

Matusevitch v. Telnikoff: the First Amendment Travels Abroad, Preventing Recognition and Enforcement of a British Libel Judgment

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NOTES AND COMMENTS

MATUSEVITCH v. TELNIKOFF: THE FIRST AMENDMENT TRAVELS ABROAD, PREVENTING RECOGNITION AND ENFORCEMENT OF A BRITISH LIBEL JUDGMENT

I. INTRODUCTION

With rapid advances in modern communications and technology, the legal implications of the dissemination, publication and effects of speech have become increasingly international. In *Matusevitch v. Telnikoff*¹ the United States District Court for the District of Columbia (applying Maryland law) was faced with the issue of whether or not to recognize a British libel judgment which did not incorporate United States' constitutional First Amendment protections. The court refused to recognize the judgment, thereby providing a clear impediment to forum shopping and affirming the United States' break with British libel law. The court denied recognition under a discretionary provision of Maryland's Uniform Foreign Money Judgments Recognition Act ("Maryland's Recognition Act"), holding the judgment to be repugnant to Maryland and United States public policy because British defamation law lacks First Amendment protections.² By refusing to recognize and enforce the British libel judgment, the District Court has continued the national trend to apply United States defamation law abroad, whether in an enforcement context or in a choice of law context.

This Note initially reviews both the facts and reasoning of *Matusevitch*, discusses the principles of full faith and credit, comity and reciprocity, and outlines the proper procedure to follow in Maryland to recognize and enforce a foreign country's judgment as opposed to a sister state's judgment. Next, this Note summarizes Maryland case law regarding enforcement of other foreign country judgments in the context of public policy issues, and cases from other jurisdictions particu-

1. *Matusevitch v. Telnikoff*, 877 F. Supp. 1 (D.D.C. 1995).

2. *Id.* at 2, citing MD. CODE ANN., CTS. & JUD. PROC. §§ 10-701 - 10-709 (1995) [hereinafter Maryland's Recognition Act].

larly discussing foreign libel actions. Specific comparison is made with *Bachchan v. India Abroad Publications Inc.*,³ the only other case to deal directly with this same issue. This Note concludes that while the District Court protected the American press under the discretionary public policy exception, it could have grounded its decision in the mandatory constitutional due process exception to recognition of foreign country judgments. This Note also suggests that there would be more certainty if non-First Amendment foreign libel judgments were never recognized in Maryland.

II. STATEMENT OF THE CASE

A. Facts

Telnikoff was a prominent human rights activist in the Soviet Union for nearly forty years, who then emigrated to England where he was employed by the BBC's Russian service.⁴ This case originated after he published an article in the *Daily Telegraph* discussing the Russian personnel that Radio Free Europe/Radio Liberty had hired.⁵ In his article of February 13, 1984, Telnikoff emphasized the importance of distinguishing between "Communist" and "Russian," and stated, *inter alia*:

This confusion further manifests itself in the policy of recruitment for the Russian Service. While other services are staffed almost exclusively from those who share the ethnic origin of the people to whom they broadcast, the Russian Service is recruited almost entirely from Russian-speaking national minorities of the Soviet empire, and has something like 10 per cent. [sic] of those who associate themselves ethnically, spiritually or religiously with Russian people. However high the standards and integrity of that majority there is no more logic in this than having a Greek Service which is 90 per cent. [sic] recruited from the Greek-speaking Turkish community of Cyprus.⁶

Matusevitch, also a Russian emigré, who was then employed in London by the United States radio station Radio Liberty, took offense at Telnikoff's statements. On February 18, 1984, Matusevitch (the

3. 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992).

4. *Matusevitch*, 877 F. Supp. at 5.

5. *Id.*

6. *Telnikoff v. Matusevitch*, 4 All E.R. 817, 819-20 (Q.B. 1991).

Plaintiff in the U.S. case) published a response to Telnikoff's original article in the *Daily Telegraph*. In his article, Matushevitch claimed that there is only one culture in Russia, namely Russian, and that the Defendant advocated racial policies.⁷ Furthermore, Matushevitch wrote "Mr. Telnikoff demands that in the interest of more effective broadcasts the management of the BBC's Russian Service should switch from *professional testing* to a *blood test*."⁸

Telnikoff filed suit against Matushevitch in England, claiming that Matushevitch defamed him in his response. Telnikoff won a judgment on March 16, 1992, for £240,000.00 Sterling.⁹ Telnikoff then filed this British judgment with the Clerk of the Circuit Court of Montgomery County, Maryland in order to enforce and collect that judgment,¹⁰ pursuant to Maryland's Uniform Enforcement of Foreign Judgments Act ("Maryland's Enforcement Act").¹¹

After having the case transferred from the United States District Court for the District of Maryland,¹² Matushevitch filed a motion for summary judgment with the United States District Court for the District of Columbia based on federal question jurisdiction.¹³ Matushevitch sought to preclude enforcement and collection of the British libel judgment as both an unrecognized and unrecognizable judgment.¹⁴

B. Issues and Holding

While Maryland's Enforcement Act provides for a simple filing

7. *Id.* at 820.

8. *Id.*

9. Order of the High Court of Justice, *Telnikoff v. Matushevitch*, 4 All E.R. 817 (Q.B. 1991) (1984-T-No. 964).

10. *Matushevitch*, 877 F. Supp. at 3. This was done because Matushevitch was a resident of Maryland. Declaration of Counsel Registering Foreign Judgment at 1, *Matushevitch*, 877 F. Supp. 1 (No. 94-1151 RMU).

11. MD. CODE ANN., CTS. & JUD. PROC. §§ 11-801 - 11-807 (1987) [hereinafter *Maryland's Enforcement Act*].

12. Unopposed Motion to Transfer Venue, *Matushevitch* (granted May, 1994)(C.A. No. 94-1151-RCL).

13. Ordinarily, recognition and enforcement of judgments from foreign countries are issues of state law, not federal law, unless a specific federal statute, treaty, or other basis for federal jurisdiction exists. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 481 cmt. a (1986) [hereinafter RESTATEMENT (THIRD)]. In the instant case, there was diversity of citizenship, Matushevitch being a resident of Maryland, and Telnikoff being a British citizen. Declaration of Counsel Registering Foreign Judgment at 1. However, jurisdiction was conferred under 28 U.S.C. § 1331 as a federal question regarding federal civil rights violation. Civil Cover Sheet at 1, *Matushevitch*, 877 F. Supp. 1 (No. 94-1151 RMU).

14. *Matushevitch*, 877 F. Supp. 1.

procedure for a recognized foreign country judgment, that judgment must first pass the recognition threshold, as set forth in Maryland's Recognition Act.¹⁵ Telnikoff's judgment failed to meet this threshold on both procedural and substantive grounds. Procedurally, Telnikoff did not have the British libel judgment judicially recognized before it was filed.¹⁶ Substantively, the court would not recognize this British libel judgment because it was repugnant to both Maryland and United States law.¹⁷

The District Court refused to recognize this judgment because, in contrast with the United States, Great Britain's libel case standards do not ensure First and Fourteenth Amendment protections to libel defendants.¹⁸ The court concluded that there are four major differences between British and United States libel law. First, in England a defendant bears the burden of proving the veracity of the allegedly defamatory statements, whereas in the United States a plaintiff bears the burden of proving their falsity.¹⁹ Second, hyperbolic speech, as claimed here, receives protection under the Constitution's First Amendment.²⁰ Third, United States' courts, in contrast to British courts, evaluate the context in which the allegedly defamatory statements appeared when adjudicating libel issues.²¹ And last, under *New York Times Co. v. Sullivan*,²² a United States plaintiff who is a public figure must show that the defendant published the defamatory remarks with actual malice by clear and convincing evidence.²³ This contrasts with the United Kingdom, where the defendant's state of mind or intention is irrelevant, as malice is presumed.²⁴

The court determined that Telnikoff, the Defendant in the instant case (who initially was the plaintiff in England) was a prominent human rights activist, and therefore a limited public figure.²⁵ Hence,

15. Maryland's Recognition Act, *supra* note 2.

16. *Matusevitch*, 877 F. Supp. at 2.

17. *Id.*

18. *Id.* at 2 & n.2.

19. *Id.* at 4.

20. *Id.* at 4 (citing *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988); *Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264 (1974); *Greenbelt Coop. Publishing Ass'n v. Bresler*, 398 U.S. 6 (1970)).

21. *Matusevitch*, 877 F. Supp. at 4-5 (citing *Moldea v. New York Times Co.*, 22 F.3d 310, 314 (D.C. Cir. 1994)). Furthermore, the British court specifically instructed the jury to ignore the context. *Id.* at 5.

22. 376 U.S. 254 (1964).

23. *Matusevitch*, 877 F. Supp. at 5.

24. *Id.* at 4.

25. *Id.* at 5.

the Plaintiff was entitled to United States constitutional and *New York Times* protections regarding speech against public personalities.²⁶ Since English law denied Plaintiff his constitutional protections, the judgment was contrary to United States and Maryland public policy. The court refused to recognize British libel law on legal principles, without a thorough discussion of the facts of the case. This implies a blanket rejection of the foreign law.

While the court clearly raised the issue of the lack of both First and Fourteenth Amendment constitutional shields,²⁷ it based its holding on the discretionary exception to recognizing a foreign country judgment as an affront to state and national public policy.²⁸ Although the court briefly mentioned this additional ground, it did not explicitly base its holding on the mandatory exception for recognizing a foreign country judgment where there is a violation of due process.²⁹

III. LEGAL CONTEXT

A. Overview

The world is increasingly becoming one global market for communications, with published materials travelling instantaneously to all four corners of the globe via satellite, television, printed materials and computer networks.³⁰ In contrast, the legal systems of the world have not become one global market. This becomes particularly problematic when published material is distributed in more than one country, each

26. *Id.* at 6.

27.

Because recognition and enforcement of a foreign judgment, based on libel standards that are repugnant to the public policies of the State of Maryland and the United States, would deprive the plaintiff of his First and Fourteenth Amendment rights, the court grants summary judgment for the plaintiff as a matter of law.

Id. at 2.

28. "Therefore, pursuant to section 10-704(b)(2) of the Recognition Act, this court declines to recognize the foreign judgment." *Id.* at 4. Section 10-704(b)(2) of the Maryland Recognition Act says that "[a] foreign judgment need not be recognized if . . . [t]he cause of action on which the judgment is based is repugnant to the public policy of the State."

29. Section 10-704(a)(1) of the Maryland Recognition Act says that "[a] foreign judgment is not conclusive if . . . [t]he judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law."

30. One court even envisioned extraterrestrial publication! *Desai v. Hersh*, 719 F. Supp. 670, 677 (N.D. Ill. 1989), *aff'd on other grounds*, 954 F.2d 1408 (7th Cir. 1992).

with different standards for libel. The situation arises when an author or publisher purposefully distributes material in a foreign market but also when material unintentionally reaches distant markets.

United States courts are struggling with the issue of conflicting libel standards in two specific contexts. First, litigants may disagree over the choice of law to be applied in a libel suit filed in the United States.³¹ Usually the choice is between the law of the forum state or the law of the place of the wrong (the *lex loci delicti*). This is further complicated because with respect to reputation, it is not always easy to ascertain where the wrong took place and often the injury extends to more than one jurisdiction.³²

Second, United States courts may be called upon to recognize and enforce a libel judgment that was rendered abroad. Both *Matusевич v. Telnikoff*³³ and *Bachchan v. India Abroad Publications, Inc.*³⁴ faced this issue regarding the enforcement of an English common law libel judgment through a United States court.

While United States law was founded on the English common law, the Constitution and Bill of Rights were adopted specifically to afford Americans greater rights than they had possessed under British colonial law.³⁵ More recently, *New York Times Co. v. Sullivan*³⁶ signified a revolutionary diversion from English defamation law, relaxing the stricter liability of the common law.³⁷ Unlike the United States, many countries still follow English common law with respect to libel.³⁸ "[A]ny libel law that does not require proof of fault and falsity is in direct conflict with the First Amendment. Under that interpretation, the libel laws of almost the entire world are unconstitutional in America."³⁹

31. *DeRoburt v. Gannett Co., Inc.*, 83 F.R.D. 574 (D. Haw. 1979); *Desai*, 719 F. Supp. 670. See discussion *infra* part IV.

32. See *DeRoburt*, 83 F.R.D. at 577-78 (discussing the place of greatest injury).

33. 877 F. Supp. 1 (D.D.C. 1995).

34. 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992).

35. *Matusевич*, 877 F. Supp. at 4 n.2. See also *Bachchan*, 585 N.Y.S.2d at 665.

36. 376 U.S. 254 (1964).

37. *New York Times* shifted the burden of proof from defendant to plaintiff, and introduced the requirement of fault, through the "actual malice" rule. Kyo Ho Youm, *Suing American Media in Foreign Courts: Doing an End-Run Around U.S. Libel Law?*, 16 HASTINGS COMM. & ENT. L.J. 235, 239-40 (1994).

38. For instance, both Nauru and India follow English defamation law, derived from the common law. *Desai v. Hersh*, 719 F. Supp. 670, 675 (N.D. Ill. 1989).

39. Youm, *supra* note 37, at 259 (quoting Todd F. Simon & Tuen-yu Lau, *When Systems Collide: Trial of Foreign Communist Media in U.S. Courts* 15 (Aug. 1987) (research paper presented at the annual convention of the Association for Education in Journalism and Mass Communication in San Antonio, Tex.)).

The First Amendment and protections of speech established in *New York Times* encourage plaintiffs to avoid United States courts and file abroad where possible.⁴⁰ Foreign courts may represent a plaintiff's only chance for a successful judgment.⁴¹ In particular, England has become "the libel capital of the world, as foreign public figures queue' to claim damages for reputational injury that cannot be won at home."⁴² Especially in comparison to United States' standards, an English suit is almost a sure win for plaintiffs.

For large organizations, such as international publications, the chance to contest a foreign libel judgment in the United States rarely arises because they usually have significant assets in the country rendering the judgment, and are therefore subject to enforcement proceedings in the same jurisdiction.⁴³ In contrast, an individual author who publishes in one country is less likely to have published in other countries as well, and if she has, is less likely to have analyzed carefully that nation's libel laws. Once published abroad, chances are the author's assets are mostly, if not exclusively, located in the home country. Hence, those particularly exposed to a judgment in one jurisdiction and collection proceedings in another are individuals and small companies who are not apt to have substantial assets abroad from which to pay a judgment. Ironically, these parties probably have the least amount of resources and legal knowledge available to cater to different legal standards.

This lack of a uniform international legal standard can have a chilling effect on United States media. If foreign libel standards can be applied to domestically published material, publishers will either print different versions for different countries, or will carefully constrain their articles in order to pass scrutiny under the jurisdiction with the

40.

The increase in communication due to advanced technology has led to more complex defamation litigation. For example, the plaintiffs and defendants may be domiciled in more than one country or the defamatory broadcast may be received in several countries. The plaintiff in a defamation action may therefore have a group of countries from which to choose a forum.

Youm, *supra* note 37, at 255, (quoting Kimberly Richards, *Defamation Via Modern Communication: Can Countries Preserve Their Traditional Policies?* 3 *TRANSNAT'L LAW*. 613, 615 (1990)).

41. Volker Behr, *Symposium On U.S.-E.C. Legal Relations, Enforcement of United States Money Judgments in Germany*, 13 *J.L. & COM.* 211, 214.

42. Youm, *supra* note 37, at 254, (quoting Geoffrey Robertson, *Two Cheers for the First Amendment*, 9 *COMM. LAW*. Spring 1991, at 6, 8).

43. Youm, *supra* note 37, at 260-61.

most restrictive laws.⁴⁴ While a publication or broadcast may be intended solely for the domestic market, oftentimes it either actually ends up being distributed abroad, or its effects travel abroad, thereby creating the possibility of international liability, without the author's intent or consent. For instance, a posting in cyberspace may end up on a computer screen anywhere in the world, or a publication can be resold abroad unbeknownst to the author.

The United States is therefore faced with a precarious balancing act between applying our constitutional norms extraterritorially or causing a chilling effect on speech that has any chance of travelling abroad. While applying our legal standards to foreign judgments may protect United States nationals, it could cause retaliation from foreign countries if they, in turn, refuse to enforce American judgments, citing a lack of reciprocity. On the other hand, if we recognize foreign libel judgments, plaintiffs are then able to skirt United States legal standards and the media will have to tailor their publications to the highest common international denominator. While the Supreme Court has decided whether certain constitutional guarantees apply abroad,⁴⁵ the Court has yet to decide whether the First Amendment applies abroad to either nationals or aliens.⁴⁶

B. Full Faith & Credit, Comity & Reciprocity

Since *Erie Railroad v. Tompkins*,⁴⁷ and *Klaxon Co. v. Stentor Electric Manufacturing Co.*,⁴⁸ federal courts have consistently held that in the absence of a federal treaty or statute, state law governs the recognition and enforcement of foreign country judgments.⁴⁹ While

44. Jeremy Maltby, *Juggling Comity and Self-Government: The Enforcement of Foreign Libel*, 94 COLUM. L. REV. 1978, 2007-08 (1994).

45. *Id.* at 2013 & n.184 (citing *Reid v. Covert*, 354 U.S. 1, 5 (1957) (American citizens tried before a military tribunal abroad are entitled to Fifth and Sixth Amendment protections); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 266 (1990) (aliens abroad are not entitled to Fourth Amendment protections)).

46. Maltby, *supra* note 44, at 2013-14.

47. 304 U.S. 64 (1938).

48. 313 U.S. 487 (1941) (stating that state conflict-of-laws rules are applied by federal courts when sitting under diversity jurisdiction as per *Erie*).

49. RESTATEMENT (THIRD), *supra* note 13, § 481 cmt. a. See also Ronald A. Brand, *Enforcement of Foreign Money-Judgments in the United States: In Search of Uniformity and International Acceptance*, 67 NOTRE DAME L. REV. 253, 262 & n.31 (1991) (citing *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1003-04 (5th Cir. 1990); *Tahan v. Hodgson*, 662 F.2d 862 (D.C. Cir. 1981); *Somportex, Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972); *Toronto-Dominion Bank v. Hall*, 367 F. Supp. 1009,

state law is not uniform, money judgments can only be enforced by a civil action once local jurisdiction is obtained, and only against assets located within that jurisdiction.⁵⁰ In determining the status of foreign country judgments, state law, whether judicial or statutory, is usually based on one of three rules : (1) full faith and credit; (2) reciprocity; or (3) comity.⁵¹

Under the United States Constitution, normally full faith and credit is only applied to judgments from sister states⁵² and other federal courts.⁵³ Maryland does not apply full faith and credit to foreign country judgments.⁵⁴ Under this doctrine, enforcement of a sister state judgment can only be refused when the judgment was initially rendered without one of the following three safeguards: inadequate notice, lack of personal jurisdiction or lack of subject matter jurisdiction.⁵⁵

The Uniform Enforcement of Foreign Judgments Act of 1964 (the "Uniform Enforcement Act"),⁵⁶ which implements the Full Faith and Credit Clause of the Constitution of the United States,⁵⁷ allows for recognition of sister state judgments and judgments of United States fed-

1011-12 (E.D. Ark. 1973)). Because actions to enforce a foreign country judgment usually involve international litigants, many such actions are brought to federal court under diversity of citizenship. Diversity of citizenship jurisdiction is based on 28 U.S.C. § 1332, and usually cases which involve the enforcement of foreign judgments arise under this provision. However, jurisdiction can also arise under "federal question jurisdiction" as per 28 U.S.C. § 1331. Such cases include admiralty law, 28 U.S.C. § 1333, bankruptcy law, 28 U.S.C. § 1334, and copyright and patent law, 28 U.S.C. § 1338(a). Brand at 262 & n.32.

50. RESTATEMENT (THIRD), *supra* note 13 § 481 cmt. g; *FTC v. Compagnie de Saint-Gobain-Pont-a-Mousson*, 636 F.2d 1300, 1316 (D.C. Cir. 1980).

51. Brand, *supra* note 49, at 264-65.

52. U.S. CONST., art. IV, § 1, and 28 U.S.C. § 1738 which implements this constitutional provision.

53. U.S. CONST., art. IV, § 1, and 28 U.S.C. § 1963. Once finalized by appeal and registered, a federal judgment is recognizable in any other United States District Court. *Id.* However, some states treat foreign country judgments in a similar fashion, enforcing them under the doctrine of full faith and credit. Brand, *supra* note 49, at 265 (citing *Atlantic Ship Supply, Inc. v. M/V Lucy*, 392 F. Supp. 179, 183 (M.D. Fla. 1975), *aff'd*, 553 F.2d 1009 (5th Cir. 1977) (recognizing judgment from Costa Rica under both the doctrines of comity and of full faith and credit)).

54. *Guinness PLC v. Ward*, 955 F.2d 875, 883 (4th Cir. 1992) (quoting *S.A. Andes v. Versant Corp.*, 878 F.2d 147, 150 (4th Cir. 1989)).

55. Maltby, *supra* note 44, at 1984 & n.21.

56. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT § 13 U.L.A. 152 (Westlaw 1995) [hereinafter Uniform Enforcement Act].

57. U.S. CONST., art. IV, § 1 (referred to in *Van Kooten Holding B.V. v. Dumarco Corp.* 670 F. Supp. 227, 228 (N.D. Ill. 1987)).

eral courts.⁵⁸ However, the Uniform Enforcement Act alone also does not usually apply to foreign country judgments,⁵⁹ as it defines a foreign judgment as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state."⁶⁰

In contrast, the Uniform Foreign Money Judgments Recognition Act of 1962 (the "Uniform Recognition Act"),⁶¹ defines a foreign judgment differently, as "any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters."⁶² Therefore, if a foreign country judgment is recognized in any state (e.g., under the state's Recognition Act), then it is entitled to full faith and credit as provided for in the state's Enforcement Act.⁶³

58. *But see* Federal Deposit Insurance Corp. v. Panelfab Int'l Corp., 501 So. 2d 167 (Fla. Dist. Ct. App. 1987) (holding that a judgment rendered by the United States District Court for the District of Puerto Rico was not a state court judgment, and therefore not recognizable under Florida's Enforcement of Foreign Judgments Act). To date, 46 states have enacted an Enforcement Act. For a list of specific statutory citations, see Uniform Enforcement Act, *supra* note 56.

59. *See* Aetna Life Insurance Co. v. Tremblay, 223 U.S. 185, 190 (1912) (holding that foreign country judgments are not entitled to full faith and credit); Guinness PLC v. Ward, 955 F.2d 875, 891 (4th Cir. 1992) (concluding that Maryland's Enforcement Act is inapplicable to foreign country judgments but for the adoption of Maryland's Recognition Act); Hennessy v. Marshall, 682 S.W.2d 340, 343 (Tex. Ct. App. 1984); Biel v. Boehm, 406 N.Y.S.2d 231, 233 (N.Y. Sup. Ct. 1978).

60. Uniform Enforcement Act, *supra* note 56 § 1. Maryland's Enforcement Act is substantially the same, defining a "foreign judgment" as "a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this State." Maryland Enforcement Act, *supra* note 11 § 11-801. *See also* Van Kooten Holding B.V., 670 F. Supp. at 227-28, (stating that the purpose of the Uniform Enforcement Act is to "facilitate the enforcement of interstate judgments").

61. UNIF. FOREIGN MONEY-JUDGMENTS RECOGNITION ACT § 13 U.L.A. 263 § 1(2) (Westlaw 1995) [hereinafter Uniform Recognition Act].

62. Uniform Recognition Act, *supra* note 61 § 1(2). Again, Maryland's Recognition Act is virtually the same as the Uniform Recognition Act, defining "foreign judgment" as "any judgment of a foreign state granting or denying recovery of a sum of money. It does not mean a judgment for taxes, fine, or penalty, or a judgment for support in matrimonial or family matters." Maryland Recognition Act, *supra* note 2 § 10-701(b). Some states make this point clearer by referring to a "foreign country" judgment as opposed to a "foreign" judgment in their Recognition Acts. N.Y. CIV. PRAC. L. & R. 5302 (McKinney 1995); TEX. CIV. PRAC. & REM. CODE ANN. § 36.002 (West 1993); VA. CODE ANN. § 8.01-465.8 (Michie 1995).

63. If one has doubts about obtaining recognition of a foreign country judgment in a particular state's jurisdiction, it is wise to obtain recognition first, where possible, in a state with a Uniform Recognition Act. Once recognized properly, the judgment would then be entitled to full faith and credit in all fifty states, as a sister state judgment.

While foreign country judgments are usually not entitled to direct recognition under the Full Faith and Credit Clause, they can be recognized under the flexible notion of comity, although sometimes limited by the requirement of reciprocity. Any discussion of comity and reciprocity begins with the seminal case of *Hilton v. Guyot*⁶⁴ which sets forth a detailed discussion of the two intertwined doctrines.

In *Hilton*, the United States Supreme Court refused to afford a conclusive effect to a judgment obtained in a French court by a French company against two United States citizens who had conducted business in France.⁶⁵ The Court held that reciprocity by French courts is required before the United States would afford this French judgment full faith and credit, because "international law is founded upon mutuality and reciprocity."⁶⁶ While not attaching full faith and credit to the French judgment, the Court held that such a foreign country judgment would be "prima facie evidence only of the justice of the plaintiffs' claim."⁶⁷

In denying the \$277,775.44 judgment, the Court reasoned that France, faced with a similar claim for recognition from a United States court, would have completely reviewed a judgment on its merits, and therefore not afforded it "full credit and conclusive effect."⁶⁸ Because of this lack of reciprocity, the Supreme Court refused to afford the French judgment full credit and conclusive effect.⁶⁹

Before reaching the final results, Justice Gray explained the doctrine of comity when there is no treaty explicitly governing the specific issue.⁷⁰ Summarizing how laws only have effect within the limits of national sovereignty, he set forth an often quoted definition of "the comity of nations" as:

'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international

Friedrich Juenger, *An International Transaction in the American Conflict of Laws*, 7 FLA. J. INT'L L. 383, 398-99 (1992).

64. 159 U.S. 113 (1895).

65. *Id.*

66. *Id.* at 228.

67. *Id.* at 227.

68. *Id.*

69. *Id.*

70. *Id.* at 163.

duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.⁷¹

While never explicitly overruled, *Hilton's* reciprocity requirement is not currently required in the majority of United States jurisdictions.⁷² However, seven states do include reciprocity in their Recognition Acts: in Massachusetts and Georgia, lack of reciprocity is a mandatory reason for nonrecognition;⁷³ in Idaho, Florida, North Carolina, Ohio and Texas, lack of reciprocity is a discretionary reason for nonrecognition.⁷⁴ The trend is to abandon the reciprocity requirement since many jurisdictions think it unfairly and irrationally penalizes individual litigants.⁷⁵

In contrast, most European jurisdictions still require reciprocity.⁷⁶ While the United States is not currently a party to any multinational treaties regarding recognition or enforcement of foreign country judgments,⁷⁷ much of Europe, as well as Latin America, is covered by such

71. *Id.* at 163-64. *See also*, *Matusevitch v. Telnikoff*, 877 F. Supp. 1, 3 (D.D.C. 1995).

72. RESTATEMENT (THIRD), *supra* note 13 § 481 cmt. d. *See also, inter alia*, *Bank of Montreal v. Kough*, 612 F.2d 467, 472 (9th Cir. 1980); *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 & n.8 (3rd Cir. 1971) ("The doctrine [of reciprocity] has received no more than desultory acknowledgement."); *Toronto-Dominion Bank v. Hall*, 367 F. Supp. 1009, 1013-14 (E.D. Ark. 1973). Furthermore, the United States Court of Appeals for the Ninth Circuit cites the draftsmen of the Uniform Recognition Act as having purposefully rejected reciprocity as a consideration, because the due process requirements were enough of a safeguard for United States citizens sued on foreign country judgments. *Bank of Montreal*, 612 F.2d at 471-72 (citing Transcript, "Proceedings in Committee of the Whole, Uniform Recognition of Foreign-Money Judgments Act," Aug. 5, 1961, at 8-9). Interestingly enough, the draftsmen contrasted their version with the British statute for recognition of foreign country judgments which requires reciprocity but not due process. *Bank of Montreal*, 612 F.2d at 472 n.6.

73. GA. CODE ANN. § 9-12-114(10) (1995); MASS. GEN. LAWS ANN. ch. 235, § 23A (West 1994).

74. IDAHO CODE § 10-1404(2)(g) (1995); FLA. STAT. ANN. § 55.605(2)(g) (West 1994); N.C. GEN. STAT. § 1C-1804(b)(7) (West 1995); OHIO REV. CODE ANN. § 2329.92(B) (West 1995); TEX. CIV. PRAC. & REM. CODE ANN. § 36.005(b)(7) (West 1993). *See also*, *Royal Bank of Canada v. Trentham Corp.*, 665 F.2d 515 (5th Cir. 1981). In New Hampshire, reciprocity is required only for Canadian judgments. N.H. REV. STAT. ANN. § 524:11 (1994), as noted in *Tahan v. Hodgson*, 662 F.2d 862, 868 n.21 (D.C. Cir. 1981).

75. *Behr*, *supra* note 41, at 221.

76. *Id.* at 220.

77. In the 1970's, Great Britain and the United States did hold negotiations regarding a proposed Convention Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters; however, those negotiations were terminated with-

treaties.⁷⁸

Because many other countries require either a treaty or reciprocity before recognizing a judgment from a foreign country, the fact that the United States does not have a uniform federal law in this area makes it difficult for an American litigant to satisfy foreign reciprocity requirements.⁷⁹ Although the United States is one of the most liberal countries in terms of recognizing foreign country judgments,⁸⁰ an explicit treaty and/or policy would lead to more certainty.⁸¹ Indeed, the Uniform Recognition Act's purpose was "'to create greater recognition of the state's judgments in foreign nations . . . by informing the foreign nations of particular situations in which their judgments would definitely be recognized.'" ⁸² However, this Act has not been adopted by every

out an agreement. RESTATEMENT (THIRD), *supra* note 13, Introductory Note 1. However, *see Vagenas v. Continental Gin Co.*, 988 F.2d 104, 106 (11th Cir. 1993), *cert. denied*, 114 S.Ct. 389 (1993) (construing an article in a United States-Greece treaty as elevating a Greek judgment to that of a sister state judgment), and *Choi v. Kim*, 50 F.3d 244, 248 (3rd Cir. 1995) (construing a similar provision in a United States-Korea treaty as also elevating a Korean judgment to the status of a sister state judgment).

78. Most of the European Community states and the European Free Trade Association member states are governed by the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, 1972 O.J. (L 299) 32, reprinted in 29 I.L.M. 1417 (consolidated and updated text) and the Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, 1988 O.J. (L 319) 9, reprinted in 28 I.L.M. 620. *See Behr*, *supra* note 41, at 213. In Latin America, there is, for instance, the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards of 1979. RESTATEMENT (THIRD), *supra* note 13, § 481 Reporter's note 6.

79. *Behr*, *supra* note 41, at 223. "Recent German commentators on the Code of Civil Procedure, who despair that it is necessary to review more than fifty state jurisdictions to determine the U.S. position, conclude [however] that reciprocity is generally guaranteed in the United States." *Id.*

80. RESTATEMENT (THIRD), *supra* note 13, Introductory Note.

It appears that the country most receptive to recognition of foreign judgments is the United States, in which the principles and practices engendered by the Full Faith and Credit clause in the United States Constitution in respect of sister-State judgments have to a large extent been carried over to recognition and enforcement of judgments of foreign states.

Id.

81. *Behr*, *supra* note 41, at 223; Matthew H. Adler, *If We Build It, Will They Come? - The Need For a Multilateral Convention on the Recognition and Enforcement of Civil Monetary Judgments*, 26 LAW & POL'Y INT'L BUS. 79, 80 (1994).

82. *Guinness PLC v. Ward*, 955 F.2d 875, 884 (4th Cir. 1992) (quoting *Bank of Montreal v. Kough*, 430 F. Supp. 1243, 1249 (N.D. Cal. 1977), *aff'd*, 612 F.2d 467 (9th Cir. 1980)).

state, nor uniformly when so adopted.⁸³ In the absence of a single national standard, American litigants who find themselves in a foreign country's jurisdiction are left to the domestic laws of that nation.

While neither the Uniform Enforcement Act nor the Full Faith and Credit Clause alone give effect to judgments from foreign countries, Maryland is one of twenty-three states that have enacted some version of both the Uniform Enforcement Act and the Uniform Recognition Act to date.⁸⁴ Pursuant to the Uniform Recognition Act, and subject to many exceptions and conditions, a foreign country judgment for the payment of a sum of money "is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit."⁸⁵ Hence, the Recognition Act in conjunction with the Enforcement Act provide means by which a judgment from a foreign country may be enforced in the United States with full faith and credit, as if it were a sister state judgment. The twenty-three states that have enacted some form of both Acts provide the clearest guidance on obtaining enforcement of a foreign country judgment on United States territory. This clarity is important, both for reciprocity and certainty. Furthermore, "[m]any of the reasons for recognition and enforcement of foreign country judgments are the same as for giving conclusive effect to domestic judgments: prevention of harassment of the successful party, elimination of duplicative judicial proceedings, and providing some measure of settled expectations to the parties."⁸⁶

C. Public Policy Exception

Most nations will not enforce a judgment rendered abroad if it offends their domestic public policy.⁸⁷ In the United States, the Supreme Court has ruled that comity "does not require, but rather for-

83. To date, 26 states have adopted a Recognition Act. For a list of specific statutory citations, see Uniform Recognition Act, *supra* note 61, at Table of Jurisdictions Wherein Act Has Been Adopted.

84. Maryland's Enforcement Act, *supra* note 11 and Maryland's Recognition Act, *supra* note 2. The 23 jurisdictions that have enacted versions of both acts to date are as follows: Alabama, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Maryland, Minnesota, Missouri, Montana, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virgin Islands, Virginia, and Washington. For a list of specific statutory citations, see Uniform Enforcement Act, *supra* note 56, and Uniform Recognition Act, *supra* note 61, at their respective Tables of Jurisdictions Wherein Act Has Been Adopted.

85. Uniform Recognition Act, *supra* note 61, § 3.

86. Hunt v. BP Exploration Co. (Libya) Ltd., 492 F. Supp. 885, 905 (N.D. Tex. 1980).

87. Behr, *supra* note 41, at 211. All European nations follow this. *Id.*

bids [recognition] where such a recognition works a direct violation of the policy of our laws, and does violence to what we deem the rights of our citizens,"⁸⁸ and individual states will not enforce a judgment that violates U.S. public policy.⁸⁹

The problem is in defining what offends public policy. Such a definition is inherently imprecise and depends on the specific jurisdiction. The public policy exception to comity has generally been construed narrowly⁹⁰ for a number of reasons. First, statutorily, the Recognition Act provides many specific grounds, such as lack of due process or lack of jurisdiction, for nonrecognition and hence few judgments fall outside of these categories.⁹¹ In addition, "[a]s Judge Cardozo so lucidly observed: 'We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home.'"⁹²

To succeed on public policy grounds, there must be an overriding public interest which outweighs comity principles; "mere variance with local public policy is not sufficient to decline enforcement."⁹³ The standard for denying recognition is high and can only be invoked in clear-cut cases.⁹⁴ The United States Court of Appeals for the Third Circuit applied the following public policy test for declining enforcement of a foreign country judgment when it

tends clearly to injure the public health, the public morals, the public confidence in the purity of the administration of the law, or to undermine that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel, is against public policy.⁹⁵

88. *Matusevitch v. Telnikoff*, 877 F. Supp. 1, 3 (D.D.C. 1995) (citing *Hilton v. Guyot*, 159 U.S. 113, 193 (1895) (quoting *De Brimont v. Penniman*, 10 F. Cas. 436, 441 (C.C.S.D.N.Y. 1873) (No. 3,715)).

89. Individual states tend not to enforce such judgments under either their individual Recognition Act, or under § 4(b)(3) of the Uniform Recognition Act (discretionary), *supra* note 61, or under § 482(2)(d) of the RESTATEMENT (THIRD) (also discretionary), *supra* note 13, or under state common law.

90. David Westin, *Enforcing Foreign Commercial Judgments and Arbitral Awards in the United States, West Germany, and England*, 19 LAW & POL'Y INT'L BUS. 325, 337 (1987).

91. RESTATEMENT (THIRD), *supra* note 13, Reporter's note 1.

92. *Ackermann v. Levine*, 788 F.2d 830, 842 (2nd Cir. 1986) (quoting *Loucks v. Standard Oil Co.*, 224 N.Y. 99, 110-11 (1918)).

93. *Ackermann*, 788 F.2d at 842.

94. *Id.* at 841 (citations omitted).

95. *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 443 (3rd Cir. 1971) (quoting and *aff'g* *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 318 F. Supp. 161, 169 (E.D. Pa. 1970) (quoting *Goodyear v. Brown*, 155 Pa. 514, 518

The fact that a judgment obtained abroad could not have been obtained domestically, or even that a cause of action pursued abroad could not be invoked in the United States jurisdiction is insufficient to deny enforcement on public policy grounds.⁹⁶ Logistically, most differences in law are covered by other provisions of the Uniform Recognition Act. However, when not so covered, for reciprocity concerns, certainty in judgments and international cooperation, it is important to narrow the public policy exception, as otherwise any differences in law could fall under its ambit.

As commerce becomes increasingly international in character, it is essential that businessmen recognize and respect the laws of those foreign nations in which they do business. They cannot expect foreign tribunals to have one set of laws for their own citizens and another, more favorable, set for the citizens of other countries. It is also essential that American courts recognize and respect the judgments entered by foreign courts to the greatest extent consistent with our own ideals of justice and fair play. Unfettered trade, good will among nations, and a vigorous and stable international-and national-economy demand no less.⁹⁷

As stated so eloquently in *Tahan*, above, the principles of international harmony, comity and *res judicata* justify such a limited reading of this recognition exception.⁹⁸

Courts have been called upon to examine the limited public policy exception in a number of areas. For example, a number of cases have dealt with attorneys' fees which were incurred abroad, under foreign standards. In 1986, the United States Court of Appeals for the Second Circuit held that in the absence of "fraud, overreaching or bad faith," differences in the German fee structure for attorneys did not, in and of itself, violate New York public policy.⁹⁹ An English breach of contract action which permits compensatory damages for loss of goodwill and other costs, including legal fees, was held not to violate Pennsylvania's

(1893))).

96. *See, e.g.*, *Knothe v. Rose*, 392 S.E.2d 570 (Ga. Ct. App. 1990); *Neporany v. Kir*, 5 A.D.2d 438 (N.Y. App. Div. 1958).

97. *Tahan v. Hodgson*, 662 F.2d 862, 868 (D.C. Cir. 1981).

98. *See Ackermann*, 788 F.2d at 845.

99. *Id.* (holding the judgment enforceable in general, however disallowing portion of attorney's bill for which there was no evidence of prior authorization or of a tangible work product).

public policy, even though unrecoverable there.¹⁰⁰ An unsuccessful litigant in Mexico claimed that charging him with his opponent's attorney's fees violated Texas public policy. The Texas court held that the Mexican attorney's fees and costs were enforceable, even if they could not have been granted by an American court.¹⁰¹

With respect to other areas, in *Tahan v. Hodgson*¹⁰² enforcement of a default judgment rendered in Israel against the defendant was held not to violate the District of Columbia's public policy, even though Israel's notice provisions were different from the Federal Rules of Civil Procedure.¹⁰³ In *Hunt v. BP Exploration Co. (Libya) Ltd.*,¹⁰⁴ an English grant of prejudgment interest was allowed on a sum for recovery that was uncertain before the time of judgment, even though Texas law was not in accord.¹⁰⁵ Similarly, a Canadian judgment was held enforceable even though note holders have broader powers with respect to security in Canada than in Arkansas.¹⁰⁶ Another Canadian judgment was also upheld which was based on two causes of action, seduction and criminal conversation, both of which had been abolished in New York.¹⁰⁷ In *Ackerman v. Ackerman*,¹⁰⁸ the United States Court of Appeals for the Second Circuit upheld an English judgment for enforcement of a breach of separation agreement under New York law. What

100. *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 443 (3rd Cir. 1971).

101. *Compania Mexicana Rediodifusora [sic] Franteriza v. Spann*, 41 F. Supp. 907 (N.D. Tex. 1941), *aff'd* 131 F.2d 609 (5th Cir. 1942).

102. 662 F.2d 862 (D.C. Cir. 1981).

103. *Id.*

With respect to the fact that Israeli procedure was inconsistent with Rule 55(b)(2) of the Federal Rules of Civil Procedure, we think that it would be a mistake to find failure to follow the Federal Rules by a foreign nation to be ipso facto a violation of American public policy. It would be unrealistic for the United States to require all foreign judicial systems to adhere to the Federal Rules of Civil Procedure. Obviously, all foreign judgments will be inconsistent to some extent with the Federal Rules; many state court judgments are, for that matter. Surely a more important discrepancy than this is necessary to create a violation of public policy. We do not find the Israeli court's failure to provide second notice three days prior to hearing an application for entry of default to be so "repugnant to fundamental notions of what is decent and just" that American public policy requires non-enforcement of the subsequent judgment.

Id. at 866.

104. 492 F. Supp. 885 (N.D. Tex. 1980).

105. *Id.* at 901.

106. *Toronto-Dominion Bank v. Hall*, 367 F. Supp. 1009 (E.D. Ark. 1973).

107. *Neporany v. Kir*, 5 A.D.2d 438 (N.Y. App. Div. 1958).

108. 676 F.2d 898 (2nd Cir. 1982).

is unusual about this case is that there was a California judgment dismissing the English decision to which New York would not give full faith and credit. Hence, "no antecedent judgment stands in the way of enforcing the English judgment"¹⁰⁹

In contrast, a Luxembourg judgment that calculated a bankrupt company's United States federal income tax debt at less than two hundred thousand dollars, when the Internal Revenue Service claimed it was a million dollars, was held to violate the "inexpugnable public policy that favors payment of lawfully owed federal income taxes."¹¹⁰ In addition, courts are beginning to refuse to recognize libel judgments obtained in contravention of the United States Constitution's First Amendment. For a complete discussion, see Section IV, below.

D. Enforcing a Foreign Country Judgment in Maryland

1. Process

As discussed in *Matusevitch*, while Maryland's Enforcement Act provides a simple filing procedure for a judgment entitled to full faith and credit, it does not allow for automatic enforcement of a foreign country judgment.¹¹¹ However, it is "a facilitating device,"¹¹² allowing for simple enforcement proceedings once that judgment has been judicially recognized under Maryland's Recognition Act, for then it is also entitled to full faith and credit. The two Acts are complementary and not mutually exclusive.¹¹³ However, it is important to distinguish between the two steps,¹¹⁴ because enforcement and recognition serve different purposes.¹¹⁵ While recognition is a prerequisite to enforcement of

109. *Id.* at 905.

110. *Overseas Inns S.A. P.A. v. United States*, 685 F. Supp. 968, 972 (N.D. Tex. 1988).

111. *Matusevitch v. Telnikoff*, 877 F. Supp. 1, 3 (D.D.C. 1995).

112. *Weiner v. Blue Cross of Md., Inc.*, 730 F. Supp. 674, 676 (D. Md. 1990), *aff'd*, *Weiner v. Blue Cross & Blue Shield of Md., Inc.*, 925 F.2d 81 (4th Cir. 1991), *cert. denied*, 502 U.S. 816 (1991).

113. *Guinness PLC v. Ward*, 955 F.2d 875, 891 (4th Cir. 1992).

114. *Matusevitch* highlights the adverse results when the steps are not applied properly. As discussed above, enforcement was improperly sought before recognition was obtained. While in this instance the foreign country judgment was held to be never-the-less unrecognizable, the case did not discuss the results if the same situation were to happen with a judgment that was entitled to recognition. *Matusevitch*, 877 F. Supp. 1.

115. RESTATEMENT (THIRD), *supra* note 13 § 481 cmt. b. *See also, Guinness*, 955 F.2d at 889 n.9 (distinguishing between questions of recognition and questions of enforcement).

a foreign country judgment, enforcement need not be sought nor is it necessary for recognition. Recognition can be used in cases regardless of whether enforcement is also sought, such as for *res judicata*, collateral estoppel, or for reliance on a prior determination of a fact or law.¹¹⁶ Furthermore, certain judgments which determine status, declare rights, grant injunctions, or arise from attachment of property may be recognized but not enforced.¹¹⁷

Maryland's Recognition Act, effective June 1, 1963,¹¹⁸ is set forth in Maryland's Courts and Judicial Proceedings statute, § 10-701 through § 10-709.¹¹⁹ To enforce a debt obtained from a foreign country judgment, one must first obtain recognition of such judgment by filing a civil action after establishing a basis of jurisdiction over the judgment creditor or his property by the enforcing court.¹²⁰

It applies to "foreign judgment[s]" from a "foreign state," meaning "any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands."¹²¹ Conversely, it only applies to judgments from foreign countries, and has nothing to do with sister state judgments.¹²²

Maryland's Recognition Act also applies to foreign judgments which are "conclusive, and enforceable where rendered even though an appeal is pending or it is subject to appeal."¹²³ However, the court does have discretion to stay the proceedings if an appeal is pending.¹²⁴ Nine reasons for not recognizing a foreign judgment are listed in § 10-704, providing four mandatory grounds in section (a), and five discretionary grounds in section (b) as follows:

116. RESTATEMENT (THIRD), *supra* note 13 § 481 cmt. b. *See also*, *Guinness*, 955 F.2d at 889 n.9.

117. RESTATEMENT (THIRD), *supra* note 13 § 481 cmt. b.

118. *Guinness*, 955 F.2d at 883.

119. Maryland's Recognition Act, *supra* note 2.

120. *Matusevitch v. Telnikoff*, 877 F. Supp. 1, 2 (D.D.C. 1995) (quoting RESTATEMENT (THIRD), *supra* note 13 § 481 cmt. g).

121. Maryland's Recognition Act, *supra* note 2 §§ 10-702, 10-701(c).

122. *Mueller v. Payn*, 352 A.2d 895, 900 (Md. Ct. Spec. App. 1976).

123. Maryland's Recognition Act, *supra* note 2 § 10-702.

124. *Id.* § 10-706.

If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

Id.

Grounds for nonrecognition.

- (a) A foreign judgment is not conclusive if:
- (1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;¹²⁵
 - (2) The foreign court did not have personal jurisdiction over the defendant;
 - (3) The foreign court did not have jurisdiction over the subject matter; or
 - (4) The judgment was obtained by fraud.
- (b) A foreign judgment need not be recognized if:
- (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
 - (2) The cause of action on which the judgment is based is repugnant to the public policy of the State;
 - (3) The judgment conflicts with another final and conclusive judgment;
 - (4) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute was to be settled out of court; or
 - (5) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.¹²⁶

In addition, the Maryland Recognition Act lists non-exclusive bases of personal jurisdiction.¹²⁷ Once a foreign judgment meets the Act's requirements (with the exceptions as noted), that judgment "is conclusive between the parties to the extent that it grants or denies recovery of a sum of money . . . [and] is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit."¹²⁸ A court also has the power to grant the foreign country judgment even

125. For a recent case denying enforcement of an Iranian judgment for lack of due process under California's Foreign Money-Judgments Act *see*, *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406 (9th Cir. 1995)(holding there to be a lack of due process where foreign tribunal did not afford defendant proper legal representation, a personal appearance in the forum or presentation of local witnesses on her behalf).

126. Maryland's Recognition Act, *supra* note 2 § 10-704.

127. *Id.* § 10-705.

128. *Id.* § 10-703.

greater effect than required by this Act.¹²⁹ While the court may not grant it a lesser effect, it can and should grant it a greater effect when to do so would be compatible with America's generally accepted substantive law.¹³⁰ Furthermore, Maryland's Recognition Act is not exclusive, providing for an expansive, versus limited, interpretation.¹³¹

Once a foreign country judgment has been properly recognized under Maryland's Recognition Act, it is then "authenticated in accordance with an act of Congress or statutes of this State [Maryland],"¹³² and entitled to full faith and credit like a sister state judgment.¹³³ A judgment creditor has the option of either bringing a separate action to enforce that judgment or simply following the filing and notification provisions set forth in Maryland's Enforcement Act, effective July 1, 1987.¹³⁴

To file a recognized foreign-country judgment under Maryland's Enforcement Act, a twenty-five dollar fee is required in addition to the state's regular fees.¹³⁵ The "Filing" section sets forth which court is proper depending on the amount of the judgment.¹³⁶ The judgment creditor must also file an affidavit with the last known addresses of both himself or herself and the judgment debtor.¹³⁷ The clerk is then responsible for mailing notice to the judgment debtor.¹³⁸ However, the judg-

129. S.A. Andes v. Versant Corp., 878 F.2d 147, 149 (4th Cir. 1989) (citing the Commissioner's Prefatory Note to the Uniform Recognition Act, *supra* note 61).

130. *Id.*

131. Maryland's Recognition Act, *supra* note 2 § 10-707. "This subtitle does not prevent the recognition of a foreign judgment in situations not covered by this subtitle." *Id.* See also, Wolff v. Wolff, 389 A.2d 413, 416 (Md. Ct. Spec. App. 1978), *aff'd*, 401 A.2d 479 (Md. 1979) (describing this subtitle as a "saving clause").

Despite the obscure wording of the clause, its intent is clear. The draftsmen did not wish to fetter the requested court's power to recognize judgments which fall Outside [sic] the scope of the Act; nor did they wish to discourage the application of more liberal standards than those prescribed for judgments Within [sic] its scope.

Id. (quoting A. Homburger, *Recognition and Enforcement of Foreign Judgments. A New Yorker Reflects on Uniform Acts*, 18 AM. J. COMP. L., 367, 370-71 (1970) (holding that an English divorce decree, including alimony, is recognizable under comity despite the court's conclusion that Maryland's Recognition Act does not provide for recognition or enforcement of alimony)).

132. Maryland's Enforcement Act, *supra* note 11 § 11-802(a).

133. *Matusevitch v Telnikoff*, 877 F. Supp. 1, 3 (D.D.C. 1995).

134. Maryland's Enforcement Act, *supra* note 11 § 11-805(b).

135. *Id.* § 11-805(a).

136. *Id.* § 11-802(a)(1).

137. *Id.* § 11-803(a).

138. *Id.* § 11-803(b). The clerk is also responsible for noting the mailing in the docket. *Id.* § 11-803(b)(1).

ment creditor also has the option to mail notice of the filing to the judgment debtor, and proof of such will be enough if the court's clerk did not mail the notice.¹³⁹

Maryland's Enforcement Act also provides for a mandatory stay of enforcement of the judgment if the judgment debtor shows that an appeal from that foreign judgment is either pending, will be made, or a stay of execution has indeed been granted, and the judgment debtor has furnished the necessary security for satisfaction of the foreign judgment as required where rendered.¹⁴⁰ A stay is also mandated if the judgment debtor shows any other ground for which enforcement of the judgment would be stayed in Maryland.¹⁴¹

Once filed with the appropriate court, the foreign judgment is to be treated in the same fashion as a judgment rendered in that court, and is subject to the same "procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the court in which it is filed."¹⁴² The statute does not "purport to alter any substantive rights or defenses that otherwise would be available either to the judgment creditor or the judgment debtor if suit were filed to enforce that foreign judgment."¹⁴³

By adopting both a Recognition Act and an Enforcement Act, Maryland is one of twenty-three states that provides clear guidance on how to translate a foreign country judgment into an enforceable American judgment.

2. Maryland Case Law

As discussed above in part 1., Maryland also provides means for nonrecognition of a foreign country judgment that is "repugnant" to its public policy by statute, although such denial is purely discretionary.¹⁴⁴ Like other jurisdictions, Maryland construes the public policy exception narrowly. Before *Matusevitch*, three cases in Maryland, *Guinness PLC v. Ward*,¹⁴⁵ *S.A. Andes v. Versant Corp.*,¹⁴⁶ and *Wolff v. Wolff*,¹⁴⁷ ad-

139. *Id.* § 11-803(b)(3) and (4).

140. *Id.* § 11-804(a).

141. *Id.* § 11-804(b).

142. *Id.* § 11-802(a)(2) and (b).

143. *Weiner v. Blue Cross of Md.*, 730 F. Supp. 674, 677 (D. Md. 1990) (holding that a judgment debtor is entitled to remove an action to enforce a foreign judgment to federal court under the same conditions as are permissible for other independent actions. "To conclude otherwise allows for the impermissible possibility that state procedural enactments alter federal policy on a state-by-state basis.")

144. Maryland's Recognition Act, *supra* note 2 § 10-704 (b)(2).

145. 955 F.2d 875 (4th Cir. 1992).

dressed the recognition or enforcement of a foreign country judgment, but only *Guinness*¹⁴⁸ dealt with the public policy provision. However, there have been other cases that discuss public policy with respect to the application of a sister state's law in a choice of law context.¹⁴⁹

In *Guinness*, a European corporation sought recognition and enforcement of a money judgment obtained in England. The defendant claimed, *inter alia*, that recognition and enforcement of a British breach-of-fiduciary-duty judgment (which did not take into account a post-judgment settlement) "would be in direct contravention of Maryland's strong public policy favoring settlement of lawsuits."¹⁵⁰ The court responded on a number of fronts. First, the court held that a breach of fiduciary cause of action is not "repugnant to Maryland's public policy" as it is a common and accepted cause of action in this state.¹⁵¹ Next the court moved to an analysis of the post-judgment settlement.

The *Guinness* court held that any defense available to the enforcement of a Maryland judgment, such as a post-judgment settlement, is likewise available to a foreign country judgment.¹⁵² While allowing such a defense in theory, the court nevertheless judicially estopped this defendant from doing so. In reaching its conclusion, the court noted that the defendant never notified the British court of the alleged settlement.¹⁵³ "The fact that the existence of such a settlement may affect the judgment and its continuing effect does not change the reality that such settlement is based on a separate cause of action which could not have been litigated prior to judgment because of its nonexistence."¹⁵⁴ The court additionally clarified that contrary to what Ward claimed, this argument was correctly categorized under §§ 10-702¹⁵⁵ and 10-

146. 878 F.2d 147 (4th Cir. 1989) (holding that the "English rule of preclusion is so much at odds with normal American notions of litigation that no American jurisdiction [including Maryland] would readily embrace it."). *Id.* at 150.

147. 389 A.2d 413 (Md. Ct. Spec. App. 1978), *aff'd*, Wolff v. Wolff, 401 A.2d 479 (Md. 1979) (holding that alimony provisions of a foreign country divorce decree may be recognized under Maryland's Recognition Act under principles of comity, even though such judgments are technically excluded from the Act).

148. 955 F.2d 875 (4th Cir. 1992).

149. See *Bethlehem Steel Corp. v. G.C. Zarnas and Co., Inc.*, 498 A.2d 605 (Md. 1985); *Harford Mutual Ins. Co. v. Bruchey*, 238 A.2d 115 (Md. 1968); *Linton v. Linton*, 420 A.2d 1249 (Md. Ct. Spec. App. 1980).

150. *Guinness*, 955 F.2d at 885.

151. *Id.* at 886.

152. *Id.* at 892 (citing Maryland's Recognition Act, *supra* note 2 § 10-703).

153. *Guinness*, 955 F.2d at 898.

154. *Id.* at 897-98.

155. *Id.* at 886 (regarding the finality of the judgment).

703¹⁵⁶ of Maryland's Recognition Act, and not the public policy section.

The court also emphasized that the goals of the Maryland Recognition Act (namely "to achieve greater recognition of domestic judgments in foreign countries, i.e., reciprocity, by providing those countries with notice of 'a minimum of [their] judgments which must be recognized in jurisdictions which have adopted the Act'")¹⁵⁷ would not be achieved "if recognition courts were permitted to routinely expand the bases for nonrecognition beyond those specifically enumerated in the Act."¹⁵⁸ The court concluded that litigants — in principle — may raise a post-judgment settlement with respect to the recognition of a foreign country judgment just like a Maryland judgment.¹⁵⁹ However, for the above mentioned reasons, that principle could not be invoked under the circumstances in this particular case.¹⁶⁰

The other Maryland cases which discuss public policy are with respect to choice of law. For example, the Maryland Court of Appeals held that applying Virginia law, which does not recognize a claim for loss of consortium, would not violate Maryland's public policy which does recognize such recovery.¹⁶¹

Similarly, in *Linton v. Linton*¹⁶² the Maryland Court of Special Appeals had to decide whether or not to apply Virginia's law of no interspousal immunity, the *lex loci delicti* of a motor vehicle accident, in a Maryland court which did recognize interspousal immunity. In reaching its results, the court defined public policy as

no more and no less than what is believed by the courts and the legislature to be in the best interest of the citizens of this State. Anything that tends to undermine or erode either the declared or the undeclared best interest of the general health or moral welfare is said to be against public policy.¹⁶³

156. *Id.* at 889 (holding that a judgment debtor can raise a post-judgment settlement as a defense to the enforcement of a foreign country judgment, just like with a sister state judgment).

157. *Id.* at 885, quoting *Wolff v. Wolff*, 389 A.2d 413, 417 (Md. Ct. Spec. App. 1978).

158. *Guinness* at 885.

159. *Id.* at 886.

160. *Id.* at 898.

161. *Harford Mutual Ins. Co. v. Bruchey*, 238 A.2d 115, 117-18 (Md. 1968) (stating that there is a very high burden for rejecting foreign law on public policy grounds).

162. 420 A.2d 1249 (Md. Ct. Spec. App. 1980).

163. *Id.* at 1251.

Applying this test, the court held that it would not violate Maryland's public policy to apply the Virginia law, in that "the action is permitted by the *lex loci delicti*[,] [o]ur public welfare, health, and morals will not be endangered by allowing such suits to proceed to judgment[,] [and] [t]here is little likelihood of an onslaught of similar litigation in our courts."¹⁶⁴

So too, in *Bethlehem Steel Corp. v. G.C. Zarnas and Co.*,¹⁶⁵ the Court of Appeals discussed public policy in a conflict of laws context. In deciding that applying a contract provision executed in Pennsylvania would violate Maryland public policy, the court rested its conclusion on an explicit contrary Maryland statute. In this case there was a clear clash with Maryland's public policy because there was a statute which said that "such indemnity provision 'is against public policy.'"¹⁶⁶

Like other jurisdictions, Maryland requires that one overcome a substantial threshold before the court will recognize a conflict with public policy. Differences in law are not enough. However, it is much easier to cross that threshold where the legislature has expressly spoken. In *Bethlehem Steel*, there was a clear statute indicating that the Pennsylvania provision in question was contrary to public policy. So too, in *Matusevitch*, the First Amendment clearly rejects British libel standards. As such, it was not difficult to conclude that British libel standards violate Maryland, as well as United States, public policy.

IV. OTHER LIBEL CASES AND FOREIGN LAW

Since *New York Times Co. v. Sullivan*, there have been very few cases which analyze a foreign law with respect to a libel cause of action. The first two cases, *DeRoburt v. Gannett Co., Inc.*¹⁶⁷ and *Desai v. Hersh*,¹⁶⁸ both deal with choice of law issues. While these cases do not involve a foreign country judgment, they do provide valuable insights into American public policy with respect to British libel law.

In *DeRoburt*, the President of Nauru filed suit in a United States District Court (under diversity of citizenship) against an American publisher and its subsidiary for defamation.¹⁶⁹ At issue was an allegedly defamatory article about the plaintiff, the President of Nauru, published by the defendants in the *Pacific Daily News*, printed in

164. *Id.* at 1253 (footnote omitted).

165. 498 A.2d 605 (Md. 1985).

166. *Id.* at 608 (quoting MD. CODE ANN., CTS. & JUD. PROC. § 5-305).

167. 83 F.R.D. 574 (D. Haw. 1979).

168. 719 F. Supp. 670 (N.D. Ill. 1989).

169. *DeRoburt*, 83 F.R.D. at 575.

Guam.¹⁷⁰ In a case of first impression with respect to Hawaiian law, the court was faced with differing *lex loci delicti* arguments as to what nation's law to apply for defamation.¹⁷¹ The plaintiff wanted to apply Nauru law, as the place of greatest harm, which is similar to United States libel law except that it does not include *New York Times*' actual malice protections for defendants when plaintiff is a public figure.¹⁷² The defendants wanted to apply either Guam law, the place of publication, or Hawaiian law both of which incorporate First Amendment protections.¹⁷³ Defendants also contended that they had no business connection to Nauru.¹⁷⁴

In proceeding through an "interest-oriented" choice of law analysis, the court evaluated three factors: the relevant polices of the adjudicating forum, the justified expectations of the parties, and the place of greatest harm.¹⁷⁵ Under the first prong of the choice of law analysis, the court concluded that First Amendment protections are paramount to American public policy.¹⁷⁶ "It is a principle fundamental to our system of constitutional democracy 'that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'"¹⁷⁷

Moving to the second prong, the court stated that defendants could justifiably expect the application of First Amendment protections because United States courts require its application.¹⁷⁸ However, this does not exclude the application of Nauru law, as long as it is not in conflict with the United States Constitution.¹⁷⁹ As there is no correlation in Nauru law to the *New York Times*' "actual malice" standard, there would be no conflict with Nauru law if the U.S. courts were to apply the *New York Times* standard.¹⁸⁰ Therefore, defendants should have expected application of Nauru law augmented by the *New York Times* standard, not the application of an entirely different forum's law, i.e., Guam's or Hawaii's.¹⁸¹

170. *Id.*

171. *Id.* at 576-77.

172. *Id.* at 577.

173. *Id.*

174. *Id.* at 581.

175. *Id.* at 578-81.

176. *Id.* at 579.

177. *Id.* (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

178. *Id.* at 580.

179. *Id.*

180. *Id.*

181. *Id.*

Under the third prong, the court concluded that the place of greatest harm was Nauru, where the plaintiff was President of the country.¹⁸² As such, the court reached a very creative solution, holding "the factors determinative of the interests of the parties in this case reveal interests that would be best accommodated by the application of the Nauru law of defamation subject to the limitations of the First Amendment."¹⁸³ This holding effectively guarantees First Amendment protection to all extraterritorial publications by American citizens.¹⁸⁴

About ten years later, an Illinois United States District Court was faced with a similar issue in *Desai v. Hersh*.¹⁸⁵ This suit was filed in an American court by a citizen of India against the author of an allegedly defamatory book entitled, *The Price of Power: Kissinger in the Nixon White House*.¹⁸⁶ The plaintiff wanted to apply Indian law to damages incurred in India, while also pursuing a lawsuit in India.¹⁸⁷ However, defendant claimed that applying Indian law, based on British common law, is prohibited by the First Amendment.¹⁸⁸

The court criticized *DeRoburt* in that it effectively applied American law, while claiming to apply the foreign law: "given the extensive modifications resulting from the imposition of first amendment safeguards, under *DeRoburt*, the (first amendment) exceptions swallow up the (foreign law) rule and the functional equivalent of American defamation law is applied."¹⁸⁹

The court explicitly concluded that the First Amendment does not apply to every extraterritorial publication printed by those protected under the United States Constitution.¹⁹⁰ The court then set out a purposeful abandonment test, whereby a writer or publisher will not be protected i.e., if the material was published solely in a foreign country, concerning activities of that country's public officials.¹⁹¹ A main concern was to prevent the First Amendment from being transformed "from a shield into a sword."¹⁹²

On the other hand, the court also refused to hold that the First

182. *Id.* at 581.

183. *Id.*

184. *Id.* at 580-81.

185. *Desai v. Hersh*, 719 F. Supp. 670 (N.D. Ill. 1989), *aff'd on other grounds*, 954 F.2d 1408 (7th Cir. 1992).

186. *Id.* at 672.

187. *Id.* at 672, 676.

188. *Id.* at 672.

189. *Id.* at 675.

190. *Id.* at 676.

191. *Id.*

192. *Id.*

Amendment never applies to foreign publications, as that would cause a “chilling effect” on American speech.¹⁹³ Hoping to provide predictability yet not to stifle the American media, the court set forth a purposeful abandonment test as follows:

[I]n instances where the plaintiff is a public official or figure and thus heightened first amendment protections, including the “actual malice” standard, apply to domestic publication, these same protections will apply to extraterritorial publication of the same speech where the speech is of a matter of public concern and the publisher has not intentionally and directly published the speech in the foreign country in a manner consistent with the intention to abandon first amendment protections.¹⁹⁴

The court tried to limit the choice of law decision to actions within a potential libel defendant’s control, stating that there must be direct, intentional international publication in order to abandon constitutional protections.¹⁹⁵ Conversely, “[a]n author or publisher who does not directly publish in a foreign country can rely on the protections of *New York Times*.”¹⁹⁶

More recently, almost the exact same issue faced in *Matusevitch* was presented in *Bachchan v. India Abroad Publications, Inc.*¹⁹⁷ Like *Matusevitch*, this was a case of first impression for New York, requesting enforcement of a £40,000 British libel judgment by motion for summary judgment.¹⁹⁸

The case originated when a London reporter wrote a story (later held to be defamatory by the High Court of Justice in London) which defendant wired to India for publication in local newspapers.¹⁹⁹ The story was then published in the Defendant’s New York newspaper, “India Abroad,” and also distributed in the United Kingdom.²⁰⁰

Like the Maryland court in *Matusevitch*, the New York court highlighted four crucial differences between British and American libel law: (1) the shifting of the burden of proof; (2) the lack of a distinction between public and private figures; (3) the lack of a requirement that

193. *Id.*

194. *Id.* at 680-81.

195. *Id.* at 681 (Supplemental Opinion).

196. *Id.* (Italicization added for conformity of style.)

197. 585 N.Y.S.2d 661 (N.Y. Sup. Ct. 1992).

198. *Id.* at 661-62.

199. *Bachchan*, 585 N.Y.S.2d at 661.

200. *Id.*

the allegedly defamatory statements be false; and (4) the lack of an actual malice requirement with respect to public figures.²⁰¹ After analyzing these differences, the court concluded that the defendant was not afforded United States Constitutional First Amendment protections²⁰² and that the absence of such safeguards would provide a “chilling effect” on American publications.²⁰³

In denying enforcement of the British judgment, the court evaluated the grounds for nonrecognition of foreign country judgments as set forth in *New York Civil Practice Law & Rules*.²⁰⁴ Like Maryland, New York’s recognition statute states that a cause of action which is repugnant to the state’s public policy is a discretionary reason not to recognize a foreign country’s judgment.²⁰⁵

The *Bachchan* court ultimately agreed with the defendant that such a judgment is repugnant to New York’s public policy, stressing that British libel law lacks First Amendment protections, and furthermore was specifically rejected by American law.²⁰⁶ While clearly deciding the case on discretionary public policy grounds, the case went a step further by holding that such a cause of action was mandatorily unenforceable on constitutional grounds:

Similarly, if, as claimed by Defendant, the public policy to which the foreign judgment is repugnant is embodied in the First Amendment to the United States Constitution or the free speech guaranty of the Constitution of this State, the refusal to recognize the judgment should be, and it is deemed to be, “constitutionally mandatory.”²⁰⁷

Like Maryland, New York’s recognition statute provides mandatory constitutional grounds for not recognizing a foreign country judgment, including lack of due process of law or lack of personal jurisdiction over the defendant.²⁰⁸ While the *Bachchan* court held that a judgment rendered without First Amendment protections cannot be recognized in New York, it was not clear under which statutory provision the court

201. *Id.* at 663-64.

202. *Id.* at 665.

203. *Id.* at 664.

204. *Id.* at 662 (citing N.Y. CIV. PRAC. L. & R. § 5304).

205. *Id.* (citing N.Y. CIV. PRAC. L. & R. § 5304(b)(4)).

206. *Bachchan v. India Abroad Publications, Inc.*, 585 N.Y.S.2d 661, 665 (N.Y. Sup. Ct. 1992).

207. *Id.* at 662.

208. N.Y. CIV. PRAC. L. & R. § 5304(a) (McKinney 1995).

based its conclusion.²⁰⁹ The court briefly mentioned that a similar judgment would affect the core of due process, however the ultimate holding did not say there was such a violation.²¹⁰

Shortly after *Bachchan* was decided, a New York United States District Court also dismissed a claim to apply British libel law in a United States forum, but in a choice of law context.²¹¹ Citing *Bachchan*, the District Court held that it “would be antithetical to the First Amendment protections accorded the defendants,” and hence dismissed an alleged cause of action under British defamation law.²¹²

V. ANALYSIS

A. Purposeful Abandonment

While freedom of speech is an underlying principle of American democracy, it is not clear that it was judiciously invoked in *Matusevitch*. Matusevitch was living and working in England at the time he published his article regarding another British resident who was a limited public figure. Under *Desai*'s purposeful abandonment test, Matusevitch had no reasonable expectations of American Constitutional protections. Not only were both parties residing and working in England, the *lex loci delicti* — the place of greatest harm — and the judgment were all in England. Even if one did not apply a purposeful abandonment analysis, “when in Rome, do as the Romans do,” or in this case, “when in England, do as the English do.”

Furthermore, there is no evidence that the defendant was forum shopping when he filed suit in London. Again, both litigants were residents of and employed in England, the article was published in England and the most likely place of injury was in England. England was clearly the most logical place to bring this defamation suit.

As stated in *Tahan v. Hodgson*, above, it is important that people conducting business abroad respect the laws of that nation. Americans cannot expect foreign countries to apply one law to its citizens and another to its visitors, or in this case former resident. Now that Matusevitch is being pursued for payment of the British judgment in the United States, under no claims that the judgment is invalid, he is effec-

209. *Bachchan*, 585 N.Y.S.2d at 662.

210. *Id.*

211. *Abdullah v. Sheridan Square Press, Inc.*, 1994 WL 419847, at *1 (S.D.N.Y. May 4, 1994). Note, however, that *Matusevitch* seemed to infer incorrectly that *Abdullah* failed to “recognize a foreign libel judgment.” *Matusevitch v. Telnikoff*, 877 F. Supp. 1, 3 (D.D.C. 1995) (emphasis added).

212. *Abdullah*, 1994 WL 419847, at *1.

tively "transform[ing] the first amendment from a shield into a sword."²¹³

B. Public Policy

Whether or not *Matusevitch* was correctly decided, the case did involve a pivotal American safeguard. While the threshold for finding a clash with federal or state public policy is high, it is clearly crossed where First Amendment protections of speech are lacking. Freedom of speech is a fundamental tenet of our country, not a mere difference in law. As such, British defamation law represents a direct confrontation with American law. Not only are First Amendment safeguards for speech different than British law, but they were adopted by this country in clear rejection of English law which was previously in force here. Condoning British libel law by recognizing the judgment in *Matusevitch* would have offended America's sense of justice. Furthermore, the United States would expose itself to legal arbitrage, with plaintiffs shopping around the world for the most favorable forum, knowing they could in turn enforce that judgment here even though they could never have succeeded otherwise.

As suggested by both *Bachchan* and *Matusevitch*, such an affront to the enshrined principles of American justice should not be recognized in the United States. Therefore, perhaps a foreign country judgment lacking in First Amendment protections should never be allowed recognition, as Georgia and Massachusetts have done by statute.²¹⁴ If rejection was mandatory, a case by case analysis of the facts and intentions of the parties would be irrelevant. As such, analysis of purposeful abandonment or forum shopping would be unnecessary.

Furthermore, judgments that are repugnant to public policy and judgments that lack other constitutional safeguards are not two mutually exclusive concepts. The two categories overlap and it is not always easy to distinguish between them. It is somewhat arbitrary to make one discretionary and one mandatory, as is done in most Recognition Acts as adopted by the various states. Alternatively, judgments which offend our constitutional protections, such as *Matusevitch*, could be classified under mandatory due process provisions, leaving the public policy exception as only a last resort for those judgments not falling under any other non-recognition exception.

In addition, a mandatory refusal to recognize a non-First Amend-

213. *Desai v. Hersh*, 719 F. Supp. 670, 676 (N.D. Ill. 1989).

214. GA. CODE ANN. § 9-12-114(6) (1995); MASS. GEN. LAWS ANN. ch. 235, § 23A (West 1994).

ment libel judgment would more emphatically protect the American press and provide more certainty among litigants and foreign nations. While either the discretionary or the mandatory exception could produce the same result, classifying the *Matusevitch* issue under the mandatory provision would lead to greater consistency and would allow the American media to publish confident of full United States constitutional protections, even if living and working abroad, so long as there were no exposed assets in the foreign jurisdiction. Reciprocally, however, Americans should expect foreign countries that lack First Amendment protections to reject American libel judgments.

While mandatory rejection of British libel law may be more emphatic, arguably the discretionary rejection of such a cause of action, as in Maryland, would allow for a case by case evaluation of the circumstances. Although not applied in *Matusevitch*, this process would also allow for evaluation of *Desai*'s intent analysis. However, if both *Bachchan* and *Matusevitch* voluntarily rejected British libel judgments where the authors purposefully availed themselves of publication in the foreign jurisdiction and purposefully abandoned American safeguards, it is hard to imagine a case where a court would voluntarily recognize a similarly obtained judgment. Courts also would need to resist showing favoritism. As such, grounding the exception to recognition of a non-First Amendment foreign libel judgment in a mandatory form would be more in keeping with the recent judicial trend.

VI. CONCLUSION

Courts are faced with a precarious balancing act when called upon to recognize and enforce a foreign country judgment that is rendered without First Amendment protections. While wanting to maintain international harmony through notions of comity and certainty, we do not want to force the American media to "chill" their speech to the coolest foreign temperatures. *Matusevitch*, reinforcing *Bachchan* on a federal level, continues to prevent recognition or enforcement of British libel judgments on American shores as an affront to Maryland and United States constitutional public policy. As such, *Matusevitch* reasserts the supremacy of the United States First Amendment over other important international goals.

As we enter this rapidly advancing age of international communication, *Matusevitch* presents only one of many legal issues that will need to be resolved. This author suggests that a blanket rejection of such judgments would provide more certainty in the global arena. Whether the United States ultimately tackles this problem through multilateral treaties, federal law, or maintains the status quo, clearly

this will be an area of burgeoning international concern with universal implications.

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