

Public Accountability and the Tuskegee Syphilis Experiments: A Restorative Justice Approach

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INTRODUCTION

The United States Government did something that was wrong, deeply, profoundly, morally wrong. It was an outrage to our commitment to integrity and equality for all our citizens. We can end the silence. We can stop turning our heads away. We can look at you in the eye and finally say on behalf of the American people what the United States Government did was shameful. And I am sorry.¹

-President William Jefferson Clinton, 1997

In every generation there exists a moment, an instant where the national consciousness pauses and the United States has the opportunity to turn inward and consider its place in the world. Such a moment occurred when, on April 15, 1865, following the assassination of Abraham Lincoln, then-vice president Andrew Johnson stepped into the role of commander-in-chief and led a fractured nation into the post-Civil War Era. On December 7, 1941, when the Japanese First Air Fleet attacked the Pearl Harbor naval base on Oahu, Hawaii, Franklin Delano Roosevelt abandoned the nation's isolationist policy and entered into the international conflict that came to be known as World War II. On August 8, 1974, in the wake of the Watergate scandal and its incendiary aftermath, Richard Nixon resigned from the office of President of the United States, leaving the federal government in crisis and demanding that the American people question whether it was a man or a system that was deeply flawed.

1. SUSAN M. REVERBY, *TUSKEGEE'S TRUTHS: RETHINKING THE TUSKEGEE SYPHILIS STUDY* 574 (2000) (quoting William Jefferson Clinton, President of the United States of America, Apology for Study Done in Tuskegee (May 16, 1997)).

On July 25, 1972, the United States faced another such moment. That day Jean Heller, a reporter for the Associated Press, published an article in the *Washington Star* breaking open the story of the Tuskegee Syphilis Experiments.² These experiments were a clinical study, commenced in 1932, designed to chart the course of late-stage syphilis in African-American men, so as to understand the impact of race on the path of the illness.³ What began as a six-month study, however, turned into a forty-year research project exploring how the illness would progress without treatment.⁴

Until the 1970s, the United States government, backed by money from private donors and United States taxpayers, employed licensed physicians to track the course of the disease through death, without the subjects' knowledge or consent.⁵ Participants, thinking they were receiving appropriate care were, in fact, left for dead as the illness ravaged their minds and bodies. These men endured severe damage to their hearts, brains, and nervous systems.⁶ They became psychotic and blind.⁷ Their vital organs and central nervous systems shut down.⁸ Many of them ultimately died.⁹ "As I see it," one participating physician remarked, "we have no further interest in these patients until they die."¹⁰

That day in 1972, the people of this country took a collective breath. Americans wondered how the government would respond, whether the country's leaders would accept responsibility, how they would begin to atone for the wrongs committed throughout the previous 40 years. During the four decades of experimentation, the international community – with the United States in the lead – had formally condemned such medical testing setting carefully defined ethical standards for human subject research. In particular, one case decided fourteen years after the United States government commenced the Tuskegee Syphilis Experiments, set the standard for human subject experimentation for the international community.¹¹ In 1946, as part of the larger Nuremberg Trials, the United States filed suit against senior medical officials of the German Nazi government, charging that these physicians had

2. Jean Heller, *Syphilis Patients Died Untreated*, WASH. STAR, July 25, 1972, at 1.

3. REVERBY, *supra* note 1, at 1-3.

4. *Id.* at 1.

5. See, e.g., REVERBY, *supra* note 1; JAMES H. JONES, *BAD BLOOD: THE SCANDALOUS STORY OF THE TUSKEGEE EXPERIMENT – WHEN GOVERNMENT DOCTORS PLAYED GOD AND SCIENCE WENT MAD* (1981).

6. JONES, *supra* note 5, at 3-4.

7. *Id.*

8. *Id.*

9. *Id.*

10. REVERBY, *supra* note 1, at 23.

11. *Introduction to NMT Case I U.S.A. v. Karl Brandt et al.*, Nuremberg Trials Project: A Digital Document Collection, available at http://nuremberg.law.harvard.edu/php/docs_swi.php?DI=1&text=medical (last visited Jan. 24, 2008).

engaged in gross human rights violations for the scientific testing they undertook on Concentration Camp victims.¹² Throughout the case, the United States condemned Nazi Germany for committing human rights abuses even as it carried out similar violations at home. Heller's 1972 article, and the subsequent fallout it produced, forced the country to come to terms with this hypocrisy. The government would have to find a way to apologize and make its victims whole. In the wake of such duplicity, it had to.

Soon after Heller's article made its way into newspapers across the country, Frederick Gray, acclaimed attorney for the NAACP, filed a class action lawsuit on behalf of the study participants.¹³ Gray sought \$3 million in damages for each living participant and \$3 million for the heirs of each deceased participant.¹⁴ The case never made it to trial.¹⁵ In December 1974, the two sides agreed on a settlement in which the United States government agreed to pay \$37,000 in damages to each survivor, along with lifetime medical benefits to the survivors and their family members who had contracted the illness, and \$15,000 to the heirs of victims of the experiments.¹⁶

That same year, Congress enacted the National Research Act, creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.¹⁷ The Commission sought to recommend a protocol to guarantee the implementation of ethical standards in research.¹⁸ Further, Congress passed legislation to set up institutional review boards to examine all studies using human subjects and to ensure that they comply with these ethical standards.¹⁹

Despite these efforts to remedy the harms committed in the Tuskegee experiments, the United States government did not publicly accept responsibility for its actions until 1997, when President Bill Clinton issued a formal apology both to the participants of the study and to the nation at large.²⁰ It was only then that the legacy of the Tuskegee Syphilis Experiments was finally exposed and the federal government acknowledged its role in "the longest non-therapeutic experiment on human beings in medical history."²¹

By that time, however, it was too late for a simple apology. The United States government had committed gross injustices against members of the African-American community, and that community as a whole was now beset by rampant distrust and suspicion toward the government and the medical

12. *United States vs. Karl Brandt (Case No. 1) (1946), cert. denied*, 333 U.S. 836 (1948).

13. *Charles W. Pollard v. United States*, Civil Action No. 4126-N. (M.D. Ala. 1972).

14. JONES, *supra* note 5, at 216.

15. *Id.* at 217.

16. *Id.*

17. REVERBY, *supra* note 1, at 439.

18. *Id.*

19. *Id.*

20. REVERBY, *supra* note 1, at 574.

21. JONES, *supra* note 5, at 91.

profession.²² The victims of the experiments, and their descendents, needed the opportunity to be heard and for their experience to be validated. By offering a simple one-sided apology the United States government was undermining efforts at true reconciliation and emotional healing.

The legacy of the Tuskegee Syphilis Experiments runs deep. Scholars have linked the experiments with widespread resistance among the African-American community to participating in biomedical research.²³ According *The Tuskegee Legacy Project*, a study funded in part by the National Institutes of Health, African-Americans are more likely than White Americans to fear participation in medical studies.²⁴ While these researchers did not find a causal connection between fear of participation and actual participation, the results are representative of similar studies that demonstrate the longstanding implications of the Tuskegee Syphilis Experiments both within the African-American community and for the nation.²⁵

Without a deliberate, bilateral process of reconciliation between the government and the victims of the experiments it is impossible for study participants to experience true justice. With so much time having passed and the history of the Experiments so intensely steeped within the community, only a restorative justice approach can serve to repair the harms dealt by the egregious behavior of the federal government. Restorative justice, a conflict resolution technique, would serve to reconstruct a national narrative by giving voice to the victims of a transgression.²⁶ Such a process creates the space for the victims of these crimes to share their stories and for the perpetrators to acknowledge and affirm those experiences. By identifying the entitlements and obligations surrounding these crimes, restorative justice seeks to initiate healing and reintegrate the impacted community into the greater society. This process

22. REVERBY, *supra* note 1, at 430 (citing Stephen B. Thomas & Sandra Crouse Quinn, *The Tuskegee Syphilis Study, 1932 to 1972: Implications for HIV Education and AIDS Risk Education Programs in the Black Community*, 81 AM. J. PUBLIC HEALTH 1498-1505 (1991)).

23. See, e.g., Thomas & Quinn, *supra* note 22; G. Marie Swanson & Amy J. Ward, *Recruiting Minorities into Clinical Trials: Toward a Participant-friendly System*, 87 J. NATL. CANCER INST. 1747-59; Vickie L. Shavers, Charles F. Lynch, Leon F. Burmeister, et al., *Why Are African-Americans Under-represented in Medical Research Studies? Impediments to Participation*, 2 ETHN. HEALTH. 31-45 (1997); Arthur Caplan, *When Evil Intrudes (Twenty Years After: The legacy of the Tuskegee Syphilis Study)*, 22 HASTINGS CENT. REP. 29-32 (1992).

24. Ralph Katz, et al., *The Tuskegee Legacy Project: Willingness of Minorities to Participate in Biomedical Research*, 17 J. HEALTH CARE FOR THE POOR & UNDERSERVED 698-715 (2006).

25. See, e.g., R. A. Vonderlehr, et al., *Untreated Syphilis in the Male Negro: A Comparative Study of Treated and Untreated Cases*, 17 VENEREAL DISEASE INFO. 260-65 (1936); J. R. Heller, et al., *Untreated Syphilis in the Male Negro: II. Mortality During 12 Years of Observation*, 27 VENEREAL DISEASE INFO. 34-38 (1946).

26. See, e.g., Ellen A. Waldman, *Healing Hearts or Righting Wrongs?: A Meditation on the Goals of "restorative justice"*, 25 HAMLINE J. PUB. L. & POL'Y 355 (Spring 2004).

has been successfully employed in micro-conflicts between two individuals, as well as macro-conflicts between whole communities.²⁷

In this essay I assert that a restorative justice approach is crucial to addressing the injustice wreaked by the Tuskegee Syphilis Experiments. Section I provides a brief historical overview of the Tuskegee Syphilis Experiments. Section II demonstrates that the actions of the United States government did, indeed, rise to the level of a considerable human rights violation necessitating remedial action. This assertion is supported by an examination of the development of human rights within international law, particularly the definitional changes that took place during the course of the Tuskegee Syphilis Experiments. Section III provides three possible models for remedying the long-lasting fallout of the injustice by looking to international legal systems and other examples of government-sponsored reconciliation projects. After analyzing these approaches under the theory of restorative justice, section IV outlines the idea that one remedy, domestic intervention, will most effectively address the needs of the Tuskegee victims.²⁸ Only through a genuine dialogue between victims and perpetrator, in which both sides are heard and their experiences acknowledged, can the wounds from Tuskegee begin to heal.

I. THE TUSKEGEE SYPHILIS EXPERIMENTS DEFINED

For 40 years, the US Public Health Service has conducted a study in which human guinea pigs, not given proper treatment, have died of syphilis and its side effects. The study was conducted to determine from autopsies what the disease does to the human body.²⁹

-Associated Press reporter Jean Heller, 1972

In the early part of the 20th century, institutionalized racism pervaded society. Progressive Era reformers, utilizing the tenets of Social Darwinism, asserted that African-Americans were a degenerating race.³⁰ Not only was the Black community deteriorating, Census data proved that they were a dying breed. Black Americans experienced both a higher mortality rate and a lower birth rate than did their White counterparts.³¹

The Progressive Movement sought to cure society of the ills brought about by industrialization and urbanization. By the early 20th century,

27. See, e.g., Ellen A. Waldman, *supra* note 26; LEONARD THOMPSON, A HISTORY OF SOUTH AFRICA (2000).

28. As I explain in more detail below, domestic intervention exists where a government seeks to remedy the wrongdoings conducted within its own borders.

29. Heller, *supra* note 2, at 1.

30. JONES, *supra* note 5, at 21; REVERBY, *supra* note 1, at 16.

31. Garret Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913*, 42 MD. L. REV. 289, 301 (1982).

however, reformers were struggling. Says scholar Garrett Power, they “found themselves faced with social chaos.”³² Having failed to eliminate the fundamental problems of American cities - illiteracy, morbidity, crime, and poverty - they shifted their focus toward two of the more discernible symptoms of social unrest: riots and epidemic disease.³³

Reorienting the goals of the movement brought a new focus to the Progressive Era. Reformers began to concentrate on Black slums, the site of both racial rioting and, it was believed, communicable disease.³⁴ It was not that individuals sought to improve the standard of life in Black communities. According to historian George Frederickson, because African-Americans had no viable future as a race, “the problem ceased to be one of ... how to make them more productive and useful members of the community. The new prognosis pointed rather to the need to segregate or quarantine a race liable to be a source of contamination and social danger to the white community”³⁵

These efforts at residential segregation to decrease the transmission of infection quickly proved ineffectual. Scientific research of the early 1900s indicated that diseases such as smallpox, syphilis, and tuberculosis were indiscriminate in their infestations.³⁶ While the impact of the disease may have differed demographically, the illnesses themselves were nondiscriminatory.³⁷ It was not enough, then, simply to quarantine the Black community. If physicians failed to pay attention to the path of a disease within the African-American community, they would risk that the disease may spread to the population at large. To ignore the health of African-Americans would be detrimental to White Americans as well.

Following World War I, the U.S. government developed a keen interest in syphilis.³⁸ Research showed that the disease was spreading quickly throughout the African-American community, one of the most virulent illnesses of the time.³⁹ According to scholar Toni P. Miles, “the social disruption brought on

32. *Id.* at 302.

33. *Id.*

34. *Id.* at 301.

35. GEORGE FREDERICKSON, *THE BLACK IMAGE IN THE WHITE MIND: THE DEBATE ON AFRO-AMERICAN CHARACTER AND DESTINY 1817-1914* 255 (1987).

36. Power, *supra* note 31, at 302.

37. *Id.*

38. REVERBY, *supra* note 1, at 497.

39. Toni P. Miles, *World War I Origins of the Syphilis Epidemic Among Twentieth Century Black Americans: A Biohistorical Analysis*, 45 *SOC. SCIENCE & MED.* 61-69 (1997). Syphilis comes in three phases. The primary stage occurs 10 to 90 days after infection, when a small sore appears at the site of contact. Often, the carrier experiences little to no pain, and if there are no secondary infections, he may never notice the sore at all. The sore generally lasts for thirty to forty days and then disappears. Approximately one week later, the secondary stage begins. During this phase, a rash often appears on the body. At times people also experience generalized side effects such as headaches, fevers, and nausea. Once these symptoms dissipate the disease enters a dormant period, which can last anywhere from thirty days to thirty years. Though rare, it may remain latent for the remainder of the person's life. During this stage, the disease can only be

by World War I was the critical and unique environmental condition that ignited an epidemic of syphilis among African-Americans."⁴⁰ Throughout the war, nearly 600,000 Black men served in the military as support staff, working regularly with a European population that had a significantly higher incidence of syphilis than did the United States.⁴¹ These interactions, including sexual relationships, caused the disease to spread from European citizens to African-American infantrymen.⁴² By the 1920s, the rates of venereal disease in the United States had risen dramatically, particularly within the Black community.⁴³

In an effort to protect the health of the general (White) population, the United States Health Service, under a grant from the Julius Rosenwald Fund, commenced a large-scale study of syphilis among African-Americans in 1929.⁴⁴ Preliminary research took place in six, primarily Black, Southern counties.⁴⁵ Ultimately, the health department found that Macon County, Alabama, had the highest number of syphilis infections among the sites surveyed.⁴⁶ This initial study ended on a high note, with scientists lauding the possibilities of mass treatment for rural Blacks.⁴⁷

While it is speculative whether funding for this intensive treatment-based research would have continued even without economic collapse, once the Great Depression hit, any hope of the studying continuing disappeared.⁴⁸ Not ready to admit defeat, however, the project organizers, headed by Dr. Taliaferro Clark, chief of the Public Health Service and author of the original report, decided to scale back the study to focus on one region.⁴⁹ The revised plan, known as The Tuskegee Study of Untreated Syphilis in the Negro Male,⁵⁰ commenced in 1932 in Macon County, Alabama, a rural region of the South populated predominately by poor, illiterate African-Americans.⁵¹ This new

detected through blood testing. Following this period of inactivity the illness enters into the third, or tertiary stage, marked by significant damage to the victim's vital organs and central nervous system. It may cause blindness, insanity, and ultimately, death. *See, e.g.*, FREDERICK D. GRAY, *THE TUSKEGEE SYPHILIS STUDY: THE REAL STORY AND BEYOND* 28 (1998); JONES, *supra* note 5, at 3-4.

40. Miles, *supra* note 39.

41. *Id.*

42. *Id.*

43. *Id.*

44. REVERBY, *supra* note 1, at 18.

45. JONES, *supra* note 5, at 60.

46. REVERBY, *supra* note 1, at 18.

47. *Id.*

48. *Id.*

49. *Id.*

50. *U.S. Public Health Service Syphilis Study at Tuskegee*, Centers for Disease Control and Prevention, <http://www.cdc.gov/nehstp/od/tuskegee/time.htm> (last visited Jan. 16, 2008).

51. GRAY, *supra* note 39, at 28. According to Taliaferro Clark of the Health Services, Macon County provided a natural laboratory, a site for a "study in nature" because of the unusually high incidence of syphilis. REVERBY, *supra* note 1, at 18.

study, rather than focusing on intensive experimentation, sought to construct a “study in nature.”⁵² A team of physicians commissioned by the federal government set out to “record the natural history of syphilis in hopes of justifying treatment programs for blacks.”⁵³ The Tuskegee Negro Normal Institute, founded in 1888 by Booker T. Washington with the expressed intention of educating freed slaves and their descendents, volunteered space in its offices and hospitals for examinations and autopsies.⁵⁴ In exchange for the Institute’s cooperation, the physician-researchers promised the hospital national esteem and recognition, as well as training for their primarily African-American students and interns.⁵⁵

The revised study included 600 subjects: 399 Black men with late-stage syphilis and 201 healthy Black men, who served as a control group.⁵⁶ Participants were recruited through church and communal gatherings.⁵⁷ The Health Service told the subjects that they were being treated for “bad blood,” a colloquialism that could mean anything from venereal disease to anemia.⁵⁸ For taking part in the project, the men were promised medical examinations, meals, and burial insurance.⁵⁹

Researchers did not tell the men to which group they belonged. Physicians and researchers told participants that they were receiving proper treatment for their ailments; however, all subjects were prescribed simple aspirin.⁶⁰ Initially, the study was set to last for six months.⁶¹ For that finite period, the syphilis would go untreated and doctors would track the course of the illness.⁶² Once that period was over, the researchers would administer the appropriate treatments available at the time.⁶³ However, this plan never came to fruition. By the time those initial six months were over, the study was just getting underway, the result of a prolonged recruitment process and the difficulty scientists faced convincing the men to return for follow-up medical visits.⁶⁴ Additionally, treatment costs were extraordinary and researchers did not have

52. REVERBY, *supra* note 1, at 18.

53. *U.S. Public Health Service Syphilis Study at Tuskegee*, *supra* note 50.

54. JONES, *supra* note 5, at 102.

55. JONES, *supra* note 5, at 101-02. Frederick Gray also argues that the Institute, which relied heavily on federal funding, became involved because it could not risk antagonizing the US government by refusing to participate in this study. GRAY, *supra* note 39, at 29.

56. JONES, *supra*, 1.

57. GRAY, *supra* note 39, at 49.

58. *Id.*

59. *Id.* at 50.

60. REVERBY, *supra* note 1, at 28.

61. *Id.* at 21.

62. *Id.*

63. In the 1930s, standard treatments for syphilis included bismuth, neoarsphenamine, and mercury. Each of these were toxic in high doses, and relatively ineffective in low doses. Frequently, a combination of the three was employed, and patients began to suffer under the strain of the ongoing regiment. REVERBY, *supra* note 1, at 19.

64. JONES, *supra* note 5, at 99.

the funds to care for each participant effectively.⁶⁵ Researchers determined that an extended study was necessary to garner fruitful results.

The physicians, with the blessing of United States Surgeon General Hugh Cumming, decided to change the design of the study to assess the manifestations of untreated syphilis as the disease ran its full course.⁶⁶ They based the new framework for implementation of the study on the 1928 Oslo Study, which traced the path of syphilis retrospectively, through autopsy results of the bodies of dead syphilis victims.⁶⁷ In Macon, researchers set out to chart the natural progression of the illness prospectively, through its progression in the human body until the death of the subject.⁶⁸ While initially they viewed this shift as beneficial to humankind, they quickly became fixated on the scientific goal of understanding the trajectory of the illness at the expense of the humanity of the victims, disregarding the subjects' personal health and welfare.⁶⁹

Throughout the course of the study, medical researchers and government actors continually manipulated subjects in order to retain their participation and retard their treatment. At the onset of the testing, for instance, subjects were told that they would receive proper and effective treatment for "bad blood," but test subjects and controls alike received only simple aspirin.⁷⁰ Even after penicillin became available as a prescribed treatment, the government withheld the antibiotic.⁷¹ During World War II, when the military began providing the drug to treat outbreaks of syphilis and other bacterial infections, the federal government willfully removed study participants from the draft pool, to safeguard against them receiving effective medication.⁷²

The subjects were never informed that the study would be carried out through their deaths.⁷³ Said one participating physician, "If the colored population becomes aware that accepting free hospital care means a post-mortem, every darkey will leave Macon County."⁷⁴

65. *Id.* at 98-99.

66. REVERBY, *supra* note 1, at 20.

67. In Oslo, Norway, Dr. E. Bruusgaard, Chief of the Venereal Disease Clinic, conducted a study of patients with first- and second-stage syphilis, who had been examined between 1891 and 1910, but left untreated. The results indicated that among White syphilis patients, cardiovascular impairment far outweighed neurological complications. JONES, *supra* note 5, at 92-93.

68. REVERBY, *supra* note 1, at 19-20.

69. *Id.* at 97-102, 131.

70. REVERBY, *supra* note 1, at 24.

71. *Id.* at 15.

72. As the war persisted, a number of subjects were called up to enter the service. Because this would require that they receive penicillin treatments to cure their syphilis, the Public Health Service asked the draft boards to exempt them from service. The draft boards agreed. *Research Ethics: The Tuskegee Syphilis Study*, Tuskegee University, <http://www.tuskegee.edu/Global/Story.asp?s=1207598> (last visited Feb. 1, 2007).

73. REVERBY, *supra* note 1, at 23.

74. *Id.*

The medical community in the United States was aware of the experiments throughout the course of the study. A total of thirteen articles were published documenting the results and chronicling the course of inquiry.⁷⁵ But these articles remained tucked away in obscure medical journals, known to the medical community but invisible to the public eye. It was not until 1972, with the publication of Heller's article in the *Washington Star*, that the participants and the public became aware of the devastating situation. Only then did the United States government finally terminate the study.⁷⁶ By that time, twenty-eight participants had died directly from the disease and upwards of one hundred more from related complications.⁷⁷ Additionally, forty wives of participants had been infected and nineteen children had been born with congenital syphilis.⁷⁸

That same year, attorney Fredrick Gray took up the cause, representing the participants in a class action lawsuit against the United States.⁷⁹ But they never saw their day in court. Within two years, the two sides settled for a total of \$10 million and lifetime healthcare for participants and affected family members.⁸⁰ At that time, though, the government made no public statement accepting responsibility or issuing an apology. Not for another twenty-five years would the United States issue a public apology.⁸¹ Finally, in 1997, in the presence of five study participants and family members, among them Herman Shaw, President Bill Clinton stood in the White House East Room and said,

The people who ran the study at Tuskegee diminished the stature of man by abandoning the most basic ethical precepts. They forgot their pledge to

75. REVERBY, *supra* note 1, at 2; See, e.g., A. V. Deibert, *Untreated Syphilis in the Male Negro: III. Evidence of Cardiovascular Abnormalities Over Sixteen Years*, 17 J. VENEREAL DISEASE INFO. 301-14 (1946); Pasquale J. Pesare, *Untreated Syphilis in the Male Negro: Observation of Abnormalities Over Sixteen Years*, 34 AMER. J. SYPHILIS, GONORRHEA, AND VENEREAL DISEASES 201-13 (1950); Eunice Rivers, *Twenty Years of Follow-Up Experience in a Long-Range Medical Study*, 68 PUB. HEALTH REP. 391-95 (1953); J. K. Shafer, *Untreated Syphilis in the Male Negro: A Prospective Study of the Effect on Life Expectancy*, 69 PUB. HEALTH REP. 261-74 (1954); Sydney Olansky, *Environmental Factors in the Tuskegee Study of Untreated Syphilis*, 69 PUB. HEALTH REP. 691-98 (1954); Jesse J Peters, *Untreated Syphilis in the Male Negro: Pathologic Findings in Syphilitic and Nonsyphilitic Patients*, 1 J. CHRONIC DISEASES 127-48 (1955); Stanley H. Schuman, *Untreated Syphilis in the Male Negro: Background and Current Status of Patients in the Tuskegee Study*, 2 J. CHRONIC DISEASES 543-58 (1955); Sydney Olansky, *Untreated Syphilis in the Male Negro: X. Twenty Years of Clinical Observation of Untreated Syphilitic and Presumably Nonsyphilitic Groups*, 4 J. CHRONIC DISEASES 177-85 (1956); Sydney Olansky, *Untreated Syphilis in the Male Negro: Twenty-two Years of Serologic Observation in a Selected Syphilis Study Group*, 73 AMA ARCHIVES OF DERMATOLOGY 516-22 (1956); Donald H. Rockwell, *The Tuskegee Study of Untreated Syphilis: The 30th Year of Observation*, 114 ARCH. OF INTERNAL MEDICINE 792-98 (1961).

76. REVERBY, *supra* note 1, at 1.

77. *Id.* at 15.

78. JONES, *supra* note 5, at 255, n.24.

79. Charles W. Pollard v. United States of America, *supra* note 13.

80. GRAY, *supra* note 39, at 98.

81. *Id.* at 115.

heal and repair. They had the power to heal the survivors and all the others and they did not. Mr. Shaw, the others who are here, the family members who are with us in Tuskegee, only you have the power to forgive. Your presence here shows us that you have chosen a better path than your government did so long ago.⁸²

President Clinton's apology was the first step toward healing the wounds created by the Tuskegee Syphilis Experiments.

II. INTERNATIONAL HUMAN RIGHTS

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁸³

-Universal Declaration of Human Rights

At the time of the Tuskegee experiments domestic law in the United States was relatively quiet on the issue of human rights in medical testing.⁸⁴ In tracing the development of international human rights law, however, it becomes clear that the governmental and medical conduct during the Tuskegee period violated international standards for the ethical treatment of individuals. Here, the country not only failed to meet its obligations to protect its citizens; it took deliberate, affirmative steps to endanger members of its own national populace.

In the post-World War II Era, the international community came together to construct a universal conception of basic human rights.⁸⁵ With the formation of the United Nations (UN) and its subsequent passage of a tripartite International Bill of Rights, nation states sought to place governments at the forefront of protecting the fundamental rights and privileges of the world's population.⁸⁶ The United States, a permanent member of the UN Security

82. REVERBY, *supra* note 1, at 574.

83. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc A/810 (Dec. 12, 1948).

84. REVERBY, *supra* note 1, at 216-17.

85. Amy Sinden, *An Emerging Human Right to Security from Climate Change: The Case Against Gas Flaring in Nigeria*, in ADJUDICATING CLIMATE CHANGE: SUB-NATIONAL, NATIONAL, AND SUPRA-NATIONAL APPROACHES (Hari Osofsky & William C.G. Burns eds., 2007).

86. According to scholar Amy Sinden, human rights as a body of law developed in three defined stages. The first phase, which arose during the Age of Enlightenment in the 18th century, saw the formulation of basic civil and political human rights. These rights "are rooted in a conception of the person as an autonomous individual, and they stress the protection of individual dignity and autonomy from government interference." In the middle of the twentieth century this stage in the evolution of human rights gave rise to the development of a set of social and economic rights. In contrast to the focus on the individual focus in the first development period of human rights concepts, this era concentrated on the responsibility of governments to safeguard the fundamental needs of their citizenries. It was during this period that the Tuskegee experiments largely took place. Lastly, in recent decades, human rights have come to encompass cultural

Council, served an integral role in the construction of these international standards at the same time that the nation's government was ignoring the rights and endangering the lives members of its own citizens through its engagement in the Tuskegee Syphilis Experiments.

As the international community developed a standard for universal human rights around the world, the United States and the Allied Forces came together to hold the Nazi government accountable for specific violations of international law committed during World War II.⁸⁷ The Nuremberg War Crimes Tribunal, so named for the location of the trials at the Nuremberg Palace of Justice, lasted for four years, from 1945 to 1949, and consisted of twelve court cases involving more than one hundred defendants.⁸⁸ Charges included war crimes, crimes against peace, and crimes against humanity.⁸⁹

The first case to be tried within the umbrella of the Nuremberg Tribunal was *United States v. Karl Brandt*, commonly referred to as the Doctors' Trial, in which twenty-three German physicians were charged with being involved in the Nazi medical experiments.⁹⁰ This case brought to light some of the most atrocious testing on human subjects in the history of the modern world.⁹¹ The defendants in the Doctors' Trial were charged with four counts: (1) common design or conspiracy, (2) war crimes, (3) crimes against humanity, and (4) membership in a criminal organization.⁹² The evidence presented at trial showed that the physicians forced their victims to participate in medical trials that included (but were not limited to) high-altitude experiments, freezing experiments, malaria experiments, mustard gas experiments, bone, muscle, and nerve regeneration and transplantation experiments, sea water experiments, and sterilization experiments.⁹³ In the course of these experiments, the defendants committed murders, brutalities, cruelties, tortures, atrocities, and other inhumane acts.⁹⁴ In total, sixteen of the twenty-three defendants were convicted, seven receiving death sentences.⁹⁵

The Doctors' Trial was significant for paving the way for the construction of a comprehensive set of standards for biomedical research.⁹⁶ Out of the Doctors' Trial arose a ten-point document known as the Nuremberg Code,

empowerment and self-determination. Sinden, *supra* note 85.

87. RAMESH THAKUR & PETER MALCONTENT, FROM SOVEREIGN IMPUNITY TO INTERNATIONAL ACCOUNTABILITY: THE SEARCH FOR JUSTICE IN A WORLD OF STATES 43 (2004).

88. *Id.* at 43-45.

89. *Id.* at 46.

90. *Introduction, supra* note 11.

91. *Id.*

92. THAKUR & MALCONTENT, *supra* note 87, at 45-48.

93. *Introduction, supra* note 11.

94. *Id.*

95. THAKUR & MALCONTENT, *supra* note 87, at 48.

96. *Introduction, supra* note 11.

laying out the standards for the medical testing on human subjects.⁹⁷ The Nuremberg Code was the first set of principles to ensure the rights of human subjects.⁹⁸ Examining the Tuskegee Syphilis Experiments in light of these Nuremberg Codes demonstrates the degree to which the United States government grossly violated the basic rights of its citizens, and undermined its legitimacy as a forerunner in the call for an international standard of medical ethics.

While many of the ten elements of the code were breached during the Tuskegee Syphilis Experiments, three points are particularly relevant to an assessment of the human rights violations that occurred in Tuskegee. First, the Nuremberg Code calls for informed consent by a participant with the mental capacity to grant such consent.⁹⁹ Under the protocol for Tuskegee, researchers utilized fraudulent and deceitful methods of recruitment.¹⁰⁰ Prospective

97. The Nuremberg Code in full: (1) The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment. The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs, or engages in the experiment. (2) The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature. (3) The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problems under study that the anticipated results will justify the performance of the experiment. (4) The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury. (5) No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur; except perhaps, in those experiments where the experimental physicians also serve as subjects. (6) The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment. (7) Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death. (8) The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment. (9) During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible. (10) During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe in the exercise of the good faith, superior skill and careful judgment required of him that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject. THE NUREMBERG CODE (1947) in A. MITSCHERLICH & F. MIELKE, *DOCTORS OF INFAMY: THE STORY OF THE NAZI MEDICAL CRIMES*, xxiii-xxv (1949).

98. *Id.*

99. *Id.* at section 1.

100. JONES, *supra* note 5, at 132.

subjects were ill-informed as to both their diagnosis and their prognosis.¹⁰¹ Further, they were ill-advised on the final outcome of the project: that the study would continue through the deaths of the participants.¹⁰²

Second, the Nuremberg Code requires comprehensive background knowledge and expertise on the part of the researchers and a good faith intention to yield results that lead to the betterment of society as a whole.¹⁰³ Faulty methodology in the Tuskegee project brings into question whether the experiments were conducted with the intention of yielding any productive results for the good of society.¹⁰⁴ Because the purpose and protocol of the study were altered mid-course, a number of the subjects initially received treatment for their illnesses, thereby both denigrating the integrity of an experiment designed to track the unaltered effects of syphilis through death and the ability to apply the study's findings to the general public.¹⁰⁵

Finally, the Nuremberg Code calls for the use of safeguards to protect the health of the subjects. The code states that experiments should minimize risk and avoid unnecessary pain and suffering.¹⁰⁶ Most importantly, it states that no experimentation should take place where death is an intended or foreseeable outcome.¹⁰⁷ The Tuskegee Syphilis Experiments were conducted with little regard for the health and safety of the participants.¹⁰⁸ The men involved were monitored until they died, but were not given any medication to alleviate their suffering.¹⁰⁹ To the contrary, while it has been documented that the physicians involved conducted the experiments with the goal of tracing the effects of the illness *until and through death*, the subjects were told that they were being given sufficient treatment.¹¹⁰ Though each of the physicians involved was scientifically qualified, it is clear that they did not use the highest degree of skill and care to ensure the safety and comfort of their subjects.¹¹¹ There is documented evidence that individuals involved in the experimentation had probable cause to believe that their actions were resulting in injury, disability, and death to the subjects.¹¹² For example, Dr. Oliver Wenger, in his remarks prepared for a venereal disease seminar in September 1950, wrote,

101. REVERBY, *supra* note 1, at 1.

102. REVERBY, *supra* note 1, at 23.

103. Mitscherlich & Mielke, *supra* note 97.

104. JONES, *supra* note 5, at 74.

105. *Id.* at 131. See also REVERBY, *supra* note 105, at 22.

106. MITSCHERLICH & MIELKE, *supra* note 97.

107. *Id.*

108. REVERBY, *supra* note 1, at 1-2.

109. *Id.* at 2.

110. JONES, *supra* note 5, at 2.

111. See, e.g., *id.* at 93.

112. According to letters exchanged by study physicians and government officials, the researchers deliberately withheld treatment from the study participants, so that they could track the 'natural history' of the disease. GRAY, *supra* note 39, at 58-77.

Now, what have these findings [of three rounds of physical examinations and blood tests] been, in terms of generalities? First, that untreated syphilis apparently shortens the life expectancy by 20 percent. Second, that there is a greater involvement of the cardiovascular system and third, that syphilitics without treatment appear to be subject to higher rates of morbidity. Thus there are more potentially disabling defects among them and they die earlier.¹¹³

Dr. Wenger and his colleagues knew that their actions (and inactions) were causing grave harm to the subjects of the study, yet their research continued for another 22 years.

From 1932 to 1972, the United States government engaged in continual, covert action to track the course of syphilis at the expense of the individuals that were afflicted by it.¹¹⁴ Over that forty-year period, effective treatments were developed and then withheld from study participants.¹¹⁵ International standards were adopted and implemented, banning the actions undertaken by the United States, but the government ignored these developments. These actions amounted to gross human rights abuses; the leaders of the Tuskegee Syphilis Experiments committed tangible violations of international law as it was constructed in the post-WWII Era, and must be held accountable.

III. RESTORATIVE JUSTICE AND THE ENFORCEMENT OF HUMAN RIGHTS

The hottest places in hell are reserved for those who, in times of great moral crisis, maintain their neutrality.¹¹⁶

-Dante

Under international law there exist three prescribed methods to remedy violations such as those that occurred in the Tuskegee Syphilis Experiments. First, the violating nation state may be held accountable within a domestic legal system, either internally or in another state's domestic court, if that system's jurisdictional structure permits.¹¹⁷ Within this method of enforcement, the

113. *Id.* at 63.

114. REVERBY, *supra* note 1, at 1. The United States government was involved at all levels of the study. In addition to funding the research, members of the government took concrete actions in furtherance of the study's objectives. For example, in 1933, Surgeon General Hugh Cumming supported the extension of experimentation. GRAY, *supra* note 39, at 55. Officials at the National Institute of Health catalogued took samples and organs from the deceased participants. *Id.* at 57. In 1942, evidence indicates that draft boards were involved in exempting study participants from serving so as to prevent them from receiving adequate treatment. *Id.* at 61. Finally, in 1958, the surgeon general signed printed certificates of appreciation for subjects who had been involved in the study for 25 years. These awards were accompanied by \$25, one for each year of participation. *Id.* at 58.

115. *Id.* at 2.

116. DANTE ALIGHIERI, *THE INFERNO* (1321).

117. THAKUR & MALCONTENT, *supra* note 87, at 80-91.

proceedings would follow the legal rules and structures that exist within that legal system, either the state's own legal system or that of another state. Second, the state may be tried within a United Nations-sanctioned tribunal.¹¹⁸ Finally, enforcement may take place in the international court system, specifically, the International Criminal Court (ICC).¹¹⁹

These three alternatives – domestic intervention, UN-sanctioned tribunals, and jurisdiction under the ICC – offer different mechanisms for administering justice for human rights violations around the world. For the crimes committed in the Tuskegee Syphilis Experiments, internal domestic intervention is the most practical and effective of these three remedies. Under the contemporary international legal and cultural climate, this option offers the best chance to alleviate the harms caused by the U.S. government. Domestic intervention, where a government seeks to remedy the wrongdoings conducted within its own borders, offers a holistic venue through which the victims of Tuskegee can finally begin to heal.

The international criminal system is not a viable means for achieving justice for victims of Tuskegee. Ratified on July 1, 2002 the International Criminal Court's charter includes a non-retroactivity clause; thus, the court can only prosecute cases in which violations took place from that point forward.¹²⁰ As such, the actions of the U.S. government between 1932 and 1972 fall outside of the jurisdiction of the ICC. Further, under Article 17 of the court's charter, the ICC operates as a jurisdiction of complementarity.¹²¹ It seeks not to usurp jurisdiction from national courts and, as a result, will only claim jurisdiction if it believes that the national courts are "unwilling or unable genuinely to carry out the investigation or prosecution."¹²² While there are no definite standards for whether a domestic court system is capable of adjudicating domestically, the ICC has generally determined that a nation is unable to hold its own tribunal when its legal system has collapsed, and is unwilling when the country is shielding someone from responsibility for ICC crimes.¹²³ Because the United States is neither unable nor unwilling under this rubric, it is unlikely that the ICC would claim jurisdiction over the crimes of Tuskegee even without the non-retroactivity limitations.

118. *Id.*

119. *Id.*

120. Rome Statute of the International Criminal Court, art. 11 (1), *available at* http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf. "The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute."

121. *Id.* at art. 17(1)(a) "[The Court shall determine that a case is inadmissible where] the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution"; *see also* Thakur & Malcontent, *supra* note 87, at 187.

122. THAKUR & MALCONTENT, *supra* note 87, at 188.

123. *Id.*

A United Nations-sanctioned tribunal is also untenable as a means of remedying the harms committed in the Tuskegee experiments. Over the past 60 years, the United Nations Security Council has created such tribunals to hold violators of war crimes and crimes against humanity accountable for their actions.¹²⁴ These ad hoc courts have proven effective in negotiating a tenuous peace between embattled peoples throughout the world.¹²⁵ In 1994, in Rwanda, for example, the UN set up the International Criminal Tribunal for Rwanda to prosecute individuals responsible for genocide, crimes against humanity, and violations of international humanitarian law that occurred during the country's inter-ethnic rivalry that year.¹²⁶ While such a tribunal to remedy the harms committed during the Tuskegee Syphilis Experiments may seem plausible in theory, the implementation of this sort of temporary court requires the unanimous support on the UN Security Council, on which the United States sits as a permanent member.¹²⁷ It is unlikely, therefore, that the United States would sign on to a trial of its own government.

Domestic intervention, on the other hand, has proven effective in other nations such as South Africa where divisive conflict and government wrongdoing created deep-seated hurt and distrust within certain marginalized communities.¹²⁸ Using a restorative justice approach, these post-Apartheid internal investigations have successfully reframed the national narrative and constructed new lenses into previously hidden truths. The United States should follow this model set forth by South Africa. This system offers the greatest hope for healing the deep-seated wounds within the African-American community and allowing the nation as a whole to move forward.

Restorative justice calls for a two-step process:¹²⁹ (1) the victims must have the opportunity to share their experiences and to tell their stories, and (2) the perpetrator must both acknowledge that experience and atone for it. According to sociologist Nicholas Tavuchis, when a conflict occurs there exists

124. *Id.* at 105.

125. For discussion on the International Criminal Tribunals for Rwanda and the Former Yugoslavia see HENRY STEINER & PHILIP ASTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 143-92 (2nd ed. 2000). Scholars point both to the Nuremberg Trials in Germany and their Pacific Theater counterpart, the International Military Tribunal for the Far East in Japan, as the foundation for these international interventions in criminal adjudication. Both in nature and in content, these trials came to represent the basis for the formation of the contemporary mechanisms for upholding the law of nations and making accountable those who violate international law, as defined by the three categories set up in the Nuremberg and Tokyo Charters. Christopher J. McGrath, *Today's Transnational Crime Epidemic: The Necessity of an International Criminal Court to Battle Misdeeds Which Transcend National Borders*, 6 D.C.L. J. INT'L L. & PRAC. 135, 143-45 (1997).

125. See, e.g., Seth Harris, *The United States and the International Criminal Court: Legal Potential for Non-Party State Jurisdiction*, 23 HAWAII L. REV. 277, 292-93 (Winter 2000).

126. *Id.*

127. U.N. Charter art. 23; U.N. Charter art. 27 para. 2.

128. See, e.g., Thompson, *supra* note 27.

129. Waldman, *supra* note 27, at 365.

a “seemingly deep-seated need to cleanse and heal social rifts by means of apology rather than excuses, defenses, justifications, or legal measures[.]”¹³⁰ Restorative justice can provide the space for this healing. It can act as a narrative catharsis, whereby a fractured community can come face-to-face with its broken past and begin to repair those fractures.

In 1995, the South African government enacted the Promotion of National Unity and Reconciliation Act, seeking to construct a complete picture of the human rights atrocities committed between 1960 and 1994, during the nation’s apartheid regime.¹³¹ The following year, the newly elected African National Congress put into effect the South African Truth and Reconciliation Commission (TRC) to reunite a nation pulled apart at its seams by decades of racial bigotry and violence.¹³²

The TRC sought to create a space in which victims could confront their persecutors and offenders could attest to their crimes, without fear of reprisal.¹³³ Quite simply, the commissions were designed to create a collective truth regarding the nation’s history, from which all involved could begin to move forward.¹³⁴ According to the Reconciliation Act’s preamble, the undertaking would serve as a “historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy, and peaceful coexistence for all South Africans, irrespective of colour, race, class, belief, or sex.”¹³⁵

Headed up by Desmond Tutu, the Commission was made up of three committees: one to consider the human rights violations committed, one dealing with reparations, and one concerned with amnesty.¹³⁶ Both victims and oppressors had the opportunity to tell their stories. Rather than focusing on harsh sanctions for the perpetrators, the commission granted amnesty to individuals who fully disclosed all of the relevant facts related to harms committed and crimes perpetrated.¹³⁷ Though the standard for amnesty was high, the goal was to create a complete picture of oppression, not to hand down harsh punishments.¹³⁸

The United States should follow this model set forth in South Africa. While the government in the 1970s provided tangible redress for its actions, it

130. NICHOLAS TAVUCHIS, *MEA CULPA: A SOCIOLOGY OF APOLOGY AND RECONCILIATION* 2 (1991).

131. Promotion of National Unity and Reconciliation Act No. 34 of 1995.

132. Waldman, *supra* note 27, at 364.

133. *Id.*

134. *Id.*

135. Promotion of National Unity and Reconciliation Act, *supra* note 131.

136. Thompson, *supra* note 27, at 275.

137. *Id.*

138. As of 1998, the Amnesty Committee had only granted approximately 150 full amnesties. They still had nearly 2,000 to consider. Thompson, *supra* note 27, at 275.

never offered the victims of Tuskegee a space to tell their stories; it never allowed for a genuine dialogue between the perpetrators of the abuse, and those upon which that abuse was inflicted. This suppression of truth has led to a loss of faith within the African-American community toward the federal government.¹³⁹

Over the past decade, several studies have linked this distrust directly to the Tuskegee Syphilis Experiments.¹⁴⁰ According to the Tuskegee University Legacy Committee's request for redress, "the study continues to cast a long shadow over the relationship between African-Americans and the bio-medical professions; it is argued that the study is a significant factor in the low participation of African-Americans in clinical trials, organ donation efforts, and routine preventive care."¹⁴¹ As Alpha Thomas, a health educator with the Dallas Urban League, stated during testimony in front of the National Commission in AIDS in December 1990, "so many African-American people that I work with do not trust hospitals or any of the other community health care service providers because of that Tuskegee experiment. It is like... 'if they did it, then they will do it again.'"¹⁴²

Scientists now find it difficult to recruit African-American volunteers to participate in medical studies.¹⁴³ A study at the University of North Carolina at Chapel Hill found that 80% of Blacks, compared with 52% of Whites, "were suspicious that they might be used as 'guinea pigs' without their consent."¹⁴⁴ Further, the African-American community is more likely to believe that the government and the medical community are deliberately jeopardizing their health and well-being.¹⁴⁵

Arguably, the most enduring travesty suffered by the victims of the Tuskegee Syphilis Experiments is this loss of trust in their own government. Simple monetary reparations, without a public acknowledgement of accountability and the shared experience of forgiveness, are not sufficient to repair the damage. Only through genuine dialogue between the United States government and the African-American community can the nation begin to address the destruction brought about by the project. Using the model of restorative justice, modeled after the South African Truth and Reconciliation

139. REVERBY, *supra* note 1, at 431-33.

140. *Id.*

141. *Legacy Committee: Abstract of the Syphilis Study Legacy Committee Final Report of May 20, 1996*, Tuskegee University, <http://www.tuskegee.edu/Global/story.asp?S=1141982> (last visited Jan. 18, 2008)

142. REVERBY, *supra* note 1, at 413.

143. *See, e. g., Study Reveals Blacks, Whites, Distrustful of Medical Research*, Dec. 19, 2002, http://www.findarticles.com/p/articles/mi_m0DXK/is_22_20/ai_95915239 (last visited Feb. 7, 2008).

144. *Id.*

145. REVERBY, *supra* note 1, at 413.

Commission, the United States can begin to construct its own narrative of reconciliation.

CONCLUSION

All I am looking for is a signal of the man's humanity. If I encounter that, I am obliged, as a vulnerable human being, to explore the possibility of reconciliation.¹⁴⁶

-Nyameka Goniwe, testimony at the South African TRC, 1995

Over a period of forty years, the United States government engaged in covert, merciless, egregious experimentation. It subjected its own citizens – for the most part illiterate, indigent sharecroppers – to mental and physical suffering.¹⁴⁷ These men, and their families who also became victims in the experiments, endured severe damage to their hearts, brains, and nervous systems.¹⁴⁸ They became psychotic and blind.¹⁴⁹ Many of them ultimately died.¹⁵⁰

It was not until twenty-five years after these experiments were uncovered that the leaders of this nation issued a public apology. In those twenty-five years, the African-American community developed a deep-seated fear of, and distrust toward, medical research. To this day, seventy-five years after the inception of the experiments, African-Americans are considerably less likely to participate in medical research, to sign living wills, to give blood and donate organs, even to get healthcare treatment.¹⁵¹ These trends create a self-fulfilling prophecy; because African-Americans are hesitant to undergo medical testing, the medical community has fewer resources at its disposal for combating public health concerns endemic to the African-American community, and the Black population in the United States receives substandard care.

By the time President Clinton issued his apology, this cycle had become so ingrained in the culture of this country that the President could do little to dispel the trepidation and apprehension. The public acceptance of responsibility was an important first step, but it is far from enough. Until both sides begin to engage in a genuine dialogue, until the African-American

146. David Thelen, *How the Truth and Reconciliation Commission Challenges the Ways We Use History*, <http://www.cshc.ubc.ca/Thelen.pdf> (last visited Jan. 17, 2008).

147. REVERBY, *supra* note 1, at 1-3.

148. JONES, *supra* note 5, at 3-4.

149. *Id.*

150. *Id.*

151. See, e.g., Giselle Corbie-Smith, *Attitudes and Beliefs of African-Americans Toward Participation in Medical Research*, J. OF GEN. INTERNAL MED. 537 (Sept. 1999), available at <http://www.springerlink.com/content/v32j017851621617/fulltext.pdf>; Nneka O. Mokwunye, *African-Americans, Trust, and the Medical Research Community*, ONLINE J. OF HEALTH ETHICS (2006), available at <http://ethicsjournal.umc.edu/ojs2/index.php/ojhe/article/viewFile/44/51> (last visited Jan. 18, 2008).

community feels heard and listened to, and until the government is able fully and completely to acknowledge its wrongdoing, contemporary medical progress and developments in treatments will perpetually continue to reach and benefit the African-American community and those who most need those treatments.

Using the model set up by South Africa's Truth and Reconciliation Commission, the United States must rectify the hurt caused by the Tuskegee Syphilis Experiments. The nation must take the initiative to set up a domestic tribunal, to give voice to the silenced, and to allow the victims to tell their stories in their own words. It is imperative that the United States create the space for restorative justice to take place so that finally, the scar that the Tuskegee Syphilis Experiments has left in our collective consciousness can begin to heal.