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Steven Arrigg Koh, the inaugural recipient of the Marianne D. Short and Ray Skowrya Sesquicentennial Assistant Professorship, teaches and writes in the areas of criminal law and procedure, international law, and legal theory. His publications, which focus on the intersection of U.S. and international criminal law, have appeared in journals such as *New York University Law Review*, *Cornell Law Review*, and *Columbia Journal of Transnational Law*. As a contributor to the Just Security law blog, he also provides analysis on U.S. criminal cases with a foreign nexus—an emerging area that he has termed “foreign affairs prosecutions.” His work draws on his prior professional experience working in the Criminal Division of the U.S. Department of Justice in Washington, D.C., as well as for two different international criminal courts in The Hague, Netherlands.

Core Criminal Procedure

Criminal procedure is intuitive to contemporary criminal law scholars, practitioners, and law students alike. Criminal defendants enjoy a bevy of individual rights—each an inviolable guarantee—including freedom from unreasonable search and seizure; guarantees to a speedy and public trial, by an impartial jury; and freedom from cruel and unusual punishment. But today, U.S. criminal justice may diverge substantially from this centuries-old U.S. framework. In a largely unseen shift across various criminal doctrinal areas, all three branches now recognize only a core set of inviolable rights, implicitly or explicitly discarding others. This worrying procedural line drawing takes place when the U.S. criminal justice system engages in law enforcement cooperation with foreign criminal justice systems in order to advance criminal cases that result in conviction, incarceration, and even execution.

This Article describes the two forms of this contemporary cross-sovereign line drawing. The first is a codified “core criminal procedure” approach that arises in the exchange of electronic evidence but is related to two prior eras cross-sovereign criminal procedural articulation—the Warren Court incorporation of the Bill of Rights’ criminal procedural protections, and the negotiation and ratification of the U.N. Universal Declaration of Human Rights and other international human rights treaties. Alternatively, courts today may use an ad hoc “outlier” approach, only excluding foreign evidence, convictions, or extradition requests in extreme circumstances that “shock the conscience.”

This Article argues that the former approach is superior to the latter, as a matter of both due process and global crime control. To support this argument and frame these normative questions at the “outer frontier” of Constitutional applicability in foreign territory, this Article draws on political theory concerned with global justice. This Article concludes by considering how core criminal procedure may critically advance cross-jurisdictional convergence of criminal legal norms and inform U.S. engagement with international criminal tribunals and mechanisms.