

CROSS-BORDER CURRENTS IN CRIMINAL JUSTICE

By:

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I. The Need to Chart Cross-Border Currents

A. Criminal Law and Procedure Are Unavoidably Transnational

1. Cross-border Conduct of Crime
2. Transnational Population Movement
3. Instantaneous Information Exchange
4. Cross-border Law Enforcement Efforts
 - a. Criminal Investigation
 - b. Mutual Legal Assistance
 - c. Criminalization of Cross-Border Crimes
 - i. Codification
 - ii. Other Measures
 - [I] Financial Action Task Force on Money Laundering (based in Paris) (http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1,00.html)
 - [II] U.N. Office on Drugs and Crime (based in Vienna) (<http://www.unodc.org/unodc/index.html>)
5. Human Rights Comes of Age
 - a. International Human Rights Ethos
 - b. Maturation of Human Rights Institutions
 - i. Norm-Articulation
 - ii. Compliance Monitoring and Enforcement

6. Thinking Outside the Box – Or, Perhaps, from Within an Enlarged Box

B. Sample of Relevant, Recent Supreme Court Cases

1. Executive Detention and Interrogation

- a. Detention Trilogy (*Rasul v. Bush*, 542 U.S. 466 (2004); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004); *Rumsfeld v. Padilla*, 542 U.S. 426 (2004))
- b. *Hamdan v. Rumsfeld*, 74 U.S.L.W. 3108 (U.S. Nov. 7, 2005) (No. 05-184), *granting cert. to review* 415 F.3d 33 (D.C. Cir. 2005)
- c. Ongoing Debate on Constraints Law Places on Interrogation Within Context of U.S. Antiterrorism Campaign

2. The United States' Extraterritorial Law Enforcement

- a. *United States v. Alvarez-Machain*, 504 U.S. 655 (1992)
- b. *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990)
- c. *United States v. Balsys*, 524 U.S. 666 (1998)

3. Consultation of Foreign and International Law

- a. *Atkins v. Virginia*, 536 U.S. 304 (2002)
- b. *Lawrence v. Texas*, 539 U.S. 558 (2003)
- c. *Roper v. Simmons*, 125 S. Ct. 1183 (2005)

4. Vienna Consular Convention (1969)

(<http://www.un.org/law/ilc/texts/consul.htm>)

- a. *Medellín v. Dretke*, 125 S. Ct. 2088 (2005)
- b. *Bustillo v. Johnson*, 74 U.S.L.W. 3284, 74 U.S.L.W. 3287 (U.S. Nov. 7, 2005) (No. 05-51) (granting certiorari to review unreported opinion of Va. S. Ct. in *Bustillo*, as well as decision in companion consolidated case, *Sanchez-Llamas v. Oregon*, 338 Or. 267, 108 P.3d 573 (2005))

C. Potential Issues

1. Incitement to Genocide/Criminalization of Hate Speech

2. Punishment

- a. Death Row Phenomenon
 - i. *Lackey v. Texas*, 514 U.S. 1045 (1995); *Knight v. Florida*, 528 U.S. 990 (1999)
- b. Death Penalty
- c. Length of Imprisonment

D. Yet Law and Legal Studies Remain Fundamentally Nation-Based

- 1. United States
 - a. Domestic Focus
 - b. Absence of a Core Discipline Devoted to Transnational Context
- 2. Though Acute in United States, Not Exclusive to United States

E. Thus Mapping Is Essential

- 1. Acknowledgment of Cross-Currents
- 2. Identification of Other Regimes
- 3. Understanding
- 4. Accommodation/integration/adaptation
 - a. Linkage to Interplay of U.s. Federal and State Laws – “Cooperative Internationalism”; “Interfederal System”
 - b. Incorporation v. Consultation

II. Charting Criminal Justice Cross-Currents

A. International Criminal Justice

- 1. International Criminal Tribunal for the former Yugoslavia (<http://www.un.org/icty/>)
- 2. International Criminal Tribunal for Rwanda (<http://www.ictt.org>)
- 3. International Criminal Court (<http://www.icc-cpi.int/>)

B. Mixed or Hybrid International Criminal Tribunals

1. Special Court for Sierra Leone (<http://www.sc-sl.org/>)
2. Proposed Extraordinary Chamber for Cambodia (see http://www.yale.edu/cgp/KR_Law_trans.06.09.2001.html; http://www.trial-ch.org/en/justice_cambodia.html)
3. Iraqi Higher Criminal Court (<http://www.iraq-ist.org/en/home.htm>)

C. Human Rights Regimes Relevant to Criminal Process

1. United Nations (<http://www.un.org>)
 - a. United Nations Charter (1945) (<http://www.un.org/aboutun/charter/>)
 - i. International Court of Justice (“World Court”) (<http://www.icj-cij.org/>)
 - b. Universal Declaration of Human Rights (1948) (<http://www.un.org/Overview/rights.html>)
 - c. International Covenant on Civil and Political Rights (1966) (http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)
 - i. United Nations High Commissioner for Human Rights (<http://www.ohchr.org/english/>)
 - ii. Human Rights Committee (<http://www.unhchr.ch/html/menu2/6/hrc.htm>)
 - d. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (1984) (http://www.unhchr.ch/html/menu3/b/h_cat39.htm)
 - i. Committee Against Torture (<http://www.unhchr.ch/html/menu2/6/cat/>)
 - e. Convention on the Rights of the Child (1989) (<http://www.unhchr.ch/html/menu3/b/k2crc.htm>)
 - i. Committee on the Rights of the Child (<http://www.ohchr.org/english/bodies/crc/index.htm>)
 - f. Special Rapporteurs and Working Groups
2. Inter-American System
 - a. Instruments

- i. American Declaration of the Rights and Duties of Man (1948) (<http://www.cidh.oas.org/Basicos/basic2.htm>)
 - ii. American Convention on Human Rights (19__)
(<http://www.oas.org/juridico/english/Treaties/b-32.htm>)
 - b. Institutions
 - i. Inter-American Commission on Human Rights
(<http://www.cidh.org/>)
 - ii. Inter-American Court on Human Rights
(http://www.corteidh.or.cr/index_ing.html)
 - iii. Organization of American States (<http://www.oas.org/>)
- 3. Europe
 - a. Council of Europe (<http://www.coe.int/Defaulten.asp>)
 - i. Convention for the Protection of Human Rights and Fundamental Freedoms (1950), as amended, with additional protocols (<http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>)
 - [I] European Court of Human Rights
(<http://www.echr.coe.int/echr>)
 - b. European Union (http://europa.eu.int/index_en.htm)
 - i. Court of Justice of the European Communities
(http://europa.eu.int/institutions/court/index_en.htm)
 - ii. European Parliament
(http://europa.eu.int/institutions/parliament/index_en.htm)
 - [I] Charter of Fundamental Rights of the European Union
(http://www.europarl.eu.int/charter/default_en.htm)
- 4. Africa
 - a. African Charter on Human and Peoples' Rights (1981)
(http://www.achpr.org/english/_info/charter_en.html)
 - i. African Commission on Human and Peoples' Rights
(http://www.achpr.org/english/_info/news_en.html)
 - b. African Union (<http://www.africa-union.org/>)

5. International Humanitarian Law
 - a. The four Geneva Conventions concluded in 1949 and the two Protocols Additional concluded in 1977 (<http://www.icrc.org/ihl.nsf/CONVPRES?OpenView>)
 - b. International Committee of the Red Cross (<http://www.icrc.org/eng>)

III. **Other Resources**

A. Electronic Document Libraries

1. University of Minnesota Human Rights Library (<http://www1.umn.edu/humanrts/>)
2. Electronic Information System for International Law (<http://www.eisil.org/index.php?sid=297648529&t=index>)
2. U.N. High Commissioner for Human Rights – Treaties (<http://www.ohchr.org/english/law/index.htm>)

B. Professional Associations and Nongovernmental Organizations

1. American Society of International Law (<http://www.asil.org/>)
 - a. *American Journal of International Law*
 - b. ASIL Insights (<http://www.asil.org/resources/e-newsletters.html>)
2. American Society of Comparative Law (<http://www.comparativelaw.org/>)
 - a. *American Journal of Comparative Law*
3. Amnesty International (<http://www.amnesty.org/>)
4. Human Rights First (formerly Lawyers Committee for Human Rights) (<http://www.humanrightsfirst.org/>)
5. Human Rights Watch (<http://www.hrw.org/>)
6. International Law Association, American Branch (<http://ambranch.org/>)
7. National Institute of Military Justice (www.nimj.org)

C. Other Journals

1. *Criminal Law Forum* (Canada)
2. *International & Comparative Law Quarterly* (UK)
3. *European Journal of International Law* (UK)
4. *European Human Rights Law Review* (UK)
6. *Journal of International Criminal Justice* (Oxford)
7. *International Journal of Constitutional Law* (Oxford/NYU)
8. *International Criminal Law Review* (Netherlands)
9. *Leiden Journal of International Law* (Netherlands)

