

Battlefield Euthanasia: Should Military Mercy-Killings Be Allowed?

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I have never experienced war directly. But in teaching and writing about the subject for several years, I've tried to imagine vividly what such an experience must be like for both combatants and civilians caught up in its destruction. Surely one of the most horrifying aspects of war occurs when soldiers¹ are seriously wounded in combat, grievously suffering, *and* facing little or no prospect of medical cure or pain relief as their lives ebb away. 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 from the battlefield, but the appalling number of casualties overwhelmed the resources and best efforts of military medical personnel (Keegan 1976, 274).

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 wounded soldiers increased dramatically between the two world wars, and even further during the Korea and Vietnam conflicts with speedy evacuations by helicopter. Even within the past five years, the survival rates for American soldiers wounded in Iraq and Afghanistan have increased: in 2005 nearly 20 per cent of wounded soldiers died from their injuries, but in 2010, fewer than 8 per cent died (Chivers 2011).

However, situations still arise occasionally today — and could occur with greater frequency in some future wars — in which the wonders of modern military 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 soldiers witnessing their miserable condition.

The law in these cases is clear: simply stated, no soldier or physician today is legally authorized intentionally to kill their own gravely wounded comrades, or any 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 in chapter 2, article 12:

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,

¹ I will use the terms 'soldiers' and 'troops' 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.

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.

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 ROE (rules of engagement) Card issued to every member of CFLCC in Iraq (the Coalition Forces Land Component Command) stated: 'Do not engage [fire at] anyone who has surrendered or is out of battle due to sickness or wounds' (CFLCC 2003). Soldiers who violate such rules by killing wounded enemy combatants can be prosecuted for murder or other forms of homicide.²

Moreover, professional codes of ethics have traditionally prohibited physicians (including military doctors) 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 (2009, 5) and American (2009) medical associations. Furthermore, while physician-assisted suicide is legal in Oregon, Washington and Montana, active euthanasia is illegal in every US state, and in most nations.

However, in this essay I will consider certain conditions under which it may be morally justifiable for soldiers (or military medical personnel specifically) to kill gravely wounded combatants, either their enemies or their own comrades; in other words, I will explore whether military mercy-killing is sometimes morally permissible. But 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.

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

The Ethics of Killing in General and Euthanasia in Particular

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 (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*

² See also article 71 of the Lieber Code (1863), 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.'

facie right not to be killed.³ Why is that the case?

A usefully straightforward answer to that question has been expressed in only slightly different ways by philosophers Jonathan Glover (1977), James Rachels (1986), Don Marquis (1989), Dan Brock (1993) and Jeff McMahan (2002): killing persons is *prima facie* wrong because it deprives them of everything that they currently value and all that they could value in the future. As explained by Marquis (1989, 189—190):

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.

Or, in the plain-spoken words of Clint Eastwood's character William Munny in the film *Unforgiven* (1992), 'It's a hell of a thing, killin' a man. Take away all he's got, and all he's ever gonna have.' 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 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,⁴ unless they have surrendered or are incapacitated by wounds or sickness; second, a right not to be killed can be *forfeited*, by murderous attackers, for instance; third, and more pertinent to the subject of this essay, a right not to be killed can be *waived*, as in cases where competent patients request assisted suicide or active euthanasia. As Marquis (1989, 191) 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.'⁵ 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' (Brock 1993, 213).

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. But in euthanasia scenarios, including battlefield ones, the fact that a person is innocent in either sense is morally *irrelevant*.

³ In Perry (2009), chapters 1—2, I explain the distinction between *prima facie* and absolute moral principles, I criticize 'divine-command' approaches to ethics, and I point out that all of the major religious traditions contain conflicting ethical rules on killing and are thus unreliable guides to action. In short, concerning the question of why killing people is usually wrong, a response like 'Because God says so in the Bible' is unacceptable for several reasons.

⁴ 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' (Walzer 1977, 41).

⁵ Since the main goal of Marquis's article was to show that abortion is immoral, 'pro-life' readers of it are likely to be disappointed that he would permit active euthanasia. But ironically, although Marquis's general argument against killing people is sound, his argument against abortion does not succeed, at least in most cases of abortion, because human embryos and early fetuses lack the capacity for consciousness that is necessary to possess any interests at all. See Steinbock (1996) and Perry (2001). Even in late pregnancy when a fetus acquires that capacity, its right not to be killed can be *overridden* by the mother's right to live, if continuing the pregnancy puts her life at risk.

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 be saved, but the needed 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 to alleviate their suffering is unavailable, or if sedating them to a state of unconsciousness short of death would be pointless.

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' (Carlson 2010).

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 patients, for example, when they experience little 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.

Illustrative Cases of Battlefield Euthanasia⁶

King Saul of Israel

One of the oldest stories of mercy-killing in war is narrated in the Hebrew Bible (Old Testament) concerning the death of King Saul after the defeat of his Israelite army by the Philistines. Actually there are two slightly (and intriguingly) different versions of Saul's death, one in 1 Samuel 30, the other in 2 Samuel 1.

In the first account, Saul is badly wounded by Philistine archers, and says to his armour-bearer, 'Draw your sword and thrust me through with it, so that these uncircumcised may not come and thrust me through, and make sport of me.' But the armour-bearer is too terrified to comply, so Saul takes his own sword and falls on it, killing himself apparently to avoid being tortured by his enemies.

In the second version of the story, there is no mention of archers or an armour-bearer; instead, according to a young survivor of the battle, as enemy chariots and horsemen approach Saul's position, Saul says to him, 'Come, stand over me and kill me; for convulsions have seized me, and yet my life still lingers.' The young man adds, 'So I stood over him, and killed him, for I knew that he could not live after he had fallen.' Hence, only in this second account do we have a clear instance of battlefield euthanasia where one person kills another.

Incidentally, 2 Samuel 1 also notes that when David hears this young man's story,

⁶ Some of these stories have been cited so frequently in commentaries on battlefield euthanasia during the past 25 years that they've nearly acquired iconic status: the Saul, Paré, Napoleon and Masters cases are discussed in Swann (1987); Beam (2003) mentions Saul, Paré and Napoleon; Gross (2006) analyzes Paré and Napoleon at length; and Kipnis (2007) draws upon the Masters incident.

he orders him executed for having killed ‘the LORD’s anointed.’ Unfortunately for our attempts to draw moral insights from the story today, David does not say whether it would have been better for Saul to be left to die of his wounds, to kill himself, or be tortured to death by the Philistines (who are reported to have mutilated Saul’s body after capture).

Ambroise Paré at the Siege of Turin

Paré was a sixteenth-century French surgeon who spent much of his career in the service of various French armies. In his memoir, *Journeys in Diverse Places*, he described his treatment of wounded soldiers in several military campaigns spanning more than three decades. During an attack on the fortified town of Turin, Italy, Paré encountered three mortally wounded and disfigured soldiers,

propped against [a stable] wall, their features all changed, and they neither saw, heard, nor spake, and their clothes were still smouldering where the gun-powder had burned them. As I was looking at them with pity, there came an old soldier who asked me if there were any way to cure them. I said no. And then he went up to them and cut their throats, gently, and without ill will toward them. Seeing this great cruelty, I told him he was a villain: he answered he prayed God, when he should be in such a plight, he might find someone to do the same for him, that he should not linger in misery (Paré 2001, ch. 1).

Although Paré called the act of the old soldier a ‘great cruelty,’ he did not explain why he thought allowing the mortally wounded soldiers to ‘linger in misery’ would have been any less cruel. Paré was not squeamish: he performed countless surgeries and amputations and dressed seemingly endless wounds under appalling conditions. But in this case he was apparently unable to alleviate the maimed and dying soldiers’ suffering, yet nonetheless considered it immoral to kill them.

Napoleon’s Army and the Plague

Two different versions of this story have been told (and both may be true): in one account (Gross 2006, 125), he is in Palestine fighting the Turks in 1799; in the other account (Swann 1987, 547), he is in Russia in 1812. But in both versions, Napoleon’s army is retreating, and many of his soldiers are dying of the plague and cannot all be evacuated. Napoleon recommends to his physician, Dr René-Nicolas Desgenettes, that the dying soldiers be given opium to end their lives. But Desgenettes refuses, claiming that physicians must not kill. Napoleon’s request was carried out by others, though, who euthanized 50 diseased soldiers (Gross 2006, 125).

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. Some of the buttons of his jacket had been pulled off and lay on the ground beside him and fragments of his other garments were strewn about.

His leather belt was parted and had apparently been dragged from beneath him as he lay. 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. In all his experience Captain Madwell had not seen a wound like this.... 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 had too frequently seen it in eyes of those whose lips had still the power to formulate it by an entreaty for death (Bierce 1889).

Capt. Madwell notices wild pigs in the distance feeding on the bodies of dead soldiers. Though Bierce does not suggest Madwell imagining a similar fate befalling his friend, perhaps while he is 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, perhaps to suggest that Madwell may be punished for his decision to kill his friend rather than call for medical assistance (Bierce 1889).

I haven't been able to determine whether Bierce ever committed or observed any actual *coups de grâce* during the war.⁷ 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 (Bierce 1891).

Jeremiah Gage at Gettysburg

Sergeant Gage was a graduate of the University of Mississippi who fought for the Confederacy and was mortally wounded at the battle of Gettysburg on 3 July 1863. His wounds and death were later described in the somewhat romanticized memoir of a surgeon who attended him, Dr Joseph Holt:

I turned to him and he pointed to his left arm. I quickly exposed it and found that a cannon ball had nearly torn it away between the elbow and the shoulder. I made some encouraging remark when he smiled and said: 'Why, Doctor, that is nothing; here is where I am really hurt,' and he laid back the blanket and exposed the lower abdomen torn from left to right by a cannon shot, largely carrying away the bladder, much intestine, and a third of the right half of the pelvis; but in both wounds so grinding and twisting the tissues that there was no hemorrhage.... [H]e asked:

⁷ Bierce came upon dead Union soldiers whose faces had been eaten by wild pigs after a skirmish in West Virginia in 1861 (Morris 1995, 31).

‘Doctor, how long have I to live?’ ‘A very few hours,’ I replied. ‘Doctor, I am in great agony; let me die easy, dear Doctor; I would do the same for you.’ His soul peered from the depths of his blue eyes in an appeal of anguish that cut me to the heart and I replied, ‘You dear, noble fellow, I will see to it that you shall die easy....’ There was no thought of the dramatic; it was dreadfully genuine and naturally spontaneous, in the unconscious creating and acting of a grander tragedy than we might ever hope to play.... I called for, and my hospital knapsack bearer, Jim Rowell, quickly handed me a two ounce bottle of black drop — a concentrated solution of opium, much stronger than laudanum.... I handed him the cup and he feebly waved it saying: ‘Come around, boys, and let us have a toast. I do not invite you to drink with me, but I drink the toast to you, and to the Southern Confederacy, and to victory!’ And he grabbed it to the last drop, returning the cup, saying, ‘I thank you’ (Atkinson 2010, 137-8; see also Dreese 2010⁸).

Technically this was a case of physician-assisted suicide, but it otherwise bears several hallmarks of battlefield euthanasia. (We might imagine what Dr Holt would have done had Gage been unable to bring the cup to his lips himself.)

A retired US Army colonel who first brought this story to my attention (but who prefers to remain anonymous) opined in personal correspondence that

from the casual way the doctor described his actions one can easily infer that the practice of ‘easing over to the other side’ mortally wounded patients was so common a practice that it was done simply, directly, and efficiently by medical personnel who had a good understanding of what constituted a fatal dose of opiate.... Doctors had few tools, skills, or medicines to treat severely wounded men, which likely prompted a general acceptance of the better good of ‘easing one over’ to the dismal prospects of slow, agonizing, and certain, demise.

Lawrence of Arabia

In T.E. Lawrence’s renowned *Seven Pillars of Wisdom*, he claims 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’ (Lawrence 1997, 363). 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.

Elsewhere in his memoir, Lawrence indicates that after a particular battle he evacuated some Turkish wounded, but had to abandon the ones who could not keep themselves in a camel saddle: ‘In the end we had to leave about twenty on the thick grass beside the rivulet, where at least they would not die of thirst, though there was little hope of life or rescue for them’ (Lawrence 1997, 297). By contrast, in at least one instance, reacting to atrocities against civilians committed by a group of Turkish soldiers, Lawrence ordered that no prisoners be taken, in other words, that even Turks who were wounded or tried to surrender should not be granted mercy; all were massacred by Lawrence and the Arabs (Lawrence 1997, 629).

⁸ Dreese (2010) indicates that Holt published this story 50 years after the battle in the *New Orleans Times-Democrat*. But Holt’s flowery style — he refers to Gage in death as ‘our reincarnated Sir Galahad’ and exclaims, ‘Oh, the excruciating pathos and very agony of the glory!’ — suggests that he probably had told that story countless times before in dramatic speeches for Southern audiences. Atkinson (2010) quotes Holt at greater length than Dreese (2010).

Lawrence does not indicate whether he reported those actions to superiors.

Eugene Sledge

Sledge served in the US Marine Corps during WWII, fighting in a series of bloody 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 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’ (Sledge 1990, 34, 283). ‘None of us could bear the thought of leaving wounded behind. We never did, because the Japanese certainly would have tortured them to death’ (Sledge 1990, 130). 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’ (Sledge 1990, 118).

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 (Sledge 1990, 120).

Several months later during the battle of Okinawa, Sledge finds an old woman seated on the floor of her hut, wounded in the abdomen by shell fragments and infected with gangrene. She motions to Sledge to shoot her in the head with his rifle. He refuses, and calls for a corpsman, though he believes her wound to be fatal. But before the medic can reach her, she is shot to death by another Marine. Sledge and others express outrage at this mercy-killing: ‘We’re supposed to kill [Japanese soldiers], not *old women!*’ (Sledge 1990, 287-8).

Sledge does not indicate whether these incidents were reported to superiors.

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 (Masters 1961, 253-4).

Masters does not indicate whether this incident was reported to superiors.

Gene Woodley

Arthur E. '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 pleads with Woodley to kill him; he is near death and far from medical care. After about 20 minutes of anxious deliberation, and hearing the man's continuing requests to die, Woodley shoots him in the head. A commentator adds, 'And after they buried him, buried him deep, Woodley cried' (King 2004, 190). It's not clear whether anyone reported this incident to superiors.

Incident at Goose Green

On 2 June 1982 during the war between Argentina and the UK over the Falkland Islands, approximately 1,200 Argentine POWs were being 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 to kill British troops. As recalled by retired British Army Col David Benest,⁹ three POWs died and nine others were badly burnt. A British medic at the scene, Sergeant 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 and fire were treated and evacuated; one of them had to have both legs amputated, and died on the operating table (Benest 2011; see also Frost 1983, 102).

Roger Maylunet in Iraq

On 21 May 2004, US Army Capt. Rogelio 'Roger' Maynulet was commanding a company of the 1st Armoured Division in Iraq. While searching for insurgent forces south of Baghdad near Najaf and Kufa, they began chasing and firing 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' (Chudy and Harris 2004). 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 (Montgomery 2005a).

Defense witnesses at Maynulet's Article-32 hearing (a military grand jury) testified

⁹ 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" (Benest 2011).

that there had been battles with insurgents in the immediate vicinity of the crash, so evacuation of the wounded driver was not possible (Dougherty 2004). But Maynulet was subsequently court-martialed on charges of assault with intent to commit murder and dereliction of duty (Chudy and Harris 2004).

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' (Montgomery 2005b).

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 (Montgomery 2005c). He was subsequently sentenced to be discharged from military service, but not to serve any time in prison (Montgomery and Murray 2005).

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 (Sanders 2004).

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 (Whitmire 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 of them who had been hit by Apache fire were soon found: one was clearly dead; the other was still alive but moaning, having been gravely wounded in the stomach and both legs. An Afghan army captain decided that the man should not be treated, for reasons that aren't clear. 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 that the area was still dangerous. (But aren't 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 (Duffy 2010a and 2010b).

At his trial, witnesses said that Semrau told them immediately after the incident that '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.'¹⁰ Semrau also reportedly said that he was 'willing to accept whatever followed on it and that it was a mercy kill,' moreover, that 'he hoped anyone would do the same thing to anyone else, even himself' (Duffy 2010c).

In the end, Capt. Semrau was acquitted of murder but convicted on a lesser charge of 'disgraceful conduct' (Carlson and Duffy 2010). 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' (Duffy 2010d). 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 (Duffy 2010e).

Paul Robinson, a former British and Canadian military officer who's 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 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.¹¹ 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. (Robinson 2011).

¹⁰ Commenting on a hypothetical case based on the Semrau incident, retired Canadian Forces officer Peter Bradley (2010) asks rhetorically, '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?' But I think Bradley greatly underestimates the ability of soldiers to make accurate judgments in cases like Semrau's.

¹¹ The editors of Canada's *National Post* made similar points, 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' 2010).

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 (Gurney 2010).

Moral Arguments on Battlefield Euthanasia: A Survey of Recent Literature

Steven Swann

In 1986 the Academy of Medicine of Washington DC awarded its annual prize in bioethics to Capt. (now Col) Steven Swann of the US Army Medical Corps for his essay, 'Euthanasia on the Battlefield.' But Swann's article caused quite a stir among his 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 ones that faced Masters and Lawrence (Swann 1987, 545—6).

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 not have enough resources, will not have enough time, and will not have transportation ready to bring the wounded to a treatment facility (Swann 1987, 546).

Echoing a famous argument by James Rachels (1975, 1986), Swann contends (in contrast to orthodox medical ethics) that there is no necessary moral distinction 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 (Swann 1987, 546—8).

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 (Beam 2003).

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') in order to expend critically scarce medical resources on salvageable patients instead (Beam 2003, 379, 383—4).

Beam addresses questions of battlefield euthanasia with commendable nuance and balance, analyzing directly the provocative positions taken by Swann (1987). Considering in turn several relevant ethical principles — respect for autonomy, beneficence and nonmaleficence toward patients, distributive justice, and utility — Beam concludes that 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 that he could not rule out resorting himself to euthanasia under conditions like those hypothesized by Swann (Beam 2003, 384—94).

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* (2006), surely one of the most comprehensive treatments of the subject by a single author ever published.

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 (1961) and imagined by Swann (1987). Gross further claims that soldiers who've 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' (Gross 2006, 127). 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 (1975, 1986) and Swann (1987), Gross believes that 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. (Imagine someone finding their elderly parent drowning in a bathtub, but refusing to save them in order to inherit their fortune sooner than they otherwise might.) 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, 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 that 'killing on request is still murder.' (Gross 2006, 129—34).

But 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; and second, he doesn't 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.

Kenneth Kipnis

Kipnis is a professor of philosophy at the University of Hawaii who has written and edited several books on biomedical and professional ethics. His recent foray into the topic of battlefield euthanasia was stimulated by an incident in New Orleans in the wake of Hurricane Katrina in 2005, when several critically ill hospital patients who could not be evacuated and were about to be abandoned were apparently euthanized by medical personnel (Kipnis 2007, 1—2).

Like Rachels (1975, 1986) and Brock (1993), Kipnis believes that active euthanasia can be morally justified under certain circumstances, including some exceptional cases of severe combat wounds. Reflecting in part on the scenarios and dilemmas described by Masters (1961) and Swann (1987), Kipnis concludes:

Where it is impossible to evacuate patients and dangerous and medically futile to remain with them, clinicians may have to choose between abandonment and euthanasia. There may be no third option.... [P]hysicians who choose euthanasia under these conditions should be excused from ethical and legal responsibility for misconduct. It would be wrong to blame them for what they have done (Kipnis 2007, 4).

Concluding Reflections

As I argued above, because people have a *prima facie* right not to be killed, it is usually unethical to kill anyone else who poses no danger to others or who has not committed a capital crime. But 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 and distress from their wounds or disease. Thus I am dissatisfied with the current strict prohibition on battlefield euthanasia, which I think unfairly forbids and punishes some morally justified acts.

But should we change military laws to permit mercy-killing? Several military officers have expressed strong objection to that idea. Retired US Marine Corps lawyer Col

Stephen Shi (2011¹²) argues that ‘hard cases make bad law,’¹³ and concludes that it’s better to keep the rule for soldiers very simple: don’t kill anybody who’s not a threat. A similar view is held by 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 (Taylor 2010). Taylor is also concerned about the significant criminal liability to which soldiers could be exposed in such cases, because the time they spend considering whether to euthanize an enemy combatant or fellow soldier could be viewed as premeditation (Taylor 2011). US Army Col Robert Knutson, concerned 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 that it would be dangerous to allow soldiers to make euthanasia decisions for others (Knutson 2010).

These are important concerns. Perhaps the most that we should 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 suppresses the victim’s breathing. (In the domestic medical context, this is sometimes called ‘terminal sedation.’) In many cases the wounded can be evacuated, but even if they cannot, they should at least be able to rely on such care from military medics.

But there may always be some even tougher cases 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 put them out of their misery directly rather than let them die of their wounds.

I confess, though, that I’m unable to construct a satisfactory rule explicitly permitting battlefield euthanasia that could practically be incorporated into legal Rules of Engagement, let alone see any possibility of relevant changes being made to our treaty obligations under the Geneva Conventions. The general rule against directly and intentionally killing anyone who isn’t a threat is so important, and so difficult to uphold consistently amid the psychological terrors and hatreds that war induces,¹⁴ that it seems unwise to stipulate any exceptions to permit even justified cases of mercy-killing.

On the other hand, consideration of the kinds of harrowing dilemmas that I’ve explored in this essay might at least encourage court-martial panels and convening authorities to impose lenient sentences on soldiers convicted in such cases.

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¹² Before becoming a military lawyer, Shi was a combat infantry officer (Shi 2011).

¹³ The same point was made by Gross (2006, 132).

¹⁴ See my chapter on ‘Anticipating and Preventing Atrocities in War’ in Perry (2009, 71—90).

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