

Chapter 9

Ethical Challenges: Researching War Crimes

Kirsten Campbell

This chapter explores the complex ethical challenges of researching war crimes, using my research on sexual violence in the conflict in the former Yugoslavia as a case study. The chapter explores three key sets of ethical challenges in this area. The first concerns how the researcher defines war crimes, as this includes or excludes forms of conduct, and accordingly, categories of victims and perpetrators. The second set of ethical challenges arises from the context of conflict, which situates the researcher in an acutely violent and politicized research field. The third set of challenges relate to the choice of methodology and methods, which is integral to research quality and integrity in this difficult field. The chapter examines each of these ethical challenges through the practice of researching war crimes in the field. It connects practical ethics issues, such as confidentiality, to the broader ethical questions of the values and principles of research, such as social justice commitments, that this area inevitably raises.

Key definitions

Epistemic accountability: Evaluation of epistemic standards in terms of the transformative values of social justice.

Situated ethics: The critical position built through relationships of epistemic responsibility to others and to transformative social change.

Theoretical accountability: The explicit and reflexive engagement with values in a process of concept building.

Introduction

The study of war crimes is a growing area of research. The field has emerged in the context of the so-called 'new wars' and the new international criminal justice system of the 1990s. However, there is little consensus within this new and multi-disciplinary field on how to engage with the specific ethical challenges of researching war crimes. This chapter explores key ethical challenges and strategies for ethical accountability when undertaking war crimes research. It identifies three key sets of ethical challenges. The first challenge concerns how the researcher defines and theorizes the nature of war crimes, since this includes or excludes forms of conduct, and accordingly, defines categories of victims and perpetrators. The second set of ethical

challenges arises from the context of conflict, which inevitably situates the researcher in a violent and politicized research field. The third challenge relates to the choice of methodology and methods, which is intrinsic to research quality and integrity in this difficult field.

This chapter explores these issues through the practice of researching war crimes, drawing on my research on prosecutions of conflict-related sexual violence in the former Yugoslavia. Most recently, this research involves a four year research project, ‘The Gender of Justice’ (‘GoJ’), funded by the European Research Council. The project develops a new research framework for studying gender justice. It studies the ‘gender’ of international justice for sexual violence in armed conflict through a mixed-method case study of international prosecutions of conflict-related sexual violence before the International Criminal Tribunal for the former Yugoslavia (‘ICTY’), and national prosecutions before the War Crimes Chamber of the Court of Bosnia and Herzegovina (‘BWCC’). This study involves a multi-disciplinary team working across multiple field sites. The study exemplifies the ethical challenges of war crimes research, and the GoJ team has engaged in ongoing dialogue on these challenges. This dialogue has been integral part of the development of the approaches outlined in this chapter.

From regulatory compliance to ethical accountability

The ‘conventional story told about the emergence of research ethics’ links modern principles to post-war prosecution of medical war crimes committed by German doctors in World War Two (Hay and Israel 2006). The judgement in this war crimes trial laid down the so-called ‘Nuremburg Code’, a set of ethical principles for conducting research on human subjects (Mehring 2014: 164). These ethical principles eventually moved from medical research to the social and political sciences.

These principles continue to inform the ethical frameworks of professional disciplinary associations and research councils, which will guide ethical practice in studying war crimes. Multiple disciplinary, country, and specialist subject specific guidelines may also be relevant. One strategy is to use research council guidelines as ‘baseline professional ethics requirements’ (Sriram 2009: 58). For example, the GoJ Project drew on the European Research Council ethics framework, together with the guidelines of the British Sociological Association, Social and Legal Studies Association (UK), and Economic and Social Research Council (UK) for subject specific issues.

These principles and guidelines are important for developing accepted ethical standards, and for complying with existing regulatory regimes. However, such compliance does not necessary guarantee ethical research in practice, particularly in the ‘difficult situations’ of conflict and post-

conflict settings (Sriram 2009: 58). For example, a sexual violence survivor may wish to be named rather than appearing as an anonymous informant in publications because they wish to combat the ‘stigmatization’ of rape victims. Such informants are often well aware of the potential harm of disclosure, but ‘want to draw attention to a situation that they perceive as unjust’. To refuse this disclosure ‘may be at odds not only with the demands of our interlocutors, but also our goals as scholars, advocates, and advisers on policy’ (Sriram 2009: 58). These important goals reflect the values that researchers have, and play a crucial role in how they undertake that work.

Acknowledging the crucial role of these values in the generation of knowledge shifts the model of ethical practice from regulatory compliance to ethical accountability. Given the complexities of ethical practice in war crimes research, applying mechanistic or technical solutions to these challenges will not necessarily provide ethical research. Rather, my approach acknowledges the interconnection between ethical norms governing the proper conduct of research, and epistemic norms governing the generation of knowledge. There is an imbrication of ethical and epistemological practices in war crimes research, and ethical accountability requires a relationship of responsibility of researchers to wider social and political values in their generation of knowledge. This approach shows how war crimes research inevitably connects practical ethics issues, such as confidentiality, to broader ethical questions of the values and principles of research, such as commitments to social justice. Accordingly, this chapter frames its discussion of specific ethical issues, such as informed consent, in the context of broader ethical strategies. Researchers can then use these strategies reflexively to develop appropriate practice for their research. To develop this approach, this chapter draws on feminist work on ethical research generally, with specific reference to ethical issues concerning conflict and sexual violence. This work offers sustained engagement with ethical issues in this challenging area, and reflects on the fundamental question of ethical accountability. Do epistemic practices reproduce inequalities and injustices, or promote social transformation and change?

Ethical challenge one: what are we researching? The challenge of theoretical accountability

The first ethical challenge that researchers face concerns how to select and define the object of investigation. Sandra Harding (1986: 22) points out that ‘deciding what phenomena in the world need explanation, and defining what is problematic about them’ always involves cultural and social values. The ethical challenge is to develop a reflexive understanding of how these values construct ‘war crimes’ as an object of research. This challenge is two-fold. The first

aspect is the concept of criminality underlying models of war crimes. The second is how the research field shapes 'war crimes' as an object of inquiry.

Concepts of criminality

If criminology concerns a 'specific genre of discourse and inquiry about crime' (Garland 2002: 7), then what is the 'crime' that war crimes research focuses upon? This is a fundamental ethical question for the study of war crimes. It is fundamental because the concept of criminality determines which acts we will categorize as criminal, and which persons we will count as victims or perpetrators of these crimes.

Researchers in this area often assume that there is an obvious answer to this question. In the first approach, war crimes are seen as 'gross human rights violations', which breach human rights law or norms (Mullins and Rothe 2008). However, this 'human rights' approach does not provide an adequate conceptual basis for identifying war crimes. For example, to define conflict-related sexual violence as a human rights violation focuses upon the breach of the civil rights of the individual right-holder, and the state as guarantor (or violator) of those rights. However, breaches of human rights norms are not necessarily criminal offences or attract criminal sanctions. Moreover, this approach neglects the collective nature of this criminality, and of the legal protection and punishment of victims and perpetrators as members of groups (Campbell 2011). The second approach characterizes war crimes as violations of the legal or moral norms governing conflict (Treadwell 2012). However, this 'crimes in war' approach also fails to provide an adequate conceptual foundation. For example, to define conflict-related sexual violence as a war crime focuses upon violations of international humanitarian law, the law of armed conflict. However, not all breaches of these legal rules are criminalized, and it is only where the requisite elements of war crimes under customary international law, genocide, or crimes against humanity that such acts can be prosecuted as crimes under international law. To use the laws and norms of humanitarian law to define conflict-related sexual violence as war crime reproduces this 'compartmentalized and incomplete normative framework' (Bassiouni 1996: 560).

It is not possible to resolve this ethical challenge by focusing upon positive law. or moral norms to define the object of study. If we define 'war crimes' according to positive law, then which legal regime should be used? For example, in the case of conflict-related sexual violence, the substantive definition of rape as a war crime differs between different international and national legal regimes. Alternatively, if we use moral norms to define war crimes, then exactly which values are we employing? For example, the 'right to sexual autonomy' that underlies

international sexual offences is a specific cultural representation of sexual violence (see Campbell 2011). The ethical challenge is not to ensure that these concepts of criminality are value-free. Rather, it is to account for the values that shape concepts of war crimes, and to engage with the ethical consequences of how those values shape the focus of enquiry.

The ethics of visibility

The second aspect of the challenge of theoretical accountability concerns invisible and visible values in the research field. These values are also part of the ‘specific genre of discourse and inquiry’ of this field (Garland 2002). While this heterogeneous and multi-disciplinary field is still in the process of constitution, it is possible to identify key debates and approaches that shape our understanding of war crimes as an object of investigation. They form the contextual values of the field by providing a set of assumptions and judgments about what is known or not known about war and criminality. These assumptions may be taken for granted and widely held ideas about conflict, which are unexamined and hence ‘invisible’. For example, Laura Sjoberg (2014: 3) points out that ‘much of the scholarly work on war and conflict does not talk about women – much less gender – at all’, but instead assumes male armies, masculine institutions, and men’s peace. These invisible assumptions about gender and war shape our understanding of the object of inquiry. The ethical challenge is to make these assumptions visible, so that it becomes possible to critically examine the social and cultural values of the field.

The counterpoint to ‘invisible’ research assumptions is highly visible research problems. For example, conflict-related sexual violence has now become a highly visible problem (Buss 2014; Aoláin 2014). This is in contrast to the earlier invisibility of this issue when the current research field began to emerge in the 1990s. The emergence of new research problems may reflect shifts in broader social values, such as the rise of feminist activism in the 1990s (Campbell 2002). However, it may also be due to other values. These include ‘the role of institutional culture(s), activist strategies and choice of “frames”, policy entrepreneurs, and the operation of deep-seated gendered, racialized, and colonial ideologies’ (Buss 2014). For example, the increasing focus upon of male victims of conflict-related sexual violence coincides with the increasing rejection of previous feminist work (Vojdik 2014: 938). The visibility of this new debate coincides with new funding, increased academic respectability, and policy attention to conflict-related sexual violence. The ethical challenge is how to critically intervene in the research field without reproducing these politics of knowledge.

Ethical strategy one: theoretical accountability

The first strategy is that of theoretical accountability. This involves constructing an ethically accountable concept of war crimes. This process of ‘concept building’ explicitly and reflexively engages with the values that shape the focus of enquiry. There are three elements in this process, which can be seen in the building of a new concept of the crime of conflict-related sexual violence in the GoJ project.

The first element builds upon the concept of criminalization, which focuses upon the social practices that make or constitute ‘criminality’. This approach moves away from the legal and normative concerns that are often taken for granted in war crimes research. Instead, criminalization is a dynamic field of ‘interlocking practices in which the moments of “defining” and “responding to” crime can rarely be completely distinguished and in which legal and social (extra-legal) constructions of crime constantly interact’ (Lacey 2002: 197). It focuses upon the constitution of war crimes as such in legal rules and trial practices. Substantive law defines which conduct is criminal and which is not (such as the criminal act); who is a victim of that harm (such as consent); and who perpetrates it (such as intent). However, this process of criminalization also involves practices that adjudicate the alleged crime. These include the charging of offences, which determines what offences are brought before the court, witness evidence, which determines the harms that the court hears, and evidential proof, which determines the basis upon which the court makes its determination of criminality.

The second element focuses upon international criminal justice, and away from human rights or humanitarian law. It is now possible to identify a body of substantive and procedural law that can properly be called ‘international criminal law’. This provides a means of identifying the category of criminalized conduct, as well as the relevant national and international criminal proceedings determining criminality. For example, sexual violence consists of a category of international crimes defined by customary international law. Such acts can be prosecuted as war crimes, genocide, or crimes against humanity if the requisite elements are met under customary international law. These so-called ‘core crimes’ can be prosecuted under national and international legal regimes, as this customary law binds all states. Following contemporary usage of ‘armed conflict’ rather than ‘war’ in this body of law, we will call these international offences ‘conflict-related crimes’. This approach emphasises the connection between conflict and the commission of these crimes. It also offers a cohesive conceptual approach, and thereby avoids the problem of different legal or ‘moral’ norms across national legal systems. These two elements build a concept of the criminalization of conflict-related crimes, which provides a means of capturing how certain conduct in conflict becomes prohibited, and how certain

persons become victims or perpetrators.

The third element explicitly inscribes transformative values in this process of concept building. This inscription aims to resist invisible assumptions about gender and war. This is because this model of conflict-related sexual violence as a crime can make visible how the process of criminalization creates ‘gendered’ acts and subjects in the legal rules and trial practices that construct the crimes of war. However, it also resists the current politics of knowledge by building on feminist work to highlight ‘the limitations in what has been made visible’ about conflict-related sexual violence (Buss 2014: 15). This approach does not focus upon war crimes against women or men as such, but instead considers how international criminal justice constructs *gender relations*. With this theoretical framing, it becomes possible to consider the making of gendered patterns of criminalization, and to ask whether those patterns reinforce or challenge existing gendered patterns of domination and power.

Ethical challenge two: the research field in the context of conflict and the challenge of situated research

The second ethical challenge arises from the context of conflict, which situates both researcher and researched in an often violent and politicized research field. This context of conflict may range from wars between states to protracted violence between irregular armed groups. The conflict may include physical, material, and symbolic violence. In such contexts, the demarcations between zones of war and peace are often unclear, with a society remaining in conflict, if not at war (Gagnon and Brown 2014).

The ethical challenge of this research arises because it is ‘undertaken in difficult or dangerous settings, within societies that are often deeply divided, and with participants who may have witnessed or experienced violence’ (O’Reilly 2015). In this context of conflict, observing the ethical principle of ‘do no harm’ becomes significantly more challenging and complex. In particular, it raises two key sets of ethical challenges for the researcher: data in conflict and situating knowledge.

Data in conflict

The conflict context can create an ethical challenge to the production of knowledge itself. This is the problem of ‘data in conflict’. In conflict, truth claims often become both highly contested and evidentially underdetermined. Crimes of conflict still remain a significantly under-researched area (Aoláin 2014). Where data is available, it often suffers from inconsistent and unsystematic collection and analysis, or from under-developed methodological frameworks and methods

(Cohen et al. 2013; Foreign and Commonwealth Office 2014). Where claims are made, they frequently become highly politicized and contested (Hansen 2000). For example, the estimated numbers of female victims of conflict-related sexual violence in the war in Yugoslavia ranges from 12,000 to 50,000 (Niarchos 1995). Exact numbers of female victims were difficult to establish for two reasons. First, these investigations faced not only the general challenges encountered when researching sexual violence, but the additional difficulty of doing so in the midst of an armed conflict (Bassiouni 1994). Second, as claims and counter-claims of sexual violence became part of the Yugoslavian conflict, these estimates themselves became the subject of ‘wars of interpretation’ (Kesić 2002: 317). Similar difficulties arose in investigating incidents of sexual violence against men. There are no comparable estimates for male sexual assault (Oosterhoff et al. 2004).

Due to the problem of data in conflict, the researcher confronts the issue of objectivity, and its negative counterparts, bias and partiality. In regulatory ethical frameworks, objectivity is often understood to require that researchers occupy the position of neutral observers of the world. This is often seen as particularly important in contexts of conflict, because ‘in a divided society, the researcher must be someone who will strive for impartiality and be unbiased in his or her analysis’ (Adetoun 2005: 48). The assumption is that without objectivity, researchers will necessarily become situated within the conflict itself, and so mired in its polarities. This approach requires that researchers must exclude value and valuation from their research, because to be objective is to be value-free.

The challenge of data in conflict, however, reveals the complexity of a value-free position in conflict and post-conflict societies. For example, a ‘neutral’ position that contends that all nationalities suffered equally during a war may ultimately give support to ethno-nationalist arguments about the nature of the conflict by failing to acknowledge differentiated patterns of perpetration and victimization (Boose 2002: 71–72; Mischkowski and Mlinarevic 2009). Similarly, if the researcher insists that some truth claims are warranted (while others are not), they have already positioned themselves in the field of competing truths. For example, while exact numbers cannot be known, it is now well established that there are significant differences in the gendered and ethnicized patterns and scale of male and female victims in the war in the former Yugoslavia (Campbell 2007). The ethical challenge does not concern how to exclude value and valuation so as to become impartial and unbiased, but rather to critically consider how these judgments shape our knowledge and situate us in the context of the conflicts that we are seeking to study.

This challenge includes reflexively examining the values that inform the decision to undertake

research. These are the ethical problems of knowing too much, and knowing too little. The problem of ‘knowing too much’ arises when a particular conflict or international crime has been ‘over-researched’, with a resulting burden upon research participants and related distrust of researchers (Pittaway et al. 2010: 236). For example, there are significant gaps in the understanding of conflict-related sexual violence in the former Yugoslavia. It might seem that the most ethical approach is to interview survivors about their experiences. However, this focus can also operate as a ‘narrative burden imposed on women victims of sexual violence’ (Buss 2014: 17), with little apparent benefit to them or to their community (Helms 2013: 19). Conversely, the problem of ‘knowing too little’ arises when a researcher has ‘under-researched’ the conflict that they are seeking to investigate. This can have similar consequences to the over-researched conflict, with subjects growing increasingly wary of researchers with little knowledge of the particular field site, or experience of fieldwork.

Situating knowledges: the researcher and the researched in the context of conflict

Research on conflict-related crimes is a classical example of ‘sensitive research’ (O’Reilly 2015). Sensitive research requires particular care regarding ethical issues because of potential risks and costs to research participants, communities, or researchers (Renzetti and Lee 1993). In his classic study of research on sensitive topics, Raymond Lee (1993: 4) identifies these threats as including intrusion into the participant’s private life or personal experiences, sanction where research is stigmatizing or incriminating; and political threat where research investigates the vested interests of powerful persons or political institutions, or relations of coercion or domination. The context of conflict clearly raises all the possibility of all three ‘threats’, and raises two key issues for undertaking ethical research. These are ‘vulnerable subjects’ and ‘ethical disclosure’.

The first issue concerns ‘vulnerable subjects’ of research. The idea of ‘vulnerability’ in sensitive research is generally understood to refer to susceptibility to harm, whether because of the personal or social position of the research participant (Liamputtong 2007). In the conflict context, the vulnerable subject may be individual informants or vulnerable groups. For example, wartime sexual assault survivors in the former Yugoslavia have often experienced long-term detrimental impacts upon their physical or psychological health, and still live in precarious financial and social circumstances some twenty years after the war (Mischkowski and Mlinarevic 2009). It is common for both scholars and ethical reviewers to assume that these women form a ‘vulnerable group’, whether because of personal distress or social stigma. However, Downes et al. (2014:2.8) point out that ‘this means that victim-survivors are assumed

to be unable to comprehend the potential risks and consequences that may unfold as a result of participating in research and the process of informed consent may not be possible for them'. This belief in the diminished autonomy of such groups often leads to the presumption that they require special safeguards to protect their rights (Liamputtong 2007: 2–3). Such safeguards are necessary in situations in which obtaining valid consent may be difficult due to incapacity (such as the age of a child or psychiatric illness) or circumstances (such as emergency settings). However, such situations should be distinguished from presumptive classification of the diminished capacity of a particular group because of their personal or social vulnerabilities. For example, the marginalized social position of many sexual violence survivors in the former Yugoslavia has not diminished their capacity or willingness to participate in research (Mischkowski and Mlinarevic 2009: 12). The 'vulnerable subject' requires the researcher to be responsible to that subject by identifying specific risks of harm due to personal disadvantage or social disempowerment. The ethical question remains for the researcher at every point: how do I minimise personal harm to participants? However, the researcher alone cannot answer this question. Rather than focusing upon diminished capacity, the researcher should engage in research practices that give agency to those participants in the research process.

An integral element and example of the ethical challenge of the 'vulnerable' subject' involves the agency of informed consent. This concerns the information that respondents and researchers require to make a responsible decision about whether or not to participate in research. To have 'informed consent' entails that the prospective participant is informed of the nature of the project, and understands the potential risks and benefits that may follow from that participation. In terms of regulatory ethical compliance, this may include a project information sheet and consent forms. However, 'informed consent' is a process involving more than a form for participants to read and sign (WHO 2007). It may involve explaining the relevant information to participants. Alternatively, it may involve obtaining verbal consent from participants, where using written records is inappropriate or creates further risk of harm (Wood 2006: 379). If consent is understood as a process, then it may need to be sought on an ongoing basis throughout the research, so that participants can make these decisions in the context of the development of the research, and of their own changing circumstances (MacKenzie et al. 2007: 307).

The second key ethical issue involves 'ethical disclosure'. This concerns the normative reasons for disclosure or non-disclosure of information obtained in the course of research. This problem arises because information may not only report and explain facts, but it may also ground claims to legal and/or social justice. In the context of conflict, ethical disclosure is a particularly

important and complex issue because of the potential personal and social consequences of making (or not making) information public. This information may include sensitive personal or institutional information, legally protected information, or information provided in circumstances of confidentiality. Disclosure may involve the publication of information in any media, as well as revealing information to third parties.

For informants, disclosure raises issues of security, confidentiality, and identification. For researchers, it may also raise issues of legal or social impact of disclosure or non-disclosure, as well as legal requirements concerning restrictions upon disclosure or obligations to disclose. These requirements may involve different obligations arising in different jurisdictions (such as obligations under a national criminal code not to disclose the identity of protected witnesses) or regional regimes (such as European Union personal data protection regulations). For example, the GoJ project faced the challenge of complex ethical and legal obligations at both European and national levels concerning recording, storing, managing, and publication of sensitive personal and institutional data concerning conflict-related sexual violence prosecutions.

In terms of ethical accountability, these obligations cannot be determined legalistically or narrowly. Rather, obligations concerning disclosure may extend beyond direct interlocutors, and also involve ‘research assistants and other collaborators as well as interviewees, to individuals such as their relatives and colleagues with whom one may have no direct contact’ (Sriram 2009: 56). Equally, these obligations may not be to the persons, but to a society. Disclosure of information regarding perpetration of war crimes, or the effectiveness of the prosecution of these crimes, may be regarded as an integral part of public interest obligations. These can be articulated as legal obligations to report suspected criminal activities. However, these public interest obligations may also include broader ethical obligations to social values such as open justice and the rule of law. To engage with this challenge requires understanding disclosure as an ethical practice, in which all decisions about disclosure or non-disclosure must be considered in terms of their personal and social consequences in the conflict setting. In this context, the principle of ‘do no harm’ becomes fundamental to developing ethical practices of disclosure.

Ethical strategy two: situated ethics

The second strategy is that of ‘situated ethics’. This involves building a new approach to situated research, with its ethical challenges of data in conflict and ethical disclosure. Following Donna Haraway (1991: 191), the concept of ‘situation’ refers to ‘location, partial embodiment

and partial perspective'. This standpoint of the researcher reflects their objective position in a social structure. However, rather than seeing this partiality as an ethical and epistemic problem, Haraway argues 'for situated and embodied knowledge claims and against various forms of unlocatable, and so irresponsible, knowledge claims'. To be objective is to acknowledge how our social position shapes the partiality and limits of our research. Rather than objectivity being seen as value-free research, this approach instead conceives objectivity as the acknowledgement of the situatedness of knowers and knowledge in an unequal social space. This enables researchers to generate less partial perspectives of the society they are seeking to study.

Following this model, the study of conflict-related crimes is a situated knowledge, in which both the researcher and researched are situated in conflictual social relations. However, this context of conflict also requires researchers to develop ethical accountability in their situated knowledges. Ethical accountability is the responsibility to 'know well' (Code 1987: 10). To 'know well' involves responsibility to others and to wider transformative values that seek to change social orders of conflict. For example, this strategy recognizes that research on conflict-related crimes should aim to resist, rather than reproduce, categories of social differentiation and domination. This is because conflict itself constitutes these categories through violence. Ethical accountability is a form of situated knowledge. It is situated because ethical research practices are located and embodied in social relations of conflict.

The strategy of situated ethics involves developing a critical position through knowing well, that is, through developing relationships of epistemic responsibility to others and to transformative social change. Accordingly, 'situated ethics' acknowledges the positions of researcher and participants in a differentiated social space that has been structured by and through conflict. It involves building relationships of accountability through, 'webs of connection called solidarity in politics and shared conversations in epistemology' (Haraway 1991: 191). A useful description of these relationships of accountability in practice can be found in Elissa Helms' (2013) discussion of her fieldwork in Bosnia and Herzegovina. Knowing well is necessarily relational, since it is the outcome of practices of communities of knowers, rather than the ethical act of a single scholar. Using the strategy of situated ethics, then, is a means of addressing the challenge of research in the context of conflict. The GoJ project uses the strategy of situated ethics by integrating ethical accountability into research design and practice. Since the project was 'high risk' in ethical terms because of its subject matter, the research design sought to address this through the use of 'low risk' research strategies. For example, to deal with the issue of vulnerable subjects, the research does not use sexual violence survivors as

key respondents. Rather, the project engages with key groups working with these survivors. To engage with the issue of ethical disclosure, the project uses a consultative strategy that circulates research to informant lawyers and local expert practitioners for review prior to dissemination. This aims to ensure that all potential ethical issues are addressed before the research moves into the public domain. The project involves continuing collaboration and consultation with key informants, practitioners, and advocacy groups. Because ethical accountability is a situated knowledge, it must be continually re-examined in relation to the changing contexts of conflict. In this approach, ethical accountability is an ongoing process.

Ethical challenge three: The ethical challenge of researching: value in methods and methodologies

The third ethical challenge relates to the choices of methodology and methods, which are integral to research quality and integrity in this difficult field. This is the other element of ‘knowing well’, which involves reflecting upon the values that inform our epistemic practices. To ‘know well’ is to be responsible for our epistemic practices, so that we reflect on our regulative standards of knowledge and generate well-warranted claims. These are crucial ethical questions for the researcher on conflict-related crimes. For example, the GoJ project analyses patterns of conflict-related sexual violence. Research in this area frequently uses ICTY statistics as the basis for an analysis of prosecutions.¹ On this basis, the ICTY appears to prosecute high numbers of individuals for crimes of sexual violence. However, the ICTY does not provide the methodology or methods used to generate these statistics. Nevertheless, it is clear that this analysis does not distinguish between charges, cases, and convicted accused, or identify the gender of victims or perpetrators. If this distinction is made, then lower numbers and patterns of prosecutions emerge. There are significantly fewer cases of sexual violence prosecuted, and the number of these cases significantly decline over time. If we identify gender of victims and perpetrators in these earlier cases, then significant difference in patterns of prosecution of sexual violence, with ‘an overrepresentation of counts of sexual violence against male compared to female victims, and a differential distribution of the categories of offences being charged between genders’ (Campbell 2007: 426–7). These issues show the necessity of engaging with epistemic practice as an ethical practice. What are the appropriate epistemic norms for evaluating these (and other) knowledge claims? How do we include the ethical values of responsibility and reflexivity in the methodologies and methods that we use? Finally, how can commitments to social justice inform the epistemic practices we use?

Evaluating data: values and valuation

The problem of the ICTY ‘in numbers’ typifies the field of research on conflict-related crimes, in which there are few empirical studies, and insufficient reflection on methods or methodologies. Recently, there have been increasing calls to address these gaps in knowledge. For example there are growing demands for more empirical data and quantitative or large-scale data on conflict-related sexual violence (see e.g. Cohen and Nordås 2014). This also includes demands for more evidence that can be used as a basis for policy development and criminal prosecutions (see. e.g. Foreign and Commonwealth Office 2014). However, Ní Aoláin points out that this ‘data demand culture’ does not ‘point the way towards *data quality* (what standards should be applied and to what ends the data will be used)’ (2014: 10–11). Questions of data quality require reflection upon our epistemic practice and norms, as well as upon the purposes for which we generate that data. This is particularly true of data concerning conflict-related crimes. For example, how do we measure conflict-related sexual violence in quantitative empirical studies? What counts as ‘evidence’ for policy or prosecutorial purposes?

The ethical challenge is that epistemic judgements (what and how we know) always involve normative judgements (what and how we should know). Knowledge-claims are epistemic practices that are regulated by communities of knowers, in which those practices reflect the values of that epistemic community concerning the most appropriate methods of inquiry and justification of knowledge. Helen Longino argues that ‘[t]he complete set of regulative standards, inclusive of theoretical virtues, guiding a community’s epistemic practices could be called its epistemology’. These regulative standards are the normative criteria by which members of the community of inquiry determine which practices ‘will advance our cognitive aims’ and political goals (1997: 33–34). These are the epistemic values of the research field. Accordingly, developing data quality involves ‘knowing well’, as it requires reflexivity about, and responsibility for, our epistemic values.

Ethical strategy three: epistemic practice as ethical practice

The third ethical strategy is epistemic accountability. This develops a model of epistemic practice as ethical practice. Epistemic accountability involves asking how the transformative values of social justice shape which normative epistemic standards research will use. It also asks how the knowledge that is generated will be applied. To answer these questions requires considering the values that inform our theory of how research should proceed (methodology), and our choice of techniques of evidence gathering (method) (Harding 1986: 2). So, for example, Helen Longino identifies ‘feminist cognitive values’ as including ‘empirical

adequacy, novelty, ontological heterogeneity, mutuality of interaction, applicability to human needs, and decentralization of power or universal empowerment' (Longino 1997: 21). This is a model of reflexive and responsible epistemic practice. For example, the GoJ project employs a strategy of epistemic accountability to choose its methodology and methods. It uses a feminist methodological framework for studying conflict-related sexual violence. This critical framework focuses on the social constitution of masculinity and femininity in the violence of armed conflict. The GoJ project also seeks not to reproduce those power relations in the methods it chose to use. For this reason, an important part of this strategy is to use feminist participatory research. This enables the researchers to reflexively engage with the perspectives of victims and activists seeking to change current models and practices of gender justice, while also aiming to contribute to that process of social change.

The ethical issue of accepted epistemic practices in the study of conflict-related crimes is still to be properly explored. Given that there is little consensus within this emerging field on how to engage with values in methodologies and methods, developing epistemic accountability has become a key task for researchers. This fundamental challenge of ethical knowledge production is as much a collective as an individual engagement.

Summary

This chapter has explored key ethical challenges and strategies for ethical accountability when researching conflict-related crime. It identifies three key sets of challenges and strategies for engaging with these issues. The first challenge is how to conceptualize the object of inquiry. This involves two key problems of the concept of criminalization, and the visible and invisible values in the research field. The first ethical strategy is theoretical accountability, which requires an explicit and reflexive engagement with values in a process of concept building. The second challenge arises because of the research context of conflict. This crystallises around issues of conflicting data, and the situation of the researcher and researched. The second ethical strategy is situated ethics. This involves the evaluation of ethical practice in terms of accountability to others, and to transformative social change in our research. The third challenge concerns values in methodology and method, which is evident in the problem of evaluation of data. The third ethical strategy is epistemic accountability, which develops normative criteria for evaluating our research practices. Because this is the least examined area of research on conflict-related crimes, it is also arguably the most challenging area of ethical engagement.

Review questions

What values inform your concept of conflict-related crime, and your intervention in the research field?

What is your position as researcher in the context of the conflict? What values inform your research relationship to the persons and societies you are seeking to study?

What values inform your choice of methodology and methods?

How do the strategies of theoretical accountability, situated ethics, and epistemic accountability change how you undertake this research?

Guide to further reading

Ní Aoláin (2014) and Buss, D. (2014): these two papers provide important analyses the ethics of research practices and fields, focusing on conflict-related sexual violence.

Smyth, M. and Robinson, G., eds., (2001) *Researching Violently Divided Societies: Ethical and methodological issues*. (London: Pluto Press): a wide-ranging and careful discussion of ethical research around societies in conflict.

Sriram, C., King, J., Mertus, J., Martin-Ortega, O. and Herman, J. eds., (2009) *Surviving field research: Working in violent and difficult situations*. (London: Routledge): an excellent discussion of the range of ethical issues raised by research in conflict settings.

Campbell, K. (2004): Chapter One sets out key approaches in feminist theories of value and knowledge.

Note

1 'In Numbers', <http://www.icty.org/sid/10586>, ICTY, accessed 7 April 2015.

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