

Human Medical Research

Ethical, Legal and Socio-Cultural Aspects

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Chapter 2

British Responses to Nazi Medical War Crimes

Fiona McClenaghan

2.1 Introduction

The British response to Nazi medical war crimes has not been as extensively studied as that of the Americans; this is largely due to the fact that Britain did not decide to utilise the results of Nazi research to the same extent as its ally (Hunt 1985). However, Britain did undertake a similar policy of scientific exploitation in post-war Germany. The first priority of the British government was to ensure that intellectual reparations from Nazi science could be secured (Farquharson 1997). Yet, as it became increasingly apparent that Nazi science had used human subjects for inhumane experimentation, the government was faced with the dilemma of whether to exploit or condemn German science.

These apparently contradictory aims could not be easily resolved. Britain was facing bankruptcy. By the Treasury's own estimate, at least a quarter of the nation's wealth had been consumed by the war effort and more money was needed to reconvert British industry to peacetime, to offset war-time disinvestment and to repair the physical damage of war (Kirby 2006). Therefore, securing intellectual reparations from German science, so preeminent before the war, was a priority (Proctor 1995). However, this economic drive to secure the best Nazi scientists for exploitation soon became political as tensions mounted at the outset of the Cold War. Suspicion of the Russians led the government to demand that all useful scientists be exploited by Britain to avoid them falling into Soviet hands (Longden 2009). This fierce competition served to undermine the efforts of British war crimes investigators to highlight the illegality of some of the Nazi research.

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Illegality, however, was also a problem. Although experimentation on humans, often leading to death or deformity, was shocking to the British war crimes investigators, it was not in itself a war crime. There was no precedent in international law for such acts. Therefore, even if the British government had the will and the financial means to be able to prosecute Nazi doctors, it was far from clear who should have conducted such a trial and on what legal premise (Sherriff Bassiouni et al. 1973). As survivors of human experimentation began to mobilise at the end of the war with the help of the British war crimes investigators, it was clear that not to prosecute would undermine British moral superiority as victors. However, not to exploit German science was economically and politically unacceptable. Therefore, a dual policy of prosecution and exploitation was worked out (Weindling 2004).

2.2 Allied Expectations

Germany was the world leader in the fields of life, physical and social sciences before the Nazi takeover in 1933 (Proctor 1995). The Allies assumed that with such a great scientific infrastructure the Germans would have made significant scientific discoveries during the war, especially in the sciences directly related to chemical and biological warfare. It was this scientific knowledge which the Allies were keen to accept as “intellectual reparations” for the war. Farquharson has argued that these intellectual reparations were, in fact, more valuable than any economic reparations, as their exact monetary worth could not be easily quantified, and so more could be gained than would have otherwise been condoned (Farquharson 1997). However, the expected highly sophisticated German war effort was not realised and it became increasingly obvious that the ethical basis of German science had been sacrificed to the principles of racial hygiene and its promotion of “experimentation without limit” (Lifton 1986). How the policies of the British government changed in response to the gradual realisation of the extent of Nazi scientific abuses tells us much about the agenda of Britain in post-war Germany.

2.3 Exploitation

The main medical experimental camps of Ravensbruck and Auschwitz were liberated by the Soviets, and Dachau by the Americans. The prosecution of medical war criminals was not an obvious priority, nor even a long term aim, for the British government. Its aims for German science in the wake of the war were two fold. Firstly, to impose appropriate restraints on German scientific research to ensure that Germany could never again become powerful enough to threaten Europe. Secondly, to exploit its wartime scientific achievements (TNA: PRO CAB 124/544 1945).

After a war which had been so costly to Britain, both humanly and economically, there was a fear that if Germany were allowed to continue scientific research, especially in the field of chemical and nuclear weapons, it could again become the aggressor of Europe (TNA: PRO CAB 124/544 1945). The fear of rearmament prompted the Cabinet to propose a prohibition of research which could be linked in any way to military aims by closing any research establishments that could not be adapted to non-military research. However, there was allowance made for those research institutions which were “necessary for the exploitation of German science” to remain open (TNA: PRO CAB 124/544 1945).

In 1944, an Anglo-American interrogation and internment camp, code named “Dustbin”, was opened for German scientists. The camp was run by the Enemy Personnel Exploitation Section (EPES), part of the British wing of the Anglo-American-French Field Information Agency (Technical) (FIAT), but situated in the American Zone as the number of scientists being held in the British zone had already exceeded the limit allowed (Weindling 2004). Although designed for only 90 scientists, by September 1945, more than 5,000 scientists and their families inhabited the crowded camp. The British were so keen that no one else should get hold of any valuable scientist that a list was compiled of 15,000 names, with an average of 500 more being added each week (Longden 2009).

There were more German scientists in British custody than the British could cope with, largely because many had chosen to flee west from Berlin to avoid the Red Army (Weindling 2004). As the situation at Dustbin grew ever more acute, the Americans threatened to release all the scientists and the British were forced to produce an accurate estimate of how many scientists were of significant exploitative value (Longden 2009). They estimated that there were approximately 500 scientists in British custody that might be a “serious danger in the hands of a potentially hostile power” (TNA: PRO FO 1031/65), but even these were too many to be employed either in Britain or the British zone. Importantly, the hostile power referred to here was not Germany but Russia. There was an air of desperation about British policy at the outset of the Cold War.

We must evacuate [the scientists] to Britain, whether they are willing to go or not. (TNA: PRO FO 1031/65)

It was the interrogations at Dustbin which would illuminate to the British the true extent of Nazi human medical research. The key figure was Captain John Thompson, a Royal Canadian Air Force intelligence officer attached to the RAF. His interrogation of Fritz Klein, a Nazi doctor who had worked in Auschwitz before being transferred to Belsen just a few weeks before the liberation in June 1945, would prove to be the key to establishing the role of concentration camp doctors. Klein admitted to experimenting with psychotropic drugs and making daily selections for the gas chambers (Weindling 2004).

This was the first realisation by the British of the power wielded by doctors in the concentration camps. Klein’s admission was to prove crucial because it increased the interest of the British investigators on the ground in Germany in medical atrocities. Thompson’s success was rewarded with a promotion to Chief of

the Scientific Branch of the British FIAT in October 1945. However, his new role, which was to make the results of German scientific and medical research available to the British and not to prosecute Nazi scientists involved in unethical research, illustrates that at the end of 1945, the primary focus of British policy remained exploitation (Weindling 2004). Nevertheless, Thompson used his new role to delve deeper into the conduct of doctors involved in medical research in the camps (Lifton 1986).

The men being interrogated at Dustbin were not lawyers or politicians but scientists, and this greatly aided the British investigators. Many of their statements were thinly veiled attempts at self-exoneration; for example, the opening statement of Ranke, a physiologist involved in carbon monoxide testing:

I did not initiate or permit the initiation of any class of experiment which may have the slightest effect on individual well-being. (TNA: PRO FO 1031/76 1945)

The majority of the scientists shocked their interrogators with their candour; Major E.B. Gill was astonished that,

[...] a good deal of the information was gratuitous and came from the elaboration of simple questions. (TNA: PRO FO 935/56 1945)

By May 1946, when nearly 30,000 reports on scientists at Dustbin had been completed, the extent of human experimentation had become apparent. However, doubts remained over whether medical atrocities actually constituted war crimes and, more pressingly, what to do with those suspected of being involved in unethical research being held in British custody (TNA: PRO FD1/5826 1945). While interrogations were going on at Dustbin, there was still no British policy for dealing with the perpetrators of medical atrocities. With no list of wanted doctors, no centralised collection of evidence and no intention of ever holding a Doctors' Trial, interrogators did not know what to do with the evidence they were obtaining (TNA: PRO WO 309/374 1945).

The scope of the investigations at concentration camps was huge because thousands of inmates were willing to testify against Nazi doctors. The report goes on to state that:

[...] investigation could be carried on indefinitely provided that there is sufficient [resource] to carry it on. (TNA: PRO WO 309/374 1945)

Such resources were not about to be willingly provided for the investigation of war crimes committed against anyone except British citizens. Dustbin was costing a huge amount of money to keep open, but there were clear economic gains to be had from interrogating and exploiting leading scientists (Weindling 2004). In contrast, the moral gains to be had from interviewing survivors of medical experimentation were not tangible enough for the British government to take an interest, and significant pressure had to be put on the government to make it change its view.

2.4 The Dual Policy

Thompson, in a memo to the United States Judge Advocate in late 1945, pointed out the problem:

In the course of investigating research work done in Germany in the medical and allied sciences, a deeply disturbing problem has come to light... in many, and probably all, German universities and research institutes the use of humans as subjects was thought desirable... [if our sample is representative then] one is able to say that the practice was universal throughout Germany. (TNA: PRO FO 1031/74 1946a, b)

Thompson was aware that a decision had to be made whether to prosecute doctors for their crimes, and pressure would have to be exerted on the Allied governments to force a decision. He warned that to prosecute would necessitate putting aside a large amount of human and economic resources and so should only be undertaken if it could be done adequately, but it was his view that the “ominous consequences” that could arise in the future as a result of a failure to act on so serious an issue more than necessitated the expense. Thompson proposed a meeting of medical and legal authorities on an inter-Allied basis to discuss the best course of action on the matter (TNA: PRO FO 1031/74 1946a, b).

Permission from the War Office for this meeting did not arrive until five months later, and in the meantime, Thompson’s comments continued to cause a stir in London. He estimated that “something like 90% of the members of the medical profession at the highest level were involved in one way or another”. This huge estimate led the Foreign Office to dismiss his claim as a “gross exaggeration”. It felt that any investigation to “detect further crimes of this nature would be undesirable and unproductive” and, perhaps more importantly in the economic climate of the time, expensive (TNA: PRO FO 937/165 1945).

The British government was concerned not only about the cost of the investigations themselves, but also future costs which would be incurred if Thompson’s estimate was accurate and a large number of doctors would have to be removed from their posts, making Germany further dependant on the Allies for medical care. The British government did not feel so ethically responsible for prosecuting the perpetrators of medical atrocities that it was willing to spend any of its (admittedly tight) budget on doing so. The point which was raised again and again was that neither the victims nor the perpetrators of the experiments were British, and so Britain had no responsibility to prosecute. This added weight to the economic argument (Weindling 2004).

Nevertheless, Thompson’s estimate did make an impact and a compromise position between trying to find every criminal doctor in Germany and being seen to condone their actions by doing nothing was beginning to be seriously considered. The British War Crimes Executive in Nuremberg in late-1945 proposed that a policy may be acceptable:

[...] where victims are German or stateless persons is to bring one or two conspicuous cases before [British] military government courts leaving others to be dealt with before German courts with (initially) British observer. (TNA: PRO FO 1031/74 1946a, b)

Therefore, by December 1945, the British finally began to formulate a plan to prosecute Nazi doctors, but the proposal only included those who could be described as war criminals. “Many more have acted unethically but do not come into the war crimes category” and there would be no attempt to prosecute this huge group (TNA: PRO FO 1031/74 1946a, b).

This proposal was essentially a dual policy to both exploit and prosecute German science. Weindling has argued that the policy was hypocritical and showed that the British were more focused on the “application than [the] misapplication of medical expertise” (Weindling 2004). However, Schmidt has contested this black and white view, arguing that the moral dilemma between exploitation and prosecution is largely retrospective (Schmidt 2006). He argues that the exploitation of Nazi scientific achievements was an acceptable substitution for war reparations. There was a moral dilemma among the investigators on the ground and this is reflected by their determination to continue gathering evidence, beyond their brief, for the crimes about which the victims testified. However, the British government, due to its financial constraints, was unable either to limit exploitation or to increase funds for prosecution. A compromise was the best option available.

2.5 Trying to Unite the Allies

Thompson had been aware from late-1945 that there was sufficient evidence to prosecute a number of leading Nazi doctors. However, he was concerned that, after the International Military Tribunal (IMT) of the major Nazi leaders was completed, the zeal to prosecute Nazi doctors would wane and the economic concerns of the British government would prevail to diminish the size and scope of a Doctors’ Trial (Weindling 2004). On 15 May 1946, a medico-legal meeting of the British, American and French arms of FIAT took place. The meeting asserted that FIAT was “purely confined to the economic, technical and scientific exploitation of Germany”, its *raison d’être* from before the end of the war, “but that in view of the obtrusion of this matter into the results of this exploitation” a meeting should be called to discuss the matter (TNA: PRO WO 309/471 1946a, b, c).

The British laid out their approach:

The investigation of these experiments in connection with what went on in concentration camps rather than the direct approach to the commission of the crimes themselves. (TNA: PRO WO 309/471 1946a, b, c).

The Russians were conspicuous by their absence; no Soviet delegate had been invited. The primary concern for the French was for an international moral condemnation of Nazi medicine to be made as soon as possible, even before trials were undertaken. Britain and the US were, above all else, keen to avoid committing to another four power commission that could culminate in a four power

doctors' trial, in the mould of the IMT, which would necessitate working with the Russians (Schmidt 2006).

The Americans dominated the conference and suggested that, as an alternative to a "cumbersome" four power trial, each nation should choose a case to investigate and prosecute it in its own zone (TNA: PRO WO 309/471 1946a, b, c). Although the French felt that an IMT would be a fairer way to try Nazi doctors (as did the absent Soviets), they were overruled. Concerns over how zonal trials, which would necessitate great inter-Allied co-operation and evidence exchange, would work in an increasingly tense atmosphere were not raised. Thompson planned for further meetings to be held every two months in an attempt to encourage Allied co-operation (TNA: PRO WO 309/471 1946a, b, c).

The French took the lead in setting up a Scientific Commission for War Crimes by the next meeting on 31 July. Aware that the Cold War was having a significant effect on the discussions of medical war crimes, the French asserted that Russian representatives should be asked to the next meeting and pushed for an International Scientific Commission for War Crimes to be set up on a four power basis (TNA: PRO WO 309/471 1946a, b, c). However, despite the best diplomatic efforts of the French, the informal FIAT meetings had no political power. Permission to set up national commissions or to join international ones had to be gained from governments heavily invested in Cold War animosity.

Characteristically the American government stood firm against joining any commission which could lead to another four power trial. In addition to their Cold War concerns, there was also a worry that great publicity from a medical trial 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. (TNA: PRO WO 309/471 1946a, b, c)

In appendix "B" of the minutes was enclosed the culmination of these two concerns: the draft by Dr. Ivy, the US War Secretary, of what would become the Nuremberg Code (TNA: PRO WO 309/471 1946a, b, c). The Americans came to realise that if they took on the trial themselves, they would have much greater control of publicity, be able to write an ethical code which would allow human experimentation to continue within set rules and, most importantly, ensure that they did not have to collaborate with the Soviets.

The British government, keen to avoid another burden on its devastated economy, did not object to America taking charge. In August 1946, Brigadier General Telford Taylor's group took responsibility for running the trial, but made it very clear that:

[...] his team had not the facilities for investigation other than of documents and accordingly would have to rely on the investigations carried out by teams at present working in the British and American zones. (TNA: PRO WO 309/471 1946a, b, c)

Schmidt has argued that the great contribution to the trial by the British is too often forgotten in accounts of post-war US policy which claim that the Americans

alone were responsible for the Doctors' Trial (Schmidt 2008). Although the Americans undoubtedly deserve credit for managing to transfer a large amount of legal machinery and personnel to Nuremberg in a short time, the British had already completed the lion's share of the evidence gathering. However, in the light of the economic state of Britain, it is clear that the actions of the British government were not the result of complete disinterest in using the evidence of their own investigators, but rather of economic necessity.

2.6 Legal Problems

Until December 1945, the British had no policy for the prosecution of medical criminals, and so the most pressing issue for the interrogators was to decide whether or not medical crimes against non-Allied personnel were illegal. The phrase "medical war crime" was coined in November 1945 by Thompson in a memo to the US war crimes Judge Advocate (TNA: PRO FO 1031/74 1946a, b). The creation of this term would have great repercussions at the Doctors' Trial. To try someone for a crime which was not illegal at the time it was committed is a post facto law which had then, as now, dubious legality (Taylor 1993). However, even before a medical trial had been contemplated, the lack of legal certainty meant that the interrogation of suspected perpetrators of medical crimes was difficult and the interrogators had to work within unwritten and largely assumed ethical guidelines.

Schmidt has argued that, at the time, it was not certain whether or not it was "ethical" to use scientific data which had been generated under unethical circumstances, or whether using such research could be seen as condoning the research and the researcher (Schmidt 2006). However, it was undoubtedly legal as there was no international law which banned the practice. At the time of the Second World War, the laws of war were defined by The Hague Convention of 1907 and The Geneva Convention of 1864, amended in 1929. Crimes against humanity, although related to war, had no legal basis at this time. Therefore, there was great uncertainty about what to do with the data being acquired from human experimentation.

Schmidt is correct to remind the reader that the ethical standards of today were not enshrined in law in the Allied countries either. In the United States, forced sterilisation had been legal in some states since 1907, something which the eugenicist Ernst Rudin was keen to point out while under house arrest (Weindling 2004). However, the medical crimes of the Nazis had to be compared against some ethical premise and that yardstick was Allied ethics. Therefore, forced sterilisation performed on the German population outside the concentration camps, although the most widespread Nazi crime, would have no part in a Nazi Doctors' Trial conducted by the United States (Sofair and Kaldjian 2000). This admission was a regrettable consequence of the Americans taking control of the Doctors' Trial.

2.7 Conclusion

The response of the British government to Nazi medical war crimes was complex. It was not a simple question of whether the British government cared enough about the Nazi violation of medical ethics to bring the perpetrators to justice. Such a simplistic appraisal denies the obvious constraints placed on the British government by the economic crisis and the growing political tensions at the outset of the Cold War.

One possible light at the end of the tunnel for the British government was the possibility that Germany had made scientific and medical advances during the war. The exploitation of Nazi scientific achievements for the benefit of Britain was seen as a legal, acceptable and even preferable form of war reparations in 1945 (Farquharson 1997). However, the German war machine was certainly not all that it had been expected to be. Despite huge investment in Dustbin and interrogation units, little new information was gleaned. However, in the midst of the search for the top scientists, suspicion of the Soviets was growing.

As the Allies no longer had a common enemy to unite them, their interests diverged and competed. Competition for scientists was so fierce that the British forcibly extradited many German scientists to Britain or held them in Dustbin for as long as possible, to avoid them falling into Soviet hands while encouraging the Americans to do the same (TNA PRO FO 945/904 1945, 1946). It was in this atmosphere of economic woe, desperation and political suspicion that evidence of Nazi human experiments began to be unearthed.

The reports of the British war crimes investigators were key in forcing the British government to look beyond the problems of post-war Britain and realise that, as a victor, it had to, in some form, contribute to bringing the perpetrators of medical crimes to justice. However, how to do this was a problem. With no precedent in international law for such acts, none of the Allied governments knew what to do (Sherriff Bassiouni et al. 1973). An IMT in the model of that for the Nazi leaders was unfavourable to the Americans and the British in the light of the Cold War, but for a long time, none of the powers was willing to step forward to take on the trial. The eventual decision for the Americans to take on the Doctors' Trial was as much about ensuring that they did not have to work with the Soviets and that they could set the precedent for human research after the war, as it was about bringing justice to the victims (TNA: PRO WO 309/471 1946a, b, c). If justice had been their sole aim, then forced sterilisation would have been a prosecutable crime.

The British, in providing the majority of the evidence for the trial, have gone largely unacknowledged in the historiography (Schmidt 2006). However the British government at the time was far from concerned about the history books; the economic issues in Britain were pressing and it wanted to focus on rebuilding its economy. The dual policy of the government appears on the surface to have conflicting aims: How can a government both exploit and prosecute the same activities? Weindling has called the policy hypocritical, (Weindling 2004) however, it would be fairer to see the policy as the farthest Britain could stretch towards prosecution without worsening its domestic situation.

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