

Ethics and Criminological Research: Charting a Way Forward

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Summary: When researching sensitive topics such as crime, researchers encounter a number of ethical and legal obstacles. Little guidance is available about how to address these issues. The ethical codes produced by criminological societies often provide only limited advice, and the generic guidelines espoused by institutional ethics committees are not always appropriate for research on specialised topics. This paper discusses key ethical issues in criminology, including the difficulties associated with maintaining confidentiality, protecting privacy, obtaining informed consent, managing participant distress and ensuring voluntary participation. Drawing on existing literature and the author's own experience, it discusses strategies that have been used to promote ethical criminological research.

Keywords: Research ethics, criminology, governance.

Introduction

This paper describes the main ethical issues that may arise during criminological research and suggests strategies that might be used to address them. These issues occur to some degree in all types of research but are particularly pronounced in criminological research, which frequently deals with sensitive issues and vulnerable populations. At present, little specific guidance is available to researchers about how to deal with these issues.

Many Irish academic institutions now require researchers to take part in a formal ethical review process when conducting research involving human participants. However, the general guidelines produced by

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institutional ethical committees are not always appropriate for research on specialised topics, such as crime. Similarly, the ethical codes produced by criminological societies often provide only limited advice to researchers. The Australian and New Zealand Society of Criminology Code (2000), for example, contains only general guidelines about responsibilities towards research participants. The American Society of Criminology (ASC) and the European Society of Criminology (ESC) have no formal codes of ethics. The ASC relies, among others, on the codes produced by the American Sociological Association (ASA) and the Academy of Criminal Justice Sciences (ACJS). In the end, four codes proved particularly helpful. These were produced by:

- British Society of Criminology (2006)
- Academy of Criminal Justice Sciences (2000)
- American Sociological Association (1999)
- National Health and Medical Research Council (2007).

Three criminologists have conducted pioneering work in the field of research ethics. Professor Mark Israel of Flinders University, Australia, has published widely on ethical issues. Professors Ted Palys and John Lowman of Simon Fraser University, Canada, have also written extensively and thoughtfully on the subject. The following discussion is informed by their writings and the author's own experience in conducting research with victims and offenders in both Ireland and the UK. The paper also considers the ethical code produced by University College Dublin (UCD), which is a good example of an institutional ethical framework.

Confidentiality

When conducting research it is important to ensure that the information provided by participants remains confidential. In criminological research, the law may conflict with this responsibility. There is currently no legal obligation on Irish researchers to report offences that come to their attention during the course of a research investigation. The offence of misprision of felony, which made failure to report certain serious offences a crime, was abolished by section 8 of the Criminal Law Act 1997. Nevertheless, many professions endorse a duty to disclose information about certain crimes. If they are also members of

professional societies, criminological researchers may be subject to ethical codes that are more stringent in this regard.

Furthermore, criminologists in some jurisdictions have received requests from legal authorities to disclose confidential information and several have faced legal action as a result of their refusal. In Northern Ireland, Suzanne Breen, northern editor of the *Sunday Tribune*, was taken to court over her refusal to disclose to the police information she acquired through interviews with members of the Real IRA. The judge ruled in her favour, arguing that journalistic confidentiality was protected by law and that breaching it would endanger her life (see Breen, 2009). As far as I am aware, Irish researchers have not yet encountered legal demands for disclosure but the experience of other countries suggests it could become an issue in the future, particularly if Ireland's research capacity continues to grow.

The guidance to researchers on how to resolve these issues diverges in terms of whether it prioritises the legal or ethical obligations. A common solution, advocated by the UCD Ethical Guidelines, is to offer limited confidentiality. The guidelines state that:

It is the duty of the researcher to protect the level of confidentiality agreed in the informed consent process, as far as is legally possible. Research participants must be informed of the extent to which confidentiality can be maintained and the measures taken to ensure this level of confidentiality.

Limited confidentiality generally means that confidentiality is honoured except in situations where actual or intended harm to self or others is disclosed. 'Harm' can be defined as a threat that is clear (i.e. directed at a specified individual), serious (i.e. would result in serious bodily harm) and imminent (this definition is derived from a Supreme Court decision in Canada, cited in Palys and Lowman, 2001). In the UK, the Multi-Agency Public Protection Arrangements Guidance (s5.3) defines serious harm as 'an event, which is life-threatening and/or traumatic, from which recovery, whether physical or psychological, can be expected to be difficult or impossible.'

The British Society of Criminology Code of Ethics (s4.iv) and the ASA Code (s11.02.a) also make it clear that offers of confidentiality can be overridden by legal obligations. Both codes recommend that

researchers educate themselves about the legal circumstances under which disclosure to legal or other authorities is required. They stress that participants should be fully and clearly informed about the limitations that apply to confidentiality before they take part in the research.

The Irish Prison Service Research Ethics Committee permits researchers to breach confidentiality if the welfare of the participant or another person is at risk, if the disclosure will prevent a serious crime or if the researcher is legally obliged to disclose the information, for example because of a court order. They advise that, where possible, this information should be shared with the agreement of the participant. The Protection for Persons Reporting Child Abuse Act 1998 (s3) protects people who disclose child abuse from civil liability.

In contrast, the ACJS states that research participants are entitled to their 'right' of personal confidentiality. Section 19 of the code (see also s11.01b of the ASA Code) explicitly prioritises ethical above legal obligations:

Confidential information provided by research participants should be treated as such by members of the Academy, even when this information enjoys no legal protection or privilege and legal force is applied. The obligation to respect confidentiality also applies to members of research organizations (interviewers, coders, clerical staff, etc.) who have access to the information.

Palys and Lowman (2001) object to the use of limited confidentiality on a number of grounds. They observe that if information about an individual's criminal activity is disclosed to legal authorities, it can be used against them. Limited confidentiality therefore violates the ethical principle of non-maleficence; that is, the obligation to do no harm. Furthermore, people may not answer honestly if they believe their responses could be disclosed to a third party, particularly when the information is sensitive or the disclosure could have adverse consequences. This creates serious methodological issues if the data that are subject to limited confidentiality are central to the research. Finally, there may be safety concerns since researchers might be blamed by participants if the latter are subsequently arrested. Palys and Lowman conclude that researchers should be prepared to guarantee full confidentiality to their participants; otherwise they should not conduct the research.

There are a number of other possible solutions to this dilemma. One approach is to collect the information anonymously so that it cannot be linked to a particular individual. Alternatively, participants' names and identifying information can be deleted from their records as soon as possible. This is not always feasible in ethnographic research or in studies where separate files need to be linked. A third solution is to limit the nature of the information requested from participants. For example, questions that elicit specific information about criminal activity which has not come to the attention of the police, or about any crimes participants intend to commit, can be avoided. Very serious offences, such as murder and rape, are also generally omitted from self-report questionnaires.

Some countries, notably the USA and Canada, have developed legislative solutions to the problem. The US National Institute of Justice offers certificates of confidentiality to researchers studying sensitive topics. The certificate provides statutory protection from legal requirements to disclose information. Researchers at Canada's national statistics agency, Statistics Canada, can also guarantee confidentiality to research participants under the Statistics Act, 1985 (s17), but this protection does not extend to other Canadian researchers.

Canadian researchers have also relied successfully on common law to assert privilege. Under the Wigmore test, confidential information can be protected if four criteria are satisfied: (a) the information was disclosed in confidence; (b) confidentiality is essential to the professional relationship; (c) the research is in the public interest; and (d) the injury that would result from disclosure exceeds the benefit. Palys and Lowman (2001) point out that limited confidentiality violates the first principle and means that researchers would have to disclose the information if requested. This creates additional risk for participants.

Privacy

Data protection laws have been implemented in many countries to protect personal information and have made it increasingly difficult for researchers to gain access to data sources (see Israel, 2004). In Ireland, access to personal information is governed by the Data Protection Acts 1988 and 2003. In 2007, the Data Protection Commissioner published guidelines on the implications of this legislation for researchers. They explain that written consent is not required in the following three

circumstances. First, anonymised datasets are not subject to the data protection provisions as they do not contain personal information. Second, the Commissioner recognises that it is sometimes necessary to link different datasets for research purposes. In such cases, it is acceptable to use pseudonymised information, that is, identifiable information is removed and codes or reference numbers are used to link the data. Finally, the legislation allows a data controller to conduct research on protected data as long as the information is not released to a third party.

In all other cases, the researcher must obtain 'unambiguous' written consent from individuals to access their information. Consent forms must clearly specify the purposes for which the data will be used and consent must be voluntary and informed. If the data are to be used for a purpose other than that specified on the form, the Data Protection Commissioner states that consent may have to be renegotiated.

Other countries have implemented more flexible data protection legislation to accommodate legitimate research. In Australia, access to personal records may be granted under the Privacy Act 1988 (s95) if the research is in the public interest. This provision applies to medical and health research only. The National Health and Medical Research Council guidelines (s3.2.4) also permit the release of personal information for the purposes of linking datasets as long as this information is deleted afterwards.

Alternatively, researchers can ask agencies to prepare an anonymised or pseudonymised dataset. This is not always feasible as the process of anonymising data is time-consuming and resource-intensive and may be prohibitive for smaller agencies. In such cases, this may mean that the research cannot be undertaken or is subject to lengthy delays.

Finally, it is important to emphasise that ethical codes generally exempt public records, such as court transcripts, from data protection as long as researchers afford due respect and courtesy to the individuals to whom the files pertain. For example, section 15 of the ACJS Code states that information obtained from public records is not protected by guarantees of confidentiality or privacy.

Informed consent

Informed consent is one of the fundamental ethical principles governing research involving human participants. It means that participants must

be provided with information about the purpose of the research, research procedures, their rights, potential risks and benefits, levels of confidentiality, possible uses of the research and researcher contact information. Its purpose is to ensure that participants are fully aware of the implications of participation. Under the UCD guidelines, informed consent must be obtained, in writing, from all research participants. A copy of the consent form, along with an information sheet, must be presented to the participant. The UCD Human Research Ethics Committee (HREC) will not accept applications that are not accompanied by these documents.

Roberts and Indermaur (2003) reviewed the problems associated with obtaining written consent in criminological research. Literacy or comprehension difficulties are often present in offender populations and this may impede the process of obtaining informed consent. Since standard university consent forms require high levels of literacy and education, participants with comprehension or literacy difficulties often do not understand what they are signing and believe they have waived their legal rights as a result. The UCD guidelines recommend that, to overcome this issue, documents should be written in clear and simple language and their contents should be discussed with participants.

While this ensures that participants understand the information provided, it does not resolve additional difficulties. Roberts and Indermaur found that people who are involved in crime are less willing to participate in criminological research when they are required to provide identifying information. They are also more likely to conceal sensitive information. This affects the quality and therefore the value of the research. Furthermore, signed consent forms actually increase the risks associated with participation because they create a link between the participant and their data, which could be an issue if there is a legal request for disclosure. Other methods of obtaining informed consent need to be considered. Roberts and Indermaur developed a procedure for obtaining verbal informed consent. First, a script outlining the requisite information was read to participants. The researchers then discussed it with them to ensure they understood. No identifying information was exchanged between the researcher and the participant.

This is in line with the guidance provided by the majority of codes, which accept that verbal consent is sufficient in some circumstances. According to the American Anthropological Association (s4): 'It is the quality of the consent, not the format, that is relevant'. The ACJS

guidelines (s17) state that ‘special actions’ may be required for certain populations and that, in some circumstances, ‘culturally appropriate’ methods must be used. Similarly, the NHMRC guidelines (s3.1.16) recommend that procedures for obtaining consent should be influenced by the cultural context, the sensitivity of the information required, the potential risks involved and the vulnerability of the participants. The ASA (s12.02) permits informed consent to be obtained in writing or orally, as long as the researcher keeps a record.

In addition, many guidelines recognise that it is not always necessary or appropriate to obtain informed consent. Under the ASA guidelines (s12.01c), informed consent does not apply to publicly available information such as public records or archives and is not required for research conducted in public places. Obtaining consent in naturalistic observation may change the participants’ behaviour and thereby invalidate the research findings. According to the NHRMC guidelines (s2.3), researchers may request a waiver of the requirement for informed consent for research that represents minimal risk to participants, is beneficial and does not breach participants’ rights to anonymity and confidentiality. The ASA guidelines (s12.01b) also allow for waivers if there is minimal risk to participants or if the research could not be done with informed consent. These waivers have to be approved by the institutional ethics committee.

Participant distress

Researchers have a responsibility to ensure that the psychological, social and physical wellbeing of participants is not adversely affected by participation. The British Society of Criminology guidelines (s4i) recommend providing participants who become distressed with a list of relevant support services (see also the ASA guidelines, s11.02.b). Elaborating, the BSC suggests that the decision to disclose potential self-harm to third parties should be determined by the individual circumstances of the case.

When conducting research on sensitive issues, it is common practice to follow the interview with a short debriefing session. This provides an opportunity for participants to ‘wind down’ after the interview and to ask questions about the research. In addition, a participant distress protocol can be designed to deal with any distress that might arise. In their national survey of sexual violence in Ireland, McGee *et al.*

(2002) developed a sophisticated protocol. Their procedure in such situations was to listen, stabilise the person and locate a source of assistance, if necessary. It is helpful to ascertain first whether there is someone in the participant's life with whom they would be willing to discuss the problem (e.g. family member, doctor) before offering information about support services. People are often more willing to speak to someone they know and trust than to contact a professional source of assistance.

McGee *et al.* (2005) subsequently re-interviewed a subsample of the original SAVI participants with a view to examining the effects of participation on wellbeing. While a minority said that they experienced some short-term distress after participation, the vast majority reported only positive or neutral outcomes. Almost all (94%) said that they would still have participated if they had known in advance what was involved.

Voluntary participation

When conducting research, it is important to ensure that participants' consent is freely given. In practice, this means that the researcher must inform them that they are free to withdraw from the study at any stage and that there will be no penalty if they choose not to participate.

It is more difficult to ensure that participation is voluntary when dealing with prisoners and probationers. These populations are considered potentially vulnerable because of their unequal relationship with criminal justice authorities. There is a valid concern that they may feel under pressure to take part in research. Moser *et al.* (2004) studied susceptibility to coercion among prisoners who were under psychiatric care, potentially a very vulnerable population. Their findings suggest that, if procedures for ensuring voluntary participation are followed, these populations do not feel coerced. Almost half of the prisoners approached for the study declined to participate, suggesting that coercion was not an issue. Among those who chose to participate, their reasons were relatively benign. The most common were to: avoid boredom, meet someone new, appear cooperative and help society. Moser *et al.* (2004, pp. 1–2) conclude: 'while it is critically important to recognise prisoners as a vulnerable population and to protect them from potential abuses, it is also of concern that they are systematically excluded from many human subjects studies'.

Conclusion

The voices of people who perpetrate crime are rarely heard in criminal justice debates. Similarly, victims of crime often remain silent about their experiences. Research provides these populations with an opportunity to share their knowledge and enables wider society to benefit from their wisdom. When conducting research with potentially vulnerable populations, it is important to take appropriate measures to protect participants during the research experience. This paper has suggested that it is possible to conduct criminological research that protects the rights and welfare of participants. Irish criminology is an expanding field and it is important to initiate a dialogue about the ethics of criminological research. It is hoped that this paper will provide a starting point for this endeavour.

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