

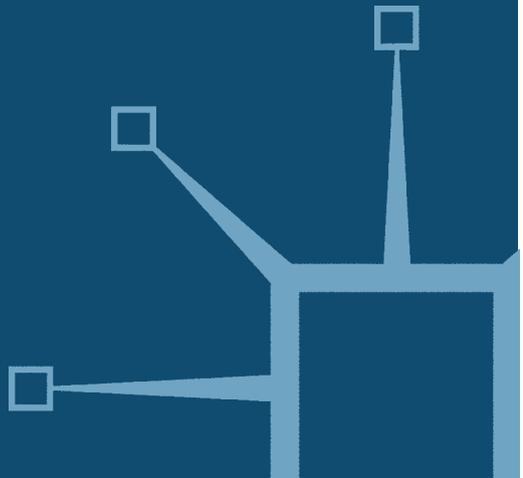
palgrave  
macmillan

# Justice at Nuremberg

Leo Alexander and the Nazi Doctors' Trial

---

Ulf Schmidt



*St Antony's Series*

General Editor: **Richard Clogg** (1999–), Fellow of St Antony's College, Oxford

*Recent titles include:*

Ulf Schmidt

JUSTICE AT NUREMBERG

Leo Alexander and the Nazi Doctors' Trial

Steve Tsang (*editor*)

PEACE AND SECURITY ACROSS THE TAIWAN STRAITS

Isao Miyaoka

LEGITIMACY IN INTERNATIONAL SOCIETY

Japan's Reaction to Global Wildlife Preservation

Neil J. Melvin

SOVIET POWER AND THE COUNTRYSIDE

Policy Innovation and Institutional Decay

Juhana Aunesluoma

BRITAIN, SWEDEN AND THE COLD WAR, 1945–54

Understanding Neutrality

George Pagoulatos

GREECE'S NEW POLITICAL ECONOMY

State, Finance and Growth from Postwar to EMU

Tiffany A. Troxel

PARLIAMENTARY POWER IN RUSSIA, 1994–2001

A New Era

Elvira María Restrepo

COLOMBIAN CRIMINAL JUSTICE IN CRISIS

Fear and Distrust

Julie M. Newton

RUSSIA, FRANCE, AND THE IDEA OF EUROPE

Ilaria Favretto

THE LONG SEARCH FOR A THIRD WAY

The British Labour Party and the Italian Left Since 1945

Lawrence Tal

POLITICS, THE MILITARY, AND NATIONAL SECURITY IN JORDAN,

1955–1967

Louise Haagh and Camilla Helgø (*editors*)

SOCIAL POLICY REFORM AND MARKET GOVERNANCE IN LATIN AMERICA

Gayil Talshir

THE POLITICAL IDEOLOGY OF GREEN PARTIES

From the Politics of Nature to Redefining the Nature of Politics

Felix Patrikeeff

RUSSIAN POLITICS IN EXILE

The Northeast Asian Balance of Power, 1924–1931

He Ping  
CHINA'S SEARCH FOR MODERNITY  
Cultural Discourse in the Late 20th Century

Mariana Llanos  
PRIVATIZATION AND DEMOCRACY IN ARGENTINA  
An Analysis of President–Congress Relations

Michael Addison  
VIOLENT POLITICS  
Strategies of Internal Conflict

Geoffrey Wiseman  
CONCEPTS OF NON-PROVOCATIVE DEFENCE  
Ideas and Practices in International Security

Pilar Ortuño Anaya  
EUROPEAN SOCIALISTS AND SPAIN  
The Transition to Democracy, 1959–77

Renato Baumann (*editor*)  
BRAZIL IN THE 1990s  
An Economy in Transition

Israel Getzler  
NIKOLAI SUKHANOV  
Chronicler of the Russian Revolution

---

**St Antony's Series**

**Series Standing Order ISBN 978-0-230-00641-6**

(*outside North America only*)

You can receive future titles in this series as they are published by placing a standing order. Please contact your bookseller or, in case of difficulty, write to us at the address below with your name and address, the title of the series and the ISBN quoted above.

Customer Services Department, Macmillan Distribution Ltd, Houndmills, Basingstoke, Hampshire RG21 6XS, England

---

# Justice at Nuremberg

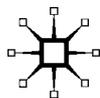
## Leo Alexander and the Nazi Doctors' Trial

Ulf Schmidt

*Lecturer in Modern History*

*University of Kent, Canterbury, UK*

palgrave  
macmillan



© Ulf Schmidt 2004

Softcover reprint of the hardcover 1st edition 2004 978-0-333-92147-0

All rights reserved. No reproduction, copy or transmission of this publication may be made without written permission.

No paragraph of this publication may be reproduced, copied or transmitted save with written permission or in accordance with the provisions of the Copyright, Designs and Patents Act 1988, or under the terms of any licence permitting limited copying issued by the Copyright Licensing Agency, 90 Tottenham Court Road, London W1T 4LP.

Any person who does any unauthorized act in relation to this publication may be liable to criminal prosecution and civil claims for damages.

The author has asserted his right to be identified as the author of this work in accordance with the Copyright, Designs and Patents Act 1988.

First published 2004 by  
PALGRAVE MACMILLAN  
Houndmills, Basingstoke, Hampshire RG21 6XS and  
175 Fifth Avenue, New York, N.Y. 10010  
Companies and representatives throughout the world

PALGRAVE MACMILLAN is the global academic imprint of the Palgrave Macmillan division of St. Martin's Press, LLC and of Palgrave Macmillan Ltd. Macmillan® is a registered trademark in the United States, United Kingdom and other countries. Palgrave is a registered trademark in the European Union and other countries.

ISBN 978-0-230-00641-6                      ISBN 978-0-230-50524-7 (eBook)  
DOI 10.1007/978-0-230-50524-7

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources.

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication Data  
Schmidt, Ulf.

Justice at Nuremberg : Leo Alexander and the Nazi doctors' trial / Ulf Schmidt.  
p. cm. – (St. Antony's series)

Includes bibliographical references and index.

1. Alexander, Leo, 1905. 2. Nuremberg Medical Trial, Nuremberg, Germany, 1946–1947. 3. Human experimentation in medicine—Moral and ethical aspects. 4. Human experimentation in medicine—Law and legislation. 5. Medical ethics—History—20th century. I. Title. II. Series.

R853.H85345 2004  
174.2'8—dc22

200306459

10 9 8 7 6 5 4 3 2 1  
13 12 11 10 09 08 07 06 05 04

*For Katia Mai*

*By the same author*

MEDICAL FILMS, ETHICS AND EUTHANASIA IN NAZI GERMANY (2002)

# Contents

<i>Acknowledgements</i>	viii
<i>List of Tables and Illustrations</i>	xi
<i>Abbreviations</i>	xiii
1 Prologue	1
2 The Austrian Jew	19
3 The Émigré	34
4 The War Crimes Investigator	73
5 The Road to Nuremberg	105
6 Constructing the Doctors' Trial	160
7 The Nuremberg Code	199
8 Post-war Medical Ethics	264
<i>Notes</i>	298
<i>Bibliography</i>	339
<i>Index</i>	371

# Acknowledgements

Like humans, books have their own history. Indeed, this book has become part of my own history. I wanted to write this book and I wanted it to be published. For a long time, however, it was far from clear whether this would ever happen. The existence of the book itself, and the odd typographical error, which I am sure every author fears to find, will eventually convince me that the book is real. To thank those who made this happen goes far beyond acknowledging their contribution. Their unflinching support and encouragement have been absolutely essential. It is almost impossible to thank the many people who over the years provided me with insight into some of the issues discussed in the book and who willingly shared their ideas and documents. Others supported me at critical junctures or gave me shelter and help when I needed it. The book has truly brought out the very best in my friends and colleagues. I am forever grateful to them and hope that those whom I have not mentioned by name will forgive me.

There is one person to whom I owe the greatest thanks of all: Cecily Alexander-Grable, the daughter of Leo Alexander. When I first visited her in 1998 in Boston, Massachusetts, she readily gave me access to an unprecedented collection of private papers, letters and diaries. Cecily also gave me access to Alexander's extensive photographic collection, showed me his paintings and sculptures, and introduced me to her family. Her warm welcome and support throughout the years have been especially important to me. I believe that our conversations helped me to understand much more clearly Alexander's complex personality and the nature of the Nazi Doctors' Trial. Very special thanks also goes to Irene Hulst, Alexander's niece, who provided me with archival sources and photographs. I would also like to thank Brian Alexander, Alexander's nephew, for his help. I am truly indebted to all of them.

I am also grateful to the organisations that generously supported this work and continued to support it through difficult times. My thanks go first of all to the Wellcome Trust, which granted me a three-year postdoctoral fellowship that enabled me to carry out the research in archives in the United States, Germany, Austria and Great Britain. The project on which this book is largely based was originally sponsored by Paul J. Weindling, now at Oxford Brookes University, who has made major contributions in this subject area. As will be evident from what follows, our approaches began to diverge at a relatively early stage, and our interpretations of the

Nazi Doctors' Trial and Nuremberg Code now differ considerably. The Wellcome Unit for the History of Medicine at the University of Oxford provided me with an excellent academic environment for a significant part of the project. I am particularly grateful to Jane Lewis and Mary Dobson for all their assistance and support. For the last three years the School of History at the University of Kent has been my academic home and I cannot think of a better place for a young scholar. I am sincerely grateful to my colleagues for providing me with the necessary security and stability, which, I believe, all scholars need in order to flourish. Their encouragement and friendship were central in completing this book. I am particularly grateful to Philip Boobbyer, Mark Connelly, Antony Copley, Kenneth Fincham, Richard Eales, William Fortescue and Charlotte Sleigh. My Head of School, David Turley, was indispensable in steering the project away from unexpected cliffs. I am truly grateful to him (and I think I have learned a lot from him).

I am indebted to many archives and their staff who helped me find information about the history of the Nuremberg Doctors' Trial, only some of whom can be mentioned here. I am especially grateful to the staff of the American Heritage Center at the University of Wyoming; the Archive for the History of the Max Planck Society, Berlin; the Bodleian Library, Oxford; the Duke University Medical Center, Durham, especially to James F. Gifford and Charles Rutt; the Federal Archives in Berlin and Koblenz; the Francis A. Countway Library of Medicine, Boston; the Holocaust Memorial Museum, especially to Patrica Heberer; the Imperial War Museum, London; the International Physicians for the Prevention of Nuclear War; the Mugar Memorial Library, Boston; the National Archives and Record Administration, Washington DC; the National Library of Medicine, Bethesda; the Public Library, New York; the Public Record Office, London; the Rockefeller Archive Center, North Terrytown; the State Archive, Nuremberg, especially to Gunther Friedrich; the Supreme Court Historical Society, Tallahassee, especially to Nancy Dobson for her kind hospitality; and to the Center for Research into Anti-Semitism in Berlin. I am grateful to Davis House, Washington DC, for a pleasant stay during my numerous visits, to Michael Dolan for the many insightful discussions, to Alexa Potter for carrying out some last-minute research, and to Sandra Marlow for her warm hospitality and for information about long-forgotten archival collections.

Work on a book of this nature would not have been possible without the help of other scholars and experts from a variety of subject areas. I would like to thank George Annas, Robert Baker, Richard Bessel, Michael Clark, Sev Fluss, Benjamin Ferencz, Andreas Frewer, Andrew Markus, Francesco Masedu, Jonathan Moreno, Anthony Nicholls, Martin Pernick, Robert

Proctor, Alice Riccardi (von) Platen, Henry Ries, Eli M. Rosenbaum, Karl-Heinz Roth, Ben Shephard, Telford Taylor and Rolf Winau for valuable discussions about my work and for sharing previously unpublished sources. I am especially grateful to Michael Grodin for giving me access to a series of previously unpublished sources on the Nazi Doctors' Trial. I am also grateful to Jürgen Peiffer for supplying me with primary material about Alexander. I am grateful to Cecily Alexander-Grable, Ivan Brown, Adelheid Kleist, Nicholas Camera-Peon, Irene Hulst, H. L. (Tom) Sebring, Gitta Sereny and Eleonore Strümpel for their willingness to be interviewed on tape in order to supplement archival evidence with oral testimony. I also wish to thank Eugene Rogan, my commissioning editor at St Antony's College, Oxford, as well as Richard Clogg for their support. I am very much indebted to Alison Howson, my publisher at Palgrave, and to Guy Edwards, for their professionalism throughout the production process. Emma Mahoney and Kay Schiller helped me proofread the manuscript, and Jo North was indispensable in the editing of the book. Finally, I wish to thank Jo Fox, Regine Jaszynski, Gert Niedl, Margaret Pelling and David Welch for all they have done. The book would not exist without them. I hope I have shown myself worthy of their support and friendship.

Canterbury, Kent 2004

# List of Tables and Illustrations

## Tables

5.1	Defendants in the Nuremberg Doctors' Trial	143
7.1	Sentences and commutations in the Nuremberg Doctors' Trial	260

## Illustrations

1	Leo Alexander as a young man. <i>Source:</i> AP.	29
2	Leo Alexander standing by the railings on board the English steamer <i>Ranpura</i> . February/March 1933. <i>Source:</i> AP.	35
3	'The good ship <i>Ranpura</i> '. Painting. <i>Source:</i> AP.	35
4	Alexander's first impressions of Peiping Union Medical College, Beijing, China, March 1933. <i>Source:</i> AP.	37
5	The buildings of Peiping Union Medical College, Beijing, China, March 1933. <i>Source:</i> AP.	37
6	Leo Alexander and soldiers from the Chinese–Manchurian war, 1933. <i>Source:</i> AP.	41
7	Dachau concentration camp after liberation by American soldiers. Dachau, Germany, April/May 1945. <i>Source:</i> AP.	78
8	Leo Alexander, war crimes investigator for the Supreme Headquarters Allied Expeditionary Forces. Germany/Austria, May/June 1945. <i>Source:</i> AP.	83
9	Broken German airplanes in rows by the roadside. 1945–7. <i>Source:</i> AP.	87
10	Brigadier General Telford Taylor, Chief of Counsel for War Crimes, pictured in his office at Nuremberg. Nuremberg, Germany, 1946/7. <i>Source:</i> NARA.	121
11	Detention report of Karl Brandt, Hitler's doctor. Germany. <i>Source:</i> NARA.	132
12	The defendants in the Nuremberg Doctors' Trial. Nuremberg, Germany. <i>Source:</i> IPPNW.	142
13	The foyer of the Grand Hotel, Nuremberg. Germany, 1946/7. <i>Source:</i> NARA.	153
14	Leo Alexander interrogating the Nuremberg defendant Wolfram Sievers. Nuremberg, Germany, 1946/7. <i>Source:</i> NARA.	155

15	Karl Brandt, Hitler's doctor, being interrogated by the US prosecution. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	155
16	Women prisoners in the witness wing of the Nuremberg gaol. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	158
17	The judges of Military Tribunal No. 1. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	173
18	Herta Oberheuser, physician at the Ravensbrück concentration camp. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	178
19	War crimes investigators. Nuremberg, Germany. <i>Source</i> : NARA.	179
20	Victims of Ravensbrück medical experiments arriving at Nuremberg. Nuremberg, Germany, 15 December 1946. <i>Source</i> : NARA.	181
21	One of the mutilated legs of the victims of medical experiments at Ravensbrück concentration camp. <i>Source</i> : Michejda 1947.	185
22	During his testimony at the Nuremberg Doctors' Trial, Leo Alexander, medical expert for the US prosecution, points to the scars on the leg of Jadwiga Dzido. Nuremberg, Germany, 22 December 1946. <i>Source</i> : NARA.	188
23	Fritz Fischer, defendant at the Doctors' Trial. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	190
24	Leo Alexander testifying in the court with one of the victims of medical experiments at Ravensbrück concentration camp. Nuremberg, Germany, 22 December 1946. <i>Source</i> : NARA.	192
25	Brigadier General Telford Taylor, US Chief of Counsel for War Crimes. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	195
26	Leo Alexander during a trial session. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	218
27	Members of the US prosecution team. Nuremberg, Germany, 1946/47. <i>Source</i> : NARA.	219
28	Gerhard Rose, defendant in the Doctors' Trial, in his cell. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	230
29	High-ranking military officials and Allied observers at the Nuremberg Doctors' Trial. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	231
30	The defendants in the Doctors' Trial. Nuremberg, Germany, 1946/7. <i>Source</i> : NARA.	255
31	Karl Brandt, Hitler's doctor, being sentenced to death. Nuremberg, Germany, 20 August 1947. <i>Source</i> : NARA.	262
32	Leo Alexander in his later years. <i>Source</i> : AP.	295

# Abbreviations

AA, PA	Auswärtiges Amt, Politisches Archiv
ANA	American Neurological Association
AP	Alexander Papers, Boston (in possession of Cecily Alexander-Grable)
BA-BDC	Bundesarchiv, Abt.III, Außenstelle Zehlendorf
BAFA	Bundesarchiv-Filmarchiv, Berlin
BAK	Bundesarchiv, Koblenz
BAOR	British Army of the Rhine
CAD	Central Affairs Division
CIC	Counter Intelligence Corps
CIOS	Combined Intelligence Operative Sub-committee
CMB	China Medical Board
CROWCASS	Central Registry of War Criminals and Security Suspects
DFA	Deutsche Forschungsanstalt für Psychiatrie
DJAG	Deputy Judge Advocate General
DUMC	Duke University Archives, Depository for Medical Center Records, Durham, North Carolina
ECT	Electroconvulsive Therapy
ETO	European Theatre of Operation
FCLM	Francis A. Countway Library of Medicine, Boston, Mass.
FIAT	Field Information Agency, Technical
G-2	Army Intelligence Branch
GMA	German Medical Association
HBAB	Hauptarchiv der von Bodelschwingschen Anstalten Bethel
HMG	Her Majesty's Government
ICT	Insulin Coma Treatment
IPPNW	International Physicians for the Prevention of Nuclear War, Nuremberg, Germany
ISC (WC)	International Scientific Commission (for the Investigation of War Crimes of a Medical Nature)
IWM	Imperial War Museum
JAG	Judge Advocate General
MPG	Archiv der Max-Planck-Gesellschaft, Berlin
NARA	National Archives and Record Administration, Washington DC
NCO	Non-Commissioned Officer

NDT	NDT-Records and NDT-Documents and Material, in: Dörner and Ebbinghaus 1999
NYPL	New York Public Library
NYU	New York University
OCCWC	Office of Chief of Counsel for War Crimes
OMGUS	Office of Military Governor of the United States
OSS	Office of Strategic Services
PoW	Prisoner of War
PUMC	Peking Union Medical College
RA	Ravensbrück Archive
RAC	Rockefeller Archive Center
RAFMC	Royal Air Force Medical Corps
RAMC	Royal Army Medical Corps
RF	Rockefeller Foundation
RFR	Reichsforschungsrat
SA	Sturmabteilung
SCHST	Supreme Court Historical Society Tallahassee, Florida
SHAEF	Supreme Headquarters Allied Expeditionary Forces
SPSL	Society for the Protection of Science and Learning, Bodleian Library, Oxford
SS	Schutzstaffel
StaNü	Staatsarchiv Nürnberg
StUF	Archivzentrum der Stadt- und Universitätsbibliothek Frankfurt am Main
UAV	University Archive Vienna
UNRRA	United Nations Relief and Rehabilitation Administration
UNWCC	United Nations War Crimes Commission
UWAHC	University of Wyoming, American Heritage Center
WMA	World Medical Association
ZfA	Zentrum für Antisemitismusforschung

# 1

## Prologue

On or around 12 July 1947, at the height of the Nuremberg Doctors' Trial, shortly before the rendering of judgement, a mysterious stranger, barely visible, broke into the office in the Palace of Justice of Major Leo Alexander, Consultant to the Secretary of War of the United States and medical expert of the Chief of Counsel for War Crimes. The stranger left a series of notes that were invisible in ordinary daylight. Alexander's enquiry revealed that the stranger had been a gremlin who 'claimed to have had a fleeting acquaintance with Archie the Cockroach and Mehitabel the Cat, but did not otherwise wish to identify himself'.<sup>1</sup> After having studied and transcribed the notes 'in a setting of infra-red illumination provided by high hydro-carbon compound during the late hours of the night', Alexander decided that the nature of the document required it to be 'classified as secret'. Its distribution was to be strictly limited to 'those members of the inside circle of OCCWC [Office of Chief of Counsel for War Crimes] who have had direct dealings with the Medical Case'.<sup>2</sup> What had happened? Had the medical expert for the prosecution finally gone mad or was he suffering from some undiagnosed hallucinations? Why was this document in any way relevant, and why must it be sent to the 'inner circle' of the US prosecution team under the leadership of Brigadier General Telford Taylor? Surely, members of Taylor's staff must have had more on their minds than Archie the Cockroach. Perhaps it was one of those foolish office pranks to lighten the depressing atmosphere of the awfully long trial proceedings? It was certainly that. But it was more than that. It was a parody of the Doctors' Trial in the form of a theatre play called 'Saturnalia', a feast celebrated in the Roman period in honour of the God Saturn.

Alexander tells us the story of a newly established court in New York City in which the judges had been recruited from the planet 'Saturnus' to ensure the 'utmost in complete detachment and objectivity'.<sup>3</sup> The defendants, Bullet-Hole Pete, Frog-Face Joe and Scar-Face Tony, were charged with the robbery and murder of John Doe, a payroll clerk.<sup>4</sup> Although the prosecution, represented by James M. McHaney, Alexander G. Hardy and Arnost

Horlik-Hochwald – and these, their real names – had amassed an enormous wealth of incriminating evidence, they were constantly challenged by the defence, which succeeded in shifting the emphasis of the trial on to a question that had little to do with the murder of the payroll clerk. The judges, in their attempt to be absolutely impartial, did not realise that they were playing into the hands of the murderers. The cast in the play obviously resembles the major players in the Nuremberg Doctors' Trial, including Alexander, who plays himself as the medical expert of the prosecution. Alexander must have loathed the judges for their legalistic approach to the case. In fact, he did so to such an extent that he transformed them into inhuman, alien creatures from another planet who had no conception of life and death, right and wrong, justice and injustice. Like machines, emotionless and without any sense of morality, they followed the cold logic of the trial procedure and what they considered to be the law. This is not the story of some Kafkaesque moral maze in which the hero finds himself charged by his own paranoid feelings of guilt. It is rather the opposite. These defendants and their lawyers have no moral conscience, no sense of guilt and responsibility. They felt they had done nothing wrong, nothing other than obeying orders; they saw themselves as the victims of circumstance, of victors' justice. As in this piece of theatre, none of the defendants in the Nazi Doctors' Trial was willing to take individual responsibility for the crimes he had committed; each argued instead that he had acted under orders from a higher authority.

The judges in the play do not speak the language of the defendants. They are ignorant men. Like silent listeners they receive information only through the 'distilling mechanism of translation', cleansed from any unwanted social, emotional and cultural connotations that might taint their apparent judicial impartiality. What Alexander seems to be asking is whether the judges in the Doctors' Trial really understood what was being said in the courtroom. Were they aware of the enormous human and material resources that were sometimes used for matters profoundly irrelevant to the trial? Throughout the play the twisted legal logic of the Doctors' Trial is humorously called forth and criticised – to the point at which the victim becomes the guilty party, a reference to the recorded humiliation of some of the victims in war crimes trials after the war. In the end the victim's corpse is ruled 'immaterial to case' because it raises too many controversial issues and the prosecution is asked to remove the exhibit. Mr Hardy, dragging the corpse across the stage and stopping next to Dr Alexander's chair, says: 'Doctor, you sure let us down this time. You said this guy was dead.' Dr Alexander: 'But isn't he dead?' Mr Hardy: 'He sure is – but we couldn't prove it.'<sup>5</sup>

This unusual document reveals some of the contemporary inner thoughts and feelings of one of the chief medical experts at the Nuremberg Doctors' Trial – the focus of this book. Who was this man who not only

parodied the Doctors' Trial, but who also challenged the judicial and moral belief system that made it so enormously difficult to prove the guilt of doctors who had immersed themselves so deeply in criminal behaviour? Alexander's biography allows us to look behind the curtain of Nuremberg and see the inherent problems of the trial, its artificiality and improvised construction. It was a unique event in modern legal history. Established by the American military authorities, the Nazi Doctors' Trial was the first of twelve Nuremberg war crimes trials that followed the trial of the major war criminals by the International Military Tribunal (IMT). Its official title was United States of America *versus* Karl Brandt et al. (Case I). Twenty doctors, including Hitler's personal escort physician Karl Brandt and three administrators, were charged with a common design or conspiracy, with war crimes, crimes against humanity and membership of an organisation declared criminal by the IMT.<sup>6</sup>

Yet, at the same time, the entire German medical profession was on trial – their moral integrity and scientific reputation. It was a scenario that had been totally unthinkable in pre-war Europe: German medical science had led the world, particularly in the fields of physiology, biochemistry, surgery and public health. The country's leading medical experts had been hailed for their innovative medical research and achievements for humanity. Now an 'odd' selection of this profession, as commentators noted, was on trial for murder and unspeakably cruel torture committed in the name of medicine and scientific progress. Contemporary observers noted that something must have gone badly wrong. But what it was and how exactly it had happened was a matter of enormous complexity, far too complicated for a trial in which the instrument of new and untested international law was being applied.<sup>7</sup>

Even more problematic was the task of developing a mechanism that would prevent doctors from committing such crimes ever again. Ultimately, the judges had to find a solution to resolve one of the most fundamental conflicts in human experimentation: to balance the need for advancements in medical science that benefit all human society with the right of the individual to personal inviolability, autonomy and self-determination. After 139 trial days, and after studying thousands of pages of evidence, the judges gave a tentative answer: a ten-point medical ethics code that laid down, for the first time, unmistakably and in writing, the human rights of patient-subjects and the responsibilities of physician-researchers conducting experiments on humans. Not all, but only 'certain types' of experiments on humans conformed to the ethics of the medical profession in the civilised world, the judges said. Human experimentation needed to remain within 'reasonably well-defined bounds'. Unless 'certain basic principles' were observed in order to 'satisfy moral, ethical and legal concepts', experiments on humans were not permissible. The medical ethics code became known as the Nuremberg Code.<sup>8</sup>

The Code established for the first time, and in written form, fundamental human rights in medicine, and placed the welfare of the patients in the foreground of medical practice. In the Nuremberg Code, as historian Michael Wunder has emphasised, neither medicine, nor science, nor society – nor any kind of collective or utilitarian ethics – has priority over the protection of the individual to remain physically and psychologically unharmed.<sup>9</sup> A person's right to self-determination and inviolability cannot be calculated against a more abstract need for medical progress, nor any other claim that society and science may or may not have towards its citizens. The principles of the Code demand it to be universally applicable so that 'experiments on humans do not violate moral, ethical and legal principles'.<sup>10</sup> Long before any kind of biomedical ethics movement was identifiable on the horizon, the Code stated, in lucid and unambiguous language, that the rights and integrity of the research subjects have to be preserved at all times.<sup>11</sup>

Of the ten principles, two (numbers one and nine)<sup>12</sup> specifically refer to the protection and rights of the experimental subject, and principle eight to their well-being. In the history of medical ethics, the importance of principle one has extended far beyond Nuremberg. The principle links the experiment to the *voluntary consent* of the experimental subject, meaning that the experiment can only be carried out after the 'voluntary, personal consent' has been obtained and after the subject has been clearly informed in the best possible manner.<sup>13</sup> The Code makes it unequivocally and categorically clear that the person involved in the experiment has to have the legal capacity to give a voluntary consent. Moreover, prior to obtaining consent, the exact nature, duration and objective of the experiment, the applied methods and means as well as all potential risks and all possible implications of the experiments for the health of the person have to be made clear. The research subject has to have sufficient knowledge and the capacity to comprehend the subject matter in order to make an enlightened and informed decision. This was meant to protect unconscious and mentally handicapped persons who, because of their specific illness, are unable to give voluntary consent. The Code made it clear that no experiments are legally and ethically permissible on the aforementioned patient groups. Since the late nineteenth century the status of the voluntary consent principle was greatly enhanced as a central element of medical research. For the first time, the Code transferred this principle as part of the Nuremberg judgement into international law.<sup>14</sup>

Likewise, principle nine deserves attention as another essential medical ethics law: the right of the medical subject to terminate the experiment at any time. The judges consciously formulated this principle as a right and not just a professional guideline. It constituted another legal precedent. These innovative patient rights were given further weight through the formulation of unequivocal responsibilities of the physicians to act responsibly

towards the patient at all times. The rights of the patient *do not* replace the obligations of the physician as outlined in principles two to eight. A patient who has given his or her voluntary consent cannot be used for a random number of experiments; these experiments cannot violate professional medical ethics standards just because the patient has consented to the research. That is why, according to principle ten of the Code, it is the duty of the scientist in charge to terminate the experiment on his or her own initiative and at any stage if there is reason to believe that the continuation of the experiment would, in all probability, result in injury, disability or death of the experimental subject.

The Nuremberg Code therefore constitutes a particular, and in many ways unique combination of human rights which are part of international law *and* the Hippocratic medical ethic.<sup>15</sup> For the judges Hippocratic medical ethics were certainly an important precedent and although they offered much with regard to protecting the welfare and lives of patients, they were insufficient in protecting lives in human experimentation. They realised that research subjects needed to have quite specific rights if they were to be sufficiently protected from potential harm. That is why the Code defined the conditions under which informed voluntary consent could be obtained in a more comprehensive and legalistic fashion than any medical ethics code preceding it. The consent principle in the Code thus demands the status of an absolute, *a priori* principle. Moreover, the experimental subject is given the right to terminate the experiment at any time. The Nuremberg Code is therefore a legal code and, at the same time, a medical ethics code. This is the Code's particular strength. Yet it is also the profound weakness of many other ethics codes: they have no legal status whatsoever and are little more than 'guidelines' to be interpreted by respective experts.

The Code was partly instrumental in supporting the judgement, but it was also directed towards a future world in which men, women and children would be protected from any unwanted violation of their rights to the integrity of the human body. It was not unusual for American judges to go beyond the facts of the case in front of them, if they felt that it constituted a precedent. Their judgement reflected a new case law to address the legal issues that had arisen from the precedent. The judges believed in the creation of an international legal and professional framework that would empower those who had suffered harm to defend their rights against those who had violated them. The Nuremberg Code was in many ways a visionary and innovative medical ethics code and its principles were designed to apply to all research involving human subjects. Even today, the Nuremberg Code has a significant symbolic, and in many ways an influential role in the field of medical politics, ethics and law.<sup>16</sup> It also serves as a major point of reference to determine whether scientists who conducted experimental research on humans complied with, or violated, medical ethics standards during the Cold War period.<sup>17</sup>