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Darryl Robinson, *Justice in Extreme Cases: Criminal Law Theory Meets International Criminal Law*, Cambridge University Press, Cambridge: 2020, pp. 326

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INTRODUCTION

Darryl Robinson is one of the most well-known experts on international criminal law (ICL) and a distinguished academic among scholars, as seen by the breadth of the literature he analyses in *Justice in Extreme Cases*. It is a rewarding intellectual journey to review his excellent new book, which contributes to the nascent literature on ICL theory.

This book review is divided into two sections. Section 1 comprises the description of the book's content and Robinson's arguments regarding various theories. According to Robinson, criminal law requires not only traditional *source-based reasoning* (what legal authorities permit or require) and *teleological reasoning* (examining the purpose and consequences), but also an additional type of reasoning – *deontic reasoning*.[1] A reasoning that "focuses not on what the texts and precedents allow or how to maximize beneficial impact, but on the principled constraints arising from respect of the personhood or agency of accused persons as moral agents."[2] Deontic reasoning, as per Robinson, should follow a "coherentist" approach or theory of justification.[3] He claims that the best way to identify and define deontic principles is coherentism.[4]

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[1] D. Robinson, *Justice in Extreme Cases: Criminal Law Theory Meets International Criminal Law*, Cambridge University Press, Cambridge: 2020, p. 52.

[2] *Ibidem*, p. 1.

[3] *Ibidem*, pp. 3, 14, 57, 85, 108.

[4] *Ibidem*, 230.

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Coherentism is a concept that generates a method for justifying beliefs.[5] It refers to the method adopted in the book, arguing that it is impractical and unwise to specify fundamental or bedrock concepts as the foundation for ICL.[6] This means that coherentism does not recognize the existence of any "foundations."[7] It also acknowledges that the best we can do as humans is make use all of the available clues.[8] Robinson contends that it is more useful and effective to look for mid-level principles, such as the culpability and legality principles, which lie in the area between foundational moral theories and particular domains of practice.[9]

His proposed "coherentist" method, on the other hand, in my opinion has drawbacks. In section 2 I argue that the approach is far too hypothetical. Furthermore, I contend that his proposed approach poses legitimacy concerns in the context of ICL. This book review concludes however by asserting that although Robinson's recommended "coherentist" approach has some shortcomings, his book is packed with depth and careful legal interpretations. The genuine innovation of this book lies in the fact that every component of ICL can be enhanced by applying Robinson's method of legal theory.[10] Therefore I believe it will stimulate critical reflections by practitioners and academics working on ICL theories.

1. DESCRIPTION AND ARGUMENTS

Robinson's book is divided into three parts: the problem; the solution; and the method to be used. Part I in particular highlights the issue – namely, the need for more cautious deontic reasoning, i.e., a reasoning – perhaps ground-breaking in the ICL context – from which ICL would benefit.[11] By "deontic," he means "constraints rooted in respect for the individual – constraints such as the legality principle and the culpability principle, which allow the system to be described as a system of 'justice'."[12]

In part II, he suggests a solution: a coherentist method for deontic analysis. Coherentism is practical reasoning that attempts to address concrete human problems and questions as best we can, rather than uncover ultimate moral truths.[13] In part

[5] M.R. DePaul, *Two Conceptions of Coherence Methods in Ethics*, 96(384) Mind 463 (1987).

[6] J. Rikhof, *Justice in Extreme Cases: Criminal Law Theory Meets International Criminal Law. By Darryl Robinson, Cambridge: Cambridge University Press (2020), 305 xix page*s, Canadian Yearbook of International Law/Annuaire canadien de droit international (2022), doi:10.1017/cyl.2022.6, p. 3.

[7] Robinson, *supra* note 1, p. 102.

[8] *Ibidem*, p. 3.

[9] *Ibidem*, pp. 96-99.

[10] Rikhof, *supra* note 6, p. 8.

[11] Robinson, *supra* note 1, p. 10.

[12] *Ibidem*, p. 57.

[13] *Ibidem*, p. 103.

III, he applies the method to several cases to clarify its use.[14] More precisely, he cautiously dissects various debates of command responsibility to clarify his proposed approach, as well as its questions, themes, and applicability.[15]

Part I consists of two chapters in which Robinson catalogues the range of ICL theories and their deficiencies.[16] According to him, ICL jurisprudence has always been focused on *source-based* reasoning – more precisely, the parsing of legal instruments and precedents; and *teleological* reasoning – the ramifications of any given decision or argument.[17] A "s*ource-based*" analysis applies basic interpretive techniques to detect what the laws, precedents, and authorities permit.[18] *Teleological* reasoning is often victim-focused, which has two features. First, even where its application may reflect a wider variety of objectives, it assumes a single aim – maximum victim protection. Second, it permits one assumed goal to override all other interpretive considerations, along with the text.[19]

Robinson raises several issues with the application of these two theoretical approaches, including unwarranted transplants from international humanitarian law and international human rights to ICL.[20] This is due to the fact part of the issue stems from habits of reasoning and techniques transplanted from the fields of human rights and humanitarian law without a proper understanding that the new context, criminal law, requires a different way of thinking.[21] Thus it appears that without adequately understanding the context of criminal law, ICL initially incorporated some inconsistent suppositions and methods of reasoning when it combined criminal law with human rights and humanitarian law.

To avoid these inconsistent suppositions, Robinson offers a third type of reasoning: deontic reasoning.[22] According to Robinson, the personal culpability concept, the legality principle, and the fair labelling principle are the deontic constraints in criminal justice.[23] The first is the principle of personal *culpability*, which asserts that each person is responsible for his or her own conduct.

The principle of *legality* (*nullum crimen sine lege*, "no crime without a law") requires, on the other hand, that definitions of laws not be applied retroactively.

[14] *Ibidem*, p. 10.

[15] *Ibidem*, p. 14.

[16] *Ibidem*, pp. 3-54.

[17] *Ibidem*, p. 11.

[18] *Ibidem*, p. 60.

[19] *Ibidem*, p. 242.

[20] *Ibidem*, p. 20.

[21] *Ibidem*, p. 22.

[22] From Robinson's vantage point, "deontic reasoning focuses not on what the texts and precedents allow or how to maximize beneficial impact, but on the principled constraints arising from respect for the personhood or agency of accused persons as moral agents" (*see ibidem*, p. 20).

[23] *Ibidem*, p. 9.

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Furthermore, this principle necessitates giving individual actors fair warning and restricting the use of coercive authority in arbitrary ways. The principle of *fair labelling* states that the label of the offence should accurately describe and communicate the accused's wrongdoing, so that the stigma of conviction corresponds to the act's wrongfulness.[24]

For example, in the *Kvočka* case the Trial Chamber failed to appropriately specify the role played by Kvočka when delivering its judgment and sentence. Mr. Miroslav Kvočka was the commander of the camp, and he was accused of the acts of his subordinates in the wilful killing, murder, torture, and rape of the Omarska prisoners. However, the Trial Chamber failed to specify whether Kvočka was a co-perpetrator or whether he aided or abetted.[25]

In this regard, the Appeal Chamber stated that "the distinction between these two forms of participation is important, both to accurately describe the crime and to fix an appropriate sentence. Aiding and abetting generally involves a lesser degree of individual criminal responsibility than co-perpetration in a joint criminal enterprise."[26] The degree of individual criminal responsibility indicates the defendant's contribution to a crime, which is needed to establish *culpability*.[27]

Robinson points out that deontic reasoning "requires us to consider the limits of personal fault and punishability", and it is a "normative reasoning that focuses on our duties and obligations to others."[28] These deontic principles are moral principles, not "artifacts of legal positivism."[29] Thus, neither legal texts nor prior practices can determine what they are made of.[30] He outlines and discusses the grounds for deontic reasoning's necessity. Other approaches, he claims, are frequently ineffectively transplanted into ICL.[31] In addition, he uncovers three "modes" by which distortion occurs in reasoning: *interpretive approaches, substantive and structural conflation,* and *ideological assumptions*.[32]

The influence of *interpretive approaches* from human rights and humanitarian law, such as victim-focused teleological reasoning, is the first mode. Such reasoning weakens strict construction and encourages broad interpretations that could jeop-

[24] *Ibidem*.

[25] ICTY (TC), *Prosecutor v Kvočk*a, Judgment, IT -98- 30/1 T, 2 November 2001, paras. 26, 35, 39.

[26] ICTY (AC), *Prosecutor v Kvočka*, Judgment, IT-98-30/1-A, 28 February 2005, para. 92.

[27] Robinson, *supra* note 1, pp. 177-178.

[28] *Ibidem*, p. 11.

[29] *Ibidem*, p. 52.

[30] *Ibidem*.

[31] In ICL, the distortions often result from habits of reasoning that are progressive and appropriate in human rights law and humanitarian law, but which become problematic when transplanted without adequate reflection to a criminal law system (*see ibidem*, p. 20).

[32] *Ibidem*, pp. 27-51.

ardize culpability and fair labelling.[33] The second mode is *substantive and structural conflation*, which assumes that criminal norms must be consistent with human rights or humanitarian law norms.

Such assumptions disregard the differences in structure and implications of these domains of law; as a result, they overlook the additional deontic considerations that limit the punishment of individuals.[34] *Ideological assumptions*, such as "progress" and "sovereignty," are the third mode. These assumptions can lead to the hasty acceptance of far-reaching doctrines and the rejection of narrower but more principled ones. When applied regardless of the context shift in criminal law, any of these assumptions can skew the analysis away from Robinson's fundamental principles.[35]

Robinson claims that decision-makers in ICL have used defective reasoning processes that have undermined the regime's ability to follow its own commitments to liberal principles rooted in "*compassion, empathy,* and regard for *humanity*."[36] For instance, Drumbl contends that mass crimes, which entail organic group characteristics, are not appropriate for the paradigm of individual culpability developed for deviant isolated crimes.[37] Many academics correctly point out that whereas domestic crime includes "deviance" from society norms, ICL often encounters circumstances of "inverted morality," where there is significant social pressure to commit crimes.[38]

Abstention from crime is sometimes considered "deviant" in ICL contexts. The extension of "western doctrines onto the transnational plane without considering the implications for societies not sharing similar assumptions" is, according to many scholars, also discouraged.[39] Arguments are made that the culpability principle may need to be altered, changed, or even abandoned for these and other grounds.[40] Scholars like Drumbl and Osiel urge the detailed scrutiny of liberal principles to consider principles such as culpability, fair labelling, and legality.[41] According to Robinson, ICL necessitates a method that respects liberal values. Robinson provides

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[33] *Ibidem*, p. 23.

[34] *Ibidem*.

[35] *Ibidem*.

[36] *Ibidem*, p. 59.

[37] M.A. Drumbl, *Atrocity, Punishment, and International Law*, Cambridge University Press, Cambridge: 2007, p. 24.

[38] W.M. Reisman, *Legal Responses to Genocide and Other Massive Violations of Human Rights*, 59 Law & Contemporary Problems 75 (1996) 77; Drumbl, *supra* note 37, pp. 24-35.

[39] M. Osiel, *Making Sense of Mass Atrocity*, Cambridge University Press, Cambridge: 2009, p. 8.

[40] M.A. Drumbl, *Pluralizing International Criminal Justice*, 103 Michigan Law Review 1295 (2005), p. 1309.

[41] M. Osiel, *The Banality of Good: Aligning Incentives against Mass Atrocity*, 105(6) Columbia Law Review 1765 (2005); M.A. Drumbl, *Collective Violence and Individual Punishment: The Criminality of Mass Atrocity*, 99(2) Northwestern University Law Review 567 (2005).

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a liberal, humanistic, coherentist, and cosmopolitan framework for investigating deontic restraints in the contexts fostered by ICL.[42]

Coherentism is a justification theory. It implies that a belief can be justified if it belongs to a coherent system of beliefs.[43] From Robinson's vantage point, "… we work with all available clues, including patterns of practice and normative arguments, to build the most coherent and convincing picture that we can."[44] This means that principles of justice are a human conversation about human ideas, not a matter of "certainty."[45] Coherentists use critical reasoning tools to examine past understandings for bias and inapt assumptions.[46] This is a non-foundational approach, which implies it embraces the fact that "foundations" do not exist.[47]

Long-running debates about the foundations of moral reasoning in criminal law show that an anti-foundationalist, coherentist view may indeed be the most appropriate choice. Coherentists believe they do not need the illusory comfort of choosing which foundational beliefs are prioritized. Instead, they can only do their best to decipher and deal with the entire web of clues available to them.[48] They also use comparative analysis to look at patterns of practice for clues about insights underlying justice (looking at other jurisdictions, other areas of law, or possibly even other social practices).[49] As per Robinson, the deontic analysis should be guided by a coherentist method or justification theory.

Robinson applies his proposed method to some ICL contexts in part III. More specifically, he addresses the concept of command responsibility using the liberal, deontic, and coherentist approaches. In ICL, three prerequisites must be met in order to hold commanders accountable for the crimes of their subordinates: a superior-subordinate relationship; a criminal act had to be imminent, in progress, or already have been committed before the superior knew or had reason to know about it; and the required and reasonable actions to stop or punish the behaviour in question have been disregarded.[50]

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[42] Robinson, *supra* note 1, pp 59-137.

[43] DePaul, *supra* note 5, p. 463.

[44] Robinson, *supra* note 1, p. 57.

[45] *Ibidem*, pp. 58 and 137.

[46] *Ibidem*, p. 13.

[47] A perspective of the structure of justification or knowledge is known as foundationalism. According to foundationalism, any justified belief must either be foundational or ultimately rely on foundational beliefs for its justification. The foundationalists' central claim is that non-inferential knowledge and justified belief serve as the basis upon which all other knowledge and justified beliefs are ultimately constructed; *see*: Foundationalist Theories of Epistemic Justification, *Stanford Encyclopaedia of Philosophy*, 21 February 2000; available at: https://plato.stanford.edu/entries/justep-foundational/ (accessed 30 June 2022).

[48] Robinson, *supra* note 1, p. 102.

[49] *Ibidem*, p. 106.

[50] *Ibidem*, p. 147.

Robinson addresses three components of this type of responsibility that have generated a lot of controversies. The first is whether a commander is responsible for punishing the unpunished subordinates for crimes committed under the command of a predecessor.[51] The second is how much of a contribution a commander must make to the crimes that his subordinates commit. Contribution is a crucial concept that establishes the culpability of a defendant.[52] The third concern is the *mens rea* for command responsibility, which has been divided into two separate doctrines: the "should have known" test and the "had reason to know" test, as outlined in the Rome Statute and the Statutes for the ad hoc tribunals. According to Robinson, these confusions would have been much clearer if his proposed method had been utilized.

Robinson suggests that command responsibility be recognized as a type of accessory liability, similar to how it was in World War II jurisprudence, ad hoc tribunals, and the Rome Statute.[53] Nonetheless, imposing responsibility on a commander who has no causal link to his subordinates' action and had no contribution to the crimes' commission – in any way – would be contrary to the culpability principle.[54] While ICL recognises that contribution to a crime in some way equates to culpability, Robinson identifies and demonstrates that the jurisprudence of the *ad hoc* tribunals – in its early reasoning – engaged ineffectively with the deontic aspect.[55] For example, the tribunals' jurisprudence violated the culpability principle by rejecting the fundamental requirement of causal contribution.[56]

Robinson claims that this ineffective engagement produces an internal paradox. According to him, criminal law demands causal contribution to avoid the internal paradox. This is because, under criminal law, a contribution is essential in determining culpability.[57] In ICL, it has been established that an accessory's contribution must have had a considerable or significant effect on the principal's ability to conduct a crime.[58]

Insofar as concerns the concept of command responsibility, criminality usually involves numerous individuals, each contributing to the crime in different ways and to varying degrees. The commitment to punish suspects only for their own wrongdoing implies that the accused must have contributed to the crime to be held accountable for it. Of course, an individual may share liability for acts physi-

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[51] *Ibidem*, p. 156.
[52] *Ibidem*, pp. 177-178.
[53] *Ibidem*, p. 15.
[54] *Ibidem*, p. 178.
[55] *Ibidem*, pp. 143-173.
[56] *Ibidem*, p. 146.
[57] *Ibidem*, pp. 177-178.
[58] *Ibidem*, pp. 181-182.

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cally performed by others if the individual participated in the acts and did so with a mental state adequate for accessory liability.[59]

2. CRITICAL ANALYSIS

Robinson's work investigates two types of causations for principal and accessory liability: Principal liability appears to necessitate a "but for" form of causation; while accessory liability requires only a "contribution," which is more indirect: it is sufficient to advocate or facilitate the crime.[60] In doing so, Robinson spent a lot of time investigating fundamental principles of general criminal law and how they apply to ICL. In the end, Robinson concludes that ICL, as currently structured, lacks such a theoretical framework, and this lack may obstruct justice. The solution is not simply to borrow and apply principles from domestic legal systems; source-based and teleological reasonings are insufficient, and what is required is deontic reasoning and a "coherentist" method.

I am persuaded by Robinson's deontic analytical approach. In particular his argument on international criminal law decision-makers' use of flawed reasoning methods – which have eroded liberal principles rooted in "compassion, empathy, and regard for humanity" – provides us with a means to rethink ICL theory.[61]

While I applaud Robinson's coherentist orientation, in my opinion his proposed method has several flaws. *First*, the approach is far too speculative. As argued by Professor Elies van Sliedregt, reliance on coherentism in ICL may cause a democratic legitimacy problem.[62] Robinson puts a lot of obligations on ICL's adjudicators and judges. This suggests that coherentism offers them too much discretion.[63] While teleological reasoning has a degree of democratic legitimacy and is textually anchored

[59] *Ibidem*, p. 149.

[60] The causal relationship between the defendant's conduct and the committed crime is known as causation. Principal liability appears to require a *sine qua non*, "but for," type of causation. Accessory liability merely requires "contribution," which is more indirect: it suffices to encourage or facilitate the crime (*ibidem*, p. 178).

[61] *Ibidem*, p. 59.

[62] E. van Sliedregt, *Justice in Extreme Cases Symposium: A Response to Darryl Robinson*, Opinio Juris, 30 March 2021, available at: http://opiniojuris.org/2021/03/30/justice-in-extreme-cases-symposium-a-response-to-darryl-robinson/ (accessed 30 June 2022).

[63] According to Adil, "when the law is vague, ambiguous, or otherwise indeterminate, it is at least arguable that no such conflict arises. In these cases, the law does not say one thing while morality says another. It is not clear what the law says. Judges therefore remain legally free to base their legal decisions on their moral reasons. For example, judges may acquit a non-culpable defendant for moral reasons, any time the crime definition or mode of liability leaves it indeterminate whether or not the defendant is legally responsible for a crime. The exclusive legal positivist would simply insist that judges in such cases necessarily switch from legal reasoning to moral reasoning when legal reasoning reaches a dead end"; *see*: A. Ahmad Haque, *Jurisprudence in Extreme Cases*, 35 Temple International and Comparative Law Journal 11 (2021) 22.

in precedents or *travaux preparatoires*,[64] coherentism has no interpretive process rooted in decision-making by accountable public representatives. As a result, it may compromise democratic legitimacy.

Similarly, as per Neha Jain:

> The coherentist approach is vaguely reminiscent of the 'crucible' approach to treaty interpretation endorsed in the Vienna Convention on the Law of Treaties (and adopted in ICL) where '[a]ll various elements, as they were present in any given case, would be thrown into the crucible, and their interaction would give the legally relevant interpretation.'[65]

It seems Robinson leaves everything up to the decision-makers, both in terms of weighing and balancing, which is problematic. Even in the context of a reasonably cohesive epistemic community of scholars, lawyers, activists, and judges who share a common set of beliefs and practices, this coherentist approach would be challenging, Neha adds.[66]

The web theory is the *second* concern of the coherentist method. In terms of weight, Robinson's account of the coherentist method does not provide a clear or explicit method to rank various options such as moral theories, positive law, and considered judgments. His approach is not particularly beneficial for sorting out complex cases because the alleged web comprises various knots, none of which are greater than the others. Or to put it another way, it would almost certainly result in entirely different outcomes depending on who ranks the options or gives weight to the various knots (moralists, institutionalists, etc.).[67] This is due to the fact that web clues are flexible, ambiguous, and even unpredictable, and these clues might hence produce unpredictable results depending on a judge's legal tradition, experiences, and preferences.

Furthermore, the coherentist technique is neither consistent nor certain.[68] Thus, it appears that the accused could not expect clarity or consistency while facing international judges. But when tried by international judges, should not the accused be entitled to clarity and uniformity?[69] What happens if there is no standard or

[64] van Sliedregt, *supra* note 62.

[65] N. Jain, *A Tale of Two Cities: Reflections on Robinson's Twinning of International Criminal Law and Criminal Law Theory*, 35 Temple International and Comparative Law Journal 25 (2021), p. 30.

[66] *Ibidem*.

[67] A. Chehtman, *An "Ongoing Conversation": Method and Substance in Robinson's Justice in Extreme Cases*, 35 Temple International and Comparative Law Journal 37 (2021), p. 40.

[68] Robinson, *supra* note 1, p. 57.

[69] M.G. Karnavas, *Book Review: Justice In Extreme Cases – Criminal Law Theory Meets International Criminal Law*, International Criminal Law Blog, 1 June 2021, available at: http://michaelgkarnavas.net/blog/2021/06/01/book-review-justice-in-extreme-cases/ (accessed 30 June 2022).

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ranking by which to compare different options? The problem with such a web, according to Alejandro, is that the knots lack a consistent metric or scale by which we can assess them, making our judgments appear arbitrary in the end.[70]

Furthermore, Robinson's coherentism proposes that command responsibility should be recognized as a mode of *accessory* liability.[71] As per his proposition, if for example a commander's subordinates murder five civilians, the commander would be held accountable – if he fails to punish his subordinates – as an accessory for five murders. Robinson's proposal strikes me as problematic in this regard.

Professor David Ohlin highlights this issue and argues that a failure to punish should not result in accessorial responsibility because, while it is a type of behaviour that often encourages subordinates to commit crimes in the future, it cannot make a causal contribution to crimes committed in the past.[72] ICL jurisprudence, on the other hand, recognizes that accessory liability requires some involvement in the underlying crime for personal accountability.[73] As Ohlin stated, why should the commander be held responsible for murders committed by his or her subordinates if he or she has had no causal connection to the crimes?

Nonetheless, we cannot deny that a commander's failure to punish subordinates is a breach of duty. To solve this puzzle, Professor Jens David Ohlin and other jurists have offered a solution based on the deontic approach. They suggest conceptualizing failure to punish as a separate crime.[74] The concept of a separate crime derives from German domestic law, where command responsibility may have either of two components: accessorial liability and a separate offense.[75]

Under this approach, the commander would be held accountable for the separate crime of "command responsibility," but not for her subordinates' domestic crimes [i.e. 5 murders]. In my opinion this is a preferable solution based on source-based reasoning, because the commander should not be held liable for the underlying crimes committed by his or her subordinates but should be held accountable for failing to act against the subordinates.[76] Thus in this case the "source-based" analysis

[70] Chehtman, *supra* note 67, p. 40.

[71] *Ibidem*, pp. 15, 148.

[72] J.D. Ohlin, *Complicity Negligence, And Command Responsibility*, 35 Temple International and Comparative Law Journal 109 (2021), p. 112.

[73] *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1T, 21 May 1999, para 199.

[74] Ohlin, *supra* note 72.

[75] Volkerstrafgesetzbuch [VStGB] [Code of Crimes Against International Law], art. 1, § 13- 14 (Ger.), available at: https://casebook.icrc.org/case-study/gennany-international-criminal-code (accessed 30 June 2022);

[76] C. Meloni, *Command Responsibility: Mode of Liability for the Crimes of Subordinates or Separate Offence of the Superior?*, 5(3) Journal of International Criminal Justice 619 (2007), p. 620; A.J. Sepinwall, *Failures to Punish: Command Responsibility in Domestic and International Law*, 30 The Michigan Journal of International Law 251 (2009) p. 255.

employs fundamental interpretive methods to discover what the statutes, precedents, and authorities permit.[77]

CONCLUSION

Darryl Robinson's *"Justice in Extreme Cases: Criminal Law Theory Meets International Criminal Law"* is an intriguing blend of theoretical insights and doctrinal descriptions. His book, for example, makes a significant contribution by discussing "deontic" constraints to the legal doctrine. He correctly emphasizes that the substance of ICL theory should respect these deontic norms. Furthermore, his book outlines a serious vulnerability to the regime's effectiveness and legitimacy: its failure to build a clear decision-making strategy.[78] To meet the challenge, he develops a method for the decision-making process: the coherentist method.

To summarize, Professor Robinson has made an essential contribution to the growing literature on international criminal law theory. Robinson provides a roadmap for more reasonable and predictable judicial decisions as well as practical suggestions for reforming the law. His roadmap undoubtedly serves as a model for anyone interested in international criminal law and criminal law theory. It will, I hope, be of great importance to practitioners and scholars focusing on command responsibility.

[77] Robinson, *supra* note 1, p. 60.
[78] *Ibidem*, p. 67.