Larry May


In *Global Justice and Due Process*, Larry May articulates and defends a conception of global procedural justice. Such justice requires the protection of four procedural rights that “set a moral minimum on what oversight is necessary for individuals who have been detained or incarcerated by governments” (p. 2), constitute the core of the ideal of due process, and should be recognized in international law. These are: 1) the right of habeas corpus, 2) the right of non-refoulement, 3) the right to be subject to international law, and 4) the right to a trial by jury. May defends the instrumental and non-instrumental value of these procedural rights and suggests institutional modifications that could strengthen the recognition and protection of these rights.

*Global Justice and Due Process* draws attention to an issue that has not been the subject of philosophical attention, and makes a compelling case for why it should be. May’s sustained examination of the idea of due process at the international level is an important addition to the literature, and will be the starting point for future discussions on the topic. Moreover, one of May’s primary concerns is those groups whose rights are insufficiently protected by domestic or international law, including refugees, stateless persons, and individuals in detention centers including Guantanamo Bay. May’s critique of current international law and proposed institutional modifications demonstrate the way that philosophy can contribute to the protection of rights of groups such as these, not only in theory but also in practice.

The right of habeas corpus involves a right to “some kind of examination of the situation of the detainee by a court or court official” (p. 104) via a form of judicial review. The right of non-refoulement specifies minimal restrictions on extradition and deportation processes to help ensure that individuals deported or extradicted will not be subject to torture and abuse (p. 164). May argues that these first two rights should be recognized as *jus cogens* norms in international law, binding on all states independent of state consent. The right to be subject to international law, or the right to not be an outlaw, requires access to a set of institutions to which one can appeal if rights claims are not being respected. The right to a trial by jury helps protect the process by which the guilt of the accused is determined by increasing the likelihood that those deciding on the legal treatment the accused will receive can sympathize with the accused and recognize him or her as a member of their community.

May’s case for the recognition and protection of these four procedural rights is in part historical. May argues convincingly that the Magna Carta provides a
model for how norms of procedural justice could become more entrenched in the current international system. According to May, sovereign states today occupy a position analogous to that of feudal lords during the thirteenth century in England, and the emergence of a centralized system of law in the English state provides a model for thinking about how a more centralized system of international law could be developed. Moreover, the Magna Carta contains analogues to the specific procedural rights May defends.

May’s defense of procedural rights also appeals to the instrumental and noninstrumental moral value of such rights. Procedural rights are instrumentally valuable because they can strengthen the protection of substantive rights. In May’s words, to have a right is not just to have the ability to make certain claims, but also to be in a position where others have a duty to recognize and respond to those claims. Procedural rights protect individuals from being sent to jail arbitrarily and ensure that there is an institution that must respond to a claim of rights violation. In addition, procedural rights make transparent the process by which an individual is judged and treated. This visibleness can have a constraining effort, limiting the abuse that individuals are willing to inflict on others (p. 64). This visibleness also helps to make public violations of substantive rights that do occur, which in turn can motivate efforts to stop such violations.

Procedural rights have noninstrumental value for a number of reasons. First, procedural rights have recognition value. Implicit in such rights is recognition of the standing of all individuals to see that their rights claims are heard. Second, procedural rights respect the agency of rights bearers. The success with which individuals can pursue their goals depends on their ability to form reliable expectations of how others will respond to their actions. Treating individuals in an unpredictable and opaque manner or arbitrarily makes it difficult to form such expectations. By contrast, procedural rights guarantee formal fairness, requiring like cases will be treated equally and evenhandedly, in the process promoting the predictability on which agency depends. Third, the formal fairness achieved by procedural rights satisfies the demands of justice. Part of what justice requires, in May’s view, is that individuals be treated in a consistent manner.

Fourth, procedural rights help constitute a system of law. This value is especially significant at the international level. In May’s words, “Procedural rights allow for a system of law to emerge out of a set of substantive rules” (p. 52). Drawing on the work of legal scholars H.L.A. Hart and Lon Fuller, May argues that what distinguishes a set of rules from a system of rules is a procedural feature. Systems of law, as opposed to mere sets of rules, contain procedural rights. Procedural rights are at the core of Fuller’s requirements of the