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Student Photography and Ethical Clearance: Do we need a tailored code for research ethics?

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Abstract

In an earlier paper presented at a DEFSA conference, Munro called for a debate on and the development of a research ethics code tailored specifically for design – as opposed to simply importing, applying or borrowing ethical principles applicable (and as such possibly more suitable) to the medical and scientific disciplines.

The aim of this paper is to advocate likewise for a tailored research ethics code, but, more comprehensively, aimed at researchers working in the fields of art, design, as well as photography.

Informed consent, participant anonymity and non-maleficence are well-established ethical requirements in the medical and scientific research environments. These requirements have likewise become mandatory for postgraduate art, design and photography students at some South African local universities.

The South African Constitution and the Press Code provide a valuable reference for change, as well as creating and upholding relevant ethical, societal conditions for its people. With reference to these, we support our arguments for a tailored research ethics code by indicating how the needs of a documentary photography research project, conflict with the research ethics requirements of a university research ethics committee (REC). We further illustrate this conflict by debating a photographic documentary case study on religious doctrine and liberal society.

We conclude by arguing against the strict application of medical ethical requirements to research projects in art, design, and photography research projects. We should consider moving towards a tailored ethical code, influenced by Hutton's Radical Moralism, and ideals enshrined in the Press Code.

Keywords: Ethics, freedom of expression, controversial subjects, research ethics, ethical clearance

Introduction

Allan Munro (2011) presented a paper on ethics and design research at the 2011 DEFSa conference. In his paper, he lists and discusses universally ethical principles and highlights that research ethics are not strictly regulated – unlike various other areas that are methodically controlled and directed by means of the promulgation and enforcement of legislation, codes of conduct, and regulations. He further indicates how research ethics are nonetheless fundamental in the morality of research practice. His paper highlights that research ethics is well established in the natural and social sciences, but that research ethics is still in its ‘infancy’ in the arts and design. He conveys a concern that institutions may or sometimes do elect to impose ethical requirements and practices on art, design and photography borrowed from other domains. He further argues that the ethical requirements of the natural sciences may have principles that may or may not be applicable to design. Munro concludes by calling for a debate on, and the development of, a research ethics code tailored specifically for design.

This paper aims to contribute to this debate on a research ethics code tailored for design but includes art and photography in the discussion as well. We argue that research practice in art, design, and photography may indeed require a code of ethics tailored specifically with our disciplines in mind. Both the South African Constitution (1996) and the Press Code of Ethics and Conduct for South African Print and Online Media (2019) (hereafter referred to as the Press Code) provide a valuable reference for change. We illustrate our arguments by discussing how the needs of a documentary-photography research project conflict with the research ethics requirements set by a university research ethics committee (REC). Researchers must obtain permission from participants, must guarantee their anonymity to the extent necessitated by the research, must aim to do good, and must avoid harm. Documentary photography and design activism, e.g. Dean Hutton’s *Radical Moralism* (Cockerill 2017), are, for example, two practices that appear as opposing ideas to research ethics. Documentary photography does not necessarily obtain informed consent, and design activism (i.e. *Radical Moralism*) does not shy away from potential harm.

We will first comment on the ethical principles of informed consent and non-maleficence and then reflect on Hutton’s *Radical Moralism* before arguing why we need a tailored code for research ethics in art, design and photography.

The Belmont Report (1978) and the Nuremberg Code (1949) were seminal in the establishment of moral and ethical guidelines in medical research. Today, independent evaluation and ethical approval of medical research projects is standard practice. Ethical standards in medical research must further conform to the zeitgeist of a human rights-centred, liberal society. Referring to the protection of patients in medical procedures, Capron summarised medical consent aptly when he stated, “That cause of action embodies the precept that, just as a man’s home is his castle, his body is his temple, and no one – not even a priest of medicine – may enter without his consent” (2018, p. 15). The foundations of research ethics that involve human subjects are found in the medical milieu. Informed consent, non-maleficence, considering the potential harm and benefit ratio and protecting the rights of participants – such as their right to withdraw, as well as their anonymity and/or the non-disclosure of their identities – are some of these key ethical medical principles.

Importing principles from the field of medical ethics – as an expeditious recourse, certainly – nonetheless begs the following important question: Is medical ethics really relevant and appropriate to research projects in art, design, and photography? And if so, to what extent? Are the consequences, the maleficence of neglecting to obtain informed consent or gatekeeper permission when, for example, visualising conflict between religious doctrine and liberal society, the same as maleficence in medical malpractice? It may be obvious that the

answer is no. It follows logically then to ask if ethical requirements, derived from medical research, are equally applicable to research practice in art, design, and photography.

We will now commence to comment on some ethical principles and reflect on Hutton's *Radical Moralism*, before arguing why we need a tailored code of ethics for art, design and photography.

Ethical principles, Dean Hutton, the Constitution, and the press code

Harmful medical experimentation during and after the Second World War gave rise to several ethical codes, conventions and declarations that now guide research practice that involves human participants. The most prominent are The Belmont Report (1978), the Declaration of Geneva (1948), the Declaration of Helsinki (1964), (1978), the Nuremberg Code (1947), and the United Nations Universal Declaration of Human Rights (1948). A central thread throughout these codes and declarations is the protection of individuals and, among other things, the prevention of abusive practices as regards research participants. Fischer (2006), in this regard, provides an informative background to, and summary of, most of these declarations and codes. In South Africa, the Department of Health's publication titled *Ethics in Health Research* places a strong emphasis on protecting participants (South Africa 2015), while the Human Sciences Research Council's (HSRC) *Code of Research Ethics* promotes the rights and dignity of research participants (HSRC 2006).

Informed consent is a key ethical research principle in all instances where human participants are involved. Consent is only possible if a potential participant received detailed and easy-to-understand information about the project, as well as the potential risks and benefits. Gatekeeper permission, similar to informed consent, is required when a researcher wants to collect data but require permission to access a building, a gathering, or even an open-air venue. It would be unethical from a research ethics perspective, for example, to photograph a religious gathering that takes place in an open-air venue unless the organisers of the activities provide gatekeeper permission. Collecting and publishing data about people without their consent, or without gatekeeper permission, may cause harm by damaging their reputation or stigmatising them. Research must further aim to do good (beneficence) and to avoid harm (non-maleficence). Beneficence is also a deliberate process that "should seek to improve the human condition" and "If the research cannot do this, then it is unlikely to be ethical" (South Africa 2015). University research ethics committees are unlikely to issue an ethics clearance certificate unless participants are adequately informed, participate willingly, can withdraw at any stage from a project and are shielded from unnecessary harm. This does not just apply to medical research, but also to projects that aim to photograph people that participate in closed or even public religious activities.

The conflict between informed consent and non-maleficence becomes obvious if a documentary photography project aims to expose poor labour practices. An employer will not provide consent, nor gatekeeper permission, to a researcher who seeks to record poor labour practices in a factory. The images, when published, will harm the employer. Similarly, photographing people that participate in cultural or religious activities may damage their reputation if such images portray the photographed subjects in a negative light.

A good example of a postgraduate study that caused harm to some is the work by Dean Hutton. The work by Hutton, a master's degree student in fine art from the University of Cape Town, encountered resistance and a legal challenge from the Cape Party, a regional political party. Hutton (n.a.) is a genderqueer, trans, media artist and uses the prefix 'they' or 'their' with reference to the artist. Hutton displayed their work *Fuck White People* in 2016 at the Iziko South African National Gallery. The work of art consisted of a black and white poster in bold, capital letters repeating the potentially sensitive and contentious statement several times

across the poster. A chair and a set of gold-coloured shoes were placed in front of the poster. Hutton's work is not derived from data that they collect from any particular person or persons, so informed consent does not apply. In *Cape Party-Kaapse Party vs. Iziko South African National Gallery* (2017), Chief Magistrate Thulare, who presided over the case, made the following comments:

Hutton is a master's student, and the work is part of their research in fulfilment of a programme for their degree in Fine Arts and was meant to elicit responses, comments and dialogue in furtherance of their research. The work is Hutton's artistic creativity and part of their academic and scientific research. Even if it were to be found to be unfair discrimination, which it is not, it would be saved from prohibition by the proviso to section 12 of the Act.

The work in general and the words 'Fuck White People' in particular as used by Dean Hutton in his protest art is not unfair discrimination on the ground of race as envisaged in section 7 of the Act. It is not hate speech as prohibited by section 10 of the Act, and its dissemination, publication and display by the respondent are not prohibited as envisaged in section 12 of the Act.

Chief Magistrate Thulare found that the 'pain' experienced by a specific homogeneous sub-group of society (white people) is of lesser importance than free speech in a liberal society.

Journalists and artists enjoy the rights and freedoms that the South African Constitution provides in Section 16(1) when it refers to the freedom of expression, a free press, freedom to impart information or ideas, artistic creativity, as well as academic freedom and freedom of scientific research (1996, p. 7).

The Press Code adopted a code for print and online media that gives effect to the Constitution. Per the Constitution and the Press Code and within its restrictions, visual artists are therefore free to comment on social issues even if it is controversial or offensive. Here again, we should nonetheless consider (Constitution, Section 16(2)) that the right of freedom of expression does not extend to propaganda for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The function of universities of technologies (UoTs) is to prepare art, design, and photography students to practice their skills in commerce and society. Is there not a need to align research ethics codes with the ethics of practices in business and society?

Research ethics requirements and its conflict with practice

The arguments presented in this paper are a response to the conditions set by the Tshwane University of Technology Research Ethics Committee (REC) for a qualitative photography research project. The project centred on the visualisation of conflict between religious doctrine and liberal society. The TUT REC required that those that are photographed must provide informed consent and that organisers of events provide gatekeeper permission. Also, the TUT REC prohibited the identification of individuals that appeared in public events. However, the TUT REC did allow the depiction of religious leaders in public. The restrictions are to protect attendees from possible stigmatisations and potential harm.

The TUT REC clearance certificate indicated the following:

- The researcher will duly obtain gatekeeper permission to enter and photograph in places of worship from its owners/custodians;
- Informed consent will be obtained from each individual (i.e. adults) being photographed in the places of worship, especially when such individuals are potentially identifiable;

- Where religious activities are in public and photography is allowed or encouraged, the researcher will take photographs in such a way that private persons are not identifiable; if private persons are identifiable, informed consent will be sought;
- When religious leaders appear in public in their capacity as religious leaders, and the photographing of them is allowed or encouraged, such photographs shall be included in the study; no permission will be sought for such photographs; and
- Children (i.e. legal minors) will not be photographed without parental consent and child assent; photographs of children will be taken in a way that does not render them identifiable.

Although these restrictions are not extraordinary, one may also assume that the sensitive nature of the research (critiquing religious doctrine) and the conflict seeking nature of the project, contributed to the specific restrictions. Research projects of this nature are often from a socially critical perspective. Several authors in the South African design community contributed to the discussion on the social role and function of visual communication research. They refer to the understanding of large-scale societal problems, such as sustainability, economy, politics and culture, in addition to the commercial role of photography and design (Fenn & Hobbs 2015, p. 131); the objectification of women (Economou & De Lange 2015); and the concept of ubuntu (Chmela-Jones 2015). Munro (2011) highlights the responsibility of design to act in a problem-solving capacity, thereby effecting change and improving society, while Cadle and Kuhn (2013) expounded on affirmative design and critical design.

Art, design, and photography departments at universities train students to become social commentators through art, design, and photography. Photojournalists would typically comment on social issues such as religion (see for example Maviya's 2018 article in the *Mail & Guardian*). The principle of professional journalism and photojournalism strives to benefit society by doing the greatest good for the greatest number of people (Kobré 2008, p. 354). Essentially the media exists to serve society by providing and interpreting information that assists in informed decision-making (Retief 2017, p. 5). This information consists of that which is in the public interest because it shapes policy and affects the population to a lesser or greater extent (Retief 2017, p. 5). Importantly, this right to disseminate information is not limited to the media but extends to the whole population (Retief 2017, p. 5). Social comment, therefore, predicated on both the right to freedom of expression and the right of the public to know and to be informed. This entails that conflicts of privacy or sensitivity will arise from time to time. It is even conceivable that student photographers may become part of the paparazzi, that thorn in the side of all celebrities and public figures. Artists such as cartoonist Jonathan Shapiro; painter Ayanda Mabulu; photographer, performance artist and activist Dean Hutton; and activist Sebastião Salgado (2013) contribute to public discourse by depicting topics and subjects that address socially relevant issues. Although constitutional democracies hold freedom of expression in very high regard, it requires balance with other rights such as the right to privacy. The South African Constitution likewise has several limitations built into the Bill of Rights that should be considered when interpreting the fundamental rights enshrined therein.

Photography students who wish to use their photographs and work to reflect critically on society (as Hutton, Mabulu and Shapiro do with their respective creative media) cannot depend on the cooperation of those that they mean to critique. Can we sincerely and honestly be expected to obtain informed consent or gatekeeper permission when the resulting images, designs or works of art are critical of the subject, the topics, and affect the reputation of the subject or organisation?

Depicting the conflict between doctrine and a liberal society

In an attempt to visualise conflict that exists between religious doctrine and liberal society, a photographer must photograph examples that represent this conflict. Homosexuality is such an example. The Bible is critical of homosexuality; some religious people are outspoken against homosexuality and society reflects this homo-aversion in discriminatory laws (scripture + belief + behaviour = doctrine). For the documentary photography student to illustrate this conflict, the hypothetical photograph would need to contain the visual elements that communicate religiosity, homosexuality and conflict. A literal hypothetical photographic example representing this conflict could be a religious official arguing with someone at a Gay Pride parade. The official could be dressed in such a way that it is obvious that they represent a religious order. The collective visual clues at the Gay Pride parade could confirm the sexual orientation of the person the official engages. The photograph would also need to capture emotional facial expressions. Such a photograph could very easily represent the conflict between religious doctrine and liberal society.

However, the ethical restrictions set by the TUT REC problematise the above scenario because the gatekeeper permission restriction may prohibit the photographer from entering the Gay Pride parade (if it takes place on private property). Even if the event takes place on public property where journalists (or anyone) are within their rights to take photographs of anyone, there is still the matter of informed consent.

Informed consent requires everyone who appears in the photograph to give their permission before the photograph may by right be published or otherwise disseminated. If the opinion of our fictional photography student favours the liberal zeitgeist, then the image in the magazine would stigmatise the religious official as homophobic. In contrast, if the image favours the official, then it would convey a message that homosexuality is wrong or repugnant. It is, therefore, unlikely that the photographer will receive the required informed consent of all the parties to publish the photograph. Someone in the photograph risks public stigmatisation or criticism. The professional practice of photojournalism does not require informed consent. The journalist may publish a subjective opinion and be protected by the freedom of speech, freedom of association and other constitutional rights. The general principle of the 'greater good' and 'in the public interest' applies. Johan Retief, a former Press Ombudsman (November 2009 – March 2019), makes it clear in *Decoding the code sentence by sentence. Explaining the code of ethics and conduct for South African print and online media*, that the media exists to serve society (Retief 2017, p. 4). By the standard of serving society, any citizen, with or without photographic training, in or out of academic context, professional or amateur, may produce the same hypothetical photograph and comment on religious doctrine and homosexuality. When private citizens appear in public, the Constitution does not protect them from identification and fair criticism. This is fundamental to a constitutional democracy. Children, however, as a sub-category, are especially vulnerable to undue exposure or exploitation. Stricter ethical principles than informed consent and gatekeeper permission apply. A parent may permit a photographer to depict their child, but how would the child respond to such an image in future – in particular, if the image depicts them contrary to their wishes?

The conflict between the stricter research ethics committees' ethical requirements and the 'allowable' ethics of the Press Code is illustrated below. Figure 1 depicts an attendee of the It's Time event hosted by Angus Buchan in Pretoria on 27 October 2018. Consider the following hypothetical criticism of the person in the photograph as a test of stigmatisation.



Figure 1. Be

Religious fervour overwhelmed the woman in the photograph. She was in a trance-like state and shouted continuously. Although she also spoke in English, she switched to an incomprehensible chanting that sounded like a language. Earlier, before this photograph was taken, she formed part of a group of people that 'healed' a person in a wheelchair by praying for him and speaking in the same strange language (Figure 2). To some attendees of the event, this behaviour may seem normal and illustrate the strength of religious activity in South Africa.

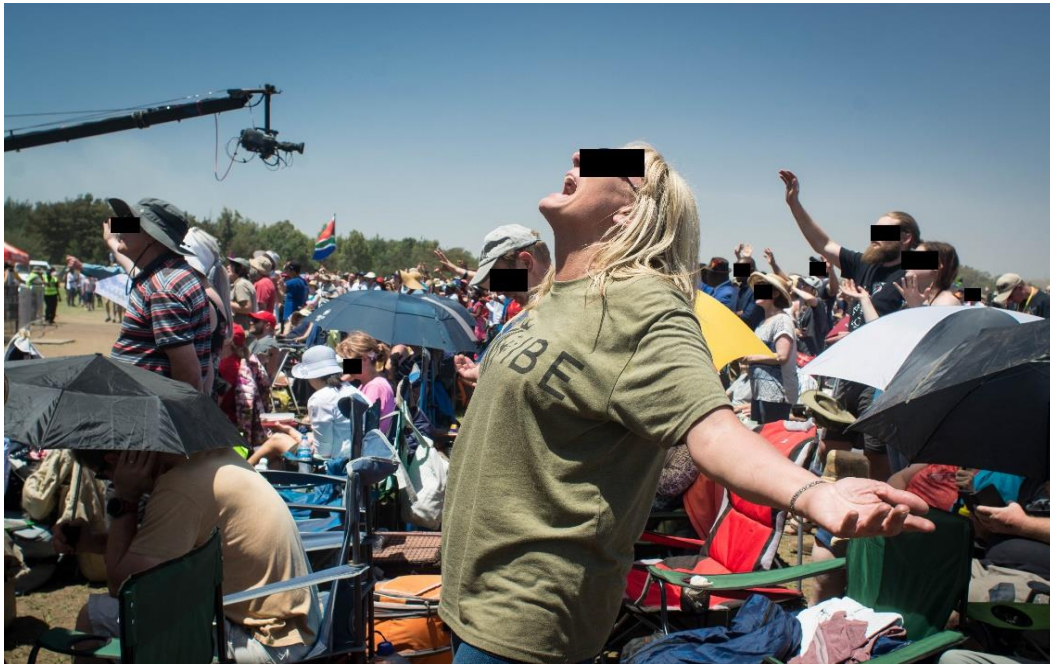


Figure 2. Healing hands

In contrast, a secular perspective may view the behaviour depicted in Figure 2 as irrational or even irresponsible. Would such a criticism stigmatise the people depicted in the images? Although it may seem as if a sceptic criticises the person, it is the idea that receives the criticism. Should the identification of a person that holds an opinion in public be protected, and should such a person provide consent before being photographed? We can counter-argue and conclude that the answer is yes. Did the attendees come to the event to be photographed, to be critiqued and to be stigmatised, or did they come to participate in a religious activity?

Informed consent and public figures

The TUT REC waived the informed consent restriction for religious leaders. It held that:

When religious leaders appear in public in their capacity as religious leaders, and the photographing of them is allowed or encouraged, such photographs shall be included in the study; no permission will be sought for such photographs ...

Research Ethics Committee requirements would thus allow a postgraduate photography student to depict a religious leader without permission and with the potential of stigmatisation. The Press Code, in contrast to research ethics committee requirements, seems to make no distinction between the rights of a public figure and a private citizen. The Press Code, in section 3, specifically addresses Privacy, Dignity and Reputation by categorically stating that: "The right to privacy may be overridden by public interest...".



Figure 3: Angus Buchan and the camera

This provision in the Press Code appears to be vague and in danger of being too liberally interpreted. For instance, section 3.1 of the Press Code seems to imply that it is justified for a photojournalist to walk into a church and start taking photographs (paparazzi style), if in the public interest. Since most churches welcome anyone to attend, the paparazzi photojournalist may not technically transgress the Press Code until the church requests that the photographer desists from taking photographs and leaves. The right of admission is assumedly reserved for religious activities. The conduct of the photographer will clearly interfere with the events and rituals of the service.

The presence of cameras in Figures 1 and 3 adds another dimension to the arguments of this paper. Private citizens could not have a reasonable expectation of anonymity as they are aware, and can see that they are captured on video for public transmission at a later stage or even during a news event. Attendees of religious activities in a building, however, have a reasonable expectation and right to privacy. Conversely, the proliferation of cell phones with cameras and the social media culture and the zeitgeist of image sharing online, suggest that private citizens in public spaces cannot have a reasonable assumption of anonymity. To this end, the presence and the behaviour of private citizens as participants of certain public events could imply consent.

Conclusion

Are the ethical requirements of informed consent, anonymity and non-maleficence for a person in a public event, the same for a participant in a medical research project? These ethical principles are non-negotiable in medical research, but they are not necessarily required in the professional practice of photojournalism. To identify persons, and to provide a valid critique of undesirable practices, are commensurate with constitutional freedoms.

This paper submits that the risk of harm (by way of stigmatisation) of private citizens when their behaviour is critiqued may be justifiable in the context of the Constitution and the Press Code. At the same time, we take cognisance of the fact that a university research ethics

committee has higher standards and may not summarily provide ethical clearance for a project if the outcome would cause undue harm.

We, furthermore, submit that the Acts governing trespassing, consent, harassment, hate speech and slander could be sufficient to protect private citizens. Ethical restriction (informed consent and identification of individual persons) should not apply universally (the blanket approach) to students for 'interpretative social science field research' (Lie & Witteveen 2017, p. 66). To apply this restriction would eliminate the sub-genre of street photography in visual communication studies, which is well suited to make visual and creative comments on social issues. Street photography is candid and impulsive, and there is no engagement between photographer and subject on the street.

Lie, and Witteveen (2017, p. 63) argue, "Appropriate ethical behaviour is thus deemed to have different relevance in social science research practices and development and social change interventions". While they acknowledge that social research affects participants, they contend that the "conceptualisation of 'harm' is unfortunate" (Lie & Witteveen 2017, p. 63). They balance 'no risk of harm' with 'the right to be informed'.

The visual communication student is not just a dispassionate collector of data but also an active participator, an instigator, an activist in critical social discourse. The identification of private citizens for research on social issues balances the right to privacy with the accountability of beliefs and actions. This will necessarily cause a degree of 'harm'.

We conclude by arguing against the strict application of medical ethical requirements to research projects in art, design, and photography research projects. We should consider moving towards a tailored ethical code, influenced by Hutton's *Radical Moralism*, and ideals enshrined in the Press Code.

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