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13

HYPOTHETICALLY SPEAKING

Ethics in linguistic fieldwork, a provocation

Simon Musgrave and Nick Thieberger

Introduction

When we wrote this scenario in 2005, we wanted to draw attention to some significant ethical issues facing linguists. The combination of several factors in the preceding decade had raised new questions in this area as well as changing the parameters within which perennial questions could be viewed. First, the tradition of work which was developing in the wake of Himmelmann (1998) emphasised the importance of archiving data. Second, technological developments meant that audio and video data of high quality could be acquired more easily and more cheaply than previously. These developments also meant that archives would be digital, and a number of such archives were already in existence by 2005 (e.g. DOBES, PARADISEC, AILLA, ELAR).[1]

We used the format of a game called a hypothetical, as devised by Geoffrey Robertson[2] in which a series of scenarios are put to a panel comprising people with the knowledge and background to be able to address the issues raised.

We aimed to highlight several issues against this backdrop, most of which flow from the question of who controls data in an archive. Issues around obtaining consent for making recordings were familiar to linguists in 2005, but how or whether the permissions obtained might apply to possible future use was less debated. Many of us were making more in-depth studies of small, or so-called 'endangered' languages in use in various contexts, but in the communities where these languages were spoken, the concept of a digital archive with potential online access might be hard to explain. This situation already raises difficult questions about 'informed consent', questions which also arise in relation to legacy data brought into the archive. We did (and still do) take the view that it is desirable that data collected before digital archiving was common practice should be digitised where possible. The scenario builds on this idea to raise the question of whether researchers with such data, or their literary executors, should see it as part of their obligation to the discipline to undertake such work. Considering these issues leads

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again to the more basic questions about control of data and who can or should make decisions about how data can be used.

We saw these questions as being particularly difficult in relation to the kind of communities where many field linguists work. Such communities are often small, which means that individuals can be identified even when data is anonymised using practices suitable for larger participant groups. The identification can be on the basis of personal characteristics (voice, appearance), but can also be made on the basis of specific knowledge represented in the data. As with the issues already raised, these ones lead back to basic questions about who can access data and who can make decisions about access to data.

We raise one further issue in the scenario: what happens when restrictions on the dissemination of data come into conflict with the researcher's obligations to their discipline and to the pursuit of knowledge? The circumstances we set out may seem extreme, even far-fetched, but they were inspired by actual events in Australia which occurred about ten years before we wrote the scenario. A proposed bridge development was disputed by the traditional owners of the land involved, and a crucial part of the dispute concerned traditional knowledge which was restricted to fully initiated women. The way in which such claims were handled by the administrative and legal systems in Australia made us consider how such a conflict might play out in the world of linguistics.[3]

The scenario is a fictional background against which the panel can discuss the issues in character, and it should be made clear to the audience the characters do not reflect on the real-life panel members except in occasional asides, and that any resemblance to any person, living or dead, is inevitable.

The scenario

Our story is set in two very contrasting locations. One is the community of Yalijijaparingu or Yaliji for short in northern Australia, a place of astounding natural beauty and great linguistic interest. The community has speakers of several languages, but the two main ones are Liminal and Thimtal. Liminal is associated with the high country to the east and south of Yaliji and Thimtal is to the west and north, and includes the country on which Yaliji sits. The community has been in a slow decline for many years but recently a group of activists from younger generations has made some advances in renewing the community and protecting its traditional knowledge by arranging a lucrative deal with the pharmaceutical company S.F.T. Jugular. This deal centres on a plant growing in Thimtal country which has proven weight-reduction properties.

The second location is the Melbourne campus of the Brendan Nelson[4] National University, a sad landscape of concrete architecture. This institution was formerly the Broadmeadows Teacher Training College, but it has made great strides in recent years. First it was an affiliated campus of LaTrobe University, then an independent TAFE[5] college, and now finally it has joined the new national institution, Brendan Nelson National University, the flagship example of a public-private partnership in tertiary education. Enrolments are high, especially overseas students, and research output is also quite high. Of course, all staff are employed

on individual contracts, and a considerable portion of their salary comes via the performance-linked incentive payment (PLIP). Surprisingly, BNNU(Melb) (pronounced be-numb) has a flourishing linguistics department. Courses in cross-cultural communication and writing English for legal documents maintain good student numbers.

One of the leading lights of the department is Enid, a renowned theoretical syntactician. More than 20 years ago, Enid, then a young member of staff at the Broadmeadows Teacher Training College, did several seasons of fieldwork at Yaliji. Even then, her interests were mainly theoretical, and her work concentrated on question formation (wh-movement) in the Liminal language. She has published a series of important papers on this over the ensuing years, each one making important theoretical contributions although the same set of example sentences, 15 in all, is used in each of them. The highlight of her most up-to-date contribution is an analysis of a five-word utterance which has 17 functional heads in the tree, all motivated by economy principles. During her time in Yaliji, Enid made around 20 reel-to-reel audio tapes, then in her last field season she took a brand-new Sony Walkman Professional to the field. She was enthusiastic about this new technology, and the amount of material she recorded in that season was at least as much as in all previous trips together. And the kids of Yaliji shared Enid's enthusiasm for this new toy – they loved being able to listen to themselves, and she made several tapes of the kids with no intention of using them as data.

Then some years later, Enid had a brilliant undergraduate student, Josie. Fortunately, Josie's time at the campus coincided with the LaTrobe affiliation, and she was able to complete an honours degree. She was extremely interested in child language, and therefore Enid gave her some of the tapes of the Yaliji kids for her to work on as an honours project. Josie made a surprising discovery on those tapes: the kids were losing the segmental material of the case suffixes of the traditional language, but had innovated prosody associated with them. This meant that the children's speech now had a prosodic system of role marking. This discovery gained Josie a university medal for her honours thesis, a large part of which was subsequently published in the *Journal of Child Language*. She went to the US for postgraduate study, already a recognised figure in the field, and has now returned to Melbourne and to Enid's department. She still lectures on her great discovery to her first-year class, and plays sections of the tape in class to exemplify the system. This year, her class includes Anthea, an Aboriginal student, from Yaliji in fact, although Josie doesn't know this (so many students, how does one keep track of them all?).

Anthea is a very talented student, recipient of the Ken Hale Bursary from the Australian Linguistic Society, and she is keen to become a linguist in order to help maintain her people's knowledge. Anthea is not a fluent speaker of either of the languages from the community, but she thinks of herself as Thimtal: she was involved in negotiating the pharmaceutical deal, and she is also active in the group pursuing a Native Title claim for the Thimtal people. She is horrified initially just to hear her voice as a child played to a lecture theatre full of students, but she is even more horrified to hear herself speaking Liminal. After the class, she confronts Josie:

PROMPT:

Anthea to Josie: What right do you have to play this tape?
(The tape was made when Enid and the children were playing around with the Walkman, and no rights or permissions were negotiated)
Where did it come from? (We know it came from Enid, who had minimal rights in it anyway, but did that include the right to pass it on to someone else?)
Doesn't it belong to my people? Give it back to me!
What back-up copies exist? Is it archived? What about transcriptions?

The unfortunate controversy around Josie's tape casts a shadow over Enid's last years at BNNU(M) and she decides to take early retirement – she has a superannuation package from the good old days, and her needs are simple anyway: lentils, cat-food, and a personal subscription to *Linguistic Inquiry* cover most of her desires. The dean does some juggling and decides that he can afford to appoint a professor in the department. BNNU(M) are fortunate to be able to secure Andrew for the job, an internationally renowned expert in quantification. He has always been intrigued by a footnote in one of Enid's articles which suggests that the Liminal words which she glosses as quantifiers might equally validly be treated as evaluative, and on that interpretation, the language would have no quantifiers. Wishing to continue a tradition in the department, Andrew applies for funding from the Australian Research Council (under their most recent initiative [supply inane name]) and is successful, after a first attempt failed due to using the wrong font size in a sentence in the application (a radical new metric for measuring research excellence).

A major new research project is underway, with Andrew as CI, Josie as a partner, and with Freda as a very promising postgrad. Freda's role is particularly important, because Andrew knows from Enid's work that there are secret language varieties restricted by gender. As soon as he knows that the funding is secure, Andrew makes overtures to Enid about accessing her data. But there are problems: Enid is still shocked by the outcry about the kids' tape, and is very nervous about the status of any agreements she negotiated with the community.

PROMPT: **Enid, did you have any form of agreement with the people you recorded about what you could do with the tapes and their content? Assume there is nothing in writing and some of the speakers are dead**.

Additionally, it becomes clear that Enid is rather disorganised – she doesn't know where the material is, the tapes are covered in mould due to poor storage and the few notes she made in Wordstar on her early CPM computer system were kept on five-inch floppy disks that are now illegible. The only hard copies of her notes were kept in a storeroom on campus and were obliterated in the great tea-trolley disaster of 1985 (an event of mythic importance to the old hands on campus – the younger staff ask in mystified tones "What is a tea-trolley?"). And Enid repeatedly says in mystified tones: "There should be more tapes".

PROMPT: Enid, do you feel any obligation to share your tapes with other researchers? Aren't they your work? There is nothing in your professional society's ethics statement about this that could guide you.

How should she be bound by personal agreements with speakers, especially those who have died?

Andrew is offering to organise and pay for proper archiving of the tapes. Should Enid feel obliged to accept this? (Speaker numbers have dropped drastically over the last 20 years).

At last, Andrew, Josie and Freda travel to Yaliji and begin work. They meet Henry, who is working on the linguistic aspects of the Native Title claim which is being prepared for the Thimtal people, and they agree to collaborate. The research team are somewhat disheartened and saddened to find that only a handful of fluent speakers remain, and they devote a considerable amount of energy to documentation activities, in addition to their main focus on quantification. But everyone finds plenty of interesting material: Josie has excellent data on the development of new varieties amongst the young people, Freda finds that the old women are very happy to share their secret language with her, because Enid was never very interested in it after she found that questions were formed in the same way in all varieties. Andrew's mood is improving rapidly also, as his data very quickly show that Enid was correct in her speculative footnote: the apparent quantifiers really are evaluative and he has a wonderful lack of success when he attempts to elicit quantifiers in all the contexts which he can think of. By the end of the three-month field trip, he has already finished the first draft of a paper for *Language*, setting out the basics of his astonishing findings, and he is confident that BNNU(M) will not be the pinnacle of his career.

PROMPT to Freda: Freda comes to Andrew and tells him that quantifiers do exist in the women's secret language register. Andrew demands data, but Freda tells him that she cannot show it to him, all the crucial examples are from material which only women can know about.

How should Andrew behave? Should he accept Freda's assertion, or can he maintain his interpretation of the data?

How should Freda behave? How far should she, a lowly postgrad, go in trying to prevent Andrew, a renowned professor, from publishing what she knows to be false claims?

What possibilities might there be for eliciting less sensitive data? Or for negotiating some easing of restrictions from the women?

Some years have passed since the initial field trip. Meanwhile, the Native Title claim is about to go to court. Amongst Andrew's publications (PLIP time again, and it looks like a trip to Paris this year) are some on the history of Liminal and Thimtal showing the relationship between them, based on the regular sound correspondence that is apparent in the language names. Liminal is clearly more representative of the proto-language. Andrew's work is well accepted in the linguistic community. Henry, in developing his Native Title linguistic report, has

used Andrew's analysis, but has added to it an analysis using linguistic stratigraphy. He has been able to show that the differentiation between the two languages occurred before the arrival of European animals, as these names are the same in both languages. He has also traced the introduction of a particular religious cult associated with a particular local artefact and argued that this clearly antedates European contact and shows continuity.

The linguist for the State has criticised Henry's analysis, by appealing to 'syncopated equilibrium', a populist theory whereby language change can only occur if there has been a dramatic impact on speakers of the language (the State plans to call the proponent of this theory as an expert witness). The State maintains that this dramatic event was the coming of Europeans and the consequent migration of the current occupants to Thimtal and Liminal country. Therefore any changes must have occurred after contact and the current Yaliji residents have no right to claim that land. The State is also using Josie's analysis of the change in children's speech to suggest loss of the traditional language and therefore a break in continuity.

Henry, in the course of writing the report, has been asked by the lawyers for the claimants to locate all material ever recorded or written about the two languages of the claim region. Is there something about Enid's material that shouldn't be exposed to the public gaze and which will cause Henry some problems if he adds it to the list of recorded material?

As Enid never listed her primary material anywhere it is not possible for it to be located. She believes that these are her recordings and she should keep them in case she ever wants to do anything more with them.

Anthea and Freda decide to go and visit Enid together to ask for the tapes so they can deposit them in the Scientific Aboriginal and Torres Strait Islander Centre for Archiving (SCIATICA). Enid gets grumpy at their presumptuousness.

> **PROMPT: Is it Enid's current research that shows that Andrew's work has all been male-centred and therefore has missed out on crucial site-related information only available to women traditional owners?**

One of the many publications which have resulted included a transcription of a narrative by one of the Thimtal elders recounting his links to his country. This appeared in a journal of international repute but restricted readership, *Herbivorous Linguistics*, and has passed largely unnoticed. However, Anthea is still a student at BNNU(M), a very successful one who is about to enter her honours year. She reads the paper as she does background research for her thesis, and is amazed to see that the narrative reveals the location where the medicinal plant grows, a plant whose properties are still being investigated by S.F.T. Jugular. After discussing the matter with other community leaders they make an official complaint to the BNNU(M) research ethics committee. Andrew is asked to account to the committee for his behaviour, and he produces a signed consent form from the owner of the narrative – who has since died.

The Yaliji community protest that the speaker did not have personal rights to the knowledge – it belonged to the whole community, and that applies even more now that he is dead.

> **PROMPT: Anthea, you respect Andrew's research but think he should have been more careful in publishing secret information**.

Andrew's defence appeals to the epoch in which he did this work when the issues being discussed here were not considered. Further, he asserts that the speaker wanted this story published to show the extent of his own knowledge of traditional plant uses.

> **Could Andrew have foreseen the uses to which his research would be put?**
> **Is it the nature of long-term storage of information that at some time it will be used for purposes not foreseen by the speakers or the recorders?**
> **Is it a sufficient defence for Andrew to say that he had signed permission from an individual speaker?**

S.F.T. Jugular's lawyers threaten Andrew with legal action for breach of commercial confidence – are they a legitimate party to this dispute? There is additional pressure here because the research into the plant's properties is being carried out in the labs of BNNU(Q) in Brisbane and the arrangement is a substantial income source for the university.

The community tell Andrew that they have lost faith in him and that he must return all the material which he has. What should he do? All the original recordings have now been archived at SCIATICA – can material be withdrawn from there? And the languages are no longer being spoken – the material which Andrew has collected is the only documentation of two languages which is securely archived (Enid's tapes are still somewhere in the cats' den) – what is his responsibility to that material?

The ARC hear of the problem, and warn Andrew that no further money will be disbursed until the issue is resolved. And he knows that if publication of his findings from Yaliji is blocked, he will struggle to generate other grant income (not to mention PLIP) over the coming years.

How can he resolve this quandary?

We move on a few more years, and Australian linguistics suffers a terrible loss. One day, Enid's neighbour notices that the cats are looking very hungry and that the latest issue of LI has been sitting in the mailbox for almost a week (unthinkable!). He calls the police, who break into the house and find that Enid has been dead for several days. BNNU(M) holds a well-attended memorial and a respectful obituary will appear in AJL. But there is no will! Enid was never a worldly person, and her assets are few, but someone has to take responsibility for tidying up the loose ends. In the end, her great-niece steps forward and agrees to empty the house, knowing that she will receive some share of the proceeds via her mother,

Enid's only close relative. It's a terrible job (those cats), but near the end of her labours, she finds a cardboard box full of cassettes. Mixed in with a Bay City Rollers' greatest hits, three disco compilations and the soundtrack of the Charles and Diana wedding are 12 previously unknown cassettes from Yaliji. Great-niece 1) throws out the lot, or 2) contacts Andrew and asks what to do. Andrew knows that the question must be referred to the Yaliji community, but his relationship with them has completely broken down – he has never been able to obtain permission to publish his quantification data, and he languishes at BNNU(M), an embittered man. So he asks Josie and Freda (now a postdoctoral fellow) to make the journey and to try to obtain permission at least for the tapes to be sent to SCIATICA. When Josie and Freda reach Yaliji, they find that there are no full speakers of either language left, and although the community council are ever more powerful and active (on the back of Jugular's money), it is not clear that anyone can claim a position as owner or guardian of traditional knowledge.

> **PROMPT: Anthea, who should they negotiate with, the community council, surviving members of speakers families (the cassette labels at least identify some speakers), the best surviving speakers?**
> **How should they respond when people say "We had an agreement with Enid, we trusted her, but it doesn't apply anymore"?**

The council has been successful negotiating with Jugular, now they demand money for rights to the tapes. What should Josie and Freda's response be to that?

Some of the tapes have women's secret language on them – but that register is now no longer spoken, and as far as Freda can tell, the knowledge that went with it also vanished (she even sees a boy child wearing a t-shirt with a secret woman's symbol on it). If this material is archived, what access restrictions should be placed on it?

How should Enid and Josie respond if the community say "You can have the tapes, but under no circumstances let Andrew have access ever"?

Possible conclusions

Ideal outcome

All of Enid's tapes were found by Freda, then cleaned and properly archived by SCIATICA. Yaliji requested a copy for their local language centre which was run by a bipartisan committee representing both language groups. Anthea has enthused the community to the extent that there is a strong language programme in both languages, based mainly on a group of old people who are relearning stories and songs from the tapes.

Likely outcome

Enid's tapes are lost, except for the few that Josie deposited at SCIATICA.

The Native Title case has caused huge division in the Yaliji community and S.F.T. Jugular has profited from the division to pay off one small family group.

Despite the efforts of the younger activists, there are no royalties from the pharmaceutical contract for the Yaliji community.

Andrew has been appointed to the ARC and spends most of his time writing poisoned reviews of his colleagues' funding applications. He is working on a vitriolic book that will signal his departure from linguistics. He has already established a practice as a shamanistic healer that will take him into his twilight years.

Josie reached an agreement with Anthea about how Josie could use the tapes and they both ended up being good friends. Josie is involved with the Yaliji language centre and assists with materials for reintroducing the language.

Anthea has left Yaliji for a prestigious American university with the offer of a PhD scholarship (with Josie's support) to write an ethnography of linguists in Aboriginal communities.

Henry's linguistic report for the Native Title case turned up other previously unknown recordings and notes on Thimtal and Liminal. Because the ALS amended their guidelines in 2006 to recommend that data be safely archived he was able to convince the legal team that this new material be deposited at SCIATICA rather than being lost in the legal process.

Freda wrote a fine PhD thesis but was more excited by the types of ethical decisions required of the work she was doing and has become a professional ethicist.

Performed by Jeanie Bell, Barb Kelly, David Nash, Rachel Nordlinger, Ruth Singer, and Michael Walsh as an entertainment after two long days of papers at the Australian Linguistic Society conference, Thursday 29th September, 2005. 5.45 pm. The script has since been adapted for a broader audience.

Scenario written by Simon Musgrave and Nick Thieberger and the presentation was presided over by John Henderson (who added his own flourishes).

Afterword

The questions which concerned us in 2005 are still of concern in 2021 but there are now several very visible forums for debate and various proposals for resolving problems.[6] A general concern for improving access to data across all disciplines has led to the FAIR principles for data sharing. But these principles do "not fully engage with Indigenous Peoples rights and interests" because they ignore power differentials and historical contexts.[7] Specific principles for Indigenous Data Governance have therefore been developed under the acronym CARE: Collective Benefit, Authority to Control, Responsibility, Ethics. These principles were developed by the Global Indigenous Data Alliance; other organisations, such as Local Contexts, have developed licensing and labelling for traditional knowledge[8] and software tools to assist in managing the representations and dissemination of such knowledge (Christen, Merrill and Wynne 2017).

Another important change is that in 2021, ethical issues around archiving, and indeed around working with Indigenous data more generally, must be addressed in relation to the question of whether archiving (or research) is itself a colonial practice (Thieberger 2020; Thieberger and Musgrave 2007). Consideration of what is archived and who has control of archived material can only take place

if we take account of "the biases coded into seemingly neutral standards and curatorial practices" (Christen, Merrill and Wynne 2017). Although some taking this perspective have seen archiving language data as a fundamentally flawed endeavour (Perley 2012), others have suggested that language documentation and archiving controlled by communities can be important in moving beyond colonial constructions of knowledge (Agyekum 2018). Reflection of this kind can only lead to better answers to the questions.

We learned of the sad death of our colleague and friend, Barb Kelly, as this chapter went to press. Barb was a panelist in the hypothetical performance in 2005 and we offer this chapter in her memory.

Notes

1 DOBES: https://archive.mpi.nl/tla/islandora/object/tla%3A1839_00_0000_0000_0001_305B_C, PARADISEC: www.paradisec.org.au, AILLA: https://ailla.utexas.org/, ELAR: www.elararchive.org/.
2 https://en.wikipedia.org/wiki/Geoffrey_Robertson.
3 Wikipedia gives a good summary of the matter: https://en.wikipedia.org/wiki/Hindmarsh_Island_bridge_controversy.
4 Insert here the name of the current Minister for higher education.
5 Technical and Further Education.
6 A partial exception is explaining an online archive to research participants. The extent to which digital technologies, especially the mobile phone, have been adopted in all parts of the world mean that such explanations have become simpler.
7 www.gida-global.org/care.
8 https://localcontexts.org/.

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