

Research Article

Resisting Commensurability: Against Informed Consent as an Anthropological Virtue

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ABSTRACT In this article, I examine anthropology's embrace of the informed consent doctrine at the end of the 1990s. Although acknowledging its utility in resolving the tensions between disciplinary ideals of openness in field research and the diverse array of contexts in which anthropologists now work, I argue that it has not been in our best interest to co-opt the concept. Bringing together the prior critiques of the informed consent doctrine's application to ethnography, I criticize the tendency of some ethnographers to characterize ethnographic practice as "insuperably flawed," pointing instead to the problems with the doctrine itself. I tease out underlying assumptions about the nature of research (and researchers and research subjects) that it presumes, and I conclude by suggesting the need for anthropology take a principled stance against the informed consent doctrine. [*ethnography, informed consent, research ethics, institutional review boards, anthropology of ethics*]

RESUMEN En este artículo, examino la aceptación de la doctrina del consentimiento informado por la antropología a finales de los 1990s. Aunque reconociendo su utilidad para resolver tensiones entre los ideales disciplinarios de apertura en el campo de la investigación y el diverso arreglo de contextos en los cuales los antropólogos ahora trabajan, argumento que no ha sido en nuestro mejor interés el cooptar el concepto. Juntando las críticas anteriores sobre la aplicación de la doctrina del consentimiento informado a la etnografía, critico la tendencia de algunos etnógrafos a caracterizar la práctica etnográfica como "insuperablemente problemática," en vez de señalar los problemas con la doctrina en sí misma. Extraigo los supuestos subyacentes sobre la naturaleza de la investigación (y los investigadores y los sujetos de investigación) que ésta presume, y concluyo sugiriendo la necesidad de la antropología de tomar una posición de principios en contra de la doctrina del consentimiento informado. [*etnografía, consentimiento informado, ética de la investigación, juntas de revisión institucional, antropología de la ética*]

As most readers will be aware, the recently revised American Anthropological Association Statement on Ethics (AAA 2012) emphasizes the importance of informed consent.¹ To quote from the code, "Anthropological researchers working with living human communities must obtain the voluntary and informed consent of research participants" (AAA 2012). During the consultations regarding the proposed revisions to the code, I watched the discussions unfold on the AAA blog with much interest. However, while several concepts engendered lively debate, the discussion

thread on the principle of informed consent was noticeably lackluster.

The most contested principle was the admonishment to "do no harm," which generated 50 responses, ranging from expressions of unqualified support to an emphatic dismissal of its relevance to anthropology. For example, according to Murray Leaf, "Do no harm is fine as a principle of medical practice, where you are working with a single individual. It is nearly meaningless when you (we) work with human communities, in which what is good and what is harm is

usually in contention” (AAA 2010a).² In the view of Gerald Sider,

Do no harm, which sounds good and clean and noble, is just about the most self-serving, juvenile crap I have heard in a very long time, and morally *vacuous* to boot . . . There is no way we can do no harm, unless we are postmodernists who write drivel, because to live morally in an unequal world we have to hurt someone. The only question that matters is who and why . . . Go and tell me you do not want to do any harm to anyone, when the violence of inequality and domination within native communities is probably the most salient feature of the last 3 or 4 decades of indigenous peoples’ histories. *Unlike what the U.S. does, we do not have to kill or torture anyone, just move them very firmly aside.* [AAA 2010a]

In contrast, only nine comments were posted on the informed consent principle, and most took the form of suggested tweaks to the wording, with several explicitly affirming the importance of the concept to the discipline. According to Shalini Shankar, “Informed consent, as this principle emphasizes, is indeed an essential part of anthropological research” (AAA 2010b). The bulk of feedback centered on the need to encourage ethics boards to move beyond the idea of consent forms; the following comment by Linda Giles is representative of the responses posted:

I like the addition that informed consent does not need to [be obtained] via a written form. I find such a form very off-putting and worrying for many local peoples outside of the European cultural milieu—they worry about what they are signing and moreover they often worry about remaining anonymous. Hopefully adding this part will help influence IRBs [institutional review boards] to realize that written consent forms are often not the best way to obtain consent in many fieldwork contexts. [AAA 2010b]

The applicability and validity of the concept of “informed consent” itself was not challenged to any substantive degree in the feedback. In this respect, the comments largely echoed the results of Lisa Wynn’s (2011) international survey of ethnographers’ experiences with institutional ethics oversight, wherein many respondents criticized their ethics committee’s preoccupation with written consent and the idea of consent as a one-off process, but none challenged the doctrine itself. However, while currently treated as a closed debate within anthropology (in official discourse, at least), as the historian Zachary Schrag (2010) documents, it was only in the late 1990s that the doctrine of informed consent was formally embraced in the discipline, in the context of ongoing debate about its validity for anthropological research.

How did the informed consent doctrine come to be imported into formal articulations of anthropological research ethics? Pointing to the debates about the concept of informed consent in medicine and bioethics, the sociologist Oonagh Corrigan has observed that her field has “by and large, posed very few questions and has not contributed much in the way of theoretical or empirical insight to this issue” (2003:769). This observation also holds equally true for anthropology. For various reasons, we haven’t subjected the concept to the disorienting, critical-comparative perspective that is a characteristic feature of our discipline (cf. Lederman 2007:323).

Such restraint is a little surprising, given that we’ve been some of the loudest and most vehement critics of the expansion of human subjects regulation to anthropological research. It suggests that informed consent has reached the status of an unassailable value—after all, how can one be against informed consent?

Inspired in part by Michael Lynch’s (2000) effort to question the meaning and epistemic virtues ascribed to “reflexivity,” I want to challenge the embrace of informed consent as an academic—and anthropological—virtue. In aid of this agenda, I focus on three distinct topics: (1) the context of anthropology’s embrace of the concept, (2) the fundamental incompatibility between ethnography and the informed consent doctrine, and (3) the underlying assumptions embedded in the concept itself. I should note up front that much of this article covers well-trodden ground and accompanies, rather than necessarily extending, the cogent critiques of human subjects regulation leveled by others. However, by focusing specifically on informed consent, I hope to challenge readers to consider whether it is in our discipline’s best interests to co-opt the doctrine as a meaningful way of conceptualizing and addressing the ethical issues involved in ethnographic research.

INFORMED CONSENT: THE RISE OF A DOCTRINE

The doctrine of informed consent is generally deemed to have made its first appearance in the originary sacred text of bioethics: the 1947 Nuremberg Code. This code, developed in the wake of the Nazi war crimes trials, forms part of the obligatory history section of research ethics textbooks and is seen to represent the beginning of a more enlightened approach to research ethics in the middle of the 20th century (Fitzgerald 2004; Petersen 2010). Although such Whiggish accounts have been challenged (e.g., Vollman and Winau 1996), it was indisputably the Nuremberg Code that entrenched informed consent as a core ethical value. Although the code pertained specifically to medical experiments, it became the foundation for subsequent efforts to articulate research ethics principles writ broad, including the Belmont Report, the first major effort to expand the scope of research ethics guidelines to social science and behavioral research (see Schrag 2010).

The Belmont Report equally stressed the primacy of informed consent, stating:

Respect for persons requires that subjects, to the degree that they are capable, be given the opportunity to choose what shall or shall not happen to them. This opportunity is provided when adequate standards for informed consent are satisfied. While the importance of informed consent is unquestioned, controversy prevails over the nature and possibility of an informed consent. [HHS 1979]³

Despite the overt centrality of biomedical rationales to the Belmont Report, this frame of reference is generally understood as a neutral medium for expressing universally applicable principles (Lederman 2012). In this framework, informed consent to research participation is conceptualized as a basic human right, one underpinned by the assumption

that enabling individuals to make free and informed choices protects their rights and welfare.

Although energetic critiques have been mounted of the autonomous, rational individual evoked by the concept and the fetishization of informed consent at the expense of broader moral issues (e.g., Corrigan 2003; Corrigan et al. 2009; Harper and Jiménez 2005; van den Hoonaard 2011), it remains at the heart of contemporary formulations of research ethics. Indeed, research ethics and informed consent have come to be seen as virtually interchangeable synonyms; ergo to obtain informed consent is to be ethical, and being ethical is about obtaining informed consent.

Despite its centrality to research ethics frameworks, as previously noted, it was only in the late 1990s that the AAA formally embraced the concept, which had both vocal supporters and vehement detractors in the discipline. In an article published in *Human Organization* in 1994, Carolyn Fluehr-Lobban—one of the more influential supporters—opened the conversational gambit by unfavorably comparing anthropology with psychology, which embraced the informed consent doctrine in the 1960s. “Why,” she asked, “has such a potent doctrine not been explicitly incorporated within the social sciences and their standards of professional conduct?” (1994:2). Arguing against a position of disciplinary exceptionalism, Fluehr-Lobban concluded that implementing the spirit of the doctrine of informed consent would result in “better researchers and better research” (1994:8).

Murray Wax (1995), perhaps the most longstanding critic of efforts to extend human subjects regulation to anthropology (e.g., Wax 1977), responded by articulating a variety of concerns about its application to the discipline. Arguing that it would foreclose valuable anthropological research, he pointed to the problems with determining who should provide consent in contexts of differing social and political interests, as well as the general difficulty of communicating study goals to people who often confuse anthropologists with welfare workers, missionaries, and so on. For Wax, “unhappily, we have usually been the target of regulators who operate in ignorance of our research situation” (1995:330).

The debate continued in the journal over the following year, with Chris Herrera taking Wax to task for asserting that anthropology should not be held to what now amounted to a universal standard. Herrera argued that “within the narrow band of scientific inquiry that would be affected by a more stringent informed-consent doctrine, it is difficult to explain what kind of ‘damage’ greater attention to ethics would cause” (1996:236). Clearly evident in Herrera’s commentary is a tendency to conflate informed consent with research ethics more broadly, perhaps unsurprising given the former’s stranglehold on the latter, as well as Herrera’s own disciplinary background in ethics rather than anthropology.

Patently unimpressed with the likes of an ethicist entering the fray, Wax decried such “tedious moralizing” from a commentator whose arguments drew exclusively from the psychological and philosophical literature and who “uncon-

sciously assumes the arrogance of the proselytizer, preaching to the heathen, and so uncomprehending of their resistance to his misguided message” (1996:238). Attempting to disentangle informed consent from questions of morality and ethics, Wax argued that the informed consent dogma was largely irrelevant to the moral problems of cultural anthropology, becoming meaningless ideology that overlooked the responsibilities of prolonged fieldwork.

The final word went to Fluehr-Lobban (1996), who reiterated her initial points using the language that has now become standard in principled approaches to research ethics, arguing that a wide degree of pandisciplinary consensus had been achieved regarding consent as an ethical and legal concept that recognized a basic set of rights all human “subjects” have. She warned, “The spirit of informed consent is not divisible by discipline or subdiscipline, by research up and down the social pyramid, or by the ‘good’ or ‘bad’ intentions of the researcher” (1996:240). In the end, Fluehr-Lobban prevailed, and in 1998 the AAA adopted informed consent language for the first time (Schrag 2010:144).

ANTHROPOLOGY’S EMBRACE OF THE CONCEPT

So what prompted the change—and why at this particular juncture? As Peter Pels observes, “the present interest in ethical codes is only one way of institutionalizing moral standards and ethical guidelines in anthropology and a very recent and fairly unusual one at that” (1999:101). Notably, the introduction of the informed consent wording in 1998 coincided with the reconfiguration of the AAA’s “Principles of Professional Responsibility” as a “code of ethics.” Prefiguring ethics in this way located the document within a broader pandisciplinary conversation; after all, ethics, as Fluehr-Lobban made clear, are not local and particular but universal. And as we have seen, despite Wax’s attempts to challenge the conflation, to talk of “ethics” makes talk of informed consent virtually unavoidable. In fact, what is surprising is that anthropology resisted the siren call of an ethical code for so long.

For Pels (1999), the field’s initial discomfort with ratifying core principles is largely due to anthropology’s “ethical duplicity.” In his view, anthropology’s epistemological commitment to cultural difference since the late 19th century has made its morals essentially duplex: “without duplicitous intent or moral corruption, anthropologists cannot but adopt ‘double standards’” (1999:102). It was such duplicity—and the ethical and epistemological doubling it entailed—that enabled anthropologists to simultaneously service and distance themselves from the colonial administrations that both facilitated and were the primary consumers of anthropological research.

Pels argues that a major turning point occurred with the outrage over Project Camelot: the social science research project in support of the U.S. Defense Department’s counterinsurgency program in Latin America. The AAA’s 1967 Statement on Problems of Anthropological Research and Ethics roundly condemned clandestine research and

activities in which restrictions were placed upon the free dissemination of study results. This statement was succeeded by the Principles of Professional Responsibility in 1971, which was formulated in the wake of concerns about anthropological involvement in counterinsurgency research in Thailand (see Jorgensen and Wolf 1970). This statement introduced wording about anthropologists' paramount responsibilities to the people they studied and condemned the secret dissemination of findings to some groups while withholding them from others (AAA 1971).

According to Pels, these developments signaled a major shift in anthropology toward the values of the people represented. In other words, those studied could now be conceptualized as the field's intended clients, and third-party involvement in the dyadic relationship between anthropologist and informant was explicitly acknowledged and problematized. However, as Pels notes, these principles assumed the academic context of anthropological employment—an assumption that became increasingly difficult to sustain in the 1970s and 1980s as opportunities for academic employment dwindled. By the mid-1980s, more professionally trained anthropologists were employed outside the academy than within its halls; the proposed revision of the AAA Principles of Professional Responsibility in 1984 was developed in response to these changed circumstances, recognizing that anthropologists' professional situations are varied and complex (Fluehr-Lobban 2003). However, the proposed changes were controversial—especially the removal of the clause about anthropologists' obligations to the people they study. Gerald Berreman (2003) later attributed these changes to the broader cultural climate in the United States in the 1970s and 1980s. To Berreman, “it seems that the era of Reaganomics spawned the nightmare of Reaganethics” (2003:75). He argued that with its emphasis on free enterprise research, the proposed statement reflected a shift toward a preoccupation with personal well-being at the expense of the broader principles of social justice.

The controversy that the proposed revision to the Principles of Professional Responsibility generated led to its abandonment. The document ratified in 1989 retained statements about anthropologists' primary obligations to those they studied, although it failed to condemn clandestine and secret research in the same clear-cut fashion as the 1971 version (Berreman 2003). The next iteration of the document in 1998 marked its reframing as a “code of ethics” replete with informed consent wording, stating:

Anthropological researchers should obtain in advance the informed consent of persons being studied, providing information, owning or controlling access to material being studied, or otherwise identified as having interests which might be impacted by the research. [AAA 1998]

There is little doubt that the intensification of regimes of research ethics oversight throughout the 1990s influenced the growing importance placed on the doctrine of informed consent in anthropology (see Schrag 2010). For example,

this context was explicitly referenced in Fluehr-Lobban's (1994:4) original call for anthropologists to embrace the informed consent doctrine, wherein she argued that the concept applied not only on moral and humanistic grounds but also because “anthropological and social science research is increasingly subject to the same regulation” as other types of research. It is also indirectly referenced in the 1998 code itself in statements such as this one: “Researchers are responsible for identifying and complying with the various informed consent codes, laws and regulations affecting their projects” (AAA 1998).

Although these external factors were clearly influential in the embrace of the concept in anthropology, I don't want to imply that the discipline merely acceded to external pressures. In my view, the doctrine was also useful in mediating between the academic and applied contexts in which anthropologists were increasingly working—contexts that had been the source of such friction in earlier discussions of ethics. For example, while the 1998 code remained coy on the topic of secret research, it's clear that the informed consent provision became seen as a way of indirectly ensuring that secret and clandestine research was disavowed. The utility of the informed consent doctrine in resolving these tensions between the proprietary contexts in which some anthropologists now worked and disciplinary goals of openness in field research is evident in Fluehr-Lobban's later statement that she was “unsuccessful in trying to get language about secret research back into the code, but . . . more successful in introducing informed consent language” (Berreman 2003:77). What I am suggesting here is that embracing the informed consent doctrine meant that the differing environs in which anthropologists were working could now be considered largely irrelevant as long as people provided their “informed consent” to being studied.

ETHNOGRAPHY AND THE IMPOSSIBILITY OF INFORMED CONSENT

Although the concept of informed consent has now been enshrined in the AAA Code of Ethics for more than 15 years, the reality is that it is not an appropriate standard with which to judge ethnographic fieldwork. Beyond Wax's interventions, periodically the difficulty of obtaining informed consent in the context of ethnographic research has been raised in discussions of the relationship between ethnography and human subjects regulation. For example, Barrie Thorne (1980:291) has pointed out that most ethnographers rely on “partial truths” to gain access to the field and that the method of participant-observation doesn't lend itself to moments of announcement and choice. She also observed that fieldworkers often find the “forgetting of the research purpose” that happens in the context of long-term ethnographic research quite helpful (1980:291).⁴ In a similar vein, Elizabeth Murphy and Robert Dingwall (2007) have noted that the accounts that ethnographers give to participants are necessarily partial and that the identity blurring that is an intrinsic feature of ethnography means that the researcher's

identity *qua* research begins to fade into the background over time, muddying the lines between “data” and other types of sharing.

Others have focused on the impossibility of pre-empting the course that ethnographic fieldwork might take. For example, Rena Lederman (2006:485) has highlighted the “systematic openness to contingency” and “disciplined relinquishment of control” that characterizes ethnographic research, wherein ethnographers are neither in a position to demarcate their research spaces nor their social identities. In an intriguing analogy (one I will return to), Daniel Bradburd has observed that

at the very least, the open-ended nature of the ethnographic encounter radically changes the conditions under which one gathers proof of informed consent, moving it from a portion of a structured exercise to, potentially, a break in a spontaneous encounter, raising problems perhaps more often associated with safe sex than with ethnography. [2006:493]

Others, still, have evinced a specific interest in informed consent documents themselves. For example, Jennifer Shannon (2007) has explored the ways in which the consent form becomes an “actant” that sets into motion a cascade of actions, alliances, and commitments. In particular, she demonstrates that it puts into effect a certain kind of relationality in fieldwork—one rendered in legal terms that inserts the institution into the relationship between anthropologists and their interlocutors. On a related note, Marie-Andrée Jacob (2007) highlights the ways in which consent forms contribute to the making of persons—epitomized in the growing use of “consent” as a verb as well as a noun. In her words,

the noun consent and verb to consent have, it seems, metamorphosed from being what patients and research subjects do to what researchers and health care providers do to subjects and patients. In other words, subjects become the objects of the verb. Some individuals . . . literally and grammatically become objects rather than subjects. This reveals how little depth there is to the idea of “subject” in the context of consent. [Jacob 2007:256]

Yet, all these complexities are elided in the current AAA Statement on Ethics. Although it speaks of consent as an “ongoing dialogue” and “negotiation” rather than a form, it sets up a series of oppositions—between openness and deception, between transparency and secrecy, between honesty and dishonesty, and so on. The document thus echoes the prevailing dichotomy in which participants are either “fully informed” about the research and consent to participation or they are not—and the research, by definition, becomes “covert” or “deceptive.” More surprising still, a similar affirmation of the doctrine occurs in various commentaries challenging its application to ethnography (e.g., Murphy and Dingwall 2007; Shannon 2007; Thorne 1980). In other words, while such commentators they reject the ways that regulatory ethics regimes have applied the concept, they affirm its general importance. The views of Murphy and Dingwall (2007) are typical in this respect. They state:

Our argument is not that informed consent is trivial or irrelevant. It is, rather, that informed consent in ethnography is neither achievable nor demonstrable in the terms set by anticipatory regulatory regimes that take clinical research or biomedical experimentation as their paradigm cases. [2007:2225]

In this framing, the concept itself is not intrinsically problematic. Instead, the issue relates to the rise of “audit culture” (Strathern 2000) and the enmeshment of research ethics in a bureaucratic machinery whose surface taxonomic schemes serve to subdue and subsume difference.

Where the impossibility of informed consent has been taken seriously, it’s generally used as a means of critiquing ethnographic research rather than the informed consent doctrine itself, which emerges largely unscathed. Notably, ethnographic sociologists have been the more vociferous critics here. For example, Charles Bosk (2001), reflecting on his own experience of conducting ethnographic fieldwork in hospital settings, has argued that structure and nature of this approach precludes the possibility of informed consent. While recognizing that an overly zealous approach to informed consent would be intrusive, disruptive, and “so socially bizarre that it would make fieldwork impossible to complete” (Bosk 2001:211), he nevertheless concludes:

There is a deeper level at which we breach the spirit of informed consent. We mislead subjects about our intentions and keep them in the dark about reasonable and easily recognized risks, even when our subjects understand (and misunderstand) our role . . . We describe our intent, but we omit a detail. We disclose but only incompletely. [Bosk 2001:212]

Bosk argues that ethnographers rarely inform participants that the world from their point of view is only the starting point for the analytic work of ethnography. Yet, in his view, it’s precisely these interpretations that engender a sense of betrayal among participants when they view the products of such research. For Bosk (2001:218), the “manipulations, deceptions, evasions, and silences” required in ethnographic fieldwork make it difficult for any ethnographer to be above reproach. He argues that ethnographers have largely ignored these ethical difficulties by either pretending they don’t exist or treating efforts to more fully explain the nature of ethnographic portraits as simply too difficult to attempt. Thus, in Bosk’s (2001) account, it is not so much informed consent that is the issue; instead, ethnographic research, with its “insuperable ethical problems” (2001:200), becomes the culprit.

Arguing in a somewhat different vein, Julia O’Connell Davidson (2008) has also raised questions about the problems that ethnographic research poses in relation to informed consent. Based on her fieldwork at a privately run UK brothel and the close relationship she subsequently developed with “Desiree,” the brothel’s owner, O’Connell Davidson argues that it is impossible for participants in ethnographic research to truly consent to what amounts to their own objectification. As she puts it,

No matter how reflexive, non-hierarchical and ethically sensitive the researcher, ultimately her or his task is to transform research subjects into objects . . . that will be exposed to the gaze of, and consumed by, other people. This remains the case even for those researchers who state that their aim is merely to ‘give voice’ to their research subjects by collecting and presenting narratives. Is it possible for a person to genuinely consent to this type of objectification? [O’Connell Davidson 2008:57–58]

Both Bosk and O’Connell Davidson share a tendency to speak in totalizing terms about ethnography, without any recognition of the differences between “participant-observation” as practiced in the varied disciplines that have come to claim a stake in it. As Bruce Kapferer (2007) and Lederman (2007) observe, anthropological ethnography is quite distinctive from the uses of ethnography as a technique for gathering data—the dominant way the term is employed in sociology. Lederman (2007, 2013) points out that participant-observation in sociology is a minority approach, one often considered ethically suspect precisely because it upsets sociological norms regarding the clear lines of demarcation between researchers and participants. For anthropologists, on the other hand, their “social proximity to their sources, their method of opening themselves to being socially defined by the folks they aim to understand, appears to them as self-evidently edifying despite its ethical risks” (Lederman 2013:598). What Bosk’s and O’Connell Davidson’s accounts also have in common is a tendency to collapse questions of informed consent with issues of textual representation in ethnography.

DIFFERENTIATING BETWEEN ETHNOGRAPHY AS FIELDWORK AND AS TEXT

Quetzil Castañeda (2006) has emphasized the need to differentiate the ethical and moral issues that arise in ethnographic fieldwork from those that inhabit ethnography as a textual product. For Castañeda, these are different conceptual and analytic registers, although he recognizes that there are “significant overlappings, complicated intersections, and parallels between them” (2006:122). The former relies on a situational ethics that is both context driven and context specific; the latter relies on a normative moral position regarding the consequences of representation. His work therefore provides a useful frame through which to examine Bosk and O’Connell Davidson’s efforts to connect issues of informed consent and ethnographic representation.

Informed consent, as originally conceptualized, is about agreeing to be “done to” in the context of data collection itself. The key issue is that in ethnographic research—in any of its disciplinary formulations—for the most part, the “doing to” doesn’t happen in the fieldwork situation but, rather, in the act of writing about it. This is why Bosk and O’Connell Davidson can claim that ethnographers have not adequately considered the ethical problems that ethnography poses in relation to informed consent, despite the longstanding debates in anthropology around the “moral vi-

olence” (Castañeda 2006:128) of knowledge, writing, and representation.

It’s not that the problems Bosk and O’Connell Davidson raise haven’t been discussed. They have—somewhat endlessly, in point of fact—but the focus is generally on the written representations that derive from ethnography “here” rather than the politics of fieldwork engagements “there.” As Castañeda illustrates, these two contexts are not commensurate; they entail different ethical and moral issues. Indeed, prevailing research ethics frameworks remain largely silent on the ethics of representation, an absence that speaks to their underlying positivism, whereby the act of writing is generally understood to present a transparent “writing up” of study results and ethical concerns tend to array around issues like data fabrication. In fact, the context perhaps most equivalent to ethnographic research is that of clinical case reports of patients receiving the usual standard of care, and such reports aren’t generally subject to institutional ethical review or informed consent requirements because there is no “doing to” the subject that happens beyond the course of a regular day-to-day interaction.⁵

Let us not forget that all “subjects” lose control over the ways they are represented in the products of our research, whether the context is an ethnography, an interview, a clinical case study, or a drug trial. While fieldwork intimacies give us access to informants’ lives beyond the ways in which they might formally present themselves if our interactions were limited to a discretely bounded space, the moral issues surrounding representation don’t dissipate in other contexts, although they may be less acute (or, at the very least, experienced as such). For Bosk, however, the ethnographer’s inability to disclose “completely” makes the practice uniquely morally suspect. He writes,

these are not arguments that are given much credence when physicians use them as an excuse for failing to provide patients the data necessary for informed consent. They possess no more credence when given by social scientists as a justification for less than full disclosure. The simple fact is that we do not try to explain this aspect of our work to our subjects, and we feel no obligation to try for this level of consent. [Bosk 2001:214; see also Bosk 2007:205]

The most striking aspect of this passage is the act of translation Bosk undertakes, wherein the ethnographer becomes directly equivalent to the physician and is found wanting as a result. Of course, the comparison can be used to entirely the opposite effect, as Dingwall and Murphy illustrate:

The relationship between the ethnographer and their [*sic*] hosts is more akin to that of a patient with a general practitioner than with a surgeon. The patient gives tentative and limited consent before contact with a general practitioner . . . Mostly, consent is implied rather than stated and operates within a context where the patient may withdraw cooperation at any time. [2007:226].

However, regardless of the uses to which the comparison is put, is an ethnographic encounter commensurate with a series of interactions between a patient and general practitioner? As Lederman observes, “one of the strongest barriers

to genuine ethical and disciplinary pluralism is a pervasive insistence on construing the standards by which we assess one another's work as neutral when they're more often projections of this or that disciplinary perspective" (2012). Such principled ethical approaches function—as Bosk (1999) himself has elsewhere noted—in much the same vein as double-entry bookkeeping in accounting: making commensurable what was formerly incommensurable. While such acts of translation are tempting, perhaps it's better to resist them altogether.⁶

As Lederman (2006:485) has argued, ethnographic fieldwork's lack of fit with the prevailing biomedical and behavioral-science models of research makes it appear “downright deviant on practically every count” when judged through the lens of such models. The acts of translation required to fit ethnography into the informed consent mold mean that it is held to a standard that far exceeds that required of any other type of research and then is condemned for failing to meet it. When judged through this frame, “ethnographic research ethics” appears to be nothing more than an oxymoron. Isn't this essentially the conclusion that both Bosk and O'Connell Davidson fall just shy of drawing?⁷ This, I think, is precisely what Wax was on about in his contention that the concept of informed consent is largely irrelevant to the moral problems of cultural anthropology. Once we take this possibility seriously, it enables us to see that if anything has “insuperable problems” (Bosk 2001:200), it may very well be the concept of informed consent itself.

“NO MEANS NO”: PARALLELS BETWEEN CONCEPTIONS OF CONSENT TO RESEARCH AND SEXUAL INTERCOURSE

The informed consent doctrine presumes a great deal—not only about the nature of ethical research but also about the nature of research itself. As Lederman argues, “to regulate research ethics is, in effect, to regulate our modes of knowledge-making themselves” (2012:6). In assuming investigator control over the research process, it elides the enormous variability in what counts as “research” from discipline to discipline and the differing sets of relations between researchers and their “subjects”; the effect is to constitute researchers and subjects as having radically different kinds of agency (Lederman 2006).

This point was brought home to me at a conference I attended in 2010 aimed at members of the academic community involved in human research ethics. Such conferences, of course, are not actually about research ethics per se but, rather, research ethics administration, and their audience consists primarily of academic board members and administrators. During the conference, I attended a workshop at which a variety of case studies were presented for the audience to dissect. One of the examples we were given was of a researcher who wanted to study the relationship between diabetes and schizophrenia in a group of homeless people. The researcher planned to recruit participants being treated at a local psychiatric facility but had decided not to disclose

the fact that one of the main inclusion criteria for study participation was schizophrenia; her stated concern was that some of the participants were likely in denial about their condition. The audience members immediately decried the study as unethical. Conversation swiftly turned to the fact that the researcher seemed to be using this justification as a cover to “get away with” not obtaining informed consent. As conversation progressed, people got increasingly worked up about the unethical behavior of the researcher. “No means no!” cried a female audience member as the discussion was wrapping up, with many of the assembled participants nodding in agreement.

I was particularly intrigued by the woman's use of a catchphrase institutionalized in the anti-rape movement—“no means no”—to describe her sense of moral outrage at the study. Although I found the pairing of research-ethics speak and anti-rape rhetoric incongruous at the time, the sexual analogy is one I have seen repeated on several occasions. It's worth noting that the title of O'Connell Davidson's (2008) aforementioned critique of ethnography's capacity for informed consent is “If No Means No, Does Yes Mean Yes?” and she uses the sexual metaphor at various points in the essay, likening ethnographers to the clients of sex workers. Bradburd (2006), in contrast, evokes the analogy to show the problems with the concept in informal research settings. I want to suggest here that such metaphors are revealing; they say something important about how research—as well as both researchers and research subjects—are being constructed in the dominant framework.

In contemporary research ethics guidelines, research is framed as an intrinsically risky enterprise (Bell in press; Lederman 2007). For example, the *Institutional Review Board Guidebook*, aimed at members of institutional review boards in the United States, asserts the following: “Risks to research subjects posed by participation in research should be justified by the anticipated benefits to the subjects or society” (OHRP 1993). More to the point, research is often quite explicitly configured as a violation or invasion: biomedical research violates the physical integrity of the body, and social science research violates the individual's privacy. Thus, one textbook on ethical issues in behavioral research warns: “The central ethical issues in field research are likely to revolve around potential invasions of privacy” (Kimmel 2007:117). This constitution of research as a “violation” or “invasion” helps to explain why informed consent is deemed so central to contemporary conceptions of research ethics. After all, to consent is quite literally to acquiesce to being “done to.” In this framing, research is a violation to which, like sex, one must willingly consent (but presumably not actively participate in, like the Victorian bride counseled to “lie back and think of England”). Informed consent to research participation, like conceptions of consent to sexual intercourse, is thus based on certain underlying assumptions about the nature of the protagonists in this encounter.

In her analysis of the ways in which rape prevention campaigns construct sex, Moira Carmody (2005) argues that they

affirm totalizing versions of masculinity and femininity, with men depicted as violent patriarchal creatures and women as passive, agentless objects who are “done to” in the context of a sexual encounter. As she notes: “This approach reflects a fixed subjectivity in which power relations between women and men are deterministically constructed as oppressive and exploitative to women and in which men are all powerful” (2005:468). Similarly totalizing views of the researcher and subject are enacted in the context of contemporary research ethics guidelines. Subjects appear in this framework as the passive objects of research; they are fragile, possess conditional reason, and require protection (Dehli and Taylor 2006; Jacob 2007; Jacob and Riles 2007). But in this framing, researchers, too, possess conditional reason. Driven by our own lust for knowledge, career advancement, and so on, we are supposedly incapable of recognizing the ethical issues that our own research poses to participants (Bell in press). If not held in check through formalized research ethics review processes, some of us would inevitably devolve to our basest instincts to exploit and violate our research participants. As Jacob and Riles observe, “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” (2007:182).

Interestingly, despite the assumption of equivalence in the different types of research to which “subjects” might be exposed, here researchers and subjects are “construed not simply as unequal but as incommensurable: always potentially opposed” (Lederman 2006:488). Informed consent, with its presumption of voluntary submission to the interests and desires of others, is the only way this fundamental inequality can be mediated in either a sexual or research encounter.⁸ However, this very same dynamic always calls the potential voluntariness of consent into question. Here we see evidence of the epistemological doubling of which Pels speaks, with modern ethics “built around the discursive oscillation between the absolute denial of politics that is implied by ethical standards and the absolute affirmation of politics that the necessarily partial use of these ethical standards brings with it” (Pels 1999:103). The preoccupation of bioethicists with “therapeutic misconception”—whereby participants in medical research have been consistently found to “misunderstand” the experimental rather than therapeutic nature of the research—is a good example of the contortions produced by this epistemological doubling, revealing the informed and consented subject for precisely what it is: a simulacrum.

The great irony, of course, is that in presuming this relationship of inequality, the doctrine actively reinscribes it. As several commentators have observed, the concept actually serves to minimize researchers’ responsibilities to their participants (e.g., Bradburd 2006; O’Connell Davidson 2008; Wax 1995). Moreover, as Jacob’s (2007) work demonstrates, whether the context is a biomedical or social science setting, it also undermines the very thing it aims to ensure: choice. In her words, “perhaps it is time to decen-

ter consent from the bulk of discussions on decision making and rule making in the contexts of health care and research. It might be time for scholars to stop fantasizing about choice as the lived experience of the consent process” (Jacob 2007: 264).

THE WAY FORWARD

In the spirit of Lynch’s (2000) critique of reflexivity as an academic virtue, I want to stress that being against informed consent doesn’t mean being for deception or covert research. It also doesn’t mean being against ethics (à la Herrera’s critique of Wax). Instead, it is to recognize that these oppositions are a fundamentally inappropriate way of conceptualizing the ethics of ethnographic research. Although it seems hard to believe now, we can actually talk about research ethics without recourse to the concept of informed consent—or the preposterous “fully informed consent.”⁹ Consider the injunction in the 1971 Principles of Professional Responsibility to communicate “the aims of the investigation . . . as well as possible to the informant” (AAA 1971). Contrast this with the 2012 code’s assertion:

Minimally, informed consent includes sharing with potential participants the research goals, methods, funding sources or sponsors, expected outcomes, anticipated impacts of the research, and the rights and responsibilities of research participants . . . Anthropologists have an obligation to ensure that research participants have freely granted consent, and must avoid conducting research in circumstances in which consent may not be truly voluntary or informed.

Beyond the absence of references to the notion of “consent” itself, entirely missing from the 1971 document is an appeal to universal standards regarding communication and the outcomes it should produce. In the 2012 code, community permissions to conduct fieldwork, interactions with interlocutors on the ground, and the politics of writing and representation are all subsumed under the category of informed consent, and “sharing” about such is treated as a self-evident, straightforward, primarily technical transaction. The 1971 document, however, implicitly recognizes the complexities of such communication and the impossibility of any sort of unitary view of the research (as evidenced by the “as well as possible” clause). It therefore implies that ethnographic research can proceed ethically in the absence of a mutually agreed-upon understanding of its aims and that this absence is to a certain extent unavoidable.

In his initial critique of Fluehr-Lobban’s proposal to import the informed consent doctrine into anthropology, Wax observed, “Given that our hosts and we usually inhabit two different conceptual universes, it has been notoriously difficult to communicate who we are and what are our goals” (1996:330). Bosk makes much the same point in his criticism that “ethnographers trade quite freely on an almost universal misunderstanding between our research subjects and ourselves” (2001:206). Yet, it’s worth considering whether such “misunderstandings” are a distinctive feature of ethnography. Here, the work of Mary Dixon-Woods and colleagues

(2007) is instructive. Based on interviews with participants in a genetic epidemiology study, the authors found that subjects' perspectives on the research were often directly at odds with the information they had been given. They argue that this "misunderstanding . . . may be a persistent and incorrigible feature of people's participation in research" (2007:2212), drawing on sociological literature on the differences between lay and expert perspectives to make this point. They conclude that while researchers must aspire toward clarity and honesty, it is simultaneously possible for legitimate decisions to be made that don't "require a full understanding and acceptance of the scientific account of a research study" (2007:2220). Thus, while the informed consent doctrine is an extraordinarily poor fit with ethnography, indications suggest it is not an appropriate standard for any research. Given that even the Belmont Report was hedging its bets on the possibility of "an informed consent," there is a clear argument to be made for jettisoning the concept entirely.

Although this may have the ring of a utopian dream, the proposed revisions to the Federal Policy for the Protection of Human Subjects suggest some openness to the sustained questioning of the current regulatory regime in the United States. Nevertheless, in the immediate term, anthropologists must still submit their ethics applications to boards whose mandate revolves primarily around evaluating the adequacy of the informed consent process. While many anthropologists have perfected the art of "simulated consilience," it doesn't help review boards understand what ethnographers actually do, and it actively contributes to misinformation about ethnographic fieldwork (Lederman 2007:33). The trickier path is to openly challenge the paradigm and its application to our research. However, as Gustavo Lins Ribeiro points out, "if researchers want to do research and guarantee 'academic freedom,' they need to do politics within and outside their own institutions" (2006:530–531).

Working to retain our own disciplinary idioms and styles means that ethicists and review boards will invariably construe us as "unprofessional, inappropriate, or incomprehensible" (Lederman 2012), although there are heartening examples of anthropologists who have succeeded in educating their boards about the distinctive attributes of anthropological fieldwork (e.g., Lederman 2006). Given the critical role that disciplinary associations play in enabling researchers to successfully challenge IRB regulations, it would therefore be beneficial if we had some backing from our professional associations (rather than their apparent wholesale capitulation) in making a case for what Lederman (2012) refers to as "ethico-epistemological pluralism."¹⁰

How might discussions of the ethics of ethnographic research differ if we did away with the concept of informed consent? First, it would allow us to talk in a far more nuanced way about the very different issues currently subsumed under the concept. Second, it would entail a recognition that an evaluation of anthropologists' communication about their research is intrinsically subjective—a matter of individual

judgment, always open to debate, and only really apparent after the fact. Third, it would enable us to grapple more clearly with the different ethical dilemmas anthropologists confront depending on where they do their fieldwork and with whom they work. As Laura Nader commented more than 40 years ago, "We should not necessarily apply the same ethics developed for studying the private, and even ethics developed for studying in foreign cultures (where we are guests), to the study of institutions, organizations, bureaucracies that have a broad public impact" (1972:304–305).

CONCLUSION

The rise of the informed consent doctrine in the latter half of the 20th century is evidence of the oft-observed biomedical underpinnings of contemporary research ethics frameworks. However, while the doctrine may have been useful at a particular historical juncture when anthropology was grappling with the changed professional circumstances of those trained in the discipline, in my view the embrace of the concept at the end of the 1990s has not served us well. Simply put, it is not an appropriate frame through which the ethics of our research can—or should—be judged. While "informed consent" might mean different things in different fields (Lederman 2009), I've tried to show that the assumptions embedded in the concept are so odds with the reality of ethnographic research that there is no way of reconciling the two without harming the latter.

In my view, all the talk in the world of "ongoing dialogue" and "negotiation" will not resolve this fundamental issue because the concept so utterly "mutes" (Lederman 2012) the central assumptions informing ethnographic practice. It sets the wrong sort of standard (by implying that there is one); it forces researchers, research participants, and research ethics boards to focus on the wrong sorts of questions; and it enacts a certain type of "subject"—one that seems designed to promote even less ethical research. While we make and remake subjects constantly in our research—in our fieldwork and field notes, in our anecdotes and our published accounts—the particular subject "materialized" (cf. Jacob 2007) in the doctrine of informed consent is one we should emphatically reject. Doing so will enable us to grapple more fully with the complex ethical dilemmas we tackle in our fieldwork and our writing—dilemmas that defy prescription or easy resolution and that reflect the extraordinarily varied circumstances in which fieldwork is conducted today.

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NOTES

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1. See also the Australian Anthropological Society's and Association of Social Anthropologists' Code of Ethics (AAS 2012; ASA 1999).
2. Although the comments are publicly available on the AAA website, I received permission from all of those quoted to reproduce their names here. Some requested that I make minor modifications to their excerpted quotes to clarify their meaning; these modifications are indicated via the use of italics.
3. Although informed consent is presented as an "unquestioned value" in one breath, the report acknowledges in the next breath that it may not, in fact, be possible. This seems to be a rhetorical strategy designed to preemptively avoid critique by acknowledging it up front.
4. Although not focusing specifically on informed consent, Gary Alan Fine (1993) makes a number of related points about the "lies" ethnographers tell themselves—and others—about the nature of ethnographic fieldwork. See particularly his overview of "the kindly ethnographer" and "the honest ethnographer."
5. This speaks to an issue that Katz (2006) and Lederman (2006, 2007), among others, raise regarding the ways that a major expansion of IRB jurisdiction is being institutionalized through a vague, unnecessary, and impractical reading of "research." One of the resulting ironies is that biomedical exemptions from institutional review requirements are far more clear cut than those for the social sciences, wherein the overarching vagueness means that nothing is outside the scope of institutional review.
6. The temptation to translate is so powerful that I earlier succumbed to it myself by comparing ethnographic fieldwork to clinical case reports of patients receiving the usual standard of care.
7. Despite their critiques, neither Bosk nor O'Connell Davidson condemn ethnography outright. Although each makes a case for its immorality, they ultimately invoke a consequentialist logic to justify its usage.
8. Although the need for consent to be "informed" is more explicitly highlighted in the context of research, it is also important to determinations of the voluntariness of sexual intercourse—as the concept of statutory rape suggests.

9. To my mind, this concept is about as meaningful as the notion of "strenuously objecting" as a legal strategy (as illustrated in the film *A Few Good Men* [1992]).
10. For example, at a national level, the joint efforts of the American History Association and Oral History Association led the Office of Human Research Protection to exempt oral history interviews from IRB oversight in 2003. At an institutional level, the codes of ethics of the American Sociological Association and the American Political Science Association were used to successfully challenge Simon Fraser University's introduction of limited confidentiality clauses on consent forms following the Russel Ogden incident, wherein the field notes of a criminology master's student writing about assisted suicide were subpoenaed by a coroner during an investigation of a death about which he was suspected to have some knowledge (see Palys and Lowman in press).

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