

Rationalising Evil?

The ethical considerations of using Nazi data
in medical publications after World War Two

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Introduction

“Each day I was submerged in hot water. Whenever I tried to put my head out of the water in order to breathe I was forced back into the water by Dr. Josef Mengele’s stick. He was enjoying himself. This lasted for 10 minutes. I was immediately afterwards put into cold water and the same procedure was repeated.”¹

Mentioning human medical experimentation, one quickly thinks about the ‘Angel of Death’ Josef Mengele, i.e. the infamous Auschwitz doctor. This would be my initial thesis topic, namely medical science with a focus on Josef Mengele. However, after researching this topic I came to two conclusions namely that the topic of Josef Mengele had been researched extensively and secondly, that a historical discourse of the ethics of using the created data was not -researched extensively. This would thus be my topic: history of medicine, more specifically a historical discourse on how scientists viewed the ethics of using Nazi data. The period that will be researched ranges from 1946 until 2004.²

Investigating the scientific literature on the ethics of using Nazi data is a continuing concern within the field of medicine and in the field of history as will be argued below.

The aforementioned quote originates from ‘Ms. G.’, a woman who wishes to share her experience of the Nazi-experiments, however considering the severe nature of her story, she prefers to remain anonymous. Her recollection gives us a unique insight into the crimes against humanity that were performed by the Nazis. The Nazi experiments and its results remain controversial. This is due to the number of deaths and the nature of the experiments on the one hand and the important information -data without equivalent - that could be derived from these experiments on the other hand. Since World War Two there have been numerous medical publications regarding the use of data derived from the Nazi experiments. One such medical publication is ‘*Nazi data and the rights of Jews*’, by Stephen G. Post, Professor of Preventive Medicine.³ Post, a medical

¹ Claims Conference, ‘Personal Statements From Victims of Nazi Medical Experiments’ <<http://www.claimscon.org/about/history/closed-programs/medical-experiments/personal-statements-from-victims/>> [consulted on 17-02-2017].

² 1946 is chosen because this is the year in which the Doctors’ Trial was conducted, 2004 is chosen because this is when the most recent relevant scientific publication on the topic was published.

³ Psychology Today, ‘Stephen G Post Ph.D.’ <<https://www.psychologytoday.com/experts/stephen-g-post-phd>> [consulted on 17-05-2017].

scientist, gives a good overview of the different stances taken by scientists.⁴ As illustrated by Post, many scientists have touched the subject, and while historians have devoted much attention to Nazi science itself, they have largely avoided the controversial subject of post-war use of the Nazi data. This essay provides such an historical approach.

Before starting the justification for the historical approach, it is important to know what this historical approach entails. Whereas the scientific approach tends to focus on the ethical discussion -whether the use of the data is morally correct or not- the historical approach focusses on the development and the changing view on the use of Nazi data. This historical approach is also known as *history of medicine*, a field characterized by its interdisciplinary, boundary crossing, approach.⁵ The main objective being “*to achieve a better understanding of what we have done and what we are doing.*”⁶ A history of medicine sees the work of medical science as a discourse on health, illness, healing and the ethics of the medical profession. Another important aspect of the history of medicine is the significant role of language, meaning, context is just as significant as what is said or written.⁷ This is paramount when researching the discourse of medicine, or for example, the discourse of Nazi ethics over the years.⁸ Context is crucial when researching the historical discourse because to understand a historical matter is to understand the circumstances which created this position. For this reason the Nuremberg Trials are discussed, seeing as it provides a context by which the historical discourse can be researched and understood.

A work has been written on the subject ‘usage of Nazi data and its ethical implications’ outside the medical field. This study has been written by doctor of Hebrew, Biblical and Jewish Studies, Ross William Halpin. In his master thesis, Halpin examined the usability of Nazi data in contemporary medical research by stating a historical

⁴ Additional medical publications on the ethics of using Nazi experiments: Robert L. Berger, ‘Ethics in scientific communication: study of a problem case’, *Journal of Medical Ethics* 20 (1994), 207-211; Henry K. Beecher, ‘Ethics and Clinical Research’, *The New England Journal of Medicine* 274:24 (1966), 367-372; Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992); Kristine Moe, ‘Should the Nazi Research Data Be Cited?’ *The Hastings Center Report* 14:6 (1984), 5-7; William E. Seidelman, ‘Mengele Medicus: Medicine’s Nazi Heritage’, *The Milbank Quarterly* 66:2 (1988), 221-239; David Bogod, ‘The Nazi Hypothermia Experiments: Forbidden Data?’, *Anaesthesia* 59:12 (2004), 1155-1156.

⁵ Gert H. Brieger, ‘Bodies and Borders: A New Cultural History of Medicine’, *Perspectives in Biology and Medicine* 47:3 (2004), 402-421, here 405.

⁶ Gert H. Brieger, ‘Bodies and Borders’, here 402.

⁷ Ibid, 406.

⁸ Ibid, 407.

background on the matter.⁹ Green's method however greatly differs from the proposed approach of this thesis, seeing as Green claims to use a historical approach, however he defers from this approach by giving a value judgement on the ethics of using Nazi data. Green concludes that the science was invalid due to its unreliability, to ultimately conclude that there is no ethical dilemma and the data should thus not be used. Therefore he states his opinion -whether to use the data or not- within the ethical discussion, rather than focussing on the development of the changing view.¹⁰ Furthermore, Greene examines the usability of the Nazi data in contemporary research, whereas I will focus on the *view* of scientists on the usability of Nazi data. Lastly, Green originates from a religious -Hebrew, Biblical and Jewish- discipline which could have affected his research seeing as his discipline is affiliated with the religious group most affected by the Nazis, which then again could have created a bias.

The scarcity of comprehensive histories on this topic can be explained through the Nuremberg trial, which started in 1945 and ended in 1949.¹¹ The trial was a juridical process focussed on the apprehension of various important Nazi perpetrators. This trial was not a fixed legal procedure, in other words it changed through time, as will be discussed more extensively in chapter one. The main question during the trials remained the same -who should be tried- however the answer to this question changed without a closing answer in 1945. This lack of a definite answer was because of pragmatic reasons, considering not everybody responsible could be tried; by reason of lack of time and money; or simply because of the absence of a defendant to trial.

Furthermore, the answer to the question 'who should be tried' changed through time. Since ethics change, the belief of who should be tried changes too. This change in ethics is also noticeable in history, namely who should be viewed as a perpetrator and who was merely a bystander, this did not stop in 1945. What is seen as normal and ethical, changes through time. For example, Edward Jenner, who infected an eight year old boy with cowpox in an attempt to find a functional vaccine for the illness.¹² Whereas Jenner's use of an eight-year old boy as a guinea pig was completely normal in the 18th

⁹ Ross William Halpin, 'A History of Concern: The Ethical Dilemma of Using Nazi Medical Research Data in Contemporary Medical and Scientific Research' (unpublished dissertation, University of Sydney, 2008), 5.

¹⁰ Ross William Halpin, 'A History of Concern', 141.

¹¹ The IMT started in November, 20 1945 and ended on October 1, 1946. The NMT started in 1946 and ended in 1949.

¹² Norman Howard-Jones, 'Human Experimentation in Historical and Ethical perspectives', *Social Science & Medicine* 16:15 (1982), 1429-1448, here 1430.

century, purposely injecting a child with a disease is unacceptable in modern-day society. This change in ethics can too be seen in the use of Nazi data; Nazi data was scorned, however whether it was ethical to make use of these data was not. This issue, whether to make use of the Nazi data, was disputed in the eighties, which resulted in a steady stream of scientific publications, however historic publications are yet to contend.

Furthermore, mere medical history is insufficient. Within the medical field, progress is the leading narrative in questions, research methods and results. Human ideas, ideologies and emotions are commonly not considered as relevant. A more innovative history of medicine precisely addresses these issues, hence a traditional medical history, often written by medical professionals, is not sufficient, a new history of medicine is thus necessary.

As discussed above, studies on the topic 'ethical considerations of the use of Nazi data' are written by doctors, scientists and even psychologists. One could argue the relevance of a historical account has passed together with the applicability of the Nazi data. However, the debate on the use of Nazi data is ongoing.¹³ Additionally, one could argue that the most important aspect of the Nazi experiments -namely the ethics of using these experiments- has been extensively covered by several experts.¹⁴ This could account for the very few works written on this topic from a historical approach. Be that as it may, an efficient medical and ethical debate is incomplete, perhaps even deficient, without historical reviews and examination. As Eva-Corinna Simon states in her dissertation on the relationship between history and medical ethics, an efficient medicoethical debate is unthinkable without including historical reviews and historical

¹³ For literature on the debate of using the Nazi data see: Robert L. Berger, 'Nazi Science - The Dachau Hypothermia Experiments', *The New England Journal of Medicine* 322: 20 (1990), 1435-1440; Barry Siegel, 'Can Evil Beget Good?: Nazi Data: A Dilemma for Science', *Los Angeles Times* <http://articles.latimes.com/1988-10-30/news/mn-958_1_nazi-data-issue> [consulted on 13-02-2017]; New York Times, 'Minnesota Scientist Plans to Publish Nazi Experiment on Freezing' <<http://www.nytimes.com/1988/05/12/us/minnesota-scientist-plans-to-publish-nazi-experiment-on-freezing.html>> [consulted on 13-02-2017].

¹⁴ For literature on the ethics of using the Nazi data see: Alan T. Lefor, 'Scientific misconduct and unethical human experimentation: historic parallels and moral implications', *Elsevier* 21 (2005), 878-882; Stephen G. Post, 'Nazi Data and the Rights of Jews', *Journal of Law and Religion* 6:2 (1988), 429-433; Henry K. Beecher, 'Ethics and Clinical Research', *The New England Journal of Medicine* 274:24 (1966), 367-372; Jay Katz, Alexander Morgan Capron and Eleonor Swift Glass, *Experimentation with human beings: the authority of the investigator, subject, professions, and state in the human experimentation process* (New York, 1972); Jay Katz, *The silent world of doctor and patient* (New York, 1984); Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992); Baruch C. Cohen, 'The Ethics Of Using Medical Data From Nazi Experiments', *Jewish Law Articles* <<http://www.jlaw.com/Articles/NaziMedEx.html>> [consulted on 26-02-2017].

consideration.¹⁵ Thus a historical account of the literature on the use of Nazi data offers a valuable, essential addition to the literature on Nazi data, not only because historians offer a new view, but also due to their impartiality and independent position within the medical field. After all, scientists work within an institutional model, one does not easily strain from this proceeding. Moreover, scientists are dependent on research grants and their reputation in order for new research to be approved, historians are no member of the medical world, consequently evading this problem, hence a historical account is useful.

Another reason for the minimal amount of such a comprehensive history could be that Nazi experiments were always viewed as part of the Nazi killing machine. Because the Nazi experiments were seen as a segment of the main 'Nazi murder agenda.' Therefore a lot of publications have been written on the Nazi killing machine in general, but few focus on a comprehensive history about the smaller segment within this broader theme, namely the use of Nazi data. Meaning it is not written about autonomously, because it was not seen as something separate.

Ethical guidelines have been established in order to prevent unethical research and its publication. The Declaration of Helsinki has included a section on the ethical obligations of authors and publishers, unethical research is however not eradicated.¹⁶ This topic can play an important role in addressing the issue of the continuing human rights violations as a result of experimentation on humans without their consent.¹⁷

¹⁵ Eva-Corinna Simon, 'Geschichte als Argument in der Medizinethik: Die Bezugnahme auf die Zeit des Nationalsozialismus im internationalen Diskurs (1980-1994)' (unpublished dissertation, Justus-Liebig-Universität Gießen, 2004), 163-165.

¹⁶ The 2013 version of the Helsinki declaration specifically states: "*Reports of research not in accordance with the principles of this Declaration should not be accepted for publication.*" (cited from: World Medical Association, 'WMA Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Subjects' <<https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/>> [consulted on 13-06-2017]); The Declaration of Helsinki was drawn up in 1964, the most recent amendment was in 2013. The Declaration is not legally binding, it is to be of use as a guideline on a local and national level but also for review mechanisms; The Council for International Organizations of Medical Sciences (CIOMS), 'International Ethical Guidelines for Biomedical Research Involving Human Subjects' <http://www.cioms.ch/publications/guidelines/guidelines_nov_2002_blurb.htm> [consulted on 12-06-2017].

¹⁷ A few examples of human experimentation in modern times to illustrate the concerning continuation of unethical conduct of science: Francie Diep, 'Why did the American Psychological Association approve its members to oversee torture?', *Pacific Standard* <<https://psmag.com/news/apa-involvement-in-post-911-torture>> [consulted on 05-06-2017]; Michael Carome, 'Outrage of the Month: A Steady Stream of Unethical Human Experiments', *Huffington Post* <http://www.huffingtonpost.com/michael-carome-md/outrage-of-the-month-a-st-b_9822610.html> [consulted on 05-06-2017]; Bob Unruh, 'EPA caught running 'illegal' experiments on humans', *WorldNetDaily* <<http://www.wnd.com/2016/09/epa-caught-running-illegal-experiments-on-humans/>> [consulted on 05-06-2017]; Emily Halnon, 'Medical researchers in Africa must

Because by describing the wrongdoings of the past and uncovering the ruling misconceptions, we can learn from the mistakes that have been made, preventing them from ever to be made again.

Stating the historiographical debate in an objective manner will ensure an impartial stance on a rather emotional topic, therefore I will restrain from using 'I' from this moment on. This research will ultimately answer the following question: 'how did scientists view the ethics of using Nazi experiments after World War Two?' This question will be divided into three chapters. The first chapter will give information on the Nuremberg Trials, which will provide context. Next, chapter two, will define the use of Nazi data until the eighties, and will discuss the reasoning for the late start on the discussion and the discontinuity in the view of using Nazi data. In the last, third, chapter the ensued debate will be demonstrated by examining several important scientists and their articles. This topic will be researched through an analysis of several literary sources, which will illustrate the development of the perspective of the use of Nazi experiments from World War Two onwards.

The hypothermia data from the Dachau Report is the focus of this thesis because these data are most frequently used by scientists, seeing as they are considered to be most trustworthy and therefore of most value.¹⁸ Additionally, the discontinuity will be researched through mail contact with the initiator of the discussion in the eighties, namely Robert Pozos. The research of literature will be done in an objective, reflective manner. If possible, more literary sources on the same topic will be examined to ultimately discern the best possible information on the topic. This paper attempts to show the historical discourse on the ethics of using Nazi data. Moreover, it will show the importance of discussion because it ensures rational and balance in an ambivalent and uncertain topic.

learn from the past, prof finds', *Around the O* <<https://around.uoregon.edu/content/medical-researchers-africa-must-learn-past-prof-finds>> [consulted on 06-06-2017].

¹⁸ Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 113-114, 136.

Chapter 1– End of an Unethical Era?

“The scientists of the world must remember that the research is being done for the sake of mankind and not for the sake of science; scientists must never detach themselves from the humans they serve.”¹⁹

To understand the development of the view on Nazi experiments, it is vital to look at the beginning, namely the Nuremberg Trial. This trial is often seen as the end of an unethical era. An era in which scientists forgot they worked for humankind first and scientific progress second. This line of reasoning is recorded in the Nuremberg code, the international code of ethics the world indisputably needed. The Nuremberg Trial and the Nuremberg Code could be seen as the start of a long debate on the ethics regarding the results of Nazi experiments, nevertheless the debate on the use of these results still had to commence. In this chapter, the Nuremberg Trial and the different stances taken at this trial, will be discussed to ultimately discern the view on the use of Nazi experiments during the Nuremberg Trial.

The Nuremberg Trial

During World War Two, the Allied forces already gave thought as to the prosecution of the Nazis. This can be seen in the Moscow Declaration of October 30, 1943, which in summary states that members of the Nazi party would be send back to the country in which the deeds were done. The idea at the time was thus to trial the defendants according to the laws of these countries.²⁰ During the Yalta Meeting in February 1945, Roosevelt, Churchill and Stalin agreed to prosecute the Axis leaders. In August 8, 1945, the Allied forces signed the Nuremberg Charter, also known as the London agreement. This decree ascribed the laws and procedures by which the Nuremberg Trials were to be conducted. For the Moscow Declaration and the London Agreement to come into force, and to establish a uniform legal basis in Germany for the prosecution of the Nazi figures, the Allied Control Council set up Law No. 10 on December 20, 1945.²¹ The Allied Control

¹⁹ George J. Annas, Michael A. Grodin (Eds.), *The Nazi Doctors and the Nuremberg Code: human rights in human experimentation* (New York, 1992), 58.

²⁰ International Military Tribunal, *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, 15 volumes (Washington DC, 1949), I: IV.

²¹ International Military Tribunal, *Trials of War Criminals*, I: XVI.

Council, also known as the Four Powers, was a military occupation governing body. Its members consisted of the United States, the Soviet Union, the United Kingdom and France. The Control Council was set up to decide the fate of post-war Europe. As previously mentioned, the Control Council constructed Law No. 10, which was a uniform legal basis for the prosecution of war criminals.²² This put into action an International Military Tribunal (IMT) to prosecute the Axis war criminals. The tribunal consisted of American, Soviet, British and French judges and prosecutors.²³ Important to ask is what crimes the defendants were charged with, and what they were accused of precisely at the Nuremberg Trial. The defendants' crimes were the following: murders, brutalities, cruelties, tortures and atrocities. These crimes can be divided in the following four counts: crimes against peace, war crimes, crimes against humanity and lastly the conspiracy to wage aggressive war.²⁴ Each defendant was accused of at least one crime and was thus tried accordingly.

The main Nuremberg Trial, in which twenty-three political and military leaders were tried, took place before the International Military Tribunal (IMT) between November 20, 1945 and October 1, 1946, this was the first trial the Allied forces conducted. The twelve subsequent trials took place before the Nuremberg Military Tribunal (NMT). The NMT which started in 1946 and continued throughout 1949, was held by the American occupation authorities.²⁵ The NMT was a continuation of the IMT not only in its ambition to change the political and legal narrative -something the IMT started- but also in its overall philosophy of legalism and its liberal view.²⁶ However, it is

²² It is also known as 'Control Council Law No.10'; Guénaël Mettraux (Ed.), *Perspectives on the Nuremberg Trial* (Oxford, 2008), 157.

²³ Yad Vashem, 'The Nuremberg Trials' <http://www.yadvashem.org/holocaust/about/end-of-war-aftermath/nuremberg-trials?WT.mc_id=wiki#narrative_info> [consulted on 25-04-2017]; Anne L. Craig and Sukumar P. Desai, 'Human Medical Experimentation with Extreme Prejudice: Lessons from the Doctors' Trial at Nuremberg', *Journal of Anesthesia History* 1:3 (2015), 64-69, here 64; United States Holocaust Memorial Museum, 'The Nuremberg Trials' <<https://www.ushmm.org/outreach/en/article.php?ModuleId=10007722>> [consulted on 25-04-2017]; Guénaël Mettraux (Ed.), *Perspectives on the Nuremberg Trial* (Oxford, 2008), 157-160.

²⁴ International Military Tribunal, *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, 15 volumes (Washington DC, 1949), I: 8; Donald Bloxham, 'From the International Military Tribunal to the Subsequent Nuremberg Proceedings: The American Confrontation with Nazi Criminality Revisited', *The Journal of the Historical Association* 98:332 (2013), 567-591, here 571-572.

²⁵ Donald Bloxham, 'From the International Military Tribunal to the Subsequent Nuremberg Proceedings', here 567-568; Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford, 2011), 85.

²⁶ Liberal states are prone to choose legalism, bureaucracy. Whereas right-orientated states would have chosen to execute the war criminals, liberal states would be more likely to choose an international

important to note that there are differences between the IMT and the NMT. For example, whereas the IMT dealt with the major war criminals, such as Joachim von Ribbentrop, Hans Frank, Alfred Rosenberg and Julius Streicher, the NMT dealt with “*war criminals of the second rank*.”²⁷ The NMT came into existence because of the growing differences between the Allied Powers, which made effective trials at the IMT impossible.²⁸ Because of Law No. 10, every Allied Power had the authority to trial war criminals in their own occupation zone. The United States made use of this law and started prosecution on their own under the jurisdiction of Law No. 10. These twelve subsequent trials are now known as the Nuremberg Trials, which took place before the Nuremberg Military Tribunal, also known as the NMT.²⁹

It is important to see the Nuremberg Trial not in the conventional terms -that is a trial with a previously established rule of law and jurisprudence- but as a process. A process from which its rules became apparent during the course of the trials. As Telford Taylor, an American lawyer in the Counsel for the Prosecution, made clear, the trials at Nuremberg should not be seen as merely a historic event, but also as an unfolding process. Considering that the main goal of the Nuremberg Trials was to arbitrate law and politics, it is not surprising to define the Trials as a process, because there was no precedent, no transnational law, or whatsoever. Additionally, the NMT developed an increasing expertise in analysing the power organisations and the various affairs of Nazi Germany. In other words, the NMT developed its international law and politics along the way.³⁰

criminal tribunal; Frédéric Mégret, ‘The Politics of International Criminal Justice’, *European Journal of International Law* 13:5 (2002), 1261-1284, here 1268.

²⁷ The second rank war criminals were high-ranking soldiers and SS men, diplomats, civil servants, industrialists, jurists, doctors and scientists; Donald Bloxham, ‘From the International Military Tribunal to the Subsequent Nuremberg Proceedings: The American Confrontation with Nazi Criminality Revisited’, *The Journal of the Historical Association* 98:332 (2013), 567-591, here 570.

²⁸ Britain felt that more than one trial would be “*anticlimactic, unnecessarily expensive, and furthermore problematic in a world in which relations between the erstwhile Allies were becoming increasingly tense*.” (Cited from: Donald Bloxham, ‘From the International Military Tribunal to the Subsequent Nuremberg’, here 576) Moreover, the Cold War marked the growing distrust between Soviet Russia and the United States, which made a collaboration on another set of trials increasingly difficult.

²⁹ *Ibid*, 576-578.

³⁰ *Ibid*, 568-569, 584.

The Doctors' Trial and Ethical Science

The first trial at the Nuremberg Military Tribunal was the Doctors' trial.³¹ The Doctors' trial began on December 9, 1946, with the opening speech by Telford Taylor.³² As previously mentioned, the defendants were accused of the following four charges, set up at the IMT: crimes against peace, war crimes, crimes against humanity and lastly the conspiracy to wage aggressive war. In the Medical Trial, the crimes against humanity and the war crimes were pivotal. More specifically: human experimentation and mass murder. More than seventy medical research projects were conducted in concentration camps between 1939 and 1945. Because of these medical experiments hundreds of thousands of people lost their lives.³³ This particular trial was named 'Doctors' trial' due to the relatively large number of medical professionals being prosecuted considering twenty of the twenty-three defendants were medical doctors. Many of the physicians held high posts in the German Medical Corps, for instance in the German Air Force and the Waffen SS. Various physicians even worked in the civilian medical establishment, some of whom held great esteem in the medical world, like Paul Rostock and Gerhard Rose. The non-physicians tried at the Doctors' trial were Viktor Brack, Rudolf Brandt and Wolfram Sievers. None of the three functioned as doctors during World War Two, so why were they tried at the Doctors' trial? Viktor Brack was the organiser of the Euthanasia Programme -Action T4-, Rudolf Brandt helped obtain 86 Jewish skeletons for an anthropological display and Wolfram Sievers was the director of the *Ahnenerbe*.³⁴ These three non-physicians were thus tried due to the nature of their crimes and not because of their medical profession -or the lack there of. At the Doctors' Trial seven of the defendants were acquitted, seven executed and the rest was sentenced to jail.³⁵

³¹ Official name: Case No. 1, The 'Medical Case', United States *against* Karl Brandt et al.

³² Klaus Dörner, Angelika Ebbinghaus, Karsten Linne and Michael Walter, *The Nuremberg Medical Trial, 1946/47: Transcripts, Material of the Prosecution and Defense, Related Documents* (München, 2001), here 11.

³³ Anne L. Craig and Sukumar P. Desai, 'Human Medical Experimentation with Extreme Prejudice: Lessons from the Doctors' Trial at Nuremberg', *Journal of Anesthesia History* 1:3 (2015), 64-69, here 64.

³⁴ *Ahnenerbe* (ancestral heritage) was a project headed by Wolfram Sievers which conducted experiments and researched cultural and archaeological history in order to prove that Nordic populations once ruled the world; International Military Tribunal, *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, 15 volumes (Washington DC, 1949), I: 35.

³⁵ Klaus Dörner, Angelika Ebbinghaus, Karsten Linne and Michael Walter, *The Nuremberg Medical Trial, 1946/47: Transcripts, Material of the Prosecution and Defense, Related Documents* (München, 2001), 11-17, 53-64; Paul Weindling, 'The Origins of Informed Consent: The International Scientific Commission on Medical War Crimes, and the Nuremberg Code', *Bulletin of the History of Medicine* 75:1 (2001), 37-71, here 55; Jay Katz, *Experimentation with Human Beings* (New York, 1972), 292-306.

Before continuing, it is important to note in which ways the experimental practices of the German Nazi doctors can be justified. To what extent were the Nazi experiments considered to be ‘normal science’? In other words, what is ‘unethical science’ and who determines the distinction between ‘normal science’ and ‘unethical science’? To answer this question, it is important to understand what the ethical norm at the time entailed. The first is the Hippocratic Oath, which provided physicians with ethical guidance and moral authority.³⁶ More clearly it states the sacred relationship between a physician and its patient: the Hippocratic physician chooses life considering he pledges to “*help or at least to do no harm.*”³⁷ Next to the Hippocratic Oath, there are two other ethical guidelines in pre-’33-’45 Germany, namely the directive issued by the Prussian minister in 1900 and the ‘Regulations on New Therapy and Human Experimentation’ issued on February 28, 1931.³⁸ Both were issued to protect the patient and to set a standard for ethics in human experimentation.³⁹ These regulations and ethical guidelines formulated the basic understanding of the doctor-patient relationship. Because the Nazi doctors called into question these very standards and principles of human civilization by conducting medical experiments on thousands of ‘patients’ without consent, their science was seen as ‘unethical’; it desecrated the doctor-patient relationship.⁴⁰ Although the latter two laws were applicable to the doctors’ misbehaviour, they were not used at the Nuremberg Trials as the court denied that the laws were legally binding from 1941 until 1945.⁴¹ Despite the fact they were not legally used in this particular trial, they do give insight into the ethical guidelines in pre-war

³⁶ Evelyne Schuster, ‘The Nuremberg Code: Hypocratic ethics and human Rights’, *The Lancet* 351 (1998), 974-977, here 974.

³⁷ Michael M. Cohen Junior, ‘Overview of German, Nazi, and Holocaust Medicine’, *American Journal of Medical Genetics* 152 (2010), 687-707, here 690; Evelyne Schuster, ‘The Nuremberg Code: Hypocratic ethics and human Rights’, *The Lancet* 351 (1998), 974-977, here 974-975; Jay Katz, *Experimentation with Human Beings* (New York, 1972), 314.

³⁸ Before the War (1920-1930) German medicine was the most advanced field in the world; Ronald F. Bellamy (Ed.), *Military Medical Ethics, Volume 2*, 2 volumes (Virginia, 2003), II: 405.

³⁹ Michael M. Cohen Junior, ‘Overview of German, Nazi, and Holocaust Medicine’, *American Journal of Medical Genetics* 152 (2010), 687-707, here 689-690; George J. Annas, Michael A. Grodin, *The Nazi doctors and the Nuremberg Code: human rights in human experimentation* (New York, 1992), 127-128; Paul Weindling, ‘The Origins of Informed Consent: The International Scientific Commission on Medical War Crimes, and the Nuremberg Code’ *Bulletin of the History of Medicine* 75:1 (2001), 37-71, here 41.

⁴⁰ United States Holocaust Memorial Museum, ‘The doctors trial: the medical case of the subsequent Nuremberg Proceedings’ <<https://www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/doctors-trial>> [consulted on 11-04-2017]; Jack S. Boozer, ‘Children of Hippocrates: Doctors in Nazi Germany’, *The Annals of the American Academy of Political and Social Science* 450 (1980), 83-97, here 83, 85.

⁴¹ Paul Weindling, ‘The Origins of Informed Consent: The International Scientific Commission on Medical War Crimes, and the Nuremberg Code’, *Bulletin of the History of Medicine* 75:1 (2001), 37-71, here 42.

medical science. In contrast, the 'internationally used' Hippocratic law was used at the Nuremberg Trial.

Stances taken at the Nuremberg Trial

The aforementioned regulations and ethical guidelines stayed in practice during the Nazi regime. However, the Nazis worked around these regulations by ignoring the above mentioned directives for some group, that is people who were deemed unworthy of life: Jews, Gypsies, Slavs, prostitutes, criminals, homeless people, political prisoners, homosexuals, psychiatric subjects, the mentally ill, disabled people and those who opposed the Nazi regime.⁴² This is how Nazi doctors could -albeit in creative ways- defend their acts: by distinguishing between people for whom the oath was valid and for whom it did not hold true. Another example of working around the guidelines, was formulated by Andrew Conway Ivy, schooled in medicine and physiology, appointed by the American Medical Association and representative at the Medical Trial for the defendants. He argued that the Hippocratic Oath refers to the function of the physician as a therapist and not as an experimental researcher.⁴³ Moreover, Ivy emphasised the dedication of the physicians to the Nazi state and its politics: "*There was no place for the ethics of medicine which teaches that the physician-patient relationship is a holy and individual matter.*"⁴⁴

Arguments brought forth by researchers in hindsight in an attempt to try to account for the crimes committed by the Nazi physicians, were found in the following factors: the hygiene revolution; the social-Darwinist philosophy; the debates on the sterilization of particular groups; 'euthanasia and the murder of those "*unfit to live*" and lastly the anti-Semitic nature of most Nazi physicians.⁴⁵ Moreover, the genocidal policies of the National Socialist regime on the one hand, and the attitudes of the physicians on

⁴² Michael M. Cohen Junior, 'Overview of German, Nazi, and Holocaust Medicine', *American Journal of Medical Genetics* 152 (2010), 687-707, here 690.

⁴³ Evelyn Schuster, 'The Nuremberg Code: Hippocratic ethics and human Rights', *The Lancet* 351 (1998), 974-977, here 974-975.

⁴⁴ Paul Weindling, 'The Origins of Informed Consent: The International Scientific Commission on Medical War Crimes, and the Nuremberg Code', *Bulletin of the History of Medicine* 75:1 (2001), 37-71, here 58.

⁴⁵ Klaus Dörner, Angelika Ebbinghaus, Karsten Linne and Michael Walter, *The Nuremberg Medical Trial, 1946/47: Transcripts, Material of the Prosecution and Defense, Related Documents* (München, 2001), 11.

the other hand, helped explain the acts the doctors committed during World War Two considering they degraded the humans they experimented on into sub-humans.⁴⁶

Human experimentation has always been part of medicine, however this was always essentially done to help save people. In the middle of the twentieth century, this began to change when the main purpose of human experimentation was no longer to help people, but to further scientific progress, that is, to help all of humankind and not just individuals. Whether this was permitted, and if so, under which conditions, was discussed during the Medical Trial. The main question raised at the trial was the following: 'Under which conditions is human experimentation permissible and under which does it violate the individual's right to physical and physiological integrity?' Two approaches to this question can be distinguished: one from the defence counsel and one from the Court.

The defence counsel claimed that the doctors first looked at the medical gain, only thereafter at the ethos of conducting these medical experiments. The gained scientific progress was –in their minds- more significant than the suffering of their research subjects. Additionally, they used the war as an contextual explanation for the experiments.⁴⁷ For example, the Dachau experiments were conducted to determine how to best revive a soldier with hypothermia.⁴⁸ Furthermore, the defence tried to alleviate the crimes committed by the Nazi physicians by discrediting physicians and scientists from other countries. Surely the Nazi doctors were not the only ones who carried out human experiments without the consent of the ones tested on. Therefore the defence counsel concluded that the medical experiments were just, legitimate and thus not unethical.⁴⁹

The court had to recognize that there was a need for human experimentation, not only for scientific progress, but also to find cures for illnesses deemed incurable. This led to the question as to whether these human experiments could only be performed on volunteers or if they could also be performed on particular groups in particular circumstances, say a war. However, who was allowed to make this decision to coerce

⁴⁶ Klaus Dörner, Angelika Ebbinghaus, Karsten Linne and Michael Walter, *The Nuremberg Medical Trial*, 11-12.

⁴⁷ Ibid, 64-65.

⁴⁸ Robert. L Berger, 'Nazi Science- The Dachau Hypothermia Experiments', *The New England journal of Medicine* 322: 20 (1990), 1435-1440, here 1435.

⁴⁹ Klaus Dörner, Angelika Ebbinghaus, Karsten Linne and Michael Walter, *The Nuremberg Medical Trial, 1946/47: Transcripts, Material of the Prosecution and Defense, Related Documents* (München, 2001), 65.

humans into taking part in medical experiments? This discussion was partly due to the non-use of existing national (German) legislation and the absence of clear international directives.⁵⁰ This led to the establishment of ten principles, forthwith the distinction between criminal acts and permissible medical experiments became conceivable.

These ten principles are critical in understanding the second approach, namely that of the Courts'. At the end of the trial, the Court concluded that evidence had shown that human experimentation was permissible and ethical as long as certain conditions were taken into account, hence the ten principles. These principles determined the conditions under which human experimentation could become permissible. This is nowadays known as the Nuremberg Code.⁵¹ The Court used these ten principles to determine whether the Nazi human experiments tried were permissible. The Court concluded that the medical experiments discussed at the trial did not meet these conditions. The 'experimental subjects' were prisoners who were stripped from their human rights before becoming an experimentee, i.e. there was no voluntary consent. This was 'acceptable' in the eyes of the Nazis because the prisoners were deemed unworthy of life. All in all the Court ruled that the human experimentation done by the defendants was unethical, in violation of human rights, not in agreement with the Nuremberg Code and thus illegal and criminal.⁵² In conclusion it can be determined that the defendants were tried because of the Moscow Declaration and the London Agreement, and convicted because of the Nuremberg Code.

The Nuremberg Trials can be seen as the end of a unethical era: the guilty parties were punished and an international code of ethics was established. It could even be said that the Nuremberg Trials were the start of the debate on the ethics of Nazi data. Nonetheless the use of the Nazi data was not discussed. No matter how progressive the Nuremberg Trials were, it failed to mention the potential use of these results. This could account for the lacuna in the debate on the use of Nazi data. In the next chapter the use

⁵⁰ National German law: the directive issued by the Prussian minister in 1900 and the Regulations on New Therapy and Human Experimentation issued on February 28, 1931.

⁵¹ The Nuremberg Code states that human experimentation is permissible as long as it: (1) is used to benefit mankind, (2) if the experimental results cannot be obtained in any other way, (3) is done by voluntary consent of the experimental subject, (4) takes place after experiments on animals have rendered results, (5) when enough information is available on the nature of the malady, (6) avoids unnecessary physical and psychological stress, (7) avoids death or permanent physical damage to the experimental subject, (8) is carried out by scientifically trained personnel, (9) takes place according to the rules of science, (10) ensures that the experimental subject can interrupt the experiment at any time.

⁵² Klaus Dörner, Angelika Ebbinghaus, Karsten Linne and Michael Walter, *The Nuremberg Medical Trial*, here 64-66.

of Nazi data after the Nuremberg Trial until the 1980s will be discussed. Furthermore, the discontinuity in the debate of using Nazi data and the reasoning for the refrainment of this subject is examined.

Chapter 2 – *Standing on the shoulders of giants?*

[Moreau] was simply howled out of the country. It may be he deserved to be, but I still think the tepid support of his fellow-investigators and his desertion by the great body of scientific workers, was a shameful thing.⁵³

An overview of the Nuremberg Trial has been presented in the previous chapter. Additionally, the international stance was defined: the science conducted at the concentration camps was seen as unethical. In this chapter an important follow-up question will be examined: what to do with the Nazi data? Do fellow-investigators remain loyal to their convicted colleagues? Can the Nazi doctors be seen as giants, is the use of Nazi data to further research comparable to standing on the shoulders of giants? Or do they become accomplices, part of the evil when using the Nazi data? In this chapter the use of Nazi data until the eighties is discussed. Next, the reasoning for the late start on the discussion will be examined to subsequently discuss the discontinuity in the view on the ethics of using the Nazi data.

The use of Nazi data in scientific literature

Nazi science and Nazi experiments were condemned after the war. The experiments were considered atrocities, feigning to be medical research. This general view on the Nazi experiments is perfectly demonstrated by the following opening statement in the Nuremberg Trial by Telford Taylor: “*These experiments revealed nothing which civilized medicine can use.*”⁵⁴ Nevertheless, after the war, at least forty-five scientific articles were published which contained Nazi data as empirical evidence, none of which included a remark on the ethics of using these data.⁵⁵ Before we continue, it is important to note that it was not commonplace to discuss the origin of data and ethics, despite the 1975 Tokyo Declaration, which clearly stated rules on the subject: “*reports on experimentation not in accordance with the principles laid down in this Declaration should not be accepted*

⁵³ H.G. Wells, *The Island of Dr. Moreau* (London, 1896), 20.

⁵⁴ Kristine Moe, ‘Should the Nazi Research Data Be Cited?’, *The Hastings Center Report* 14:6 (1984), 5-7, here 5; Moe gives an estimate as to the number of scientific articles which drew on Nazi data, however she does not state the names of the articles in question, she only gives a quantity, 45. This is important because a lot of articles refer to Moe’s statement -45 articles- when it is not retractable whether this quantity is correct.

⁵⁵ Kristine Moe, ‘Nazi Research’, here 5.

for publication.”⁵⁶ This issue was examined by Yvonne Brackbill and André E. Helligers in 1977. They sent questionnaires to 138 editors of major medical journals of which seventy-five responded. On the question, ‘Do you instruct reviewing editors to judge manuscripts on the basis of ethics as well as substantive material, methodology, and style?’, forty-four answered “No”.⁵⁷ To the second question, ‘Do you require authors to submit IRB approval along with their manuscript’, fifty-five editors answered “No”.⁵⁸ Thus, the majority of editors did not deem it necessary to include a note about ethics in their medical journal. It was neither mandated nor customary to include a remark on ethics or to make clear research had to be conducted in an ethical manner in order for it to be published in medical journals.⁵⁹ In conclusion, data on the Nazi experiments could be published without mentioning their ethics or origin.

The most useful data obtained from the Nazi experiments were data from the Dachau hypothermia experiments. Since most of the medical studies performed on humans were destroyed by the Germans, the scientific articles had to make use of a report written on the Dachau experiments. The Dachau Scientific Report (DSR) was written by Leo Alexander -US Army psychiatrist and adviser to the Chief of Counsel for War Crimes- who was assigned to investigate the medical experiments performed by the Nazis at the Dachau concentration camp.⁶⁰ He wrote a 228-page report on the Dachau hypothermia experiments, which was declassified after the War.⁶¹ Within the field of physiology this was the key piece of information on hypothermia experiments and the only reference mentioned by scientists when using the hypothermia Nazi data.⁶² This common tendency to use Nazi data without any comment regarding the ethics will be

⁵⁶ George J. Annas, Michael A. Grodin (Eds.), *The Nazi Doctors and the Nuremberg Code: human rights in human experimentation* (New York, 1992), 280-281.

⁵⁷ Yvonne Brackbill and André E. Helligers, ‘Ethics and Editors’, *Hastings Center Report* 10:2 (1980), 20-24, here 20.

⁵⁸ IRB is the Institutional Review Board, in charge of examining all research involving human beings; Yvonne Brackbill and André E. Helligers, ‘Ethics and Editors’, here 20.

⁵⁹ Kristine Moe, ‘Should the Nazi Research Data Be Cited?’, *The Hastings Center Report* 14:6 (1984), 5-7, here 7.

⁶⁰ The Dachau Scientific Report is also known as the Alexander Report; Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 110.

⁶¹ The report was declassified and released to the Office of the Publication Board by the Army and Navy Departments. This was done with the prospect of it being of value to the science and industry of the United States; Leo Alexander, *The Treatment of Shock from Prolonged Exposure to Cold, Especially in water* (Washington, 1945), front page.

⁶² Physiology is an area of study that analyses the function of living organisms; C. Ladd Prosser (Ed.), *Environmental and Metabolic Animal Physiology* (New York, 1991), 1; Robert L. Berger, ‘Ethics in scientific communication: study of a problem case’, *Journal of medical ethics* 20:207 (1994), 207-211, here 207; Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 110.

illustrated by the following three publications. As previously mentioned according to Kristine Moe there are forty-five examples of scientific publications making use of Nazi data. None give an ethical disclaimer, however the degree of concealment of the ethics of the Nazi data vary. These three publications have been chosen because they demonstrate three different ways of using Nazi data.

The first example is the book *'Man in a cold Environment'*, published in 1955.⁶³ After the war a lot of information was accumulated, this needed to be published in order for it not to be lost in time. The book fulfilled the long need for a comprehensive account of the effects of cold temperatures on man. In the chapter on hypothermia and resuscitation, Leo Alexander and his Dachau Report are referenced to when stating the effects and course of events of hypothermia to man. In contrast to other publications making use of the Report, it does briefly give judgment to the experiments : "*the horrible experiments at Dachau performed by the Nazis on prisoners in a concentration camp have been reported in detail by Alexander.*"⁶⁴ It labels the experimentees as "*human subjects*".⁶⁵ In addition, it states the circumstances by which the experiments were conducted: "*the subjects of which were prisoners and unlikely to have been well nourished.*"⁶⁶ The book makes use of the information provided by the experiments of the Nazis, and it briefly scrutinizes the nature of the experiments. It however does not give thought as to the possible ethical problems of publishing these data. The following questions for example do not seem to be considered: if the experiments were 'horrible', is publishing these data then not just as horrible; could data contrived from such 'horrible' experiments be reliable, etc.⁶⁷

A second example of a scientific article making use of the Nazi data is an editorial written in the *Postgraduate Medical Journal* named: *'Hypothermia'*, published in 1958. The Dachau Report stated that the lethal hypothermia temperature was valued between 26°C to 27°C. The article states that the lowest permissible level of the body temperature is 26,5°C, however without mentioning the source of this estimate, the publication seems to conceal its source.⁶⁸ The scientist either made use of the Nazi data without an ethical disclaimer, or coincidentally matched the estimate given in the

⁶³ Alan C. Burton and Otto G. Edholm, *Man in a Cold Environment* (London, 1955).

⁶⁴ Alan C. Burton, *Cold Environment*, 205.

⁶⁵ Ibid, 216.

⁶⁶ Ibid, 210.

⁶⁷ Horrible is used here because he himself calls the experiments "horrible" on page 205.

⁶⁸ Editorial, *'Hypothermia'*, *Postgraduate Medical Journal* 34:387 (1958), 1-48, here 1.

Dachau Report, which is highly unlikely because the data in the Dachau Report is the only existing data on human lethal hypothermia temperatures, making the Dachau Report extremely valuable.⁶⁹

The third example of a publication using the Nazi data after World War Two is '*Lethal Hypothermic Temperatures for Dog and Man*', published in 1959, it references the Alexander Report. The article examines the lethal temperatures for dogs and man. This article clearly states the circumstances under which the information for the lethal temperatures for man has been obtained: "*the paucity of data on man is not due to lack of material upon which measurements could be made so much as to the fact that the appropriate thermometer was not in the hands of enough appropriate individuals at a time when it could be applied usefully for the purpose.*"⁷⁰ It undeniably affirms the incapability of the Nazi scientists, it does not however state the unethical way in which it has been obtained. In other words, it does give an epistemic observation on the quality of the research, but fails to mention the ethics of the research and the data. Moreover, it does not mention the ethics of publishing these Nazi data.

The Nazi experiments thus may have ended in 1945 but the data obtained from these experiments continued in various scientific articles. Some do mention the circumstances by which the data were obtained hereby confirming the ruling belief of the atrociousness of the Nazi experiments. However none mention the ethical problems of the use and publication of the Nazi data and thereby consequently evade a discussion on the ethics of the use of Nazi data.

Why have scientists refrained from this discussion for so long?

Forty years after the finalisation of the Doctors' Trial, the discussion on the use of Nazi data started. Why did it take this long for the discussion to emerge? According to Michael H. Kater this gap had to do with the fact that West German historians of medicine were reluctant and averse to confront the moral and ethical problems caused by the Nazis. Doing so would mean admitting the crimes committed under the Nazi regime but instead it was seen as an "*accident of history*", consequently creating a mental

⁶⁹ For research to be based on non-human data, animals were used, however this could never be as accurate as the research on human subjects.

⁷⁰ Albert H. Hegnauer, '*Lethal Hypothermic Temperatures for Dog and Man*', *Annals New York Academy of Sciences* 80 (1959), 315-319, here 315.

boundary and distancing themselves from the Nazi doctors.⁷¹ As a result neither their generation nor the future generation identified with the Nazi doctors, wiping out every link to the strategically ignored past.⁷² This development was aided by the World Medical Association and governments -which used the Nazi scientists for their expertise- entombing the stigma on Nazi doctors and their future in medicine, which made the Nuremberg Trial the last place of discussion on the Nazi doctors.⁷³ To write or talk about the medical Nazi past of Germany was considered 'not done'.⁷⁴ Seidelman characterised this period as with a: "*persistent climate of professional denial and suppression.*"⁷⁵ If one did choose to write on this topic, it was to assess the medical-scientific knowledge produced by the Nazi, which could eventually be used for either the medical field or by the military.⁷⁶

The individuals who did try to publish were ignored and even silenced. An excellent example is psychiatrist Alexander Mitscherlich who was commissioned with the editing of the Nuremberg Trials of high-ranking physicians to investigate their crimes.⁷⁷ He concluded that the medical profession acted as an extension of the regime.⁷⁸ Correspondingly in 1949, Alexander Mitscherlich published '*Wissenschaft ohne Menschlichkeit*', which included a collection of documents used in the Medical Trial.⁷⁹

⁷¹ Michael H. Kater, 'The Burden of the Past: Problems of a Modern Historiography of Physicians and Medicine in Nazi Germany', *German Studies Review* 10:1 (1987), 31-56, here 32.

⁷² Michael H. Kater, 'The Burden of the Past', here 32.

⁷³ Joel Martin Geiderman, 'Ethics Seminars: Physician Complicity in the Holocaust: Historical Review and Reflections on Emergency Medicine in the 21st Century, Part I', *Academic Emergency Medicine* 9:3 (2002), 223-231, here 223.

⁷⁴ Joel Martin Geiderman, 'Ethics Seminars', here 230.

⁷⁵ William E. Seidelman, 'Mengele Medicus: Medicine's Nazi Heritage', *The Milbank Quarterly* 66:2 (1988), 221-239, here 230.

⁷⁶ Klaus Dörner, Angelika Ebbinghaus, Karsten Linne and Michael Walter, *The Nuremberg Medical Trial, 1946/47: Transcripts, Material of the Prosecution and Defense, Related Documents* (München, 2001), 12.

⁷⁷ Another example of the shunning of a scientist after publishing on Nazi data: in 1986 Hartmut M. Hanauske-Abel was laid-off from medicine in West-Germany because of an article he wrote. In this article '*From Nazi Holocaust to Nuclear Holocaust: a Lesson to Learn*' he compared the silence of German doctors during the Holocaust with the silence of doctors in the face of the new threat: the nuclear arms race. He urged doctors to take a more active stance in this "Nuclear Holocaust"; Stephen G. Post, 'Nazi Data and the Rights of Jews', *Journal of Law and Religion* 6:2 (1988), 429-433, here 430; William E. Seidelman, 'Mengele Medicus: Medicine's Nazi Heritage', *The Milbank Quarterly* 66:2 (1988), 221-239, here 230.

⁷⁸ Hartmut M. Hanauske-Abel, 'From Nazi Holocaust to Nuclear Holocaust: a Lesson to Learn?', *The Lancet* 8501:2 (1986), 271-273, here 272; Ross William Halpin, 'A History of Concern: The Ethical Dilemma of Using Nazi Medical Research Data in Contemporary Medical and Scientific Research' (unpublished dissertation, University of Sydney, 2008), 28.

⁷⁹ Fred Mielke, who was a medical student at the time, helped Mitscherlich with this publication; Michael H. Kater, 'Unresolved Questions of German Medicine and Medical History in the Past and Present', *Central European History* 25:4 (1992), 407-423, here 415; Joel Martin Geiderman, 'Ethics Seminars: Physician Complicity in the Holocaust: Historical Review and Reflections on Emergency Medicine in the 21st Century, Part I', *Academic Emergency Medicine* 9:3 (2002), 223-231, here 230.

Various reactions followed, characterising the work as: “*directly irresponsible*”, “*lacking the character of a documentation*” and “*detrimental to the reputation of German scientists whose honour is inviolable*,” he was titled “*harbinger of a ubiquitous danger*” and “*traitor to his country*.”⁸⁰ Mitscherlich describes it as the following: “*the accusations against us eventually became grotesque, and thereupon some colleagues led themselves to believe that whatever we had taken down in writing had been invented merely to humiliate our venerable medical profession*.”⁸¹ From 1952-1953, with the start of the ‘Economic Miracle’, not the bravest scientist could change the now ruling innocence of the Nazi doctors because the crimes against humanity were now obliterated from the collective memory.⁸² Only until the German student revolt changed the lingering quiet. In the late 1960s and early 1970s the younger generation confronted the now ruling academics, teachers and scientists with a Nazi past.⁸³ In 1966 Henry Beecher was the harbinger of change in the general field of medicine when he started the discussion on ethics in medicine. Whereas Pozos is accredited with the start of the debate on the use of Nazi data, as will be examined below.

Discontinuity

The start of the discussion on ethics in medicine is generally accredited to Henry Beecher, Professor of Research in Anaesthesia at the Harvard Medical School. Beforehand there was no discussion on the ethics of human experimentation. There were several laws concerning human experimentation, however no laws or discussion on the ethics of publishing unethical data existed at this time. That is until Henry Beecher published his article ‘*Ethics and Clinical research*’ in 1966, starting the discussion on the ethics in medicine.⁸⁴ In this article Beecher examined several articles that were published after World War Two, researching “*breaches of ethical conduct*”, i.e.

⁸⁰ Hartmut M. Hanauske-Abel, ‘From Nazi Holocaust to Nuclear Holocaust: a Lesson to Learn?’, *The Lancet* 8501:2 (1986), 271-273, here 272.

⁸¹ Us= Alexander Mitscherlich and Fred Mielke; Michael H. Kater, ‘The Burden of the Past: Problems of a Modern Historiography of Physicians and Medicine in Nazi Germany’, *German Studies Review* 10:1 (1987), 31-56, here 38.

⁸² Michael H. Kater, ‘Burden of the Past, here 38.

⁸³ *Ibid*, 39.

⁸⁴ George J. Annas, Michael A. Grodin (Eds.), *The Nazi Doctors and the Nuremberg Code: human rights in human experimentation* (New York, 1992), 278-279; Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 103, 264; Arthur L. Caplan and Barron H. Lerner, ‘Judging the Past: How History Should Inform Bioethics’, *History of Medicine* 164:8 (2016), 553-568, here 553; Alan T. Lefor, ‘Scientific misconduct and unethical human experimentation: historic parallels and moral implications’, *Elsevier* 21 (2005), 878-882, here 879.

violations of the Nuremberg Code.⁸⁵ Beecher started this discussion because he was of the opinion that the field of medicine was on the brink of ruin considering the increasing “*ethical errors*”, this would continue unless corrected.⁸⁶ Beecher would function as this correction by exposing these ethical errors: “*I am utterly convinced that calling attention to ethical problems involved will lead to elimination of the vast majority of mistakes.*”⁸⁷ Beecher’s scepticism about the ethics in biomedicine started as early as 1952, when Beecher asked Pentagon officials about their new policy on human research. In 1959 he wrote ‘*Experimentation in Man*’, where he discussed human experimentation, its inconsistencies and the lack of attention on its misuse: “*much more objection has been made to experiments on animals than on man.*”⁸⁸ Furthermore, in 1965 he spoke at a conference on the ethics of clinical research, here he described 18 cases of unethical practices which violated the Nuremberg Code due to lack of consent or harmful conduct of the research subjects.⁸⁹ Here Beecher stated his primary objection: “*breaches of ethical conduct in experiments which are by no means rare but are almost universal.*”⁹⁰ He feared the emphasis on the greater good -as opposed to the individual good- which could justify the conduct of unethical research, especially after the occurrences shown at the Nuremberg Trials.⁹¹ The conference generated a lot of buzz in the medical field. Because Beecher used real cases instead of fictional examples, he got a lot of media attention seeing as both the New York Times and the Wall Street Journal published articles on his findings.⁹² Subsequently, Beecher wrote an article on human experimentation and

⁸⁵ David S. Jones, Christine Grady, Susan E. Lederer, “Ethics and Clinical Research” - The 50th Anniversary of Beecher’s Bombshell’, *The New England Journal of Medicine* 374:24 (2016), 2393-2398, here 2395; George J. Annas, Michael A. Grodin (Eds.), *The Nazi Doctors and the Nuremberg Code: human rights in human experimentation* (New York, 1992), 278-279.

⁸⁶ Henry K. Beecher, ‘Ethics and Clinical Research’, *The New England Journal of Medicine* 274:24 (1966), 367-372, here 367.

⁸⁷ David S. Jones, Christine Grady, Susan E. Lederer, “Ethics and Clinical Research” - The 50th Anniversary of Beecher’s Bombshell’, *The New England Journal of Medicine* 374:24 (2016), 2393-2398, here 2396.

⁸⁸ Henry K. Beecher, ‘Experimentation in Man’, *Anesthesia Progress* 6:6 (1959), 4-7, here 4.

⁸⁹ Brook Lodge Conference on “Problems and Complexities of Clinical Research in Michigan, sponsored by the Upjohn pharmaceutical company; John Harkness, Susan E. Lederer and Daniel Wilker, ‘Laying ethical foundations for clinical research’, *Bulletin of the World Health Organisation* 79:4 (2001), 365-367; Henry K. Beecher, ‘Ethics and Clinical Research’, *The New England Journal of Medicine* 274:24 (1966), 367-372, here 367; David J. Rothman, *Strangers at the bedside: a history of how law and bioethics transformed medical decision making* (New York, 1991), 72-73.

⁹⁰ Henry K. Beecher, ‘Ethics and Clinical Research’, *The New England Journal of Medicine* 274:24 (1966), 367-372, here 367.

⁹¹ David J. Rothman, *Strangers at the bedside: a history of how law and bioethics transformed medical decision making* (New York, 1991), 82.

⁹² David J. Rothman, *Strangers at the bedside*, 72.

unethical practices.⁹³ He could publish this article with help of Joseph Garlan, New England Journal of Medicine editor. This was necessary because the editorial board voted to reject Beechers' article due to the lengthy number of cases -50 which had to be reduced to 22-; the lack of doctors who could defend their work; the recognisability of the 'anonymous' cases; the media coverage the subject had already received and the possible legal problems. The aim of the article was to give a "*sober and undramatic presentation of what has been done and is being done in violation of basic ethics.*"⁹⁴ By exposing the unethical practices, Beecher hoped it was enough to address the existing problems: "*these examples are not cited for the condemnation of individuals; they are recorded to call attention to a variety of ethical problems found in experimental medicine, for it is hoped that calling attention to them will help to correct abuses present*", and so it was because the article had immediate impact.⁹⁵ 1966 is now seen as the start of a transformation of medical ethics and the article is seen as instrumental in the start of bioethics.⁹⁶

While Beechers' article had the biggest impact, he was not the only one researching ethics and human experimentation.⁹⁷ Maurice Pappworth, British physician, researched unethical experiments in Great Britain and published an article on his findings titled '*Human Guinea Pigs: A Warning*'. In the article Pappworth exposed fourteen medical experiments which he claimed were unethical due to the lack of consent given by the research subjects.⁹⁸ Pappworth differed from Beecher in several important areas. Beechers' article was written in a technical, professional manner, whereas Pappworth made sure it was understandable for a broader audience. Moreover, Pappworth purposefully published names and references to discourage further unethical research: "*my opinion remains that those who dirty the linen and not those who*

⁹³ Article mentioned: Henry K. Beecher, 'Ethics and Clinical Research', *The New England Journal of Medicine* 274:24 (1966).

⁹⁴ David S. Jones, Christine Grady, Susan E. Lederer, "'Ethics and Clinical Research"- The 50th Anniversary of Beecher's Bombshell', *The New England Journal of Medicine* 374:24 (2016), 2393-2398, here 2395.

⁹⁵ Henry K. Beecher, 'Ethics and Clinical Research', *The New England Journal of Medicine* 274:24 (1966), 367-372, here 368; Jay Katz, *Experimentation with Human Beings* (New York, 1972), 307.

⁹⁶ David S. Jones, Christine Grady, Susan E. Lederer, "'Ethics and Clinical Research"- The 50th Anniversary of Beecher's Bombshell', *The New England Journal of Medicine* 374:24 (2016), 2393-2398, here 2396; Nancy S. Jecker, Albert R. Jonsen and Robert A. Pearlman, *Bioethics: An Introduction to the History, Methods and Practices* (Sudbury, 1997), 29-33, 40-41; David J. Rothman, *Strangers at the bedside: a history of how law and bioethics transformed medical decision making* (New York, 1991), 70-84.

⁹⁷ Pappworth even helped Beecher with his publication, seven of the 22 experiments were provided by Pappworth.

⁹⁸ Ruth Chadwick and Ann Gallagher, *Ethics and Nursing Practice* (Basingstoke, 2016), 176-178.

wash it should be criticised. Some do not wash dirty linen in public or in private and the dirt is merely left to accumulate until it stinks.”⁹⁹ In contrast, Beecher chose not to publish names or journal references by cause of legal grounds.¹⁰⁰ Thus Beecher and Pappworth both delivered important contributions to the development of bioethics and both can be seen as “*medical whistleblowers*” uncovering important flaws in research ethics and human experimentation.¹⁰¹

Whereas Beecher and Pappworth are influential figures in the start of a debate on unethical conduct in the medical field in general, Robert Pozos, can be accredited with the start of the debate on the use of Nazi data, i.e. a more distinguished field within the – general- medical field.¹⁰² In October 1987 a lecture was given by Arthur L. Caplan on the ethics of human experimentation. Here Pozos asked Caplans’ thoughts on the citing of Nazi data.¹⁰³ This is generally seen as the start of the debate on the ethics of Nazi data.¹⁰⁴ Pozos rationale for starting this debate -more than forty years after the experiments were condemned at the Nuremberg Trials- can be deducted into three reasons. Firstly because of the hypothermia experiments he conducted on his students, which were done in an ethical manner nevertheless students experienced it as “*stressful.*”¹⁰⁵ Naturally the connection was made between his students and the Dachau hypothermia victims: “*I extrapolated from my experiences with the medical students to the victims in Dachau... it struck me in a very negative fashion.*”¹⁰⁶ Next Pozos states the value of science, with its considerable contribution in the advancement of humanity. “*To use science to advance your goals while killing people debases the essence of scientific*

⁹⁹ M.H Pappworth, “‘Human guinea pigs’ – a history’, *British Medical Journal* 301 (1990), 1456-1460, here 1459.

¹⁰⁰ M.H Pappworth, “‘Human guinea pigs’ – a history’, 1459.

¹⁰¹ Allan Gaw, ‘Exposing Unethical Human Research: The Transatlantic Correspondence of Beecher and Pappworth’, *Annals of Internal Medicine* 156:2 (2012), 150-156, here 150.

¹⁰² Robert Pozos received his PHD from the Southern Illinois University. Pozos conducted his hypothermia research at the University of Minn, Duluth, School of Medicine and Naval Health Research Center. This is also where he wrote his articles about Hypothermia; Robert Pozos, E-mail "Bachelor Thesis" [June, 16 2017].

¹⁰³ Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 65-66.

¹⁰⁴ Robert L. Berger, ‘Ethics in scientific communication: study of a problem case’, *Journal of Medical Ethics* 20:4 (1994), 207-211, here 208-209; Barry Siegel, ‘Can Evil Beget Good? : Nazi Data: A Dilemma for Science’ Los Angeles Times <http://articles.latimes.com/1988-10-30/news/mn-958_1_nazi-data-issue> [consulted on 13-02-2017]; Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 65-66, 114, 157.

¹⁰⁵ Robert Pozos, E-mail "Bachelor Thesis" [May, 16 2017].

¹⁰⁶ Robert Pozos, E-mail [May, 16 2017].

inquiry."¹⁰⁷ Lastly, Pozos wishes to exempt the "*all is fair in love and war philosophy.*"¹⁰⁸ As previously stated the experiments and the evil done during World War Two were no longer a secret. During the Nuremberg Trials the veil was lifted and all was made public. However the data was still used due to its applicability. By raising this question -should the data be used- Pozos hopes: "*It might give some scientists pause as they consider unethical research in the name of national security.*"¹⁰⁹

In the next chapter several scientists and their articles will be examined. The scientists will be divided into two contrasting sides: those in favour of using the Nazi data and those opposed to using the Nazi data to ultimately elucidate the debate on the ethics of using Nazi data.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

Chapter 3 - *To be or not to be... used?*

"The goal of science is to produce new knowledge. If, during unethically conducted experiments, one valid scientific fact is produced, should that information be used as it has been, referenced in the literature as it has been, or just discarded?"¹¹⁰

In the previous chapter the use of Nazi data in scientific articles was illustrated via three examples. Next the reasoning for the late start on the discussion was examined. Furthermore, the discontinuity in the view on the ethics of using Nazi data brought forth by Beecher, Pappworth and Pozos was discussed. Consequently, the debate was started on the ethics of using Nazi data in scientific articles; should the information be used, or discarded? When studying the literature on the ethics of using the Nazi data, it becomes apparent that there is no clear consensus among scientists on what to do with the data. Different stances can be discerned. In this chapter the ensued debate will be demonstrated by the works of several important scientists. Because there are few pivotal, reoccurring actors in this debate, they will be examined individually.

In favour of using Nazi data

Robert Pozos is generally accredited with the start of the debate on the ethics of using Nazi data in 1987, however articles on this topic have been written as early as 1984.¹¹¹ Kristine Moe, science and medicine reporter, wondered what should happen with published -and unpublished- articles using Nazi data. In the article '*Should the Nazi Research Data be Cited?*', she explores this matter. Moe examines the issue by reviewing statements made by several key persons on the topic. Her thoroughness is demonstrated by the wide range of people she examines, because Moe does not only analyse important scientists and editors of medical journals, but also a philosopher, a chairman of the Human Investigation Committee and someone from the Jewish Ethical Medical Study Group.¹¹² After reviewing several arguments brought forth by experts on the matter, Moe ultimately concludes that scientists can use the Nazi data when it is proven to be scientifically sound and when there is no other source of information, stating: "*a decision*

¹¹⁰ Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 137.

¹¹¹ Pozos was the first person to publicly ask whether these data should be used internationally, therefore he is seen as the initiator of the debate.

¹¹² Kristine Moe, 'Should the Nazi Research Data Be Cited?', *The Hastings Center Report* 14:6 (1984), 5-7, here 5-7.

*to use the data should not be made without regret or without acknowledging the incomprehensible horror that produced them. We cannot imply any approval of the methods. Nor, however should we let the inhumanity of the experiments blind us to the possibility that some good may be salvaged from the ashes.”*¹¹³

Another important figure in the debate is Arthur L. Caplan, professor of Bioethics, who was not aware that Nazi data was still in use after the War. Nonetheless after this issue was mentioned to him by Robert Pozos at a lecture he could not strain from the subject, as it was his belief that it had to be examined.¹¹⁴ Similar to Moe, Caplan too has an utilitarian argument, seeing as he believes the data may be used if it can be applied to save lives.¹¹⁵ Nevertheless there has to be a “*clear moral denunciation of how it was obtained*”, then the “*moral repugnance of the data source might be overruled.*”¹¹⁶ In 1992 Caplan edited ‘*When Medicine Went Mad*’, here Caplan’s second argument in favour of the use of Nazi data becomes apparent.¹¹⁷ After considering many arguments against the use of Nazi data, Caplan concludes that the best way to condemn the Nazi experiments is to widely publicise the data, stating: “*the medical crimes of that time stand as the clearest examples available of moral wrong-doing in biomedical science. Bioethics may have been silent precisely because there seems to be nothing to say about an unparalleled biomedical immorality, but silence leads to omission.*”¹¹⁸

Another important voice in the debate is Velvl W. Greene, former chairman of epidemiology and public health and head of the Lord Jakobovitz Center for Jewish Medical Ethics, who ardently believes the Nazi data should be used.¹¹⁹ Greene foresees a society of restriction, if one cannot publish the Nazi data, where does one draw the line? Stating: “*to paraphrase Heine’s immortal warning about burning books and burning people, a society that burns Nazi data will soon go on to burn other data that will be*

¹¹³ Kristine Moe, ‘Should the Nazi Research Be Cited?’, here 7.

¹¹⁴ The lecture was given at the University of Duluth on the ethics of human experimentation in October, 1987; Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), vii, 65.

¹¹⁵ Utilitarianism= the ethical theory that one should choose the option which creates the best outcome for the greatest number of people; Henry Sidgwick, ‘Utilitarianism’, *Utilitas* 12:3 (2000), 253-260, here 253.

¹¹⁶ Stephen G. Post, ‘Nazi Data and the Rights of Jews’, *Journal of Law and Religion* 6:2 (1988), 429-433, here 429.

¹¹⁷ ‘*When Medicine Went Mad*’ is a volume combining several articles written after a conference on the meaning of the Holocaust for Bioethics, organized by Caplan at the University of Minnesota on May, 17-19 1989; NYU School of Medicine, ‘Arthur L. Caplan, PHD’ <<https://med.nyu.edu/faculty/arthur-l-caplan>> [consulted on 29-05-2017]; Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), vi.

¹¹⁸ Arthur L. Caplan (Ed.), *When Medicine Went Mad*, 80.

¹¹⁹ Arutz Sheva, ‘Velvl Greene, Head of BGU Jewish Medical Ethics, Dead at 83’

<<http://www.israelnationalnews.com/News/News.aspx/150024>> [consulted on 30-05-2017].

deemed in the future as equally excoriable. What will be next after Rascher's notes and Mengele's report? South African medical journals look like good candidates."¹²⁰ In 'When Medicine Went Mad' Green states another argument in favour of the use of Nazi data, he does this by describing the ever so important dilemma; the impasse every scientists in the debate encounters: the choice between staying objective or subjective when considering the use of the Nazi data.¹²¹ By describing his stance on this issue -objective or subjective- Greene argues that the Nazi data provides people with the truth i.e. reality. Greene pleads for the wide distribution of the data, methodology and the names of the doctors involved to every medical school, concluding: "we might never fully understand 'why' and 'how', but at least we can remember what."¹²²

Lastly, Jay Katz, "explorer of ethics issues" and physician, will be examined.¹²³ In 'When Medicine Went Mad' Katz gives a thorough account of his thoughts on the subject. First he explores the sub topic of "voluntary consent"; next he places the experiments in its historical and contemporary context; thirdly, he examines the experiments to ultimately discern if the Nazi data should be used or banished to never be spoken about.¹²⁴ Important to note is that Katz does consider the Nazi data to be trustworthy as he has studied the experiments and believes they contain valuable information.¹²⁵ Hence, the only question remaining: is the Nazi data more important than the ethics of not using the data? Katz concludes that he does not want to make use of the data, but what about other scientists? Katz considers science to be seen as too objective, for he urges every scientist to make the decision to use data independently, with their individual conscience. He argues for scientists to do more than simply refer to the Dachau experiments in a footnote, for he believes that "in using the data, scientists make a political, as well as a scientific decision."¹²⁶ Thus Katz believes the data can be used

¹²⁰ Horst H. Freyhofer, *The Nuremberg Medical Trial: The Holocaust and the Origin of the Nuremberg Medical Code* (Bern, 2005), 161.

¹²¹ Greens objective point of view stems from his profession, being a biomedical researcher. Whereas his subjective stance originates in him being a Jew who was old enough to be percipient to the Holocaust; Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 156.

¹²² Arthur L. Caplan (Ed.), *When Medicine Went Mad*, 169-170.

¹²³ Dennis Hevesi, 'Dr. Jay Katz, 86, Dies; Explorer of Ethics Issues', *The New York Times* <<http://www.nytimes.com/2008/11/20/nyregion/20katz.html>> [consulted on 31-05-2017].

¹²⁴ Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 235-236.

¹²⁵ Arthur L. Caplan (Ed.), *When Medicine Went Mad*, 264.

¹²⁶ *Ibid*, 267.

however this should be done in a careful, thorough manner; for he believes that data should not be seen separate from the way it has been obtained.¹²⁷

Opposed to using the Nazi data

As previously mentioned there is a lot of discussion on the topic of using Nazi data. First the people in favour of the usage of Nazi data have been discussed, naturally there are also people opposed to using the Nazi data. As early as 1966 Henry K. Beecher touched the subject of ethics in the medical field. Beecher also discussed the use of wrongfully obtained data for he believed that the ban on improperly obtained data would discourage scientists to conduct unethical experiments: *“how many would carry out such experimentation if they knew its results would never be published?”*¹²⁸ He also discussed the ‘disadvantage’ to medicine that not using the data would produce; Beecher believes it: *“would be less important than the far reaching moral loss to medicine if the data thus obtained were to be published.”*¹²⁹ Furthermore, Beecher parallels the Nazi experiments -illegally obtained- to illegally obtained evidence in court. According to Beecher evidence illegally obtained is inadmissible in court, no matter how crucial it might be. Beecher urges scientists to look at human experimentation in the same way. The results from the Nazi experiments were illegally obtained, thus the results should not be used either, no matter how useful it could be.¹³⁰

Continuing the tradition of advocating for the non-use of Nazi data is Stephen G. Post - founding director of the Center for Medical Humanities, Compassionate Care, and Bioethics- with his article *‘Nazi Data and the Rights of Jews’* written in 1988.¹³¹ First, he illustrates the debate by explaining the different stances taken by bioethicists, Holocaust survivors, philosophers and scientists.¹³² Post’s main aim of the article is to debunk the

¹²⁷ Ibid, 268.

¹²⁸ Henry K. Beecher, ‘Ethics and Clinical Research’, *The New England Journal of Medicine* 274:24 (1966), 367-372, here 372

¹²⁹ Henry K. Beecher, ‘Ethics and Clinical Research’, 372.

¹³⁰ Kristine Moe, ‘Should the Nazi Research Data Be Cited?’, *The Hastings Center Report* 14:6 (1984), 5-7, here 6; William E. Seidelman, ‘Mengele Medicus: Medicine’s Nazi Heritage’, *The Milbank Quarterly* 66:2 (1988), 221-239, here 231.

¹³¹ Stony Brook University, ‘Stephen G. Post, PhD’ < <http://www.stonybrook.edu/bioethics/post.shtml> > [consulted on 01-06-2017].

¹³² People mentioned: Arthur L. Caplan (philosopher); Jay Katz (physician); Susan Vigorito (Holocaust survivor); Hanauske-Abel (German physician); Kristine Moe (science and medicine reporter); John S. Hayward (scientist); Henry K. Beecher (Professor of Research in Anaesthesia at the Harvard Medical School); William E. Seidelman (professor in the department of family and community medicine at the University of Toronto); Stephen G. Post, ‘Nazi Data and the rights of Jews’, *Journal of Law and Religion* 6:2 (1988), 429-433, here 429-433.

utilitarian argument i.e. that the Nazi data may be used if people can benefit from it.¹³³ Post disproves this argument by pleading against the use of Nazi data. According to Post the reasoning against the use of Nazi data can be distilled into four reasons: the usefulness of the data is too questionable; the emotional stress its use causes on the Jewish community; the possession of the data -for he argues this belongs to the Jewish people, not the scientific community- and lastly the moral complicity, stating: “... *there can be prospective complicity. Using the data could send the wrong message to future scientists, no matter how much the methods are condemned.*”¹³⁴ Thus Post concludes that Nazi data should not be used on account of the four reasons mentioned antecedently.

Another important voice in the debate on the use of Nazi data is William E. Seidelman -professor in the department of family and community medicine at the University of Toronto.¹³⁵ In 1988 Seidelman wrote the article ‘*Mengele Medicus: Medicine’s Nazi Heritage*’, here he voices the concerning continuation of Nazi medicine after 1945. Seidelman gives his stance on the topic after providing context through the examination of four main scientists who shaped Nazi medicine: Ernst Rüdin, Otmar Freiherr von Verschuer, Josef Mengele and lastly Sigmund Rascher. Through the works of these four scientists, Seidelman describes the contemporary influences as well as the medical gain during the Nazi era, to ultimately discern his stance on the use of Nazi data.¹³⁶ Seidelman does not believe good can be salvaged from the Nazi data. He is of the opinion that the use of Nazi data could serve as an “*intellectual rationalisation*” of the acts performed by the Nazis to gain these data.¹³⁷ Therefore Seidelman concludes that not the Nazi data should be published, but a cautionary tale which describes the consequences of prioritising science and its possible gain over the experimentees from which it was attained.¹³⁸

In 2004 David Bogod, Editor-in-Chief of Anaesthesia, analysed the subject of the use of Nazi data; after he attended a Group of Anaesthetists in Training conference where he was confronted with a citation of the Nazi experiments by a speaker who did

¹³³ Stephen G. Post, ‘Nazi Data and the rights of Jews’, 431.

¹³⁴ Ibid, 431-433.

¹³⁵ Jewish Virtual Library, ‘The Holocaust: Medicine and Murder in the Third Reich’ <<http://www.jewishvirtuallibrary.org/medicine-and-murder-in-the-third-reich>> [consulted on 03-06-2017].

¹³⁶ William E. Seidelman, ‘Mengele Medicus: Medicine’s Nazi Heritage’, *The Milbank Quarterly* 66:2 (1988), 221-239, here 221-222.

¹³⁷ William E. Seidelman, ‘Mengele Medicus’, 232.

¹³⁸ Ibid, 230-234.

not mention their origin other than “*data from Dachau.*”¹³⁹ This prompted him to write an editorial on the subject. In his publication he explained his stance on the issue; namely that the Nazi data should not be used as not using the data is the “*true legacy of the people.*” This will ensure the experiences endured by the experimentees would not be in vain.¹⁴⁰

As discussed previously, professor of Biology Robert Pozos, started the discussion on the ethics of using Nazi data in scientific publications. Pozos has used data from the Nazi experiments, hence there was a time when Pozos was in favour of using Nazi data.¹⁴¹ However in 1987 he began to question the ethics of using these Nazi data. In ‘*When Medicine Went Mad*’ Pozos states several scientific and ethical arguments frequently used to ultimately determine his stance on the issue.¹⁴² Through this presentation of arguments the ruling difficulty becomes clear: does one have to include ethical principles when referencing or making use of Nazi data? Pozos concludes that despite the methodology and the impossibility to repeat the hypothermia experiments (on humans) the hypothermia experiments can be scientifically rationalized.¹⁴³ However, if one considers the ethical standards, the answer to this issue becomes less clear-cut.¹⁴⁴ In 1992 Pozos ultimately concludes that the Nazi data should not be referenced i.e. acknowledged but it should: “*be made available to interested scientists so that they might advance humankind’s understanding.*”¹⁴⁵ In 2017 his stance on the issue becomes more distinct, he is still of the opinion that every scientists should make up their own mind, however Pozos now chooses to not use the data as it was unethically obtained and people died in the process. Additionally, similar to Beecher, Pozos hopes: “*by raising the question, it might give some scientists pause as they consider unethical research in the name of national security.*”¹⁴⁶

By stating the debate through several key scientists in the debate on the use of Nazi data, it has become clear that there is no consensus on the issue. Furthermore, it has become apparent that every individual scientist has their own individual impetus to

¹³⁹ David Bogod, ‘The Nazi Hypothermia Experiments: Forbidden Data?’, *Anaesthesia* 59:12 (2004), 1155-1156, here 1155.

¹⁴⁰ David Bogod, ‘The Nazi Hypothermia Experiments’, 1156.

¹⁴¹ Arthur L. Caplan (Ed.), *When Medicine Went Mad* (Minnesota, 1992), 50, 66.

¹⁴² Arthur L. Caplan (Ed.), *When Medicine Went Mad*, 95-108.

¹⁴³ *Ibid*, 102-103.

¹⁴⁴ *Ibid*, 107-108.

¹⁴⁵ *Ibid*, 107.

¹⁴⁶ Robert Pozos, E-mail “Bachelor Thesis” [May, 16 2017].

voice their opinion, such as potential problems in the future or the sufferings from people in the past. Additionally the impasse at the core of this issue has become clear. The dilemma every scientists had to consider, albeit deliberately or unintentionally: the choice between scientific value and ethical principles. Sadly this issue has still not been resolved. More lamentable, the discussion seems to have subsided, seeing as the most recent, relevant scientific publication is David Bogod's article '*The Nazi Hypothermia Experiments: Forbidden Data?*' written in 2004, thirteen years ago.

Conclusion

In this paper several courageous scientists have been examined. First the various scientists involved in the Nuremberg Trials. Furthermore, Beecher and Pappworth who questioned the status quo in the sixties, along with Robert Pozos, who not only challenged his own research but also that of his colleagues. This criticism started a debate on the ethics of the use of Nazi data: should this data be used or discarded? Next the historical discourse was stated, to ultimately discern that there is no consensus on the issue. Reason being that every scientists' rational stems from different aspects, such as the fear for the future or the wrongdoings of the past. This distinction showed the most important problem, namely the choice between scientific value and ethical standards.

This paper has not only shown the development of a code of ethics -the Nuremberg Code- but also the commence of a debate and the historical discourse on the ethics of using Nazi data. Moreover, it has shown the importance of discussion. The initial elation has faded and no one seems to be talking about the ethics of using Nazi data anymore. This is an issue, considering there is no consensus nor an answer to this question. A discussion not only ensures the rational and balance in this difficult topic but also a possible answer to this question, 'can Nazi data be used in scientific publications?' Not discussing it thus not only creates a forgetfulness, but also a possible quandary seeing as "*ideas run wild without discussion.*"¹⁴⁷ Moreover, no debate ensures no answer to this question. Furthermore, the past cannot be changed, however we can try to prevent this from ever happening again, acknowledging and discussing the ethics of publishing and conducting unethical research is thus a necessity. Take for instance the ongoing war in the Middle-East, the war ensures a continuing need for PTSD or war wounds treatments. Not to mention the growing opportunity to conduct unethical research experiments on prisoners of war in Syria for example. This continuance in unethical experimentation -and referencing of this unethical research- has not only occurred directly after the creation of the Nuremberg Code but also recently.¹⁴⁸ All it

¹⁴⁷ Serge Kahili King, *Urban Shaman* (New York, 1990), 52.

¹⁴⁸Information on unethical experimentation after World War Two: Alan T. Lefor, 'Scientific misconduct and unethical human experimentation: historic parallels and moral implications', *Elsevier* 21 (2005), 878-882; Information on recent unethical experimentation: Francie Diep, 'Why did the American Psychological Association approve its members to oversee torture?', *Pacific Standard* < <https://psmag.com/news/apa-involvement-in-post-911-torture> > [consulted on 05-06-2017]; Michael Carome, 'Outrage of the Month: A

takes is for one person to choose scientific value -a cure for PTSD for example- over ethical principles and the possibility to conduct this research. The only difference today is that this research is conducted by the protagonist -the 'progressive' Western society- instead of the antagonist -Nazi Germany. Because we often use Nazis as the worst possible example of human wrongdoing, we often forget the misconduct executed by groups who are seen as less reprehensible.

What this paper has shown is the importance of transparency and a continuing debate on the morality of ethical and unethical research. The non-ethical nature of the Nazi experiments have been condemned almost immediately after the War, however the use of these data was never officially condemned, in a way the nature of these experiments were thus not fully condemned either. This paper thus not only functions as a historical approach to this medical topic, but also as a warning. Illustrating what could happen if we do not discuss the ethics of medicine: namely a chance of history repeating itself. Therefore, as previously stated, the most important thing we can take from this paper is the importance of discussion. Several important approaches to the prohibition of unethical research have been distinguished in this paper: the individual rational and ethics of editors of scientific journals, the guidelines set up by international scientific organisations (CIOMS, etcetera) but most importantly discussion. Discussion ensures the continuing sense of a controlled nature of science, because one has to take other notions into consideration, this is crucial because of the detachment discussion provides from situational ethics. Not only does it provide nuance, it ensures transparency and it prevents forgetfulness. But where we can all agree on -whether one is opposed or in favour of using Nazi data-, is that we can and should learn from the past. This paper is an opportunity to do just that.

Steady Stream of Unethical Human Experiments', *Huffington Post* <http://www.huffingtonpost.com/michael-carome-md/outrage-of-the-month-a-st_b_9822610.html> [consulted on 05-06-2017]; Bob Unruh, 'EPA caught running 'illegal' experiments on humans', *WorldNetDaily* <<http://www.wnd.com/2016/09/epa-caught-running-illegal-experiments-on-humans/>> [consulted on 05-06-2017]; Emily Halnon, 'Medical researchers in Africa must learn from the past, prof finds', *Around the O* <<https://around.uoregon.edu/content/medical-researchers-africa-must-learn-past-prof-finds>> [consulted on 06-06-2017].

Bibliography

Literature

- Alexander, Leo, *The Treatment of Shock from Prolonged Exposure to Cold, Especially in water* (Washington, 1945).
- Annas, George J., Michael A. Grodin (Eds.), *The Nazi Doctors and the Nuremberg Code: human rights in human experimentation* (New York, 1992).
- Beecher, Henry K., 'Ethics and Clinical Research', *The New England Journal of Medicine* 274:24 (1966), 367-372.
- Beecher, Henry K., 'Experimentation in Man', *Anesthesia Progress* 6:6 (1959), 4-7.
- Bellamy, Ronald F. (Ed.), *Military Medical Ethics, Volume 2*, 2 volumes (Virginia, 2003).
- Berger, Robert L., 'Ethics in scientific communication: study of a problem case', *Journal of Medical Ethics* 20 (1994), 207-211.
- Berger, Robert L., 'Nazi Science – The Dachau Hypothermia Experiments', *The New England Journal of Medicine* 322: 20 (1990), 1435-1440.
- Bloxham, Donald, 'From the International Military Tribunal to the Subsequent Nuremberg Proceedings: The American Confrontation with Nazi Criminality Revisited', *The Journal of the Historical Association* 98:332 (2013), 567-591.
- Bogod, David, 'The Nazi Hypothermia Experiments: Forbidden Data?', *Anaesthesia* 59:12 (2004), 1155-1156.
- Boozer, Jack S., 'Children of Hippocrates: Doctors in Nazi Germany', *The Annals of the American Academy of Political and Social Science* 450 (1980), 83-97.
- Brackbill, Yvonne, and André E. Helligers, 'Ethics and Editors', *Hastings Center Report* 10:2 (1980), 20-24.
- Brieger, Gert H., 'Bodies and Borders: A New Cultural History of Medicine', *Perspectives in Biology and Medicine* 47:3 (2004), 402-421.
- Burton, Alan C. and Otto G. Edholm, *Man in a Cold Environment* (London, 1955).
- Caplan, Arthur L., (Ed.), *When Medicine Went Mad* (Minnesota, 1992).
- Caplan, Arthur L., and Barron H. Lerner, 'Judging the Past: How History Should Inform Bioethics', *History of Medicine* 164:8 (2016), 553-568.

- Chadwick, Ruth, and Ann Gallagher, *Ethics and Nursing Practice* (Basingstoke, 2016).
- Cohen Junior, Michael M., 'Overview of German, Nazi, and Holocaust Medicine', *American Journal of Medical Genetics* 152 (2010), 687-707.
- Craig, Anne L., and Sukumar P. Desai, 'Human Medical Experimentation with Extreme Prejudice: Lessons from the Doctors' Trial at Nuremberg', *Journal of Anesthesia History* 1:3 (2015), 64-69.
- Dörner, Klaus, Angelika Ebbinghaus, Karsten Linne and Michael Walter, *The Nuremberg Medical Trial, 1946/47: Transcripts, Material of the Prosecution and Defense, Related Documents* (München, 2001).
- Editorial, 'Hypothermia', *Postgraduate Medical Journal* 34:387 (1958), 1-48.
- Freyhofer, Horst H., *The Nuremberg Medical Trial: The Holocaust and the Origin of the Nuremberg Medical Code* (Bern, 2005).
- Gaw, Allan, 'Exposing Unethical Human Research: The Transatlantic Correspondence of Beecher and Pappworth', *Annals of Internal Medicine* 156:2 (2012), 150-156.
- Geiderman, Joel Martin, 'Ethics Seminars: Physician Complicity in the Holocaust: Historical Review and Reflections on Emergency Medicine in the 21st Century, Part I', *Academic Emergency Medicine* 9:3 (2002), 223-231.
- Halpin, Ross William, 'A History of Concern: The Ethical Dilemma of Using Nazi Medical Research Data in Contemporary Medical and Scientific Research' (unpublished dissertation, University of Sydney, 2008).
- Hanauske-Abel, Hartmut M., 'From Nazi Holocaust to Nuclear Holocaust: a Lesson to Learn?', *The Lancet* 8501:2 (1986), 271-273.
- Harkness, John, Susan E. Lederer and Daniel Wilker, 'Laying ethical foundations for clinical research', *Bulletin of the World Health Organisation* 79:4 (2001), 365-367.
- Hegnauer, Albert H., 'Lethal Hypothermic Temperatures for Dog and Man', *Annals New York Academy of Sciences* 80 (1959), 315-319.
- Heller, Kevin Jon, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford, 2011).
- Howard-Jones, Norman, 'Human Experimentation in Historical and Ethical perspectives', *Social Science & Medicine* 16:15 (1982), 1429-1448.

- International Military Tribunal, *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, 15 volumes (Washington DC, 1949).
- Jecker, Nancy S., Albert R. Jonsen and Robert A. Pearlman, *Bioethics: An Introduction to the History, Methods and Practices* (Sudbury, 1997).
- Jones, David S., Christine Grady, Susan E. Lederer, "Ethics and Clinical Research"- The 50th Anniversary of Beecher's Bombshell', *The New England Journal of Medicine* 374:24 (2016), 2393-2398.
- Kater, Michael H., 'The Burden of the Past: Problems of a Modern Historiography of Physicians and Medicine in Nazi Germany', *German Studies Review* 10:1 (1987), 31-56.
- Kater, Michael H., 'Unresolved Questions of German Medicine and Medical History in the Past and Present', *Central European History* 25:4 (1992), 407-423.
- Katz, Jay, Alexander Morgan Capron and Eleonor Swift Glass, *Experimentation with human beings : the authority of the investigator, subject, professions, and state in the human experimentation process* (New York, 1972).
- Katz, Jay, *Experimentation with Human Beings* (New York, 1972).
- Katz, Jay, *The silent world of doctor and patient* (New York, 1984).
- King, Serge Kahili, *Urban Shaman* (New York, 1990).
- Lefor, Alan T., 'Scientific misconduct and unethical human experimentation: historic parallels and moral implications', *Elsevier* 21 (2005), 878-882.
- Mégret, Frédéric, 'The Politics of International Criminal Justice', *European Journal of International Law* 13:5 (2002), 1261-1284.
- Mettraux, Guénaël (Ed.), *Perspectives on the Nuremberg Trial* (Oxford, 2008).
- Moe, Kristine, 'Should the Nazi Research Data Be Cited?', *The Hastings Center Report* 14:6 (1984), 5-7.
- Pappworth, M.H., "Human guinea pigs" – a history', *British Medical Journal* 301 (1990), 1456-1460.
- Post, Stephen G., 'Nazi Data and the Rights of Jews', *Journal of Law and Religion* 6:2 (1988), 429-433.
- Prosser, C. Ladd (Ed.), *Environmental and Metabolic Animal Physiology* (New York, 1991).

- Rothman, David J., *Strangers at the bedside: a history of how law and bioethics transformed medical decision making* (New York, 1991).
- Schuster, Evelyne, 'The Nuremberg Code: Hypocratic ethics and human Rights', *The Lancet* 351 (1998), 974-977.
- Seidelman, William E., 'Mengele Medicus: Medicine's Nazi Heritage', *The Milbank Quarterly* 66:2 (1988), 221-239.
- Sidgwick, Henry, 'Utilitarianism', *Utilitas* 12:3 (2000), 253-260.
- Simon, Eva-Corinna, 'Geschichte als Argument in der Medizinethik: Die Bezugnahme auf die Zeit des Nationalsozialismus im internationalen Diskurs (1980-1994)' (unpublished dissertation, Justus-Liebig-Universität Gießen, 2004).
- Weindling, Paul, 'The Origins of Informed Consent: The International Scientific Commission on Medical War Crimes, and the Nuremberg Code', *Bulletin of the History of Medicine* 75:1 (2001), 37-71.
- Wells, H.G., *The Island of Dr. Moreau* (London, 1896).

Websites

- Arutz Sheva, 'Velvl Greene, Head of BGU Jewish Medical Ethics, Dead at 83' <<http://www.israelnationalnews.com/News/News.aspx/150024>> [consulted on 30-05-2017].
- Carome, Michael, 'Outrage of the Month: A Steady Stream of Unethical Human Experiments', *Huffington Post* <<http://www.huffingtonpost.com/michael-carome-md/outrage-of-the-month-a-st b 9822610.html>> [consulted on 05-06-2017].
- CIOMS, 'International Ethical Guidelines for Biomedical Research Involving Human Subjects' <<http://www.cioms.ch/publications/guidelines/guidelines nov 2002 blurb.htm>> [consulted on 12-06-2017].
- Claims Conference, 'Personal Statements From Victims of Nazi Medical Experiments' <<http://www.claimscon.org/about/history/closed-programs/medical-experiments/personal-statements-from-victims/>> [consulted on 17-02-2017].

- Cohen, Baruch C., 'The Ethics Of Using Medical Data From Nazi Experiments', Jewish Law Articles <<http://www.jlaw.com/Articles/NaziMedEx.html>> [consulted on 26-02-2017].
- Diep, Francie, 'Why did the American Psychological Association approve its members to oversee torture?', *Pacific Standard* <<https://psmag.com/news/apa-involvement-in-post-911-torture>> [consulted on 05-06-2017].
- Gannon, Megan, 'Germany to probe Nazi-era medical science', *Science Magazine* <<http://www.sciencemag.org/news/2017/01/germany-probe-nazi-era-medical-science>> [consulted on 20-03-2017].
- Halnon, Emily, 'Medical researchers in Africa must learn from the past, prof finds', *Around the O* <<https://around.uoregon.edu/content/medical-researchers-africa-must-learn-past-prof-finds>> [consulted on 06-06-2017].
- Hevesi, Dennis, 'Dr. Jay Katz, 86, Dies; Explorer of Ethics Issues', *The New York Times* <<http://www.nytimes.com/2008/11/20/nyregion/20katz.html>> [consulted on 31-05-2017].
- New York Times, 'Minnesota Scientist Plans to Publish Nazi Experiment on Freezing' <<http://www.nytimes.com/1988/05/12/us/minnesota-scientist-plans-to-publish-nazi-experiment-on-freezing.html>> [consulted on 13-02-2017].
- NYU School of Medicine, 'Arthur L. Caplan, PHD' <<https://med.nyu.edu/faculty/arthur-l-caplan>> [consulted on 29-05-2017].
- Psychology Today, 'Stephen G Post Ph.D.' <<https://www.psychologytoday.com/experts/stephen-g-post-phd>> [consulted on 17-05-2017].
- San Diego State University, 'Faculty in Biology' <<http://www.bio.sdsu.edu/faculty/faculty.html>> [consulted on 04-06-2017].
- Siegel, Barry, 'Can Evil Beget Good?: Nazi Data: A Dilemma for Science', *Los Angeles Times* <http://articles.latimes.com/1988-10-30/news/mn-958_1_nazi-data-issue> [consulted on 13-02-2017].
- Stony Brook University, 'Stephen G. Post, PhD' <<http://www.stonybrook.edu/bioethics/post.shtml>> [consulted on 01-06-2017].
- United States Holocaust Memorial Museum, 'The doctors trial: the medical case of the subsequent Nuremberg Proceedings'

<<https://www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/doctors-trial>> [consulted on 11-04-2017].

- United States Holocaust Memorial Museum, 'The Nuremberg Trials' <<https://www.ushmm.org/outreach/en/article.php?ModuleId=10007722>> [consulted on 25-04-2017].
- Unruh, Bob, 'EPA caught running 'illegal' experiments on humans', *WorldNetDaily* <<http://www.wnd.com/2016/09/epa-caught-running-illegal-experiments-on-humans/>> [consulted on 05-06-2017].
- World Medical Association, 'WMA Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Subjects' <<https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/>> [consulted on 13-06-2017].
- Yad Vashem, 'The Nuremberg Trials' <http://www.yadvashem.org/holocaust/about/end-of-war-aftermath/nuremberg-trials?WT.mc_id=wiki#narrative_info> [consulted on 25-04-2017].
- Yewish Virtual Library, 'The Holocaust: Medicine and Murder in the Third Reich' <<http://www.jewishvirtuallibrary.org/medicine-and-murder-in-the-third-reich>> [consulted on 03-06-2017].

Appendix

The e-mails from Robert Pozos are added in order for the information given in this thesis to be verified.

- Pozos, Robert, E-mail "Bachelor Thesis" [May, 16 2017].

14-05-2017

Dear dr. Pozos,

My name is Hannah Jacobi, I am a history student at the Radboud University in the Netherlands. I am currently working on my bachelor thesis, my aim is to write a comprehensive history on the use of Nazi experiments after World War Two.

Reading the articles about the Nazi experiments, I noticed that there was no mention as to the ethics of using the data until the seventies. I have read a lot of articles and books on this subject and they all credit you with the start of the discussion on the ethics of using Nazi experiments. The most recent publications I could find on your stance on the ethics dilemma is '*When Medicine Went Mad*' and '*Military Medical Ethics, volume II*'.

I am e-mailing you because I am wondering if your stance has changed in the last fifteen years, could you elaborate on this? On top of that I was wondering why you think you were the first person to touch the subject and start the debate? What made you start this debate?

I understand that this is a very difficult topic, especially after so much time, but I would be very grateful if you could answer these questions so that I can put forward the most accurate information as possible.

Thank you in advance!

Yours sincerely,

Hannah Jacobi

14-05-2017

Hi Jacobi

Thanks for your inquiry. Also my apologies for not responding sooner. I did see your earlier message about my involvement concerning the ethics involved in the use of data.. but I am super busy right now concerning a deadline dealing with getting an ebook on general biology finished by August!

However, tell me more about your requirements for a bachelor thesis and why you picked such a "great" topic. I will be happy to work with you on this topic and tell you what I know. This topic has many layers and it is very appropriate to write a comprehensive history not only for yourself but for future generations.

I have to finish some assignments right now so I am - with apologies- delaying any long answer to your question- until later today or tomorrow- when I have a chance to recollect my thoughts on this matter.

Warm Regards

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14-05-2017

Dear dr. Pozos,

Thank you very much for replying to my mail and taking time out of your busy schedule to answer my questions! The topic was very hard to think of because a lot has already been written on World War Two, when I was researching Joseph Mengele (someone who has interested me since high school) I stumbled upon the medical history topics. I noticed the debate on the use of Nazi data along with the enormous corpus of medical articles. However an historical approach to this important topic was non-existent. This is why I wanted to write my bachelor thesis on this subject, to shed light on this important topic from a historical perspective. Moreover, the interdisciplinary -medical, legal and historical- nature of this topic makes it very interesting to write on.

In my thesis I will begin with a chapter on the Nuremberg Trial, to provide a context. Then I analyze the different stances taken at the Trial to ultimately discern the view on the Nazi experiments during and after the Nuremberg Trials. In the second chapter I examine the use of Nazi data until the seventies by examining three examples of articles and books which used Nazi data without providing 'ethical disclaimers'. Then I discuss the discontinuity/start of the debate on ethics and human experimentation by examining three individuals and their works: Henry Beecher, Maurice Pappworth and you. In chapter three I will examine several authors and their opinions on the use of Nazi data, from the seventies until now.

Because it is such a controversial topic I think it is very important to have all the facts. This is why I contacted you. I have read a lot of articles and books on the matter but there has not been any recent (relevant) publications. Therefore I wanted to ask you: what is your opinion on the use of Nazi data today? Why are you for/against the use of Nazi data? Why do you think you are the first person to touch the subject and consequently start the debate? What made you start the debate?

Because I am still reading up on the topic, maybe more questions will follow, is this okay?

Requirements: 8000-10000 words, due: 8th June. I'm writing my thesis in English.

Thank you again!

Kind regards,

Hannah Jacobi

16-05-2017

Hi Hannah...

My thoughts are below:

Dear dr. Pozos,

Thank you very much for replying to my mail and taking time out of your busy schedule to answer my questions! The topic was very hard to think of because a lot has already been written on World War Two, when I was researching Joseph Mengele (someone who has interested me since high school) I stumbled upon the medical history topics. I noticed the debate on the use of Nazi data along with the enormous corpus of medical articles. However an historical approach to this important topic was non-existent. This is why I wanted to write my bachelor thesis on this subject, to shed light on this important topic from a historical perspective. Moreover, the interdisciplinary -medical, legal and historical- nature of this topic makes it very interesting to write on.

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Because it is such a controversial topic I think it is very important to have all the facts. This is why I contacted you. I have read a lot of articles and books on the matter but there has not been any recent (relevant) publications. Therefore I wanted to ask you: what is your opinion on the use of Nazi data today? Why are you for/against the use of

Nazi data? Why do you think you are the first person to touch the subject and consequently start the debate? What made you start the debate?

Yes.. you are correct that there is no recent publications. The debate has subsided but I think the issues have not really been resolved. Recently, the USA government was torturing prisoners in Guantamo Prison for data. Some persons objected and others thought that it was ok in the national interest(<https://psmag.com/news/apa-involvement-in-post-911-torture>) These are some of the same arguments used in Nazi Germany.

The use of data has always been thought to be the right or privilege of scientist. The data was the data. The question about the way that the data was gathered was not really discussed until Neuremberg trials. Why? Because there was data! As you notice as you read the transcripts of the trial, there were the recordings of person's temperature and death. Unlike many other situations, the graphs are one of the eloquent testimonies of dehumanizing a human subject . He was just a "vessel" for which you need data. The graphs are haunting in their detail.

Should persons use data that is scientifically valid but unethically gathered? This is my question. Notice that the data must be valid but unethically gathered. Here are the arguments: In favor of the data is the fact that it can or could help persons who are hypothermic. Many advances in hypothermia research came from the observations made in Dachau. So-why throw away the data if it can help someone even though it was unethically gathered. ? This is called the silver lining arguement meaning that there is always some good that can come from bad situations. Against this approach is the argument that the ends do not justify the means.Although the data was valid it would be a signal to other scientists that unethically research was still advancing science. Part of this argument can be expanded to include the idea of National Survival. If the Netherlands were being invaded and you had unethical data that could be used to help in defense of your country - would you use it?

My approach has been that it is up to each individual to make up their own mind knowing the arguments that are briefly listed above.For me personally, I would not use the data since it was unethically gathered and persons died. (Keep in mind, that there is

no data as complete as the Nazi data so some persons think it is ok to use it since it is one of a kind and can help persons. The purpose for this digression is to address the issue that some people will not use the data because they can reference other data that was ethically gathered.) I remember being at a meeting in Indianapolis dealing with this issue and I was seated next to a physician who said ..."As a scientist, you are obligated to use the data"... This is part of the problem with this question which I stated earlier that we have elevated Data to be the justification of science. It is similar to a religion in some sense.

Why did I raise the question about the use of valid data that was unethically gathered? I think one of the reasons is that I have conducted hypothermic experiments on Medical students who were my students. The experiments were conducted ethically and we did not have any negative experiences with any of the students. However, during the experiments, it was stressful for the students who were in the cold water or cold air as we collected data. Possibly, I extrapolated from my experiences with the medical students to the victims in Dachau. As I read the Nuremberg trials and looked at the data- similar to my data- it struck me in a very negative fashion. Also, I think that science has contributed a great deal to the advancement of humanity and to use science to advance your goals while killing people debases the essence of scientific inquiry. Finally, as you know after World War II, people were aware of the atrocities committed in the war camps. However, there was the data that could be used as the USA entered the cold war. Thermal physiologists were aware of the data and how it was gathered. One of my concerns is that in cases of national emergency, persons will be like the Nazis and gather data anyway they can to survive or beat the enemy. It is called.. "All is fair in love and war" philosophy. Today, there are so many ruthless governments which would kill people for the advancement of some kind of chemical weapon as an example. Possibly by raising the question, it might give some scientists pause as they consider unethical research in the name of national security.

There are a couple of observations that you might be interested in. I have a letter from one of the subjects in Dachau who stated that it would be ok to use the data but just to be careful that it was valid!. Also, he was proud that he was involved in a number of experiments in the prisoner of war camps.! In essence, people should not have died in

vain. At another meeting, after giving my talk, I ask each person whether or not they would use the data. One woman stated that she had a son in the Marine Corp who was serving in northern Europe. Any data that could be used for helping her son- should be used!

Because I am still reading up on the topic, maybe more questions will follow, is this okay?

Anytime! Pardon my short response to your question. Let me know what is not clear or if you have other questions.

Only if these questions continue to be raised, will there be a chance that scientists and people will not do these experiments or not use the data. Good Luck and please do not hesitate to contact me.

Warm Regards

Requirements: 8000-10000 words, due: 8th June. I'm writing my thesis in English.

Thank you again!

Kind regards,

Hannah Jacobi

16-05-2017

Dear dr. Pozos,

Thank you very much for your quick response and your extensive answers. It is very useful. If there are more questions I will not hesitate to e-mail!

Kind regards,

Hannah

16-07-2017

Dear dr. Pozos,

Attached to this e-mail is my bachelor-thesis. I thought it would be nice to send you a copy!

Thank you very much for your correspondence, it helped a lot!

Kind regards,

Hannah Jacobi

16-07-2017

Greetings Hannah

I read with delight your thesis. Well done.

A couple of points:

1. I conducted all the hypothermia research and wrote articles about Hypothermia etc at University of Minn, Duluth, School of Medicine and Naval Health Research Center, San Diego.

You have me listed at Southern Illinois University - which is correct in that is where I received my Ph.D.

2. What is your real conclusion? How do you see your excellent review fitting in the context of the current world. Are we as a society bond to repeat the errors of history. Consider the current crisis of Global Warming. Is it ethical to experiment on humans to genetically derive human that possibly can survive on less food, water and more heat? We have too many people in the world .. not enough water or eventually food. This is a perfect recipe for wars over territory with water etc or ... do we change our species.. just a little to save ourselves. Of course we need to do human experiments .. who will those persons be? Just food for thought.

I will reread your these with delight.

I wish you well in your future endeavors.

Warm Regards

Bob Pozos

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17-06-2017

Dear Dr. Pozos,

Thank you for your quick reply! I'm terribly sorry for my mistake, I will change it immediately! As to the conclusion, your proposed ethical quandary: I have to give it some thought, it is a very interesting way to look at it, but very difficult to answer. As soon as I formulated a answer, I will include it in my conclusion and send it back!

Thank you very much for the big compliment of you liking my thesis!

Kind regards,

Hannah Jacobi

17-06-2017

Good Morning.. Hannah

Thank you for making the slight correction in your thesis.

In reviewing your thesis, I think one of the reasons that I asked the question about whether one should use the data or not is the number of years since the end of WWII. After the war, I think most people would have agreed to have used the data. It was after all, the end of WWII and the beginning of the cold war. You wrote a good section on how sensitivity to issues changes over time. Nice!

What did we really learn about the experiments conducted in Dachau where the data was saved?

I think we saw a threatened nation doing what it could to survive. It needed data from humans-supposedly- and the ethical climate supported that decision. (Not every scientist in Germany supported the inhumane experiments but as you suggest- did people throughout the world consider the experiments inhumane.) In short, we are discussing situational ethics. Does the ethics of the time play a role in terms of whether certain actions are right or wrong?

What I am concerned about is the potential situation in which a nation will perceive it is in danger and will do whatever it takes to survive. Will the population of that nation-sort of- agree with that solution.

The future will pose new questions for nations as a whole- ranging from genetic manipulations of living systems,use of robots in warfare and as I mentioned Climate Change. I think that climate change will force nations to become either more dependent on each other or some will become more insular. Consider the North Korean Government. Walled off from most of the world, it is impervious to International Criticisms. Also, the new Philipino (sp)Government has also become somewhat more isolated. If these countries conduct unethical experiments, should we use the data if it can help other countries to survive. Or is Data just Data? It is not just third world

governments that run this risk. Consider the water boarding that was conducted by the US Government.

The value of your thesis is to shine a light on what we as a group want to do with scientific data. Is it sacred- independent of the means that we get it? As I said.. the silver lining of a dark cloud? I suppose this is the reason - as you chronicle in your thesis- why many editors of journals after WWII did not consider the ethics of the data in the scientific papers they reviewed. It was only data!?

Finally.. it was a delight to read your thesis and your thoughtfulness indicates- as I have already known- that the new generations will find a way to think about these questions to stay sensitive to the duplicity of human nature: its quest for knowledge as well as its sensitivity about each other. Each aspect can be abused but in the best of worlds, these two aspects can show the best of what we can be.

Tell me.. what are your future plans? What are you going to do?

Sincere Regards

Dr. Bob Pozos

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17-06-2017

Good Morning!

You raise very interesting follow-up questions. I think we reached a consensus on the non-ethical nature of Nazi experiments very quickly after the War. However, the use of these data was -then- never officially condemned, in a way the nature of Nazi experiments therefore were not fully condemned either. Therefore, for me the most important thing my thesis has shown is the importance of discussion. This ensures the continuing sense of a controlled nature of science: one has to take other notions in consideration, I think this is important because it is separate from situational ethics. This is where my thesis is of value for the bigger issue of unethical research in uncertain times/uncertain situations. Next to the individual rational and ethics of editors of scientific journals, the guidelines set up by international scientific organisations (CIOMS, etc.) discussion is the most important way we have to prevent unethical science to be published or conducted, one has to nuance his/her standpoint. Moreover it ensures a certain transparency and it prevents forgetfulness.

I am very concerned for the future as well, mostly because I have never heard of any of these unethical experiments and implications in modern times before my thesis. With the raging conflict in the Middle-East and all of the other dangers the world is faced with today, I think this is a problem one cannot ignore. For the time being, there does not have to be a consensus on the topic, but there has to be a discussion and awareness.

My plans: next year I'm going to study in Poland (Krakow) for a semester. I hope to learn certain topics (mostly World War Two) from a completely different narrative and standpoint. In the second semester I'm hoping to secure a internship. The year after that I hope I can get into the master Holocaust and Genocide Studies in Amsterdam to continue my interest in the conflict studies.

Thank you very much for this opportunity to provide my vision on this topic!

Kind regards Hannah

18-06-2017

Hi Hannah

I read your response with great interest. My last point to you deals with my concern about the new generations. You are unusual in that you have taken an interest in the scholarly pursuit of a complex question. Many of your peers in USA do not have that perspective. In short, they do not read or think about these issues. I do not blame anyone about this phenomenon- it is happening. The pursuit of money and jobs is the paramount issue. Financial inequality brings out the worst in people.. I think.

If you want to keep conversations alive and well about issues dealing with **humanity's inhumanity to humanity**... I suggest you eventually consider publishing some kind of graphic representation of your interest. Why? Your generation may take a look at a graphic representation of issues more so than the written one. Hard to say.. but as my generation leaves this world.. the baton has to be passed onto persons such as yourself to keep these questions alive.

So.. think "digitally" about how to keep the conversation alive. It will become difficult until there is a serious crisis that confronts humanity.. and people need to think about those issues now.

I invite you to share your insights when you go to Poland. Remember you will be talking to people who were conquered by the Germans and there is still no love lost between the two. What an exciting time for you. Be careful!

Fond Regards

Bob

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18-06-2017

Dear Dr. Pozos,

I have discussed this issue with my sister who happens to be a very talented student at the art academy, and she is very interested to pursue this proposal (to present a graphic representation) with me in the future.

I just want to say that I have very much enjoyed our correspondence. I learned a lot and it gave me the opportunity to discuss my ideas and vision outside my paper, in the 'real world' with a very knowledgeable individual!

I wish you the very best in the future!

I will be sure to keep you informed on my future development on the issue, to ensure it is not forgotten.

Warm regards,

Hannah

22-07-2017

<https://www.nytimes.com/interactive/2017/06/20/us/cia-torture.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=photo-spot-region®ion=top-news&WT.nav=top-news>

Hi Hannah

The New York Times has done a story on CIA interrogation. It might be of interest to you.

I hope the link I sent you works. Let me know.

Warm Regards

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25-07-2017

Dear dr. Pozos,

The link works! What horrible things are happening in the world. That such an advanced country as the United States still uses these horrible methods is very disturbing.

Moreover the psychologists who performed the tortures demonstrate the pressing need for clearer boundaries on the subject. They too were confronted with the utilitarian dilemma: the greater good for the country or a individual and they chose what was right in their minds: "there was going to be another attack in America and the blood of dead civilians are going to be on your hands." A very interesting yet frightening current issue.

Kind regards,

Hannah Jacobi