

THE MORALITY OF GROUPS: COLLECTIVE RESPONSIBILITY, GROUP-BASED HARM, AND CORPORATE RIGHTS. By Larry May.¹ Notre Dame, Indiana: University of Notre Dame Press. 1987. Pp. xii, 200. \$23.95.

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Well before finishing *The Morality of Groups*—well before opening it, in fact—I predicted to myself from the title alone that Professor Larry May would reach the following conclusions:

1. Groups do not exactly exist but they do not exactly not exist.
2. Groups exist enough to be harmed, with sex stereotyping the paradigmatic example of such harm.
3. By the same token, groups exist enough to justify group-based compensation for disadvantaged groups (paradigmatically blacks and women) even when this overrides individual rights.
4. Groups also exist enough to render organizations liable for the misdeeds of a few of their officers.
5. On the other hand, groups don't exist enough to create immunities for profit-seeking organizations.

Imagine my satisfaction, then, when my reading confirmed that Professor May holds every one of these positions. Not that I was perfectly prescient: I failed to anticipate his defense of publicly funded class-action litigation, or his advocacy of special rights and immunities for the NAACP when this conflicts with the free speech of "racist individuals." Still, my success raises a question: how did I know so much?

There are two hypotheses that may explain the data. First, perhaps all five positions are self-evident, so that May, being a competent philosopher, could be trusted to arrive at them. Alternatively, perhaps May, like many "applied ethicists" in academe, is committed *a priori* to preferences for blacks and women, and dislikes business, so the only uncertainty is the manner in which he will try to justify his commitments.

How is one to decide between these two hypotheses? The first hypothesis predicts that May's arguments will be so overwhelming as to make a reader wonder why anyone remains attached to individualistic justice. If, on the other hand, May's arguments are post hoc justifications for conclusions reached beforehand, these arguments may be expected to be weak and unconvincing; our second hypothesis predicts that May will skate over difficulties with un-

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seemly haste, equivocate at crucial junctures, avert his gaze from logical muddle, and avoid inconvenient facts. This, I regret to say, is the hypothesis supported by most of the evidence in *The Morality of Groups*.

May realizes that the moral status of groups awaits a determination of their ontological status. Groups cannot act, suffer, or deserve recompense unless they exist. Indeed, the most cogent objection to "group rights" and "group debts" has always been skepticism on this point of ontology. Social reality, for the "methodological individualist," consists of interrelated individuals; talk of groups is a convenient fiction not to be taken literally at the level of serious causal or moral analysis. There's nobody here but us people. Although moral ascriptions depend heavily on the relations people bear to each other, it is to individuals alone that these ascriptions ultimately apply. I cannot owe my grocer money unless I have a grocer, but it is still *I*, not the dyad composed of the grocer and myself, who carry the debt. This spare ontology, continues the individualist, is also the more morally enlightened. Reification of groups in earlier times led individuals to be treated on the basis of the groups to which they belonged rather than their own merits. Because in fact there are no groups, this reification required in effect that people be judged for the actions of others to whom they might be quite adventitiously related. It is somewhat disturbing that May wishes to demonstrate the existence of groups precisely to get us to "reconsider . . . these moral conceptions [of] Germanic tribal and feudal societies."

A group is an entity over and above its constituent individuals, says May, if (and only if) the putative properties of the group are more than mere sums of the properties of its constituents. As a special case of this criterion, a group exists if there are properties of its members that can be explained only by reference to membership in the group itself. In May's words, social groups must be recognized because a phenomenon like group solidarity "is not itself merely a function of the individual psychological states of the members of the group." This, in turn, means that

group members aid one another in significant ways and thereby enable one another to act differently than they could act on their own. . . . The capacities of individuals change when they are mixed together with other individuals. This change is best captured, it seems to me, by reference to the structure of the group.

Because groups exist insofar as individuals *in* groups act, think, and suffer in ways they would not by themselves, May defines groups to be "individuals *in relationships*." It is not so much groups as relations among individuals which have "a distinct ontological status

which is different from the individuals related." By shifting the ontological burden to relations, May arrives at "a middle position, one in which it is possible to give both a qualified 'yes' and a qualified 'no' to the question: 'Do social groups exist?'" In other words, they don't exactly exist and they don't exactly not exist.

May uses his criterion not only to demonstrate the existence of mobs, corporations, and oppressed groups (more or less equated with blacks and females), but also to identify the modes of group agency. Groups intend and act (and bear responsibility) because the intentions and actions of each member reflect the intentions and actions of other members, with corporations acting "vicariously" through their officers. Groups like women and South African blacks can be harmed because injury to each member is transmitted, according to May, to every other member via their physical resemblance: "An additive, or cumulative, account of the pervasiveness of sexual discrimination does not give adequate emphasis to the links between the various harms inflicted upon individual women." To explain how woman *A*, not "directly" touched by discrimination against woman *B* or any other woman, may nonetheless be said to be harmed, he reasons that Ms. *A* *would have* suffered discrimination had she been in Ms. *B*'s position. (By the same token, I suppose, a flowerpot falling on Mr. *X* indirectly harms me because it would have brained me had I been standing where Mr. *X* was, and a university that hires me must indirectly benefit all similarly qualified philosophers who would have been hired had they applied for the job I received.) The beneficiary of group harm to women is, of course, "the group 'men.'"

May relies on his criterion even when seemingly arbitrarily changing his mind about which groups exist. Thus, after having argued that corporations can intend, act, and incur liability because "the corporate decision-making structure" is needed to explain the behavior of corporate officers, he maintains that corporations have no interests (and thus greatly reduced rights claims) because

the corporation's interests in realizing its goals [are] merely a *summation* of the interests of the current and perhaps past, employees, managers, and stockholders. . . . [T]he corporation's interests [are] a mere aggregation of the interests of its members.

May is able to play so fast and loose because the old conundrum, "Is the whole greater than the sum of its parts?," and consequently May's position on it, is in fact hopelessly confused. Whether a property of a whole is or is not the sum of the properties of its parts depends upon what is to count as a property of a part and how part-properties are to be added. Water, unlike hydrogen

or oxygen, is a liquid at one hundred degrees Fahrenheit. If the properties of hydrogen and oxygen are limited to their atomic weights, atomic numbers, and physical states at one hundred degrees Fahrenheit, the properties of water are irreducible to those of hydrogen and oxygen. But if "combines with oxygen to form a liquid at one hundred degrees Fahrenheit" is taken as a property of hydrogen, the liquidity of water *is* explained by the properties of its components. And it is surely arbitrary to include the atomic weight of hydrogen among its "individual states" while excluding its tendency to form a liquid with hydrogen. The reference to oxygen in the description of hydrogen's combining properties is consistent with those combining properties being "individual states," for a hydrogen molecule in splendid isolation, miles from any oxygen, is still disposed to combine with oxygen. Indeed, all the world's oxygen is presently disposed to react in definite ways to transuranium elements that may never exist. The "intrinsic" gaseousness of hydrogen at one hundred degrees Fahrenheit, for its part, is specified by reference to the Fahrenheit scale, and perhaps to Herr Fahrenheit himself.

The border surrounding "individual" states is even less clear when the states in question are psychological. Robinson Crusoe would doubtless have enjoyed a different outlook on life had he found his island already occupied by a contingent from Club Med, but this shows the irreducibility of group psychology to individual psychology only if "individual psychological states" are those that are not caused by other individuals. May in fact flirts with such a definition in his final pages without realizing that it would trivialize his overall thesis. *All* familiar human conduct becomes "group-based" if the only "individual" states are those belonging to orphans raised on desert islands, in which case "individual" and "group-based" marks no distinction within ordinary moral experience. Or consider May's gloss on the Watts rioters:

The intentions displayed by such social groups . . . [such as] beating white motorists, and overturning cars and setting fire to them . . . may be treated as if they were collective, since they arise out of the relations and structures of the group. . . . [T]he intentions and goals of some or most of the mob members are different from their intentions and goals as individuals. And while the change in their intentions is still a change in their individual intentions, it is the group structure that has brought about this change. . . . [E]ach member of the group comes to have the same intention, either reflectively or pre-reflectively, and this is different from what their individual intentions would be if they were not members of the group. The sameness of intention is collective in the sense that it is caused by the group structure, that is, it is group based.³

3. May's source for his description of the Watts riots is M. BROWN & A. GOLDIN, *COLLECTIVE BEHAVIOR* (1973). He cites without demur their assessment of the riots as a

Now, while no rioter would have formed the intention of attacking white motorists absent other rampaging blacks, each rioter taken singly was already disposed to attack white motorists if accompanied by other rampaging blacks. This prior disposition, whose existence is shown by its subsequent manifestations and whose physical basis is no doubt some currently unknown state of the nervous system, is surely an "individual psychological state." Each individual rioter's intention to attack white motorists can therefore be explained with equal cogency as the action of other individuals on his *individual* psychology. The reference to group structure becomes superfluous.

My point is not the superiority of individualistic to group explanations, but the arbitrariness of classifying explanations as one or the other. There can be no fixed criterion for group action or group existence until "property of an individual" is adequately specified. Apparently unfamiliar with the technical literature on this problem,⁴ and certainly not concerned to offer a consistent definition of his own, May is free to construe "individual state" as suits his convenience. Even though the interests of corporate officers reflect their corporate positions just as surely as the interests of blacks reflect their membership in the NAACP, May counts the heightened salience of each member of the NAACP as a group effect but the interests of corporate officers as "individually separate." It is then an easy step for him to grant to the NAACP a package of first amendment rights he has denied to corporations. (To be sure, May also enlists the logically irrelevant contention that the NAACP serves more socially desirable interests than does a corporation.) This is what I mean by averting one's gaze from logical muddle.

But suppose these criticisms are wrong. Suppose there are non-arbitrary criteria according to which groups exist and display moral properties. What follows? Should groups possess constitutional rights? If so, when are those rights weightier than individual rights? Here *The Morality of Groups* will disappoint readers, especially legal readers accustomed to analyses constructed to vindicate one side or the other of concrete disputes. For the most part May

response to "an assault on a vulnerable and helpless community by a powerful representative of white colonial interests" (i.e., the police). To judge by May's citations, every riotous act was provoked by police misbehavior.

4. The relativity of reduction to choice of part-properties and modes of aggregation was emphasized as long ago as 1942 by Henle, *The Status of Emergence*, 39 J. OF PHIL. 486 (1942); see also C. HEMPEL, ASPECTS OF SCIENTIFIC EXPLANATION 260-62 (1965); E. NAGEL, THE STRUCTURE OF SCIENCE ch. 11 (1961). In M. LEVIN, METAPHYSICS AND THE MIND-BODY PROBLEM (1979), I suggest that a property of a whole is intuitively reducible to properties of its parts when both whole and part-properties are among continuum-many determinations of the same determinable; other authors have made related suggestions.

avoids definitive judgments altogether, being content to reiterate unhelpfully that groups “should be recognized as having at least some form of standing to make legitimate moral or legal claims.” Indeed, upon reviewing the one problem May considers in detail, and extending his account to a sample of issues left undiscussed, it becomes clear that group rights have not been shown to play any role whatever in legal reasoning. In any case, May’s failure to test his theory in a variety of cases is a major weakness of his book.

May considers the dilemma of a Legal Services Corporation lawyer who must choose between taking a divorce case and a challenge to a power company’s policy of shutoff upon nonpayment. The first case affects the prospective client only, whereas the second case reaches beyond the prospective client to other members of his group, namely everyone sufficiently in arrears on his gas bill. The LSC lawyer, contends May, is clearly permitted to choose to litigate the shutoff case if winning it will secure the rights of many people. According to May, an individualist—by contrast—would treat each individual petitioner as equally entitled to the LSC’s attention. Notice, however, that May’s argument—whatever the merits of its conclusion—does *not* oppose the rights of the individual divorce-seeker to any group right; it opposes the rights of the individual divorce-seeker (to access to the LSC and thence the divorce courts) to the aggregated rights of many individual subscribers to the power company. For May, as for a commonsensical individualist, the choice is made after balancing the rights and interests of individuals.

Or consider affirmative action, a topic close to the heart of May’s position but one on which he is curiously silent. According to group rights theory, does the equal protection clause of the fourteenth amendment require State U. to favor black applicants to its law school as compensation for past injury? Offhand, the answer would seem to be an unequivocal “yes,” especially if it is granted that the group blacks have indeed been injured. Because blacks as a group were injured, every black has a claim against . . . whom? Blacks as a group have a claim against whites as a group—a claim against every white—only if every white benefitted from those injuries, a proposition which is by no means self-evident. It certainly cannot be assumed that all blacks have suffered and all whites have benefitted to precisely the same extent: justice in the law school case depends on the precise harm to the particular black applicants and the precise gains wrongfully accrued by their particular white competitors—a determination which cannot be made simply by chanting the “group rights” mantra. Recall, furthermore, that ac-

ording to May, group harm creates "some form of standing to make a legitimate legal claim," not an infeasible entitlement; the vagueness of May's formulation allows the harm done to qualified whites to counterbalance the blacks' claims to compensation, and the harm to society of abandoning merit standards to offset what may (or may not) be the demands of justice. In short, recognition of group rights does nothing to meet any of the familiar objections to affirmative action. If these objections are inadequate, it is not because they are overwhelmed by "group rights."

Finally, does the group vulnerability of women warrant constitutional protection of their "equality of rights under the law," as the Equal Rights Amendment promises? Well, whether *all* women are vulnerable just by virtue of their womanhood is an empirical issue which the concept of group rights is incapable of addressing, however much its language may suggest a positive answer. Even assuming a *prima facie* case for the ERA based upon the group concept, a host of other familiar questions remain: would the ERA require conscripting women for combat if men are conscripted? Would it eliminate tax exemptions for churches that do not ordain women? If the answers are "yes," would the ERA inflict too much damage on the social fabric? If the answer is "the courts will decide," is it a good idea to give the judiciary this kind of authority? The group rights perspective adds nothing to our understanding of these questions.

May delivers so much less than he promises because he, like everyone else, must in the end base all ascriptions of intent, harm, fault, and desert on the ascription of these categories to individuals. As our discussions of equal access, affirmative action, and the ERA suggest, raising moral issues in group terms is a gigantic distraction, a mug's game. It is all very well to hold "Yale University" responsible for sexual harassment, as May does,⁵ but individuals—employees, managers, directors, CEOs, shareholders, trustees, blacks and whites, males and females—remain the malefactors and benefi-

5. Here is sexual harassment as May imagines it: "Professor Smith calls in one of his graduate students, Ms. Jones, and says 'I'd like you to sleep with me. If you won't, I'll make sure you lose your assistantship.' . . . Assume that in this instance, Professor Smith had threatened graduate students before, and word of this travelled to the Chairman, the Dean, and the Vice President, yet they had said nothing to Professor Smith or to any of his graduate students." To begin with, it is extremely unlikely that Smith's superiors would take no action in the circumstance described. Well before the concept of "sexual harassment" was invented, such conduct would have been severely penalized, and some professors were reprimanded merely for asking a student for a date. More telling is May's apparent unfamiliarity with the dynamics of desire. Flat-footed declarations of lust simply don't happen. A real "Professor Smith" would at least try to be a little more seductive, and his excitement would be likely to abate if unreciprocated. Improper advances occur, but the truth is more nuanced than May seems to recognize.

ciaries, the ultimate winners and losers of all such judgments. Logically, May's position is compatible with any canon of judgment, including conventional ones; it merely reformulates these canons and their attendant problems in more obscure language. For instance, a corporation turns out to be "vicariously negligent" if "appropriate members of the corporation failed to take preventive measures" they could have "reasonably" foreseen to be necessary. (May seems to favor sanctions against the "appropriate members of the corporation" when corporations are liable.) This again tells us nothing new. The main problem in negligence theory is the difficult concept of reasonableness, and a detour through "vicarious" negligence leaves us no better able to assess reasonableness in concrete cases than we were before.

It is here that the tendentiousness of group language gives it the appearance of content. Group-think does yield moral novelty via novel theories of fact. By exaggerating the cohesiveness of select groups it makes a showing of harm (selectively) easier and defenses against fault (selectively) more difficult. This slide from group-think into fiction is well illustrated by May's long (4500-word) account of sex stereotypes. May certainly does his cause little good by selecting the socialization of women as the most salient example he can think of a "high standing group-based wrong" in a world in which mass slaughters are appallingly frequent. He is also quite wrong in maintaining that women exhibit the "three plausible interrelationships" that, according to him, facilitate group harm, namely "shared group consciousness, confined primary relationships, and distinctive cultural heritage." May has fallen into the trap of thinking of women as a cohesive minority.

What, in any case, is wrong with stereotypic generalizations about, say, women and blacks? May condemns stereotypes partly because they lead the members of stereotyped groups to be "treated as if they had no individuality, as if there were no salient differences among members of the group." Of course, this is not literally true; despite extant stereotypes about black criminality, a black jaywalker is treated more leniently than a black murderer. What May seems to mean is that stereotypes are bad because they are "unjust" to their exceptions. And this is where May fails to make some crucial distinctions. In discussing stereotypes, the first question is whether (and in what sense) the stereotype is true as a generalization. If it is, then it's ridiculous to deplore the stereotype as a *thought* (that takes due account of exceptions) though it may (or may not, depending on the circumstances) be appropriate to deplore social behavior based on the assumption that a given individual will or may con-

form to the stereotype in a given situation. The stereotype that blacks are disproportionately likely to be criminals is true. Nevertheless, to incarcerate Jesse Jackson without a trial, because he is black, would be improper. If, however, the question is whether a driver should discriminate between young black hitchhikers in casual clothes and elderly white hitchhikers in three-piece suits, the answer may be different and is certainly more problematic.

Most stereotypes, including all those cited by May, are true at the observational level. All the great scientific geniuses have been men, as have the overwhelming majority of ordinary scientists and engineers. In this sense, the stereotype about the male's greater originality and abstract rationality is empirically warranted, as are the stereotypes about the male's greater aggressiveness (war and violent crime are practically a male monopoly), black rhythm (blacks invented rhythm 'n' blues, jazz, and rap music), and Jewish cleverness (ever notice the number of Jewish lawyers?). Not all Jews are clever, of course, yet Jews are disproportionately represented in the law, and that is what the stereotype correctly captures. It should also be noted that stereotypes may depart from literal truth by implying an evaluation of the stereotyped trait. Thus, May characterizes the conventional belief about Jews as the stereotype that they are "cunning." Once it is recognized that "cunning" is a name bestowed on such cleverness as the speaker dislikes, it again becomes clear that the factual core of this stereotype is correct, however much one may properly object to the pejorative innuendo of "cunning." Whether the presence of a stereotypic trait is relevant to how one should treat a particular individual in a particular situation is of course a different question, and no doubt stereotypes (true and false) can be misused—but caution in their use should not require us to deny evident facts.

Critics of stereotyping usually don't confine themselves to such banal, commonsensical observations as the need for caution. For example, some critics admit the truth of stereotypes but assert that they are true only because they are believed, mere self-fulfilling prophecies which stunt individual development. This approach is vulnerable to scientific findings, which often prove or strongly suggest that group traits are primarily biological, not social, in origin. On the one hand, the failure of women to enter the legal profession in large numbers before the 1970s was clearly due to social rather than biological causes (although calling a cause "social" does not necessarily make it discriminatory or oppressive). On the other hand, male aggressiveness is produced by the action of hormones on the fetal brain, not primarily by the viewing of Clint Eastwood mov-

ies.⁶ Boys still regularly outscore girls on tests of mathematical ability and other indicators of abstract reasoning ability, even though textbooks now go to great lengths to cast women in traditional male roles.⁷ The verbal IQ of Jews of European ancestry is one hundred thirteen, the highest of any known ethnic group.⁸ Granted, biological differences are sometimes reinforced by social conditioning. Still, the list of exploded social-origin theories is very long.

At several points, May grasps the much more precarious horn of the dilemma; rather than attributing the truth of stereotypes to social causes, he claims that stereotypes are simply false. He writes: "Stereotyping of a group of persons occurs when a model or type is created from a composite of the characteristics of a few group members." The generalization, in other words, is invalid even if taken as a generalization. At other times, he hedges his denial with impenetrable echelons of qualifiers, as when he describes women as vulnerable to stereotyping because "[t]he members of this group are defined as having certain characteristics which many, if not most, of the individuals may not have," and despairs that "it is very difficult to convince people on an intellectual level, on the level of statistics and data, that they have generalized incorrectly." Given the empirical reliability of the central sex stereotypes, and their validation by science, the reader is entitled to at least one example of these "statistics and data." May provides none. He simply insinuates stereotypes away, and with them a vast body of research inconsistent with the empirical foundations of his view of society. This is what I meant by a half-conscious avoidance of inconvenient facts.⁹

There is no question that belief in group rights informs current public policy. Some such theory is necessary to confer the appearance of sense on penalties for individually innocent white males and benefits to individually undamaged blacks and women. It is cause for reflection that, in less than three decades, the quest for civil rights has led us back to feudal Germany.

6. See Erhardt & Meyer-Blauberg, *Effects of Prenatal Hormones on Gender-Related Behavior*, 211 *SCIENCE* 1312 (1984).

7. See Benbow & Stanley, *Sex Differences in Mathematical Ability: Fact or Artifact?*, 210 *SCIENCE* 1262 (1980).

8. See Gordon & Rudert, *Bad News Concerning IQ Tests*, 52 *SOC. OF EDUC.* 174 (1979).

9. May does not even go through the motions of denying the empirical validity of stereotypes about blacks, simply passing over the question in silence.