Those familiar with Cold War history will likely know the refrain, “Show me the man and I’ll show you the crime,” a phrase generally attributed to Lavrenty Beria, who was chief of the Soviet secret police, the People’s Commissariat for Internal Affairs (NKVD), and served as deputy premier under Joseph Stalin from 1941 to 1953. In the eyes of the West, Beria’s aphorism aptly characterized the justice system of the Communist world. The “show trials” of Trotskyite opposition leaders conducted between 1936 and 1938, and the very public prosecution of Cardinal Jósef Mindszenty for alleged espionage in Hungary in 1949, demonstrated to the West that justice in the Eastern bloc was relative and arbitrary.¹ But when it came to prosecuting twelve former members of Japan’s infamous Unit 731 for war crimes committed during the Second World War, Soviet leaders had no need to invent charges or to contrive evidence. In a highly publicized trial held in December 1949 in the industrial city of Khabarovsk in the USSR’s “Far East,” according to bioethics historian Jing-Bao Nie, prosecutors for the Soviet Union proved “beyond reasonable doubt that the Japanese army had prepared and deployed bacteriological weapons” and that Japanese researchers with the Unit 731 detachment “had conducted cruel experiments on living human beings.”² In the historiography of this subject, both in Japan and in the West, it is commonly accepted that the United States also possessed sufficient evidence to try members of Unit 731 in the International Military Tribunal for the Far East (a.k.a. IMTFE or “Tokyo Trials”) for war crimes and crimes against humanity but chose not to do so. Instead, most scholars argue, the US made “a deal with the devil” and granted members of Unit 731 immunity from prosecution in exchange for their biological warfare-related research data, which, at the time, was deemed to be of inestimable value.³


Valerie J. Cranmer disagrees. In this essay, Cranmer argues that the US did not attempt to prosecute members of Unit 731 not because the Americans coveted their research data and so offered immunity, but because “they could not replicate the same clear legal framework used to successfully prosecute the Nazis” at Nuremberg. “Conscious of the fact [the prosecutors] were establishing international criminal precedent,” Cranmer writes, “the United States’ case against the Nazi doctors relied on military chain of command to prove strong legal responsibility for human experimentation crimes” (32). Cranmer’s central thesis contends that successful prosecution at Nuremberg rested on established military command and control structures, as well as legal military authority, to order acts of human experimentation. Such a clear line between orders and execution did not exist in the Japanese case. While trials presumably could find individuals guilty of individual acts of human rights abuses, the lack of formal military authority to order the experiments resulted in an inability to develop a strong, prosecutable case against the biological warfare (BW) activities of the Imperial Japanese Army (IJA). Therefore, application to the Japanese of the legal basis for prosecution of the Nazi medical doctors was not possible (33).

This is a bold and original claim. Unfortunately, it is not supported by the evidence.

In 1932, Major Ishii Shirō, a professor of immunology in the Army Medical College with a doctorate in microbiology, convinced his superiors to support the formation of a top-secret biological warfare research unit, which he would head. Ishii well understood that the infectious diseases research involving human subjects that he was conducting in Tokyo was far too dangerous, both because of the potential for an accidental outbreak and the possibility of the work being discovered by an outside party. Where BW research was concerned, safety and secrecy were paramount. The Japanese Army brass agreed. Later that year, the Army approved funding for the establishment of a small-scale BW research facility to be built in Harbin (Haerbin), a city located in the heart of Japanese occupied Manchuria in China’s northeast provinces. Ishii’s BW research program and facility fell under the command of the Tōgō Unit, a special detachment of the IJA’s Kwantung Army in China that was created especially to oversee Ishii’s work. In 1934, Major General Nagata Tetsuzan, then Chief of the Military Affairs Division of the Army Ministry, allocated an additional ¥200,000 for Ishii’s program. In 1936, the Army established the Kwantung Army Epidemic Prevention and Water Supply Unit, more commonly known by its numerical designation, Unit 731. Ishii, now a lieutenant colonel, was appointed its commander. By the end of the war he rose to the rank of lieutenant general.4

Ishii’s fledgling BW program soon underwent a dramatic expansion. Finding the modest laboratory conditions in Harbin too restrictive, late in 1936, Ishii appropriated a small cluster of villages outside the city, known collectively as Pingfang, and there built a veritable fortress comprised of 150 buildings, including multiple laboratories and a prison capable of holding 300 prisoners. Surrounded by a high wall, the Pingfang facility had its own electric power station, a railway siding, and a small airfield. In time, the Kwantung Army would garrison some 3,000 soldiers, scientists, doctors, and support staff at Pingfang. It was to become one of the largest biological weapons research and development facilities constructed during the war. It was also the largest death camp in all of East Asia. At Pingfang, Ishii assembled a research staff comprised of the leading lights of the Kyoto Imperial University Medical College, many of whom assisted him in gruesome


4 On the history of Unit 731, see especially Williams and Wallace, Unit 731, 5-88; Harris, Factories of Death, 6-82; and Tsuneishi, 731-butai, passim.
human experiments that involved deliberately infecting subjects with various pathogens to observe the progress of a disease and to develop treatments, though none of the victims survived. Unit 731 staff engaged in activities analogous to Nazi doctors at Auschwitz, Dachau, and elsewhere in German occupied areas, such as experiments involving high pressure chambers, freezing, and vivisections. Subjects for Unit 731 “research” were gathered by the Kempeitai, the wartime gendarmerie that served as a secret police unit, which had carte blanche to arrest and detain Chinese locals merely with simple allegations of being spies, Communists, or “bandits.” In all, over 3,000 victims are estimated to have died at the hands of Ishii and Unit 731.5

It is an historical fact that US prosecutors attempted to build a case against Ishii and his accomplices. The obstacle from the outset was not the military command and control structure of the Japanese military, but whether the evidence on hand was sufficient to justify a charge of biological warfare.6 According to the “Chronological Overview” provided in “Select Documents on Japanese War Crimes and Japanese Biological Warfare, 1934-2006,” compiled by William H. Cunliffe, as early as 1941 to 1943, US military intelligence had “acquired knowledge of Japanese tactical biological warfare (BW) incidents that resulted in localized outbreaks of plague or cholera” and captured Japanese documents had begun to reveal “personnel and places for primary Japanese Army BW organizations operating under the title of Water Supply & Purification Units,” including “limited initial information about Maj. Gen. Shiro Ishii and the research facilities in Manchuria.” By early 1944, US Army intelligence (G-2) had obtained “details about the extensive production of bacteria sources both in Japan and Manchuria; of supplies on hand in Shanghai, Nanking, and Mukden [Shenyang]; and potential means of delivery in bacillus bombs or free balloons.” By early 1945, captured documents and interrogations of Japanese POWs provided “increasing details about BW facilities in Mukden, Harbin, and Pingfan.”7 By the end of the war in August 1945, Allied intelligence had identified Ishii, located Pingfang, and had numerous reports of Unit 731’s BW activities in Manchuria as well as throughout China.

In September 1945, in the early days of the Allied Occupation, the US dispatched the first of a series of scientific intelligence surveys charged with the mission of assessing Japan’s wartime research activities. Dr. Murray Sanders, a Columbia-trained microbiologist and lieutenant colonel who had been recruited to work at Camp Detrick—the premier BW facility in the US at the time—was assigned to investigate biological warfare. Upon arrival in Japan, he was met by Dr. Naito Ryoichi, who identified himself as Sanders’s interpreter. Little did Sanders know that Naito was himself a high-ranking member of Unit 731 and was doing his best to obfuscate the investigation. In time, Sanders grew suspicious of Naito’s dithering. Suspecting that he was being “played,” Sanders admonished Naito that should he not become more forthcoming with information he would “have no choice but to invite the Soviets to take part in the investigation,” exploiting the “deadly fear of the Communists” that all former Japanese military personnel seemed to share.8 This threat changed the tenor of the investigation. Naito soon produced a manuscript, likely penned by Ishii himself, that outlined

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5 Williams and Wallace, Unit 731, 31-50; and Harris, Factories of Death, 57-82. See also the Unit 731 summary history in Walter E. Grunden, Secret Weapons & World War II: Japan in the Shadow of Big Science (Lawrence: University Press of Kansas, 2005), 183-191.


Japan’s wartime BW research program, complete with an organizational chart for Unit 731, which identified all the affiliated medical and military detachments involved, as well as the administrative hierarchy, that is, the chain of command. The chain of command passed from the Imperial General Staff in Tokyo to the Bureau of Medical Affairs to the Kwantung Army headquarters down to Unit 731. At the very top sat Emperor Hirohito, from whom a direct line could be drawn to Ishii. Naito implied there was more, but he was not yet ready to give it up. Ishii was waiting for an offer.10

This posed two particular problems for General Douglas MacArthur, who presided over the Allied Occupation as the Supreme Commander of Allied Powers in the Pacific (SCAP) and, who, in this capacity, was bestowed with extraordinary powers of command authority. Revealing the full extent of Unit 731 activities would not only have given Soviet officials access to the much-coveted data, which the Americans wanted to keep for themselves, but it would also likely implicate the emperor as the highest responsible authority in the chain of command. (Whether the emperor knew of the more nefarious activities of Unit 731 and sanctioned them is still being debated.)11 Soviet officials believed they already possessed enough evidence to charge Ishii and his colleagues, but they still demanded full access to the Unit 731 members in Japan as well as all their data. They also continued to press the issue of trying the emperor for war crimes.

This, MacArthur would not do. He believed that putting the emperor on trial would so undermine the morale of the nation and turn the people against the occupation that he might end up with a full-blown insurrection on his hands.12 MacArthur decided that a more prudent course of action was to use the emperor in his traditional role as figurehead to keep the peace and ultimately to help implement the tremendous political, economic, and social changes that would be necessary in a postwar Japan. MacArthur could not risk setting the nation on edge with a very public trial of the emperor, whom many Japanese would continue to revere as a living Shinto god long after the war, even after the official denunciation of his divine status.13

Consequently, MacArthur made the fateful decision to offer Ishii and his colleagues immunity from prosecution in exchange for full disclosure of all the details of Japan’s BW efforts and Unit 731 activities. According to author Hal Gold, the proposal to grant immunity from war crimes “was already on the table less than two months after the war’s end.”14 Only after a deal was struck, however, were the Japanese more forthcoming about what they had done. Details concerning human experimentation were revealed piecemeal in a series of interrogations thereafter. But this information was not widely disseminated. MacArthur allowed

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12 MacArthur estimated he would need at least one million reinforcements should the emperor be tried for war crimes. “I believed that if the Emperor were indicted, and perhaps hanged, as a war criminal,” he wrote in his memoir, “military government would have to be instituted throughout all Japan, and guerrilla warfare would probably break out.” MacArthur saw to it that Hirohito’s name was stricken from the list of potential war criminals. See, Douglas MacArthur, *Reminiscences* (New York: McGraw-Hill, 1964), 288.

13 On these issues, see Herbert P. Bix, *Hirohito and the Making of Modern Japan* (New York: Perennial, 2000).

that information to be shared with only a select few within US military and intelligence circles. When Sanders submitted his official report in November 1945, which was included as volume five of the “Report on Scientific Intelligence Survey in Japan,” he provided only a general overview of the BW program and disclosed no revelations about human experimentation. Moreover, American lawyers with the International Prosecution Section of the IMTFE were not made privy to the Unit 731 data either. Despite having discovered compelling circumstantial proof on his own, David Nelson Sutton, whom the IMTFE dispatched to China in March 1946 to gather evidence and build a case for war crimes concerning Japanese biological warfare, ultimately concluded that “As the case now stands, in my opinion the evidence is not sufficient to justify the charge of bacteria warfare.” MacArthur and G-2 suppressed vital incriminating evidence and thereby successfully obstructed these investigations.

Much of Cranmer’s argument hinges on a handful of primary sources from the Frank S. Tavenner Jr. papers found in the University of Virginia Law Library’s digital collection. Tavenner was an acting chief counsel for the US prosecution in the IMTFE and his correspondence with Eugene D. Williams, the special assistant to the chief counsel, reveals only a narrow part of the story. In short, these letters serve as evidence not of the US lack of evidence or capacity to try Ishii and the rest, but of the successful compartmentalization of information surrounding the Unit 731 data. Cranmer cites a document wherein Williams informed Tavenner that, despite the fact that Soviet officials had provided evidence of the Japanese having engaged in biological warfare, he concluded that the evidence obtained was “not sufficient to warrant opening that issue” (45). Later, Cranmer explains that Colonel A. C. Carpenter, the commander of the Far East’s Legal Section, believed he could hold General Umezu Yoshijiro, commanding general of the Kwantung Army and Ishii’s direct military superior from 1939 to 1944, legally accountable for the unit’s actions, even though there was (at least to their knowledge) insufficient evidence to bring Ishii to trial at that time (45). If that were the case, and they could try Umezu—which they did for other war crimes—then Cranmer’s central thesis that Unit 731 members were not prosecuted because “they could not replicate the same clear legal framework used to successfully prosecute the Nazis” is questionable. It is not clear that they would need to do so. This point requires a more nuanced explanation and more grounding in legal history to be convincing.

Cranmer asserts that a “lack of clear command and control structure within the military (not to mention the structural similarities between the U.S. and Japanese medical services) prohibited the ability of the United States to try Japanese personnel of Unit 731” (49) and that “the United States avoided prosecuting Unit 731 because they could not replicate the same clear legal framework used to successfully prosecute the Nazis” (32). But the document cited to support the former assertion, “Notes of Japanese Medical Services,” amissive produced by the Military Intelligence Division, does not make this claim. In fact, a direct line in the chain of command connected Ishii to Umezu and there is no question that he could have been brought to trial had MacArthur willed it. As I wrote in my own account of Unit 731 in 2005,

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18 The document in question states only, “the organization and general standard of medical services for the evacuation and treatment of casualties are similar to our own.” No further mention is made of the command-and-control structure. See, Military Intelligence Division (War Department), “Notes of Japanese Medical Services,” *Tactical and Technical Trends*, no. 36 (21 October 1943): 32-33, https://www.lonesentry.com/articles/ttt/japanese_medical_services.html.
The command structure and hierarchy of control into which Ishii’s BW program fit was also an important factor. The Army General Staff, Second Operations Section, was solely responsible for BW policy, and the Army Ministry retained general supervisory authority over BW research and development. The commander of the Kwantung Army, General Umezu Yoshijirō, had authority over all operations in Manchuria, including that of Unit 731. But at Pingfang, it was Ishii who ruled. The budget for Unit 731 was channeled directly through the Kwantung Army, which operated independently under its own authority in Manchuria and was accountable only to the emperor.19

It is not evident what clearer chain of command would have been needed, or why it would necessarily have had to replicate the same legal framework used to successfully prosecute the Nazis doctors. At a minimum, Cranmer’s article does not present a clear and convincing case that this was so. The IMTFE and other national tribunals successfully prosecuted numerous cases of Japanese war crimes, as in the cases of General Yamashita Tomoyuki and Homma Masaharu. As Barak Kushner has demonstrated, the trial of Nazis at Nuremberg was indeed “a learning ground for the Tokyo War Crimes Trial,” but in the case of Japan, the prosecution of “conventional war crimes” was not the main purview. Kushner writes,

The Allies, mostly pressed by the Americans, placed their immediate postwar legal concentration on ascertaining the reasons behind the start of the war, while the debate about wartime responsibility centered on those military and political leaders who promoted the continuation of the war. The pursuit of the A class war criminal leadership was heavily dominated by political concerns: thus the equally important debate about Japanese military atrocities during the war did not really enter the discussion or receive scrutiny as a legal issue other than to substantiate the larger claims of war responsibility.20

Moreover, according to Suzy Wang, a leading scholar of Unit 731, the Control Council Law No. 10 of the International Military Tribunal (Nuremberg) alone would have “allowed occupying authorities to prosecute war criminals who committed conventional crimes” [emphasis mine], not to mention crimes against humanity, which the law also includes, and this could have been applied to individuals regardless of the command structure.21 With the evidence on hand by summer 1947, at least a full year before the IMTFE trials closed in November 1948, the Americans had more than enough evidence—much of it provided by Ishii himself—to prosecute Ishii and members of Unit 731 had they possessed the desire to do so. A document provided to the chief of the US Chemical Corps in June 1947 revealed that Unit 731 had conducted multiple field trials of BW agents against Chinese civilians and soldiers, and that “there were available approximately 8,000 slides representing pathological sections derived from more than 200 human cases of disease caused by various B.W. agents. These had been concealed in temples and buried in the mountains of southern Japan.”22 But more revealing is a State-War-Navy Coordinating Subcommittee document dated September 1947 that concluded, “Information of Japanese BW experiments will be of great value to the U.S. BW research program... The value to the U.S. of Japanese BW data is of such importance to national security as to far

19 Grunden, Secret Weapons & World War II, 194.
outweigh the value accruing from ‘war crimes’ prosecution.”\(^\text{23}\) Yet, the clincher may have been the more comprehensive “Summary Report on BW Investigation,” submitted in December 1947, which argued that the Unit 731 data had been obtained “at the expenditure of many millions of dollars and years of work” on behalf of the Japanese, and that “Such information could not be obtained in our own laboratories because of scruples attached to human experimentation.”\(^\text{24}\) All this proved that the United States possessed ample evidence to prosecute Ishii and members of Unit 731 for war crimes but chose not to do so.

Cranmer’s article contains other statements with which one might take issue. For example, the Nazi medical system is characterized as an efficient and streamlined organization, which is an oversimplification that ignores the byzantine and polycratic nature of the German wartime research infrastructure more broadly.\(^\text{25}\)

The references to *samurai* and the discussion of the formative years of the Meiji era military seem unnecessary, if not entirely irrelevant. The general assertion that “Due to the structure of the Imperial Japanese Army’s medical service,” which is not elucidated, “military medical doctors did not have operational field commands, nor did they head civilian medical institutions,” is not substantiated and does not explain why Ishii could not have been prosecuted had the US been determined to bring him to trial.

Similarly, the argument that,

> Since the United States could not make the same case against the IJA that it did against the Nazis, and without the ability to indict Unit 731 formally, the U.S. government made the decision to offer an immunity deal—if it could not build a strong case against the perpetrators anyway, it reasoned that it then might as well gain important scientific data (49).

begs the question of what incentive there would have been otherwise for Ishii and company to come forward at all. Cranmer’s assertion that “writers treat BW programs worldwide irrespective of one another and rarely analyze them as an aggregate to define a general global trend in the interwar period of states that developed and researched BW” (54) is incorrect, as the extensive multi-volume series by the Stockholm International Peace Research Institute (and my own work) demonstrates.\(^\text{26}\)

Cranmer’s narrative does not triangulate among the numerous primary and secondary sources available that stand as counterevidence to the untenable thesis presented here, and it overlooks some critical scholarship on the Tokyo Trials.\(^\text{27}\) Unlike the circumstances that prevailed for researchers of this topic into the 1980s, there is now a virtual mountain of primary source documentation and excellent secondary literature on Unit 731

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\(^{23}\) US National Archives, College Park, Md., RG 165, Folder: SWNCC 351, State-War-Navy Coordinating Subcommittee for the Far East, SFE 188/3, September 1947, Appendix A.

\(^{24}\) The memo continues: “These data were secured with a total outlay of ¥250,000 (around $3,000) to date, a mere pittance by comparison with the actual cost of the studies.” See, US National Archives, College Park, Md., RG 395, Entry 6909-C, Box 1, Reference Collection-Japanese Biological Weapons in WW II, Edwin V. Hill and Joseph Victor to General Alden C. Waitt, “Summary Report on BW Investigation,” 12 December 1947.


\(^{26}\) See, for example, Erhard Giessler and John Ellis van Courtland Moon, ed., *Biological and Toxin Weapons: Research, Development and Use from the Middle Ages to 1945* (Oxford and New York: Oxford University Press, 1999), to name only one volume of many.

and Japan’s wartime BW research readily available, and there is much that is accessible online beyond just the UVA law library collection. The article does not engage the extensive Japanese language scholarship and thus overlooks or ignores some of the best academic and journalistic work now extant on this subject matter, particularly the groundbreaking work by the eminent 731 scholar, Professor Tsuneishi Keiichi, whose name appears nowhere in the bibliography.28

Given the wealth of publications that have appeared on this subject in the last thirty years, not to mention the numerous websites and digital sources devoted to examining Unit 731 that are now available online, it is indeed a challenge to find a new angle on this topic and to offer something original. One can appreciate the effort here, but the execution is not convincing. In the end, what we have here is a reversal of Beria’s aphorism: The crime actually existed, but the US refused to show the man.

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