

## How Research Ethics Committees Act as a “Witness” to Research

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Rachel Douglas-Jones, *Committee as Witness*, 39 **Cambridge J. of Anth.** 55 (2021), available at [Berghahn Journals](#).

In her recently published article in the *Cambridge Journal of Anthropology*, [Dr. Rachel Douglas-Jones](#), an Associate Professor at the IT University of Copenhagen, investigates how research ethics committees (RECs, or IRBs as they are known in the United States and some other countries) *witness* research that has yet to occur. For those of us in law, “to witness” holds particular meaning. According to the free [Legal Dictionary](#) (to take a relatively trite form of research at my desk), a witness is one who, being sworn or affirmed, according to law, deposes as to their knowledge of facts in issue between the parties in a cause. For those who remember their law school lectures in civil and criminal procedure, there are a variety of rules and tests to determine competence to give evidence *qua* witness, and compellability of witnesses. To witness, and to be a witness, holds particular power in law.

But to witness also holds other forms of meaning, and can be a powerful concept in extra-legal circumstances, too. Douglas-Jones, as an anthropologist, is less interested in the legal meaning of “witness” (though, as an aside, it would make for an interesting area of investigation in legal anthropology). She is instead keen to better understand how RECs, particularly those in the Asia-Pacific region where she spent a number of years conducting research, rely on “visual cultures”—“spatial and temporal forms that underpin [their] capacity to speak”—to render a collective decision on the ethical acceptability of a research project *even before the research itself happens*. Her article is an excellent one that is deserving of a wide readership.

Applying this to regulatory studies, we would say that RECs provide a kind of “[regulatory event license](#)” to researchers. RECs all over the world, like other forms of administrative bodies (particularly those designed to review applications and then grant, or not, or revoke or suspend, licenses—think of “Gambling Control Boards” or “Alcoholic Beverage Control boards”), have taken more or less the same form since their creation in the 1960s and 1970s. Indeed, were we to relabel RECs/IRBs, we might be more inclined to label them Research Control Boards, as this more accurately captures the regulatory design. After all, their approach is similar to other control boards. Specifically, they comprise a body of experts (and sometimes “lay” community members) who receive applications from researchers, who in turn seek to conduct a project that involves human participants in some way. These research applicants ask the committee for an ethical “green light” to begin their project. Phrased another way, researchers apply to a REC and essentially request: “here is the project I propose to do, and all the ethical issues I think are associated with it, and how those issues have been adequately addressed; can you give me a permission to begin it?”

Legal scholars such as Professor Carl Schneider have been highly [critical of this approach](#) in the context of research ethics, arguing that the regulatory design of RECs is so fundamentally misconceived that it inevitably does more harm than good. Taking a blue skies approach, we can think of other ways in which research projects might be (better) assessed for ethical acceptability, and to ensure that researchers conduct themselves ethically. We could, for instance, establish a regulatory regime where research is only [reviewed after the fact](#) to see if any wrongs were committed (a kind of audit regime), and if so, sanction those researchers for their transgressions. We could rely solely on tort law as a kind of private ordering regime, enabling research participants to sue researchers and institutions for legal wrongs committed (e.g., battery, negligent conduct). Or, as another example, we could design a more trust-based system that instills in researchers values of virtuous conduct, whereby they promise to behave ethically and with integrity (adhering to a kind of honor code that would lead to institutional or professional sanction if breached).

In any event, countries, and institutions within them, around the globe continue to operate [the regulatory design](#)

enacted more than 50 years ago for research involving human participants. In other words, the regulatory event-license regime continues to operate without having undergone any fundamental reform. Maybe that means the system is working, or maybe it is more a case of inertia and inability to consider alternative, better (read: more effective and more efficient) ways of assessing the ethics of research projects. The system remains: RECs receive documents, and as part of this may invite researchers to present their project at a committee meeting; they read, listen, and deliberate; and they render an opinion in the form of a regulatory event-license (the approval letter). In her article, Douglas-Jones focuses on the power behind this form of witnessing. She does not criticize this regulatory design *per se*; rather, she encourages us to consider how witnessing is not just a legal concept, but in fact, in this context, an “ethical moment” and a bureaucratic instantiation of ethics.

Through ethnographic examples of her [fieldwork of RECs in Asia](#), Douglas-Jones’s article deftly points to instances in the process of ethics committee work where there is a “translation of ideals of vision into the bureaucracies of ethics committee practice,” such as the witnessing of the scientific validity of the protocols on their table (which is not bearing witness to the making of a fact but to what can be sought as knowledge) and the committee’s approval level as the (final) product of their assessment, and which can be seen as a form of attestation. More specifically, Douglas-Jones elucidates how a visual logic of seeing from “all sides” (the participants’, the researchers’, each REC member’s, the sides from society more generally, etc.) underpins the committee’s imagined vision, and thereby its legitimacy. And the visual is what predominates at the form of witnessing: neither individual REC members, nor the REC as a whole, are generally constituted to leave their conference table and go out into the “field” to actually witness in all senses how research is being performed, and how ethical a given research project is. Instead, they *view* documents, and as a possible addition, they may ask the applicant to present at the committee meeting and observe their responses to questions as a means of establishing rapport and gauging trustworthiness. The form of witnessing for a REC, then, is a witness to the attendant documents, the visual culture, that comprise committee work generally, and ethics committee work especially. So, to witness in this context is not merely to “see” the proposal and attendant documents; it is to see it in a certain way, and to produce – through the social technology of the committee – a document with a decision. And, as noted above, RECs “witness” research at the *ex ante* and *ab initio* stages: they not only “see” the proposal as a kind of (anticipatory) witness to it, but they also witness it in a certain way, and produce a document with a decision – all situated in a space of anticipation – and we might add, in a black boxed space where one cannot easily witness the witnesses in action.

Ultimately, Douglas-Jones invites us in her article to reflect on how REC members across the world participate in a “global regime of knowledge making” (a finding Prof. Laura Stark has also noted in [her work on IRBs in the USA](#)) through their ethical consideration of prospective research and approval of project designs, and that this is best understood through the lens of witnessing. The knowledge making “is anticipatory, it depends on ideals of disinterested yet motivated vision, and it has the power to generate a collective voice through which to speak.” It also depends on partial obscurity, of course, where individual REC members’ voices are obscured and reflected in “concealed expertise,” with the REC approval (or rejection) letter reflecting an ostensibly consensus view of the committee. Through their positioning the research lifecycle, that is, at the beginning stage, the REC’s approval letter enables the research project to move forward, onto the next stage – which is the implementation of the project (subject, of course, to any other regulatory approvals that might be needed). The concept of “witnessing”, as Douglas-Jones describes it, adds to our understanding of RECs because it helps us see how they fit within the longer traditions of scientific witnessing. Douglas-Jones urges us to take stock of the importance of this bureaucratic work, and how this work performs a kind of witnessing of what “good” science will be, both scientifically and ethically. As she writes, “research futures – as they pass over the tables of ethics committees – emerge through the ideal that committee work will indeed be witnessing work; that it will be ethical work, for ethical ends.”

For those of us in law, and with an interest in the regulatory design and performance of these committees, the question is: is that “ideal” *actually* being realized, and is this an appropriate ideal *at all*? And if not, how might the realization of ethical research be better accomplished? This is an area where anthropologists and lawyers can bring their work together fruitfully to consider how, if at all, the system of research ethics review might be done better.

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