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# THE CONVERSATION

## Why we shouldn't always compensate people for historical wrongs

June 11, 2015

**Angus Dawson**, Professor of Bioethics and Director of VELiM at University of Sydney

Human research ethics has often been formulated in response to scandals. However, the majority of research ethics cases are actually quite mundane. They involve committees making decisions about the likely balance between risks and benefits of the proposed research. Most researchers are well-intentioned and much research is conducted for public benefit.

But what should we do when things go wrong? What about when evidence of wrongdoing is uncovered long after the event? Are survivors entitled to compensation? A current example of just such a case provides an opportunity to examine the issues involved.

### The Guatemala STD case

From 1945 and into the 1950s, a series of research activities involving investigations into various sexually transmitted diseases (STDs), took place in Guatemala. The project was a collaboration with support from government agencies of both Guatemala and the United States.

About 1,500 men, women and children [were deliberately infected](#) with syphilis and gonorrhoea so patterns of disease transmission could be better understood. Survivors are [now taking legal action against](#) those they hold responsible including Johns Hopkins University (where some researchers held academic appointments) and the Rockefeller Foundation (which supplied some of the funding).

When we look at the case, 75 years later, it's easy to see what happened as wrong, and the work has been [strongly condemned](#) by the US [Presidential Commission for the Study of Bioethical Issues](#). But we should take care in reaching such judgements; we should always accept our conclusions for the right reasons. We need to think carefully about what we can learn and what subsequent action is appropriate.

There are three reasons for questioning whether legal action against the institutions involved is the right approach for the survivors of the Guatemala study to take. Because even if the

original experimentation was wrong, it's not clear that legal action, at least in its present form, is justified.

## **Interpreting historical cases**

First, we should take care not to judge the case as if it were a contemporary failure. The world has changed a lot in the past 70 years, and we need to look at the case in terms of the values and assumptions about research at the time the actions occurred.

The experimentation began during World War II, when STDs were a major health issue that threatened the war effort. There was little, if any, research regulation in place at the time, and the attitudes of clinicians and researchers were very different from those of today.

Key aspects of contemporary research ethics, such as a strong commitment to informing participants that research is occurring and the risk of harms involved, did not exist at that time. The transformation of the values that guide medicine and research, and the subsequent development of relevant research ethics regulations have been dramatic. We should not judge the 1940s and 1950s by the standards of 2015.

## **Responsible parties**

Even if I'm wrong on the issue of the relevant standard to use, we still have the problem of how to ascribe responsibility in this case. If individuals, an organisation or even a nation acted wrongly in the past, who is responsible for the consequences of that event?

In this case, it's almost certain that not a single individual involved in the research is still an active researcher or employed by Johns Hopkins University or the Rockefeller Foundation. Indeed, most active participants will be dead.

So even if we think the actions were wrong, it's not clear the relevant responsible parties still exist. Any causal chain of responsibility is weak, if not broken.

Surely if anyone should be the focus of legal action, it should be the US government, as they have ultimate responsibility for what their citizens do when acting on the basis of a nationally supported programme as in this case. If no action can be taken against the US government, it's not clear that any other legal action is justifiable.

## **Appropriateness of compensation**

Finally, even if we think we should still be able to go down the route of retrospective compensation, focused perhaps on the US government as having ultimate responsibility when wrongs are inflicted on the citizens of another country, where do we stop in making such claims?

Even when wrongs have clearly been committed in the past, there must be firm limits on retrospective claims. Most jurisdictions have such limits for good reason. Without them, a list of claims for compensation for cases of past injustice will be very long.

For example, part of my family was driven out of rural Ireland in the 1850s as a result of poverty, crop failures and a lack of an adequate response by the British government to the

problems of a starving population. Do I, as a result, have some kind of claim against the UK government? Surely not.

## Useful lessons

The real lesson we should learn from the Guatemala case is that research should be conducted according to appropriate standards, and such standards are, rightly, now much higher than they were in 1945. Indeed, it's impossible to believe that such research would be carried out in this manner today.

Any research involving deliberate infection with a disease would require the highest level of informed consent. But it's also essential to acknowledge that STD research is vital to understanding the nature of disease transmission and possible treatments. We all benefit from such public health research, and it should be encouraged, where the appropriate safeguards are in place.

Retrospective lawsuits are problematic because they involve judging the past by today's standards. We can learn something by looking at them - what not to do today, and how contemporary research regulation might have to change - but it makes no sense to seek compensation for historical wrongs from organisations that were once involved.