NO. 96-110

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1996

STATE OF WASHINGTON, CHRISTINE 0. GREGOIRE,
Attorney General of Washington,

Petitioners,

v.

HAROLD GLUCKSBERG, M.D.,
ABIGAIL HALPERIN, M.D., THOMAS A. PRESTON, M.D.
and PETER SHALIT, M.D., Ph.D.,

Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE, BRIEF OF SCHILLER INSTITUTE IN SUPPORT OF PETITIONERS, AND APPENDIX

MAX DEAN
Attorney for Amicus Curiae Schiller Institute
120 E. 1st Street, Suite 1616
Flint, MI 48502
(810) 235-5631

November 6, 1996

NO. 96-110

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1996

STATE OF WASHINGTON, CHRISTINE 0. GREGOIRE,
Attorney General of Washington,

Petitioners,

v.

HAROLD GLUCKSBERG, M.D.,
ABIGAIL HALPERIN, M.D., THOMAS A. PRESTON, M.D.
and PETER SHALIT, M.D., Ph.D.,

Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

MOTION OF SCHILLER INSTITUTE FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to Rule 37 of the Rules of this Court, the Schiller Institute respectfully moves for leave to file the accompanying brief amicus curiae in the above-captioned case.

The Schiller Institute, founded in May 1984, has national organizations in the United States of America, Canada, most of the nations of Europe, Ibero-America, Australia, Thailand, India, and Japan.

The Schiller Institute has a deep and abiding interest in the principles and spirit of the American Revolution as an inspiration for all people, including elected officials and jurists in the United States, and urges them to reaffirm the Federal Constitution's dedication to the preservation and extension of the lives of its population, thus leading the rest of humanity on such a course.

Because of the Schiller Institute's past activities and its cultural optimism, its brief will bring to this case a perspective not currently before the Court. The accompanying proposed brief advances an argument not developed by Petitioners: the extent to which allowing physician-assisted suicide on any of the alleged grounds, or permitting the various states to do as they please, would be an act of world wide negative significance, it would expose all those physicians acting in reliance upon such rulings to be adjudged criminally responsible for crimes against humanity in future proceedings similar to those had under the Four Power Agreement establishing the international tribunals at Nuremberg at the conclusion of World War II.

The Schiller Institute's brief supports the position of Petitioners and points out where such Nazi policies have led in the past and where they will lead again. It is the writer's expectation that this arnici brief alone will address this issue directly and for that reason urges this brief be accepted.

The counsels for either party have not consented to the amicus curiae brief of the Schiller Institute.

For the above reasons, the Schiller Institute moves this Court to grant leave to file the accompanying brief amicus curiae in support of Petitioners.

Respectfully submitted,

MAX DEAN
Attorney for Amicus Curiae
Schiller Institute
120 E. 1st Street, Suite 1616
Flint, MI 48502
(810) 235-5631

Dated: November 6, 1996

QUESTION PRESENTED

Amid Curiae will address the following question :

Whether judicially according a terminally ill, competent individual a constitutionally protected right to obtain the assistance of a physician to commit suicide will lead to punishable acts under future Nuremberg type tribunals established to punish those who commit such acts as being crimes against humanity.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

Four Powers Agreement and Charter of the International Military Tribunals authorizing the trials at Nuremberg.

United States of America v. Karl Brandt, et al., LM.T. under Control Council Law No. 10 of December 20, 1945, issued at Berlin by the Four Powers through their commanding generals.

NO. 96-110

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1996

STATE OF WASHINGTON, CHRISTINE 0. GREGOIRE,
Attorney General of Washington,

Petitioners,

v.

HAROLD GLUCKSBERG, M.D.,
ABIGAIL HALPERIN, M.D., THOMAS A. PRESTON, M.D.
and PETER SHALIT, M.D., Ph.D.,

Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF OF SCHILLER *INSTITUTE AS AMICUS* CURIAE *IN SUPPORT* OF PETITIONERS

INTEREST OF THE AMICUS CURIAE

Helga Zepp-LaRouche, the founder of the Schiller Institute, and chairman of its Board of Directors in the United States, chose the German poet of freedom, Friedrich Schiller, as the namesake for the Institute, because his belief in the beauty and power of human reason provides a strong and clear antidote

to the "cultural pessimism" which led to fascist economic and social measures.

The Institute currently has chapters throughout Eastern and Western Europe, Asia, Ibero-America, the Middle East, and Australia. Its international scope provides a constant reminder of the importance of decisions taken in the United States for the rest of the world. This perspective is particularly important in matters of the right to life, such as the one placed before the Supreme Court in Vacco v Quill and State of Washington v Glucksberg et al It is the Institute's belief that if the Supreme Court were to uphold assisted suicide, it would put the United States on a course which threatens the very existence of many Third World nations, as well as whole classes of individuals considered "useless eaters" in the United States itself.

At a major conference in November 1984, the Institute adopted a "Declaration of the Inalienable Rights of Man," modeled on the U.S. Declaration of Independence, but adapted with reference to the tyranny that has been established by the international financial institutions. Prominent among these rights, of course, were the rights to "life, freedom, material conditions worthy of man, and the right to develop fully all potentialities of their intellect and their souls." These rights would clearly be threatened should the U.S. Supreme Court decide in favor of "physician-assisted suicide."

Mrs. LaRouche, a German citizen, has shown a special interest in analyzing the dangers of the resurgence of Nazism and fascism today, and the Institute has joined her efforts. In a 1984 book called The Hitler opk published by the Schiller Institute, she analyzed the philosophical roots of fascism, and pointed to the philosophies of irrationalism, and a wide-range of attacks against the Judeo-Christian humanist concept of man being created in the image of God, as constituting a growing threat to mankind. She attacked the Social Darwinists, and such

theorists as Colorado Governor Richard Lamm, as exemplary of this thinking today.

In a series of other books and conferences, the Schiller Institute has promoted economic development plans, space colonization, and classical culture as means to overcome cultural pessimism and solve the problems of economic devolution that mankind faces. These conferences have generaily featured the economic theories and programs of Mrs. LaRouche's husband, economist Lyndon LaRouche, and have attracted considerable support, particularly within nations under the thumb of International Monetary Fund conditional ities.

The Schiller Institute and Mrs. LaRouche have often pointed to the standard of the Nuremberg Military Tribunal, which tried the Nazis for crimes against humanity after World War II, in contrast to the rapidly decreasing valuation on individual human life that has been evident over the last 20 years in particular. A close study of this standard shows that, at the bar of civilization -- as Justice Robert Jackson would say -- the trend of judicial decisions, and medical practice have been rapidly converging on the "ethics" of the Nazis and their Nazi doctors. Dr. Leo Alexander, who was the chief medical witness to the Nuremberg war crimes trial, forcefully reiterated that point to the Schiller Institute on several occasions. Dr. Alexander, who wrote the Nuremberg Code that established the moral, ethical, and legal principles defining crimes against humanity, emphasized that the acceleration of the tendency nowadays to accept euthanasia, this time in the form of the right-to-die movement, "parallels what occurred in Nazi Germany."

In November 1985, the Institute held a commemoration of the Nuremberg Tribunal in that German city, and announced the formation of a new commission to investigate crimes against humanity, dedicated to founding a new Nuremberg Tribunal.

Among the areas identified for investigation was "the euthanasia campaign in the industrialized countries, modeled on the 'mercy killing' campaign of the Nazis, which is targetting the old and sick people. What started with a campaign for the dubious 'right to die' has long since become a campaign for the 'duty to die' (Colorado Governor Lamm) for the old and sick, whose medical treatment is considered not 'cost effective.'"

Since 1985, the decline down the slippery slope of viewing more and more lives as "not worthy to be lived," has been dramatic. If the U.S. Supreme Court does not stop this descent, the U.S. role at Nuremberg will essentially be reversed.

REASONS FOR REVERSING THE COURT OF APPEALS

The Supreme Court should reverse the Court of Appeals on grounds that there is no constitutionally protected right to suicide. To judicially accord a terminally ill, competent individual, a constitutional right to the assistance of a physician to commit suicide will lead to punishable acts under future Nuremberg type tribunals established to punish those who commit such crimes against humanity.

BACKGROUND PHYSICIAN-ASSISTED SUICIDE THE GERMAN EXPEIINCE

The New England Journal of Medicine Vol. 241: 39-47 of July 14, 1949 published "Medical Science Under Dictatorship" by Leo Alexander, M.D. Born in Vienna, graduating from its university in 1929, he came to America and became a medical investigator for Secretary of War Robert P. Patterson and a consultant to the U.S. Chief of Counsel at Nuremberg. As a psychiatrist and neurologist, Dr. Alexander became chief medical witness at the Nuremberg trials and showed that crimes against humanity can occur at any time, in

any nation, as the outcome of putting Hegelian "rational utility" above Judeo-Christian morality.

In his article, he recounts that a preparatory propaganda barrage was commenced even before the Nazis openly took charge. It was directed against the traditional compassionate 19th century attitudes toward the chronically ill. He points out that sterilization and euthanasia were discussed at a meeting of Bavarian psychiatrists in 1931. By 1936, exte!jntion of the physically or socially unfit was so openly accepted, that its practice was mentioned incidentally in an article published in an official German medical journal.

Dr. Alexander describes in his article motion pictures dealing with euthanasia, including one depicting a woman suffering from multiple sclerosis, with her husband, a doctor, finally killing her to the accompaniment of soft piano music rendered by a sympathetic colleague:in an adjoining room. He describes indoctrination in which high school mathematics books included problems stating the cost of caring for and rehabilitating the chronically sick and crippled. Math problems asked how many new housing units and how many marriage allowance loans could be giverto newly wedded couples for the amount of money it cost the state to care for "the crippled, the criminal, and the insane."

The first direct order for euthanasia was issued by Hitler, dated September 1, 1939. Dr. Karl Brandt headed the medical section in charge. All state institutions were required to report on patients who had been ill five years or more and who were unable to work. Decisions to kill were made by experts, most of whom were professors of psychiatry in the key universities and who never saw the patients. Decisions were based on questionnaires giving name, race, marital status, nationality, next-of-kin, whether regularly visited and by whom, who bore financial responsibility, et cetera. One expert

Among the areas identified for investigation was "the euthanasia campaign in the industrialized countries, modeled on the 'mercy killing' campaign of the Nazis, which is targetting the old and sick people. What started with a campaign for the dubious 'right to die' has long since become a campaign for the 'duty to die' (Colorado Governor Lamm) for the old and sick, whose medical treatment is considered not 'cost effective.'"

Since 1985, the decline down the slippery slope of viewing more and more lives as "not worthy to be lived," has been dramatic. If the U.S. Supreme Court does not stop this descent, the U.S. role at Nuremberg will essentially be reversed.

REASONS FOR REVERSING THE COURT OF APPEALS

The Supreme Court should reverse the Court of Appeals on grounds that there is no constitutionally protected right to suicide. To judicially accord a terminally ill, competent individual, a constitutional right to the assistance of a physician to commit suicide will lead to punishable acts under future Nuremberg type tribunals established to punish those who commit such crimes against humanity.

BACKGROUND PHYSICIAN-ASSISTED SUICIDE THE GERMAN EXPENCE

p

The New England Journal of Medicine Vol. 241: 39-47 of July 14, 1949 published "Medical Science Under Dictatorship" by Leo Alexander, M.D. Born in Vienna, graduating from its university in 1929, he came to America and became a medical investigator for Secretary of War Robert P. Patterson and a consultant to the U.S. Chief of Counsel at Nuremberg. As a psychiatrist and neurologist, Dr. Alexander became chief medical witness at the Nuremberg trials and showed that crimes against humanity can occur at any time, in

any nation, as the outcome of putting Hegelian "rational utility" above Judeo-Christian morality.

In his article, he recounts that a preparatory propaganda barrage was commenced even before the Nazis openly took charge. It was directed against the traditional compassionate 19th century attitudes toward the chronically ill. He points out that sterilization and euthanasia were discussed at a meeting of Bavarian psychiatrists in 1931. By 1936, extejjion of the physically or socially unfit was so openly accepted, that its practice was mentioned incidentally in an article published in an official German medical journal.

Dr. Alexander describes in his article motion pictures dealing with euthanasia, including one depicting a woman suffering from multiple sclerosis, with her husband, a doctor, finally killing her to the accompaniment of soft piano music rendered by a sympathetic colleague :fl an adjoining room. He describes indoctrination in which high school mathematics books included problems stating the cost of caring for and rehabilitating the chronically sick and crippled. Math problems asked how many new housing units and how many marriage allowance loans could be given to newly wedded couples for the amount of money it cost the state to care for "the crippled, the criminal, and the insane."

The first direct order for euthanasia was issued by Hitler, dated September 1, 1939. Dr. Karl Brandt headed the medical section in charge. All state institutions were required to report on patients who had been ill five years or more and who were unable to work. Decisions to kill were made by experts, most of whom were professors of psychiatry in the key universities and who never saw the patients. Decisions were based on questionnaires giving name, race, marital status, nationality, next-of-kin, whether regularly visited and by whom, who bore financial responsibility, et cetera. One expert

consultant between November 14 and December 1, 1940 evaluated 2,109 questionnaires. The semantics in vogue then prompted the name of this program to be 'Realm's Work Committee of Institutions for Cure and Care." A parallel organization devoted to killing children was called "Realm's Committee for Scientific Approach to Severe Illness Due to Heredity and Constitution." The "Charitable Transport Company for the Sick" transported the patients to the killing centers. The "Charitable Foundation for Institutional Care" was in charge of collecting the cost of the killings from the relatives, without, however, informing them what the charges were for. The cause of death was falsified on the death certificates.

Dr. Alexander quoted verbatim what a member of the court of appeals at Frankfurt-am-Main wrote in December 1939 of constant discussion of the destruction of the socially unfit, and that abnormal activity was taking place. The judge said people were:

> • disquieted by the question of whether old folk who have worked hard all their lives and may merely have come into their dotage were also to be liquidated.. · The people are said to be waiting for legislative regulation rpviçlin some orderly method that will ensure especially that the aged feeble-minded are not included in the program.

Dr. Alexander described the early warning signs in the changes in medical attitudes:

> 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 p 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.

It is, therefore, the subtle shift in emphasis of the physicians' attitude that one must thoroughly investigate. It is a recent significant trend in medicine, including psychiatry, to regard prevention as more important than cure. Observation and recognition of early signs and symptoms have become the basis for prevention of further advance of disease.

In looking for these early signs one may well retrace the early steps of propaganda on the part of the Nazis in Germany as well as in the countries that they overran and in which they attempted to gain supporters by means of indoctrination, seduction and propaganda.

(Emphasis added)

BACKGROUND NUREMBERG TRIBUNAL
THE CASE OF DR KARL BRANDT

4

It was America alone who brought the Nazi doctors to trial. The U.S. Tribunal made clear that the crime of euthanasia was so abhorrent to the civilized world, that the U.S. had to prosecute it. The U.S. military constituted special tribunals to try the doctors for euthanasia, and made it clear from the outset that these particular men were on trial, not for having murdered Jews and Gypsies, not for having murdered Poles -- they had not, others had -- but for having murdered Germans. Furthermore, the murdered Germans have no one to speak for them, since they had been murdered at the hands of their own government.'

Prior to Hitler's formal euthanasia order of October 1939, back dated to September 1, 1939, the day of the invasion of Poland, each case of "mercy killing" was decided by Hitler in response to letters from parents and doctors asking for his approval io "gant" a euthanasia death to retarded or disabled children. The first such request came in 1938, from a couple named Knauer, whose infant was born blind, with a leg and part of an arm missing, and "who seems to pean idiot." Hitler had his own physician, Karl Brndt, consult with the child's doctors and parents; then he gave his permission for the child to be killed.

In 1973, the father of the child described Brandt's discussion with him: "He explained to me that... the Fuehrer

Molly Hamxnett Kronberg, Hitler's Euthanasia Program--More Like Today's Than You Might Imagine from How to Stop the Resurgence of Nazi Euthanasia Today; including Transcripts of the **International Club** of Life Conference, Munich, West Germany, June 11-12, 1988," EIR Special Report, pp. 129-142 (Sept. 1988).

wanted to [solve] the problems of people who had no future -- whose lives were worthless." Knauer said Hitler was "like a savior to us -- the man who could deliver us from a heavy burden."[2]

After the Knauer child's case, Hitler ordered the Reichschancery Secretariat and Brandt to investigate each new case, and to make recommendations.

The lives of such unfortunates, Hitler told his intimates, "are not worth living." He continued, these people deserve "mercy - in their case, death."

In the summer of 1939, Hitler called in his Secretary for Health in the Interior Ministry, and Reichschancery Secretary Lammers to tell them that, "He considered it to be proper that the 'life unworthy of life' of severely mentally ill persons be eliminated by actions that bring about death." In *this* way, Hitler said, "a certain cost-saving in hospital, doctors, and nursing personnel could be brought about." But, Hitler also clearly enunciated one more reason: he considered these euthanasia killings "humane." He insisted that the euthanasia deaths be absolutely painless; he insisted that only doctors perform the euthanasia. And, he specifically disallowed Jews from benefitting from *this* "mercy killing." Euthanasia, or a "mercy death," was allowed only for Aryans. Jewish patients in German psychiatric hospitals were deported to concentration camps to deny them the Gnadentod of euthanasia.

In October 1939, Hitler hand wrote his secret euthanasia order. "Reichsleiter [Philip] Bouhler and Dr. [Karl] Brandt are charged with the responsibility for expanding the authority of

[2] Supra pp. 139-140, EIR Special Report.

physicians, to be designated by name, to the end that patients considered incurable according to the best available human judgment of their state of health, can be accorded a mercy death."

At the top of the order, Hitler, wrote: "Vernichtung lebensunwerten Lebens" or, "The Destruction of Lives Unworthy of Life."

Before the International Military Tribunal, one of the cases brought for crimes against humanity for which individuals were indicted, tried, and executed, was the crime of euthanasia committed by Germans against German civilians. This charge was based on Control Council Law No. 10 of December 20, 1945, issued to Implement the Four Power Agreement by the United States, United Kingdom, French Provisional Government and Soviet Union through their commanding generals at Berlin. Article II 1.(C) defined crimes against humanity as:

> Atrocities and offenses, including but not limited t6 murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population ... whether or not in violation of the domestic laws of the country where perpetrated.

The U.S. Military Tribunal specifically applied the definition of a crime against humanity to cover German victims, not just conquered civilians:

> The words "civilian population" cannot possibly be construed to exclude German civilians. If Germans are deemed excluded Efrom the class of victims], there is little or nothing left to give purpose to the concept of crimes against

> humanity ... It is one of the very purposes of the concept of crimes against humanity ... to reach the systematic commission of atrocities and offenses by a state against its own people."

Count III of the indictment in the case, United States of America v Karl Brandt et al, charged in pertinent part:

> Defendants Karl Brandt, Blome, Brack and Hoven unlawfully, willfully, and knowingly committed crimes against humanity, as defined by Article II of Control Council Law No. 10 in that they were principles in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the execution of the so-called "euthanasia" program of the German Reich, in the course of which the defendants herein murdered hundreds of thousands of human beings, including German civilians, as well as civilians of other nations.
>
> This program involved the systematic and secret execution of the aged, insane, incurably ill, of deformed children, and other persons, by gas, lethal injections, and diverse other means in nursing homes, hospitals, and asylums. Such persons were regarded as "useless eaters" and a burden to the German war machine.

Evidence presented in the course of the Brandt trial included evidence that deformed or defective newborn infants were among the victims of the euthanasia program.

> The names of newly born children who were deformed or partly paralyzed, or mentally

> deficient, were submitted to the health authorities and finally to a Reich agency of Berlin ... A short time after the reports were filed, the County Health Authorities of the respective districts received an order that these children should be sent to a special institution for special modern therapy. I know from hundreds of cases, that this "special modern therapy" was nothing less than the killing of these children. Another method of killing so-called "useless eaters" was to starve them ... This method was apparently considered very good, because the victims would appear to have died a "natural death." This was a way of camouflaging the killing procedure.

Affidavit of Gerhard Schmidt, Director of the Haar-Eglfing Insane Asylum, dated 28 March 1946, Document No. 3816-PS.

Dr. Karl Brandt, like Dr. Jack Kevorkian, also clothed acts of genocide and euthanasia in "humanitarian" garb, saying at sentencing:

> I am fully conscious that when I said "Yes" to euthanasia I did so with the deepest conviction, just as it is my conviction today, that it was right. Death can mean deliverance. Death is life -- just as much as birth. It was never meant to be murder. I bear a burden, but it is not the burden of a crime. I bear this burden of mine, though with a heavy heart, as my responsibility. I stand before it, and before my conscience, as a man and as a doctor.

Final Statement of defendant Karl Brandt, 19 July 1947, Transcript of Trials of War Criminals before the Nuremberg

Military Tribunals under Code Council Law. No. 10, trans. pp. 11311-11314.

On August 20, 1947, Dr. Karl Brandt was adjudged guilty of war crimes, guilty of crimes against humanity, of conspiring to commit war crimes and crimes against humanity, and of membership in an illegal organization, and was sentenced to "death by hanging" by order of the U.S. Military Tribunal. It is only just that it is no defense to be a sincere Nazi.

There is no difference between Hitler's perspective and that of the Second and Ninth Circuit. The Second Circuit cites New York's long-standing contention that its principle interest is in preserving the life of all its citizens at all times and under all conditions. But, the Second Circuit asks: "Of what interest can the state possible have in requiring the prolongation of a life that is all but ended? Surety, the state's interest lessens as the potential for life diminishes." Quill, et al v. Vacco 80 F.3d, 716, 729.

The Ninth Circuit states:

> While the state has a legitimate interest in preventing suicides in general, that interest, like the state's interest in preserving life, is substantially diminished in the case of terminally ill, competent adults who wish to die.

Compassion in Dying v Washington under the State's Interest, 2, a; 79 F.3d 790, 829

The "lives not worthy of life" ethic, as the Ninth Circuit finds, is already established within state statutes and we ask the Court not to compound that wrong with another.

> As the laws in state after state demonstrate, even though the protection of life is one of the state's most important functions, the state's interest is dramatically diminished if the person it seeks to protect is terminally ill or permanently comatose and has expressed a wish that he be, permitted to die

Compassion i Dying v Washington 820.

The Ninth circuit continues:

> When participant.. are no longer able to pursue liberty or happiness and do not wish to pursue life, the state's interest in forcing them to remain alive is clearly less compelling. Thus, while the state may still seek to prolong the lives of terminally ill or comatose patients ... the strength of the state's interest is substantially reduced in such circumstances.

Compassion in Dying v Washington supra 820.

If anything, the Ninth Circuit's perspective is a chilling embrace of Hitler's, as Hitter wrote in his second book, unpublished until the 1960s after his death:

> In truth that struggle for daily bread, both in peace and in war, is an eternal battle against thousands upon thousands of obstacles, just as life itself is an eternal struggle against death. For men know as little why they live, as does any other creature of the world. Only life is tilled with the longing to preserve itself

> Countless are the species of all the Earth's organisms, unlimited at any moment in all individuals is their instinct for self-preservation as well as their longing for continuance THEREFORE, HE WHO WANTS TO LIVE MUST FIGHT AND HE WHO DOES NOT WANT TO FIGHT IN THIS WORLD OF ETERNAL STRUGGLE, DOES NOT DESERVE TO BE ALIVE.

Hitler's Secret Book, Grove Press, New York, 1962 (emphasis added).

Is Hitler's social Darwinian ethic all that different from that of the Ninth Circuit's? Effectively, the Ninth Circuit said that when a patient is too ill or no longer wishes to fight for his life, then he no longer is fit to live within the embrace of society's protection and support. Hitler explicitly wrote: "If the power to fight for one's own health is no longer present, THE RIGHT TO LIVE IN THIS WORLD OF STRUGGLE ENDS." (Emphasis added.)

Such is the premise, whenever a state or a court bestows the "right" for an individual to take his life, or, to allow others to do so for him. That physicians are called upon to act to render that "right" out of some misplaced compassion, does not stand the historic test of Nuremberg.

> It should be noted that Dr. Timothy Quill, a forceful and eloquent proponent of physician-assisted suicide, would not limit that right to the terminally ill. As he explains, he does not want "to arbitrarily exclude persons with incurable, but not imminently terminal, progressive illness." But why stop there? Is it. any less arbitrary to exclude the quadriplegic? The

victim of a paralytic stroke? The mangled survivor of a road accident?

Yale Kamisar, Against Assisted Suicide Even a Very Limited Form U. Det. Mercy L. Rev., Vol. 72, Issue 4 (1995) (emphais added).

For America, the Nuremberg judgments have prócedential value. The United States led in the establishment of the Nuremberg Trounals. By January of 1945, the United States government had decded to conduct ine;national trials. The three other major allied powers accepted the American program at the San Francisco United Nations Conference. Associate Justice Robert Jackson was appointed by President Truman as head of the United States delegation and future chief counsel for the American prosecution, who was the guiding spirit and practical planner. Nineteen other governments, members of the United Nations, adhered to the Four Power Agreement.

William J. Bosch, Judgment on Nuremberg University of North Carolina Press, 1970, analyzed the response of international law jurists and wrote at page 235:

> International lawyers condemning the Tribunal often reached their conclusions because they subscribed to the doctrine of legal positivism. This judicial theory maintains that the sovereign state was the only subject of international law and that a nation has no obligations except those created by explicit agreements or clear compliance with a general custom. Legal positivism, therefore, looked askance on Nuremberg's indictment for crimes against peace and humanity derived from an alleged international common law, on the court's

principle of individual responsibility, and on the judges' affirmation of a progressive, dynamic law of the nations which could not be emasculated by uncompromising demands for precedence.

Adherents of the natural-law philosophy generally endorsed Nuremberg because the court supposedly vindicated their theory. This theory declared that law was derived from the ontological nature of things, that rights and duties were discovered by reason rather than made by the sovereign's will, and that consequently there existed immutable, inalienable human rights and a fundamental law above all human legislation.

Nuremberg embodied tenets of the natural-law philosophy, for the court affirmed individual accountability, claimed to be speaking for a rule of reason which judged the actions of all men and nations, and decided that, whatever the lack of statutory enactments, the laws of God and nature were enough to condemn the Nazis.

It is submitted to this Court that the Tribunal's actions taken at Nuremberg were just, necessary, and legally valid under international law and our own Constitution. Additional authority was provided when, on December 11, 1946, the General Assembly of the United Nations "affirmed" the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal. The Nuremberg ban on aggressive war has been repeatedly invoked by the United Nations. The prosecutions for crimes against humanity, including governmentally sanctioned euthanasia, are such a national expression of the American concept of the good,

that to turn one's back on Nuremberg is tantamount to retreating in the face of the enemy.

It is submitted that Kevorkian's activities have continued because of this subtle shift that Dr. Alexander describes. The shift has been reinforced by the massive propaganda (major media coverage) which treats Kevorkan as a victim and angel of mercy, whose offense lies merely in being unregulated. The Ninth and Second ircuit Courts of Appeals majorities contribute o the institutionalization, of Kevorkian's conduct, providing a gloss of legality and aii at strikãng down state laws, such as Michigan's stature prohibiting assisted suicide, which specifically forbids prescribing, dispensing, or administering medications or procedures if done with the intent to cause death. MCL 752.1027 (WEST) 1995. That statute expired and People v Kevorkian 447 Mich. 436 (1994); 527 N.W. 2d 714, (1994) was based on the common law prohibition.

It is submitted by this writer, that the veterans of World War II made possible this nation's ability to survive as the greatest and finest experiment in democratic republican representative self-government under the longest living constitution that has ever existed. Its continuance depends upon people who will live by and die for the principles of the American Constitution and the Declaration of Independence. This nation, acting through its Supreme Court, cannot approve of or allow its citizens to believe that they have a protected right to commit suicide. The American population has a right to life, liberty, and the pursuit of happiness, but should be encouraged by decisions of this Court to live that life contributing to the common good of their fellows, their posterity, and their country, thereby providing an example to all nations of the world and showing that the Judgment at Nuremberg was not a mere act of vengeance against losers. Almost a million Americans since 1776 have died fighting to uphold this nation and its

Constitution, and they did not die fighting to protect a fundamental right to commit suicide.

CONCLUSION

Wherefore, the members of the Court are respectfully urged, on behalf of the world membership of the Schiller Institute, inclucng Germans liberated from German Nazis, not to forget them and their struggle to hold up the spirit of our Revolution and our Constitution as guides in building nation states to exist in peace with the lives of their citizens enriched by our national example of not allowing Americans to kill Americans in Hitler's footsteps.

For the foregoing reasons of law and policy, the Sch liter Institute urges this Court to reverse the decision of the Ninth Circuit Court of Appeals.

Respectfully submitted,

MAX DEAN
Attorney for the Schiller Institute
120 E. 1st Street, Suite 1616
Flint, MI 48502
(810) 235-5631

Dated: November 6, 1996