

Free-Riding and Research Ethics

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In “Rethinking Research Ethics,” Rosamond Rhodes argues that all of us (including vulnerable populations) have a duty to participate in research ethics programs (Rhodes 2005). The crux of the argument is that since each of us stands to benefit from the fruits of those programs, we each have a moral obligation to contribute to them. This argument invokes the concept of “free-riding”: free-riders are those who benefit from mutually cooperative schemes without absorbing any of the costs. If, for example, I go to a public park which has been funded by taxpayers’ dollars despite the fact that I have consistently evaded my taxes, I would be free-riding upon the taxpayers’ contributions.

Numerous moral arguments could be made against free-riding, most of which invoke some variant of the social contract. Immanuel Kant, for example, held that we may only act on universalizable maxims (Kant 1998). This requirement prohibits free-riding since I cannot simultaneously will that I not ϕ (where ϕ represents some generic action) and that *everyone* not ϕ while, at the same time, hoping to benefit from some consequence of someone’s ϕ ’ing since, *ex hypothesi*, nobody will be ϕ ’ing given the universalization of my maxim. More recently, Tim Scanlon has argued that “an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement” (Scanlon 2000, 153). The idea would be that no reasonable person could fail to endorse participation in programs from which s/he stands to benefit.

While the theoretical underpinnings of the immorality of free-riding might seem intimidating, let us at least grant that the notion has an intuitive plausibility. Recently, Paul Menzel proposed that free-riding is an important moral construct specifically in health care (Menzel 2002). I take Rhodes’s arguments to be logical extensions of Menzel’s as directly applied to research ethics. In these comments, I would like to raise two concerns regarding Rhodes’s proposal and its allegations of free-riding against non-participants.

The first concern I have is pragmatic: Rhodes argues that the focus in research ethics should shift from the informed consent of actual agents to the hypothetical consent of idealized moral agents. As a moral philosopher, I am rarely concerned with pragmatics—I take our discipline to

be entirely disjoined from that of public policy and other related fields. Nevertheless, we should at least recognize that the attempt to base an obligation to participate in research ethics upon hypothetical and idealized consent is unlikely to be more than an exercise in abstract moral philosophy. This project is, I think, very important, but only part of the picture. Rhodes begins her account with empirical concerns regarding the historical development of research ethics, but we should realize that her positive doctrine is one that cannot come to have any real-world instantiation: the priority that we place upon individual rights (including the right not to participate in research) is just too high, especially in the United States. We simply will never be able to subjugate anyone to participate in a research program on the grounds that some idealized moral agent would.

Of course, I take Rhodes’s project not to be concerned with pragmatics, but rather with morality. Regardless of pragmatic constraints against her suggestion, we could still ask whether she has adequately made the case for a moral duty to participate in medical research. The issue that I would like to raise regarding duties to participate involves the fact that, at present, research participants are often *paid* for their participation in the studies. This fact seems to me to abrogate allegations of free-riding against non-participants. If there is a problem with free-riding, it is that some sub-class is bearing all of the burdens whereas some larger class is deriving the benefits. In medical research, a small sub-class does bear all the burdens, and a larger class receives the benefits (the fact of remuneration for participation does not change this fact), but this misses an important element of the practice. If for example, ten people pay for a park but, in exchange, receive non-monetary compensation which exceeds the monetary value of their contributions, would non-payers really be doing anything wrong by using the park? I would not think so.

I do not think that this is an obstacle for indictments against free-riders in general, but rather a problem for the standard definition (i.e., a free-rider is one who benefits from some mutually cooperative scheme without bearing any of the costs). Okay, so how about a better definition? I’m not sure I have a great one, but let’s try: a free-rider is one who benefits from some mutually cooperative scheme while absorbing a lower *net* burden than other contributors. This definition of a free-rider has, I think, the added benefit of issuing indictments against those who contribute *less* than others, but still take a full share of the finished product; the original definition would have exonerated anyone who carried *some* of the costs.

*The opinions contained in this article are those of the author and do not necessarily represent those of the American Medical Association.

Assuming that Rhodes would accept this revised definition (and I have no reason to think that she would not), we could then ask whether non-participants in research ethics are free-riders. And I think the answer, so long as participants are adequately remunerated, is that they fairly clearly are not. There are, of course, substantive questions as to what “adequate” remuneration would consist in, but the general conceptual framework should be clear. As a first attempt, we might say that A is adequately remunerated for ϕ 'ing if and only if A autonomously chooses the remuneration given full information regarding possible consequences of ϕ 'ing. To allay fears of coercion, we might go on to say that an autonomous will is absent if the moral agent has no meaningful alternatives from which to choose.¹

So, given current research practices, I think it is plausible to claim that non-participants are *not* free-riding upon participants of research studies. If this is true (and presuming no other moral failings on the part of non-participants), then they are not doing anything morally wrong and Rhodes would be unable to ascribe a duty to participate upon these individuals. Of course, the whole argument is predicated upon the current structure of research programs and the presumption of adequate remuneration. There are numerous arguments for socialized medicine and against its privatization (most of which I would not support), and I suspect that Rhodes would endorse some of

1. For example, a young mother who subjugates herself to dangerous research in order to feed her starving family could reasonably be said to have been coerced by the offer of comparatively small remuneration since she lacks meaningful alternatives to participation.

these. She therefore might be able to agree that, at present, there is no free-riding, though advocate a movement toward a system which would eradicate remuneration. She could then reapply the free-rider tag to non-participants. Alternatively, Rhodes might deny that current remuneration schedules are adequate and that, because participants are under-remunerated, free-riding would still be a problem. This line would warrant further empirical investigation but, conceptually, I would still maintain that remuneration carries the potential to negate the free-rider problem in research ethics. ■

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Putting the “Ethics” Into “Research Ethics”

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Rosamond Rhodes has done us a great service by suggesting that we take a look at research ethics from a higher altitude in order to get “the big picture” (Rhodes 2005). She offers us a grand view, and suggests some solutions that would indeed represent a radical departure from current practice. I want to thank her for opening up this conversation, but propose that the changes that are needed are quite different from those that she proposes.

Professor Rhodes invokes a principle she calls the negative golden rule, from which she derives a proposal for what I would call conscription to service: all people will be required to act as participants in clinical trials in the name of the greater good of society. She argues that the current emphasis on informed consent and the protection of research

subjects grew out of a suspicion of researchers that derives more from the Nazi doctors than anything else.¹ But, in her opinion, the Nazi doctors do not merit being the source of the foundation for our research ethics, for our research has not been nearly so murderous as that one aberrant example.

Professor Rhodes underestimates the contribution of scandal to our own research ethics. She quickly recites in one (long) sentence some of the famous cases, but doesn't give adequate appreciation to how each led up to some of our current regulations. The National Commission for the Protection of Human Subjects and *The Belmont Report* were

1. She also attributes a great deal of the U.S. response to the Nazi horrors to the influence of Hans Jonas.