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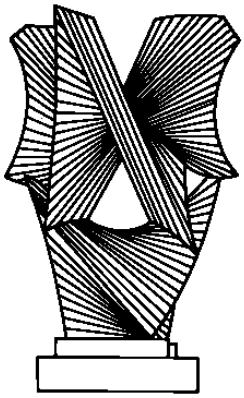

MAKING WILLING BODIES:
MANUFACTURING CONSENT AMONG PRISONERS AND SOLDIERS, CREATING HUMAN SUBJECTS, PATRIOTS AND EVERYDAY CITIZENS

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THE UNIVERSITY OF CHICAGO MALARIA EXPERIMENTS ON PRISONERS AT STATEVILLE PENITENTIARY

Bernard E. Harcourt[†]

> *"I assume all the risks of this experiment and declare that I absolve the University of Chicago and all the technicians and researchers who take part in the experiment, as well as the government of Illinois, the directory of the State penitentiary and every other official, even as concerns my heirs and representatives, of any responsibility."*

I was struck when I came across this medical release in Giorgio Agamben's discussion of the concentration camp as the paradigm of modernity in *Homo Sacer: Sovereign Power and Bare Life* (1998:157). Human experiments, I soon discovered, were indeed conducted by doctors at the University of Chicago on prison inmates in custody at the Illinois State Penitentiary at Stateville. The first batch of human subjects, 432 convicts to be exact, were deliberately infected by malaria-carrying mosquitoes of the most virulent type—the Chesson strain of *Plasmodium vivax* malaria—under the supervision of physician researchers from the university's Department of Medicine starting in March 1944. The University of Chicago doctors not only oversaw the incubation of the malaria-infected mosquitoes, but also the transmission and inoculation of the parasites and the administration of experimental drugs.

Each of the Stateville prisoners had consented to be part of the experiment and signed a standard release form. Ernest Beutler, one of the University of Chicago doctors stationed at Stateville, recalled years later: "I would talk to a group of eight or ten people, and we would tell them what we're going to do. Do you have any questions? Then there were mimeographed forms and they would sign them. There was a guard there and he would witness the signature. That was it. Then it would be filed" (Beutler 2007:39).

"The obvious hypocrisy of such documents cannot fail to leave one perplexed," Agamben observes (1998:157). That seems right, of course.[1] Doubly true because these human experiments were taking place at exactly the same time as the infamous Nazi medical

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experiments in concentration camps that we would all rightly condemn—especially American prosecutors and judges at the Nuremberg Medical Trial a few years later.[2] Agamben challenges the very idea that any person under such conditions could exercise free will, arguing that "the concept of 'voluntary consent' is simply meaningless for someone interned at Dachau, even if he or she is promised an improvement in living conditions" (1998:157-58). Agamben then adds: "From this point of view, the inhumanity of the experiments in the United States and in the camps is, therefore, substantially equivalent" (1998:158).

That too seems right—at least with regard to less extreme forms of Nazi experimentation that did not involve intentional homicide, cruelty, maiming, and psychological battery. Surely, the justification for the detention—or the lack thereof—should not matter to the issue of consent under inherently coercive conditions. For some of the more egregiously homicidal medical experiments, as Agamben observes, the Nazi doctor, Dr. Roscher, specifically asked for two or three "*professional criminals*" (1998:154).[3] The slippage does not escape Agamben: The particular status of the detained individual *qua* prisoner, he suggests, is what made it possible for him to become a human subject of experimentation and for others to imagine the possibility of his consent, or not even to care. In both totalitarian and democratic countries, the prisoners "were persons sentenced to death or detained in a camp, the entry into which meant the definitive exclusion from the political community" (1998:159). That exclusion is precisely what gave rise to the condition of *homines sacres*—the condition of "a life that may be killed without the commission of homicide" (1998:159).

This too seemed right, at least at first. But as I began to investigate the University of Chicago malaria experiments, my sense of outrage slowly turned into more genuine perplexity, and I was oddly overcome by this haunting feeling that I had heard this all before—but not exclusively in the space of political exclusion.

Stateville Prison, Illinois, March 1944

The first "bite day" was March 8, 1944. The procedure took longer than expected. The plan was to bite sixteen prisoners on that first day, and "each man had to have the same number of first bites, second bites, and third bites" (Leopold 1974:310). Each mosquito was in a little cylindrical cage that was placed up to the skin of the inmate: "You took a mosquito, placed its cage on A's forearm and watched carefully until the mosquito bit him. Then, when you were sure that the mosquito had inserted its proboscis well under the skin, but before it had had a chance to fill up with blood, you lifted the cage gently from A's arm and placed it on B's. Here, too, the mosquito must have a chance to bite, but not to fill up with blood. Then you placed the cage on C's arm, and here you let the mosquito 'bite out'—drink its fill" (Leopold 1974:310).

Easier said than done. Many of the mosquitoes did not cooperate, others were not sufficiently infected after dissection, and so it took until 3 a.m. that first day to get the job done—with all the doctors and researchers gradually leaving, eventually letting a single doctor finish with the assistance of Nathan Leopold, the notorious Stateville inmate of Leopold and Loeb infamy, who would participate actively in the human experiments as lab technician, as researcher, and as volunteer. In all, each of the inmates "received the bites of ten infected mosquitoes" (Alving et al. 1948:3; Leopold 1974:310-11).

The volunteers at Stateville had been selected carefully. In order to volunteer, they had to satisfy specific criteria. They had to be white and in good physical health, and they had to be confined for 18 or more months so that follow-up observations could be made. The subjects were nearly all between the age of 21 and 40. And they had to have had a medical or genetic history that excluded prior exposure to malaria or certain immunities. As the doctors explained, "Volunteers who had lived in known malarious areas, or who gave a history suggestive of previous malarial infection, or who belonged to one of the colored races, were excluded in order to minimize the factors of acquired or natural immunity" (Alving et al. 1948:2).

Each candidate underwent a full physical examination and gave their medical history, and was routinely subjected to a battery of exams: "complete blood count, urinalysis, urinary urobilinogen concentration, phenolsulfonephthalein excretion, cephalin-cholesterol flocculation, serum bilirubin, blood nonprotein nitrogen, blood Kahn, blood typing, chest x-ray, electrocardiogram, and, where indicated, erythrocyte sedimentation rate" (Alving et al. 1948:2).

The mosquitoes were also carefully selected and cultivated. *Anopheles quadrimaculatus* mosquitoes, they were vigilantly infected with the Chesson strain of *Plasmodium vivax* malaria by being allowed to feed on volunteers—and not on any, but on those patients "whose gametocyte densities were such as to insure a reasonably high incidence of infection in the biting mosquitoes;" these mosquitoes were then "incubated" at the "mosquito insectory at the University of Chicago" (Alving et al. 1948:3).

Once the mosquitoes had bitten the prisoners, they were then dissected and studied under the microscope to determine if their salivary glands had the sufficient degree of infection. There were then prophylactic tests and curative tests administered on the prisoner subjects in order to assess the effectiveness and toxicity of new anti-malarial drugs (Alving, et al. 1948:3; *see also* Leopold 1974:310).

According to the official story and the news media, none of the Stateville prisoners suffered fatal harm as a result of the malaria experiments. The *Chicago Daily Tribune* reported that "None of the volunteering convicts died but many were made violently ill as a result of their infection with *vivax* malaria and subsequent treatment with drugs then in the experimental stage" (Howard 1947:10). Leopold's memoir, though, tells a slightly different story and does include at least one inmate death directly associated with the testing of anti-malarial drugs (1974:320). For the rest of the inmates, the experiments tended to be extremely painful. The malaria was a virulent strand, one of the most potent. When Leopold had it, he claimed, it caused headaches "unlike any other headache in the world. You think from moment to moment that your head is going to split, and you wish to gosh it would!" (1974:321).

As the historian Nathaniel Comfort notes, "No longitudinal study was performed on the Stateville prisoners to assess the long-term effects of these regimens. Heart failure is now a known side effect of some synthetic antimalarials. Leopold suffered two heart attacks while on the malaria project and eventually died of heart failure in 1974" (Comfort 2009:195).

Manufacturing Consent

As singular and remarkable as the University of Chicago malaria experiments were, I nevertheless felt haunted by the familiarity of the storyline. The rationale for the experiments sounded so familiar. The way that the human experiments were discussed, presented, and justified—the way that they *worked*, the work that they *did*, I had heard all this before, so many times, in so many situations—situations that seemed far more ordinary and, so often, far more noble.

The prisoners at Stateville, it turns out, were needed as human volunteers because the country had to win the war in the Pacific. The malaria experiments were conducted during a period of active military engagement of American troops in subtropical regions and the experiments themselves were presented as a vital part of the war effort. The principal investigator, Dr. Alf Sven Alving, a nephrologist at the University of Chicago, would tell the prisoners precisely that: malaria "was the number-one medical problem of the war in the Pacific" and "we were losing far more men to malaria than to enemy bullets" (1974:305). The war in the Pacific was ravaging our soldiers and the medical problem of malaria was a top priority. "Between 1942 and 1945," Comfort reminds us, "American forces reportedly lost some eight million mandays to malaria. In 1943, General Douglas MacArthur reportedly exclaimed, 'Doctor, this will be a long war if for every division I have facing the enemy I must count on a second division in hospital with malaria and a third division convalescing from this debilitating disease!'" (2009:192-193).

The country needed volunteers for these experiments, and *human* volunteers at that, because laboratory animals would not suffice. Bodies, *human* bodies were necessary. Chimpanzees would not do the trick: "*vivax* malaria won't take in a monkey," Leopold explained, "they tried it!" (1974:307). Experimental volunteers were as badly needed, it turned out, as battlefield soldiers. As Leopold recounted in his memoirs:

> In some not too farfetched sense our bodies would be the battlefield in a not unimportant war. Shaking the bed with your chills, saturating the mattress with the sweat of a 107° temperature weren't nearly so dramatic as shouldering a tommy gun, but maybe they were just about as important in the long run. And beggars can't be choosers. Here was something we could do as well, maybe better, than civilians. A malaria parasite isn't a bit snobbish. It would just as soon set up housekeeping in a con's blood cells as in anyone's. And the time we lost from our jobs while in bed with malaria wasn't an economic loss to anyone. (1974:307)

The convicts—at least some of them, reportedly—viewed themselves as sacrificial soldiers in the war effort. Leopold referred to them as "good soldiers." When they caught malaria, Leopold explained, their fevers were high, and they were not allowed to have anti-malarial drugs administered until they had suffered five consecutive days of a temperature not less than 102°. "That 102° was easy; nearly everyone had at least 106° before he started on the drug," Leopold recounts. "They were pretty uncomfortable boys for a while, but they got the best of nursing care and there wasn't a single complaint. Every last one of them was a good soldier" (1974:312).

The more I investigated these human experiments, the more apparent it became that Dr. Alving and Nathan Leopold were rehearsing a familiar tune: experimenting on live

prisoners was necessary to win the war. This story would permeate the malaria project and pervade the news media and all government communications. When the National Research Council finally lifted its "curtain of secrecy" and publicly announced the malaria research program, a year after its inception, in March 1945, the federal agency portrayed the experiments precisely as central to the war effort: "These one-time enemies to society appreciate to the fullest extent just how completely this is everybody's war," the NRC declared.[4] "Instead of being deterred by [the risk]," the Report continues, "many of the volunteers actually invite danger, in order to share in some measure what their friends and relatives are experiencing on the various battlefronts. Upon learning that, through their cooperation, thousands of GI's might be spared the ravages of the tropical malady, the prisoners respond immediately and enthusiastically."[5]

Naturally, the media took the same angle. On page one of a front-page article on March 5, 1945, the *New York Times* portrayed the experiments as an effort "to determine whether the chemicals can safely be given to our fighting men exposed to malaria and how large a dose can be tolerated by the human system" (Laurence 1945:1). The *Chicago Daily Tribune* presented the researchers as "a corps of four army doctors" and added that "The prisoners do this without any promise of reward" (Wright 1945:18). *Life* magazine, in its June 4, 1945 issue—an issue that carried on its cover a public-service announcement urging readers to invest in War Bonds—laced its photo-spread with war and enemy motifs. "In three U.S. penitentiaries men who have been imprisoned as enemies of society are now helping science fight another enemy of society," the article began ("Prison Malaria," 1945:43). The first photo caption read: "Army doctor watches malaria-carrying mosquitoes bite stomach of Richard Knickerbocker, serving 10 to 14 years at Illinois State Prison" ("Prison Malaria," 1945:43).

A Productive Mechanism

The war rationale, eerily familiar, was so very productive—for everyone involved, not just for the University of Chicago researchers. Nathan Leopold himself would deploy it aggressively when he sought executive clemency in 1949. "Leopold told the [parole] board of his role as guinea pig for malaria tests for army doctors," the *Chicago Daily Tribune* reported in April of that year in an article subtitled "Hopes Malaria Test Aid Will Benefit Him" (Wright 1949:13). Like the other volunteers before him, Leopold hoped to get a reduced sentence from his participation in the war effort; and so, "he related his part in the malaria tests and told of how he had two small infected pieces cut from his legs... At another time he chuckled as he tried to describe for the board how 'hot a malaria fever of 105 appears'" (Wright 1949:13).

A few years earlier, in February 1947, the Illinois Governor, Dwight H. Green, had announced that the 445 convicts who had participated in the war-time malaria experiments would be "given special consideration for paroles or executive clemency" (Howard 1947:10).[6] One historian reports that the following governor, Adlai Stevenson, commuted or paroled 317 of the prisoner volunteers, including 24 men convicted of homicide and one convicted of rape. According to the *Chicago Daily Tribune*, "the usual allowance by the parole board for malaria guinea pigs has been two calendar years' shortening of time" (Wright 1949:13). Leopold hoped to get his just recompense: "I hope I will get the same reward as the other men in this malarial project. That is all I have to say, gentlemen."[7] The war effort was his strongest suit.

For medical research more generally, the war rationale was productive and helped initiate a wave of experiments on prisoners. Allen Hornblum, a historian of human experimentation, observes that the "war years had become the transforming moment for human experimentation in America and particularly for penal institutions as a site of such scientific endeavors. What had once been a small, under-funded, unsophisticated cottage industry had blossomed into a well financed, broad clinical research programme investigating avant-garde procedures, cures, and treatments" (Hornblum 1997:1439). As Hornblum suggests: "The overriding goal was to win the war in Europe and Asia; everything else was secondary, including research ethics and the issue of consent. Millions of American fighters were risking life and limb daily; at the very least, lawbreakers could contribute to the war effort with similar commitment" (1997:1439).

The war-time malaria project, in fact, helped put in place a new model for medical research that would ultimately lead to the National Institutes of Health. The idea of combining governmental and private university research and funding dedicated to one particular disease was the formative model for today's NIH (Slater 2004:129).

The war rationale was also useful in other ways. It was, for instance, helpful to the Allied prosecutors at the Nuremberg Medical Trial: The Stateville consent protocols, specifically, became the benchmark of ethical human experimentation (Harkness 1996). In fact, in a somewhat ironic twist, the combination of the war rationale and the consent protocols that emerged from the Stateville malaria project—and more specifically from the Nuremberg Code—served to legitimize and expand experimentation on live prisoners. It is fair to say that the regulation of consent led to an explosion of prisoner experimentation.[8]

Moreover, from a purely strategic point of view, prisoner experimentation successfully contributed to reduced casualties and injuries. "World War II was the first major US 'conflict in which fewer of our troops died of disease than of battle injuries and wounds.' The manufacture and use of [anti-malarial drugs] kept the total number of cases of malaria in the US military below half a million" (Slater 2004:128). In this sense, the Stateville malaria project was "a productive undertaking" (Slater 2004:128). As the *New York Times* editorialized in April 1946, the malaria project was "proof that war accelerates the progress of science and technology."[9]

Not surprisingly, human experimentation on prisoners also turned out to be a remarkably productive and efficient way of conducting medical research. Just imagine how convenient it was to experiment on captive subjects—available at all times, under surveillance at every minute, controlled and isolated. The researchers knew what they ate, when they slept, where they had been, what they had been exposed to for every waking and sleeping moment of their participation in the tests. They were as close to lab animals—to *caged* lab animals—as one could possibly hope. As the University of Chicago doctors reported in their research, published in 1948, "Follow-up observations could be made in nearly 100 per cent of the subjects" (Alving, et al. 1948:2). The experimental conditions could not have been better.

How To Get People To Do Things

We no longer run such experiments in this country—or at least, that's what I would like to believe.[10] The University of Chicago malaria research ended around the time that the

federal government announced it would no longer use federal prisoners for medical research in the mid-1970s (Hornblum 1997:1440). Since then, we no longer inflict disease intentionally on sacrificial bodies—even with their formal consent. Human subjects committees and institutional review boards now police that domain of research and ensure that human subjects are not treated like laboratory animals.

We also no longer draft young men and women to fight our wars, at least in the United States. We no longer conscript citizens regardless of their will. Since Vietnam, the country has turned to a volunteer force: citizens must now consent to sacrifice their bodies for their country. And every day, young men and women do just that. They enlist to serve their country in the struggle against terrorism in the wars in Afghanistan and the surrounding region, while the rest of us continue to expect that our young fellow citizens will sacrifice their bodies willingly to fight our wars, to protect our country, to secure our homeland.

But for each and every one of those men and women who enlist, their willingness to serve the country is fabricated in very much the same way that the prisoners' consent at Stateville had been manufactured. Their consent and willingness to serve is manufactured by tying the sacrifice of the body to the categories—those noble categories—of citizenship, patriotism, and humanity.

Looking back, Nathan Leopold was entirely right: the Stateville prisoners *were* "good soldiers"—no more, nor less than the conscripted men who would be sent to fight at Okinawa or land on the Normandy beaches and put their lives at risk for their country. The formal consent of the Stateville prisoners was no more, nor less informed or free than the willingness of the heroic men in uniform, called for military service, and shipped off to foreign lands. If anything, the prisoners may have had the better deal: surely, malaria parasites and anti-malarial drugs were less dangerous, in a supervised setting, than firefights and active military combat. Moreover, the prisoners had the *option* of volunteering—in fact, formally they would have had to volunteer because they were subject to a legally specified punishment that did not include human experimentation. Further punishment, above and beyond their stated sentences, without their consent, would have been cruel and unusual. By contrast, we did not need to seek the informed consent from citizens conscripted into the army. We just drafted them into the war and expected that they would fight, willingly. We fully expected that they would land on foreign beaches under what amounted to, often, suicidal conditions.

In an odd way, the coercion of the prison mirrored the coercion of conscription: *Prisoners at Stateville had to consent to participate, but under coercive conditions. Soldiers were coerced to participate by the threat of incarceration.* In both cases, though, winning the war made it all right. For the human experiments to work, and for the convicts to volunteer, the malaria project had to be infused with patriotism. It had to be made part, in everyone's mind, of the war effort. Even if the prisoners were participating because of their own self-interest, in the hope of leniency or commutations, those outside the prison had to place the experiments under the rubric of war—to appease their own conscience, to make them feel good about themselves, to justify infecting someone intentionally with a virulent strand of malaria, to provide the necessary element of consent, to avoid cruel and unusual punishment. Not just for the convicts, but for the physician researchers as well, and the general public more largely, it was important that they take comfort in the fact that they were advancing science in the interests of the war effort and humanity. For the malaria project to *work*—for doctors

to participate, for prisoners to volunteer, for the federal government to finance, for the public to support the experiments, for the courts to condone—there had to be a dominant framework of sacrifice for the soldiers fighting in the Pacific.

And, in a certain sense, it did work. Formal consent flowed through Stateville prison. As Ernest Beutler, one of the Chicago doctors reported, "there was really no reason to try to coerce people or to mislead people because there were always more people who wanted to do this than we really had slots" (2007:39).

In manufacturing consent, the doctors, the government, the warden, and the inmates were engaged in a "political economy of the body"—a most productive enterprise (Foucault 1975:30). The prisoners' bodies were needed to find a cure to malaria, just as they needed waves of soldiers on landing beaches to invade foreign territory, or bodies to staff the prison hospital ward, the military hospitals in the field, the amphibian landing vehicles, and the munitions plants. The prisoners were fulfilling a vital role in this larger political economy, and human experimentation was the perfect vehicle since their bodies were functionally useless in prison. The malaria experiments rendered their unuseful bodies useful to the state (Goodman et al. 2003:2-3). Their bodies—subjugated, coerced, and consenting—became forces of production in the war effort.

Vietnam and the Korean War

Not surprisingly, the war rationale blossomed during the Korean and Vietnam Wars. As the warden of Stateville prison, Frank J. Pate, would tell reporters in 1966—in the middle of the Vietnam War—prison inmates volunteer even more enthusiastically "during wartime" (Press Release 66-121B 1966:2). "During World War II, Korea, and now, the inmates have been more receptive to the project than they are during years of peace," Warden Pate explained. "I think it gives these inmates a great chance to do a service to humanity. It's definitely a morale factor because it increases their self-esteem" (66-121B:2).

It was precisely during the Vietnam War that the malaria project got renewed media attention. "The project has taken on renewed urgency recently because of drug-resistant malaria in Vietnam and Southeast Asia," Stuart Kaminsky of the Office of Public Relations at the University of Chicago reported on March 4, 1968 (Press Release 68-141 1968:2). "The reaction of the inmates to the project is enthusiastic support. As their reason for participation, they frequently cite having relatives in Vietnam or the desire to do something useful" (68-141:3).

One inmate, Earl Hanson, who worked in the hematology lab at Stateville, told the Office of Public Relations at the University of Chicago that "I think they're depending on this work more and more now with all the fighting going on in Viet Nam" (Press Release 66-121B 1966:3). Another inmate, Barrett Ingram, reportedly told the OPR from his hospital bed, "I wanted to volunteer because I felt I was doing something good, something for the boys overseas fighting" (66-121B:2). The war theme was prevalent throughout. According to the OPR, "Other inmates participating in the project report motives ranging from helping humanity, to impressing the parole board, to escaping boredom. Some have relatives serving with the armed forces in Viet Nam" (Press Release 66-121B 1966:3). Warden Pate himself emphasized the connections to Vietnam. "I've been through the South Pacific, and I have

some first-hand knowledge of what malaria can do to a man," he told the Chicago media representatives (66-121B:5)

The malaria experiments were, apparently, indispensible to winning the Vietnam War. "According to Dr. James V. McNamara, Research Associate at the University [of Chicago] and a Major in the U.S. Army, malaria cannot be eradicated in Vietnam or elsewhere with our present knowledge of the disease," the OPR reported. "In Vietnam, according to Dr. McNamara, the problem is further complicated by alien strains of malaria being carried into South Vietnam by infected North Vietnamese regular army soldiers. Estimates have been made, he continued, that if Americans were to be in the field in Vietnam for three months, 90 per cent would have malaria."

Again and again, the University of Chicago underscored the importance of its research to the war effort. "The University of Chicago-Army Medical Research Project has developed a drug which is now being tested in Viet Nam against the resistant forms of malaria now affecting American servicemen there," opens their press release dated March 12, 1966 (Press Release 66-121A 1966:3). The war rationale was productive. It helped prisoners volunteer to catch malaria. It made doctors willing to infect inmates with malaria. It helped the university with public relations. It made soldiers more willing to sacrifice themselves in far off lands.

Political Exclusion and Biopolitics

Giorgio Agamben writes in *Homo Sacer* that human experimentation on prisoners was only made possible in a democratic country because of the status of the prisoner, whose entry into the prison "meant the definitive exclusion from the political community" (1998:159). There is no doubt that exclusion was important in the case of the Stateville inmates. Incarceration at the Stateville penitentiary had stripped the inmates of much of their humanity and practically all of their citizenship rights. Not allowed to vote, and having no voice in politics or in the war, the convicts had been demeaned, demoted, downgraded for their crimes to something less than men, to inferior compatriots. They were, as Agamben justly observes, excluded from the larger political community. In this sense, the prisoners had become, as living beings who could be disposed of through human experimentation, what has become known today as "bare life":

> Precisely because they were lacking almost all the rights and expectations that we customarily attribute to human existence, and yet were still biologically alive, they came to be situated in a limit zone between life and death, inside and outside, in which they were no longer anything but bare life. Those who were sentenced to death and those who dwelt in the camps are thus in some way unconsciously assimilated to *hominess sacres*, to a life that may be killed without the commission of homicide. (Agamben 1998:159).

Political exclusion was indeed an important element that, in part, made possible the Stateville experiments. However, political exclusion was by no means *the* explanation—nor the "only possible answer" (Agamben 1998:159)—that made sense of human experimentation. First, because volunteering to catch malaria redeemed the prisoners at Stateville and returned them to the community. It allowed them to become, once again, fully human, patriots once more. In effect, by sacrificing their bodies to the war effort, these

prisoners were able to reclaim their citizenship. By their patriotic act of self-sacrifice, the prisoners were able to regain their political voice and membership in society.

Second, and more importantly, because the focus on political exclusion ignores the large number of other bodies that were being commandeered—all the men and women in uniform. The focus on political exclusion masks the fact that the Stateville prisoners were, in truth, nothing more than *good soldiers* and that the country was asking the very same sacrifice—if not more—from ordinary citizens. If anything, the nation was demanding even greater bodily sacrifice *from within the political community*.

The Stateville inmate volunteer and the common soldier were interchangeable—both equally necessary in this political economy of the body. Volunteering to catch malaria returned the inmates back *into* the political community *from which* citizens were being drafted as soldiers. Nathan Leopold understood this well: the malaria experiments, he wrote, "put the administration and the cons on the same side of the fence, partners in a common endeavor" (1974:330). And it was not only symbolic. It had material effects as well: many of the Stateville volunteers were let out of prison early.

The element of political exclusion does not fully capture the circumstances of the Stateville inmates, nor the parallel situation of ordinary citizens conscripted into war. Although Agamben recognizes the possibility of inclusion,[11] his emphasis on political exclusion somehow masks the sacrifice we demanded of the men and women in uniform. If this is what Agamben has in mind when he writes that "we are all virtually *hominess sacri*" (1998:115) or that "the realm of bare life gradually begins to coincide with the political realm, and exclusion and inclusion, outside and inside, *bios* and *zoé*, right and fact, entire into a zone of irreducible indistinction" (1998:9), then I would have to agree. If, more provocatively, it is what he means when he writes that the concentration camp has become "the fundamental biopolitical paradigm of the West" (1998:181) and that "*the production of a biopolitical body is the original activity of sovereign power*" (1998:6), again, I would tend to agree.

But my purpose here is not to project meaning onto Agamben's text, but instead, and more directly, to question how it is, exactly, that prisoner experimentation would have seemed (at least at the outset) so much more outrageous than commanding men and women in uniform to sacrifice their bodies for their country. In the end, the question to ask, again more directly but perhaps more cautiously, is: What is the difference between asking prisoners to participate in human experimentation and sending soldiers to their death at Omaha Beach, Verdun, or Vietnam? Or, more cautiously yet, how does the concentration camp differ from the high-casualty, sacrificial battlefield?

Of Real Interests and Other Reasons

Without question, catching malaria went against the Stateville prisoners' interests in good health and longevity—as was true, for soldiers landing on enemy beaches. But that hardly means that volunteering went against their real interests. Even for those who were not moved by patriotism, there were many other reasons to catch malaria. One, naturally, was a reduction of sentence. Although the experiments started with explicit reservations that the inmates had nothing to gain in terms of prison length, it quickly became clear that sentencing relief was on its way. It was certainly clear by the time of the Korean or Vietnam wars.

There were certainly many other reasons why an inmate might volunteer. There was, for instance—and unmistakably—a racial dimension. At Stateville, in 1944, the inmates were not chosen at random. They were all white—more specifically, they were "white male" volunteers between the ages of 21 and 40, with longer prison terms. Inmates who belonged to the "colored races" were not allowed to participate "in order to minimize the factors of acquired or natural immunity" (Alving et al. 1948:2). There was a certain racial prestige in being allowed to be infected by malaria-carrying mosquitoes.

There were also financial incentives: each man who volunteered was offered somewhere between ten and one hundred dollars to participate in the experiments.[12] That may have seduced some of the inmates—though it also, at least reportedly, disturbed others. Leopold was among the latter: "To this a number of the early volunteers, including me, objected strongly. We did not want to be paid for undergoing the experiment; we wanted to be volunteers in the literal sense of the word" (1974:309). Leopold took the issue up with the head researcher, Dr. Alving, who argued that compensation was necessary to make the contract legal, that the money was available and he wanted the inmates to receive it, and that no one would think they were volunteering for the money. This, Dr. Alving suggested, would be crazy. If they were doing it for the money, he argued, "[they] ought to have [their] heads examined" (Leopold 1974:310). And anyway, he added, they can give it to charity if they desired. That's exactly what Leopold did: "The payment was made in two parts; as soon as the checks arrived I endorsed them and sent one to the Red Cross and the other to the Salvation Army" (Leopold 1974:310). But others, perhaps, did it for the money.[13]

For some, it was an opportunity to have contact with women—indeed, for some, the first contact they had had with women in years: "for the first time there were several ladies on the floor—nurses and laboratory technicians. That was an innovation, indeed; many of the fellows had not been that close to a woman for years, and everyone felt a little shy and strange" (Leopold 1974:309). Leopold notes: "the first week the nurses were present everyone's blood pressure rose." Leopold would have known, he was the lab technician and took all the vitals. "The average rise was twenty points" (Leopold 1974:309).

The more general point, of course, is that being on the hospital ward may well have been more enjoyable and in part entertaining than being locked down in general population. As Ernest Beutler noted, "It was really probably more pleasant for them to be in this hospital unit, where they could play cards with their friends, than being on the rock pile or the laundry or whatever else their work assignment would be" (Beutler 2007:30). Many of the inmates, like Leopold—or so he reports—also got an intellectual charge out of the experiment. At the suggestion of Dr. Alving, Leopold began setting up a microscope on bite day for the volunteers to see what malaria (more specifically, the sporozoites and trophozoites) looked like. "This little lecture and demonstration became a standard part of bite day, and nearly all the fellows were intensely interested" (Leopold 1974:314).

Norval Morris, professor and dean of law at the University of Chicago, spent a significant amount of time visiting and studying prisons, including Stateville. He knew prisoners well, and recognized the myriad motivations that could lead an inmate to volunteer in such an experiment:

> Prisoner motivations, in fact, are many and complex. Machismo, which leads prisoners to exaggerate the risks they take, is one. The altruism of community service

> is another, carrying with it for the prisoner the assurance that he is as virtuous as those outside who have banished and rejected him. And if he sees himself as having wronged others by his crimes, here is a chance of expiation, of making restitution. Participation in experiments also provides an immediate temporary escape from the pervasive fear, endemic brutality and total anonymity of the typical American mega-prison. (When we visited Stateville, nearly 40 men were in solitary because they had asked to be—for their own safety.) Other motives are obvious and more prosaic, the hope of earlier release, the reward of payment. (Morris and Miller 1974).

In truth, there is no good reason to believe that any one of the prisoners at Stateville was *really* motivated to volunteer because of the war or patriotic sentiment. I don't want to be misunderstood. The war rationale may not have motivated any of the Stateville prisoners and it certainly was not present in all the other cases of prisoner experimentation in the United States.[14] It would be far too simple to attribute the Stateville inmates' willingness to sacrifice their bodies to any single factor such as the war effort. Suffice it to say that for some inmates perhaps there was a genuine element of patriotism and fidelity—and perhaps also of guilt, maybe, at not being on the front. Other men, it seemed, were free to volunteer to die for their country. Other men could prove their commitment and become heroes by sacrificing their bodies on the landing beaches of Normandy or Okinawa. Other men could give themselves to their country and to the greater good of humanity.

But the war narrative provided a means of fabricating willing bodies. It provided a way to present the malaria research as a fully legitimate enterprise—for the doctors, the Stateville inmates, the larger public, and the university. It sounded right. It was one of the more productive stories. For everyone involved, the war effort made for a good story.

Nathan Leopold: Desire, Consent, and Manipulation

The way Nathan Leopold tells it, he not only consented, he fought to catch malaria. From the moment he first heard about the malaria experiment, Leopold desperately wanted to volunteer—or so he says, but emphatically and repeatedly. In his memoirs, *Life* plus *99 Years*, Leopold insists that he not only wanted to participate in the experiments, but that he desperately wanted to catch malaria. From the minute he heard it was possible.

Leopold had been a prisoner for several decades by the time September 1944 rolled around, and had earned a respected position within the penitentiary. With his intelligence, social upbringing, and motivation, Leopold had held several trusted positions at the penitentiary, and was considered by the prison authorities and by his peer inmates as a voice of reason. At the time he first met Dr. Alf Alving of the University of Chicago, in September 1944, Leopold was a trustee working in the X-ray room at the hospital of the penitentiary. And it was as a trusted spokesman that he was approached. The United States government, Leopold was told, was interested in running some human experiments to test malaria drugs. The question to Leopold and his small cohort was whether inmates might volunteer. Leopold had no doubt:

> I had been looking around for a way of being useful in the war effort; this was made to order. Further, I had heard quite a number of fellows express themselves; they'd feel as I did, I knew. Then, in general, the cons have never been slow in doing their part. I asked Dr. Alving how many volunteers he contemplated using, and he

> answered that he might need as many as two hundred. I told him that I was confident there would be no difficulty in getting twice or three times that number. (Leopold 1974:305).

About two weeks later, the prison authorities asked for volunteers and the very first day 487 inmates volunteered.

Leopold himself volunteered, and was thrilled to no end to be part of the malaria research project. "I wanted to work on the project so bad I could taste it," Leopold recalls (308). "Working on the project was one of the biggest breaks I've ever had in my life," Leopold would write (306). "The coming of the malaria project was probably the most stirring and exciting event of my prison term," he added (307). It was "providential": "Here, without any question, was a real chance to be useful. This time a fellow could be sure it wasn't mental mud pies he was making. This was a real problem, a real challenge…. Here was something we could do as well, maybe better, than civilians" (307).

Leopold had special reasons to enjoy working on the project. He was a bright man and loved to learn and be with other intelligent people. "You were working shoulder to shoulder with wonderful people," Leopold explained (307). The young doctors assigned to the research team, Leopold found, were "brilliant," "among the finest people I've ever met" (306). They'd been "picked for their brains" and they were, in his own words, "the kind of guys you'd want to have for younger brothers" (306). "Not only were they very pleasant to be around; they were always willing to take time out to explain something you did not understand… I was learning more new things than I ever had before… and I hadn't looked through a microscope since I was a kid in high school" (306).

"For me it was," Leopold explains, "a liberal education, especially as all the doctors were most generous in explaining all the details" (315). Leopold bought medical text references and taught himself about malaria and heart disease. He also, in fact, engaged in research and purportedly wrote a research article on measurement of parasite concentration, which Dr. Alving recommended be published in the *Malaria Bulletin* (316).

But he also wanted *desperately* to catch malaria. Not just to work on the experiment, but to *be* a human subject. When the experiment was enlarged to include infecting volunteers with malaria, Leopold fought tooth and nail to be among the first. "This was what I wanted for myself," Leopold explains (309). "I went to Captain Craige and asked if I might not include myself in the first group to be bitten by malaria-infested mosquitoes" (309). No luck, at least not at first. He was too valuable to the researchers in his capacity as research assistant and all-around supervisor of the operations.

Even after Leopold had seen his peers suffer through temperatures of 106° or 107°, shaking in bed with chills, saturating their sheets with sweat, he *wanted* to get infected. "Having seen the actual workings of the experiments with malaria and having infected other men myself," Leopold reflected, "I was more eager than ever to become a subject. I went to Captain Craige and renewed my plea to be allowed to be a member of the next bite group" (312). Still no luck, apart from a cooked up experiment involving the ingestion only of anti-malarial drugs. But Leopold was still not content. "I wasn't satisfied. I was determined that I was going to have malaria too—the real thing. But I'd have to bide my time now" (313).

When a specially toxic strand of antimalarial drugs was being tested—a family of drugs called 8-amino quinolines that had been known to be very dangerous to patients—Leopold jumped on it. "This was one of the times I was clamoring to be used as a volunteer" (317). "My desire to take malaria myself continued to grow, and early in June I determined to force the issue" (318). So he approached the medical captain in charge: "This is the seventh time I have volunteered," he emphasized. "I want very much to take malaria; I feel very strongly about it. In fact, Captain, if you can't see your way clear to giving your consent, I'm afraid I'll have to quit my job here, go to the coal pile, and volunteer from there. Then you'll have to take me" (318). On that seventh try, Leopold finally succeeded.

"I was jubilant," Leopold reported (318). He had just volunteered to have the glands of malaria-infected mosquitoes injected subcutaneously in his thigh on two subsequent days; to have his thighs then cut open and a tissue the size of a silver dollar then removed from each thigh and inserted into another man's; and then to suffer through temperatures of 105° continuously over five days. "I carry a scar on each leg to this day. They're not very pretty, but I'm rather proud of them" (320).

Leopold loved being a human subject, he said, because he finally could be of use to society and no longer despised. "I knew no one would hate us for what we were doing here," he explained (307). "If we did this job and did it well, it might conceivably soften public opinion with respect to convicts. It might even help us here and now" (308).

Maybe Leopold was lying or embellishing in his memoirs. Nathaniel Comfort at Johns Hopkins University, who has written about the Stateville malaria research, refers to Leopold, in passing, as a "savvy manipulator":

> Nathan Leopold, savvy manipulator of the system that he was, understood that the surest route to freedom was to convey to the prison and to the public not only that he was no longer dangerous but that he was positively useful. Interviews, memoirs, public-relations statements, and newspaper articles all portray the Stateville project in a positive light, as putting the prisoners to good use. The public nature of such statements supports … [the idea that] we read them as persuasive rhetoric rather than literal truth. (Comfort 2009:201)

Persuasive rhetoric, indeed. Leopold was keenly aware of that himself. And only a few years later, in 1949, he would base his plea for clemency on his participation in the Stateville malaria experiment. Leopold never denied that self-interest played an important role in his decision to participate in the malaria experiments. Although he knew there was no assurance that it would benefit him or other inmates, Leopold could not put it out of his mind: "the possibility did exist that there would be time cuts. And that was a chance I could not afford to miss" (332). But in the same breath, Leopold asserted his genuine patriotism:

> I have said before that as a boy of fourteen I was bitterly disappointed that I was too young to take part in World War I, in which all three of my brothers saw service. And the advent of World War II increased greatly the punishment of being in prison. I wanted very badly to do my bit. Patriotism is not highly thought of among cons. I think way down deep a pretty large percentage are, in fact, patriotic, but somehow, in the face of the prevailing bitter cynicism, it's an emotion you don't dare mention aloud…. O.K., let's face it: I was and am patriotic; I love my country. Giving blood

> to the Red Cross, X-raying the men being considered for induction into the Army, helping register the fellows for the draft—all these I enjoyed because they gave me some slight sense of participation in the common effort. But they were such little things. The moment I grasped the scope of what was being attempted, I knew that being a malaria volunteer represented by far the best opportunity to do my bit in this thing. That's why I was so determined to be a subject; that's why I was willing to battle the whole staff and take a chance on losing my job in order to ensure that I would be allowed to take part. Opportunities like that come once in a term in prison; they have to be grasped when available. (330-31).

Leopold knew he would be taken for a manipulator. "There would no doubt be snide references to my participation in the experiments as a 'play for sympathy,'" Leopold recognized. But he didn't care, or at least he said. He knew some people would give him credit nonetheless. "They couldn't get away from the cardinal fact that I was participating, and I was sure no one would hate me for that. I felt that I had some reason to hope that public opinion in my regard might be softened to some degree" (332).

Involuntary Servitude, Truth, and Power

In a passage in *The Things They Carried*, an autobiographical novel about Vietnam, Tim O'Brien, the author, is on the brink of fleeing to Canada to avoid the draft, and invites the reader to step in his shoes and experience what it was like to face that life decision. At that moment, O'Brien is on a fishing boat, twenty yards from the Canadian shore, free to jump into the Rainy River and avoid being sent into combat. "What would you do?" O'Brien asks. "Would you jump? Would you feel pity for yourself? Would you think about your family and your childhood and your dreams and all you're leaving behind? Would it hurt? Would it feel like dying? Would you cry, as I did?" (O'Brien 1990:54). O'Brien would sit there for what seemed like an eternity, the aluminum boat swaying beneath him, paralyzed at having to make the decision. He ultimately tried to jump, but couldn't. "It just wasn't possible," O'Brien writes. "I couldn't endure the mockery, or the disgrace, or the patriotic ridicule. Even in my imagination, the shore just twenty yards away, I couldn't make myself be brave. It had nothing to do with morality. Embarrassment, that's all it was" (57).

What must it have felt like to be Nathan Leopold in 1944, several years into World War II, locked up at Stateville, guilty of one of the most notorious and heinous crimes committed in Chicago? Would it have felt embarrassing that other men were enlisting to serve in the Pacific theater and that you could do nothing worthwhile for your country? Would you have wanted to redeem yourself? Would you have been desperate to prove your willingness to serve for others? Would you have sacrificed your body and put it at the service of army doctors? Would you have wanted to get paroled?

There are, of course, a number of ways of thinking about this, there is a significant tradition in political thought regarding what Étienne de la Boétie coined "involuntary servitude." Steven Lukes has a useful taxonomy in his book, *Power: A Radical View* (2005).[15] From one perspective, the inmate volunteers may have been engaging in an ordinary cost-benefit analysis: they may have volunteered because they thought that it would benefit them by, for instance, getting them out of prison sooner. From another viewpoint, some would argue, the prisoners may have felt they had no choice but to volunteer. Not that they made a calculating decision, they simply had no alternative. From yet another perspective, the

inmates may have come to believe, genuinely, that they wanted to volunteer because of the war effort. Some may have bought in, sincerely, and embraced the war rationale, making them do things they otherwise would not have done. Some would characterize this as false consciousness, given that catching malaria was clearly against their self-interest in health. Others would shy away from the label of "falsity," but nevertheless subscribe to a notion of the production of a truth: that the inmates genuinely came to believe that it was important to volunteer in order to render service to one's country.

To my mind, this is a hard case to argue that we could even know the prisoners' "real" interests. Shaving two years off a prison term may be worthwhile—especially for an inmate who himself genuinely recognizes having committed a wrongful homicide or rape. And there are many, still today, who would argue that prisoners should have the capacity to consent. Norval Morris, again someone who dedicated his life to improving prison conditions, took the position that prisoners *should* be allowed to volunteer for medical research under properly supervised conditions. "The free consent of the unfree *can* be protected," he urged in an op-ed in the *Wall Street Journal* in April 1974. "[R]esearch in prisons can with appropriate safeguards make a useful contribution to the prisoner's welfare, to reform of the correctional system and not least to medical progress" (Morris and Mills 1974). Morris emphasized that prisoners *want* to participate, or at least say they do and often say so vehemently. "For example, last April, 96 of the 175 inmates of the Lancaster County, Pa., prison wrote to the local newspaper protesting the state's decision to stop all medical experiments on state prisoners. The disgruntled prisoners made the point that they were unharmed and that this project allowed them to pay off their fines and court costs" (Morris and Mills 1974).

Nathan Leopold recalls that the Nazi defendants at the Nuremberg medical trials brought up the Stateville malaria project as an example of involuntary human experimentation. "That was absolutely false," Leopold adamantly states. "The docs explained in great detail to each and every volunteer before he was used just what it was planned to do. We were told that there was danger, that we might be sick, that we might die. No man was coerced or even persuaded. If anything, the Army officers threw their weight the other way. Every man who went on the project at Stateville did so because he wanted to, almost because he insisted on it" (1974:307). At least that was how Leopold felt: "I really had to twist their arms to get my own chance to go on the project" (1974:307).

None of this is decisive, naturally. Leopold is not the arbiter of real interests. But to my mind, it makes little sense to view this matter through the lens of false consciousness. The notion of "falsity" adds little.[16] Rather, the question to ask is how the prisoners' apparent willingness to catch malaria was achieved. How was their consent fabricated?

And here, the answer turns out to be somewhat less remarkable than expected: by the ordinary means of governance, by associating the sacrifice of the body to citizenship and country, by raising the national flag, by framing everything through the lens of the war effort; by investing these prisoners and soldiers in their own destiny, nurturing them, and turning them into entrepreneurs of their own will (Foucault 2004:232-36); by joining "the care and governing of the polity to the care and governing of the affective self" (Stoler 2009:71).[17] It is a device that is, as we have seen, extremely productive.

The implications, though, are stunning—in two significant ways. Stunning, first, because, if consent can be achieved within Stateville prison, surely it can be achieved anywhere. If we can convince ourselves that these inmates volunteered and that their consent was legitimate—despite the fact that they were in formally coercive conditions—then it must not be hard to manufacture consent elsewhere. And not surprisingly, we do. We produce willingness in our everyday lives—willingness to accept the daily and banal routines of service, work, family life, and citizenship. Like the prisoners at Stateville, we make ourselves feel the need to sacrifice ourselves—to serve, to abide, to agree—by associating self-sacrifice with fidelity, devotion, citizenship, and patriotism. These associations—of sacrifice and family, work, country, or beyond that, humanity—are the techniques of governance that produce willing subjects. They help produce experimental subjects in prisons, at the extremity of consent-making; but they also produce daily acts of submission. The new mother who stops working in order to follow her husband or care for her children; the act of childbearing itself, as a sacrifice of one's body for one's family; the wage-earner who accepts a night shift or takes a second job to provide more for his or her children; the taxpayer who pays for things she really does not believe in, like war, sex education or abstinence programs—all of the sacrifices that we make in our daily lives, how often they are placed within the rubric of fidelity to family, to political community, to country.

Stunning, second, because it normalizes those other sacrifices that we routinely demand of young men and women in uniform. It may well be shocking that we would infect prisoners with malaria; but it should be equally shocking, if not more, that we would have drafted young men in the prime of their lives, with their whole productive future ahead of them, and all the pleasures of life, love, and fatherhood – and sent them to die for us, slaughtered in human waves on landing beaches or in no man's land. In the end, what is truly remarkable about the Stateville malaria project is also that we commanded other young men to die for us, that we asked other men and women to sacrifice their lives for our country.

Madness, Prisons, and War

In an interview given in Louvain with André Berten on May 7, 1981, Foucault closed with this reflection:

> *Michel Foucault:* And God willing, after madness, illness, crime, sexuality, the last thing I would like to study is questions of war and the institutions of war within what one might refer to as the military dimension of society. And there again, I would encounter the problem of law, both in the form of the law of people and international law, as well as in the form of the problem of military justice and what makes it possible for a nation to ask someone to die for it.
>
> *André Berten:* We hope that God will be willing, so that we may be able to continue to read your histories, these multiple histories that have been so enriching for us.

The University of Chicago malaria experiments might be fruitfully understood as a first chapter. Manufacturing and regulating consent at Stateville was, indeed, a productive enterprise. And, oddly, madness may also have played a role.

Buried in one of the University of Chicago malaria-research articles from 1948 there is an indication that the strain of malaria was actually "maintained in psychotic patients at the

Manteno State Hospital, Manteno, Illinois, chiefly by blood inoculations from donors who had manifested high gametocyte densities during trophozoite-induced infections" (Alving, et al. 1948:3). This is confirmed by our informant, Nathan Leopold, who tells us that the malaria project "was originally set up at Manteno State Hospital for the Insane, and the experimental subjects were the insane patients confined there" (Leopold 1974:306). And so, it turns out, on that first "bite day" at Stateville prison on March 8, 1944, the doctors used "mosquitoes raised by the Department of Parasitology at the University of Chicago *and infected on patients at Manteno*" (Leopold 1974:310 emphasis added).

Imagine that. Patients in an insane asylum being infected with malaria in order to feed mosquitoes, experiment on live prisoners, and win the war. Like young soldiers, the psychotic inmates at the asylum were made to sacrifice their bodies to serve their country. I can well imagine that the Manteno project was presented as a vital part of the war effort, indispensable to the GI's fighting in the Pacific theatre. Madness, delinquency, war: how often they go together, seamlessly.

References

Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*. Palo Alto CA: Stanford University Press.

Alving, A. S., Craige, B., Pullman, T. N., Whorton, C. M., Jones, R., & Eichelberger, L. 1948. "Procedures used at Stateville penitentiary for the testing of potential antimalarial agents." *Journal of Clinical Investigation*, 27, 2–5.

Beutler, Ernest. 2007. Oral history. Interview by A. Maestrejuan, 8 March. La Jolla, CA: Oral History of Human Genetics Project. (Available at http://www.societyandgenetics.ucla.edu/hgp/).

Comfort, Nathaniel. 2009. "The prisoner as model organism: malaria research at Stateville Penitentiary," *Studies in History and Philosophy of Biological and Medical Sciences*, 40: 190-203.

Dörner, K., Ebbinghaus, A., Linne, K., Roth, K. H., Weindling, P., Eltzschig, J., & Walter, M. 1999. *The Nuremberg Medical Trial, 1946/47: Transcripts, Material of the Prosecution and Defense, Related Documents*. Munich: K. G. Saur.

Foucault, Michel. 1975. *Surveiller et punir. Naissance de la prison*. Paris: Gallimard.

------. 2004. *Naissance de la Biopolitique. Cours au Collège de France. 1978-1979*. Paris: Gallimard/Seuil.

Freyhofer, H. H. 2004. *The Nuremberg Medical Trial: The Holocaust and the Origin of the Nuremberg Medical Code*. New York: P. Lang.

Goodman, Jordan, Anthony McElligott, and Lara Marks, eds. 2003. *Useful Bodies: Humans in the Service of Medical Science in the Twentieth Century*. Baltimore: Johns Hopkins University Press.

Gostin, Lawrence O., Cori Vanchieri, and Andrew Pape, editors. 2006. *Ethical Considerations for Research Involving Prisoners,* a report written by the Committee on Ethical Considerations for Revisions to DHHS Regulations for Protection of Prisoners Involved in Research. Institute of Medicine of the National Academies. Washington DC: The National Academies Press

Harcourt, Bernard. 2011. "Resisting Truth: Radical Thought from Marx, Nietzsche, and Freud, through Foucault, and to the Present [Comments on Steven Lukes' "In Defense of False Consciousness"]." *University of Chicago Legal Forum*, forthcoming.

Harkness, Jon M. 1996. "Nuremberg and the Issue of Wartime Experiments on US Prisoners: The Green Committee." *Journal of the American Medical Association*, Vol. 276, No. 20 (November 27, 1996): 1672–1675.

Hornblum, Allen M. 1997. "They were cheap and available: Prisoners as research subjects in twentieth century America." *British Medical Journal*, 315, 1437–1441.

------. 1998. *Acres of skin: Human experiments at Holmesburg prison. A story of abuse and exploitation in the name of medical science*. New York: Routledge.

Howard, Robert. 1947. "445 Guinea Pig Convicts May Win Clemency." *Chicago Daily Tribune*, February 1, 1947, p.10.

Laurence, William L. 1945. "New Drugs to Combat Malaria Are Tested in Prisons for Army." *New York Times*, March 5, 1945, p. 1.

Lederer, S. E. 1997. *Subjected to science. Human experimentation in America before the Second World War*. Baltimore: Johns Hopkins University Press.

Leopold, Nathan. 1974 [1958]. *Life* plus *99 Years*. Garden City, N. Y. : Doubleday.

Lukes, Steven. 2005. *Power: A Radical View* (2nd edition). Palgrave Macmillan.

------. 2011. "In Defense of False Consciousness." *University of Chicago Legal Forum*, forthcoming.

Moreno, J. D. 2000. *Undue Risk: Secret State Experiments on Humans*. New York: W. H. Freeman.

Morris, Norval and Michael Mills. 1974. "Prisoners as Laboratory Subjects," *Wall Street Journal*, April 2, 1974.

O'Brien, Tim. 1990.*The Things They Carried*. Mariner Books.

Pappworth, Maurice Henry. 1968. *Human Guinea Pigs: Experimentation on Man*. Boston: Beacon Press.

Press Release 66-121A. 1966. The Office of Public Relations, The University of Chicago, Press Release dated March 12, 1966. In University of Chicago Regenstein Library, Special Collections, Levi Administration Papers, Box 243, Folder 4.

Press Release 66-121B. 1966. The Office of Public Relations, The University of Chicago, Press Release dated March 12, 1966. In University of Chicago Regenstein Library, Special Collections, Levi Administration Papers, Box 243, Folder 4.

Press Release 68-141. 1968. The Office of Public Relations, The University of Chicago, Press Release dated March 4, 1968. In University of Chicago Regenstein Library, Special Collections, Levi Administration Papers, Box 243, Folder 4.

"Prison Malaria: Convicts Expose Themselves to Disease so Doctors Can Study It." 1945. *Life Magazine*, 4 June 1945, 43–46.

Slater, Leo B. 2004. "Malaria Chemotherapy and the 'Kaleidoscopic' Organisation of Biomedical Research during World War II." *Ambix*, Vol. LI, No. 2 (July 2004):107–134.

Sparrow, James. 2011 forthcoming. *Warfare State: World War II Americans and the Age of Big Government*. New York: Oxford University Press, forthcoming June 2011.

Stoler, Ann Laura. 2009. *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*. Princeton: Princeton University Press.

Taussig-Rubbo, Mateo. 2009. "Sacrifice and Sovereignty," 83-126, in *States of Violence: War, Capital Punishment, and Letting Die* (J. Culbert & A. Sarat, eds.). New York: Cambridge University Press.

Wright, George. 1945. "Bells Regulate Life in Prison at Stateville." *Chicago Daily Tribune*, November 25, 1945, p. 18.

Wright, George. 1949. "Leopold Seeks Shorter Term in Parole Plea." *Chicago Daily Tribune*, April 23, 1949, p. 13.

NOTES

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[1] According to the historian Nathaniel Comfort, "The consent form was almost fact-free. On paper, the prisoners agreed to participate in 'investigations of the life-cycle of the malarial parasite' and to 'accept all risks connected with the experiment'. No explicit risks—or even experimental drugs—were mentioned on the form." Comfort 2009:199; *see also* Pappworth 1968: 62.

[2] The Stateville malaria experiments featured prominently at the Nuremberg Medical Trial. Defense attorneys for the accused Nazi doctors raised the Stateville experiments in their defense, and the experiments then became the focus of expert testimony by the Allied prosecution's expert, Dr. Andrew Ivy. *See* Harkness 1996; *see also* Freyhofer 2004; Dörner et al. 1999. Dr. Ivy chaired the Green Committee and authored the committee report which focused on the Stateville experiment protocols, emphasizing the consent of the prisoners and the idea that they were engaged in a patriotic act. There has been a lot written on the controversy surrounding Dr. Ivy's testimony and the Green Committee Report, especially by Jon Harkness (1996).

[3] Not surprisingly, the "professional criminal" discussed in that passage turned out to be a 37-year-old Jewish woman prisoner at Dachau (Agamben 1998:154).

[4] NRC Report quoted in Laurence 1945:1. This quote has oft been attributed to the *New York Times*, though in matter of fact it was in the NRC report, reported in the *Times.* The distinction is important.

[5] NRC Report, quoted in Laurence 1945:30.

[6] For prisoners who were sentenced under the indeterminate sentence law, the Illinois Parole Board scheduled special hearings; and for convicts serving longer terms under definite sentencing (terms up to 199 years), the Governor asked the Division of Corrections to consider recommending executive clemency (Howard 1947:10).

[7] Wright 1949:13. As Comfort 2009:200 explains, Leopold's appeal for commutation was denied, but "he was ultimately granted parole in 1958, shortly after he became eligible."

[8] Alexander de la Paz, a graduate student at the University of Chicago, is developing this insight in an outstanding master's thesis title "'A Use For Criminals;' On Punishment, Knowledge, and the Case of Human Experimentation on Prisoners in the United States." As the historian Allen Hornblum documents, there was "tremendous expansion in prison experimentation in postwar

America. Federal prisoners, for example, were enlisted in a broad range of clinical studies that included athlete's foot, histoplasmosis, infectious hepatitis, syphilis, and amoebic dysentery, and in additional malaria experiments. State prisoners were considered to be equally valuable and were soon utilised for studies of syphilis, malaria, influenza, viral hepatitis, and flash burns 'which might result from atomic bomb attacks'" (Hornblum 1997:1439).

[9] *New York Times*, "Control of Malaria," April 13, 1946, p. 16, quoted in Slater 2004:131.

[10] Alexander de la Paz came into my office the other day with a book detailing the wide range of medical research that is being done today using prisoners. The book in question is *Ethical Considerations for Research Involving Prisoners*, published by the National Academies Press in 2006 and written by the Committee on Ethical Considerations for Revisions to DHHS Regulations for Protection of Prisoners Involved in Research, edited by Lawrence O. Gostin, Cori Vanchieri, and Andrew Pape. As de la Paz explains to me, "it offers a very broad topography of the contemporary research landscape, and a few recommendations for reform attentive to the changing demography and health profile of inmates in this age of mass incarceration." There is a particularly helpful pie chart of all the types of research being done at page 61. "Despite the federal, state and local level regulations governing it, and the gaze of the complex system of review and oversight monitoring it," Alexander de la Paz tells me, "contemporary social and biomedical research on prisoners is freckled with violations. Determination letters from the Department of Health and Human Services attest to this, as do recent controversial studies from Stanford University, the University of Miami, and the University of Texas: Experiments on prisoners, clinical trials—some involving "greater than minimal risk"—are still conducted in the United States, and the pharmaceuticals tested range from Phase I HIV vaccines to Interferon-alpha therapies, Depakote and Risperidone." (Communication with Alexander de la Paz, February 5, 2011). I had thought, well, I had hoped, that we did not do this anymore.

[11] Agamben 1998:159 ("In such a space of exception, subjection to experimentation can, like an expiation rite, … return the human body to life (pardon and the remission of a penalty are, it is worth remembering, manifestations of the sovereign power over life and death)").

[12] Leopold reports $100 (1974:309); Comfort reports, based on Beutler 2007, that it was possibly as low as $10 per year, and writes "between $25 and $100." Comfort 2009:199.

[13] Naturally, this raised an ethical dilemma. *See* Comfort 2009:192.

[14] It is important to note that much prisoner experimentation in the United States did not depend on the war rationale and some dispensed entirely with the requirement of consent or even disclosure. (In the infamous Tuskegee syphilis study, which extended to 1972, the African-American subjects were not only denied the opportunity to consent, but were actively withheld information and in some cases prevented from accessing treatment elsewhere). By the time the malaria research started at Stateville in 1944, prisoners in the United States had been used in experiments involving dengue fever, gonorrhea, gas gangrene, and tuberculosis—to name just a few—as well as in more esoteric medical research, and in all this the rationales had varied (Hornblum 1997:1438; Hornblum 1998; Lederer 1997). Some experiments were so eccentric as to defy rational discourse entirely. Charles Wittmann-Todd, a graduate student at the University of Chicago, is writing a remarkable masters thesis on the experiments of Dr. L. L. Stanley, the resident physician at San Quentin Prison in California, who was "transplanting testicles from recently executed convicts to senile and devitalized men" in the period 1918 to 1922 (Hornblum 1997:1438, quoting an article by Dr. Stanley himself). Under Dr. Stanley's supervision, "Hundreds of San Quentin inmates received injections of animal testicular substance; some

received a piece of ram's testicle the size of a silver dollar, which was implanted into the scrotum or abdominal wall" (Hornblum 1997:1438). Many of these studies put the volunteers at serious risk of health (Hornblum 1998; Moreno 2000). Hornblum reports that "The Ohio state prison system, for example, allowed researchers from the Sloan-Kettering Institute for Cancer Research to inject over 100 inmates with live cancer cells. The study was designed to examine 'the natural killing off process of the human body'; inmates were informed they faced 'no grave danger. Any cancer that took would spread slowly ... and could be removed surgically'" (Hornblum 1997:1440). Another prisoner experiment Hornblum reports involved a certain Dr. Austin Stough, who engaged in wide-ranging series of drug tests and blood plasma projects in Oklahoma, Arkansas, and Alabama, which "resulted in inmate volunteers receiving the wrong blood type and as many as 30 inmates a month contracting viral hepatitis" (Hornblum 1997:1440; *see also* Moreno 2000).

[15] Steven Lukes has an elegant short essay, "In Defense of False Consciousness," that spells out these categories in a succinct way. *See* Lukes 2011; Harcourt 2011.

[16] This is the central point I try to make in my exchange with Steven Lukes, *see* Harcourt 2011.

[17] For recent explorations of sacrifice and sovereignty, *see* Taussig-Rubbo 2009; and of mobilization and citizenship, *see* Sparrow 2011.