War Crimes and Just War

War crimes are international crimes committed during armed conflict. Larry May argues that the best way to understand war crimes is as crimes against humaneness rather than as violations of justice. He shows that in a deeply pluralistic world, we need to understand the rules of war as the collective responsibility of states that send their citizens into harm’s way, as the embodiment of humanity, and as the chief way for soldiers to retain a sense of honor on the battlefield. Humanitarian considerations of mercy and compassion count morally in war, even if soldiers fight with just cause and their opponents have committed atrocities. Throughout, May demonstrates that the principle of humaneness is the cornerstone of international humanitarian law and is itself the basis of the traditional principles of discrimination, necessity, and proportionality. He draws extensively on the older Just War tradition to assess recent cases from the International Criminal Tribunal for Yugoslavia as well as examples of atrocities from the archives of the International Committee of the Red Cross.

Larry May is professor of philosophy at Washington University in St. Louis. He is the author of several books, including The Morality of Groups, Sharing Responsibility, and Crimes Against Humanity, the first book in a trilogy of volumes on the normative foundations of international criminal law. War Crimes and Just War, the second volume in the trilogy, received the Frank Chapman Sharp Prize from the American Philosophical Association.
War Crimes and Just War

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The subject of war crimes is one that I first explored as a college senior at Georgetown University’s School of Foreign Service in the early 1970s. I was then motivated by the revelations of the My Lai massacre. A few years later, while completing my Ph.D. in philosophy at the New School for Social Research, I had several discussions about the Nuremberg trials with Hannah Arendt, whom I was then assisting, that caused me to think hard about how 17th-century thinkers might have set the stage for such trials. Many years later, just after the Rome Treaty was signed in the late 1990s, I came back to this topic while attending a class on international criminal law taught by Leila Sadat at Washington University’s School of Law. And most recently, I felt inspired to try to write about war crimes by developments since September 11, 2001. My work defending convicted murderers on appeal has also inspired my work on war crimes. At various points in my philosophical and legal careers, I have been intrigued by the fascinating literature in Just War theory. The idea behind the current volume is to try to provide a normative bridge between the classical Just War theory, especially of the 17th century, and prosecutions that occur in contemporary international humanitarian law.

I have been very lucky that several people have generously agreed to read and comment on drafts of this manuscript over the last two years. My greatest debt is to Marilyn Friedman, who read various versions of the manuscript chapters and gave meticulous comments. Many of her helpful ideas are now contained as my own in the text. Special thanks also go to Mark Drumbl, who came along near the end of the drafting process and gave me excellent suggestions about the whole manuscript, forcing me to engage better with international lawyers. Jeff McMahan has been quite generous with his time, and his comments on several chapters forced me to rethink what I say about the relationship
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A first draft of this book won the American Philosophical Association’s Frank Chapman Sharp Prize for the best unpublished work on the ethics of war and peace. This is the second volume of a projected...
multivolume work on the moral foundations of international criminal law. The first volume was published in 2005 as *Crimes Against Humanity: A Normative Account*. The third volume is tentatively called *Aggression and Crimes Against Peace*. Somewhere down the road, there will undoubtedly also be a volume on genocide, as I try to grapple philosophically with the most important crimes in this emerging field of law and normative jurisprudence.

Lastly, I am grateful to my daughter Elizabeth, who kept reminding me of the human side of these crimes. Even as I defend the “defendants” in international criminal law, I remain committed to the idea that there should be prosecutions for the horrendous crimes that will fill the pages of what follows.
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