

wiener klinische wochenschrift

The Central European Journal of Medicine

130. Jahrgang 2018, Supplement 3

Wien Klin Wochenschr (2018) 130 :S159–S253

<https://doi.org/10.1007/s00508-018-1343-y>

Online publiziert: 8 June 2018

© The Author(s) 2018

Medical Ethics in the 70 Years after the Nuremberg Code, 1947 to the Present

International Conference at the Medical University of Vienna,
2nd and 3rd March 2017



Editors:

Herwig Czech, Christiane Druml, Paul Weindling

With contributions from:

Markus Müller, Paul Weindling, Herwig Czech,
Aleksandra Loewenau, Miriam Offer,
Arianne M. Lachapelle-Henry, Priyanka D. Jethwani,
Michael Grodin, Volker Roelcke, Rakefet Zalashik,
William E. Seidelman, Edith Raim, Gerrit Hohendorf,
Christian Bonah, Florian Schmaltz, Kamila Uzarczyk,
Etienne Lopicard, Elmar Doppelfeld,
Stefano Semplici, Christiane Druml, Claire Whitaker,
Michelle Singh, Nuraan Fakier, Michelle Nderu,
Michael Makanga, Renzong Qiu, Sabine Hildebrandt,
Andrew Weinstein, Rabbi Joseph A. Polak

The reception of the Nuremberg Code and its impact on medical ethics in France: 1947–1954

Christian Bonah, Prof. Dr. med. Dr. phil., SAGE UMR 7363, University of Strasbourg, Medical Faculty, 4 rue Kirschleger, 67085 Strasbourg, France
bonah@unistra.fr

Florian Schmaltz, Dr., Max Planck Institute for the History of Science, Boltzmannstr. 22, 14195 Berlin, Germany
schmaltz@mpiwg-berlin.mpg.de

The history of the prosecution of Nazi medical war crimes and the Nuremberg Code's impact on the development of medical ethics in France are complex historical subjects [256]. First, trial investigations were a matter of international collaboration and rivalry [257]. Second, follow-up trials for French (medical) war crimes were still in preparation when the first accounts of the Nuremberg trial were published [256–260]. Specific book-length accounts of the Nuremberg Medical Trial (NMT), written by Mitscherlich and Mielke (1947/1949) in German, appeared during the preparation of the French legal procedures [261]. Similarly, the French edition of selected documents from the NMT by Bayle (1950) was published before the Struthof/Natzweiler concentration camp medical war crimes trials (SMT) were held in Metz in 1952 and in Lyon in 1954 [31]. In both cases, important NMT documents were published before the French judgment. The Nuremberg Code was part of the NMT judgment and therefore could not be included in the first edition of Mitscherlich and Mielke's (1947) book, while the second edition published in 1949 as well as Bayle's French edition of 1950 documented the Nuremberg Code [30, 31, 261]. These editions therefore could have had an impact on French judges and physicians, but as our analysis will show, this was not the case. Our central contention is that differences arose between professional groups and their respective cultures and understandings, especially between judges and physicians and prosecuting lawyers and scientific experts. This conflict between professional agencies, which emerged during the preparation for the French trials, continued to play a role in the debates about medical ethics later on.

In the context of this paper, “impact” will be defined as direct influence, for example, when the Nuremberg Code was openly acknowledged or referenced in citation. “Indirect” influence would include echoing the code's principles without directly mentioning the code or a precise quotation.

This contribution examines the influence of the Nuremberg Code in France in five stages: first, the negotiations and events during prosecution prior to the Nuremberg trial (1944–1946); second, the immediate portrayal of the NMT in the French professional medical press; third, its influence in the early debates on medical ethics in the context of the WMA, and in particular the French representative Paul Cibré's role within the WMA; fourth, the discussions about the prosecution of (medi-

cal) war crimes by the Monaco Commission in the early 1950s; and finally, the impact of these debates during the French SMT (1952–1954) [256–260].

(1) Negotiations and events during prosecution prior to the Nuremberg Trial (1944–1946)

Inter-allied discussions on experimental research in the concentration camps and ethical guidelines for the protection of human subjects in medical research preceding the NMT started in summer 1946 [14]. On May 15, 1946, British members of the Field Information Agency, Technical (FIAT) held an initial meeting with French scientists from the Pasteur Institute. On this occasion Professor Pierre Lépine from the Pasteur Institute suggested, on behalf of the French delegation, that scientific bodies representing the four powers should issue a moral condemnation of the unethical practice of German scientists [30]. The British delegate, Chairman Brigadier Raymond John Maunsell, held a contradictory view, insisting that it was essential to have a trial first and that national scientific bodies could subsequently publicly condemn criminal medical practices [262]. Here, the issue at stake was priority, namely whether judges or medical professionals should first get to define what was criminal or admissible, and who should get to convey this judgment to the general public. Half a year before the opening of the NMT, a second meeting in Paris on July 31, 1946 led to the foundation of the International Scientific Commission (ISC) on War Crimes of a Medical Nature [263]. Here Andrew C. Ivy, physician and Special Consultant to the U.S. Secretary of War, warned attendees that the publicity associated with a trial of concentration camp experimenters could “so stir public opinion against the use of humans in any experimental manner whatsoever that a hindrance will thereby result to the progress of science” [30]. Instead, Ivy presented the first draft of an ethical code [263]. A short while later it became clear that another international trial would be doomed. At the last meeting of the ISC on January 15, 1947 in Paris—six weeks after the beginning of the NMT—Leo Alexander, the second initiator of the “Nuremberg Code”, and present as a guest of the ISC, announced his plan to publish two articles on medical ethics and the Nazi war crimes. Dissent arose when Lord Moran, Churchill's physician and President of the Royal College of Physicians, insisted with the support of the British and French delegates that no such publication should take place [193: 201–2]. The ISC never met again. In short, the above example shows how, in the French case, guidelines reaffirming and demarking legitimate clinical research from criminal experiments for legal purposes were a lower priority than a professional condemnation that should precede and inform judicial action.

(2) Immediate reception in the professional press after the NMT

The historian Etienne Lepicard has examined the impact of the NMT and the Nuremberg Code in detail in two leading French medical journals, *La Presse médicale*—an elite medical journal—and the *Concours médical*—a professional journal with close ties to the French medical trade unions. Beginning in 1946, the *Presse médicale* fea-

tured eyewitness accounts by Charles Richet, Jean Braine, André Ravina, Robert Waitz, and Marian Ciepielowski, and covered the NMT in 1947, including a precise translation of the accusations but no direct mention of the Nuremberg Code. Camp experimentation and “euthanasia” remained rather undifferentiated in the accounts and genuine questions about extermination prevailed over those concerning experimentation and research. In contrast to *La Presse médicale*, the professionally-oriented *Concours médical* hardly made any reference to the NMT in its columns; when the issue surfaced, it did so mainly in the context of professional debates about the creation and actions of the WMA and the (re)structuring of the French medical profession in the form of the French Medical Association (*Ordre*) and its deontological code of 1947. Thus, the influence of the Nuremberg Code on the post-war debates in the professional medical press in France may be characterized as being strongly divided between an elite medical public with reports on the NMT but not the Code per se, and a discourse of general physicians with an “almost complete silence about what happened to medicine under the ‘Third Reich’ and about the NMT” [264: 71]. Generally, eyewitness accounts from physicians who had survived German concentration and extermination camps were placed at the forefront, including direct testimonies on atrocities and the moral condemnation of unethical practices by German physicians and scientists, lumping together “euthanasia”, forced sterilization, and experimentation under the general heading of “medically assisted extermination”. According to Lepicard, the Nuremberg Code does not seem to have had any direct influence on professional audiences at this point. In short, it seems that condemnation, rather than preventing unethical and criminal practices and experiments, was the central concern of the reports from French medical professionals.

(3) The role of French representatives in side-lining the Nuremberg Code in early debates about medical ethics in the WMA

In late November 1944 and on June 6, 1945, barely one month after the end of World War II and three weeks after the initial ISC meeting described above, the British Medical Association (BMA) gathered physicians from over 30 countries to discuss the (re)creation of an international association of doctors. Due to the late reorganization of the French Medical Association (*Ordre des Médecins*), Paul Cibrie (1881–1965) represented the French medical profession at the initial WMA meetings in 1945 and 1946 and continued to act as French liaison. He inevitably became a key player when he was appointed temporary secretary-general of the WMA in September 1946, together with Charles Hill, the secretary of the BMA. Cibrie was a longstanding medical-union activist and had been compromised by his membership in the second Higher Vichy Council which, from 1942 to 1944, participated in the implementation of anti-Jewish laws. [265]

In June 1947, two months before the final verdict of the Nuremberg Doctor’s trial, John A. Pridham presented a BMA-supported request and draft for a declaration on

war crimes and medicine, classifying the different medical war crimes for the preparatory assembly of the WMA. One month after the Nuremberg verdict, the first General Assembly of the WMA in Paris established a specific committee for the question of war crimes in September 1947. In 1947 this committee adopted a medical charter, including the WMA physician’s oath, without any direct reference to the NMT Code [266, 267]. The initiative echoed British physicians’ demands for a post-trial declaration, a step that the ISC discussed but never had the time to make. Paul Cibrie, one of the four members of the war crimes committee, specifically insisted on the necessity of an oath at the conclusion of medical studies, complementing or rivalling the binding deontological code of the French *Ordre des Médecins*, then barely established [266]. The medical vow was adopted and became known as the Declaration of Geneva at the second WMA General Assembly in Geneva in September 1948 [268].

Four months earlier in April 1948, at the second council meeting in New York, Cibrie had suggested the necessity for a more comprehensive and obligatory international code of medical ethics. His efforts led to the appointment of a study committee on the matter under his presidency at the second General Assembly in Geneva [269]. The code was conceived in a comprehensive way and was to include the Geneva declaration as a preamble and the code of ethics of the Canadian Medical Association as an introduction. A complete first version of this ethical code was then presented to the WMA council at its fifth meeting in Madrid in April 1949 [270]. A direct reference to the Nuremberg Code never appeared during the nine years that Cibrie served the WMA at the intersection of the committees on war crimes and medical ethics. From the outset, he sought to distance the WMA’s considerations on international medical ethics from the “scientific crimes” of German physicians, especially because they were initially addressed in a single committee on war crimes that led to the adoption of the Geneva Declaration. The dividing line for Cibrie was a simple one: crimes fell into the domain of law and the competence of judges with their merciless justice, while medical ethics belonged to the realm of the medical profession, which was defined by professional autonomy [271].

(4) The Monaco Commission and the NMT

The early 1950s were further marked by an initiative of a group of continental jurists and physicians led by the Belgian military physician Surgeon General Jules Voncken and the Swiss jurist Jean Graven, who actively engaged the public in establishing international medical law. On December 23, 1950, Voncken, as one of the founders of the International Committee of Military Medicine and in the context of the debates mentioned above, published a harsh critique of the WMA International Code of Medical Ethics in the French medical journal *Presse médicale* [272]. He called for a lesson to be learned from the NMT and referenced the Nuremberg judgment and code directly. His conclusion was that without international law, international courts, and penalties, the code only represented a simple statement lacking any sort of practical con-

sequences. At the following WMA council meeting Cibrie resented the attack and insisted that international medical law did not exist and that international medical tribunals in wartime were impossible since a neutral location for impartial judgment would be impossible to find [271]. In Cibrie's view, Voncken's activities, as well as those of the ICMM, were unduly interfering with international and professional organizations rightfully concerned with medical ethics. In April 1951, Cibrie, in his role as the WMA's mandatory observer, attended the ICMM and the medico-legal Monaco Commission founding meeting for an Institute for the Study of International Law. He reported to the eleventh council meeting of the WMA that Voncken, the Monaco Commission, and the ICMM had no mandate to interfere with medical ethics affairs that belonged to the joint competence of WMA, WHO, and the International Commission of the Red Cross (ICRC). In October, 1951 the WMA General Assembly adopted a resolution concluding that "given that the Monaco Commission is not mandated to treat these questions, if it persists in elaborating a Code of Medical Ethics, the code will not be recognized by the medical profession" [273]. Sidelineing the Monaco Commission's initiative, the first explicit reference to the Nuremberg Code was marginalized as well, and when the WMA transformed the Study Committee on Medical Ethics into a Permanent Committee in 1952 under the presidency of Paul Cibrie, the Nuremberg Code continued to be widely ignored.

(5) French medical war crimes trials: the Struthof Medical Trials (1952-1954)

It is in this context that the preparations for the French follow-up military trials of a group of Nazi physicians who conducted medical research at the Struthof/Natzweiler concentration camp in formerly-occupied Alsace (Struthof Medical Trials, SMT) were actively taken up on July 18, 1952. Four weeks prior to the trial opening in Metz, the French Academy of Medicine (FAM) published a public statement on experiments with human subjects in November 1952 [274]. The SMT offers a noteworthy and complementary perspective for studies concerned with the impact of the NMT and the influence of the Nuremberg Code in France. Did the French judges refer to the guidelines for "permissible medical experiments" established by the NMT in 1947?

A detailed analysis of the arguments used by the prosecution and the defence, and whether or not they echoed the NMT's "ten principles", is beyond the scope of this paper [257-260]; however, an overview is possible. First, the prosecuting magistrate Captain Lorch issued, on April 20, 1948, letters rogatory to the typhus expert Professor Georges Blanc, director of the Pasteur Institute in Casablanca, and Colonel André Jude, director of the Central Laboratory of the French Army and military hospital specialist physician, requesting written statements on ten questions based on the defendants' declarations and their scientific publications, which were essentially of a technical-medical nature. The Nuremberg principles did not surface and neither explicit nor implicit reference was made to them by the prosecution or by the two experts [275]. Defence law-

yer Frédéric Hoffet interpreted the scientific experts' statements as a testimony to normal medical experiments devoid of any objectionable deed. Echoing individual points of the Nuremberg Code, but without referring to it explicitly, Hoffet noted that the experiments were made in accordance with societal necessity and usefulness, and that requirements such as prior animal and laboratory studies, a favourable risk-benefit analysis, and the execution by qualified personnel were respected [257-260].

Active preparations for the trial sparked an initiative by the French National Academy of Medicine (FAM) to hold a secret committee on human experimentation ethics. A public statement by this committee was rendered necessary by the pressure imposed, on the one hand, by the repeated accounts of medical atrocities reported to the Academy by physicians who had survived German concentration camps, and on the other by expert statements from Jude and Blanc which discharged the NS physicians on trial in Metz, purveying the FAM with the role of a mediating moral authority for the entire medical profession. The short statement emphasized a distinction between non-therapeutic and therapeutic research, meaning that the FAM reaffirmed different consent requirements for therapeutic and non-therapeutic research [257-259]. Therapeutic research, which associated experiment and care, was exempt from obtaining patient consent in writing. The FAM declaration suggested that the medical profession had the basic power to define what was therapeutic or not, and therefore what required consent or not. It was therefore in great contrast with the Nuremberg Code, which had abolished this distinction and declared that all research with coerced subjects and without consent was unlawful. To distance itself from coerced concentration camp medical research the FAM committee added a final paragraph to its statement. It concluded that, in applying the above-mentioned principle, the National Academy considered experimental activities committed in certain concentration camps during the past war criminal and contrary to the principles formulated in the Geneva Convention [257-259]. In the end, the judges of the Military Tribunal at Metz disregarded the medical experts' appreciations and condemned the two German physicians Eugen Haagen and Otto Bickenbach to lifelong forced labour on December 24, 1952. The audience notes from the SMT make no mention either of the NMT judgment or of the Nuremberg Code rendered five years earlier [256-259].

As described above, the example of the SMT, which was intensely covered by the French general press, highlighted the differences of opinion between medical scientists and physicians on the one hand, and jurists on the other. The debates at the trial made clear that the distinction upheld by the FAM conclusion and by Cibrie at the WMA, namely between normal medical practice and biomedical research on the one side and German medical war crimes on the other, was not as evident as the medical profession's representatives were inclined to think. In practice, the borderline between medical practice and research, and between lawful and criminal medical acts, was blurred, and the debates of the jurists at the SMT

hinted at this problem—as had the ICMM and the Monaco Commission. When the Royal Netherlands Medical Association—some of the Struthof victims serving as witnesses at the SMT in Metz were Dutch physicians—requested in early 1953 that the WMA consider the ethical issues concerning the use of human subjects in scientific experiments and develop guidelines to protect test subjects in practice, the Monaco Commission issue again became a burning one. In the context of this international competition for moral authority in the field of medical research ethics and international medical law and the preparation of the appeal court trial of the SMT in 1954, the Committee on Medical Ethics of the WMA under the leadership of Cibrie drafted the first version of the WMA's ethical guidelines for human experimentation, which were presented in Rome in 1954 [276]. In February, 1953 the American journal *Science* had published the Nuremberg Code as a guide [277]. When the British physician Hugh Clegg was appointed as chair of the Committee on Medical Ethics in 1960 that stated that the WMA had briefly considered adopting the Nuremberg Code in 1953 but that Cibrie had dismissed the idea [278: 2]. Instead of adopting the Code, Cibrie and his committee imported the 1952 FAM formulation separating therapeutic and non-therapeutic research because they questioned the wisdom of laying down hard and fast rules that would constrain researchers; they especially wanted to defend professional autonomy [276]. It was this French influence in the competition between post-war international organizations, and in the confrontation between medical and juridical values and professional cultures, that reinserted the distinction between therapeutic and non-therapeutic human experiments. This was one of the characteristic traits of the sidelining of the Nuremberg Code in France and, through Cibrie, its eventual sidelining within the WMA Helsinki Declaration of 1964.

Conclusion

The reception of the Nuremberg Code and its impact on medical ethics in France was troublesome at best. The period between 1946 and 1964 may be interpreted as the result of a continued, hidden, and forgotten international disagreement and negotiation about the essential divide between an internal professional moral code and external legal control over the rules and principles that differentiate lawful and unlawful clinical research practices. In the French case, reception of the Nuremberg Code was very limited—if not absent—whether in the medical press or in the French military follow-up trials. The aforementioned discussions and disagreements in the late 1940s and 1950s about drafting an international code for clinical research echoed, directly or indirectly, issues that were at stake in ongoing legal procedures. They have rarely been connected to the wider contextual framework and the (non)reception and limited influence of the Nuremberg Code in France.

The perpetuation or reintroduction of the therapeutic versus non-therapeutic biomedical research divide, abandoned by the Nuremberg Code for the first time in biomedical research ethics, was a significant difference concerning the situation in France and had long lasting consequences. As a consequence of the reintroduction of the category of therapeutic research that could forego subject consent, the French medical profession and the FAM introduced a “pseudo-medical” research category based on the idea that Nazi concentration camp research was criminal because it was “pseudo” or biomedical research that was scientifically invalid. “Pseudo-medical” was defined here as the fact that these experiments could not be integrated into the framework of the normal role of medical diagnosis and treatment of unhealthy individuals. The FAM favoured a definition that attempted to demarcate between lawful therapeutic experiments and criminal Nazi experimental practices in concentration camps, while maintaining the medical profession as the defining authority, whereas the Nuremberg Code introduced the experimental subject as the supreme authority who could refuse, consent to or halt an experiment. The role that the “French case” played in the immediate post-war reorganization of biomedical research ethics was to extend the therapeutic versus non-therapeutic biomedical research divide into the 1960s, and to influence the 1964 Helsinki declaration. From there it took three decades to recover the essential influence of the Nuremberg Code's central principle: general experimental subject consent.

Auschwitz doctors on trial: the cases of Hans Münch, Johann Paul Kremer and Roman Zenkteller

Kamila Uzarczyk, PhD, Medical University of Wrocław, Department of Humanities and Social Sciences in Medicine, ul. J. Mikulicza-Radeckiego 7, 50-368 Wrocław, Poland
kamila.uzarczyk@umed.wroc.pl

Introduction

According to the Moscow Agreement of 30 October 1943 and the London Agreement of 8 August 1945, after the end of the war, war criminals were to be either judged by an International Military Tribunal or to stand a trial in the country where they committed their crimes. The Polish media reported on the Nuremberg trials extensively, the Doctors' Trial (9 December 1946–20 August 1947) in particular,¹⁹ familiarizing the readers with facts mostly unknown to the public at the time. At the same time, the perspective of extraditing hundreds of war criminals to Poland triggered efforts to create a Tribunal, which, due

¹⁹ Stanisławska E. *Procesy hitlerowskich zbrodniarzy wojennych w Niemczech na łamach prasy polskiej 1945–49*. Wrocław 1977; unpublished MA dissertation.