Rather Than Responding to the Past, Shape the Future Instead

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Published online: 01 Jun 2015.

To cite this article: Sharon Kaur (2015) Rather Than Responding to the Past, Shape the Future Instead, The American Journal of Bioethics, 15:6, 61-63, DOI: 10.1080/15265161.2015.1028668

To link to this article: http://dx.doi.org/10.1080/15265161.2015.1028668
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The atrocities conducted by the Japanese during World War II are undeniably shocking, and the U.S. government’s complicity in failing to bring any of them to justice, indefensible. However, while there is value in the author’s argument that the United States should be held to account, it is submitted that there is far more value in examining why the Japanese felt justified in carrying out such atrocities and addressing such concerns in ethics guidelines, with a view to ensuring better protection in the future.

The idea that some human lives are worth more than others lay at the heart of research misconduct during World War II. In fact, the undervaluation of human life can be traced back to the earliest forms of systematic medical research. The emergence of hospital medicine in Paris, France, between 1794 and 1848 transformed not only the practice of medicine but medical research as well. Hospital medicine made it possible to run clinical experiments on large numbers of people. This in turn provided physicians with rich data upon which to design treatment modalities. Using hospital patients as research subjects was considered appropriate because for most of the 18th century, hospitals were administered to care for the poor and infirm, who were considered the most suitable subjects for experiments because of their illnesses, their perceived resulting obligation to society, and the power structure within hospitals that created a regulated research environment. (Ackerknecht 1967, 15) Bernard de Gordon advised that medicines should be tested “first on birds, next on mammals, then [on patients] in hospitals, then on lesser brethren, and then on others in [ascending] order, because if it should be poisonous it would kill” (Demaitre, 1980, 28). Because they were poor and unable to pay for their own treatment, hospital patients were considered to be of less value and thus legitimate subjects of medical research.

Over time, observational hospital medicine evolved into laboratory and evidence based medicine, and observational clinical research developed into formally run

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scientific trials. While it is difficult to arrange and structure the history of modern clinical research misconduct as a consistent and coherent analytical narrative, as the case studies recorded in the literature are not easily reconciled, a number of high-profile exposés beginning with the events surrounding World War II were pivotal in the development of ethics guidelines and demonstrate how the undervaluation of human life remained the underlying cause of unethical treatment (Kaur 2011, 70).

People may be undervalued because they are members of what might be regarded as inferior races or religions, if they are poor or old, or if they are mentally immature or incompetent. This undervaluation is often driven by discrimination and contempt for people who are viewed as being inferior. The inferiority may be based on extrinsic or intrinsic grounds (Goldberg 1990, 5). Extrinsic racism and discrimination lie in the belief that certain groups of people differ in respects that warrant differential treatment. Certain qualities are considered morally relevant and the presence or absence of these qualities justifies treating groups of people differently. For instance, people who are mentally retarded might be viewed as lacking sufficient intelligence. Following from this, if intelligence is viewed as being morally relevant, this group of people is considered less valuable to society and can be treated differently. Intrinsic racism differentiates between members of different races, believing that every race possesses a different moral status quite independent of morally relevant qualities. Some races are simply regarded as superior to other races. Such racist and discriminatory attitudes result in the dehumanization of its victims.

This sort of undervaluation is exemplified by the type of racist and eugenic policies pursued by the Nazi and Japanese regimes during World War II. Hitler and others believed that there were gradations of human fitness; that race and physical and mental abilities were determinants of the fitness of humans; and that at the lower end of the spectrum, some lives were so worthless as not to be worth living. Unwilling to submit to the unhurried pace of natural selection, the Nazi regime chose to exterminate those they considered unfit or sacrifice their lives to serve the ends of the superior race by using them as subjects in their medical experiments. Much like the Nazis, the Japanese believed that their race was superior to any other race or group and the military administrators and doctors did not regard other Asians and Westerners as truly human or worthy of the respect accorded to humans.

Both the Japanese and German researchers sought to justify their actions on the ground of sacrificing the few for the benefit of the many. But it is vital to recognize that the selection of the sacrificial few was based on the notion that the lives of certain groups of people were worth less than the lives of the Japanese or Aryan Germans, and as a result, the sacrifice was negligible compared to the benefits that would be enjoyed by the “superior” group. The fact that both countries were engaged in a protracted and horrific war led these researchers further to believe that they were entitled on utilitarian grounds forcibly to subject these sacrificial few to appalling medical experiments. Both these ideas—first, that some human lives are worth more than others; and second, that it is justifiable to sacrifice a few for the good of the many—were inextricably linked and lay at the heart of the research misconduct during World War II.

This does not, however, appear to be the way in which the judges at the Nuremberg Medical Trial approached the problem when they formulated the Nuremberg Code. It is worth examining the ideas that seem to have informed the development of the Nuremberg Code, as it is generally viewed as being the first important declaration of ethical guidelines for medical research on human subjects and as such represents the “beginning of the story” of clinical research ethics. But more than this, as recognized by Capron (2006, 436), the principles prescribed by the Nuremberg Code continue to “guide the development of subsequent declarations, guidelines, and regulations.” The foremost principle is that which is set out as the very first, the requirement for free and informed consent.

In presenting the principle of informed consent as the primary vehicle by which human subject protection might be achieved, the judges only addressed one of the underlying causes of the abuse—the utilitarian notion that the well-being of an individual may be sacrificed for the good of society. Informed consent addresses this problem by recognizing that every individual must be given the right to determine for him- or herself whether or not to choose to participate in research and that this right cannot be taken away from the individual on the grounds that it would serve the interests of the many. However, by focusing on informed consent, the judges at Nuremberg failed to give recognition to what was perhaps the greater driving force behind the atrocious experiments, namely, the undervaluation of certain groups of vulnerable people who were regarded as being of less value than the German Aryans. There was never any interest in obtaining any form of consent from these prisoners, and because these prisoners were viewed as “inferior” beings not worthy of full moral respect, even if informed consent had been laid down in a code of practice or law in Germany or Japan before the outbreak of World War II, this would not have prevented the commission of the subsequent atrocities. The abuses occurred and were sanctioned by the state largely in part because the subjects were not recognized as possessing worthwhile lives. What the Nuremberg Code should also have made perfectly clear is that all human beings regardless of race, religion, or social standing must be accorded the same level of respect. It should have made it clear that in no situation should a human being belonging to one section of society ever be used as a means to an end for any human being belonging to another section of society. It should have mandated that individuals or
persons in power (state) be responsible to protect the interests of minorities and vulnerable populations. In failing specifically to address these issues, the Nuremberg Code failed to recognize that the undervaluation of human life lay at the heart of the experiments.

If we now have an opportunity to open a new discussion on the atrocities committed by Japanese researchers during World War II, our time would be better spent not looking to see who we might punish for failing to bring the researchers to justice but revisiting the underlying reasons for these atrocities. This understanding is crucial because it allows for a more nuanced recognition of research misconduct and opens to door to devising new tools to address the problem of undervaluation of human life.

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