

## JUSTICE IN EXTREME CASES

In *Justice in Extreme Cases*, Darryl Robinson argues that the encounter between criminal law theory and international criminal law (ICL) can be illuminating in two directions: criminal law theory can challenge and improve ICL, and conversely, ICL's novel puzzles can challenge and improve mainstream criminal law theory. Robinson recommends a 'coherentist' method for discussions of principles, justice and justification. Coherentism recognizes that prevailing understandings are fallible, contingent human constructs. This book will be a valuable resource to scholars and jurists in ICL, as well as scholars of criminal law theory and legal philosophy.

Darryl Robinson is professor of law at Queen's University (Canada). He has helped shape international criminal law as a negotiator of the ICC Statute, a legal adviser at the Court, and as an influential scholar. He received the Antonio Cassese Prize for International Criminal Legal Studies for his work on moral coherence of criminal law.

# Justice in Extreme Cases

CRIMINAL LAW THEORY MEETS  
INTERNATIONAL CRIMINAL LAW

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It has taken me years – many more years than I anticipated – to complete this book. It was over twelve years ago that I first wrote about (i) the need for a method to explore deontic constraints in international criminal law and (ii) how such an effort could produce insights not only for international criminal law, but also for criminal law theory. This project brings together international criminal law scholarship, criminal law theory, and moral philosophy. The investigation in turn took me into other fields, such as cosmopolitanism, and ultimately into deeper epistemological theory, which led me to coherentism.

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I published provisional findings as I progressed, in order to benefit from online symposia and scholarly engagement. Accordingly, this book draws on and develops material previously presented in “The Identity Crisis of International Criminal Law”<sup>1</sup> (Chapter 2), “A Cosmopolitan Liberal Account of International Criminal Law”<sup>2</sup> (Chapter 3), “International Criminal Law as Justice”<sup>3</sup> (Chapters 1 and 5), “How Command Responsibility Got So Complicated: A Culpability Contradiction, Its Obfuscation, and a Simple Solution”<sup>4</sup> (Chapters 6 and 7), “A Justification of Command Responsibility”<sup>5</sup> (Chapter 8), and a draft “The Humanity of Criminal Justice: Five Themes.”<sup>6</sup> Many of my earlier ideas are significantly refined here.

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<sup>1</sup> (2008) 21 *Leiden Journal of International Law* 925.

<sup>2</sup> (2013) 26 *Leiden Journal of International Law* 127.

<sup>3</sup> (2013) 11 *Journal of International Criminal Justice* 499.

<sup>4</sup> (2012) 13 *Melbourne Journal of International Law* 1.

<sup>5</sup> (2017) 28 *Criminal Law Forum* 633.

<sup>6</sup> Expected to be published with *Brill Research Perspectives in International Legal Theory and Practice*.



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## Abbreviations

A.Ch	Appeals Chamber
AJIL	<i>American Journal of International Law</i>
Am J Comp L	<i>American Journal of Comparative Law</i>
AP I	Additional Protocol I to the Geneva Conventions
ASIL Proc	<i>American Society of International Law Proceedings</i>
Calif L Rev	<i>California Law Review</i>
Canadian J Phil	<i>Canadian Journal of Philosophy</i>
Can JL & Jur	<i>Canadian Journal of Law and Jurisprudence</i>
Can J L & Soc	<i>Canadian Journal of Law and Society</i>
Cardozo J of Int'l & Comp L	<i>Cardozo Journal of International and Comparative Law</i>
Case W Res L Rev	<i>Case Western Reserve Law Review</i>
CCA	Court of Criminal Appeals (England & Wales)
Columbia J Transn'l L	<i>Columbia Journal of Transnational Law</i>
Crim L & Phil	<i>Criminal Law and Philosophy</i>
Crim L Forum	<i>Criminal Law Forum</i>
Denver J Int L & Pol'y	<i>Denver Journal of International Law and Policy</i>
Duke J Comp & Int'l L	<i>Duke Journal of Comparative and International Law</i>
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EJIL	<i>European Journal of International Law</i>
Eur J Crime Cr L Cr J	<i>European Journal of Crime, Criminal Law and Criminal Justice</i>
Eur J Int'l Rel	<i>European Journal of International Relations</i>
Eur J Oper Res	<i>European Journal of Operational Research</i>
Fletcher F World Aff	<i>Fletcher Forum of World Affairs</i>



Geo J Legal Ethics	<i>Georgetown Journal of Legal Ethics</i>
Harvard HRJ	<i>Harvard Human Rights Journal</i>
HRLJ	<i>Human Rights Law Journal</i>
HRQ	<i>Human Rights Quarterly</i>
HRTK	had reason to know
ICC	International Criminal Court
ICJ	International Court of Justice
ICL	international criminal law
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IJCACJ	<i>International Journal of Comparative and Applied Criminal Justice</i>
Indian J Const L	<i>Indian Journal of Constitutional Law</i>
Inter Am Ct HR	Inter-American Court of Human Rights
Int'l & Comp LQ	<i>International and Comparative Law Quarterly</i>
Int'l Crim L Rev	<i>International Criminal Law Review</i>
Int'l LJ	<i>International Law Journal</i>
Int'l LQ	<i>International Law Quarterly</i>
J Appl	<i>Journal of Applied Social Psychology</i>
JBS	<i>Journal of British Studies</i>
JCE	joint criminal enterprise
JCLC	<i>Journal of Criminal Law and Criminology</i>
J Conflict & Sec L	<i>Journal of Conflict and Security Law</i>
J Contemp Legal Iss	<i>Journal of Contemporary Legal Issues</i>
Jerusalem Phil Q	<i>Jerusalem Philosophical Quarterly</i>
J Ethics Soc Philos	<i>Journal of Ethics and Social Philosophy</i>
JICJ	<i>Journal of International Criminal Justice</i>
J Int'l L	<i>Journal of International Law</i>
J Phil	<i>Journal of Philosophy</i>
Justice Q	<i>Justice Quarterly</i>
L&C	<i>Law and Critique</i>
L & Contemp Probs	<i>Law and Contemporary Problems</i>
L & Phil	<i>Law and Philosophy</i>
Law & Hist Rev	<i>Law and History Review</i>
LDR	<i>Law and Development Review</i>
LHR	<i>Law and History Review</i>
LJ	<i>Law Journal</i>
LJIL	<i>Leiden Journal of International Law</i>
Loy U Chi LJ	<i>Loyola University of Chicago Law Journal</i>
LQR	<i>Law Quarterly Review</i>

## List of Abbreviations

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L Rev	<i>Law Review</i>
Melbourne U L Rev	<i>Melbourne University Law Review</i>
NC J Int'l L & Comm Reg	<i>North Carolina Journal of International Law and Commercial Regulation</i>
Neth Q Hum Rights	<i>Netherlands Quarterly of Human Rights</i>
NGO	non-governmental organization
Nw U L Rev	<i>Northwestern University Law Review</i>
NYIL	<i>Netherlands Yearbook of International Law</i>
NYU J Int'l L & Pol	<i>New York University Journal of International Law and Politics</i>
Ohio St J on Disp Resol	<i>Ohio State Journal on Dispute Resolution</i>
Oxf J L Stud	<i>Oxford Journal of Legal Studies</i>
Phil & Pub Aff	<i>Philosophy and Public Affairs</i>
PPR	<i>Philosophy and Phenomenological Research</i>
PTC	Pre-Trial Chamber
S Cal Interdisc LJ	<i>Southern California Interdisciplinary Law Journal</i>
SCER	<i>Supreme Court Economic Review</i>
SCR	Supreme Court Reports (Canada)
SCSL	Special Court for Sierra Leone
SHK	should have known
Soc Psychol Q	<i>Social Psychology Quarterly</i>
Southern J Phil	<i>Southern Journal of Philosophy</i>
STL	Special Tribunal for Lebanon
T.Ch	Trial Chamber
Theor Inq L	<i>Theoretical Inquiries in Law</i>
Transnat'l L & Contemp Probs	<i>Transnational Law and Contemporary Problems</i>
Transnat'l L & Pol'y	<i>Transnational Law and Policy</i>
U C Davis J Intl L & Pol'y	<i>UC Davis Journal of International Law and Policy</i>
U Cincinnati L Rev	<i>University of Cincinnati Law Review</i>
U Illinois L Rev	<i>University of Illinois Law Review</i>
U Miami L Rev	<i>University of Miami Law Review</i>
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
U Pa J Int'l L	<i>University of Pennsylvania Journal of International Law</i>
U Pittsburgh L Rev	<i>University of Pittsburgh Law Review</i>
U Toronto LJ	<i>University of Toronto Law Journal</i>
Wis Int'l LJ	<i>Wisconsin International Law Journal</i>
Wm & Mary Bill Rts J	<i>William &amp; Mary Bill of Rights Journal</i>
Yale J L & HR	<i>Yale Journal of Law and Human Rights</i>