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Exploring justice in extreme cases: Criminal law theory and international criminal law

Robinson, D.E.

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Author: Robinson, D.E.

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**Propositions Relating to the Dissertation “Exploring Justice in Extreme Cases:
Criminal Law Theory and International Criminal Law” by Darryl Eric Robinson**

1. Legal reasoning in international criminal law (ICL) needs not only ‘source-based’ and ‘teleological’ reason, but also a third type of reasoning – ‘deontic’ reasoning. Deontic reasoning considers the principled constraints of justice, rooted in respect for the personhood of the affected individual.
2. The study of deontic principles is important for at least two reasons: to ensure that persons are not treated unjustly, and to avoid needlessly conservative doctrines based on fallacious understandings of the principles.
3. A ‘liberal’ account can avoid many of the common criticisms of liberal accounts: it need not entail unsound individualistic conceptions, nor ignoring social context, nor reliance on timeless metaphysical axioms. A liberal account can draw on human experience and social context.
4. A liberal account need not replicate fundamental principles exactly as articulated in national legal systems. Salient differences in context may generate deontically-justified refinements of familiar principles.
5. Accordingly, the special problems raised by ICL may generate new insights for general criminal law theory, which is steeped in assumptions from the ‘normal’ case of the criminal law within the modern state.
6. In the absence of a reliable foundational ethical theory, ‘coherentism’ is the best method for identifying and refining deontic principles. Coherentism draws on all available clues to formulate the best attainable hypotheses about principles.

7. The ICTY and ICTR rejected 'causal contribution' in command responsibility for relatively superficial doctrinal reasons that did not engage adequately with deontic principles. The resulting doctrine contradicts the culpability principle as recognized by the system.
8. The causal contribution requirement in the ICC Statute provides consistency with the culpability principle. If command responsibility is indeed a mode of liability, as most jurisprudence indicates, then the causal contribution requirement is an appropriate limitation.
9. While criminal negligence may ordinarily not be considered blameworthy enough to generate accessory liability, the command responsibility doctrine responds to a set of circumstances in which a criminal negligence standard is indeed blameworthy enough for accessory liability.