# Contents

**Acknowledgements**  
*page viii*

**Cases, Statutes, and Other Authorities**  
x

**List of Abbreviations**  
xvii

## PART I  INTRODUCTION AND PROBLEM

1 **Introduction**  
   *Overview*  
   1.1 **Context: Why Principles Matter**  
   1.2 **Objectives**  
   1.3 **The Scope of This Work**  

2 **The Identity Crisis of International Criminal Law**  
   *Overview*  
   2.1 **Context and Argument**  
   2.2 **Interpretive Assumptions**  
   2.3 **Substantive and Structural Conflation**  
   2.4 **Ideological Assumptions (Sovereignty and Progress)**  
   2.5 **After the Identity Crisis: The Deontic Turn**  
   2.6 **Implications**

## PART II  PROPOSED SOLUTION: A HUMANIST, COHERENTIST, DEONTIC ACCOUNT

3 **The Humanity of Criminal Justice**  
   *Overview*  
   3.1 **Context and Argument**  
   3.2 **Why Engage with Constraints: A Human Commitment**
## Contents

3.3 Absorbing Common Criticisms: A Humanistic Account 74
3.4 Implications 84

4 **Fundamentals without Foundations** 85
   
   Overview 85
   
   4.1 Terms: Fundamentals and Foundations 86
   
   4.2 Where Can We Find Fundamental Principles? 86
   
   4.3 Fundamentals without Foundations: Mid-level Principles and Coherentism 96
   
   4.4 Justice: A Coherentist Conversation 113

5 **Criminal Law Theory in Extremis** 119
   
   Overview 119
   
   5.1 New Challenges for Criminal Law Theory 119
   
   5.2 Promising Problems 127
   
   5.3 Conclusion 137

**PART III ILLUSTRATION THROUGH APPLICATION**

6 **An Unresolved Contradiction** 143
   
   Overview 143
   
   6.1 Argument and Resulting Insights 143
   
   6.2 The Novel Reach of Command Responsibility 147
   
   6.3 The Culpability Contradiction 149
   
   6.4 The Stakes 155
   
   6.5 First Strategy: Doctrinal Arguments to Sidestep the Contribution Requirement 159
   
   6.6 Second Strategy: Characterization as a Separate Offence 163
   
   6.7 Other Responses (and the Increasing Mystification of Command Responsibility) 169
   
   6.8 Implications 173

7 **The Outer Limits of Culpability** 177
   
   Overview 177
   
   7.1 What Are the Parameters of “Contribution”? 177
   
   7.2 Culpability without Contribution? 185
   
   7.3 Implications 190

8 **The Genius of Command Responsibility** 194
   
   Overview 194
   
   8.1 Problem, Objective, and Themes 194
   
   8.2 The Allergy to Negligence 199
# Contents

8.3 A Proposed Justification of Command Responsibility 206
8.4 Implications 218
8.5 Conclusion 222

9 Horizons: The Future of the Justice Conversation 224
  Overview 224
  9.1 Mid-level Principles and Coherentism at Work 224
  9.2 Major and Minor Themes 229
  9.3 Further Questions 231

Annex 1 After the Identity Crisis: Responses and Clarifications 237
Annex 2 The Rise of Joint Criminal Enterprise: Lessons for Reasoning 249
Annex 3 Bemba: ICC Engagement with Deontic Analysis 257
Annex 4 The Pendulum Swing? Possible Questions from the Bemba Appeal Judgment 272

Glossary of Selected Terms 282
Bibliography 284
Index 303