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OPTION 1 – *“Everything that is legal is not necessarily ethical” Critically discuss this statement, drawing on your knowledge and understanding of ethical and legal issues relating to research with children and young people.*

In considering this question it is first important to define what is meant by legal, what is legal and what is not legal or illegal. Then it will be necessary to define what is meant by ethical, does the term ethical have different connotations in different circumstances or does it mean different things to different people? How are both legal and ethical characterised with regard to research involving children and young people. Having done this it should be possible to consider the statement and conclude if it is true or an exaggeration.

Masson in (Fraser et al 2004 pg 42) states that including child participants in research as respondents or interviewers raises legal dilemmas and ethical issues about children's rights and the obligation of those carrying out the research. According to Masson there is a strong relationship between the law and ethics, but not all that is legal can be said to be ethical. Ethical practices seek to reach a higher plane than merely attaining legality. Having first ensured that what they plan is legal, researchers must then ensure that the research achieves the ethical standards which are set by the organisation funding their work, their own professional organisation and any other organisation which is involved in the research either directly or indirectly. It would not be considered acceptable to defend any proposed research solely on the basis that it meets all legal requirements. Despite the legal definition of a child being all those who are under the age of 18, the law treats children of different ages differently taking into account, their age and stage of development. The law, however, generally makes no gender distinctions about the rights of children and young people.

The involvement of children and young people in research is a quite recent phenomenon, recognising the valuable contribution that this group can make to

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research topics. Research was in the past more likely to be conducted “on” children, particularly by those involved in educational or health research. Consent for the research was often sought from teachers or parents, but researchers rarely attempted to explain to children the purpose of their studies. In contrast to this researchers in the field of social policy, law and sociology tended to ignore children on the basis that they were considered incompetent, unreliable or that they needed to be protected, thus causing too many problem to include them as subjects in research. Both these approaches compromise research legally, ethically and in terms of research findings. (Masson Fraser et al 2004 pg 44) Thus research in these areas that doesn't involve children is permitted within the law. It cannot be ethically right to draw conclusions without taking into account a child' perspective on the issue involved.

Of course it is easier to involve children in research when they are articulate. To involve children who are disabled or who have special educational needs or who's families suffer from social exclusion is much more challenging and problematic. It is important to satisfy those responsible for these children that the children's rights are safeguarded. However, it would be wrong if the law was seen as a barrier to the participation of these kinds of children in research. To interpret the law in such a literal and restrictive way is to undermine the very rights that it enshrines. In practice such is the nature of children's lives that they are rarely free to decide for themselves whether or not to participate in research. They are surrounded by adults who act as “gatekeepers” who control their access to the researchers and vice versa. Researchers should expect that these adults will question their motives in wanting access to the children and be prepared for them to take steps to prevent their access if their research is poorly thought out.

In law the older the child gets the control of those with “parental responsibility” for them diminishes. There is no clear statutory definition of parental responsibility. It is left to precedents set by the courts to understand what decision those with parental authority have a right to make. One such precedent was set by the case of Killick v W. Norfolk and Wisbech A.H.A in 1995. researchers who seek to involve children in their research who are not mature enough to decide about participation for themselves must obtain by law the agreement of a least one person who has parental responsibility. Ethically, however, it is often more appropriate to engage the parent

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(or person with responsibility) who has the most to do with the child's day to day care. In cases of research into children's contact with parents after parental separation it would be both ethical and sensible to seek the consent of both parents.

With regard to medical research there is no legal requirement for informed consent for research participants. However, ethically higher standards are required by those conducting research. As they do not face the risks that doctors do with regards informed consent. Therefore, the researcher should observe the view that it is important to fully explain to participants the purpose, process and intended outcomes of the research and seek consent on that basis. The Data Protection Act imposes legal requirements on the collection, processing and retention of data by researchers. Confidentiality is a difficult area for researchers although legally participants are entitled to confidentiality, ethically the same degree of confidentiality cannot be guaranteed to a child as would be given to an adult. There are two main areas where a researcher may ethically be required to break confidentiality, firstly, where a child discloses that they have been seriously harmed or ill-treated and secondly where a researcher identifies a medical condition or learning disability about which the parents could take action.

Where children are used as interviewers working for a researcher they should be accorded the same consideration as adult interviewers. Even though legally the payment for young people under 21 need not be the same as the minimum wage for those over 21, it is ethically right to pay the same rate to all those conducting interviews in the pursuit of research. There are legal restrictions on the age at which children can be employed and the number of hours they can work. In addition child interviewers should be given the same as if not greater protection from the risks associated with interviewing as adults. According to Ethicists (Anderson Fraser 2004 et al pg 98) the rules for ethical research are based on three main ways of thinking about what is "good" research. The principles of respect and justice concern carrying out "good" research because it is the right thing to do; always respecting children as sensitive dignified human beings. Rights based research also involves respect, and children's rights have been listed under the 3 P's – providing for basic needs; protection and participation. Best outcome based ethics means working out how to avoid or reduce harms and costs and to promote benefits.

Researchers rely on the public to participate in research, if the public are to cooperate then researchers have to keep to high ethical standards.

In obtaining consent to involve children in research it is important to think about all the ethical concerns a project may have. Is it sufficient to seek permission from parents or the head teacher (if in school) to involve children in research; or is it more ethical to seek consent from the children themselves in addition to their parents or if the young person is aged 16 or 17 years of age from them alone.

Ethical standards are involved in all kinds of research and shape the methods and finding of research projects. Modern medical ethics has forced medical researchers to change their methods. They now carry out less risky research with children and they respect, protect and inform children to a greater extent. It is important that all researchers pay heed to ethical issues with equal if not more attention than they pay to the legal obligations of research.

There are examples to both ethical and legal issues in some of the research included in the course. The stranger situation (fOCUS clip 4) was of course legal, but some people may find the research less than ethical. The obvious distress caused to the child no matter how short term would be unacceptable to some people. The consent of the child's mother was clearly obtained; it would have been very difficult to obtain the child's consent at such a young age. Some researchers now use other research methods to gauge a child's reaction to strange experiences. However, many researchers still use the stranger situation, because it involves a well established protocol with clearly defined situations.

Algate and Bradley (Algate, J. and Bradley, M. Children's Experiences of Short-term Accommodation in *The Reality of Research with Children and Young People*) carried out research into children experiences of foster care. They had to pay attention to both legal and ethical issues in their research. The researchers sought the informed consent of parents to allow them to interview their children, thus adhering to their legal obligations. All those who were involved in the research also undertook police checks to comply with legal obligations of those who come into contact with children

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in a professional capacity. They also developed a protocol to deal with any revelations of possible child abuse. In addition to their legal obligations the researchers also took into account the many ethical issues involved in using children in research. The researchers were keen to consult the children on the research procedures considering it of value to consider the children's thoughts and feelings, and allowing them to make informed decisions about participation in the research. However the children thought that they had had little opportunity to protest or change the plan of the research. In contrast the adults involved thought that the children had been given the opportunity to air their views. The researchers tried to solve the ethical problem of interviewing children and their parents separately, by sharing the contents of the children's questionnaires with their parents and gaining their approval. They also told the children and showed the older ones what they would be asking their parents. This is an example of setting higher ethical standards with regard to ethical issues. The researchers had already met their legal obligations by gaining parental consent to interview the children, yet they sought the children's consent to interview their parents in a manner of speaking.

Coates also had to consider both ethical and legal issues when conducting her research (Coates, E. "I forgot the sky" Children's Stories Contained within Their Drawings in *The Reality of Research with Children and Young People*) her research was carried out in schools and she sought the permission of the Head Teacher to carry out her observations of children drawing. Through the Head Teacher; the class teachers and parents were informed that Coates would be present in classes, and that their children might be involved in the research. Coates assured the school that her research paper would be available for them to "vet" prior to publication. Coates also had concerns over the fact that qualitative research using such a close focus on a relatively small number of children raised ethical issues. If the research is explained to the children will they understand? Coates also had to deal with the ethical issues of violating children's personal space because of observing them so closely. The use of video and audio tapes is invasive and disruptive, it also makes it more difficult to maintain the anonymity of the children under observation, it is for this reason Coates made notes to record her observations. Coates did not explain to the children beforehand what she was going to do as she felt this might affect their behaviour and cause inhibitions. However, whilst observing the children if she was asked by them

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what she was doing, she explained it to them. She sought permission from the children to keep their drawings thus giving them control over their work and who should be allowed to see it.

In conclusion I think that it is quite clear that everything which is legal is not necessarily ethical. Ethical considerations set much higher standards of behaviour on researchers than do legal requirements. The law provides only a general outline for research which is generally derived from other areas of children's lives and not specifically related to research. An ethical researcher will use this as a baseline and seek to adhere to much higher standards with regards to all aspects of their research. It is not enough to carry out legally correct research, in order to gain the respect of participants and funding organisations the highest ethical standards must be upheld.

(2123 WORDS)

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