

# Moral perspectives on covert research

A A van Niekerk, MA, BTh, DPhil

*Centre for Applied Ethics, Department of Philosophy, Stellenbosch University, Western Cape, South Africa*

**Corresponding author:** A A Van Niekerk (aavn@sun.ac.za)

The term 'covert research' refers to research on human subjects for which informed consent is not, and allegedly cannot, be solicited – not because of wilful negligence or the deliberate transgression of research ethics guidelines on the part of the researcher(s), but because the revelation of the nature of the research to the involved research participants would necessarily invalidate the research results. While covert research is deemed necessary in a number of sciences, such as ethnography, such research nevertheless elicits major ethical concern due to the fact that it seemingly violates the values of respect for autonomy and the protection of research subjects – values that have, since the first formulations of the Nuremberg Code, the Belmont Declaration and the series of Helsinki accords, become almost axiomatic in our understanding of the basic tenets of responsible and ethical research on human subjects. In this article, I contend that while subject autonomy is a pivotal value in morally legitimate research generally, there is more to morally legitimate research than informed consent. I conclude by formulating a few guidelines for the identification of circumstances under which covert research might and might not be morally in order.

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The term 'covert research' refers to research on human subjects for which informed consent is not, and, allegedly, cannot, be solicited – not because of wilful negligence or the deliberate transgression of research ethics guidelines on the part of the researcher(s), but because the revelation of the nature of the research to the involved research participants would necessarily invalidate the research results. Herrera<sup>[1]</sup> provides the following example of such research: '... a researcher might feign alcoholism and join a recovery group, using the meeting time to record the interaction of the members. Her carefully tailored behaviour would include the fostering of false beliefs in her cohorts.' To reveal to the research subjects what she is actually busy with, would necessarily result in their adjusting their behaviour and thus undermining the credibility of the information that she hopes to recover. Herrera writes: 'This is research that exploits naïve trust, and where data collection relies on a "cover story". Far from being open in any meaningful sense, studies like this are predicated on the omission of informed consent ... Arguments defending covert research usually follow vaguely utilitarian lines. The idea is that whatever risks covert methods might involve are offset, or balanced, by the benefits that follow from the research. The promise is one of net gain.'<sup>[1]</sup>

The ethics of covert research is an important issue, mainly for two reasons. Firstly, it is often claimed that this kind of research is essential for the business of many sciences, such as ethnography. Secondly, in spite of this alleged importance, covert research is a kind of research that seemingly violates the values of respect for autonomy and the protection of research subjects – values that have, since the first formulations of the Nuremberg Code, the Belmont Declaration and the series of Helsinki accords, become almost axiomatic in our understanding of the basic tenets of responsible and ethical research on human subjects.

It is sometimes claimed that the acquisition of informed consent from all research subjects is the best guarantee for the protection of the legitimate interests of those subjects. That is often the case, but

not always or necessarily the case. It is, for example, quite conceivable that a research subject might unknowingly or unwittingly participate in a drug trial that might yield a therapy from which that person might as a consequence – immediately or later in life – benefit directly.

Furthermore, there exists a danger that researchers might be under the impression that the fact that a research subject has provided informed consent exempts the researchers from any further moral responsibility towards the subject in the course of the research process. The latter is also ethically untenable. The researcher's basic moral duties of beneficence and non-maleficence towards research subjects continue in the course of the research process, irrespective of whether consent has been solicited or not.

I make these preliminary points to emphasise that, although subject autonomy is a pivotal value in morally legitimate research generally, we would do well to avoid the often mistaken assumption that informed consent is an absolute or final criterion for ethical research procedures. There is, in other words, more to morally legitimate research than informed consent. This claim, in turn, raises the more pertinent question as to whether there might then not also be a kind of ethical research on human subjects that could (and should) proceed without informed consent.

The first distinction to be made in this regard is that between covert research and deceptive research. What is common to both of these is the claim that the research cannot methodologically proceed or yield valuable results if the subjects of research are aware of the fact that they are being researched. The reason for this is that the knowledge of being researched will almost inevitably lead to a change of behaviour among the subjects that would defeat the enterprise. This phenomenon is related to what is sometimes called the 'Hawthorne effect',<sup>[2]</sup> which refers to the fact that 'the behaviour of subjects can be changed by the mere presence of the researcher.'<sup>[3]</sup> Giddens ascribes this phenomenon to what he calls the 'double hermeneutic' of social science research as a symptom of the 'reflexivity of Modernity', i.e. the phenomenon that social reality is easily transformed by the fact/process of making

it a subject of research, since social actors respond and change their behaviour and therefore the fabric of social reality itself as a result of being studied or conceptualised.<sup>[4]</sup> Therefore, for example, Winlow *et al.*<sup>[5]</sup> report on a study of the behaviour of doormen where valuable results could only be attained by the researcher(s) themselves going undercover and becoming doormen.

This kind of covert, in the sense of undercover, research is the result of the withholding of information. It must be distinguished from deceptive research, where not only the real identity of the researcher(s) is withheld from the research subjects, but also the nature of what is being researched. The example that I gave at the beginning (Herrera's example of a researcher feigning alcoholism) is, in fact, an example of covert research (the real identity of the researcher is not revealed) which is, at the same time, also deceptive research (what is being researched is withheld from the research subjects). Research can, in other words, be both covert and deceptive. In deceptive research, the research subjects are deliberately deceived, not only about the real identity of (if not all, then at least some of) the researchers, but also about what is actually being researched, in order to attain the required results. Stanley Milgram's famous experiment in the early 1960s remains the most spectacular and notorious example of such research.<sup>[6]</sup>

Milgram wished to study the extent to which submission to authority was not only a characteristic of Germans under the spell of Hitler and Nazism, but a universal human trait. He therefore set up an experiment involving ordinary US citizens who were made to believe that they were participating in a study to establish how rapidly persons under the duress of pain are able to learn complicated sequences of numbers. The 'learners', who were in fact Milgram's co-investigators, were separated from the 'investigators', who in fact were the research subjects and were made to believe that they were assisting Milgram with the experiment – the 'subjects' on whom the research was done were in fact Milgram's research assistants. These 'investigators' were instructed to inflict an electric shock of persistently increasing voltage on a 'subject' who gives a wrong answer. No shocks were in fact administered, although the 'subjects' feigned pain as a result of the 'shocks' they wanted the investigators to believe they were administering.

The remarkable finding was that, in spite of being under the sincere impression that they were inflicting severe pain, the 'investigators' continued to administer ever more severe shocks – in some instances up to the maximum allowed voltage. Although Milgram always claimed that his results – the insight that ordinary, seemingly non-violent US citizens are as capable as anyone else of inflicting pain and therefore of irrational obedience – could not have been attained in any other way, his research has been widely condemned, not only because of the lack of consent, but also because of the deliberate deception and the way in which he, according to his critics, abused his position of authority to instigate the deviant behaviour (the 'investigators' and 'subjects' were handsomely paid for their participation).<sup>[7]</sup>

It is fairly self-evident what the main objections to covert and deceptive research are. I have already pointed out the clear-cut deception and possible abuse of personal power in the case of the Milgram experiment. Covert research is sometimes very intrusive and clearly violates the privacy of research subjects. An example in point was Humphrey's study of the behaviour of men engaging in

homosexual acts in public restrooms.<sup>[8]</sup> Van Amstel<sup>[3]</sup> writes in this regard: 'Such violation [of privacy] occurred not only as a result of the actual observation of the homosexual act by Humphreys in the covert social role of "watchqueen", but also when he secured the addresses of the men involved by tracing the licence plate numbers of their cars, and then used this information to track them down and question them.'

'Privacy' in this context can then be defined as 'the claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is communicated to others.'<sup>[9]</sup> We will note later that privacy, as defined, cannot be a right that is always and everywhere inviolable. Covert research is also often morally condemned because it allegedly violates the interests of subjects, and is therefore at loggerheads with the oldest and arguably most pervasive and compelling of all moral principles: *Primum non nocere*: 'first do no harm.'<sup>[10]</sup>

Available space does not allow me to deal with all the objections systematically or comprehensively. I will conclude by formulating a few guidelines to identify the circumstances under which covert research might, and might not, be morally in order. I'll limit myself to four points:

- The first guideline is: Establish a relationship of trust and integrity with research participants in as far as that is possible. If confidentiality is promised to the research subject, that confidentiality must be kept under all circumstances, and if it cannot be kept, it should not be promised. A research subject ought to always have the opportunity to withdraw from participation in a study (Declaration of Helsinki, article 26).<sup>[11]</sup> It is clear that one of the main problems with covert research is that it forfeits that seemingly inalienable right of the participant. In other words, when we judge the moral legitimacy of covert research, it seems inevitable to draw on a strong (individual) human rights-orientated argument that has priority over the utilitarian concerns in terms of which covert research is normally justified.
- The second guideline is: Avoid harm as far as possible, yet not necessarily beyond the consequences of the actions of a research subject. The participants in Milgram's experiment might have contributed to our knowledge of human behaviour, but that outcome does not weigh up to the harm that was done to them in terms of the abuse of authority to which they were submitted, the deception they suffered and the distress they consequently experienced. On this score, utilitarian concerns again do not seem to trump the claim of human rights and human dignity.

However, utilitarian concerns can also not be dismissed entirely. It cannot be consistently argued that harm could and should never come to research participants. In this respect it seems to me better to argue, as stated in the guideline, that harm should be avoided beyond the consequences of one's own action. By this I mean that if an agent A deliberately does things that harm others, A has no moral case to expect research done on his/her (harmful) actions to be done in such a way that that research will not yield results that will be harmful to A in turn. Take as an example undercover research into the behaviour and strategies of football hooligans in Britain. If this research clearly exposes criminal activities and tactics on the part of the hooligans that in themselves generate significant harm to other people, does the researcher have no moral duty to expose

such behaviour? I tend to agree with Spicker's conclusion that 'There is nothing intrinsic in the rights of the research subject that implies that the researcher must become complicit in the crime.'<sup>[12]</sup>

Another example that is relevant in this respect relates to an incident that occurred as a result of a research project into the integrity of processed meat in certain butcheries and supermarkets in South Africa (SA) – a project done by researchers in the Department of Animal Studies in the Faculty of Agricultural Sciences at Stellenbosch University. In this research, meat products (such as mincemeat and hamburger patties) were simply purchased over the counter by researchers and tested.<sup>[13,14]</sup> It was found that some labels on these products were misleading, and that meat from species such as horses, donkeys and camels were mixed into the meat indicated on the labels.

With reference to this incident, which was covert in the sense that research was done on food products without informing the commercial interests selling those products (although it is hard to see why there was any moral or legal obligation on the researchers to divulge such information), it can indeed be argued that if there is proof that the integrity of meat products offered commercially to the public of SA is compromised, and if such compromise is against the law, there is no compulsion on researchers establishing the integrity of such products to protect those responsible for violating the law.

The above argument, of course, presupposes that the law is legitimate and just. That is a reasonable expectation in a democratic context. Laws, however, can also sometimes be unjust. SA, as a country, has a notorious history of unjust laws that prevailed in the time before democratisation, which only arrived in 1994. What, then, do we do when the law is itself immoral? What about the hypothetical researcher spying under false pretences on consenting adults who have sex across the 'colour bar' in the old SA – something which, at that time, was 'illegal' – in terms of article 16 of SA's then 'Immorality Act', as that law was oxymoronically called – but certainly not immoral? Is this researcher consequently 'doing the right thing' when he turns the participants in to the police? The answer must be negative. The argument developed above can only be valid in a democratic context where the law has moral legitimacy.

- The third guideline is: Respect research subjects' human rights, including their right to privacy, as far as possible, but not necessarily when they knowingly act in public. The right to privacy and the obligation to avoid harm are important but not absolute moral demands. Not all human action is of a nature that justifies the right of the actor to not divulge information about it. That is because many of our actions occur in public and are therefore open to public revelation and/or scrutiny, including the scrutiny of the researcher. Shils<sup>[15]</sup> writes in this regard: 'Observation which takes place in public or in settings in which participants conventionally or knowingly accept the responsibility for the public character of their actions and expressions ... is different from observation which seeks to enter the private sphere unknown to the actor ... The open sphere – the sphere in which the individual has committed himself to publicity – is a legitimate object of observation, as it is of interviewing.'

To return to the last example under the previous point, this guideline has a direct bearing on the case of research into the

integrity of labels on meat products sold commercially to the public. To sell a product – any product – in a shop or butchery is a public act which is at all times open to public scrutiny. If the public is misled by such commercial transactions, researchers have both the right and arguably the moral duty to expose any misinformation or deception. It is ludicrous to, in such circumstances, demand the right to consent when investigated. Spicker<sup>[12]</sup> rightfully notes in this regard that: 'consent becomes morally irrelevant, because the information is beyond the right of the individual to control. This is the main answer to the allegation that covert research denies research subjects the opportunity to be informed, to consent, or to withdraw from research. If they are in the public domain, they have no such rights.'

What can be conceded in terms of this argument is that the decision as to whether the researched or observed actions are indeed in the public sphere is not always that easy. Take the example of domestic violence: is wife battering an action that warrants a claim to privacy, or is it an act in the public sphere that cancels the man's right to claim privacy? To me, it seems to be the latter, but it is conceivable that there are a number of borderline cases that might not be that easy to decide.

- The fourth guideline is: When in doubt – and even when not in much doubt – submit the proposed research to ethical review. It is always better to consult the accrued wisdom of colleagues in a research ethics committee (REC), even if the researcher is relatively sure that consent need not be solicited for a research project. Often this ethical review will not necessarily result in placing any impediments on the protocol, but it could also be very useful in order to establish risk – if not risk to the researcher, then risk to the institution of which he or she is part. In the case of the meat research project mentioned above, it turned out that the main risk which this research provoked was not any moral misconduct on the part of the researchers, but the possible loss of financial support for the university as a result of the exposure of the possible complicity of powerful business interests in compromising the integrity of product labels.<sup>[16]</sup> Such a risk might well be one that an institution such as Stellenbosch University might under certain circumstances be willing to run for the sake of scientific credibility. It would, however, always be better for the researchers to be cautious of making that decision on their own, and to rather defer the decision until a process of proper ethical scrutiny has occurred in the ranks of a legitimate REC.

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