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SYMPOSIUM

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The New Bureaucracies of Virtue: Introduction

Once a soft humanitarian twist to professional, commercial, or academic ventures, relegated to the margins of knowledge, practical ethics—from business ethics to military ethics—is an increasingly mainstream, high-profile, well-funded, and bureaucratically complex discipline. What it has kept from its early years is its catchy wording and a self-assured sense that it is engaged in making things better.

One of the interesting features of modern ethics is that it must continually be demonstrated—it must be bureaucratically evidenced, revealed, documented, enacted, performed. This special issue explores the documentation of social science research ethics as one site of the evidentiary practices surrounding practical ethics.

As Foucauldian theory has long pointed out, ethics is usually presented as a self-evident good—the only question is how to do it and demonstrate it. It is said that the impulse to formalize research ethics originally stemmed in Europe from the Nuremberg Code, which was drafted in reaction to the postwar accounts of abuses of research subjects in clinical experimentation. Our specific interest is in how this self-evident good comes to be bureaucratized—in “the institutionalization of over-enthusiastic best practice” (Strathern 2006:533). At its inception, the Institutional Research Boards (IRBs) bureaucracy, which institutionalizes research ethics in the United States,¹ was lauded for evidencing best practice by documenting, by routinizing it. Hence our term for our subject, “bureaucracies of virtue.”

The clinical research ethics model is based on universalistic principles of informed consent, confidentiality, and protection from harm (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research 1979; World Medical Association 1964). Today, in many countries, this clinical research ethics model has expanded to cover many fields of knowledge, including research in many disciplines of the humanities and social sciences. In the bureaucracies of virtue, all living nonresearcher persons who contribute to a researcher’s project are indexed as “research subjects” and are conceived of as needing protection, protection of one uniform kind (except for those persons who are in need of even more protection, such as the “economically and medically disadvantaged,” “those who cannot give or refuse consent for themselves,” and those

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“who may be subject to giving consent under duress”).² One of the effects of this bureaucratic practice, in other words, is to constitute particular kinds of agency: in this system, the one who is imagined as giving of one’s self to a researcher is a research subject in need of protection, and the one who is imagined as receiving this gift is a researcher-perpetrator. So, one of the questions of interest is, what appears and what disappears, what becomes salient and what is forgotten when persons are not envisaged as experts, muses, or colleagues, but rather as research subjects?

In the fall of 2005, we began to think about what ethnography might elucidate about the bureaucracy of virtue as a conceptual package. In order to make the inquiry more manageable, we chose to focus on one especially evocative artifact of the bureaucracies of virtue, the discourse and practice of informed consent. A number of scholars had already begun to formulate important practical and theoretical critiques of IRBs (e.g., Bourgois 1990; Palys and Lowman 2006; Thorne 1980).³ In 2006, a fascinating special forum on IRBs edited by Rena Lederman was published in *American Ethnologist*. Some of the participants in that forum were angry about having to be virtuous by virtue of IRBs and worried about the IRB’s infringement on their academic freedom (Shweder 2006). Others were rather more intrigued by how their discipline is misunderstood and disregarded by research ethics administrators (Bradburd 2006; Lederman 2006b). Still others strategically searched for loopholes and escape routes for anthropologists from within the IRB regulatory framework (Katz 2006). At about the same time, the University of Illinois Center for Advanced Study’s White Paper, *Improving the System for Protecting Human Subjects: Counteracting IRB Mission Creep* (Gunsalus et al. 2005), Philip Hamburger’s article on IRBs and censorship in academia (2005), and a conference of the *Northwestern University Law Review* on the same issue (2007) provided venues for airing further anxiety and even anger about the institutionalization of research ethics among ethnographers, legal scholars, and other social scientists. Whereas some championed academic freedom as the supreme exercise of a First Amendment right (Hamburger 2005, 2007; Shweder 2006), others did not see why researchers should have more of a privilege than other members of society to be above positive law, in a context in which rights always have to be balanced against the state’s interest in regulation (Piron 2006; Plattner 2006; Sundar 2006).

To us, these debates and anxieties reveal plenty about the floating assumptions ethnographers, legal scholars, and others in cognate fields hold about the knowledge they fabricate, be it its efficiency, transparency, rigor, or authenticity. And so, our interest in this subject lies slightly elsewhere, in the practices and reactions the documentation of research consent generates from researchers and research subjects alike, as a site from which to explore how practical ethics is *shown* (Strathern 2000). In this collection, therefore, we have attempted to avoid an explicit advocacy frame. Although we certainly do not defend the current regulatory framework of research, we also wanted to press the pause button on the ambient criticism of IRBs and accompanying expressions of fears and anxieties about their impact on

research and free speech. Instead, we wanted to trigger a discussion that would harness, among other things, these practical anxieties in the service of a larger theoretical and epistemological inquiry. The nice thing about consent for this purpose is that it immediately raises much larger theoretical and political concerns.⁴

What are the subjects and objects of ethics a manifestation of? Some time ago, critics pointed to the abstract and disconnected quality of ethics from local social realities (Kleinman 1999; Massé 2000) Yet, now that U.S. ethics certification programs train researchers in how to use particular fonts, headlines, and bullet points in informed consent documents, it is fair to say that ethics *is* concrete and in fact has increasingly become a practical, applied technique. We wanted to engage with this technique by paying ethnographic attention to its tools, workshops, masters, apprentices, and scribes, as well as its material expressions and particular aesthetics in different contexts.

* * *

As a way to briefly introduce the following essays about the bureaucracies of virtue, we thought it might be helpful to bring up the fascinating work of artist-photographer Sophie Calle. With her irreverent approach, Calle tests the limits of what it means to work with persons, be they subjects, research subjects, or objects. Her art form seems in part to consist of elucidating from the viewer a judgment about whether the artist's descriptive practices are ethical, virtuous, and appropriate.

In her photography, Calle gives herself license to do many things that those whose work falls under the category of "research," as opposed to art, would not:

For months, I followed strangers on the street. For the pleasure of following them, not because they particularly interested me. I photographed them without their knowledge, took note of their movements, then finally lost sight of them and forgot them. [Calle and Baudrillard 1983]

Calle uses the technique of the forensic archive. She writes down at every hour what she does. Her data gathering is meticulous, almost as if it were an outsider's mock ethnographic method. Yet at the same time, she teases hot points of legal/ethical sensitivity by unapologetically disregarding the boundaries of privacy, intimacy, and confidentiality of her "art subjects." She transgresses the rules of the observation game. In one project, for example, when a man she meets once at a social gathering in Paris mentions that he is leaving for a trip to Venice, she takes the next plane, tracks him down, finds him, and then follows him through the streets of Venice. This urban predation takes the form of many consecutive shots of the man at a distance, yet central in the camera's gaze, as he shops for antiques, walks in public squares, and sits for coffee. In another project, Calle gets hired to clean rooms in an Italian hotel and takes up the opportunity to record and photograph the clients' private effects. The results are intimate renderings of open suitcases, notebooks, and wrinkled sheets.

Calle's work does evoke abuse of power, surveillance, voyeurism, absence, and loss of agency. It is curious, cruel, and yet strangely sympathetic. Researchers may feel estranged from her, uncomfortable in the way that the presence of tourists in the village makes the anthropologist uncomfortable, but perhaps the reason why some of us are shocked, touched, angry, or even envious at her freedom from bureaucratic restraint is that there is an intimate, unnamable connection between what she does and what we do and imagine we do, between her actual and our latent work.

The ethnographer is of course both similar to and yet distinct from the artist, just as the "researcher" is both similar to and yet distinct from the fiction writer, the amateur tourist, the industrial spy, the human rights reporter, the activist, the journalist, the detective, the stalker, the oral historian. Part of the difference lies in the motif and design of the work. And yet the ethnographer sometimes has to be "downright annoying—by design," just like artist Calle (Storr 2003:26).

Further, ethnography also inevitably turns on a structure of secret. Fieldwork is knitted with secrets, serendipities, chance encounters, treasure hunts, coincidences, mistakes, and mysteries—all the stuff of contemporary popular fiction. Some anthropologists refute this open-ended definition of fieldwork methodology, but many recognize themselves in it and thus are left confused by IRBs' strict emphasis on transparency and predetermined research frames (see Bledsoe et al. 2007; Bourgois 1990; Bradburd 2006; Lederman 2006b). Unavoidably, the surprises, tragedies, and dilemmas encountered in the field oblige ethnographers to confront the internal contradictions and meagerness of social sciences' institutional definitions of research ethics (Bourgois 1990). It might be arrogant if not dangerous to assume that there are definite answers to research ethics dilemmas in fieldwork. As Karen Sykes puts it, "fieldwork is a daunting undertaking, but it would be a mistake to try to triumph over it" (2005:220).

Calle's violation of the rules of the bureaucratic evidencing of ethics may help us to understand better what the bureaucracies of virtue demand of us and what ambitions and desires they set into motion. The ethics (understood as practice) of Calle's work is the writing and rewriting of the rules through direct confrontation (Storr 2003:25), *not* ethical demonstration—be it bureaucratic or scientific. Calle does not argue, disclose, or explain; her tactic of expression is rather that of a furtive interference. Her project suggests a paradoxical counterpoint to the practices of the bureaucracy of virtue that does not succumb to abstract ethical relativism but that rather opens up and encourages possibilities of concrete comparative work about relations, agency, and disciplines.

* * *

The present collection covers a broad range of ethnographic sites that are encompassed by the bureaucracies of virtue, such as academia in the United States (Rena Lederman), a citizens' consensus conference in Germany (Stefan Sperling),

Native American museums in the United States (Jennifer Shannon), offshore pharmaceutical research projects (Adriana Petryna), and American and Israeli hospitals (Marie-Andrée Jacob). The collection also contains a proposal for law reform (Charles Bosk), as well as a theoretical reflection based on the work of Kant and Lacan on the researcher's conquest of her objects (Amy Swiffen). Many others contributed significantly to this special issue through their active participation in the live symposium held at Cornell in October 2006, including Tim Choy, Steve Hilgartner, Doug Holmes, Michael Lynch, Marilyn Norcini, Mark Suchman, Laura Stark, and Bradley Wendel.

Together, the papers complicate and confuse what we think are the key positions in recent social scientific and legal debates about the IRB problem. They do so by bringing ethnographic attention to three aspects of both practices of consent and debates surrounding these practices: researchers' and research subjects' *investments* in their approach to the documentation of consent, *documentation* as an evidentiary practice, and the role and nature of *the state* as a context for and artifact of this practice.

Sociologist Charles Bosk's article nicely bridges between previous analyses of the IRBs and the aims of the present collection. Bosk reenacts the investment and activism that characterized recent writings about the IRBs. However, instead of critiquing IRBs as many previous articles have done, he boldly redescribes social scientists' professional practices as part of the bureaucratic structure of research ethics that the same social scientists so vehemently condemn. Bosk asks how ethnographers have contributed to the overregulation of their work that they bitterly complain about. He reviews the main refrains of what he terms "the chorus of complaints" and proposes avenues to better empirically evaluate and ultimately change the current system.

In contrast to Bosk's invested approach to the new bureaucracies of virtue, Amy Swiffen's article purposively stands outside those debates. Echoing Bosk's concerns, but rephrasing them in a totally different language, Swiffen's essay helps the reader to make familiar debates and rehearsed axioms strange. Her contemplative, meditative piece poses the question of desire and responsibility in research ethics in Kantian and Lacanian terms. She objects that the problem of research ethics is that of the incompatibility between general norms and particular research cases and proposes that only the radical uncertainty of responsible decision making is the ground upon which researchers can be in ethical research relationships.

One of the principal anthropological complaints about IRBs, as Bosk points out, is the fact that signing consent forms is "an obligatory passage point" to research. As identified in a recent compilation of ethnographic work on documents (Riles 2006), the impulse to "paperwork" is a point of commonality between researchers and their modern ethnographic subjects. The documenting of ethics and the papering of consent are evidentiary artifacts of the new

bureaucracies of virtue, and the new bureaucracies of virtue, in turn, constitute a rich record of the changing relationships between researchers, their subjects, and research governance officers. Moving from philosophical deliberations to empirical enactments of ethics, Jennifer Shannon's ethnography of the consent process in the Museum of Native American Indians and in an Ivy League university IRB details the shift from "contractual ethics" to "collaborative ethics." Shannon's first person piece describes how the practical ethics of informed consent explicitly aims to set into motion a set of micro-social dynamics between researcher and subject. Shannon carefully describes the given, expected moves of the researcher who follows the actors and actants of the bureaucracies of virtue. In her case, these processes lead to negotiating around the signing of consent forms and to practices in which the signature is replaced by real-time conversation on audio recording.

Marie-Andrée Jacob's article also tackles the actual fabrication and signature of consent forms. But where in Shannon's field site, the museum and the university, the paper form eventually fails in its career as an articulation of consent, in Jacob's field site, the hospital, the paper form stubbornly remains the consent proxy. More than that, the paper form not only supports consent but also personifies it comprehensively, leaving no residue outside of the form. In Jacob's ethnography, what legal and bioethical discourses recognize as consent has little to do with professionals' and patients' submission or indifference toward its bureaucratic articulation. Jacob shows how submission to material consent forms enacts particular forms of agency and personhood.

The next two papers by Stefan Sperling and Adriana Petryna bring to the forefront another instantiation of the new bureaucracies of virtue: the state. Can ethics and informed consent be signals of, acts of, or instruments for national affirmation or the fragmentation of the state (Fassin 2006:523)? Sperling's article grapples in particular with the "informed" dimension of informed consent. His ethnography of a large political consensus conference in Germany focuses on how citizens individually and collectively negotiate the information experts wish to inform them about in order to secure "public" consent. A two-way conversation occurs, he argues, which ultimately reinforces traditional models of state-citizens relationships. Sperling's analysis echoes the Foucauldian view of a state that makes knowledge and yields to power with knowledge. Implicit in Sperling's account is also a more complicated story, however, in which the state is fragmented into a myriad of lay and scientific practices. Hence, his observations stand as a disruptive challenge to the claims of jurists such as Philip Hamburger (2005), sociologists such as Richard Shweder (2006), and others who see IRBs as the invasion of the private and professional lives of researchers by a static, monolithic, and ultimately quite authoritarian state.

If Sperling's piece makes the state appear in surprising ways, in Adriana Petryna's contribution, the state retreats. Petryna's essay traces the exportation

of pharmaceutical research and its ethics governance from the United States to low-income countries. Her ethnography shows how at the moment at which the governmentality practices of the state begin to dissipate, private actors begin to emulate those same state practices with enthusiasm and commitment. Petryna points out that despite the fact that frameworks of IRBs and informed consent are in force in offshore research sites, specific kinds of harm are still being imposed on research subjects. Her essay thus shows the limits of research ethics governance. Her focus is on the privatization of virtue through purification enterprises such as private, pharmaceutically owned IRBs.

Anthropologist Rena Lederman concludes the collection by teasing out what has often been left out of the research ethics equation: the nature of research itself. In her paper, Lederman opens up the question of what constitutes research: whether and how “research” can be defined and distinguished from nonresearch; whether research can be differentiated from nonresearch by virtue of the distinctive constraints to which it is subjected. Lederman’s analysis uncovers an intimate connection between the subjects, risks, and ethics of anthropological fieldworkers and those of literary fiction writers. To do this she draws on the observations by American ethnographers and novelists like Margaret Mead, Toni Morrison, and Philip Roth. She wonders what would happen if fieldworkers could make common cause with fiction writers, as both groups are interested in “what happens.”

* * *

There is a tension palpable in many papers between a pull to take a step back and to generalize (as in Swiffen) and a call for more specificity (as in Lederman). But taken as a whole, the articles suggest a number of things.

One is that legal knowledge proliferates. As many papers testify, our work is changing because law gets into it. How does law get into human activity? And what happens when legal knowledge gets into nonlegal settings and into the hands of nonlegal people? The proliferation of legal knowledge can happen when, for example, human resources bureaucrats in the workplace do legal analysis and training (as demonstrated in the work of law and society scholar Lauren Edelman, and others).⁵ But law can also appear in less straightforward, even more complicated ways when academics do legal projects. For example, anthropologist Adriana Petryna, by mapping the regulatory structures and gaps in the regulations, is doing what clearly constitutes a lawyerly project, and, in so doing, she further expands the reach of law. Shannon, in mobilizing “the Native community” as an exception to the rule of signed consent, offers an occasion for more bureaucratic and legal relationalities. Her use of the structure of the *exception to the rule* in fact may appeal to IRB bureaucrats because, as lawyers know, it expands creatively the ambit of the rule: making exceptions gives the bureaucracy something to do, a way to show its creative potential, a project of responding adequately to deficiencies in the rule by enacting more rules, exceptional ones.

Together, the authors also make ethics and consent appear ethnographically, as Lederman puts it, as both “context and content” of research. Along the way, the authors demonstrate that the bureaucracies of virtue cannot be reduced to the censorship and infringement on academic freedom feared by some. They are far more interesting and far more multivalent than this. In addition to their ethnographic interest in the new bureaucracies of virtue, the authors in this collection share a certain ethical realism. It has been a long-standing project of classical legal realism to diagnose the gap between law in the books and law (or legalized practices) in action. In the context of research ethics, this gap was widening, and it seemed pressing to us to follow ethnographically the numerous routes this fissure opens up, the ethical and institutional potentialities it sets into motion.

Notes

1. In the United States, institutional review boards, also termed human subjects committees, prospectively review, approve, or reject research projects involving human participants. Every research U.S. institution (e.g., hospital, university) that is planning to use federal research funding must file an assurance with the agency that provides research funding or file a Federalwide Assurance with the National Institutes of Health–Department of Health and Human Services’ Office of Protection from Research Risks. Requirements for this assurance include the evidence of the setting up of one or more IRBs and other procedures.
2. Special protection can take the form of a stricter calculation of risks-benefits and additional consent by a proxy. “For a research subject who is legally incompetent, physically or mentally incapable of giving consent or is a legally incompetent minor, the investigator must obtain informed consent from the legally authorized representative in accordance with applicable law. These groups should not be included in research unless the research is necessary to promote the health of the population represented and this research cannot instead be performed on legally competent persons” (World Medical Association 1964, art. 24; see also art. 8, 25–27).
3. The central lines of critique elaborated by these scholars are that lengthy informed consent constraints will ultimately shield the powerful and impede the quality of research by preventing the prompt documentation of pressing issues.
4. Scholars in law, science studies, anthropology, political philosophy, and bioethics have problematized the large theoretical implications as well as the concrete dimensions of the legal frameworks of consent. Some scholars insist on informed consent’s healthy existence as a normative practice and lament the fact that it is distorted by institutions that are outside of it, that is, by power, bureaucracy, or market forces. Others are wary to pass judgment on the contextual factors that impinge upon the good practice of informed consent,

because it may obscure informed consent's internal operational limitations and, most fundamentally, discard the question of whether informed consent itself may be an inadequate model at all. For a more detailed discussion, see the sixth chapter in Jacob 2006.

5. See for example the article by Edelman, Fuller, and Matusik (2000).

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