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Doctors and War Crimes: Understanding Genocide

Jonathan Tiefenbrun*

Recent atrocities reported around the world remind us that the Nazi trials resulting from World War II have not served to diminish certain modern day crimes. Examples of crimes against peace, war crimes, and crimes against humanity, as defined by the International Military Tribunal at Nuremberg,1 include patient abandonment, medical cruelty, and the sale of organs for transplantation as reported occurring in the current Bosnian crisis.2 However, the extent of the systematic schema for medical war crimes committed during World War II has not been found in recent times.

War itself, whether civil or international, invokes a temporary suspension of the traditional moral codes of society,3 in particular “Thou shalt not kill” and “Thou shalt not covet thy neighbor’s property.”4 War crimes, genocide, and crimes against humanity constitute a further suspension of morality in an amoral and chaotic time. The psychological mechanisms and motivations of individuals perpetrating these egregious crimes must continue to be explored if we are to seriously hope to establish a deterrence.5

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2. Shekar Bhatia, They’re All Guilty of Systematic Brutality, EVENING STANDARD (London), Aug. 13, 1992, at 5. “Prisoners in a Bosnian horror camp routinely had their throats slit, a guard fed brains to his dogs, and doctors took organs away in a refrigerated truck.”


4. TEN COMMANDMENTS.

Several recent scholars\textsuperscript{6} have focused attention on the socio-
logical and group responsibility for the Nazi Holocaust, rather than
on individual criminal responsibility, which was the source of much
controversy at Nuremberg.\textsuperscript{7} Individual criminal responsibility sub-
sequently became part of the Statute of the International Tribunal
for Crimes in the Former Yugoslavia.\textsuperscript{8} Although the Nuremberg
trials were conducted according to association (i.e. political, mili-
tary, judicial), at the famous Doctors' Trial, the actual emphasis was
on individual criminal responsibility.\textsuperscript{9}

Such intellectuals as Goldhagen, Annas, Grodin, Burleigh, and
Lifton\textsuperscript{10} have examined the motivations underlying the authoriza-
tion and sanctioning of the temporary suspension of traditional
morality by professional, intellectual and governmental groups
which ordinarily provide leadership within the society.\textsuperscript{11} Religious
principles, traditional and family values, the rule of law and peer
behavior are among the strongest influences of individual human
behavior within society. Groups, such as doctors, clergymen, law-
yers, and teachers normally adhere to certain transitional and his-
torical codes, traditions and moral principles which transcend the
influences of the present moment.\textsuperscript{12} The behavior and leadership
of these groups, which act as role models, can modify the subtle
pressures placed on individuals who may be tempted to suspend
their moral principles in times of intense social unrest.\textsuperscript{13} Therefore,
these groups, and especially their leaders who committed war

\textsuperscript{6} DANIEL JONAH GOLDHAGEN, HITLER’S WILLING EXECUTIONERS: ORDINARY
GERMANS AND THE HOLOCAUST 416 (1996); MICHAEL BURLEIGH, DEATH AND
DELIVERANCE; ‘EUTHANASIA’ IN GERMANY 1900-1945 97-98 (1994); ROBERT JAY LIFTON,

\textsuperscript{7} THE NUREMBERG TRIAL AND INTERNATIONAL LAW 99-121 (George Ginsburgs &
V.N. Kudriartseu eds. 1990).

\textsuperscript{8} U.N. SCOR, 32 ILM 1159, art.7 (1993)[hereinafter The Statute].

\textsuperscript{9} The Brutalities of Nazi Physicians, 276 JAMA 1692 (1996). The medical profession in
accordance with its traditions would support any medical officer who would refuse to obey an
order which would violate the sanctity of any human being.

\textsuperscript{10} Supra note 6.

\textsuperscript{11} Eleanor W. Myers, “Simple Truths” About Moral Education, 45 AM. U. L. REV. 823,
831 (1996).

profession has been one of the basic institutions of our society grounded on principle and
providing a moral sense to a civilized society.”

\textsuperscript{13} MICHAEL BURLEIGH, supra note 6, at 5.
crimes, and in particular medical war crimes, should be scrutinized and held publicly accountable.\textsuperscript{14}

Although patient abandonment, medical cruelty, withholding of medical care in cases of rape and the sale of organs for transplantation have been reported in Serbia and Montenegro,\textsuperscript{15} I have not seen specific allegations of medical war crimes\textsuperscript{16} to equal the extensive and systematic selection of victims by Nazi doctors who committed deliberate torture and conducted brutal non-consensual experimentation in the concentration camps during World War II.\textsuperscript{17} There have been many reports concerning doctors with courage and political courage, under fire, in Sarajevo and elsewhere.

It is noteworthy, however, that Biljana Plavsic, among the political leaders of the Bosnian Serbs, and the successor of Radovan Karadzic,\textsuperscript{18} is herself a professor of biology at the University of Sarajevo, and has stated that the Muslims go against the biologic substance of the Serbs. She stated that ethnic cleansing is a natural phenomenon, not a war crime.

Still the question remains. Why have we not seen any protest against "ethnic cleansing"\textsuperscript{19} from the medical establishment in the Balkans? Persecution on racial and religious grounds is a crime against humanity as defined by the Statute of the International Tribunal for Crimes in the Former Yugoslavia.\textsuperscript{20} Ethnic cleansing, a form of hypnotic group consciousness, is racism which closely evokes the images and degrading philosophy of Social Darwinism underlying the Nazi genocide. These atrocities committed in the

\textsuperscript{14} Michael P. Scharf, Swapping Amnesty For Peace: Was There A Duty To Prosecute International Crimes In Haiti?, 31 Tex. Int'l L.J. 1, 34 (1996).

\textsuperscript{15} SPOTLIGHT ON: HUMAN RIGHTS IN SERBIA AND MONTENEGRO 141 (Natasa Kandic ed. 1996).

\textsuperscript{16} U.N. SCOR, 32 ILM 1159, art. 2 (1993). Medical war crimes is defined to include torture or inhumane treatments or experiments willfully causing great suffering or serious injury to the body or health.

\textsuperscript{17} Jeremiah A. Barondess, MD, Medicine Against Society, Lessons From The Third Reich, 276 JAMA 1657, 1660 (1996).


\textsuperscript{19} Id. at 1428. Defines ethnic cleansing to mean "rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area."

\textsuperscript{20} U.N. SCOR, 32 ILM 1159, art. 5 (1993).
name of racial and ethnic purification demand an outcry\textsuperscript{21} from responsible professional organizations within the Balkan societies.

It is in this context that I shall try to examine the physician's role in the Nazi Holocaust in order to determine how and why educated, cultured members of a highly principled profession, steeped in the tradition of Hippocrates, could participate in genocide, torture, murder, and non-consensual experimentation on human subjects.\textsuperscript{22}

It was, perhaps, the widespread belief in eugenics and an adherence to the doctrine of Social Darwinism, sponsored by the medical community in pre-Nazi Weimar Germany, that fostered their temporary suspension of morality and the commission of mass murder.\textsuperscript{23} The essence of murder, and the appropriate (if any) deliberate extinction of life, still haunts contemporary society and impacts on the legal issues of abortion, sterilization, birth control, physician-assisted suicide, execution by lethal injection, human medical experimentation, genetic engineering and animal rights.

According to traditional Hippocratic and Christian ethics, man has the right to a "gentle" death, and physicians have the right to alleviate the suffering of the dying.\textsuperscript{24} However, "\textit{mortem accelerate medico non licet}," death should not be accelerated.\textsuperscript{25} In support of this principle, the distinguished Berlin physician philosopher and humanist, Christoph Wilhelm Hufeland, wrote:

\begin{quote}
[The doctor] should and must do nothing other than maintaining life; it is not up to him whether that life is happy or unhappy, worthwhile or not, and should he incorporate these perspectives in his trade the consequences would be unforeseeable, and the
\end{quote}

\textsuperscript{21} Michele Brandt, \textit{supra} note 18, at 1421. The Alien Tort Statute is one way to ensure that those responsible for these atrocities are held accountable.

\textsuperscript{22} Matthew Lippman, \textit{The Nazi Doctors Trial and the International Prohibition on Medical Involvement In Torture}, 15 \textit{Loy. L.A. Int'l & Comp. L.J.} 395, 420 (1993). Those physicians who worked in concentration camps justified their actions by claiming that they were involved in the restoration of health rather than the destruction of humans. In addition, their involvement in experimentation, torture, and genocide was essential for the preservation of medicine.


\textsuperscript{24} BURLEIGH, \textit{supra} note 6, at 12. Until the 19th century, the word "euthanasia" retained the meaning of gentle death. After, it was modified by doctors to mean 'the exclusive right to alleviate one's suffering.'

\textsuperscript{25} \textit{Id.} at 12.
医生可能会成为最危险的人；如果这条线被越过了，医生认为他有权决定生命是否必要，那么这只需要一个逻辑的推论，让他在其他情况下应用“值得”和“不值得”的标准。

很讽刺的一点是，胡夫兰德的人文作品的引言是由乔阿希姆·马鲁格斯基写的，就是那个被纽伦堡处决的SS医生，他负责在集中营维持和分发 Zyklon B 气体进行“医学安乐死”。

在19世纪90年代，阿道夫·约斯特大大修改了关于安乐死的共识，包括死亡权和“负面人类价值”的概念。26 独立经济学家和达尔文主义者，恩斯特·海克尔指出，仁慈杀戮可以引导自然选择的过程，“节省大量的公共和私人资金。”27 此外，法官阿尔弗雷德·布齐指出，安乐死的概念可以扩展到包括那些无法表达自己意愿的人，或者那些对自己的社区毫无益处的人。28

在1920年，卡尔·宾宁，海德堡、弗赖堡、斯特拉斯堡和莱比锡大学的教授，与阿尔弗雷德·霍赫的教授精神病学的大学教授，出版了一本书叫做《生命不值得生命的许可》。29 在这本书中，他们主张支持临终、不可治愈的精神病和昏迷病人的生命。30 他们倡导建立一个司法法庭，最终成为第三帝国的两百二十二个遗传健康法庭。在1928年，德国精神卫生学会，致力于社会达尔文主义下的遗传纯洁，开始出版他们的活动作为最权威补充的补充。

注释
26. Id.
27. Lifton, supra note 6, at 32.
28. Burleigh, supra note 6, at 12. 这个概念不仅包括临终者的生命痛苦，而且包括亲属或社会的负担。
29. Id. at 13.
30. Id. at 14. 他基本上扩展了安乐死的范围，包括那些不可治愈的精神病患者。
31. Id. at 15.
32. Id. at 17, 18.
psychiatric journal Allgemeine Zeitschrift fur Psychiatrie. Thus, the destruction of human life for medical purposes (in the name of racial purity or eugenics) came into the mainstream of medical thinking in the first third of the twentieth century in Germany.

The German Racial Hygienicists drew on the experience of the Americans who engaged in the sterilization of mental defectives, a procedure which became law in twenty-three states of the United States. For example, in the 1920's Hans Boeters, district medical officer in Zwickau, Germany, proposed the adoption of the 'Lex Zwikau,' a law which would sanction compulsory sterilization of idiots, the feebleminded, the blind, the deaf and dumb, and illegitimate mothers of "low eugenic value." Moreover, Robert Gaupp, from Tubingen, declared that it was time to remove "the burden of the parasites," by adding sex offenders and alcoholics to the list of victims for non-consensual sterilization.

Prominent among the physicians who cautioned against compulsory sterilization was Oswald Bumke. Most of the opposition to these statutes came from certain organized medical societies concerned more about which groups of patients should or should not be included in the forced sterilization program rather than core opposition to the concept of medical selection itself.

On July 14, 1933 the "sterilization law" was passed for the prevention of genetically-diseased offspring. It allowed for the forcible sterilization of anyone suffering from genetically-determined illnesses including feeblemindedness, schizophrenia, manic depression, epilepsy, Huntington's chorea, genetic blindness, deafness, and severe physical malformation. Institutions were established to

33. Id. at 29.
34. ANNAS & GRODIN, supra note 23, at 21.
35. Richard A. Estacio, Sterilization of the Mentally Disabled In Pennsylvania: Three Generations Without Legislative Guidance Are Enough, 92 DICK. L. REV. 409, 413 (1988). Pennsylvania was the first state to pass an eugenic sterilization rule paving the way for twenty-two other states to follow suit. Currently, only thirteen states hold sterilization laws. Those states which felt the need to retain sterilization statutes seek different grounds upon which to base the laws. E.g. punitive and therapeutic rationales.
36. BURLEIGH, supra note 6, at 36.
37. Id. at 37.
38. Id. at 40. Kraepelin's successor as Professor of Medicine at Munich. Bumke ultimately became an ardent supporter of National Socialist eugenic legislation.
39. Id. at 55. The law was called the "Nationalist Socialists' Law for the Prevention of Hereditarily Diseased Progeny." These categories were determined at meetings which
ultimately train Nazi SS physicians and set up genetic registries for Jews and gypsies who were condemned to sterilization.\(^{40}\)

In 1939, a special registry for twins was established, whereby all twins born in the Third Reich were registered for the purpose of genetic research.\(^{41}\) The largest research institute in Frankfurt was under the direction of Dr. Otmar von Vershauer\(^{42}\) and had sixty-seven rooms; the purpose of which was genetic research. The infamous Nazi Dr. Josef Mengele did research on cleft palate genetics under Vershauer. Later, at Auschwitz, Mengele would conduct brutal experiments on twins found in the camps.\(^{43}\)

In a continued attempt to establish the purity of the Aryan race, Otto Reche established the German Society for Blood Group Research.\(^{44}\) He was determined to find a reliable means to distinguish the Aryans from the Jews.\(^{45}\)

In 1935 the “Nuremberg Laws” excluding Jews from citizenship and preventing marriage and sexual relations between Jews and non-Jews were signed.\(^{46}\) Further, marital health laws were established which required couples to submit to a medical examination before marriage in order to determine if “racial pollution” was likely to occur by this marital union.\(^{47}\)

Doctors in Germany were clearly caught up in the swelling tide of racial purity proclaimed by Hitler. For example, after being petitioned by the parents of a deformed baby in 1938, Hitler dispatched his personal physician and confidant, Dr. Karl Brandt, to investigate the case.\(^{48}\) Dr. Brandt, who was ultimately found guilty and hanged at Nuremberg for having organized the childrens' euthana-

_40. _ANNAS & GRODIN, _supra_ note 23, at 20. Racial hygiene became the primary goal of the prestigious and venerable Kaiser Wilhelm Gesellschaft, including the establishment of an Institute of Anthropology in Berlin under the direction of Dr. Eugene Fischer, and an Institute for Genealogy in Munich, under the direction of the psychiatrist Ernst Rudin.

_41._ Id. at 20.

_42._ Id.

_43._ Id. at 55. Mengele had two types of research programs: one set of experiments dealt with genetics and the other with germ warfare.

_44._ Id. at 20.

_45._ Id.

_46._ Id. at 23.

_47._ Id.

sia program, was “ordered to talk with the physicians...and to inform the physicians in his name (Hitler) that they should carry out the euthanasia.”49 In October 1939, certain doctors were commissioned by Hitler to grant “mercy death” to patients judged “incurably sick by medical examination.”50 By August 1941, 70,000 patients from mental hospitals had been killed by doctors believing in racial purity and mercy deaths.51 Termination of life without consent of the patient or parent was the new standard.

It is patently clear that the subsequent murder, torture, and sadistic experimentation which was practiced in the concentration camps had its origin, by direct intellectual extension, in the prevailing accepted standard of medical and ethical conduct in the German community of the 1930’s and 1940’s.52 And yet, it was possible for members of a group in Germany to protest or resist orders which they deemed unethical. Goldhagen recounts one such example of civil disobedience by an officer of the infamous Police Battalion whose job it was to round up and kill Jews:

Captain Wolfgang Hoffmann was a zealous executioner of Jews. As the commander of one of the three companies of Police Battalion 101, he and his fellow officers led their men... in the deportation and gruesome slaughter in Poland of tens of thousands of Jewish men, women and children. Yet this same man, in the midst of his genocidal activities, once stridently disobeyed a superior order that he deemed morally objectionable. The order commanded that members of his company sign a declaration... not to steal, not to plunder, and not to buy without paying. . . . He states how unnecessary such a demand was, since his men, of proper ideological conviction, were fully aware that such activities were punishable offenses. He wrote that his men’s adherence to German norms of morality and conduct derives from their own free will and is not caused by a craving for advantages or fear of punishment. ‘As an officer I regret, however, that I must set my view against that of the battalion commander and am not able to carry out the order, since I feel injured in my sense of honor. I must decline to sign a general declaration’.53

49. Id. at 53.
50. ANNAS, supra note 23, at 23.
51. Id. at 23.
52. Id. at 19.
53. GOLDHAGEN, supra note 6, at 3.
The ability of an individual doctor or soldier to claim a deep sense of morality and retain self esteem while committing gross atrocities is a common theme elucidated by Lifton in his monumental psychological study of genocide. Lifton argues that the physician, accustomed to pain, inflicting pain, and overexposure to the suffering of those ravaged with disease, is better equipped psychologically to deny the very existence of a Holocaust and to justify his participatory role in the genocide as an act of duty, a by-product of everyday work.

It is in this context that I decided to take a closer look at Dr. Eduard Wirths, Chief Medical Officer at Auschwitz. Dr. Wirths was a respected physician, scientist, and family man. He was generally described as a decent, compassionate individual, conqueror of a Typhus epidemic, supporter of the establishment of prisoner-doctors who were different from the Nazi doctors and who the prisoners regularly chose to see if and when they were sick. However, Dr. Wirths was the organizer of the physician-generated death camp selection process which resulted in the systematic murder of four million souls. Under Dr. Wirths’ direction, physicians supervised the entire killing process, from the selection of victims and slave laborers, to the separation of families, the escorting of the victims to the killing gas chambers, the determination of the dosage and the duration of the lethal gas, and the ultimate disposition of the corpses.

The duality of Dr. Wirths’ personality is made apparent when one examines the documents left in his legacy; letters he wrote to his family, recollections by his wife and children speaking of him as a kind husband and father, recollections of his loving brother, Helmut, a pathologist, and recipient of experimental organs from the bodies of non-consensual patients imprisoned in the camps, and recollections of one of the concentration camp prisoners, Wirth’s secretary and confidant, Hermann Langbein, who actually loved

54. Lifton, supra note 6, at 418. It is a process called “doubling.” It is the division of the self into two functioning wholes, so that a part-self acts as an entire self.

55. Id. at 421. Doubling actually allowed the Nazi doctors to avoid feeling guilty by a transferring of the conscience. This entailed transferring the Auschwitz self with one’s own criteria for good, thereby freeing the original self from responsibility.

56. Id. at 385. This man is a prime example of a “good man” becoming a leading figure in a project of unprecedented evil.

57. Id. at 384.
Wirths and called him his "fairy tale prince." Similar praise of Wirths is contained in the recollections of other prisoner doctors, patients, and subjects of his medical experiments. In the end, Dr. Wirths' final act of conscience occurred when he committed suicide. In his letters, Wirths states that there is "much work to be done, much German spirit, energy, and German work not easy, but it must be done for our children." He longs for his wife's visit but notes difficulties arranging the proper premises for her and the children. Langbein describes him as "a competent physician with a strongly developed sense of duty, extremely conscientious and careful." He "conveyed an aura of moral scrupulousness. . . . He alone among Auschwitz doctors kept himself on wartime food rations. He consistently took stands (against superiors), against brutality and random abuse of prisoners. . . ." Wirths was anxious to leave the death camp but was encouraged to continue his work as director by the prisoners who believed that Wirths would be able to save. Underlying prisoner support for Wirths is the fact that Wirths supported the existence of prisoner doctors. The Christmas card sent to Wirths by camp prisoners in 1943 read: "In the past year you have saved 93,000 people. . . . We wish for ourselves that you stay for the coming year."

The portrait of Wirths epitomizes the "healing - killing" conflict, a term coined by Lifton to describe the psychological state of sustaining two conflicting codes of morality known as "doubling." As a committed Nazi and anti-Semite, Wirths became a willing implementer of a "cosmic scheme for the racial cure" of the German race. He entered the SS subculture of Auschwitz, the "ultimate atrocity-producing situation. . . .that was so structured organizationally that virtually everyone entering. . . .committed

58. Id. at 412. Wirths was extreme in his involvement in both the healing and killing functions.
59. Id. at 414. The principle he was expressing was that "he who becomes involved in mass killing must pay with his life" as well.
60. Id. at 396.
61. Id. at 386.
62. Id. at 387.
63. Id. at 388.
64. Id. at 389.
65. Id. at 403.
atrocities." His effectiveness as a killer was aided by his conscientiousness and sense of duty and loyalty to his country. He maintained relations with family, friends and co-workers in a manner separate from work. While Eduard Wirths was perhaps more humane than Joseph Mengele, who enjoyed his work, and Carl Clauberg, who turned the notorious infirmary "Block 10" into a torture chamber for gynecologic research, or Horst Schumann’s callous castration of victims by radiation burning, Wirths, nevertheless, turned Auschwitz into an efficient factory for medicalized killing.

On a personal note, as I was preparing this paper, a friend and well-known Polish musician and survivor of five years in Auschwitz, a man who rarely talks about his concentration camp experience, took me aside, and in the manner of the "ancient mariner" told me his story of survival. "I knew Mengele!" he said. "One day I was working in the yard and developed a rash on my hand. Mengele saw it and ordered me to go to Block 10 for treatment in the infirmary. We all knew that no one ever left Block 10 alive, and I tried to find a way out. Just then, by chance, they needed some help disposing of corpses, and I volunteered. I found a gold chain on one of the victims and bribed the guard with it so he would send me back to the main camp. And so I survived. At Auschwitz, Nazi doctors were agents of death."

In the recent past I have avoided programs, books and events retelling yet another horror story of the Holocaust. Nevertheless, we must listen! Genocide, crimes against humanity, and war crimes are with us today as they were in the past despite our sophistication, education, and mass communications.

As the witnesses of the Nazi genocide disappear, each of us as professionals and members of influential groups must be diligent to decipher immoral or amoral sentiments and ideas that are couched in labels like "ethnic cleansing." These euphemisms for sanctioned killings have the potential of becoming the guiding principle for authorized mass destruction. While we have not recently seen the large scale perversion of the medical profession, which occurred during World War II, the potential for abuse still exists. While the zeal for mass scientific experimentation without consent has waned,

66. Id. at 402.
67. Id. at 388.
68. Id. at 393.
perhaps due to the stringent codes established at Nuremberg, new crimes, such as illegal farming for organs of transplantation, may appear, and these must be written into the codes of conduct.

While the Nuremberg and the Tokyo trials, which established *ad hoc* international criminal tribunals, may have had a deterrent effect on medical crime, it is hoped that both the International Tribunal for Crimes Against the Former Yugoslavia and the Rwanda International Criminal Tribunal will continue to provide a further deterrent to these inhumane acts, which demand an outcry from the medical community at large.