

**Michael L. Gross**

*Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict.*

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During the past decade there has been a significant resurgence of interest in just war theory, terrorism, and related issues. Much of this work has focused on how the war on terror has come to shape policy and test traditional just war thinking. In this regard, the war on terror marks a new era in just war theory. The current dialogue is marked by dilemmas engendered by a desire to resolve the necessity of waging an asymmetric war against a non-traditional enemy with the humanitarian principles of proportionality and discrimination, principles that have historically defined just war theory. Yet, it is rare to find a work that introduces these dilemmas in a comprehensive way approaching both the history of just war theory and the special circumstances of warfare in the 21<sup>st</sup> century. This is no mean feat, but one that Michael L. Gross has set for himself in *Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict*.

With *Moral Dilemmas of Modern War*, Gross has offered the reader an introduction to the dilemmas facing us in an age where warfare is no longer relegated to skirmishes between national powers but consists of ‘wars of occupation, the war on terror, and wars against rogue regimes’ (x). Historically, just war theory has labored under concepts such as combatant equality, non-combatant immunity, the principles of proportion and discrimination, etc. These moral guidelines often were motivated by factors such as humanitarian concerns about avoiding gratuitous suffering, as well as practical factors such as the ability to fight and win given one’s circumstances, self-interest, and also the fear of retaliation in kind. In an age of asymmetric conflict, when self-interest is no longer constrained by fear of reprisals due to a lack of reciprocity, and effectively waging war demands otherwise prohibited actions, what can be salvaged from classical just war theory?

Gross begins his work with a section on combatants in asymmetric warfare, including chapters such as ‘Shooting to Kill’, ‘Shooting to Stun’, ‘Murder, Self-Defense, or Execution’, and ‘Human Dignity or Human Life’. This section is driven by the concept of combatant equality, the idea that the status of combatants as morally innocent delimits permissible violence against them. Questions are then raised regarding assassination, torture, and the use of lethal and non-lethal force. Gross ties the concept of combatant equality not to a moral imperative but rather the more practical factor of national self-interest, an interest promoted through mutual self-restraint when one is at risk of reprisal from an equal. Just as we would not want our troops tried and summarily executed, so we prudently choose not to inflict that treatment on others. This idea of deterrence through mutual threat does a lot of work for Gross. According to him, it is the ostensible rationale

for many of our conventions from limiting the use of certain weapons such as exploding bullets, serrated bayonets, or chemical weapons, to the prohibition on torture, as well as the aforementioned demand for combatant equality. As such, when reciprocity is lost, as it is in asymmetric conflicts, Gross no longer sees a compelling reason to abide by these restrictions. ‘Combatant equality, part moral imperative and part mutual self-interest, holds up well in conventional warfare where each side is motivated to bestow its enemy with a degree of moral innocence...In asymmetric warfare, however, reciprocity breaks down and when it does, combatant equality is no longer useful’ (33-4). A recurring theme for Gross, one that often motivates his critique of accepted norms, is that necessity is defined in terms of the needs of those waging war to do so effectively with a prospect for success.

Consider the rigid distinction between combatants and non-combatants, historically rooted in the humanitarian principle of protecting the innocent. In asymmetric conflicts Gross sees this dichotomy as untenable. In these conflicts one no longer fights armies where the enemy has a clear affiliation. Instead one wages war against groups or individuals. These conflicts thus require that we rethink the status of combatants and non-combatants motivated both by a desire to attribute culpability based on participation, but also to afford those waging war enough targets to enable them to fight to win. Thus, historically prohibited targets become legitimate insofar as those waging war require targets in order to have the ability to disable their enemy. In an age of unlawful enemy combatants who are neither criminals nor combatants (47), and of military operations other than war (MOOTW) which are neither exclusively military or law enforcement exercises (91), Gross maintains that necessity forces us to redraw the lines of who is an acceptable target. As asymmetric conflicts shift our understanding of what is necessary for waging war, so it requires a shift in our conception of permissible killing.

Assassination and torture are additional topics raised in the context of combatant equality. Assassination is rationalized as ‘named’ killing (107), the only viable alternative, according to Gross, in conflicts that deal not with affiliations but degrees of participation. Assassination is thus merely the naming of one’s target, a means of identification in lieu of a uniform. Torture is dealt with in terms of its efficacy, and since reciprocity is lacking to any significant degree Gross sees no *prima facie* reason to discount its use. Again, the humanitarian concerns take a back seat to efficacy, and since there is no prudential reason to avoid torture one must consider the practice a viable means of waging war.

The second part of Gross’ book deals with non-combatants and includes chapters such as ‘Blackmailing the Innocent’, ‘Killing the Innocent’, and ‘Risking our Lives’. Here many of the issues raised in the previous section are recapitulated with a focus on the status of non-combatants. Issues range from reconsidering non-combatant immunity to reassessing how we calculate proportionality in terms of the scope of military responses and acceptable loss of innocent life, to the defensibility of terrorism and humanitarian intervention. These issues are handled in a fashion similar to that employed in the first part of the book. Gross asks what is necessary in order to wage asymmetric conflict and then how necessity as newly defined by the nature of asymmetric conflict

forces us to reconsider classic just war principles in order to accommodate the shifting nature of warfare. Thus classical principles often seen to rely on humanitarian principles such as the principle of proportion are recalibrated to allow for the exigencies of fighting a non-conventional enemy.

Overall, what is most striking about Gross' book is not the depth of his analysis. Oftentimes his treatment can be cursory, an unfortunate yet unavoidable result of covering such a wide range of issues. What is most striking is the conclusion. Gross boils down his analyses to one observation: exceptionalism is the new rule. Exceptions to just war orthodoxy become defensible in light of national emergencies, and once these exceptions become common place new norms are generated. 'While torture, assassination, and blackmail may have started their lives as exceptions to the established norms of conventional warfare, there are many signs that they are evolving into rules' (234). In light of the dilemmas of modern warfare, old paradigms must shift and the principle according to which they shift is necessity, the right of a legitimate power to fight to win any conflict that threatens its interests. This conclusion, that necessity drives a reassessment of just war theory, is not novel, but the notion that humanitarian principles take a back seat to necessity is an important position, given its influence.

At some point, however, the question to be asked—and one Gross should be pushed to answer—is this: Is there anything that is too horrific, i.e., too grave a violation of humanitarian principles, that even if it were deemed necessary it would still be unjustifiable? In a way, Gross deals with this question in his discussion of a two stage distillation process whereby necessity and humanitarianism are both brought to bear on any operation or tactic, but in most cases when he applies this procedure necessity trumps morality (241). Yet, if humanitarian principles were given priority, or even due consideration, we could ask whether one response to asymmetric conflicts might not be pacifism. Ultimately, in an age of asymmetric conflict, if you cannot wage a traditional war justly, then you both redefine your terms and accept shifting norms—as is Gross' approach—or you do not wage war. Gross never sees the latter option as tenable. But instead of justifying all military actions under the rubric of necessity, perhaps the moral dilemmas of modern war indicate that warfare is an inappropriate response to threats posed by non-state actors. In the end, insofar as Gross offers an important window—one comprehensive in scope—onto these dilemmas, his voice is invaluable in the discourse.

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