



Ethical Issues in Field-Based Criminological Research in Canada

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Abstract

In Canada, all research involving human subjects requires approval from a formal ethics review board before it can be conducted. Despite this, the body of literature relating to ethics in social science research is marginal, particularly in relation to research on crime and deviance. This paper contributes to this void in the literature by exploring the ethical issues presented by field-based criminological research. The issues examined include: eliciting sensitive information, coercive potentials, the consequences of knowing, conflicts of interest, and confidentiality and the possibility of subpoena. This paper argues that the current ethics review framework in Canada often acts in contradicting ways making it more difficult to conduct ethical criminological research.

Key Words: Ethics; Research; Conflicts of interest; Confidentiality; Canada

Introduction

Considering that all social science research with Canadian university affiliation that involves contact with humans requires formal ethics review by an approved Research Ethics Board (REB), the contemporary published literature pertaining to ethical issues in social science research is meagre. The literature on strategies to remain ethical without compromising research is even sparser. This paper seeks to contribute to the literature in both of these areas as it relates to field-based criminological research. It examines the main ethical issues of criminological research and possible strategies for novice researchers to remain ethical in ways that are not detrimental to the research. Further to this, this paper will briefly discuss how the ethics review framework in Canada has added further complications to researchers, rather than ameliorating these issues and strategies.

The first section of this paper will discuss how ethics is defined, why we have ethics review boards, and how the ethics review system is structured in Canada. The second section will examine five main ethical issues involved in field-based criminological research, and when pertinent, simple strategies to possibly address these issues. The ethical issues that will be examined include: 1) eliciting sensitive information, 2) coercive potentials, 3) the consequences of knowing, 4) conflicts of interest, and 5) confidentiality and the possibility of subpoena. The third section will briefly discuss how the framework of ethics review in Canada has done little to curb these issues, and in some cases have

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unethically placed researchers and research participants at further risk of harm. This paper will then conclude with a discussion of the future of criminological research in Canada in the climate of overbearing ethics review boards.

The Importance of Ethics

The Canadian *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* states that ethical research includes two fundamental components: 1) “the selection and achievement of morally acceptable ends”, and 2) “the morally acceptable means to those ends” (Sec. B, i.4). Ethics, as defined in relation to human research, is a moral standard of conduct to ensure that risks of harm are minimized to those who participate in research (Berg 2004). When one is wrapped up in the sometimes difficult and lengthy ethics application process, it can be easy to think that the process is, as Mueller (2007, p.1) suggests, just a “tool for harassment in the academic workplace.” However, that is more a testament of how the ethics review process is organized in Canada, rather than a suggestion that ethics are not needed in social science research.

Some, such as Barber (1973), have cited the rise of the civil rights movement in the 1950s and 1960s as having raised the awareness of ethics in human research. Whereas, scholars such as Babbie (2001) suggest that this concern has arisen from questionable studies such as those conducted by Stanley Milgram (1973), Laud Humphreys (1970), and Philip Zimbardo (1973). However, before these studies there were numerous autocracies committed in the name of science during the Second World War by a group of German physicians that included “immersing [concentration camp subjects] in freezing water, and injecting them with poison, diseases, and even gasoline- in an effort to learn how the body responds to such extreme manipulations” (Haggerty 2004, p. 403 via Annas & Grodin 1992).

These autocracies were later tried in the Nuremberg War Crimes Tribunal in 1946, which led to the subsequent indoctrination of the Nuremberg Code (Haggerty 2004). It is here that the concern for ethics in human research first began to take on its contemporary form. The principles of the Nuremberg Code of 1947 include:

- 1) *To obtain voluntary consent of the persons involved as subjects.*
- 2) *To allow persons to end their participation in a study at any time.*
- 3) *To ensure the research is needed to obtain the information sought (i.e. it could not be obtained in any other way) and that the research is expected to be beneficial to society.*
- 4) *To minimize the risk to the subjects and the suffering they are likely to experience*
- 5) *To ensure the expected benefits outweigh the risks (Itlas 2006).*

These guidelines have become the foundation of the Canadian *Tri-Council Policy*. This is not to say, however, that the authors who have suggested different origins of ethical concern are wrong. Milgram (1974), Zimbardo (1973), and Humphreys (1970), among countless others, have certainly added increased concern to how we conduct human research in contemporary academics, but it has really been questionable practices by biomedical researchers, such as the Nazi doctors that have led to the contemporary ethics review mandate.

While the *Tri-Council Policy* guidelines are not set out to eliminate harm to participants, they do aim to strike a balance between benefit and harm. Such a balance is, however, the ideal for human research; harm to participants and researchers, should be minimized. Many scholars have raised questions about REBs in Canada overstepping their bounds

(Haggarty 2004; Adler & Adler 2002; Mueller 2004, 2007; Palys & Lowman 2000, 2002, 2006); however, this does not negate the importance of ethics in social science research. The concerns raised by these researchers are not on the importance of ethics but rather, that the ethics review framework in Canadian universities is inadequate in ensuring ethical research.

While some variations of the ethics review process likely exist across Canadian universities, they are all governed by the mandate laid out in the *Tri-Council Policy Statement*. In general, each REB requires that researchers submit an application of their proposed project before conducting any research involving human subjects. This application includes, but is not limited to, an overview or discussion of the proposed project, the methodology, the possible harms, and the procedures taken to minimize these harms (Haggarty 2004). Research that does not involve human subjects does not require ethics review; although, it is not uncommon practice for contemporary Canadian researchers to err on the side of caution and submit an ethics application even if they are relying strictly on secondary data. The penalties for not adhering to this mandate is that no federal research funds will be released, and those found to act in non-compliance can be fined, fired or suspended (Haggarty 2004).

Ethical Issues

There are number of ethical issues that must be addressed in most research projects involving human subjects such as: voluntary participation, informed consent, privacy of personal information, and the potential harms and benefits of the research (Berg 2004). Criminological researchers must negotiate through these concerns, as well as a number of other issues that are heightened or more specific to the nature of the research. This paper will focus on these specific ethical issues of field-based criminological research. The ethical issues that will be examined include: i) eliciting sensitive information, ii) coercive potentials, iii) the consequences of knowing, iv) conflicts of interest, v) confidentiality and the possibility of subpoena, and vi) researcher risks.

i) Eliciting Sensitive Information

While criminological research is not the only research that touches on potentially sensitive topics, it is most commonly found within such research (Renzetti & Lee 1993). Two main forms of sensitive information that are often elicited during field-based criminological research include: information that could potentially disturb the participant, and information pertaining to illegal activities. Renzetti & Lee (1993) suggest that the eliciting of information that might disturb the participant is an ethical issue of all research projects involving human subjects, regardless of substantive focus. One can never know if something in the interview process will strike a negative cord with the respondent. The second sensitivity issue, eliciting information on illegal activities is possible in all studies as well, but is certainly most common in research that is specifically geared towards discussing criminal behaviours, e.g. Osborne and Fogel's (2008) qualitative research of illicit drug use. While all efforts should be made to minimize the emotional distress of participants, the elicitation of sensitive information type is not necessarily problematic. In some instances, particularly in criminological research, the research is intended to gain further understanding of a sensitive topic. Uncovering sensitive information, particularly of illegal activities, is however, the starting point for the next three ethical issues that will be discussed.

ii) *Coercive Potentials*

Researching a group or population, regardless of the study being conducted, requires a measure of invasiveness that might expose individuals to a higher risk of harm than they would assume in their everyday life (Palys & Lowman 2006). As such, researchers are required to present the possibility of these risks to participants to ensure their free and informed consent. A participant can potentially be coerced into participating in a study, that is, not to have free and informed consent, if a) their consent is not completely voluntary or b) if they have received misleading or inadequate information about the purposes of a study (Berg 2004).

To ensure voluntary participation, participants must not perceive any coercive potential. A good example of a coercive potential is a professor asking his or her students to take part in a study. The students might feel that participating, or not participating, will have an influence on the grade they receive in this professor's course (Berg 2004). There is a clear power differential here that could have the effect of coercing the students into participating. In criminological research, this issue is most clearly illustrated by studies on prison populations (Arboleda-Florez 1991). If the study appears sanctioned by anyone with administrative authority, then the participants might think that they will get points for good behaviour for participating, which would subsequently lead to their early release. Participation, under these conditions, would be considered to be coerced participation.

To avoid this form of coercive potential, researchers should avoid sampling approaches that clearly identify who provided their contact information for participation, or who the gatekeeper to access the population was. By providing this information, the participant might feel that the study is being sanctioned by the contact information source, e.g. if researching juvenile delinquents, to say that their social worker provided their contact information might coerce them to participate, much like inmates in a prison study, because of the award they might hope to receive for good behaviour (Arboleda-Florez 1991). One strategy to avoid this problem, then, is to avoid identifying contact information sources when contacting potential participants. Or alternatively, recruitment posters and websites could be used to allow potential participants to voluntarily contact the researcher, thereby allowing for a more indirect sampling approach (Im & Chee 2004).

Not providing the name of those who provided contact information should not be confused with providing misleading information to participants. To confuse the two would negate the informed consent of study participation (Berg 2004). Since criminological research deals with topics of a sensitive nature, participants must be informed of these risks. To not do this would be an exploitation of the research participant; the researcher and their institution would profit from the potential uninformed harms to the research subject. This is what caused such ethical alarm in the studies conducted by Milgram (1974), Humphries (1970), and Zimbardo (1973) that were mentioned previously in this paper.

iii) *The Consequences of Knowing*

Being privy to sensitive information has the further issue that the researcher might be faced with difficult ethical decisions of what to do with the information. Three problems could arise in field-based criminological research in this regard, including: 1) the participant has revealed a need for help or counsel, b) the participant has admitted to something that might require reporting to legal officials, c) there are conflicts of interest

between researchers, subjects and funding agencies, or d) legal officials want to know confidential information that the researcher may know, i.e. the possibility of subpoena.

The first two ethical issues surround if and when researchers should interfere. One research stance is to enter the fields of research with as little invasiveness in the lives of those being studied as possible, i.e. the fly on the wall (Savage 2000). However, some complications could arise that make this approach difficult. For example, common topics of criminological research include drug abuse, gambling, and pornography. In any of these types of studies the researcher could perceive that a participant is suffering from a serious addiction. This issue can be dealt with by a) securing counselling services that might seem plausible before beginning a research project, listing the details on the participant consent form, and ensuring that the services will be at no financial cost to the participant, and b) providing this information to the participant in a debriefing at the end of the participation (Berg 2004). The researcher should plan ahead for such occurrences, and avoid trying to act as counsellor to the participant.

The researcher might also be faced with the ethical dilemma of whether or not to interfere in the lives of participants if they become privy to information about illegal behaviours that could be useful to legal authorities. The issue here pertains to what that privileged information is. To ensure that participants provide honest answers, participants must be given the privilege of confidentiality; this is essential for valid and reliable research (Palys and Lowman 2000, 2002, 2006). Thus, just as a psychiatrist would not report the confessions of a client, neither should a researcher. Palys and Lowman (2000, p.75) do suggest that researchers should, however, report what they term "heinous discoveries". They suggest that these discoveries could fall under two conditions including: a) public safety, e.g. knowledge of child abuse, or b) innocence at stake, e.g. knowledge of a wrongly accused.

This is only to say that researchers *should* report heinous discoveries, but is not always that they must. For example, in *Smith v. Jones* (1999) the Canadian Supreme Court delved over whether or not to employ the public safety clause to allow a psychiatrist to break confidential doctor-client privilege. The court considered three public safety factors:

- 1) *Is there a clear risk to an identifiable person or group of persons?*
- 2) *Is there a risk of serious bodily harm or death?*
- 3) *Is the danger imminent?*

The court ruled that the psychiatrist could not reveal specific details of his interactions with the client, but could only express his opinion on the danger he felt the client posed to a specific population, in this case towards prostitutes. The rationale behind this decision was to "foster a climate in which dangerous individuals are more likely to disclose their disorders, seek treatment and pose less danger to the public" (*Smith v. Jones* 1999).

iv) *Conflicts of Interest*

Gaining detailed sensitive information can lead to conflicts of interest for researchers conducting criminological research. For criminological researchers, a definite ethical dilemma is presented when the data one collects is in fundamental opposition to the values and objectives of his or her funding agency. This is becoming an increasingly important ethical issue to consider as more criminological research projects are being funded by various external sources ranging from private enterprises to government initiatives. When confronted with such a conflict of interest, researchers are faced with the decision of

whether to censor certain information to protect the mission of their funding agency, or alternatively to go against this mission in the interest of academic integrity.

Geis, Mobley and Shichor (1999) suggest that criminologists have an ethical obligation to report their findings, even if it means going against the desires of their funding agency. To not do so would be a major compromise to social science research. To illustrate their contention, Geis, Mobley and Shichor (1999) look specifically at the case study of Professor Charles W. Thomas at the University of Florida. Professor Thomas, a major supporter of the privatization of prisons, authored work exaggerating the positive impact and reduced recidivism rates of juveniles leaving private prison facilities compared to those in the public system. Geis, Mobley and Shichor (1999) did some digging and discovered that Thomas had received \$50 an hour by the Florida Correctional Privatization Commission for the research he conducted. As a result of this funding, Thomas's results have been viewed as tainted amongst other criminologists. How could he conduct unbiased research for an agency that was paying him his livelihood? The Florida Commission on Ethics had similar concerns ruling that by receiving funding from the company that he was researching Thomas had acted unethically, regardless of what merit his research might have, and he was subsequently fined and forced to leave his funded position.

Another researcher, Jeff Benedict (1997), faced a similar conflict of interest while researching instances of violence perpetrated by collegiate athletes but took an alternate route. At the time of the research Benedict was serving as the Research Director of the Centre for the Study of Sport in Society at North eastern University. The Centre was materially dependent on the sports world and as such, had a vested interest in portraying athletes as healthy role models. Through his research, however, Benedict uncovered a litany of stories of physical and sexual assaults disproportionately committed by university athletes, as well as numerous cover-ups of these occurrences. Benedict refused to stay silent, which led him to part ways with the research centre, his course of funding, for the sake of academic honesty.

As research funding increasingly becomes external and privatized, ethical conflicts of interest such as these have become pivotal ethical issues in conducting criminological research. To ensure that academic integrity is not violated through conflicts of interests, criminological researchers should: a) avoid directly researching an organization in which they are receiving funding from, b) explicitly acknowledge their funding sources in all publications, as well as any biases that may have been formed as a result and c) hold higher ideals of valid research, even if that means a reduction in funding sources.

v) *Confidentiality and the Possibility of Subpoena*

A central concern of researchers writing on ethical issues of criminological research appears to be the concern for insuring confidentiality of research participation, particularly in light of the possibility of subpoena (see Palys and Lowman 2000, 2002, 2006; Lowman and Palys 2004; Israel 2004; Roberts and Indermaur 2003). The incident that spurred this debate involves a graduate student at Simon Fraser University named Russell Ogden who was subpoenaed to turn over his research materials on assisted suicide to a Vancouver coroner (Palys and Lowman 2000). After a lengthy legal debate, the coroner finally agreed that the costs of disrupting the researcher-participant privilege did not outweigh the benefits of knowing the privileged information. A lengthy legal battle was fought between Ogden and Simon Fraser University regarding Ogden's contention that SFU failed to

support his refusal to turn over the subpoenaed material. SFU was subsequently not held liable for Ogden's legal fees, but the judge presiding over the case did suggest that SFU had acted inappropriately in failing to support Ogden.

Palys and Lowman (2000) suggest two strategies for criminological researchers to use in dealing with the possibility of subpoena including: a) methodological precautions, and b) legal strategy. The use of a methodological strategy entails confusing ones research materials in such a way that even if materials are subpoenaed they will be meaningless as no participants could be identified. One example of this approach is provided by Roberts and Indermaur (2003) who suggest that researchers in criminology do not use signed consent forms because this will provide concrete evidence of who participated in a study. Instead, participants can read the consent form and then check a box stating that they voluntarily consent to participate.

In terms of legal strategy, Palys and Lowman (2000, 2002, 2004, 2006), suggest that researchers plan their consent forms in a manner that appeals to the Wigmore test. The test is used in common law to determine case-by-case confidential privilege. The four tenets of the test include (Palys and Lowman 2000, p.51):

- 1) *The communications must originate in a confidence that they will not be disclosed.*
- 2) *This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.*
- 3) *The relation must be one which in the opinion of the community ought to be sedulously fostered.*
- 4) *The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.*

Russell Ogden was able to convince a coroner to negate his Coroner's Court subpoena for his research materials by successfully appealing to these Wigmore criteria. Palys and Lowman (2000) suggest that researchers can plan ahead by using Wigmore criteria to guide their research practices, so as to ensure that their research materials are not subpoenaed. For example, a statement in the consent form along the lines of "your right to privacy is ensured and will not be waived under any conditions" would provide a legal contract of privilege the courts would likely acknowledge.

The Role of Canadian REBs

While research ethics boards in Canada have been created to ameliorate the issues previously discussed, as well as many others, it could be argued that they have in fact done the opposite, making ethical research more difficult to conduct for field-based criminologists. This is most evident in the failure to resolve the issue of confidentiality and the possibility of subpoena. For example, when Russell Ogden was subpoenaed by a coroner to turn over his research materials, Simon Fraser University unethically failed to stand behind their graduate student who was acting in accordance with his ethical provisions (Palys and Lowman (2000). Further to this, some REBs in Canada will not allow researchers to assume the risk when it comes to the subpoena, instead, through the provision of limited confidentiality, they place the burden of risk on the research participants who have volunteered their time and efforts and little to no direct benefit to themselves (Palys and Lowman 2006). While a series of reports by the federally-appointed Social Sciences and Humanities Research Ethics Working Committee has specifically addressed the issue of confidentiality suggesting that full or limited confidentiality should

be at the discretion of the researcher, this does not appear to be the practice at all Canadian universities.

As such, many scholars have suggested that REBS are overstepping their bounds and legislating on research projects in ways that they do not have the authority (Haggarty 2004; Adler & Adler 2002; Mueller 2004, 2007; Palys & Lowman 2000, 2002, 2006). Haggarty (2004, p.392) terms this an “ethics creep” whereby “REBs have unintentionally expanded their mandate to include a host of groups and practices that were undoubtedly no anticipated in the original research ethics formulations.” He equates this creep to the problem of bureaucratization, where new regulatory structures are continuously developed and intensified to the point that they are out of control. And yet, there are few checks and balances of the ethics review process; there is nothing to ensure they are acting ethically. American researchers Adler and Adler (2002) as well as Australian researchers Lucas and Lidstone (2000) attribute this encroachment on social science research to a fear of litigation against universities. Similarly, it is likely the case that Canadian ethics boards are becoming less concerned with minimizing harm to researchers and participants, and more concerned with protecting the university from litigation and poor publicity.

To an extent, one could argue that this is legitimate. If researchers are failing to provide adequate ethical standards in their research projects they can, and should, be held liable. However, the manner in which REBs are approaching their duties is in effect making it more difficult for researchers to ensure adequate ethical standards. At some universities in Canada, researchers are not supported in guaranteeing anything beyond limited confidentiality to their participants. This allows for a much weaker appeal to the Wigmore criteria, as it would be more difficult to prove that a contract of privilege was formed between the researcher and the participant. In this regard, Canadian ethics boards are, in effect, making it more difficult to conduct ethical field-based research on criminological topics and settings.

Conclusion

This ethics creep, which has amounted to placing research participants at further risk of harm, has and will continue to have some devastating effects on the future of criminological research in Canada. One possibility is that researchers will take what Haggarty (2004, p.412) terms “the path of least institutional resistance.” Similarly, both Christopher Shea (2000) and Bruce Berg (2004, p.56) suggest that this crackdown on human research has and will continue to lead researchers to conduct “vanilla research or the research of the sterile and mundane.” Within the competitive and productivity-centered academic world, social science researchers simply do not want to waste months of time trying to push their projects through a lengthy ethics review process, when, there is the definite possibility that the REB will kill their project anyways. That is, by not allowing researchers to guarantee confidentiality, the validity and reliability of the participants’ claims becomes questionable (Palys and Lowman 2000).

A second negative consequence, beyond forcing researchers to study the mundane, is an increasing disjuncture between the academic world and that which it is situated within. There is now a censorship barrier that makes researchers reluctant to conduct research outside the privacy of their office. Research is becoming increasingly devoid of contact with the world it seeks to explore, understand and explain. This does, of course, only have an effect those who stay in academics.

A third possible effect, as John Mueller (2007) suggests, is that people are leaving academic jobs and graduate students are either dropping out because they cannot do the projects they planned or they are not entering at all. To paraphrase Mueller (2007), Zimbardo knew enough to stop his experiment, the question is, when will Canadian REBs have such insight?

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