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# Utilitarian Reasoning in Nazi Medical Policy: Some Preliminary Investigations

Michael R. LaChat

A doctoral candidate in the Religion and Society program at Harvard University, Mr. La Chat is presently working on several articles dealing with the socio-ethical implications of public policy proposals involving the use of bio-medical technologies, specifically those that require genetic or eugenic manipulations.

In this article he attempts to determine the extent to which utilitarian ethical reasoning was an ingredient of Nazi medical policy, and to urge caution towards modern public policy proposals in bio-medicine whose implementation involves the conscious or unconscious appropriation of utilitarianism for justification.



"People reproached me with accusations that the Hitler movement was the destroyer of both Christian Churches, that it would render all crippled and useless people . . . when I heard these lies and slanders, I tried to enlighten the people . . ."

— anonymous German, 1934

"Just is that which is useful to the German people."

— Roland F. Fish,  
People's Court  
Judge, 1941

"The mask of a moral order of the world has dissolved into a fog."

— Ernst Haeckel (pre 1919)

Within the last few years a number of proposals for a public policy of eugenic control, and advocacy of related genetic technologies, have appeared in the medical and legal literature. Such proposals differ markedly in their specifics but tend to share a common orientation regarding their social utility and justifiability.<sup>1</sup> The revival of such concern prompts the need for the careful scrutiny of possible parallels with the medico-ethical situation during the dominance of National Socialism in Germany, in the hope that consideration of the steps taken during one of the worst perversions of traditional western medical ethics might prevent its recurrence in the present and future. Historians will, I hope, excuse this brief excursus into their own territory with the knowledge that the author's primary interest is the field of social ethics.

Of the many variables surrounding any public policy decision one can delineate four areas of primary importance: the definition of the empirical situation; the social cathexis or "loyalties" of the advocates; basic philosophical and theological presuppositions; and the mode of ethical reasoning.<sup>3</sup> It is the latter element that is of primary concern in this paper. In the modern eugenic debate the centrality of the specific form of ethical reasoning known as utilitarianism is evident. The origins of the philosophical definition of the term, attributed mainly to Bentham and J. S. Mill, have become obscured to such an extent as to make the word almost vacuous in common parlance. For our purposes here, we can offer a working definition as follows — utilitarianism means that right action is determined solely on the basis of the consequences of the action — that is to say, right action is that which produces the greatest balance of good over bad, or "the greatest good for the greatest number."<sup>4</sup> By way of contrast, a non-utilitarian or formalist would contend that the rightness of actions is not based on consequences alone.<sup>5</sup>

One can usually find indices of utilitarian reasoning in the use of cost-benefits analyses, and appeals to practicality and effectiveness. In this essay we wish to show the extent to which utilitarian reasoning, particularly in its cost-benefits formulation, was incorporated into Nazi medical policy. Thus the essay itself is

primarily of a descriptive nature, and not meant to be a subtle theoretical analysis of the logic of utilitarianism as a philosophical doctrine.

The atrocities perpetrated by the Nazis on Jews, Gypsies and Communists point in the direction of a quasi-religious (millennialist) "Rassenhygiene" purge that contained within it many non-utilitarian elements as well. The historian Erich Goldhagen is no doubt correct in seeing the Jewish holocaust as a "complex and singular blend of rational calculation and unreasoning fanaticism."<sup>6</sup> But all too often proto-Nazi and Nazi "Volkism" has been seen in total opposition to science and modernism, romantically bereft of anything as rationally calculating as utilitarian reasoning. It is for the purpose of trying to isolate the utilitarian element in Nazi medical ethics that this paper will consciously refrain from dealing with the Jews and other outcast groups and concentrate instead on the application of eugenic measures to the German "Aryans" themselves.<sup>7</sup> What was the role of utilitarian ethical reasoning in the corruption of medicine under National Socialism?

## Three Topical Areas Examined

To attempt an answer to this complex problem this paper centers its analysis around three topical areas: 1) the historical-eugenic prelude is briefly considered; 2) some of the actual public medical laws and their justification by professional groups

are examined; and 3) the "hidden" implementation of mass-scale sterilization, castration and "euthanasia" is analyzed with respect to intentional or non-intentional utilitarian reasoning.

Two assumptions are made with regard to the first area. The first is that the main thesis of Daniel Gasman's book, *The Scientific Origins of National Socialism*<sup>8</sup> — that the impact of Ernst Haeckel's peculiar brand of Social Darwinism and Monism had enormous impact upon the scientific community of pre-Nazi Germany — is largely vindicated. The point being added, or rather emphasized by this author, is that contrary to Haeckel's stated intent, the by-product of his theory was a strange form of utilitarianism — indeed it was, at one level, utilitarian in essence. The second assumption, partly included in the first, is that a nominalistic positivism had all but annihilated what little natural law tradition there was in German jurisprudence and, indeed, in the moral fabric of the country itself, and that the related absence of "natural right"<sup>9</sup> had a great deal to do with the particular form of Haeckelian utilitarianism. Both assumptions add up to the peculiar blend of "calculation" and "fanaticism" mentioned previously. For the second major area three assumptions are made based upon the evidence open to the author.<sup>10</sup> The first of these, and most important, is that utilitarianism appealed to the good-

will and "professionalism" (often elitism) of the professional classes of Germany before and during Hitler's rise to power more than it appealed to the "masses." Secondly, that the Nazis themselves condemned utilitarianism as a rule (usually as being "bourgeois") but had the remarkable and somewhat paradoxical habit of appealing to it fairly often in justifying their own thought. Thirdly, it is held that the Nazis often used utilitarian reasoning as propaganda to further their own aims, and this with more success among the professionals than among the common people. The third major area of the paper deals with possible utilitarian considerations of the "hidden" Nazi medical atrocities. This form of utilitarianism was largely concerned with method of implementation. Consideration is here given also to the stated justifications for resistance to these policies when they were "leaked out."

The conclusion of the paper brings to the fore elements of this lamentable deterioration as it relates to present and future. The extraordinarily important question of the relation of cultural "morality shifts" to the change from voluntarism to compulsion is offered for thought. Related to this is, of course, the question of the cultural inculcation of positivism versus natural law and right. The question is also broached whether utilitarianism carries something like an implicit "ubermensch" concept along with

it. Whether a medical profession alert to the logical pitfalls of utilitarianism could have stunted or stopped entirely the degradation of the sanctity of human life is finally offered as an "open" afterthought.

\* \* \*

In 1961 a doctor was tried and convicted by a German court for shooting twenty-six panic-stricken defective German adults in Silesia in 1945. He claimed that years before committing the act he had been "fired" with the vision of eugenics, of breeding "good, big families." In a personal interview of 1969 he still talked avidly about the science of genetics and positive mate selection. Before becoming an S.S. member, he had been a lecturer on the biology of inheritance in a public health post.<sup>11</sup> A great amount of debate has surrounded the interpretation of and possible motivation for such action. Gasman's study of Haeckel's "pantheistic religion of evolutionary monism" is one interpretation among many. Psycho-social explanations abound. One reason for looking especially hard at Gasman's thesis is that Haeckel's thought seems to contain so much "prophetic" efficacy. A chair in "racial science" had been established by the Thuringian government at the University of Jena in 1930. Its first occupant, Hans Günther, had written a book in 1929 that sold 272,000 copies between 1929 and 1943 (*Kleine Rassenkunde des Deutschen Volkes*).<sup>12</sup> There are numerous other examples of

pre-Nazi eugenic passion. Most seemed to be composed of the three elements (or variations thereof) that Gasman finds present in Haeckel's thought: 1) philosophic romantic idealism; 2) scientific positivism and materialism; and 3) Darwinism, all of which "provided the ideological basis for National Socialism." Of this strange and seemingly self-contradictory blend of thought we need only emphasize a few aspects. The first is the absolute subordination of the individual to the interest and use of the group:

Evolution, it was asserted, demonstrated that everywhere the individual must be placed by an "inborn drive" at the "disposal of the species." Conversely, the survival of the individual was of no importance. Life itself was only of relative value and depended solely on the usefulness of the individual organism to its own species and to the evolution of life in general. No individual was of unique value in himself and no individual could appeal to a system of absolute ethics which guaranteed the preservation and sanctity of life.<sup>13</sup>

Haeckel's "Kulturkampf" against Judeo-Christian values on behalf of the "values" of science were aimed with particular vindictiveness at the Catholic Church. He had long been a fan of Bismarck's anti-Catholic bias, and saw politics as nothing more than applied biology. He raved against bourgeois democratic egalitarianism and liberalism, among other things. Of great importance, moreover, is the fact that he thought infanticide could not be "rational-

ly" classified as murder:

'One should regard it rather,' he wrote, 'as a practice of advantage both to the infants destroyed and to the community . . . 'Was it not,' he argued, only a 'traditional dogma' that life had to be maintained under all circumstances?<sup>14</sup>

Haeckel's monist followers claimed that a veritable "army of the feeble-minded" committed most of the crimes in Germany, were guilty of most of the drunkenness and composed the general poverty-strata of the society. The monists thus "raised grave objections to the modern practice and theory of medicine."<sup>15</sup> His most ominous suggestion, and one obviously taken most seriously to heart, is from his *Wonders of Life* (sic!):

He . . . advocated the setting up of a commission which would decide on matters of life and death for the ill and deformed. Upon a decision of the commission 'the redemption from evil' should be accomplished by a dose of some painless and rapid poison.<sup>16</sup>

### Haeckel's Influence

Whether Haeckel directly influenced many others, as Gasman suggests, or whether he was merely paradigmatic of a growing consensus in the scientific world is a moot point. Suffice it to say that many thought like him. In 1927 a German Roman Catholic priest by the name of Joseph Meyer wrote a book titled *Legal Sterilization of the Mentally Diseased*, in which he pointed out that it was the duty of everyone to prevent certain marriages and listed

a number of Catholics supporting eugenic programs.<sup>17</sup> One of his articles mentions a public health meeting of the *Deutsche Caritas Verband* (German Society for Social Work) led by two bishops at which it was agreed that standardized files be kept on the "inherited" tendencies of prisoners, delinquents and alcoholics.<sup>18</sup> This may have been conceived with good intentions. Benefits were thought to be obtained by the greater public body. By the time of the Nazi take-over of 1933 a large number of professionals had been won over to the Haeckelian standpoint or something like it. A few examples should suffice. Paul Brohmer in 1933 asked that biology students prepare genealogical charts of the physical characteristics of their families, reporting all deformities and hereditary diseases.<sup>19</sup> Gauger<sup>20</sup> wrote that the feeble-minded and the hereditarily insane were afflicted with "hereditary soul-sickness," and were often criminals possessed of an "animal procreative faculty" — therefore they were sick in a "Volk-biological" sense. Hanns Lohr (1935) called for "incentives" for certain people to procreate, and for all to see the sterilization law as a "pillar of the national Socialist State."<sup>21</sup> The list of examples of this kind of reasoning, particularly by Nazi propagandists, is endless. The Nazis and the proto-Nazis before them were in pursuit, as Gasman noticed, of the "greatest possible biological fitness of the nation . . ."<sup>22</sup>

Utilitarian ethical reasoning, as Wolfgang Friedmann has noted, often rests upon a rejection of any concept of a natural order imposing absolute values, an acceptance of the doctrine that the control of life is a proper function of society rightly influenced by factors such as the "population explosion," and an emphasis on the needs and interests of the community.<sup>23</sup> All these are indicated in the "prelude" outlined above. As an alternative to utilitarianism, the doctrine of natural law usually depends upon an acknowledgment of an essential human nature and some sort of notion of universals making it possible to speak of "humanity" in a general sense.<sup>24</sup> Often the view of pure science has run counter to the idea that there is such a thing as an essential human nature. Sister Mary Gallin, in her study of ethical and religious factors in the German Resistance, notes that a reliance on positive law obscured for many Germans the thought of the possible right to resistance.<sup>25</sup> Haeckel himself had called the concept "man" a fiction,<sup>26</sup> and by adhering to the concept of a "world-soul" instead, had hoped to stave off the fearful (for him) spectre of democratic egalitarianism and liberalism.

Perhaps nowhere has the danger of the twin absence of natural law and the concept of "humanity" been so accurately prophesized and articulated so early than by the great German Church historian, Ernst Troeltsch, in his 1922 essay, "The

Idea of Natural Law and Humanity in World Politics." In this essay Troeltsch strove to demonstrate why the western European notions of "natural law" and "Humanity" had "become almost incomprehensible" in the Germany of his time. He delineates the two opposing views in this way:

We begin to see, on the one side, an eternal, rational and divinely ordained system of order, embracing both morality and law, we begin to see, on the other, individually living and perpetually new incarnations of an historically creative mind. Those who believe in an eternal and divine law of nature, the equality of man, and a sense of unity pervading mankind, and who find the essence of Humanity in these things cannot but regard the German doctrine as a curious mixture of mysticism and brutality. Those who take an opposite view — who see in history an ever-moving stream, which throws up unique individualities as it moves, and is always shaping individual structure on a basis that is always new — are bound to consider the west-european world of cold rationalism and equalitarian atomism, a world of superficiality and Pharasaism.<sup>27</sup>

Later in the same article Troeltsch somewhat grudgingly admits that Germany needed to borrow some notion of the "so-called" rights of man to offset a "certain one-sidedness" in the German tradition.

We can begin to see, then, that a quasi-scientific and quasi-rational "groundwork" for many eugenic proposals later implemented had been laid among the scientific and professional communities certainly by the latter

part of the first decade of the twentieth century — the roots, of course, going much too far back into history for us to detail at any length or with any competence. However, specifics such as calling for “data-banks” detailing genetic history, and often justified by a crude utilitarianism (the greatest good for the whole) were increasingly audible after Haeckel. Along with this development, the anti-utilitarian corrective of natural law and natural right, we have seen, was virtually absent from the cultural-moral tradition, and certainly from jurisprudence. We can turn now to some of the actual implementation of some of these ideas.

### Hitler's Eugenic-Euthanasia Campaign

On August 7, 1929, Hitler had spoken in public of killing German infants with physical defects — a slaughter, he estimated, of 700,000 children annually.<sup>28</sup> No one knows for certain how many deaths were actually accomplished by this eugenic-euthanasia campaign. Estimates vary between fifty and 275,000.<sup>29</sup> Suffice it to say that Hitler's early ideas were approaching realization early on in his power take-over. In June of 1933 several medical journals were replaced by “Race-Welfare” magazines. In Dortmund a bureau of racial hygiene was at work on its first task — completing statistical data on 80,000 German school children. A “Congress of the Criminobiologic Society” met in Hamburg on June

7-10 of 1933 to outline a program for protection of the state against “inferior humanity.” Every person was to be evaluated according to his biological worth and assigned a position on that basis. Along this line of thought Professor Rudin, a psychiatrist from Munich, called for a compilation of statistical material on hereditary risk — attention not being confined to parents but extending to relatives and family groups. “The ideal sought is the allocation of every person, whether presenting healthy or pathologic hereditary antecedents to a characteristic hereditary type,” making it possible to eliminate undesirable types.<sup>30</sup>

In late June reports were heard of a bill coming up for deliberation by the Council of Health of the Prussian Minister of the Interior calling for eugenic sterilizations. The proposed law, said the ministry, might possibly “go beyond voluntary sterilization.”<sup>31</sup> Professor Fetscher of a Dresden “Marriage Consultation Center” (such centers had been in operation since 1926) lamented the fact that for four years he had advocated sterilization in eighty-eight cases but had only been able to bring it about in sixty-six. It is important to note the cost-benefits justification he brought to bear: “He cited a family in which five out of eight children were idiots. They have cost the community more than 58,000 marks (\$13,804).”<sup>32</sup>

In July of 1933 the Municipal

Pre-nuptial Consultation Centers established since 1926 were closed down for allowing “too large a measure of liberty.” Announcement of new regulations was anticipated. In fact, in Southern Germany consultation centers were established “for people of moderate means” to seek out and promote propagation of those with mental and physical superiority.<sup>33</sup> Later in the month, on July 14, 1933, the “law for the prevention of the congenitally unfit” was passed — to go into effect January 1, 1934. The Bill was legislated on the grounds that those with hereditary defects were propagating to such an extent as to be “a burden to society,” and were threatening “within three generations to overwhelm completely the valuable strata.” The passage of the legislation was to be regarded “as evidence of brotherly love and watchfulness over the welfare of the coming generations.” The list of those “diseases” requiring sterilization included: hereditary imbecility, schizophrenia, manic-depression, hereditary epilepsy, Huntington's Chorea, hereditary blindness, hereditary deafness, alcoholism and extreme physical malformation.<sup>34</sup> Rights for mental patients were completely abrogated “in the interest of society,” and *hereditary health courts* were established. Castration for crimes “against good morals” was not yet incorporated, but was “expected next year” (1934).<sup>35</sup>

### Sterilization: The Cost-Benefit Analysis

In January of 1934 a serious violation of the physician's traditional code was ordered. A physician knowing of anyone with hereditary disease or “grave alcoholism” was required to notify the health officer having jurisdiction over him. A “weak-minded intelligence test” was developed, and sterilization (the complete severing of the spermatic chord or fallopian tubes<sup>36</sup>) was ordered (not to be performed before completion of the tenth year). Especially pertinent is the extremely detailed cost-benefits analysis put out by Director Burgdorfer of the Federal Bureau of Statistics. He estimated the number of persons to be “ferreted out” by eugenics courts to be 400,000, and gave detailed numerical breakdowns of that figure by “disease.” He then gave an estimate of expenses and savings for the sterilization of men and of women, the cost of keeping mental patients in asylums per year, the cost of special schools for their offspring, and the cost to churches and welfare agencies for support of “diseased, asocial and criminal elements,” etc. The meticulousness of Burgdorfer's statistics and its reception is indicative of the power of utilitarian cost-benefits analysis. Even Franz Neumann<sup>38</sup> saw a “few progressive features” in the proposals.

In May of 1934 a Mr. Wetzel addressed the *Stuttgarter Aerztliches Verein* on the prevalence

and cost of schizophrenia in Germany. Again a cost-benefits analysis was used. He equated many schizophrenics with "anti-social elements" (beggars, vagrants, prostitutes and criminals) and added the rejoinder that "a moralizing attitude often prevents the correct psychiatric understanding of these patients." He cautions the physicians against the "useless" wastes of private funds on "useless" treatments, adding that the sterilization of these types is "welcome legislation." So long as the patient is able to work, he stated, he need not be reckoned in the invalid class.<sup>39</sup>

In late September of 1934 eugenic proposals and legislation began to snowball. A November report showed that the Berlin Eugenics Court ruled that foreigners with defects were also susceptible to sterilization while in Germany.<sup>40</sup> The Federal Minister of the Interior, upon seeing the sterilization statistics through June 15, 1935, claimed that execution of the law was "lagging," and ordered the eugenics courts to accelerate on the grounds that "it is desirable to put an end to the over-crowding of institutions." Since many new patients could not be admitted, a detention center was established in Saxony for weak-mindedness, with special attention for "criminally inclined" juveniles. Dr. Dornedded of the Federal Bureau of Health noted that 22.5% of all those in institutions needed sterilization.<sup>41</sup>

In November of 1934 Dr. Schlegal lamented public the "vagueness" of the castration law of November 24, 1933 (The Statute Against Habitual Criminals). A central national card index of patients with hereditary diseases was also established by the Medical Department of the National Health Bureau. It was intended to serve as a basis for the new racial and eugenic law (Law of October, 1935?). An index form of eighty questions was drawn up, preliminary work being done at the Hygienic Institute of the University of Munster (Westphalia). During this time lectures were given in Bremen on the "Prevention of Useless Lives" by Professor Baur, the director of the Kaiser-Wilhelm Institute for Research on Breeding. Lectures were also given there by sociologists on the "selection process" in the Human Society.<sup>42</sup>

In May of 1935 the Hamburg Eugenics Court declared that the interruption of pregnancy for eugenic reasons (or "racial emergency") was exempt from punishment, thereby legalizing eugenic abortion. The destruction of the unborn fetus was undertaken "for the health of the German People," and the decision was being "eagerly discussed" in special medical journals.<sup>43</sup>

The above examples by no means exhaust the debated legislation and proposals during these first few years of Nazi reign. What they do demonstrate is that utilitarian reasoning, especially in its

cost-benefits form, was used extensively to justify the legislation. It may be impossible, even with the most well-informed historical hindsight, to try to determine the motives of many of the advocates. But certainly it can be assumed that many of the listeners and perhaps some of the legislators were people of good will who took the utilitarian calculus to be the most reasonable moral track to take.

If one were not to consider that the Nazis were in some part motivated by utilitarian reasoning one would have to explain a paradoxical fact — namely, that many Nazis who condemned implicitly or explicitly the "Utilitarianism" of the western democracies themselves used the form of ethical reasoning extensively. For example, in a speech to psychiatrists in 1934 Kurt Gauger, an S.A. man, condemned utilitarianism in no uncertain terms:

... the liberalistic-materialistic world-view, with its goal of the 'greatest happiness for the greatest possible number' ended in the deepest satisfaction, in the inferno of the deepest sickness of our people's soul. The Third Reich has not inscribed happiness on its banners, but virtue ...<sup>44</sup>

Two pages later he makes the comment that "... that self-interest is reprehensible which harms the common interest."<sup>45</sup> Dr. Arthur Guest, Director of Public Health in the Ministry of the Interior, wrote in 1935:

The ill-conceived doctrine of 'love thy neighbor' has to disappear, especially in relation to inferior or

asocial creatures. It is the supreme duty of a national state to grant life and livelihood only to the healthy and hereditarily sound and racially pure folk for all eternity. The life of the individual has meaning only in the light of that ultimate aim, that is, in the light of his meaning to the family and to his national state.<sup>46</sup>

An article was written by a German scientist in an American magazine in 1937 defending the idea that German science had left abstraction behind, "especially in the field of law," and was helping to prepare legislation "to be brought to bear on our own practical needs."<sup>47</sup> A man writing an address to physicians in 1935 wrote that "through Marxist-Liberal thought . . . the Jew turned the physician into a business-man," reducing the art of healing solely "to figures and fees." Several paragraphs later, while lauding the sterilization law for its prevention of evil consequences, he states:

We will make no mention here of the enormous costs imposed on society by congenital defects, which Dr. Wagner has calculated to be 1.2 billion marks yearly.<sup>48</sup>

While Dicks' claim that the aim of the euthanasia program was aimed at "freeing the nation's economic resources" may be a bit far-fetched, his claim that the switch of the "euthanasia" program to Poland in 1941 also incorporated into that program greater "cost-effectiveness" methods is reasonably justifiable.<sup>49</sup> There is some evidence that even

Himmler himself was often interested in such calculations. On June 23, 1942, for instance, Victor Brach recommended to Himmler that out of 10,000,000 Jews two to three million would be fit to work if sterilized. Himmler sanctioned the experiments, but the cost, according to Brach, proved to be prohibitive.<sup>50</sup> In all fairness, however, one might just as well attribute sterilization to Himmler's own prurient interest in the matter.

### Research for Euthanasia

Of no small importance is the fact that medical research was also tied up with the euthanasia movement. One professor received 6,000 brains for research from the killing of the retarded,<sup>51</sup> a distinguished neurologist wrote openly in 1943 of the successful transmission of monkey encephalitis to a number of mental patients,<sup>52</sup> and one physician involved in the euthanasia program at Oranienburg wrote to his wife in April of 1941:

I am particularly interested in these examinations because of their value for possible scientific research later, since all these are people with anti-social tendencies — and that to the highest degree.<sup>53</sup>

The Nazis were swift to realize the propaganda value of utilitarian reasoning, whether or not it is possible to ascertain it as being part of their own motivation. Appeals to expediency have been noted since the time of the Greeks to be extremely effective in swaying audiences.<sup>54</sup> Leo Alexander noted while reviewing the

Nuremberg medical trial that the "rational utility" propaganda was highly effective in perverting public opinion and public conscience in a remarkably short time. He was especially amazed at how early the practice of extermination of the physically or mentally unfit was openly accepted. Karl Brandt testified that the Nazi Party Convention of 1935 had been shown a film titled "Accuse," a propaganda film dealing with a patient suffering from multiple sclerosis whose uneventful life is finally ended in a glorious "mercy death." Hitler reportedly told the filmmaker at that time that he would undertake a euthanasia program under the cover of the confusion of war, since he anticipated revolution on the part of the Church.<sup>56</sup> It is interesting to note that when Himmler saw that news of the euthanasia program finally reached the public he ordered films on heredity and disease to be shown in the area.<sup>57</sup>

Alexander's ideas on the susceptibility of the great masses of the German people to utilitarian arguments seems overstated, however. Such arguments seemed to hold more sway over the professionals and even seemed to have been perpetrated by those classes in the positions of "expertise." The master propagandist Goebbels (1941) tried to play on the sterilization fears of the Germans (while justifying it at other times):

If someone feels pity looking at an old Jewish woman wearing a Jewish

star then let him remember that . . . a distant cousin of this old lady, Nathan Kaufman by name, is sitting in New York and has prepared a plan according to which all Germans under 60 would be sterilized!<sup>58</sup>

Perhaps the most striking example of the Nazi attempt to utilize a cost-benefits analysis as propaganda came from Hitler's mouth. The sterilization law had been passed by the Reich six days before the Concordat with the Catholic Church was to be signed. Immediately a dispute arose. On July 26 and 27 the *Osservatore Romano* said that the treaty by no means implied approval of Nazi doctrine and theories. As Westermeyer says: "It was the question of sterilization that brought irreconcilable differences to the fore. . . ." Hitler's speech of January 30, 1934 was a utilitarian reply to the uproar:

It is not the churches who provide for the hosts of these unfortunates, but the people that has to do so. If the churches were to declare themselves ready to take over the treatment and care of those suffering from hereditary diseases, we should be quite ready to refrain from sterilizing them.<sup>60</sup>

The last statement was, of course, a lie. And as early as March of 1936 opposition to sterilization was strongly marked. Dr. Wagner was forced to reply to some recalcitrant physicians that it was erroneous to speak of anyone being "saved" from sterilization.<sup>61</sup> But the major evidence of rejection came when the euthanasia program received, exactly as Hit-

ler had feared, publicity at the hands of the churches. Official correspondence to the Reich Minister of Justice in 1939 reported that neighbors of some of the euthanasia programs were becoming disquieted. Old people were beginning to wonder if they too would be "discarded" when they became "useless." Children noticing the transportation vans going by would yell, "Here comes the murder van again."<sup>62</sup> Form letters from Grafenek sent to the families of the deceased were becoming increasingly suspect. Mistakes such as the sending of two cremation urns to the same family, or the listing of the cause "death by appendicitis" for someone who had had his appendix removed ten years previously,<sup>63</sup> were made. Himmler understood that the secret was out long before the formal speech of the Roman Catholic Bishop Von Galen's August 3, 1941 protest. The program was thus ended, at least in Germany, on direct order from Hitler on August 23, 1941.<sup>64</sup> Among the various protestations<sup>65</sup> this one by a Protestant pastor and member of the Domestic Welfare Council of the German Protestant Church, Dr. Braune, deserves consideration:

It is urgently necessary to stop these measures as soon as possible, since they strike sharply at the moral fabric of the nation as a whole. The inviolability of human life is a pillar of every social order. Only valid laws can be taken as a basis for ordered killings. It is unbelievable that the sick are to be currently eliminated for purely utilitarian reasons . . .<sup>66</sup>

### 'Aktion T4' — October, 1939

"Aktion T4" — the code name of the first euthanasia campaign — began some time during October of 1939. Questionnaires had been developed through the order of Conti, and were in full use one month after Hitler's decree.<sup>67</sup> Initial implementation was through starvation; a daily rationing of about nine cents per day per person was allotted to patients marked for "mercy" death.<sup>68</sup> The killing of deformed and idiot children, in contrast to the mercy death program for adults, lasted until the end of the war. There is, however, evidence that the adult program carried on on a limited scale. Children, at any rate, were still reported to Berlin by questionnaire form to the "Pediatric Section of the Reich Committee." Brandt, when asked at the Nuremberg trials why a distinction had been made between the old and the young in the euthanasia program, replied:

In the case of children the purpose was to prevent their development at an early stage, if only for reason of family difficulties, etc. The goal was to make it possible to locate and kill these cases of congenital malformation as soon as possible after birth.<sup>69</sup>

Again, many probably acted out of a perverted utilitarian understanding of good will. Dr. Gustav Schuebbe, captured in Germany by the U.S. First Army in 1945, was reported to have said:

'Of course we, the circle of German Physicians,' he said, 'were aware of the importance of this job. I still maintain the following: that just as

one prunes a tree by removing old undesirable branches in the Spring, so for its own interest, a certain hygienical supervision of the body of the people is necessary from time to time. This also includes sterilization.'<sup>70</sup>

Whatever the motivation of the two hundred or so physicians who participated directly in the war crimes were, it is evident that hundreds more knew what was going on,<sup>71</sup> and whatever utilitarian justifications they fabricated or really believed in, "Aktion T4" (in its new form as Aktion 14 F 13) soon switched its criteria for death from disease to pure politics. The staff who had participated in the extermination of the mentally ill now turned their "skills" toward Jews and political prisoners. Interestingly enough, Jews had been previously not deemed "worthy" of euthanasia, a fact that demonstrates, to some extent, the utilitarian "good will" of the early euthanasia programs.<sup>72</sup>

When those brave enough to speak out against the medical "excesses" we have been considering did so, to what justification did they appeal? We have noted at the onset of this paper the positivist bent of German jurisprudence before the war. During the war, of course, it flourished as an attack on universal morality. Hans Frank, the leader of the German lawyer's guild under the Nazis, and president of the Academy for German Law, said on January 14, 1936:

The judge is not placed over the citizen as a government authority. Instead he stands in the ranks of the living community of the German people. It is not his task to help apply a legal order that is higher than the racial community, or to enforce some system of universal values. What he must do, rather, is to safeguard the concrete order of the racial community, to exterminate those who undermine it, to punish behavior harmful to the community, and to arbitrate quarrels among members of the community.<sup>73</sup>

Natural law philosophers have blasted this form of legal positivism as the basis of Nazism. John Hallowell, for example, claimed that it was the positivistic liberal element of the German population, with its denial of the inalienable rights of man, who "prepared the way" for Dachau.<sup>74</sup> More intellectually subtle opponents of natural law, such as H. L. A. Hart, have expressed concern over the fact that the Nuremberg judges appealed to some form of natural law in convicting the former Nazis.<sup>75</sup> We need not go into the intricacies of the argument here — an argument thousands of years old. We are merely attempting to determine whether natural law or right played a great part in the justification of those who resisted Nazi medical "innovations."

One might expect that the Thomist tradition might provide a substantial underpinning for natural law arguments against sterilization and euthanasia. We have alluded previously to the consternation the sterilization

laws caused among some of the Catholics. Catholic tradition is certainly strongly entrenched against sterilization and abortion except in exceptional circumstances.<sup>76</sup> Certainly natural law was appealed to by Von Galen on August 3, 1941,<sup>77</sup> and directly by Pius XI (Mit Brennender Sorge) on May 8, 1937:

Human laws in flagrant contradiction with the natural law are vitiated with a taint which no force, no power can mend. In the light of this principle one must judge the axiom that 'right is common utility' . . . the believer has an absolute right to profess his faith and live according to its dictates. Laws which impede this profession and practice of faith are against the natural law.<sup>78</sup>

This by no means exonerates the Catholics for whatever political stances they might have taken. It is even a fact that "expedience" often overweighed their own natural law tradition. For example, Catholic nursing orders were weakened by forbidding nuns to assist in sterilization proceedings. In 1940 the Church freed nuns from this prohibition.<sup>79</sup> There is also the fact that many Protestants resisted these encroachments upon the sanctity of life without any reference to natural law. Yet still, Will Herberg is probably correct in asserting that the absence of natural law in German Protestantism (particularly in Lutheranism) did facilitate a lack of opposition.<sup>80</sup> It is equally obvious that one did not have to have a theoretical justification to be a resistor. As Gallin suggests:

The men of the resistance movement seldom refer directly to "natural rights," and the very diversity of reasons which they offer for fighting the Hitler regime creates the impression that they were not concerned with a rational explanation of any abstract "right" or duty of resistance. This can be said without in any way detracting from the possibility that they acted in defense of fundamental human rights from a high ethical or religious motivation.<sup>81</sup>

The question is really one of whether the historical absence of that kind of tradition in the cultural-educational and legal tradition contributed to the subsequent degradation. I happen to think that the nominalism prevalent in Germany made the Fuhrer's "trans-moral" will very easy to obey, and made it even more difficult to discern the train of events following logically from small infringements, often justified in utilitarian terms, on the sanctity of the individual.

#### Frightening Parallels in the U.S.

One of the most frightening articles dealing with the subject matter of this paper comes not from the mouth of some Nazi fanatic, but from a 1934 editorial of the *Journal of the American Medical Association*, titled "Human Sterilization in Germany and the United States." After speaking of the 1,700 special courts and twenty-seven Hereditary Health Supreme Courts of the then present Germany system, the editorial gives a brief synopsis of sterilization legislation in the United States. Noting that as of 1932

there were 12,000 sterilizations performed in the United States, it is said that the effect in increasing inherited mental defects "has yet to be determined" but that "certainly every conceivable effort should be made to follow the course of the sterilized and the progeny of their blood relatives." In contrast to Germany, the article goes on to say "a more gradual evolution of justice and principles has occurred in this country." As regards the programs in Germany, a "scientific detachment" is advised:

While recognizing the possible potential value of sterilization the medical profession can perhaps serve its purpose best by retaining a scientific detachment in assessing the biologic and social results of the programs now in force.<sup>82</sup>

It is probably due to the subtle allure of utilitarian ethical reasoning that such a standpoint should arouse little controversy. Not many were probably alarmed at a 1935 report that "a recent court decision has brought the question of abortion into an interesting connection with the eugenic principles of the National-Socialist State,"<sup>83</sup> or when a December 23, 1942 decree of the Fuhrer relieved doctors of the secrecy oath.<sup>84</sup> Neither have many been alarmed at recent developments in genetic technology and related eugenic proposals. After all, the gulf between voluntary elimination of defective fetuses through amniocentesis and selective abortion is radically different from the compulsory programs of the Nazis.

But is it really? Does a purely utilitarian calculus carry within it something akin to a conception of a "perfect man" (or woman) — that is, one of "greatest use" to the community — by which "defectives" are measured and found lacking and therefore unworthy of living? Is there not a tendency for inculcated "morality" to become positive law when human rights are "laid aside"<sup>85</sup> in the interest of the majority, or for that matter in the interest of the "needs" and "desires" of parents or a single parent? Too often the quasi-religious fanaticism of Hitler's eugenic-apocalyptic madness has obscured the more insidious effects of utilitarian thought. On June 5, 1941, for example, Himmler received a letter asking for permission to go ahead with human experimentation designed to "insure a most intensive treatment of women hitherto sterile who want children."<sup>86</sup> The same justification for *in vitro* fertilization is being called for today.<sup>87</sup> In Nazi medicine a doctor's remark like "Mongoloid wrinkle" or "badly formed ears" was enough to sanction infanticide in many cases.<sup>88</sup> Today advocates of genetic "screening" through amniocentesis talk of the desirability of selective abortion of Down's Syndrome (Mongoloid) fetuses. The recent Johns Hopkins Mongoloid infanticide case bears a subtle but disquieting resemblance to the first starvation killings of mentally retarded infants in Germany.<sup>89</sup> No one has to believe in a Nazi racist revival,

or resort to mud-slinging ad hominem arguments to demonstrate parallels with modern utilitarian thought. There is, however, a tendency to neglect the quiet role of well-intentioned professionals while wallowing in descriptions of Hitler's madness. There is, therefore, also the possibility that the "Inexorable line" Mitscherlich sees from the July 14, 1933 laws to the "euthanasia" program<sup>90</sup> is an edge-of-the-wedge argument that may be "a-political" in essence. Anyone who has an interest in public policy decisions must at least take the thought seriously.

The most vulnerable point for an attack on utilitarian reasoning is the fact that logical adherence to its assumptions may require the sacrifice of individual rights for the good of the majority. A quote from a modern-day analyst of genetic screening proposals demonstrates this and other dangers of utilitarianism:

The fact that public screening programs have been initiated for single genetic diseases should not blind us to the fact that there may be a future trend toward simultaneous testing for more and variant genes. Cost-effectiveness calculations ("get the most genetic information for your tax dollar") so popular as a yardstick for evaluating government programs would favor such a trend. Would new ethical and social issues be raised if our paradigm genetic screening program was a government-funded, data-banked, multifactorial testing proscribed for all adults of childbearing age? Would such programs have a tendency to

become compulsory, either explicitly by law, or implicitly through social pressure?<sup>91</sup>

That there is some warrant for seeking the same mode of ethical reasoning in Nazi medical ethics can be seen from this quote by Dr. Leo Alexander, Chief Counsel for the Nuremberg war trials:

Whatever proportions these crimes finally assumed, it became evident to all who investigated them that they had started from small beginnings. The beginnings at first were merely a subtle shift in emphasis in the basic attitude of the physicians. It started with the acceptance of the attitude, basic in the euthanasia movement, that there is such a thing as life not worthy to be lived. This attitude in its early stages concerned itself merely with the severely and chronically sick. Gradually the sphere of those to be included in this category was enlarged to encompass the socially unproductive, the ideologically unwanted, the racially unwanted and finally all non-Germans. But it is important to realize that the infinitely small wedged-in lever from which this entire trend of mind received its impetus was the attitude toward the nonrehabilitable sick.<sup>92</sup>

Is there a deeper meaning attached to the post-war Nuremberg modification of the Hippocratic oath than we see at present? The modification reads: "I will maintain the utmost respect for human life from the time of its conception."<sup>93</sup> Would acknowledgement of this have prevented, as one author put it, the oath from being displaced by race-hygiene in "the name of the greatest good for the ruling in-group?"<sup>94</sup> In the opinion of Dr.

Ivy, Medical Scientific Consultant to the Prosecution at the Nuremberg Tribunal #1 it would have:

Had the profession taken a strong stand against the mass killing of sick Germans before the war, it is conceivable that the entire idea and technique of death factories for genocide would not have materialized.<sup>95</sup>

In fact, a German doctor describing the "euthanasia" of some "tubercular" Poles in 1942 remembered well the lesson that the Führer had to take in halting euthanasia in Germany in 1941. He admits that secrecy in the case of the Poles would be impossible and cautions that "it is likewise beyond question that the enemy will mobilize the medical profession throughout the world," should the secret get out.<sup>96</sup>

Some of the implications drawing are somewhat speculative. But it seems that, whether utilitarianism and the lack of natural law were responsible in part or not, there is good reason for warning against a dangerous "attitude" or "disposition" on the part of modern individuals and nations. This is said with quite simple elegance by the late Karl Barth, one of the first men to smell the danger:

No community, whether family, village or state is really strong if it will not carry its weak and even its very weakest members. They belong to it no less than the strong, and the quiet work of their maintenance and care, which might seem useless on a superficial view, is perhaps more effective than common labor, culture or historical conflict

in knitting it closely and securely together. On the other hand, a community which regards and treats its weak members as a hindrance, and even proceeds to their extermination, is on the verge of collapse.<sup>97</sup>

#### REFERENCES

1. The great number of recent publications, and their varying assumptions, have prompted one researcher to attempt a preliminary typology of some of the advocates' positions. See Marc Lappe, "Allegiances of Human Geneticists: A Preliminary Typology," in *Hastings Center Studies*, I (1973), pp. 63-78. An article in progress by Karen Lebacqz and Michael LaChat will attempt to do this in greater detail.
  2. For those who wish an introduction to the debate within the framework of Christian ethics, two books with opposing ethical orientations are helpful. The work of Joseph Fletcher provides a paradigm of utilitarian response to the questions raised. See *Morals and Medicine* (Princeton, New Jersey: Princeton University Press, 1967). The contrasting formalist position can be seen in the work of Paul Ramsey, *Fabricated Man* (New Haven: Yale University Press, 1970).
  3. The paradigm for this analysis is a partial adaptation of the one developed by Ralph B. Potter in *The Structure of Certain American Christian Responses to the Nuclear Dilemma, 1958-1963*. Ph.D. Thesis, Harvard University, 1965.
  4. For those who wish a thorough analysis of utilitarianism see David Lyons, *Forms and Limits of Utilitarianism* (Oxford: Clarendon Press, 1965). A critical review of work in utilitarianism from 1961 through 1971 may be found in the article by Dan W. Brock, "Recent Work in Utilitarianism," in the *American Philosophical Quarterly*, 10, no. 4 (October, 1973), pp. 241-276. A more than ample bibliography can be found therein.
  5. See Ross, W. D., *The Right and*
- the Good* (Oxford: Clarendon Press, 1930).
6. Goldhagen, Erich, "Pragmatism, Function and Belief in Nazi Anti-Semitism," *Midstream* (December, 1972), p. 52. As Goldhagen later suggests, "What rational purpose was hidden behind the design to exterminate the Jewish people? What possible capitalistic interest could have been served by the extermination at considerable cost of millions of useful laborers and craftsmen?" (p. 58).
  7. A brief history of the German Medical Association and its early attitude toward Jewish physicians can be found in Joseph Tenenbaum, *Race and Reich: The Story of an Epoch* (New York: Twayne Publishers, 1956), pp. 85 ff., and a detailed and grim account of actual experimentation may be found in Alexander Mitscherlich, *Doctors of Infamy: The Story of the Nazi Medical Crimes* (New York: Henry Schuman, 1949). (The picture section contains a helpful chart of the organization of the medical system under the Nazis). For statistics on the number of Jews in the medical and dental professions in Germany between 1933 and 1936, see *The Economic Destruction of German Jewry by the Nazi Regime, 1933-1937* (New York, American Jewish Congress, Publishers, November 1937) pp. 29-30. For a summary of anti-Jewish decrees and ordinances relating to health professionals, see *The Jews in Nazi Germany: A Handbook of Facts Regarding Their Present Situation* (New York, The American Jewish Committee, 1935) pp. 85-88, and texts pp. 131-157.
  8. Gasman, Daniel, *The Scientific Origins of National Socialism: Social Darwinism in Ernst Haeckel and the German Monist League* (New York, American Elsevier Publishing Company, Inc., 1971).
  9. Not all thinkers equate natural law and natural right. Often the development of the natural right tradition has been seen to originate with Hobbes. Leo Strauss's *Natural Right*

and History, (Chicago: University of Chicago Press, 1974), for instance, claims natural right to be anarchic, while supporting natural law (in its 'classical' form).

10. For the bulk of the material in this section, I am heavily indebted to an extremely important bit of scholarship by Harry Bloch, "The Berlin Correspondance in the JAMA During the Hitler Regime," *Bulletin of the History of Medicine* (xlvii, no. 3, pp. 297-305, May-June, 1973). *The Journal of the American Medical Association* had, from 1933 to 1940, a Berlin correspondent who faithfully recorded many little-known proceedings of the medical profession in the "Foreign Letters" section of the JAMA. Bloch does us an admirable service by categorizing the correspondence and offering enough of a synopsis of the content of each to facilitate easier research.

11. Dicks, Henry V., *Licensed Mass Murder: A Socio-psychological Study of Some S.S. Killers* (London: Sussex University Press, 1972), p. 152. See especially chapter 7, "Two Medical Humanitarians," p. 143 ff.

12. Mosse, George L., *Nazi Culture: Intellectual, Cultural and Social Life in the Third Reich* (New York: Grosset and Dunlap, 1966), p. 57. Gunther was later an "expert" called by Hitler to sanction the law of July 14, 1933. Tenenbaum, *op. cit.*, p. 90, reports that the Nazi leaders were thinking seriously about euthanasia long before they came to power. Lectures and movies on the subject were frequent. Gasman, *op. cit.*, p. xxii, asserts that "indeed it is safe to say that few men in modern times have had more of a general cultural influence than Haeckel," and that Hitler's formulation of the differences between the human races was taken directly from him.

13. Gasman, *op. cit.*, p. 48.

14. *Ibid.*, p. 91.

15. *Ibid.*, p. 94. Haeckel's utilitarianism shows in this statement: 'We are not bound,' he wrote, 'under all cir-

cumstances to maintain and prolong life, even when it becomes utterly useless.' He complained that 'hundreds of thousands of miserables — lunatics, lepers, people with cancer, etc. — are artificially kept alive . . . without the slightest profit to themselves or the general body.' (pp. 94-95).

16. *Ibid.*, p. 95. More ominous notes were echoed by Haeckelian disciples like Schallmeyer, who advocated infanticide to get rid of asylums (pp. 95-96), and Dr. Ziegler who said, 'the feeble-minded must be treated as one would discipline an animal' (p. 96). The Monists, incidentally, were also enamored of positive eugenics, particularly in the form of encouraging the upper classes to reproduce — Schallmeyer going so far as to say that some childless couples should be required by law and nation to bear children. (During one Nazi celebration in 1940 Nazi women marched with signs reading, "Leader, at Thy Command We Will Bear Thee Children," *Ibid.*, *op. cit.*, p. 301).

17. Meyer, Joseph, "Eugenics in Roman Catholic Literature," tr. by P. Poponoe, in *Collected Papers of the Human Betterment Society* (New York: Macmillan, 1929).

18. Meyer notes that preliminary studies toward that end were being undertaken with the collaboration of Professors Muckermann and E. Fischer (Berlin). Muckermann was a runaway Jesuit who withdrew "to devote his whole time to furthering eugenics and social hygiene." It is also noted that "he took a leading part in raising funds among Catholic industrialists and capitalists to establish an independent institute for that purpose" (p. 11). That institute was named the *Institute for Research in Anthropology, Human Heredity and Eugenics*, headquartered at Berlin-Dahlen. The director was Eugen Fisher. Otto Von Verschuer was in charge of heredity and Dr. Muckermann of eugenics. See following footnote 31 for the later "work" of these men as reported in

the JAMA.

19. Brohmer, Paul, "The New Biology: Training in Racial Citizenship," (1933), in Mosse, *op. cit.*, p. 90.

20. Gauger, Kurt, "Psychotherapy and the Political World View," in Mosse, *op. cit.*, pp. 220-221 (1934).

21. Lohr, Hanns, "The Physician Must Come to Terms With the Irrational," in Mosse, *op. cit.*, p. 233 (1935).

22. Gasman, *op. cit.*, p. 93.

23. Friedmann, Wolfgang, "Interference With Human Life: Some Jurisprudential Reflections," in *Columbia Law Review*, 70 (1970), 1058.

24. Maritain, Jacques, *Man and the State* (Chicago: University of Chicago Press, 1951). Maritain maintains, contra Strauss (*op. cit.*), that natural law constitutes the sustaining basis for natural rights.

25. Gallin, Mary A., *Ethical and Religious Factors in the German Resistance to Hitler* (Washington: Catholic University of America Press, 1955), p. 199: "The neglect of the teaching on natural law and the lack of clarity in the theological views on the right of resistance made a decision in this matter (for a German) extremely difficult. Even those who surmounted the difficulty reached their decision more from an instinctive repudiation of a leader who did not abide by standards of decency and honor than from a well thought out analysis of the right to defend one's natural rights" (p. 199).

26. Gasman, *op. cit.*, p. xviii.

27. Troeltsch, Ernst, "The Idea of Natural Law and Humanity in World Politics," in Otto Von Gierke, *Natural Law and the Theory of Society* (Boston: Beacon Press, 1957), p. 204. See also Paul Tillich, "The Religious Situation in Germany Today," in *Religion and Life*, Vol. III, no. 2 (Spring, 1934), p. 64. Here Tillich explains the Lutheran Church situation on the basis of its lack of a natural law position from which to criticize the state: "The problems of the Jew, of Communism, of trade unions even the problem of

sterilization are held to be purely political problems such as provide the Church with no reason for raising its voice."

28. Goldhagen, *op. cit.*, p. 59.

29. Franz Neumann quotes Shirer in *Life* as saying that Himmler ordered the execution of 50,000, to which Neumann gives "prima facie probability" (Neumann, Franz, *Behemoth: The Structure and Practice of National Socialism, 1933-1944*. New York: Harper and Row, 1966 [1st publication 1942], p. 112). Tenenbaum, *op. cit.*, p. 94, says that the Nuremberg Tribunal estimated 275,000 were slaughtered in nursing homes, hospitals, and asylums. Dicks, *op. cit.*, p. 60, estimates between 60,000-100,000 German youth and adults killed. In his *Berlin Diary*, W. R. Shirer thinks the "conservative" estimate of a friend (100,000) to be too high. (New York: Knopf, 1941), p. 569.

30. *Journal of the American Medical Association*, 101, no. 4 (July 22, 1933), pp. 294-295.

31. JAMA, 101, no. 6 (August 5, 1933), p. 459. This proposal alarmed Prof. Muckermann (see footnote 18). He cautioned against "too radical" a course. To eliminate every German family with poor hereditary traits would be the "death knell" of the German people. Instead, he proposed "experts" must be called in to prevent "degenerate progeny." He also advocated remission of taxes for those with "sound" qualities (see footnote 37).

32. *Ibid.*, p. 459.

33. JAMA, 101, no. 7 (August 12, 1933), pp. 535-536. In 1937 the Reich party expert on agriculture, R. Walter Darre, said in one of his famous "80 maxims," "By introducing eugenic considerations into our ideas of marriage, we do not introduce something more suitable to animals, or unworthy of man, no! In so doing we merely resume the best moral and intellectual traditions of our ancestors." In Joachim Remak, *The Nazi Years: A Documentary History* (New Jersey:

Englewood Cliffs. Prentice-Hall, 1969), pp. 33-34.

34. *Ibid.*, pp. 535-536. Neumann, *op. cit.*, notes that this statute was amended on June 26, 1935 and February 4, 1936 (footnote, p. 488). See page 488 for examples of the excesses to which these vague laws were carried. Short-sightedness, for instance, came to be seen as "blindness" and called for sterilization. A cataract, even if successfully removed, was also cause (Neumann notes that this decision was praised in 1938 by a Juridical Review).

35. *Ibid.*, p. 536.

36. See Erich Ristow, "To Preserve the Strength of the Race: Compulsory Sterilization" (Berlin, 1935) in Mosse, *op. cit.*, pp. 90-91. Ristow states that sterilization is not to be postponed because the patient is pregnant. He also states that "care" should be taken that the severed parts cannot be rejoined, and that sterilized persons should be forbidden from going abroad for corrective surgery (see also *JAMA*, 105, no. 3 (July 20, 1935), p. 213, for compulsory abortion law).

37. *JAMA*, 102, no. 8 (February 24, 1934), pp. 630-631. The same article quotes two of the guest lecturers at the Congress of Internal Medicine at Wiesbaden, April 9-12, to be Drs. Fischer and Von Verschuer. Their two topics were (respectively), "The present-day theories of Hereditary Transmission in its application to man" and "General pathology of Hereditary Transmission" (see footnote 31).

38. Neumann, *op. cit.*, p. 111. "National Socialism is the first anti-semitic movement to advocate the complete destruction of the Jews. But this purpose is only part of a wider plan defined as the 'purification of German blood,' in which barbarism and a few progressive features combine to form a repellent whole."

39. *JAMA*, 103, no. 1 (July 7, 1934), pp. 56-57.

40. *JAMA*, 103, no. 18 (November 3, 1934), pp. 1390-1391.

41. *JAMA*, 103, no. 19 (November

10, 1934), pp. 1463-1464.

42. *JAMA*, 104, No. 5 (February 2, 1935), pp. 412-413. It should be noted that this issue also reports a Dr. F. Waller who stood up against the "unsafety of prediction" of the application of the Mendelian law to the human race.

43. *JAMA*, 105, no. 3 (July 20, 1935), pp. 212-213.

44. Gauger, in Mosse, *op. cit.*, pp. 222-223.

45. *Ibid.*, p. 225.

46. Tenenbaum, *op. cit.*, p. 8.

47. Friedrich, Hans, "The Code for Nazi Science," in *The Living Age*, 352 (March, 1937), p. 25.

48. Lohr, Hanns, in Mosse, *op. cit.*, p. 233.

49. Dicks, *op. cit.*, p. 60. It is also true that the attitude toward the Jews was not always anti-utilitarian. Jewish physicians, for example, who were normally (under the rubric of being the intelligentsia) among the first to go into concentration camps were utilized by the Nazis in the Russian campaign. Cf. *The Black Book: The Nazi Crime Against the Jewish People* (New York: The Jewish Book Committee, 1946), p. 107.

50. Tenenbaum, *op. cit.*, p. 10. See also Mitscherlich, *op. cit.*, pp. 132-138, for some of Brack's cost estimates. It is interesting to note that Brandt, when sent to the gallows at Nuremberg, justified some of the heinous medical experiments on the basis of the scientific knowledge gained. He even offered his body to be experimented on instead of being hung, and was surprised when the judges refused (Mitscherlich, p. 147).

51. Mitscherlich, *op. cit.*, p. 106.

52. *Ibid.*, p. xxxi.

53. Remack, *op. cit.*, p. 141.

54. See Kennedy, G. A., "Focusing of Arguments in Greek Deliberative Oratory," in *Transactions and Proceedings of the American Philological Association*, 90 (1959), pp. 131-138. Kennedy notes that Greek orators usually appealed to the just and hon-

orable or the expedient, but didn't usually combine such arguments. He adds (p. 131) that most of the successful speeches centered attention on the expedient.

55. Alexander, Leo, in Mitscherlich, *op. cit.*, p. xxxi. See also *The Brown Book* (published in East Germany, 1965), p. 312, for Nazi propagandists advocating institutes for abortion and voluntary sterilization.

56. Mitscherlich, p. 91. Dr. Mennecke told a secret conference of physicians in Berlin (1940) that euthanasia had been planned as early as 1932 by other countries, and that the 1941 program would involve "only suffering incurables" (p. 94).

57. Mitscherlich, p. 111.

58. Remak, *op. cit.*, p. 156.

59. Westermeyer, H. E., *The Fall of the German Gods* (Mountain View, California: The Pacific Press, 1960), p. 130. He cites the opposition as centering around article 32, which gave the Catholics the right to teach against morality counter to the natural and Divine laws. On May 25, 1935 the Pope attacked sterilization on the grounds of the 1930 encyclical *Casti Connubii*.

60. *Ibid.*, p. 131.

61. *JAMA*, 106, no. 18 (May 2, 1936), pp. 1582-1583. The same issue reports the results of the May, 1935 International Hospital Conference in Rome, where the German delegation had requested that the issue of sterilization be taken up. The Netherlands strongly opposed the measure as well as the Pope, who saw it as a reversion to paganism. The French, Spanish, and Irish delegations were also strongly opposed.

62. Mitscherlich, pp. 103 ff. See Tetens, T. H., *The New Germany and the Old Nazis* (New York: Random House, 1961) for Hitler's secret letter authorizing euthanasia (September 1, 1939), p. 183. See following for the organization and names of front-groups for the euthanasia program.

63. Remak, *op. cit.*, pp. 138-139.

64. Tetens, *op. cit.*, p. 184. Hitler reportedly said that he would settle accounts "down to the last penny" with Galen after the war (Remak, p. 140). Hitler's hatred for the church is evident from private correspondence where he said that it must not be destroyed outright, but be allowed to wither away "like a gangrened member" (Remak, p. 63).

65. For Catholic protests see Gordon Zahn, *German Catholics and Hitler's Wars* (New York: E. P. Dutton, 1969). Chapters on resisters and collaborators are contained therein.

66. Mitscherlich, p. 107. Braune goes on to ask where the borderline to such medical intervention can be drawn. It should also be noted that this Protestant is still positivist in his legal understanding: "only a valid law can be seen as a basis for the killings," in contrast to Catholic protests (see above).

67. Remak, *op. cit.*, p. 135. See Mitscherlich, pp. 96-100 for texts of the questionnaire used. According to Remak (p. 135) medical "experts" in Berlin made bureaucratic errors costing many lives — such as using the wrong colored pencil for a "life or death" rating. Several thousand cards were involved in one such mishap. Tenenbaum, p. 92, cites Nuremberg testimony showing that Conti, Brandt and Beuhler were present to observe at a test "gassing" of four patients in December of 1939 or January of 1940.

68. Remak, *op. cit.*, p. 134. Workers in the hospitals often gave their own means for support when possible. Many could not bear the cries, "Hunger! Hunger!" that came from the patients.

69. Mitscherlich, pp. 113-116.

70. *The Black Book*, *op. cit.*, p. 249.

71. Mitscherlich, statement of Dr. Ivy, p. x.

72. Remak, *op. cit.*, pp. 141-146.

73. *Ibid.*, pp. 60-61.

74. Hollowell, John, *Main Currents in Modern Political Thought* (New York: Holt, 1950), p. 613.

75. See H. L. A. Hart, "Legal Positivism and the Separation of Law and Morals," in *Harvard Law Review*, lxxi (1958), p. 598 ff. Hart's argument really settles on protecting the possibility of change in history. Some readers might question the contention that Hart is an opponent of natural law theory by referring to his chapter "Laws and Morals" in *The Concept of Law* (Oxford: Clarendon, 1961, pp. 181-207), which contains his account of a "minimal content" of natural law. Space does not permit an analysis of his position here, but I would want to contend that the basically *functionalistic* formulation of natural law that Hart develops is really more compatible with rule-utilitarianism than with natural law *per se*, and that his position as a natural law thinker is, at best, ambivalent.

76. See Aquinas' *Summa Theologica*, II, II, 65 art. 1. Private castration or sterilization was seen as a violation of the natural law. Punitive sterilization (punishment for sin) and medical necessity was allowed. The Papacy condemned direct sterilization in 1894. In 1921 in the United States, the Catholic Hospital Association strongly condemned the sterilization of the insane and the retarded. On December 31, 1931, the Pope condemned eugenic sterilization uncompromisingly (*Casti Connubii*). One must remember, however, that many Catholics approved eugenic sterilization (see the Joseph Meyer article previously cited). I am indebted to the unpublished paper of my colleague, Richard Sherlock, "The Problem of Sterilization in Western Society: a Preliminary Survey of the Medical and Religious History," for this information. See also J. B. Mason, *Hitler's First Foes: A Study in Religion and Politics* (Minneapolis: Burgess, 1936) for some of the text of the Joint Episcopal Letter at the Bishop's Conference, Fulda (June 11, 1933) opposing sterilization laws.

77. Remak, pp. 139-140, for some of Galen's speech.

78. Quoted in Gallin, *op. cit.*, p. 175.

79. See Mosse, pp. 239 ff. A political dealing prompted one anti-natural law theorist to say that the Catholic Church response to National Socialism might be interpreted as a rather cynical example of power politics and not an example of the sense of human justice and human rights (Midgely, Louis C., *Beyond Human Nature: The Contemporary Debate Over Moral Natural Law* (Provo, Idaho: Brigham Young University Press, 1968), p. 55.

80. Herberg, Will, *How My Mind Has Changed*, ed. by H. E. Fey (New York: Meridian, 1961), p. 84.

81. Gallin, p. 39.

82. *JAMA*, 102, no. 18 (July 5, 1934), pp. 1501-1502. Another instance of well-intentioned but extremely shortsighted reasoning may be found in "The Case of the Physicians" by L. F. Barker, M.D., in *The Case of Civilization Against Hitlerism* (New York: R. O. Ballou, 1934). Barker, a professor at Johns Hopkins University at the time, berates the treatment of the Jewish physicians by the Nazis, but adds this note: "If the Germans had wished to reduce the number of Jews in medicine to a proportion, this could have been done gradually by limiting the number entering upon a medical career . . ." For a thorough survey of the history of eugenic thought in America, see Mark Haller, *Eugenics: Hereditarian Attitudes in Modern American Thought* (New Brunswick, New Jersey: Rutgers University Press, 1963). See also Richard Hofstadter, *Social Darwinism in American Thought* (Boston: Beacon Press, 1971).

83. *JAMA*, 105, no. 3 (July 20, 1935), pp. 212-213.

84. Tenenbaum, p. 88.

85. Exactly this is the proposal of the self-proclaimed utilitarian medical ethicist Joseph Fletcher, who says, "... all rights are imperfect and may be set aside if human need requires it." Mr. Fletcher also wonders what

we are to do if "after genetic counselling a couple elects to proceed with a predictably degenerate pregnancy?" (pp. 3 and 4, "Indicators of Humanity: A Tentative Profile of Man," in the *Hastings Center Report*, 2, no. 5, (November, 1972). This article contains a consistent logical extrapolation from utilitarian premises.

86. Tenenbaum, p. 101.

87. See Edwards, R. G., and Sharpe, D. J., "Social Values and Research in Human Embryology," in *Nature*, 231, 87, 1971.

88. *The Brown Book*, *op. cit.*, p. 314.

89. See Mitscherlich, pp. 100-101, for an account of the first starvation killings.

90. *Ibid.*, p. 90.

91. Roblin, Richard, "Some Recent

Developments in Genetics," in *Theological Studies*, Vol. 33, no. 3, 1972, pp. 404-405.

92. Alexander, Leo, "Medical Science Under Dictatorship," in *The New England Journal of Medicine*, 241: 39-47 (1949), p. 8.

93. Mitscherlich, *op. cit.*, p. 90. Gallin reports one Protestant resistance group with plans before the aborted coup of July 20, 1944, to stress the idea of rights and strong family structure.

94. Dicks, *op. cit.*, p. 154.

95. Mitscherlich, p. x of Ivy's statement.

96. *Ibid.*, pp. 128-129.

97. Barth, Karl, *Church Dogmatics* (Edinburgh, T & T Clark, 1961), Vol. III, no. 4, p. 424.

## 1975 ANNUAL MEETING

### National Federation of Catholic Physicians' Guilds

Sept. 8, 9, 10, 1975

SHERATON PARK HOTEL

WASHINGTON, D.C.

in conjunction with the

United States Catholic Chaplains Association