

War Crimes and Just War by Larry May. Cambridge University Press, 2007, 357 pp., \$29.99.

Larry May sets out to lay the normative foundations for international humanitarian law in his latest, truly thoughtful, and easily accessible book, *War Crimes and Just War*. While he lays out the book to support what he says in the first sentence that he intends to do, what comes out more clearly than a foundation is a normative argument for humane treatment of your opponent in war, especially if he is your prisoner.

May grounds himself in what he calls a secularist and minimalist version of natural law. The problem with this grounding is that by secularizing and minimizing natural law, he has to determine which elements of the broader law to use as his foundation and which to leave out. Thus, he loses some measure of credibility in claiming universality in norms. That does not mean that he is incorrect. Far from it. But the problem when dealing with normative vice empirical issues is that you set yourself up for the criticism of inconsistency if you do not firmly establish that your normative claims—such as the importance of humane treatment—are truly universal.

May's primary foundational grounding for determining culpability is in the concepts of humane treatment and honor. Thus, he contends that war crimes are not necessarily crimes against humanity but against humaneness. And it is here that the reader should encounter a problem. It is difficult to measure variance from something unless we can define that from which we need to know how far we vary. By defining *humaneness* as a "simple matter of charity" (p. 71) it seems that May's own definition is fraught with ambiguity—even in our own country and culture—let alone when discussing fighting between cultures. Likewise, by his defining *honor* as the sense of being morally superior and as the "motive to follow the rules as enhanced beyond what is true for the normal person" (p. 32), we are left with trying to describe multiple concepts within a single definition.

If military professionals or the civilians who command them are to draw any benefit from this work, it is certainly to be found in May's treatment of individual dependency and how that concept relates to distinction, proportionality, and discrimination. First, May methodically defines the relationship between combatants and noncombatants as one of dependency, going far beyond Walzer and the comfort zone of even the most liberally minded US officers. He argues that when one person renders another dependent, the former has special responsibilities towards the latter. He takes this argument of dependency, which he fully develops with respect to prisoners, even farther with fielded forces.

May disagrees with Walzer's distinction of threats and, consequently, what is allowable in war. Where Walzer posits the legitimacy of attacking the naked soldier who is bathing, based on his belonging to a group that is a legitimate target and that will return to the front to fight, May argues that such group distinction is unjustifiable and that we must break down the decision to the individual level. He reasons that because the naked soldier is not a threat, he is dependent upon

the attacker for mercy. Just as we would expect soldiers to “spare civilian persons,” May expects soldiers to spare those who are not a danger to us at a given time (pp. 110–12) as well as those who are vulnerable to our attack without the ability to render us vulnerable in return (pp. 172–76).

If air forces were to follow May’s positions as doctrine, then the attacks against barracks a hundred miles from Kosovo in the initial nights of Operation Allied Force would be deemed violations of international humanitarian law. The entire face of warfare would have to change as tactics and strategies which have become accepted through centuries, from King Arthur riding through the Gaelic Confederation camp in the night while they slept, to “plinking” tanks well behind the lines during the first Gulf War, to the use of stealth and standoff weapons to minimize an aircrew’s risk while attacking a target.

From the principle of distinction, that is, who is allowed to be attacked, follows the principle of necessity, that is, what we may attack. May posits that first “the military objective must be normatively compelling in light of the overall objectives of the war [and that] there must be no other, less objectionable tactics available to achieve the same objective” (p. 208). It seems to me that May’s understanding of necessity is very close to what the US military teaches its officers today. This brings us to his discussion of proportionality, which will once again challenge the US officer.

American military officers certainly understand the doctrine of double effect, such as when May argues for restricting tactics to equate them to what is to be achieved (p. 219). But May goes farther than that. He proposes that the tactics chosen must minimize suffering and promote human values, force soldiers to stop and think before they act (p. 221), and never allow us to weigh the lives of our soldiers as greater than the lives of any others (p. 225). Such rules, if followed as best practices and principles, could easily render any military force unusable in most situations. While this may be what some would argue could make a better world, it is not a practical set of guidelines for those professional officers given the Huntingtonian task of faithfully carrying out orders that they oppose.

It is a good thing to discuss where standards ought to lie and to try to define standards of right and wrong more precisely. It is also good to try to determine what a “normal” person is with respect to targeting and how many noncombatants are worth a particular objective. But it is also deeply troubling to think of ourselves as criminals for taking the opportunity to kill the enemy commander prior to the battle commencing during a war or to attack a target with standoff weapons to keep the aircrew out of reach of air defenses. Yet, while many officers discuss what is good and right, humane and honorable in other areas of life aside from strategy and tactics, they find it difficult to extend that same reasoning to military operations and enemy soldiers. Perhaps May’s book, if read and discussed in professional circles, could help us to bridge that gap.

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