

## **US complicity and Japan's Wartime Medical Atrocities: Time for a Response**

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**Abstract:** Shortly before and during the Second World War, Japanese doctors and medical researchers conducted large-scale human experiments in occupied China that were at least as gruesome as those conducted by Nazi doctors. Japan never officially acknowledged the occurrence of the experiments, never tried any of the perpetrators, and never provided compensation to the victims or issued an apology. Building on work by Jing-Bao Nie (2006), this paper argues that the US government is heavily complicit in this grave injustice, and, should respond in an appropriate way in order to reduce this complicity, as well as to avoid complicity in future unethical medical experiments. It also calls on other US institutions, in particular the Presidential Commission for the Study of Bioethical Issues, to urge the government to respond, or to at least inform the public and initiate a debate about this dark page of American and Japanese history.

**Keywords:** complicity, accessory after the fact, Unit 731, apology, human experimentation, medical war crimes, medical ethics guidelines

## **Japan's Wartime Medical Experiments**

Though many have heard of Josef Mengele and the gruesome medical experiments conducted by Nazi doctors, it is much less widely known that similar atrocities were committed by Japanese doctors and medical researchers around the same time. The main purpose of the Japanese experiments, which took place between 1932 and 1945, was research into biological warfare (BW). (Note that the Geneva Protocol of 1925, signed by Japan, prohibited the use of biological and chemical weapons.) The brain behind this large-scale undertaking was Shiro Ishii, Chief Medical Officer of the Imperial Japanese Army and a specialist in microbiology. With generous support from military scientists and key military leaders he set up what is now referred to as the 'Ishii Network'. This network consisted of several units conducting BW research in the Japanese puppet state of Manchukuo (known as 'Manchuria' before it was invaded by Japan in 1931) and occupied parts of China. Human experimentation was conducted in all of these units, but it was only done systematically and on a large scale in Unit 731 in Harbin, Manchukuo, and Unit 1644, one of its sister units in Nanjing, in Eastern China. The victims were mainly Chinese civilians and soldiers, but Russians, Koreans, Mongolians and allied prisoners of war were also used as guinea pigs. Towards the end of 1939, the Ishii Network had a staff of more than 10,000 doctors and medical researchers conducting BW experiments (Moreno 2001, Harris 2002, Tsuneishi 2007).

A significant part of the research, which was top-secret because of its problematic nature, took place in so-called 'factories of death': large research facilities built especially for BW research (Harris 2002). To learn how to use pathogens in biological weapons, and to prevent and treat infectious diseases in the Japanese population, Japanese doctors and researchers deliberately infected prisoners with infectious diseases, including plague, cholera, typhoid, anthrax, and

tuberculosis. To study the development of these diseases, they dissected the victims after they had died, or vivisected them to their death. They also tested vaccines and treatments that had never been tested on animals, for example, by injecting horse urine in the prisoners' kidneys, or by performing blood transfusions using horse blood. To learn about the tolerance of the human body, prisoners were exposed to extreme temperatures or other extreme conditions, including oxygen, food or water deprivation, electroshocks, and lowering of air pressure. To test weapons, the doctors and researchers detonated bombs (with or without pathogens) near a prisoner and then dissected or vivisected the victim to study the bombs' effects (Moreno 2001, Harris 2002, Brody et al. 2014). There was no regard for the suffering of the victims, who were referred to as 'maruta' (Japanese for 'logs'). At least 3000 people (by some accounts several times as many) were subjected to these and similar experiments, and all died, either as a result of the experiments or in the process of destroying evidence of the experiments. Research also took place in hospitals in Manchukuo and in occupied cities in China, where Japanese surgeons and medical students (typically sent by their professors from Kyoto and Tokyo universities in exchange for research materials) conducted vivisections, including appendectomies and tracheostomies, usually on conscious prisoners. The main aim of these experiments was to practice surgery and to learn how to treat wounded Japanese soldiers (Tsuneishi 2007, Wang 2010). However, the largest part of the Ishii Network's research consisted of field experiments (Harris 2002, 95-104, Tsuneishi 2007). Soviet and Chinese villages and cities were exposed to infectious agents that had been released in rivers, wells and reservoirs, or dropped from planes. For example, bombers dropped fleas infected with the bubonic plague on the city centre of Ningbo, in East-China. Many other Chinese cities suffered from similar attacks with infectious agents, including salmonella, cholera, typhoid and anthrax. Sometimes Japanese doctors would, after exposing a village to infectious agents, dissect or vivisect villagers to study the effects of the attack. In one case, Ishii warned authorities in Changchun that there would be a cholera

outbreak. Ishii provided a vaccine, which had been deliberately contaminated with cholera bacteria. Shortly after the inhabitants of Changchun had been vaccinated, a cholera epidemic spread through the city (Harris 2002, 99). The number of victims of these ‘field experiments’, which mostly occurred between 1939 and 1942, is unclear (partly, because occasional outbreaks of infectious diseases occurred till many years later). According to the American Historian Sheldon Harris, by 1942 the number of casualties had fallen ‘into the six-figure range’ (Harris 2002, 104).

### **Aim**

As I will explain in more detail below, the US government played a crucial role in the fact that the Japanese perpetrators were never punished and victims never helped in any way, for example, through an official acknowledgement by Japan of the occurrence of the atrocities, or through an apology or compensation for the victims and their families. Building on work by Jing-Bao Nie (2006), I argue that this makes the US government heavily complicit in this grave injustice and that it, therefore, should respond in an appropriate way in order to reduce this complicity, as well as to avoid complicity in future unethical medical experiments. I also call on other US institutions, in particular the Presidential Commission for the Study of Bioethical Issues, to urge the government to respond, or to at least inform the public and initiate a debate about this dark page of American and Japanese history. But first, let me provide some background information on the US’ crucial role in the cover-up of the medical experiments.

### **The US’ Crucial Role in Japan’s Failure to Restore Justice**

Japan never tried any of the doctors or medical researchers who participated in the cruel medical experiments. After the war, most of the prominent medical staff of Unit 731 held high-status positions in Japanese society. Ishii lived in quiet retirement and received a generous government pension until his death. Others became head of important institutions, including Tokyo Prefectural University, the Olympic Committee, the Green Cross, and at least seven of the

directors of Japan's post-war National Institute of Health and five of its vice-directors had worked within the Ishii Network and had conducted human experiments. Many also went into the private sector and earned fortunes (Harris 2002, 336–344, Kleinman et al. 2010, 5).

To date, the Japanese government has not officially acknowledged the occurrence of the medical atrocities. In 1953, the Ministry of Education ordered Saburo Ienaga, a historian and former high school teacher, to remove passages about Unit 731 from his widely used history textbook. Ienaga rewrote the passages several times but the Ministry of Education was never satisfied. In 1965, Ienaga started a process against the government, which lasted until 1993, when he finally lost the case (Buruma 1994, 201, Wang 2010, 46-47). Medical schools or medical associations in Japan have also never issued statements repudiating the barbarity of the Japanese doctors and researchers, who had often been members of their institutions (Harris 2002, 336).<sup>1</sup> All this is in stark contrast with Germany, where many of the Nazi doctors were convicted at the Nuremberg trials (which also resulted in the Nuremberg Code with guidelines for human subjects research), medical associations and also universities acknowledged the involvement of (their) medical personnel in medical atrocities committed during the war, and where the government officially acknowledged and apologised for the atrocities committed by Nazi doctors (Yamazaki 2006, Brody et al. 2014).

However, what I would like to focus on in this paper is not the actions of the Japanese state and society, but those of the US government. Though the post-war US government played a crucial role in the prosecution of Nazi doctors, it did not prosecute or encourage the prosecution of

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<sup>1</sup> There has, however, not been *complete* silence about the Japanese medical atrocities in Japan. Since the 1980s, there have been historical and journalistic writings on the topic in China and Japan (for a comprehensive bibliography, see Nie et al. 2010). Japanese television has broadcasted documentaries about Unit 731, a group of Japanese Lawyers has taken up the cause of Chinese and Korean victims of BW (and chemical warfare) experiments and a photographic exhibition about Unit 731 was displayed in many cities throughout Japan in 1995-1996.

Ishii and his collaborators. Instead it made a secret deal with them: a payment of 250,000 yen and immunity for prosecution of war crimes in exchange for exclusive access to the data resulting from the experiments (Moreno 2001, Harris 2002, Tsuneishi 2007, Nie 2006, Wang 2010). Relations with the Soviet Union were deteriorating at that point, and the cold war was well under way. The US government hoped to prevent the Soviet Union from obtaining access to the data. Government officials also thought the data could be useful for their own warfare research. Moreover, by openly condemning the Japanese medical experiments the government risked compromising its own BW research at Fort Detrick in Maryland. Not only did the US government pay and promise immunity for prosecution to the Japanese war criminals, it also undertook several other active steps to help them escape justice and thus cover-up the crimes.<sup>2</sup> For example, it withheld information about the experiments from the International Military Tribunal for the Far East, which took place in Tokyo between 1946-1948 (Wang 2010, Yudin 2010).<sup>3</sup> The postwar US government also deceived the public over evidence from the Khabarovsk Trial (Nie 2004, Wang 2010, Yudin 2010, Brody et al. 2014). This trial, conducted by the former Soviet Union in December 1949, prosecuted 12 Japanese military personnel that were accused of the production and use of biological weapons during the war. The trial

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<sup>2</sup> That what the US did, or omitted to do, involved a cover-up of the medical atrocities is also argued in many other papers and books on this topic, including in Moreno 2001, Harris 2002, Nie 2006, and Brody et al. 2014.

<sup>3</sup> The Japanese medical experiments were virtually excluded from the International Military Tribunal for the Far East (IMTFE). However, one revealing conversation was made on record. It involves David Nelson Sutton, an American Associate Prosecutor of the International Prosecution Section (IPS) assigned to the China case, who mentions the experiments but when questioned about it replies to the President of the IMTFE that the issue will not be looked further into (International Military Tribunal for the Far East 1946, 4546-52, Wang 2010, 33-34). Written testimony about the medical atrocities was also handed over to the American Chief Prosecutor, Joseph Keenan, but nothing was done with it (Yudin 2010, 60). The groundbreaking report on that provided clear proof of the US cover-up was an article by journalist John Powell published in 1981 in the *Bulletin of the Atomic Scientists* (Powell 1981).

established beyond reasonable doubt that Japanese medical doctors had conducted cruel medical experiments and that the military had deployed biological weapons (Khabarovsk Trial Materials 1950). However, the findings were publicly dismissed by US authorities as communist propaganda. No official inquiry has ever addressed the US-Japanese deal (Kleinman 2010). Japan's 'secret of secrets' became one of the US government's own most closely guarded secrets, up until today (Nie 2006).

### **Nie's Proposal**

Jing-Bao Nie, a historian and bioethicist at the University of Otago, has written extensively on the topic of the Japanese medical atrocities. According to Nie, the Japanese case represents 'a continuing insult to humanity' and 'the triumph of inhumanity' (Nie 2004, 32-33). He calls it 'a double failure', which lies in 'the atrocities of war and in the subsequent state and societal responses' (Kleinman et al. 2010, 3). Nie has suggested two concrete steps that should be undertaken now – one by the US government and one by the international community – in response to the US cover-up of the Japanese medical atrocities.

First, the US government should

issue a formal apology, making it clear that it now condemns the Japanese war crimes including those associated with BW activities and human experimentation, and offers compensation in some form to redress its own actions in covering up these atrocities (Nie 2006, W28).

Importantly, Nie appeals to the US President's Council of Bioethics (the Bioethics Commission under President George W. Bush, which has now been replaced by the Presidential Commission for the Study of Bioethical Issues) to take the initiative by issuing a formal statement to urge the US government to apologise (Nie 2006, W30).

Nie's second proposal appeals to the international community. He suggests that

to help prevent similar acts of complicity (whether before or after the fact) from happening again, international declarations or codes of human rights and medical ethics should include a clause banning any attempt by any state or group, for whatever reasons, to be accessory to unethical medicine and other human rights violations (Nie 2006, W30).

According to Nie, the reason why the US Government should respond is because of its role as ‘an accomplice or accessory after the fact with respect to Japanese wartime medical crimes’ (Nie 2006, W23). The US government is an accomplice or accessory after the fact, according to Nie, because it knew about the medical atrocities, and deliberately undertook several active measures to help the perpetrators escape justice (Nie 2006, W23-4). The international community has an important role to play in trying to prevent such, and similar, complicity from recurring in the future. Though Nie presents various reasons for why these courses of action should be undertaken, he does not consider possible objections to his proposal. I aim to provide a more elaborate defence of (a slightly modified version of) his proposal. In order to do so, it is helpful to first look into the concept of complicity.

### **Complicity**

Complicity is a complex and disputed concept but is normally taken to capture the idea that one can do wrong by being associated, in a certain way, with the harmdoing—or, more broadly, wrongdoing—of other individuals or collectives (Gardner 2006, Kutz 2007, Lepora and Goodin 2013).

What sort of association is required to be an accomplice is a disputed issue, but most accept that complicity requires some sort of contribution to others’ wrongdoing. On this popular view of complicity neither the post-war, nor the current US government are complicit in the Japanese medical atrocities as these occurred before the US government became involved. The US

government could not have contributed to the experiments as these happened in the past and it is not logically possible to contribute to a past event.

One reply to this objection could be that perhaps a case can be made for a non-causal view on complicity, according to which contribution is not necessary for complicity (see, for example, Kutz 2007). Such a view is, however, likely to remain controversial.

Another possibility could be to adopt what Lepora and Goodin refer to as the ‘consolidated view’. The idea is that sometimes what seem to be distinct wrongs taking place at different times, are actually constitutive parts of one bigger consolidated wrong (Lepora and Goodin 2013, 54-59). The example of a getaway driver illustrates their point. They ask us to imagine a taxi driver who suddenly sees robbers running down a street chased by the police (it is obvious they are robbers – money is sticking out of their suitcases and they hold guns in their hands). The taxi driver stops, picks them up, and agrees to help them escape in exchange for an equal share of the loot. What sort of contribution does the driver make to the robbery?

Lepora and Goodin argue that there are two ways of looking at the getaway driver’s involvement in the robbery. First, one could see it as a distinct wrong – that of facilitating a robbery by aiding and abetting it. Secondly, one could see both the driving of the getaway car and the prior robbery as constitutive parts of one consolidated wrong: pulling off a successful heist. In that case the getaway driver contributes to the wrongdoing – the heist – even though the robbery lies in the past.

How do we know what interpretation is the right one in a particular case? According to Lepora and Goodin, we have to look at *the plan* of the wrongdoing and each agent’s acts in relation to that plan:

If it were just a case of ‘one thing leading to another’ in a wholly unplanned (and perhaps unanticipatable) way, then it may seem more natural to consider the wrongs separately.

But if instead it were the case that all those wrongs were seen by the agents involved as

components of one big plan ('pulling off a successful heist') which they adopt as their own, and they tailor their own actions in a mutually responsive way designed to ensure the success of that plan, then the consolidated way of looking at the wrongdoing seems more appropriate for assessing the contributions of those who regard it in that way (Lepora and Goodin 2010, 26-27).

Though it is plausible to think of the taxi driver in the story as someone who adopted the plan of the robbers to rob the bank, get away with it, and profit from the money, it is much less plausible to think of the US Government as adopting Ishii's plan as their own. The plan of Ishii was to conduct human experiments for the purpose of large-scale biological warfare research, and, presumably, to thereby help to increase Japan's power. The aim of the US in providing immunity of prosecution for those who conducted the experiments was quite different: it was to protect *US* national security by securing exclusive access to the medical data. Thus, even though the consolidated view might be a plausible one in some cases, I do not think it is plausible in the Japanese case.

However, this does not relieve the US government from all complicity regarding the Japanese case. As Nie has argued, the US government is 'an accessory after the fact' (Nie 2006). Legally, an accessory after the fact is someone who knows an offense has been committed, and who receives, relieves, comforts or assists any offender in order to hinder or prevent his or her apprehension, trial or punishment. However, being an accessory after the fact is typically not seen as a subset of legal, or moral, complicity since it does not involve a contribution to the initial crime, or wrongdoing. In US jurisdictions, an accessory after the fact is treated as a separate offender and is usually liable for considerably milder punishments (typically half the fine or prison time that principals face). One could also plausibly argue that, from a moral point of view, the US cover-up of the medical crimes and the subsequent silence about this was wrong, but less wrong than the commitment of the medical crimes themselves. However, even though

being an accessory after the fact is not a subset of complicity, it is closely related to it. (Lpora and Goodin (2013) refer to it as one of the 'conceptual cousins' of complicity.) Its wrongness can only be explained by referring to complicity-based reasons.

There are two-complicity-based reasons for explaining what is wrong with the US cover-up of the Japanese experiments and the subsequent silence about this. First, it makes the US government complicit in the fact that the Japanese perpetrators have never been brought to justice and that redress was never provided to the victims or their families. By protecting the Japanese perpetrators against prosecution, by benefiting from their crimes, and by remaining silent on this, the US government knowingly contributed, and still contributes in a significant way to Japan's failure to restore justice regarding its wartime medical atrocities. This makes them heavily complicit in this failure.

Secondly, by covering up the medical atrocities, and by subsequently remaining silent on this, the US government seems to implicitly condone the experiments. By implicitly condoning the experiments, the government indirectly encourages, and thus becomes potentially complicit in, future unethical medical research. It implicitly sends the message to current and future scientists that however unethical their experiments are, as long as the results are potentially useful for the government, they will not be prosecuted - indeed, they might even be granted special protection. This, in turn, may result in researchers not respecting research ethics codes as much as they would otherwise do.

Thus, the US government's wrongdoing regarding the Japanese medical atrocities lies in its actual complicity in maintaining a serious injustice as well as in its expected complicity in future unethical medical research.

I now turn to consider possible objections to Nie's proposal. I will first discuss his second proposal, and then return to the first.

## Proposal 2 - Banning Complicity in Medical Ethics Guidelines

*Complicity lacks normative significance for consequentialists*

A first potential objection to adding a clause to medical ethics guidelines that strongly condemns complicity in unethical medical research could be that the concept of complicity lacks normative significance for consequentialists, or more generally, for adherents to agent-neutralist moral theories. For agent-neutralists, what matters is *whether* your action contributes to the amount of badness or wrongness in the world, not *how* it contributes to that. Agent-neutralists do not care whether your contribution to the amount of badness or wrongness in the world is direct, as a principal agent, or indirect, as an accomplice. They might thus object to the inclusion of separate rules against complicity, which involves indirect wrongdoing, and against direct wrongdoing.

However, although the distinction between complicity and principal agency is not, for agent-neutralists, one with intrinsic moral significance, I believe that the concept of complicity could nevertheless be *instrumentally* valuable for agent-neutralists, and thus for consequentialists. We seem psychologically inclined to care much more about our own *direct* contribution to the amount of badness or wrongness in the world than about our *indirect* contribution to it, that is, through association with the wrongdoing of others. Perhaps this is, as Gardner suggests, because it is much less demanding from a rational point of view to do so. According to Gardner

it would often be an inefficient use of rational energy for me to pay the same rational attention to your wrongs as I pay to my own. I would be more productively employed, as the saying goes, keeping my own house in order (Gardner 2006, 132).

Thus, were we to simply advise people to avoid promoting bad outcomes or wrongful conduct, it is likely that they would focus mainly on mitigating their own direct contributions to badness and wrongness.

However, it does not follow from the fact that we tend to care more about our own direct wrongdoing that we *should* not equally care about others' wrongdoing that occurs as a result or

consequence of our actions. Indeed, the agent-neutralist will maintain that we should care just as much about others' wrongdoing as about our own, and just as much about the bad outcomes directly produced by others as about the bad outcomes that we directly produce.

Thus, the agent-neutralist needs a way to induce people to accord more moral weight to their indirect contributions to the amount of badness and wrongness in the world. In doing so, it would be useful to appeal to a concept that most are already somewhat familiar with. Complicity is such a concept - it has intuitive appeal and is already part of our moral framework. Thus, I think that there is at least an instrumental reason for consequentialists, and other agent-neutralists, to incorporate the concept of complicity into their practical recommendations, and to favour its inclusion in, for example, codes of medical ethics.

Thus, the objection that complicity does not have any normative force for consequentialists is not very strong.

*Complicity is only pro tanto wrong*

Another potential objection to introducing a clause banning complicity in medical ethics guidelines could be that complicity is 'only' *pro tanto* wrong: it can be outweighed by competing considerations. Sometimes it may, all things considered, be permissible, desirable or even obligatory to be complicit if there are sufficiently strong reasons in favour. The idea would be that plausible moral theories do not universally rule out complicity, so our codes of medical ethics should not do so either. An anecdote described by Chiara Lepora, a physician working for Doctors Without Borders who has also done theoretical work on complicity, illustrates this well. She describes how at the end of a medical information session in a very poor war-torn country a young soldier came to her and asked whether he should use condoms when raping women. She answered yes. This might have been the correct answer, given that the situation was not going to change any time soon and that it is better for a woman to be raped without getting an infection or unwanted pregnancy than to be raped with those added harms (Lepora and Goodin 2013). So

in this case, reasons not to become complicit in rape arguably were outweighed by competing considerations regarding the interests of the women. Following a medical ethics guideline that prohibits medical complicity might have resulted in the wrong action in this case.

In response to this objection, one could argue that medical ethics guidelines are simply not the right place to capture these nuances and complexities. To be effective, these guidelines need to send a simple clear message. I think there is something to this. However, one solution for avoiding a categorical condemnation of all complicity in medical ethics guidelines could be to frame the clause in a nuanced way, for example, by stating that it is 'typically' or 'presumptively' wrong to be complicit in unethical research or other human rights violations. Even more nuanced advice should then be provided elsewhere, for example in appendices of ethical guidelines, in more elaborate advisory reports, in the ethics sections of medical journals and/or in bioethics journals that are widely read by medical professionals.

So I think that the objection referring to the pro tanto wrongness of complicity is not a very strong one and can easily be dealt with.

In the remainder of this paper, I focus on Nie's first proposal, which, I believe, raises more interesting questions, in particular regarding the nature of complicity.

### **Proposal One – The US Government Should Apologise and Offer Compensation**

To consider this proposal, it is useful to refer to recent revelations about the US' involvement in unethical research, and reactions by the US government to these revelations.

#### *The Guatemala Case*

A few years ago it was revealed that between 1946 and 1948, the US Public Health Services ran medical experiments in Guatemala that deliberately exposed more than thousand Guatemalans to sexually transmissible diseases (STDs) without their consent. Shortly after the revelations about these experiments, President Obama directed the Presidential Commission for the Study

of Bioethical Issues (henceforth just 'Bioethics Commission') to undertake both 'a forward-looking assessment of research ethics' and 'a historical review of events that occurred in Guatemala between 1946 and 1948'. The Bioethics Commission wrote a seventy-page report describing in detail the specifics of the STD studies (PCSBI 2011a), as well as a more than hundred-page review of contemporary human research subjects protection rules and standards to ensure federally funded research is conducted ethically (PCSBI 2011b). President Obama formally apologised to the people of Guatemala, and so did the Secretary of the U.S. Department of Health and Human Services and of the Department of State. Reasons expressed by President Obama and the Bioethics Commission for thoroughly investigating the events and for apologising are that '[w]e owe it to the people of Guatemala and future generations of volunteers who participate in medical research' (vi); '...to both honor the victims and make sure events such as these never happen again' (v); and 'to restore trust and repair the damage created by these revelations'(2). The reasons provided could thus be said to be grounded both in the idea that justice should be restored (by honouring, or providing redress to the victims and by providing a detailed account of the events, so that blame can be correctly allocated), and that steps should be undertaken to rebuild trust in medicine and to prevent more unethical research in the future. The obvious question arising is: why not do something similar for the US involvement in the Japanese medical atrocities, which happened on a much larger scale and were arguably much more atrocious than the experiments in Guatemala (which I in no way intend to minimise)?

*The US government is merely complicit*

One argument for treating these two cases differently could be that, from a moral point of view, the US government's role was very different in both cases. In the Guatemala case, it was the US Public Health Service who ran the experiments, whereas in the Japanese case, the principal

wrongdoers were Ishii and his collaborators. The US government only became involved after the war, when the experiments had already stopped. The US government was thus not a principal agent in the Japanese case, at least not with regard to the execution of the experiments. It was, and still is, an accomplice at most.

This may be true, but being an accomplice says something about *the sort* of wrongdoing one is engaged in, not necessarily about the *moral weight* of that wrongdoing. As we have seen, agent neutralists believe that it is just as problematic to be an accomplice as to produce the same amount of badness or wrongness directly. But even those who are not agent-neutralists can accept that it can sometimes be morally equally bad or even worse to be an accomplice than a principal wrongdoer.<sup>4</sup> It could also clearly be worse to be an accomplice in a more serious wrong than a principal agent in another, less serious wrong.

Complicity comes in different kinds and degrees. Lepora and Goodin (2013) have developed a useful moral framework for thinking about complicity (and complicity-related actions, such as condoning past wrongdoing without contributing to it). According to Lepora and Goodin, to determine the moral weight of complicity, we have to look at several factors, including the badness of the principal wrongdoing, the extent to which the agent is responsible for her contribution to the wrongdoing, and the centrality of this contribution. I do not have space here to provide a detailed ‘moral calculation’ to determine the moral weight of the US government’s actual and expected complicity in the failure to restore justice regarding the Japanese medical atrocities. It will suffice for now to make three brief observations. Firstly, most would agree that this is a very grave injustice. Though Guatemala experiments were obviously wrong, the

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<sup>4</sup> Lepora and Goodin refer to two examples to illustrate this point: (i) a policeman who connives in petty theft has arguably done something worse than the thief herself, and (ii) a husband who persuades three friends to rape his wife, assuring them her screams of protest will be just part of the game to heighten her pleasure, arguably has done something worse than the rapists themselves (Lepora and Goodin 2013, 22).

wrongness of the Japanese experiments seems to be of a different scale. Most victims were tortured to death, and all died or were killed. The Japanese experiments were also more clearly in violation of the ethical norms governing medical research that were accepted at the time. In the Guatemala case, this is more controversial (Lyons 2014). Secondly, the US government is clearly partly responsible for the cover-up of and the subsequent silence on these atrocities. Its actions were, and still are, voluntarily actions through which the government knowingly contributed, and still contributes, to the failure to restore justice regarding the Japanese medical atrocities. Finally, its contribution to this failure has been central. Without the US cover-up it would probably have been impossible, or at least much more difficult, for Japan to ignore the atrocities, and the case for bringing the perpetrators to justice. If the current US government broke the silence on the Japanese case, this would also make it much more difficult for Japan to continue to ignore this dark page of its past. The badness of the failure to restore justice in the Japanese case, and the US government's central and deliberate contribution to this failure, plausibly make the US government *heavily* complicit. An official response from the US government would be a mayor step towards restoring justice.

Thus, the 'mere' complicity of the US does not provide a sufficient justification for not providing an appropriate response. The likely moral weight of this complicity is simply too great for that. Even if the US government's involvement in the Japan case was less bad than its involvement in the Guatemala case, this would only be a reason for the response to be different, not to omit or refuse to respond. Perhaps a statement, instead of an apology (like in the Guatemala case), would be an appropriate response, as well as directing the Bioethics Commission to write a brief report on the US involvement in the cover-up of the Japanese medical experiments. But determining precisely what response would be appropriate is something that requires further analysis. My point here is that there should be a response, and soon.

Moreover, there are precedents: the US has apologised in the past for protecting war criminals, which arguably is a case of complicity in the failure to restore justice. For example, the US has apologised to France because US army intelligence officers prevented Klaus Barbie, a wartime Gestapo leader in Lyon, from being extradited to France 33 years ago by lying about his whereabouts and then helping him to flee from Germany to South America (Nie 2006, W29). If this was considered a sufficient reason for the US to apologise, then its alleged complicity in the failure to restore justice regarding Japan's wartime medical atrocities might be too.

*The current US government is not complicit as complicity is not transferrable*

Some might object that there might have been a complicity-based reason for the post-war government to respond, but that there is no such reason for the current US government to do so, because it is simply not true that it is complicit in maintaining a serious injustice regarding the Japanese medical atrocities. Even if it is true that the post-war US government was complicit in the fact that the perpetrators were not brought to justice and never received the blame they deserve, and that victims were never helped in any way, the same is not true for the *current* US government as complicity is not transferrable – one cannot inherit complicity.

Whether or not complicity is transferrable is a complex question closely related to the question whether one can inherit *responsibility* for others' wrongdoing, which has been widely discussed, for example, when asking whether post-war generations of Germans inherited responsibility for the cruelties committed by Nazi criminals or whether current governments owe compensations to the indigenous people of their country (Barkan 2000, Brooks 1999).

In some cases, complicity seems not transferrable. Suppose, for example, that my father was an accomplice in a violent bank robbery when I was three years old. It seems plausible to argue that I would not inherit this complicity. The fact that we are family members does not provide a reason for why, morally, I have anything to do with his involvement in the robbery. The US

government is, however, a collective agent and persists over time despite changes in who constitutes it. Its situation is more comparable to two live stages of one and the same person.

*The current US government is not complicit as complicity dilutes over time*

One could argue that though complicity is transferrable, it dilutes over time. In the current case, it might be argued that, since the Japanese medical atrocities and the cover-up by the US government happened a long time ago, the current government's degree of complicity has by now diluted to the point that it is no longer significant.

First, it is not clear whether or to what extent complicity simply dilutes over time. Consider visiting pyramids in Egypt. We generally think this would not make us complicit in slavery, even though they were built by slaves. But is this simply because the slavery involved in building the pyramids happened a very long time ago? Though time may be a contributing factor, there seem to be additional reasons for why we generally think that visiting pyramids does not make us complicit in slavery. One plausible reason is that visiting pyramids is unlikely to directly or indirectly encourage slavery. It does not create a demand for having more pyramids built by slaves, and it is also unlikely to be seen as expressing approval of slavery.<sup>5</sup> Thus, we can plausibly account for the pyramid-visitor's lack of complicity in slavery without assuming that complicity automatically diminishes over time. However, in the case of the US cover-up of the Japanese medical atrocities, the current silence of the US does seem to express approval of the atrocities, which may indirectly encourage unethical medical research in the future. Moreover, if time were indeed a contributing factor for determining the degree of complicity, then the argument that the

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<sup>5</sup> It is not necessarily because of the passing of time that we do not create a demand for more pyramids built by slaves. Suppose we stopped building pyramids last week, say, because law prohibited this, the argument would still work. One explanation for why we do not express approval of slavery when visiting pyramids might have something to do with time, but also with the fact that it has been widely acknowledged that the pyramids were built by slaves and that slavery is wrong.

US government's complicity has diminished to the point that it is no longer significant does not work either. Even though the medical atrocities happened more than 70 years ago, the US government's complicity in the fact that the perpetrators have never been brought to justice and the victims have not been helped in any way went on till very recently – the last perpetrators and victims alive might have died only a short while ago (or some may still be alive).

Finally, if complicity simply diluted over time, this would have the implausible implication that one could intentionally avoid complicity by allowing time to pass, in the meantime doing nothing. This, indeed, might be a strategy governments, including the Japanese and US governments, actually adopt. But it is implausible that one can avoid complicity in this way. It seems clear that, early on after one initially becomes complicit, one can reduce that complicity only by taking active steps: acknowledging one's role in the wrongdoing, issuing an apology, compensating one's victims and so on.

Thus, the objection that the US government should not react because its complicity has diminished simply with the passing of time is not convincing.

So far I have considered possible objections to Nie's proposal that are grounded in the idea that the current US government is not, or no longer, complicit. However, I would like to finish by briefly considering one objection that is grounded in a different idea.

#### *The argument from no expectation*

One could argue that, since there does not seem a clear expectation that the US government apologises or undertakes any other steps to reduce its complicity, it does not have a strong moral reason to do so. The idea would be that, unless there is an expectation for a reaction, not reacting does not express approval of the Japanese medical atrocities and their cover-up, and, therefore, does not indirectly encourage unethical medical research in the future. Let us call this the argument from no expectation. The idea is that the meaning of inaction can depend on what

is expected, which seems somewhat plausible.<sup>6</sup>

Nevertheless, I believe that there are at least two reasons to doubt that the argument from no expectation can be plausibly appealed to here. The first reason has to do with the fact that the US is partly responsible for the lack of awareness of this part of history. If the argument from no expectation succeeded, then one could avoid the need to apologise, or react in another appropriate way, by making sure that no one finds out about the issue one would have to apologise for, or react to. This seems implausible.<sup>7</sup>

The second reason why the argument from no expectation is not convincing is that there are of course people that *do* expect a reaction, though only few of them may find the right channels to express this expectation.<sup>8</sup>

In addition, it is plausible to assume that if more people were actually aware of the Japanese medical atrocities and the US cover-up, there would be much more expectation that the US government reacts in an appropriate way. This creates a reason for those who do expect a reaction, to inform people and to try to convince them to join their case. The argument from no expectation could then no longer be appealed to. Of course, if instead of individuals, major US

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<sup>6</sup> Expectations can often influence the meaning of inaction in the way the argument from no expectation suggests. For example, suppose Smith is the head of an academic department, a member of which has recently been convicted of a sexual offence against a student. There is a public outcry with many, including the victim, calling for Smith to make a public condemnation of the offender. Smith chooses to remain silent. Jones is the head of another academic and is in a similar situation, except that no one is calling for him to make a statement. Perhaps everyone simply takes it as given that Jones strongly condemns what has happened. It seems plausible that Smith's silence expresses a kind of support for the sexual offender that Jones' does not.

<sup>7</sup> Similarly, if no one were calling for Jones' to condemn the sexual harassment only because Jones' had covered the case up, we would not take the lack of expectation to diminish Jones' reason to issue a public statement.

<sup>8</sup> The publication of Nie's paper in a major American bioethics journal should count as enough to constitute an expectation.

institutions such as the Bioethics Commission expressed the expectation for a reaction of the government, this would be the most efficient way to have an effect. If the Bioethics Commission had good moral reason to write two long reports in response to the Guatemala case, it seems that, it must also have good moral reason to address the Japanese case. There are important similarities between the US' involvement in both cases. Again, it might not need to address the Japanese case to the same extent the Guatemala case was addressed, but there is a strong moral reason to at least address it in some way. (Note that although in the Guatemala case, it was President Obama who directed the Bioethics Commission to address the topic; the commission is free to work on any topic that falls within its mission and that is of interest to its members.) If the government does not react in response to the Bioethics Commission's report or statement on the Japanese case (through which it would, implicitly or explicitly, urge the government to react), and if it fails to provide good reasons for not responding<sup>9</sup>, this might be taken as an expression of approval of the Japanese medical atrocities and their cover-up. An interesting question that arises is whether the Bioethics Commission would express something similar if it remained silent after a clear request to urge the US government to react.

Finally, other US institutions, could, and should undertake action as well. For example, something that could be done easily without any obvious costs is adding the Japanese case to the 'Research Ethics Timeline (1932-Present)' on the website of the National Institute of Health.<sup>10</sup>

The Research Ethics timeline, developed by David Resnik, mentions, among other things, the

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<sup>9</sup> The reason (and thus part of the justification) for being and remaining complicit was protecting national security. This reason can no longer be appealed to now as avoiding or reducing after the fact complicity no longer involves a threat to national security. Reasons for being or remaining complicit may become weaker over time. Of course, there might be other reasons for the US not to reduce its complicity, for example, to protect political and economic relations with Japan. But then at least an argument needs to be provided for why that reason is strong enough to outweigh reasons for reducing its complicity.

<sup>10</sup> <http://www.niehs.nih.gov/research/resources/bioethics/timeline/>

Tuskegee experiments, the Nazi medical experiments, the radiation experiments, and the Manhattan Project. Adding the Japanese case could be a first small but easy step to inform people and encourage debate about the topic.

### **Summary and Conclusions**

The post-war US government played a crucial role in covering-up Japanese medical atrocities conducted on a large scale and in a systematic way shortly before and during the Second World War. It also remained silent on this cover-up, up until today. Building on a work by Nie, I have argued that this makes the US government heavily complicit in a grave injustice, as well as expectably complicit in future unethical research.

Nie has formulated two concrete proposals for steps that should be undertaken to reduce the US government's complicity with regard to these atrocities and to avoid similar instances of such complicity in the future. The proposal to avoid complicity involves adding a clause in medical ethics guidelines that bans complicity in unethical research. I considered two possible objections to this proposal and concluded that these can be quite easily dealt with. First, though consequentialists (and other agent-neutralists) do not care whether your contribution to the amount of badness or wrongness in the world is direct, as a principal agent, or indirect, as an accomplice, they have good reason to accord instrumental value to the concept of complicity and to incorporate the concept into their practical recommendations, and to favour its inclusion in, for example, codes of medical ethics. Secondly, a clause banning complicity in unethical research could be framed in a nuanced way, for example, by stating that it is 'typically' or 'presumptively' wrong to be complicit in unethical research. Even more nuanced advice should then be provided in other sources that are easily accessible to medical personnel. Thus, unless better objections can be found, it might indeed be useful to have a clause in medical ethics guidelines that bans complicity in unethical research. This may help to reduce indirect wrongdoing by doctors and other medical personnel.

I then investigated possible objections to Nie's proposal that the US government should issue an apology and compensate the victims and their families. I concluded that objections grounded in the idea that the current US government has no complicity-based reasons to react do not hold. The US government has reason to reduce its actual complicity in maintaining a grave injustice and to prevent complicity in future unethical research. The argument that complicity is not transferrable or that it dilutes over time cannot save the initial objection against Nie's proposal either. The US government is a collective agent, thus complicity is transferrable, and complicity does not simply dilute over time. I ended by considering the objection that even if the government is complicit, if there is no clear expectation that it reacts, it does not have reason to do so. I argued that this argument is problematic, especially because it is the US government who contributed to the fact that so few people know about the atrocities and the US cover-up, and because there are people who do expect a reaction, though they might not always find the right channels to express their expectations. To prevent the argument from no expectation being appealed to, people need to be informed about the Japanese case, and important institutions that are in a strong position to exert influence on the US government, such as the Bioethics Commission, should express their expectation for a reaction. Moreover, because of sufficient similarities with the Guatemala case, the Bioethics Commission has equal reason to address the Japanese case (though perhaps to a lesser extent).

Will we just let this dark page of Japanese and US history pass, or should appropriate action be undertaken to restore justice and prevent such experiments from occurring again? I hope that this paper will reignite debate about this case, and will put some pressure on US institutions, especially the Bioethics Commission, to address it.

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