

HUMAN RIGHTS AND THE MILITARY

The 'chemical soldier'¹

JO BIRD and GRETA BIRD

Pilots and soldiers are being used as guinea pigs. [They are] being given mind-altering narcotics in order to make them more effective, to keep them awake ... and in reality to make them more aggressive. This has resulted in innocent deaths, not just of civilians, but of their own men and allied soldiers.²

New technologies offer the possibility to re-shape the human at the genetic, molecular and hormonal levels.³ Philosophers anticipating and reflecting on this science speak of the 'fluid subject' and of the death of man.⁴ The ethico-legal foundations of Western law, sited in the Judaeo-Christian knowledge of good and evil, are challenged by these technologies. This article explores an aspect of this science: the military use of mind-altering drugs, particularly amphetamines and the 'anti-remorse' pill, to create an enhanced soldier. The enhanced soldier may lack capacity for the moral reason required to establish the commission of war crimes. We argue that the human rights of the soldier are being infringed and international conventions and domestic laws must be strengthened to remedy this.⁵

The human at war

In order to don the uniform of the military, a soldier may be required to shed part of their humanity. Military training involves boot-camps and psychological desensitisation techniques. A soldier at war may be required to take mind-altering drugs, such as amphetamines or the so-called 'anti-remorse' pill. Scientists at a number of research institutions are developing techniques and chemicals to impact on the brain's ability to feel fear and to remember traumatic events. The working of the human brain is still largely unknown and the neural pathways connected to fear may be linked to a number of other emotional states, such as memory, remorse and guilt.⁶ Recently the Chairman of United States President Bush's Council on Bioethics, Dr Leon Kass,⁷ expressed alarm at these developments. Kass referred to the fear inhibiting drugs arising from this research as the 'morning-after pill for just about anything that produces regret, remorse, pain or guilt'. Collectively this research has been referred to in the media as the 'anti-remorse' pill and for convenience we have adopted this term.

In this article we explore the human rights of military personnel and in doing so look at the human psyche and its chemical and material engineering for military purposes. The reduction of the rights of the soldier, we argue, affects the dignity of all human beings. International law theoretically encompasses the legal

liability of states for breaching the human rights of their own military personnel. However, implementation of this law is needed to ensure the liability of states for the military actions of their 'chemical soldiers'.

Human rights of the soldier

Most human rights instruments concerning wartime conduct involve codes for the treatment of civilians and enemy soldiers.⁸ Military law deals with infractions by soldiers of military codes of conduct.⁹ However, there is little domestic or international human rights law about the rights of soldiers vis-à-vis the state that employs them. What literature there is focuses on the rights of children not to be drafted into military service and draws on the human rights in the United Nations *Convention on the Rights of the Child*. Although international human rights law and domestic laws apply to the rights and responsibilities of soldiers these are infrequently used for the conduct we are discussing here. The adult soldier ceases in many respects to be an individual under military codes of conduct and is trained to obey orders in a collective fashion. There is, however, a duty on the soldier to refuse to obey instructions that would lead to the commission of war crimes or crimes against humanity. Lyndie Englund has raised superior orders as a defence to the charges brought against her in connection with the abuses in Abu Grahb prison.¹⁰ This is unlikely to absolve her of criminal liability. As the *Nuremberg Principle* number IV states: 'The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him'.¹¹ Although voluntary drug taking that diminishes moral responsiveness is never a defence, the ingestion of mind-altering drugs where the taking of those drugs is a condition of employment is a new situation. We hope that it could not reduce liability.

There has been a plethora of litigation by veterans over health problems connected to wartime exposure to chemicals such as defoliants, and to the stress of war trauma.¹² There is little focus on what is happening to the humanity of the soldier through bio-engineering and the administration of mind-altering drugs, and what human rights are potentially affected. The engineering of soldiers by the state affects the relationship between citizen/soldier and state. Further, it is antithetical to the social contract at the basis of a liberal democracy and to the fundamental ideas of a criminal justice system based on the free willing individual. We assert that

REFERENCES

1. The term 'chemical soldier' is taken from ABC Radio National, 'The Rise of the Chemical Soldier', *All in the Mind*, 30 March 2003 <www.abc.net.au/rn/science/mind/s817005.htm> at 22 March 2005.
2. Jamie Doran, SBS Television, 'The Need for Speed', *The Cutting Edge*, 12 August 2003.
3. The principal author, Jo Bird, is writing a book on *Technologies of the Body*.
4. Michel Foucault has spoken of man as a purely philosophical construct, an unstable entity able to be 'washed away'. See Michel Foucault, *The Order of Things: An Archaeology of the Human Sciences* (trans 1989).
5. The administration of drugs to soldiers may infringe existing protocols such as the Nuremberg code and the Helsinki declaration. See Jennifer Leaning, 'War Crimes and Medical Science: Not Unique to One Place or Time; They Could Happen Here', (1996) 313(7070) *British Medical Journal*.
6. For a discussion of the complicated genetic and chemical brain mechanisms involved in fear and memory formation see Phyllida Brown, 'In the Shadow of Fear', *New Scientist*, 6 September 2003, 30.
7. Eric Baard, 'The Guilt Free Soldier: New Science Raises the Specter of a World Without Regrets', *The Village Voice*, 22-28 January 2003, <www.villagevoice.com/news/0304,baard,41331,1.html> accessed 23 March, 2005. Note that Dr Kass is speaking here in his personal capacity and not on behalf of the council.
8. Society of Professional Journalists, *A Brief History of the Laws of War*, <www.globalissuesgroup.com/geneva/history.html> at 23 March 2005.
9. See for example the *Defence Force Discipline Act 1982* (Cth).
10. Anthony Lewis, 'The Road to Abu Grahb', *The American Prospect*, October 2004.
11. Principles of the Nuremberg Tribunal, 1950, No 82, Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal. Adopted by the International Law Commission of the United Nations, 1950.

these questions call for a consideration of international human rights law, and its interaction with military codes and Western law generally.

Who is the human of human rights?

Until recently in Western ethico-legal systems there was a certainty about the human; the human was distinguished from God, animal and machine. These certainties are being eroded by scientific discoveries that challenge the sacred aspects of humanity and the boundaries between machine and human, animal and human, nature and culture. Science is manipulating human life and envisaging the post or trans human being.¹³ In the case of warfare, military training is designed to dehumanise not only the enemy, but also the soldier. If to be human is to have emotions of empathy, compassion, fear and remorse the removal of these emotions by chemicals or biological engineering disturbs the psyche. We do not wish to essentialise the human, but point to the difficulties in human relationships that flow from an inability by a person to feel empathy and other emotions towards another human being. The enhanced soldier may lack the capacity for moral judgment that is the basis of ethical behaviour in a theatre of war. This may in practice make it difficult to obtain a conviction against a soldier for behaviour in a theatre of war.

Use of amphetamines in the military

The basis of Western law is the free-willed, rational individual. The legal responsibility is to act, or refrain from acting, as a reasonable person. This reasonable person may use certain mind-altering drugs, such as alcohol or prescription medicines, but within limits. If they harm another person they may be able, in narrow circumstances, to raise a defence of intoxication. However, the use of mind-altering drugs such as amphetamines in civilian life is considered to be a serious criminal offence.

Soldiers have used amphetamines at least since the Second World War.¹⁴ On the street, amphetamines are an illegal drug, otherwise known as speed, and side-effects include hallucinations and paranoid delusions. Amphetamines are considered to unravel a sense of self and they are known to affect an individual's relationship with other individuals and to society and the state. The use of amphetamines by the United States air force was banned in 1992. However, there is evidence that they have continued to be widely used. In 2002, four Canadian soldiers were killed in a friendly

fire incident in Afghanistan, and the American soldiers involved admitted that the error in judgment was at least partly due to amphetamine use. The soldiers revealed that they were given no choice but to take the drug. Part of their defence was that the drugs, supplied by the air force, had clouded their ability to reason.¹⁵

The United States air force has defended the use of amphetamines or 'go pills', as they prefer to call them, claiming that they are essential in combat situations to maintain alertness in soldiers. The air force also claims that the consent of soldiers is obtained before ingesting these mind-altering chemicals. However, the orders to take the drug are given by superiors, and a refusal to do so means that a pilot may be considered unfit to fly.¹⁶

This raises the issue of informed consent in the military context. Amphetamines can override rational decision-making, allowing aggressive and/or paranoid reactions to occur. Soldiers cannot be said to freely consent to the use of mind-altering chemicals that remove their ability to reason and to experience the emotions that form the basis of personal responsibility. The use of such chemicals interferes with their free will and moral judgment.

The anti-remorse pill

A drug does not as yet exist which can take away a human sense of guilt or remorse. Research, however, is being conducted in several universities for the purpose of inhibiting fear and this emotion has links to memory formation.

Researchers at the University of California have been able to inhibit fear and the memory formation associated with that fear in experiments with rats. Similar research is being conducted at New York University where scientists are attempting to short circuit fear. At Columbia University, researchers have isolated the gene behind a protein that inhibits fear. Drugs that may inhibit trauma are being trialled in car accident victims in a study based at Harvard University. As yet there have been no trials involving soldiers but the idea is being debated. Dr Gregory Quirk is one scientist who is concerned about the military applications of the brain altering techniques that he is researching at the University of Puerto Rico. His study involves experiments to help the brain to 'unlearn fear' through stimulation with magnets. Potentially then, it is possible to genetically or chemically engineer the brain to inhibit fear or a traumatic memory.¹⁷

12. See Reuters, 'Vietnam Disabled Take Case to the US', *The Australian* (Sydney) 26-27 February 2005. The article discusses 'a 1984 agreement by Dow and Monsanto to pay \$US180 million to US veterans, 'to compensate for illnesses arising from exposure to dioxin in Vietnam.

13. For a discussion of the transhumanist movement <www.transhumanism.org> at 23 March 2005.

14. The evidence we have of authorised amphetamine use by the military comes from the United States.

15. CBS News, 'No Trial for Friendly Fire Pilots', <<http://cbsnews.cbs.com/stories/2003/06/25/attack/main560422.shtml>>. Noting that the charges were dropped and the pilots faced only internal air force discipline. Also CBS News, 'Lawyer Blames Bombing Mistake on Pills' <<http://cbsnews.cbs.com/stories/2003/01/16/attack/main536802.shtml>> at 23 March 2005.

16. SBS Television, *The Cutting Edge: The Need for Speed*, 12 August 2003.

17. See Mohamed Milad and Gregory Quirk, 'Electrical Stimulation of Medial Prefrontal Cortex Reduces Conditioned Fear in a Temporally Specific Manner', (2004) 118(2) *Behavioural Neuroscience* 389-94; Mohammad R Milad and Gregory Quirk, 'Neurons in Medial Prefrontal Cortex Signal Memory for Fear Extinction', *Nature*, Vol 420, 7 November 2002, 70-74.

Scientists at a number of research institutions are developing techniques and chemicals to impact on the brain's ability to feel fear and to remember traumatic events.

These developments have been referred to generically as the 'anti-remorse pill', chemicals and bio-engineering designed to erase memory of traumatic events such as killing. The impetus for their production lies in the high physical and social costs resulting from post traumatic stress disorder suffered by war veterans and the burden this places on public health facilities and ultimately, the state.¹⁸ However, the use of drugs may erode a sense of personal responsibility and increase the likelihood of war crimes, such as the atrocities against civilians and soldiers that were committed in the Vietnam and the Gulf Wars.¹⁹

How would an 'anti-remorse' pill affect the free will of the soldier?

The proposed pill would allow the killings associated with war to occur without psychological trauma. Proponents of the anti-remorse pill argue that there is little difference between the psychological alterations to the human psyche that already occur through military training and the new chemical or other neurological alterations. However, we argue that anti-remorse pills are another step in the context of a long history of the desensitisation of the soldier and the dehumanisation of the enemy other.²⁰ This desensitisation is unacceptable within an international human rights framework.

Remorse is regarded as a marker of the psychologically healthy individual; the failure to experience this emotion is an indication of psychopathy. If an 'anti-remorse' drug is developed and administered, a soldier's sense of remorse could be chemically altered so that they could kill or rape civilians in the context of war without the guilt experienced by healthy individuals. This chemical enhancement of soldiers would not affect a state's liability at international law.

The development of such a drug may be contrary to criminal law prohibitions. We argue that in such a case the state party responsible for administering the mind-altering drugs to their soldiers would be regarded as liable for any breaches of international law causally linked to the effect of the drugs.²¹

Proponents have constructed access to the 'anti-remorse' pill as a right to health. The material alteration to the physical constitution of the brain in the deletion of a traumatic memory is characterised as a preservation of the subject's sanity. However, opponents of the drug see the material alteration to the human psyche in terms of ethics or morality.

We position ourselves with the latter perspective, arguing that the drug will erode the possibility of the ethical self,²² and further, that this erosion has implications for the subject's relationship to 'the other' and to their liability in criminal law.

The cyborgisation of the human

Donna Haraway celebrates the erosion of boundaries between machine and human, animal and human, nature and culture.²³ However, the erosion of the psychic boundaries of soldiers gives little cause for celebration. We characterise this bio-engineering as the cyborgisation of the human, weakening the boundaries between human and machine. There is a move, according to Natasha Mitchell, to create 'a chemically enhanced fighter who can go without sleep or even food for up to a week. They call it metabolic dominance.'²⁴

The context of 20th century warfare is characterised by a movement to 'dehumanise' the enemy. The enemy does not have a face. Military training tends to turn 'the other' into the non-human, and the self into the machine. In the sense that to be human is to have emotions of empathy, fear, compassion and remorse, both sides are dehumanised.

David Neil of the Centre for Human Bioethics at Monash University has commented:

the Department of Defence might be able to produce a soldier, who is able to operate in ways that soldiers previously haven't. What this shows is that ... the military is thinking more and more of the soldier, less as a human being who carries weapons in fights, but as a piece of equipment, the soldier is more of an it, in which the human characteristics of the soldier need to be suppressed when they don't make you a good fighting machine.²⁵

Humanist definitions of the self

Modernist philosophers include the ability to reason as a defining feature of our humanity, a characteristic that distinguishes us from animals. Humanist definitions of the self include psychological and social dimensions. The 'knowing and willing subject' is central to liberal humanist human rights discourses. As David Neil has argued, 'for a person to be a moral agent a minimal condition is that you have to be able to appreciate harm to others and you have to be affected by harm to others'.²⁶ Neil continues, 'It is in fact a pathology when someone fails [to appreciate the harm they are doing to others]'. When a perpetrator lacks remorse for their

18. Amanda Zivcic, 'The Ongoing Casualties of War,' *Green Left Weekly*, 23 April 2003.

19. Elizabeth Schulte, *United States: War Crimes Revealed: 'We Killed Anything that Walked'*, *Green Left Weekly*, 19 November 2003, 17 and Ramsey Clark et al, *War Crimes: A Report on United States War Crimes Against Iraq to the Commission of Enquiry for the International War Crimes Tribunal*, <<http://deoxy.org/wc/wc-toc.htm>> at 23 March 2005. Also see *Vietnam*, Vol 12, August 1999, 24 about the massacre of hundreds of unresisting civilians by US soldiers in the village of My Lai in Vietnam on 16 March 1968.

20. For a discussion of the subject's relationship to 'the other' see Emmanuel Levinas, *Ethics and Infinity*, 1985, 95. Levinas speaks of 'responsibility as the essential, primary and fundamental structure of subjectivity'.

21. For a discussion of research into the anti-remorse pill see Eric Baard, 'The Guilt-Free Soldier: Anti-Remorse Pill', *The Village Voice*, 22-28 January 2003 <www.villagevoice.com/news/0304baard,41331,1.html> at 23 March, 2005. Dr Gregory Quirk is a scientist concerned about the possible military applications of the brain altering techniques that he is researching at Ponce College at the University of Puerto Rico. His study involves experiments to help the brain to 'unlearn fear' through stimulation with magnets.

22. The principal writers we have drawn on in our conception of the ethical self and 'the other' are Jacques Derrida and Emmanuel Levinas.

23. Donna Haraway, 'A Manifesto for Cyborgs: Science, Technology, and Socialist Feminism in the 1980s' in Gil Kirkup et al (eds), *The Gendered Cyborg: A Reader* (2000) 50-7.

24. Natasha Mitchell, *Radio National*, above n 1.

25. *Ibid.*

26. *Ibid.*

27. The American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (4th ed, 1994) 645.

28. See eg, Helene Cixous and Catherine Clement, *The Newly Born Woman* (1986).

29. Joanna Bourke, *An Intimate History of Killing: Face to Face Killing in Twentieth Century Warfare* (1999) 72.

30. *Ibid* 83.

31. Barbara Ehrenreich, 'The Making of McVeigh', *The Progressive*, July 2001, 15.

32. David Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (1995).

33. H Victor Conde, *A Handbook of International Human Rights Terminology* (1999) 27-8.

34. George Annas, 'The Man on the Moon and Other Millennial Myths: The Prospects and Perils of Human Genetic Engineering', (2000) 49 *Emory LJ* 753.

35. *Ibid* 771.

actions this makes them subject to a harsher, criminal penalty.

The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* provides a definition of anti-social or dangerous severe personality disorder (previously known as psychopathy or sociopathy). The definition refers to the sufferers' disregard for and violation of the rights of others and a lack of remorse characterised by being indifferent to or rationalising having hurt or mistreated another.²⁷ Arguably then, the attempt to treat one war-related illness, that is post-traumatic stress disorder, by using the anti-remorse pill, may cause the symptoms of another illness: a dangerous, severe personality disorder.

A positivist ideology, underlying Western law, highlights rationality and morality as essential facets of our humanity, but not emotion. Emotion is associated with irrationality, and an inability to reason. The 'man of law' is a man of reason. Emotion has been connected to the female.²⁸ This split between the rational and the affective is accentuated in the military.

Military propaganda perpetuates the myth of the ideal male warrior. He kills in defence of his homeland, in a just war. He experiences neither fear nor remorse. In civilian life remorse is a healthy, integral aspect of morality. In a militaristic context, emotions of remorse are frequently characterised as abnormal, or even pathological. Although women are playing an increasing role in the military we assert that the dominant ideology is a masculine one.

Dehumanising the soldier

As Joanna Bourke points out, the chief function of military training is to convert civilians into effective combatants.²⁹ She writes that the 'dehumanizing and excessively brutal ways of training men for war' were feared by parents who were concerned that their sons 'both did their duty and returned to peaceful civilian lives afterwards as better citizens, not as professional fighters'.³⁰

Some commentators argue that it is precisely this contradiction between the roles of civilian and soldier which led to the terrorist activities of returned soldier Timothy McVeigh. Interpreting the actions of McVeigh, Barbara Ehrenreich argues that 'it was the government that turned him into a warrior, and, of course, the government he eventually decided he was at war with' and further 'when a government has no use for its

working class youth except as killers, killers is what it will get'.³¹

David Grossman, in his book *On Killing*, explores the idea that the human psyche is not naturally adapted to the stress of killing, or of coping with the traumatic effects that follow. Grossman bases his thesis on that fact that during Second World War in 1939-1945 only 15-25% of soldiers fired their rifles on order. In later wars, soldiers were subjected increasingly to Pavlovian training and operative conditioning to desensitise them to killing and to disconnect them from their sense of community and responsibility to other human beings. Such conditioning uses many of the techniques associated with torture. During the Korean War the number of combat infantry who fired on demand had risen to 50%, by the Vietnam War, this number had increased again to over 90%. Therefore, Grossman concludes that an essential or instinctual loathing of killing is an inherent part of our humanity.³² This essential reluctance to kill would be further eroded by the development of an anti-remorse pill.

Human rights laws

There are, to date, no specific international human rights instruments that would prohibit the development of an anti-remorse pill or other technologies to alter the materiality of soldier's minds or bodies so that they can kill without a sense of responsibility or without memory of their actions.

International humanitarian law, which we perceive as part of a broad human rights jurisprudence, is a relatively new and developing field of law. For example, the category of crimes against humanity has become more flexible since its inception so that there need not be a nexus between war and the crimes committed.³³ Scholars such as George Annas have argued that there needs to be strong international law to deal with such actions as altering the human genome without democratic consent.³⁴ As Annas writes: 'If we humans are to be the masters of our own destiny, and not simply products of our new technologies (a big 'if'), we will need to build international institutions at least as sturdy as the United Nations and the ... International Criminal Court to help channel and control our new-found powers and to protect basic human rights'.³⁵

A way forward?

It is very difficult to restrict scientific research conducted on behalf of the military. Ordinary citizens

Amphetamines are considered to unravel a sense of self and they are known to affect an individual's relationship with other individuals and to society and the state.

can find out little about such developments given the classification of much material that keeps it out of the public domain. The growth of a global citizenship through the Internet is, however, raising awareness. Groups may pressure their governments for an international response. The United Nations could develop a *Convention on the Rights of Soldiers* providing that they are to be free from chemical and physical alteration of their bodies designed to make them more 'machine like'. The Convention could also make state parties liable for crimes committed by their soldiers that are causally linked to the 'medical' treatments the soldiers have been subjected to. The Convention would not allow soldiers to give their 'informed consent' to nominated mind-altering drugs and procedures. It might be argued that international law already covers these matters. However, a specific convention would elevate the importance of these issues. Australia could also pass domestic laws to protect the human rights of soldiers.

Conclusion

The use of drugs in war raises ethical questions given their proven ability to alter behaviour and affect the ability to reason. The 'anti-remorse' pill calls into question liberal humanist, Judaeo-Christian and post-structuralist conceptions of humanity, ethics and human rights. If the law accepts the location of such psychic alteration in the discourses of health, then the healthy subject is one who cannot always remember their agency, or exercise their free will. This has serious implications for the prosecution of war crimes.

Memory is central to the psychic recovery of the many perpetrators and victims of war and other atrocities against humanity. Examples of movements for justice for which memory and remorse are central are Australia's 'stolen generation', South Africa's Truth and Reconciliation Commission, and the trial of Nazi war criminals for their actions in the Holocaust. Drugs that have the potential to inhibit human memory formation or to alter moral reasoning have enormous implications for the future of human rights jurisprudence with its growing emphasis on reconciliation.

The spectre of the post or trans human soldier is one that raises serious questions for those committed to human rights in war and human rights generally. Warrior soldiers in their exoskeletons,³⁶ popping amphetamines and 'anti remorse' pills, may react inappropriately in war, engaging in paranoid 'friendly fire' or crimes against humanity. They may be incapable

of the memory required for the prosecution of war crimes or for post-war reconciliation.

Grossman writes: 'every society has a blind spot ... A century ago it was sex ... Today that blind spot is killing.'³⁷ However, our eyes are opening to the ethico-legal aspects of war. We can, through our knowledge, commitment and resistance begin a process to strengthen human rights in this area. We can develop international conventions and domestic laws designed to limit the 'enhancement' of the soldier.

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36. Homayoon Kazerooni 'anticipates that exoskeletons of the future will be "invasive" not just worn, but partially implanted within a person's musculature and nervous system'. Peter Weiss, *Science News*, 30 June 2001, 408.

37. Grossman, above n 32, xvi.

MENTIONS

ENVIRONMENTAL DEFENDER'S OFFICE ANNUAL CONFERENCE 2005

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