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**Case study research in Kenya and South
Korea: reflexivity and ethical dilemmas**

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Abstract

Reflexivity increases the reliability of qualitative research studies and can fuel conversations as to how field researchers make judgments of complex challenges that are simultaneous of a practical, scientific and ethical nature. In this paper, I will reflect on the collection of empirical data for two case studies on the role of the European Union in the regulation and remediation of labour rights violations in the Kenyan floriculture industry and the South Korean electronics industry. This paper has two intertwined objectives. First, this paper explores reflexivity on my research experience and the use of methods in empirical fieldwork. Second, this paper questions the Anglo-American elements of my research, which had been reinforced by my School's Research Ethics Committee. I explain how the contexts of research institutions and research participants can starkly differ and may not always be attuned to each other. I suggest that awareness of and training in "positive ethics" might be useful to deal with such issues.

Keywords

Ethics; interviews; socio-legal fieldwork; reflexivity

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Introduction

Law in the books is important but not sufficient to understand how legal systems work in practice. The Socio-Legal Studies Association stresses that the meaning that people give to their experiences with legal systems can uncover the influence of socio-economic factors on the law, legal processes and institutions.¹

The complexity of an issue in the field can give rise to multiple questions about proper researcher behaviour that need to be assessed in context.² Researchers acknowledge their role in the field by drawing attention to the ways in which their background, agenda and emotions influence their interactions. In this paper, I will reflect upon challenges that I encountered while I was collecting empirical data for two case studies in Kenya and the Republic of Korea (Korea) during my PhD studies in international law. The twofold nature of the research design allows the identification of nuanced insights and challenges that occurred in one context, but not in the other.

This paper has two intertwined objectives. First, this paper aims to explore reflexivity on the level of the researcher. Such reflexivity is well-established in neighbouring fields and involves thoughtful analysis and continual evaluation of methods and subjective responses.³ Second, this paper questions the Anglo-American elements of my research. I draw, in particular, attention to the role of my School's Research Ethics Committee's (REC) in Wales. Interrogating "the mediating and constitutive effect" of RECs has long been a recognised element of reflexivity.⁴ I reflect that the requirements that were imposed by my School's REC were useful to prepare the research, but they were also ill-adapted to the Korean context in which the research was conducted. I suggest improvements and explain in particular that "positive ethics" can be useful to deal with challenges. Positive ethics – which encourages reflection and the identification of commonalities between overarching professional requirements and personal values and motives – was developed to support psychologists, but it can also be useful to support field researchers. Edward Robinson and Jennifer Curry have previously hypothesised that engaging in positive ethics might be particularly valuable for field researchers who are challenged by ethical guidelines and research ethics committees.⁵

One might wonder why international law researchers would draw attention to how they made judgments of complex challenges in the field that are simultaneously ethical, scientific and practical. It might seem as if they only open themselves to criticism in an academic domain that does often not report on issues of methodology at all.

Yet, practising reflexivity can benefit both the research and the broader research community. Increasing transparency makes the conducted research rich and multi-layered. It improves the

* This paper follows the convention of putting the Korean family name first, followed by the given name connected by a hyphen, except for references to scholarship. For reasons of consistency, such references indicate the given name (as spelt by the author) followed by the family name.

¹ Socio-Legal Studies Association, Statement of Principles of Ethical Research Practice (2009) <<https://www.slsa.ac.uk/index.php/ethics-statement>> accessed 29 April 2021.

² Cf Alan Kimmel, Ethics And Values In Applied Social Research 36 (1988).

³ Linda Finley, *Reflexivity: An Essential Component for All Research?* 61(10) British Journal of Occupational Therapy 453 (1998).

⁴ David Butz, Sidelined by the Guidelines, Reflections on the Limitations of Informed Consent Procedures for the Conduct of Ethical Research ACME 7(2) An International E-Journal for Critical Geographies 240 (2008).

⁵ Edward Robinson & Jennifer Curry, *Institutional Review Boards and Professional Counseling Research* 53 Counseling and Values 39, 44 (2008).

quality of research and demonstrates its reliability.⁶ In addition, reflexive accounts that focus on challenges in the field can serve as an impetus for other field researchers to prepare and reflect on their own practices.⁷ Such accounts provide real insights that cannot be found in field guides, codes of conduct and other guidelines.⁸ Such accounts can also encourage educational institutions to support field researchers in a way that is flexible and sensitive to the various contexts in which research is carried out.

This paper is structured around the “Rigour, Respect and Responsibility” framework, which had been proposed as a Universal Ethical Code for Scientists by David King during his time at the United Kingdom (UK) Government Office for Sciences.⁹ These three elements are common themes in ethical guidelines that encourage active reflection and communication amongst researchers across institutional and other boundaries.

Rigour

Rigorous research requires strict adherence to scientific methods and understanding as to how the researcher and the work which has been conducted by other researchers inform research results.¹⁰ It requires that the researcher keeps her skills up to date. I had been trained in methods and ethics during my doctoral course and during a previous job as a marketing researcher in a business school which adheres to the American tradition in my home country of Belgium.

In this section, I introduce my research and the methodology that has been used. Human rights violations by corporations that operate in more than one country have attracted the attention of legal scholars from the global North and the global South over the past five decades. However, they have almost exclusively focused on corporations from economically developed countries. Corporations of other countries have been largely overlooked. In my PhD dissertation, I narrowed this research gap by studying private transnational corporations from developing and emerging countries in their own right and as competitors of EU-based corporations. I aimed to investigate the conditions under which the EU and its Member States attempt to create an artificial level playing field on which such corporations can be held accountable.

It was important to understand the investigated group of corporations in the context of the sovereign countries in which they are embedded. Empirical research allows uncovering the underlying social forces and barriers that can impede the enjoyment of rights in context.¹¹ The case study research methodology is well suited to put a spotlight on social forces that impede the enjoyment of rights in context. It can be used to study contemporary phenomena within their real-world relational contexts, especially when the boundaries between the phenomena and context may be not evident.¹² Case studies allow knowing “how laws are understood, and

⁶ Ping-Chun Hsiung, *Teaching Reflexivity in Qualitative Interviewing* 36(July) *Teaching Sociology* 212 (2008); Sarah Nouwen, *As You Set out for Ithaka: Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Empirical Research in Conflict* 27(1) *Leiden Journal of International Law* 227 (2014).

⁷ Hsiung *id.*, at 211-212.

⁸ Paul Gready, *Early Career Researchers and Fieldwork* 6(2) *Journal of Human Rights Practice* 195 (2014).

⁹ UK (Government’s Science & Society Team Department for Innovation, Universities & Skills). ‘Rigour, Respect and Responsibility, a Universal Ethical Code for Scientists’ (2007) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/283157/universal-ethical-code-scientists.pdf> accessed 24 September 2021 p 2; David King, ‘Rigour, Respect and Responsibility’ *The Guardian* (20 March 2007) <<https://www.theguardian.com/science/2007/mar/20/research.highereducation1>> accessed 24 September.

¹⁰ UK (Government’s Science & Society Team Department for Innovation, Universities & Skills) *supra* note 9.

¹¹ Sonia Cardenas, *Human Rights in Comparative Politics*, in *Human Rights in Comparative Politics* 81 (Michael Goodhart ed., 2009).

¹² Cf Robert Yin, *Case Study Research and Applications. Design and Methods* 15, 38 (2018).

how and why they are applied and misapplied, subverted, complied with or rejected”.¹³ Legal case study researchers submit doctrinal propositions to a “reality check” “to see the reality with a more holistic, in-depth and contextual view”.¹⁴ Common sense assumptions and academic blind spots can be replaced by deeper knowledge and understanding.¹⁵ Evidence from the field also allows the identification, via inductive analysis, of issues and concepts that have not been considered or theorized in the European and Anglo-American literature.¹⁶ Case studies strive for generalisable theories that go beyond the setting for the specific case that has been studied.¹⁷ While the findings of case study research are generalisable to theoretical propositions, they cannot be generalised across populations or universes.

The Kenyan floriculture industry and the Korean electronics industry have been selected as case studies. Human rights abuses – including violations of trade union rights and the right to health and safety at work – have been reported in both cluster industries. While there is not sufficient space to explain all the factors that have been taken into account in the process of selecting these two case studies, it is useful to mention that any selection of case studies ultimately depends on whether their investigation provides insights relating to the research aim. The Kenyan case study has been selected as the *typical* case, which operates as a reference point.¹⁸ Kenya has often been the subject of research focusing on ‘business and human rights’ issues.¹⁹ Kenya is the fourth largest exporter of cut flowers in the world.²⁰ The primary supply and distribution channels of this industry are concentrated along the EU-Africa axis.²¹ This industry is almost exclusively occupied by corporations with Kenyan, European and Indian owners that produce consumer products sold at auctions or to individual retailers. The Korean case study has been chosen as an *extreme* case. Atypical case studies can often give access to more information “because they activate more actors... and more basic mechanisms in the situation studied”.²² This case was strategically chosen to falsify some of the doctrinal assumptions that have been made in discourses on the role of EU Member States in ‘business and human rights’ issues. The *revelatory* character of this case study heightens this effect; the timing of the field research created the opportunity to gather data that might have been previously difficult to explore.²³ The field research was carried out in a politically favourable climate at the beginning of 2018, shortly after Moon Jae-in – who is often portrayed as a relatively moderate leader – became president. He succeeded after president Park Geun-hye was impeached because of accusations of soliciting bribes from Lee Jae-yong, the main heir of the Samsung group.

Case study researchers combine an array of sources and a variety of methods to generate a spectrum of rich data including interview data, thought experiment data, observations, court

¹³ Lisa Webley, *Stumbling Blocks in Empirical Legal Research*. Case Study Research Law and Method 3 (2016).

¹⁴ Aikaterini Argyrou, *Making the Case for Case Studies in Empirical Legal Research* 13(3) Utrecht Law Review 95, 102 (2017).

¹⁵ Robert Cox, *Social Forces, States and World Orders: Beyond International Relations Theory?* 10(2) Millennium Journal of International Studies 126, 128-129 (1981).

¹⁶ Devika Choudhuri, *Conducting Culturally Sensitive Qualitative Research*, in *Strategies for Building Multicultural Competence in Mental Health and Educational Settings* 277 (Madonna Constantine and Derald Sue eds., 2005).

¹⁷ Yin *supra* note 12, at 37.

¹⁸ Cf *id.*, at 50.

¹⁹ E.g. World Bank, ‘Judicial Performance Improvement Project Kenya’

<<http://documents.worldbank.org/curated/en/118271548714228981/Disclosable-Version-of-the-ISR-Judicial-Performance-Improvement-P105269-Sequence-No-10>> accessed 29 April 2021.

²⁰ David Whitehouse, ‘Kenya’s Flower Growers to Share Brexit Pain’ *The Africa Report* (Paris, 17 April 2019) <www.theafricareport.com/11976/kenyas-flower-growers-to-share-brexit-pain/> accessed 29 April 2021.

²¹ See Aleydis Nissen, ‘Where is the Flower Power these Days? The EAC-EU Economic Partnership Agreement’ *Afronomicslaw* (27 January 2020) <<https://www.afronomicslaw.org/2020/01/27/where-is-the-flower-power-these-days-the-eac-eu-economic-partnership-agreement/>> accessed 29 April 2021.

²² Bent Flyvbjerg, *Five Misunderstandings About Case-Study Research* 12(2) Qualitative Inquiry 219, 229 (2006).

²³ Cf Yin *supra* note 12, at 50.

cases, press articles, legal guidelines and other documents handed over by research participants.²⁴ When triangulated, they provide a means through which robust, valid and reliable inferences about the law in the contemporary real world can be drawn.²⁵

Semi-structured interviews with those concerned with law and policy-making form one of the most important sources for legal case study researchers.²⁶ The meaning that research participants give to their experiences with legal systems can uncover the influence of socio-economic factors on the law, legal processes and legal institutions. The obtained interview data and non-verbal data can capture participants' subjective views and non-verbal behaviour and, through them, convey a true picture of the social fabric in which legal practices are embedded and of the law's impact in local contexts.

For my research in Kenya and Korea, the participants were identified through non-probability methods to recruit a diverse and specialised overall sample. I used snowball sampling to make it possible to get in touch with experts that were hard to access. The desk research highlighted that data collection (and analysis) needed to be sufficiently differentiated along age and gender lines. Other categories of participants that needed to be included were identified during the course of the fieldwork after the first data were analysed. The categories of participants were redefined and revised until they did not need further modification. They were constructed using both reputational and purpose sampling techniques. For example, it was necessary to collect sufficient data from Kenyan people of Indian descent with specialised knowledge, as early participants often made distinctions between Kenyan flower producers from this community and other communities.

Respect

Preparation

Respectful research requires adherence to the law and making sure that participants are treated as humanely as possible.²⁷ Researchers should comply with the legal and ethical requirements existing at home and in the countries where their projects are conducted. In Kenya, researchers are required to seek permission from the Kenyan National Commission for Science, Technology and Innovation. You can find an overview of relevant laws and clearance proceedings all over the world in the yearly updated International Compilation of Human Research Standards of the United States (US) government's Office for Human Research Protections.

Interactions in the field can, inevitably, provoke harm. Prior to embarking on a plane to the other side of the world, I discussed my plans with Kenyans and Koreans living in Europe to anticipate harm.²⁸ They helped me to consider the adverse impacts of my interviews, such as risk to participants' social standing, risk to their position within occupational settings, intrusion, distress, inconvenience and time lost. In addition, I consulted ethical guidelines to consider multiple ways to handle ethical issues prior to entering the field. Such guidelines originate from the US Government's Nuremberg Code (1947), which provided a written response to the Nazi experiments that severely harmed human research subjects.

²⁴ *Id.*, at 15.

²⁵ Webley *supra* note 13, at 4.

²⁶ *Id.*, at 9.

²⁷ UK (Government's Science & Society Team Department for Innovation, Universities & Skills) *supra* note 9.

²⁸ In Korea, I also had the opportunity to participate in Seoul National University's 2018 Winter Course Human Rights and Asia, <<https://hrc.snu.ac.kr/node/96?language=en>> accessed 29 April 2021.

At first, it seemed as if no course of action was satisfactory. Such thoughts are normal because ethical dilemmas are “rarely black or white”.²⁹ Researchers need to use their discretion in how to interpret and assimilate ethical guidelines. The complexity of an issue can give rise to multiple questions about proper behaviour that need to be assessed in context. It is useful to give two examples. First, while one code of practice recommends that researchers leave their phones switched on in order to protect their own safety,³⁰ another field guide explains that researchers should switch off their mobile phones to generate trust.³¹ I, ultimately, decided to put my phone in airplane mode in Kenya and to switch my phone off in Korea due to the country’s heavy use of surveillance technology. Second, I hoped that participants and other contacts in both research contexts were willing to introduce me to their networks. I expected that they would ask which research participants I had contacted or seen already. It is important to not pass along any information, however incidental, from one contact to another. One field guide states in this regard that “your refusal to disclose any information about others will reassure [participants] about your commitment to protecting confidentiality”.³² I considered, however, that an overly formal refusal could alienate or offend the participants. I, therefore, planned to courteously sidestep such questions.

The preventive measures that I had designed were formalised in two applications to my School’s REC. My then supervisor had to sign my applications while I had to complete online research ethics training. These applications required answers in a prescribed form to specific questions on four themes: nature of the research, participant details and recruitment methods, methodology and data handling, data protection issues and consent. I found it difficult to predict how this research ethics clearance process – which was entirely on paper – had to be approached and how many reviews would need to be made to satisfy my School’s REC.

Research ethics committees emerged in the core Anglosphere, after a number of scandals in biomedical research.³³ Nowadays, they have expanded to a wide range of countries and disciplines, including legal scholarship. Marilyns Guillemin and her co-authors have distinguished three core functions of RECs on the basis of interviews with 34 Australian ethics committee members and 54 health researchers.³⁴ First and foremost, RECs try to ensure that research projects respect human participants and the communities to which they belong. Second, RECs have a “filtering” role. They can refine and improve research. RECs have the authority to require modifications and prevent research projects from being conducted. Their approval is often (only) required *before* a research project can start in legal research institutions. The third role is more controversial. Researchers sometimes believe that RECs protect institutions from legal and reputational risks. It is useful to add here that the functions of RECs are constantly evolving and increasingly complex. For example, REC members nowadays need expert knowledge of privacy management to review data management plans.

In the review context, there is also no one right and ethical approach towards research. For members of RECs, as for researchers, the distinction between ethical and unethical behaviour is not dichotomous. The discrepancies in recommendations and requirements proposed by

²⁹ Patricia Bricklin, *Being Ethical: More than Obeying the Law and Avoiding Harm*, 77(2) *Journal of Personality Assessment* 195, 196 (2001).

³⁰ Social Research Association, ‘A Code of Practice for the Safety of Social Researchers’ (2000) <<https://the-sra.org.uk/common/Uploaded%20files/SRA-safety-code-of-practice.pdf>> accessed 29 April 2021 p 5.

³¹ Natasha Mack, Cynthia Woodsong, Kathleen MacQueen, Greg Guest & Emily Namey, *Qualitative Research Methods: a Data Collector’s Field Guide* 34 (2005).

³² *Id.*, at 32.

³³ Linda Bell, *Ethics and Feminist Research*, in *Feminist Research Practice: a Primer* (Sharlene Nagy Hesse-Biber ed., 2014); Paul Atkinson, *Ethics and Ethnography* 4(1) 21st Century Society 18 (2009).

³⁴ Marilyns Guillemin, Lynn Gillam, Doren Rosenthal & Annie Bolitho, *Human Research Ethics Committees: Examining their Roles and Practices* 7(3) *Journal of Empirical Research on Human Research Ethics* 40-43 (2012).

different ethics committees for the same research proposals have been extensively studied.³⁵ Different committees will prioritize other issues and make different trade-offs.

My School's REC's reviews provided me with an indispensable learning opportunity. I found it particularly helpful that my School's REC indicated that interviewing right-holders would be an ambitious and costly endeavour because of the additional layers of protection that are necessary to protect their vulnerabilities. Due to my background in journalism, I was not used to reflecting sufficiently upon such issues. I decided, therefore, to only interview participants with expertise and experience of state-based justice mechanisms deal with 'business and human rights' issues and claims.

Challenges in the Field

The geographical and cultural distance and the feeling of being lost in translation in both research contexts were constant reminders of my outsider status. I am a white woman from Belgium who had until recently been trained exclusively in the European tradition. My status as a privileged person inevitably influenced my access to participants, their willingness to share their experiences and my safety. Research conducted by an outsider is neither superior nor inferior to research conducted by an insider.³⁶ Participants might have been more open or might have been inclined to give less "socially desirable responses" because they might value my lack of direct involvement.³⁷ I have, however, also experienced that some participants were guarded about disclosing their views at the beginning of the interview in both research contexts. While Sandra Harding writes that it would be required to further elaborate on my social location, Wanda Pillow finds that it is better to acknowledge the problematics that this creates "without a bemoaning of or a 'discovery' of [my] researcher/researched position/subjectivities".³⁸ I cannot place myself in the shoes of those who are less privileged. I might also never be able to tease out all the specific effects of my gender, ethnicity, age and social standing in my experiences at a given place and time in the past. I will therefore only report the following anecdotal evidence. When I noted that almost all potential participants who were contacted in Kenya agreed to be interviewed, a Kenyan contact of my age replied with the rhetorical question: "Would it have been equally easy for me?"

I had some reservations about applying the interview method as part of a British doctoral degree in Kenya, a country where British colonial administrators had conducted social science research to identify and manage institutions and customary laws.³⁹ Some Kenyan participants referred to this by expressing their enthusiasm when they noticed that I do not speak English with a British accent. However, it was only after I arrived in Seoul that I struggled with the Anglo-American elements of my research.⁴⁰

³⁵ Sarah Edwards, Tracey Stone & Teresa Swift, *Differences Between Research Ethics Committees*, 23(1) *International Journal of Technology Assessment in Health Care* (2007).

³⁶ Alexander Weinreb, *The Limitations of Stranger-Interviews in Rural Kenya* 71 *American Sociological Review* 1014, 1015 (2006).

³⁷ Cf Georg Simmel, *The Stranger*, in *The Sociology of Georg Simmel* 404 (Kurt Wolff ed., 1950).

³⁸ Sandra Harding, *Feminist Standpoints*, in *Handbook of Feminist Research: Theory and Praxis* 11 (Sharlene Nagy Hesse-Biber ed., 2014); Wanda Pillow, *Confession, Catharsis, or Cure? Rethinking the Uses of Reflexivity as Methodological Power in Qualitative Research* 16(2) *International Journal of Qualitative Studies in Education* 175, 190 (2003).

³⁹ Cf Ryan Sheely, *Regimes and Randomization: Authoritarianism and Field Research in Contemporary Kenya* 97(4) *Social Science Quarterly* 936, 940 (2016).

⁴⁰ Cf Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* text above note 21 (2013).

Qualitative methods in social sciences have been developed in the Western world, and have been used in Korea since the mid-1980s.⁴¹ In 2005, Young Chun Kim and Jeasik Cho observed that a paradigm shift has taken place which recognises “triangulation, member checks and self-reflexivity as basic components of qualitative research” in Korea.⁴² However, they noted that there was still a strong preference for quantitative research.⁴³ They furthermore called for recognition of cultural differences in qualitative research.⁴⁴ In 2015, Sunghee Park and Neil Lunt did this by reflecting that their sampling methods for individual interviews were not easily used in Korea.⁴⁵ They argued that doing interviews is at odds with Confucian values.⁴⁶ The Korean Confucian tradition served as the official state philosophy during the Choson Dynasty from 1392 until 1910. These values were subsequently recycled and applied through the education system and corporate environments by president Park Chung-hee (1963-1979) to promote the myth that Koreans are ethnically and culturally homogeneous.⁴⁷ This was an attempt to overcome the trauma inflicted by the Japanese occupation and the American, Russian and Chinese warfare on the Korean Peninsula. One of the most important elements of the Korean Confucian tradition is age hierarchy.⁴⁸ The respect for elders underpins a strong hierarchical power system in business and wider society. I think that I experienced this when younger experts repeatedly referred me to colleagues who did not have specialist knowledge but were sitting higher in the pecking order, because of their more advanced age. Another traditional value is collectivism. Park and Lunt write that a “strong emphasis on unity influences lower levels of social interaction at group and community levels. As a result, homogeneity and collective activity are highly prized within relationships. The Confucian ethic elevates family, and this concept of family expands to groups, organizations and communities”.⁴⁹ I think that I experienced this when older experts questioned why multiple interviews would provide richer insights than one single interview. They seemed to indicate that there was only one ‘right’ collective answer.⁵⁰ It is, of course, possible that their reactions were just indirect ways to decline an interview request. However, this would not explain participants’ willingness to continue our conversation and their astonishment when I elaborated further upon the methodology and goals of the field research.

Unfortunately, the nature of my research made it difficult to conduct interviews in focus groups. Focus groups are not well-suited to investigate sensitive topics that require confidentiality with a large number of respondents who are hard to recruit.⁵¹ During my preparations, I had, nevertheless, considered giving Kenyan and Korean participants the chance to comment on my research findings. Member checks can be useful to protect research participants from “the penetrative power of the research”, to check misunderstandings by the researcher and to

⁴¹ Young Chun Kim & Jeasik Cho, *Now and forever: Portraits of Qualitative Research in Korea* 18(3) *International Journal of Qualitative Studies in Education* 356-357 (2005).

⁴² *Id.*, at 368.

⁴³ *Id.*, at 367.

⁴⁴ *Id.*, at 368.

⁴⁵ Sunghee Park & Neil Lunt, *Confucianism and Qualitative Interviewing: Working Seoul to Soul* 16(2) *Forum: Qualitative Social Research* 8 (2015).

⁴⁶ *Id.* See also the special issue *Conducting Research in Confucian Heritage Cultures: an Overview of Methodological Issues* 47(3) *Comparative Education* (2011).

⁴⁷ Andrew Eungi Kim & Gil-sung Park, *Nationalism, Confucianism, Work Ethic and Industrialization in South Korea* 33(1) *Journal of Contemporary Asia* 37, 44 (2003).

⁴⁸ Park & Lunt *supra* note 45, at 3.

⁴⁹ *Id.*, at 4.

⁵⁰ Cf Kokila Roy Katyal, *Challenges of Conducting Educational Research in Hong Kong: An Insider/outsider Point of View*, 13 *Comparative Education Bulletin* 157 (2011).

⁵¹ Greg Guest, Emily Namey, Jamilah Taylor, Natalie Eley and Kevin McKenna, *Comparing Focus Groups and Individual Interviews: Findings from a Randomized Study*, 20(6) *International Journal of Social Research Methodology* 693 (2017). See Butz *supra* note 4, at 243; Stephanie Rap, ‘Focus Group Research’ *Leiden Law Methods Portal* <<https://leidenlawmethodsportal.nl>> accessed 27 April 2021.

increase the internal validity of research findings.⁵² I had considered that these benefits would outweigh the risk that experts might seek to influence the research results.⁵³ During my time in Korea, I realised that doing member checks would be particularly useful for those participants who were not familiar with the interview method. It would allow them to comment on my findings and perhaps to withdraw their consent if they understood that they could do so. It would not be appropriate to ask participants to consent to participate in a research project of which they could not fully assess the risks because they were not familiar with the method and concepts used.⁵⁴

I had, however, agreed to not invite Korean participants to comment on research findings after my School's REC advised removing this option (only) in the Korean case study. The School's REC's motivation was that continued contact with participants would affect confidentiality. I struggled with this promise in the field because it limited my agency to make context-specific accommodations. I experienced thus that the requirements imposed by my School's REC exacerbated the challenge that came with using the interview method in Korea.

The difficulty of satisfying research ethics committees and accommodating challenges in collective settings has been discussed by various researchers. Park and Lunt experienced that ethical clearance requirements of Anglo-American social research practice seem "perhaps even unethical" in Korea-based fieldwork.⁵⁵ They wrote, for example, that the formal nature of consent required by their School's REC was somewhat awkwardly after giving a customary gift at the beginning of the interview as a sign of respect.⁵⁶ Education scholar Kokila Roy Katyal reflected that the "emphasis on individual autonomy" in consent forms was at odds with the 'largely collectivist, hierarchical, Confucian heritage culture of Hong Kong'.⁵⁷ She furthermore explained that Confucian heritage culture participants tend to believe that there is one "right" answer and are sometimes reluctant to provide direct answers.⁵⁸ Geographer David Butz – who is also an experienced REC member – described that "individual" requirements by the REC of his institution in Canada "disciplined" the communities that he researched in Pakistan.⁵⁹

More generally, there have been multiple calls for more flexible approaches by research ethics committees that allow contextual accommodations.⁶⁰ Guillemin and her co-authors found that research committees can be over-protective toward research participants.⁶¹ The effect is counterproductive, in that it can lead to poor relations between such committees and researchers.⁶² A British senior researcher told me in this regard that he had experienced that the measures imposed by his School's REC in the UK for conducting field research in Kenya were often unnecessarily paternalistic, limiting the autonomy of the participants. He explained that this was an incentive for him to provide this REC only with the minimum amount of required information. Martyn Hammersley even warns that ethics committees can create a proceduralist

⁵² Cf Martyn Hammersley, *Against the Ethicists: on the Evils of Ethical Regulation*, 12(3) *International Journal of Social Research Methodology* 213 (2009) referring to R. Walker, *The Conduct of Educational Case Studies: Ethics, Theory and Procedures*, in *Controversies in Classroom Research* 290 (Hammersley ed., 2009).

⁵³ Vaida Obelene, *Expert versus Researcher: Ethical Considerations in the Process of Bargaining a Study*, in *Interviewing Experts* 199 (Alexander Bogner, Beata Littig and Wolfgang Menz eds., 2009); Florian Heitmüller, 'Expert Interviews' (forthcoming) *Leiden Law Methods Portal*.

⁵⁴ Cf Atkinson *supra* note 33, at 18; Kim & Cho *supra* note 41, at 370.

⁵⁵ Park & Lunt *supra* note 45, at 8.

⁵⁶ *Id.*

⁵⁷ Katyal *supra* note 50, at 147.

⁵⁸ Katyal *supra* note 50, at 147 and 157.

⁵⁹ Butz *supra* note 4, at 239.

⁶⁰ Eg Herbert Kritzer, "Research is a Messy Business" *An Archeology of the Craft of Socio-Legal Research*, in *Conducting Law and Society Research: Reflections on Methods and Practices* 280-281 (Simon Halliday & Patrick Schmidt eds. 2009).

⁶¹ Guillemin et al. *supra* note 34, at 38.

⁶² *Id.*

mentality amongst researchers who will be “preoccupied with what will get through an ethics committee, not with what is and is not ethically justifiable”.⁶³ For example, education scholar M. Obaidul Hamid reflected that he and his fellow PhD scholars felt more concerned about the application to his School’s REC in Australia than about research ethics in the field.⁶⁴

There exist so many reflexive accounts that question the difficulties created by research ethics committees that Linda Bell observes that social research has become a “battleground” where “those who control research” can exercise power over researchers and especially student researchers.⁶⁵ This paper does not want to engage in such battles. Rather, it wants to reflect on existing approaches in order to encourage institutions to support field researchers as good as possible. I would suggest that open and “conversational” research ethics proceedings can be more fruitful. Rather than giving their one-off consent prior to the research, their involvement should be dynamic and continuous, from the stage of preparation to the reporting of research results. One particular challenge is that members of RECs often take on their ethical review work on top of teaching, research and management commitments in their institutions. Their time is scarce, while time delays of SRECs are a major source of concern for field researchers.⁶⁶ It might be useful to consider other approaches than the current institution-based approach to research ethics proceedings. Regional and dedicated RECs might be an alternative to RECs that are based in legal schools. Over time they can build specialized and context-specific expertise (or – in any case – make time to solicit the advice of experts). In many cases, it might also be useful to provide a waiver if local institutions in the field deal with ethical issues.⁶⁷

Ultimately, no matter how many steps are taken during the preparations, there will always remain ethical dilemmas for field researchers. At the ground level, the responsibility to ensure that research is as respectful and responsible as possible lies and remains with those who design and carry out the research.⁶⁸ Bell asked in this regard for ways to shift the emphasis back from “a discourse of regulation” to ethics as “moral discourse (based largely on ideas what researchers *ought* to do, and on their own values and integrity”.⁶⁹ In the remainder of this paper, I will suggest that training and practice in “positive ethics” can be useful to achieve this. I developed this idea while I was trying to follow the requirements of my School’s REC which created additional challenges in the Korean context.

Positive Ethics

Positive ethics has been conceptualised by psychologists Mitchell Handelsman, Samuel Knapp and Michael Gottlieb in 2009 to encourage professionals to fully acknowledge ethical challenges and professional standards, but to approach them in a positive manner.⁷⁰ In this section, I will first explain what positive ethics is and why it can be useful for field researchers. I will then discuss how I employed “positive ethics” to deal with my experience that the requirements of my School’s REC seemed to be ill-adapted to the context of the research.

⁶³ Hammersley *supra* note 52, at 220.

⁶⁴ M. Obaidul Hamid, *Fieldwork for Language Education Research in Rural Bangladesh: Ethical Issues and Dilemmas*, 33(3) *International Journal of Research & Method in Education* 263 (2010).

⁶⁵ Bell *supra* note 33.

⁶⁶ Guillemin et al. *supra* note 34, at 38.

⁶⁷ See Hamid *supra* note 64, at 264

⁶⁸ Katyal *supra* note 50, at 157; Calliope Farsides, *The Ethics of Clinical Research in Manual for Research Ethics Committees* (Sue Eckstein ed., 2003), at 5.

⁶⁹ Bell *supra* note 33.

⁷⁰ Mitchell Handelsman, Samuel Knapp & Michael Gottlieb, *Positive Ethics: Themes and Variations*, in *The Oxford Handbook of Positive Psychology* (Shane Lopez & C.R. Snyder eds., 2009); Samuel Knapp, Leon VandeCreek & Randy Fingerhut, *The Legal Floor and Positive Ethics*, in *Practical Ethics for Psychologists: A positive Approach* (Samuel Knapp, Leon VandeCreek & Randy Fingerhut eds., 2017).

Positive ethics requires professionals to recognise personal values and motives via reflection and to anchor decisions in overarching ethical principles, such as virtue ethics.⁷¹ According to Handelsman and his co-authors “virtue ethics” are particularly useful for positive ethics because they help to fulfil both personal and professional motives.⁷² Virtue ethics emphasize “the nature of the good life for human beings and the character traits that are required for this”.⁷³ In virtue ethics, acting rightly grows out of character.⁷⁴ Accordingly, cultivating character strengths is the pathway for ethical action and human flourishing.⁷⁵ Virtue ethics are sometimes opposed to principle ethics, in which acting rightly amounts to following rules. While principle ethics seek to answer the question “What shall I do?”, virtue ethics seek to answer the question “Who should I be?”.

Positive ethics has much in common with positive psychology, the relatively young scientific discipline that studies the strengths that enable individuals and communities to thrive.⁷⁶ Just as positive psychology shifts the emphasis away from pathology, positive ethics moves away from ethics as a fixed entity of obligations and disciplinary complaints. It makes place for ethics that focus on moral excellence to continuously improving the quality of professional activities. Positive ethics offer a pathway to professionals to make sure that ethics do not become “a concrete wall hemming [them] in, forbidding [them] from human connectedness,” while recognising that laws or standards of the profession have their own value.⁷⁷ It might help professionals to act in an ethical manner, when they are faced with ethical dilemmas that might otherwise frighten or alienate them. They learn to develop the sensitivity to recognise the ethical implications of decisions. They can better recognise that something they might do or are doing can affect the welfare of others, either directly or indirectly.⁷⁸ This, in turn, allows them to modulate appropriate gratifications from inappropriate behaviour.⁷⁹

Originally, positive ethics was conceptualised to support psychologists, who face various challenges in their counselling practice. It guides them in their work, which is often conducted in relative isolation.⁸⁰ But practising positive ethics is also useful to support a variety of other professionals. Douglas May and Matthew Luth have determined in an empirical study that business and legal education would benefit from covering variables of positive ethics.⁸¹ In

⁷¹ Handelsman et al *id.*, at 108.

⁷² *Id.*, at 106 referring to Randolph Pipes, Jaymee Holstein and Maria Aguirre, *Examining the Personal-Professional Distinction: Ethics Codes and the Difficulty of Drawing a Boundary*, 60 *American Psychologist* 330 (2005).

⁷³ Hammersley *supra* note 52, at 213.

⁷⁴ Christopher Peterson, & Martin Seligman *Character Strengths and Virtues* 4 (2004).

⁷⁵ Blaine Fowers & Barbara Davidov, *Virtue of Multiculturalism. Personal Transformation, Character, and Openness to the Other*, 61(6) *American Psychologist* 581 (2006).

⁷⁶ Martin Seligman, an American psychologist, launched a call to research human potential and the positive qualities of life in 1998, almost three decades after Maslow, a fellow American, noted that his call to do so had not been heard. (ABRAHAM MASLOW, *MOTIVATION AND PERSONALITY* XXIII (1970) REFERRING TO ABRAHAM MASLOW, *MOTIVATION AND PERSONALITY* 353 (1954)); Martin Seligman, *Building Human Strength: Psychology's Forgotten Mission* 29(1) *American Psychological Association* (1998).

⁷⁷ Handelsman et al *supra* note 70, at 106 citing Laura Brown, *Concrete Boundaries and the Problem of Literal-Mindedness: A Response to Lazarus* 4 *Ethics and Behavior* 276 (1994).

⁷⁸ Muriel Bebeau, James Rest & Catherine Yamoore, *Measuring Dental Student's Ethical Sensitivity* 49(March) *Journal of Dental Education* 225, 226 (1985).

⁷⁹ Handelsman et al *supra* note 70, at 109.

⁸⁰ Cf Daniel O'Donnell, *Exploration of Positive Ethics Factors and Associations with Ethical Decision Making* (2014) <<https://www.semanticscholar.org/paper/Exploration-of-Positive-Ethics-Factors-and-With-O'Donnell/217628284128eadfa30659aa40f2b07e4b1f0c6e>> 10 referring to Mark Aoyagi and Steven Portenga, *The Role of Positive Ethics and Virtues in the Context of Sport and Performance Psychology Service Delivery*, 41 *Professional Psychology: Research and Practice* 258 (2010).

⁸¹ Douglas May & Matthew Luth, *The Effectiveness of Ethics Education: a Quasi-Experimental Field Study* 19 *Science and Engineering Ethics* 550-551 (2013) referring to Douglas May, Matthew Luth & C.E. Schwoerer, *The Effects of Business Ethics Education on Moral Efficacy, Moral Meaningfulness and Moral Courage: a Quasi Experimental Study* 1 *Academy of Management Best Paper Proceedings* 1 (2009).

particular, they found that positive ethics can help students to develop moral courage and moral efficacy. The former variable refers to an individual's confidence in their ability to actively and positively deal with ethical issues that arise at work and to overcome obstacles and ethical dilemmas. The latter variable refers to an individual's fortitude to convert moral intentions into actions despite pressures from either inside or outside of organisational environments to do otherwise. Positive ethics education should not be limited to the classroom. It also involves real-life and lifelong learning experiences. Edward Robinson and Jennifer Curry have hypothesised that engaging in positive ethics might, in particular, be valuable for field researchers who are challenged by ethical guidelines and research ethics committees.⁸²

In practice, positive ethics requires two important elements. First, it encourages the identification by the researcher of commonalities between overarching professional standards and personal values and motives.⁸³ For my part, travelling to Kenya and Korea was in my self-interest. These journeys allowed me to expand my horizons as a researcher and as a human being, while also rekindling my old passions for journalism and art. These journeys helped me to flourish by producing the maximum of real-life situations. Interacting with many different people representing diverse interests was experienced as pleasant after two years of relative isolation, which characterizes doctrinal research in international law. These spontaneous experiences in a new world allowed me to utilise different aspects of my personality and to further develop my character strengths. For example, they gave me the chance to make a creative contribution to the area in which my research is situated.⁸⁴

Second, researchers need to practise reflexivity to develop more sensitivity to the ethical implications of their decisions.⁸⁵ There is some empirical evidence that reflecting upon character strengths can help researchers to think and act in a more ethical fashion.⁸⁶ It involves thoughtfulness about potential harm in any given situation to recognise that something that the researcher might do or is doing can affect the welfare of participants and other people in the field, either directly or indirectly.⁸⁷

I made two efforts to better recognise ethical implications in the field (and – in particular – deal with the challenges that I encountered in Korea). First, I tried to build meaningful and respectful relationships with participants and the society to which they belong in both research contexts. I think that other field researchers have – in fact – routinely described their efforts to develop empathic relationships in their reflexive accounts.⁸⁸ They use terms such as “being open to new possibilities” and “building rapport” to describe that they cultivate character strengths such as curiosity and social intelligence.⁸⁹ I will explain how I approached this element in the remainder of this section. Second, I paid particular attention to the “responsible” dimension of my research. This element is not often discussed in reflexive accounts. Cultivating character strengths such as “teamwork”, “the love of learning” and “creativity” led me to conclude that research participants should be included in the assessment of whether research is valuable to them. This element will be further discussed in the next section of this paper.

⁸² Robinson & Curry *supra* note 5, at 44.

⁸³ Cf Handelsman et al *supra* note 70, at 3.

⁸⁴ Cf Peterson & Seligman *supra* note 74, at 163.

⁸⁵ Cf Handelsman et al *supra* note 70, at 4-6.

⁸⁶ Cf Silvia Osswald, Tobias Greitemeyer, Peter Fischer and Dieter Frey, Moral Prototypes and Moral Behavior: Specific Effects on Emotional Precursors of Moral Behavior and on Moral Behavior by the Activation of Moral Prototypes, 40(6) *European Journal of Social Psychology* 1093 (2010).

⁸⁷ Cf *id.*, 5; Bebeau et al. *supra* note 78, at 226.

⁸⁸ E.g. Linda Finley, *The Reflexive Journey: Mapping Multiple Routes, in Reflexivity. A Practical Guide for Researchers in Health and Social Sciences* 10 (Linda Finlay & Brendan Gough eds., 2003).

⁸⁹ E.g. Brendan Browne & Luke Moffett, *Finding Your Feet in the Field: Critical Reflections of Early Career Researchers on Field Research in Transitional Societies*, 6(2) *Journal of Human Rights Practice* 231 (2014); Elizabeth McKay, Susan Ryan & Thelma Sumsion, *Three Journeys towards Reflexivity, in Linda Finlay and Brendan Gough (eds.), Reflexivity. A Practical Guide for Researchers in Health and Social Sciences* 55 (2003).

My contacts in the field were most helpful to consider different courses of action for dealing with the challenges described above. I found such contacts in my host institutions, but also in normal daily life. I experienced that Koreans of the gen-Y and gen-Z generations have, in particular, an increased general understanding of the problems caused by the preferential treatment of large corporations (contrary to older Koreans). Kwangsik Kim studied such generation differences in a telephone study with 1000 Koreans.⁹⁰ Koreans who are currently in their twenties and thirties display an increased general understanding of the problems caused by the preferential treatment of large corporations. Koreans who are in their thirties would consider global norms as more important than inherent Korean values, while Koreans who are in their twenties would also display a strong belief that everyone is free to gather in an open forum, and share opinions and information. It was this generation that initiated peaceful candlelight protests to impeach president Park Geun-hye via social media. They had previously – in their teenage years – also organised protests against imports of US beef out of concern about the mad cow disease.⁹¹ This is in stark contrast with Koreans aged forty and older that have been raised under the authoritarian rule.⁹² Generally speaking, this older generation is extremely respectful of large corporations for the unprecedented economic growth and global recognition that they brought to Korea.

Repeated interactions resulted in trusted relations in which I could openly question cultural and political considerations when issues arose. I learned, for example, from my local contacts that the character strength of humility is valued in Korea. I also learned that it was, nevertheless, desirable to mention any curricular achievements, situate myself in my School's hierarchy and identify my networks prior to starting any research-related conversations. Being affiliated with a well-known local university was valuable information in this context, as higher-level education and school networks are perceived as being of great importance. My local Korean contacts were also willing to openly discuss age hierarchy, power distance and loyalties. They reassured me that the cultivation of courteousness in everyday behaviour is concerned with consideration for another's feelings. In so doing, they helped me to "step into my power" and develop the fortitude to convert intentions into actions despite institutional pressures. I became confident in my ability to actively and positively deal with ethical issues that arose.

In order to use the interview method and make the formal aspect of conducting field research less awkward, I spent extra time in Korea to engage in exploratory talks with a wide range of potential participants. The extra time was used to create an in-between space in which it was possible to communicate openly about Korean values and the requirements of my research methodology and degree. I observed the wording, voice intonations and body language of potential participants to detect whether there were any indications that they did not feel willing or able to familiarise themselves with these requirements. This approach required that many more potential participants needed to be identified and approached than initially foreseen. Those participants who were ultimately not interviewed often provided alternative exchanges of information with which they felt comfortable. I have, amongst other things, received internal working documents and typed-out answers to my questions, which represent the official standpoints of the organisations in which the potential research participant worked. These data were not considered as interview data, but they were useful for triangulation purposes.

Dealing with ethical challenges remained a learning journey with much "trial and error" in both research contexts. I did, for example, not always succeed in making sure that a question regarding corruption in the broader professional category to which the participant belonged

⁹⁰ Kwangsik Kim, Historical Awareness of the Post-War Generation in Korea and National and Social Responsibility 22(4) Korean Journal of Defence Analysis 435, 446 (2010).

⁹¹ Jiyeon Kang, Internet Activism Transforming Street Politics: Korea's 'Mad Cow' Protests and New Democratic Sensibilities 39(5) Media, Culture and Society 750, 751 (2017).

⁹² Kim *supra* note 90, at 446.

was not taken personally. I noticed that it was helpful, but not sufficient, to ask neutral questions about sensitive issues at the end of the interview. I learned that it was more helpful to emphasise the sensitive and non-personal character of a question before posing the actual question.

Responsibility

Efforts to conduct respectful research should be complemented by efforts to do responsible research.⁹³ Responsible research requires that research participants should benefit from the research in exchange for the time and information that they provide. Helpfully, my School's REC asked me to explicitly spell out the benefits that my research might bring to the participants. Remarkably, however, this component is not often included in reflexive accounts on field research. Through practising positive ethics, I determined that participants should participate in assessing the responsibility of my research. Participants are best placed to estimate whether the benefits and burdens of research participation are to be distributed fairly.

Prior to entering the field, I had anticipated that participants would benefit in two ways. The first benefit was privileged access to research results. The second benefit was the publication of longreads in popular newspapers in my home country of Belgium that could increase awareness amongst consumers about the issues at hand. The content presented in these longreads can also be used by civil society organisations that wish to disseminate research results.

I asked my contacts to assess whether they perceived the anticipated benefits as beneficial. Regarding the first anticipated benefit, I learned that not all participants wanted to directly benefit from the research results through privileged access to the results of my case studies. The interviewed Kenyan government officials were willing to explain the sources of pressure exerted upon them, as well as the factors that influence whether they are able to resist such pressures. Some of them requested, however, to not give their real name or receive the results of the study, because they feared repercussions. They told me that they saw contributing to this research, which might inform system changes, as advantageous. Furthermore, I know now that the results will provide more insights to my Kenyan contacts than to Korean contacts. In Kenya, information was more scattered, while problems were less understood. One important reason for this is that two groups of Kenyan representatives – those working in civil society and the centralised trade union – were not on speaking terms. My outsider status allowed me to gather and integrate data from both groups. In Korea, however, NGOs across all groups of representatives and experts worked extremely well together to share information and effect change. They indicated that the Korean case study would, nevertheless, be valuable to them as a part of my PhD dissertation.

Regarding the second anticipated benefit, I learned that my Korean contacts valued a publication in a popular newspaper more than my Kenyan contacts. Awareness-raising in Europe was considered as a major benefit in Korea.⁹⁴ One Korean NGO representative told me, "We have no chances here. The government defends corporate interests. We have to get directly in touch with NGOs and consumers in Europe". This belief might have been strengthened by the fact that major global consumer brands were included in the Korean case study. Most participants understood that consumers in Belgium are not aware of human rights concerns that occur in the supply chains of these brands. On the contrary, I learned that my Kenyan contacts did not expect that my longread would be beneficial to them. The researched

⁹³ UK (Government's Science & Society Team Department for Innovation, Universities & Skills) *supra* note 9.

⁹⁴ Aleydis Nissen, Meer dan Tweehonderd Samsung-arbeiders Ziek of Door Blootstelling aan Toxische Chemicaliën - Wie Klaagt Verliest haar Job, EOS MAGAZINE (Jan., 2021).

industry had already been covered in some popular Dutch and English-language newspaper articles in the past. The research participants told me that this had not resulted in significant changes on the ground. They thought that the media's narrow focus on corporations with European owners had even widened the protection gap for workers in European-owned and Kenyan-owned farms. One interview participant indicated that "Only Kenyans can solve Kenyan problems". Therefore, I decided to focus my longread on the difficulties that existing development initiatives and the media had created.⁹⁵

Finally, I tried to be as open as possible by asking participants if I could be of help to them in any way. Various participants had a clear idea about this. While some had specific questions about 'business and human rights' regulation in Europe, others were looking for benefits that were not directly connected with my presence in the field. For example, some Kenyan participants asked for practical advice to advance their professional careers. One Korean participant asked me to do some small research tasks using British legal databases that he could not access.

Conclusion

This paper explored reflexivity on my research experience in Kenya and Korea and the use of methods in empirical fieldwork. Practising reflexivity can improve the quality of the research and demonstrates its reliability. It can also fuel more conversations as to how judgments of complex challenges that are simultaneous of a practical, scientific and ethical nature are made. This analysis serves as an impetus for other researchers to prepare and reflect on their own practices and finetune them according to the specific contexts they are engaged in. I questioned the Anglo-American elements of my research, which had been reinforced by guidelines of my School's Research Ethics Committee. I explain that such guidelines were sometimes ill-adapted to the context in which the research is conducted. In particular, they limited my agency to make contextual accommodations in a research context where individual interviews were not well understood. I suggested that an open and continuing dialogue between researchers and research ethics committees can alleviate such challenges. It might also be useful to consider whether it is a "best practice" that faculty members of law schools – who are by definition always busy – are members of such committees. Regardless, there will always be challenges, no matter how much preparations and REC proceedings are conducted. I suggested that awareness of and training in positive ethics – which encourages to fully acknowledge ethical challenges and professional standards but to approach them positively – can be useful to overcome such challenges. I reflected that I tried to build meaningful and respectful relationships with participants and the society to which they belong. In addition, I concluded that research participants should get the opportunity to assess how they can benefit most from the research in exchange for the time and information that they provide.

⁹⁵ Aleydis Nissen, *In Kenia is de ene Rozenplantage de Andere Niet - Klagen is Ontslag Vragen*, KNACK MAGAZINE (Oct. 24, 2020).

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