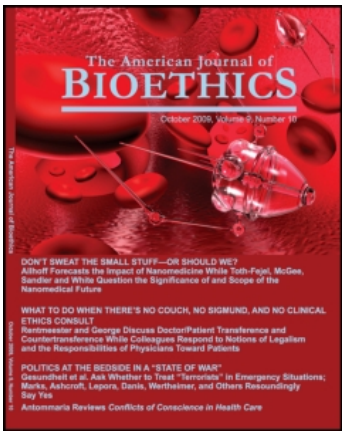

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Reflections on 'Rethinking Research Ethics'

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Guest Editorial

Reflections on 'Rethinking Research Ethics'

Robert J. Levine, Yale University

Rosamond Rhodes presents us with a very interesting and provocative proposal for the recruitment of research subjects—a form of conscription (Rhodes 2005). She argues that adoption of this proposal would help correct our current overemphasis on informed consent and on the protection of vulnerable persons and mitigate the adverse consequences of this overemphasis. It is not clear whether she wishes to have her proposal considered as a policy that would be adopted officially as a replacement for current policies for the recruitment of research subjects or whether, instead, she intends primarily to stimulate discussion (Beauchamp 2005). If she aspires to replace current policies and practices for the recruitment of research subjects, she will surely be disappointed. If, on the other hand, she wishes only to provoke reflection on her concerns, she has already begun to succeed. Her article has already had the salutary effect of eliciting several valuable commentaries, also published in this issue of *AJOB*.

THE ROLE OF RESEARCH SUBJECT RECONSIDERED

I will not detail my reasons for predicting that this proposal of a system of conscription of research subjects is destined to miscarry. There is sufficient discussion of this in the commentaries in this issue ranging from practical reasons that this proposal would fail (e.g., Sharp and Yarborough 2005) to ethical reasons that this proposal should fail (e.g., Simmerling and Schwegler 2005). Two commentators reached conclusions that prompt me to recall a proposal I offered in the 1970s—that it might be appropriate to view the role of research subject as a job (Levine 1976a). Allhoff (2005) addresses Rhodes' concern that those who reap the benefits of research subject without participating as subjects should be seen as 'free-riders'. He concludes that, as long as research subjects are remunerated adequately, such branding is unwarranted. Commentators Wachbroit and Wasserman conclude that "research participation should be seen as a valuable civic activity, like school tutoring, volunteer fire-fighting, and neighborhood patrolling. Like those other activities, it is a way for individuals to serve a community from which they derive many benefits" (Wachbroit and Wasserman 2005, 49). I would add that while it is good if we can have people volunteer their services as (e.g.) school tutors and fire-fighters, it is also necessary and ethically acceptable to consider teaching and fire-fighting as jobs and to pay people for doing them.

A full discussion of the role of research subject as a job is beyond the scope of this editorial. I believe, as I did in 1986,

> that most IRBs, as they consider appropriate levels of cash payments, view the role of research subject as an ordinary job generally requiring relatively unskilled workers. Wages are determined by customary market factors in that they are established at sufficiently high rates to attract suitable numbers of subjects. . . This seems appropriate to me for the vast majority of research projects in which persons capable of informed consent volunteer to assume such burdens as minimal risk. (Levine 1986, 83)

For all research involving human subjects there should be a system of no-fault compensation for research-induced injury (Levine 1986, 155ff). This is particularly important if we would extend the role of research subject as a job to research in which the level of risk is more than a minor increase above minimal risk. As well, in research presenting more than a minor increase above minimal risk, we should take seriously Beauchamp's proposition regarding stipends for the subjects: "The key is to strike a balance between a rate of payment high enough that it does not exploit subjects by underpayment and low enough that it does not create an irresistible inducement to an unwelcome participation in research" (Beauchamp 2005, 33).

CONCEPTUAL ISSUES

Rhodes identifies four issues (she calls them 'accepted research dogmas') as targets for her dispute; these are: 1) the primacy of informed consent, 2) protection of the vulnerable, 3) the substitution of beneficence for research's social purpose, and 4) the introduction of an untenable distinction between innovation and research (Rhodes 2005). I agree that informed consent gets more than its share of attention in contemporary discussions of research ethics and that its documentation on consent forms dominates the process of review by institutional review boards at the expense of other equally or more important matters (Levine 1986, 134ff). I also agree that in some cases the definition of who is to be considered vulnerable is expanded beyond reasonable bounds and that some of the protections required by regulations are excessive and counterproductive (Levine 1986, 291ff; Levine 1995); I will not now discuss these issues further. I do not agree that beneficence has been substituted for research's social purpose or that the distinction between innovation and research is untenable. On these two topics Rhodes has misunderstood the Belmont Report.

In its commentary on the principle of beneficence in the Belmont Report, the National Commission wrote:

> The obligations of beneficence affect both individual investigators and society at large, because they extend both to particular research projects and to the entire enterprise of

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> research. In the case of particular projects, investigators and members of their institutions are obliged to give forethought to the maximization of benefits and the reduction of risk that might occur from the research investigation. In the case of scientific research in general, members of the larger society are obliged to recognize the longer term benefits and risks that may result from the improvement of knowledge and from the development of novel medical, psychotherapeutic, and social procedures (National Commission 1978).

Beneficence then, is not a substitute for the social purpose of research, It is instead an expression, an explication of that social purpose. The principle, as interpreted by the National Commission, also grounds an obligation for investigators to secure the well being of individual subjects as they work to develop information that will form the basis of our being better able to do so in the future (Levine 1986, 16–17).

The distinction between innovation and research is not untenable. The National Commission defined 'research' as a class of activities designed to develop or to contribute to the development of generalizable knowledge. 'Practice', by contrast, is a class of activities designed to enhance the well being of patients or clients. The National Commission went on to observe that the customary standard for 'accepted' practice was "a reasonable expectation of success". Well, then, what does one call activities that are designed to enhance the well being of patients but have not been adequately tested so that they meet the reasonable expectation of success standard? In the days before the National Commission completed its conceptual clarifications, many people referred to these activities as 'research' for reasons elaborated in (Levine 1991). A review of the legislative history of the act that created the National Commission (Kay 1975; Levine 1976b) shows that many cases of 'research' cited at the hearings were not research at all, they were what I called 'nonvalidated practices' and what the Commission decided to call 'innovative practices or therapies' (Levine 1986, 4). They included the use of Depo-Provera as a long-acting injectable contraceptive, the use of diethylstilbesterol as a 'morning after' pill and the sterilization of two mentally retarded sisters; none of these activities were intended to contribute to the development of generalizable knowledge. Regarding the first two examples, part of the problem was that research had not been done to validate them. Congress, in the act in which it established the National Commission, called upon it to accomplish several general conceptual assignments. The first listed among these was a clarification of the boundaries between biomedical or behavioral research and the accepted and routine practice of medicine (Levine 1986, 3). Congress signaled its view of the importance of this issue by assigning it this pride of place.

Rhodes implies that part of the National Commission's conceptual error is that is seems to endorse the Declaration of Helsinki's distinction between therapeutic and nontherapeutic ('clinical' and 'non-clinical') research. Actually, the National Commission explicitly rejected this distinction (Levine 1979; Levine 1986, 8–10) and replaced it with 'component analysis' in which each component of a research protocol is classified either as holding out the prospect of direct benefit or not holding out such a prospect. The former interventions and procedures are labeled 'beneficial' and the latter, 'non-beneficial'. The standards for justification of risk in each of these categories differ substantially (Levine 1986, 62–64).

REFLECTIONS ON THE NAZI ATROCITIES

According to Rhodes, the development of

> . . . contemporary research ethics policies started with reflection on the atrocities perpetrated upon concentration camp inmates by Nazi doctors. Apparently, as a consequence of that experience, the policies that now guide human subject research focus on the protection of human subjects by making informed consent the centerpiece of regulatory attention. (Rhodes 2005, 7)

Commentaries in this issue of *AJOB* indicate distinct differences in opinion regarding the role of reflection on the Nazi atrocities in the development of contemporary standards. Four commentators agree that the imagery of the Nazi research was an important influence; of these one supports his position simply by citing one of my publications (List 2005) so I will discount his vote lest the reader charges that I get to vote twice. Three commentators mention the Nazi influence without taking a side and five make no mention of the matter. Two commentators deny the importance of a response to the Nazi experience. One supports this position in part with a *non sequitor*, arguing that the Nuremberg Code was rejected by the medical community (Macklin 2005). The fact that early workers in the field of research ethics and regulation found the Nuremberg Code inadequate indicates a rejection of the work of the Americans who created the Code and not a denial of the influence of the Nazi imagery. Although the Code was widely rejected, it was not without influence. The World Medical Association, for example, rejected the Nuremberg Code as a document created by jurists to establish standards for criminal prosecution. This point notwithstanding, in its development of the Declaration of Helsinki, the WMA adopted in modified form many of the provisions of Nuremberg (Lederer 2004). For another example, the Food and Drug Administration in its first publication of regulations calling for informed consent, "drew extensively on both the Nuremberg Code and the Declaration of Helsinki" (Lederer 2004).

Memories of the Nazi concentration camp research were also fresh in the minds of members of the United Nations General Assembly when in 1966 they adopted the International Covenant on Civil and Political Rights. Article 7 of this Covenant reads: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." It is clear that the UN perceived medical or scientific experimentation as a subset of a larger category called "torture or cruel, inhuman or degrading treatment or punishment." These images also influenced Hans Jonas (London 2005; Jonas, personal communication) as he wrote his highly influential essay, "Philosophical reflections on experimenting with human subjects" (Jonas 1969).

DISCLOSURE

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