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ORIGINAL ARTICLE



Ethicizing history. Bioethical representations of Nazi medicine

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Abstract

The article presents and analyzes different approaches of U.S. bioethicists in comprehending the Nazi medical crimes after 1945. The account is divided into two sections: one dealing with discussions on research ethics and the Nuremberg Code up until the 1970s and the other ranging from the 1970s to the present and highlighting bioethics' engagement with Nazi analogies. The portrayal of different bioethical scholars, institutions, and documents—most notably Henry K. Beecher, Jay Katz, the Belmont Report, the Hastings Center, Arthur L. Caplan, and Robert M. Veatch—provides a nuanced interpretation of the motives that bioethicists held and the strategies that they applied to establish an understanding of the Nazi medical crimes and their relation to contemporary bioethical issues. In this, the different approaches shared a common goal: To integrate the Nazi medical crimes into an ethical framework by means of selective acknowledgments and representation of their history.

KEYWORDS

Arthur L. Caplan, Belmont Report, bioethics, Henry K. Beecher, Nazism, Nuremberg Code

The question is the story itself, and whether or not it means something is not for the story to tell.

(Paul Auster, City of Glass, 1985)

1 | INTRODUCTION

An underlying theme in this journal's recent special issue on "Bioethics and the Legacy of the Holocaust" was the perceived lack of cooperation between history and ethics. As the issue editors put it, "there is little overlap—or there is even a disciplinary rift—in the ways medical history and bioethics have been combined." The experience of the Nazi medical crimes and their influence on the development of

bioethics were the special issue's continuous case in point of how the relationship between history and ethics has been (mis-)construed. Most pointedly, a contribution by Boas et al. that dealt with the legitimacy of "playing the Nazi card" in ethical discourse claimed to have identified the reason for this development. In their view, the NMT, the authors' abbreviation for "Nuremberg Medical Trials,"²

sought to sever the evils of Nazi medicine from the future of post-war bioethics. [...] Framing itself as the

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¹Schicktanz, S., & Stoff, H. (2021). The legacy of the Holocaust in bioethics. *Bioethics*, *35*(6), 497–498, p. 497.

²Boas, H., Davidovitch, N., Filc, D., & Zalashik, R. (2021). From bioethics to biopolitics: "Playing the Nazi card" in public health ethics—The case of Israel. *Bioethics*, 35(6), 540–548, p. 541. NMT usually stands for Nuremberg Military Tribunals, that is, the 12 trials of different groups of Nazi perpetrators, conducted by the U.S. military authorities in West Germany between 1946 and 1949. The first of those trials was the—singular—medical case or doctor's trial against 20 physicians and three non-physicians who had been responsible for patient killings and human experiments. Cf. https://nuremberg.law.harvard.edu/nmt_1_intro

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antithesis of National Socialism, liberal bioethics severed any link between Nazi medicine and the winning side—the anti-Nazi allies. [...] Once liberal bioethics had been designated as the antithesis to Nazi medicine, the next step in denying all links with pre-war practices and World War II medical practices was the refusal to play the Nazi card.³

Thus, for Boas et al., a desire on the part of "liberal" bioethicists to distance the Allies from the Nazis was itself a form of historical erasure that obliterated, in turn, a putatively more organic relationship between ethics and history themselves. By explicitly connecting present bioethical practices to Nazism—playing, as it were, "the Nazi Card"—Boas et al. aim to mend a rift that is, for them, unnecessary and harmful.

It is unfortunate, especially in light of the authors' "call for a more accurate and deeper understanding of the impact of this past on post-war and contemporary issues,"4 that they do not specify what and whom they are referring to by the collective singular "liberal bioethics." In spite of their concern for history, they leave the alleged historical genesis and impact of perhaps their key conceptual grouping in the dark, effectively rendering it a strawman. This caricature is so thorough that it leaves them unable to understand why liberal bioethicists would suppress Nazi medicine's legacy, given that "some prominent bioethicists were Holocaust survivors, or came from families of Holocaust survivors." Here, they seem to refer to bioethicist Arthur L. Caplan, going on to criticize Caplan's work on this topic and contrast it with that on display in an edited volume on Medicine after the Holocaust, whose contributors "have called for better understanding of the continuities in medical practice and policies before, during, and after the Holocaust"5—and among whom is none other than said Arthur Caplan.⁶ What Boas et al. have overlooked here is not only this particular article by Caplan or the fact that neither he nor his immediate family were Holocaust survivors.⁷ Rather, such a framing is indicative of a fundamental misconception of the way bioethicists have or have not dealt with the history of Nazi medicine. Like no other, Arthur Caplan has shaped the very discourse on bioethics and the Holocaust, which Boas et al. themselves are now a part of. In 1989, he organized a conference on "The Meaning of the Holocaust for Bioethics," and he published continuously on the subject, criticizing the improper use of Nazi analogies in public discourse as much as the lack of awareness of Nazi medical crimes, emphasizing their persistent bioethical relevance.⁸ Whatever one's perception of Caplan's attempt to connect bioethics and the history

of Nazi medicine might be—and the authors of this paper are highly critical of him—, to characterize him as "part of a continuous process of constructing a sharp dichotomy straight after the NMT between Nazi medicine, labeled as evil science, and 'the rest' of contemporary medical science and practice" is completely uncalled for. It sheds an unfavorable light on Boas et al.'s sweeping claim regarding liberal bioethics' role in suppressing the legacy of Nazi medicine as well as on their own case for legitimately applying Nazi analogies in bioethical discourse.

This paper aims at providing a more nuanced perspective on the relationship between history and ethics by building on an observation that Boas et al. themselves have presented: "The paradoxical role of the Nazi past and the Holocaust in bioethics is expressed in the simultaneous references to and suppression of these phenomena in contemporary bioethics." 10 But what role has this dialectic of reference and suppression played in the historical development of bioethics itself? Here, we examine this question through a study of the role that Nazi medicine played in bioethics in the United States. We do so by looking at exemplary figures, institutions, or artifacts of what could be referred to as "liberal bioethics"—in particular, Henry Beecher, Jay Katz, the Belmont Report, the Hastings Center, Arthur Caplan, and Robert Veatch. Such an approach has different goals: First, it provides the more accurate and deeper understanding that Boas et al. have called for. Second, it analyzes the actual development in bioethical discussions of Nazi medicine. Third, it introduces an explanation of why these different bioethical representations of Nazi medicine were being construed-and still are, not least in the way Boas et al. themselves frame history's relevance for bioethics-, in what we call the ethicization of history, that is, its selective appropriation and interpretation, in which historical facts and narratives legitimize a contemporary ethical argument, but at the cost of their accuracy and completeness. Ultimately, we draw on this material to argue against a reconciliation between history and ethics that, in its present form, is based on historical misunderstandings, which in turn serve as a poor foundation for recommendations—such as those given by Boas et al.—of how bioethics might be changed and, perhaps, improved.

2 | DIS-ENGAGEMENT: RESEARCH ETHICS AND THE NUREMBERG CODE

The development of ethics in human subject research after the Second World War has primarily been associated with two documents: The ten principles of "Permissible Medical Experiments," read out at the end of the Nuremberg Doctors' Trial on 19 August, 1947, and the paper "Ethics and Clinical Research," published by Harvard anesthesiologist Henry K. Beecher (1904–1976) in 1966. 11

³Boas, H., et al. (2021), op. cit. note 2, p. 541f.

⁴lbid: 542.

⁵lbid.

⁶Caplan, A. R. (2010). The stain of silence: Nazi ethics and bioethics. In S. Rubenfeld (Ed.), Medicine after the Holocaust. From the master race to the human genome and beyond (pp. 83–92). Palgrave Macmillan.

⁷Acadia Institute Project on Bioethics in American Society: Interview with Arthur L. Caplan #1. 15 October. 1997. p. 4. http://hdl.handle.net/10822/557017

⁸Caplan, A. L. (1989). The meaning of the Holocaust for bioethics. *Hastings Center Report*, 19(4), 2–3. Cf. the remarks on Caplan later in this paper.

⁹Boas, H., et al. (2021), op. cit. note 2, p. 542.

¹⁰lbid

¹¹In Jay Katz' anthology on human experimentation, both texts are even documented back to back. Cf. Katz, J. (1972). Experimentation with human beings. The authority of the

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It is striking, however, that nowhere did Beecher explain what these outrages and acts had been and who had committed them, at least not in his own words. Instead, he quoted what others had said and written about Nazi medicine: On the one hand, a commentary from 1953 that had been published in Lancet, which expressed a conviction shared by Beecher, that is, that subordinating the individual's well-being under some prospective common good "would open the door wide to perversions of practice, even such as were inflicted by Nazi doctors on concentration-camp prisoners."17 On the other hand, a long paragraph from the verdict of the Nuremberg Doctors' Trial highlights the systematic brutality and scientific inadequacy of concentration camp research, equally unimaginably in the U.S. context.¹⁸ Beecher's ambiguous approach towards the Nazi crimes was condensed in a programmatic remark, when he claimed that although "the philosophical problems raised by those gross actions are beyond the area surveyed in this report, they too indicate the need for a long straight look at our current practices."19

The need for this long straight look did not so much result from the concrete practice of concentration camp research as from the underlying rationalization of this research: its ethical justification. "With the recent Hitlerian acts freshly in mind," Beecher claimed, "responsible investigators are wary of such phrases as 'for the good of society.' In any case, the scientist or physician has no right 'to choose martyrs for society'."20 This assessment, appearing as a warning against the historical precedent, actually functioned as Beecher's inroad to criticize the substance of the Nuremberg Code. The Code, in its second point, stipulates that any human experiment must "yield fruitful results for the good of society." As Beecher highlighted, such a formulation, just like all other principles of the Nuremberg Code including the most important one, the inevitability of obtaining voluntary consent, was only conceivable in the context of and as a reaction to the Nazi medical experiments. To Beecher, the Code was not applicable to other contexts, and he even asked if it could have been effectively applied to the context of the Nazi medical crimes since "[r]ules are not going to curb the unscrupulous."21 Therefore, instead of prescribing a "Western credo" of overarching ethical principles to guide medical research on human beings, with the principle of consent at its center, Beecher calledand, in his later articles, kept reinforcing this call-for the elimination of "ignorance and inexperience" through the education of "the skillful, informed, intelligent, honest, responsible, compassionate physician," the "truly responsible investigator."22

Beecher's early reflections on Nazi medical experiments and their relevance for current challenges of human subject research shaped his positions laid out in later publications to the degree of identical wording, albeit without the explicit mentioning of the Nazi medical

This association is remarkable, given that the problem of research ethics had been approached in a much more significant manner by the World Medical Association's adoption of the Declaration of Helsinki in 1964, a document that, as Susan Lederer has shown, bore the marks of the Nazi crimes as much as it was designed to overcome their most restrictive consequences for human subject research. 12 Rather than having had an immediate impact—the so-called Nuremberg Code was mostly ignored by medical associations and government agencies worldwide, while Beecher's paper was superseded by U.S. federal regulations 13—, both documents have risen to prominence due to their critical expounding of the problems arising from research practices witnessed at the time. Aside from their respective historical significance, it is revealing how these two ground-breaking documents were related to each other.

Beecher's article, as his other papers dealing with the subject of research ethics published around the same time, did not explicitly mention the Nazi medical crimes and the Nuremberg Code. 14 Nevertheless, they undeniably constituted the background for his own reflections on the investigator's responsibility and the subject's consent. The fact that Beecher's thinking was deeply influenced by his knowledge of human experiments in German concentration camps, 15 that he tried to contextualize and, thereby, contain this experience, can be taken from an earlier publication, a report for the American Medical Association's Council in Drugs that already anticipated many of the issues of his much more prominent paper from 1966: Here, Beecher repeatedly mentioned "the outrages of Hitler's Germany" and "recent Hitlerian acts" as one of the main sources for his own engagement with research ethics, and extensively dealt with the "Nuremberg Code's 10 Points" as a reaction to this experience.16

investigator, subject, professions, and state in the human experimentation process. Russel Sage Foundation, pp. 305-310.

¹²Lederer, S. E. (2004). Research without borders. The origins of the Declaration of Helsinki. In V. Roelcke & G. Maio (Eds.), Twentieth century ethics of human subjects research. Historical perspectives on values, practices, and regulations (pp. 199–217). Franz Steiner.

¹³Bonah, C., & Schmaltz, F. (2018). The reception of the Nuremberg Code and its impact on medical ethics in France: 1947-1954. Wiener klinische Wochenschrift, 130(Suppl. 3), S199-S202: Glantz, L. H. (1992). The influence of the Nuremberg Code on U.S. statutes and regulations. In G. J. Annas & M. A. Grodin (Eds.), The Nazi Doctors and the Nuremberg Code. Human Rights and Human Experimentation (pp. 183-201). Oxford University Press; Hazelgrove, J. (2002). The old faith and the new science: The Nuremberg Code and human experimentation ethics in Britain 1946-1973 Social History of Medicine 15(1) 109-135. Herranz, G. (1997). The inclusion of the ten principles of Nuremberg in professional codes of ethics: An international comparison. In U. Tröhler & S. Reiter-Theil (Eds.), Ethics codes in medicine. Foundations and achievements of codification since 1947 (pp. 127-139). Ashgate; Jacobs, N. (2020), A moral obligation to proper experimentation; Research ethics as epistemic filter in the aftermath of World War II. Isis, 111(4), 759-780; Stark, L. (2012). Behind closed doors. IRBs and the making of ethical research. The University of Chicago Press. ¹⁴Beecher, H. K. (1966a). Ethics and clinical research. The New England Journal of Medicine, 274(24), 1354-1360. Cf. Beecher, H. K. (1963). Ethics and experimental therapy. Journal of the American Medical Association, 186(9), 858-859; Beecher, H. K. (1966b). Consent in clinical experiments: Myth and reality, Journal of the American Medical Association, 195(1), 34-35,

¹⁵For a critical assessment of this knowledge, cf. Lederer, S. E. (2016). "Ethics and clinical research" in biographical perspective. *Perspectives in Biology and Medicine*, *59*(1), 18–36, pp. 24–27.

¹⁶Beecher, H. K. (1959). Experimentation in man. *Journal of the American Medical Association*, 169(5), 461–478, pp. 461, 463, 473. This report is one of the first documents to actually use the term "Nuremberg Code."

¹⁷Ibid: 469.

¹⁸Ibid: 474.

¹⁹lbid: 461. ²⁰lbid: 463.

²¹Ibid: 471.

 $^{^{22}} lbid;\, 471f;\, Beecher\, (1966b),\, op.\,\, cit.\,\, note\,\, 14,\, p.\,\, 35;\, Beecher\, (1966a),\, op.\,\, c$

crimes, the Nuremberg Doctors' Trial, and the Nuremberg Code. Eventually, in his magnum opus Research and the Individual, Beecher not only reiterated his basic assumptions but also returned to explaining their relation to the experience of Nazi medical research: He underlined the prioritization of the individual's well-being by pointing to the fact "that the bonum communum was precisely the rationalization claimed by the Nazis," he repeated his criticism of the Nuremberg Code-here printed in full as one of the book's appendices-and its alleged status as a "Western credo," and he even mentioned, although somewhat reluctantly, the perpetrators who had been standing trial at Nuremberg, using the peculiar phrase "doctors of medicine," by which he referred to their formal degree rather than their belonging to a profession.²³ Still, Beecher tried to balance his assessment of a relation between contemporary research ethics and the experience of Nazi medicine: He acknowledged the underlying "philosophical problems" connecting them, while rejecting the applicability of the Nuremberg Code outside of the Nazi context.

Beecher's insistence on the physician's virtue as the only safeguard against ethical regression might seem jarring, given his often ascribed role as one of the founders of modern bioethics. Indeed, in 1976, he was the first recipient of the Hastings Center's award for lifetime achievements in the field of bioethics, subsequently named after him.²⁴ Historian of science Laura Stark has pointed to the fact that this legacy was "unintended"²⁵ since Beecher wanted to shield the physician's role in human subject research from outside interference and regulation. For Beecher, it was the physician who would protect the individual from the state and its demand for prioritizing the common good, as the Nazi state had done, not the other way around, even though physicians had utterly failed at this task under Nazi rule.

This mixture of dealing with the Nuremberg Code while reducing it to a mere technicality, of acknowledging the Nazi medical crimes while ignoring the physician's responsibility for these crimes, of emphasizing an abstract relevance of those crimes for current debates while denying any comparability between then and now was not specific to Beecher. In 1969, the American Academy of Arts and Science's official journal *Dædalus* published a thematic issue on the ethics of human experimentation. It compiled the results of a working group, established by the Academy in the aftermath of "Ethics and Clinical Research," that included Beecher himself. ²⁶ Of 17 contributions, mostly written by physicians, six did make no direct or indirect reference to Nazi medicine—among them Beecher's—, six dealt with the—technicalities of—the Nuremberg Code and three articulated the historical background of Nazi medical crimes, while

only two stated that these crimes had been committed by physicians: Anthropologist Margaret Mead (1901-1978) incidentally mentioned the "experimenting physicians in Nazi concentration camps" while psychiatrist Jay Katz (1922-2008) dealt quite extensively with the experience of Nazi medical crimes and the role that it should and could play in contemporary research ethics in a paper with a title reminiscent of Beecher: "The education of the physicianinvestigator."28 Katz, reflecting on his relationship with Beecher years later, acknowledged that they both "wanted to teach, not to indict."29 Although Katz realized early on that physicians had not much interest in being taught and was more open to practical constraints like consent requirements and government regulation, his approach was still predominantly didactic.³⁰ This prioritization was not the result of a lack, but rather of an abundance of knowledge about the Nazi medical crimes. Katz himself, just like his immediate family, had only narrowly escaped Nazi Germany and many of his relatives had been murdered in the Holocaust. When he learned about the Nazi experiments and read the transcripts of the Nuremberg Doctors' Trial, medical history became personal history. 31

Aside from this personal connection, Katz articulated much more clearly than Beecher that the Nazi experiments had neither been completely pseudo-scientific nor completely unprecedented, although, once again, without contradicting his predecessor.³² As he later specified, there was a difference in kind that separated the Nazi medical crimes from other ethical transgression since "the history of human experimentation has also been a history not of ravages, but of injuries, inflicted on human beings without their voluntary consent."³³ To guarantee the desired educational outcome, Katz had to assure that his readers and students were not emotionally involved—like he was—and thereby "tempted either to condemn the entire research process or to deny that the exploitation of research subjects, as revealed at Nuremberg, is an ever-relevant problem for human experimentation."³⁴

This did not mean to neglect or suppress historical knowledge, but to put it into perspective: In his 1972 anthology of sources and commentaries on human experimentation, Katz did not start chronologically with the Nuremberg Doctor's Trial, which he pushed back to the fifth chapter. Instead, he brought its continuous relevance to light much more subtly by beginning with the infamous Jewish Chronic Disease Hospitals Case: which had occurred in Brooklyn in 1963: A number of unconscious patients had been injected with cancer cells without their consent, a clinical experiment that, as Katz's documentation showed, was characterized at the time as belonging

 $^{^{23}}$ Beecher, H. K. (1970). Research and the individual. Human studies. Little, Brown and Company, pp. 77, 227–234.

²⁴Only recently has the Hastings Center renamed the prize to "Bioethics Founders Award" due to inconsistencies between what Beecher proclaimed and what he practiced as a clinical researcher. Cf. Gray, B. H., & Solomon, M. Z. (2021). The Center's Highest Award. *Hastings Center Report*. 51(4).

²⁵Stark, L. (2016). The unintended ethics of Henry K Beecher. *Lancet*, 387(10036), 2374–2375.

²⁶Capron, A. M. (2016). Henry knowles Beecher, Jay Katz, and the transformation of research with human beings. *Perspectives in Biology and Medicine*, 59(1), 55–77, p. 66.

²⁷Mead, M. (1969). Research with human beings: A model derived from anthropological field practice. *Daedalus*, 98(2), 361–386, p. 369.

²⁸Katz, J. (1969). The education of the physician-investigator. *Daedalus*, *98*(2), 480–501.

 $^{^{29}}$ Katz, J. (1993). "Ethics and clinical research" revisited: A tribute to Henry K. Beecher. Hastings Center Report, 23(5), 31–39, p. 32.

³⁰Cf. Capron, op. cit. note 26.

³¹Katz (1993), op. cit. note 29, p. 31f; Katz (1972), op. cit. note 11, p. ix.

 $^{^{32}\}mbox{Katz}$ (1969), op. cit. note 28, pp. 482, 484.

³³Katz, J. (1992). The consent principle of the Nuremberg Code: Its significance then and now. In G. J. Annas, & M. A. Grodin (Eds.), op. cit. (pp. 227–239), p. 228.

³⁴Katz (1972), op. cit. note 11, p. ix.

"more properly in Dachau, where for similar acts there had been prosecutions against the Nazis."35 Just like Beecher, Katz was convinced that only a proper education would prevent ethical overreach in human experimentation and "that no system of control will affect the unscrupulous investigator."36 Such a stance was surpassed by events already in 1972, when facts about the Tuskegee Syphilis Study were leaked to the public.

The Tuskegee study had documented the effects of untreated syphilis among African American men without their knowledge, and it went on for decades even after effective treatment had been developed. It was immediately abolished in 1972 and led to the establishment of a National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research by Congress in 1974. The commission was a multidisciplinary body with members and staff coming from medical practice and science, the humanities and law, as from the civil rights movement. Among other recommendations on different aspects of human subject research, the commission also issued, in its final act in 1978, a fundamental reflection on Ethical Principles and Guidelines for Protection of Human Subjects of Biomedical and Behavioral Research, which has become famous as the Belmont Report. The release of the report has been described by historian Robert Baker as a "watershed moment" since it established the principle of respect for a person's autonomy as the premise for all human subject research; its focus on overarching, universal principles distinguished the report from the Nuremberg Code and its historical context. It was, again in Baker' words, "post-Holocaust as well as post-Tuskegee."37

However, the report did not fail to acknowledge its broader background, that is, the history of abuses in human subject research on poor people, during the Tuskegee study, and, most prominently. during the Nazi era. 38 Already on its first page, the report mentioned the Nuremberg Doctors' Trial and Code, which "was drafted as a set of standards for judging physicians and scientists who had conducted biomedical experiments on concentration camp prisoners."³⁹ In a manner that could already be witnessed with Beecher and Katz, the report referred to the Nazi experiments, even explicitly stating the responsibility of physicians for these crimes, while emphasizing that the Nuremberg Code had been designed to deal with those medical crimes specifically.

The ambivalence in dealing with the Nazi experiments, the acknowledgment of their legacy, and the immediate containment of this legacy through contextualization continued in the Belmont

³⁵lbid., p. 16.

Report. The exact influence that the awareness of the Nazi experiments, the Nuremberg Doctors' Trial, and the Nuremberg Code had on U.S. scholars dealing with research ethics after the Second World War is hard to determine. Reflecting on this history, which is also their own history, bioethicists Ruth Faden and Tom Beauchamp have claimed that this awareness was "the single most important causal factor"40 for the development of informed consent in biomedical research, while adding that such a causality can only be properly understood in the context of a multitude of other political, social, and technological factors influencing research ethics after 1945. Research ethics incorporated the legacy of Nazi crimes as much as it contained their effect, and the examples presented hear bear witness to this ambivalent dis-engagement with Nazi medicine: They reflected the shared conviction that the Nazi experiments at German concentration camps were unparalleled but still challenged the practice of human experimentation as such—as Beecher had put it, they did not pose a practical, but a serious philosophical problem for research ethics. The fact that the work on the Belmont Report was no longer conducted by physicians alone but involved, especially, philosophers, might have contributed to the strengthening of such a philosophical perspective, which had already been present in Beecher's writings: The perspective that Nazi medicine could not simply be discounted as unethical but had resulted from an ethical consideration, which absolutely prioritized the good of the community and of future generations over the well-being of the individual.⁴¹

DIS-ENTANGLEMENT: LIFE, DEATH, AND THE NAZI ANALOGY

Much more than the somewhat insular and esoteric question of research ethics itself-insular and esoteric since mostly discussed by physicians within the realm of academic and professional medicine the social consideration of the individual in relation to an alleged common good generated associations with Nazism. Since the question of research ethics could immediately be tied to the Nazi experience through the Nuremberg Code, this association could also be convincingly contextualized and contained. Ethical questions, however, which related to just about everybody's experiences and fears, posed much greater difficulties in this respect. This was especially true of questions dealing with life and death-questions that, as Princeton theologian Paul Ramsey (1913-1988) pointed out by the example of Henry Beecher, were sometimes answered in

³⁶Katz, op. cit. note 28, p. 498. Cf. Faden, R. F., & Beauchamp, T. L. (1986). A history and theory of informed consent. Oxford University Press, p. 160.

³⁷Baker, R. (2013), Before bioethics, A history of American medical ethics from the colonial period to the bioethics revolution (p. 287f), Oxford University Press.

³⁸The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (1978). The Belmont report. Ethical principles and guidelines for the protection of human subjects of research. U.S. Department of Health, Education, and Welfare, p. 9.

³⁹lbid: 1. The subsequent, more elaborate, and impactful study by Beauchamp and Childress speaks in comparable terms about the relevance of the Nazi experience and documents the Nuremberg Code in full. Cf. Beauchamp, T. L., & Childress, J. F. (1979). Principles of biomedical ethics. Oxford University Press, pp. 62, 287-289.

⁴⁰Faden & Beauchamp, op. cit. note 36, p. 186.

⁴¹Such a perspective is not represented in the Report itself, but in the collection of commentaries which accompanied its formation Cf Childress J F (1978) The identification of ethical principles. In The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (Ed.), The Belmont report, Ethical principles and guidelines for the protection of human subjects of research, App. I (art. 7). U.S. Department of Health, Education and Welfare, p. 12: Veatch, R. (1978), Three theories of informed consent: Philosophical foundations and policy implications. In The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (Ed.), The Belmont report. Ethical principles and guidelines for the protection of human subjects of research, App. II (art. 26). U.S. Department of Health, Education and Welfare, p. 18.

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complete contradiction to what physicians were willing to concede with regard to research ethics, that is, that no higher good could justify making the human body a means to an end.⁴² Ramsey perceived a social and ethical debate in which "Nuremberg recedes" as fatal not only to research ethics but also to questions of life and death, especially euthanasia. He claimed that it was not "that the euthanasists are troubled by the Nazi experience as it is that they are troubled that the public is troubled by the Nazi experience."

This concern indeed affected bioethical discourse to a much higher degree than it had been the case with research ethics. Bioethics, as it turned out, was a product of the challenges that U.S. medicine faced in the late 1960s and the early 1970s. Social, moral, technological, and not least economic questions of healthcare produced an unprecedented crisis of legitimacy of the U.S. medical profession that put the physician's professional authority and social status into question.45 Into that void, bioethicists emerged, characterized-perhaps necessarily-by a self-awareness of their place amidst these changing dynamics. Bioethical scholars and institutions laid claim to transcending physician-centered medical ethics and theory-centered philosophical ethics. As Daniel Callahan (1930-1919), founder of one of the earliest bioethical institutions, the aforementioned Hastings Center, stated as a fundamental challenge facing said discipline: "Feet will be wet before feet are even in the water."46 This referred to bioethics' determination to engage with not only the new challenges of medical diagnostics, treatment, decisionmaking, and cost-saving but also the social discourse and disintegration accompanying those challenges.

What Renée Fox and Judith Swazey identified as "the coming of the culture wars to American bioethics" in the 2000s, resulting from a "narrow range of biomedical instrumentalities, all of which are associated with the beginning and the end of human life," actually had its roots in the 1970s, especially in the U.S. Supreme Court decision *Roe v Wade* on the constitutionality of abortion and the New Jersey Supreme Court decision *In re Quinlan* on the termination of life-sustaining measures in a permanent vegetative state. Both decisions immediately led to associations of said medical procedures with Nazi policy and implicated the bioethical discourse accompanying them, anticipating an analogy that would become endemic in the course of U.S. culture wars. Such associations were underlined by fears of an economic rationality overlaying health care priorities: As one gerontologist phrased it prominently in the *Journal of the American Medical Association* with regard to the social and economic

utility driving the Nazi patient-killings: "It can happen here." Bioethics did not only have to deal with the underlying moral issues of life and death but also with the associations accompanying these issues. The earliest discussion of "the proper use of the Nazi analogy in ethical debate" took place at a conference at the Hastings Center in 1976, and it included mostly non-physicians, such as ethicists, historians, lawyers, writers, and contemporary witnesses, among them the chief counsel for the prosecution of the Nuremberg Military Tribunals, Telford Taylor (1908–1998). What had motivated the Hastings Center to approach the Nazi analogy was not so much the defense of a certain bioethical position but rather the defense of bioethical debate *per se* since it had become

not unusual to find both sides in current debates over biomedical issues making references to the Third Reich—those favoring and those opposing legal restrictions on abortion, for example. [...] As long as people disagree about serious moral questions, it seems they will diverge in their appeals to this absolute standard. But the frequency and resonance of these allusions or analogies, however ambiguous or perhaps because of this very ambiguity, raises questions about not only the conduct of our discussion in this area, but about ethical discourse in our society generally.⁵⁰

Human subject research only played a minor role in the discussions at the conference; the Nuremberg Code was not mentioned once. The participants were much more concerned with notions of life and death, especially abortion, euthanasia, and genetics. Margaret Steinfels, editor of the Hastings Center Report, identified the relevance of a historical perspective when debating these issues in their proximity to "a constricting attitude about 'meaningful' human existence-a notion which has unstated assumptions about social utility underlying it."51 And while the participants mostly agreed that analogies between contemporary medical discourses and practices and the historical precedent of Nazi medicine were not valid, there was an understanding of the conditionality of ethical norms, as stated by Laurence McCullough, then a postdoctoral fellow at the Hastings Center: "Our slippery slope might yet be analogous to Nazi Germany's in a more abstract way. [...] I think the Nazi slippery slope is not a logical one, but a psychological one,"52 and therefore a universal challenge that bioethics had to grapple with.

Indeed, bioethics continued to grapple with the Nazi analogy in subsequent years, albeit in a very inconsistent and fluctuating fashion. When the Hastings Center's Daniel Callahan and Arthur

⁴²Ramsey, P. (1970). The patient as a person. Explorations in medical ethics. Yale University Press, p. 106f. Ramsey refers to Beecher's position towards brain death and organ transplantation.

 $^{^{43}}$ lbid: xvi. Cf. Ramsey, P. (1978). Ethics at the edges of life. Medical and legal intersections. Yale University Press, p. 211.

⁴⁴Ibid: 296.

⁴⁵Starr, P. (2021). The social transformation of American medicine. The rise of a sovereign profession and the making of a vast industry (Upd. ed.). Basic Books. p. 380f.

 ⁴⁶Callahan, D. (1973). Bioethics as a discipline. Hastings Center Studies, 1(1), 66–73, p. 68.
⁴⁷Fox, R. C., & Swazey, J. P. (2008). Observing bioethics. A sociological history. Oxford University Press, p. 292.

⁴⁸Hunter, J. D. (1991). *Culture wars. The struggle to define America*. Basic Books, pp. 150–152.

⁴⁹Reiff, T. R. (1978). It can happen here. *Journal of the American Medical Association*, 239(26), 2761–2762.

⁵⁰Callahan, D., Caplan, A., Edgar, H., McCullough, L., Powledge, T. M., Steinfels, M., Steinfels, P., Veatch, R. M., Walsh, J., Colton, J., Dawidowicz, L. S., Himmelfarb, M., & Taylor, T. (1976). Biomedical ethics and the shadow of Nazism. A conference on the proper use of the Nazi analogy in ethical debate. *Hastings Center Report*, 6(4), Special Supplement, p. 2.

⁵²Ibid: 15f.

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Caplan edited a book with the topical title Ethics in Hard Times in 1981, they criticized that ethicists "have not been as quick to look at the historical and social roots of their own theories and views."53 while not mentioning Nazism or Nazi medicine as one such plausible root with a single word. Cynthia B. Cohen, on the other hand, wrote a lengthy rebuttal of the Nazi analogy that centered around the incomparability of historical conditions and philosophical premises of Nazi medicine and contemporary quality-of-life debates.⁵⁴ When the Hastings Center revisited the Nazi analogy in 1988, dedicating a new discussion format of its journal to the topic, many of the known arguments were repeated.

Yet, something had changed. While the aforementioned Cynthia B. Cohen had, in her repudiation of the Nazi analogy 5 years earlier, focused on Hitler's ideology, its simplicity, and its incommensurability with contemporary medical and ethical discourses, she now highlighted that the "role of health care professionals as state executioners was central to National Socialist ideology. The Nazis viewed their program as a form of biomedical engineering that could only be carried out by health care professionals." She also acknowledged that there "are respects in which we stand in danger-wittingly or unwittingly-of repeating the terrible acts of the Third Reich. [...] To avoid these moral errors, we must continue to ask ourselves whether we are stumbling toward a practice that is reminiscent of the Nazis."55

While it cannot be determined unequivocally what caused this change of thought and tone, a factor that will have played a role was the publication of Robert Jay Lifton's book The Nazi Doctors in 1986. Lifton, a psychiatrist who had begun to investigate the psychology of extreme situations already in the late 1950s and risen to prominence for his studies on Hiroshima and concentrations camp survivors as well as veterans of the Vietnam War, now had changed his perspectives and delivered an extensive study, both on health professionals' involvement in Nazi crimes and on the psychological processes allowing for "healers" turning into "killers." Assisted by a wave of renewed public interest in Nazi history in the wake of the NBC mini-series Holocaust, which had aired in 1978, Lifton's book was immensely successful and influential.

One of the reasons for the book's general success was Lifton's explicit claim that the psychology of "medicalized killing" was relevant beyond the narrow historical context.⁵⁶ Apparently surprised by the reception of his book, he tried to explain the reactions by relating them to an experience that he himself had made while conducting his research: He described a dream of becoming part of an infernal chorus, that is, becoming part of the Nazi doctors by portraying not only their crimes but also their rationales, and claimed that "any

immersion into the world of Nazi doctors runs the risk of entering into that infernal chorus."57 The change in perspective and tone of the bioethical debate of the Nazi analogy can be interpreted as a reaction to such an immersion: The question was no longer if Nazi "euthanasia" was comparable to contemporary practices of end-oflife decision-making, but if a closer look into Nazi medical history revealed something about modern medicine as such, including its ethical foundations. Here, Lifton left a notable mark on the ongoing debate of Nazi medicine's relevance to contemporary bioethics.

Not everybody was as frank as Courtney Campbell, who, in another rebuttal of the Nazi analogy, nevertheless expressed his concern "with the psychology of moral distancing, in which moral conscience is compartmentalized from vocational interests,"58 explicitly referring to Lifton and his psychological explanation of Nazi medicine. The question that loomed large behind Lifton's study, although he himself never posed it, was articulated at the aforementioned conference on "The meaning of the Holocaust for Bioethics" in 1989 by its organizer, Arthur Caplan, then head of the Center for Biomedical Ethics at the University of Minnesota: "If the Holocaust could be defended on ethical grounds then what use is bioethics?"59 Caplan, from here on, became the most ardent advocate of a disentanglement of Nazi history and bioethics: On the one hand, he was completely unambiguous in his conviction that analogies between specific historical phenomena from the Nazi era and practices of contemporary medicine and biomedical research had no substance. On the other hand, he was no less unambiguous in his conviction that not only the Nazi medical crimes but also the Holocaust would have been unthinkable without their ideological, practical, and ethical rationalization by medical professionals and scientists, a contribution that was provided out of conviction and that posed an ongoing. universal challenge for medicine and bioethics.

Caplan's thinking was very close to Lifton's, although he seldomly referred to the latter's work: Where Lifton spoke of a "medicalized killing" and "the transformation of the physician-of the medical enterprise itself-from healer to killer," Caplan bemoaned "the fact that many who committed the crimes of the Holocaust were competent physicians and health care professionals acting from their moral conviction" and asked how it had been possible for "those sworn to the Hippocratic principle of nonmaleficence to kill." Where Lifton identified a "broad Nazi 'biomedical vision'," and "the interaction of Nazi political ideology and biomedical ideology," with the guiding principle that "[i]f you are curing a sickness, anything is permissible," Caplan saw an "overarching biomedical paradigm," based on the perception of an existential "biological threat" and the determination that the "appropriate response to such a threat was to eliminate it, just as a physician must eliminate a burst appendix using surgery or a dangerous bacterium using penicillin." Where Lifton was

⁵³Caplan, A. L., & Callahan, D. (1981). Introduction. In A. L. Caplan & D. Callahan (Eds.), Ethics in hard times (pp. ix-xv). Plenum Press, p. xi.

⁵⁴Cohen, C. B. (1983). 'Quality of life' and the analogy with the Nazis. *Journal of Medicine and* Philosophy, 8(2), 113-135.

⁵⁵Hentoff, N., Callahan, D., Crum, G. E., & Cohen, C. B. (1988). Contested terrain: The Nazi analogy in bioethics. Hastings Center Report, 18(4), 29-33, p. 32f.

⁵⁶Lifton, R. J. (1986). The Nazi doctors, Medical killing and the psychology of genocide, Basic Books; Cf. Fermaglich, K. (2006). American dreams and Nazi nightmares. Early Holocaust consciousness and liberal America, 1957-1965. Brandeis University Press, p. 128.

⁵⁷Lifton, R. J. (2011). Witness to an extreme century. A memoir. Free Press, pp. 330, 334f. ⁵⁸Campbell, C. S. (1992). It never dies: Assessing the Nazi analogy in bioethics. *Journal of*

Medical Humanities, 13(1), 21-29, p. 28.

⁵⁹Caplan, A. L. (1992). Preface. In A. L. Caplan (Ed.), When medicine went mad. Bioethics and the Holocaust (pp. v-viii). Humana, p. vi.

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certain of the significance that his psychologization of the Nazi doctors "holds for other expressions of genocide as well," Caplan related his biomedical understanding of the Holocaust to other, "more recent Holocausts." Caplan's reference to the Holocaust had lasting effects on the bioethical understanding of Nazi medicine, as the recent special issue of *Bioethics*—as much as an abundance of corresponding publications—clearly points out. Yet, this reference was, at the same time, a way of incorporating Nazi history into bioethical self-awareness and a strategy of coping with the Nazi analogy and its persistence in bioethical discourse. Displaying not only a bioethical awareness of the Nazi medical crimes but also an unequivocal acknowledgment of the responsibility for and ethical justification of those crimes by medical professionals became the basis for rebuking specific analogies between past and contemporary concepts and practices.

Caplan's question-what use did bioethics have when the Nazi medical crimes could be justified by a prevalent ethical rationale?found its answer not so much in specific bioethical arguments, but in the mere existence of the field. The use that bioethics could claim to have was in liberating ethics from its medical traditions and suppositions, which not only had been unable to prohibit medicine's involvement in Nazi crimes but had also even actively advocated such involvement. This dis-entanglement of bioethics and Nazi medicine on the one hand acknowledging medicine's seminal role in perpetrating and justifying Nazi medical crimes and on the other hand rebuking any analogies between past and present practices-was articulated much more clearly and also much more consistently by another bioethicist: In March 1996, the head of the Kennedy Institute of Ethics, Robert M. Veatch (1939-2020), wrote a letter to the director of the United States Holocaust Memorial Museum, Walter Reich, in which he apologized for not having been able to participate in the recent conference "Hippocrates betrayed: Medicine in the Third Reich." He also conveyed his skepticism "that Hippocrates was in such contrast with the Third Reich. Of course, Hippocrates cannot be blamed for the actions of the Nazi physicians, but I do think that the Hippocratic ethics contains elements that made it attractive to the Third Reich physicians," particularly pointing to "the absence of any social ethic in the Hippocratic tradition."62

This explication of the problems of Hippocratic ethics, its connection to Nazi medicine, and its bioethical resolution was a continuous theme of Veatch's thinking. Just like Caplan, he had already been a participant at the Hastings Center's conference on the

Nazi analogy. Shortly thereafter, Veatch shared his own thoughts on the relevance of Nazi medicine in his assessment of research ethics in the preparatory work for the Belmont report, pointing to the ethical rationale behind Nazi experiments as well as, in passing, to the problems inherent to the Hippocratic tradition.⁶³ In his programmatic Theory of Medical Ethics, published in 1981, Veatch argued vehemently "against the dangerous Hippocratic principle" of doctoral beneficence, claiming that it was "a bizarre ethic that bases correctness of moral action in what one happens to think is beneficial, without specifying rigorous criteria for testing the individual's intuitions of right and wrong, good and bad."64 Both threads were eventually tied together in Veatch's review of Robert Lifton's The Nazi Doctors in 1987, where he argued against the authors' view that Hippocratic ethics could and should have provided a sufficient barrier against the medical profession's involvement in Nazi crimes, while lauding his psychological explanation for this involvement, the relevance of which was "not limited to the Nazi physician."65 In so many words. Veatch reiterated that the problem had been-and continued to be-inherent in the traditional physician's ethics and that it not only could be identified historically but also resolved practically by means of bioethics.

4 | HISTORICIZING ETHICS, ETHICIZING HISTORY

When the American Journal of Bioethics launched in late 2001, one of the first original articles that were published in the new journal dealt with the ethical legacy of Nazi medicine. The author, Georgetown University's Warren T. Reich, emphasized the necessity of reassessing the ethical self-rationalization of Nazi medicine in order to go beyond the minimum criteria established by the Nuremberg Code, centering around the principle of informed consent:

While a system of individual rights is essential in a society that wants to preserve minimal humaneness and is an unavoidable component of contemporary medical ethics, it is important in the second generation of postwar medical ethics to go considerably deeper than this "first line of ethical defense." To develop an adequate ethics for the healthcare professions, we need to look more deeply into the sentiments and commitments of healthcare professionals. 66

Reich epitomizes the history of bioethics probably like no other: on the one hand through his biography—a Catholic theologian who became one of the first research scholars at the Kennedy Institute of

⁶⁰Lifton. (1986), op. cit. note 56, pp. 4f., 488; Caplan, A. L. (1992). How did medicine go so wrong? In A. L. Caplan (Ed.), op. cit. (pp. 53–92), p. 58; Caplan, A. L. (1992). The doctors' trial and analogies to the Holocaust in contemporary bioethical debates. In G. J. Annas, & M. A. Grodin (Eds.), op. cit. (pp. 258–275), p. 268; Caplan, A. L. (1994). The relevance of the Holocaust to current bio-medical issues. In J. J. Michalczyk (Ed.), *Medicine, ethics, and the third reich. Historical and contemporary issues* (pp. 3–12). Sheed & Ward, p. 7.

⁶¹This strategic component becomes more obvious when reading Caplan's extensive and quite personal account of the development of U.S. bioethics, in which the Holocaust plays practically no role and, incidentally, is characterized as "purely historical." Acadia Institute Project on Bioethics in American Society, Interview with Arthur L. Caplan #5, 24 May, 1999, p. 9. Online: http://hdl.handle.net/10822/557021

⁶²Robert M. Veatch to Walter Reich, 1 March 1996, BRL-018, Box 3, Folder 1, Bioethics Research Library Archives, Georgetown University, Washington, DC.

⁶³Veatch (1978), op. cit. note 41, pp. 7f., 57.

⁶⁴Veatch, R. M. (1981). A theory of medical ethics. Basic Books, pp. 147, 149.

 $^{^{65}\}mbox{Veatch},$ R. M. (1987). Nazis and hippocratists: Searching for the moral relation. The Psychohistory Review, 16, 15–31, p. 29.

⁶⁶Reich, W. T. (2001). The care-based ethic of Nazi medicine and the moral importance of what we care about. *American Journal of Bioethics*, 1(1), 64–74, p. 65.

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Ethics in 1971, and shortly thereafter founded the bioethics program at Georgetown University's medical center-, on the other hand through his work, not only researching the roots of bioethics in the United States but also crafting one of the first symbols of the new discipline, the Encyclopedia of Bioethics.⁶⁷ Already in the first edition and again in the second, both edited by Reich, the Encyclopedia included contributions that specifically addressed Nazi medicine and its relevance for bioethics.⁶⁸ Those entries, just like Reich's paper, and just like the other engagements with the bioethical relevance of Nazi medicine that we have discussed here, can be criticized as inadequate and even tendentious, as more or less openly selective in the aspects of Nazi history in general and Nazi medicine in particular that they chose to include and address. Such targeted criticism is necessary, as much as it would inevitably go beyond the sweeping accusation that "liberal bioethics" ignored or suppressed the history of Nazi medicine as Boas et al. claim. Identifying structural traits of bioethics' representation of Nazi medicine should not exclude appreciating the individual interests and motives, the contingent histories that blur into history.

What is common to the different bioethical approaches towards Nazi medicine—notwithstanding their respective accentuations, from Henry Beecher via Jay Katz to the Belmont Report, from the Hastings Center via Arthur Caplan to Robert Veatch—is the attempt to make history ethically relatable and incorporable. This attempt is transparent in the title that Arthur Caplan chose for his conference in 1989: "The Meaning of the Holocaust for Bioethics," which represents something very different from, for example, the meaning of bioethics in light of the Holocaust. The notion that history means something for ethics goes along with the effort to find those historical examples that fit the ethical prerogative, or rather can be adjusted accordingly. Rather than highlighting a nexus between medical history and bioethics, or historicizing the establishment of bioethics, this approach must be understood as the ethicization of history, as an instrumental resort to historical facts or narrations thereof, chosen and arranged in a way that lends legitimacy to a contemporary ethical argument—be this argument about clinical or research practices, about the very necessity of bioethics itself, or about conceptions of public health, as has been demonstrated most recently by Boas et al.

Their sense of how Nazi medicine relates to the broader history of medicine, exemplifying their ethical prerogative, revolves around the fundamental juxtaposition of "communitas" and "immunitas," or inclusion and exclusion, especially in public health. In this, they refer to the political scientist Roberto Esposito and his understanding of Nazi biopolitics, adopting an illustrative historical example that Esposito presents: that is, that the Nazis had "medical-biological principles as rationales, or the guiding criteria of their actions, even inscribing the words 'Cleanliness and Health' on the entrance gate to

Even more, it highlights a perhaps inevitable tendency of ethicizing history in the pursuit of relating it to bioethics. This tendency connects the earliest and the most recent examples presented here, marking a continuity that undermines any notion of a split between "liberal" bioethics and the bioethics that, ostensibly, comes after. Connecting history and bioethics might, in contrast, gain from a perspective that is, at the same time, more involved and more reserved: More involved in the historical material, the sources, and historiography, and more reserved in imposing its own themes and its own logic onto that material. Such an approach could contribute to an understanding of the historicity of bioethics instead of repeating the teleological fallacy of "insinuating meaning where none exists." 72

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the Mauthausen concentration camp."69 The fact that Esposito speaks of "Mathausen" 70 could have aroused suspicion and led to the awareness that his very fitting representation of Nazi history simply is false: In the concentration camp of Mauthausen, situated close to the Austrian city of Linz where Adolf Hitler spent much of his youth, no such inscription was installed at any point of its existence. Some barracks were equipped with wooden signs that displayed a cynical appeal comparable to those at other concentration camps: "There is a path to freedom. Its milestones are: Obedience, diligence, orderliness, cleanliness, honesty, self-sacrifice, love of the fatherland."71 Yet, the distinct biopolitical notion that Esposito alleged and that Boas et al. integrated into their historical-ethical reasoning is completely missing from the artifact. This does not necessarily constitute an argument against their ethics, but it does undermine their claim that the legitimacy of their ethics is granted by history.

⁶⁷Jonsen, A. R. (1998). The birth of bioethics. Oxford University Press, pp. 23, 27.

⁶⁸Redlich, F. C. (1978). Medical ethics under national socialism. In W. T. Reich (Ed.), Encyclopedia of bioethics (pp. 1015-1020). The Free Press; Proctor, R. N. (1995). National socialism. In W. T. Reich (Ed.), Encyclopedia of bioethics (Rev. ed., pp. 1794-1799). Simon & Schuster.

⁶⁹Boas, H., et al. (2021), op. cit. note 2, p. 543.

⁷⁰Esposito, R. (2013). Terms of the political. Community, immunity, biopolitics, p. 83. Fordham University Press. Boas et al. refer the quote to the wrong page in the book.

⁷¹"Es gibt einen Weg in die Freiheit. Seine Meilensteine heißen: Gehorsam, Fleiß, Ordnung, Sauberkeit, Ehrlichkeit, Opfermut, Liebe zum Vaterland," Maršálek, H. (2006), Die Geschichte des Konzentrationslagers Mauthausen. Dokumentation (4th ed.). Edition Mauthausen, p. 73.

⁷²Adorno, T. W. (2006). History and freedom. Lectures 1964-1965. Polity Press, p. 9.

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