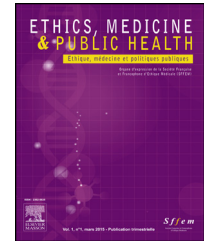




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## THOUGHTS

# The Nuremberg veil

## *Le voile de Nuremberg*

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**Summary** Subject autonomy is widely considered the distinctive achievement of contemporary research ethics. Popular history claims that there were no attempts to protect subject autonomy or informed consent until the Nuremberg Doctors' Trial brought the Nazi research abuses into infamy. This is however a false history. There were at least two research codes in Europe before the Nazis: the Prussian Decree of 1900 and the German Reichsrundschreiben of 1931. Ironically, these codes had stricter demands for subject autonomy and informed consent than contemporary research codes like the Belmont Report and the Nuremberg Code. Yet, the strict demands were overridden by the Nazi state once it faced the emergencies of war. This historical lesson reveals a fundamental flaw in political liberalism, which caused the pre-Nazi codes to fail. But during the Nuremberg Trial, Allied prosecutors were manipulated by the Nazi defence into forgetting about these pre-Nazi codes. Consequently, a frightening lesson from history was lost to modern ethicists. Modern research codes remain vulnerable to the same problem that caused pre-Nazi codes to fail. Thus, recovering this lost history is as important as ever.

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### MOTS CLÉS

Abus des droits de  
l'homme ;  
Libéralisme ;  
Médecine nazie ;

**Résumé** L'autonomie de la personne est largement considérée comme un sujet à part entière de la recherche contemporaine en éthique. L'histoire populaire affirme qu'il n'y a pas de tentative pour protéger l'autonomie d'une personne ou le consentement éclairé jusqu'à ce que le procès de Nuremberg condamne les abus de la recherche nazie. Ceci est faux. Il y avait au moins deux codes de recherche en Europe avant les nazis : le décret Prusse de 1900 et le *Reichsrundschreiben* allemand de 1931. Étonnamment, ces règles étaient plus exigeantes sur l'autonomie de la personne et le consentement éclairé que le rapport Belmont et le code de Nuremberg.

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Procès de  
Nuremberg ;  
Éthique de la  
recherche

Pourtant, les Nazis sont passés outre ces exigences avec l'urgence de la guerre. Cette leçon d'histoire met en évidence une faille du libéralisme politique qui a fait que ces règles pré-nazies n'ont pas été respectées. Et pendant le procès de Nuremberg, les procureurs alliés ont oublié l'existence de ces règles. Par conséquent, une leçon effrayante de l'histoire a été perdue pour les chercheurs en éthique modernes. Les règles modernes établies par les chercheurs restent vulnérables de la même façon. Par conséquent, faire revivre l'histoire oubliée est important.  
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Allow me to narrate the most familiar story in bioethics. A now-infamous researcher was hoping to discover a treatment for syphilis. He decided to conduct research on a population known for their exponentially high syphilis rates. The surrounding culture had a heavy prejudice against this population that we would now consider extremely vulnerable. These subjects were believed to be so sexually depraved that they were villainized as a threat to both moral and racial purity. Something had to be done about their disease and new medical research was a promising solution.

Over the years of research, abuse of these subjects became evident. Subjects were not told they had syphilis and no effort was made to inform them about the nature of the research or get their consent. Medical professionals uninvolved with the study were the first to sound the alarm. Most notable was a whistleblowing article detailing a plethora of abusive research studies, which included the syphilis experiments. Eventually, public outcry spurred government intervention. The study would become infamous and in reaction, the government would sponsor the creation of a decree – a report of sorts that was not legally binding. The report was an attempt to bring individual liberty, an axiom of classic political liberalism, to the forefront of medical practice. Except now the axiom was repackaged under a new name: "subject autonomy". It was declared that respect for individual liberties – subject autonomy – would protect each individual's rights to life and liberty from infringement by state power.

Now you probably think this is the story of the Tuskegee syphilis experiment in America (1932–1972) and the Belmont Report. Except this is not the story of Tuskegee and the rise of American bioethics. This is the story of Dr. Albert Neisser's syphilis experiments and the Prussian government's response in 1900.

We like to think that contemporary Western bioethics is the latest in a long, unbroken line of victories for political liberalism. Bioethics emerged in reaction to the Holocaust and will forevermore protect individual rights against horrible abuses by doctors and governments. Liberalism freed citizens from kings, now liberalism frees subjects from researchers through bioethics.

But this "new" liberal strategy in bioethics is actually an old failure. Injecting medicine with a heavy dose of individual freedom in the name of liberalism has catastrophically failed at least twice in the past 150 years. The Prussian code of 1900 contained the Four Principles long before Beauchamp & Childress' famous text. The Reichs-rundschreiben was German law in 1931 and had stricter patient protections than the Belmont Report or any other American research code. Yet, the individual freedoms promised

by these codes and underwritten by liberalism were blotted out by state force.

Even worse, the horrific abuses liberalism failed to stop were not themselves departures from liberalism but the culmination of it. Liberalism's problem lies in how it imagines politics as a tug of war between state power and individual power. Maintaining a balance between the two is an endless struggle. Historically, we see with the rise of the liberal state that individual freedoms are always dependent on state power. The state agrees to tolerate certain individual actions and protections in exchange for power over the individual. In liberalism, individual freedom and state power are not opposing poles: individual freedom is always provided by state power. Ultimately, the state holds all the power. In crisis, the liberal state devolves into Hobbes' Leviathan. A state will tolerate many freedoms in peace, but freedom and even rights will disappear when the state is threatened. Sacrifice of certain individuals for the good of the state is indeed the primary argument of the Nazi defence at the Nuremberg Doctors' Trial. The necessary sacrifice of individuals for the good of the state is also simply the logic of liberalism.

## Two eras of subject autonomy

I will provide evidence for the points above by first examining two historical eras of research ethics: research ethics as it was done before the Nazis (pre-Nazi) and research ethics as it has been done after the Nazis (post-Nazi). I do this to make a simple point: protection of subjects through appeals to autonomy was just as emphasized in pre-Nazi research ethics as it is in contemporary post-Nazi research ethics. I will make this point by comparing two pre-Nazi research codes against two post-Nazi research codes, with special attention to their autonomy protections. The pre-Nazi codes of Prussia (1900) and the Reichs-rundschreiben (1931) will be compared to the Belmont Report (1979) and the Nuremberg Code (1947). It is unknown how influential the Prussian code was, but as a government document responding to medical abuses it illuminates the ethical atmosphere of the European medical community in the pre-Nazi era. Likewise, neither Nuremberg nor Belmont are legally binding documents, but they serve as paradigms illuminating contemporary ethical mores. The juridical question of their legal status is irrelevant to my concerns in this paper. What matters in this examination is that binding regulations have been inspired by these documents and the typical bioethicist relies heavily on the principles therein [1, p. 1437]. These documents are prime examples of their ethical eras.

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