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Endangered Language Research and the Moral Depravity of Ethics Protocols

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At the 2nd International Conference on Endangered Languages in Kyōto in December 2001, a field linguist from Siberia and I both independently warned an international audience of linguists and policy makers about the perils of ethics protocols for endangered language research which had begun to take shape at that time (van Driem 2004). Our warnings were not heeded and some of the foretold absurdities have since then materialized. Most of the then new ethics protocols that were suddenly being drawn up, just as endangered language research came back into mainstream linguistic fashion in the 1990s, are not just misguided constructs dreamt up by do-gooder bureaucratic busybodies. In practice, many ethics protocols are morally bankrupt.¹

Part of the problem lies with the fact that such ethics protocols have been drawn up by idealists in the decidedly atypical context of societies with a litigious Anglo-Saxon legal tradition where a European colonial population has displaced and to some extent even largely exterminated the indigenous language communities. Another part of the problem is that some granting agencies have, in precisely the bureaucratic fashion predicted in Kyōto, compelled aspiring field linguists to engage in absurd and even unethical exercises in laying the groundwork for their linguistic fieldwork. Fundamental cultural differences and disparate histories of diverse language communities are essentially ignored, and those implementing and enforcing such ethics protocols have in some cases unwittingly practiced a not altogether benign form of cultural imperialism.

When endangered language research suddenly and thankfully became fashionable to the linguistic mainstream once again, many who jumped on the bandwagon began to generate a flurry of derivative literature about conducting fieldwork, which struck many of those who had already been conducting linguistic fieldwork for years or decades as superfluous or as just belaboring what should have been obvious to common sense, e.g., Bower (2008), or the Linguistic Society of America's ethics statement.² Most pernicious to the relationship between the field linguist and his or her informants was the endeavor to apply the modern Western legal notions of 'data ownership' in a culturally imperialistic fashion to research taking place in other lin-

¹This opinion piece was presented as a lecture at the one-day pre-conference workshop on Establishing a Research Centre for Endangered Languages at the 1st International Caucasus University Association Conference on Endangered Languages at Ardahan Üniversitesi on the 13th of October 2014.

²http://www.linguisticsociety.org/sites/default/files/Ethics_Statement.pdf.

guistic and cultural contexts (Dwyer 2006), particularly American attempts to bring all linguistic fieldwork “within the purview of federal human subjects regulations” (DiPersio 2014:505–506). Even well-intentioned writers of this secondary literature have couched their argumentation in the modern post-colonial Occidental jargon of ‘advocacy’ and ‘empowerment,’ stressed the North American legal need for securing permissions, and adopted a stance whereby speakers of another language are viewed as ‘human subjects’ (Rice 2006).

Some writers condoned the haughty bureaucratic attitude that dismissed real cases of hardship and untenable situations arising from “the burden that regulations places on researchers” as merely “anecdotal” (Bown 2010:897). Even when a particular discussion in the new derivative genre of linguistic fieldwork ethics was sympathetic in tone, it would nonetheless inexorably be couched in a modern type of North American discourse that was projected onto other cultures and language communities (e.g., Dobrin & Berson 2011). The rising wave of ‘ethical imperialism’ represents the outcome of interference by meddling bureaucracies at the governmental and university corporate levels. Zachary Schrag (2010) has documented in meticulous detail how decades of bureaucratic impositions in North America have hardly yielded beneficial effects and how the enforcement of American legalistic frameworks in other cultural contexts in no way represents or defends universal ethical values. Instead, developments are motivated by more parochial American concerns about liability. The difficulties caused by formal procedures are exacerbated as the drive to satisfy bureaucratic regimens comes to lead a life of its own and becomes an end in itself. Indeed, Schrag’s careful study raises the question whether more harm than good has been wrought by ethical committees in the humanities.

First of all, ethics protocols sow the seeds of distrust. The practices imposed by ethics protocol enforcers can spoil the relationship between language researchers and language informants. One American researcher followed the dictates of the ethics protocol of the University of Oregon because the penalty for non-compliance for her would have been nothing less than to forfeit the right to earn a doctoral degree, even though, in the particular case in question, this involved just 400 Bhutanese *’ngütram*, which at the time of the affair was less than US\$10. The researcher was compelled to go back to a particular Bhutanese village and get a signature from a particular language informant on a receipt for this sum of money. The researcher in question did as she was told in good faith, and consequently the community ostracized her, shunning her on each subsequent visit because she had made them sign a legal document. The people of the language community later explained through intermediaries that they both felt insulted and were also genuinely afraid for having been made to sign a legal document, especially after all the assistance and hospitality which they had extended to the researcher. We are dealing with no less than a clash of cultures. Ethics protocols prescribe and require immoral, unseemly and outright rude behavior to be carried out by researchers in other societies with very different cultural norms. Yet how is it possible that these ethics protocols are so culturally insensitive?

On the 13th of February 2008, Australian Prime Minister Kevin Rudd delivered a formal apology on behalf of the Australian government to the so-called ‘stolen

generations' of the native Australian peoples. Australian society has in recent years been coming to grips with the anguish of reconciliation with its history of genocide and expropriation. The manuscript of the apology, calligraphed by Gemma Black, is currently enshrined in a glass display case in the first floor gallery of the Parliament House in Canberra. In America, there has been no similar generalized catharsis, although some public awareness was raised in 1970 by Dee Brown's popular book *Bury My Heart at Wounded Knee*, which attempted to recount U.S. history from a native American perspective rather than from the viewpoint of the post-colonial migrant population of European ancestry. Australia is just as severely afflicted with a checkered history of outright genocide of indigenous populations as is North America. Only recently has a collective guilt complex developed in Australia. In the context of centuries of brutalities perpetrated by the colonial population of European extraction against the aboriginal populations, Rieschild (2003:91) advocates a stance that views research as an "imposition," an "invasion" and a form of "exploitation," and she therefore recommends that linguists work together with ethics committees. Rieschild, however, recognizes that the imposition of "universal codes" of ethics that dictate "the norm and make minimal allowance for cultural variation in the cultural and social construction of self, relationships and interactive norms" poses a problem, and she rightly bemoans the "increased bureaucratization of university research" (2003:71). It so happens that, for the rest of the world, the Australian and North American 'universal codes' of ethics present a particular problem because these elaborately bureaucratic codes are not only far from universal, but they are also largely inappropriate outside of the context of those continents where the almost the entire indigenous population has been murdered, and the survivors brutalized and disenfranchised.

Loud voices make themselves heard from America, Canada and Australia, where the native language communities have been expropriated and made to suffer the destructive force of colonialism and, in some regions, have been completely exterminated by European settlers and their descendants. Arguably moral preceptors in these post-colonial societies are not the obvious candidates to be telling researchers in other parts of the world how to conduct linguistic fieldwork with native peoples or to dictate to them the legal terms of conduct, for historically these post-colonial societies have forfeited the moral authority to set the example. The frame of reference of ethics protocol enforcers in Australia, New Zealand, Canada and the United States is awash with the guilt of what their own ancestors perpetrated against the native populations of their countries.

Another dimension to the issue of ethics protocols for linguistic research is the culture of an Anglo-Saxon legal system which evolved, especially in North America, to become ever more litigious, by global standards sometimes grotesquely so. Just one example out of myriads of such cases is the *cause célèbre* of Stella Liebeck, who in 1994 spilt coffee on herself upon prying open the plastic lid of her coffee whilst sitting on the passenger's seat of her grandson's car with the cup of coffee clutched between her legs as they bought food from a drive-through window in Albuquerque. She suffered serious scalding to her legs, and certainly one cannot help but feel sorry

for her injuries and also feel compassion for the physical pain which she must have suffered. As an elderly lady, the ordeal of the lengthy healing process was greater than it would have been in the case of a younger person, and those who would make light of the injuries which the poor woman suffered must be unaware of the severity of the tissue damage caused by the scalding.

Nonetheless, in another society the issue of culpability and responsibility for one's own actions may have been perceived differently than it was in the United States. Initially, Liebeck was offered US\$800 in compensation, but through her lawyers she ultimately received US\$2.86 million. This celebrated case of American-style litigation was reportedly described by U.S. legal scholar Jonathan Turley as "a meaningful and worthy lawsuit".³ In view of the sheer magnitude of the earnings which lawyers in the United States stand to make on lawsuits of this type, it is not difficult to imagine how many a lawyer might be inclined to view any such case as both a meaningful as well as worthy enterprise.

However, all are not treated equally under the law. Today we can travel overland in the United States from sea to shining sea, and the chances that we will encounter a native American on our journey are minimal. All of the compensation which the descendants of native Americans have received for the genocide perpetrated against their peoples and the expropriation of their lands amounts to a ludicrous pittance which pales in comparison with the foulness of the crimes committed against their ancestors. Though we might dismiss the admittedly fraught issue of inherited guilt, injustice against native Americans continues today, which is all the more flagrant in view of the history of the dealings of the migrant population of European ancestry with the native populations of North America. Another palpable legacy of this sad history is that it has saddled some sensitive souls with a sense of guilt which has impelled them not just to embrace ethics, but to formulate and preach ethics to others in the most contrite and yet authoritarian tones.

Naturally it is to be lauded that people strive to behave morally, but history teaches us that those who preach moral conduct need not necessarily behave in an exemplary fashion themselves. Worse yet is the fact that the post-colonial guilt complex in North America and Australia in combination with an Anglo-American legal system has yielded a sanctimonious cocktail of red tape and procedural posturing which not only impedes scientific research, but actually engenders unethical conduct and prescribes unseemly and culturally insensitive behavior.

In October 2014, when speaking to the woman in charge of the ethics protocol division at Australian National University, an unnamed researcher from Bhutan, who was born and raised in Bhutan with all the cultural and moral sensibilities of a morally upright Bhutanese citizen, said, quite rightly, that certain stipulations and premises of the Australian National University Ethics Protocol "just do not apply to our part of the world". The head of the ethics protocol division was incensed. The premise in Canberra was that their early 21st century Australian sensibilities regarding ethics were absolute, timeless and universal, and could and should be applied extraterritorially, yea, globally. The moral code prescribed in Canberra included Informed

³http://www.worldlibrary.org/articles/liebeck_v._mcdonald's_restaurants.

Consent Forms and, in the case of illiterate people, Oral Informed Consent Forms as well as a binding legal contract with the language informants. The Bhutanese researcher was compelled to rewrite the legal contract several times, because he was told that the language informants could not be referred to as such, since somebody had decided that ‘language informant’ was a bad word. The Bhutanese researcher was informed that his language informants were human beings, and that accordingly they should be styled as ‘language consultants,’ a term which later had to be replaced with the even more politically correct label ‘linguistic research assistants.’

The Bhutanese researcher raised the issue that being compelled to sign a contract at all would be viewed by Bhutanese villagers as if they were not being treated in a civil fashion as human beings, whatever English label one might like to append to them as native speakers of their languages. The researcher objected that the feelings of the Bhutanese people should be taken into consideration. In response, one of the staff members of the Australian National University Ethics Division in a moment of candor told the Bhutanese researcher the following, as paraphrased by the researcher: “No, you don’t understand. We care deeply about the people in Bhutan. We care not only about today’s language community. We care even about the children and the grandchildren of these people, who might come to us one day and ask to see the written permission that their ancestors had granted us at Australian National University in order to be allowed to study their language.” This admission was highly revealing because it alludes quite plainly to what institutions and bureaucracies are really after.

When I once asked a solicitor in Geneva specialized in U.S. law what the abbreviation C.Y.A. stood for, he first suggested that I look it up on the internet because the metaphor was objectionable. He later explained to me that getting individuals to sign documents that could forestall subsequent litigation, in which people essentially waived certain rights, was referred to as a ‘cover your ass.’ He assured me that having people sign such forms is routine practice in Anglo-American jurisprudence in order to protect corporations and organizations from possible future litigation. These documents are no laughing matter, and researchers are nowadays essentially being compelled by their granting agencies and their universities and institutions to foist such documents upon language informants in native communities in the field.

Ethics protocol enforcers are wont to depict themselves as caring, but in fact those enforcing ethics protocols in language research manifestly care little about either the people or the researchers. The entire exercise is essentially just about global compliance with Anglo-American legal culture. In many societies, amongst which rural Bhutan is just one example, only people with a Western education can even begin to understand the thinking behind such paperwork. The legal forms with which researchers are required to confront local people in distant language communities show an utter disregard for local values and non-Anglo-American culture and a profound contempt for the people in these communities.

Research on endangered languages is not the only area affected by these policies. Speaking from personal experience, during the Bhutanese Genome Project, the Royal Government of Bhutan hastened to point out that the elaborate ethics protocol of

the Human Genome Diversity Project was immoral and contained many stipulations which were reprehensible to Bhutanese sensibilities. Government spokesmen categorically rejected the inherent imperialism of requesting Bhutanese citizens to sign any foreign legalistic paperwork within Bhutan, whether or not the text had been properly translated into Dzongkha. At the time, the ethics protocol then still in use stressed that the research findings could not be used for medical purposes, evidently because the profits made by drug companies were deemed by the ethics protocol drafters of the day to be unethical, but the Bhutanese officials considered this exclusion immoral. They also stressed that Bhutanese DNA donors must be offered financial incentives for their participation in accordance with government rule.

Ethics protocols prescribed that some services were to be paid for, whereas other services were not to be remunerated, and in exchange for participation in certain types of research no financial recompense could be offered. The Bhutanese have their own standards and customs. Offering money for certain types of activity or assistance constitutes one of the rudest types of insult, whereas some other types of assistance have for centuries required a show of gratitude in the form of a *sōra*, a sensitive cultural gesture for which there is no apt English translation and which often, but not always, takes the form of money. Evidently it has never occurred to the people who draw up ethics protocols that the world might look different in Lhüntsi or Tamphula than it does in Washington or Canberra.

In 2014, in an issue of *Nature*, an editorial highlighted how U.S. regulators compel institutions working with human subjects to conduct multiple ethics protocol reviews, whilst they frown on the practice of an institution conducting its own review and instead “explicitly push the cost of a duplicate review onto the institution”.⁴ In 2015 again, in another opinion piece in *Nature*, entitled “Bioethics accused of doing more harm than good,” Jyoti Madhusoodanan (2015) calls for bioethics to “get out of the way” and urges haughty ethicists to undertake some self-reflection. In fact, many of the ethical issues in biological and medical research do not extend to linguistic research. The polyglot Swiss are well aware of this, for I have twice been prompted by spokespersons of the Swiss National Science Foundation in Bern that language informants are speakers of languages and, as such, not deemed to be *Versuchspersonen* in the sense of experimental subjects of medical and biological experimentation. This commonsensical insight would evidently be a revelation to some ethics protocol enforcers in the Anglo-American world, where people who happen to speak a language, as most people do, become ‘human subjects’ once you ask them a question about their language.

In the Khmer context, a similar situation cropped up in Cambodia when French researchers sponsored by the Centre National de la Recherche Scientifique in Paris, emulating the example of their colleagues in the Anglo-American world, came with lots of paperwork for local people to sign. Gérard Diffloth, who has spent half of a century conducting research in Southeast Asia and who lives in Cambodia, was at pains to explain to linguists, geneticists and even to anthropologists who, one might

⁴Ethical overkill: Institutions should take a unified look at protections for research on human subjects. *Nature* 516(7530). 143–144. doi:10.1038/516143b.

think, should know better, that their ethics protocol was misconceived and highly inappropriate in the Cambodian cultural context. The documents which they were required to get signed were going to ruin their relationship with the local people from the very outset. Gérard explained patiently that people who come with documents for you to sign, even if they have been translated into Khmer, will be assumed to be out to steal your land or to harm or cheat you in some other way. Gérard witnessed that the Cambodians who were embarrassed by the researchers into signing the forms promptly vanished, and the people actually donating the genetic samples were in fact other individuals who had not been compromised in this way. This switch reportedly eluded the selective perception of the researchers. Cambodia is not an isolated case, nor is the Khmer context aberrant. What is both unusually misguided and harmful is the attempt globally to enforce a litigious Anglo-American legal culture.

The National Science Foundation in Washington obviously expects compliance with their ethics protocol paperwork. Ethics protocols compel researchers, even those who know better, just to get on with it and to comply. I do not believe that any researchers actually resort to subterfuge, but the absurdity of enforced protocols at the very least necessitates that a researcher go through the motions. When a researcher is aware of local sensitivities and knowledgeable of local culture, does this knowledge render a researcher disingenuous when he or she earnestly attempts to comply with bureaucratically enforced procedures? Even if a particular researcher were to know that the exercise amounts to a farce, he or she has very few options, since bureaucracies are notoriously intransigent, and speaking out in most cases would effectively entail foregoing funding.

From a Himalayan vantage point, I was able to observe how the National Science Foundation required one gifted American researcher to procure a letter from the leadership or governing body of a particular Himalayan language community, stating that the researcher had been accepted by the local community and so was authorized to conduct research on their language. This paperwork was required before the researcher in question was even allowed to submit her grant proposal. The said letter also had to state *a priori* that nobody would be harmed by the research that would be conducted on their language. All this paperwork, which had to be locally generated in a remote mountainous part of the Himalayas beforehand, was part of meeting the ethical prerequisites for even applying for funding to conduct the endangered language research in the first place. This entire procedure is preposterous in two respects, and I doubt that the poor researcher, who is a talented linguist, could have been oblivious of the reality of the situation.

The first bit of folly is the inherent assumption made by the National Science Foundation that some particular leader or governing body exists that is entitled to speak on behalf of a particular language community and therefore authorized to issue paperwork in the name of that entire language community. As field linguists, we know very well that there generally exists no governing body authorized in any legal sense, or even in any unofficial but legitimate way, to speak on behalf of the community of speakers of any given language. The most investigated language in the world is English. When we linguists conduct linguistic experiments with speakers of

English, do we first request permission from the tribal chieftain? Do we first compose a petition to Queen Elizabeth II? If we undertake to conduct linguistic research on Dutch, to which particular tribal chieftain do we turn? Do we request authorization from Willem-Alexander, King of the Netherlands and Prince of Orange-Nassau, or does His Majesty Filip Leopold Lodewijk Maria, King of the Belgians, also hold some jurisdiction over the language community? Even in the case of languages which do not transcend national boundaries, who could possibly claim to speak on behalf of the Rhaeto-Romance language community in Switzerland? A very strangely condescending colonial attitude inspires bureaucrats who assume that language communities elsewhere are led by some tribal headman or council of elders that can speak on behalf of the entire language community.

The second absurdity is that a good number of industrious people in Nepal will be prepared to issue statements on official stationery which they will have especially printed for a foreigner asking for unusual services. In writing, these entrepreneurs will even be prepared formally to usurp the authority of speaking on behalf of an entire language community for the purposes of the paying client who must furnish this paperwork to, say, the National Science Foundation in Washington or the European Research Council in Brussels in order to receive funding and support for their research. The people issuing such paperwork are not guilty of wrongdoing. Toy passports and toy driving licenses are sold in children's stores and as a curiosity in some stationery shops in the West. Entrepreneurs merely accommodate the world of make-believe in which the foreign researcher is compelled to operate. The extraordinary type of paperwork required is inherently fictitious, for there are no governing bodies of language communities which could legitimately issue research permissions on behalf of all of the speakers of the language community. No language is anybody's intellectual property. In future, however, since this cottage industry has now got started, certain bodies have already begun to exercise a claim to the authority of conducting business profitably on behalf of 'their' language community.

The cultural damage inflicted upon other societies and cultures by insisting on global compliance to such moral depravity should be stopped. In the globalized world, we are already accustomed to such disingenuous practices on a daily basis. We are routinely confronted with legal documents that are not designed to protect ethics, but rather to protect vested interests. This moral depravity pervades the daily intercourse that we call the 'social media' and underlies the agreements to which software developers shamelessly compel users to agree. If ever some wrongdoing is detected, the guilty party can hide behind the fine print in the so-called end user license agreement (EULA). The choice presented to the consumer is effectively between saying, however disingenuously, 'Yes I have read, understood and fully agree to the document in officialese which I have not actually bothered to read and of which I would not otherwise understand all the legal implications anyway' or to discard one's expensive computer and abandon one's work. The consumer has no real alternative, and it ought to be plainly obvious that this practice is morally reprehensible. The situation is more dire, however, than just this bogus paperwork, for, as Richard Stallman (2015) stresses, "Malware is not only about viruses—companies preinstall it all

the time.” Like the agreements which granting agencies and universities compel us to get signed by our language informants, the paperwork does not render the research ethical. Paperwork might, at most, make the work lawful, but that is something different.

Rule of law may be ethical as long as the laws are just, and if these laws are justly applied, but our Byzantine web of rules and regulations devised by bureaucratic busy-bodies transgressed that frontier long ago. Current ethics protocols and their administrative enforcement both hamper and damage research on endangered languages. They represent an excess of the Anglo-American legal system. How can we conduct linguistic fieldwork in an ethical fashion without resorting to culturally myopic and often misguided ethics protocols? The ethicists, with their present record of prescribing unseemly and culturally inappropriate behavior to researchers in the field, have forfeited any claim to moral authority. On the other hand, research programs are often led by charismatic and moral individuals who inspire their researchers. Most researchers whom I have met in the course of decades of research are ethical individuals, who strive to work in consonance with the dictates of their conscience. In my experience, most field researchers strive to be good people, whereas the people devising the paperwork for the enforcement of ethics protocols appear to have the mind set of a certain breed of lawyer. The work of honest and good field researchers can only be hampered by idle legalistic paperwork.

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