

# ‘God’s Ethicist’: Albert Moll and His Medical Ethics in Theory and Practice

ANDREAS-HOLGER MAEHLE\*

Centre for the History of Medicine and Disease, Wolfson Research Institute, Durham University,  
Queen’s Campus, Stockton TS17 6BH, UK

**Abstract:** In 1902, Albert Moll, who at that time ran a private practice for nervous diseases in Berlin, published his comprehensive book on medical ethics, *Ärztliche Ethik*. Based on the concept of a contractual relationship between doctor and client, it gave more room to the self-determination of patients than the contemporary, usually rather paternalistic, works of this genre. In the first part of the present paper this is illustrated by examining Moll’s views and advice on matters such as truthfulness towards patients, euthanasia, and abortion. The second part of this article discusses how Moll engaged with the then publicly debated issues of experimentation on hospital patients and the ‘trade’ of foreign private patients between agents and medical consultants. In both matters Moll collected evidence of unethical practices and tried to use it to bring about change without damaging his or the profession’s reputation. However, with his tactical manoeuvres, Moll made no friends for himself among his colleagues or the authorities; his book on ethics also met with a generally cool response from the medical profession and seems to have been more appreciated by lawyers than by other doctors.

**Keywords:** Medical Ethics, Albert Moll, Truth-telling, Euthanasia, Abortion, Human Experimentation

## Introduction

In 1902, Albert Moll published his comprehensive, 650-page book *Ärztliche Ethik: Die Pflichten des Arztes in allen Beziehungen seiner Thätigkeit* [*Medical Ethics: The Doctor’s Duties in All Relations of His Work*].<sup>1</sup> At this time, Moll was already well known as a medical author: his 1889 book on hypnotism and his 1891 monograph on homosexuality had gone through several editions and translations, and his studies of the *Libido sexualis*

\* Email address for correspondence: [a.h.maehle@durham.ac.uk](mailto:a.h.maehle@durham.ac.uk)

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<sup>1</sup> Albert Moll, *Ärztliche Ethik: Die Pflichten des Arztes in allen Beziehungen seiner Thätigkeit* (Stuttgart: Ferdinand Enke, 1902).

had come out in 1897/8.<sup>2</sup> With his work on medical ethics he contributed to a literary genre that had been flourishing at the end of the nineteenth century. Books on medical deontology – that is, on doctors' professional duties – had been authored in the 1890s by the Berlin physician and historian of medicine Julius Pagel (1851–1912), the Berlin medical practitioner Jacob Wolff, the Bremen psychiatrist Friedrich Scholz (1831–1907) and others.<sup>3</sup> The common context for all of them was the so-called overcrowding of the medical profession in those years. The resulting competition among practitioners was accentuated by the increasing role of health insurance. Doctors not only competed for lucrative private patients, but also for contracts with the health insurance organisations [*Krankenkassen*], which gave them access to the insured working class and lower-middle-class patients.<sup>4</sup> Books on the doctors' duties were seen as one means to counteract overly competitive behaviour among medical practitioners, and to emphasise a need for collegiality and solidarity. Other means to safeguard professional conduct were the disciplinary tribunals of the medical societies and doctors' chambers [*Ärzttekammern*]. In Prussia, such medical courts of honour [*ärztliche Ehrengerichte*], attached to the regional doctors' chambers, had been established by law in 1899. Moreover, many medical societies had adopted professional codes of conduct that served as guidance for their disciplinary committees.<sup>5</sup> Accordingly, writing about medical ethics predominantly meant discussing the requirements of fair conduct among practitioners and how to display behaviour that would enhance the reputation of the profession in the eyes of the public.

Moll's *Medical Ethics* contained much of this type of professional ethics, yet he took a distinctive approach to medical ethics – an approach that was fuelled by his outrage about abuses in clinical experimentation on hospital patients. One of the most notorious cases, which had recently been discussed in the daily press, was that of Dr Alexander Strubell,

<sup>2</sup> Albert Moll, *Der Hypnotismus* (Berlin: Fischer's medicinische Buchhandlung H. Kornfeld, 1889) (2nd edn, *ibid.*, 1890; 3rd edn, *ibid.*, 1895; Engl. transl. New York: Scribner & Welford, 1890; London: Walter Scott, 1891; *ibid.*, 1900; *ibid.*, 1901); Albert Moll, *Die conträre Sexualempfindung* (Berlin: Fischer's medicinische Buchhandlung H. Kornfeld, 1891) (2nd edn, *ibid.*, 1893; 3rd edn, *ibid.*, 1899; French transl. Paris, G. Carré, 1893; Spanish transl. Madrid, Fortanet, 1896; Italian transl. Rome, 1897); Albert Moll, *Untersuchungen über die Libido sexualis*, Vol. 1, parts 1 and 2 (Berlin: Fischer's medicinische Buchhandlung H. Kornfeld, 1897–8). On the last work see the contribution by Sauerteig in this issue.

<sup>3</sup> Julius Pagel, *Medicinische Deontologie: Ein kleiner Katechismus für angehende Praktiker* (Berlin: Oscar Coblentz, 1897); Jacob Wolff, *Der Praktische Arzt und sein Beruf: Vademecum für angehende Praktiker* (Stuttgart: Ferdinand Enke, 1896); Friedrich Scholz, *Von Ärzten und Patienten: Lustige und unlustige Plaudereien* [1st edn 1899], 4th edn (Munich: Verlag der Ärztlichen Rundschau Otto Gmelin, 1914). For discussions of this genre see Andreas-Holger Maehle, *Doctors, Honour and the Law: Medical Ethics in Imperial Germany* (Basingstoke: Palgrave Macmillan, 2009), 95–121; Georg Schomerus, *Ein Ideal und sein Nutzen: Ärztliche Ethik in England und Deutschland 1902–1933* (Frankfurt/Main: Peter Lang, 2001).

<sup>4</sup> See Claudia Huerkamp, *Der Aufstieg der Ärzte im 19. Jahrhundert: Vom gelehrten Stand zum professionellen Experten: Das Beispiel Preußens* (Göttingen: Vandenhoeck & Ruprecht, 1985); Hedwig Herold-Schmidt, 'Ärztliche Interessenvertretung im Kaiserreich 1871–1914', in Robert Jütte (ed.), *Geschichte der deutschen Ärzteschaft: Organisierte Berufs- und Gesundheitspolitik im 19. und 20. Jahrhundert* (Cologne: Deutscher Ärzte-Verlag, 1997), 43–95; Ingo Tamm, *Ärzte und gesetzliche Krankenversicherung in Deutschland und England 1880–1914* (Berlin: Verlag für Wissenschafts- und Regionalgeschichte Dr Michael Engel, 1998); Lutz Sauerteig, 'Health Costs and the Ethics of the German Sickness Insurance System', in Andreas-Holger Maehle and Johanna Geyer-Kordesch (eds), *Historical and Philosophical Perspectives on Biomedical Ethics: From Paternalism to Autonomy?* (Aldershot: Ashgate, 2002), 49–72.

<sup>5</sup> See Andreas-Holger Maehle 'Professional Ethics and Discipline: The Prussian Medical Courts of Honour, 1899–1920', *Medizinhistorisches Journal*, 34 (1999), 309–38; Maehle, *op. cit.* (note 3), 6–46; Barbara Rabi, *Ärztliche Ethik – Eine Frage der Ehre? Die Prozesse und Urteile der ärztlichen Ehrengerichte in Preußen und Sachsen 1918–1933* (Frankfurt/Main: Peter Lang, 2002).

who had locked up a patient with diabetes insipidus in an attic of the Jena university clinics without any access to water in order to try to break the patient's 'habit' of increased drinking (polydipsia) and excessive urination (polyuria). The experiment was conceived in analogy to withdrawal treatments for drug addicts. Allegedly, the patient became so desperately thirsty that he ended up drinking his own urine.<sup>6</sup> Another widely debated case was that of the Breslau professor of dermatology Albert Neisser (1855–1916), who had injected, without consent, eight female hospital patients, some of them minors and some of them prostitutes, with blood serum from syphilis patients in the hope of developing a vaccination for the disease. None of these patients suffered from syphilis at the time of the experiment (1892); they had been hospitalised because of other skin or venereal diseases. Four of the subjects, all of them prostitutes, developed syphilis some years later, which raised the question of whether the infection had been caused by the experimental injections or through their occupation.<sup>7</sup> Moll was particularly upset about the many bacteriological experiments that were carried out on hospital patients around this time, including inoculation of dying patients with the germs of gonorrhoea and other infectious diseases.<sup>8</sup>

Against this background, Moll advocated a medical ethics that focused on the doctor's relationship and duties to his patients, not just his professional obligations to medical colleagues. In this article, I will first outline Moll's patient-centred type of ethics and illustrate it with some moral issues that he regarded as more important than professional etiquette: truth-telling and the justifiability of deceiving patients; the question of euthanasia; and the so-called perforation of the fetus – ie. late abortion – when a natural birth turned out to be impossible. This will provide some insights into his theory of medical ethics. I will complement these in the second part of the paper with two cases of Moll's personal involvement in publicly debated ethical issues: the above-mentioned issue of human experimentation in hospitals; and the so-called 'patient trade' scandal of 1908/9, in which four professors of the Berlin university clinics were accused of paying middlemen to bring them lucrative private patients. In the final sections, I will assess the impact of Moll's ethics and his contemporary image as a 'guardian of medical ethics'.

### Characteristics of Moll's Medical Ethics

In writing *Medical Ethics*, Moll had received advice from two philosophers: his friend Max Dessoir (1867–1947), with whom he also collaborated in the Berlin Society for Experimental Psychology on questions of hypnotism and psychical research; and Georg Simmel (1858–1918), who had been appointed to an extraordinary professorship at Berlin University in 1901.<sup>9</sup> Their input may, to some extent, explain why Moll started his

<sup>6</sup> Moll, *op. cit.* (note 1), 268, 525; Barbara Elkeles, *Der moralische Diskurs über das medizinische Menschenexperiment im 19. Jahrhundert* (Stuttgart: Gustav Fischer, 1996), 195–6; Barbara Elkeles, 'Wissenschaft, Medizinethik und gesellschaftliches Umfeld: Die Diskussion um den Heilversuch um 1900', in Andreas Frewer and Josef N. Neumann (eds), *Medizingeschichte und Medizinethik: Kontroversen und Begründungsansätze 1900–1950* (Frankfurt/Main: Campus Verlag, 2001), 21–43: 23–4.

<sup>7</sup> Moll, *op. cit.* (note 1), 24, 560–3; Barbara Elkeles, 'Medizinische Menschenversuche gegen Ende des 19. Jahrhunderts und der Fall Neisser', *Medizinhistorisches Journal*, 20 (1985), 135–48. See also Elkeles, *Diskurs, op. cit.* (note 6), 190–4; Elkeles, 'Wissenschaft', *op. cit.* (note 6), 24–5.

<sup>8</sup> Moll, *op. cit.* (note 1), 5, 9, 515, 538, 544, 546–8, 558, 569–70.

<sup>9</sup> *Ibid.*, vi. On the work of Moll, Dessoir and others in the Society for Experimental Psychology, see Albert Moll, *Ein Leben als Arzt der Seele: Erinnerungen* (Dresden: Carl Reissner, 1936), 128–42; Max Dessoir, *Buch der Erinnerung*, 2nd edn (Stuttgart: Ferdinand Enke, 1947); Adolf Kurzweg, 'Die Geschichte der Berliner "Gesellschaft für Experimental-Psychologie" mit besonderer Berücksichtigung ihrer Ausgangssituation und des

discussion of medical ethics by delineating its relationship to moral philosophy, an aspect that one does not usually find in other works of this genre at that time. Moll made it clear that none of the current systems of moral philosophy could provide a basis for medical ethics because one system of thought could be used to argue for entirely contrary positions, thus failing to give reliable guidance for the doctor. Instead, Moll appealed to an ‘average morality’ [*Durchschnittsmoral*] of the people, a kind of intuitive common-sense ethics in contemporary society, that the doctor shared with the layperson. This did not mean, however, as Moll cautioned, that the doctor’s ethical decisions were determined by public opinion.<sup>10</sup> With his critical stance towards moral theories, Moll echoed positions of Simmel, who in his *Introduction to Ethics* (1892) had argued that ethics had to be developed into an inductive science in order to progress, and that this task was separate from the normative role of ethics.<sup>11</sup>

Moreover, as Moll stressed, moral systems such as evolutionary ethics and utilitarianism could lead to conclusions that negated the role of the doctor as a healer. For instance, from an evolutionary standpoint, it might be argued that patients with hereditary illnesses or disabilities should not be treated in order not to be helped to pass on their condition to the next generation, that is, a Social Darwinist and eugenic position might be supported. Or from a utilitarian perspective, experimentation on a dying patient might be justified in the interest of developing treatment for future patients. None of these conclusions appeared acceptable to Moll, who asserted that the essential characteristic of the doctor was that of the healer who is committed to the well-being of the individual patient.<sup>12</sup>

While this principle of *Salus aegroti suprema lex* was common among medical authors writing on ethics,<sup>13</sup> Moll gave it a characteristic, quasi-legal shape. For him, the doctor–patient relationship was a (tacit) contract, with duties and rights for both parties. This contract relationship implied full commitment of the doctor to his patient once he had agreed to take on the treatment, though it also gave a right to the doctor to refuse treatment in the first place – except in emergencies. It also gave room for the self-determination of the patient in questions of his or her health, but simultaneously implied an expectation of compliance by the patient with the agreed treatment, at least as far as the patient’s personal circumstances permitted it.<sup>14</sup>

This basic concept ran through the whole of Moll’s work on medical ethics, giving it some coherence, despite a strong tendency towards long-winded and overly detailed discussion and excessive casuistry. These latter problems were also observed by reviewers

Wirken von Max Dessoir’ (unpublished MD thesis: Freie Universität Berlin, 1976). For an introduction to Simmel’s work see David Frisby, *Georg Simmel* (London: Routledge, 2002).

<sup>10</sup> Moll, *op. cit.* (note 1), 10–16, 21–2, 247.

<sup>11</sup> Georg Simmel, *Einleitung in die Moralwissenschaft: Eine Kritik der ethischen Grundbegriffe*, 2 vols, Vol. 1, iii–v; Vol. 2, iii–vi (Berlin: Verlag von Wilhelm Hertz, 1892).

<sup>12</sup> Moll, *op. cit.* (note 1), 7–9, 55.

<sup>13</sup> For example Pagel, *op. cit.* (note 3), 45; Albert Krecke, *The Doctor and his Patients*, Margaret M. Green (trans.) (London: Kegan Paul, 1934), 79.

<sup>14</sup> Moll, *op. cit.* (note 1), 14, 33–54. See also Albert Moll, ‘Aufsätze zu einer medicinischen Ethik’, *Deutsche Medicinische Wochenschrift*, 25 (1899), 462–4; and 26 (1900), 73–5. The importance of the contract relationship in Moll’s medical ethics has likewise been emphasised by Julius Henri Schultz, *Albert Molls Ärztliche Ethik* (MD thesis: Zurich: Juris-Verlag, 1986). See also Antonia K. Eben, *Medizinische Ethik im weltanschaulich-religiösen Kontext: Albert Moll und Albert Niedermeyer im Vergleich* (MD thesis: Munich, 1998), 92; Dorothea Cario, ‘Albert Moll (1862–1939). Leben, Werk und Bedeutung für die medizinische Psychologie’ (unpublished MD thesis: University of Mainz, 1999), 50–65, 94–9.

and probably limited the book's success.<sup>15</sup> While two Russian editions of *Medical Ethics* appeared in 1903 and 1904,<sup>16</sup> there was no further German edition – a marked contrast to the success of Moll's books on hypnosis and on sexology. Perhaps over-ambitious in its comprehensiveness, Moll's *Medical Ethics* not only covered the doctor–patient relationship, or as Moll called it, the relations between 'doctor and client', but discussed in detail the various forms of practice, as a house doctor, specialist, panel doctor, hospital doctor, country doctor, etc.; dangerous or morally problematic actions of the doctor, such as abortion or risky surgical interventions; economic aspects of medical practice, including the health insurance system; the doctor's professional and private conduct; the role of public and personal hygiene; the doctor as an expert for the authorities, courts and insurance organisations; the ethics of medical science and research on animal and human subjects; and finally, questions of medical education. This scope was not dissimilar to Pagel's book on doctors' duties; the latter, however, had managed to limit his *Ein kleiner Katechismus für angehende Praktiker [A Brief Catechism for Incoming Practitioners]*, as he subtitled it, to a mere ninety-seven pages. Pagel covered, in his text, the setting up and running of a medical practice; the doctor's conduct in society, towards patients and colleagues, including behaviour during consultations; medical societies and professional discipline; the relationships to pharmacists, midwives and other healers; town and country practice, as well as the roles of poor law physician, panel doctor and officer of health; and the doctor's fees and book-keeping. Unlike Moll's approach to the doctor–patient relationship, Pagel's was overtly paternalistic: the doctor had to be, or at least appear to be, 'sovereign' in the interests of the sick. This view was in line with that of many other medical practitioners of his generation.<sup>17</sup> In the following sections, I will illustrate Moll's particular ethical argumentation with the examples of deceiving patients, euthanasia and abortion.

### Truth-telling and Deception

Moll was aware of philosophical positions such as those of Immanuel Kant (1724–1804) and Johann Gottlieb Fichte (1762–1814), who had both argued that truthfulness was an unconditional duty in any situation,<sup>18</sup> but he rejected this point of view as unsuitable for the demands of medical practice. According to Moll, the doctor had to distinguish whether he had only been asked for his expert opinion on a medical question, or whether he was also in charge of the patient's care. In the former case, the contract relationship

<sup>15</sup> Gustav Aschaffenburg, 'Albert Moll, Aertzliche Ethik', *Zeitschrift für Socialwissenschaft*, 5 (1902), 751–2; Leopold Henius, 'Albert Moll, Ärztliche Ethik', *Deutsche Medizinische Wochenschrift*, 28 (1902), 528–9; Karl Jaffé, 'Albert Moll, Ärztliche Ethik', *Münchener Medicinische Wochenschrift*, 49 (1902), 287; Kammer, 'Albert Moll, Aertzliche Ethik', *Deutsche Aerzte-Zeitung*, 5 (1903), 11; Korn, 'Albert Moll, Die Pflichten des Arztes in allen Beziehungen seiner Thätigkeit', *Die ärztliche Praxis*, 15, 10 (1902), 152–3; R., 'Albert Moll, Ärztliche Ethik', *Deutsche Medizinal-Zeitung*, 23 (1902), 121–5.

<sup>16</sup> See Boleslav L. Lichterman and Mikhail Yarovsky, 'The Discourses of Practitioners in Eighteenth to Twentieth Century Russia and Soviet Union', in Robert B. Baker and Laurence B. McCullough (eds), *The Cambridge World History of Medical Ethics* (New York: Cambridge University Press, 2009), 439–45: 443.

<sup>17</sup> Pagel, *op. cit.* (note 3), esp. 41–2. On other deontological literature of this type, see Maehle, *op. cit.* (note 3), 95–109.

<sup>18</sup> See Immanuel Kant, 'On a supposed right to lie from altruistic motives', in Immanuel Kant, *Critique of Practical Reason and other Writings in Moral Philosophy*, Lewis White Beck (ed. and trans.) (Chicago: University of Chicago Press, 1949), 346–50; Johann Gottlieb Fichte, *The System of Ethics*, D. Breazeale and Günter Zöllner (eds and trans.) (Cambridge: Cambridge University Press, 2005), 269–78.

obliged the doctor to give the patient his truthful opinion. An exception could only be made if the prognosis was so dire that suicide of the patient had to be feared. In the second scenario, when the doctor had taken on a mandate for the patient's care, the decision about truthfulness or deception depended on the best interests of the patient. Here, deception could be permissible; for example, a patient with hysteric paralysis who had put hope in a course of magneto-therapy should be encouraged by the doctor in order to make use of the suggestive effect of such a harmless treatment. In dangerous diseases, deceiving patients in their own interest could also be acceptable. This might also extend to misleading the relatives of the patient, who might otherwise reveal the seriousness of the condition through their words or behaviour.<sup>19</sup>

In this context, Moll addressed particularly the question of truth-telling in incurably ill patients. Tactful disclosure of the dire prognosis seemed justified in the patient's interest, if the patient had to sort out his or her personal affairs – eg. by drawing up a last will – or if the patient was religious (Catholic) and would want to be given the last rites. If the doctor had merely been asked for his expert opinion, disclosure of the prognosis was rather unproblematic in these two situations. If, however, the doctor was also responsible for the patient's treatment, and perhaps, as the house doctor, for the health of the patient's family, he carefully had to weigh the potential damage caused by telling the truth against the potential benefits. Moll advised the doctor in this case to involve a third person to communicate the bad prognosis, which would affect the patient's psychological condition less and would keep the doctor in his role as a source of hope and support.<sup>20</sup> Moll's discussion of the problem of truth-telling thus gave careful attention to what the specific contract with the patient – and his/her family – implied. The demands of the contract eventually determined the ethical decision. With his application of his contract theory, Moll's position on truth-telling became differentiated and explicit.

It was not, however, radically different from the traditional medical view in this matter, which likewise permitted restrictions on truthfulness *vis-à-vis* the terminally ill. Prominent nineteenth-century medical authors, such as Christoph Wilhelm Hufeland (1762–1836) and Karl Friedrich Heinrich Marx (1796–1877), had warned that telling the truth in this situation might seriously harm, even 'kill', the patient.<sup>21</sup> This silence of the doctors could, as Karen Nolte has recently shown, conflict with the intentions of nurses belonging to religious orders, who wished to inform incurably ill patients about their imminent end, so that they could be spiritually prepared for death.<sup>22</sup> Typical of the attitude of doctors was the advice given by the Viennese surgeon Robert Gersuny (1844–1924) in his deontological booklet *Arzt und Patient: Winke für Beide [Doctor and Patient: Hints for Both]* (1884) to be very restrictive in giving information to patients with serious illnesses. Diagnoses such as tuberculosis and cancer should, in his view, not be mentioned because they would deprive the patient of hope. The doctor should even exercise caution in speaking with the relatives in such cases, because they might pass the information on to the patient or

<sup>19</sup> Moll, *op. cit.* (note 1), 210–20.

<sup>20</sup> *Ibid.*, 121–7.

<sup>21</sup> Christoph Wilhelm Hufeland, 'Die Verhältnisse des Arztes', *Journal der practischen Heilkunde*, 23, 3 (1806), 5–36: 17; Karl Friedrich Heinrich Marx, *Ärztlicher Katechismus: Über die Anforderungen an die Ärzte* (Stuttgart: Ferdinand Enke, 1876), 33–4.

<sup>22</sup> Karen Nolte, 'Telling the Painful Truth – Nurses and Physicians in the Nineteenth Century', *Nursing History Review*, 16 (2008), 115–34.

become unable to be carers as a result of their own sense of hopelessness.<sup>23</sup> Similarly, the Munich surgeon Albert Krecke (1863–1932) claimed that a ‘cancer patient gains nothing by knowing the nature of his malady. A doctor acts in obedience to the highest dictates of humanity if he conceals the true nature of the complaint from his patient, whilst at the same time endeavouring to effect a radical cure of the gruesome disease’.<sup>24</sup> In his memoirs, published in 1936, Moll portrayed his position as one of absolute truthfulness towards his patients<sup>25</sup> – a claim that clearly contradicted the advice that he had given in his *Medical Ethics*.

### Euthanasia

Within his discussion of the doctor–patient relationship, Moll also addressed the then controversially discussed question of euthanasia. From the perspective of Social Darwinism, racial hygiene and eugenics, the Berlin physician Alfred Ploetz (1860–1940) had propagated, in 1895, his vision of a society that would practise active euthanasia – with morphine – of weak and disabled newborns, and that would refrain from caring for the sick, the blind and the deaf-mute in order to avoid counteracting natural selection.<sup>26</sup> A few years earlier, the philosopher Friedrich Nietzsche (1844–1900), in his *Götzendämmerung* [*Twilight of the Idols*] – written in 1888 – had denounced the sick as ‘parasites on society’, who – from a certain stage of illness that made them entirely dependent on doctors and other practitioners – should be treated with social contempt. Doctors, he suggested, should then be ‘the agents of this contempt – not offering prescriptions, but instead a daily dose of *disgust* at their patients’.<sup>27</sup> Also in 1895, the notorious booklet *Das Recht auf den Tod* [*The Right to Death*] by Adolf Jost had been published. Jost, a student of philosophy, mathematics and physics at the University of Göttingen, argued here that in some cases of incurable physical or mental illness, death was desirable both from the patient’s and from society’s perspective. Taking a utilitarian approach, he claimed that the intensity of the individual’s suffering and the amount of harm caused to society by the patient’s sickness could result in a ‘negative value of the human life’. Since killing on demand was punishable with not less than three years’ imprisonment under the German Penal Code of 1871 (Section 216), Jost called for legal reform. A new law would permit, in such cases, voluntary active euthanasia performed by physicians. Once this had been established in society, a further step of legal reform might extend also to euthanasia, without consent, of incurably ill mental patients.<sup>28</sup>

Moll firmly rejected such ideas in his medical ethics. For him, any measures that deliberately shortened a patient’s life were inadmissible – from the point of view of

<sup>23</sup> Robert Gersuny, *Arzt und Patient: Winke für Beide* (Stuttgart: Ferdinand Enke, 1884), 18–22.

<sup>24</sup> Krecke, *op. cit.* (note 13), 87.

<sup>25</sup> Moll, *op. cit.* (note 9), 266–9.

<sup>26</sup> Alfred Ploetz, *Die Tüchtigkeit unsrer Rasse und der Schutz der Schwachen: Ein Versuch über Rassenhygiene und ihr Verhältnis zu den humanen Idealen, besonders zum Socialismus* (Berlin: S. Fischer, 1895), 144, 147; Udo Benzenhöfer, *Der gute Tod? Euthanasie und Sterbehilfe in Geschichte und Gegenwart* (Munich: C.H. Beck, 1999), 84–8. On Ploetz and his concept of racial hygiene see Paul Weindling, *Health, Race and German Politics Between National Unification and Nazism, 1870–1945* (Cambridge: Cambridge University Press, 1989).

<sup>27</sup> Friedrich Nietzsche, ‘Twilight of the Idols or How to Philosophize with a Hammer’, in Friedrich Nietzsche, *The Anti-Christ, Ecce Homo, Twilight of the Idols and other Writings*, Aaron Ridley and Judith Norman (eds), Judith Norman (trans.) (Cambridge: Cambridge University Press, 2005), 153–229: 209–10.

<sup>28</sup> Adolf Jost, *Das Recht auf den Tod: Sociale Studie* (Göttingen: Dieterich’sche Verlagsbuchhandlung, 1895). See also Benzenhöfer, *op. cit.* (note 26), 93–5.

criminal law as well as of morality. Moll used here what we now call a ‘slippery slope argument’: if one once admitted such a right to kill the terminally ill, it might also be applied to shorten a patient’s life by months and even years, if a painful and socially unproductive remaining lifespan was predicted. There would be no stopping. The doctor, however, Moll asserted, had to prolong not shorten life. Life should be the doctor’s highest good, and death should be seen by him as the worst evil.<sup>29</sup> Moll’s argument here was a classical piece of medical ethics, virtually the same as Hufeland had used at the beginning of the nineteenth century.<sup>30</sup> As Michael Stolberg has recently shown, however, there were already individual cases of German medical practitioners performing active life-shortening measures on terminally ill patients around 1800.<sup>31</sup> Although Moll very rarely made reference to Hippocratic ethics in his work, he pointed to the Hippocratic Oath’s prohibition of giving a deadly poison to a patient, even on demand.<sup>32</sup>

Moll’s position on the question of euthanasia was in line with the prevailing view of the medical profession at his time – at least on the level of normative writing and debate.<sup>33</sup> Moll rejected traditional techniques of euthanasia, such as pulling away the pillow from underneath the dying person’s head or turning the patient on their face. He did, however, concede a generous use of narcotics to mitigate pain, even if they led to unconsciousness. The objection that inducing unconsciousness was incompatible with the dying person’s dignity was, in his view, invalid. Moll was aware of the fact that high doses of painkillers, such as morphine, could shorten the lifespan of the dying patient, but he regarded this as a case of applying risky treatments, which were permissible according to his contract theory with the patient’s consent.<sup>34</sup> There was no clear sense in Moll’s discussion of this matter of the problematic nature of so-called indirect or double-effect euthanasia. His understanding of the concept of euthanasia was the traditional one, as part of palliative care. In fact, he referred to the Berlin professor of clinical medicine Johann Christian Reil (1759–1813), who had described in detail how good nursing care could ease a patient’s final hours.<sup>35</sup> Still, Moll’s contract theory also influenced his advice in this area. ‘Heroic’ treatment efforts, such as strong electric stimulation, which would prolong the dying patient’s life for just a short time and would only increase his or her pain, should not be undertaken, even if the patient’s family urgently asked for them. The contract relationship, Moll emphasised, was still with the dying patient, not with the relatives, so the presumed interest of the patient in not suffering even more than necessary in their last moments was paramount. Similarly, from his contract-perspective, Moll condemned medical experimentation on dying patients as ethically entirely unacceptable and as a shameful act of brutality.<sup>36</sup>

<sup>29</sup> Moll, *op. cit.* (note 1), 127–9.

<sup>30</sup> Hufeland, *op. cit.* (note 21), 14–6.

<sup>31</sup> Michael Stolberg, ‘Two German Pioneers of Euthanasia around 1800’, *Hastings Center Report*, 38, 3 (2008), 19–22.

<sup>32</sup> Moll, *op. cit.* (note 1), 129.

<sup>33</sup> Benzenhöfer, *op. cit.* (note 26), 77.

<sup>34</sup> Moll, *op. cit.* (note 1), 129–31, 243.

<sup>35</sup> *Ibid.*, 129, 133; Johann Christian Reil, ‘Euthanasia, oder von den Hülfen, erträglich zu sterben’, in Johann Christian Reil, *Entwurf einer allgemeinen Therapie* (Halle: Curtsche Buchhandlung, 1816), 560–82. On the pre-modern understanding of palliative care see Michael Stolberg, ‘Cura palliativa: Begriff und Diskussion der palliativen Krankheitsbehandlung in der vormodernen Medizin (ca. 1500–1850)’, *Medizinhistorisches Journal*, 42 (2007), 7–29.

<sup>36</sup> Moll, *op. cit.* (note 1), 131–3.



### Perforation of the Fetus

The self-determination of the patient or, if this could no longer be exercised, the patient's presumed interest, likewise guided Moll's advice in another morally contested issue, the practice of craniotomy or 'perforation' of the fetus when a natural delivery was impossible – eg. because of too narrow a pelvis. The alternative, a Caesarean section, at that time still carried a relatively high risk of mortality – about ten per cent – for the mother. Craniotomy of the fetus, which inevitably killed it, was seen as a desperate measure for saving the mother's life, although around 1900 it had a similar mortality risk for the mother as a Caesarean section. Legally, perforation of the fetus was regarded as permitted. Jurists had argued, for example, that the killing of the fetus in this situation could be seen as self-defence or as an act in a state of emergency.<sup>37</sup> Moll, however, examined the issue from an ethical point of view. If the woman requested the perforation, the doctor had to follow her wish and carry out the procedure. Also, if the woman was unable to express her will due to her condition, or left the decision to the doctor, the craniotomy should be performed. For Moll, the fetus was not an independent human being, which meant that its life could not be balanced against the life of the mother. If, however, the mother deliberately wanted to take the risk of a Caesarean section, the doctor should also follow her wishes, because self-sacrifice for a high purpose was regarded as ethically permissible. If the mother was dying and unconscious, the Caesarean section could also be performed, because the mother's consent to an attempt to save the baby's life could be presumed.<sup>38</sup> Moll's emphasis on the wishes of the mother contrasted with that of leading gynaecologists and obstetricians of the time, such as Bernhard Krönig (1863–1917) in Freiburg, who wanted to make the decision only on medical grounds, which could mean that a Caesarean section was performed against the mother's will.<sup>39</sup>

Moll's position on the question of the perforation of the fetus also matched his rather liberal views on the morality of earlier abortions. The German Penal Code, which at the time punished abortion with imprisonment or penal servitude for up to five years (Section 218), was, in his opinion, out of tune with public sentiment. The public did not invariably regard abortion as something unethical, as Moll pointed out, especially not if carried out in an early stage of pregnancy.<sup>40</sup> In fact, it has been estimated that in late nineteenth-century Germany, between three hundred thousand and five hundred thousand abortions were performed every year.<sup>41</sup> Only a small proportion of these cases, less than one thousand per year around the turn of the century (1882–1912), ended with a criminal conviction.<sup>42</sup> Moll himself was sympathetic to women who wanted to terminate a pregnancy after rape or if they already had too many children to support. He was also not alone in his view that a doctor should not denounce the woman to the police, if he was called to attend to

<sup>37</sup> *Ibid.*, 249–50; Joseph Heimberger, *Strafrecht und Medizin* (Munich: C.H. Beck'sche Verlagsbuchhandlung, 1899), 64–5; Barbara Elkeles, 'Die schweigsame Welt von Arzt und Patient: Einwilligung und Aufklärung in der Arzt-Patienten-Beziehung des 19. und frühen 20. Jahrhunderts', *Medizin, Gesellschaft und Geschichte*, 8 (1989), 63–91: 76–83.

<sup>38</sup> Moll, *op. cit.* (note 1), 250–9.

<sup>39</sup> Elkeles, *op. cit.* (note 37), 81–3.

<sup>40</sup> Moll, *op. cit.* (note 1), 259. For the debate on abortion law reform in Imperial and Weimar Germany, see Cornelia Osborne, *The Politics of the Body in Weimar Germany: Women's Reproductive Rights and Duties* (London: Macmillan, 1992); Cornelia Osborne, *Cultures of Abortion in Weimar Germany* (New York: Berghahn Books, 2007).

<sup>41</sup> Eduard Seidler, 'Das 19. Jahrhundert. Zur Vorgeschichte des Paragraphen 218', in Robert Jütte (ed.), *Geschichte der Abtreibung: Von der Antike bis zur Gegenwart* (Munich: C.H. Beck, 1993), 120–39: 135.

<sup>42</sup> *Ibid.*, 137–8.

complications after a botched abortion. The harm done to the doctor–patient relationship through a breach of medical confidentiality in this situation, and the serious damage to the woman’s reputation, had to be weighed against the value of reporting a crime.<sup>43</sup> In 1911, Moll commented on a case in which a doctor had reported the woman concerned, with her consent, in order to initiate prosecution of the abortionist. Both the abortionist and the woman had subsequently been convicted, but the latter had been able to submit a plea for clemency which was supported by the public prosecutor. In Moll’s view, a case like this was a matter of personal, conscientious decision-making for the doctor.<sup>44</sup> Many doctors, it seems, did not report abortions. Moll’s views on medical confidentiality were differentiated. While he leaned towards protecting patients’ confidence on the issue of abortion, in 1905, he successfully supported the defence of a Berlin doctor who was accused of a breach of professional secrecy – under Section 300 of the German Penal Code – for having warned the relatives of a syphilitic patient of the danger of infection.<sup>45</sup>

We can conclude from Moll’s argumentation in the three examined ethical issues of truth-telling, euthanasia and abortion that the self-determination of the patient was a central factor. It competed, to some extent, with the best interest of the patient – especially in the case of truth-telling – but unlike other writers on medical ethics at the time, such as Pagel and Scholz, Moll was not a paternalist.<sup>46</sup> His quasi-legal understanding of the doctor–patient relationship committed him to the well-being and interests of the individual patient, and this included respect for the patient’s wishes. In this sense, Moll’s theory of medical ethics might be seen as a forerunner of the modern concept of patient autonomy, although his practical conclusions were rather moderate and often in line with medical traditions. The patient’s consent to treatment, after adequate information and advice, was a crucial element in Moll’s ethics.<sup>47</sup> This goes some way to explain his position and actions on the issue of clinical experimentation on hospital patients, to which I will turn in the following sections.

### Human Experimentation

In his *Medical Ethics*, Moll provided a summary of about 600 research papers that explicitly or implicitly reported non-therapeutic experimental interventions on human subjects. He had collected these publications from the international literature, as he emphasised: from Germany, Austria, Switzerland, France, Italy, England, Russia, Norway, Sweden, Denmark, Romania, the United States, Chile and Egypt. Many of the examples that Moll cited indicated that patients had been harmed, or at least molested or exposed to risks, through experimentation. Moreover, in many cases, the human subjects did not seem to have been informed about the nature and implications of the experiment, nor been asked

<sup>43</sup> Moll, *op. cit.* (note 1), 105–6, 259–60.

<sup>44</sup> Albert Moll, ‘Neuere Fragen zum ärztlichen Berufsgeheimnis’, *Berliner Ärzte-Correspondenz*, 16 (1911), 1–4.

<sup>45</sup> Moll, *op. cit.* (note 9), 270–1; *Entscheidungen des Reichsgerichts in Strafsachen*, 38 (1905), 62–6 (II. Strafsenat, Urteil vom 16. Mai 1905). On the contemporary medico-legal debate on medical confidentiality, including the question of reporting on abortions, see Andreas-Holger Maehle, ‘Protecting Patient Privacy or Serving Public Interests? Challenges to Medical Confidentiality in Imperial Germany’, *Social History of Medicine*, 16 (2003), 383–401. See also Maehle, *op. cit.* (note 3), 47–68.

<sup>46</sup> For a discussion of Scholz and Pagel in this respect, see Maehle, *ibid.*, 84–7. See also Andreas-Holger Maehle, ‘Zwischen medizinischem Paternalismus und Patientenautonomie: Albert Moll’s “Ärztliche Ethik” (1902) im historischen Kontext’, in Frewer and Neumann, *op. cit.* (note 6), 44–56.

<sup>47</sup> Moll, *op. cit.* (note 1), 263, 564–5.

for their consent to being a subject in a trial. Typically, the experiments had been carried out on hospital patients or other institutionalised persons, such as orphans or prisoners.<sup>48</sup> While Moll's tone in his medical ethics was generally neutral and considered, his outrage about abuses in human experimentation became clearly recognisable at this point:

I have observed with increasing surprise that some medics, obsessed by a kind of research mania, have ignored the areas of law and morality in a most problematic manner. For them, the freedom of research goes so far that it destroys any consideration for others. The borderline between human beings and animals is blurred for them. The unfortunate sick person who has entrusted herself to their treatment is shamefully betrayed by them, her trust is betrayed, and the human being is degraded to a guinea pig. Some of these cases have occurred in clinics whose directors cannot talk enough about 'humanitarianism', so that they may almost be regarded as specialists in humanitarianism. There seem to be no national or political borders for this aberration.<sup>49</sup>

Despite its international dimension, the problem was of particular relevance to Prussia. Alerted by the scandal surrounding the syphilis experiments of Albert Neisser, which were discussed in the Prussian Parliament, the Prussian Minister for Religious, Educational and Medical Affairs [*Minister der geistlichen, Unterrichts- und Medizinal-Angelegenheiten*] had commissioned, in March 1899, an expert report on human experimentation from the Ministry's Scientific Committee for Medicine [*Wissenschaftliche Deputation für das Medizinalwesen*]. Neisser himself, as a university professor, was punished – with a reprimand and a fine – by the Royal Disciplinary Court for Civil Servants [*Königlicher Disziplinarhof für nicht-richterliche Beamte*] because he had failed to obtain consent from the parents or guardians of the minors on whom he had experimented. The syphilis serum injections given to those of his subjects who were prostitutes were, however, regarded by the court as legitimate therapeutic trials, because they might have protected the subjects against the risk of catching syphilis through their occupation. As a kind of immunisation therapy for prostitutes, who could legally be subjected to compulsory medical treatment, these trials did not require consent.<sup>50</sup>

This distinction between therapeutic and non-therapeutic trials was central in a directive that the Prussian Minister issued to the directors of hospitals and clinics on 29 December 1900. It required information about the risks and consent of the subjects in scientific, non-therapeutic trials, but did not make this a requirement for interventions that served 'therapeutic, diagnostic or immunisation purposes'. Moreover, the directive made the hospital or clinic directors personally responsible for the scientific trials, which had to be documented – including the compliance with information and consent requirements

<sup>48</sup> *Ibid.*, 504–52.

<sup>49</sup> This and all subsequent translations, unless otherwise stated, are the author's own. Cf. *ibid.*, 504–5: '...ich habe dabei mit stets wachsendem Erstaunen wahrgenommen, dass sich einzelne Mediziner, von einer Art Forschungsmanie besessen, über die Gebiete des Rechts und der Sittlichkeit in bedenklichster Weise hinwegsetzen. Für sie geht die Freiheit der Forschung so weit, dass sie jede Rücksicht auf andere durchbricht. Die Grenze zwischen Mensch und Tier ist für sie verwischt. Der unglückliche Kranke, der sich ihnen zur Behandlung anvertraut hat, wird von ihnen schmähdlich betrogen, das Vertrauen getäuscht, und der Mensch wird zum Versuchskaninchen degradiert. Einige dieser Fälle sind in Kliniken vorgekommen, deren Leiter nicht oft genug das Wort Humanität im Munde führen können, so dass man sie fast als Spezialisten für Humanität betrachten könnte. Nationale und politische Grenzen scheint diese Verirrung nicht zu kennen'; Moll also mentioned his indignation at human experiments in his memoirs as the immediate reason for writing his book on medical ethics. See Moll, *op. cit.* (note 9), 261–3.

<sup>50</sup> Elkeles, *Diskurs, op. cit.* (note 6), 192–3, 204–6; Elkeles, 'Wissenschaft', *op. cit.* (note 6), 24–5.

– in the patients' files. Non-therapeutic experiments on minors and other persons lacking full legal competence were forbidden.<sup>51</sup>

Moll criticised these regulations in *Medical Ethics*, arguing that on the one hand they did not provide enough protection for the human subjects, and that on the other, they went too far in their requirements. They went too far in ruling out scientific experiments on minors; for example, taking a blood sample from a twenty-year-old within a scientific study would not be allowed in Prussia. But the regulations were not stringent enough, as they did not make clear whether the 'therapeutic, diagnostic or immunisation purposes' referred to the individual patient or to all interventions of this type, regardless of whether they might be useful to the individual subject concerned. Moll also doubted that simple recording in the patient's file was sufficient to ensure that full information had been given and valid consent obtained. He was aware of the authoritarian milieu in the hospitals and university clinics of the time, in which the mostly lower-class patients were expected to follow doctors' orders. Many patients would also lack the education to fully comprehend the implications of a proposed trial. Moll therefore demanded a guarantor for the proper information and consent of the subjects, and written consent for serious interventions.<sup>52</sup>

Beyond this critique in his book on medical ethics, Moll became personally involved in the issue. With the exception of the cases that were well known through the press, such as those of Neisser and Strubell, Moll deliberately omitted the names of the experimenters in his account of problematic human trials in *Medical Ethics*. In a preceding article on the issue of human experimentation, published in November 1899 in the critical political weekly *Die Zukunft*, he had likewise abstained from giving names. His aim was to draw attention to abuses in clinical trials as a general problem, not to individual researchers such as Neisser.<sup>53</sup>

After publication of this article, however, Moll was approached by Friedrich Althoff (1839–1908), the influential Ministerial Director in the Prussian Ministry for Religious, Educational and Medical Affairs, who requested to see Moll's material on this topic.<sup>54</sup> The request was sent on 30 December 1900, just one day after the Minister's directive on scientific trials had been issued. Obviously, the Ministry planned investigations, and possibly disciplinary proceedings, against some of the researchers who were resident in Prussia. In early January 1901, Moll replied to Althoff's letter, stating that he was willing to give access to his material under two conditions: that it was explicitly acknowledged by the Ministry that he, Moll, had supplied the information upon Althoff's request; and that he was given an assurance that his material was not going to be used in investigations of individual persons. Moll explained his conditions with his wish to avoid any resemblance with anonymous denunciation. Rather, he wanted his material to provide background information for the drawing up of future regulations on human trials.<sup>55</sup> As can be gathered

<sup>51</sup> 'Anweisung an die Vorsteher der Kliniken, Polikliniken und sonstigen Krankenanstalten' (29 December 1900), *Zentralblatt für die gesamte Unterrichtsverwaltung in Preußen* (1901), 188–9; reprinted in Elkeles, *Diskurs, op. cit.* (note 6), 209; see also Lutz Sauersteig, 'Ethische Richtlinien, Patientenrechte und ärztliches Verhalten bei der Arzneimittelerprobung (1892–1931)', *Medizinhistorisches Journal*, 35 (2000), 303–34.

<sup>52</sup> Moll, *op. cit.* (note 1), 564–8.

<sup>53</sup> Albert Moll, 'Versuche am lebenden Menschen', *Die Zukunft*, 9, 15 (1899), 213–8; Moll, *op. cit.* (note 1), 24, 562; Moll, *op. cit.* (note 9), 263. The editor of *Die Zukunft* was the influential Jewish-born publicist and critic of Wilhelminian government, Maximilian Harden (1861–1927).

<sup>54</sup> Letter from Althoff to Moll, 30 December 1900, Geheimes Staatsarchiv Preußischer Kulturbesitz (hereafter GStA PK), I. HA, Rep. 76, Va, Sekt. 1, Tit. X, Nr. 47, Bd. 1, fol. 466.

<sup>55</sup> Letter from Moll to Althoff, 7 January 1901, GStA PK, I. HA, Rep. 76, Va, Sekt. 1, Tit. X, Nr. 47, Bd. 2, fol. 170r–171r.

from a memorandum of the ministerial official Ludwig Elster (1856–1935) at the end of February 1901, Moll was subsequently told that the assurance mentioned in his second condition could not officially be granted. Moll then continued to refuse permission for access to his material, but agreed that the ministerial official could meet with him privately to look into his documentation, provided he was given the requested assurance by this official. After Elster had given Moll the assurance, he was able to study the material, a total of ninety-five cases, and to take notes. As Elster remarked, however, most cases were ‘totally harmless’.<sup>56</sup> The Ministry does not seem to have taken much further action on the issue of human experimentation in the following years. As Barbara Elkeles has found in her research on this matter, only six cases were investigated by the Ministry between 1900 and 1913, but were not pursued any further due to ‘harmlessness’.<sup>57</sup> When Moll described the affair in his memoirs of 1936, he indicated that his reluctance to reveal the identity of the experimenters had led to dissonances with the Ministry, and he associated these with his failure to obtain an allegedly planned titular professorship at Berlin University.<sup>58</sup>

The incident had, in fact, drawn the Ministry’s attention to Moll as a person and physician. After Moll had published, in March 1901, another critical article on the issue of human experimentation, this time in the popular illustrated news magazine *Die Woche*, Elster requested, on behalf of the Ministry, a report on Moll from the Berlin chief of police, specifically on Moll’s personal circumstances and his standing in medical circles.<sup>59</sup> The report, authored by a medical civil servant in the police department, Richard Wehmer (1854–1909), was highly ambivalent. On the one hand, it acknowledged that Moll’s medical practice was ‘good’, that he lived unmarried in orderly and prosperous financial circumstances in his Berlin flat, and that his recent scientific works had found recognition, but on the other hand, it pointed out that Moll had specialised in hypnotism and had fallen out with leading experts over scientific questions; that he had attacked the work of asylum doctors in the journal *Die Zukunft*; and that he liked to study sexual perversions and had served as an expert in trials against sexual offenders. The report even contained a piece of innuendo, saying that detectives were often seen in his flat, that prostitutes were among his patients, and that there were rumours that something mysterious was going on at his home. The account ended with the observation that Moll did not vote in the 1893 general elections, and that he was a member of the *Progressive Party* [*Fortschrittspartei*], but that he had never attracted the attention of the police through any political campaigning.<sup>60</sup> The report was filed in the Ministry and no further action seems to have been taken.

The whole affair revealed a pattern in Moll’s behaviour: engagement in a public debate on the ethics of medicine; confident and almost arrogant dealings with the authorities; and yet also anxious concern for his reputation as well as the reputation of the medical profession. Moll was aware of the broader implications of the contemporary debate on

<sup>56</sup> Memorandum by Elster, 28 February 1901, GStA PK, I. HA, Rep. 76, Va, Sekt. 1, Tit. X, Nr. 47, Bd. 2, fol. 172r.

<sup>57</sup> Elkeles, ‘Menschenversuche’, *op. cit.* (note 7), 147–8.

<sup>58</sup> Moll, *op. cit.* (note 9), 263–5.

<sup>59</sup> Albert Moll, ‘Aerztliche Versuche am Menschen’, *Die Woche*, 9 March 1901. Letter from Elster and Kirchner to Polizei-Präsident, 6 May 1901, GStA PK, I. HA, Rep. 76, Va, Tit. X, Nr. 47, Bd. 2, fol. 260.

<sup>60</sup> Der Polizei-Präsident, Referent: Regierungs- und Medizinal-Rath Dr Wehmer, ‘Betrifft den Arzt Dr Albert Moll zu Berlin’, 23 June 1901, *ibid.*, fol. 277r–278v. Moll had criticised that directors of private mental asylums might, for business reasons, be tempted to keep patients hospitalised for longer than medically necessary. He therefore suggested nationalising the mental asylums. See Albert Moll, ‘Privatirrenanstalten’, *Die Zukunft*, 7 (1894), 550–8; Albert Moll, ‘Die Verstaatlichung der Irrenanstalten’, *Die Zukunft*, 10 (1895), 21–8. On Moll’s role as an expert witness in trials of sex offenders, see the contribution by Conn in this issue.

human experiments, which included a general lay criticism of scientific medicine and of medical authority, especially as practised in hospital.<sup>61</sup> To the extent that mostly working-class patients were the subjects of clinical experimentation, the issue had also a political dimension. The case of Strubell, for example, had been made public by the Social Democratic newspaper *Vorwärts*.<sup>62</sup> Friedrich Scholz, in his widely read ethical reflections *Von Aerzten und Patienten* [*On Doctors and Patients*] (first published in 1899), noted complaints about the autocratic attitude of some hospital physicians who regarded the patients that were dependent on them as ‘material’ and ‘abused them for the sake of science’. Syphilis inoculations, made out of scientific curiosity and with the knowledge that they would do harm, were in his eyes ‘criminal’.<sup>63</sup> Moreover, the public attacks against Neisser had anti-Semitic undertones<sup>64</sup>, something that Moll, who had converted from Judaism to Protestantism in 1895, as the police report on him noted, is likely to have felt. Julius Pagel, who, like Neisser, was Jewish, defended the latter’s controversial human trials on syphilis immunisation by explaining their scientific context and medical significance.<sup>65</sup> To a degree, Moll’s manoeuvring between going public and protecting himself and the profession becomes understandable from a consideration of these various contexts.

### ‘Patient trade’

However, a similar behavioural pattern became apparent again a few years later when Moll became involved in the so-called ‘patient trade’ affair of 1908/9.<sup>66</sup> In October 1908, the Medical Society of Berlin-Schöneberg [*Verein der Schöneberger Aerzte*] began an investigation of medical practitioners’ referrals of foreign private patients to specialist consultants in Berlin hospitals and university clinics. The main target of this investigation was the Russian Institute for Medical Consultations in Berlin [*Russisches Institut für medizinische Consultationen zu Berlin*], run by doctors Semjon Lipliawsky (born c.1875) and Siegfried Weissbein (born c.1877), who arranged, for a fee, consultations with leading medical specialists for Russian patients visiting the German capital.<sup>67</sup> There were also other such ‘institutes’, as well as individual agents in Berlin, who provided this service to foreign visitors. Allegedly, these middlemen were not only paid by the patients but also by the clinicians consulted. For the medical practitioners of Schöneberg this would constitute unfair competition for lucrative private patients. Through a series of

<sup>61</sup> Moll, ‘Versuche’, *op. cit.* (note 53), 213, 218.

<sup>62</sup> Elkeles, ‘Wissenschaft’, *op. cit.* (note 6), 24.

<sup>63</sup> Scholz, *op. cit.* (note 3), 127.

<sup>64</sup> See Elkeles, *Diskurs*, *op. cit.* (note 6), 170–9, 199–201.

<sup>65</sup> Julius Pagel, ‘Ueber den Versuch am lebenden Menschen’, *Deutsche Aerzte-Zeitung*, no. 9 (1905), 193–8, and no. 10 (1905), 219–28; 222–4, 226. Pagel had originally written this paper in August 1900 as part of a planned memorandum from the Prussian Ministry for Religious, Educational and Medical Affairs in the context of the Neisser case. The memorandum was, however, not published. See *ibid.*, 193.

<sup>66</sup> The subsequent sections follow my account of the patient trade affair in Andreas-Holger Maehle, ‘Doctors in Court, Honour, and Professional Ethics: Two Scandals in Imperial Germany’, *Gesnerus*, 68 (2011), 61–79.

<sup>67</sup> It was estimated that approximately 60,000–70,000 Russian patients per year travelled to Berlin for expert medical advice and help. ‘Kleine Mittheilungen’, *Deutsche Medicinische Wochenschrift*, 27 (1901), 420. The Russian Institute reported to have had 357 patients during the first four months of its existence (May to August 1901); see Semjon Lipliawsky, ‘Das russische Institut für medizinische Consultationen zu Berlin und seine Thätigkeit in den ersten vier Monaten seines Bestehens’, *Deutsche Medicinische Wochenschrift*, 27 (1901), 697–8.

appeals in the *Berliner Ärzte-Correspondenz* – ie. the official newsletter of the Berlin medical chamber and journal of the local medical professional societies – the deputy chairman of the Medical Society of Berlin-Schöneberg, Julius Friedemann (b. 1858), called for information on such practices, ‘in the interest of the professional dignity [*Standeswürde*] of the German and especially the Berlin medical profession’.<sup>68</sup> Clearly, the intention was to initiate disciplinary proceedings against consultants who made underhand payments to middlemen for bringing them private patients. Moll, as chairman of the so-called Committee of Fifteen [*Fünfzehner-Ausschuß*], a group representing the interests of the medical profession in the area of Berlin,<sup>69</sup> soon sided with Friedemann in this campaign and himself collected ‘material’ on this matter, which he partly shared with Friedemann. The explosive nature of the issue became quickly apparent as Ernst von Leyden (1832–1910), the doyen of internal medicine and former director of the First Medical Clinic of the Charité-Hospital of Berlin University, had agreed to be a consultant for a planned outpatient clinic of the Russian Institute for Medical Consultations. After Friedemann and Moll had personally spoken with him, von Leyden publicly retracted from this agreement.<sup>70</sup>

Soon, however, another prominent clinician, Karl Anton Ewald (1845–1915), director of the department for internal medicine at the Augusta-Hospital in Berlin and professor at Berlin University, came under suspicion of being involved in the ‘patient trade’. Such a suspicion was all the more delicate because Ewald was, at the time, a candidate in the elections for the council of the prestigious Berlin Medical Society [*Berliner Medizinische Gesellschaft*]. As in the case of von Leyden, private conversations took place. On behalf of Ewald, Hermann Senator (1834–1911), the chairman of the Berlin Medical Society and director of the Third Medical Clinic and Outpatient Clinic of the Charité-Hospital, followed Moll’s invitation to speak with him and Friedemann about the matter at Moll’s home. As Senator later claimed, Moll and Friedemann ‘tricked’ him on this occasion to implicate himself in the dubious practices surrounding Russian private patients. The contents of the conversation became public in a libel trial in May 1909, after Senator had been mentioned, in an article in the newspaper *Berliner Zeitung am Mittag* in March 1909, as one of those making payments to the Russian Institute for sending patients to them.<sup>71</sup>

<sup>68</sup> ‘Tagesgeschichtliches: Verein der Schöneberger Aerzte E.V.’, *Berliner Ärzte-Correspondenz*, 13 (1908), 180; see also, *ibid.*, 192, 212. ‘Institute für medizinische Konsultationen’, *Berliner Ärzte-Correspondenz*, 13 (1908), 213–5; ‘Weiteres über Institute für medizinische Konsultationen’, *Berliner Ärzte-Correspondenz*, 14 (1909), 10–12. The fact that the initiative against the Russian Institute for Medical Consultations and Dr Lipliawsky was published in the *Berliner Ärzte-Correspondenz* may have had to do with a serious business conflict between the journal’s publishers, Haussmann and Hartmann, and Lipliawsky, who was a co-owner of the journal. Allegedly, in a business meeting in October 1908, Lipliawsky had been physically assaulted and seriously injured by Haussmann and Hartmann; see Hans Lungwitz, ‘Zu den medizinischen Wirren’, *Therapeutische Rundschau*, 3 (1909), 257–62, 289–92, 337–41, 353–6, 369–74, 424–5, 472: 354–5.

<sup>69</sup> In the interest of Berlin’s medical practitioners, the Committee of Fifteen (founded in 1905) had, in October 1907, renegotiated an agreement with Berlin University’s surgical outpatient clinic that cases that could not be used for teaching or research purposes should not be treated beyond the first consultation and be directed back to the practitioners. The Committee had thus previously been concerned with consultant–practitioner relations. See ‘Mitteilungen des Fünfzehner-Ausschusses betreffend die staatlichen Polikliniken’, *Zeitschrift für ärztliche Fortbildung*, 4 (1907), 671. The initial main concern of the Committee was the contractual relations of practitioners with the health insurance organisations. See Moll, *op. cit.* (note 9), 181–2.

<sup>70</sup> ‘Tagesgeschichtliches: Poliklinik für Russen’, *Berliner Ärzte-Correspondenz*, 13 (1908), 184.

<sup>71</sup> ‘Patientenfang: Professoren als Provisionsgeber’, *Berliner Zeitung am Mittag*, 22 March 1909, 1. The same newspaper had reported the allegations before without giving the names of the professors concerned: ‘Die Jagd nach Patienten: Die Praktiken der Konsultationsbureaus’, *Berliner Zeitung am Mittag*, 18 December 1908, 1; ‘Verhandlung in der Privatklage des Geheimen Medizinalrats Professors Dr Senator gegen den verantwortlichen

As Moll later declared as a witness in disciplinary proceedings against Ewald, he also had, in early January 1909, a private conversation about the issue with the latter.<sup>72</sup>

Before the trial of Senator against the editor of the newspaper, however, further revelations about the patient trade and the Russian Institute had been made in a libel trial of Moll against Dr Albert Levin (b. 1867), a member of the Medical Society of Berlin-Schöneberg, in March 1909. Levin belonged to the society's committee that had taken on the investigation of this matter. When Levin asked Moll to give him access to all his collected material on the patient trade issue, Moll refused. Incensed about this lack of collaboration, Levin wrote a letter to Moll, in which he accused him of cowardice or of holding back the material for improper reasons, or of actually having no further material at all. Moll reacted with a libel action against Levin. Initially, Moll had taken the view that one should deal discreetly with the patient trade issue, in order to stop abuses but not to expose individual colleagues. However, by the time of the trial against Levin his tactics had clearly changed. Moll now used the trial to make the conduct of the Berlin university professors public, and Friedemann became his ally in this enterprise. In his witness statement, Friedemann reported that von Leyden, Senator, and the urologist Carl Posner (1854–1928), who was an extraordinary professor at Berlin University, had admitted to having offered or made payments to middlemen from the Russian Institute for Medical Consultations or other agents that had brought them private patients. He also mentioned Ewald's name in this connection. The judge, keen to limit proceedings to the specific issue of libel, concluded that the payments described had actually happened, that Moll had made material on this matter available to Friedemann, and that the tone of Levin's letter to Moll was libellous. Levin was convicted, with a thirty Mark fine.<sup>73</sup>

Both Levin and Moll subsequently appealed against this verdict. The appeal proceedings, held in late May 1909, shortly after the libel trial of Senator against the editor of the *Berliner Zeitung am Mittag* – in which Moll appeared as a witness – provided a further forum to divulge details. This time, Moll's lawyer submitted an extensive motion to take evidence, in which he gave further details about the Berlin medical professors' relationships with the Russian Institute. Dr Weissbein, as one of the Russian Institute's directors, had a defensive letter read out at the trial, in which he suggested that Moll and Levin had stage-managed the whole libel case to obtain a public platform for their accusations against the professors and the Institute. Moll and Levin energetically protested against this insinuation. The trial ended with a settlement: Levin acknowledged that Moll had had honourable reasons not to release his substantial material, withdrew the accusations that he had made against Moll in his letter, and took on the costs for the trial. Moll accepted and withdrew his libel action.<sup>74</sup>

Redakteur der "B. Z. am Mittag" Dr Fritz Auer vor der 147. Abteilung des Amtsgerichts Berlin-Mitte (Schöffengericht), 11 May 1909, GStA PK, I. HA, Rep. 76, Va, Sekt. 2, Tit. IV, Nr. 46, adh B, fol. 101–201. The trial ended with a settlement.

<sup>72</sup> *Ibid.*, fol. 91r–92v, fol. 234r (statements by Moll on 10 May 1909 and 7 June 1909).

<sup>73</sup> 'Öffentliche Sitzung des Königlichen Schöffengerichts. Berlin-Schöneberg. Abt. 20. Privatklagesache des Sanitätsrats Dr Albert Moll (...) gegen den prakt. Arzt Dr Albert Levin', 20 March 1909, *ibid.*, fol. 13r–14v; [Urteil], 20 March 1909, *ibid.*, fol. 15r–18r; 'Der Prozess betr. die russischen Konsultationsbureaus', *Berliner Ärzte-Correspondenz*, 14 (1909), 67–8.

<sup>74</sup> 'Zwei Beleidigungsprozesse betr. die Russischen Konsultationsbureaus', *Berliner Ärzte-Correspondenz*, 14 (1909), 113–16; 'Tagesgeschichte. Vermittlung russischer Konsultationen', *Zeitschrift für ärztliche Fortbildung*, 6 (1909), 399–400. On the social relevance of libel actions and their relationship to notions of honour in this period, see Ann Goldberg, *Honor, Politics, and the Law in Imperial Germany, 1871–1914* (Cambridge: Cambridge University Press, 2010).



The details of the trials were not only reported and commented upon in the medical press, such as the *Berliner Ärzte-Correspondenz* and the *Berliner Klinische Wochenschrift*, but also in newspapers across the political spectrum.<sup>75</sup> The allegations that prominent members of the Berlin medical establishment had paid 'bribes' to get private patients provided the right sort of material for a public scandal. As in the Neisser case a few years earlier, anti-Semitic comments were made. Obviously being aware that Moll, Friedemann, Levin and Senator, as well as Lipliawsky and Weissbein, had a Jewish background, the *Deutsche Tageszeitung* and *Das Reich* emphasised that Jewish doctors were prominently involved in the affair.<sup>76</sup>

When the matter was also mentioned in the Lower House of the Prussian Parliament [*Abgeordnetenhaus*], the Ministry for Religious, Educational and Medical Affairs promised to investigate the allegations. At their own request, disciplinary proceedings were started against the professors Ewald, Senator and Posner.<sup>77</sup> Weissbein and Friedemann initiated court of honour proceedings against themselves in order to have their conduct vindicated.<sup>78</sup> In the disciplinary proceedings against the three professors, Moll was heard four times as a witness by the university judge and government official, *Geheimer Regierungsrat* (Senior Executive Officer) Dr Daude. The Minister for Religious, Educational and Medical Affairs, to whom reports on the hearings were sent, asked Daude to obtain more detailed evidence from Moll because the latter initially refused to confirm that the accused professors had paid the middlemen specifically for bringing patients. Only after Daude threatened legal action against Moll himself if he refused to give full evidence did Moll provide further details that incriminated Ewald and Posner.<sup>79</sup> In the end, however, none of the involved professors was found guilty. While it was noted that the medical professors concerned had occasionally given money to agents who had brought them patients, the Ministry accepted their justification that these payments had just been small tips or small rewards for having acted as interpreters, or for having assisted when the Russian patients were seen and examined by the professors. The disciplinary proceedings against Senator and Ewald were abandoned in November 1909, as were proceedings against the elderly and ill von Leyden which had been initiated only in the previous month.<sup>80</sup> Posner, who had regularly paid one specific agent, the Russian interpreter and

<sup>75</sup> See, for example, Hans Kohn, 'Russische Konsultationen', *Berliner Klinische Wochenschrift*, 46 (1909), 623–4, 955–6, 1050–1; 'Die russischen Konsultationen vor Gericht', *Medizinische Reform*, 17 (1909), 133–5; 'Die russischen Konsultationen: Die Rechtfertigung Senators', *Medizinische Reform*, 17 (1909), 231–8; 'Die Russischen Konsultationen: Die Berufungsverhandlung Moll gegen Levin', *Medizinische Reform*, 17 (1909), 257–9; 'Vermittlung russischer Konsultationen', *Zeitschrift für ärztliche Fortbildung*, 6 (1909), 238–9. 'Patientenfang: Schmiergelder von Berliner Aerzten', *Berliner Tageblatt*, 21 March 1909; 'Russische Institute für medizinische Konsultationen und angebliche Schmiergelder von Professoren und anderen Aerzten', *Vossische Zeitung*, 21 March 1909, 12. Beilage; 'Patientenschacher vor Gericht', *Die Post*, 21 March 1909; 'Krankenschacher', *Tägliche Rundschau*, 21 March 1909, 2; 'Aerztliche Schmiergelder', *Berliner Tageblatt*, 22 March 1909; 'Patientenschacher', *Der Montag. Berliner Lokal-Anzeiger*, 22 March 1909, 1; 'Patientenfang: Professoren als Provisionsgeber', *Berliner Abendpost*, 23 March 1909, 1.

<sup>76</sup> 'Patientenhandel', *Deutsche Tageszeitung*, 22 March 1909; 'Schmiergelder', *Das Reich*, 23 March 1909, 1; 'Kleine Pfeile', *Das Reich*, 9 April 1909, 1.

<sup>77</sup> *Stenographische Berichte über die Verhandlungen des Preußischen Hauses der Abgeordneten*, 21. Legislaturperiode, II. Session 1908/09, Vol. 4, cols 5553–4, cols 5625–6 (sessions on 30 April and 1 May 1909).

<sup>78</sup> GStA PK, I. HA, Rep. 76, Va, Sekt. 2, Tit. IV, Nr. 46, adh A, fol. 152r–153v; *ibid.*, fol. 154r–155r, 233r–236r; adh B, fol. 239–246. Both court of honour trials ended with an acquittal.

<sup>79</sup> GStA PK, I. HA, Rep. 76, Va, Sekt. 2, Tit. IV, adh B, Disziplinaruntersuchungsakten gegen Ewald und Genossen, fol. 91r–94v, 202r–203r, 211r, 233r–235r.

<sup>80</sup> GStA PK, I. HA, Rep. 76, Va, Sekt. 2, Tit. IV, adh A, Acta betr. den angeblichen Patientenhandel durch Ärzte und Professoren an der hiesigen Universität, fol. 275r–277v, 280r–282r.

health assistant Bernhard Rosenberg (born c.1860) had to face a full trial by the Royal Disciplinary Court for Civil Servants in January 1910, but was acquitted.<sup>81</sup>

With his intervention in this issue of professional conduct Moll had further established himself as an ‘expert’ in medical ethics, but clearly at a reputational cost. While his name was now all over the newspapers, and he had turned himself into a champion of the economic interests of Berlin’s medical practitioners, his relationship to university medicine had suffered further damage; for example, in the widely reported libel trial of Senator against the *Berliner Zeitung am Mittag*, Senator sneeringly called Moll and Friedemann ‘... those two gentlemen, who make their appearance as guardians of medical ethics and of collegiality’.<sup>82</sup> The young doctor and medical journalist Hans Lungwitz (1881–1967), who had recently completed his medical training in Ewald’s department, published a series of polemical articles about the affair in his weekly *Therapeutische Rundschau*, in which he ridiculed Moll as ‘God’s ethicist’ [*Ethiker von Gottes Gnaden*] and as a ‘medical Sherlock Holmes’ who had ‘interrogated’ the professors in his flat. Lungwitz also shared Weissbein’s suspicion that the Moll vs Levin libel case had been staged by these two in order to go public with their allegations. As Lungwitz claimed, Moll’s and Friedemann’s campaign against the Berlin professors had damaged the international reputation of German medicine and was ‘anti-German’ [*deutschfeindlich*].<sup>83</sup> The latter remark may well have been understood by informed readers as an anti-Semitic gesture towards the Jewish descent of both Friedemann and Moll.

In principle, Moll had repeated his strategy to intervene in an ethical issue, but then to try to protect his reputation and that of the profession by withholding incriminating material until ‘forced’ to release it to the authorities; but, as in the issue of human experimentation, such manoeuvring put him in an unfavourable light. Being called a ‘guardian of medical ethics’ [*Wächter der medizinischen Ethik*] by his medical peers was rather derogatory, and, apparently, after the patient trade affair, Moll’s continuing membership as a representative in the Berlin medical chamber was called into question by some of his colleagues.<sup>84</sup>

### Conclusions

From my analysis of Moll’s medical ethics, there appears to be a discrepancy between the appreciation that they might deserve from a present-day, ethical point of view, and the historical impact they actually made. Theoretically, Moll’s move in his *Medical Ethics* to privilege the doctor–patient relationship over issues of professional behaviour among doctors themselves was important. His focus on the ‘contract relationship’ between doctors and patients gave space to the self-determination of the patient, though he moderated patients’ wishes with what he thought to be in the patient’s best interest. Moll

<sup>81</sup> *Ibid.*, fol. 306r–326v.

<sup>82</sup> GSa PK, I. HA, Rep. 76, Va, Sekt. 2, Tit. IV, adh B, fol. 147 (‘...die beiden Herren, die als Wächter der medizinischen Ethik und der Kollegialität auftreten’).

<sup>83</sup> Lungwitz, *op. cit.* (note 68), 260, 337, 369–70, 472. Reports on the Berlin patient trade affair appeared in, among others, the *British Medical Journal*, issues 2519 (10 April 1909) and 2526 (29 May 1909) and the *Southern California Practitioner*, 24 (1909), 303. On Lungwitz’s biography and work, see Anika Fellermeier, ‘Der Arzt Hans Lungwitz (1881–1967) im Spiegel seiner sozialreformerischen Schriften’ (unpublished MD thesis: Universität Würzburg, 2004); Matthias Miener, ‘Hans Lungwitz (1881–1967) – Arzt und Schriftsteller’ (unpublished MD thesis: Universität Würzburg, 2005).

<sup>84</sup> Lungwitz, *ibid.*, 338. Moll had been elected into the medical chamber in December 1908 and chaired its ‘Vertragskommission’, which dealt with the contracts with health insurance organisations, from 1909 to 1918. GSa PK, I. HA, Rep. 76, VIII B, Nr. 825, fol. 366r–370v, fol. 402v; Nr. 827 (Ärztchamber für die Provinz Brandenburg und den Stadtkreis Berlin, July 1916–December 1920), 1005–21.

can thus be seen, to some extent, as a pioneer of the concept of patient autonomy in medical ethics. Carefully discussing conflicts of interest in many areas of medicine, his voluminous text on medical ethics was the most elaborate consideration of the topic at this time.<sup>85</sup>

His contemporaries, however, do not seem to have picked up his point about respect for patients' wishes. A friendly but bland review in the *Münchener Medizinische Wochenschrift* by the Hamburg gynaecologist Karl Jaffé (1854–1917) asserted that Moll's book was 'a true reflection of the current views on medical ethics' and praised his 'impartial and objective point of view'. Incoming as well as experienced doctors might learn from it, suggested Jaffé, but he also expressed his general doubts about the practical usefulness of writings on medical ethics.<sup>86</sup> A similar point was made by the reviewer for the *Deutsche Medizinische Wochenschrift*, the Berlin physician Leopold Henius, who thought that it was more helpful to seek the advice of an experienced colleague in doubtful cases than to plough through a voluminous handbook. Many things in Moll's book were not new, claimed Henius, and other parts, such as that on the perforation of the fetus, 'too sophisticated to be convincing'. Both Jaffé and Henius acknowledged Moll's enormous industriousness in writing *Medical Ethics*, and, like Jaffé, Henius acknowledged Moll's 'calm, noble and objective tone'.<sup>87</sup> But in the end, Henius' assessment must have been frustrating for Moll: 'On the whole (...) we have here an industrious work which deserves recognition, and we wish it a large readership, but, for the above-mentioned reasons, we do not expect that it will have it'.<sup>88</sup> Some reviewers in less prominent medical journals more warmly recommended Moll's book to their readership.<sup>89</sup> Generally appreciative were also the reviews in the Viennese medical periodicals.<sup>90</sup> However, Henius' prediction seems to have been correct if one considers that there was no further German edition of Moll's *Medical Ethics*.

The reception of the book in the legal profession was perhaps more positive; for example, Melchior Stenglein (1825–1903), formerly an official at the German Supreme Court, praised, in a review in the legal journal *Der Gerichtssaal*, the similarity of Moll's views to current legal opinion on the issues of euthanasia and consent to surgery.<sup>91</sup> Likewise, the Berlin lawyer Erich Sello (1852–1912), a friend of Moll's, emphasised, in his review, the many links to legal questions that the book provided.<sup>92</sup> In fact, legal publications on aspects of medical practice, such as consent and confidentiality, regularly

<sup>85</sup> See also Maehle, *op. cit.* (note 3), 110–18.

<sup>86</sup> Jaffé, *op. cit.* (note 15).

<sup>87</sup> Henius, *op. cit.* (note 15); similarly also Kaminer, *op. cit.* (note 15), who praised Moll's objectivity and impartiality.

<sup>88</sup> Henius, *ibid.*, 529: 'Im ganzen und grossen (...) liegt eine fleissige, anerkennenswerthe Arbeit vor, für die wir einen zahlreichen Leserkreis wünschen, aber aus den oben angeführten Gründen nicht erwarten'. In his memoirs Moll called Henius a narrow-minded but influential member of professional societies ('ebenso beschränkten wie einflussreichen Standesvereins'); Moll, *op. cit.* (note 9), 265.

<sup>89</sup> Marcell Lauterbach, 'Albert Moll, Aertzliche Ethik', *Klinisch-therapeutische Wochenschrift*, 9 (1902), 881–6; [Ludwig] Kleinwächter, 'Albert Moll, Aertzliche Ethik: Die Privilegien [sic!] des Arztes in allen Beziehungen seiner Thätigkeit', *Der Frauenarzt*, 17 (1902), 9; Th. Toeplitz, 'Albert Moll, Aertzliche Ethik', *Schlesische Aerzte-Korrespondenz*, 6 (1903), 187; anon., 'Albert Moll, Aertzliche Ethik', *New Yorker Medicinische Monatsschrift*, A. Ripperger (ed.), 14 (1902), 14–18.

<sup>90</sup> H.A., 'Albert Moll, Aertzliche Ethik', *Wiener Medicinische Wochenschrift*, 52 (1902), 2106–7; Adolf Klein, 'Albert Moll, Aertzliche Ethik', *Wiener Klinische Wochenschrift*, 15 (1902), 453; [Max] Neuburger, 'Albert Moll, Aertzliche Ethik', *Wiener klinische Rundschau*, 17 (1903), 642–3.

<sup>91</sup> Melchior Stenglein, 'Albert Moll, Aertzliche Ethik', *Der Gerichtssaal*, 60 (1902), 383–4.

<sup>92</sup> Erich Sello, 'Aertzliche Ethik', *Die Zukunft*, 38 (1902), 397–402. Moll mentioned the positive reviews by Sello and Stenglein in his memoirs; see Moll, *op. cit.* (note 9), 272.

cited Moll's work on ethics while often ignoring other medical literature.<sup>93</sup> It would be an exaggeration, however, to say that Moll's *Medical Ethics* was a success, despite its two translations into Russian. The editor of the 1904 translation, the Marxist medical doctor and writer Vikentii Veresaev (1867–1945), characterised Moll as 'a cautious, moderate, and prudent philistine, who is devoid of noble purpose' and saw parts of the book as illustrating 'the bourgeois outlook of the modern, ordinary German physician'. Russian reviewers of *Medical Ethics* criticised it for its lack of a foundation in a philosophical system and for its application of the term 'ethics' to problems of medical deontology.<sup>94</sup>

Moll himself, in his memoirs of 1936, repeatedly claimed that his outrage about abuses in experimentation on hospital patients had made him feel compelled to write *Medical Ethics*.<sup>95</sup> In view of his later active engagement in medical politics, as a member of the Berlin medical chamber from December 1908, one may also assume that a more general interest in questions of professional conduct had been a motivating factor. His emphasis on self-determination of the patient might have been a reflection of the specific circumstances of his own practice, in which he saw private patients who paid for the consultations themselves.

Only in the 1980s and 1990s, when medical ethics and bioethics became increasingly important subjects in German academia, did historians of medicine engage with the contents of Moll's book on medical ethics. Susanne Hahn pointed to the focus on 'situation ethics' in Moll's text, and to his subjective response to the rise of science in medicine, as exemplified by the issue of human experimentation.<sup>96</sup> Julius Henri Schultz, in a short monograph on Moll's medical ethics in 1986, emphasised the latter's closeness to legal thought and philosophical positivism; and for Antonia Eben, in her medical doctoral dissertation of 1998, the 'inductive' and casuistic approach of Moll to ethical problems was important – an approach that she linked with his liberal, Jewish–Christian thinking.<sup>97</sup>

Moll's practical interventions in contemporary issues of medical ethics had no lasting impact. His collected materials on human experimentation and his criticism of the Prussian ministerial directive of 1900 did not lead to revisions of the regulations, as he had hoped. His activities in the patient trade affair also failed to effect disciplinary punishment for the professors involved. On the other hand, the publicity that his interventions in this matter gained may well have put a temporary stop to the practice of clinicians' payments to middlemen. However, a hundred years on, when in August and September 2009 a new patient trade affair went through the German media,<sup>98</sup> nobody remembered that Berlin had experienced all this before – let alone that Moll had been a 'guardian of medical ethics' in this affair.

<sup>93</sup> On the medico-legal debate of these issues, including Moll's contributions, see Maehle, *op. cit.* (note 3), 47–94.

<sup>94</sup> Lichterman and Yarovinsky, *op. cit.* (note 16), 443.

<sup>95</sup> Moll, *op. cit.* (note 9), 261, 263.

<sup>96</sup> Susanne Hahn, 'Die ärztliche Ethik im Leben eines Arztes der Seele – Überlegungen zur medizinisch-ethischen Konzeption Albert Molls (1862–1939)', *Zeitschrift für die gesamte innere Medizin*, 39 (1984), 558–61.

<sup>97</sup> Schultz, *op. cit.* (note 14), 97–9; Eben, *op. cit.* (note 14), 124–5.

<sup>98</sup> In the 2009 affair, medical practitioners had received bonus payments from specific hospitals for referring patients to them; see, for example, Andreas Milm, 'Immer mehr Ärzte "verkaufen" ihre Patienten', *Frankfurter Allgemeine Zeitung*, 31 August 2009; Anne-Kathrin Bonsert and Wolfgang Gehrman, 'Der Kopfgeld-Erreger: Ärzte kassieren von Kliniken Fangprämien für Patienten: Das System lädt dazu ein', *Die Zeit*, 10 September 2009. For a comparison of this recent scandal with the Berlin patient trade affair of 1908/9, see Andreas-Holger Maehle, "'Patient Trade" in Germany: An Ethical Issue at the Practitioner-Clinician Interface in 1909 and 2009', *Medical Humanities*, 36 (2010), 84–7.