

Process for the Dispossessed: Procedural Rights from *Magna Carta* to Modern International Law

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How oft the sight of means to do ill deeds
Make deeds ill done!

—King John, in William Shakespeare's *The Life and Death of King John*, Act IV, Scene ii, 219–220

Due process matters greatly to distinguished philosopher Larry May, who advocates for a vigorous assertion of procedural rights as constituting an international rule of law. He undertakes this ambitious, *à la fois* aspirational, task in *Global Justice and Due Process*.

May understands due process rights as “procedural rights that set a moral minimum on what oversight is necessary for individuals who have been detained or incarcerated by governments” (2). For May, “international procedural rights can become the cornerstone of an ‘international’ rule of law that will cure many of the infirmities of international law today” (viii). May goes so far as to ensconce these rights as *jus cogens*, that is, peremptory norms of universal application from which no derogation is possible. He posits that the instantiation of due process through international law would have averted two decrepit infirmities: the legal black holes of Guantánamo and Bagram (141–2).

May contends that enforcement of these due process norms would occur through an “international legal body that has the authority to hear claims of deprivation of basic procedural rights anywhere in the world [where] a person [is] in detention who claims that the charges against him or her do not support the detention” (6). Drilling down to operational specifics, for May this body could take the form of a global court of equity, an enhanced system of administrative rules, or an expanded role of the International Rights Committee and Human Rights Council. May's preference is for the first option (205), buttressed by liberal standing rules. He conceptualizes the denial of due process rights as tortious conduct (207). May therefore advocates further juridification through judicialization.

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