

## BOOK REVIEW

### BIOETHICS AND ARMED CONFLICT: MORAL DILEMMAS OF MEDICINE AND WAR

By Michael L. Gross

Cambridge, Massachusetts and London: The MIT Press, 2006, 384 pp. (incl. index),  
£16.95. ISBN-10: 0-262-57226-5.

Only just wars are said to be legitimate and ethically sustainable. Modern *jus ad bellum* is invoked in cases of “gross territorial infringement, egregious violations of human rights, and immediate threats to world peace.” [p. 60]. The vagueness of these justifications has allowed big stick interventions that create military necessities where means are justified by setting arbitrary ends. Still, conventional wars between sovereign states are supposedly ruled by international laws and agreements (Tokyo Declaration, Geneva Conventions), which prohibit the use of certain destructive weapons, disallow attacking noncombatants and targeting civilians, grant immunity to medical forces, require humane treatment of prisoners and condemn torture and the participation of physicians in such practices. Alas, this book informs us, contemporary war scenes are asymmetrical, rogue states or rebellious groups resorting to terror, thus introducing unconventional strategies that in the end force both parties to violate humanitarian norms of warfare, that is, to disregard the *jus in bello* doctrine.

Having thus illustrated when and how war may be justified and humanitarian norms ignored, Gross displays his main purpose; to reject the World Medical Association’s (WMA) basic statement that medical ethics in times of armed conflict does not differ from medical ethics in times of peace. By arguing that the WMA fails to see the difference between the “bioethics of war and the bioethics of peace”, Gross neglects to make a distinction between medical ethics and bioethics, unconventionally presenting bioethics as concerned with “two actors [who] dominate decision making” [p. 24].

Bioethical principles contend not only with one another, but with the “overriding principles of military necessity and reason of state that animate any issue of military ethics” [p. 2]. And yet a “rough symmetry between the underlying principles of contemporary just war and bioethics” is detected, these principles being “the right to life, respect for autonomy, human dignity, and utility” [p. 28]. Sufficient arguments and detailed analysis are supposedly presented to illustrate a diversity of warfare situations where military necessity and war ethics must prevail over peacetime medical ethics, seemingly allowing the book’s final conclusions that “[M]edicine is but another form of military operation” [p. 330], and “[M]ilitary medical ethics reflects the state of medical ethics during war” [p. 323].

Whereas the Geneva Conventions hold to Larrey’s original concept of triage as allocating scarce resources to those who need care but have good chances of recovering, Gross prefers NATO’s recommendation that medical efforts be distributed “solely based on military salvage”, treating the least severely injured in order to

reinstate them promptly in the battle field. Physicians are expected to abide by these non medical indications, and should accept that “soldiers do not receive medical care to guarantee their health as individuals but to preserve the health of a larger organism” [p. 103] and, Gross elaborates, “after all, if a soldier is sent to die, why is it necessary to care for him or her when wounded?” [p. 66]. Friendly soldiers who are not salvageable for further action are excluded from the priorities of medical care, whereas enemy soldiers so severely wounded to be unable to return to combat, become eligible for treatment.

Wars having become unconventional, it is supposedly no longer valid that medical neutrality and impartiality mandate treating all patients with equal dedication, nor need medical personnel and facilities be granted immunity and spared from being targeted. Gross presents arguments that medical neutrality is not absolute and “may be overridden by military necessity in exceptional cases.” Furthermore, “once one side violates neutrality, the other side is no longer bound to respect it.” [p. 191]. Reviving the long defunct *lex talionis* makes one wonder whether this book is really concerned with bioethics.

The *piece de résistance* of Gross’ book is the handling of torture, initiated with a brief summary of actual ill-treatment practices in countries plagued by terrorism, where only “moderate” forms of torture are acceptable, although harsh methods will occasionally be allowed on a case-by-case basis. Beginning with a non-utilitarian defense of torture, the reader is told that terrorists have forfeited their “moral status as a human being” [p. 222], their dignity and the right to have their self-esteem respected, because they threaten and harm innocent people. Having undermined the fabric of human rights, Gross turns to utilitarian considerations that will tolerate torture if numerous innocent lives are saved. His prime example of such a utilitarian justification of torture is the ticking-bomb situation.

For two reasons, the ticking-bomb justification of torture misfires and is self defeating. First, a ticking-bomb is by definition a situation to be defused with utmost urgency, so it will not explain the overwhelming use of so-called moderate and prolonged forms of ill-treatment (hooding, forced positions, isolation, deprivation), which by their very nature constitute brutal harassment and yet are not designed to obtain prompt and urgently needed information. Second, torture practices are carried out even though prisoners are not informants or information can be obtained otherwise. Abuses of this kind are abhorrent practices dictated by unbridled violence.

International declarations condemning torture are ambiguous, argues Gross, so “torture may be *defensible* if necessary” [p. 218] in order to recover the strategic value of torture in saving innocent lives, and to assure terror-ridden societies that everything is being done to neutralise the enemy. Once again brandishing the Talion, the text argues that since terrorism violates humanitarian law, combating terror must resort to similar violations, and involve physicians in doing so. If torture is a military requirement, then physicians are under obligation to cooperate. Their commitment to non maleficence is limited to doing “no more harm than necessary to *a patient*” [p. 31], and therefore does not excuse them from harming non patients. In fact, “for health-care professionals to violate the principle of non maleficence, they must intentionally harm their patients.”

The physician’s role is not to spare the victim from further suffering, for the whole point of torture is to inflict as much pain as possible, at least until reliable information is obtained or the base instincts of the torturer are satisfied: “health-care professionals

who accept the inevitability of interrogational torture must use their medical expertise in a way that facilitates harm to certain individuals” [p. 230]. This causes “a conflict between civic and professional duties” which should be resolved in favor of the civic duty of torturing. Admittedly, such behavior goes clearly against international medical norms that require professionals to unexceptionally respect humanitarian law but, argues Gross once again taking refuge in the Talion, since terrorism violates humanitarian law, combating terror must resort to similar violations and involve physicians to gain effectiveness.

A similar mandate is issued by invoking the call of civic duty requiring scientific and medical expertise to help develop chemical and biological weapons known to provoke brutal injuries and inordinate civilian casualties. But, the argument continues, these agents are acceptable because they act as merely deterrent weapons, in spite of the fact that the dividing line between deterrence and actual aggression is thin, porous and easily trespassed. Such deliberations go absolutely against the grain of international declarations, medical teachings, and health-care practices.

The doctrine of double effect (DDE) makes a frequent appearance throughout the text, being presented as “an important principle of military ethics”, when in truth it belongs to the rhetoric arsenal of Catholic ethics. The distinction is important, for the usefulness of DDE depends on being faced with two absolute but contradictory principles that can only be reconciled by unintentionally and unavoidably violating one of them. The DDE has found little favor outside the Catholic doctrine if for no other reason than because lay ethical positions rarely harbor absolute principles. Gross would invoke the DDE when a necessary military action will cause harm or death to civilians, to the wounded or to otherwise innocent people. But military actions do not obey absolute principles, nor is causing the unintended death of the innocent to be construed as totally unavoidable action. Should we accept that the deaths of civilians “although foreseen and unavoidable, are the byproduct or unintended effect of a necessary military operation” [p. 161], it would mean installing a slippery slope where “unintended” and “necessary” are in flux and may serve any purpose from “defensible torture” to wiping out whole cities with atomic weapons.

Gross has written an important, well researched and profusely argued book, which should have its title reversed to “Armed conflict and bioethics”, for there is not a single instance where the disagreement between military necessity and bioethics is solved to the satisfaction of the later. The text is counterintuitive not only to the health-care professions but to scholars engaged in bioethics, it being extremely unsettling that a book on bioethics should adopt the *hubris* of denying moral status to human beings. Physician’s should be aware that Gross encourages military and political power to dismiss centuries of medical ethics, decades of bioethical deliberation, and the fabric of a culture anxious to get rid of aggression and violence but not at the price of creating its own brand of terrorism. Maleficence is not only allowed but mandated in exceptional situations and, once the crack is opened, it becomes easy to extend the indications and put arguments to uncensored use, the ethics of beneficence and protection becoming subaltern to contingent strategic and pragmatic positions.

As one reads this text, three reasons come to mind that make it hard to follow Gross: 1) All international documents – the Geneva Conventions, the WMA’s Declarations, the Tokyo Declaration – are dismissed as being mistaken or ambiguous enough to weaken their unlimited support of medical ethics; 2) Just states and military necessity

are more often than not invoked for the wrong reasons, and 3) Gross will not accept that professional medical ethics must resist subordination to political or military demands, lest medicine become an instrument of suffering and death; in the same vein he dismisses Pellegrino and Thomasma's classical tenet that medical obligations go beyond self-interest, exigency and even social, political and economic forces. Phrases like "Torture is a noncaregiving dilemma" [p. 238] become meaningless, but also dangerous by implying that torture is dilemmatic rather than unacceptable, and also that in "noncaregiving" settings physician might consider being maleficent.

Fortunately for those who might disagree with military hegemony over ethics, the book shows some inconsistencies that weaken its thrust. Gross smoothly renders his conception of just war – wars of honor, ideology and territorial aggrandizement – as led by a nation facing unconventional and immoral fighting forces. Historian Hobsbawm believes that it is pure ideology to call one's own cause just and the enemy so hateful as to justify using any means to achieve victory. The enormous increase in terror is due to moral concepts being substituted by superior imperatives, making ill-treatment a routine exempt from justification and leading to the scandalous situation of occidental ideologists offering intellectual excuses for torture. If *jus ad bellum* is nothing but ideology, as history clearly suggests, then the whole ethical fabric of the text under discussion falls apart. As well it should.

In defending subordination of medical ethics to the needs of military ethics, this book serves to alert the bioethical community to the dangers of political and international pragmatism. Fortunately, there are a growing number of publications that respect international agreements and consider that medical ethics is concerned with the sick and the injured, not with military strategy or "war ethics." Some of them pre-date the publication of this book and might have found their way into its reference list. Such efforts need to be supported by bioethics and by the health-care professions in view of the scandalous fact that human beings continue to be tortured throughout the world.

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