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Battlefield Euthanasia: Should Mercy-Killings Be Allowed?

David L. Perry

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ABSTRACT: The survival rate of American military personnel seriously wounded in combat has risen dramatically in recent decades. But situations still arise when wounded soldiers cannot be saved, nor their suffering sufficiently palliated, creating difficult ethical dilemmas for their fellow troops. The Geneva Conventions and most codes of medical ethics prohibit direct and intentional killing of wounded, and changing our relevant treaty obligations would have serious strategic consequences. Battlefield euthanasia can be morally justified, but the military profession should not argue for its legality.

I have never experienced war directly. But in teaching and writing about the subject for over 15 years, I have tried to imagine vividly what such an experience must be like for combatants and civilians caught up in its destruction. Surely one of the most horrifying aspects of war occurs when soldiers are seriously wounded in combat, grievously suffering, and facing little or no prospect of medical cure or pain relief as their lives ebb away.¹ Military historian John Keegan estimates that one third of the 21,000 British soldiers killed in the battle of the Somme in early July 1916 died of wounds that would not have been fatal had the men been evacuated quickly, but the appalling number of casualties overwhelmed the resources and best efforts of military medical personnel.²

To be sure, the care available to American and other allied soldiers now is dramatically better than in previous decades, let alone previous centuries. The survival rates of our wounded soldiers rose dramatically between the two world wars, even more during the Korea and Vietnam conflicts with the advent of speedy evacuations by helicopter, and still more during our recent wars in Iraq and Afghanistan: in 2005 nearly 20 percent of wounded US soldiers died from their injuries, but in 2010, fewer than 8 percent died.³

However, situations still arise occasionally today—and could occur as well in some future wars—in which the wonders of modern military

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1 A previous version of this essay was presented in 2011 at the annual meeting of the International Society of Military Ethics, and at a subsequent colloquium jointly hosted by Richard Schoonhoven of the US Military Academy and Daniel Callahan of the Hastings Center, to whom I am most grateful. I use the terms “soldiers” and “troops” here to refer comprehensively to all uniformed military personnel, officer and enlisted, in every service branch. In the US context, this includes the Army, Navy, Marines, Air Force, and Coast Guard. The term “combatants” here will encompass not only uniformed military but also illegal fighters such as insurgents and terrorists.

2 John Keegan, *The Face of Battle* (London: Penguin Books, 1976), 274.

3 C. Chivers, “In Wider War in Afghanistan, Survival Rate of Wounded Rises,” *New York Times*, January 7, 2011, A1.

medicine are unable to reach all seriously wounded combatants in time to save them or sufficiently palliate their suffering. Such situations engender difficult ethical dilemmas for other soldiers witnessing their miserable condition.

The law in these cases is clear: simply stated, no soldiers today (including military medical personnel) are legally authorized to intentionally kill gravely wounded comrades, nor wounded enemies who no longer pose an immediate threat to them. The Geneva Conventions strictly prohibit killing enemy combatants who are rendered *hors de combat* by their wounds: for example, the first Geneva Convention of 1949 stipulates:

Members of the armed forces ... who are wounded or sick, shall be respected and protected in all circumstances. They shall be treated humanely and cared for by the Party to the conflict in whose power they may be. ... Any attempts upon their lives, or violence to their persons, shall be strictly prohibited. ...; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created. Only urgent medical reasons will authorize priority in the order of treatment to be administered. ... The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care.⁴

(Note these passages assume that humane treatment precludes intentional killing as in active euthanasia, a position challenged below.)

Signatories to the Geneva Conventions (such as the United States) are bound to enforce them in their own military laws and regulations. As an example of their application, the rules of engagement card issued to every member of Coalition Forces Land Component Command in Iraq stated, “Do not engage [fire at] anyone who has surrendered or is out of battle due to sickness or wounds.”⁵ Soldiers who violate such rules by killing wounded enemy combatants can be prosecuted for murder or other forms of homicide.⁶

Moreover, professional codes of ethics have traditionally prohibited physicians (military and civilian) from directly and intentionally killing patients under any circumstances. Although some physicians have challenged that strict rule, advocating active euthanasia under certain carefully specified conditions, the prohibition remains to this day in the codes of ethics of the British and American medical associations.⁷ Furthermore, while physician-assisted suicide is legal in Oregon, Washington, Montana, New Mexico, and Vermont, active euthanasia is

⁴ *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, ch. 2, art. 12 (Geneva: International Committee of the Red Cross, August 12, 1949).

⁵ CFLCC (Coalition Forces Land Component Command), “Rules of Engagement for U.S. Military Forces in Iraq,” January 31, 2003, reprinted in Human Rights Watch, *Off Target: The Conduct of the War and Civilian Casualties in Iraq* (New York: Human Rights Watch, 2003).

⁶ See also article 71 of the Lieber Code, which influenced several subsequent Hague and Geneva conventions: “Whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States, or is an enemy captured after having committed his misdeed.” Francis Lieber, *General Orders no. 100*, promulgated by President Abraham Lincoln, April 24, 1863.

⁷ “End-of-Life Decisions: Views of the BMA” (London: British Medical Association, 2009); American Medical Association, “Euthanasia,” *Code of Medical Ethics*, Opinion 2.21 (Chicago: American Medical Association, 2009).

illegal in every US state, and in most other nations (apart from Holland, Belgium, and a few others).

However, this essay will consider certain conditions under which it may be morally justifiable for military medical personnel or other soldiers to kill gravely wounded combatants, either their enemies or their own comrades; in other words, explore whether military mercy-killing is sometimes morally permissible. (In theory, mercy-killing by soldiers might encompass gravely wounded civilians as well, but I'll largely ignore those instances here.) I will also weigh the potential consequences of changing relevant military laws and regulations, which may indicate that the current prohibition of battlefield euthanasia should not be qualified after all.

The analysis will proceed as follows: first, discussion on the ethics of killing in general and euthanasia in particular, and why the intentional killing of innocent persons is *prima facie* immoral, but not always or absolutely immoral; second, summarize several illustrative cases of battlefield euthanasia; third, I'll examine contending arguments in the recent scholarly literature regarding such cases; and finally, offer concluding reflections on the ethics and law of mercy-killing in war.

If the strategic relevance of this essay isn't clear yet, note that if strategic leaders were contemplating whether to legalize battlefield euthanasia, doing so would involve much more than simply rewriting our relevant military manuals. Before that could occur, formal changes in our commitments to the Geneva Conventions would have to be made, which would not only require presidential approval, but also two-thirds of the Senate. (As formal treaties signed by a president and ratified by the Senate, the Geneva Conventions have the same status under the US Constitution [Art. II, section 2] as does any other federal law.)

The Ethics of Killing and Euthanasia

Since battlefield euthanasia is a form of killing, it is morally suspect, and the burden of proof falls on those who would allow it. Now, it is not always wrong to kill persons intentionally. For example, in defense of oneself and other innocent people, it may be ethical (i.e. morally right or justified) to use deadly force if necessary to stop a murderous attacker. But it's usually wrong to kill people; most persons in most cases have a *prima facie* right not to be killed.⁸ Why is that the case?

A usefully straightforward answer to that question has been expressed in only slightly different ways by philosophers Jonathan Glover, Thomas Nagel, James Rachels, Don Marquis, Dan Brock and Jeff McMahan: killing persons is *prima facie* immoral because it deprives

8 Jonathan Glover, *Causing Death and Saving Lives* (London: Penguin, 1977); Thomas Nagel, *Mortal Questions* (Cambridge: Cambridge University Press, 1979), 1-10; James Rachels, *The End of Life: Euthanasia and Morality* (Oxford: Oxford University Press, 1986); Don Marquis, "Why Abortion Is Immoral," *Journal of Philosophy* 86, no. 4 (1989): 183-202; Dan Brock, *Life and Death: Philosophical Essays in Biomedical Ethics* (Cambridge: Cambridge University Press, 1993); Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (Oxford: Oxford University Press, 2002). In David Perry, *Partly Cloudy: Ethics in War, Espionage, Covert Action, and Interrogation* (Lanham, MD: Scarecrow Press, 2009), Ch. 1, I explain the distinction between *prima facie* and absolute moral principles, drawing from W. D. Ross's moral theory.

them of everything that they currently value and all that they could value in the future.⁹ As explained by Marquis:

What primarily makes killing wrong is neither its effect on the murderer nor its effect on the victim's friends and relatives, but its effect on the victim.... The loss of one's life deprives one of all the experiences, activities, projects, and enjoyments that would otherwise have constituted one's future.... When I am killed, I am deprived both of what I now value which would have been part of my future personal life, but also what I would come to value.¹⁰

Or, in the plain-spoken words of Clint Eastwood's character William Munny in the film *Unforgiven*, "It's a hell of a thing, killin' a man. Take away all he's got, and all he's ever gonna have."¹¹ When we grieve for our loved ones killed in war, we not only feel the loss of their companionship, we regret the fact that, were it not for the war, they might have lived long, rich lives. Death in battle deprived them of future lives as much worth living as our own.

But again, the right of persons not to be killed is not absolute: it can be qualified in at least three ways: first, the right of soldiers not to be killed is qualified in wartime, unless and until they have surrendered or are incapacitated by wounds or sickness; second, a right not to be killed can be *forfeited*, by murderous attackers or terrorist bomb-makers, for instance; and third, a right not to be killed can be *waived*, as in cases where competent patients request assisted suicide or active euthanasia.¹² As Marquis argued, "Persons who are severely and incurably ill, who face a future of pain and despair, and who wish to die will not have suffered a loss if they are killed."¹³ Dan Brock similarly contended that "the right not to be killed, like other rights, should be *waivable* when the person makes a competent decision that continued life is no longer wanted or a good, but is instead worse than no further life at all."¹⁴

Normally it is wrong directly and intentionally to kill *innocent* persons, "innocent" meaning either "not guilty" of a capital crime, or "not a threat" in war, such as civilian noncombatants and wounded combatants.¹⁵ But in euthanasia scenarios, including battlefield ones, the fact that a person is innocent in either sense is morally *irrelevant*.

Although active euthanasia is illegal in most countries, I'm persuaded that it can be morally justified in some instances, chiefly: 1) where a person's illness or injury is terminal, meaning that all life-sustaining treatments are qualitatively futile, *or* 2) where the severely sick or wounded victim could theoretically be saved, but the needed

9 If there is an afterlife that is objectively valuable for us, then death would not deprive us of that good. But I and the philosophers I have noted here are focusing exclusively on value in this world and this life.

10 Marquis, "Why Abortion Is Immoral," 189-190.

11 *Unforgiven*, directed by Clint Eastwood, 1992.

12 The moral status of combatants in wartime is puzzling, and difficult to describe precisely. Strictly speaking they have not forfeited their right not to be killed, yet it is not unjust in war for their enemies to kill them. As Michael Walzer noted, soldiers on both sides of a war have "an equal right to kill." Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), 41.

13 Marquis, "Why Abortion Is Immoral," 191.

14 Brock, *Life and Death*, 213, emphasis added.

15 Michael Walzer's points about noncombatant immunity are important: "We are all immune to start with; our right not to be attacked is a feature of normal human relationships. That right is lost by those who bear arms 'effectively' because they pose a danger to other people. It is retained by those who don't bear arms at all" Walzer, *Just and Unjust Wars*, 145.

medical resources are unavailable or extremely scarce (as in conditions of battlefield triage); and 3) to prevent or end the victim's unbearable, unrelenting suffering, when sedation is unavailable, or if sedating them to a state of unconsciousness short of death would be pointless, no better than death itself for them.

Even under those conditions, one must obviously not euthanize people *against* their stated wishes! If they still value their lives, then they have not waived their right not to be killed, no matter what they may have indicated previously. Ideally, active euthanasia should only be done with the informed consent of patients, or, if they are no longer competent to reason, in light of their previously expressed wishes. Military personnel sometimes refer to "the soldiers' pact," an "unwritten code that if one soldier is wounded and on the verge of death, another should hasten the inevitable," which could potentially represent informed consent to euthanasia.¹⁶

But there are also some instances of *nonvoluntary* active euthanasia that can be morally justified as being in the "best interests" of no-longer-competent (or never competent) patients, when they can experience little or nothing more than overwhelming suffering, or when it is no longer possible for them (or anyone else in a similar condition) to value their own continued existence.¹⁷ Soldiers sometimes sustain wounds so grave that death would be more beneficial to them than continued life.

To illustrate various conditions in which battlefield euthanasia is sometimes contemplated, I turn now to several brief cases.

Illustrative Cases of Battlefield Euthanasia¹⁸

Ambrose Bierce's Tale of "The Coup de Grâce"

Bierce served in the Union army through most of the American Civil War, and later became a famous journalist and essayist. In "The Coup de Grâce," one of many short stories inspired by his wartime experience, he tells of a captain in a Massachusetts infantry regiment named Downing Madwell, who discovers a friend gravely wounded in battle:

Sergeant Halcrow was mortally hurt. His clothing was deranged; it seemed to have been violently torn apart, exposing the abdomen.... There had been no great effusion of blood. The only visible wound was a wide, ragged opening in the abdomen. It was defiled with earth and dead leaves. Protruding from it was a loop of small intestine.... The man who had suffered these monstrous mutilations was alive. At intervals he moved his limbs; he moaned at every breath. He stared blankly into the face of his friend and if touched screamed. In his giant agony he had torn up the ground on which he lay; his clenched hands were full of leaves and twigs and earth. Articulate speech was beyond his power; it was impossible to know if he were sensible to anything but pain. The expression of his face was an appeal; his eyes were full of prayer. For what? There was no misreading that look; the captain

16 Kathryn Carlson, "'An Act of So-Called Mercy': Semrau Case Hinges on 'Soldier's Pact,'" *National Post*, July 7, 2010.

17 Glover, *Causing Death*, 190-200; Rachels, *End of Life*, 179-180.

18 A few cases included in a draft version of this essay had to be excluded from publication in *Parameters* due to space constraints. They examined stories of King Saul of Israel, Napoleon's army infected by plague, and Jeremiah Gage at Gettysburg. The author will provide those case analyses to readers upon request to him at daperry@davidson.edu.

had too frequently seen it in eyes of those whose lips had still the power to formulate it by an entreaty for death.¹⁹

Capt. Madwell notices wild pigs in the distance feeding on the bodies of dead soldiers. Though Bierce does not suggest Madwell foresees a similar fate befalling his friend, perhaps while still alive, we are led to imagine that horrifying prospect ourselves. Madwell steps away from the sergeant to shoot a fatally wounded horse; then, having used his last bullet, he plunges his sword into his friend's chest. The story ends with the appearance of Madwell's superior officer with two stretcher-bearers, suggesting perhaps that Madwell may be punished for his decision to kill his friend rather than call for medical assistance.²⁰

It is unclear whether Bierce ever committed or observed any actual *coups de grâce* during the war.²¹ But he later published some of his views on mercy-killing in a newspaper column:

[I]n all seriousness I believe that the mercy which we extend to dumb animals, "putting them out of misery" when unable to relieve it, we are barbarians to withhold from our own kind.... Scores of times it has been my unhappy lot to deny the piteous appeals of helpless fellow creatures, comrades of the battle field, for the supreme and precious gift by which a simple movement of the arm I was able and willing to bestow—the simple gift of death. Every physician has had the same experience, and many (may blessings attend them!) have secretly given the relief implored.²²

Bierce indicates here that he had indeed witnessed cases like Sgt. Halcrow's during the war, but unlike Capt. Madwell he regretfully did not perform active euthanasia, perhaps out of fear of being court-martialed.

Lawrence of Arabia

T. E. Lawrence asserts in *Seven Pillars of Wisdom* that "the Turks did not take Arab prisoners. Indeed, they used to kill them horribly; so in mercy, we were finishing those of our badly wounded who would have to be left helpless on abandoned ground."²³ Unlike most WWI armies, Lawrence's Arab forces typically fought guerrilla-style, far from any field hospitals where his wounded might otherwise have been deposited; indeed, his fighters apparently travelled without a medic, let alone a military physician.

Eugene Sledge

Sledge served in the U.S. Marine Corps during WWII, fighting in two major battles against the Japanese on Pacific islands. In his eloquent memoir, *With the Old Breed at Peleliu and Okinawa*, he recalls the murderous hatred that the Marines and Japanese felt for each other, which "resulted

19 Ambrose Bierce, "The Coup de Grâce" (1889), <http://www.classicreader.com/book/1168/1>.

20 Ibid.

21 Bierce came upon dead Union soldiers whose faces had been eaten by wild pigs after a skirmish in West Virginia in 1861. Roy Morris, *Ambrose Bierce: Alone in Bad Company* (Oxford: Oxford University Press, 1995), 31.

22 Ambrose Bierce, "The Morality of Suicide," *San Francisco Examiner*, July 5, 1891, in *Ambrose Bierce: A Sole Survivor: Bits of Autobiography*, ed. S. Joshi and David Schultz (Knoxville: University of Tennessee Press, 1998), 225.

23 T. E. Lawrence, *Seven Pillars of Wisdom* (Ware: Wordsworth Editions, 1997), 363.

in savage, ferocious fighting with no holds barred.” Both sides were “reluctant to take prisoners.” The Marines were

too familiar with the sight of helpless wounded Americans lying flat on their backs on stretchers getting shot by Japanese snipers while we struggled to evacuate them.... None of us could bear the thought of leaving wounded behind. We never did, because the Japanese certainly would have tortured them to death.

Corpsmen (Navy medics who also accompany Marine units) learned to be extremely wary of treating wounded Japanese, who “invariably exploded grenades when approached ... killing their enemies along with themselves.”²⁴

One particularly disturbing incident involved a Marine on Peleliu who found a seriously wounded and partially paralyzed but still-conscious Japanese soldier:

The Japanese’s mouth glowed with huge gold-crowned teeth, and his captor wanted them. He put the point of his *kabar* [knife] on the base of a tooth and hit the handle with the palm of his hand. Because the Japanese was kicking his feet and thrashing about, the knife point glanced off the tooth and sank into the victim’s mouth. The Marine cursed him and with a slash cut his cheeks open to each ear. He put his foot on the sufferer’s lower jaw and tried again. Blood poured out of the soldier’s mouth. He made a gurgling noise and thrashed wildly. I shouted, “Put the man out of his misery.” All I got for an answer was a cussing out. Another Marine ran up, put a bullet in the enemy soldier’s brain, and ended his agony.²⁵

John Masters

During the Second World War, British Army officer John Masters served primarily in Burma fighting the Japanese. In his 1961 memoir, *The Road Past Mandalay*, he described a wrenching decision he had to make in May 1944 while commanding a brigade in northern Burma that was about to be overrun by a larger Japanese force. His unit had previously cared for and evacuated all of its sick and injured men, through extremely challenging terrain and weather. But now it lacked enough healthy men, horses and mules to safely withdraw all of its wounded: some would have to be left behind. So Masters ordered 19 of those in the worst condition, whom his medical officer judged to be near death, to be put to death immediately rather than abandoned to die of their wounds or at the hands of their captors. All of those men who were still conscious were given morphine before being shot.²⁶

Gene Woodley

Arthur “Gene” Woodley, who served in the US Army in Vietnam, 1968-69, had the horrific experience of finding a fellow US soldier who had been captured by the enemy, skinned alive, staked to the ground, and left to die. Still conscious, the victim pleaded with Woodley to kill him; he was near death and far from medical care. After about 20 minutes of anxious deliberation, and the man’s continuing requests to die, Woodley

24 Eugene Sledge, *With the Old Breed at Peleliu and Okinawa* (Oxford: Oxford University Press, 1990), 34, 283, 130, 118.

25 *Ibid.*, 120.

26 John Masters, *The Road Past Mandalay* (New York: Harper and Brothers, 1961), 253-254.

shot him in the head. A commentator adds, “And after they buried him, buried him deep, Woodley cried.”²⁷

Incident at Goose Green

On 2 June 1982 during the war between Argentina and the United Kingdom over the Falkland Islands, approximately 1,200 Argentine prisoners of war were detained in a sheep shed at Goose Green on East Falkland Island. Concerned about piles of artillery ammunition near the shed, the prisoners asked for and obtained permission to move it a safe distance away from them. Unfortunately, as several of them did so, some of the ammunition exploded, possibly due to booby traps set earlier by Argentine soldiers. As recalled by retired British Army Col. David Benest, three POWs died and nine others were badly burnt. A British medic at the scene, Sgt. Fowler, assessed one of the still-burning men to be fatally injured and possibly suffering horribly, and shot him to end his misery. (A subsequent military inquiry concluded that no war crime had been committed.) The other Argentines wounded in the explosion were treated and evacuated; one had to have both legs amputated, and died on the operating table.²⁸

Roger Maylunet in Iraq

On 21 May 2004, US Army Capt. Rogelio “Roger” Maynulet was commanding a company of the 1st Armored Division in Iraq. While searching for insurgent forces south of Baghdad near Najaf and Kufa, they chased and fired on a suspicious black sedan, which crashed after its driver and passenger were shot. As later reported in *Stars and Stripes*, “When a medic pulled the driver out of the car, it was clear he had suffered critical injuries, with part of his skull blown away.”²⁹ Although the medic (for unknown reasons) did not thoroughly examine the victim or attempt to treat him, he told Capt. Maynulet that he was dying. Maynulet then apparently aimed his gun at the driver and shot him twice in the head. The incident was captured on video by an unmanned aerial vehicle, unbeknownst to Maynulet at the time.³⁰

Defense witnesses at Maynulet’s Article-32 hearing (a military grand jury) testified that there had been battles with insurgents in the immediate vicinity of the crash, so evacuation of the wounded driver was not possible.³¹ But Maynulet was subsequently court-martialed on charges of assault with intent to commit murder and dereliction of duty.³²

27 William King, “Bloods: Teaching the Afro-American Experience of the Vietnam Conflict,” in *Soldier Talk: The Vietnam War in Oral Narrative*, ed. Paul Budra and Michael Zeitlin (Bloomington: Indiana University Press, 2004), 190.

28 During the Falklands conflict, Benest held the rank of captain in the Second Battalion, The Parachute Regiment, and was its Regimental Signals Officer. He recently stated, “I remain convinced that Sgt. Fowler acted in the best of motives, so as to alleviate human suffering.” David Benest, e-mail messages to author, January 5-12, 2011. See also John Frost, *2 PARA Falklands: The Battalion at War* (London: Buchan and Enright, 1983), 102. I have been unable to identify Sgt. Fowler’s first name.

29 Jason Chudy and Kent Harris, “1st AD Captain to Face Court-Martial in Shooting Death of Wounded Iraqi Man,” *Stars and Stripes*, December 8, 2004.

30 Nancy Montgomery, “Maynulet Enters Not Guilty Plea in ‘Mercy Killing’ Trial,” *Stars and Stripes*, March 29, 2005.

31 Kevin Dougherty, “Article 32 Hearing in Death of Iraqi Man Concludes,” *Stars and Stripes*, October 16, 2004.

32 Chudy and Harris, “1st AD Captain to Face Court-Martial.”

During his trial, Capt. Maynulet's attorney claimed that "his actions were guided by the part of the law of war that says 'maximize humanity, minimize suffering.'" Maynulet said in his own defense, "[The driver] was in a state I didn't think was dignified. I had to put him out of his misery.... It was the right thing to do.... It was the honorable thing to do."³³

Prosecutors countered that there is no justification or exception in the laws of war permitting soldiers to execute anyone rendered *hors de combat* by wounds. Maynulet was convicted by his court-martial panel of assault with the intent to commit voluntary manslaughter, a less serious charge than what he initially faced.³⁴ He was subsequently sentenced with discharge from military service, but no time in prison.³⁵

Cardenas Alban and Johnny Horne, Jr.

Alban and Horne were both US Army staff sergeants deployed in Baghdad, Iraq. On 18 August 2004, according to Edmund Sanders of the *Los Angeles Times*, their unit

received a tip that militants in dump trucks were planting roadside bombs.... So when ... Alban ... saw an object fall from a garbage truck in the distance, his company took positions around the vehicle and unleashed a barrage of fire from rifles and a 25-millimeter cannon atop a Bradley fighting vehicle. The truck exploded in flames. As soldiers ... approached the burning vehicle, they did not find insurgents. The victims were mainly teenagers, hired to work the late shift picking up trash for about \$5 a night, witnesses said. Medics scrambled to treat the half a dozen people strewn around the scene. A dispute broke out among a handful of soldiers standing over one severely wounded young man who was moaning in pain. An unwounded Iraqi claiming to be a relative of the victim pleaded in broken English for soldiers to help him. But to the horror of bystanders, Alban ... retrieved an M-231 assault rifle and fired into the wounded man's body. Seconds later ... Horne ... grabbed an M-16 rifle and also shot the victim.... US officials have since characterized the shooting as a "mercy killing," citing statements by Alban and Horne that they had shot the wounded Iraqi "to put him out of his misery." Military attorneys, however, are calling it premeditated murder and have charged the two sergeants, saying the victim's suffering was no excuse for the soldiers' actions.³⁶

I have not been able to determine whether the medics at the scene made any attempt to treat the man who was shot by Alban and Horne, nor if they did not, why not. Why wasn't he at least given a sedating dose of morphine? Perhaps they were too busy caring for other wounded Iraqis whom they believed had better prospects of survival.

The two sergeants were later court-martialed, convicted of murder, and sentenced to prison.³⁷

³³ Nancy Montgomery, "Maynulet Testifies in Own Defense, Says Killing Wounded Iraqi 'Right Thing to Do,'" *Stars and Stripes*, March 31, 2005.

³⁴ Nancy Montgomery, "U.S. Army Captain Is Found Guilty in Shooting Death of Wounded Iraqi," *Stars and Stripes*, April 1, 2005.

³⁵ Nancy Montgomery and Ben Murray, "Maynulet Is Discharged from Service, but Gets No Jail Time in Death of Iraqi," *Stars and Stripes*, April 2, 2005.

³⁶ Edmund Sanders, "'Mercy Killing' of Iraqi Revives GI Conduct Debate," *Los Angeles Times*, November 5, 2004.

³⁷ Tim Whitmire, "Short Sentences, Dismissals Show Wartime Murder Prosecutions Hard," *Associated Press*, June 5, 2005.

Robert Semrau in Afghanistan

On 19 October 2008, Canadian Forces Capt. Robert Semrau was serving in Afghanistan's Helmand Province with an Operation Mentor Liaison Team (OMLET) on patrol with an Afghan company when they were attacked by the Taliban. An airstrike was ordered, and Apache helicopters engaged the Taliban fighters. Two who had been hit by Apache fire were soon found: one was clearly dead; the other was still alive but gravely wounded in the stomach and both legs. An Afghan army captain decided that the man should not be treated, for reasons unclear. Capt. Semrau apparently agreed, and decided not to request a medical evacuation either, in spite of the availability of British helicopters at the time, out of concern the area was still dangerous. (This begs the question, are not their pilots trained and expected to land in dangerous places to save wounded combatants and civilians? Were they even consulted on the decision not to evacuate?) A few minutes later, Semrau walked back alone to the wounded Taliban fighter and fired two rifle shots into his chest. As a result, Semrau was court-martialed in 2010 on several charges including second-degree murder.³⁸

At his trial, witnesses stated Semrau told them immediately after the incident "he felt it was necessary . . . the humane thing to do. He couldn't live with himself if he left . . . an injured human being in this condition."³⁹ Semrau also reportedly said he was "willing to accept whatever followed on it and that it was a mercy kill," moreover, "he hoped anyone would do the same thing to anyone else, even himself."⁴⁰

In the end, Capt. Semrau was acquitted of murder but convicted on a lesser charge of "disgraceful conduct."⁴¹ At his sentencing hearing a military prosecutor argued, "Those incapacitated by wounds are to be treated humanely—this is one of the basic rules of humanity, this is one of the basic rules of combat. Treating a wounded combatant humanely does not mean accelerating his death."⁴² Semrau was subsequently demoted to second lieutenant and dismissed from military service by his sentencing judge, but not ordered to serve any time in prison.⁴³

Paul Robinson, a former British and Canadian military officer who has published extensively in military ethics, commented on the verdict in Semrau's case:

It's a curious result—if he didn't kill the Afghan, then he's not guilty of disgraceful conduct. If he's guilty of disgraceful conduct, then it follows that

38 Andrew Duffy, "Soldier on Trial for Wrongful Battlefield Death Was Afghan Mentor," *National Post*, March 25, 2010, and "Corporal Saw Captain Pointing Rifle at Afghan, Court Martial Hears," *National Post*, April 27, 2010.

39 Commenting on a hypothetical case based on the Semrau incident, retired Canadian Forces officer Peter Bradley asks, "Can the average patrol member determine when someone is suffering unbearably? How do we define 'unbearably'? There are also problems with the notion that the wounded enemy is going to die soon. Who knows who is going to die and when? If he is going to die soon anyway, why not wait until he dies of his wounds?" Peter Bradley, "Is Battlefield Mercy Killing Morally Justifiable?" *Canadian Military Journal* 11, no. 1 (2010): 11. But I think Bradley underestimates the ability of soldiers to make accurate judgments in cases like Semrau's.

40 Andrew Duffy, "Wounded Taliban's Death a 'Mercy Kill,' Soldier Testifies," *National Post*, April 28, 2010.

41 Kathryn Carlson and Andrew Duffy, "Semrau Not Guilty of Murdering Taliban Fighter," *National Post*, July 19, 2010.

42 Andrew Duffy, "Semrau to Wait until September for Sentencing," *National Post*, July 27, 2010.

43 Andrew Duffy, "Canadian Soldier Sentenced for Battlefield Mercy Killing," *National Post*, October 5, 2010.

the jurors were convinced that he did the deed, in which case he should also be guilty of murder or manslaughter. It doesn't square very easily—perhaps the only way of making sense of the verdict is that the jury was certain that he shot the body, but could not be certain that the body was alive, in which case the disgraceful conduct is mutilation of a dead body. More probably, though, it's a case of jury nullification—they knew he did it, but had some sympathy for him and didn't want him sent to prison for life so they found him guilty of something lesser to ensure that he got a lighter sentence but didn't get off scott free. Not good law, probably, but could have made sense to the panel. I should add that if the mortally wounded person had been Canadian, I don't believe for one instant that Capt. Semrau would have shot him.⁴⁴

Matt Gurney, an editor at Canada's *National Post*, wrote sympathetically of the dilemma that Semrau faced on the ground in Afghanistan:

Capt. Semrau may have broken the law, and there are those who could reasonably argue that he has sinned against God. I would not choose to argue those points. But I will say that were I the soldier in that situation, I would not hesitate to shoot, and were I the broken man waiting to die in the dirt, I would welcome the bullet.⁴⁵

Recent Moral Assessments of Battlefield Euthanasia

Steven Swann

In 1986 the Academy of Medicine of Washington DC awarded its annual prize in bioethics to Capt. (later Col.) Steven Swann of the US Army Medical Corps for his essay, "Euthanasia on the Battlefield." Swann's article caused quite a stir among fellow physicians and bioethicists in advocating active euthanasia in some wartime circumstances.

Writing in the waning days of the Cold War, Swann begins with a plausible scenario in a hypothetical war between NATO and the Soviet Union in Europe. He imagines himself in the role of a surgeon near the front lines who is ordered to evacuate in the face of an advancing enemy, but who cannot possibly take all of his wounded with him. He further speculates that the Russians are executing all severely wounded prisoners, so that they cannot be trusted to care for them if captured; in other words, Swann suggests a situation like the actual one that faced Masters and Lawrence above:

On the modern battlefield, physicians will be faced with wounded of all types, of many nationalities, and in greater numbers than previously known... Gunshot and fragment wounds are to be expected, but with the lethal and diverse arsenals available to potential combatants, one must expect more severe and incapacitating wounds, such as multiple trauma, multiple amputations, severe burns, chemical casualties (especially from blister and nerve agents), as well as burns, blast injuries, and lethal contamination from nuclear weapons. Many of the wounded being seen with such injuries will not be attended because treatment will not be technically or physically available. The medical support system will be overcome with wounded, will

44 Paul Robinson, e-mail message to author, January 21, 2011.

45 Matt Gurney, "On the Battlefield, Morality and Law Fight to the Death," *National Post*, July 23, 2010. The editors of that periodical made similar points after Semrau's sentencing, adding that "killing someone out of malice is very different from killing someone out of compassion. It's time the law reflected that, both on the battlefield and off." "Absence of Malice," editorial, *National Post*, October 7, 2010.

not have enough resources, will not have enough time, and will not have transportation ready to bring the wounded to a treatment facility.⁴⁶

Echoing a famous argument by James Rachels, Swann contends (in contrast to orthodox medical ethics) that there is no necessary moral difference between killing and letting-die, meaning that if someone's motives and intentions are ethical, then either choice can be justified; moreover, active euthanasia can actually be *more* ethical than letting die, if euthanasia will result in less suffering to a mortally wounded or terminally ill patient.⁴⁷ I concur.

Thomas Beam

Beam is a retired colonel who served in the US Army Medical Corps, directed a hospital operating room during the Persian Gulf War, and was a medical ethics consultant to the Army Surgeon General. He contributed an essay on battlefield medical ethics to an impressive two-volume anthology on military medical ethics, in which he commented on euthanasia in wartime.⁴⁸

Beam notes that the normal moral obligation to respect the autonomous preferences of patients is limited in the military context. For example, although competent civilian patients have a right to refuse all life-sustaining treatments (in which case their physicians must allow them to die), soldiers don't have that right to the same degree or scope: military medics and doctors may be obliged to save soldiers lives against their will if doing so will allow them to return to the fight later. In addition, a severely wounded soldier might desperately want to be saved, but may nevertheless be placed by doctors in the lowest-priority category of battlefield triage ("expectant," i.e., expected to die even if treated) in order to devote critically scarce medical resources on salvageable patients instead.⁴⁹

Beam addresses questions of battlefield euthanasia with commendable nuance and balance, analyzing directly the provocative positions taken by Swann. Considering in turn several relevant ethical principles—respect for autonomy, beneficence and nonmaleficence toward patients, distributive justice, and utility—Beam concludes points both for and against euthanasia can be made under each one, making him reluctant to take a categorical stance either way. For instance, nonmaleficence can be construed both to forbid killing *and* to forbid allowing someone to suffer needlessly, though physicians have tended historically to side with the former when it conflicts with the latter. In the end, Beam advocates upholding the current military law and policy (in effect) prohibiting euthanasia, out of a concern for potential abuses if it were legally permitted. But he admits he could not rule out resorting himself to euthanasia under conditions like those hypothesized by Swann.⁵⁰

46 Steven Swann, "Euthanasia on the Battlefield," *Military Medicine* 152, no. 11 (1987): 546.

47 James Rachels, "Active and Passive Euthanasia," *New England Journal of Medicine* 292 (1975): 78-80, and *End of Life*; Swann, "Euthanasia on the Battlefield," 546-8.

48 Thomas Beam, "Medical Ethics on the Battlefield: The Crucible of Military Medical Ethics," in *Military Medical Ethics*, vol. 2, ed. Thomas Beam and Linette Sparacino (Washington: Office of the Surgeon General, Department of the Army, and Borden Institute, 2003), 367-402.

49 *Ibid.*, 379, 383-384.

50 *Ibid.*, 384-394.

Michael Gross

Gross teaches applied and professional ethics at the University of Haifa and has served in the Israeli military. His many publications include *Bioethics and Armed Conflict*, one of the most comprehensive treatments of the subject published by a single author.⁵¹

Gross argues that the normal obligation of military medical personnel not to abandon their wounded can be overridden by military necessity in cases where doing so would put an important military mission at risk, such as delay a tactical retreat in circumstances experienced by Masters and imagined by Swann. Gross further claims that soldiers who have been incapacitated by wounds—at least if their wounds will prevent them from ever returning to combat—have thoroughly ceased being combatants and thus regain all the rights they had as civilians, including a right to refuse life-sustaining treatment, which Gross contends “military organizations rarely recognize.”⁵² But then, very few civilians anywhere in the world have a legal right to obtain active euthanasia, even where they have the right to refuse all life-sustaining treatments. So the question becomes, do mortally wounded soldiers have a moral right to be euthanized, in spite of legal and professional prohibitions?

Like Rachels and Swann, Gross believes there is not always a clear moral difference between passive and active euthanasia, since even passive euthanasia can be immoral if done with evil intent, e.g., to collect on their life insurance. But unlike Rachels and Swann, and consistent with orthodox medical ethics as evinced by Paré and Desgenettes, Gross regards the intentional killing of patients as always immoral. So, according to Gross, while it might be justified to abandon wounded soldiers in the face of an overwhelming enemy advance, it would be unethical to use active euthanasia on them (as Masters ordered in Burma), even when those soldiers are likely to die of their wounds in great suffering. Curiously, Gross seems to be vaguely amenable to euthanasia in the face of near-certain torture by enemies. But overall, he judges, “Commanders may place their soldiers in harm’s way but they may not kill them.” Although he thinks that withholding life-sustaining treatment on request is not murder, he contends “killing on request is still murder.”⁵³

However, Gross’s argument against active euthanasia stumbles in at least two ways: first, he fails to show how dying of one’s wounds is any less horrible from the victim’s perspective than dying under enemy torture, hence why euthanasia would be clearly wrong in the former case but possibly justified in the latter. Second, he does not recognize that acceding to the request of competent adults to kill them is obviously *unlike* murder in that respect—in other words, Gross ignores the question of whether competent adults can credibly *waive* their right not to be killed (as Brock persuasively argued they could).

51 Michael Gross, *Bioethics and Armed Conflict: Moral Dilemmas of Medicine and War* (London: MIT Press, 2006).

52 *Ibid.*, 127.

53 *Ibid.*, 129-134.

Stephen Deakin

Deakin is a professor of leadership at the United Kingdom's Royal Military Academy at Sandhurst. His 2013 article, "Mercy Killing in Battle," is one of the most recent scholarly treatments of the subject. The greatest strength of this essay lies in Deakin's rich use of vivid narratives of wartime mercy killing during the past two centuries, including the Napoleonic Wars, the Franco-Prussian War, both world wars, and recent conflicts in the Falklands, Kosovo, Afghanistan and Iraq. The author persuasively argues that battlefield euthanasia is much more common than civilians have assumed, in part because veterans have been reluctant to speak or write about it.⁵⁴

However, Deakin's ethical analysis is problematic in some respects. First, a minor quibble: he states early on, "Battlefield mercy killings are repugnant. Intentionally to take an innocent person's life is a very grave matter both legally and ethically: it is battlefield murder."⁵⁵ Legally that is true, it is a war crime, an "atrocities," but if Deakin has already concluded that *ethically* it is murder, then there was no reason for him to pursue the matter further, because murder by definition (i.e., unjust killing) is unethical. His point would have been clearer had he stated more narrowly that mercy killing is considered murder under the laws of armed conflict.

Second, Deakin claims because mercy killing is outside of battle (or combat) *per se*, therefore the ethical considerations of *jus in bello* do not apply. Here the author makes a serious mistake, since the *jus in bello* criteria of noncombatant immunity, military necessity and proportionality clearly bear on whether it is permissible intentionally and directly to kill noncombatants. In other words, *jus in bello* criteria are obviously relevant to mercy killings. At the very least, Deakin would need to show mercy killings are justified *exceptions* to the *jus in bello* rules, and ideally also to wrestle with what those exceptions would entail in terms of modifications to the Geneva Conventions. Instead, the author appeals to "last resort"—a *jus ad bellum* criterion not obviously appropriate in this context—and "good faith"—which he never clearly defines but which seems to encompass several ethical principles that ought rather to be distinguished.⁵⁶

On the other hand, Deakin helpfully points out that stress-filled wartime situations in which euthanasia might seem justified usually differ from end-of-life choices in peacetime hospital settings, where withholding or withdrawing life-sustaining treatments can occur in light of a patient's advance directive, medical prognosis, etc. But, he also rightly hints that domestic euthanasia debates may have increasing relevance to battlefield cases.⁵⁷ This reader wishes that he had explored those connections in more depth, since there can be important similarities regarding consent (e.g., waiving one's right not to be killed), scarcity or futility of life-sustaining treatments, alleviation of severe suffering, and whether patients/soldiers value extending their lives any further.

54 Stephen Deakin, "Mercy Killing in Battle," *Journal of Military Ethics* 12, no. 2 (2013): 162-171.

55 *Ibid.*, 163.

56 *Ibid.*, 172-177.

57 *Ibid.*, 172, 178.

Concluding Reflections

As argued above, as people have a *prima facie* right not to be killed, it is usually unethical to kill anyone who poses no imminent lethal threat to others, or has not committed a capital crime. However, I'm also persuaded that some instances of battlefield euthanasia are not only morally justifiable, they can be more ethical than allowing someone to die in agony from wounds or disease. Thus, I am uncomfortable with the current strict prohibition on battlefield euthanasia, which I think unfairly punishes some morally justified acts.⁵⁸

But should we change military laws to permit mercy-killing? Several military officers have expressed strong objections to that idea. Retired US Marine Corps lawyer Col. Stephen Shi argues that "hard cases make bad law," and concludes that it is better to keep the rule for soldiers very simple: do not kill anybody who is not a threat.⁵⁹ A similar view is held by retired US Army lawyer Col. Fred Taylor, who also thinks it would be unfair to ask soldiers to bear the burden of making euthanasia decisions or carrying them out, given all of the other pressures and traumas weighing on them in combat and counterinsurgency operations.⁶⁰ Retired US Army Col. Robert Knutson, worried about the effects of shock and sedation on seriously wounded combatants, doubts that we could plausibly consider their requests for euthanasia under such conditions to be rational. He also believes it would be dangerous to allow soldiers to make euthanasia decisions for others.⁶¹ These are important concerns, though they might be eliminated by restricting those authorized to perform battlefield euthanasia to military medics and physicians exclusively.

The most our troops would typically expect on the battlefield is for medics to treat wounds and save lives as best they can, and use as much morphine as needed to alleviate suffering, even if the dose required might also suppress the victim's breathing. (In the domestic medical context, this is sometimes called "terminal sedation.") Some even tougher cases may continue to arise in war, where the numbers of seriously wounded soldiers overwhelm the ability of medics to treat or sedate them, or when military necessity requires the most gravely wounded to be abandoned. In those situations, I fully sympathize with commanders who feel compelled to end their misery directly rather than let them suffer and die of wounds or torture.

I confess, though, that I am unable to construct a satisfactory rule explicitly permitting battlefield euthanasia capable of being practically incorporated into legal Rules of Engagement, let alone see any possibility of relevant changes being made to our more fundamental treaty obligations under the Geneva Conventions. The general rule against directly and intentionally killing anyone who is not a threat is so important in

58 Bradley, "Is Battlefield Mercy Killing Morally Justifiable?" 11, claims that because battlefield euthanasia is illegal, it therefore cannot uphold Kantian obligations to act only on universalizable maxims and treat persons as ends and not merely as means. But he ignores questions of whether the law itself should be changed to uphold the right of a competent patient to obtain active euthanasia, and whether respect for human dignity permits nonvoluntary euthanasia, in or out of wartime.

59 Stephen Shi, e-mail message to author, January 21, 2011. (See also Gross, *Bioethics and Armed Conflict*, 132.) Before becoming a military lawyer, Shi was a combat infantry officer.

60 Fred Taylor, telephone message to author, December 29, 2010, and e-mail message to author, January 16, 2011.

61 Robert Knutson, e-mail message to author, December 3, 2010.

most wartime scenarios, and so difficult to uphold consistently amid the psychological terrors and hatreds that war induces, that it seems unwise to stipulate legal exceptions to it, even to permit morally justified cases of mercy-killing.⁶² This may seem an anticlimactic conclusion to reach—affirming the moral justification of active euthanasia in some instances, yet failing to endorse a legal authorization for it on the battlefield—but there are previously mentioned precedents for that combination of views in domestic US law, namely the five states that permit physician-assisted suicide, but also prohibit active euthanasia, out of concern that legalizing the latter would lead to regrettable abuses.

However, it may be that consideration of the kinds of harrowing dilemmas that I have explored in this essay might at least encourage court-martial panels and convening authorities to impose lenient sentences on well-intentioned soldiers convicted of battlefield euthanasia.

62 See my book *Partly Cloudy*, ch. 4 on “Anticipating and Preventing Atrocities in War.”