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# Reflections on the 50th Anniversary of the Nuremberg Doctor's Trials

by

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The 50th Anniversary of the Nuremberg Doctor's trial is an occasion for reflecting on the true meaning of the verdicts in the trial and for deciding whether the outcome has had a lasting impact on medical ethics and human rights. One of the dangers in considering the historical significance of these trials is that we will consider the actions of the Nazi doctors to have been an isolated aberration, derivative of the excesses of the Third Reich. If we are secure in our opinion that such medical atrocities are impossible in well-ordered societies, governed by the rule of law, we will have missed an important lesson.

What happened in the Nazi euthanasia and sterilization programs was not against the law in Germany. The Nuremberg tribunal was an *international* Court convened by the victorious nations after the war. Had there been another outcome, the Germans as a victorious nation would surely not have accused themselves of crimes against humanity. When the Allied armies liberated the Nazi death camps, the processes of justice and accountability were placed in motion to their inevitable outcome in Nuremberg. When genocide was committed by the Turks against the Armenians, by the Russians against the Ukrainian Kulaks, or by the Nigerians against the Ibos, the only trials were belated complaints in the courts of public opinion. It becomes increasingly obvious that the perpetrators of Serbian ethnic cleansing will suffer only the wrist-slaps allowed by political expediency.

The sterilization programs and the euthanasia programs were separate from the Holocaust. When the German sterilization programs were publicized before World War II, they were praised, not condemned by Social Darwinists in the United States.<sup>1</sup> The origin of the euthanasia movement was the official approval given by Dr. Karl Brandt, Hitler's personal emissary, for the killing of the

multiply handicapped Baby Knauer. The lesson of Baby Knauer was obviously lost on the attending physicians of Baby Doe in Indiana.<sup>2</sup> When Dr. Andrew Ivy, as an expert witness for the prosecution at the Nuremberg trials solicited the AMA for its position paper on protection of human subjects, he was dismayed to find that there was no such document and that it would be necessary to improvise a post-facto statement for use in the trials.<sup>3</sup> Now we have the Nuremberg code and the more explicit Declaration of Helsinki, but we continue to have exposures of activities which contravene the principles of one or both sets of rules. The Willowbrook experiments,<sup>4</sup> the Tuskegee experiment,<sup>5</sup> the sterilization of the Reif sisters in Alabama,<sup>6</sup> the decapitation of liveborn infants by American researchers in Finland<sup>7</sup> and a long list of questionable military personnel experiments<sup>8</sup> have been exposed.

In most of these experiments there has been a preliminary process of what Ericson has called "pseudospeciation" in which other human beings have been redefined as belonging to another species. The "Untermenschen" of the Dachau experiments are joined by the retarded children of Willowbrook, the syphilitic black men at Tuskegee, the allegedly promiscuous welfare recipients in Alabama, aborted children in Finland and the disadvantaged military enlisted: all to be defined out of existence as protected experimental subjects. Although the euthanasia programs and the genocidal holocaust were separate, they were not unrelated. Direct medical killing is a prefiguring or rehearsal for killing on a larger scale. The reciprocal seems also to be true. Life cheapened by the mass killings of the death camps was easily nominated for the research of Dr. Mengele because the research subject would "die anyway". Millions of abortions have the cumulative effect of conditioning the scientific community to justify highly questionable fetal experimentation.

Two fundamental philosophic positions come in to play when the issues of protection of human subjects, including preborn children, are debated. One position would assert a transcendental view of human life at all stages of life's continuum—embryonic, fetal, child, adult. Life at all stages, in this view has an *intrinsic* and unquantifiable value. This value transcends the real or alleged values of experimentation and research. If a human is deformed, dying of a fatal disease, or pre-viable, the ontological goodness of his being is still intact.

The other position would consign to human beings values that are *extrinsic*. Each human life is not an end in and of itself but rather a means to another end which is the good of the society. Extrinsic value is not a per se condition of life and some are said to lack it.<sup>9</sup> From the totalitarian view that the individual exists for the society one can conclude that experiments can be performed on a member of this generation in order to benefit the members of future generations. An experiment performed on a pregnant woman scheduled for abortion may help a "wanted" child to have a better chance of survival. Lives which grossly lack "quality" (e.g. trisomy 21) should be terminated early for their own and Society's good.

Fetal experimentation has become the paradigm for the conflicted protection of human subjects for experimentation. How can the conflicts raised by the philosophies of intrinsic vs. extrinsic value of human life be reconciled in this most sensitive arena? One essential first step is to treat the pre-viable child

delivered by abortion the same as any other subject for human experimentation. The original Presidential Commission on fetal experimentation declined to do this. It recommended different rules for non-therapeutic, greater-than-minimal risk experimentation on fetuses to be aborted in contrast to fetuses to go to term.<sup>10</sup> It overruled a minority report by Louisell which said "no research should be permitted on a fetus to be aborted that could not be permitted on one to go to term". It even invented different names for the two classes. It called the subject for experimentation a "possibly viable human infant" if it was not aborted and a "possibly viable fetus ex-utero" if it had been aborted. Since "fetus" is a term to describe a stage of *intrauterine* life, "fetus ex-utero" is a contradiction in terms. One may reasonably suspect that this oxymoron was invented out of reluctance to humanize the product of an abortion.

Likewise the issue of consent is very tenuous in the area of fetal experimentation. If the decision for abortion is accepted as a resolution of a conflict concerning the rights of the child, then it must be admitted that the mother who chooses abortion has demonstrated her willingness to prefer her rights to those of the child. Parents who give proxy consent to experimentation on their children are usually accepted as having affectional bonds to their children. Such bonds would be highly dubious in the mother who gives consent for experiments on her live aborted offspring.<sup>11</sup>

Non-therapeutic fetal experimentation violates the consent principle of the Nuremberg code<sup>12</sup> as well as its principles regarding the protection of the experimental subject from harm and death (principles 4,5,6,10). Article III-1 of the Declaration of Helsinki states "In the purely scientific application of clinical research carried out on a human being, it is the duty of the doctor to remain the protector of the life and health of that person on whom research is being carried out." Non-therapeutic fetal experimentation violates this principle clearly. The most dramatic violation would be those experiments in which human life is *begun* by in-vitro fertilization in anticipation of its being experimented on and then killed. Articles I-3, and III-3b, and III-4b of the Helsinki Code are also germane to the types of fetal and newborn experiments which have brought criticism.

The various scientific panels convened by HHS for the purpose of establishing rules for fetal experimentation have averted their gaze from the standards of the Nuremberg and Helsinki Codes. This is based on the questionable notion that abortion has displaced all preborn abortion candidates and all newborn pre-viable aborted infants outside the realm of legal protection as experimental subjects. While such standards are observed and defended within the scientific community, we must presume that the lessons of the Nuremberg Doctors' trials remain unlearned and unheeded.

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