

How to Think about Stemming an Insurgency

In the first issue of the *Hastings Center Report* I edited, Gilbert Meilaender wrote an article titled “The Point of a Ban—Or: How to Think about Stem Cell Research.” The article appeared following a report from the National Bioethics Advisory Council in which NBAC argued that human embryos are due special moral respect, but that scientists may nonetheless conduct research on them, destroying them in doing so. Meilaender argued that if we think human embryos merit special respect, and if we take the idea of “respect” seriously, then we will almost certainly reject NBAC’s permissive stance toward medical research, even if the research might lead eventually to therapies for terrible diseases. The point of a ban, Meilaender held, is precisely that it does not easily give way before utilitarian concerns. Meilaender contemplated only one way in which a utilitarian imperative might overwhelm the sort of sanctions that lead to moral bans: following Michael Walzer’s ruminations about just war theory, he allowed that some circumstances generate a “utilitarianism of extremity,” in which an enemy simply *must* be defeated because it poses “an ultimate threat to everything decent in our lives” (Walzer’s words). But in Meilaender’s view, the diseases researchers hope to cure using stem cells, bad as they are, do not threaten to destroy everything decent.

That was the January-February issue of 2001. Later that year, of course, warfare itself was a pressing topic again. At first, it did not look like a pressing topic *for bioethics*; it seemed rather to overshadow bioethics. Certainly it briefly overwhelmed the national debate about stem cells. In the years since September 11, however, the uniquely horrifying bioethical issues of warfare have been brought back to mind. Several *Report* authors, including At Law columnist Larry Gostin, have discussed the threat of bioterrorism and how public health agencies, medical researchers, and health care workers should respond to it. In the current issue, a set of contributions takes up some of the medical ethical issues of the battlefield itself. The topic is, again, the point of a ban.

In the lead article, philosopher Michael Gross of the University of Haifa maintains that “war fundamentally transforms the major principles and central issues that engage bioethics.” Patients’ right to receive and make decisions about their medical care, and physicians’ obligations to render care, are fundamentally transformed by “reasons of state.” Gross suggests that even human rights can end up on the scales, if only because the human rights of some must sometimes be weighed against the human rights of others. At this point, Gross explains, states tend to fall back upon utilitarian reasoning. But in *Another Voice*, Leonard Rubinstein, executive director of Physicians for Human Rights, offers a diametrically opposed view: that to transform a question of human rights into a utilitarian balancing act, “even in times of national emergency,” is just to forget the point of international humanitarian and human rights law.

In the case study, instructors from the United States Military Academy at West Point and George Annas, an authority on law and bioethics and an advocate of human rights, discuss what to do with a dying prisoner of war who may have militarily valuable information but who wants the treatment that keeps him alive terminated. In his commentary, Annas concludes, in effect, that Walzer’s “utilitarianism of extremity” does not generate legitimate exceptions to a ban on using physicians to force information out of prisoners of war, and that it is, anyway, never really a serious possibility for military physicians, not “in this case or any other in the real world.” —GK ■

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