Deception in Social Science Research: Is Informed Consent Possible?

by ALAN SOBLE

The principle of informed consent generally includes two necessary conditions for the proper treatment of human subjects in experimentation. The first condition, which has been widely discussed, is that the consent be obtained from subjects who agree to participate *voluntarily,* where voluntarism is understood negatively as the absence of coercion. The second condition, which is less often discussed, is that the consent must be *informed.* The Articles of the Nuremberg Tribunal and The Declaration of Helsinki both state that the subjects must be told the duration, methods, possible risks, and the purpose or aim of the experiment. The most recent HEW regulations agree: informed consent has not been obtained if there has been any element of deceit or fraud. These guidelines reflect our ordinary moral view that deception is morally unacceptable.

During the past quarter-century the size of the scientific research establishment has vastly increased. Medical, sociological, and psychological research is being carried out at our universities and other institutions at a rapid rate. The success of this effort, measured in terms of the amount of knowledge gained, has been well documented. In some of this research, however, the human beings serving as subjects are deceived as to the purpose of the experiment. In social psychology, for example, the incidence of the use of deceptive research designs has been estimated to be as high as 38 percent,[1] and even though deception is less common in medical research, many examples are available.[2] One immediate response is to say that "the experiment ought not to be performed and the desired knowledge should be sought by means of a different research design."[3] But this response overlooks the crucial point that certain bits of knowledge cannot, for logical reasons alone, be obtained without the use of deception. The testing of some hypotheses, within both psychology and medicine, requires that the subjects not be informed of the purpose or aim of the experiment being conducted.

We are faced then with a moral dilemma. Since the search for knowledge is at least morally permissible (if not, to a certain extent, morally obligatory), and since the use of deception is morally unacceptable (at least on a *prima facie* basis), in some situations both moral desiderata cannot be satisfied. And it is not clear which moral value ought to be sacrificed for the sake of the other.

I am aware of a handful of proposed solutions for this dilemma. First, we can maintain that subjects ought to be told the full purpose of an experiment for which they have volunteered. In this view no experiments logically requiring deception are permissible. Second, we can say that the subject's knowing the purpose of an experiment is not a central element of informed consent and therefore that experiments using deception are always permissible, as long as they satisfy the other conditions of the principle of informed consent. These are the two extreme solutions.[4]

The other positions are more complicated. According to one proposal, ineliminable deception is permissible *only* when there are substantial paternalistic reasons for withholding the purpose of the experiment from the subjects. According to another proposal, deception is permissible *only* when there are firm utilitarian reasons for doing so. This view, the standard argument for the use of deception, claims that the knowledge to be gained from deceptive experiments is so valuable to society that it is only a minor defect that persons must be deceived in the process. Finally, a number of strategies have been recently proposed to resolve the dilemma. These include the method of *ex post facto* consent (getting approval of the subjects retroactively), the method of presumptive consent (getting approval from a group of mock subjects and inferring that the real subjects would have consented), the method of prior general consent (in effect, getting consent to deceptive procedures well before the experiment is actually conducted), and a method that combines prior general consent and proxy consent. Before I discuss each of these ways of resolving the dilemma, let me examine briefly the major presupposition that underlies the dilemma.

Are Deceptive Designs Necessary?

Many types of experiments seem to require that the subjects not be told the purpose of the study, and in some cases that they be induced to hold false beliefs about the nature of the experiment during the experiment itself. Experiments, for example, that are designed to yield information about the influence of expectation or other psychological factors on the psychoactivity of drugs or on physiological processes would be ruined if subjects were told that what was being studied was their "mental" contribution to drug effects. Often subjects are not merely ignorant as to whether they have received the drug being tested or a placebo, but rather are told that they will receive one of these but in fact receive the other. Similarly, experiments designed to test for the existence of psychological phenomena such as obedience and trustworthiness seem necessarily to involve the use of deception.[5] Telling subjects that what is being studied is, for example, the extent to which they conform with the judgments of persons who are really cohorts of the experimenter, will destroy the attempt to discover the extent of conformity.

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But how does one go about proving that deception is required in order to obtain certain bits of knowledge? In some cases, of course, it is quite easy. If what we want to know is something like "the effect of LSD-25 on the behavior of a group of unsuspecting enlisted men," it is quite obvious that the subjects must be deceived in order to assure that they are unsuspecting. This is an easy case because the statement of the relevant hypothesis being tested will include reference to deceived persons. But the hypothesis that persons will tend to judge in conformity with the judgments of persons in their immediate vicinity does not contain a reference to deceived subjects. It *seems* obvious that knowledge about conformity requires that we deceive subjects, but how can this intuition be supported?

Certainly, there is a way of proving that a given case of the use of deception was *not* required: all we need to do is to construct an experiment that is designed to yield the same information but that does not involve any deception. But the failure to find such an alternative nondeceptive research design does not prove that the deception *was* required by the nature of the knowledge being sought. The failure may only show how unimaginative we are in constructing research designs. (This is very ironic. Some deceptive research designs are extraordinarily ingenious.[6]) At least for this reason we ought not to take lightly the claim that deceptive research is ultimately justifiable because deceptive designs are necessary.

Knowledge that can be obtained only by using a deceptive research design must be contrasted with knowledge that can be obtained without deception but that can be obtained more efficiently by employing deception. Deception that is motivated out of a need to secure enough subjects, or deception that is pragmatically useful in terms of conserving time, effort, and expense, is not generally deception that is required purely on account of the nature of the knowledge being sought.[7] In these cases, of course, the dilemma I outlined earlier does not arise. But we have to be careful, for there is the danger that if we do allow deception because it is logically necessary for the testing of specific hypotheses, then it becomes slightly more plausible to argue that deception that saves the experimenter (and society) time, effort, and money also should be permitted. One major fault of the paternalistic and utilitarian solutions to the dilemma is that they also tend to justify deception that is only pragmatically, and not logically, required.

Before discussing the various proposals, I would like to comment on two related issues. First, the dilemma as I have stated it involves the acceptability of deceiving subjects who know, at least, that they are subjects in an experiment. What they do not know is precisely what experiment they are subjects in. Experiments done especially within sociology, however, involve deception in which the subjects do not even know that they are subjects in the experiment (covert observation, for example).[8] I will not discuss the issue of the morality of this practice here, for in covert observation there is apparently not simply a violation of the "informed" condition of the principle of informed consent, but also a violation of the "voluntary" condition. Discussion of this issue would take us too far from the resolution of the dilemma.

Second, my discussion is meant only to examine the acceptability of deception in thoroughly experimental situations, and is not meant to bear upon the use of deception by physicians and others in situations that are purely therapeutic. Therefore, my conclusions on the acceptability of deceptive techniques in experimentation does not necessarily apply to the morality of placebo therapy and the practice of lying to patients in the course of treating disease or disability.

The Paternalistic Defense of Deception

A defender of research employing ineliminable deception might try to justify the deception by relying on an argument like this: the deceptive procedures employed in these experiments can be viewed as being therapeutic for the subjects, and since there are many contexts in which the principle of informed consent is temporarily abandoned for the sake of persons who need therapy (for example, unconscious adults requiring emergency treatment), it ought to be acceptable temporarily to ignore the principle in these experiments.[9]

The argument, however, does not provide an adequate way of resolving the dilemma. First, it is not a global justification of the use of ineliminable deception, for it would only justify a small percentage of the experiments in question, those in which some real benefit to the subjects could be demonstrated. But there are more serious problems with the argument. It assumes much too quickly that the experimenter who plans to deceive subjects can know that the subjects will agree that the deception is in fact beneficial for them. Even if it is true, however, that the subjects do agree that the deception is beneficial for them (by, for example, exposing to them certain psychological traits they have but would rather not have), this does not mean that the deception was also therapeutic. Possessing certain psychological traits may not be beneficial for a person, but possessing these traits does not constitute being unhealthy, and therefore procedures that tend to expose and to remove these traits cannot be called "therapeutic." But even if it makes some sense to say that the removal of certain psychological traits is therapeutic, whether a procedure that removes these traits is therapeutic will depend on the context in which the procedure is carried out. Persons presenting themselves at a physician's office or at a clinic acknowledge that the context is a therapeutic one, but this acknowledgement is absent when persons volunteer for experiments.

Finally, the paternalistic argument carries the danger of justifying not only ineliminable deception but also deception motivated out of a concern to conserve time, effort, and expense. The paternalistic argument can be extended to something like this: deception that conserves the experimenter's time and effort, which enables the experimenter to carry out the research less expensively, ultimately is beneficial for each of the *individual* subjects, who are of course taxpayers. (The paternalistic argument might also say that the money saved could be reallocated and used in, for example, cancer research. The deception then can be tied to a therapeutic intent.) But an argument like this would justify more deception than we would find comfortable.

The Utilitarian Defense of Deception

A utilitarian justification of the use of ineliminable deception is far superior to a paternalistic one because it does not have to blur the distinction between therapy and experiments. It is also more plausible because it argues that the deception is acceptable because it promises to benefit in many cases the whole of society and not merely the individuals who participate as subjects. Simply put, the utilitarian argues that experiments utilizing ineliminable deception and that do *not* cause any other harm to subjects are acceptable because the knowledge gained from them is socially valuable. When balancing the needs of society and a desire of individual subjects not to be deceived, experiments that do contribute substantially to our knowledge are justified.

Like the paternalistic argument, the utilitarian argument does not provide a global justification of experiments employing ineliminable deception. If the deceptive procedure is accompanied by the possibility of grave harm to the subjects, then the needs of society no longer overshadow the needs of the subjects. Or if the deceptive procedure is part of an experiment that is designed to yield only trivial knowledge, there is no longer a justification for the experiment. Even so, the utilitarian argument has the potential for justifying most of the experiments recently carried out that employ deception. But I do not find the argument to be a convincing one.

One weakness of the utilitarian argument can be seen by examining what the argument has to prove. Certainly we can agree that the scientific research establishment as a whole is to be justified on utilitarian grounds. The reason we spend so much time, effort, and money on research is that the research as a whole is bound to have beneficial results for society and the individuals who make up society. But the utilitarian argument has to prove that because the research establishment itself is justified on utilitarian grounds, anything else done within that establishment is also justified by utilitarian considerations. In particular, the utilitarian argument has the burden of showing that not only the principle of informed consent is ultimately based on utilitarian considerations, but also that exceptions to the principle (for example, the use of ineliminable deception) are also grounded in utilitarian considerations.

This argument may be very difficult to prove. For example, one who relied on a notion of "rules" developed by John Rawls[10] might say that, yes, the principle of informed consent can be justified on utilitarian grounds, and yes, the research establishment can be similarly justified. But this Rawlsian would go on to claim that a system of experimentation on human subjects that publicly included a rule permitting violations of the principle of informed consent (by allowing ineliminable deception) would not be justified on utilitarian grounds, given certain sociological, psychological, economic, and ideological properties of this society. For example, public outrage at the use of deception could undermine the status of the experimental scientists and eventually result in a curtailment of research and a subsequent decrease in the knowledge that the research establishment provides. The use of deception then from a utilitarian point of view would be counterproductive. The heavy burden of the utilitarian is thus to show that it is unreasonable to believe that the proposed modification of the principle of informed consent would be counterproductive in this way.

Alternatively, the utilitarian can drop the requirement that a rule permitting violations of the principle of informed consent must be public. This modification might eliminate the possibility that deception is counterproductive. But I think that this alternative is inadequate, for at least three reasons. First, it relies on the assumption, which is likely false, that this deception (the failure to make a rule public) is especially immune from discovery. Indeed, it could turn out that this deception, when exposed, is more counterproductive than the deception permitted by the public rule in certain experiments. Second, it solves the dilemma about the use of deception in experiments by introducing deception at another level, and therefore in a sense just begs the question. Third, in allowing rules to be nonpublic, it seems to violate one of the so-called logical or conceptual requirements of morality.

The utilitarian argument is also not convincing because it ignores the history or the genesis of the principle of informed consent.[11] The whole point of the principle (including its prohibition of deception) is precisely to protect individual rights against exactly these sorts of claims of social need or benefit. Those who designed and those who now support the principle freely admit that there might be utilitarian reasons for not always obeying the principle, but they announce that the individual has a sphere of autonomy that cannot be sacrificed or invaded for the good of society. To try to justify experiments employing ineliminable deception on utilitarian grounds would be to deny the intent and significance of a principle that has only recently appeared in our history, that took much effort to develop and apply, and that represents one of the major advances of modern society. In a word, the utilitarian argument proposes that we undo the moral progress we have made in this century.

Finally, like the paternalistic argument, the utilitarian argument would justify too much deception. If experiments employing ineliminable deception are acceptable for utilitarian reasons, then what about deception motivated by pragmatic considerations? Indeed, the utilitarian justification of merely pragmatic deception seems stronger than the corresponding paternalistic justification of pragmatic deception. Again we end up allowing more deception than we find comfortable, and the utilitarian argument therefore does not provide a safe way of resolving the dilemma.[12]

Ex Post Facto Consent: Another Defense

Stanley Milgram has tried to justify the ineliminable deception used in his obedience experiments this way:

> Misinformation . . . [and] illusion . . . are justified for one reason only; they are, in the end, accepted and endorsed by those who are exposed to them. . . . *The central moral justification for allowing a procedure of the sort used in my experiments is that it is judged acceptable by those who have taken part in it.*[13]

The thrust of this argument is that the principle of informed

consent can be modified to allow for consent being obtained after a procedure has been carried out on subjects, rather than before, in order to permit the successful execution of deceptive techniques vital to the knowledge being sought. I want to argue that such a modification is not acceptable.

Consider first the possibility that after the experiment is over, some of the subjects do not agree that they should have been deceived. We already know that violations of the principle of informed consent, when the principle is understood in its usual way as requiring consent prior to an experiment, have been increasingly met by claims of subjects that they deserve compensation and that punitive measures be directed at the experimenters. But an experimenter who wants to rely on *ex post facto* consent is in a rather shaky position. If any subject withholds consent afterwards, this subject was a participant in an experimental procedure to which he or she *never* consented. Their failure to agree means that such subjects never should have been exposed to the experimental procedures. They would have, I think, a good argument for compensation. The experimenter who relies on *ex post facto* consent therefore faces practical problems that endanger the continuance of the research, professional standing, and perhaps financial status.[14] But even if compensation is exacted, this does not mean that it was morally correct that the procedures were carried out. The 1.3 percent of Milgram's subjects who expressed disapproval afterwards were morally wronged, and it is no defense to say that 98.7 percent found the deception acceptable.

Consider now the situation in which all the subjects do approve afterwards. Is it safe to say that this postexperimental approval counts as *bona fide* consent? Steven Patten has argued that the approval of Milgram's subjects was not really consent.[15] We know, says Patten, from Milgram's study that persons are submissive to authority; this gives us reason to think that when the subjects approved afterwards they were merely obeying (once again) and not really consenting. Although Patten has a point here, I think his argument is too strong. If the subjects in Milgram's experiments are representative of people in general, then *no* experiments at all on human subjects would be permissible. For if we take Patten's point seriously, it means that we ought not to believe any subject who shows up for an experiment; the subject's showing up is just an act of obedience and real consent cannot be obtained. From Patten's argument, then, we can only draw the conclusion that Milgram's study is only as objectionable as any other study. It does not provide a way of singling out deceptive experiments as especially objectionable.

The approval given by the subjects afterwards might not really be consent because the experimental procedures themselves elicit the approval of the subjects or make it difficult for them not to agree afterwards. Consent, whether it be prior or retroactive, ought to be *independent* approval of the experimental procedures. (One might want to interpret the requirement of independence simply as the requirement that consent be given voluntarily.) I don't want to argue that *ex post facto* consent is always nonindependent, but rather that many experimental procedures do contain ingredients that elicit the subsequent approval of the subjects. Because obtaining consent prior to an experiment is the best way to ensure that consent is independent, we ought not to allow deceptive procedures that can be given approval only, if at all, in retrospect.

In the case of Milgram's studies, it is plausible that persons who have been exposed (to themselves and, quasi-publicly, to the experimenters) as obedient and as unfaithful to their own moral beliefs will be embarrassed and shamed by this exposure and will attempt to alleviate their unpleasant position by agreeing afterwards that the experimenters were correct to have used deception. Even those subjects who were not obedient during the course of the experiment have good reasons for giving approval afterwards. To disapprove of the deception would be to undermine their fine performance. Thus for both obedient and defiant subjects the nature of the experiment provides powerful psychological reasons (self-respect, exculpation, self-righteousness) for giving approval afterwards.[16]

What is astounding is that Milgram recognizes the influence of just these kinds of psychological factors on other features of his experiment but not on the credibility of retrospective approval. Commenting on the fact that 3.8 percent of the obedient subjects *later* said that they were certain that the learner was not receiving real shocks, Milgram writes:

> Even now I am not willing to dismiss those subjects because it is not clear that their rejection of the technical illusion was a cause of their obedience or a consequence of it. Cognitive processes may serve to rationalize behavior. . . . [S]ome subjects may have come to this position as a post facto explanation. It cost them nothing and would go a long way toward preserving their positive self-conception.[17]

If the doctrine of *ex post facto* consent is to be taken seriously, surely the burden of proof is on the one who wants to justify the use of deception in research to demonstrate convincingly that retrospective approval has in no way been manufactured by the experimental procedures. It is necessary to eliminate the possibility that the procedures for which consent is requested do not themselves elicit that consent.[18]

Presumptive Consent: A Proposal

Robert Veatch has proposed a method for resolving the dilemma and thereby for permitting ineliminable deception:

> In those rare, special cases where knowledge of the purpose would destroy the experiment . . . it might be acceptable to ask a group of mock subjects drawn from the same experimental population if they would consent to participate in the experiment knowing its purpose. If there is substantial agreement (say, 95 percent), then it seems reasonable to conclude that most real subjects would have agreed to participate even if they had had the information that would destroy the experiment's validity.[19]

It seems to me that Veatch's proposal is just as controversial as the dilemma it was intended to resolve. His method relies on our assuming that real subjects *would* consent on the basis of what other persons *do* consent to. Although in some cases (for example, when a person in need of treatment is

temporarily unconscious) we allow that the next-of-kin consent to therapy assuming that the patient would consent, the experimental situation is too far removed from these emergency cases for this kind of hypothetical reasoning to be compelling.

An objection that was raised to the doctrine of *ex post facto* consent can be raised in this context also. Why does Veatch settle for only 95 percent agreement from the mock subjects? This figure suggests that Veatch is willing to expose 5 percent of the subject population to procedures to which they would not have consented, had they known the information that they in fact do not know. If we were to use his method, we ought to set the level of mock subject agreement at 100 percent. In a typical nondeceptive experiment, there are some persons who, having heard the terms of the experiment, decide not to participate. This percentage can be weeded out at the start. But in an experiment involving ineliminable deception and governed by presumptive consent, if the agreement of the mock subjects is only 95 percent, then those persons who would have been weeded out are not going to be weeded out. (A side thought: regarding the "voluntary" element of the principle of informed consent, would we allow an experiment in which we have evidence that only 95 percent of the subjects *would* have consented?)

Of course, if the criterion of mock subject agreement is set as high as 100 percent then perhaps in practice Veatch's proposal will mean that very few deceptive experiments will be carried out. This possibility does not fit very well with Veatch's apparent sympathy with the attempt to gain knowledge with deceptive and otherwise nonharmful experiments. Furthermore, even if all the mock subjects give approval, this in no way guarantees that all the real subjects would have consented had they known the purpose of the experiment. Even when the criterion is set as high as it can be, there is still a possibility that some subjects will be exposed to procedures to which they would not have consented.

Note also that Veatch's proposal has a loose tie with Milgram's suggestion of *ex post facto* consent. If we were to use a group of real subjects in a deceptive experiment on the grounds that mock subjects have given their approval, we are using real subjects on the strength of a claim that is somewhat testable. It would be nice to know, afterwards, whether the percentage of mock subjects who agreed was a reliable indicator of the percentage of real subjects who would have agreed. In order to obtain this information we must seek the approval of the real subjects *ex post facto*. But it is possible that this check on the accuracy of the prediction, however, may very well be contaminated by the influence of the experimental procedures themselves.[20]

Prior General Consent: Still Another Method

Milgram has proposed another method designed to satisfy the principle of informed consent and at the same time make deceptive experiments possible:

> [Prior general consent] is a form of consent that would be based on subjects' knowing the general types of procedures used in psychological investigations, but without their knowing what specific manipulations would be employed in the particular experiment in which they would take part. The first step would be to create a pool of volunteers to serve in psychology experiments. Before volunteering to join the pool people would be told explicitly that sometimes subjects are misinformed about the purposes of an experiment. . . . Only persons who had indicated a willingness to participate in experiments involving deception . . . would, in the course of the year, be recruited for experiments that involved [deception].[21]

This proposal fails to resolve the dilemma because it creates a new dilemma: experiments based upon this proposal *either* will yield no useful information at all *or* will require that additional experiments be performed which do violate the principle of informed consent (see fn. 20). If an experiment relying on this technique for recruitment yields no useful information, then the technique has not preserved one of the original goals we had: to secure valuable information. And if experiments relying on this technique require (for their validity, as I argue below) that further experiments be done which do involve violations of the principle of informed consent, then the technique has not preserved our other goal.

The first question is whether we could have reason to believe that any deception eventually carried out on this subject pool really worked and really provided us with the information we were seeking. At first glance, if people know or think that the procedures to which they have consented involve deception, then they will be more suspicious of the experimental protocol and may very well not be "tricked" in the necessary way. Even when subjects are *not* told in advance that the experiment involves deception, there is always some doubt as to whether the illusion was successful and whether the experiment has generated any useful knowledge. But if the technique of prior general consent is used, the subjects know in advance that they might be exposed to deception, and this knowledge makes the success of the illusion even more problematic. In order to show that the knowledge gained in experiments relying on prior general consent is useful, experimenters will have to demonstrate that subjects' foreknowledge of the deception did not interfere with the success of the illusion. And, as far as I can tell, to establish this kind of fact one must resort to deceptive procedures.[22] If this is so, prior general consent does not solve the dilemma. One might say here that even though it is true that only those subjects who generally consented to deception are used in deceptive experiments, this pool of subjects does not have to know this fact about itself. Withholding *this* information from the subjects would certainly bypass the problems I just mentioned but at the cost of replacing one act of deception with another.

The second question is whether the information gained in an experiment relying on this technique is useful because the only subjects who are exposed to deceptive procedures are those who express a willingness to be exposed to deception. Application of this technique, that is, restricts the nature of the subject pool and may possibly insert a bias into the characteristics of the research population. This complaint is raised often in the context of sex research; the information obtained by studying only those who volunteer for sex ex-

periments may be misleading because the research population is lacking other kinds of persons. If deceptive procedures are carried out only upon those who are willing to undergo deception, then psychological studies may be misleading because they have excluded from the research population those people who were not willing to undergo deception and who may have different personality structures or profiles than willing subjects. Again, in order to show that such a bias is not present, it is quite likely that deceptive experiments *not* relying on prior general consent will have to be carried out. At the very least, the burden of proof is on the experimenter who relies on prior general consent to establish that the knowledge is not contaminated by either of the two factors I mentioned. And in establishing this, the experimenter must not conduct experiments that violate the principle of informed consent.

Prior General Consent and Proxy Consent

I have so far rejected all but one of the more complicated ways of resolving the dilemma. In addition to the method that I am about to describe, then, the only positions left are the two extreme views. According to one, no experiments involving ineliminable deception are permissible; according to the other, all such experiments are permissible. This latter alternative wants to decrease substantially the significance of the "informed" condition of the principle of informed consent. But there is very little that can be said in favor of doing so. I have already suggested that paternalistic and utilitarian arguments for exceptions to the prohibition on the use of deception are inadequate. But paternalistic and utilitarian reasons are the only one we could have for decreasing the significance of the "informed" condition. The second extreme solution, then, is in practice no different from the solutions proposed by the paternalist or by the utilitarian. There are simply no other arguments to use in defending the second extreme solution.

There are of course perfectly good reasons for accepting the first extreme solution. Experiments without deception respect those individuals who have already volunteered to be subjects at least in part for the sake of other people. Conversely, experiments with deception show disrespect for these persons who have willingly undertaken the risks of an experiment so that other persons might benefit. Deceiving an experimental subject who has volunteered is an acute expression of ingratitude. And it deserves the scorn that we ordinarily give to the person who passes through the cafeteria line twice but pays only once. There is, however, one final method that seems to satisfy our requirements; it allows some ineliminable deception, and so preserves the search for knowledge, without (1) expressing ingratitude to the subjects and (2) undermining the epistemological status of the data collected during the experiment. In this method prior general consent is combined with proxy consent.[23]

I suggest that we make the method of prior general consent applicable to the whole realm of experimental science employing human subjects. If the method of prior general consent is employed for any and every subject pool, the likelihood that forewarning of deception will disrupt the experimental illusion is greatly decreased. In this method, furthermore, the experimental bias introduced in Milgram's proposal (only those subjects who consented in general to deception would be used in deceptive experiments) is overcome in the following way. Subjects are *not* told that only those who approve of deception will be used in experiments utilizing deception; rather, all subjects are candidates for participating in deceptive experiments. But the usual objection to doing this is vitiated by the use of an additional procedure: proxy consent. Each subject in the pool designates some relative or friend as one who will inspect the experiment in which the subject might participate. This relative or friend is empowered by the subject to reject or accept experiments on the basis of whether they posed too much risk, employed deception that was too devious, or was aimed at providing knowledge that might be misused. The proxy makes these judgments from the point of view of the subject who has empowered him or her to do so. It is important to note that combining the method of prior general consent with that of proxy consent combines what is acceptable from both Milgram's and Veatch's proposals. From Milgram's it takes the idea that consent to deception is compatible with the principle of informed consent; from Veatch's proposal it takes the idea that we can resolve the dilemma by consulting persons other than the subjects themselves. But the method of proxy consent used as a conjunct to prior general consent has an obvious advantage to Veatch's proposal: the necessity of having to argue from the approval of mock subjects to the hypothetical approval of real subjects is eliminated by consulting persons empowered by the real subjects to give consent for them.

A procedure employing both prior general consent (as standard for all subject pools) and proxy consent is very far removed from what exists at the present: the use of deception in experiments without the protection for subjects of either prior general consent or proxy consent. For this reason many changes will have to be made in the structure of experimental science using human subjects; so many changes, in fact, that I suspect that the initial reaction of experimental scientists will be that the proposal is impractical, that it will create too many bureaucratic impediments to the conduct of research. Indeed, the experimental scientist could argue that the method, in solving the original dilemma, gives rise to a new dilemma. Either we employ the method of prior general/proxy consent (and abandon a large part of the research enterprise because the method is too costly in terms of time, effort, and money), or we retain the large bulk of the research enterprise (but employ a less ethically satisfying method of obtaining the approval of the subjects). My response to this argument would be to say that as long as we reject the paternalistic and utilitarian arguments for the use of ineliminable deception because those justifications could very well justify deception required only for pragmatic reasons, then we must also be prepared to embrace the relative inefficiency of the method of general/proxy consent. Pragmatic considerations, we had decided, are not compelling enough to warrant the less-than-full satisfaction of the principle of informed consent.

REFERENCES

[1]See Donald Warwick, "Social Scientists Ought to Stop Lying," *Psychology Today* (February 1975), p. 105; and Jay Katz, *Experimentation With Human Beings* (New York: Russell Sage Foundation, 1972), pp. 323-433, esp. p. 358. A very recent example is the experiment done → Diane Ruble, "Premenstrual Symptoms: A Reinterpretation," *Science* 197 (1977), 291-92.

[2]Three recent examples are: Robert Heaton, "Subject Expectancy and Environmental Factors as Determinants of Psychedelic Flashback Experience," *Journal of Nervous and Mental Disease* 161 (1975), 157-(→ Monte S. Buchsbaum, Robert D. Coursey, and Dennis L. Murphy, "The Biochemical High-Risk Paradigm: Behavioral and Familial Correlates of Low Platelet Monoamine Oxidase Activity," *Science* 194 (1976), 339-41; and C. P. O'Brien, Thomas Testa, T. J. O'Brien, J. P. Brady, and Barbara Wells, "Conditioned Narcotic Withdrawal in Humans," *Science* 195 (1977), pp. 1000-02.

[3]Sissela Bok, "The Ethics of Giving Placebos," *Scientific American* 231 (November 1974), 17-23.

[4]Perry London says that "neither extreme position will do for those of us who are equally concerned with the need for valid scientific information and for the protection of human subjects" (*Psychology Today* [November 1977], p. 23), and he laments the fact that the current HEW guidelines "offer no clues as to when some amount of deception may be necessary and proper." The guidelines however do seem to be rather explicit in prohibiting "any element of force, fraud, deceit, duress . . ." (*Federal Register, 39,* No. 105, at section 46.3c).

[5]For example: Seymour Feshbach and Robert Singer, *Television and Aggression* (San Francisco: Jossey-Bass, 1971); C. K. Hofling, E. Brotzman, S. Dalrymple, N. Graves, and C. M. Pierce, "An Experimental Study in Nurse-Physician Relationships," *Journal of Nervous and Mental Disease* 143 (1966), 171-80; Stanley Milgram, *Obedience to Authority* (New York: Harper & Row, 1974); L. Paige, "The Effects of Oral Contraceptives on Affective Fluctuations Associated With the Menstrual Cycle," *Psychosomatic Medicine* 33 (1971), 515-37. An interesting discussion and a number of references can be found in S. Wolf, "The Pharmacology of Placebos," *Pharmacological Reviews,* 11 (1959), 689-704.

[6]For an experiment involving extensive deception of different types, see Stuart Valins, "Cognitive Effects of False Heart-Rate Feedback," *Journal of Personality and Social Psychology* 4 (1966), 400-08. Incidentally, Valins's comment on p. 401 is noteworthy. "Male introductory psychology students, whose course *requirements* included 6 hours of participation in experiments, *volunteered* for a psychophysiological experiment" (italics added).

[7]One might want to interpret the San Antonio oral contraceptive study in this way. For discussion, see Robert Veatch, "Medical Ethics: Professional or Universal?" *Harvard Theological Review* 65 (1972), 550, and his " 'Experimental' Pregnancy," *Hastings Center Report,* 1 (1971), 2-3, and the editors' note in Robert Hunt and John Arras, eds., *Ethical Issues in Modern Medicine* (Encino, Cal.: Mayfield, 1977), p. 266. Some deception in personality studies is carried out because the investigators fear, ironically, that the subjects would otherwise lie when answering questionnaires. Is this deception logically required by the knowledge being sought, or is it only pragmatically useful in obtaining that knowledge?

[8]For examp → D. Rosenhan, "On Being Sane in Insane Places," *Science* 179 (1973), 250-59; and Laud Humphreys, *Tearoom Trade. Impersonal Sex in Public Places* (Chicago: Aldine, 1975), enlarged edition. A general critique of Humphreys is presented by Donald Warwick, "Tearoom Trade: Means and Ends in Social Research," *Hastings Center Studies* 1 No. 1, (1973), 27-38; and Murray Wax has recently discussed problems of consent in sociology, in "Fieldworkers and Research Subjects: Who Needs Protection?" *Hastings Center Report* 7, No. 4 (August 1977), 29-32.

[9]See the remarks of some of Milgram's subjects after they had been debriefed, in *Obedience to Authority*, pp. 196 and 200, and the "Foreword" to *Tearoom Trade* by Lee Rainwater, pp. xiv-xv.

[10]John Rawls, "Two Concepts of Rules," *Philosophical Review* 64 (1955), 3-32. For a similar position see H.L.A. Hart, "Prolegomenon to the Principles of Punishment," in *Punishment and Responsibility* (New York: Oxford University Press, 1968), pp. 1-27.

[11]A concise history can be found in Alan Donagan, "Informed Consent in Therapy and Experimentation," *Journal of Medicine and Philosophy* 2 (1977), 307-29.

[12]It might be argued that some studies employing ineliminable deception are permissible or even mandatory because they are designed to expose or produce facts about the occurrence of harmful or immoral activities (for example, the studies done by Rosenhan and Hofling). But this utilitarian argument justifies only a very small percentage of the experiments involving ineliminable deception. Furthermore, there are dangers in this rationale, in that the argument not only comes close to justifying police entrapment but also suggests that policework is a legitimate activity for scientists.

[13]*Obedience to Authority*, pp. 198-99. Milgram's position is repeated in his "Subject Reaction: The Neglected Factor in the Ethics of Experimentation," *Hastings Center Report* 7, No. 5 (August 1977), 21.

[14]Murray Wax (in "Fieldworkers and Research Subjects," p. 32) does not mention compensation to subjects when *ex post facto* consent is not obtained, but only punitive measures taken against the experimenter by professional peers.

[15]"The Case That Milgram Makes," *Philosophical Review* 86 (1977), 350-64.

[16]The fact that Milgram's subjects were given supportive debriefing may also have influenced their retroactive approval. See A. K. Ring, et al., "Mode of Debriefing as a Factor Affecting Subjective Reaction to a Milgram-type Experiment—An Ethical Inquiry," in Katz, *Experimentation on Human Beings*, pp. 395-99.

[17]*Obedience to Authority*, pp. 173-74. See also *ibid.*, p. 204.

[18]An example from ordinary life will help explain my point. Consider a man who persists with amorous advances, as in attempted seduction, in spite of the fact that the woman is verbally and physically resisting. If later, having finally given in, she expresses approval, we cannot take her approval at face value because it has been induced by the procedure she has approved of. Her approval is not independent of the procedure being judged.

[19]"Ethical Principles in Medical Experimentation," in *Ethical and Legal Issues of Social Experimentation*, A. M. Rivlin and P.M. Timpane, eds. (Washington: The Brookings Institution, 1975), p. 52. Milgram also makes this suggestion, in "Subject Reaction," p. 23.

[20]This last objection to Veatch's proposal is similar to an objection raised by Milgram to the technique known as "role-playing." In role-playing, the subject is fully informed but is asked to go through the experimental protocol *as if* he or she didn't know the relevant information. Clearly, role-playing does not involve any violation of the principle of informed consent. But, as Milgram points out, "we must still perform the crucial experiment [with deception] to determine whether role-played behavior corresponds to nonrole-played behavior" ("Subject Reaction," p. 23). What the experimental scientist needs to do, then, is to show *without* the use of deception that role-played and nonrole-played behavior closely correspond, and this may be impossible to do.

[21]"Subject Reaction," p. 23.

[22]See, for example, L. J. Stricker, S. Messick, and D. N. Jackson, "Suspicion of Deception: Implications for Conformity Research," *Journal of Personality and Social Psychology* 5 (1967), pp. 379-89; and Z. Rubin and J. C. Moore, Jr., "Assessment of Subjects' Suspicions," *Journal of Personality and Social Psychology* 17 (1971) 163-70.

[23]This method was suggested to me by Professor Richard T. Hull, Department of Philosophy, SUNY/Buffalo.