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Ethical awareness and socio-legal research in the UK

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<TITLE>**Ethical awareness and socio-legal research in the UK**</TITLE></BOOK-PART-META>

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<ABSTRACT><TITLE>**Abstract**</TITLE>

Before carrying out work in the socio-legal field, it is necessary to consider the ethical implications of the work and to go through the required ethical approval processes. Often, depending on the project, this will be straightforward, since as the work will not give rise to significant ethical dilemmas. Sometimes though, in projects that will involve human subjects and sensitive issues such as mental health and sexuality, investigated either through quantitative or qualitative methods, further ethical enquiry will be necessary. This further enquiry will usually entail the consideration of the project by a research ethics committee, who will be checking the application to ensure that there is no danger to the researcher, or to the institution. The kind of risk considered is usually physical, financial, legal, and/or reputational. This chapter considers the likely ethical questions that will be asked of socio-legal work, and how to navigate the process of dealing with these questions. I also look at an example of how a 'risky' participatory sexuality project can produce particular challenges to ethical regimes. These challenges are both to the underlying prejudices in the decision-making processes of ethics committees, and to academia as a conventional and 'straight' space. I consider how we, as socio-legal scholars, might navigate these prejudices, the types of prejudices that might be encountered, the potential effects on research, and the necessity of confronting and challenging these prejudices through ethical awareness in socio-legal research.</ABSTRACT>

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<BODY><HEAD1><TITLE>**Introduction**</TITLE></HEAD1>

Most of us will encounter an ethics review at some point in our careers. Most of the time, this will be simply to tick a box to say that our project raises no significant ethical issues. Usually, such a review will be a minor inconvenience, and, often, we will wonder at the point of ethical review. On occasions, the process will draw us in, since as we will need to disclose to our institutions, and/or research councils (the two major councils in the UK being the ESRC or and

the AHRC)[1] that our project involves, for example, human subjects, or sensitive issues such as sexuality, criminal offences, or mental health. At this point, many of us will experience frustration and sometimes fear that our project will not be allowed to go ahead at all. Research ethics in the humanities, and more so in the narrower field of socio-legal studies, has not received the same level of attention and scrutiny as in the sciences. This is at once a shame and concerning. As we will see, research ethics and the bodies that apply them to our work (research ethics committees; 'RECs') have the power to bring us to reflect productively on not only the ethical position of our projects, but also our ethical position as researchers. As we will see, research ethics and the findings of RECs not only tell us about our field, our methods, and ourselves, but also the priorities, framings of risk, and prejudices and conventionally conservative ethics that are the foundation of the broader academic context within which we operate.

In what follows, I will set out an overview of research ethics processes that are likely to apply to a socio-legal project, the current criticisms of the frameworks that underpin research ethics in humanities fields, and the apparent biases of RECs. I will then move on to consider my own 'risky' sexuality project, and how this is a useful example that demonstrates both the power of research ethics and RECs, and an occasional, yet urgent, need to be critical of research ethics in our particular field. In looking at this, I will also set out some strategies for dealing with a refusal of ethical approval, and how this can be taken forward to ensure a project's continuation, how such a response can be dealt with productively, and how ethical awareness can be transformed into a positive and useful part of researcher development (De Wet, 2010).

<HEAD1><TITLE>**The codes**</TITLE></HEAD1>

It goes without saying that the process of ethical awareness must begin at the earliest possible stage of a project. There are several things that can impact on the timing of recourse to the procedure, which could range from reticence to engage in the process, to simply not knowing it is necessary, or not knowing how to do it, to last minute changes in methodology or theoretical framework. Most projects, whether or not funded by a body external to the researcher's home institution, will be subject to the institution's ethics framework. It has been found that rash consideration of ethics and an assumption of a lack of ethical dimensions, can be both 'erroneous and dangerous' (De Wet, 2010). Not only this, but such a position might render the researcher in contravention of research council guidelines, which require ethical

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[1] The arguments I advance in this Chapter are targeted at the frameworks governing research at UK institutions. However, the points made in this article are likely to have broader application than the UK jurisdiction since much of the critique against ethical frameworks runs along similar lines.

awareness and engagement with RECs.

For socio-legal researchers, the Socio-Legal Studies Association ('SLSA') has produced a 'living document' in the form of a Statement of Principles of Ethical Research Practice (SLSA Principles, 2009). This document is designed to be read in conjunction with ethics guidance appropriate to each research project, which might be your specific institution's guidance and/or code of practice,[2] and it will likely include, whether or not you are externally funded, the ESRC Framework for Research Ethics (ESRC FRE; ESRC 2012). It should be noted that, if a project is funded by a different external body, such as a charity, then they it will have their its own ethical principles for the conduct of research, which also must be considered. It could be said, then, that there is guidance aplenty, with many papers and codes of practice and statements of principles to resort to, should you find yourself 'ethically' compromised during your project. It is also the case, that you *must* engage with this process. Ethical awareness, is not a choice, such that, if you are found to be in breach of these rules, you might find yourself in trouble at your PhD viva, or perhaps having your research funding removed, or, in extreme circumstances, you might find yourself splashed across the front pages of the *Daily Mail*, and, potentially, without a job.

The process, at first glance, appears complex, anxiety inducing, and, to the most hardened empirical researchers, harmful to the production of free and exciting research (Burgess, 2007, cited in De Wet, 2010). I find myself fluctuating between all three of these possibilities, but I conclude that ethical awareness (albeit the processes and codes are problematic, as we shall see) can be hugely beneficial to a project, even (and especially if) the project is one that *confronts* and disrupts ethical codes and processes (although there are some caveats to this). But, before moving on to the problems with the process, I shall first look at the basic requirements and considerations, and how an application for ethical approval might look for a socio-legal project might look. It is worth mentioning that, at this point, any recommendations for navigating the process are drawn both from others, and from my own engagement with ethical awareness.

<HEAD1><TITLE>**The process**</TITLE></HEAD1>

The ESRC Framework for Research Ethics (ESRC FRE), which will be incorporated into most, if not all, research ethics frameworks (REFs), tells us that primary data collection will always raise ethical issues that must be addressed, whereas secondary use of data 'may' be

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[2] See for example the University of Westminster Research Ethics Framework
https://www.westminster.ac.uk/research/research-framework/research-ethics . Your own institution will have its own framework, which will incorporate and refer to external ethical guidance – most likely including the ESRC FRE.

uncontroversial, requiring only a 'light touch ethics review' (ESRC ~~FRE~~, 2012~~;~~: 3). It is also the case that, once you indicate to your research support team (your supervisors and so on), that you are planning to go into the field and carry out, for instance, interviews or observations, the requirement for some ethical engagement will become clear. It is also the case~~,~~ that, regardless of your methods, ~~that~~ if your research involves a 'sensitive' subject-_matter, the requirement for ethical awareness will arise (and your supervisors, depending on their experience and research inclinations, may be panicking).

~~While~~ Although each institution will incorporate external guidance such as the ESRC FRE into ~~their~~ its own frameworks, if you are attached to an institution, then your starting point will be your institution's application process for ethical approval. Each process will differ in terms of practical steps (it could be a paper/email form~~,~~ or a process ~~via~~ using a virtual research environment)~~,~~ but will include similar 'triggers' for engaging more than a 'light touch ethics review'. There is no indication in the SLSA Principles as to what the headline triggers for a more ~~in~~ in-depth review might be, specific to socio-legal research. The ESRC FRE gives institutions responsibility ~~to intuitions~~ for establishing principles and policies, which include criteria for identifying the level of risk that a project entails and therefore the procedure to apply (ESRC ~~FRE~~, 2012~~:~~: 8). The framework then goes on to set out the following categories~~,~~ that are *likely* to require a full, in-depth review: research involving potentially vulnerable groups or those lacking capacity; research involving sensitive topics (including participants' experience of sexuality, gender, race, political or illegal behaviour, experience of violence, abuse, or exploitation); research involving human tissue; research using secure or sensitive data; research involving deception; research involving psychological stress; research involving intrusive methods of data collection; research where the safety of the researcher might be at risk; research involving members of the public; research outside ~~of~~ the UK or on the Internet; research through visual or vocal methods (where participants may be identifiable~~)~~ ; (ESRC FRE, 2012~~;~~: 8–10).

If your research fits into one of these categories, which is likely given their extensive coverage and the kind_s of project~~s~~ that are likely to be undertaken by socio-legal researchers, then the ESRC FRE indicates that your research should be subject to a full ethics review (ESRC FRE, 2012~~:~~: 8–10). These categories are likely to be reflected in the institutional process, and, when you come to the 'risk' section of your institution's form~~, then once you~~ and tick the box indicating that your research involves one of these areas, this will trigger a full ethics review. A full ethics review will involve consideration of your application by your institution's REC, following your institution_'s particular process for doing so. In the unlikely event that your

research does *not* fall within the categories listed in the ESRC FRE and mirrored by your institution's 'risky' categories, then a 'light touch' review will be sufficient. A 'light touch' review, however, does not let you off the hook as far as ethical awareness is concerned. Although you will not be subject to the scrutiny of your REC, you will remain bound by the SLSA Statement of Principles of Ethical Research Practice, and your institution's and the research council's codes of conduct/practice.

So far, the process seems, on the face of it, relatively clear, both in terms of the steps and in terms of the documents themselves that guide our ethical behaviour as researchers. However, this is far from the case. What the researcher will find is a huge area of uncertainty in the space that exists between the lines of these documents, containing these supposedly clear principles that guide a 'full ethics review'. This space of uncertainty is both problematic and productive, but, most importantly, it is a space in which researchers should demand (and receive) support mechanisms. It is also a space that might bring researchers into confrontation with institutional power within our discipline. It is crucial that socio-legal researchers, as part of 'ethical awareness', are conscious of the problems with these principles, as well as their protective purpose. This is particularly important given the power that RECs have in relation to our projects, and the impact that their findings can have.

<HEAD1><TITLE>**Problems with research ethics, SLSA principles, and RECs**</TITLE></HEAD1>
<HEAD2><TITLE>*An ill-fit for the discipline*</TITLE></HEAD2>

The first criticism of relevance to socio-legal researchers is that ethical clearance procedures in social science and the humanities tend to 'sprout' from procedures applied to the sciences (De Wet, 2010: 302). As we have seen, it is also the case that ethical frameworks for institutions and externally funded projects will always incorporate the ESRC FRE – a framework that is specifically designed for research in scientific disciplines. This ought not to be a surprise, as the origin of ethics review is in the sciences, with the process originally designed to prevent physical abuse and medical malpractice (Connor, Copland, and Owen, 2018: 401). Accordingly, the process is often thought of as not only unnecessary, but painfully bureaucratic – a perceived reality that will make most socio-legal researchers disengage (De Wet, 2010: 301).

Although an ethical framework will also incorporate the institution's own code of practice, and indeed the SLSA Principles, it is submitted that this does not render the overall ethical guidance any more focused on the specific demands of a socio-legal project. As De Wet argues, the positivist epistemological tenets of the ethical 'tick-box' exercise designed

for the sciences, simply does not fit with the demands of ethical practice in the social sciences (De Wet, 2010: 302). De Wet argues that the distance between the reality of the particular demands in humanities research, and the design of the procedure, has resulted in at once a disengagement with ethics review as a 'dead procedure', and a suspicion that it 'overregulates' research (De Wet, 2010: 303). This is not only potentially dangerous, but also sad, because ethical review, as we shall see, can be highly productive for a research project, and supportive of the researcher.

For the socio-legal researcher, the inadequacy of ethics review processes is of particular concern, a concern that the ESRC FRE and the SLSA Principles of Ethical Research Practice do not fully address. Nouwen captures perfectly the very particular challenges of socio-legal research, particularly that which might well be deemed subject to a 'full review' as being 'risky' (Nouwen, 2014: 230):

<DISP-QUOTE>Practically, empirical socio-legal field research requires huge amounts of resources and time. Epistemologically, it suffers from the perennial identity crisis of social science as a science, given the limitations on its ability to demonstrate causality with anything like the certainty of natural sciences. Ethically, the context of research in situations of (post-)conflict continuously confronts the researcher with most difficult questions. Existentially, empirical socio-legal research can shake up the most basic assumptions, hopes, and expectations of the fieldworker… The challenges are huge, precisely because empirical socio-legal research takes place in the midst of a social world that is continuously changing and filled with contradictions, uncertainties, and inconsistencies.</DISP-QUOTE>

The question is how an ethics framework, that is specifically designed for the sciences, can have any hope of covering the magnitude and variety of these challenges, all of which, I argue, have implications for research ethics: they are not just theoretical or academic challenges, these are resolutely real, carrying not only the possibility for unpredictable ethical demand for the research study, but also risk to the researcher *personally*. I shall come back to this point later, but the fact that a researcher can, and often is, left alone (potentially early on in their career) to deal with these challenges that do not fall within the categories of conventional risk – as set out by the ESRC and the SLSA, for example – is hugely concerning.

<HEAD2><TITLE>*Risk: physical and reputational*</TITLE></HEAD2>

In a way, it should not be a surprise that the SLSA Principles form a very 'legal' document. Each principle explains what is required of a responsible socio-legal researcher, including responsibility to junior researchers (Principle 3); acknowledgment of sources (Principle 4);

safety and wellbeing (Principle 5); in great detail, ~~on~~ the responsibilities of the researcher in relation to obtaining consent (Principle 7); confidentiality and data sharing (Principle 8)~~;~~ and a short and sweet section on social responsibility (Principle 9). I am afraid it is clear this document is focused on ensuring the protection of institutions~~,~~ and a notion of 'ethical' research~~,~~ that is far removed from the demands of the field, and the modern context of academia (De Wet, 2010~~:~~; 313). Consequently, there is little in the way of protection that relates to the real risks to the researcher~~,~~ ~~and~~ or evidence of a will to protect the innovative, ~~demanding~~demanding, and crucial field that is socio-legal work. In fairness, it is an inadequate supplement to a desperately inadequate framework. The reason for this begins with the conception of 'risk' that underlies both the ESRC FRE and the SLSA Principles.

The way in which risk is conceptualised is important, ~~since~~ as this will inform the kinds of question~~s~~ that will be asked of a researcher, the kind of support needed/provided, and the overall productivity of the ethics review. This will also indicate, I claim, the priorities of the institution~~,~~ and the underlying assumptions about both the researcher~~,~~ and the socio-legal field. The risk that seems the most obvious will be physical risk to the researcher, ~~and~~ with the resulting duty of care held by the institution as employer (SLSA Principles, Principle 5). Given the diversity of methodological enquiry and subject matter within socio-legal study, these dangers are likely to take on a variety of forms. Although this seems obvious and uncontroversial, the 'obviousness' of these dangers can hide a multitude of assumptions about both the researcher and researched (~~Lee~~ Lee-Treweek and Linkogle ~~(eds)~~, 2001). For example, a concern about the physical safety of a female researcher going to a public sex beach for a socio-legal project is highly gendered – would the same question be asked of a man? What kind~~s~~ of assumption~~s~~ are being made, and what does this say about both the institution and the field~~?~~ (Brooks, 2018~~).~~)? Likewise, a lack of concern about a male researcher being assaulted in the field carries with it another set of gendered assumptions (~~Lee~~ Lee-Treweek and Linkogle ~~(eds)~~, 2001). It is also the case that these kinds of physical risk~~s~~ will be the subject of scrutiny to the exclusion of 'softer' risks, such as emotional risk. When researching within a particular community in a particular place, the risks associated with isolation are real and serious (Sampson, 2017). There are risks, too, ~~which~~ that might not even register with RECs, and certainly not in terms of the SLSA Principles, such as the potential for the dynamic of the field to render gaining informed consent, or ethical approval (~~since~~ as the field has ~~changes~~ changed or altered), impossible (Sampson, 2017). This has the effect of locating risk, and therefore responsibility, solely with the researcher in carrying out 'unsanctioned' work, and work that falls outside ~~of~~ the Principles.

As universities have come under increased public scrutiny, reputational risk has become a heightened concern. This is particularly so ~~since~~ as academic spaces have come to operate increasingly as businesses (Hedgecoe, 2016:~~;~~ 488). The particular kind of work that might cause the university a loss of 'prestige' or research funding~~,~~ is the kind of work that RECs are likely to be sensitive to (Hedgecoe, 2016:~~;~~ 494). As Hedgecoe argues, in the course of considering both student sex-work studies and terrorism studies, it seems to be the case that the ambit of RECs extends beyond legalistic duties of care, toward reputational harm (Hedgecoe, 2016:~~;~~ 494). It is also important to consider the personal risk to the researcher. As Massanari argues, with increased technology~~,~~ social media use, and the ability to work with diverse kinds of ~~communities~~ community (some with extreme views), researcher visibility carries new forms of risk, which go beyond institutional reputation (Massanari, 2018:~~;~~ 7). Concern for reputation ~~by~~ on the part of the SLSA takes the form of 'integrity' (Principle 2) to the discipline of socio-legal studies (SLSA Principles, Principle 2). I suggest that this focus, although well-~~ ~~intentioned, does not make the researcher aware of the complexities associated with reputational risk, which for institutions is the priority, and integrity means institutional integrity – not integrity to your discipline (Connor, Copland, and Owen, 2018:~~;~~ 407).

The question then becomes ~~as~~ one of ~~to~~ how to navigate and mitigate these perceived risks (whether physical or reputational), if they are raised as a concern (either expressly or implicitly) as part of a full ethics review. Peter and Friedland suggest recourse to the researcher themselves~~,~~ in assessing their own vulnerability in their particular project, might trigger closer, yet more flexible, engagement with RECs (Peter and Friedland, 2017:~~;~~ 115). ~~Whilst~~ Although it is not surprising that RECs attempt a protectionist stance, via focus on regulation, it is possible to form strategies to mitigate the distanced view that RECs take. This would also have the effect of undoing assumptions and researcher stereotypes, currently in operation with the consideration of both physical and reputational risk – moving from hypothetical assumed risk~~,~~ to actual risk (Peter and Friedland, 2017:~~;~~ 115). This approach of 'ethical mindfulness' is more a process and discussion~~,~~ than a judg~~e~~ment, 'recognizing and giving credence to feelings of discomfort, and being ethically reflexive' (Peter and Friedland, 2017:~~;~~ 115). This approach is an unconventional approach taken to risk~~,~~ and is not reflected in ~~research ethics framework~~REFs. Yet~~,~~ given that unconventional methodological and theoretical approaches in socio-legal studies are becoming the norm, we need an approach that fits.

<HEAD2><TITLE>*Fear of innovative methods and reflexivity*</TITLE></HEAD2>

If you are using an unconventional methodology, as well as researching within a 'risky' field, you are even more likely to be considered ethically 'risky'. A significant factor in the apparent

increase in risk for socio-legal research is methodological innovation. Our research has become more critical of methods, and those of us doing qualitative work are taking our methodology itself as an object of critical concern. In doing so, we are doing work that fails to be captured by conventional risk frameworks and tick-box exercises, towards work that examines and disrupts power dynamics within the research process and moves toward researcher—participant collaboration (Connor et al., 2018: 401).[3] With research that prioritises social empowerment, we need an ethics framework that facilitates and empowers, but this, as we have seen, is not the case (Connor, Copland, and Owen, 2018: 401).

Reflexivity and methods that allow for reflexivity, are being used with increasing frequency in socio-legal studies (Nouwen, 2014: 233). Reflexivity might be through the method itself (for instance, autoethnography or ethnography), or through the researcher's theoretical position, which takes account of the fact that analysis cannot be separated from the researcher who analyses and is, too, part of the world that she studies (Nouwen, 2014: 234). Nouwen finds that socio-legal research has been slow on the uptake for such work (with reflexive accounts often rejected for not being scholarly enough), but that such approaches are invaluable in dismantling the illusion that law, the object of our study, is external to us (Nouwen, 2014: 233). Nouwen claims that reflexivity relates clearly to intellectual honesty, in disclosing the limitations and possibilities of research. With this being the case, it appears that honesty in our reflexivity and the impact of our methods and ourselves on our findings, are essential ethical concerns.

However, it would seem apparent that socio-legal research is somewhat reticent to be open to creative and personal methodological enquiry (Nouwen, 2014: 233).[4] To be sure, it is one of the more adventurous disciplines, albeit the personal and political seems not to be a priority, as Nouwen suggests:

<DISP-QUOTE>Authors are expected to write up research by mentioning "'the facts'", the theories, and possibly the methods. The relationship between facts, theories, methods, and the researcher, however, is rendered invisible, and so is the personal, social, and political character of research.

<ATTRIB>(Nouwen, 2014: 233)</ATTRIB></DISP-QUOTE>

Yet, our ethical frameworks, the SLSA Principles included, do not provide guidelines

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[3] See also Victoria Brooks 'Fucking Research Ethics through Radical Method: autoethnography and the field of environmental law, in Andreas Philippopoulos-Mihalopoulos and Victoria Brooks (eds) Research Methods in Environmental Law (Elgar, 2017) for how radical methods (and theories) can cause disruptions to the ethical regimes of institutions.

[4] See also Brooks (2018).

on the necessity, nor the non-legalistic risks of doing such research and adopting such a position. What is worse is that we are left with a huge gap in our ethical frameworks, which will leave researchers unsupported in what can be a risky approach.

Hidden bias and the secret deliberations of RECs

The whisperings and debates of the REC, once our ethics reviews land on its desk, are as shrouded in mystery as jury deliberations, with no requirement to record or minute its deliberations, or give full reasons for its 'verdicts', much less to disclose its biases. REC discussions take place in private, away from the researcher, who is not included in these conversations (De Wet, 2010: 313). An illusion is given of an objective body that can decide on the integrity of research that it is not doing, and may well be outside its disciplinary expertise. The research may be highly controversial, and yet we endow the REC with the capability not only of judging its value and integrity, but of separating this judgement from broader institutional (legalistic and commercial) concern. Yet the impossibility and, I argue, danger of this position is largely ignored by the socio-legal community. Perhaps this is because the process seems comfortingly judicial!

I shall examine ways of navigating the biases, assumptions, blind-spots, and uses of REC's in the following section. First, however, it is important to understand what kinds of biases might be encountered, and why they are inevitable, in order that we might develop individual and institutional strategies for ensuring they do not impact on the production of socio-legal knowledge. The majority of research concerning the bias of RECs is, unsurprisingly, in the medical and sciences field.[5] Yet this is also surprising, as bias as a social phenomenon of a person's subjective position is often the very subject matter of humanities and social sciences work. This gap in our knowledge is likely due to the discomfort and challenge of talking about the risks associated with cutting-edge socio-legal research.

In Halse's work on her experience as an REC chair, we find deeper, honest reasons for a problematic ethics decision in a sociology project, which takes us beyond the true but concealing conventional narratives of paternalism (Connor, Copland, and Owen, 2018) and safeguarding of the institution through legalistic framings of risk. Her work is also a clear articulation of the relation between a critique of RECs and self-interested neo-liberal institutional concern (Halse, 2011). Halse examines the ethics review of a (fictional) 'risky' socio-legal project by a PhD student (Mary) on the question of why married men with children

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[5] See for example de Jong, van Zwieten, and Willems (2012).

use prostitutes (Halse, 2011: 242). We find through her work that the underlying ethical principles for such projects are of a conventional, rational kind, in which the researcher is presumed, somewhat unrealistically, to be: 'a rational being who abides by the decreed universalized norms of principlism even when this involves acting in ways that are counter to his or her subjective desires or rational self-interest' (Halse, 2011: 242).[6]

Mary's project seems to fall foul of this principle, owing to self-interest, or otherwise her personal investment in her project (her own marriage broke down owing to her husband's use of prostitutes; (Halse, 2011: 247). Halse argues that personal insight such as this is a valuable tool in qualitative research, which is a point established in literature concerning reflexive positions.[7] What becomes troubling is that the standard against which projects are assessed is taken for granted as being based on an infallible catch-all principle that will guarantee ethical research (Halse and Honey, 2005: 2158). Halse and Honey have reasserted the argument that this is not the case, and that there ought to be an 'ethic of care and responsibility' in research (Halse and Honey, 2005: 2158).

What we do not learn from Halse's account, however, are the reasons for, and the impact of, the assumptions and self-interest of the REC members themselves. Bias in research on the part of the researcher is a well-rehearsed notion, with the notion of being objective being thoroughly rejected.[8] We have even been taught to move with bias, to look at it closely and embrace it for the lessons it will teach us about ourselves and our studies.[9] Responsibility for ethical research and upholding the 'integrity' of the ethical code is placed solely with the researcher and their supervisors. What about where the REC members themselves have an undisclosed, or unacknowledged, assumption or bias? Halse's confession does not go far enough. The stakes are too high for there to be a silence on this matter – if the production of knowledge and truly ethical research is at stake, then we need to know more. After all, the REC is formed of individuals with their own assumptions that they bring to the table in ethics reviews. I claim that this is a further reason why RECs must be opened up, so staff can observe them; not only to stop them serving the interests of management and the neo-liberal institution (Hedgecoe, 2016: 497), but also to learn more about the assumptions applied to our work and to ourselves as socio-legal researchers. The following

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[6] The author demonstrates that this foundation is translated into, and applied in her decision-making processes, as a four-point framework of principles of research merit and integrity; justice; beneficence and respect.

[7] See, for example, Mauthner, N and Doucet (2013).

[8] See Donna Haraway's pioneering piece on partial perspectives and arguments against scientific objectivity, Donna Haraway (1988). For a socio-legal approach examining this position and method, see Mason, M in this volume (ppX-X).

[9] See, for example, Brooks (2018)9 and Brooks (2018) on autoethnography and the need for bias.

example of a real 'risky' socio-legal project examines why this is urgent, ~~along with~~and ~~developing~~ develops strategies for navigating the subjectivities of RECs.

<HEAD1><TITLE>**Risky socio-legal work and ethical 'refusal'**</TITLE></HEAD1>

There are many types of ~~cutting~~ cutting-edge and challenging work in socio-legal research, including conflict and international criminal law (Nouwen, 2014), terrorism (Bakircioglu, 2010; Varona, 2013), drugs and childhood (Flacks, 2018), and mental health (Thom and Finlayson, 2011). Here, ~~though~~however, I will focus on sexuality work. This is because it is a field ~~from~~ in which I can demonstrate problems with the ethical review process from personal experience, and because sexuality is notoriously loaded with uncomfortable truths, assumptions, and biases, many of which are silenced in an institutional space where we must be objective and distanced (Hedgecoe, 2016; Brooks, 2018).

I have rehearsed the details of my project on the ethics of sexuality elsewhere (Brooks, 2018). In short, the project was theoretical, but also included covert observations of a nudist and ~~public~~ public-sex beach in southern France. I also considered the REC's correspondence in response to my ethics review application, which set out their concerns relating to my project in the same article (Brooks, 2018), but, for ease ~~and~~ of use, I reproduce the main ones here:

- <BL>The Committee have serious concerns about your safety given you will be working off-campus with negligible support in a potentially dangerous environment where individuals nearby could be actively seeking a sexual encounter.

- The Committee were unclear how you would record the observations, for example would you propose relocating to improve the quality of your observations, and if so how would you be able to guard against suspicions being raised about your activity. Is it possible to undertake covert observations in this way and at the same time remain inconspicuous?

- Concepts of privacy could be contentious. While the research will be undertaken on a public beach, the individuals being observed may view their area as being a private or semi-private space. As there are quite strict laws in France relating to privacy has there been any assessment of the legality of the proposed research in the local context? Can you confirm that any proposed covert observations will only take place on people who are in a space that could be reasonably be observed by others, the individuals would have no expectation of privacy and that you will not follow individuals to better observe them should they go behind bushes/into caves, etc.?</BL>

To be clear, this correspondence was the response to my application for a full ethics review

under the institution's procedure and framework. My application was refused at first instance, but, as we can see, the REC was keen for me to respond. In the end, this piece of correspondence has become career-shaping for me – forming a central point of analysis for my PhD, and for my work after. I do not wish to criticise the REC for engaging as ~~they~~ it did (and, from what I learn~~ed~~t, ~~they had~~there were protracted discussions on my application – although of course I do not know the content of these discussions). Nor will I undertake a sustained theoretical analysis of the concerns here, ~~since~~ as I have done so elsewhere (Brooks, 2018~~, 2018~~). The important point here is to be aware of the type~~s~~ of question~~s~~ one might be asked, and to know that a refusal is not necessarily the end of the road. It is important, ~~though~~ however, that we understand why these questions are asked, and why this points to gaps and assumptions within ~~research ethic framework~~REFs.

We can see from the first concern above, that we have a clearly gendered worry for my safety as a woman researcher. This, although perhaps well- intentioned personally, is resolutely a concern framed through a legalistic, and indeed reputational, framing of risk. The risk assessment I had following my (eventual) ethical approval is testament to that, where the extent of the risk appeared to be that I would get sunburn from being on the beach. Interestingly, all sexual risks (perhaps STDs, consent, and so on) were ignored, together with any discussion ~~or~~ of emotional risk. The two further concerns the REC raise~~s~~ are explicitly legalistic and connected to reputational concerns. We also find evidence of the depressingly familiar narrative of unproductive, yet well-intentioned, paternalism as a strategy for infantilising not only the participants in my study, but my position as a researcher (Connor, Copland, and Owen, 2018:~~;~~ 407).

In terms of how to deal with this kind of REC 'tussle', I would suggest, as far as it is possible, to embrace it. It can be quite a telling exercise about the subject matter itself, or otherwise the field, and not just about the REC and you as a researcher. Second, I think this first step is much easier if you have a supportive research team. I did, and this made the world of difference, meaning the response to the REC's refusal was a collective effort. I accept, ~~though~~however, that this might not always be the case, and that is why it is so important that we are openly critical about RECs and ethics review processes, ~~but~~ and that researchers are adequately supported. This must be an ongoing process, as and when we find these 'gaps' in ethical review (Connor, Copland, and Owen, 2018:~~;~~ 405). The most concerning and urgent aspect of this, is where we do see projects stopped in their tracks, and where we suffer a huge loss to our discipline, — undermining the core of the SLSA's principles, ~~of~~ integrity ~~to~~ in our discipline (SLSA Principles, Principle 2).

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My project here is far from being unique in bringing a challenge to ethics reviews. Such projects can question academic institutional power, and challenge the silencing of discussion as to sex. Hedgecoe gives the example of projects examining students who undertake sex- work (Hedgecoe, 2016).[10] This project, at Kingston University, was remarkably similar to my own in terms of the REC's responses – reducing concerns to personal safety and thereby covering the true reputational concerns (Hedgecoe, 2016: 490). This, Roberts argues, demonstrates an institutional reluctance, that such research is: 'not only unwelcome, but actively discouraged' (Roberts, 2010, cited in Hedgecoe, 2016). Support of the researcher and true engagement with methods and gaining the keenest intellectual insight from the project is are rejected, in favour of upholding an institutional distance and shelter under the pretence of 'duty of care' (Hedgecoe, 2016: 490).

This situation ought to warn researchers undertaking 'risky' work that, frankly, their project is not given a full ethics review. If ethics is about integrity to of the discipline, empowerment for participants, and support for researchers, then the procedure is simply not doing its job. The SLSA Principles, as the 'gap' filler for such work that the ESRC FRE is not designed to cover, do not help us in this regard. In short, I can say that, in terms of doing ethical research, the ethics review served only to demonstrate the lack of true and useful ethical awareness within institutions, and the need for a complete overhaul of the process. So, what is a researcher to do? How do we navigate these processes in the knowledge that they are inadequate for the needs of 'risky' socio-legal work?

<HEAD1><TITLE>**Conclusions: strategies and support for socio-legal researchers**</TITLE></HEAD1>

We are in a situation where research ethics frameworkREFs mirror the parameters and interests of commercially centred, REF- and TEF -focused, institutions. Ethical awareness processes are therefore fundamentally failing (Connor, Copland, and Owen, 2018: 411). It is important that researchers are aware of this, and are prepared to face and deal with the ethical unawareness of RECs. Most RECs will be open and ready for active conversations around research ethics, and willing to turn a refusal into an approval. It is also possible that they some may not be.[11] While the 'deliberations' of RECs remain a secret, without transparency as to their motives, it is also difficult to be sure about whetherif their concerns relate to the project's ethical dimensions –

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[10] See also feminist research on the discomfort and academic cultural anxiety of doing any kind of sexuality work, especially as a woman researcher – a position that has been a reality since the early 1990s. For example, Newton (1993); Irvine (2014) and De Craene (2017).

[11] See de Jong, van Zwieten, and Willems (2012): RECs must give advice on how to improve so as to prevent rejection of valuable research. This is not only a problem in social sciences and the humanities, but also in health and sciences ethical reviews.

whether this relates to method or theory (Brooks, 2018). My overarching concern is avoiding the prevention of valuable work that contributes significantly to the field of socio-legal studies.

At the core of this concern is whether ethical frameworks are a good fit for the discipline and its unique demands. We have seen that this is not the case, and I argue that an urgent overhaul of the SLSA Principles and the key governing ethical framework of the ESRC FRE is required to fit with this reality. As we have seen, researchers have persistently argued that current frameworks do not fit the demands of social sciences and humanities work more broadly – in this jurisdiction and beyond.[12] I argue that, as socio-legal researchers, ~~I argue that~~ this reality affects us in a particular way, ~~since~~ as our work is likely, in itself, to be operating at the forefront of challenging ethical and legal regimes. The good news here~~,~~ is that we are in a unique position to bring the required challenge. In doing so, I argue that the most useful and important ethical 'gap' that needs to be filled – and what socio-legal researchers must demand – is in researcher support as part of ethical awareness, as a process.

The importance of my research team and colleagues in the ethical review process was crucial. Without it, I would otherwise have considered the ethical refusal as a total block to my project. Research teams and supervisory teams ought to empower and advise and give the benefit of their experience. Further, informed, frank, and honest training ought to be given on the process and its importance, ~~and to be given the~~as well as the 'correct tools' to navigate it during staff and doctoral training (Connor, Copland, and Owen, 2018:~~;~~ 411). In addition, ~~since~~ as emotional support is a serious gap in ethical consideration (Connor, Copland, and Owen, 2018:~~;~~ 405), there ought to be consideration of the risks of isolation and the emotional impact of a project. Such personal risks to the researcher are largely ignored and not framed as an institutional responsibility. Acknowledgement of these risks ought not to be a block to a project, but used as an opportunity to be aware and equipped. I would encourage, where possible, researcher support groups as an informal mechanism~~,~~ where researchers are undertaking demanding fieldwork. ~~While~~Although there are, in some cases, codes of practice relating to fieldwork, these tend not to focus on the needs of the researcher, but rather, again, on the legal protection of the institution (LSE ~~Safety Code of Practice for the Safety of Social Researchers, undated~~n.d.). Having spoken on research ethics in various institutions, I can attest to the desire to have such informal networks, and there is certainly a will to build them. Researchers must take an active role in creating and maintaining them.

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[12] See Owen (2002) in relation to Canada, Wynn et al. (2014) and Connor, Copland, and Owen (2018) in relation to Australia; De Wet (2010) regarding South Africa, and see de Jong, van Zwieten, and Willems (2012) regarding the Netherlands.

By the nature of socio-legal work~~its nature~~, ~~the~~ its ethical demands ~~of socio-legal work~~ can change with the field. The ethical approval you have gained may not cover you for a sudden need to change your methodology. In my case, I had approval for a non-participant methodology, ~~which~~ whereas, once in the field, it was clear that I would become a participant.[13] Before I left to do my fieldwork, I asked what to do if this should happen, to which I was advised that I would need to seek further emergency approval, which, of course, is unrealistic. In these circumstances, I would have to retrospectively justify this change at my viva. However, this is not a satisfactory position and again testifies to the inadequacy and inflexibility of the framework that we have and the gaps that remain.

Ethical awareness can be a challenging but rewarding process. Just because it is difficult and the process is inadequate, does not mean that we should not engage with it. In fact, this means that engagement and confrontation ~~is~~ are even more important. As De Wet argues, we need to turn this into a radically confrontational conversation around ethical awareness (De Wet, 2010: 313):

<DISP-QUOTE>We have to instill an "'open knowledge system'" where unrestricted debate, contestation and room for difference are accommodated and not inhibited by fears of authoritarianism and a conservative hierarchy.</DISP-QUOTE>

We need a sustained and critical attitude to these processes, and, as such, we must engage with them. As I have argued and as De Wet argues, this full engagement cannot happen while RECs remain closed, and documents and policies ~~which~~ that form the framework, are drafted in a vacuum (De Wet, 2010: 313). This cultural shift and the desired overhaul of the entire institution that is ethics review, ~~is~~ are not going to happen without, I would argue, some confrontation with institutional power and ~~their~~ its conservative and restrictive academic and pedagogical agendas. ~~It~~ They will not be achieved otherwise than through a wholesale change of culture and a framing of risk and the building of support mechanisms for researchers – ~~one~~ a process that is not a bureaucratic tick-box exercise of control (Sampson, 2017: 13). My advice to new socio-legal researchers is to be prepared for a fight, but that fight will be worth it. </BODY>

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[13] The 'line' between researcher and participant continues to be contested. The closer that the ethics review process finds you to being 'part of the field', the greater the ethical concern. This is not unproblematic, with the collapsing of this line simultaneously challenging assumptions about researcher objectivity, and engaging closer ethical scrutiny. For an approach in 'risky' sexuality work, see Brooks (2018). Getting close to the line will also see you more likely to engage a need for ethics review, under the ESRC FRE (see pp8-10).

<REF-LIST><TITLE>**Recommended reading**</TITLE>

Victoria Brooks 'Fucking Law (A New Methodological Movement)' (2018) *Journal of Organizational Ethnography*, 7:1 31–43.

Christine Halse and Anne Honey 'Unravelling Ethics: Illuminating the moral dilemmas of research ethics' (2005) *Signs*, 30:4 2141–2162.Janice Irvine 'Is Sexuality Research 'Dirty Work'? Institutionalized stigma in the production of sexual knowledge' (2014) *Sexualities*, 17:5-6 632–656.

Geraldine Lee-Treweek and Stephanie Linkogle (eds) *Danger in the Field: Risk and ethics in social research* (Routledge, 2001).

SLSA 'SLSA Statement of Principles of Ethical Research Practice', (2009) retrieved from www.slsa.ac.uk/images/slsadownloads/ethicalstatement/slsa%20ethics%20statement%20_fin al_%5B1%5D.pdf (accessed on 20 August 2018).

Victoria Brooks 'Fucking Law (A New Methodological Movement)' (2018) *Journal of Organizational Ethnography*, 7:1 31–43.

Geraldine Lee-Treweek and Stephanie Linkogle (eds) *Danger in the Field: Risk and ethics in social research* (Routledge, 2001).

Janice Irvine 'Is Sexuality Research 'Dirty Work'? Institutionalized stigma in the production of sexual knowledge' (2014) *Sexualities* 17:5-6 632–656.

Christine Halse and Anne Honey 'Unravelling Ethics: Illuminating the moral dilemmas of research ethics' (2005) *Signs*, 30:4 2141–2162.</REF-LIST>
</SEC>
<REF-LIST><TITLE>**References**</TITLE>

Onder Bakircioglu 'A Socio-Legal Concept of Jihad' (2010) *International and Comparative Law Quarterly*, 59:2 413–440.

Victoria Brooks 'Fucking Law (A New Methodological Movement)' (2018a) *Journal of Organizational Ethnography*, 7:1 31–43.

Michael M. Burgess, M. 'Proposing Modesty for Informed Consent' (2007) *Social Science and Medicine*, 65, 2284–2295

James Connor, Simon Copland, and Jill Owen 'The Infantilized Researcher and Research Subject: Ethics, consent and risk' (2018) *Qualitative Research*, 18:4 401–415.

Valerie De Craene, 'Fucking Geographers! Or the epistemological consequences of neglecting the lusty researcher's body' (2017) *Gender Place and Culture* 24:3 449–464.

Jean Phillipe de Jong, Myra van Zwieten, and Dick Willems 'Ethical Review from the Inside: Repertories of evaluation in Research Ethics Committee Meetings' (2012) *Sociology of Health and Illness*, 34:7 1039–1052.

Katinka De Wet 'The Importance of Ethical Appraisal in Social Science Research: Reviewing a Faculty of Humanities' Research Ethics Committee' (2010) *Journal of Academic Research Ethics*, 8: 301–314.

ESRC 'ESRC Framework for Research Ethics', (2012) retrieved from https://esrc.ukri.org/files/funding/guidance-for-applicants/esrc-framework-for-research-ethics-2010/ (accessed on 20 August 2018).

Simon Flacks, 'Drugs Law Reform, Performativity and the Politics of Childhood' (2018) *International Journal on Drug Policy*, 51: 56.

Christine Halse 'Confessions of an Ethics Committee Chair' (2011) *Ethics and Education*, 6:3 239–251.

Christine Halse and Anne Honey 'Unravelling Ethics: Illuminating the moral dilemmas of research ethics' (2005) *Signs*, 30:4 2141–2162.

Donna Haraway 'Situated Knowledges: The science question in feminism and the privilege of partial perspective' (1988) *Feminist Studies*, 14:3 575–599.

Adam Hedgecoe 'Reputational Risk, Academic Freedom and Research Ethics Review' (2016) *Sociology*, 50:3 486–501.

Janice Irvine 'Is Sexuality Research 'Dirty Work'? Institutionalized stigma in the production of sexual knowledge' (2014) *Sexualities*, 17:5-6 632–656.

Geraldine Lee-Treweek and Stephanie Linkogle (eds) *Danger in the Field: Risk and Ethics in Social Research* (Routledge, 2001).

LSE 'A Code of Practice for the Safety of Social Researchers' , (n.d.) retrieved from webcache.googleusercontent.com/search?q=cache:lPKOv1ULgQUJ:www.lse.ac.uk/intranet/LSEServices/healthAndSafety/documents/SRA_%2520safety_code_of_practice.doc+&cd=5&hl=en&ct=clnk&gl=uk (accessed on 31 August 2018).

Adrienne Massanari 'Rethinking Research Ethics, Power and the Risk of Visibility in the Era of the "Alt-Right" Gaze' (2018) *Social Media and Society*, 1–9.

Natasha S. Mauthner, N and Andrea Doucet, A 'Reflexive Accounts and Accounts of Reflexivity in Qualitative Data Analysis' (2003) *Sociology*, 37:3 413–431.

Esther Newton, E (1993) 'My Best Informant's Dress: The erotic equation in fieldwork' (1993), *Cultural Anthropology*, 8: 3–23.

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Q: Please provide missing Publisher location for the "Lee-Treweek et al., 2001" references list entry.

Commented [Q6]: Page: 18
Q: Please provide missing volume number for the "Massanari, 2018" references list entry.

Sarah Nouwen '"As you set out for Ithaka": Practical, epistemological, ethical, and existential questions about socio-legal research in conflict' (2014) *Leiden Journal of International Law*, 27 227–260.

Michael Owen 'Engaging the Humanities? Research ethics in Canada' (2002) *Journal of Research Administration*, 33:3 5.

Elizabeth Peter and Judith Friedland 'Recognizing Risk and Vulnerability in Research Ethics: Imagining the "what ifs?"' (2017) *Journal of Empirical Research on Human Research Ethics*, 12:2 107–116.

Andreas Philippopoulos-Mihalopoulos and Victoria Brooks (eds) *Research Methods in Environmental Law: A Handbook* (Elgar, 2017).

Helen Sampson '"Fluid Fields" and the Dynamics of Risk in Social Research' (2017) *Qualitative Research*, 1–17.

SLSA 'SLSA Statement of Principles of Ethical Research Practice', (2009) retrieved from www.slsa.ac.uk/images/slsadownloads/ethicalstatement/slsa%20ethics%20statement%20_final_%5B1%5D.pdf (accessed on 20 August 2018)

Katey Thom and Mary Finlayson '"They're Not Really Doing "Normal" Psychiatry: The socio-legal shaping of psychiatric expertise in insanity trials' (2011) *Psychiatry, Psychology and the Law*, 20:1 46–59.

University of Westminster 'Research Ethics Framework' www.westminster.ac.uk/research/research-framework/research-ethics (accessed on 31 August 2018).

Gema Varona 'Who Sets the Limits on Restorative Justice and Why? Comparative implications learnt from restorative encounters with terrorism victims in the Basque country', *Onati Socio-Legal Series* (2013) 4:3 550–572.

L.L. Wynn, Mark Israel, Colin Thomson, Karolyn White, and Louise Carey-White 'A National Survey of Experiences with Ethics Review (2014) *The Australian Journal of Anthropology*.</REF-LIST>
</BACK>
</BOOK-PART>