Confronting the “Good Death”: Nazi Euthanasia on Trial, 1945–1953

By Michael S. Bryant

Reviewed by Henry Cohen

Most people are probably vaguely aware that the Nazis murdered mentally disabled people as well as Jews, Gypsies, and many others. This book makes clear how deliberate, well-organized, and widespread the Nazis’ murder of the mentally disabled was, as well as how it served as “both precedent and training ground” for the Holocaust. After relating the history of Nazi euthanasia from 1933 to 1945, Michael Bryant describes and analyzes the trials of its perpetrators. These trials were conducted by U.S. occupation forces in 1945–1947 and by occupied Germany and then West Germany (which was formally established in 1949) in 1946–1953. Bryant shows how the courts treated the perpetrators of euthanasia more and more leniently as West Germany regained its sovereignty and formed an alliance with the United States during the developing Cold War.

The phrase the “Good Death” used in the title of this book is the English translation of the Greek roots of the word “euthanasia,” and Bryant’s use of the phrase in quotes is obviously meant to be ironic. The prologue for the Nazis’ extermination of the mentally ill was a pamphlet published in Germany in 1920, entitled The Permission to Destroy Life Unworthy of Life. As early as 1931, Hitler identified sterilization as “the most humane act for mankind,” and he published a law in 1933 — the year he gained power — authorizing the nonconsensual sterilization of people suffering from various mental and physical illnesses, including hereditary blindness, deafness, or feeblemindedness — the criteria for feeblemindedness being “lying, argumentativeness, laziness, and receptiveness to influence.”

Then, in 1938, Hitler launched a formal program for the murder of mentally ill children. From its earliest stages, the program was shrouded in secrecy, presumably because of fear of domestic and foreign reaction. Hitler ran the program through a sham organization with a scientific-sounding name — the Reich Committee for the Scientific Registration of Severe Hereditary Ailments — that operated through an elaborate structure of camouflage organizations. Registration forms were sent to mental hospitals and pediatric clinics throughout Germany, where medical staff would fill them out for each of their patients and return them to the committee. The medical staff would report on each child’s illness, ability to function, prognosis, and life expectancy — without being told why their report was required. After the completed forms arrived in Berlin, three “experts” would enter next to each name either a plus sign, which meant that the child was to be killed, or a minus sign, which meant that the child was to be spared. Then the local health offices would be notified to prepare the children whose names had plus signs for transport to a “children’s ward” — there were approximately 30 throughout Germany — where the children would be murdered, typically by overdoses of medication. Their parents, of course, were informed that they had died of natural causes.

Children’s euthanasia, Bryant writes, “was a prologue to the more ambitious and destructive campaign to kill mentally ill adults.” Because some Nazi officials were concerned about the legality of the campaign, Hitler had a euthanasia law drafted. He decided not to release it, however, on the grounds that an official law would cause too great a sensation. Yet, because “many of the health-care providers and public health officials involved would express their fear of criminal liability,” Hitler assented to authorize the euthanasia program in writing. On Sept. 1, 1939, he signed a single-sentence document authorizing “ incurable” patients to “be granted mercy death after a critical evaluation of their state of health.” This document was shown to any doctor or nurse who had qualms about participating in the program.

Bryant writes, “Whereas in the children’s euthanasia a single front organization, the Reich Committee, concealed the chancellor’s involvement, four such entities were established for the adult program.” As with the children’s program, local doctors filled in forms about their patients; the forms also asked about each patient’s ability to work, and those patients who could work would be spared. Many of the doctors, however, were unaware of the euthanasia program and “deliberately underestimated their patients’ ability to do work, fearing that patients capable of work would be sent away from the institution to perform war-related labor.” The patients then were sent away from the institution — to be murdered. From 1938 to 1941, more than 70,000 patients were murdered in gas chambers disguised as shower rooms. It was after these killings that Hitler expanded the category of lives deemed “unworthy of life” to begin the systematic extermination of Jews and others.

The Trials

At Hadamar, a German town with a population of 6,000, the Nazis gassed at least 10,000 mentally disabled German adults and children and hundreds of Polish and Russian forced laborers who were ill with tuberculosis. In October 1945, the United States tried the killers only for the deaths of the laborers, and only of those laborers who “were in good [mental] health at the time of the extermination. … Technically, the Americans could have prosecuted the Hadamar defendants for killing mentally ill Russian and Polish workers; their mental capacity had no bearing on their protection by the Geneva and Hague conventions.” The Americans’ choice was based on their belief that the murder of mentally disabled people was permitted under...
German law, and, as Bryant puts it, "U.S. Army officials were concerned above all else with defending state power," and "to prosecute defendants for performing an act legal under German law at the time of commission would be an impermissible incursion into the domestic affairs of the Third Reich." Some U.S. officials believed that such an incursion would create a dangerous precedent, because the United States had "no more jurisdiction over a crime unconnected to the conduct of war than a foreign court would have to prosecute defendants involved in lynchings in the American South." The U.S. approach led to an incongruous situation. The defendants sought to admit evidence that they had killed mentally disabled people, arguing that "the action against the Poles and Russians was part of the larger program of euthanasia authorized by the 'law of the land,'" and that the defendants had been told that "the Polish and Russian workers would fall under the same euthanasia law," as the Nazis considered tubercular workers from Eastern Europe to be "mentally ill." The prosecution, by contrast, sought to keep out evidence of the euthanasia program as irrelevant, arguing that "the defendants were involved as perpetrators in a conspiracy to kill Polish and Russian workers suffering from tuberculosis with full knowledge that these murders were not sanctioned by the German euthanasia law of 1939 and for the purpose of furthering their careers in a postwar National Socialist Germany." The United States "disconnected the murders from the larger context of the Nazi campaign against 'life unworthy of life,' including the mass extermination of Jews, Gypsies, asocials, Soviet POWs, and the mentally disturbed."

The military commission hearing the case sustained the prosecution's objection to admitting the evidence, although Bryant believes that "defense counsel had logic, law, and the military rules of evidence on its side." The defendants, Bryant reports, were all found "guilty of murder in violation of the Geneva conventions and the Laws of War." Three were sentenced to death and the remaining defendants were sentenced to hard labor for terms varying from 25 years to life. One of the defendants complained, "It is a hard fate, that we the smallest ones who never had anything to say and only had to obey have to be here accused of such a charge." Bryant comments that there was truth in this remark.

The United States consistently depicted the Nazi euthanasia program as designed "to eliminate 'useless eaters' from the scene, in order to conserve food, hospital facilities, doctors and nurses for the more important use of the German armed forces." In other words, euthanasia was portrayed as a war crime — "as an offense against international law — not a systematic program to purify German society of 'unworthy life'" — a category at first "confined to 'incurable' mental patients, but gradually ... extended to Jews and others."

The German courts were more lenient to defendants than the U.S. courts were, in part because of idiosyncracies of German law, which made much finer distinctions among defendants' subjective mental states than does American law. In the "Bath Tub Case," for example, a woman, at the request of her sister, had drowned her sister's illegitimate newborn in a bathtub in order "to remove from her sister the stigma of having a bastard child." The German appeals court reversed a conviction for murder because, although the defendant had killed the baby with her own hands, she had no "personal interest" in the crime and was therefore merely an accomplice. This case was tailor-made for postwar Nazi defendants, many of whom "argued successfully that they were mere tools of the arch-perpetrators, Adolf Hitler and his minions." Thus, some defendants accused of euthanasia were, because of their subjective mental states, convicted as accomplices rather than as murderers. These defendants included two nurses: Helene Schürg, whose culpability for killing between 30 and 40 disabled children, according to the court, was mitigated by her "amorous infatuation" with the doctor in charge of the killings, and Andreas Senft, whose 40-year habit of deference to doctors' orders the court found to have rendered him "psychologically unprepared" to refrain from killing patients and entitling him to a mere four-year prison sentence.

German courts acquitted later defendants in euthanasia cases after the defendants presented evidence that they had participated in the euthanasia program in order to sabotage it. Dr. Karl Todt and Dr. Adolf Thiel, for example, had been complicit in the deaths of about 1,000 patients, because they had continued to fill out patient registration forms after having discovered their purpose. But Todt and Thiel claimed that they had done so — at great risk to themselves — in order to save lives by "discharging patients who might otherwise have been transported, exaggerating patients' capacity for work ... and concealing severely ill patients from the [authorities]." The court believed the defendants and determined that they had saved 250 patients from transport — a 20 percent success rate. Moreover, if the defendants had resigned in protest, they would have been replaced by 'some sort of SS man, an obedient minion, or one of the young doctors reared in the Hitler youth, who would have proceeded with the necessary ruthlessness.' As a result, the court believed, more patients would have died."

The court, therefore, acquitted these and other defendants under the "collusion of duties" theory, finding that the defendants had been forced "to choose between abandoning their patients to almost certain doom or collaborating minimally in the euthanasia program so as to rescue whoever they could." Bryant comments that "the court's treatment of the 'collusion of duties' defense is conceptually fuzzy. Typically, a collision of duties involves a situation in which an actor confronts two mutually irreconcilable legal duties; by performing one, the actor necessarily violates the other." But, although the defendants in these cases "assuredly had a legal duty not to collude in the destruction of their patients..."
... [,] in what sense did they have a duty to rescue as many patients as possible? They may have had a moral duty but they did not have a legal duty to save their patients. Bryant’s comment here strikes me as legalistic nitpicking. If the defendants proved the facts that they alleged, then they deserved to be acquitted and might even be commended for their actions. To have quit their jobs in order to preserve their moral purity might have been the less heroic choice.

Later, the German courts became even more lenient to defendants and acquitted them on the basis of the “exertion of conscience” defense, which seems truly remarkable to someone trained in American law. Under this defense, a criminal defendant “had the duty to ‘exert his conscience’ in a degree commensurate with his life experience and professional training in determining whether a contemplated action was legal.” If, notwithstanding [such exertion], he is unable to perceive the illegality of his action, his error is unavoidable, and he cannot be held criminally liable for it.” Thus, Dr. Gerhard Wenzel, who “was accused of either personally administering or authorizing nursing staff to poison 130 children during his tenure from 1941 to 1943 as director of a children’s ward,” was aware that “leading minds had approved the ‘release’ of ‘life unworthy of life.’” Furthermore, the euthanasia program “had all the outward indicia of ‘orderliness,’ including panels of expert evaluators who enjoyed reputations for working ‘carefully and conscientiously.’” Therefore, although Wenzel had “exerted his conscience,” he was incapable of grasping the illegality of the euthanasia program and had to be acquitted. Thus, under German law of the early 1950s, the more oblivious one was to morality, the more likely one was to be acquitted.

Extralegal Factors

For the most part, Bryant’s descriptions of the American and German euthanasia trials are fascinating, but his analysis of the extralegal aspects of these trials is not as persuasive as one might wish. Bryant finds that the dramatic decline in the prosecution and conviction of Nazi criminals in the postwar years “was contingent on political, institutional, cultural, demographic, and international developments.” Underlying the many diverse causes of the decline was one general concept: “the desire for national power” — a desire on the part of both the United States and Germany. “The Americans’ desire for a democratic, armed, and anti-Soviet Germany opened the door to the German longing for restored sovereignty.” Bryant notes that “U.S. reticence to open the door to foreign interference with U.S. sovereignty is by no means a new theme in the country’s history: the opposition of the U.S. delegation at Versailles in 1919 to international trials for crimes against humanity, as well as the refusal of the Senate to ratify the League of Nations and, more recently, the 1949 U.N. Genocide Convention (finally ratified by Congress in 1986), are all telling proofs of such reluctance.” (Bryant does not mention the current Bush administration’s lack of respect for the United Nations and for international law, beyond a reference to “recent [U.S.] opposition to the International Criminal Court.”) “Simultaneously,” Bryant adds, “the West Germans were involved in a bid for national power of their own. In the German case, however, the goal was not to sustain their sovereignty, but to regain it after the catastrophic defeat of the war.”

Bryant goes so far as to claim that “social, geopolitical, and cultural forces shaped the actual verdicts of the trials” that he discusses throughout the book, and “that the influence of these non-legal factors was determinative of the verdicts.” In 1946, Bryant writes:

German courts were not yet ready to give their defendants’ psychological makeup such exonerative effect. The memory of Nazi atrocities was still vividly etched in the minds of most Germans. Further, the Cold War had not reached its full stride, as it would in the late 1940s. The need to punish the killers of the National Socialist state still outweighed the need for a rehabili-
tated German nation as a democratic-capitalist buffer between the West and the Soviet sphere of influence in eastern Europe. This geopolitical situation would change between 1946 and 1948. ... One result would be the wholesale acquittal or sentence mitigation of euthanasia defendants.

In 1947, one defendant in a euthanasia trial, Dr. Mathilde Weber, was convicted of murder and sentenced to death, but an appeals court granted her a retrial, and, in 1949, she was sentenced to three and a half years in prison. Because of ill health, however, she never served more than a month of her sentence, and, by 1960, she had resumed her career as a practicing doctor. Bryant writes: “The tension between the United States and the Soviet Union in the late 1940s was a godsend for Weber in her second trial. A politically and morally rehabilitated Germany was needed to anchor the Western alliance against the Soviet bloc. ... [T]he West German judiciary ... became an auxiliary to the nation’s willed amnesia.” Bryant concludes: “The impact of Cold War politics on the trials of Nazi war criminals cannot be overstated.”

I am not qualified to dispute Bryant’s conclusion, but I am not persuaded by it, because he mainly asserts it without proving it. According to Bryant, “German judges in these cases were steeped in a cultural milieu thirsting for a break with the recent National Socialist past, and yearning for a fresh start at a renewed German nationhood. ... Obviously, contemporary Germans burdened with allegations of committing Nazi war crimes could not shore up the Free World’s bulwark against Soviet Communism.” Yes, but one wonders why the German judiciary believed, if it did, that these allegations would disappear more effectively by acquitting Nazi murderers than by convicting them and demonstrating that Germany had truly redeemed itself. Could there have been other reasons for the decline, in the late 1940s, in the prosecu-

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tion and conviction of Nazi war criminals? Perhaps a "let's just move on" ethos inevitably arises with the passage of time.

One final thing: The dust jacket on Confronting the "Good Death" reproduces a skin-crawling and perfectly apt painting depicting two identical groups of four faceless bureaucrats standing and talking in a sterile room while their terrified victims wait in square openings carved in the floor. The painting, called "Waiting Room II," is by George Tooker, a contemporary American painter of the magical realist school. TFL

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In the House of the Hangman: The Agonies of German Defeat, 1943–1949

By Jeffrey K. Olick


Reviewed by Henry S. Cohn

Jeffrey Olick's In the House of the Hangman examines an extensive dialogue that took place between 1945 and 1949 among government officials, historians, philosophers, theologians, and others from the victorious Allied nations and vanquished Germany. The topic: What was to be the nature of the country that replaced the Nazi Reich? The title of the book reflects this topic—it refers to Cervantes' aphorism that, "[i]n the house of the hanged, one should not mention the rope." According to Olick, it was wrenching for all parties to address the Nazi era and appropriate postwar solutions.

Olick first explains the Allied demand that the war end on terms of "unconditional surrender," tracing the origin of this demand to the Atlantic Charter issued by Churchill and Roosevelt in 1941; the phrase harked back to Grant's uncompromising position in his negotiations with Lee to end the Civil War. Some in the Roosevelt administration, however, including Secretary of State Cordell Hull, feared that the lack of an offer to compromise would strengthen German resistance and that talk of unconditional surrender would play into the hands of Joseph Goebbels, the Nazi propaganda minister. The debate raged on until Germany formally surrendered on May 8, 1945.

Olick then takes up the basic principles of the surrender developed at the Potsdam Conference, known as "the four D's"—dismantling, demilitarization, denazification, decentralization/democratization, and decartelization." One means of denazification, first announced in 1942 by then Vice President Henry Wallace, was "re-education" of the German population. Wallace declared: "We must de-educate and re-educate people for democracy. ... The only hope for Europe remains a change of mentality on the part of the Germans."

In the wake of the peace, as part of re-education, occupation authorities set up photographic displays of evidence of war atrocities and required Germans to view a film entitled "Die Todesmühen" (Death Mills). But, Olick observes, this film did not refer to Jews, but to victims "from every European nationality." In any case, "the British military wanted to encourage a less harsh approach as a way of improving German cooperation with the occupation and reconstruction in their zone," and the Americans ended the project.

The ultimate re-education program was the Nuremberg trials and the follow-up trials of lower-level Nazi officials. Justice Robert Jackson, the chief prosecutor, stated that one main purpose of the trials was to demonstrate to the world that the legal system was not utterly helpless in the face of crimes of this magnitude.

The four D's called for the reshaping of German society and the country's economy. Some on the Allied side called for a "soft peace," and some for a "hard peace." Among those who favored a "hard peace" was British diplomat Lord Robert Vansittart, who, during the war, lectured on BBC overseas radio that "Nazism is not an aberration but an outcome" of German history. A debate immediately arose in the United States and England over "Vansittartism." In 1941, an American, Theodor Kaufman, wrote a "bile-filled diatribe ... unsubtly titled Germany Must Perish!" Others rejected a "hard peace" approach, with one American journalist writing that "[i]f the German people should be neither willfully humiliated nor indefinitely reduced to subjection."

As the war concluded, the debate caused a split in the Roosevelt administration. Treasury Secretary Henry Morgenthau Jr., perhaps influenced by his Jewish heritage but more likely by his personal moral code, urged Roosevelt to "pastoralize" the new German state — in the words of another historian whom Olick quotes, to "turn the Germans into good, honest, democratic yeoman farmers, the Jeffersonian ideal." Opposing Morgenthau's plan was Secretary of War Henry Stimson, who sought to maintain German industry and to minimize the transfer of the population.

In the end, although much of the Allied rhetoric reflected Morgenthau's position, the actual postwar treatment of Germany more closely resembled the one advocated by Stimson. Olick sees Morgenthau's plan as "infinite perhaps, but not solely vengeful," but Olick acknowledges that the more common view — as reflected, for example, in Michael Beschloss' recent book, The Conquerors — supports Stimson's opinion that Morgenthau felt "personal resentment against the entire German people without regard to individual guilt."

While the victors argued over how drastically to treat Germany, the Germans themselves resisted the implication that they all should be blamed and punished for the Nazi terror. The Potsdam agreement became a symbol of oppression to many Germans. One of the outcomes of the Potsdam Conference was the transfer of Germans from places like Upper Silesia to the new boundaries of the German state. Many Germans saw this relocation as aggression on the part of the Allies, some Germans going so far as to liken