COHERENTIST DEONTIC ANALYSIS OR DIALOGIC COMMUNITY VALUE IDENTIFICATION: WHICH WAY FORWARD FOR ICL?

Margaret M. deGuzman[*]

In his forthcoming book, *Justice in Extreme Cases: Criminal Law Theory Meets International Criminal Law*, Darryl Robinson addresses a central issue for international criminal law (ICL): how the regime's institutions should make decisions, particularly decisions about how to interpret and apply law.[1] He criticizes the regime for focusing largely on what he calls source-based analysis and teleological analysis, and urges greater attention to deontic analysis.[2] Deontic analysis, he says, "considers the principled limits of institutional punishment in light of the personhood, dignity, and agency of human beings affected by the system."[3] The principles he says require greater attention and implementation are those of personal culpability, fair labeling, and legality.[4] He argues that increased focus on deontic analysis, especially implementation of these principles, will make the system both more just—because defendants will not be treated as means to an end—and more effective, because people will better understand the contours of permissible behavior.[5]

Professor Robinson acknowledges that the kind of deontic analysis he advocates is routinely used in national criminal law systems, but he cautions against uncritical application of parallel reasoning in international criminal law.[6] As the book's title suggests, Professor Robinson frames international criminal law as importantly distinct from national criminal law in that it addresses "extreme or special cases,"[7] in contrast to the ordinary cases typical in national systems.[8] He argues that through careful application of deontic analysis in international criminal

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[*] James E. Beasley Professor of Law & Co-Director, Institute for International Law and Public Policy at Temple University's Beasley School of Law.

1. DARRYL ROBINSON, JUSTICE IN EXTREME CASES: CRIMINAL LAW THEORY MEETS INTERNATIONAL CRIMINAL LAW 11–12 (2020).

2. *Id.*

3. *Id.* at 229.

4. *See id.* at 9 ("The first is the principle of personal culpability . . . . that persons are held responsible only for their own conduct . . . . A second is the principle of legality . . . which requires that definitions not be applied retroactively and that they be strictly construed . . . to provide fair notice to individual actors and to constrain arbitrary exercise of coercive power . . . . [T]he principle of fair labelling, which requires that the label of the offence should fairly express and signal the wrongdoing of the accused, so that the stigma of conviction corresponds to the wrongfulness of the act.").

5. *Id.* at 30–31.

6. *Id.* at 10.

7. *Id.* at 230.

8. *Id.*

law, the field can both learn from general criminal law theory and contribute to the further development of that theory.[9] The special contexts in which international criminal law usually operates, he says, suggest modifications of general criminal law theory, which in turn can lead to an even more *general* criminal law theory, thus benefiting both national and international fields of law.[10]

The method Professor Robinson advocates for identifying and refining the deontic principles applicable in international criminal law is one he labels "coherentist."[11] Rather than search for "foundational principles," he argues that decision makers should be satisfied with identifying "mid-level principles," by examining "patterns of practice, normative arguments, and . . . considered judgments," among other clues.[12] He asserts that this process will yield "principles that are both arguably immanent within a body of practice and normatively compelling."[13] However, he cautions that the principles thus identified should not be considered universally or eternally valid.[14] Rather, they should be treated as hypotheses in a continuous search for greater understanding.[15]

Professor Robinson uses the doctrine of command responsibility as a case study to demonstrate the benefits of his theoretical approach.[16] He critiques the way the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda ("Tribunals") interpreted and applied this doctrine as insufficiently attentive to deontic concerns.[17] In particular, he argues that the Tribunals' holding that commanders can be liable for the crimes of their subordinates to which they made no contribution violates the principle of individual culpability.[18] In his view, the Rome Statute of the International Criminal Court (ICC) is correct to hold a commander responsible only for subordinate crimes that happen "as a result of his or her failure to exercise control properly" over subordinates.[19]

In contrast to his view that the Tribunals adopted an insufficiently robust actus reus to support the culpability of commanders,[20] he argues that the mens rea they adopted was too stringent.[21] The Tribunals held that negligence was insufficient for command responsibility and that such responsibility could only

9. *Id.*

10. *See id.* ("Thus the study of special cases can help to foster a more truly general theory of criminal law.").

11. *Id.* at 13.

12. *Id.* at 85.

13. *Id.* at 230.

14. *Id.*

15. *Id.*

16. *Id.* at 15.

17. *Id.* at 149–54.

18. *Id.* at 156.

19. Rome Statute of the International Criminal Court art. 28, July 17, 1998, 2187 U.N.T.S. 38544 [hereinafter Rome Statute].

20. *See* ROBINSON, s*upra* note 1, at 44 (noting that the Tribunals overlooked structural distinctions between humanitarian law and theories of personal criminal liability).

21. *See id.* at 204–05 (exemplifying a situation where Tribunal jurisprudence would hold a culpable commander to have not met the mens rea requirement).

attach when a commander had access to information that should have put her on notice that crimes had been or were being committed.[22] Professor Robinson supports a negligence standard, asserting that such a mens rea better captures the kind of culpable indifference that command responsibility aims to penalize.[23]

Professor Robinson's book is an important contribution to the nascent literature on international criminal law theory. He illuminates a central impediment to the regime's legitimacy and efficacy: its failure to develop a consistent and coherent decision-making framework. His careful exposition of the flawed reasoning methods sometimes employed at international courts and tribunals and his innovative coherentist solution will both inspire other theorists and provide practical tools for decision makers.

In my book, *Shocking the Conscience of Humanity: Gravity and the Legitimacy of International Criminal Law* (Oxford University Press 2020), I address similar themes to those explored in Professor Robinson's book, and, like him, I propose a framework for decision-making in international criminal law.[24] In the remainder of this essay, I highlight points of convergence and divergence between the two approaches and then explain how the different frameworks affect our analyses of international criminal law doctrines, including command responsibility.

With regard to Professor Robinson's critique of past and, to a lesser extent, current decision-making at international criminal law's institutions, I wholeheartedly agree that the absence of a principled framework has undermined coherence.[25] International criminal law evolved rapidly in an atmosphere of urgency that discouraged careful examination of applicable community values and goals.[26] This is beginning to change, both at international criminal courts and, as Professor Robinson's book attests, in the scholarship of international criminal law, where more attention is starting to be paid to such questions.[27] For instance, I agree with Professor Robinson that early international criminal law analysis has sometimes paid insufficient attention to the principle of culpability, risking unfairness to defendants.[28] Professor Robinson attributes this to a systematic disregard for deontic principles,[29] while my book highlights the role that pervasive

22. *See id.* at 195 ("[T]he Tribunal test is 'had reason to know' (HRTK), whereas the ICC test for commanders is 'should have known' (SHK).").

23. *See id.* at 216 (asserting that a negligence standard appropriately applies to the hypothetical commander that buries their head in the sand in dereliction of their duty).

24. *See generally* MARGARET M. DEGUZMAN, SHOCKING THE CONSCIENCE OF HUMANITY: GRAVITY AND THE LEGITIMACY OF INTERNATIONAL CRIMINAL LAW (2020).

25. *See* ROBINSON, *supra* note 1, at 22.

26. *Id.*

27. *Id.* at 5.

28. *Id.* at 149–54.

29. *See id.* at 162–63 ("These arguments engage at entirely the wrong level. They do not even attempt to engage with the deontic argument: the violation of the fundamental principle of culpability. ICL claims to respect the culpability principle as 'the foundation of criminal responsibility' and thus to hold persons responsible only for transactions in which they 'personally engaged or in some other way participated.' Technical doctrinal arguments, such as reconciling one provision with another, are no answer to the challenge that one is contradicting

narratives about the extreme gravity of international crimes have played in discouraging attention to such principles.[30]

I also agree with Professor Robinson that to address the absence of a coherent, principled decision-making framework requires a humanistic, cosmopolitan, and iterative process.[31] It is crucially important for all supporters of the regime to recognize that neither they nor anyone else has unique access to principles of truth, right, or justice. Thus, any decision-making framework must be dynamic, evolving over time in response to a wide variety of inputs. In particular, those seeking to develop the regime should be attentive to voices outside of dominant structures of power and privilege. Such voices have been suppressed in international criminal law historically,[32] as they have been in international law more broadly,[33] and sustained effort is necessary to remedy this deficit.

A more subtle point on which our analyses align is that desert should serve as a side constraint to punishment, rather than as a goal. International criminal law's institutions should not be classically retributive—they should not seek to punish offenders in accordance with the full extent of their desert.[34] Rather, such institutions should be careful not to inflict more punishment on any offender than they deserve.[35] Desert should provide a ceiling, not a target for punishment.

Professor Robinson is not explicit in making this argument. Indeed, he gestured toward a more traditionally retributive stance when he endorsed Paul Robinson and John Darley's "utility of desert" theory, whereby punishing in accordance with desert is necessary to maintain respect for the system of punishment,[36] an argument that I reject.[37] However, Professor Robinson elsewhere describes desert as a "constraint" on punishment,[38] and much of the book suggests he endorses this more limited role. For instance, he notes: "Purely deontological

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one's own stated fundamental principles. To answer such a challenge, one must consider the normative question of compliance with deontic constraints.").

30. *See* DEGUZMAN, *supra* note 24, at 177–79 (highlighting the lack of attention paid to a culpability analysis in sentencing decisions, where the gravity of the crime is often emphasized).

31. ROBINSON, *supra* note 1, at 108.

32. *See, e.g.*, Immi Tallgren, *Who Are 'We' in International Criminal Law? On Critics and Membership*, *in* CRITICAL APPROACHES TO INTERNATIONAL CRIMINAL LAW 71, 77 (2014) (noting that critics of international criminal law were largely homogeneous until or later than the 1950s).

33. *See, e.g.*, B.S. Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT'L CMTY. L. REV. 3, 8 (2006) (asserting that international law norms requiring formal democracy disregard the likely exclusion of marginalized groups from decision-making power).

34. *See* ROBINSON, *supra* note 1, at 21 (advocating that international criminal law institutions should impose principled restraints on the infliction of punishment). *See generally* DEGUZMAN, *supra* note 24, at 181 ("Desert is typically conceptualized as a function of an offender's moral culpability and the harm they caused. Some international sentencing decisions adopt this traditional understanding of retribution.").

35. *See* DEGUZMAN, *supra* note 24, at 177–79 (highlighting the lack of attention paid to a culpability analysis in sentencing decisions, where the gravity of the crime is often emphasized).

36. ROBINSON, *supra* note 1, at 66.

37. *See* DEGUZMAN, *supra* note 24, at 190–91 (examining the lack of shared intuitions internationally regarding desert of offenders).

38. ROBINSON, *supra* note 1, at 66.

accounts of criminal law are generally unconvincing, because the objective of 'righting the cosmic balance' by meting out deserved punishment does not seem to justify the expense and hardships flowing from criminal law."[39] Although not central to Professor Robinson's work, this point is important because it positions punishment in international criminal law as a utilitarian endeavor rather than a purely deontological one.[40] As I explain in my book, this position is justified both by global norms and by the practical difficulties associated with measuring desert, especially at the international level.[41]

These are just a few of the many points on which I agree with Professor Robinson's analysis. Yet our approaches to understanding and promoting international criminal law also differ in important respects. One significant difference concerns our proposed decision-making frameworks. Where Professor Robinson endorses a "coherentist" method of decision-making that draws on various "clues" to identify immanent mid-level principles,[42] I advocate a dialogic process to identify relevant community values and goals. Professor Robinson is attracted to the coherentist method because it avoids the need he says is inherent in most foundationalist theories to identify an "ultimately correct comprehensive moral theory."[43] The daunting nature of this task inhibits progress. Coherentism, he says, more easily enables us to chart a path forward.[44] Thus, although much of the book's analysis hinges on a commitment to such principles as culpability, fair labeling, and legality, Professor Robinson rejects the idea that these are foundational or universal moral norms.[45]

In contrast to Professor Robinson, I am an avowed moral universalist. In my view, the international criminal law regime, like the international human rights regime, is justified in significant part because of the existence of universal moral norms that the global community has an interest in enforcing.[46] In particular, I highlight the value of respect for human dignity as a foundational norm that ought to guide decision-making in international criminal law.[47] Other, more specific, norms flow from this broad one, including, for instance, the right to life, to be free from torture, and to be presumed innocent.

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39. *Id.* at 7–8.

40. *See id.* at 8 (discussing consequentialist and deontological considerations of punishment in criminal law).

41. DEGUZMAN, *supra* note 24, at 188–93.

42. ROBINSON, *supra* note 1, at 85.

43. *Id.* at 13.

44. *See id.* at 14 ("Coherentism accepts that we can work on problems of the middle range, trying to develop models that best reconcile all available clues, without first solving all of the ultimate questions about underpinnings. Indeed, as human beings in an uncertain world, the very best we can do is work with the clues that are available to us.").

45. *See id.* at 85 ("We do not have an uncontroversially 'correct' foundational moral theory . . . . I suggest a non-foundational approach, using a coherentist method: we do the best we can with the available clues and arguments.").

46. *See* DEGUZMAN, *supra* note 24, at 185–87 (asserting that international courts should seek to prevent crimes through deterrence and promotion of global norms).

47. *See, e.g.*, *id.* at 87.

Despite this philosophical difference, however, it is not clear that our approaches to decision-making diverge greatly in practice. Although I believe that universal values exist, and are worth uncovering, I support an inclusive, iterative, and dialogic process for doing so. This requires regime participants, as well as observers, supporters, and critics, to advance their views of relevant values, decision makers to invoke values in support of their decisions, constituent audiences to react, providing feedback to regime actors, and so on.[48] This process should gradually concretize values that have broad support at a high level of abstraction. For instance, there is broad—perhaps universal—support for the idea that all humans are entitled to dignity, but determining what this means in concrete terms, for example, as it relates to the principles of culpability, fair labeling, and legality, requires global dialogue. Professor Robinson's suggestion that decision makers examine all available clues, including normative arguments, to uncover mid-level principles may well lead to the same conclusions.[49] Both approaches stress the importance of recognizing humans' imperfect access to truth and of nonetheless seeking the best way forward based on available evidence and resources.

Another important difference in our approaches is that Professor Robinson focuses his analysis significantly on dissimilarities in the natures of international and national, or "ordinary," criminal law.[50] Like many other scholars and practitioners of international criminal law, Professor Robinson cites the unusual conditions in which international crimes are often committed—armed conflict and systemic, often government-led, abuses—as suggesting a need for distinct rules and principles.[51] He asserts that international criminal law has "abnormal features" that "compel us to explore a more general account of criminal justice that includes very different conditions."[52]

Rather than focusing on differences between national and international crimes, my analysis draws attention to the particular community values and goals that each body of law seeks to advance. In my view, the relevant difference between international and national regimes for determining appropriate decision-making frameworks inheres more in the communities they serve than in the types of crimes they address. International criminal law, at least when adjudicated at international courts, primarily serves the global community and therefore ought to pursue that community's values and goals, whereas national criminal law should effectuate national values and goals. Both international and national courts basically seek to inflict punishment for the ultimate goal of promoting human dignity, but how they do so ought to depend on what each community values most. To discover the global community's values and goals requires the dialogic process described above.

Applying these two frameworks—Professor Robinson's coherentist deontic

48. *Id.* at 96.
49. ROBINSON, *supra* note 1, at 14.
50. *Id.* at 70.
51. *Id.* at 74, 121.
52. *Id.* at 71.

analysis and my dialogic community value identification—can lead to different conclusions. As an example of a difference between international and national crimes that is relevant to criminal theory, Professor Robinson explains that, unlike national law, "ICL has often encountered violent atrocities for which there was no national prohibition."[53] In light of this difference, he says, "ICL challenges us to consider the outer parameters of the legality principle more carefully."[54] Likewise, he notes that "ICL addresses collective criminal enterprises involving thousands of perpetrators playing very different roles" and that "[c]rimes of obedience challenge some normal thinking about deviance, conformity, and wrongdoing."[55] This difference, he says, "can . . . help us to explore the limits of personal culpability."[56] For Robinson, like many international criminal law scholars, these differences support broader interpretations of the relevant principles.

In contrast, my approach would focus less on refining the principles than on understanding their application, especially in relation to competing values. My analysis would frame international criminal law's relatively loose approach to the principle of legality as an effort to balance that value with the competing value of accountability, which, in certain cases, is found to outweigh the strict application of the principle of legality. Similarly, international criminal law's application of the principle of culpability in situations of collective criminality and normalization of violence represents an effort to ensure accountability, and thus prevention, sometimes at the expense of high levels of moral responsibility.

Professor Robinson's case study of command responsibility also demonstrates the potentially different consequences of our approaches. Professor Robinson uses his coherentist method to conclude that culpability requires both a culpable mens rea and a contribution to crime.[57] Based on his conclusion about the nature of the principle of culpability, he charges the Tribunals with disregarding the principle in holding that command responsibility can attach even when the commander's dereliction made no contribution to the commission of crimes.[58]

Professor Robinson is correct that most forms of criminal responsibility require both a culpable mens rea (guilty mind) and harm causation or contribution. But, as he acknowledges, this is not true for all criminal responsibility. One example is attempt. Under both the Rome Statute and the U.S. Model Penal Code, a person is guilty of attempting a crime if, with intent to commit a crime, she takes a "substantial step" toward the commission of the crime.[59] This "substantial step" need not—and often does not—produce any real harm in the world. As such, the attempter's culpability rests principally on her guilty mens rea. Likewise, in

53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *See* Rome Statute, *supra* note 19, art. 25 (including attempting a crime in a list of actions subject to ICC jurisdiction); *see also* MODEL PENAL CODE § 5.01 (AM. L. INST. 1985) (defining inchoate crimes, which criminalize preparation for events that have yet to transpire).

international criminal law, incitement to genocide requires no contribution to harm.[60] Indeed, for genocide itself, the harm inheres significantly in the mens rea, rather than in harm causation. According to the International Criminal Tribunal for the former Yugoslavia (ICTY), an offender can be guilty of genocide even if no genocide is occurring or likely to occur based on the offender's conduct;[61] incitement to genocide does not require any contribution to an actual act of genocide. It simply requires the intent to incite others to commit genocide.[62]

These doctrines are examples of communities, both national and global, valuing utility—especially that of early intervention to prevent crime—over high levels of culpability and certainty about culpability. In the United States, not all communities strike the balance the same way. In fact, until fairly recently, most U.S. jurisdictions required that an offender come dangerously proximate to achieving the result in order to be convicted of attempt.[63] Many of those jurisdictions have now decided that the utility of early intervention is more important than a high degree of certainty as to culpability and have adopted the substantial step test.[64] For genocide, the imperative of early intervention would seem even more compelling, given the catastrophic results that could flow from waiting to ascertain an offender's culpability more surely by requiring greater proximity to the harmful result.

These examples show that criminal law sometimes balances the deontic value of ensuring individual culpability against the utility of earlier intervention to prevent crimes. How that balance ought to be struck is a matter of community norms, not deontic justice. As long as a minimum level of culpability is established such that the offender deserves *some* punishment, no deontic principle dictates either the level of culpability or the level of punishment.[65]

In response to this objection, Professor Robinson notes that attempt and incitement require a high mens rea to make up for the absence of a contribution to harm.[66] Yet, as discussed below, he objects that the Tribunals have adopted too high a mens rea.[67] While this might be true if a causal contribution were required, perhaps it is not given the absence of this requirement. He also notes that attempt and incitement are offenses rather than modes of liability like command

60. *See* Rome Statute, *supra* note 19, art. 25 (stating that inciting others to commit acts of genocide can render an offender guilty of genocide).

61. *See* Prosecutor v. Jelisić, Case No. IT-95-10-T, Judgement, ¶¶ 80–83 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 14, 1999).

62. *See* Rome Statute, *supra* note 19, art. 25 (listing incitement to genocide as a separate offense).

63. Avani Mehta Sood, *Attempted Justice: Misunderstanding and Bias in Psychological Constructions of Criminal Attempt*, 71 STAN. L. REV. 593, 597 (2019) (contrasting the common law "proximity rule" with the new "substantial step" rule).

64. *Id.* at 602–04.

65. *See* ROBINSON, *supra* note 1, at 71 (stating that applying fundamental principles in new contexts requires deontic justification).

66. *Id.* at 176.

67. *Id.* at 200–01.

responsibility, which explains the lower culpability requirements.[68] Yet the difference between offenses and modes of liability is not necessarily relevant to levels of punishment, which is the central reason we must pay attention to levels of culpability. In many jurisdictions, for instance, attempt is punished just as severely as the completed crime.[69] Additionally, there is some question as to whether incitement to genocide is a mode of liability or a separate crime at the ICC,[70] an issue to which the drafters may not have paid much attention because they did not believe it would be highly relevant to punishment.

With a value-balancing approach, both the Tribunals' and the ICC's rules regarding command responsibility can be justified. The Tribunals rejected the requirement of contribution, preferring instead to support earlier intervention. However, they endorsed a heightened mens rea; it was not sufficient that the offender ought to have known of past, current, or potential future crimes.[71] Rather, she had to have access to information that put her on notice of such crimes.[72] This sounds a lot like a willful blindness standard, which courts often equate to knowledge. If a commander had access to information that put her on notice of crimes and failed to review that information, she can be considered to have constructive knowledge of it. This relatively high mens rea can be considered to establish the commander's culpability even in situations where she makes no contribution to the commission of crimes. For instance, a commander who fails to punish past crimes almost always increases the likelihood of future crimes, a situation similar to that of someone who attempts a crime and is caught before it is completed. While not all commanders will be highly culpable under this approach, their culpability is sufficient to qualify them for at least *some* punishment. Notably, the punishment the Tribunals have inflicted for command responsibility has often been light relative to punishment imposed on those who committed crimes, reflecting this reduced culpability.[73]

The ICC's approach to command responsibility can also be justified according to the set of values adopted for that Court. The Rome Statute includes a contribution requirement but a lower mens rea: should have known, or

68. *Id.* at 176.

69. *See, e.g.*, MODEL PENAL CODE § 5.05 (AM. LAW. INST. 1985) (providing that attempts are generally punished to the same degree as the attempted offense in question).

70. *See* Thomas E. Davies, *How the Rome Statute Weakens the International Prohibition on Incitement to Genocide*, 22 HARV. HUM. RTS. J. 245, 267 (2009) (stating that the placement of incitement to genocide in Article 25 was done without considering the substantive effect of the placement). *Compare* Rome Statute, *supra* note 19, art. 25(3)(e) (categorizing incitement to genocide as a mode of liability), *with* Convention on the Prevention and Punishment of the Crime of Genocide art. III, Dec. 9, 1948, 78 U.N.T.S. 277 (categorizing incitement to genocide as a stand-alone crime), *and* Statute of the International Criminal Tribunal for the Former Yugoslavia art. (4)(2), May. 25, 1993 (same), *and* Statute of the International Criminal Tribunal for Rwanda art (2)(3), Nov. 8, 1994 (same).

71. ROBINSON, *supra* note 1, at 44, 200–01.

72. *Id.* at 200–01.

73. Barbora Holá et al., *Consistency of International Sentencing: ICTY and ICTR Case Study*, 9 EUR. J. CRIMINOLOGY 539, 547 (2012).

negligence.[74] Professor Robinson argues that negligence in this context is sometimes a higher mens rea than recklessness, but I do not agree. According to Professor Robinson, a commander who fails to care enough to even be aware of the risk that subordinates will commit crimes, may be even more culpable than one who disregards a known risk.[75] He describes such a commander as "displaying a culpable indifference to the lives and interests she was entrusted to protect."[76] He gives as an example a commander who instructs her troops not to provide her with information about crimes being committed.[77] Yet such a commander sounds at least reckless, if not willfully blind. In telling subordinates not to inform her of crimes, a commander indicates her awareness that crimes may be committed. If her awareness is of a high-enough risk and she deliberately fails to discover the truth, she may be considered to have constructive knowledge. Another example he provides is of a commander who does not care enough about possible crimes to set up a system of reporting.[78] Again, at least in a scenario where crimes are likely, this sounds like recklessness. A negligent commander, in contrast, is one who genuinely believes that her troops will not commit crimes, but in circumstances where such a belief is unreasonable. This is a lower level of culpability.

The ICC's lower level of culpability for commanders compared to that at the Tribunals can be justified by its inclusion of a contribution requirement. Although negligence is sometimes considered too low a standard for criminal punishment—particularly at an institution charged with punishing persons responsible for "the most serious crimes of concern to the international community as a whole"[79]—where such negligence contributes to actual harm in the world, culpability may be considered adequate for punishment.

Each of these approaches adheres to the minimum standard of culpability required for *some* punishment because some degree of desert is present. The fundamental principle of individual culpability is thus respected. Beyond this, questions about how much culpability above the minimum ought to be required to justify adjudication before a particular institution are a matter of the values and goals that institution seeks to promote, which in turn depends on the community or communities it seeks to serve. International courts, like national courts, must frequently balance values and goals associated with culpability with those related to utility. Examining principles in more detail will not necessarily tell us how this balance should be struck.

In sum, Professor Robinson has made a valuable contribution to the emerging literature on international criminal law theory. His book identifies a serious challenge to the regime's effectiveness and legitimacy: its failure to develop a coherent approach to decision-making. Although Professor Robinson highlights the need for more deontic reasoning, and I seek to center community values and

74. Rome Statute, *supra* note 19, art. 28.
75. ROBINSON, *supra* note 1, at 217.
76. *Id.* at 204.
77. *Id.* at 203.
78. *Id.* at 217.
79. Rome Statute, *supra* note 19, pmbl.

goals, our ultimate purpose is the same: to strengthen the global justice system. Professor Robinson's book greatly advances that goal; it will serve as an important resource for scholars and as a guide to courts seeking to improve their decision-making processes.