Military Medical Ethics in the New Era of Symmetrical Conflict

Department of Defense Medical Ethics Center (DMEC)

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James Giordano, Ph.D., M.Phil.

Dr. James Giordano is a Pellegrino Center Professor of Neurology and Biochemistry, Chief of the Neuroethics Studies Program, Chair of the Sub-Program in Military Medical Ethics, and Co-director of the Program in Brain Science and Global Law and Policy at Georgetown University Medical Center in Washington, DC. He also serves as a Senior Bioethicist for the Defense of Defense Medical Ethics Center, and Adjunct Professor of Psychiatry at the Uniformed Services University of Health Sciences.

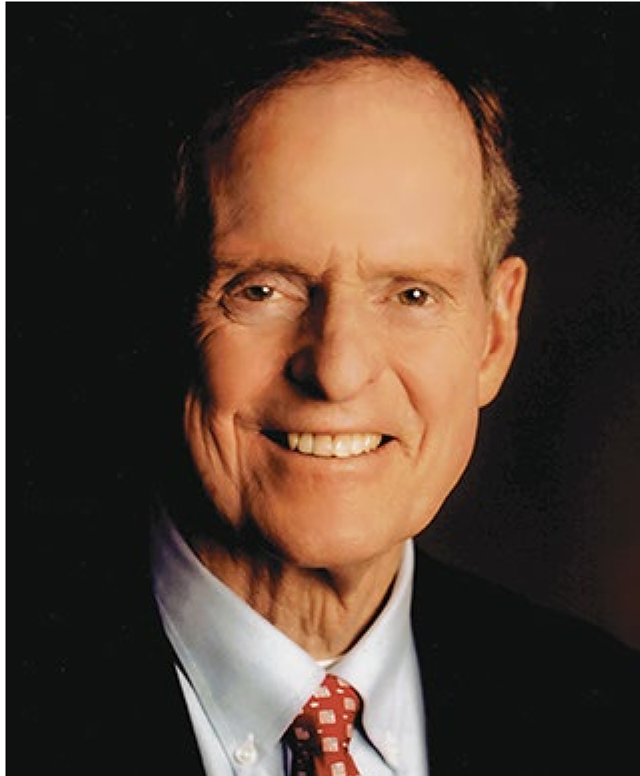
Dr. Giordano is a Distinguished Fellow of Science, Technology, and Ethics of the Stockdale Center of the US Naval Academy. He is the author of over 350 publications, 9 books, and 50 governmental reports, and is an elected member of the European Academy of Science and Arts, and an Overseas Fellow of the Royal Society of Medicine (UK).

Joshua Girton, J.D., L.L.M., M.B.A.

Mr. Joshua Girton is the Deputy Director of the Department of Defense Medical Ethics Center (DMEC) and an Assistant Professor at Uniformed Services University of the Health Sciences (USU). Mr. Girton also serves as an Adjunct Professor of Law at the US Naval Academy (USNA). Prior to his current position, Mr. Girton was an Associate General Counsel within the USU Office of General Counsel (OGC). At the outset of his professional career, he had the extreme honor and privilege of serving as an officer and judge advocate in the United States Marine Corps (USMC). His honors and awards include multiple military decorations, awards for teaching excellence at USNA, election as an honor graduate from both of his law programs, and the recipient of the Dan Carter-Earl Tedrow Memorial Award selected by the Senior Law Class as the exemplification of the aims of all those entering the profession of law.

A native of Maryland, Mr. Girton received his B.A. in English from Emory University, his J.D. from Washington University in St. Louis, his L.L.M. in Global Health Law and International Institutions from Georgetown University Law Center and the Graduate Institute of International and Development Studies (Geneva, Switzerland), his M.B.A. from Duke University, The Fuqua School of Business, and was awarded a Fellowship in Bioethics at the Harvard Medical School (HMS) Center for Bioethics. On a personal note, Mr. Girton considers himself truly blessed to have an amazing wife and two wonderful children.

Army Col. (Ret.) Frederick C. Lough, M.D.



Army Col. (Ret.) Frederick C. Lough was commissioned in the Corps of Engineers on graduation from West Point in 1970, completed Airborne and Ranger training, and was selected for medical school by the US Army. He graduated from the George Washington University School of Medicine and trained as a General Surgeon at Walter Reed Army Medical Center. He served as a surgeon in Korea, followed by training as a Cardiovascular Surgeon at Walter Reed. He became the Asst. Chief of Cardiac Surgery at Walter Reed and was then the Chief of Cardiovascular Surgery at Letterman Army Medical Center.

Col. Lough pursued a civilian career as a surgeon in Reading, Pennsylvania. While there, he performed or participated in over 10,000 open heart cases. This was followed by a brief time in McAllen, Texas in the private practice of cardiac surgery. He was recruited to be the Director of Cardiac Surgery at the George Washington University Hospital in Washington, D.C . He joined the US Army Medical Corps Reserves in 2007 and served as a combat surgeon in Afghanistan in 2010 and 2012. Upon return, he was commissioned in 2014 in the US Army Medical Corps and was assigned to Walter Reed National Military Medical Center. While on active duty he was the Deputy Chair, Department of Surgery at the Uniformed Services University of the Health Sciences (USU) and Director of the Department of Defense Medical Ethics Center. Col. Lough has also established the GEN Ronald H Griffith Institute for Ethics, Leadership and Military Medical Professionalism at USU.

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Mr. Joseph A. Procaccino, Jr. is the Legal Advisor for the Department of Defense Medical Ethics Center located at the Uniformed Services University for the Health Sciences (USUHS), and is an Adjunct Assistant Professor of Preventive Medicine and Biostatistics at USUHS where he teaches Medical Jurisprudence and Bioethical issues. He has been on the faculty at USUHS since 1991. He is also on the faculty of the Defense Department’s Medxellence Program.

Mr. Procaccino is an attorney licensed in Virginia and the District of Columbia. He holds a Bachelor’s Degree in both Classical Humanities and Political Science from George Washington University. He received his Juris Doctor degree from American University and a Master's degree in Forensic Sciences (Medicine) from George Washington University.

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Disclosures

- Dr. Applewhite, Dr. Giordano, Mr. Girton, Col. Lough, and Mr. Procaccino have no relevant financial or non-financial relationships to disclose relating to the content of this activity.
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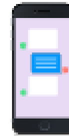

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Poll Question #1

If the Geneva Conventions are only being followed by select groups, should there be recourse for the organizations who violate them, or should possible alternatives to engaging and enforcing international humanitarian law during war be explored?

Poll Question #2

How has the scope and conduct of current and future conflict change - and how will it likely continue to change - and what challenges and opportunities do these changes pose for military medicine, military medical ethics, and the Defense Medical Ethics Center?

Poll Question #3

Considering the tactics used in recent years by terrorist organizations and even nation states that violate "standards" of war, why should any opposing force continue following ethical and legal principles if they actually serve to give the "unethical" enemy a tactical advantage?

Learning Objectives

At the conclusion of this activity, participants will be able to:

1. Describe Geneva Convention/Law of War standards during conflict
2. Explain how laws and rules have been and are abrogated for self-serving/predatory purpose where ends justify means
3. Discuss the unique role of mission and how it may influence "standard" ethical practices

Overview

- The broadening scope of clinical medical ethics in the civilian setting
- The new symmetrical battlespace: Changing contexts of military medical ethics, and the role of the Department of Defense Medical Ethics Center (DMEC)
- Military medical ethics in the new era of symmetrical conflict: A Legal-ethical perspective
- Conclusions
- Questions and Discussion

The Broadening Scope of Clinical Medical Ethics in the Civilian Setting

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Where should we focus our attention?

- Our scope defines what we see as our ethical responsibilities
- As we shift our point of view, our ethical responsibilities similarly shift and broaden
- Bedside of patient to bedside of community

(Getty Images, n.d.)

Traditional view of clinical ethics

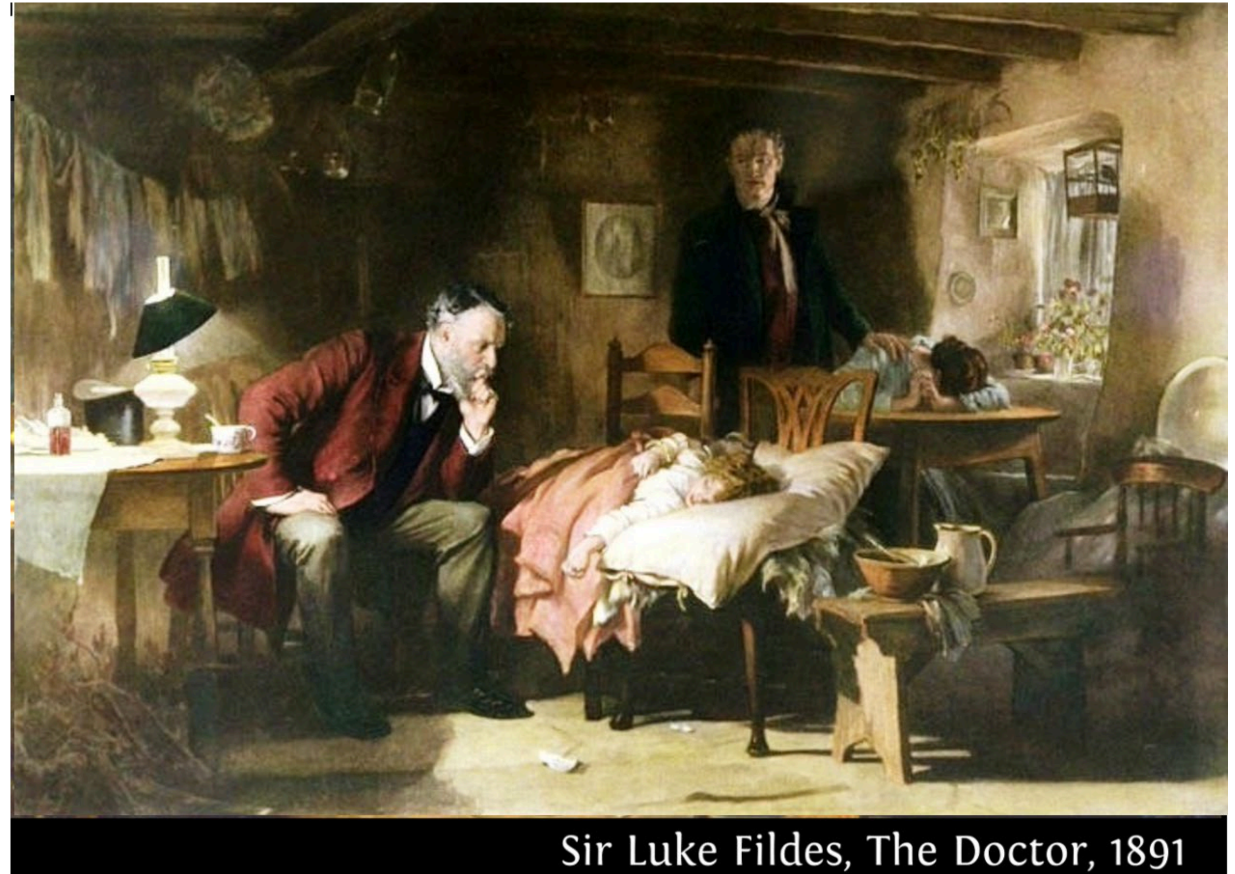
- The doctor and the patient
- Largely isolated from the outside world
- Focused on the relationship

Frans van Mieris the elder, (1635-1681)

Patient and doctor interact within a family context

- Parents and children
- Siblings and spouses

Patient & Doctor



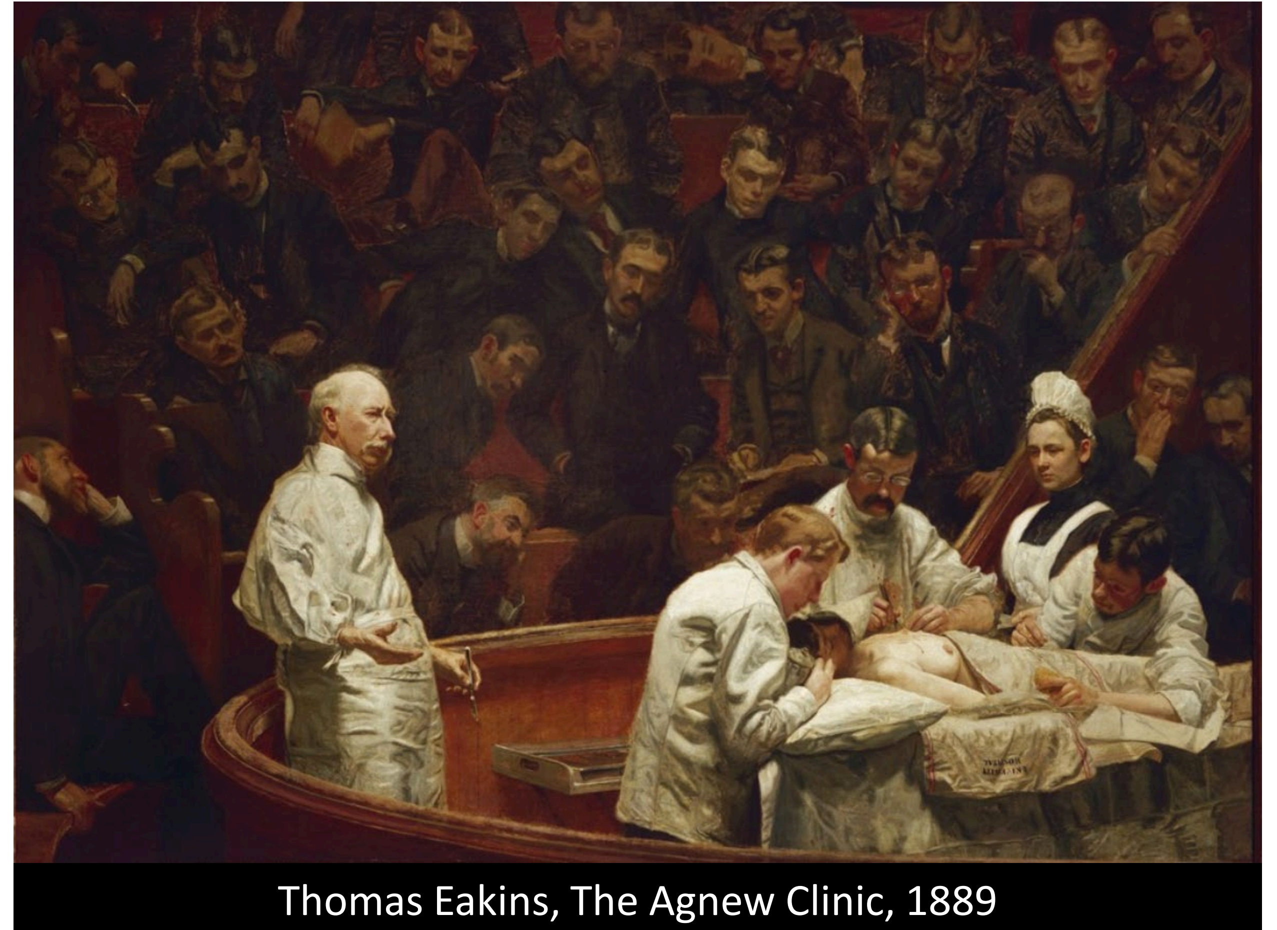
Sir Luke Fildes, The Doctor, 1891

Healthcare involves many other caregivers

- Nurses
- Advanced Practice Providers
- Therapists, social workers
- Technicians
- Medical assistants

Patient & Doctor

Family and loved ones


Thomas Eakins, The Agnew Clinic, 1889

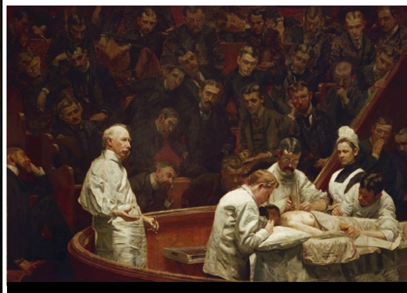
Healthcare occurs within a *health system* in a *society*

- Clinical interactions cannot be isolated from the broader system in which they occur
- We cannot assume a narrow view of clinical ethics that ignores the broad appreciation of public health and how it impacts individual patients
- Resource allocation

(https://www.commonwealthfund.org/)

Patient & Doctor

Family and loved ones



Care Team

Increasing complexity to Military Medical Ethics

- Even in civilian medical care, there is a broad scope of ethical responsibilities that providers navigate daily
- Disparities in access and healthcare outcomes need to be mitigated
- Introducing challenges encountered in combat adds further layers of responsibility and broadens scope
  - Resource allocation
  - Weighing the needs of the mission with the needs of the patient
- Geneva Conventions for the establishment of international legal standards for humanitarian treatment in war attempts to protect those caring for the wounded

INTERNATIONAL COMMITTEE OF THE RED CROSS

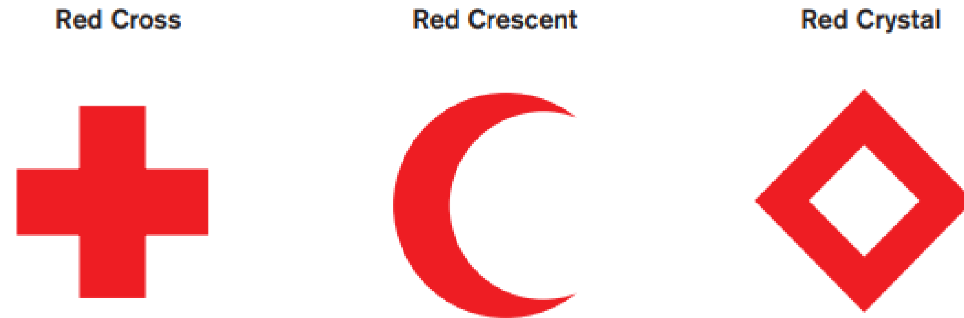
The Geneva Conventions and their Commentaries

The Geneva Conventions and their Additional Protocols form the core of international humanitarian law, which regulates the conduct of armed conflict and seeks to limit its effects. They protect people not taking part in hostilities and those who are no longer doing so.

- Most commonly known to have been created in 1949 in the aftermath WWII, but was adopted in its initial form in 1864.
- Created to provide specific rules to safeguard combatants, or members of the armed forces who are wounded, sick or shipwrecked, prisoners of war, civilians, as well as medical personnel, chaplains, and civilian support workers of the military.
- Foundation of modern international humanitarian law
  - **Convention I**: Protects wounded and infirm soldiers and medical personnel who are not taking active part in hostility. Ensured humane treatment without discrimination. It prohibits torture, assaults upon personal dignity, and execution without judgement. It grants the right to proper medical treatment and care.
  - **Convention II**: Extends Convention I to shipwrecked soldiers and other naval forces, including special protections afforded to hospital ships.
  - **Convention III**: Defined "Prisoner of War", and such prisoners are entitled to humane treatment (CI) and are required only to give their name, rank and serial numbers to captors. Nations party to the Convention may not use torture to extract information from POWs.
  - **Convention IV**: Civilians are afforded the same protections from inhumane treatment and attack afforded to sick and wounded soldiers in CI. This also prohibits attack on civilian hospitals and medical transports. It also discusses how occupiers are to treat an occupied populace.

(www.redcross/org/ihl)
(https://www.law.cornell.edu/wex/geneva_conventions_and_their_additional_protocols)
(https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions)

The Emblems under International Humanitarian Law



- The symbol of a red cross on a white background (the reverse of the Swiss flag in honor of the origin of the Geneva Convention), red crescent, and red crystal serve to identify and protect medical and relief workers, military and civilian medical facilities, mobile units, and hospital ships during armed conflict.
- This is, however, aspirational; an ideal.
- Tactical realities are different circumstances that do not always align to the aspirational, which presents a significant challenge when groups may not respect the agreed upon rules of conduct.

(https://www.law.cornell.edu/wex/geneva_conventions_and_their_additional_protocols)
(www.redcross/org/ihl)

Introduction of The New Symmetrical Battlespace: Changing Contexts of Military Medical Ethics, and the Role of the Department of Defense Medical Ethics Center (DMEC)

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DMEC Mission and Meaning in the New Era of Symmetrical Conflict

- The DoD Medical Ethics Center (DMEC) is focusing on the Military Medical Ethics challenges that will likely be encountered in the next symmetrical warfare engagement.
- Each side having roughly equivalent military capabilities, but potentially relative/distinct ethics, will be radically different from the asymmetrical conflicts the US and Allied Forces have been engaged in over the past 20 years

DMEC – New Realities of Symmetrical Conflict

- Key factors, issues, and questions arising in **bioscience** and **technology** affect:
  - Scope, conduct, effectiveness, and efficiency of military medicine
  - Key ethical, legal, social, and environmental considerations and concerns
    - Idiosyncratically (i.e. at the individual level)
    - Systemically (i.e. in regard to a specific military system, and its interactive dynamic roles and activities with other, allied and potentially competitive or hostile military systems).

DMEC – New Realities of Symmetrical Conflict

- Triage and reverse triage considerations and protocols, given scarcity of medical resources in mass casualty situations
- Treatment of local nationals and enemies in a resource constrained environment, in concert with the requirements of the Geneva Conventions and their Additional Protocols
- Forward deployed medical units without the Golden Hour Casualty Evacuation (CASEVAC) capability due to lack of air or/and maritime superiority, which will necessitate significantly longer treatment in place clinical environments
- The likelihood of repeated mass casualty events - inclusive of possible use of chemical, biological, radiological and nuclear (CBRN) weapons - and the predictable and causal deep moral injury of service members and healthcare providers alike

DMEC – New Realities of Symmetrical Conflict

- Development and use of emerging biotechnologies for both:
  - Warfighter/intelligence operator protection and performance optimization
  - Degrading hostile personnel/force mission capability
- The use/non-use of protective Geneva/medical symbols on personnel/tactical vehicles
  - Originally designed to signal a protective status of those persons/vehicles
  - In practice have caused the enemy to engage those assets with greater intensity of hostile fire because the loss of medical personnel on the battlefield is so crippling from a tactical operations perspective

Military Medical Ethics in the New Era of Symmetrical Conflict: A Legal/Ethical Perspective

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THE ETHICS JUGGLING ACT

NON-MALEFICENCE

BENEFICENCE

JUSTICE

AUTONOMY

MISSION

(hiclipart.com)

PRINCIPLES OF THE LAW OF ARMED CONFLICT (LOAC)

BASED ON THE ARTICLES OF THE 1949 GENEVA CONVENTION AND SUBSEQUENT APPROVED ADDENDA

- MILITARY NECESSITY
- DISCRIMINATION/DISTINCTION
  - PROTECT INNOCENT CIVILIANS
- HUMANITY/UNNECESSARY SUFFERING
  - TROOPS ARE TRUSTED
- PROPORTIONALITY
  - USE DECISIVE FORCE
  - COLLATERAL LOSS OF LIFE DAMAGE SHOULD NOT BE EXCESSIVE IN RELATION TO MILITARY ADVANTAGE GAINED
  - DECISIVE FORCE IS NOT INDISCRIMINATE FORCE

LAWFUL TARGETS

- COMBATANT PERSONNEL
- MILITARY OBJECTIVES:
  - OBJECTS THAT CONTRIBUTE TO THE ENEMY'S WARFIGHTING/SUSTAINING EFFORT AND WHOSE DESTRUCTION WOULD CONSTITUTE A DEFINITE MILITARY ADVANTAGE
  - INCLUDES BOTH MILITARY AND ECONOMIC TARGETS

UNLAWFUL TARGETS

- NONCOMBATANTS
  - SOMETIMES HARD TO DISTINGUISH
- CIVILIAN FACILITIES NOT USED FOR THE WAR EFFORT
- PROTECTED INSTITUTIONS (E.G., MUSEUMS, CHURCHES, MONUMENTS, ETC.)
  - BUT WHAT IF OCCUPIED AND USED BY COMBATANTS?

NON-COMBATANT

- **PROTECTED STATUS**
- **CANNOT BE THE PRIMARY OBJECT OF ATTACK**
- ***MAY LOSE THIS STATUS IF THEY ACTIVELY CONTRIBUTE TO THE WAR EFFORT OR ENGAGE IN HOSTILITIES***

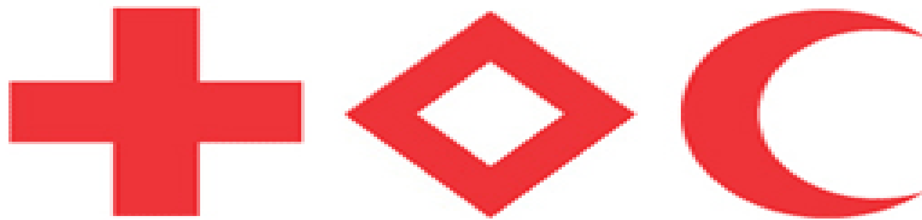
INTER ARMA, SILENT LEGES….

"IN TIMES OF WAR, THE LAWS ARE SILENT."

WHOSE ETHICS, IF ANY, ARE FOLLOWED?

PROTECTIVE EMBLEMS

- MEDICAL – RED CROSS, RED CRESCENT, RED CRYSTAL



(redcross.org)

RESPECTING THE LAWS OF WAR?

WHY DO/SHOULD WE MAINTAIN LEGAL/ETHICAL STANDARDS WHEN THE OPPOSITION DOES NOT?
INCREASED RISK

ARE CORRECT LAWS/ETHICAL CONDUCT DETERMINED BY THE VICTOR?

WHEN ARE ORDERS NOT "LEGITIMATE"?

(icrc.org)

THE MISSION VS. INDIVIDUAL CARE DECISIONS: THE QUANDARY OF SUPERSEDING GOALS

- RESPECTING PATIENT AUTONOMY AND INFORMED CONSENT

- IMPACT ON COMBAT MORALE/SAFETY/SUCCESS

- PRIMUM NON NOCERE VS. “THE DOUBLE EFFECT” PRINCIPLE – A HIGHER GOOD?

- ALLOCATION OF RESOURCES AND “NECESSITY”

NECESSITY IN ARMED CONFLICT – PRIORITIZING THE FITTEST?

"**When the wonders of penicillin were new, but recognized, and the supply heartbreakingly meager, a small shipment finally arrived in North Africa during World War II. The hospital beds were overflowing with wounded men. Many had been wounded in battles; many also had been wounded in brothels. Which group would get the penicillin? By all that is just, it would go to the heroes who had risked their lives, who were still in jeopardy, and some of whom were dying. They did not receive it, nor should they have; it was given to those infected in brothels. Before indignation takes over, let us examine the situation.**

First, there were desperate shortages of manpower at the front. Second, those with broken bodies and broken bones would not be swiftly restored to the battle line, even with penicillin, whereas those with venereal disease, on being treated with penicillin, would in a matter of days free the beds they were occupying and return to the front. Third, no one will catch osteomyelitis from his neighbor; the man with venereal disease remains, until he is cured, a reservoir of infection and constant threat. In terms of customary morality, a great in-justice was done; in view of the circumstances, I believe that the course chosen was the proper one."

- **Beecher, Henry, *Research and the Individual*. Boston: Little Brown and Company, (1970) pp. 209-210**

THEORIES OF ETHICS

- **UTILITARIANISM**
  - **AN ACTION IS RIGHT IF IT LEADS TO THE GREATEST POSSIBLE GOOD**
- **DEONTOLOGY**
  - **MORAL PRINCIPLES MUST BE FOLLOWED REGARDLESS OF THE CONSEQUENCES**

THE UMBRELLA OF ETHICAL CONSIDERATION

- **PERSONAL ETHICS vs.**
- **PROFESSIONAL ETHICS vs.**
- **ORGANIZATIONAL ETHICS**

KEY TAKEAWAYS

- OBJECTIVITY
- BALANCING MISSION WITH PATIENT NEEDS
- DO NOT ABANDON ETHICAL PRINCIPLES
- COMMUNICATION
- EDUCATION
- COMPASSION
- HUMANITY
- INTEGRITY
- SELF-CARE

Questions?

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References

Department of Defense Medical Ethics Center (DMEC). (n.d.). DMEC Website. https://www.usuhs.edu/research/centers/dmec

DMEC Bioethics Mobile Application. (n.d.). https://youtu.be/pUJKbxeDJIY

King's College London. (n.d.). *The Centre for Military Ethics*. https://www.kcl.ac.uk/research/the-centre-for-military-ethics

King’s College London. (n.d.). *Medical Military Ethics Playing Cards now available with smartphone app*. https://www.kcl.ac.uk/news/medical-military-ethics-playing-cards-now-available-with-smartphone-app

Cornell Law School. (2017). Geneva Conventions and their Additional Protocols. LII / Legal Information Institute https://www.law.cornell.edu/wex/geneva_conventions_and_their_additional_protocols

International Committee of the Red Cross. (2018, September 27). Geneva Conventions and Commentaries. International Committee of the Red Cross. https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions

Red Cross. (2018). Humanity in War. Redcross.org https://www.redcross.org/humanityinwar.html

Thomas, R., Lough, F., Girton, J., & Casciotti, J. A. (2020). A Code of Ethics for Military Medicine. *Military Medicine*, *185*(5-6), e527–e531. https://doi.org/10.1093/milmed/usaa007

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4. Follow the onscreen prompts to complete the post-activity assessments:
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   b. Complete the Evaluation
   c. Take the Posttest
5. After completing the posttest at 80% or above, your certificate will be available for print or download.
6. You can return to the site at any time in the future to print your certificate and transcripts at: https://www.dhaj7-cepo.com/
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