

How the Nuremberg tribunal would judge the euthanasia movement today

by Edward Spannaus

While the Nuremberg war trials, held in 1946, were devised specifically to judge war criminals from the Nazi period, these trials established principles which are binding upon the United States under natural law and international law today. These govern chiefly the crimes of genocide and of euthanasia, for which Nazi doctors such as euthanasia administrator Dr. Karl Brandt were tried, convicted, and hung at Nuremberg.

The Nazi Doctor trials were conducted by a U.S. Military Tribunal pursuant to Control Council Law No. 10. This tribunal was created after the four-power International Military Tribunal (IMT) held its trials of major war criminals. The Charter of the IMT gave the tribunals jurisdiction over the crime of euthanasia and other crimes against humanity committed in execution of, or in connection with, the war. This narrow definition excluded acts committed against German citizens prior to 1939. But the Charter did include crimes committed by Germans against German civilians—a category of crimes that went beyond the customary definition of a war crime as a crime committed against prisoners of war, or against the population of an enemy country.

The indictment against Dr. Karl Brandt et al. classified euthanasia as a war crime and a crime against humanity:

Defendants Karl Brandt, Blome, Brack, and Hoven unlawfully, willfully, and knowingly committed crimes against humanity, as defined by Article II of Control Council Law No. 10 in that they were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the execution of the so-called “euthanasia” program of the German Reich, in the course of which the defendants herein murdered hundreds of thousands of human beings, including German civilians, as well as civilians of other nations.

This program involved the systematic and secret execution of the aged, insane, incurably ill, of deformed children, and other persons, by gas, lethal injections, and diverse other means in nursing homes,

hospitals, and asylums. Such persons were regarded as “useless eaters” and a burden to the German war machine.

Infanticide

The crime of euthanasia as defined by the Nuremberg trials is being committed again today, including against deformed or defective newborn infants. Nuremberg witness Gerhard Schmidt, director of the Haar-Egling Insane Asylum, testified thus:

The names of newly born children who were deformed or partly paralyzed, or mentally deficient, were submitted to the health authorities and finally to a Reich agency in Berlin. . . . A short time after the reports were filed, the Country Health Authorities of the respective districts received an order that these children should be sent to a special institution for special modern therapy. I know from hundreds of cases, that this “special modern therapy” was nothing less than the killing of these children.

Another method of killing so-called “useless eaters” was to starve them. . . . This method was apparently considered very good, because the victims would appear to have died a “natural death.” This was a way of camouflaging the killing procedure.

U.S. Brigadier General Telford Taylor, Chief of Counsel for War Crimes for the United States, estimated that 275,000 German nationals were killed in the Nazi euthanasia program, along with hundreds of thousands of foreign nationals. The Tribunal established the following binding principles of judgment:

- 1) Euthanasia was defined as a crime against humanity;
- 2) This determination was not restricted to euthanasia committed against foreign and conquered peoples by the Nazis, but included euthanasia committed by Germans against other Germans. Article II of Control Council Law No. 10 defined Crimes Against Humanity as:

Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial, or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

3) The intent of the person or persons charged with euthanasia was not at issue:

We have no doubt that Karl Brandt—as he himself testified—is a sincere believer in the administration of euthanasia to persons hopelessly ill, whose lives are burdensome to themselves and an expense to the state or to their families. The abstract proposition of whether or not euthanasia is justified in certain cases of the class referred to is no concern of this Tribunal. . . . The Family of Nations is not obligated to give recognition to such legislation when it manifestly gives legality to plain murder and torture of defenseless and powerless human beings.”

—Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, Vol. XI, p. 235.

The narrow interpretation of the Nuremberg International Military Tribunal Charter—that it applied only to crimes committed during the war—led to the development of a resolution presented at the United Nations in 1946. That resolution affirmed the Nuremberg principles and defined the crime of genocide. Both aspects of the resolution were strongly supported by the United States.

Resolution 95 (1), “Affirmation of the Principles of International Law recognized by the Charter of the Nuremberg Tribunal” (adopted Dec. 11, 1946), affirmed those principles and called for their codification into international law.

Resolution 96 (1), “The Crimes of Genocide,” called upon member states to enact legislation for the prevention and punishment of genocide, and authorized the Economic and Social Council to draft a Convention on Genocide.

“The International Convention on the Prevention and Punishment of the Crime of Genocide” was drafted and adopted unanimously by the U.N. General Assembly on Dec. 9, 1948. The appropriate body for supervising this convention today is the U.N. Commission on Human Rights, located in Geneva.

The United States voted for the convention, and signed it with reservations on Dec. 11, 1948. It was submitted to Congress by President Truman in 1949 for ratification by the Senate, but it was never ratified.

The U.S. reservation was that a state could not be held liable for injuries to its own citizens. In the Senate debate on ratification, the Convention was opposed for nationalist and isolationist reasons, with the argument that the convention

would give an international body jurisdiction over acts that are the province of a sovereign state. Not being a signatory to the Genocide Convention, the United States could argue that it is not legally bound by it.

The jurisdiction of natural law

Nevertheless, the United States is bound morally, and by precedent, to adhere to the Nuremberg Principles on the following grounds:

1) The United States is morally bound by the Nuremberg precedent. Not only was the United States a party to the Charter which created the International Military Tribunal, and which defined crimes against humanity, but the “Nazi Doctor” trial was conducted exclusively by the United States. As the country which defined the principle, the United States has no right to exempt itself from it.

2) The chief prosecutor for the United States, Telford Taylor, argued in his closing statement that the military tribunal’s substantive provisions “derive from and embody the law of nations.” Therefore the United States is bound to follow the argument of this nation’s preeminent Chief Justice John Marshall (1755-1835). Marshall and subsequent Supreme Court justices have held that the law of nations is incorporated into the U.S. Constitution.

3) The United States voted for the United Nations resolution affirming the Nuremberg principles and declaring genocide to be a crime.

On these grounds the United States is not only subject to the standards of the genocide convention as a nation, but the U.S. attorney general is bound to uphold the Nuremberg principles in their application against individuals within the United States. As a constitutional republic bound by natural law, we are duty-bound to regard the Nuremberg principles as incorporated into the criminal law of the United States.

We reproduce here the entire text of the Genocide Convention.

The Genocide Convention

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its Resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international cooperation is required,

Hereby agree as hereinafter provided:

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under

international law which they undertake to prevent and to punish.

Article II

In the present convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals.

Article V

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provision of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III.

Article VI

Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII

Genocide and other acts enumerated in Article II shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Cost benefits of medical technology

by Ned Rosinsky, M.D.

Contrary to the claims of the advocates of euthanasia, advanced medical technology *cheapens* health care costs. A case in point is the Computerized Tomography (CT) scanner, a machine which costs on the order of \$1 million, but which can pay for itself within one year in a busy hospital.

The efficiency of CT was recently evaluated in a five-year study conducted at the Massachusetts General Hospital and published in the November 1983 issue of the *American Journal of Roentgenology*. The study showed that in a group of 2,619 randomly chosen patients, body CT scans resulted in enormous savings through avoidance of unnecessary surgery and of dangerous diagnostic procedures such as arteriography, as well as through improved accuracy of diagnosis. In those 385 patients for whom CT was judged to be either equally effective as other lab tests or more so, 244 patients were headed for surgery before CT; however, after CT, only 81 of them were still considered in need of surgery.

We can calculate a rough estimate of the savings that CT allows. The average cost of the type of abdominal surgery procedures which form the majority of the cases in the study would be \$3,000 to \$5,000. Since the cost of the CT procedure is \$300 to \$400, and since in this study 14% of patients avoided unnecessary surgery, the savings more than made up for the cost of the CT process! Add to this the saving to patients of the trauma of surgery with all its attendant risks.

In the case of CT head scanning, typically a patient with head trauma and a decreasing state of consciousness is suspected of having dangerous bleeding in the head. Before CT, the physician's only choice was to operate and check for blood. Yet a large percentage of such patients turn out to have no bleeding, and the procedure thus produces no benefit, only subjecting the patient to an unnecessary and expensive craniotomy operation.

Only if one looks toward eliminating modern medical treatment for the bulk of the population does it make sense to scrap the CT. That is what the euthanasia advocates intend to do.