Threats from Data Protection and From Ethics Committees as Applied to Social Science Research

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The EU Data Protection Directive (95/46/EC), which was finalized in 1995, regulates the “processing” (at the least anything done electronically) of “personal” information (any information, even publicly available information, about an identifiable individual). While under Article 9 of the Directive processing for the purposes of journalism, literature and art must be exempted from much of the Directive, “research” is largely governed by its general provisions including not only the broad principles but also a number of detailed rules. Assuming that the researcher is established in at least one member state, the particular transposition of the Directive applicable will generally be that of the State (or potentially States) in which he/she is established. The researcher is likely to have to register with the Data Protection Authority (DPA) in this/these State(s) in order to process data lawfully. In the DP law of many member states, information notification (including the identity of the data controller and an explication of the purpose of data collection) must apparently in all cases be provided to all subjects prior to direct data collection. This is incompatible with covert and/or deceptive research methodologies which are not only an established part of research in the social sciences but have also helped uncover critical information regarding, for example, police racism and the activities of far-right political parties (Erdos, 2011a). Research projects will also often find that, unless the subjects themselves have made this material public or have given their explicit consent to its use, they cannot collect any “sensitive” data (racial/ethnic origin, trade union membership, religious or political belief, health, etc.) unless an exemption is granted based on the basis of substantial public interest. In a number of states (e.g. Belgium, France, Denmark) this requires an individual license from each Authority who can impose onerous requirements such as granting subjects from whom data has been obtained a right to withdraw their data for any reason at any time. Finally, the “export” of the data outside the European Economic Area (EEA) is generally banned (even in the form of posting information on an internet page located outside the EEA) unless there is “adequate protection” (Erdos, 2011b). In Sweden, however, at least the requirement of getting an individual license from the DPA for sensitive data collection may be waived if the research has been approved by a research ethics committee (aka as an institutional review board). Such alternative prior authorization, however, may be at least as problematic. For example, recent articles in the literature have documented RECs prohibiting participant observation and “informal” or “verbal” consent methodologies (Hurdley, 2010) as well as the non-anonymous reporting of results.

In sum, as Robert Dingwall has noted in relation to RECs, this system of regulation can seriously hamper social science and historical research and constitutes “a process of censorship that is disabling to the democratic values by which we seek to live” (2006, p. 57). Additionally, the gap it encourages between formal regulation and actual reality places researchers in a precarious position and also poses threats to the rule of law. A draft of a new Data Protection Directive is expected to be released in November. Researchers should lobby European and Member State institutions to ensure a better legal framework for the future. The “risk averse” interpretation of DP and ‘ethical’ requirements by University governance structures (including RECs) must be resisted. Finally, there should be a review to examine if many types of historical and social science research might be able to benefit from the special exemptions for “literature” within the DP framework.

Citations:


Rachel Hurdley, “In the Picture or Off the Wall? Ethical Regulation, Research Habitus, and Unpeopled Ethnography”, *Qualitative Inquiry* (2010)