

Crimes Against Humanity: An Exchange between Larry May/Norman Geras

Larry May: A Reply to Norman Geras

Editors: Norman Geras (in *Democratiya* 3) has written the kind of review that an author can only hope for. The review is crystal clear and gets nearly all of the major theses and many of the arguments of the book right. And his critical remarks are apt, indeed I agree with most of the points he makes. Since on-line reviews require quick responses I will provide only two brief comments on Geras' wonderful review. First, it is possible to agree with many of the things that Geras says and not yet give up on my approach. For Geras argues passionately for a highly intuitive idea, that there be a regime that would have all serious violations of human rights prosecuted. I support such an idea. But my book was only focused on one type of international crime, the crime against humanity. I could, and largely do, agree with Geras that other crimes, such as his example of the small scale torture of a person by a member of the police, should also be prosecuted, but disagree with him that this is best done under the rubric of crimes against humanity. We might have a separate treatment for torture, as I suggest in my book that does not bring it under the rubric of crimes against humanity but still makes it an international crime, perhaps because of the involvement by the State in perpetuating the crime. In my next book *War Crimes and Just Wars*, forthcoming, I argue that torture is often best seen as a crime against humaneness, the main basis of a war crime, not a crime against humanity. Second, I am surprised that Geras does not give more weight to my various cautionary remarks about letting us be influenced so much by the plight of the victims that we forget about the plight of the defendants. Amnesty International similarly is strongly pro-defendant in the domestic setting but pro-victim in the international setting. Folks on the left, and I count myself in this group, need to come to terms with this disparity. My book attempts to confront it squarely and I only wish that Geras had done so as well. But I wish to end by reiterating that I am very grateful to Norman Geras for such an intelligent and careful review of my book – more than an author can hope for today.

Larry May, Professor of Philosophy, Washington University in St. Louis.

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Norman Geras: A Rejoinder to Larry May

Editors: I am grateful to Larry May for his kind remarks about my review of Crimes Against Humanity. I take up the two comments he has made in response to it.

On the first of them, I don't think he's really met the point of my criticism. In saying that the focus of his book was 'one type of international crime, the crime against humanity,' whereas I for my part have my eye on 'other crimes,' May deploys no argument at all in support of the idea that these are indeed other crimes, and not, as I contend, crimes against humanity. The central purpose of my review was to show that his arguments for excluding them from this category were unpersuasive, that they undermined the first of his two principles – the security principle – and that they betrayed the central ambition of the foundational idea of crimes against humanity: namely (in the words of Sir Hartley Shawcross) 'that the individual human being, the ultimate unit of all law, is not disentitled to the protection of mankind when the state tramples upon his rights in a manner which outrages the conscience of mankind.' My criticism was about the proper boundaries of the concept of crimes against humanity, and the way Larry May responds to it simply presumes that he has these boundaries right, without giving, in answer to that criticism, any reasons why.

I am also puzzled by his second point. He says I don't give sufficient weight to his cautionary remarks about the plight of defendants (in international trials). However, I entirely accept May's point that the rights of defendants are important. They are just as important as the rights of everyone else. As I argued in the review, though, it is not clear why, for a prosecution to occur, the possibility of an injustice to defendants has to be matched, as he proposes, by an injustice to the entire international community, rather than just by a correspondingly important injustice to the defendants' (putative) victims. Again without a counter-argument from Larry May, it isn't possible to judge whether I'm giving the rights of defendants too little weight or, as I believe, he is giving them too much.

Norman Geras, Manchester