Should researchers protect the good name and reputation of institutions in which research is done?

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Abstract
The article explores the issue of protecting the good name and reputation of institutions and organisations in which research is being done. It explores current ethical codes in this regard, as well as legal provision for such protection. The issue of balancing the right of the researchers to share information about institutions in which research is done, with the need for organisations to protect their good names is discussed, and recommendations will be made with regard to the inclusion of this aspect of research ethics into the brief of ethics committees and the way in which organisations can be protected without jeopardising the aims of research.

INTRODUCTION
Recently a researcher requested permission from the University of Port Petros¹ to do a research project in the University, involving staff and students and exploring their perceptions about certain human resource policies and procedures in the University. The issue being investigated was a very sensitive one, and no effort was described by the researcher in the proposal submitted to the University when requesting their permission to involve their staff to protect the identity of the University. The name of the University was in the title of the project and the setting was explicitly described. The management of the University was concerned about the damage that the results might do to the good name and reputation of the Port Petros University. They did not believe their institution had a worse problem than any other higher education institution in the area of research, but since no other institution was being investigated, readers could not compare this institution with its peers. The results might create the impression that the University of Port Petros had a unique problem. When the management of the University of Port Petros questioned this lack of
protection of the institution with the researchers, they responded that the mandate of Research Ethics Committee who approved their research is to protect individuals, not institutions. The management of the University of Port Petros then found that indeed, the constitutions of most Ethics Committees make it clear that individuals and groups should be protected, but there is usually no mention of institutions or organisations.

This limitation in the functioning of Research Ethics Committees created a problem. Is it not true that institutions and organisations have a good name that is valued, and should be respected? Do researchers not have an obligation to protect the reputation of the institution in which they do their research? When is an institution fair game, when should it be exposed to the public, and when should it be protected?

**IS THE GOOD NAME OF INSTITUTIONS CURRENTLY PROTECTED BY PEOPLE DOING RESEARCH?**

Most research codes used in individual institutions, nationally and internationally, refer exclusively to the protection of human subjects. An institutional example is the San Francisco University code that states that ‘The purpose of ethics review of research is to consider the risks to the physical and psychological well-being … of persons who are asked to participate . . . ’ (Palys and Lowman 1998). At national level, the code of research ethics of the Government of Canada refers to the moral imperative based on the respect for human dignity and formulates eight guiding principles that are all focused on the individuals involved in research as subjects (1977, 2–3). This individual focus is also strongly reflected in the international code of the World Medical Association (2004, 1) with statements such as ‘It is the duty of the physician in medical research to protect the life, health, privacy of the human subject’ and ‘The rights of the research subjects to safeguard their integrity must always be respected’.

Codes in the Social Sciences seem to incorporate a focus wider than the individual. An example is the code of the American Anthropological Association (1998, 5). In this code, there is frequent mention of ‘people with whom they (researchers) work (informants)’ rather than the individual research participant or informant. There seems to be a recognition in this code that information can be used in different ways and therefore the statement is that in reporting the research results, the researchers are ‘not only responsible for the factual content of their statements but also must consider carefully the social and political implications of the information they disseminate’. Anthropologists must do everything in their power to ensure that such information is ‘well understood, properly contextualized, and responsibly utilized’. Preston-Whyte (1989, 227), who is an anthropologist, argued that harm to research participants has two dimensions. ‘It is important to distinguish harm in the sense of repercussions for the community at large and harm which might personally befall particular informants because of information which the researcher has collected in the course of fieldwork’. She then argues that confidentiality should not extend to
the individual only, but may need to extend to the communities to which they belong (1989, 228). She quotes the example of a social science researcher (Crapenzano) who did field work in a small South African town, and did not protect the anonymity of his respondents or the town itself. This caused harm to the individuals and to the community. Anthropologists, however, usually refer to communities rather than institutions.

**IS THERE LEGAL PROVISION FOR PROTECTING THE GOOD NAME OF INSTITUTIONS AND ORGANISATIONS?**

Companies and institutions recognise their brand as part of their intellectual property in line with patent portfolios, copyrights, and know-how (Verlinden, Smits and Boone 2004). The value of intangible assets, such as brand recognition and respect, provide competitive advantage and therefore companies increasingly try to ensure brand protection. Authors in this field increasingly encourage companies to establish the value of their intellectual property, even though this is a difficult process, in order to protect this asset sufficiently. With regard to institutions such as hospitals, universities, non-governmental organisations (NGOs) and faith-based organisations (FBOs), their ability to leverage external funding is to a large extent dependent on their good name and reputation in the community.

In Roman-Dutch law an act that causes harm to another in a wrongful and culpable way is called a delict (Neethling, Potgieter and Visser 2001, 4). In order to prove wrongfulness, one has to prove that the consequences of an act infringed on the rights of another person. All people (subjects) have certain rights, which give them the power to enjoy, use and dispose of certain objects. One of the rights a person has is personality rights, which include good name, reputation, honour and privacy. These rights can be enforced in the face of challenges by others. In legal terms ‘persons’ may be natural and legal persons. An institution such as a University, hospital or Faith-based organisation (FBO), would be considered a legal or artificial person. As a matter of general principle, rights that are closely associated with human persons, such as feelings and honour and inconvenience may not be ascribed to artificial persons. Artificial persons do, however, have a right to status and esteem, privacy and identity (Burchell 1993, 51).

Many organisations that are the focus or site of research would argue that they have a right to status and esteem, if not to privacy. For instance, NGOs and FBOs who are delivering services to communities are totally dependent for their funding on the public perception that they are useful, valuable and respectable. Research that impinges on their right to esteem is therefore a direct threat to such organisations. Similarly, with organisations such as Universities and private health care providers, the image that the public have of these institutions directly impacts on their ability to compete with others in the field. It would therefore seem that the right to esteem should have the same respect from researchers as they would give to such rights in individuals.
Defamation is the legal term for the unlawful, intentional publication of defamatory matter referring to a person, which damages a person’s right to a good name (fama) and reputation (Burchell 1993). In South African law, provision is made for persons who may allege being defamed to include trading corporations or non-trading corporations (op cit., 242). The state, however, cannot claim defamation under South African law, at any level of government, and this includes public health services such as hospitals and public universities. In contrast, the right of a trading corporation to sue for infringement of its reputation or good name (fama) is well established in decisions in the courts of South Africa (op cit., 329). Such companies may therefore sue in respect to defamation, which injures their good name and reputation, and how they conduct their business. Although this has not always been the case, it is now also clear that non-trading companies, such as universities or political parties, have the same right (op cit., 244).

**WHAT ARE THE ETHICAL PRINCIPLES INVOLVED?**

There are many sets of principles or rules that may be used to argue good ethics (e.g. Gert and Clouser 1999). One such set of four principles proposed by Beauchamp and Childress, and often used in the health professions are autonomy, beneficence, nonmaleficence and justice (Parsons 2000; Kopelman 1999). Researchers may test their own research proposals against the demands of these four principles.

One can use the same principles with regard to institutions:

*Autonomy* demands that the researcher respects the right of the institution to confidentiality and to self-determination. The institution should therefore have the right to decline participation in a research project, and informed consent from the institution should involve full disclosure of the use to which the data will be put.

To apply autonomy of decision making with regard to research participation to an organisation, is more difficult than applying it to an individual. An organisation consists of multiple decision makers, and the person with the authority to make the decision to allow or disallow a researcher access to the organisation might not have the support of the majority of people in the organisation or of significant minorities in the organisation. Institutions that employ people have a significant level of power over them, so that it is seldom feasible to access employees or even service users (customers) of an institution that has refused access to the researcher. While the ‘investigative journalism’ type of evaluator might go ahead when permission is not given (or even sought), or a field worker might disguise research activity, in most cases the organisation has a fair chance of refusing access to researchers.

*Beneficence* requires that researchers should ensure that the aim of the research is to benefit people. This may mean that the good of the institution must be compared to that of people generally, and this comparison creates the central ethical dilemma in the issue of protection of institutions. There are usually at least two stakeholder groups involved in an institution; the people working in or for the institution and the people using the service or products of the institution. What benefits the employee
group might not benefit the consumer group. Beauchamp and Childress (1994, 262) point out that beneficence is not obligatory, but is part of the moral life of a society. Without people (also researchers) who are willing to ‘protect and defend the rights of others’, or ‘prevent harm from happening to others’ or ‘remove conditions that will cause harm’ (all forms of beneficence posed by these authors), society will be difficult to sustain. Such protection of and removal from the general public might involve publishing research about institutions, and should be defended on that basis.

*Nonmaleficence*, or the demand that one does no harm, is usually used to refer to harming people (e.g. Beauchamp 1991, 189–192). One may be able to argue that organisations are essentially made up of people, and harming an organisation will harm the people in it. For instance, if a survey of HIV prevalence done in one University shows a high rate of infection, it is clear that the reputation of the institution, the students and perhaps the staff of the institution will be tarnished. Similarly, if research shows that the beneficiaries of one of the programmes of a certain NGO feel disempowered and question the relevance of the programme, this may have negative implications for other programmes in the institution and the staff who are responsible for them.

Applying the principle of nonmaleficence to organisations demands that researchers take reasonable steps to protect the institutions they involve in their research from foreseeable and avoidable harm as a result of the research.

*Justice* refers to the need to treat all institutions equally and fairly. In Beauchamp’s discussion of justice (1991, 342–344), the focus is mainly on individuals. Nevertheless, some examples refer to institutions rather than individuals. It would seem that the concept of comparative justice (balancing the claim of one against that of others) and the concept of fairness in terms of both deserts (what is deserved) could just as well be applied to organisations.

For example, if a researcher targets one institution without any reason, and makes this institution the centre of public attention in issues where no evidence exists that it is different from other institutions in their sector, this would go against the principle of comparative justice and against the principle of fair deserts.

No set of rules is set in stone and can be applied without consideration. Gert and Clouser recognised, in their system of public morality, that a procedure should exist for deciding when the violation of a rule is justified (1999, 3). In the case of the rights of institutions, it is usually the conflict between public good and the rights of the institution that will have to be considered.

**HOW CAN THE RIGHT OF AN INSTITUTION TO HAVE ITS GOOD NAME PROTECTED BE WEIGHED AGAINST THE SCIENTIFIC PRINCIPLE OF INFORMATION SHARING?**

In terms of the delict laws, once an act has been proven to have caused harm to another, the interests that the actor served have to be balanced against the interests
that were infringed (Neethling, Potgieter and Visser 2001, 39). This is called the boni mores principle. The authors mention, amongst others, several factors which might be taken into account in this regard: the nature and extent of the harm, whether it could be foreseen or not, the possible value to society of the harmful action, the cost and probability of success of preventive actions, the motive of the actor, and the relationship between the actor and the harmed party. The most obvious consideration is that the law may cancel the wrongfulness of a person’s act if the published facts are true and it is in the public interest to make them known. This judgement is in accordance with the principle of beneficence.

Burchell (1994, 173) points out that the public benefits must cause some advantage to the public from the knowledge. It would seem that the argument can be made that it is in the interest of society (service users) and tax payers if negative information about institutions that use public monies or provide services to the public, is publicised. It seems that the public has a right to have information on the structure and functioning of such organisations, based on their financial and consumer interest. The more scientific this information is, the better. It would seem right, for instance, that if a specific hospital’s infection rates are much higher than the average, the public should be informed about this fact. Similarly, if the satisfaction with teaching quality of students at a higher education institution is much lower than that of other similar institutions, the public has a right to know that.

Another factor that also comes into play, with regard to the weighing of interests, is the special relationship that may exist between the researcher and the organisation in which the research was done. The balance can shift towards wrongfulness when the relationship that exists between the researcher and the organisation can be shown to have involved the researcher in a duty to protect the organisation from harm. Such a special relationship might stem from a contractual relationship (Neethling et al. 2001, 69), such as that of an employee or consultant. In the case of a researcher, such a special relationship might refer to the research protocol or the letter giving the researcher access to the institution, especially if such contracts include specifications of non-harm. It is important in this regard that researchers understand that the law of delict will uphold the rights of the harmed entity even if the researcher only created the impression that harm would be prevented (Neethling et al. 2001, 71). Although a right can be given up through a process of consent, the law is strict about the conditions of valid consent, and one of the conditions is that the institution giving consent must be fully informed about the possible prejudice. If the researcher therefore does not address the possible harm the research can do to the institution in the protocol or the letter requesting access, it would probably not serve as a valid defense against delict to say that the organisation gave consent.

Harm may be caused by varying degrees of intent. A person might cause harm on purpose (direct intent). Secondly, a person might also cause harm while pursuing another purpose, which could not be achieved without also causing harm (indirect intent) while not desiring a particular result. Lastly, a person may foresee the possibility that s/he may cause the harmful result and reconciles to this fact,
that is, s/he nevertheless performs the act which brings about the consequence in question \( (dolus eventualis) \). A researcher whose work shows any of the three types of intent, might be found to have acted wrongfully. The last type of intent borders on negligence. Since researchers may be seen as experts in their field, their acts will tend to indicate that their conduct is blameworthy (i.e. fault exists) (Neethling et al., 136). There is, however, also a tradition of fair comment, which refers to honest expressions of relevant opinion, which does not disclose malice (Burchell 1994, 177). A further consideration is whether the article on the research findings is in a limited edition professional journal or in the mass media. In the mass media there is a bit more leeway than in a professional publication for what can be accepted as fair comment than in professional publications.

Another criterion is that the harm should be foreseeable (Neethling et al., 125–126). This has to be judged on the degree of probability, but the expertise of the researcher will again put the burden of foresight on her/him. It is therefore important for researchers to consider the implications of publishing results on an identified institution in order to prevent unintentional harm.

**DOES THE FACT THAT THE RESEARCHER REPORTS THE TRUTH NOT PLACE THE PUBLICATION BEYOND REPROACH?**

According to Law SA (2005, 243) the most common defence amongst people against a claim of defamation is that the information is true and in the public interest. Most researchers will make the same claim for their published research results. This may, however, not be such a safe haven as one would wish it to be. In the first place, the organisation may challenge the truth defence based on a lack of rigor in the research process. We have all heard survey research results challenged in this way prior to elections, usually based on questions around the sampling or questions used. Truth is, after all, one of the most illusive entities even in science. If the sampling or the statistically analysis can be challenged, the institution may claim that the results do not represent the truth at all. Where qualitative methodologies are used, it might be even more difficult to prove ‘truth’.

In terms of causing harm, truth may also not be enough to support disclosure of the identity of institutions. The goal of science is to build knowledge and understanding. If a researcher is causing harm by releasing the name of an institution, even if such report is describing the facts accurately, how does this in itself serve science? If the same results in terms of building knowledge can be achieved without naming an institution, why would one not protect the identity of such an institution? Does the disclosing of the identity of an institution in such circumstances not in itself point at negligence, lack of forethought, and even malice? These arguments can definitely be raised in the case of the research by Crapenzano, in which it is difficult to see how the release of the name of the town and the failure to protect individuals in the town contributes to science (Preston-Whyte 1989).
HOW CAN THE RIGHTS OF INSTITUTIONS BE PROTECTED?

Firstly, if at all possible, the researcher should protect the institution in which research is done, by making every effort not to publish its name and identifying data that would make it easily recognisable. It might be difficult to disguise an institution sufficiently from those really informed in that field. It is still worth the effort, however, since it will protect the institution’s brand or the community’s good for those readers who are more distant and less informed. In fact, it makes sense to protect the brand in this way, since it is precisely those groups who might be less informed about contextual factors, and might find it more difficult to interpret the results.

I would suggest that the protection of communities and institutions be added to the brief of ethics committees of Universities, in order to ensure that researchers address this issue in their research protocols. This is particularly important in social research, but may also be relevant in fields such as health systems research. In order to address the issue sufficiently, researchers should address the possible harm the publication of the results might hold for the communities or institutions involved, and should indicate what precautions they are going to take to prevent the identification of the community or organisation. The issue of disclosure of identity in the (internal) report and in subsequent publications should be addressed in the permission sought from communities and institutions.

It seems fair that if an institution is named in the report of a study, the author should make a determined effort to contextualise the study in the sense that the reader should be given adequate information to interpret the results. One way in which findings can be contextualised, is to have comparative data available from other settings. This would allow the reader to decide whether this institution has a uniquely poor record, or is similar to others. Another way of contextualising would be to report clearly when the data was collected, and which environmental factors were active at the time. For instance, if an outbreak of a hospital-based infection occurred during a period of industrial action, this would be interpreted differently from the same outbreak in the absence of staffing problems. Thirdly, Ferraro (in Rasmussen 1990, 22) talks about the ‘connected critic’ and says that ‘the compelling quality of social criticism rests on the fact that good criticism keeps a foothold in what it criticizes’. This would demand that the researchers have an intimate knowledge of the kind of institution they are researching, so that the researchers share the perspective of the institution being criticised and the report is therefore written within such a shared perspective.

CONCLUSION

It is not good enough for Research Ethics Committees to focus exclusively on protecting the rights of individual persons. Institutions also have a right in law and moral principles to protection against the harm that the publication of research results can cause. Universities as employers of researchers, or institutions that approve
the research protocols of students may also have a vicarious responsibility for damages which could be shown to be caused by a publication. The responsibilities of researchers in this regard have to be carefully considered during the planning process so that the researcher can show due diligence.

NOTE
1. A pseudonym.
2. Words in brackets inserted for clarity.

REFERENCES