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Can research ethics codes be a conduit for justice? An examination of Aboriginal and Torres Strait Islander guidelines in Australia

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Abstract

Aboriginal and Torres Strait Islander peoples in Australia, have historically experienced research as another means of colonialization and oppression. Although there are existing frameworks, guidelines and policies in place that respond to this history, the risk of exploitation and oppression arising from research still raises challenging ethical questions. Since the 1990s the National Health and Medical Research Council in Australia has developed specific sets of guidelines that govern research with these populations in an attempt to redress injustices of the past. The current guidelines: Ethical Conduct in Research with Aboriginal and Torres Strait Islander Peoples and Communities: Guidelines for Researchers and Stakeholders, 2018, emphasis six core values which are bound together by “spirit and integrity.” The values are reflected through respect for cultural inheritance, and genuine negotiation of partnerships between researchers, other stakeholders, and communities. We examine whether these guidelines can lead to research and research practices that redress some of the ongoing traumas of colonialization and racism. We draw upon Margaret Urban Walker’s formulation of restorative justice, based upon her “pragmatics of repair” which relies upon “voice, validation and vindication” and at its core, the restoration of relationships.

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Keywords

Aboriginal guidelines, research ethics, Australia, colonialization, justice

Introduction

“It appals us that the West can desire, extract and claim ownership of our ways of knowing, our imagery, the things we create and produce, and then simultaneously reject the people who created and developed those ideas and seek to deny them further opportunities to be creators of their own culture and own nations.”

Decolonialising Methodologies. Smith (2012): 1

Aboriginal and Torres Strait Islander peoples in Australia, like many First Nations peoples, have experienced research as an instrument of colonialization and oppression. Here we ask the question: can research with these populations change in order to address oppression? If so, how might this be done?

In what follows we look critically at the way research has contributed to colonialization. We situate ourselves in this ongoing debate as non-Indigenous allies, with a background in scholarship on human rights and justice. We go on to discuss whether or not First Nations generated ethical guidance about research can act as a means of decolonization, focusing on the Australian guidelines governing Aboriginal and Torres Strait Islander research. Finally, we discuss whether or not such guidance can contribute to conceptions of distributive and restorative justice.

In Australia, as in other settler-colonial countries like Canada and the USA, First Peoples populations have been subjected to genocide and other significant abuses. These have included massacres, currently numbered at over 300 (Ryan, 2020); widespread, forced removal of children from their communities¹; the seizure of lands; the imposition of Anglo-European legal and economic systems; ongoing removal of children through the child welfare systems; and the ongoing denial of individual and collective rights to land and sovereignty in resource disputes. This history has created conditions of physical, emotional, economic and spiritual loss (Chandler and Lalonde, 2009). Many of these losses are so profound that they are in fact hidden from mainstream historical inquiries. However, the work of scholars like Chandler and Lalonde and Dr. Pamela Palmater (Palmater, 2018) hint at where the possibilities of survival, health and resilience lie. They outline the importance of support for Indigenous sovereignty, spiritualities, law, the preservation, and the re-building and intensification of strong community relations from elder to infant. Redvers et al. (2020) also powerfully articulate the ways in which Indigenous identities are constituted by their reciprocal relationships with land.

Land is foundational because it is seen to be alive and of spiritual value. It continues to provide the basis for health and well-being, in spite of the enormous

pressures exerted upon the communities by settler post-colonial laws. Moreover, good research and practice is already happening in many Indigenous communities in support of the restoration of the losses caused by colonialism. But the research community, among others, needs to recognize, and act in solidarity with Indigenous communities. It also needs to recognize the ongoing colonizing violence to which First Peoples continue to be exposed—for example Adani’s development of the Carmichael coalmine in Queensland (Wangan and Jagalingou Family Council, 2020) and fracking in the Beetaloo Basin in the Northern Territory and the necessity of allying with them in opposition to it (Parliament of Australia, 2021).

Situating the researchers

As non-Indigenous scholars, our preoccupations are both solidarity and justice. As Briskman et al. (2021) state:

We take as our starting point that non-Indigenous people need to be part of the solidarity movement as a way of acknowledging our own privileged positions as well as sharing responsibility. . . . , we reject calls by the “new right” which refuses to take responsibility for past wrongs and current injustices. (p. 4)

As scholars who have long been preoccupied with issues related to structural violence, vulnerability, oppression and ethics in contexts such as the treatment of asylum seekers and those stigmatized by issues of ethnicity or sexuality, we have sought to uncover the particular narratives through which such populations experience oppression, and the way they resist or make sense of them. As such we bring to our analysis complex views of the relationship between justice and research.

In particular, we take as foundational, decolonization theory articulated both as a general theory of social justice, but also as a praxis embodied in the stories of First Peoples. As settler allies, our approach is to track the corollary obligations generated by resistance to colonialism and the requirements involved in supporting Indigenous resurgence. Regrettably, research has been highly instrumental in the rewriting of history and the imposition and maintenance of colonialization of Indigenous peoples globally. Australia is no exception (Smith, 2012).

In what follows we outline some issues regarding research and power, the emergence of Aboriginal guidelines in Australia, and the ways in which such guidelines might promote both distributive and restorative justice. In so doing we focus on the work of the American philosopher Margaret Urban Walker. Finally, we will argue that restorative justice is foundational in bringing about change, although considerations of distributive justice are also significant. Most significantly, we believe that research ethics guidelines must prioritize support for the restoration of First Peoples sovereignty, land rights and economic compensation.

Research and colonialization

The New Zealand scholar, Smith (2012) suggests that research is something of a dirty word to many Indigenous peoples; through research Indigenous ways of seeing were replaced by Western concepts. (Smith, 2012: 1) Smith is not alone. Other scholars have also outlined the way in which colonialization underpins research (Briskman et al., 2021: 27).

Zion et al. (2021) elucidate the importance of history and power in the research process. They state:

Research has had a powerful part to play in making political, cultural and material domination possible. Just as history has often left out the stories of the lives of the oppressed, so too, research of all kinds has been used to “naturalize” colonialization. (p. 4)

In the same vein, Battiste (2008) identifies four related strategies used to maintain power over Indigenous peoples and links them to the research context. These are:

(1) stressing real or imaginary differences between the racist and the victim; (2) assigning values to these differences, to the advantage of the racist and to the detriment of the victim; (3) trying to make these values absolutes by generalizing from them and claiming that they are final; and (4) using these values to justify any present or possible aggression or privileges. All these strategies have been the staple of Eurocentric research, which has created and maintained the physical and cultural inferiority of Indigenous peoples’ (p. 507.)

The devaluation of First Peoples/Indigenous ways of knowing to mere myth and story-telling and the simultaneous elevation of Eurocentric research norms as the sole “correct” ways of determining truth are in themselves a form of epistemic racism (Allan and Smylie, 2015: 5). Though their use, sciences and social sciences have played crucial roles in the genocide and colonization of First Peoples (Matthews, 2017: E78). It also follows that such ways of seeing contribute to the problematic relationship between research, ethics and justice. They are also key to the ethics of Indigenous research where issues of ongoing colonialization are extant. Can guidance documents that govern such research assist in the process of decolonialization and become a conduit for justice?

Our question is based upon a definition of decolonialization that is multifaceted, recognizing that context is highly significant. Nonetheless, our analysis recognizes the importance of reflexivity in research practice. Following Guilleman and Gillam, Ferdinand et al. (2018) state that there are four stages to the reflexive process:

The first (type) is self-reflexivity, or how the individual recognizes their own biases, assumptions, and ways of working. Such reflexivity is tied to the second type, which is interpersonal reflexivity or the ways in which the research works with or collaborates with others and incorporates self-awareness, building trust

and rapport. The third type is collective reflexivity, which examines participation in research and the relative roles of the researcher and the community. Finally, institutional reflexivity must also be considered as necessary to facilitate embedded changes in academic research practices such as funding allocation, organizational partnerships, and patterns of knowledge dissemination (Ferdinand et al., 2018:166; Guillemin and Gillam, 2004). See also Briskman et al. (2021:11)

At its core, our paper is a call—from the standpoint of the settler ally—to decolonize research. However, decolonization is a complex and multi-faceted issue. It is not a matter of ensuring that Indigenous artworks grace the covers of research products. Nor does it entail merely consulting with Indigenous peoples and ensuring that their voices are heard. Above all, de-colonization is about land, sovereignty and land rights (Bond et al., 2021). It is concerned with transforming individual and community consciousness and the resulting theory and practice as it relates to land and social relations within and between communities. Of necessity, decolonization takes different forms for Indigenous peoples and for settlers. For both, there is the need for recognition of the genocidal truths of colonialism and its impacts (Matthews, 2019). But merely hearing the truths is insufficient. It is also necessary that we transform our institutions and behavior's accordingly. Decolonization also carries corollary obligations for settlers. Settler nations, settler institutions and individuals have to see themselves as caught up in cycles of abuse and violence—not merely in the past, but in the present. Where decolonization for First Peoples involves the reclamation of Indigenous lands, sovereignty and power, for settlers it means relinquishing them.

The researchers and the research community are, knowingly or not, part of this violent and genocidal structure and, for many First Peoples, universities are highly problematic (McNeil-Seymour, 2017: 53). The decolonization of research, as we discuss in further detail, should take the institutional violence of settler research structures as a starting point. To appreciate this violence, we have to take seriously the question of “who decides which rules apply?” and “by what means should the relevant rules be enforced?” For research in countries like Australia, Canada and the USA, the relevant laws are state, provincial and federal. In short, the laws of the settler-colonial state. Capitalist economics underlies modern funding arrangements and decision-making about where and how benefits are allocated. Beholden to settler laws and economic structures, research is subordinated to, and determined by, the dominant settler interests that shape it.

The role of codes in research

If we contextualize guidance documents in the light of our earlier discussion, we must ask if they can facilitate decolonialization and justice if the ethical and

research norms used to evaluate research, along with the gatekeepers who apply them, are themselves uncritical about their socio-economic position and power. In particular, can they aid decolonization if they continue to presuppose the legitimacy of the colonial states and their laws?

Dene philosopher Coulthard (2014) criticizes most analyses of Indigenous issues—whether mainstream conservative, liberal or even radical socialist—for failing to appreciate that the State itself is the primary site of contestation. (p. 134). That is to say, there is a failure to appreciate that the right of a state unilaterally to dictate the terms of recognition of First Peoples political, economic and legal claims is the primordial site of injustice. Indigenous economic and legal traditions are excluded a priori, and the exclusions are necessarily enforced violently.

Like other settler-colonial states, Australian law conditions all aspects of research. It is not that there is no consultation. The issue concerns the terms under which consultations and recognitions are enacted. For example, the specific details of health research on human participants, such as methods and design are governed by guidance documents from the National Health and Medical Research Council, (NHMRC) a government body. In 1999 the Australian Health Ethics Committee released a document that governed all facets of research involving human participants, bringing together a series of existing guidelines. It is not simply a matter of methodology or design, but also at a meta level, what counts as “valid” methodology. Nonetheless by this time, Aboriginal and Torres Strait Islander guidelines already had a separate history which we will outline below, based upon a recognition of different health issues, the growth of the Aboriginal health service, and recognition of the influence of colonialization on both research and the parlous state of Aboriginal health. (National Aboriginal Health Strategy Working Party, 1989) (Humphery, 2001) Over the last decades, Aboriginal and Torres Strait Islander voices have increasingly been included in the creation of these documents, which displays some level of consultation. (National Health and Medical Research Council, 2005) As important morally as these developments have been, they remain insufficient. For instance, while benefit sharing agreements are important, they do not resolve the foundational ethical problems, all of which are problems of sovereignty, of the assertion of cultural identity in the face of socio-economic settler processes that continue to be ethnocidal (Bond et al., 2021; Matthews, 2019).

The NHMRC Aboriginal and Torres Strait Islander guidelines. A history

In the 1980s, it became clear that there was a need for guidance concerning Aboriginal and Torres Strait Islander research. As Gillam and Pyett (2003) state: “(s)ince colonialization, Aboriginal and Torres Strait Islander people have experienced research as invasive, disrespectful and exploitative” (p. 9). It was this

ongoing critique of research practice that led, in the 1980s to the development by the NHMRC of a separate set of guidelines to govern Aboriginal research, which were published in 1991 (Dunbar and Scrimgeour, 2005, 2006) (McKendrick and Bennett, 2003).

These guidelines are a genuine advance. However, a deep challenge remains. Human Research Ethics Committees, (HRECS) must take seriously their own legitimacy as representatives of settler-colonial societies.

What kinds of justice are mirrored in the guidelines?

The idea that the issues that underpin the research agenda must be generated by Aboriginal communities is mirrored in the most recent guidelines' emphasis on participation, respect and consultation. However, these are insufficient. One can invite Aboriginal people to participate in research as well as to consult with them, but ultimately what matters is control. Suppose the given individual or community disagrees over some research issue. Who then gets to decide what happens? In other words, who gets to hold effective power over the research processes? The researcher? The university? Funding bodies such as NHMRC? Specific Aboriginal individuals? Or communities?

If we look to Canada, we see a roadmap that may assist in formulating solutions. For example, the *First Nations Information Governance Centre* has developed the Ownership, Control, Access and Possession (OCAP) principles to address such questions and to make justice principles more robust (First Nations Governance Information Centre, 2021). The most fundamental aspect of the principles is the priority of sovereignty and self-determination. These principles reject the individualism of mainstream research ethics principles and prioritize group or community rights. These in turn require that the First Nations own their own cultural knowledge, information and data; that they are entitled to exercise complete control over all research and information processes which concern them; and that they are entitled to access to any information about them regardless of where it is held. They likewise have a right to control who gets access to the information; and finally, that they should physically control any data. As such, the guidelines can be seen as mechanism of solidarity between researchers and participants, whereby the research questions are communally developed.

How then does these ideas relate to justice, and what formulation of justice might be important? Waller (2018) gives us an indication when she states that research confirms that health and social problems are the effect of compounded intergenerational traumatic events that have resulted in family violence, and poor health and education outcomes (p. 227). At their core are the "extensive social exclusion and cruelty that that came from colonialization and has resulted in disconnection from traditional cultural and spiritual ways of being" (p. 227). Thus the guidelines attempt to provide a way forward to redress this past, the core of

restorative justice. Furthermore, both restorative and distributive justice have a part to play in such a reclamation. While both are significant, we argue that restorative justice is the foundational concept.

Restorative justice

In practice, restorative justice is sometimes utilized as a way of redressing wrongdoing in law as well as in healthcare ethics (Braithwaite, 2002: 596). It is based on a justice model that views crime and wrongdoing as occurring against the individual or community rather than the State. Ethically, it forms the foundation of institutions and practices like the Truth and Reconciliation Commission in South Africa, and the Australian Labor government's 2008 apology to the Stolen Generations.

Within the ethical canon, when discussing the relationship between justice, history and the making of an ethical life, the philosopher Margaret Urban Walker describes how restorative justice relies upon three things: voice, validation and vindication. At the core of her work is the idea that:

(R)estorative justice begins from and defines itself in terms of the reality of violation, alienation and disregard among human beings. Its central concept of "restoring relationships" supposes that it is disregard or violation of acceptable human relationships that stands at the core of its agenda, practically and philosophically. (Walker, 2006a: 382)

Walker (2006a) refers to this process as "a pragmatics of repair." (p. 199). She suggests that at its basis is the identification of accessible pathways to engender recognition of wrongdoing and the development of trust. Accountability of those who have caused the initial harm is the bedrock upon which this process stands (p. 199).

It might follow then, that guidance into research in which the voices of Aboriginal people are central to the construction of the research questions, and whose experience is validated through the process and results of research, might act as a form of restorative justice. However, as noted already this must be more than consultation. The voices need to be empowered and the researcher must work as an ally, yielding power and benefit in the name of the restoration. Under these conditions it is possible that such research might bring together persons -Aboriginal and non-Aboriginal—in relationships that build trust.

The nature of the restoration is of considerable significance here, since what was taken, is land and the associated cultural, ecological, and land-based identities. If we take restoration seriously, then it is not just a matter of including First Peoples voices, but also deploying the research in support of such a restoration. This entails financial compensation and restoring First Peoples' sovereignty as debts owed for wrongdoing (Opikew Wajuntah, 2014: 150). Under these conditions, First Peoples voices are much more likely to be effective in asserting their interests, improving

their health, and buttressing their identities. Research, if appropriately reflexive and founded in principles of ally ship and decolonization, can play a powerful role in supporting this.

Justice as distributive

There are other formulations of justice that are fundamental to a discussion of the guidance documents. They rely on the idea that material loss must be addressed. In particular, the idea of distributive justice is made clear in the most recent guidelines, which state that

Equity is reflected by a commitment to showing fairness and justice that enables Aboriginal and Torres Strait Islander Peoples' culture, history and status to be appreciated and respected. Many instances of discrimination and marginalisation have resulted in multiple inequities for Aboriginal and Torres Strait Islander Peoples and communities. In research, Aboriginal and Torres Strait Islander Peoples have perceived the distribution of benefits from research as flowing mostly to the researchers and research institutions. (National Health and Medical Research Council [NHMRC], 2018a: 6)

The guidelines also emphasis the issue of benefit. They state that ethical research must

Ensure the fair and reasonable distribution of benefit for Aboriginal and Torres Strait Islander people and communities to achieve equity in economic, legal, social and health status. In mutually beneficial relationships, the benefits may be tangible or intangible and may take many forms. Some benefits may not relate to the research project in question. The distribution of benefit stands as a fundamental test of equity. The distribution of the benefits of research is also discussed as part of the reciprocity value. (NHMRC, 2018b: 15)

The idea of benefit as related to equity might in fact leave out any particular claim based upon colonialization and culture. However, there are formulations of distributive justice that move beyond the distribution of goods alone that are relevant to the guidelines.

Of particular relevance is the capabilities formulation of distributive justice, which is based upon two normative claims.

First, the claim that the freedom to achieve well-being is of primary moral importance, and second, that freedom to achieve well-being is to be understood in terms of people's capabilities, that is, their real opportunities to do and be what they have reason to value. (Robeyns, 2020: 1)

More specifically, Ruger's Health Capability framework focuses on the distribution not of goods, but of the capabilities that lead to a flourishing life and the way in which justice demands these should be distributed (Ruger, 2009). Following the philosophers Martha Nussbaum and Amartya Sen, who first developed the capability approach, and using the context of the right to health, she argues that

justice requires that people receive the health-related entitlements that are required to enable human flourishing and the living of a life one has reason to value. Consequently, by this account individuals are entitled to a universal benefits package that includes public health goods and services; health care goods and services for prevention, diagnosis, treatment and rehabilitation; and social support services (Ruger, 2009). Persons are also entitled to an external environment (the social norms, relations, and structures within which public health and health care goods and services are distributed) that supports health functioning and health agency. That is, the ability to acquire and draw on health-related information, knowledge, and skills to preserve or improve health and to develop a set of habits to prevent the onset of premature morbidity and mortality (Ruger, 2010).

Conclusion: Restorative justice as foundational

Given the health and social welfare issues that beset Australia's Aboriginal and Torres Strait Islander peoples, it is clear that research should address the distribution of social goods, as well as investigating ways through which these populations' capabilities might be enhanced, so that a flourishing life becomes possible. Research must also address complex questions of state legitimacy and the reconciliation/return of sovereignty of lands where such compensations are possible. The structural violence of the settler state is an unavoidable feature of the analysis of the justice of any distributions of goods and benefits. It is not just a matter of improved healthcare, water, housing, access to education and the like (although all of these matter greatly), but of achieving a pluralist national politics that recognizes the independent legal, spiritual, economic and cultural traditions of the respective First Peoples.

However, for this to happen, for there to be a world in which First Peoples might have redress to some of the issues of colonialization, and for research to have some part to play in such a world, we suggest that restorative justice is in fact foundational. It is not just the partnerships and relationships that are significant here, but also what Margaret Urban Walker (2006b) refers to as three pillars of restoration.

As discussed earlier, Walker speaks of "Voice. Validation and Vindication." Her work bears some similarities to the core of the Aboriginal research guidelines; namely, issues of *Spirit and Integrity*. The guidelines state that:

Spirit and integrity is the central core value

The first part, spirit, is about the ongoing connection and continuity between Aboriginal and Torres Strait Islander Peoples' past, current and future generations. The second part, integrity, is about the respectful and honorable behavior's that hold Aboriginal and Torres Strait Islander values and cultures together.

Spirit and integrity is reflected through:

- Respecting Aboriginal and Torres Strait Islander Peoples' cultural inheritance of past, current and future generations, and the links which bind the generations together.
- Credibility of intent in the process of negotiations with Aboriginal and Torres Strait Islander communities, as demonstrated by researchers' adherence to the Guidelines and the behavior and perceived integrity of the researchers and other stakeholders. (NHMRC, 2018a: 9)

In practice, such ideas are congruent with Walker's pillars of Voice and Validation, translated here into a profound need for Aboriginal people to tell their own stories, as a way of ensuring cultural continuity. Such stories must be validated as central concerns, as well as the persons who tell them, to set a research agenda that can lead to some redress of the impact of colonialization, instead of reproducing it.

If we are to apply Walker's insights to First Peoples- Settler contexts, we must add land and sovereignty to the conditions of reconciliation. Nothing guarantees the ability of a culture to transmit their stories and ensure continuity more than self-determination, both individually, communally, and in relation to land. This means that capitalist interests of production may be denied—or considerably subordinated to the land use decisions of traditional custodians. Research ethics guidelines must respect and support such changes through recognition of the primacy of Indigenous narrative as foundational.

Empowerment may require a great shift in thinking and approach for the researchers. In particular, they must recognize the importance of locally led complex narratives, which in turn define the research questions from a multilayered community perspective, as well as enabling voices that have been silenced. While the current guidelines address these issues to some degree, we await the legal and social changes that enable real world impact.

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Note

1. Throughout the period of the *Stolen Generations*, children were seized *en masse* and removed to often far distant schools for re-education.

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