

Ethics Creep: Governing Social Science Research in the Name of Ethics

Kevin D. Haggerty

This article presents an analysis of the Canadian ethics review process by a member of a Research Ethics Board. The author suggests that the new formal system for regulating the ethical conduct of scholarly research is experiencing a form of “ethics creep.” This is characterized by a dual process whereby the regulatory system is expanding outward to incorporate a host of new activities and institutions, while at the same time intensifying the regulation of activities deemed to fall within its ambit. These tendencies are demonstrated through an analysis of: 1) the scope of research ethics protocols, 2) the concept of “harm” employed by these boards, 3) the use of informed consent provisions, and 4) the presumption that research participants will remain anonymous. To accentuate the nature of this ethics creep, comparisons are made between the ways in which identical knowledge generation activities are governed within journalism and the academy. The conclusion suggests that one effect of the increasingly formalized research ethics structure is to rupture the relationship between following the rules and acting ethically. Some of the reasons for this “creep” are highlighted along with the risks that it poses for scholarship.

KEY WORDS: research ethics; regulation; bureaucracy; risk; rules.

The institutionalized production of knowledge never proceeds unencumbered. As philosopher Michel Foucault suggested, knowledge is produced by multiple forms of constraint. The social sciences¹ are currently witnessing the emergence of a host of new fetters on our knowledge production endeavors. Research involving First Nations communities, for example, now routinely requires that findings be vetted by a Band Council before publication. Criminology, the

Correspondence should be directed to Kevin D. Haggerty, Department of Sociology, University of Alberta, Edmonton, Alberta, Canada; e-mail: kevin.haggerty@ualberta.ca.

¹I refer to “social sciences” for the sake of convenience. The provisions discussed in this article apply to all research activities involving human subjects, including the humanities and law.

subfield that I am most familiar with, has seen the increased use of remarkably specific research contracts. Police agencies that previously granted scholars comparatively easy access now require contracts containing ominous provisions stipulating that the police approve any research findings before they are communicated. Such developments constrain scholarly research and, in so doing, structure what truths can be spoken and by whom.

We can add to these constraints the comparatively new development of research ethics protocols. Such regulations have existed for several years in the medical sciences and have increasingly been institutionalized in the social sciences. In Canada, the country I focus on for this analysis, the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans* (hereafter the *Policy*), established in 1998, requires that all university research involving human subjects be approved by a Research Ethics Board (REB).²

Concerns about the ethical quality of research are characteristic of a society where anxieties about the unintended consequences of science and technology are increasingly common (Beck 1992). Where modernity manifests a general trust in the ability of science to resolve our most pressing problems, we have become attuned to the truth that science itself poses risks and that these risks can no longer be explained away as temporary aberrations in the march of progress. While the natural and medical sciences have been singled out for producing some of our most colossal risks, such as nuclear energy and genetic engineering, the social sciences are now also recognized as a risk-producing endeavor. Research ethics protocols are a formal attempt to manage such risks.

As a regulatory system, however, the research ethics process now poses dangers to the ability to conduct university based research. This article documents four such risks in relation to: 1) the scope of research ethics protocols, 2) the notion of “harm” employed by REBs, 3) the place of informed consent in research ethics, and, finally, 4) the presumption of anonymity as a means of mitigating the risks of research. These topics are singled out because of the way in which ambiguous terms such as “harm,” “consent,” and even “research” have been interpreted. Such ambiguity is not unique to the operation of REBs, as all new legal regimes employ broad and unspecific concepts, the meanings of which only solidify over time as they are applied to different cases. We have now reached the point in the evolution of the Canadian research ethics infrastructure that the meaning of such terms is crystallizing into a more regular and predictable form. Part of this has involved an ethical “creep” whereby REBs have unintentionally expanded their mandate to include a host of groups and practices that were undoubtedly not anticipated in the original research ethics formulations. After detailing some of the specifics of this creep, I conclude by suggesting some reasons for its occurrence. Over time, I fear that the REB structure will follow the pattern of most bureaucracies and continue

²These regulations can be found at: <http://www.pre.ethics.gc.ca/english/policystatement/policystatement.cfm>.

to expand, formalizing procedures in ways that increasingly complicate, hamper, or censor certain forms of nontraditional, qualitative, or critical social scientific research.

This article draws primarily from my four years experience as a member of the University of Alberta's Faculty of Arts, Science and Law Research Ethics Board. Serving on the REB for one of Canada's top social science research universities I have reviewed hundreds of research ethics proposals from the departments of Sociology, Political Science, Law, Anthropology, Psychology, Music, English, and Linguistics. Undoubtedly, our REB has its own idiosyncrasies, but formal and informal discussions with faculty, members of other REBs, and officials working for the Tri-Council suggest that our board operates much like the other social science REBs across Canada and deals with comparable issues.

While I focus on the Canadian system, aspects of my analysis are germane to developments in the United States where comparable Institutional Review Boards (IRBs) have existed since 1981. The American boards are concerned with similar issues relating to harm, consent, and anonymity that I address below. The analysis also serves as a cautionary tale for those countries who are currently contemplating establishing their own formal research ethics bureaucracy.

Despite the critical tone of this article, I support the concept of ethical research. That said, supporting research ethics in the abstract displays all of the moral fortitude of unconditionally voicing support for motherhood. As with all regulatory matters, the devil is in the details, and as I demonstrate, some of the details about the regulation of research in the name of ethics should give us pause.

ETHICS CREEP

The ethical status of research was historically governed through a combination of discipline-specific codes of conduct and the professional standing of research scientists. The training that academics received in research methods, ethics, and, most importantly, their practical experience in conducting research were previously presumed to offer sufficient protections against unethical behavior. That system has now been supplanted and effectively replaced by a formal process of bureaucratic oversight. This marks a move away from a system based on an assumption of professional competence and responsibility to one based on institutionalized distrust, where researchers are presumed to require an additional level of oversight to ensure that they act ethically.

By introducing a bureaucratic system to manage the risks of academic research, universities have also assumed many of the characteristic deficiencies of regulatory bureaucracies. For the purposes of this analysis the most important of these attributes is the tendency for bureaucracies to expand, assuming new responsibilities while refining and intensifying their regulatory structure. The sociological interest in processes of bureaucratic expansion can be traced to Max

Weber's arguments (1978) on bureaucracy and rationality. One of the iron rules of bureaucracy identified in the literature involves a proclivity towards rule breeding and proliferation (Galanter 1992; Zhou 1993). Evidence of this process is apparent in the *Tri-Council Policy Statement*, which now runs to a full ninety pages including procedures, clarifications, and appendices.

The concept of "creep" has acquired a degree of sociological purchase in recent years as a means of denoting processes of unintended transformation and expansion of systems. The most familiar of these uses is the notion of "mission creep," used to characterize how governmental initiatives, typically military engagements, tend to assume new and unanticipated agendas. Gary Marx employs the expression "surveillance creep" to designate the processes whereby surveillance practices gradually assume novel uses. Recently, Martin Innes (2001) has expanded on that usage to suggest a more general process of "control creep" whereby social control mechanisms tend to expand and penetrate different social arenas. In all of these uses the concept of "creep" accentuates the types of unanticipated expansion that I am drawing attention to in relation to research ethics protocols. "Ethics creep" involves a dual process whereby the regulatory structure of the ethics bureaucracy is expanding outward, colonizing new groups, practices, and institutions, while at the same time intensifying the regulation of practices deemed to fall within its official ambit.

Demonstrating ethics creep requires scrutiny of the decisions of regulatory bodies. In the case of REBs, however, this scrutiny is made extremely difficult by how these boards are structured. While REBs communicate their decisions and recommendations to individual applicants, they do not publicize these decisions. Moreover, each REB is the final arbiter for research issues within its domain. There is no appeal to a higher authority such as an "ethics Supreme Court." As such, there are no public documents for analysts to scrutinize in order to discern the authoritative positions on research ethics matters. These structural factors make it very difficult for outsiders to gain an appreciation of tendencies in how the rules governing ethics are being interpreted and applied in practice. Fortunately, I have been able to surmount this methodological problem by virtue of being able to draw from my four years of experience as a member of my faculty's REB. In this capacity I have acquired a privileged insider's view of the content of such decisions, their rationale and cumulative direction. The examples and anecdotes that I present here are derived from a theoretical sampling of cases that have been dealt with by our REB. While this sampling of cases is not representative in a strict statistical sense, I believe that it accurately represents some of the more troubling trends in the operation of these boards.

To accentuate the direction and extent of this ethical creep, I compare research ethics protocols in the academy with what is permissible in journalism (print, televised, radio, and Internet). This comparison is not intended to suggest that journalism serve as a standard to which academics should necessarily aspire, but

rather as a benchmark against which we can demonstrate the degree to which ethical concerns in the university have crept into a host of new and problematic domains. It allows us to push the logic of ethics regulation, accentuating its ironies, contradictions, and dangers.

Some might argue that journalists and academics are involved in different enterprises. Academics tend to draw broader conclusions from their findings than do journalists. Academics also manipulate quantitative data using more sophisticated statistical tools and situate their findings in different discourses than do journalists. That said, the broad methodologies used by members of both institutions—how they produce their facts—are often hard to distinguish. Both social scientists and journalists conduct interviews, videotape people and events, undertake forms of participant observation, and, in recent years, have increasingly scrutinized online discussion groups. Media outlets also produce a host of quantitative knowledges through their own in-house research units or contracts with private research firms. Newspaper and magazine surveys of university students are prominent examples of such media generated statistical studies. Television broadcasters routinely conduct opinion polls, and Web surveys are now an omnipresent attribute of the media. Journalists have produced an impressive volume of research on pressing social issues. A small sampling would include James Dubro's *Mob Rule: Inside the Canadian Mafia*, Victor Malarek's *Merchants of Misery: Inside Canada's Illegal Drug Scene*, and Jeffery Robinson's *The Laundrymen: Inside the World's Third Largest Business*.

Another ostensible important difference between academics and journalists concerns the commercial nature of journalism. Given that the knowledge produced by journalists can be crucial in shaping public opinion, influencing elections, and motivating social action campaigns, and that commercial interests can bias knowledge production, it would logically follow that journalistic knowledge production should receive considerable ethical scrutiny. Instead, journalists are comparatively free from the types of ethical scrutiny to which academics are now subjected. There is a heightened concern in the academy about the ethical implications of forms of knowledge production that, when performed by journalists, raise few, if any, ethical concerns. Ultimately, this raises the provocative question of whether university ethical protocols are making it easier to produce certain forms of knowledge as a journalist rather than as a university affiliated researcher.

SCOPE OF RESEARCH ETHICS PROTOCOLS

The *Tri-Council Policy* aims to strike a balance between the potential harms and benefits of research. Every Canadian university must have a Research Ethics Board (and often more than one) to evaluate whether researchers have attained this balance. Before research commences, researchers must submit an application

to their respective REB outlining the specifics of their methodology, any potential harms that it might produce, and the procedures they have established to alleviate these harms. To date, REBs have focused on analyzing prospective accounts of what a researcher says she will be doing. The actual conduct of research is not monitored, although there has been some discussion that such policing might occur in the future.

Ethics approval must be granted before federal research funds are released, and researchers who fail to comply with ethical protocols can be disciplined or fired by their respective universities. While not all research must undergo ethical vetting, the scope of these provisions is already quite extensive. If a researcher is in any way connected with a Canadian university and is conducting research involving human subjects then that research must receive ethics clearance, irrespective of whether or not the research is funded. Research that does not involve human subjects need not undergo ethical vetting. As such, archival research or secondary data analysis is excluded from research ethics scrutiny. On its face this seems entirely reasonable. Closer examination reveals that the REBs are working with rather expansive definitions of both “researcher” and “research.”

Researchers

Research ethics protocols apply to full-time academics and graduate students. They also apply to a host of other individuals who have more tangential university affiliations.

Perhaps most surprisingly, professors and students who conduct private research entirely on a contractual or consultative basis, using no university resources, must have such research approved. The implications of this logic are potentially quite profound. If a journalist is enrolled in university courses, for example, she would apparently have to submit an ethics application each time she wanted to interview someone. Given that a) such a student is affiliated with the university and b) interviews are a form of research, the student’s journalistic “research” would not seem to be exempt. As the University of Alberta does not have a school of journalism I am unaware of any test case for such a scenario, but the implications of any such determination for freedom of the press should be self-evident.

Retired professors who want to maintain their emeritus status must submit their research for ethical approval. Visiting professors or sessional instructors who are conducting research while at their host university must also submit their research for ethical assessment. The same is true of ongoing research that has received ethics approval from another university and collaborative research conducted with a researcher from another institution. Such projects must receive approval from the REB of each university with which the different researchers are affiliated, and ongoing research must cease until it receives ethics approval from

the institution with which a faculty member or student is currently affiliated—no matter how temporary that affiliation might be.

Another interesting paradox that seems to be emerging is that research conducted by professionals who are not university affiliated falls outside of the Tri-Council mandate. As I stress throughout this article, this is true for “research” conducted by the media, but it is also true for a host of other institutions. Most large organizations now have sections dedicated to producing various in-house studies, none of which undergo ethical vetting. This is not to say that any of this research is unethical, but simply that it need not be examined by an REB. Continuing the process of ethics creep, however, a study by the Centre of Governance found that individuals on the Tri-Council oversight committees envisage “broadening the policy to include other groups in government and in the private sector” (quoted in Kellner 2002, p. 29). In some contexts this expansion is already occurring, such as when a private or quasi-private research institute situated on a university campus contracts with governmental or private sector agencies. Such research must now conform to the Tri-Council guidelines, effectively extending the reach of the *Policy* into a host of non-university institutions.

Research

A comparable expansive process is apparent in the types of activities that REBs have deemed to be “research.” Beyond a core set of unambiguous research practices are a host of more tangential and ambiguous knowledge generating activities that have been deemed to be research requiring ethics approval.

Various on-campus surveys about, for example, library patron satisfaction, campus newspaper readership, or computer services usage must now undergo REB vetting. The same is true for administrative studies conducted by the university such as exit surveys of graduates. None of these studies are part of an academic research program, nor are they envisioned as a means to advance scholarship. However, since they involve encounters with human subjects in a university setting, they fall under the ambit of the Tri-Council guidelines.

In-class student research must also be approved. Students routinely want to quote a parent or friend of the family who, by virtue of their occupation or biography, has insights into particular social issues. They are inevitably surprised to learn that such discussions, in the context of writing a term paper, constitute a form of research and as such must receive ethics approval and conform to ethics protocols. Needless to say, most students are reticent to submit such a proposal, and simply choose to concentrate entirely on textual resources. Hence, I fear that one unintended consequence of this inclusive definition of “research” is that it stifles the initiative of some of our most enthusiastic students.

Instructors who want their students to engage in rudimentary knowledge generating exercises can submit a research ethics proposal on behalf of the entire

class. This goes a considerable distance towards streamlining this component of the ethical review process. Every student, however, must conduct the same research (same topic, same type of subjects, same questions), and any departure from the protocol requires the instructor or student to submit a separate application. Ultimately, this all means that students cannot undertake simple knowledge generating activities without ethics approval. A case came before our REB of a student in a methodology class who, as a means to improve her interview skills, wanted to interview her father about his recent vacation. That such activities are deemed to be research and not simple dinnertime conversation starkly reveals the contextual nature and expansive dynamic of ethical standards.

This is also apparent if we consider the “entertainment” section of the weekend newspaper. A staple feature of such publications is the interviews with authors, producers, and actors who are queried about their methods, motivation, or the symbolism of their works. Such inquiries are unremarkable when undertaken by a journalist. When the exact same interview is conducted by a professor of humanities or cultural studies, the researcher should start planning weeks or perhaps months in advance, as this “research” must receive ethics approval, and might have to seek exemption from the ethical presumption that research subjects will remain anonymous, as I discuss further.³

Hence, the types of people deemed to be “researchers” and the activities that fall under the heading of “research” already extend well beyond what is reasonable or practicable. The research ethics bureaucracy is in the process of colonizing other practices, institutions, and individuals, imposing its rules and conceptions of harm on very different institutional contexts. This is a troubling development given the broad ways in which REBs have interpreted the potential “harms” of research.

THE RISKS OF PRODUCING HARM

Harm

The Tri-Council guidelines suggest that research should not be conducted if it “might cause serious or lasting harm to a participant.” This standard is intended to be flexible, allowing REBs to evaluate the unique risks and benefits of the proposed research. In the eventuality that a research project poses a greater risk than what a person might encounter in his/her daily life, these risks must be

³There are provisions in the guidelines dealing with public figures such as authors that would seem to provide some leeway in interviewing such individuals. However, the actual text of the regulations suggests that these interviews are exempt only if the interviewee is speaking about information that is already publicly available. Hence, if the interviewee might stray in any way from what is already available in the public (which would be the point of all interviews, to hopefully learn something new), then the interview must receive ethics approval.

managed by the researcher or the research cannot be conducted. On its face, this appears unremarkable, but again interpretive questions arise as to what denotes serious harm and the real likelihood of such harm ever materializing.

The harms that are apt to result from social scientific research are rarely of the same magnitude as those produced by research in the medical sciences, which have placed the lives of unwitting research subjects at risk by infecting them with dysentery and malaria and using them as guinea pigs for LSD research (Beecher 1966). Nonetheless, there are a number of prominent instances where social scientists have engaged in research practices that many now see as unethical (see, generally, Fadan and Beauchamp 1986). Three cases in particular have become inescapable referents in any discussion of research ethics in the social sciences. These are Stanley Milgram's (1974) research on obedience, Philip Zimbardo's (1973) prison experiments, and the research conducted by Laud Humphreys (1970) for his book *Tearoom Trade*. Each study raises important questions about informed consent, deception, and manipulation of subjects, all of which REBs continue to grapple with.

Arguably, the most famous of these cases involved research conducted by Stanley Milgram into the process of obedience to authority. His basic study involved an "experimenter" overseeing an experiment where two research participants are informed that they are involved in a study of the effects of punishment on memory retention. One participant served as the "learner" and the other as the "teacher." The learner was taken into a different room out of sight, but within hearing distance, of the teacher, and hooked up to electrodes. The teacher was to ask the learner a series of questions. Each time a question was answered incorrectly he was to administer a shock. The electrical voltage of these shocks was ostensibly increased with each incorrect answer. As the voltage increased, the learner started to grunt, object, demand to be released, scream, and, as the shocks reached the most extreme level, became ominously silent. All of this was overseen by the experimenter. Unbeknownst to the teacher, however, both the learner and the experimenter were confederates, and the true research was being conducted on the teacher. Milgram was really investigating the degree to which the teacher would conform to the demands of authority, as represented by the experimenter and experimental setting. Milgram's results were startling. Approximately 60 percent of research subjects punished the learner through the most extreme level of shocks. Critics, however, condemned the research for psychologically harming the research subjects, using deception, and disregarding the use of informed consent.

Concerns about harm were also raised in response to Philip Zimbardo's (1973) research on the social psychological response to incarceration. He recruited male college students to participate in an experiment in institutional behavior. Participants were randomly assigned the role of "guard" or "inmate." These roles were played out in a mock prison created in the basement of a laboratory at Stanford University. The experiment ran only for six days. It was prematurely terminated because the guards had begun to systematically abuse the inmates through ridicule,

verbal abuse, and other forms of harsh treatment, at one point even turning a fire extinguisher on them. Critics objected that these research participants had not been informed of the risk of psychological stress, physical discomfort, and humiliation to which they were ultimately subjected.

Another prominent case that raised concerns about ethical research practices in the social sciences involved research conducted by Laud Humphreys. Motivated by a concern for how gay men had been negatively stereotyped by the authorities, Humphreys' research investigated homosexual sex performed in public restrooms, a practice known as "tearoom sex." To try and understand the personal motivations for such behavior Humphreys conducted both direct observational studies and follow-up interviews, misrepresenting himself in both instances. He first posed as a "lookout" for the authorities while others engaged in public sex. Later, he secretly followed some participants, recording their license plates and subsequently appearing at these men's homes posing as a health service interviewer in order to solicit information about their personal affairs. His research prompted heated debate about deception, informed consent, and the invasion of privacy.

Notwithstanding the now iconic status of these early examples, the harms that social science REBs routinely try to mitigate are generally of a considerably lower magnitude. Social science REBs tend to be concerned with the prospect that research might damage a research participant's reputation, finances, or relationships or upset, offend, or traumatize a research participant. The range of potential research related harms envisioned by REBs at times seems to be limited only by the imagination of different reviewers. Any change in a research participant's condition or disruption of their routine can be conceived of as a potential harm. Concerns about research risk extend into consideration of such things as the possibility that a research participant might be embarrassed by personal questions or that they might experience disruption in their family routine or a loss of respect by others.

Research that might traumatize research participants can include questioning individuals who have experienced distressing events or who have been victimized in any number of ways. The ethical concern is that such research might rekindle disturbing memories, producing a form of re-victimization. Individual REB members differ on how they evaluate the seriousness of the harms associated with upsetting or traumatizing a research participant in this way, and whether these risks are any greater in the research setting than in daily life. Questions persist about where the line separating minimal from greater than minimal harm will be drawn in practice.

Contemplating the prospects that research might result in trauma places REB members in the tricky position of predicting the types of psychological relationship different individuals will have to the same experiences. Unlike some of the more objective physical harms that can be produced by the medical sciences, trauma is notoriously subjective (McNally 2003). How traumatic or stressful research subjects are apt to find the same experience can vary markedly. From the point of

view of REBs, the difficulty with contemplating such subjective harms is that it introduces an expansionist dynamic into the regulatory structure. Given that it is possible to anticipate that a vast array of research *might* be stressful or upsetting to *someone*, researchers can be required to establish protocols to manage a host of highly speculative harms.

A classic example of research that would now probably be seen as posing a risk of re-victimization is presented in Kai Erikson's award-winning book *Everything In Its Path* (1976), which studied the West Virginia community of Buffalo Creek after a flood destroyed the town and killed 125 people. Erikson conducted face-to-face interviews with a number of survivors, and asked others to complete a survey on their recollections of the flood. Few would suggest that Erikson's research was unethical, and it appears that many participants welcomed the opportunity to discuss the tragedy. That said, if his study were submitted to an REB today, certain aspects of the research would probably have to be managed differently, while still other components might not be allowed at all. Both the survey and face-to-face interviews would likely require measures to mitigate the prospect that a research subject would have an adverse reaction. This usually involves having trained counselors on hand or readily available during the interview. The prospect of such adverse reactions would likely mean that Erikson's paper-and-pencil survey would not be allowed as originally formulated, as having individuals complete such a survey alone in their homes would not permit the researcher to monitor them for adverse reactions.⁴

While some commend this greater sensitivity to the prospect of re-traumatization, it comes at a cost of new administrative qualifications and protocols for academic researchers. Tellingly, such protocols are not required if the identical research is carried out by journalists. It is a cornerstone of both investigative journalism and "action news" to interview people about all manner of potentially traumatic events, often immediately after they have occurred. None of these inquiries undergo ethical vetting and it seems only minimally relevant that such practices might pose a remote risk of traumatizing some interviewees.

This is not to suggest that academics should embrace the distasteful spectacle of journalists thrusting microphones into the faces of grieving parents. Instead, I am emphasizing the academy's introduction of impediments in the name of ethics to scholarly research that would pose no ethical concerns if it were done by representatives of another institution. If Kai Erikson wanted to reproduce his study today, he would face fewer bureaucratic hurdles if he were to do so as a journalist.

⁴One reviewer suggested that as Erikson's research was undertaken in his capacity as a consultant to a legal firm it would not have to pass IRB muster. In fact, as I stated in the section "Scope of Research Ethics Protocols," in Canada university affiliated academics must vet their private, contractual, consultative research with the university Research Ethics Board.

Risk

After REB members have contemplated the types of harms that a research project might pose, they must then decide on the likelihood of these harms actually occurring. In practice both considerations are done simultaneously, but approaching them as two distinct moments allows us to accentuate a second level of subjective decision-making relating to the assessment of harms. Specifically, how likely must an eventuality be before a researcher must initiate protocols to mitigate that risk? Does any harmful research related eventuality imagined by REB members need to be addressed, or is there a threshold beyond which eventualities are so vanishingly remote that they do not have to be seriously considered?

The Tri-Council guidelines dictate that “research participants must not be subjected to unnecessary risks of harm.” An unspecified level of harm is allowable, if it is proportional and justified, and if it is not, the research should not be conducted. However, this language of “unnecessary risks” is actually quite misleading, as Research Ethics Boards are generally not dealing with risks at all. Risk has a precise meaning, most commonly associated with actuarial science where statistics about previous events are used to analyze the likelihood of future untoward potentialities. Risk involves “trying to turn uncertainties into probabilities” (Douglas 1986, p. 19). While there is disagreement over how statistical regulatory knowledges must be in order for a governmental project to be deemed a form of “risk management,” at a minimum it entails some consideration of empirical evidence about the likelihood of untoward events (Sunstein 2002).

In contrast, what distinguishes efforts to manage the risks of social scientific research is that they involve almost no consideration of empirical evidence of risk. As such, the REBs are not working within an actuarial framework and generally do not know the empirical likelihood of the potential untoward outcomes that they try to regulate. For example, in 2003 our REB evaluated a research proposal that entailed interviewing romantic couples. Part of the research would have involved having each couple sit together and answer questions about what they liked and disliked about their relationship. We decided that such questioning posed more than a minimum risk because there was the prospect that such an interview might harm the relationship, as individuals might be prompted to reflect critically on their relationship and perhaps even decide to end the relationship as a result.⁵ Such a scenario is certainly imaginable, but how likely is it that relationships would be damaged or destroyed due to such interviews? The answer is that we simply do not know. Nor is this lack of concrete predictive information an aberration. Such an empirical void is the norm with most such decisions, a situation that reveals that pronouncements about the “risk” of research projects are more akin to a subjective imagining of potential scenarios unconstrained by empirical evidence. As such,

⁵Tellingly, no one (myself included) raised the prospect that if the research participants were in a bad relationship, the fact that the research might prompt the couple to end it might constitute a net benefit.

they have a tendency towards a form of decision-making that in another context I have deemed “precautionary” (Haggerty 2003), characterized by an attempt to respond to subjectively assessed worst-case scenarios rather than empirical consideration of what is likely or probable.

If REB members can imagine that an untoward eventuality *might* occur, then they can ask a researcher to manage that scenario. Given that the members of these boards are bright, motivated, well-intentioned, and highly skilled at dealing with hypothetical scenarios, they seem to have no difficulty envisioning any number of potentialities that should be managed through increasingly onerous regulations. At the recent Advances in Qualitative Methods conference I listened intently as several members of the research ethics community advocated a two-day “cooling off” period between when a researcher approaches a potential research participant and when the person actually agrees to participate. The proposal was based on the suggestion that the simple presence of a researcher can subtly pressure people into participating in a study, thereby undermining the voluntary nature of their consent. This cooling off period was proposed as a “good idea” for all research, but was advanced with no evidence to suggest that this was indeed a real problem. While I suspect that a cooling off period *might* be an appropriate protocol for a very narrow set of research activities posing dramatic risks of physical harm, it makes little sense for the vast majority of social scientific research. The danger with this and comparable proposals is that such well-intentioned but onerous regulations are justified on the basis of hypothetical worst-case scenarios and then normalized across a vast range of research.

This is not to say that the harms imagined by REBs are fictional, but that decisions about future potentialities are much more subjective and *ad hoc* than one might have concluded from the discourse of “risk” used in the *Policy*. The danger is that with little to constrain imaginings of possible harms, researchers are being asked to mitigate a host of potentialities precisely because we do not know how likely or unlikely they might be.

INFORMED CONSENT

Contemporary concerns about research ethics would undoubtedly be quite different were it not for the almost incomprehensible cruelties of a group of German physicians in Nazi Germany. Drawing their “research subjects” from the concentration camps, these physicians subjected Jews and Gypsies to “experiments” that included immersing them 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 (Annas and Grodin 1992). Twenty Nazi doctors were ultimately indicted for their actions, and appeared before the Nuremberg War Crimes Tribunal in 1946. This tribunal condemned the sheer barbarity of

these experiments and repeatedly emphasized that the experiments were conducted without the consent of the participants. In an effort to establish the basic principles that must be adhered to in conducting research on human subjects the tribunal drafted the famous Nuremberg Code. The requirement that researchers must secure the consent of research subjects, and that this consent must be voluntary, competent, informed, and comprehending is the very first item on that code.

The informed consent requirement has been embraced by various regulatory bodies that oversee medical and scientific research. In recent years this has been extended to the social sciences (Fadan and Beauchamp 1986; Wax 1980). In Canada, the explicit expectation of the Tri-Council is that participants will sign a release form demonstrating that they have read and understand a summary of the research and any risks that it might entail. In some contexts, oral consent will suffice, such as when the use of legalistic forms is culturally inappropriate or when conducting telephone surveys. In either case, consent must be voluntary, and participants must be aware that they are free to withdraw from the research at any time without facing any repercussions.

The movement of informed consent provisions from the medical sciences to the social sciences has proved to be a point of contention. At least three downsides to this protocol can be identified. The first is that when used in the context of ethnographies, participant observation, or exploratory interviews, consent forms seem alien, unduly formal, and occasionally unworkable (van den Hoonaard 2001, 2002). Consent forms can unnecessarily color interview or ethnographic situations, transforming encounters that are routinely more informal and exploratory into unnecessarily official and legalistic exchanges. These apprehensions are particularly germane to research on large groups of people. The Tri-Council guidelines stipulate that participant observation research can be conducted on political rallies, demonstrations, and public meetings since "it can be expected that the participants are seeking public visibility," but this does not seem to extend to the day-to-day observation of behavior in the public or quasi-public realm. Van den Hoonaard (2002, p. 11) recounts how an ethics committee at his university informed a graduate student that she should look away when her participant observation research brought her into contact with individuals who had not explicitly consented to being studied. Comparable difficulties were encountered by Steadman Rice in his research on co-dependency groups when he sought to acquire the consent of all individuals attending such meetings. He routinely had to leave the session each time a member arrived so that the group could vote on whether he could remain. This became so onerous that he ultimately had to abandon this component of the research entirely (Steadman Rice 1996, p. 224).

Our REB struggled with a research proposal that involved videotaping Ukrainian New Year celebrations because of the impracticality of acquiring informed consent from everyone that might appear on tape. We ultimately decided

that the researcher should concentrate on filming the main participants in the festivities who had provided explicit consent. It should be stressed that this celebration was a community event that would have undoubtedly included a host of individuals videotaping and photographing whatever and whomever they pleased for their own personal use; such actions obviously do not raise legal or ethical issues.

The second drawback of the standard expectation that researchers will secure formal written consent is that it seems to preclude or seriously complicate forms of scholarly endeavor that otherwise seem entirely unproblematic. So, for example, some of the proposals that my REB has refused, or returned for revision, because they did not contain informed consent provisions include a proposal to conduct a discourse analysis of Internet chat room conversations, a proposal to analyze private conversations overheard in public places, and yet another proposal that would have studied video recordings of people interacting in public places.

How informed consent provisions will shape Internet research is a particularly pressing concern. Discussions are currently underway in the global research community about what ethical protocols should govern Web based research. Opinions on this issue can be roughly divided into two camps. On the one hand are those individuals who equate Web postings with public pronouncements, comparable to letters to the editor, and as such amenable to academic analysis without the necessity of ethical review (Kitchin 2002). Others, however, accentuate how some Internet users operate with an assumption of privacy and confidentiality. These individuals are more inclined to suggest that Internet research should undergo ethics review and adhere to the *Policy*, raising difficult questions about the practicalities of acquiring informed consent. While this matter is far from resolved, if the latter view becomes dominant the academy risks becoming the only social institution that cannot routinely quote and analyze information posted on what will likely become the dominant social communication system.

Informed consent provisions have also made it increasingly difficult (although not impossible) to conduct research that employs deception. Concerns about the use of deception in research have a long history, most famously articulated by Kai Erikson (1967) in his reaction to the development of methodologies where researchers deliberately misrepresent their identity in order to enter otherwise inaccessible social situations. Erikson proposed that such research was unethical on several grounds, including the facts that it undermined the responsibilities a researcher owed to his/her subjects and that it could damage the reputation of the field of sociology. His position has not gone unchallenged, and there is now a voluminous literature on the ethics and pragmatic necessities of deception in social scientific research (see Korn 1997). The general trend, however, has been toward restricting the use of deception in research because of the practical difficulties or impossibilities of securing informed consent.

While some applaud this development, it is now apparent that “deception” can be shaded in many different ways. Advocates of banning deception in the research process tend to accentuate the most onerous and unpalatable forms of deception imaginable in a research context. This includes use of elaborate sets and confederates designed to make research participants falsely believe that they are ill or in mortal danger. However, prohibiting deception is akin to outlawing lying, something that at first blush might seem wonderful until it becomes apparent that lying and deceit lubricate daily life while serving large and small legitimate institutional purposes (Bok 1978). The concept of “deceit” encompasses a massive range of behaviors, the majority of which are rather innocuous. Our REB, for example, rejected a proposal to measure the participation rates of research subjects when different styles of informed consent forms were used. Given that the research participants could not be informed about the true aims of the research this constituted a form of deception, and was consequently rejected by our board.⁶ In the United States, sociologist Richard Leo faced allegations that his research on police interrogation practices was unethical because in his encounters with the police he adopted a more professional and conservative persona than he did in his daily life. These modifications included dressing formally and cutting his hair (Allen 1997). These are clearly not the types of extreme manipulations envisioned by people opposed to deception in research, but are nonetheless encompassed by a blanket prohibition on deception. Whatever one’s opinions about the restrictions on deception in research, we should not underestimate the loss that this development has entailed for scholarship; between 1965 and 1985 approximately one-half of all social psychology articles published in the United States involved some form of deception (Korn 1997, p. 2). Most of that research, some of which has produced significant and lasting insights, would not be permitted today as it could not provide opportunities for informed consent.

Finally, the presumption that research participants will provide informed consent augments and reinforces the difficulties in conducting critical scholarship. The requirement to be “up front” about the focus of your research can simply preclude valuable forms of critical inquiry. Researchers, for example, who wanted to accompany and interview police officers at work in order to learn about police racism (or corruption, sexism, excessive use of force, etc.) would likely see their research grind to a halt at the first sign of a consent form informing officers of the research topic. The same is true for a host of other critical scholarship that might seek to investigate high-profile, contentious issues involving powerful people or agencies.

Returning to our comparison between the academy and journalism, the issue of informed consent again accentuates the marked differences in the regulation of

⁶An additional reason this proposal was rejected was that the REB felt that consent forms should be treated as being akin to sacrosanct. As such, they should not be manipulated, even in order to test which is the most effective.

identical behavior when undertaken by representatives of these two institutions. Journalists generally do not acquire formal written consent to interview people. As anyone who accepts calls from the media knows, one is simply asked a series of questions, and some of the answers are apt to appear in the newspaper the following day. The mere act of talking with a journalist, whether one is a professor or a waitress, is a self-evident demonstration that one is willing to be interviewed and must self-evaluate any risks that might entail.

Research strategies that are increasingly problematic in the academy because they pose difficulties for acquiring informed consent are common and indispensable journalistic practices. Journalists routinely film or photograph people interacting in public places, none of which is ethically dubious. Or, more accurately, journalists have the discretion and professional standing to judge for themselves whether these might pose an ethical risk. Journalists also regularly refer to Internet chat room discussions and have long reported on overheard private conversations. Where deception is now severely restricted in the academy, it has become a routine practice in all manner of television game shows and assorted *Candid Camera* types of reality programming. Deception is also a staple of policing, where the public is regularly deceived through elaborate hoaxes and outright lies in the furtherance of criminal justice agendas (Marx 1988). Deception undertaken by scholars to advance knowledge and address larger social problems is generally prohibited on ethical grounds. When it is done in the name of entertainment or policing, deception is allowed and occasionally applauded.

ANONYMITY

The final measure to be discussed is the presumption of anonymity. Following the *Policy*, researchers are now expected to protect the identity of their research participants. There are, however, some important qualifications to this rule. If researchers learn of instances of child abuse they must report it. Likewise, if researchers encounter other instances of criminal behavior they can be legally compelled to reveal their sources.

While academics have only rarely been asked to reveal their sources, because research is not a statutorily protected form of communication researchers can be faced with difficult decisions about whether they are willing to go to jail rather than reveal their sources. This dilemma faced Russel Ogden, a Canadian M.A. student in criminology at Simon Fraser University. As part of his research, which had received ethics approval, Ogden attended the suicide and euthanasia of persons with AIDS. In 1994 Ogden was subpoenaed to testify before the Vancouver Coroner in a case involving the death of an "unknown female." When he refused to identify his research participants he was threatened with a charge of contempt (Palys and Lowman 2000). Although Ogden was ultimately able to convince the judge to treat his communications with research participants as privileged, Simon

Fraser University offered almost no support for his case, forcing him to sue the university to recover his legal costs. An even more extreme example involved the American case of Rik Scarce, who was incarcerated for 159 days in 1993 for contempt of court because he refused to surrender his research notes on the radical environmental movement (Scarce 1994).

While journalists also have procedures to ensure the anonymity of confidential sources, there is a marked difference in the operating assumptions of the two institutions. Journalists generally expect that the people they interview or film will be identified by name unless they specifically indicate that they would like to remain anonymous. For the Tri-Council, the starting assumption is that all research participants will remain anonymous unless they provide explicit permission to be identified.

This difference can have interesting and occasionally bizarre consequences. Consider, for example, the case of a journalist and an academic who both want to interview a prominent author, for example, Margaret Atwood. Neither the journalist nor Ms. Atwood would presume that her identity would be suppressed. However, if the academic were to conduct the *exact same* interview, she could not identify Ms. Atwood by name without acquiring her explicit written approval. Prior to the interview the researcher would have to submit a proposal to the REB that included a justification as to why the normal protocols prescribing anonymity should be waived. Our REB recently reviewed a file where a researcher in the humanities wanted to interview a prominent poet and consequently had to undergo precisely such a process.

The effects of the presumption of anonymity extend beyond increasing the bureaucratic hurdles that academics must surmount. It can also mean that academic knowledge may be less robust when compared to journalistic accounts. Evidence of this can be seen in relation to the topic at hand. Consider the fact that one consequence of establishing formal ethical guidelines could be that some academics will simply ignore or consciously subvert such protocols. Several scholars I have interviewed for a research project on how ethics procedures are being received in the academy have indicated that they have “made up” interview questions to satisfy the REB demand to provide exactly what interviewees would be asked. Others noted that the real-life practicalities of conducting research have led them to abandon the formal consent forms once the research commences. Such practices are corroborated by Christopher Shea (2000) in an article written for the academic magazine *Lingua Franca*. He reports that award-winning sociologists Paul Rabinow and Mitchel Dunier did not receive ethics approval for their studies. In that article Howard Becker, arguably the most famous sociologist of his generation, claimed that should the ethics people come knocking, he would simply say that his ethnographic studies are a form of performance art.

For the issue at hand, the important point about these examples of avoidance and subversion of the research ethics process is that Christopher Shea’s journalistic

account can identify these individuals by name. In contrast, my interview based research on the academic response to research ethics, because it conforms to research ethics protocols, can only speak broadly of “prominent sociologists” because of the presumption of anonymity and the fear that revealing their identities might jeopardize their careers. This suggests that academic claims can inadvertently lose their political weight and critical edge because of ethics requirements. It is often vitally important to know *who* these prominent individuals are. Their actions and opinions matter because they are known sociologists, union leaders, or KKK members, and not just nameless members of a larger social grouping. Academic accounts that must avoid identifying such individuals are comparatively less robust and critical than the forms of investigative journalism that can and does “name names.”

CONCLUSION

In this article I have sought to demonstrate the process of ethics creep occurring in the operation of research ethics protocols in Canadian universities. I now briefly consider some reasons why this creep may be occurring and accentuate the danger it poses.

The differences between the ethical protocols established for journalists and those for social scientific researchers accentuate several interesting attributes about their respective institutions, and about formalized ethical protocols more generally. The first point is one I have accentuated throughout this article: the ethical standards of one institution can serve as a benchmark to evaluate the regulatory framework in a different institution. In this case, journalism serves as a telling yardstick that accentuates the increasingly restrictive and expansive nature of the ethical governance of academic research. Such a situation reaffirms the sociological truism that deviance and normality, or, in this case, ethical and unethical conduct, are contextual and institutionally specific.

The reason for the different ethical standards used by journalists and social scientists appears to relate to how these institutions have historically imagined their relationships with their informants or research subjects. Social scientists have often studied poor and marginalized individuals. As such, they have positioned themselves as the authorized “knowers” about assorted dispossessed and marginal groups. The epistemological and political difficulties of speaking for other groups, combined with an awareness of the marginal status of such research participants, has fostered a tendency to view all research participants as vulnerable, lacking power, and needing protection. In contrast, journalists often interview and question individuals drawn from more powerful segments of society. Rather than speaking for such individuals, these accounts tend to employ the journalist’s characteristic point/counterpoint style of narrative, where interviewees are (ostensibly) allowed to present their own views. As such, journalists work on the assumption that

interviewees are capable of speaking in their own voice, and only rarely require special protection. This distinction is obviously more true in the institutional imaginary than in practice, but it helps explain why the social sciences have been more willing to embrace an image of their research participants as being more vulnerable and fragile than a journalist's sources—even when these sources may be the exact same individuals.

One of the paradoxes of the formal research ethics systems is that there is often a distinct but unquestioned rupture between following the rules and conducting ethical research. If, following Bauman (1993), ethical relationships are characterized by an ongoing interrogation of the types of responsibilities that we might owe to others, and which cannot be reduced to a simple exercise in rule following, it becomes apparent that the application of many of the existing rules bears little relationship to ethical conduct whatsoever. We have reached the point where breaking many of the rules imposed by REBs would not in fact result in unethical conduct—if ethics is conceived of as anything beyond simple rule-following.

This becomes apparent if we consider the hypothetical, but not atypical, case of a researcher who wants to interview teenagers about their music preferences as part of a study on gender identity. The Tri-Council rules are clear that because these “research participants” are minors the researcher cannot interview them without acquiring parental consent. While the motivations for this rule are above reproach, applying it in this instance is a form of rule fetishization that needlessly hampers research. At times this rule has impeded the development of potentially important insights into otherwise inaccessible behaviors. An American IRB effectively foreclosed Wax's (1980, p. 280) research into teenage glue sniffing because he did not have provisions for securing parental consent—an impracticality given the nature of the topic being studied. Enforcing this rule for such research bears little relationship to the aim of protecting research subjects from harm. This is increasingly true for the application of any number of research ethics rules.

The fetishization of rules can reduce ethical systems to a form of conformist rule-following. Researchers risk being seen as acting unethically when they fail to submit an application to the REB or obtain a signed consent form, whether or not there was ever the slightest prospect of anyone being harmed by virtue of such research. When following the rules hampers research but seems disconnected from any prospect of producing harm, researchers conform not because they accept the moral authority and ethical insights of the REB structure, but because their reputations and careers can be damaged should they fail to do so. The authority of the ethics structure risks becoming more coercive than moral.

A paradox of such a system is that it can itself become an instrument of unethical behavior. An incident from our REB provides a telling caution. A faculty member had recently been hired on the condition that he complete his Ph.D. dissertation within a set period of time. He learned about the research

ethics process during his faculty orientation, and realized that research he conducted several years ago in France as the basis for his dissertation did not receive ethics clearance and probably should have been submitted to an REB. The research involved audio-recording choral conducting practices and then analyzing the recordings. When he submitted an application to see if he could acquire retroactive ethical approval he was informed that such approval could not be granted because, following the *Policy*, ethics approval must be secured before research commences. Consequently, he faced the prospect of being forced to abandon the data he had collected, which would likely have resulted in his failing to earn his Ph.D. and forfeiting his academic position. After weeks of anxious discussions with the highest levels of our research ethics bureaucracy he ultimately received something akin to retroactive approval for his research. However, this result was not preordained and occurred only after much hand-wringing and debate.

The interesting point about this case is that I believe it would have been fundamentally unethical if this individual had failed his dissertation and potentially lost his career as a result of the strict application of formalistic regulations to an undertaking that posed no prospect of producing harm. Writing in a more polemical vein, Howard (1994) has accentuated how comparable rule fetishization by a range of regulatory bodies in the United States routinely produces decisions that are patently unjust, unethical, and divorced from common sense. That REBs will occasionally feel compelled to render such decisions in an attempt to appear consistent or to avoid violating the formal guidelines appears to be one of the inherent risks in the move to a more bureaucratic system for governing research.

Academics opposed to the ethics review process have singled out university lawyers as the main culprits responsible for these new restrictions (Adler and Adler 2002). There is a perception that university administrators are motivated by a fear of lawsuits to embrace research ethics. However, even if we accept this, it merely explains how the ethics system was originally structured and does not address why the REBs have tended to interpret these regulations in such a way as to expand and intensify the regulatory structure.⁷

One explanation for these developments is the open-ended nature of the *Policy's* formal guidelines. Few of the central concepts set out in the *Policy*, including those of “research,” “researcher,” or “harm,” have clear referents that unproblematically direct how the regulations should be applied in different situations. Instead, they are empty signifiers, capable of being interpreted in a multitude of ways, and occasionally serving as sites of contestation. Accentuating such open-endedness,

⁷The deliberations of our REB have rarely included the legal implications of our decisions for the university or the board. Instead, we have tended to concentrate on questions of precedent—how we have handled comparable cases in the past.

however, only draws attention to the unavoidable fact that there is an interpretive process involved in deciding how to apply vague legalistic concepts to specific situations. It does not help explain the cumulative direction that such interpretations appear to have taken. To explain that process, I believe that we must address the dynamics of the REBs themselves.

The culture of REBs is cautious and conservative, inclined to take a “just in case” approach to managing the dangers posed by research projects. This is probably both inevitable and desirable for a body charged with evaluating whether research poses risks to research participants. Hence, there is a tendency for REB members to perceive eventualities that others might see as innocuous as being sufficiently risky to necessitate some precautionary measures. With few constraints on the types of harms that can be imagined, a process is set in motion that has the potential to introduce ever more regulations to manage potentially undesirable eventualities, the true likelihood of which is routinely unknown.

This tendency is augmented by the fact that the dynamic that seems to drive the ethics boards is a form of legal consistency. While the Tri-Council guidelines accentuate the need for flexibility, the Boards seem to be concerned with a desire for something akin to formal equality, where like cases are treated alike. Rather than treat each case as a unique undertaking, they tend to look for parallels and commonalities across different research programs. This is similar to the use of legal precedent, but much less formalized. The cumulative effect is an expansionist logic as ethics protocols creep into a host of new domains because of board members’ desire for consistency. The unarticulated logic is that it is better to require all researchers in situations that might be seen as roughly comparable to operate in a similar fashion, rather than risk the perception of inconsistency or bias.

The various rules that I have accentuated in this analysis are open to reform, and I hope that some of the more contentious policies will be modified in the coming years. However, my suspicion is that the systematic creep of the ethical structure will continue its expansionist dynamic and the bureaucracy will become larger, more formal, and more rigid. Signs of this are already on the horizon. Discussions are now underway to require REBs to be accredited, adding another layer of permanent bureaucratic oversight onto the REBs themselves to ensure that they are properly constituted and that the Ph.D. qualified researchers who staff these boards are properly trained.

An unfortunate consequence of these developments will likely be that researchers will choose to employ certain types of unproblematic and often predictable research methodologies rather than deal with the uncertainty and delays associated with qualitative, ethnographic, or critical scholarship which do not fit easily into the existing research ethics template. The more ethical roadblocks are installed for innovative and critical research, the more we risk homogenizing inquiry and narrowing vision, as scholars start to follow what they perceive to be the path of least institutional resistance.

None of this would be a problem and would, in fact, be commendable if the REBs clearly served as a bulwark against a tide of unethical research. However, I have seen no evidence that this is the case. The vast majority of the proposals that come across our desks are so innocuous that they shade into the mundane or trivial. Not even the most adamant supporter of research ethics would have anticipated that the Tri-Council bureaucracy would necessitate regular meetings, where six or more Ph.D. qualified academics scrutinize senior scholars' proposals to study overheard conversations, or students' requests to interview friends. It is now time to seriously reconsider whose interests are served by such measures and what is being lost as a result.

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