The Need for Flexible and Adaptive Research in an Environment of Diverse Barriers to Accessing Data

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There is concern among socio-legal scholars about the relationship that has formed between scholarly research and public policy. Pat Carlen contends that in the case of criminology, this relationship sees scholars increasingly struggle to maintain their critical capacity.[1] The problem, according to Carlen, is that scholars trying to increase research output through partnership with policy makers often find this partnership hinges on an agreement that any research produced will conform to the parameters of the policy makers' needs.[2] Furthermore, when scholars do not seek partnership with policy makers, they may face political hurdles in gaining access to institutional data. Scholars may be required to demonstrate the direct policy relevance of their research before policy makers will consider the type and extent of access granted. These kinds of barriers to data access have the potential to adversely impact the critical merit of socio-legal scholarship.

This paper employs my own research as a case study to explore some of the foundations for socio-legal scholars' concerns about the appearance and impact of barriers to institutional data. My research aimed to explore how correctional agencies approach the offender rehabilitation principle of responsivity in relation to Indigenous offenders. Contemporary correctional literature states that to be responsive, correctional agencies must identify variances among offenders that may affect the delivery and reception of programs.[3] Significantly, however, it is unclear what, if anything, correctional agencies should do to accommodate variances once identified. Accordingly, I sought access to correctional agencies to interview staff working in the areas of Indigenous offender rehabilitation policy and service who could elaborate on their agencies' approach to Indigenous offender responsivity. Agencies in four jurisdictions were approached. In seeking access to this institutional data, I encountered two main barriers that impacted the scope and direction of the project in unexpected ways.

The first task of any scholar wishing to employ institutional data in her research is to identify the process by which access to correctional institutions and personnel is granted. In the case of correctional institutional data, this is

1 Pat Carlen, "In Praise of Critical Criminology," *Outlines* 7 (2005), 84.
2 Ibid., 86.
3 Don Andrews and James Bonta, *The Psychology of Criminal Conduct* (Cincinnati: Anderson Publications, 1994).

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not always easy. Although a few correctional agencies articulate the process and provide a copy of the necessary documentation on their Web site (as was the case for the first jurisdiction included in my research project), other agencies provide little or no information on their Web site about the procedure required for scholars to gain access to institutional data. Indeed, none of the three other jurisdictions approached for my research project provided any indication on their Web sites that a standard procedure existed. Moreover, attempts to contact these institutions via their publicly available enquiry contact details elicited little further information.

Scholars intent on basing their research on data from institutions must therefore often resort to informal means of deriving the applicable process and obtaining the required documentation. One favoured method is drawing on personal and professional networks to locate contacts working within the institution to which access is sought.[4] Once located, these informally referred contacts can be an invaluable source of information, either directing the scholar towards the appropriate documentation or to another contact who may, in turn, possess the relevant knowledge. The problem with this approach, however, is that it can be time-consuming and may yield inconsistent results. For example, in the case study it took an average of five months and four emails to various contacts at the correctional agencies before the person who managed access was located. In the case of one jurisdiction, although contacts were made through this approach, these contacts were either not working in the correctional sphere or were unresponsive beyond initial communications.

Losing time identifying contacts and locating the correct application form for institutions that do not openly provide these details is problematic when so much scholarly research is time-constrained. In Australia, for example, the Federal Government's Australian Research Council only funds projects for a maximum of five years, with most funded for only three years.[5] Many internal university research schemes also limit funding for projects up to three years. Moreover, both funding bodies commonly expect output from scholars within the first year. Such pressure to produce research may result in institutions being removed from the project in response to prolonged delay. This was the outcome in my research project, where appropriate contacts could not be obtained for the fourth jurisdiction's correctional agency within the first six months.

This outcome implies that the capacity of socio-legal scholars to produce scholarly research is not entirely determined by the academic ability of the scholar or the merit of their research project (as is indicated by the selection criteria of funding bodies), but rather by the chance capacity of the scholar to successfully negotiate this institutional barrier. The role of chance is a

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4 Yang Lu, "The Human in Human Information Acquisition: Understanding Gatekeeping and Proposing New Directions in Scholarship," *Library & Information Science Research* 29 (2007).

5 Australian Government Australian Research Council, http://www.arc.gov.au/ (2011).

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worrying feature of socio-legal research because socio-legal scholars are rarely in a position where they can either control the circumstances surrounding the feature's emergence (e.g. the lack of information provided by institutions about access) or its redress (e.g. the flexibility to produce research outcomes without time constraints). Moreover, while this may not be a new feature of socio-legal research, its impact has the potential to change and increase alongside the continuous growth in competition for research funding and pressures on scholars to secure external funding for their university position.[6]

Of course, locating and completing the necessary application form of an institution does not guarantee scholars access to institutional data either. It is typical for a correctional agency to hold an internal review process for access applications. This process often mirrors the ethics application procedure already undertaken by the scholar at her university. In some cases, the reviewing committee decides that the scholar will not be granted access to data until further information is provided, or certain issues of concern within the application are addressed. In these circumstances, the scholar is typically allowed the opportunity to address the points raised by the committee and resubmit the application. At other times, however, the application for access may be denied outright by an agency, with no avenue available to scholars for reapplication.

The key problem with this internal review process, however, is the inconsistency of outcome across agencies. Although correctional agencies appear to base their decisions about access on the same (or similar) criteria, addressing these criteria in a consistent manner does not always lead to the same outcome. For example, in the case study, both the first and second jurisdictions' correctional agencies determined that there was a need for research into Indigenous offender responsivity in their jurisdictions, and that the proposed project could address this need without undue imposition on the agencies' staff or resources. The third jurisdiction, which was provided with the same information and appeared from the application process to grant or deny access on the same criteria, denied access without provision for appeal. The agency provided the following reasons for denying access:

> [w]hen considering your project the Committee had regard to a number of factors including the potential new information arising from the proposed research, the time impost of staff to participate, and that most of the information you seek is already available from existing policy documents.

The lack of consistency surrounding institutions' decisions to grant or deny access to data is a problematic barrier for socio-legal scholars. Indeed, unlike the insufficiency or absence of publicly available information on access processes, socio-legal scholars cannot manoeuvre around this impediment by recourse to other informal means. If access is denied, research cannot take place. Moreover, because the problem facing socio-legal scholars is

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[6] Australian Government Australian Research Council, *Consultation Paper: ARC Discovery Program* (Barton: Commonwealth of Australia, 2010).

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inconsistent decision making and not inconsistent criteria, there is no apparent base from which socio-legal scholars can better prepare themselves to receive a positive outcome. Thus, socio-legal scholars may be forced to remove certain institutions from their research projects, not because of any apparent fault in their research but because of the overall inconsistency and unpredictability of institutional barriers. Scholars cannot assume that they will obtain the same outcome if they present one institution with the same information used to obtain ethics approval at another institution.

The unpredictability of institutions' decision making indicates something further about the nature of the problem facing scholars. The problem, it would seem, is not simply the appearance of barriers to institutional data access that impact upon research in concerning ways, but also the overall diversity and inconsistency between the nature, timing, and outcome of different institutions' barriers, for which scholars can do little to prepare or negotiate. Indeed, if barriers manifested themselves in uniform ways across every institution a scholar approached, then scholars would at least have a coherent base from which to better prepare their approach, but this is not the case in practice. Rather, as this paper illustrates, scholars are presented with barriers that appear in one institution, but not another; barriers that appear at one time in one institution, but at a different time in another; barriers that can be overcome at one institution, but not another; and barriers that lead to one outcome in one institution, but a very different outcome in another. When the barriers are as diverse as the institutions themselves, it is doubtful that any scholar can prepare herself enough to safely navigate them.

The lack of preparedness of socio-legal scholars to overcome diverse and inconsistently applied barriers to institutional data has two serious implications for the production of socio-legal research. First, it has the potential to derail the proposed research design that has been confirmed by funding bodies. As the case study research project illustrates, without the tools or methods to successfully negotiate the diverse and inconsistent array of barriers encountered, I was forced to reduce the scope of the project from four geographically diverse jurisdictions to two jurisdictions in much closer proximity. Based on such limited data, the research project could no longer produce global insights about the overall consistency and structure of correctional approaches towards Indigenous offender responsivity, as was originally intended.

Second, if socio-legal scholars continue to inconsistently navigate institutional barriers to data access, the results presented in socio-legal scholarship may become skewed. There is potential for socio-legal scholarship to become limited to research involving those few institutions where access to data can be readily sought and will be granted. Thus, it would seem that the problem facing socio-legal scholars may not only impact upon the production of research at an individual level, but over time it may also impact upon the overall character and depth of socio-legal scholarship.

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So what can be done about this problem facing socio-legal scholars and their scholarship? Perhaps very little. Indeed, although this special collection of essays represents the current concerns of scholars, the problem of barriers to institutional data has been present for decades with little wholesale solution offered to date.[7] Perhaps what is called for is therefore the proposition and exploration of a different question. Rather than asking what can be done about a problem that appears to have become inherent to the research process, socio-legal scholars should ask, what can be done to alleviate some of the impacts and implications of this unwavering issue? To this question, I offer one suggestion: adapt.[8]

Being forced to work with data from only two correctional agencies with close geographical (but not ideological) proximity, the barriers I encountered incited a change in analytical direction. I considered the project's original intent, to explore the practice of Indigenous offender responsivity, and resolved that despite the loss of two jurisdictions, the project could still provide a critically sound, location-specific, genealogical account of this practice. Doing so enabled me to produce scholarship about the myriad conditions, considerations, and transformations that not only allowed correctional approaches towards Indigenous offender responsivity to emerge in each location, but also allowed these approaches to take on the location-specific formations that they did.[9]

Of course, not all research projects have the same capacity as the present case study to adapt to limitations in access to institutional data. As this paper previously indicated, much academic research is subject to external funding bodies. Often, these bodies provide funds based on an agreement that a scholar will produce the study they first claimed they could provide. Moreover, as Carlen's concern[10] about the relationship between contemporary academics and public policy indicates, in situations where socio-legal scholars form partnerships with policy makers, the capacity of the scholar to make changes to their project in the way that they see fit may be diminished.

Recognizing this compounding issue allows this paper to draw some final conclusions about the problem facing socio-legal scholars. The fact that socio-legal scholars may encounter an array of barriers to accessing institutional data that manifest at different times, in different formats, and with different outcomes is neither a new problem nor one that scholars have not already sought to address by developing adaptable and flexible research designs. Instead, what should be of concern to socio-legal scholars is the increasing

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7 See, e.g., Robert Broadhead and Ray Rist, "Gatekeepers and the Social Control of Social Research," *Social Problems* 23 (1976).

8 The practice of adapting one's research to presenting issues is not new and can be seen in other articles within this volume as well as Dawn Moore, *Criminal Artifacts: Governing Drugs and Users* (Vancouver: UBC Press, 2007) and Albert Roberts and Kenneth Yeager, eds., *Foundations of Evidence-Based Social Work Practice* (New York: Oxford University Press, 2006).

9 See, e.g., Claire Spivakovsky, "Approaching Responsivity: The Victorian Department of Justice and Indigenous Offenders," *Flinders Journal of Law Reform* 10 (2008).

10 Carlen, "In Praise of Critical Criminology."

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potential for funding agreements to limit scholars' capacity to respond to institutional barriers with adaptation and flexibility, brought about by the ever present and growing pressure on scholars to secure external funding for their university position.

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