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## ***NON-AGENDA***

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With the view of causing an increase to take place in the mass of national wealth, or with a view to increase of the means either of subsistence or enjoyment, without some special reason, the general rule is, that nothing ought to be done or attempted by government. The motto, or watchword of government, on these occasions, ought to be — Be quiet...Whatever measures, therefore, cannot be justified as exceptions to that rule, may be considered as *non-agenda* on the part of government.

—*Jeremy Bentham* (c.1801)

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### **Why Ethics Committees Are Unethical**

**Paul Oslington**

Recently UNSW academics at the Australian Defence Force Academy were asked to attend a presentation by members of the UNSW Human Research Ethics Committee, who appeared to be somewhat disturbed by our previous lack of interest in their activities. Their posture was one of missionaries bringing ethics to us poor savages for the first time, and they began with a short history of ethics committees and guidelines. They explained that Nazi medical experimentation in the concentration camps is the reason we have human ethics committees in the universities today, and that they stand between us and these repugnant practices. When challenged with an alternative account of ethics committees arising to protect the university administration against litigation and scandal, and their expanding through the internal dynamics of bureaucracy, the ethics committee representatives became somewhat defensive. When persuasion failed they resorted to threat (that academics would not be covered by the university insurance policy if their research does not go through the ethics committee — untrue as it turns out) and coercion (no ethics approval, no research funds — unfortunately true). Ironically, the presentation and subsequent debate was being filmed without the slightest hint of the informed consent the committee representatives were so earnestly exhorting us savages to seek for almost everything.

Furthermore, when it was suggested that most of their exhortations were irrelevant as few in the audience are involved medical research, we received the quite incredible response that an activity which affects humans in any way, or an

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*Paul Oslington is a Senior Lecturer in Economics at The University of New South Wales/Australian Defence Force Academy.*

environment in which humans live, must go before the committee. This assertion stretches — to say the least — the NHMRC guidelines. If this interpretation of the NHMRC guidelines is followed almost all economics research would require ethics approval. This would be a serious issue indeed.

Ethics committees have been part of the life of medical researchers for some decades, based on guidelines which flow from the World Medical Association's 1964 *Declaration of Helsinki*. This draws heavily on the Nuremberg Code developed during the trials of Nazi doctors after WWII. In Australia the NHMRC issued its first *Statement on Human Experimentation* in 1966, and both this and the World Medical Association's declaration have been amended many times. The current set of NHMRC guidelines is the *National Statement on Ethical Conduct in Research Involving Humans* issued in 1999. Further details of the history of ethics committees and rules may be found in NHMRC (1999) and Annas and Grodin (1992).

What is new is not so much the rules, as the attempt to expand the applicability of the rules to non-medical researchers. The argument seems to be that since non-medical research also involves humans or at least impacts humans it should be subject to the same set of procedures as medical research. Examples of problems with anthropological and sociological fieldwork are used to support such an extension (see for example Burgess, 1984:chapter 9). The extension to economics does not seem well founded, nor is it convincing that the burden of proof should be on those who resist the extension of the medical rules to economics.

It would be easy to write off our unfortunate encounter with the Ethics Committee representatives as an aberration, but there are reasons to be deeply concerned about the current approach to regulating research ethics in the Australian Universities, especially when extended beyond the original medical context. Discussions with colleagues at other institutions reveals similar incidents, and a widespread hostility to the activities of ethics committees.

Some concerns about the current approach to regulating ethics in Australian Universities are now discussed in turn.

### **A Particular Approach to Moral Philosophy**

The quasi-legal procedures of ethics committees privilege a particular rule-based approach to moral philosophy. The procedures are quasi-legal because the committee evaluates proposals based on the 'law' of the ethics guidelines and relies heavily on precedent. It is difficult for a committee to operate in any other way, but quasi-legal and legal procedures miss the point. The guidelines ethics committees follow present themselves as universal rules derived from reason. This rule based approach is one among many within moral philosophy and certainly not uncontroversial (see, for instance, MacIntyre, 1981; Williams, 1985). For instance, it is sharply inconsistent with the approach of virtue ethics (that is, ethics is about encouraging institutions that nourish virtue). It does not sit easily with 'consequentialism' (that is, activities are acceptable if good consequences

outweigh the bad) of which economists' favourite moral philosophy — utilitarianism — is a special case.

A committee must have some substantive ethical position, even if not written down or explicitly invoked by the committee. Ethical neutrality is self contradictory, and a dangerous delusion. The concern is not that the committee has a substantive position, but that a particular substantive position has been chosen unreflectively, as a consequence of the way the ethics approval process has been established. A quasi legal process implies rules. This rule based approach to ethics is not described, let alone defended in the various ethics guidelines. The committees seem mostly unaware of their substantive ethical position, believing themselves to be operating on an obvious and uncontroversial basis. Their focus (perhaps rightly, given the way the system has been set up) has been on the application of the rules to particular cases.

### **Perverse Incentives in Ethics Committees**

Committees are not very good at ethical deliberation, especially those operating in a quasi-legal way. It is even worse when committee members are subject to the reward structures of contemporary Australian Universities. Philip Pettit has discussed at some length the problems in an Academy of Social Sciences Lecture (Pettit, 1992).

One problem identified by Pettit is *asymmetric rewards* for wrongly approving and wrongly rejecting proposals. A committee which accepts a proposal which turns out badly (for example, a scandal reported in the press) will suffer serious consequences. However being over cautious and rejecting a proposal that should have been accepted is likely to have minimal consequences for the committee, and occasional complaints from researchers may even (as Pettit suggests) reassure senior university administrators that the committee is doing a good job. The reward structure suggests committees systematically will get it wrong.

Another problem is *ratchet effects*. In a rule based system it is far easier to invent new rules — scandals as Pettit notes lead to a flurry of this sort of activity — than to delete or ignore bad rules. The dynamics of the system will tighten ethical requirements on researchers over time, regardless of the appropriateness.

*Self-righteousness* is another danger suggested by Pettit — the ethics committee member enjoys the warm inner glow that comes from adherence to a set of ethical rules while costs of this are imposed on researchers and the general public. Still another is assertiveness — the understandable desire of the committee to avoid being seen as a rubber stamp. This, like the other tendencies, will lead to excessively tight rules and over-zealous committees.

It is sometimes suggested that ethics committees attract self-righteous busybodies, but Pettit's arguments are more that the incentive structures will push otherwise reasonable people to behave this way.

## **Maintenance of Ethical Responsibility**

Ethics committees undermine the ethical culture. The current procedures encourage researchers to treat ethics as someone else's problem. A division of labour will develop where the researcher does the work and a distant (often anonymous) committee makes sure certain ethical rules are adhered to. Ethics is trivialised. Researchers will get out of the habit of ethical reflection, except of the most minimal sort which considers what will get past the committee. Encouraging them to pass the ethical buck undermines the ethical capacities of researchers, and universities and disciplines as ethical communities.

A related issue is trust. It is not prudent to trust people in all circumstances, but the strong message to researchers in the current procedures that the University does not trust their ethical judgement could very well be self fulfilling.

## **Cost**

The current ethics approval system is very costly, and these costs will rise rapidly as ethics committees seek to expand their activities. It would be very interesting to have an estimate of the cost of the current ethical approvals process in Australian Universities. At the unfortunate presentation described above, a committee member pointed with satisfaction to graphs showing strong growth in applications to the ethics committee and staffing of the ethics secretariat. Apparently an increase in costs was a good thing — but it is unlikely that many academics, who have been doing more with less resources in recent years, would have been so easily persuaded.

Administrative costs of the ethics secretariat are probably just the tip of the iceberg. Academics serving on the committees speak of large numbers of applications to be read. Researchers at UNSW must read the *Rules Governing Human Research Projects at UNSW*, then decipher the obtuse and internally contradictory twenty page *Guidelines for Applications to the Institutional Ethics Committee at UNSW and its Affiliated Teaching Hospitals to Undertake Research Involving Humans* plus the sixty six page NHMRC (1999) *National Statement on Ethical Conduct in Research Involving Humans*, the several hundred page *Commentary on the National Statement on Ethical Conduct in Research Involving Humans* (NHMRC, 1999), plus about ten other lengthy documents referred to within the Guidelines. At UNSW the blank application form is twenty pages long, and applicants must submit nineteen copies to the Ethics Secretariat for review.

Another cost of the current system is the exposure of ethics committee members to legal liability as a result of the activities of the committees. Restricting their role or abolishing the committees would reduce this exposure, and perhaps even reduce the risk of litigation for the university as a whole.

## **Delay**

The need for ethical approvals before commencing research delays projects. Delays can run to many months while preparing applications and waiting for

ethics approval, even if the application goes through without the need for clarification or modification. Once approval is obtained that is not the end of the matter. If any change is made to the research as described in the application, approval must be sought and obtained in advance of this change. This is incredibly inhibiting of research projects, especially in rapidly developing fields, where new methods are being experimented with, and of research on contemporary issues.

Talking with colleagues in other institutions the activities of the ethics committee are having major effects on the topics on which academics undertake research and the methods they use. The ethics committee would probably see this as a gratifying sign that they are not wasting their time. However, the impression one gets is not that academics are avoiding unethical research, but that they are avoiding anything they perceive the ethics committee is likely to make trouble over or which is time consuming to justify. The burden of proof is on the researcher. It is likely that novel or unconventional research is being inhibited, rather than unethical research. This is no small matter given the large amounts of government and private money spent on research. It would be unfortunate if the excesses of human ethics committees drove this type of research out of the university system, or overseas.

### **Inappropriate Medical Model**

An inappropriate medical model is being applied to the social sciences and humanities. A recent report to the Executive Committee of the Academy of Social Sciences in Australia, summarised in Gregson (2002), raised concerns about the applicability of the medical rules — especially consent forms and procedures — to the psychological sciences. How much greater are the applicability problems for the social sciences and humanities.

In my own discipline of economics the most recent Nobel Prize was awarded to Vernon Smith for his work in experimental economics. The NHMRC rules prohibit offering money to subjects participating in experiments — for reasons one can understand in a medical context. However experimental economics is about seeing how subjects respond to monetary incentives of various kinds in different settings, so strict application of the NHMRC rules would cut Australian researchers out of this increasingly important area of economics. Common sense may prevail here, but this is just one example of the problems created when medical rules are applied outside their original context.

Another risk is that rules about harm will impinge more widely on economic research. One can readily imagine a zealous ethics committee member objecting to anything that has a whiff of ‘economic rationalism’ about it, as economic rationalism is known by all right thinking people to be damaging to society. Research involving organisations such as the World Bank, IMF and WTO could also come under scrutiny from our zealous ethics committee member. It is worth noting that under the current NHMRC rules there is no specific requirement for

the committees sitting in judgement of economic research having members with expertise in economics.

### **Summarising the Concerns**

These arguments can be drawn together by taking up the suggestion at the unfortunate ethics committee presentation that it is the ethics committee that stands between us and the horrors of Nazi medical experimentation. Suppose the Nazis had a Human Research Ethics Committee, and that all research had to be approved. It is unlikely that there would be much difficulty in Nazi Germany in finding sufficient people of the required types (that is, seven including a lawyer, doctor, and minister of religion) to sit on a properly constituted Human Research Ethics Committee under the NHMRC guidelines and approve the abhorrent Nazi experiments. A culture that generates these acts would have no difficulty generating committee members prepared to endorse the acts and construct justifications for them under almost any set of general principles, including the current NHMRC guidelines. 'Informed consent' will be obtained, harm of course is minimal as the experiments are not dealing with people, benefits for the Nazi state are great, and so on. In fact Mengele's notorious twin experiments at Auschwitz were approved by the Research Review Committee of the Reich Research Council (see Annas and Gordon, 1992:35). Ethics approval procedures and guidelines would seem to provide little real protection if the ethical culture is compromised or suppressed by power, as it was in Nazi Germany.

The Nazi era, as well as providing evidence that ethics committees and approvals in themselves mean little, suggests that principles devised by the well intentioned and a bureaucratic state are a potentially dangerous mix. Annas and Grodin (1992:17-31) document the rise of the racial hygiene movement in pre-WWII Germany, suggesting that it was developed by well meaning doctors and became 'orthodox' in the German medical community before the Nazis came to power. Such an orthodoxy in the medical community however could only become deadly when it gained the support of the Nazi state and was implemented with the help of the state's efficient bureaucracy and coercive power. Annas and Grodin's book also discusses the way 'mercy killing' evolved out of the original medical context to a social doctrine that justified the gassing Gypsies, Jews and other undesirables. It is particularly interesting the way ethical debate and individual dissent was crushed as these principles were appropriated, twisted and absolutised by a bureaucratic state. Committees functioned to co-opt doctors and spread Nazi ideology rather than restrain evil.

In conclusion, there can be no running away from ethical issues in research, but in my view the cause of ethical research in Australian Universities would be better served by scaling back the activities of ethics committees to ensuring compliance with legal requirements. A committee and approval process like the current one is probably not the most efficient way of ensuring compliance with legal requirements, so perhaps the Universities would be better served by some other structure or no structure at all.

Ethics committees and approval processes are a sign of and contributor to an unhealthy ethical culture. It would be good to see more discussion of the University as an ethical community and a greater level of ethical leadership from senior academics and administrators. Ethics education is also important, provided it is serious and not just about how to get through the committee or expanding people's capacity to justify dubious actions. Ethics should be more integrated with our day to day professional practice — and reclaimed from the bureaucrats.

In my own discipline of economics, as argued persuasively by Hausman and McPherson (1996) and others, ethical problems are inseparable from theoretical and empirical economics. As well as the ethical content of their models, economists face ethical issues in selecting topics, honesty and care. At the very least, if we are going to extend ethics approval procedures beyond the medical disciplines to economics we need to think beyond an inappropriate medical model.

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