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Ethical covert research

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Abstract. Covert research is research which is not declared to the research participants or subjects. This is often muddled with deception, and condemned as intrinsically unethical. The basis of that condemnation is a legitimate concern with the rights of research subjects. It is, however, over-generalized. Research subjects do have rights, but they are not the only people with rights. They may have some say about the use of information, but not all information is under their control. They are entitled to privacy, but not everything is private. Undeclared, undisclosed research in informal settings has to be accepted as a normal part of academic enquiry.

Key words: research, ethics, covert, limited disclosure

Covert research has been heavily criticised on ethical grounds; in some discussions of ethical principles in research, it is treated as one of the principal issues (e.g. Bulmer, 1982; Punch 1986). Students are being advised not to undertake such research. This, for example, comes from a textbook on research for social workers:

“Some of the more famous participant observation studies (such as Whyte’s study of street corner gangs) collected rich data because they did not disclose to the observed that their behaviour was being researched. Nowadays, such studies are viewed as ethically untenable and we are no longer able to conduct such research.” (Alston, Bowles, 2003, 196)

This reflects an atmosphere where research is becoming increasingly regulated and hemmed in by ethical constraints (Haggerty, 2004). In an environment where institutions are actively scrutinising the ethical implications of research proposals, and where there tends to be a presumption that covert research is problematic, it is becoming increasingly difficult to plan and execute research where covert elements have been identified (see e.g. Tysome, 2006; Iphofen, 2006).

Covert research is often seen as intrinsically illegitimate.

‘As a general principle, deception or concealment of the purposes of a study from, or covert observation of, identifiable participants are not considered ethical because they are contrary to the principle of respect for persons in that free and fully informed consent cannot be given.’ (Australian NHMRC, 1999; cf Government of South Africa, 2004.)

The identification here of covert research with deception is very common (see e.g. Bulmer, 1982; Homan, 1991; Herrera, 1999). Little in the paper that follows refers to deception, but to avoid confusion I need to make a clear distinction between them at the outset.

Covert research is research which is not disclosed to the subject - where the researcher does not reveal that research is taking place. It is covert research, for example, if a researcher

simply stands and watches what people are doing, like checking whether motorists are using mobile phones (Walker et al, 2006). It is covert research when a researcher attends a public event, like a trial, a football match or a political meeting, and writes about it. It is covert research if a researcher accumulates information about subjects who do not know it - for example, someone writing an unauthorised biography, or someone undertaking secondary analysis of data about human subjects. It is covert research if a researcher sees and records something when people have not realised that research is going on (cf. Power, 1989). The term "limited disclosure", favoured by the Australian NHMRC, helps to make two points about covert action. The first is that disclosure is a positive act; a researcher may not actively be concealing the research, but unless there are steps taken to disclose what is happening, the activity may still be considered covert. The second is that disclosure is not a dichotomous concept, something that is done or not done, but a spectrum of activity: researchers can reveal nothing, a little, or a lot, and still not be making a full disclosure (Australian NHMRC, 2007, 2.3). As many writers have recognised, overt research often has covert elements (see Lugosi, 2006)

Deception, by contrast, occurs where the nature of a researcher's action is misrepresented to the research subject. This can be done at the same time as covert work, but deception is not necessarily, or even usually, done in the form of covert research. Researchers who engage in deception mainly say they are doing one thing when they are actually doing another (as in Milgram's famous experiments: Milgram, 1974). In a review of the use of deception in social psychology in nearly 1200 studies over twenty years, participants were unaware that a study was going on in only one study in seven (cited Kimmel, 1996, p.73). In other words, although some deceptive research is also covert, most is not.

Many of the objections which are made to covert research are objections to deception rather than covert activity. Homan's lengthy review of objections to covert activity include the concerns that

- deception betrays trust
- deception 'pollutes the research environment', leading people to be suspicious of researchers
- the habit of deception infects the researcher's behaviour - it 'becomes a way of life'
- the strain of maintaining a deception may be damaging to the researcher
- deception is bad for the reputation of research, and
- use of the method may legitimate deception more widely. (Homan, 1991)

Homan finds good reasons to qualify them: the concerns are over-generalised, and there are many circumstances in which they do not apply. Whether or not they are justifiable, however, I do not think that they have much to do with the use of covert research. They apply, rather, to research where deception is practised, whether it is covert or overt.

The widespread confusion between deception and covert activity means, unfortunately, that a conventional literature review does little to clarify the ethical issues; I have consequently avoided referring to the usual litany of deceptive studies and the papers that discuss them. In this paper, I want to focus instead on the arguments about covert research in itself - that is, research done without the knowledge, and so without the informed consent, of the people who are its subjects.

Why not disclose?

The main reasons for limiting disclosure are practical and methodological. The methodological argument is a strong one. Every researcher knows, or should know, that the experience of being observed is likely to affect the behaviour of the person who is being observed; the Hawthorne experiments are a familiar staple of basic textbooks (see Olsen et al, 2004). It has been argued, for example, that:

“in participant observation studies it is virtually impossible to obtain consent from all observed individuals. ... Obtaining consent would interfere with the strength of the ‘naturalist’ approach of ethnography. Seeking consent from participants in these situations may lead to behavioural changes that would invalidate the research.” (Australian NHMRC, 2001, p E130)

There are different ways of trying to deal with the problem, but if the objective of a study calls for observation of people’s behaviour in a particular context, the research has to minimise the effect of the process of observation on the way that people behave. Limiting disclosure by the researcher is the obvious way to counter that problem.

The main argument against this is that it is often impossible not to affect the subject under study. Attendance at events, for example, is often taken to be implicit support of those events, and participant observation in particular often involves engagement in the activity being studied. Homan argues that covert research is ‘invisibly’ reactive, whereas overt research tends to be explicit about it (Homan, 1991). This limits the scope to claim that research has not affected the behaviour being studied, but it does not vitiate the process. In the same way as it is impossible to be perfectly clean, it may be impossible for a researcher to be completely unobtrusive. That does not mean that it is not worth trying to do.

There are also some basic practical reasons why disclosure may be limited. It may not be possible to get consent because observation is fleeting or anonymous, because the process of gaining consent is burdensome or intrusive, or because the research draws on information gained before the research project began. There may not have been an opportunity to disclose. Observations might take place before there has been any verbal interaction: in my own work I have turned up for a pre-arranged interview, but observed interactions in the reception area while I was waiting. Disclosure to one party is not disclosure to everyone; wherever there are incidental social interactions with third parties, other people may be unwittingly involved. And research has a tendency to twist in the researcher’s hand; it is possible that the researcher does not realize that something ought to be recorded till after it has happened (cf Whyte, 1955). Researchers who work exclusively to fixed schedules and a deductive methodology may feel they are able to work within the confines of a strictly prescribed approach, but for those who work in flexible, inductive, qualitative modes, this is neither possible nor desirable. In ethical terms, even it is difficult for researchers not to see and not to be aware of the things that are happening around them, there are still choices to be made: researchers do not necessarily have to use the information available to them. It is not uncommon, consequently, for ethical decisions to be made after the event – whether or not to refer to material that has been obtained without adequate disclosure.

Homan reviews three main arguments against the effectiveness of covert research as a method:

- that covert research affects the behaviour of research subjects, regardless of its intention;
- that covert research is unnecessary;
- that covert research limits the scope of research, by preventing overt interaction. (Homan, 1991)

The same kind of reservations could be made about most research methods: the third objection, for example, could be made to any fixed-form questionnaire with closed questions. What is right and appropriate for one research problem may not be right and appropriate for another. Whether covert research is 'necessary' equally depends on the context – in field research of any kind, some failure to disclose may be unavoidable. How effective it is, by comparison with overt research, depends on the design and purpose of the research within its particular situation.

Practical and methodological arguments, whatever their merits, do not outweigh ethical considerations. If there are ethical objections to using material obtained covertly, they establish a presumption against either conducting research without disclosure, or using research materials obtained in that way.

The rights of research subjects

The core of the ethical objection to covert research is that it infringes the moral rights of research subjects. What are those rights?

There are two main classes of moral rights which ought to be considered: particular rights, which are specific to individuals, and general rights, which apply to everyone (e.g. Hart, 1955). Particular rights are dependent on the relationships between parties: examples are the right to have a promise kept, or to hold someone to a contract. Particular rights in research are generated by the relationship between the researcher and others involved in the research - usually, to participants rather than subjects in general, because most particular rights in research are held by people who are actively engaged with the researcher. Researchers should behave towards research participants with integrity – that is, their actions should be consistent with the principles they affirm. If they promise confidentiality, they should maintain it. By the same token, if researchers are working in circumstances where confidentiality cannot be maintained, they should not be promising anything different. Israel records a substantial literature in which promises of confidentiality in the field of criminology are liable to be compromised by the actions of law enforcement agencies (Israel, 2004a).

General rights are not dependent on the relationships between the parties; they are held by anyone in the same position (Raz, 1989). There are rights of citizenship, like the rights guaranteed in the US constitution; general legal rights; and human rights, including rights to privacy where appropriate, and the right not to be exploited. The general duties of researchers include beneficence - the promotion of welfare and the avoidance of harm and respect for persons. Those duties not just to research participants – those who knowingly take part in a study – but to research subjects, to third parties and potentially to wider social groups. There may be conflicting rights and interests. If a research participant is abusing the rights of another person, it is not necessarily the case that the researcher is bound to respect or protect the participant's

position. Research on issues like violence, drug dealing or sex abuse has to consider the rights of the victims, not just the perpetrators.

Some researchers present the rights of research participants as if they take priority over other ethical considerations. In Pearson's research on football hooliganism, for example, he comments that he "perceived that the duty he owed to his unwitting research subjects overrode any 'moral' obligation to society or authority" (Ferdinand et al, 2007, p. 539; see also Pearson, 2009). The Association of Social Anthropologists suggests as a general principle that

'most anthropologists would maintain that their paramount obligation is to their research participants and that where there is conflict, the interests and rights of those studied should come first.' (ASA, 1999, s 1.1)

This is difficult to defend. The rights of research subjects are not unlimited, and they certainly do not pre-empt other ethical issues. It is more appropriate to think of the process as striking a balance between competing principles. The BSA emphasizes the need for sociologists to "protect the rights of those they study", but qualifies this by saying

"In some cases, where the public interest dictates otherwise and particularly where power is being abused, obligations of trust and protection may weigh less heavily. Nevertheless, these obligations should not be discarded lightly." (BSA, 2002, para 15)

I would differ here in the order of priority. Particular rights generated in the process of research are not more important than human rights. The initial presumption should be that researchers will respect people's human rights, and there have to be extremely strong reasons to qualify that position.

Because covert research is done without making any commitment about a research relationship, it is difficult for research subjects to claim particular rights in respect of the research done. This may be undesirable, because making things explicit is usually a better way to protect the interests of all parties, but that is not a fatal objection. Whether it is problematic depends on the context in which the research takes place. The obligation on researchers to respect general rights applies to covert research in the same way as to overt research.

Privacy

Privacy is not the only general right governing research, but it has come to dominate the debate on covert research. Privacy refers in the first instance to non-interference: respecting privacy means that people are not inappropriately observed, inconvenienced or reported on. The private sphere is a "zone of protected activity" (Faden and Beauchamp, 1986). However, it has come to stand beyond that for a much stronger concept, based on 'the claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is communicated to others' (Westin, cited Kimmel, 1988). This goes well beyond non-interference; it asserts that people have elements of their lives which is for them to control, and no-one else (cf Rössler, 2005, p 72; Australian NHMRC, 1999, p 18). It follows that information obtained in research lies in the control of the research subject or participant, and the use of such information without the person's consent is unethical.

The strong interpretation of privacy is contentious. The idea that all information remains under the control of the people it relates to would establish a presumption against the free circulation of information – a position fundamentally opposed to democratic thought as well as to scientific discourse. For example, if taken literally, it should imply that most of the personal data currently held in data archives, regardless of anonymity, should be expunged. Faden and Beauchamp comment that the principle came to occupy its prominent role without being thought through. The goals are “imperfectly distinguished and poorly formulated ... We can claim little beyond the indisputable fact that there has developed a general inchoate societal demand for the protection of patients’ and subjects’ rights.” (Faden, Beauchamp 1986 p 223) The consequences of that uncritical adoption are now widely experienced in the research community.

Whenever research intrudes into the private sphere, it is taken as axiomatic that it must respect people’s right to control information about themselves, and consent is essential to legitimate any such intervention – a necessary element, even if it is not a sufficient one. Research subjects have the right to be informed about research, to consent, or to withdraw from it if they are not content. So, for example, the Social Policy Association suggests that “Research participation should wherever possible be based on individuals’ freely given informed consent” and that

“Consent to participate in a research study should be regarded as an on-going process and it should be made clear to participants that they are free to withdraw from the study or withhold information at any point.” (SPA, 2009)

If research is covert, people are not informed, they are not able to consent, and they cannot effectively withdraw. The Socio-Legal Studies Association takes the view that:

“Despite the technical advantages of covert research methods they clearly violate the principle of consent and invade the privacy of those studied.” (SLSA, n.d.)

That, in a nutshell, is the principal ethical objection to covert research in practice.

The public sphere

There is a substantial qualification to make about the application of privacy as a general right. The concept of privacy hinges on a basic distinction between the private and the public spheres. Even if individuals are considered to control personal information, that control does not relate to information in the public sphere. Shils, whose passionate criticism of covert observation established one of the most influential arguments against it, writes:

‘Observation which takes place in public or in settings in which the participants conventionally or knowingly accept the responsibility for the public character of their actions and expressions ... is different from observation which seeks to enter the private sphere unknown to the actor. ... The open sphere - the sphere in which the individual has committed himself to publicity - is a legitimate object of observation, as it is of interviewing.’ (Shils, 1959, p 132)

There are different norms applying to public actions than there are to private ones. Public actions can be publicly observed. There is nothing wrong with a researcher attending a trial as a member of the public, and reporting on it, even if the effect of

reporting a 'guilty' verdict is to expose the subjects to public disapproval. More than not being wrong, it is ethically desirable. The public nature of the act makes the ability to report and comment essential to the functioning of the system of criminal justice. Where a function is public, researchers can legitimately put themselves in the place of service users, "mystery shoppers" or citizens. Research in a democracy has an important public function, which is to scrutinise social processes and to bring people to account. Observation, recording, the investigation of records and public criticism are not only permissible, but it may be unethical to put stumbling blocks in their way (Spicker, 2007) – as some Research Ethics Committees have tried to do (Israel 2004b). And there are contexts where undisclosed research may be the method of choice, shining a light on the conduct of public services or issues of public interest which people, organizations, businesses or governments may wish to conceal.

Some actions are public in their very nature. The formal actions of governments and public agencies, even in closed rooms, are intrinsically public. A political demonstration is a public action. So is standing for elected office. Information which has moved into the public domain, like census returns or research reports, can legitimately be used without further reference to the subjects of the information. I am not sure that action in the public sphere has 'implicit' consent; what happens, rather, is that consent becomes morally irrelevant, because the information is beyond the rights of the individual to control. This is the main answer to the allegation that covert research denies research subjects the opportunity to be informed, to consent, or to withdraw from research. If they are in the public domain, they have no such rights.

Disputes about ethics in these contexts focus necessarily, then, not on the application of a general presumption of consent, but on the question of whether the circumstances are truly public. The boundaries between public and private spheres are complex, and they can be difficult to determine. The treatment in research of several critical issues, like the study of domestic violence or liability to personal taxation, have hinged on the question of whether they should be classified as public or private (There is a growing sentiment that domestic violence should be thought of as public: see Schneider, 1994.) The Australian National Health and Medical Research Council has argued:

'Covert observation is usually regarded as acceptable if undertaken in a public place.... it is implicit in sanctioning unconsented observation of individuals in a public place that they are aware that any of their actions will be visible to anyone simultaneously present.' (Australian NHMRC, 1999.)

This seems to be an argument that doing things in a public place is public because it is visible. This is not quite right. The distinctions are conventional, and people can do private things in public spaces. What defines something as public is not the geographical location where it happens, but the nature of the act. It can be difficult to separate the private and public spheres distinctly. A bank, a restaurant, a park or a public convenience may be a public place, but some of the things that people do there are private. Clubs and meetings in hired rooms in pubs are not self-evidently in one sphere or the other, and some of the controversies about research in these settings are about whether or not they should be seen as intrusive. The study of policing is particularly problematic, because the nature of police action often involves intervention in the private sphere in order to examine whether it ought to be considered public. Punch writes:

‘during my research with the police in Amsterdam, the patrol car was directed to a fight and the two constables jumped out and started wrestling with the combatants. Was I supposed to step up to this writhing shindig and shout ‘freeze!’ and then, inserting my head between the entangled limbs, whip out my code and, Miranda-like, chant out the rights of the participants?’ (Punch, 1986, p 36)

I think he can rest easy: fights in public places which are rowdy enough to draw the police into a brawl have clearly stepped into the public domain.

Autonomy

Faden and Beauchamp argue that the central principle behind the idea of consent is not so much privacy, as autonomy or self-determination – the ability of people to decide for themselves what happens to them (Faden, Beauchamp, 1986). The principle of consent to research is derived from issues in medical ethics, because medical intervention undertaken without consent can be held to constitute a battery. It was well established in US law that “every human being of adult years in sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient’s consent commits a battery for which he is liable in damages.” (*Schloendorff*, cited Faden, Beauchamp, 1986, p. 127) That principle was directly extended into the governance of research through the Nuremberg code, developed to address the abuses in bio-medical experimentation perpetrated under the Nazis. The experiments conducted by Nazi doctors violated that principle. The decision in *United States of America v Karl Brandt* consequently specified that “The voluntary consent of the human subject is absolutely essential” and that “During the course of the experiment the human subject should be at liberty to bring the experiment to an end ...” (Nuremberg Code, 1947) These principles are commonly translated into a presumption that consent must always be obtained for research to be legitimate. They have spread out from bio-medical research to cover most fields involving research with human subjects.

One of the key objections to covert research, then, is that “covert methods help erode personal liberty” (Homan, 1991). In so far as the actions of the researcher limit the behaviour of the research subject without the subject’s consent, they could be argued to limit that person’s scope for self-determination. If the process of the research is burdensome, intrusive or oppressive, that may be true: but it is not clear why it should be more true of covert research than it is of other kinds, undertaken with or without the subject’s consent. The process of disclosure may be intrusive and burdensome; in some circumstances it may be alarming.

There seems to be an assumption in the emphasis on consent that if people are able to consent to the research openly, they are more likely to be able to protect their interests. This is probably true, but it is only true up to a point. Wiles et al found that even experienced researchers, when asked to become research participants, tend to misjudge the degree to which they wish to reveal information. (Wiles et al, 2006, 293-4) Some subjects are vulnerable, some may not see the consequences, and damage done to subjects by a researcher is not excused by saying ‘well, I warned them’. Corrigan lambasts reliance on formal processes of consent, and the model of participants as rational actors, as an example of “empty ethics” (Corrigan, 2003).

The Association of Social Anthropologists comments, I think rightly, that
‘Consent from subjects does not absolve anthropologists from their obligation to protect research participants as far as possible against the potentially harmful effects of research.’ (ASA, 1999, s 1.2)

The Australian NHMRC suggests that covert research might be undertaken in certain cases where disclosure is limited in practice (Australian NHMRC, 2007). However, “The covertness of the method is unlikely to be regarded as preventing the duty of confidentiality from arising. It is probable that researchers who conceal the fact that they are researchers when they gain information from potential participants still owe those participants the same obligation to respect their confidence as they would have had if their researcher status had been disclosed.” (Australian NHMRC, 2001, p. L21)

The argument here implies that there are particular rights, as well as general ones, in covert research. If the objection to covert research is that it is done without sufficient safeguards, it seems to follow that covert research might be possible, in cases where the research is methodologically justifiable, provided that other safeguards are strengthened. Public exposure is commonly avoided through the use of anonymity – not, in itself, an ethical principle, but a device to try to limit the degree to which information gained in research can be attributed to the circumstances of particular individuals or groups.

An example of circumstances where alternative safeguards are appropriate is the case where a researcher is writing about personal experience or past events. It is not necessarily the case that research begins with the identification of a problem or issue; often researchers systematize information from their previous experience. Many researchers choose areas of work where they have some prior knowledge or familiarity with the setting. (I began my own career working in housing management, and my first published work was related to that experience.) Knowledge of this sort, however, is invariably obtained for a different purpose than research. Does that mean that it cannot be used? I do not think that such a constraint is ethically required, or even reasonable. The limitations that researchers recognize in such circumstances relate to the context where they have acquired the information, and sensitivity to the position of the people affected. That would typically lead to anonymisation where appropriate, and perhaps altering details which might otherwise breach confidentiality. That is not the same as giving control over information to the research subjects.

This assumes that the principle of consent is defeasible, and the safeguards it offers may reasonably be offered in other ways. If it is accepted that this is possible, it implies that the strong concept of privacy, which treats private information as being solely under the control of the subject, is not decisive. It also follows that covert research may be undertaken without obtaining consent, or at least with limited disclosure, in some circumstances within the private sphere. There is an obligation to consider appropriate safeguards to protect participants, subjects and others from undesirable consequences. If covert research is undertaken, it is subject to such safeguards.

The avoidance of harm

Researchers have a duty of beneficence – or at least of non-maleficence, the avoidance of harm - to those affected by research, going beyond the issues of privacy and consent. No researcher should be blind to the potential consequences of research. If a research report is effective, it may well heighten awareness, change the way that people respond to the issues raised, or inform policy. This may, in some cases, increase risk to those involved in research. There is no rule, however, to say that harm must never occur. For example, evaluations of policy or service delivery always carry the risk that activities may be curtailed or funding withdrawn; that does not mean that the research is not legitimate.

Possibly the most damning criticism made of covert research has been that it has a distinct potential to harm the people who are being studied (cf Homan, 1991), and that consequently it is inconsistent with the obligation to protect the position of research subjects. The criticism is paradoxical. One of the main arguments for doing things covertly is to avoid changing the nature of the behaviour that is being observed. In most cases, if it is done successfully, covert action means that the subjects of research are doing exactly what they did before, and they are exposed to no risk from the research process beyond the risk already associated with the activity. There may be a problem if their action should not be reported - typically, because it is genuinely private - but it should not be a problem otherwise. The test of beneficence does not imply that research subjects should not be subject to changes in their circumstances, but that research should not expose subjects to harm beyond the consequences of their own actions.

The issue here is not that covert research does not have the potential to have undesirable effects. Many forms of research do. A judgment about whether research is ethical depends on an engagement with the ethical considerations. At root, the tests that need to be applied to covert research are the same as the tests that apply to other forms of research – whether there is a potential for harm, whether people’s rights are infringed, whether the research is intrusive and what safeguards are needed. Ethical conduct in covert research depends, not on the automatic application of programmatic rules, but on examining the ethical implications of process and outcomes in the context where the research is done.

The hardest test of this principle has been criminal activity. Covert research is often favoured as an approach for the exploration of criminal activity, because of the concern that researchers will otherwise not be able to get access, because subjects will disguise their behaviour and invalidate the findings, or because the researchers will themselves be put at risk. The argument that covert research is harmful in this context relates crucially to the fact that their action is being reported - that attention is being drawn to it. Wiles and her colleagues report that social researchers are likely to break confidence only in the most serious cases:

“Researchers appear to feel a responsibility to report, with their participants’ permission, cases where their participants are at risk of harm but not cases of illegal activity. There is a clear consensus that the abuse of vulnerable people should always be reported with participants’ permission.”
(Wiles et al, 2008)

There are reasonable concerns about the potential harm that might be done when a person is not willing to make a complaint, but two parts of this seem to me misplaced. One is the qualification of both sentences with the proviso that this should only be

done “with the participants’ permission”. That elevates the particular rights to participants to a status where they take priority over both the risk of harm and the protection of vulnerable people. The other is the suggestion that researchers will not report illegal activity. Some researchers have certainly taken the view that it is unethical to report a crime revealed in the process of the research (e.g. Loxley et al, 1997; Australian NHMRC, 2001, p 130; Pearson, 2009; and see Israel, 2004a for further examples). I think they are profoundly mistaken. There are “rules of recognition” in any system of law: Hart, 1961; a criminal action is one which has been defined as criminal through a recognised public process. The investigation of the circumstances of people engaged in criminal acts can always be seen as public rather than private. There is consequently no immediate ethical bar to using covert research in these contexts, because there is no implicit duty of confidentiality about criminal activity.

The Social Research Association informs us that

‘The US Office for Protection from Research Risks allows observational research to be exempt from consent unless ... “any disclosure of the human subjects’ responses outside the research could reasonably place the subjects at risk of criminal or civil liability ...” (SRA, 2003, p 33)

This seems to say that researchers can observe people without consent, going about their private business, only until they do something that *prima facie* falls into the public sphere. That reasoning is perverse. It is precisely at this point that consent from the subject is no longer required. There is always an additional individual responsibility in ethics to deliberate whether the law is indeed moral (for example, laws restricting certain sexual behaviours). A researcher who wants to take a different view about the legitimacy of the law has both to justify that and to accept the consequences. That, however, is the exception rather than the rule.

The duties which the researcher has are not subject to the consent of the offender. There is nothing intrinsic in the rights of the research subject that implies that the researcher should maintain silence or confidentiality, or that the researcher must become complicit in the crime. There is no right which allows a research subject to commit crimes with impunity, and if a person’s actions place them at risk, they have to accept the consequences. The main rights that people have in those circumstances are not to be arraigned for crimes without the process of law – which means that researchers need to exercise considerable caution in publishing details of crimes, even in circumstances where the research participant is apparently confessing. Researchers have no general duty to protect people from the law. On the contrary, if the test of rights is that there is due process of law, the principle may require ethical researchers to cooperate actively with the authorities.

Other objections to covert research

The kind of issue that the literature focuses on most clearly is a special case: the use of covert participant observation, or ‘undercover’ work, where researchers either pretend to be something different, like Rosenhan’s classic study of psychiatric hospitals (Rosenhan, 1973), or become something different, as Calvey became a security guard and Pearson became a football hooligan (Calvey, 20008; Pearson, 2009). There are many problems with this kind of research, but its covert nature is the least of them. If covert participant observation is undertaken in a legitimate public

setting, without deception - for example, Homan's participation in religious services (cited Homan, 1991) - there is nothing evidently wrong with it. There are four other more significant reservations about undercover work. The first reservation concerns what kind of activity the researcher is participating in. Covert participant observation in criminal activity is likely itself to be criminal, and the advancement of knowledge is unlikely to be a legitimate justification for that. Pearson describes his participation in football hooliganism: "I found myself both witnessing criminal offences and being put under pressure to commit them personally. ... I committed 'minor' offences (which I tentatively defined as those which would not cause direct physical harm to a research subject) on a weekly basis as part of the research routine." (Pearson, 2009, pp. 245, 246-7) Participation in criminal offences, such as offences against public order, seems to me to require a much stronger justification than completion of a doctoral thesis.

Second, there is the extent to which the observation can be said to be intrusive. Many private actions are of general interest - issues like nutrition, family care, sexuality or physical capacity have implications for public policy - but it is difficult to think of circumstances in these fields where research in non-public settings, on aspects of the issues which do not impinge on the rights of others, and undertaken without the consent of the subject, would not breach the privacy of those observed. (Garfinkel's famous "experiments with trust", where students were asked to disrupt the everyday lives of their unsuspecting parents and siblings, seems to me to fall foul of that principle. As one student's sister commented: "Please, no more experiments. We're not rats, you know." Garfinkel, 1967, pp. 48-9)

The third objection is the potential risk to the researcher. Sometimes the role implies exposure to physical violence: Calvey's work depended in part on his abilities in martial arts (Calvey, 2008). Sometimes the risk is to physical integrity: the risks to Rosenhan's researchers of permanent physical or mental damage through inappropriate medical intervention were, in retrospect, staggering.

Fourth, there is the issue of deception. Some researchers do deliberately misrepresent their situation. They need to consider whether it does indeed represent a betrayal - a breach of undertakings given to the research subjects.

Homan lists thirteen key objections to covert research, but six, as noted earlier, are objections to deception rather than covert research, and three are about the effectiveness of covert research as a method. That leaves four main ethical objections: that

- 'covert procedures flout the principle of informed consent ...
 - covert methods help erode personal liberty ...
 - covert methods discriminate against the defenceless and powerless ...
 - Covert methods may damage the behaviour or interests of subjects ...'
- (Homan, 1991)

I have reviewed three of these arguments in the course of this paper. The argument that remains is the suggestion that the process is intrinsically biased against people who are disadvantaged. This seems to rest in the view that if people who are vulnerable and disadvantaged are less able to defend their privacy than people who are wealthy. That may be true, but it does not follow that a procedure which does not go through the process of disclosure puts them more at risk. It is no less true that

privacy has also been used to assert disadvantage, and the effect of defending people from intrusion has been to deflect potential criticism of the way people behave in the domestic sphere – for example, in marital violence and child abuse (Schneider, 1994; Rössler, 2005).

Covert research in practice

I gave earlier some basic practical and methodological reasons why researchers might limit disclosure in the process of research. There is, though, another, more subtle, and more substantial, argument for non-disclosure. In the course of the argument so far, I have given several instances of research where disclosure is limited – such as the researcher who is drawing on, reflecting and systematizing previous experience; the researcher who decides to use information obtained fortuitously; or the researcher whose agenda changes in the course of the research. Most academic researchers will, I think, recognize that kind of process. Undeclared, incremental learning and discovery is part of the normal process of academic learning and investigation.

I work as an advisor, consultant and researcher, undertaking applied policy research to meet the needs of various agencies. The things I learn from each project add to the next. I use examples from previous research, practice and informal enquiries liberally in my teaching and writing. In the course of the last year, I have visited or discussed issues with government officials, benefit administrators, voluntary sector workers, employment advisers, welfare rights workers, community workers, campaigners, politicians, disability activists, journalists and of course academics. None of those discussions has been part of a formally constituted research project. Finding out about things - having conversations, forming networks, learning from people, and piecing information together - is part of my work. I do not generally do ‘covert research’ in the sense of deliberately constructing research that is intended to be concealed from view; but equally, there may be no point at which it would be opportune or appropriate to make an explicit disclosure about the process of research and how the information I glean might be used. That method of working, in the current climate of ethical governance, has become problematic. Any researcher who came forward with a proposal to fish unsystematically for serendipitous material would find it difficult to justify the proposal to a Research Ethics Committee.

The problem here, I think, does not lie with the practice, but with a misconceived view of research. Ethical review procedures have often been based in a stereotypical, restrictive understanding of research activity. The kind of research they relate to is a closely defined, project-based, time-bounded programme of work, with a clear plan, statement of objectives and method of working. The idea of ‘research’, however, includes much more than project-based investigation. It takes in scholarship, exploration, discovery, and practice. Research is often done informally, and informal research is rarely overt. If the process of acquiring and systematizing knowledge cannot be done without the full, explicit knowledge and cooperation of research subjects, in many cases it will not happen at all.

The rules which are being applied to covert research are based in concerns about a marginal set of special cases; they are unduly influenced by concerns within deception, which is another issue entirely; there is widespread confusion about the duties that researchers owe to their subjects. The importance of the issue stretches far

beyond the narrow issue of covert participant observation. The ethical principles which apply to formal research have to be applicable to informal research - any other position would be incoherent. We cannot sensibly say, for example, that researchers have a duty of beneficence in research that begins with a project proposal and do not have such a duty in research that does not. Currently we seem to imagine that formal research is somehow morally different from other approaches to the acquisition of knowledge – scholarship, discovery, experience, engagement with practice, or the kind of networking and interaction that is central to learning. This is not sustainable. The rules which are applied to covert research necessarily apply to any equivalent situation where people are not aware that research is taking place. These restrictions threaten the very nature of academic enquiry.

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