

Larry May

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Larry May (born 1952) is an American professor of legal and moral philosophy. He has spent most of his career at Purdue University (1979-1991), Washington University in St. Louis (1991-2009), and most recently as the W. Alton Jones Professor of Philosophy, Law, and Political Science at Vanderbilt University (2009-2017). He has authored or co-authored 16 books and more than 120 articles, and edited or co-edited 18 books, on a wide range of topics, including the philosophy of international criminal law, collective and shared responsibility, just war theory, and Thomas Hobbes's legal and political thought. His pioneering work on the philosophy of international criminal law has helped to usher in a wave of attention to the conceptual and normative questions underlying these relatively new and developing institutions.

A central concern running through much of May's work is with the issue of wrongdoing committed by groups and against groups: how to conceptualize it, how to assign responsibility for it, how to respond to it. In his early writing, especially his books *The Morality of Groups* (1987b) and *Sharing Responsibility* (1992c), he departs from traditional, purely individualistic conceptions of moral agency and responsibility to develop a more nuanced conception according to which groups as well as individuals can bear responsibility.

In *The Morality of Groups*, May contends that actions may properly be attributed to groups when group members are related in ways that allow them to do things acting together that they could not do acting individually. Importantly, May's account aims to find middle ground between strong individualistic and strong collectivist views. He conceives of groups as individuals *in relationships* and contends that although groups themselves, *qua* groups, do not have reality independently of the members who compose them, the relationships among individual group members do have an ontological status distinct from the individuals themselves (1987b: 23). Group intentions, on his view, are a product of these relationships, and so although group intentions are distinguishable from individuals' intentions, they are not collective in the strong sense of being above or separate from individuals.

In *Sharing Responsibility*, May draws on the work of Sartre, Jaspers, and Arendt to develop a social existentialist account of responsibility among members of groups. He contends that individuals' identities are grounded in their memberships in social groups, and that individuals are implicated in their groups' actions. Group members are responsible, he argues, not just for what they individually do, but also for their social identity, their shared attitudes, and

importantly, their failure to work to prevent harmful activities perpetrated by their group. He writes that “each member of a community shares in what each member does, and each member should feel responsible for what the other members do” (1992c: 11).

In many of his early writings, May focused on these issues of collective responsibility in the context of corporate wrongdoing (see also, e.g., 1982, 1983, 1986). But his interest in how to conceptualize and assign responsibility for group wrongdoing informed the subsequent work for which he is perhaps best known, in the philosophy of international criminal law. May’s four-volume series on the moral foundations of international criminal law has helped to set the conversation about moral, legal, and political questions underlying prosecutions of the four classes of international crime identified by the 1998 Rome Statute: crimes against humanity, war crimes, crimes of aggression, and genocide. Two notable commitments running through each of these volumes are, first, a commitment to a moral minimalist approach intended to make his conclusions plausible to a wide range of readers with different philosophical or legal commitments, and second, a belief that defendants’ rights and fidelity to legal due process are at least as important in international prosecutions as is the vindication of victims’ rights.

In the series’ first volume, *Crimes Against Humanity: A Normative Account* (2005), May focuses on the apparent tension between prosecuting these crimes and respecting the sovereignty of states. Unlike war crimes or crimes of aggression, which are perpetrated by one state or its members against another state or its members, crimes against humanity are perpetrated or allowed to occur by a state against its own citizens. Thus crimes against humanity are *intranational* rather than international, and it might appear that respect for state sovereignty is inconsistent with international prosecution of crimes that occur entirely within a state’s borders and against its own members. Drawing on the work of Grotius and Hobbes, May argues for a presumption in favor of state sovereignty. This presumption, however, can be defeated when a state attacks its members’ subsistence or security or is unable or unwilling to protect its members from harm. He terms this the ‘security principle.’ But although a state that attacks or fails to protect its members may forfeit its sovereignty and thus its right to exclusive control over its affairs, May believes international prosecutions are only fully justified if another condition is met: namely, that the crime involves some serious harm to the international community. This second condition, which he terms the ‘international-harm principle,’ is met when the crime is group-based in terms of its victims or its perpetrators. More specifically, the principle requires that the crime either causes “harm to the victims that is based on non-individualized characteristics of the individual, such as the individual’s group membership, *or* is perpetrated by, or involves, a State or other collective entity” (2005: 83). When one of these conditions is met, he contends, the crime harms humanity itself and is subject to international prosecution (2005: 100).

May’s two principles have been influential as well as (especially the international-harm principle) controversial in subsequent debate about the grounds for justified international prosecution. Some have objected that many crimes against humanity do not in fact harm all of the international community — they do not constitute harms to humanity in the sense May

suggests (e.g., Altman 2006, Chehtman 2010: 100). Others have objected that the relevant consideration for assessing whether a crime is properly prosecuted by the international community is not whether it harms the international community but whether it properly concerns the international community, thus whether the perpetrators are accountable to the international community as a whole, rather than merely to their victims or even their fellow citizens (Renzo 2010). Some scholars have suggested that something like the security principle is sufficient to render certain crimes liable to international prosecution (Altman and Wellman 2004).

The second volume in the series, *War Crimes and Just War* (2007), focuses on the moral foundations of international humanitarian law, which concerns the rules of war. Drawing on the work of 17th century just war theorists, especially Grotius, May reconsiders traditional moral principles governing how wars are fought — the principles of discrimination, necessity, and proportionality —in light of a new, more fundamental principle, which he terms the principle of humane treatment. Essentially, this principle requires that soldiers act with mercy and compassion, grounded in a sense of honor, toward those who are in various respects vulnerable. May's account reframes the principle of discrimination's traditional distinction between soldiers and civilians (or combatants and noncombatants); for him, the principle of humaneness requires compassionate treatment of the vulnerable, or defenseless, whether they are civilians or soldiers. The humaneness principle has a broad range of implications, from what sorts of weapons may be used in war to how prisoners of war, and even defendants in subsequent war crimes trials, may be treated. One theme that emerges in this work and continues in the next volume, but gets fuller expression in his later book *Contingent Pacifism: Revisiting Just War Theory* (2015), is the sense of deep tension between fighting wars humanely and fighting them effectively.

In the series' third volume, *Aggression and Crimes Against Peace* (2008), May sets out to rethink the notion of *aggression* as a basis for international prosecutions. Instead of focusing, as traditional international law has done, on a state's violation of another state's sovereignty or territorial integrity, May reconceptualizes aggression in terms of human rights violations. Rather than a state's first strike against another state, aggression is a "first wrong that violates or undermines human rights" (2008: 4). This revised notion of aggression has several key implications. Most notably, it suggests that the traditional conception of aggression in international law is both too narrow and too broad: It is too narrow in that aggression is not limited to state aggression; non-state entities (such as terrorist groups) may also be guilty of aggression. It is too broad in that states' first strikes against other states may in some cases not count as aggression, if these are humanitarian interventions against states perpetuating human rights violations against their members.

The fourth volume, *Genocide: A Normative Account* (2010), examines what has been described as the most serious of all international crimes. The 1948 UN Genocide Convention defines genocide as an act committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." A central concern in this volume is with the ostensible significance of destroying a group. Some have regarded genocides as morally unique, and as the worst of all crimes, because they constitute the destruction of a group. If this is true, May

contends, then groups must be something over and above their members, and they must also be morally significant in a way that renders their destruction worse than the killing of their members. Drawing on his earlier work on collective responsibility, May contends that groups do not have objective reality independently of their members, and thus that genocide is neither morally unique nor significantly worse legally than other serious international crimes (2010: 78). But groups can be said to exist in an intersubjective sense, as individuals in social relationships who find meaning in group identity. This has important implications for how we define groups for purposes of genocide prosecutions: rather than limit the list to national, ethnic, racial, or religious groups, or indeed any objective list of groups, May suggests we include any “publicly recognized group that is relatively stable and significant for the identity of its members,” such as, but not limited to, the four listed in the 1948 convention (2010: 58).

Beyond these four books, May’s has written prolifically on questions of international law and justice, authoring or co-authoring books about due process (2011), proportionality (2014), and necessity (2016) in international law; contingent pacifism (2015); and justice after war ends (2012).

In addition to his work on international criminal law, just war theory, and collective responsibility, May has written about a range of issues in moral and social philosophy, including ethical issues surrounding masculinity and men’s social and familial relationships (1980b, 1991, 1992b, 1994, 1998); conflicts in religious and medical ethics (1999); and Hobbes’s legal and political thought (e.g., 1980a, 1987a, 1992a, 2013).

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