GLOBAL JUSTICE AND DUE PROCESS

The idea of due process of law is recognized as the cornerstone of domestic legal systems, and in this book Larry May makes a powerful case for its extension to international law. Focusing on the procedural rights deriving from Magna Carta, such as the rights of habeas corpus (not to be arbitrarily incarcerated) and non-refoulement (not to be sent to a State where harm is likely), he examines the legal rights of detainees, whether at Guantanamo or in refugee camps. He offers a conceptual and normative account of due process within a general system of global justice, and argues that due process should be recognized as jus cogens, as universally binding in international law. His vivid and compelling study will be of interest to a wide range of readers in political philosophy, political theory, and the theory and practice of international law.

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The central guiding idea of this book is that we need to make sense not only of substantive rights to liberty and life at the international level but also of the rights to due process through which appeals of deprivation of substantive rights can be made. I first encountered these issues in both a theoretical and very practical context. In law school, Steve Legomsky first introduced me to many of these issues in a course on human rights law. Later, the courses I co-taught with Jack Knight on the rule of law inspired me to think more carefully about due process than I had before. And then, I had occasion to participate in a few cases of habeas corpus appeal from first degree murder convictions, several involving the death penalty, in the US. This practical experience solidified my belief in the importance of due process matters. In my research about international law I became increasingly convinced that debates about global justice needed more attention to due process as well.

In this book I argue that there is value in due process as constituting a rule of law that exceeds the benefit of protection of substantive rights. And I also argue that international procedural rights can become the cornerstone of an “international” rule of law that will cure many of the infirmities of international law today. This book addresses a gap in the political philosophy literature on global justice. Its focus is on procedural issues, whereas most of the literature is on substantive issues. And its focus is on legal rights of detainees, whether at places like Guantanamo or in refugee camps, whereas most of the literature is on economic rights. In international law there is a burgeoning literature on the topics that I will address, but there has also been very little theoretical literature here as well. As in any discussion that fills a gap, it is best seen as a first approach.

Several chapters of this book were published as free-standing essays. Chapter 2, “Magna Carta and the interstices of procedure,” was published by the *Case Western Reserve Journal of International Law* in 2009. Chapter 4, “International law and the inner morality of law,” was
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