

Medical Experimentation, Prisoner Protections, and Government Liability:  
A Study on the Violation of Prisoners' Constitutional Rights during U.S. Experiments in  
Guatemala from 1946 to 1948

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## ABSTRACT

From 1946 to 1948, the United States Public Health Services, with the cooperation of Guatemalan government authorities, conducted studies on STD prophylaxis, specifically for chancroid, gonorrhea, and syphilis, using human subjects in Guatemala. The subjects consisted of commercial sex workers, Guatemalan soldiers, mental hospital patients, leprosy patients, and prisoners. This essay analyzes the extent to which these experiments violated the constitutional and legislative protections of prisoners in the United States and Guatemala in the 1940s, as well as how these protections have developed since the 1940s. This essay argues that the United States and Guatemalan authorities violated federal protections for prisoners and subjected prisoners to experimentation without their knowledge or consent, and that, while the United States had no federal law against human experimentation in the 1940s, and thus, could argue that the experiments were legal, Guatemala provided the United States with the opportunity to experiment on vast populations in unethical ways without the U.S. public's knowledge. Using correspondence and official reports from the Records of John C. Cutler in the National Archives, constitutions, court cases, and legal codes from the United States and Guatemala, and the 2011 Presidential Commission reports of both Guatemala and the United States, this essay details the specific violations present in the Guatemala studies and how the wartime culture surrounding venereal disease research encouraged such a study to take place. Concerning the extent to which a country's laws and constitutional rights truly protect its citizens, it is important to address events like the Guatemala experiments and, as necessary, establish further legislative protections to prevent a study of this kind from occurring again.

## INTRODUCTION

From 1946 to 1948, the United States Public Health Services' (USPHS) Venereal Disease Program, in collaboration with the Pan American Sanitation Bureau, the Public Health Services of Guatemala, and Guatemalan government officials, conducted studies on STDs, specifically syphilis, gonorrhea, and chancroid, using human subjects,<sup>1</sup> colloquially known as the Guatemalan STD Experiments. These experiments involved the intentional exposure of over 1,300 subjects to these STDs, and diagnostic testing that involved a total of over 5,000 participants in the study.<sup>2</sup> Subjects in this study primarily consisted of commercial sex workers, soldiers, prisoners, psychiatric patients, leprosy patients, and children.<sup>3</sup> This paper will specifically focus on the estimated 205<sup>4</sup> to 219<sup>5</sup> prisoners in Guatemala's Central Penitentiary who were involved in varying STD studies and the ways in which these experiments violated

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<sup>1</sup> Records of Dr. John C. Cutler: Folder 1- Final Syphilis Report Part 1. National Archives. 1955.

<sup>2</sup> Presidential Commission for the Study of Bioethical Issues. "Ethically Impossible: STD Research in Guatemala from 1946 to 1948." Washington, D.C., September 2011. p. 6

<sup>3</sup> Ibid. p 6.

<sup>4</sup> Comisión Presidencial para el Esclarecimiento de los Experimentos Practicados con Humanos en Guatemala, and Rafael Espada. *Consentir El Daño: Experimentos Médicos de Estados Unidos En Guatemala, 1946-1948*. Primera edición. Guatemala: Vicepresidencia de Guatemala. 2011. P. 10

<sup>5</sup> Presidential Commission for the Study of Bioethical Issues. "Ethically Impossible: STD Research in Guatemala from 1946 to 1948." Washington, D.C., September 2011. P 53

their constitutional protections. The purpose of this essay is to explain legal protections for prisoners in the 1940s regarding human experimentation in the United States and Guatemala, analyze the extent to which the STD experiments in Guatemala violated these protections, and examine how protections for prisoners have changed since the 1940s. This paper utilizes correspondence and official reports from the Records of John C. Cutler in the National Archives, constitutions and legal codes from the United States and Guatemala, and the 2011 Presidential Commission reports of both Guatemala and the United States, published in response to the public discovery of the experiments in 2010.<sup>6</sup>

This essay is divided into four parts. The first examines the political context that allowed the experiments to take place and how the United States eventually began operations in Guatemala. The second argues that the United States Constitution, meant to be interpreted in broad-reaching terms by individual courts, and ratified in 1787, does not provide specific protections for prisoners concerning human experimentation. While prisoners are protected from Cruel and Unusual Punishment under the Eighth Amendment, what constitutes ‘cruel and unusual punishment’ is similarly undefined and depends on court interpretation. In contrast to the United States Constitution, the Guatemalan Constitution provides detailed and specific protections for citizens and vulnerable populations like prisoners. The third argues that the Guatemala STD experiments, primarily conducted and funded by the United States, did not violate standing legal restrictions in the United States on experimentation with humans in the 1940s, because there would be no restrictions in place until the National Research Act of 1974. Conversely, Guatemala’s 1945 Constitution and federal laws outline specific protections for citizens and prisoners. Under these laws, the authorities involved in conducting the experiments in Guatemala were acting illegally. The fourth and final part details how protections for prisoners and restrictions on scientific experimentation have developed since the 1940s.

## PART I: SYPHILIS IN THE U.S. AND GOING TO GUATEMALA

In 1943, Dr. John F. Mahoney, Director of the Venereal Disease Research Laboratory, and Dr. R. C. Arnold, Mahoney’s Assistant Director, discovered that penicillin could cure syphilis in rabbits and, after testing, that it could cure syphilis in man as well.<sup>7</sup> Venereal diseases were a major concern in the United States military, with venereal disease being “the leading cause of incapacitation or rejection from active duty”<sup>8</sup> during WWI. By WWII, the USPHS initiated “a full-fledged national [venereal disease] control program,”<sup>9</sup> and there was an intense public campaign advocating for a cure to syphilis, in part “because of the high rates of rejection of draftees due to syphilis and because of the high rates of absence from duty of military manpower

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<sup>6</sup> Ibid. p. 4

<sup>7</sup> Records of Dr. John C. Cutler: Folder 1- Final Syphilis Report Part 1. National Archives. 1955. page 5.

<https://nara-media-001.s3.amazonaws.com/arcmedia/research/health/cdc-cutler-records/folder-1-syphilis-report.pdf>

<sup>8</sup> Cutler, John C., MD, MPH. and R.C. Arnold, MD. “Venereal Disease Control by the Health Departments in the Past: Lessons for the Present.” American Journal of Public Health Vol. 78, No. 4. April 1988.0090-0036/88\$1.50. p. 372.

<sup>9</sup> Ibid. p. 373

resulting from syphilis and gonorrhea.”<sup>10</sup> This campaign pressured U.S. government officials to find a fast-acting and effective cure for syphilis as soon as possible. When Dr. Mahoney and Dr. Arnold published their discovery that penicillin was an effective treatment for syphilis in 1943, it was issued to the U.S. military for treating soldiers within the same year, though critics argued that there was not enough testing done to know the efficacy of the treatment or the long-term effects of its usage.<sup>11</sup>

Dr. Mahoney and Dr. Arnold, with the help of Dr. John C. Cutler, were tasked to study the use of penicillin as a treatment for syphilis. For over a year, the Venereal Disease Research Lab, under the supervision of these three doctors, conducted small-scale studies on naval vessels with high rates of syphilis, but the results were inconclusive.<sup>12</sup> It was during this period that the chief of the Venereal Disease Control Division of Guatemala’s Public Health Services, Dr. Juan M. Funes, was assigned to work at the Venereal Disease Research Lab, and it was Dr. Funes who suggested that the USPHS continue its research in Guatemala.<sup>13</sup> The United States and Guatemala had been collaborating on venereal disease research since 1931<sup>14</sup>, with the United States providing aid that included provisions for medical services and the development of public health services.<sup>15</sup>

According to Dr. Cutler, “the suggestion was ideal for many reasons.”<sup>16</sup> The primary motivator for going to Guatemala, according to Cutler, was the legalization of sex work, noting that the Guatemalan Public Health Services “supervised” all sex workers’ health and kept extensive records of their medical histories.<sup>17</sup> Another important factor was that conjugal visits and prostitution were permitted in Guatemalan prisons, as long as prisoners paid for the visits themselves.<sup>18</sup> The USPHS’ original plan was to expose sex workers to syphilis and gonorrhea and, upon signs of infection, pay these workers to have conjugal visits with prisoners in Guatemala’s state penitentiary, with both the prisoners and sex workers acting as regulated and monitored control groups to test the natural spread of venereal disease.<sup>19</sup> Though this exact experiment was never carried out, due in part to the prisoners’ apprehension and lack of cooperation with researchers,<sup>20</sup> they would expand their testing demographic beyond the penitentiary and into orphanages, schools, military hospitals, and mental institutions.

By 1946, the USPHS had performed several STD experiments on prison populations, including the syphilis experiments in Terre Haute Penitentiary from 1943 to 1944, and

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<sup>10</sup> Ibid. p. 374

<sup>11</sup> Marshall, James. “Penicillin in the Treatment of Syphilis.” *Nature* 156, 769-772 (1945). <https://doi-org.proxysb.uits.iu.edu/10.1038/156769a0>,

<sup>12</sup> Records of Dr. John C. Cutler: Folder 1- Final Syphilis Report Part 1. National Archives. 1955. P. 7 <https://nara-media-001.s3.amazonaws.com/arcmedia/research/health/cdc-cutler-records/folder-1-syphilis-report.pdf>

<sup>13</sup> Ibid. p.7

<sup>14</sup> Comisión Presidencial para el Esclarecimiento de los Experimentos Practicados con Humanos en Guatemala, and Rafael Espada. *Consentir El Daño: Experimentos Médicos de Estados Unidos En Guatemala, 1946-1948*. Primera edición. Guatemala: Vicepresidencia de Guatemala. 2011. Prologue.

<sup>15</sup> Presidential Commission for the Study of Bioethical Issues. “Ethically Impossible: STD Research in Guatemala from 1946 to 1948.” Washington, D.C., September 2011p. 29

<sup>16</sup> Records of Dr. John C. Cutler: Folder 1- Final Syphilis Report Part 1. P. 8

<sup>17</sup> Ibid. 8

<sup>18</sup> Ibid. 8

<sup>19</sup> Ibid. 8

<sup>20</sup> Presidential Commission for the Study of Bioethical Issues. “Ethically Impossible.”2011. p. 38

experiments on gonorrhea and syphilis in Sing Song Penitentiary from approximately 1953 to 1954. In a letter to Dr. John Cutler, an American physician who would go on to lead the Guatemalan experiments, G. Robert Coatney recounted Surgeon General Parran's "interest in [Cutler's] work."<sup>21</sup> In this letter, Coatney wrote of "a merry twinkle" in the Surgeon General's eye as he expressed, "You know, we couldn't do such an experiment in this country."<sup>22</sup> Given the United States' history of conducting medical experiments before those in Guatemala, it is up for debate what exactly could not have been done in the United States, but it is suggested that the debate was not over the legality of the experiments, but public opinion.

## PART II: CONSTITUTIONAL PROTECTIONS FOR PRISONERS IN THE U.S. AND GUATEMALA

### Guatemala

In the years leading up to and following the Guatemalan STD experiments, the Guatemalan government and its constitution experienced significant change. In 1944, two years before the experiment officially began, President Jorge Ubico Castañeda suspended the Guatemalan Constitution in response to student protests that called for university reform,<sup>23</sup> resulting in enormous public backlash and Ubico stepping down as president and transferring power to a military junta led by General Federico Ponce Vaides, who was overthrown by a coup d'état three months after his inauguration.<sup>24</sup> The governing junta then organized a democratic election to determine a new president. Juan Jose Arévalo, a professor and a nationalist who advocated for democracy and moderate social and political reform, won the presidency with 85% of voters supporting him.<sup>25</sup> Arévalo was a major supporter of the United States and admired its technology and medical advancements, which the 2011 Guatemalan Presidential Commission suspects contributed to the Guatemalan government's earnest collaboration in the experiment.<sup>26</sup>

Upon assuming the presidency, Arévalo's government passed a new constitution in 1945, reinstating the rights of citizens and advocating gradual and "moderate reform."<sup>27</sup> The constitution also cemented specific, yet broad-ranging protections for Guatemalan prisoners. Article 45, although not explicitly restricting scientific experimentation on prisoners, stated that

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<sup>21</sup> Ibid. p 74

<sup>22</sup> Ibid. p. 74

<sup>23</sup> Muñoz, Aurora. "Guatemalans Overthrow a Dictator, 1944 | Global Nonviolent Action Database." Global Nonviolent Action Database, 2011. <https://nvdatabase.swarthmore.edu/content/guatemalans-overthrow-dictator-1944>,

<sup>24</sup> Holly, Susan, and David S. Patterson. "Introduction" in *Foreign Relations of the United States, 1952-1954, Guatemala*, Washington. United States Government Printing Office. 2003

<sup>25</sup> Ibid.

<sup>26</sup> Comisión Presidencial para el Esclarecimiento de los Experimentos Practicados con Humanos en Guatemala, and Rafael Espada. *Consentir El Daño: Experimentos Médicos de Estados Unidos En Guatemala, 1946-1948*. Primera edición. Guatemala: Vicepresidencia de Guatemala. 2011. P. 44

<sup>27</sup> Holly, Susan, and David S. Patterson. "Introduction" in *Foreign Relations of the United States, 1952-1954, Guatemala*, Washington. United States Government Printing Office. 2003

prisoners could not be subjected to torture, humiliation, or unlawful exaction,<sup>28</sup> in which the government's actions overreach its authority and benefit the government at the expense of a person or organization.<sup>29</sup> The Article also stipulated that any prison or authority that violated these protections would be removed from office, barred from civil service, and subject to criminal charges.<sup>30</sup> The Constitution also established the government's responsibilities, with Articles 21, 22, and 23 holding the state accountable for maintaining the health, liberty, and well-being of its citizens, and criminalizing discrimination based on sex, race, color, class, religion, or political ideas.

## The United States

The United States Constitution is significantly vaguer than the Guatemalan Constitution, with the U.S. Constitution encouraging individual interpretation to address a wider range of possible infringements. However, this also creates an uncertainty with more specific protections than those of the general population, like convicted felons. The Bill of Rights refers to the first ten amendments to the United States Constitution, which outline the rights to free speech, assembly, press, petition, a well-regulated militia, and against unlawful search and seizure of one's property. Additionally, the Bill of Rights addresses the rights of those in criminal prosecutions and those imprisoned, with the Eighth Amendment prohibiting "cruel and unusual punishment."<sup>31</sup> There have been cases brought to the Supreme Court to identify the boundaries of the Cruel and Unusual Punishment Clause, like the 1910 ruling of *Weems v. United States*, which ruled that the Philippine Government had violated the Eighth Amendment by imposing excessive punishments and fines disproportionate to the prisoner's crime and denying prisoners' civil rights during imprisonment.<sup>32</sup> However, no case has been brought to the Supreme Court with respect to human experimentation as a violation of the Eighth Amendment.

The United States Constitution does not mention human experimentation; however, the nineteenth and early twentieth centuries featured intense debate on the ethics of vivisection, and clinical experimentation on animals and humans, resulting in attempts to pass legislation regulating scientific experimentation and the use of human subjects in the early 1900s. Vivisection refers to the practice of cutting open a living organism, whether animal or human. Those who championed against human vivisection were often those who also advocated against animal vivisection.<sup>33</sup> One prominent anti-vivisectionist was Senator Jacob Gallinger, who proposed Senate Bill 3424 to regulate human experimentation in the District of Columbia in 1900, yet the bill did not pass.<sup>34</sup> Some individuals advocated against restricting human and animal experimentation, arguing that restrictions on experimentation would hinder scientific discovery. This debate would ultimately lead to a standstill in the United States legislation on

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<sup>28</sup> Granados, Jorge Garcia, J. Romeo Leon, and Francisco Vallagran. "Constitucion de la Republica de Guatemala Decretada por la Asamblea Constituyente en 11 de Marzo de 1945." 1945.

<sup>29</sup> Burbank, Renee. "Illegal Exactions" in *Tennessee Law Review. Volume 87, Issue 2, Summer 2020*. The University of Tennessee Knoxville College of Law, 2020.

<sup>30</sup> Granados, Jorge Garcia, J. Romeo Leon, and Francisco Vallagran. "Constitucion de la Republica de Guatemala." 1945.

<sup>31</sup> "Bill of Rights: What Is the Bill of Rights: Amendments to the Constitution." Bill of Rights Institute.

<sup>32</sup> *Weems v. United States*, 217 U.S. 349 (1910), p. 351

<sup>33</sup> Lederer, Susan E. *Subjected to Science: Human Experimentation in America before the Second World War*. The Johns Hopkins University Press. Baltimore and London. 1995.

<sup>34</sup> "Congressional Record-Senate." 1900. P. 2460

whether to restrict human experimentation, instead relying on medical codes of ethics and researchers' discretion.

## PART III: WAS IT LEGAL?: LOOPHOLES AND HUMAN RIGHTS VIOLATIONS

### Guatemala

Since the discovery and publication of the experiments in 2010 by Susan Reverby, a historian and professor at Wellesley College, contemporary scholars and government officials have criticized the experiments for being illegal and unconstitutional. In the same year, the Guatemalan president, Álvaro Colom Caballeros, established the Presidential Commission for the Investigation of Experiments Practiced with Humans in Guatemala, which published a comprehensive report of the experiments and human rights violations called “Consent to Harm: United States Medical Experiments in Guatemala, 1946-1948” (“Consentir El Daño: Experimentos Médicos de Estados Unidos en Guatemala, 1946-1948”) ((previously referred to as the 2011 Guatemalan Presidential Commission Report)). This report argues that the experiments violated numerous constitutional and legislative protections, citing the 1945 Constitution, established Health Codes, and the Penal Code of 1936 to explain how the United States’ experiments in Guatemala violated existing protections for prisoners and citizens alike.

According to the report, the experiments violated Penal Code sections 337 through 342, which cumulatively criminalize the intentional spread of venereal disease by infected individuals and/or authority figures who knowingly allow an infected individual to spread the disease to others.<sup>35</sup> The intentional infection of children, mental patients, prisoners, and sex workers is penalized under all five of these penal codes, with the researchers liable under Penal Codes 340 and 342 for abusing their authority and knowingly infecting large populations of people, often without their consent or knowledge. Under Penal Codes 337, 338, and 339, however, it is possible that some of the sex workers involved in the experiments could be liable, as the codes specifically penalize individuals who know they are contagious and knowingly infect others, though it is unclear if factors like coercion impact liability.

The experiments also violated the 1945 Constitution of Guatemala, specifically articles 21 through 24, and Article 45. As mentioned in Part II, Article 21 established that discrimination on the grounds of affiliation, race, sex, class, religion, or political beliefs was a criminal offense. Both the Guatemalan and the United States Presidential Commission Reports suggest that racism and discrimination were pervasive in the STD experiments, with the former suggesting that the United States practiced on historically disadvantaged demographics, like sex workers, hospital patients, and prisoners, who were not properly educated and/or informed on the nature of the experiments. The United States Report further indicates that researchers in the 1930s believed syphilis affected other races differently, and that primitive sanitation and sexual promiscuity were the cause of high syphilis rates in Latin America.<sup>36</sup> Additionally, Dr. Cutler was advised not

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<sup>35</sup> Comisión Presidencial para el Esclarecimiento de los Experimentos Practicados con Humanos en Guatemala, and Rafael Espada. *Consentir El Daño*. 2011. P. 26

<sup>36</sup> Presidential Commission for the Study of Bioethical Issues. “Ethically Impossible.”2011. p. 73

to explain the experiments to the “Indians” in the Penitentiary, “as they are only confused by explanations and knowing what is happening.”<sup>37</sup> This resulted in practical discrimination throughout the experiments, ultimately violating Article 21 of the 1945 Guatemalan Constitution.

Articles 22 and 23 collectively state that the well-being and health of the people are the responsibility of the State. Of the estimated 219 participating prisoners, only 92 received some form of STD treatment following the experiment, and the United States Presidential Commission Report suggests that infection and complications from inoculation were worsened by poor sanitation on the part of the researchers, sometimes using the same needle for inoculation across numerous patients.<sup>38</sup> With this in mind, it can be argued that the conditions created by the USPHS in these experiments directly violate Articles 22 and 23 of the 1945 Guatemalan Constitution. Article 24 dictates that no government official or institution is exempt from the laws outlined in the Constitution, further cementing the fact that the governmental permission granted to the USPHS by the Guatemalan government and authorities, like the Directors of the Penitentiary and Mental Health Hospitals, was unconstitutional.

Article 45, regarding specific protections for prisoners, criminalized subjecting prisoners to humiliation, torture, coercion, or unlawful exaction. This essay argues that the experiments, at the very least, violated prisoners’ protections against coercion and unlawful exaction. Regarding coercion, Dr. Cutler and his team were advised to tell prisoners as little as possible about the experiments to encourage cooperation. As for unlawful exaction, the experiments took place at the expense of the participants, especially those who were infected without follow-up treatment, for the benefit of government authorities. It can also be argued that the government overstepped its authority in violating prisoners’ protections for the sake of scientific experimentation.

## United States

The United States Presidential Commission Report does not cite any specific legal violation of the researchers in Guatemala, arguing instead that the researchers acted “against [their] own understanding of medical ethics practices and requirements of the day” and that “some of the participants were morally culpable and blameworthy for these wrongs.”<sup>39</sup> The report focuses primarily on moral and ethical violations, but acknowledges that, even for the 1940s, there were concerns about the legality of the experiments in Guatemala. While concerns were voiced in the Subcommittee on Venereal Diseases about the legality of the experiments, the experiments were ultimately deemed legal.<sup>40</sup> The committee even “recommended that the experiments be conducted in men in state prisons and city jails” on the grounds that they were separated from women and under medical supervision for the duration of their sentence.<sup>41</sup> Assistant Solicitor General Oscar Cox and Attorney General Francis Biddle discussed the legality of the Terre Haute experiments, three years before the Guatemala experiments were sanctioned, and agreed that there was no standing federal law that made the experiments illegal, as recalled in a correspondence by James B. Donovan, standing chief legal officer for the OSS, in 1943:

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<sup>37</sup> Ibid. p.73

<sup>38</sup> Ibid. p 56

<sup>39</sup> Ibid. p. 38

<sup>40</sup> Ibid. p. 17

<sup>41</sup> Ibid. p. 16

“The problem is not a legal one, but political in nature. There should be no question of the legality of the experiments in the absence of specific provisions of law to the contrary. While the experiments might be held to be technical violations of law in a particular jurisdiction, any criminal prosecution should easily be defended.”<sup>42</sup>

The political problem in question refers to the nature of public support, with Cox later insisting that, in a “time of war,” the public was unlikely to criticize any government attempt to combat disease.<sup>43</sup> Unlike the Terre Haute experiments, the Guatemala experiments were conducted in a time of peace, as WWII had ended the year prior, making public criticism and subsequently, suspended government approval to maintain appearances, a more pressing political concern. Regardless, there were no concrete federal restrictions in the United States that made these experiments illegal, and the USPHS’s history of using prisoners and vulnerable populations in scientific experiments provided the United States with legal and political justification to carry out the STD experiments in Guatemala.

The U.S. Presidential Commission Report is titled “Ethically Impossible,” referring to an article published in the New York Times in 1947 by science editor Waldermar Kaermpffert, in which he describes the discovery of penicillin injections to treat syphilis in incremental doses and notes that, while promising in research with rabbits, would need to be tested in humans before it was implemented as a standard treatment.<sup>44</sup> However, Kaermpffert critically states that, while studies on humans would develop scientists’ understanding of the treatment, doing so was “ethically impossible.”<sup>45</sup> At the time of this publication, Dr. Cutler’s team in Guatemala had been doing just that and had made a concerted effort with Dr. Mahoney to keep the experiments as discreet as possible from the public and other U.S. authorities. It is crucial to understand that, while the United States had no concrete federal law prohibiting human experimentation, there were regulatory codes of medical ethics and conduct across federal organizations, including the USPHS, and methods to maintain transparency in scientific experimentation, like monthly progress reports to the Pan American Sanitation Bureau. However, Dr. Cutler and Dr. Mahoney, with the help of a select few U.S. federal officials, actively provided as little information as possible in their monthly reports to the Pan American Sanitation Bureau, thereby violating ethical codes by withholding information from the subjects. This is to say, while the experiments may not have been explicitly illegal according to the United States Constitution and federal law, the individual agents in charge of providing transparency to avoid abuse in such a volatile and controversial experiment knowingly acted against existing ethical safeguards and kept as much information from subjects and the public as they could to avoid unfavorable public and official backlash.<sup>46</sup> Simultaneously, these individual agents alone do not account for the existing environment that encouraged scientific development over civil protections.

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<sup>42</sup> “James B Dovan to Irvin Stewart. (1943, February 17). Correspondence.” As cited in Presidential Commission for the Study of Bioethical Issues. “Ethically Impossible.” 2011. p. 18

<sup>43</sup> Presidential Commission for the Study of Bioethical Issues. “Ethically Impossible.” 2011. p. 18

<sup>44</sup> Ibid. p.22

<sup>45</sup> Ibid. p.22

<sup>46</sup> Ibid. p75

# PART IV: DEVELOPMENTS IN CONSTITUTIONAL PROTECTIONS FOR PRISONERS AND RESTRICTIONS ON HUMAN EXPERIMENTATION IN THE U.S. AND GUATEMALA

## Guatemala

In the decades following the establishment of the 1945 constitution, Guatemala carried out suspensions, amendments, and complete revisions to its constitution. Since 1945, there have been 3 revisions to the constitution, in 1955, 1956, and 1965, with the current constitution having been established in 1985, with one amendment in 1993.<sup>47</sup> In contrast to the 1945 constitution, the 1985 iteration explicitly prohibits human experimentation with respect to prisoner protections. Article 19a. dictates that prisoners should be treated humanely and that they shall not be subject to discrimination, physical torture, denigration, nor should they be subjected to scientific experimentation.<sup>48</sup> In addition, Articles 93 and 94 defend health as a fundamental right and reaffirm that the state is responsible for the well-being and social assistance of its citizens.<sup>49</sup>

## United States

Though the Guatemalan study would not become known to the public until 2010, an Associated Press journalist named Jean Heller published an article in 1972 that exposed the Tuskegee syphilis experiments that had been ongoing in Alabama from 1932 to 1972,<sup>50</sup> which would go on to influence significant reform in restricting human experimentation in the United States. Drafted in response to the Tuskegee experiments was the National Research Act of 1974.<sup>51</sup> This act established a commission, known as the “National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research,” whose intention was to investigate human rights abuses in human experimentation and recommend administrative actions to establish guidelines for the protection of human subjects.<sup>52</sup> In April of 1979, the Commission published the Belmont Report, a comprehensive summary of basic ethical principles, including respect for persons, justice, and beneficence, and the application of these principles in practice and research.<sup>53</sup> While not legally binding, it is meant to provide a general

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<sup>47</sup> “Guatemala (1903-present).” University of Central Arkansas Government, Public Service, and International Studies.

<sup>48</sup> “Constitución Política de la República de Guatemala, 1985”

<sup>49</sup> Ibid.

<sup>50</sup> Heller, Jean, The Associated Press. “Syphilis Victims in U.S. Study Went Untreated for 40 Years.” New York Times. July 26, 1972.

<sup>51</sup> “National Research Act 50<sup>th</sup> Anniversary.” U.S. Department of Health and Human Services. July 2024.

<https://www.hhs.gov/ohrp/education-and-outreach/national-research-act-50th-anniversary/index.html>,

<sup>52</sup> Public Law 93-348. July 12, 1974. p. 348

<sup>53</sup> The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. “The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects in Research” U.S. Department of Health and Human Services. April 18, 1979.

moral framework for clinical studies and policy changes,<sup>54</sup> and was influential in the establishment of 45 CFR 46, or the Federal Policy for the Protection of Human Subjects, in 1991.<sup>55</sup> According to the United States' Presidential Commission for the Study of Bioethical Issues, in their comprehensive report of the experiments in Guatemala, "The Guatemala experiments could not be approved under the current system for protecting human subjects in U.S.-funded research."<sup>56</sup>

## PART V: HISTORIOGRAPHY ON EXPERIMENTS

Modern historiography on the legality of the experiments emphasizes the importance of the political and social environment of the 1940s in the United States and Guatemala, respectively, and how this environment and a lack of federal regulations in the United States resulted in the eventual violation of subjects' human rights in Guatemala. In "'Something of an Adventure': Postwar NIH Research Ethos and the Guatemala STD Experiments," authors Kayte Spector-Bagdady and Paul A. Lombardo argue that, though the United States government has acknowledged the experiments and put forth a thorough review, "public health research... is rarely an individual activity," and argues that "they were not merely the product of a malevolent individual; they were generated and supported by a structured grant system and a defined research environment."<sup>57</sup> The wartime environment that encouraged the development of a syphilis prophylaxis and a systemic lack of restrictions as a result of the research grant structure<sup>58</sup> provided an ample atmosphere for the violations and conduct present in the experiments in Guatemala. Similarly, in her essay, "'Ever Vigilant' in 'Ethically Impossible': Structural Injustice and Responsibility in PHS Research in Guatemala," Charlene Galarneau analyzes the United States Presidential Commission report and argues that the report's focus on the individual actions of researchers does not adequately address the systemic issues like classism and sexism that proliferated the experiment and the environment that allowed for the funding and expansion of such a study. Both articles emphasize the role of racism in the organization and demographic effects of the experiments, as well as the "normative beliefs about the racial inferiority of Guatemalans."<sup>59</sup> Galarneau further articulates the existing racial disparity in Guatemala and how indigenous Guatemalans were disproportionately institutionalized compared to those with European heritage.<sup>60</sup>

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<sup>54</sup> Nagai H, Nakazawa E, Akabayashi A. The creation of the Belmont Report and its effect on ethical principles: a historical study. *Monash Bioeth Rev.* 2022 Dec;40(2):157-170.

<sup>55</sup> "Federal Policy for the Protection of Human Subjects ('Common Rule')." U.S. Department of Health and Human Services, Office for Human Research Protections.

<sup>56</sup> Presidential Commission for the Study of Bioethical Issues. "Ethically Impossible: STD Research in Guatemala from 1946 to 1948." p. 92

<sup>57</sup> Spector-Bagdady, Kayte & Paul A. Lombardo, "*Something of an Adventure*": *Postwar NIH Research Ethos and the Guatemala STD Experiments*, 41(3) *J. LAW, MEDICINE & ETHICS* 697-710 (2013).

<sup>58</sup> *Ibid.* p.7

<sup>59</sup> Galarneau, C. "'Ever Vigilant' in 'Ethically Impossible': Structural Injustice and Responsibility in PHS Research in Guatemala." *Hastings Center Report* 43, no. 3 (2013): 36-45.

<sup>60</sup> *Ibid.*

# CONCLUSION

This essay does not seek to push the narrative that the United States has absolutely no protections for its citizens and that the Guatemalan government authorities did not share liability in these experiments. Many systemic and individual components permitted the experiments to take place. Actors like Dr. Funes, who initially suggested the USPHS conduct experiments in Guatemala, Dr. Mahoney, who encouraged Dr. Cutler to report as little as possible on the nature of the experiments to higher authorities, and Dr. Cutler, who led and organized the experiments from 1946 until he departed from Guatemala in 1948, hold direct culpability in the illegal nature of the experiments. Even General Surgeon Parran, who recalled that such an experiment couldn't be done in the United States and would go on to support funding for the Guatemalan experiment, holds his own liability for the abuses that took place during the experiments. But individual actors cannot be completely put to blame for the proliferation of racial discrimination and systemic issues that allowed this and other scientific experiments to occur in the United States.

The STD experiments in Guatemala resulted from a scientific and social environment that prioritized scientific development over legal or ethical restrictions and primarily targeted vulnerable populations, with many participating without their knowledge and participants being told as little as possible. It's important to acknowledge the systemic and the individual actors at play to carry out such an experiment, and to understand the extent to which our constitutions and legislature protect us from potentially harmful treatment at the hands of the state.

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