

CHAPTER ONE

INTRODUCTION

The Power of Positionality

Mark Fathi Massoud

Know yourself [because] it is the beginning of all wisdom.

– Aristotle

I felt anxiety deep in my stomach as I entered the law professor's office for my tenure-track job interview.¹ It was 2008. I had recently completed my doctorate, and this meeting with a full professor who was also a leading scholar in my field would be pivotal. A “no” vote from him would end my candidacy. I sat across from him, an older white man, ready to discuss my research on human rights. He peppered me with questions about my background, the circumstances surrounding my immigration from Sudan to the United States (US), my childhood experiences, the languages that I spoke growing up, the places that my parents or I had lived, and other personal matters. By the time the interview ended, I had been invited to speak neither about my qualifications – my reasons for applying, my teaching experience, my job talk, my book manuscript – nor about my research and leadership plans were I to be hired. As a lawyer, I knew his direct questions about ethnicity, language, and national origin were prohibited by US employment law and fair hiring practices,² but because I was new to the field, needed a job, and wanted to make a good impression, I answered all of them.

¹ Elements of this chapter draw on Massoud (2022).

² Title VII of the United States Civil Rights Act of 1964 (29 CFR Part 1601) prohibits employers from discriminating on the basis of race, color, religion, sex, and national origin.

Alone later that night, I cried – not only because I had not wanted to talk about personal matters with this man, but also because I had felt powerless to assert my rights. My vulnerability and fear of not being accepted and not getting a job had replaced my academic preparation and legal training. Though austerity measures led the law faculty to stop this search without hiring anyone, my experience at the interview taught me how scholars exert authority over one another. Asking questions may be a benign way to get to know people in ethnically diverse societies, but it can also spotlight the class and racial privileges that sustain intellectual, socioeconomic, and cultural hierarchies.

Some of us feel like outsiders in our research sites and in academia; both are places dominated by people who do not share our backgrounds. We may find ourselves “out of place” by virtue of our social marginality, unique professional privileges, or both. As this book shows, being out of place – and reflecting on this subject position transparently – provides benefits to law and society scholarship, but it also places burdens on the researchers themselves.

Out of place scholars are typically minorities – through their class background, ethnicity, gender, physical ability, religious beliefs, sexual orientation, and so on. These scholars may find law’s power dominated or usurped by able-bodied, gender-normative, heteronormative, and/or majority ethnic or religious populations, often backgrounds and identities to which they do not belong. Feelings of isolation in fieldwork sometimes grow stronger in the academy. Being or feeling different from the majority in a research site or an academic field can compel out of place scholars to think carefully about how their personal backgrounds and experiences shape their research.

Consider the influence of a US Supreme Court nominee’s background – their class, gender, race, upbringing, or schooling – in debates over their appointment. Taking a judge’s personal background into account is a recognition that factors related to identity and unrelated to legal doctrine shape judicial decisions. Likewise, good lawyering involves using skills learned from law school – such as interpreting precedent, evaluating evidence, and following procedures – and skills learned from life experience. Lawyers unable to recognize how clients, judges, and jurors perceive them are going to struggle. In law and society scholarship, bringing the personal to bear on the research clarifies – or entirely blurs – the boundaries between law, politics, and power.

Academic writing, particularly in the social sciences, was built on the idea of outsiders looking in. However, due to structural inequalities, some people never had the privilege of joining academia because of their class, gender, race, or other minority status, and some of the people who became successful scholars could not share their outsider status. The social theorist Robert Merton, for instance, was born Meyer Schkolnick; he anglicized his name in the early twentieth century during a time when Jewish immigrants faced exclusion from American universities, businesses, and social institutions (Snell 2006). Decades later, a cultural turn in American writing led journalists and scholars to give greater attention to positioning their self-identifications, experiences of marginalization, or professional privileges. The prevalent term for this is “positionality,” though several other terms, including “reflexivity” and “standpoint,” are also used to refer to similar concepts. While these terms have different genealogies, I see them as interchangeable ways of naming the phenomenon of opening up one’s self-identifications – rather than only one’s ideas – to criticism.

Scholars of literary theory have labeled this intimate connection between one’s lived experiences and theoretical contributions as “autotheory.” To them, autotheory is about expressing something that was once inexpressible, including about one’s physical body – “the personal made public,” as Maggie Nelson discusses it in *The Argonauts* (Nelson 2015, 60). Writing with the self, to Nelson, is both a form of protection and a signal of belonging. For the postcolonial and critical race theorist Vilashini Cooppan, turning to our most intimate sources of knowledge – thinking autotheoretically by connecting ourselves to the arguments that we make – allows us “to think *with* the I, not merely as the I” (Cooppan 2021, 587). For Cooppan, recognition of the self is a form of reparation for longstanding social and legal inequalities. It is a starting point for long-run social and legal change in which “a long debt of nonrecognition, historical unseeing, political unresponsivity, closed ears and eyes and hearts, is coming due” (602). Consider the legal scholar Patricia Williams, whose first-person accounts of social marginalization based on gender, race, and class shaped a generation of critical race theory on law’s shortcomings (Williams 1991). Consider also the literary historian Saidiya Hartman, who argues that using autobiographical examples as data “is not about navel gazing, it’s . . . about trying to look at . . . one’s own formation as a window onto social and historical processes, as an example of them” (Saunders 2008, 5). Conveying personal experiences puts scholars in a vulnerable position,

making research and writing more difficult. Such exposure also sparks a rebellion against academic traditions built on a pretense of neutrality – and legal rules built on a pretense of impartiality.

Understanding the conditions under which research creates useful knowledge, and how researchers themselves influence their research, are questions that are as old as the social sciences themselves. This book adds to these questions a distinct and powerful dimension of positionality: one's marginal social position, and the benefits and burdens associated with it. One's sense of marginality may change across places and times. A scholar's ethnic identity may be minoritized in some contexts but not in others, or a working-class immigrant kid may grow up to become a celebrated intellectual employed by a wealthy university. Feeling marginal even in one context of our lives, as all of us do to varying degrees, has important consequences for our research anywhere. Centering a researcher's marginality – their "outsider within status" – adds "excitement to creativity" and enriches academic debate (Collins 1986, S15). My own study (Massoud 2022) of positionality statements appearing in law and society journals found that researchers who occupy marginalized social positions are the most likely ones to be sharing positionality; moreover, many of these marginalized researchers' positionality statements explain how their privileges, and not their marginalization, influenced their research.

To address the connections between positionality, research methods, and law's power, this book brings together a globally diverse group of law and society scholars who share a marginalized, or out of place, positionality in their research. In the chapters that follow, they explain how their identities, backgrounds, and experiences transformed their research and themselves, during and after fieldwork, and across sometimes decades-long careers. They discuss what they learned about the law by virtue of being and working out of place.

Out of Place offers an antidote to those who see law as a set of abstract rules. Positionality shifts attention from the rules to the people who create, enforce, and are subjected to them. This transformation – putting people first in legal studies – increases empathy for research subjects and other researchers. The authors of the chapters that follow have honed these skills. They share their experiences to help early career scholars who are embarking on empirical projects and established scholars who are retooling their own research. *Out of Place* is designed to encourage collective and transparent self-reflection on positionality and, specifically, marginalization – and to give hope to a

rising generation of law and society scholars who may be different from the field's founders in fundamental ways.

A FIELD BORN OUT OF PLACE

If there is any canon that the field of law and society has created since the mid-twentieth century, it is a methodological one. This is because law and society researchers study how the law shapes society often by borrowing or enhancing research methods found in the disciplinary traditions of the humanities and social sciences. Grounded research – traveling to a place to conduct fieldwork, historical research, or interviews – shaped much of our interdisciplinary field's foundation.³ But this kind of research also shapes law and society scholars as teachers, colleagues, and mentors.

The interdisciplinary field of law and society was born of efforts to connect empirical data with legal studies, often alongside a commitment to addressing inequality. In the US, law and society began as a field of outsiders who felt marginalized by their academic disciplines. The field also grew separately, and earlier, outside of the US. Founded in the 1940s, Japan's law and society association may be the first of its kind. Scholars in Australia, Brazil, China, Egypt, France, India, Indonesia, Mexico, South Africa, and the UK, among other places, have also been producing decades of law and society scholarship. The field's pioneers worked around the world in rapidly changing legal, political, and economic contexts. They distinguished themselves from their law faculty colleagues who were making their careers studying legal doctrine. In other words, law and society scholarship began as an effort by people from different disciplines and in different parts of the world who were professionally out of place and who promoted the benefits of leaving their offices – going out of place – to conduct research.

In the US, many in the first generation of law and society scholars were motivated by a shared desire “to create a more humane, egalitarian society” (Kennedy and Klare 1984, 461). But they also did not write of themselves as fundamentally a group of white men who held significant professional privilege. As the law and society scholar Laura Gómez

³ Political scientists define fieldwork as the purposeful, deliberate, and site-intensive pursuit of “data, information, or insights” (Kapiszewski, MacLean, and Read 2015, 8). Scholars have done fieldwork in-person and virtually (Boellstorff 2008).

noted, the field's "founding generation included no people of color and only three White women – at least partly a reflection of the gender and racial makeup of the professoriat at the time" (Gómez 2012, 222–3). Similarly, nearly all of the twenty-one foundational, "well-known and well-regarded Law and Society research projects" featured in a recent textbook were conducted by white men (Halliday and Schmidt 2009, 7). In this context, explicitly reflecting on positionality would perhaps be too obvious; as Gómez explained, the field's composition meant that US-based scholars of law and society were largely presumed to be white and cisgender male.

Law and society scholars are, of course, more diverse than the pioneering generation, inside and outside the US. Among this new generation are scholars who occupy marginal social positions and who are sharing their positionality. Doing so provides many benefits. It can establish an author's credibility in cases where insider knowledge may be of particular value, such as when a person from a given place, who speaks the local dialect, studies its legal history or legal system. Reflecting on one's positionality can also be a form of knowledge production. It can help scholars to find their inner wisdom, and it can build community among researchers and between researchers and their research subjects, particularly among scholars who identify as members of under-represented or minoritized groups. It can facilitate more open discussion about how racial oppression, gender-based discrimination, and socioeconomic privileges shape research methods and career paths, which creates space for a more diverse generation of scholars to participate in law and society, and to influence the field's development.

However, while positionality provides significant benefits, it comes at a price. When an author consciously blurs the boundaries between the personal and the professional by inserting their experiences into their scholarly work, they open up their ideas and *themselves* to criticism and harm (Medzani 2021; Miled 2019; Galam 2015). That harm may include the devaluation of the scholarly content of the work because, for example, it is therefore presumed not to meet social science standards of neutrality or objectivity. Positionality also requires emotional labor. In some cases, scholars communicate painful memories to their research subjects, reviewers, and readers (Gustafson 2011; Hirsch 2008). Doing so may cause discomfort or – when a scholar is regularly asked to represent and speak about their gender identity or ethnic background rather than their scholarship – exhaustion. At the extreme,

researchers who have experienced physical or psychological trauma may retraumatize themselves by retelling their suffering. These harms disproportionately affect historically marginalized groups in academia, including women and people of color.

Moreover, these harms do not merely accrue when marginalized scholars speak about their own positionality; they also accrue when scholars from majority populations do not speak about theirs, because that omission renders positionality peripheral to mainstream law and society scholarship. Normalizing positionality, especially out of place positionality, will involve all scholars in law and society considering how their identities, class backgrounds, and professional privileges shape their motivations, questions, methods, and findings.

In the field of law and society, out of place scholars who are women, ethnic minorities, or both have unevenly carried the burdens of positionality. To provide evidence for this argument, this Introduction proceeds as follows. First, I discuss the benefits of open and principled discussion of positionality, drawing on existing law and society scholarship, including my own. Second, based on a longitudinal empirical study I conducted of positionality in two of the field's oldest journals, I assess who has written about positionality and how and why they have written about it. Third, I reflect upon the costs, particularly for marginalized populations, of disclosing the influence of identities on research and writing. Fourth, I provide an overview of this book and give attention to how an out of place positionality has been building hope for a new generation of law and society scholarship. I conclude by encouraging law and society scholars of all backgrounds to adopt a "position sensibility" by examining and explaining how their own self-identifications, privileges, or experiences shape and challenge research methods.

THE BENEFITS OF POSITIONALITY

Law and society researchers who use empirical methods – particularly qualitative methods such as ethnographic fieldwork, participant observation, and interviews – often invite vulnerable persons to share their backgrounds, emotions, and experiences. Empirical research may therefore involve unequal power relations, especially if researchers reveal little to nothing about themselves while their subjects share intimate stories in order to help the researchers (Rios 2011). Becoming self-aware about their own positionality is a first step that researchers can

take towards rectifying this imbalance and building stronger social science methods.

As scholars, our class, educational training, group experience, and membership in minoritized or non-minoritized groups create “cultural frames” through which we ask questions and analyze data (Bell 2016, 320, citing Goffman 1974). Feminist and critical race scholars have argued that it is fundamental to consider how the standpoints of scholars who are members of non-privileged groups influence their approaches to studying law’s systemic inequalities.⁴ Scholars of intersectionality have shown how people experience multiple, overlapping forms of marginalization – which create privilege in some ways but not in others – depending on their citizenship, class, educational attainment, gender, gender identity, physical abilities, professional position, race, and sexual orientation (Crenshaw 2011, 1991). Building on this feminist and intersectional scholarship, this section outlines five primary benefits of communicating an out of place positionality: establishing connection and credibility, challenging structures of oppression, opening up social science, empowering communities, and communicating privileges.

Establishing Connection and Credibility

Explaining one’s positionality allows a reader to understand how data were gathered, who agreed to talk to the researcher, and why they did so. At the beginning of my book, *Law’s Fragile State*, I recount how my own background helped me to “build rapport among attorneys, judges, and local activists, who told me they were pleased to see a young man – whose family fled the country never to return – himself come home” to do fieldwork in Sudan (Massoud 2013). Similarly, in my book, *Shari’a, Inshallah*, which was based on fieldwork in the Somali regions of the Horn of Africa, I explained that as an Arab from neighboring Sudan, I felt “welcomed by Somalis who called me their cousin” (Massoud 2021). Though I had prior experience of Sudan and not of Somalia and Somaliland, I thought that it was important to disclose how my self-identification influenced research access at the outset of both books, since their findings are based in part on fieldwork and interviews that I conducted. Likewise, in her article about qualitative research,

⁴ The feminist and critical race judgments projects offer rewritings of judicial opinions from feminist and racial justice perspectives to show how courts shape law’s systemic inequalities (Hunter 2015; Capers, et. al. 2022).

Elizabeth Hoffmann writes that building a “personal connection” with interviewees as well as with readers can help to establish trust and credibility, such as “a divorced mom studying divorced moms . . . a female construction worker-turned-sociologist studying women construction workers . . . or a law professor studying law students” (Hoffmann 2007, 329, citing Arendell 1997, Paap 2006, and Granfield 1992).

Announcing her positionality at the start of her book *In the Moment of Greatest Calamity: Terrorism, Grief, and a Victim’s Quest for Justice*, legal anthropologist Susan Hirsch explains that she studied and participated in legal cases about the 1998 East African embassy bombings, which she had survived. Hirsch sets out to connect with readers by explaining that she writes,

as [both] an American survivor and the widow of an African victim. I also write from the perspective of a cultural anthropologist . . . The book describes my attempts to come to terms with a massive personal and public tragedy . . . Above all, I wrote this book to convey my perspective as a victim who turned to law for a response to terrorism and found it as flawed as it was indispensable.

(Hirsch 2008, xv)

The affective nature of Hirsch’s opening statements underscores the potential power of positionality. Situating personal experience in relation to empirical research may increase the writer’s authority on the topic and help readers to connect with the work at multiple levels: intellectually, professionally, and personally.

Challenging Structures of Oppression

Personal stories challenge oppression, such as when survivors of sexual assault share their stories with policymakers in order to improve laws designed to protect people from gender-based violence (Goodwin 2021; Kershner 2021; Randall 2010). These stories often recount violence that people have suffered because of their perceived race, gender, class, religion, disability, sexual orientation, or other identifications. For this reason, scholars of identity politics have seen such identifications as more than the “descriptive categories of identity applied to individuals”; they are also “elements of social structure [that] emerge as fundamental devices that foster inequality resulting in groups” (Collins 1997, 376).

Communicating our own identifications can challenge structures of inequality and the imperial legacies of academic disciplines. As a

graduate student doing fieldwork in the context of Sudan's dictatorship, I gathered hidden, sensitive data on the legal profession from "the dusty bottoms of locked file cabinets" because I was able to connect with open-minded government officials in whose offices those data were kept (Massoud 2013, 235). Socio-legal scholar Nadera Shalhoub-Kevorkian challenges power structures in a different way, by writing about how Israeli settler colonialism influenced not only the arguments in her book *Security Theology, Surveillance and the Politics of Fear*, but also her life as a Palestinian. She wrote the book's preface amid Israeli military bombardments in Gaza in 2014, and in it she reflects on the support that she received from Palestinian family and friends "in spite of all the dispossession around me" (Shalhoub-Kevorkian 2015, p. x). Acknowledging the Palestinian struggle was "the only way," Shalhoub-Kevorkian writes, "to challenge the political economy of war" (Ibid.). Her experience of colonization strengthens her argument about how the law facilitates the Israeli government's surveillance of Palestinians. As Swethaa Ballakrishnen and Sara Dezalay (2021, 5) contend in the introduction to *Invisible Institutionalisms*, "the *reflexivity* of each . . . allow[s] for the *dialogue of all*."

Opening Up Social Science

Some social scientists have called on scholars who use qualitative methods to adhere to standards of objectivity, impartiality, and neutrality (King, Keohane, and Verba 1994). These standards grew out of quantitative epistemologies, and they are reified in law. However, a growing number of feminist and critical race scholars have challenged these standards because of the difficulty of cordoning interpretation off from the influence of life experiences, identities, and commitments (Ballakrishnen and Dezalay 2021; Shaw et al. 2020; Gherardi and Turner 2002; Wasserfall 1993; see also the interview with Michael McCann in Halliday and Schmidt 2009). Some of these scholars contend that research relies on interpretation, which itself is shaped by the social, economic, and cultural status of the interpreter. Reflecting on her fieldwork in US military schools, Taylor Paige Winfield writes:

It is impossible [for an investigator] to fully remove any bias or projection, but the more investigators learn to pay attention to their inner emotions and thoughts, the better they will be able to separate them out from the participants . . . and avoid reproducing the "objectifying and imperialist gaze" associated with traditional Western qualitative methods.

(Winfield 2022, 11, citing Kincheloe et al. 2017)

Positionality opens up new forms of social science when scholars index their power relations, showing how they may interpret data via their experiences, privileges, or membership in minoritized groups. In that regard, positionality statements may serve as a bridge between two epistemological areas of law and society scholarship: social-science positivism and critical postmodernism (Cotterrell 2004; Burawoy 1998).⁵

Consider Kaaryn Gustafson, a US law professor who understood that she could not appear neutral during her research interviewing indigent Black mothers receiving welfare payments in California (Gustafson 2011, n. 8). Gustafson is a Black woman who uses a wheelchair, and while conducting fieldwork she was either pregnant or carrying her infant child with her (193). In the methodological appendix to her book *Cheating Welfare: Public Assistance and the Criminalization of Poverty*, Gustafson writes about how her “status ambiguity” prompted the Black American mothers whom she met to deem her nonthreatening. They volunteered personal information to her, sometimes thinking that she could not form a negative judgment of them because of how they viewed her (195). Gustafson sensitizes the reader to the experience of vulnerability. We see her not as an impersonal scholar conducting interviews or reviewing transcripts, but instead as an impassioned interlocutor trying to help readers to appreciate that the tradition of distant objectivity does not fully capture her experience.

Empowering Communities

Some academics write to influence theories or policies. Others write to connect with communities of support that help them to process their own or others’ experiences. Such self-awareness often remains unarticulated in mainstream law and society scholarship, which may leave many scholars who see their writing not simply as professional work, but also as a personal and political commitment, feeling out of place. For these scholars, writing about positionality helps them to gain inner strength while they signal their support to other marginalized scholars.

Revealing one’s own vulnerabilities can affect empirical work by bringing these concerns to the fore and legitimizing different

⁵ Philip Selznick, one of the field’s US pioneers, reflected in the years before his death on the tension, in law and society scholarship, between positivism on the one hand and what he labeled “a certain amount of postmodern fragmentation and indulgence and lack of coherence” on the other (Cotterrell 2004, 317).

perspectives. Empowerment and community building may begin with sharing experiences of harassment, racism, loneliness, misgendering, presumed incompetence, and “acting white,” the majority race of leading North American and European law and society scholars. Such self-revelation ensures that people who might feel similarly also do not feel alone. As a Black woman socio-legal scholar told me while I was researching positionality, “We write our way out of the trauma of our experiences ... not just to help others but partly to help ourselves.”⁶

Communicating Privileges

Positionality does not only involve disclosing how our marginalization may have influenced our work; equally important is revealing how our social, economic, or cultural privileges shape the questions that we ask and how we answer them. Our identities are part of the toolkit that we carry with us into theory generation and data-analysis (Reyes 2020). Just as those whom we study use their own “bag of tricks” to guide their interactions with the legal system, reflecting on how we influence and are influenced by our data means understanding the “cultural repertoires” that guide our actions as researchers (Bell 2016, 316–17). These repertoires take shape through the privileges that our perceived identities and insider or outsider status afford to us. Reflecting on his own privileges after a half-century of work, legal scholar Marc Galanter wrote that he started out as “a mid-twentieth-century, middle-class, white American” when he first traveled from the US to India in the 1950s to study its legal system. There, he got what he called his “second legal education” as he turned his academic gaze back onto the US from India to see US law as “wild and unexpected” (Galanter 2021, ix–x).

A researcher’s status as an outsider, particularly while conducting fieldwork, may bestow class, gender, or racial privilege. When I did research in South Sudan, my position as an outsider from a US university facilitated meetings with government ministers, judges, diplomats, and United Nations officials, which allowed me to gather data across political and cultural lines (Massoud 2015). Lynette Chua writes, in *The Politics of Love in Myanmar*, that she likewise “embraced” her privilege as a foreigner there, which allowed her to ask “what might have been obvious or stupid questions to ... insiders” while researching

⁶ Though wishing to remain anonymous, this person gave me consent to publish this quote.

her book on Burmese lesbian rights activism (Chua 2019, 146). Chua says that she was prone to asking “stupid questions” because she was not Burmese and did not identify as a member of the lesbian, gay, bisexual, and trans (LGBT) community. Her outsider status made people comfortable opening up to her and helped her to see events and understand discourses at multiple registers, including as both an empathetic observer and a scholarly interlocutor.

It is difficult to consider, reveal, and describe how class, gender, racial, or other privileges influence our research, and it takes extra skill to explain the uncertainty, pain, and messiness of research processes (Whittingdale 2021; Smith 2021; Halliday and Schmidt 2009). When a researcher candidly discusses their own positionality, their vulnerability can remove the boundaries between the researcher and their research subjects and readers. Of course, it is not likely that positionality statements alone will dismantle the barriers that sustain inequality inside and outside of academia. However, articulating our positionality in print is a step towards explicitly recognizing how these restrictions built the field and whether our research benefits from such barriers or breaks them down.

WHO IS OUT OF PLACE?

The scholars who wrote the chapters that follow have done the hard work of expressing positionality. They draw on their experiences of marginalization, making their vulnerability into a strength. They have placed their trust in Chua and me as the volume editors and in you as the reader. Given the benefits that accrue to the field when scholars disclose their self-identifications, marginalization, and privileges, it would seem to make sense for scholars to do so regularly in their published work. However, this is not yet the case. In fact, as this section will show, at least on the pages of the field’s two oldest academic journals, only a small minority of socio-legal scholars actually risk revealing themselves in this manner. Kathleen Blee’s assertion that positionality “is often erased from written accounts” of research findings is as empirically true in the 2020s – at least in the field of law and society, one that connects law and social science to social justice – as it was in the 1990s when she wrote it (Blee 1998, 383, cited in Hoffmann 2007, 326). Even more troubling is that the scholars who do write about positionality are overwhelmingly women and ethnic minorities – in other words, those who are also the most likely to be marginalized in the field.

To find direct reference to positionality, I analyzed the first fifty-six volumes of the *Law & Society Review (LSR)* from 1966 through 2022, and the first forty-nine volumes of the *Journal of Law and Society (JLS)* from 1974 through 2022. Together, these are two of the oldest English-language socio-legal studies journals in the world. The *LSR* is the oldest; it is the flagship journal of the LSA. The *JLS* is the longest-established law and society journal in the United Kingdom (UK); it has connections with the UK-based Socio-Legal Studies Association. The results of my study of these two journals provide a baseline for assessing positionality in other law and society journals as well as in books, which necessarily have more space. What I found testifies to the fact that nearly all authors writing for these journals over half a century – to echo the searing words of Edward Said – “were or tried to be cut from the same cloth” (Said 1999, 274).⁷

I searched across all digitized articles from both journals for prominent words used to identify positionality (Table 1.1, see also Wasserfall 1993; Roberts and Sanders 2005; Huisman 2008).⁸ In total, I found 28 articles, by 36 authors, that discuss researcher positionality.⁹ The authors’ racial and gender self-identifications are striking: 22 of the 36 authors identify as white women, nine as women of color, three as men of color, and two as white men. That is to say, women and people of color authored all but two of the 28 articles discussing positionality. Many of them are also minoritized as working class, disabled,

⁷ As asserted in the *LSR* in 2007, “Assessments . . . of grounded theory and theoretical reflexivity . . . typically receive some coverage in the better research methods textbooks . . . but are seldom, if ever, discussed in . . . the field of sociolegal studies” (Treviño 2007, 493).

⁸ My initial results, published in Massoud (2022), covered through the third issue of 2021 of both journals and yielded 23 articles that discussed positionality or my related search terms. Since that time, I conducted a new search of the articles published from the fourth issue of 2021 through the fourth issue of 2022. This search uncovered five additional articles – three in the *JLS* and two in the *LSR* – that discuss positionality or my related search terms (Foster and Hirst 2022; Gonzalez, Simon, and Rogers 2022; Leckey 2022; Bunting, Tasker, and Lockhart 2021; Hunter, Roach Anleu, and Mack 2021).

⁹ Three papers have three authors identifying their positionalities, three papers have two authors, and one author wrote two of the papers. I excluded various genres – such as presidential addresses and responses; special issues on methods; articles commemorating a scholar’s birthday, retirement, or death; and essays in which senior scholars look back on their careers – because these works were meant to provide personal reflections. I also excluded statements describing financial or other conflicts of interest.

TABLE 1.1 Search terms for positionality statements from two peer-reviewed law and society journals, 1966–2022

Round	Search terms
1	positionality reflexive/reflexivity I identify as my position/identity
2	my class/disability/ethnic/ethnicity/gender/race/racial/sexual/ status as as a(n) African/Arab/Asian/Black/Latino/Latina/Latinx/ethnic/ Muslim/white/non-white/disabled/female/woman/man/male/lesbian/ gay/bisexual/trans/queer/heterosexual/researcher of/person of nonbinary gender identity I write as draw(s) on my insider status/as an insider

Source: Massoud 2022.

immigrants, queer persons, non-native English speakers, or first-generation university graduates.

While I conducted iterative searches and developed a systematically generated sample, the dataset is limited by the search terms and the journals. However, it is likely true that most of the scholars who have published in the *JLS* and the *LSR*, especially in the early decades of both journals, were or are white men, so the proportion of women and minorities who talk about positionality is much higher than the proportion of white men who do so. This effect is compounded by the fact that our field has historically been dominated by white men.

While the concept of positionality is younger than both journals, the term is at least a generation old, having gained prominence in the early 1990s in feminist and critical race scholarship (England 1994; Awkward 1995). However, about a third of the twenty-eight articles that refer to positionality or the related search terms were published since 2020. While this suggests a rising trend, especially in *LSR* where most of these articles appeared, it is also a trend that remains profoundly limited.

In nearly all of these articles, positionality statements focused on how the researcher's background and identity may have influenced

access to people and places, including by prompting suspicion or trust. For example, in the oldest article, published in 1978, the author mentioned her positionality as a woman in order to dismiss the effects of her gender on her research (Crowe 1978, 226). Many of the more recent articles discussed power relations between researchers and subjects, including how the privilege of holding a university-based appointment influenced the methods (Cownie 2015, Massoud 2015, Powell and Phelps 2021). One of the authors discussed how his identity as a heterosexual male facilitated access to police officers working in a “heteronormative environment” (Sierra-Arévalo 2021, 80). Other authors focused on their marginalization, including one survivor of trauma and another who reported having an “outsider positionality” in the field of law and society because of her professional writing on critical race theory (Houh 2006, 482). One white male author discussed positionality in the context of his race helping him to access white police officers but blocking his access to their Black colleagues. Across all published articles in the *JLS* and the *LSR*, only two have sub-headings on positionality: one of these is titled “Methods and Positionality” (Statz 2021, 16) and the other is “Positionalities” (Gonzalez, Simon, and Rogers 2022, 485). The paucity of these direct references to positionality suggests that the overwhelming majority of scholars writing in our field’s leading journals, including minoritized scholars, do not discuss their positionality, an imbalance that this book tries to redress.¹⁰

Some of my own empirically based articles do not discuss positionality, favoring instead an objective, neutral, or dispassionate scholarly voice (Massoud 2020; 2014; 2011). Reflecting with the benefit of

¹⁰ With human subjects research approval from the Institutional Review Board of the University of California, Santa Cruz, I asked the first authors of these 28 articles why they discussed positionality. They gave me varying reasons, including, in their words, “explaining . . . why I had access to legally vulnerable people,” laying bare the “contingent nature of ethnography,” equipping readers “with context that enriches their . . . interpretation of what the researcher . . . heard or did not,” and “exposing . . . a perceived disrespect of intersectional scholarship.” One author said that it would have felt “wildly irresponsible . . . not to grapple with my own identity” as a first-generation university graduate from a rural area working with Indigenous communities. Another author said that “being cognizant of my own privilege was extremely important because of the inherited power dynamics and expectations that exist” in qualitative research. Two authors described to me how their peer reviewers had discouraged exploration of positionality, while another said that the journal editors asked for a fuller methods section that addressed positionality.

hindsight, perhaps I had wanted to foreground the stories of the people whom I had met and the theories that my work had generated. Perhaps I had also not wanted to risk exposing myself to criticism, either for being excessively interested in myself or for “going native” – a disparagement that I received from some senior scholars when starting my doctoral dissertation on human rights activists in Sudan, the country of my birth. As a young scholar hoping to enter and influence a large scholarly field, I adhered to the writing conventions that I had seen in the leading journals.¹¹ However, the empirical writing of a new generation of more diverse scholars is eroding these traditions.

In some cases, the absence of positionality statements may reflect non-qualitative methods since no socio-legal journal exclusively publishes qualitative work. However, there is nothing to suggest that only scholars who use qualitative methods should consider positionality. Class, gender, and racial privilege or marginalization may influence research design, textual interpretation, and quantitative data analysis just as they may influence qualitative research (Soedirgo and Glas 2021). Even so, women and people of color – who presumably have not written the majority of articles published in our field’s journals – are vastly over-represented as authors of articles that discuss positionality in both the *JLS* and the *LSR*.

THE BURDENS OF POSITIONALITY

The intentional choice to discuss positionality may elevate a researcher’s authority, but it requires emotional energy, hard work, and skill to overcome significant challenges. Building on the empirical data presented above – which shows that very few articles in two leading journals make reference to positionality, and that those that do are authored almost entirely by women and people of color – this section explains some of the burdens associated with positionality. To paraphrase Emily M. S. Houh’s (2006) blistering critique of an introductory law and society reader that failed to incorporate a feminist or critical race perspective, if the field’s leading journals are meant to create a

¹¹ The exception is my 2016 essay, “Ideals and Practices in the Rule of Law,” featured in a symposium on my book, *Law’s Fragile State*. In this essay, I discuss how a lack of diversity – among the authors whom I was assigned to read in graduate school and the places that those authors studied – formed part of my motivation for studying Sudan (Massoud 2016, 491).

canon of law and society scholarship, what messages are these journals conveying through the glaring absence of explicit reflection on positionality? And, as Houh concludes, more importantly, do we care? (491). I care, for one, because the burdens placed on those who disclose positionality are disproportionately carried by the field's minorities.

Creating Anxiety and Reducing Stamina

Even at the best of times it is challenging to research and write clearly. This challenge is even greater for marginalized persons who are asked to consider and communicate their own positionality. Conducting fieldwork, for instance, necessitates appreciable emotional strength: arranging interviews, becoming a "sympathetic ear," experiencing survivor's guilt, and dealing with respondents who harass or exert other forms of power over gendered, racialized, or minoritized researchers (Hoffmann 2007, 323). Confronting positionality may yet again painfully remind such scholars of microaggressions encountered in their research or of discrimination experienced in their academic lives. At a workshop that I attended on the topic of "surviving" the academy as socio-legal scholars of color, one young woman spoke of the emotional labor that it took for her "just to work safely" because she needed to focus on trying to "avoid getting cornered or touched by" her department head. An Indigenous professor from North America shared powerfully about how the act of communicating in English – though unremarkable to her colleagues – not only feels to her like a "performance of whiteness" but also functions as a painful reminder of the ongoing destruction of her language and the genocide of her people. A Black professor at an Ivy League university spoke about how students waiting outside a locked classroom thought that she was a member of the janitorial staff whose job it was to unlock or clean the classroom for them.¹² These incidents, while not occurring during fieldwork, stay with people. When they are called upon to communicate positionality, marginalized persons open up their distressing memories to others who might take issue with, critique, or reproduce their trauma.

Reflecting on positionality can generate self-doubt and anxieties, especially for minoritized scholars who conduct empirical research. Kaaryn Gustafson, the law professor who interviewed Black American women receiving welfare payments, felt so much discomfort during her

¹² These persons gave me their consent to publish these quotes and experiences here.

research that she admitted her “hesitation to pursue similar research in the future” (Gustafson 2011, 197). Maryam S. Khan experienced anxiety as a socio-legal scholar “systematically called upon to redeem Pakistan’s theocratic regime to outside audiences,” while also being a woman “actively opposed to” the regime’s anti-feminist policies (Khan 2021, 147). Susan Hirsch, the legal anthropologist who survived a terrorist attack, wrote that though her discipline’s foundational aim is to pursue knowledge “across differences,” perceiving the world from both her own and others’ perspectives “felt like a heavy burden” because she “lacked the emotional stamina and training” to interview trauma victims, though she herself was one (Hirsch 2008, xvii). Writing this Introduction to *Out of Place* became a source of personal challenge for me because thoughtfully considering my own positionality is not easy. I am not accustomed to doing it. I was not trained to do it. I was trained *not* to do it. Even in a multicultural society, it feels grueling to share experiences of difference or feelings of isolation.

Making Identity More Important than Theory

Asking scholars to write positionality statements risks reifying the “efficient [yet] provisional identities” that we use in the different spaces that we inhabit in our lives (Said 1999, 84). Even when we report the range and complexity of our positionalities, such a statement can feel incomplete – especially when we have to reduce our positionalities into a sentence or two in an article’s methods section. It also risks retraining our scholarly lenses onto certain aspects of an author’s multifaceted identifications and experiences rather than focusing on their theoretical and empirical contributions.

To explain how audiences may make identity more important than theory, I return to my own professional experience. My books (Massoud 2021, 2013) were each based on deep historical and empirical research, but when I have given talks on these books, my positionality rather than my scholarship has been the focus of some of my interlocutors. I have fielded questions about being from Sudan in relation to my book on Sudan, and questions about not being from Somalia or Somaliland in relation to my book on Somalia and Somaliland. A colleague recently told me that a white male scholar whom she knows had not been asked about his background when he discussed his fieldwork in East Asia, while she had noticed that I was quite often asked about my positionality when discussing my empirical work. More to the point, the questions that he received focused on his scholarship, while I was

asked questions about positionality, which was not the focus of my scholarship. In my case but not in his, people's understanding of the data and theoretical intervention was mediated by their desire to understand positionality. More generally, every question that a scholar is asked about their background is a question not asked about their intellectual contribution.

Edward Said discussed this problem as a process of "challenge, recognition, and exposure" that came from people constantly asking him, "What are you?" He eventually learned to answer that he was, simply, "an American" (Said 1999, 84). He did this to avoid opening up himself and others "to the deeply disorganized state of my . . . history and origins" (Said 1999, 5–6). Shortly before his death, he reflected that his life as a Palestinian-American intellectual raised between Jerusalem, Cairo, and New York "meant not only never being quite right [when confronted by the gaze of other scholars], but also never feeling at ease, always expecting to be interrupted or corrected, to have my privacy invaded and my unsure person set upon. [I was] permanently out of place" (Said 1999, 5–6). Some people might be happy to grant that statements of positionality should be irrelevant to scholarly contributions, but such a posture also maintains an academic status quo in which mainstream scholars are silently presumed to be able bodied, heterosexual, upper class, white, and cisgender male.

Challenging Academic Neutrality

Communicating positionality is difficult for marginalized scholars, especially because academic culture is built upon skepticism and critique. Self-reflection calls into doubt the expectations of modern social science. That is, communicating positionality, depending on its specificity, can jeopardize anonymity and cut against the double-blind peer review process that forms the gold standard of anonymity in social science. A massive amount of research shows that implicit or unconscious bias pervades all fields, from corporate hiring to teaching, health-care delivery, and police behavior, and it is reasonable to presume that peer review in the field of law and society is not immune to undervaluing the contributions of minoritized scholars (Jolls and Sunstein 2006; Kang et al. 2012 Fitzgerald and Hurst 2017; Staats 2016; Brownstein and Saul 2016). Researchers have suggested that peer reviewers in some historically male-dominated fields hold women to higher standards than men, which leads to longer peer review processes and, in the long term, lower pay and promotion rates for women (Hengel 2017).

Attention to insider and outsider status would help some scholars to clarify their research goals to peer reviewers and build knowledge of the challenges associated with scholars' commitments to the people whom they study and the academic spaces where they try to add knowledge (Young 2020).

Disclosing positionality also cuts against efforts in qualitative research to create repositories that store scholars' raw interview data and field notes. While the goal of these repositories is to promote replicability, scholars' unique positionalities may, in part, shape their interpretations.¹³ For many scholars, however, positionality is not merely a part of social science methods; it is the central space from which they produce knowledge. Writing with attention to one's position emphasizes both "the discovery of an identity" and a "sense of participation in a movement [that] renders historical what has . . . been hidden from history" (Scott 1991, 775–6). Recording positionality alongside interview data may open up social science to these new possibilities.

Reproducing Law's Dominance

The act of positioning oneself may be rebellious, but some scholars and activists caution that it risks reinforcing the power that it is meant to challenge. The feminist historian Joan Scott took up this problem, arguing that socially marginalized people risk reproducing dominance when they make their experiences visible. Narrating one's experiences may "essentialize identity and reify the subject" (Scott 1991, 797). It also precludes "critical examination of the workings of the ideological system itself, its categories of representation . . . as fixed immutable identities, [and] its premises about what these categories mean and how they operate" (778). Categorizing ourselves and others may create insiders and outsiders. While this can legitimize and elevate personal stories, it can also channel power. The result may be a public performance of identity that puts insider solidarity before healthy debate, or that excludes people whose identities, backgrounds, and experiences do not fit neatly into a prescribed category. To address these issues, the political organizer Maurice Mitchell invites us to refocus attention on the ways that concentrations of wealth, institutional power, and cultural privilege create identity and subjectivity (Mitchell 2022).

¹³ Qualitative Data Repository, <https://qdr.syr.edu>. For a critique, see Ellett and Massoud 2016.

People express and understand positionality through particular historical, legal, social, and political contexts. To some scholars, the project of essentializing one's identity and experience is dangerously tied to a hegemonic and American way of categorizing people in the world. Identity in the US is often connected to specific legal ideologies and institutions of ascriptive hierarchy coming out of the country's history of racial classification (Smith 1993). This view of positionality that is tied to US legal categories can miss the ways that some formations of marginalization can coexist and change, such as class, disability, ethnicity, gender, immigration and noncitizenship, religion, and rurality. We may not ever be fully coherent intellectually, politically, psychologically, or emotionally at any one point in our lives, or across the sweep of our lives, which makes positionality unstable.

More consequentially, we must consider whether the invitation to write a statement of positionality – if accepted mostly by white women and people of color – risks reifying gendered and racialized hierarchies. That is, are women and scholars of color complicit with existing power structures by performing difference while white men remain unmarked? Many of us have been taught to disregard our actual or perceived differences, or to hide them to the extent that we are able from those whom we determine to be scholars lacking the experience of extreme social marginalization. The invitation to communicate positionality must not become a requirement, which risks reifying difference. Scholars must be free to withhold their stories as well as tell them, and they must not be forced to discuss or apologize for their positionality.

Without sharing ourselves, however, we risk becoming disembodied thinkers limited by the boundaries set around our field by an earlier generation of law and society scholars. We risk disconnecting ourselves from our own lived experiences, marginalization, privileges, and identifications, even as we appropriate the experiences of our research subjects and then distance ourselves from them in the name of objectivity and neutrality. Such disconnection is a sinister parallel to the ways in which law generalizes, exceptionalizes, and separates unusual behavior and persons from everyday experience, obstructing from view our own contexts and communities (McMillan 2020). In other words, we risk reinscribing the forms of oppression that many law and society scholars have set out to critique.

OVERVIEW OF THE BOOK

I have underscored the importance of balancing positionality's costs and benefits. The remainder of this book proceeds with a sense of hopefulness about the place of positionality in the field's methodological development. In the chapters that follow, eight socio-legal scholars consider and connect with their own positionalities. Given the personal nature of their experiences, they each write in their own styles. What unites their chapters is that they each explain how they found themselves to be out of place, how they confronted, understood, and adopted that subject position, and how they shaped their understanding of the law and their contributions to the field by virtue of being out of place. They explain positionality across the lifespan of the research process (Abrego) and its constituent steps, including fieldwork within a specific research site (Mnisi Weeks and Boittin), fieldwork across multiple projects (Chua), long-term fieldwork in courtrooms (Baxi), building theory (Ballakrishnen and Eslava), and multi-sited fieldwork across a multi-decade career (von Benda-Beckmann).

Their work provides three broad lessons about an out of place positionality. First, they never took their identities for granted at any point in the research process. This lesson is important for everyone precisely because, as Ballakrishnen explains in Chapter 7, some of us do not have the luxury of not thinking about our identities. Scholars who write about and discuss positionality, especially those unaccustomed to doing it, must thus do so with care and consideration.

Second, they did not shy away from hybridity and confusion whenever they considered their positionality. Identities and subject positions are conditional. The scholars in this book who used qualitative methods found themselves inside and outside of place in a multiplicity of ways, often simultaneously, and at different points in the research process, all of which is hard to compartmentalize. This can lead to ambiguity and discomfort. However, as their writing shows, being out of place, and accepting that positionality with gratitude, can also create a growing sense of confidence and authority. While being vulnerable is not easy, it is a significant part of the research and writing process.

Third, the authors in this book embraced fluidity, multiplicity, and ambiguity not just in their personal and professional lives but also in the law. Reflecting on identities and experiences created space for these authors to understand how the law constrains or opens identities. Law and society research has long shown that the law does not exist simply

in courts or their official records. It exists in people's ordinary consciousness and behavior (Ewick and Silbey 1998). The power of positionality comes when out of place scholars welcome themselves into spaces where they initially may not have felt welcomed.

The scholars in this book are early career, mid-career, and senior scholars in the field of law and society. We hold different advanced degrees in anthropology, law, political science, socio-legal studies, and sociology. Collectively, we resist the urge to see "outsiderhood [as] a characteristic way of inventing . . . Americanness" (Moore 1987, ix). We come from and work in at least ten countries on four continents, and we do fieldwork in other places too. Most of us are also immigrants, living and working in countries different from those of our births. Four of us self-identify as women of color, two as white women, two as men of color, and one as a gender nonbinary person of color. Some of us come from the working class or rural areas. We all hold faculty appointments at major universities. The privileges of our faculty appointments have given us the time and resources to do what we love – research, teach, and write – and to reflect upon positionality, which contributed to making this book a reality.

Chapter 2, Leisy Abrego's "Research as Accompaniment," provides a critical reflection on how she conceptualizes, conducts, analyzes, writes up, and presents her research projects. As a "mestiza from a working-class background," Abrego does not have the luxury of deciding to distance from or "intellectualize" oppression. However, she sees colleagues who come from majority groups do this with relative ease. Abrego is a sociologist who studies how legal violence is perpetrated against migrants and its effects on their legal consciousness. She is also an advocate for refugee rights. In her chapter, she explains her identity as both an immigrant in the US from Central America and a scholar of immigrant rights and experiences. She feels called to commit herself to the rigorous standards required for social science and moreover to the rigorous standards required for meaningful empathy with her study participants and readers. Although much of her work is qualitative, she has chosen, for instance, not to interview migrants languishing in US border detention facilities but instead to draw attention to their plight by obtaining and analyzing government documents that provide evidence of US imperialism. Abrego writes that she welcomes "the grainy truths that arise in . . . embodied research and people-centered analysis." This perspective also influences how she studies immigration law. Being an out-of-place scholar empowers Abrego "to eschew any

false premise of the law's objectivity and to view multiple angles of a law, its creation, and implementation, while also understanding how it shapes people's public and more intimate behaviors." The result is pathbreaking and interdisciplinary scholarship that is "simultaneously humanizing and rigorous," and that fosters community through an "accompaniment" with immigrants rather than a study of immigrants.

Chapters 3 and 4 bring us into the experience of being out of place in the specific context of fieldwork. Chapter 3, "Pretty and Young' in Places Where People Get Killed in Broad Daylight," by Sindiso Mnisi Weeks, turns on its head Abrego's notion of closeness and proximity. Specifically, Mnisi Weeks reflects on the tension she felt when other scholars identified her too closely with her study participants, who like her are Black South Africans. Their shared background seemed to taint or decrease her scholarly credibility, she writes. While this perspective of being a young African woman studying other young African women gives her some insider status, it also shapes how other academics see her, how study participants see her, and how she has come to see herself. Mnisi Weeks is a scholar of gender, Indigenous rights, and constitutionalism in South Africa, as well as race in the United States. However, her marginalized identity in the law sapped her authority in the centers of patriarchal power where the law resides – both in the communities she has studied and in the academy whose "default representative is a white, middle-aged, European and/or American male locked in a single discipline." Adding to this for African scholars is the fact that "the formal law's understanding of the customary law of . . . African people has been based on articulations of such by white, male anthropologists of European or American nationality or ancestry." Mnisi Weeks's intersectional identities and positionality, however, are precisely what allowed her to study and show how social and legal injustice are never far apart, as they weave their way into and out of the rural courts and traditional justice forums that she studied in KwaZulu-Natal.

Chapter 4, Margaret L. Boittin's "Out of Place when Studying China's Sex Industry," explains how being out of place can paradoxically put one back in place – or exactly where one needs to be to achieve their research goals and values. Boittin is a lawyer and US-trained political scientist who works in a Canadian law faculty. She explains how being out of place is relative. She may not be out of place in North America as "a white woman with blond hair and blue eyes," but she was obviously out of place when she was studying sex workers in China.

While being out of place in China was “draining to the core,” she writes that embracing this outsider status also became the source of her strength during fieldwork and later in the academy. Like Abrego’s “accompaniment,” Boittin found empathy with her study participants during her fieldwork, not only with the sex workers who navigated assault and harassment but also with the police officers and public health agents who found themselves “in positions of surprising precarity and weakness as they navigate their professional responsibilities to implement prostitution policies.” But being a woman studying sex work also shoved her into a “methodological and substantive periphery” of law, political science, and China studies. This made not just her research but also herself face higher levels of scrutiny. Boittin’s scholarship, however, has successfully traversed the disciplinary boundaries that she had been taught to avoid crossing. Boittin concludes with a reminder about the exhaustion of being out of place but also with gratitude to the many respondents – sex workers, their clients, and police officers – who felt comfortable with her precisely because she was an outsider.

Chapter 5 is Lynette J. Chua’s “Feeling at Home Outside: Embracing Out-of-Placeness in the Study of Law and Resistance.” Chua is a scholar of law and social movements originally from Malaysia, educated in Singapore and the US, and working in Singapore. She says that across these diverse contexts she has “always been drawn to being, and [has] always been out of place.” Chua reflects on how her out of place positionality enabled her to write two books. For both books, *Mobilizing Gay Singapore* and *The Politics of Love in Myanmar*, Chua embraced her own status ambiguity by holding in balance both an insider status (as an Asian person who had lived and worked in Southeast Asia) and an outsider status (not being Singaporean or Burmese, nor part of the gay rights movement in either place). It was her own out of place positionality that she says first drew her to “out-of-place movements,” which allowed her to see “the strength of human agency to forge resistance against [legal] odds.” While being out of place in so many ways “can become wearisome,” it is also what enabled her to see the importance of emotions and relationships for human rights activists, a central theme of Chua’s work on Myanmar.

Chapter 6, “Out of Place in an Indian Court: Notes on Researching Rape in a District Court in Gujarat (1996–1998),” by Pratiksha Baxi, is a reflection on the “unsafe” and “painstaking work” of observing rape trials. Baxi, a leading sociologist of gender, learned Indian law and

medical jurisprudence on her own during her fieldwork, through conversations with lawyers, observing trials, and reading books. However, her outsider status as a nonlawyer and as a woman led various people in the courtrooms where she conducted fieldwork to “scold” her for studying rape trials. She witnessed how sexism gave the law its power. The “judicial hierarchy was foundationally sexist,” she writes, because “male desire was inserted in the place of law” in legal arguments and judgments. The out of place feeling from fieldwork followed her long afterward, like a trauma. Though her fieldwork took place more than two decades earlier, the “anger and grief” never went away. They were instead “deferred to writing.” She writes that after her fieldwork she “was not in my own skin. I was out of place in the university and home felt unfamiliar . . . Law had interpolated the intimate.” However, she concludes, that “If law’s attachment to cruelty continues to mark the self, then the ability to love and be in solidarity is the necessary condition for living with the field.”

Chapters 7 and 8 turn to the ways that an out of place positionality builds socio-legal and cultural theory. Chapter 7 is Swethaa S. Ballakrishnen’s “At Odds with Everything Around Me: Vulnerability Politics and Its (Out of) Place in the Socio-Legal Academy.” Ballakrishnen, who uses nonbinary pronouns, is a sociologist of law and globalization who studies, among other things, inequality and identity in the legal profession. They identify as “a global south queer [with] ‘local north’ advantages.” Their chapter considers how identity and vulnerability – and not merely ideas – build critical legal theory. Specifically, Ballakrishnen argues that complicated legal and social hegemonies create outsider status, but the process of making hidden identities visible creates closeness, camaraderie, and change in our scholarship. Data, like identity, is not neutral, though both are often valorized in that way. And the law, Ballakrishnen writes, is also very much like identity in that both are “predicated on trust, exchange, and power, and each, when moderated with self-reflexive vulnerability, hold within them the capacity to belong, break-open, and build anew.”

Chapter 8, Luis Eslava’s “Trigueño International Law: On (Most of the World) Being (Always, Somehow) Out of Place,” uses the framework of this book to build an “out of place” theory of international law. Eslava, a scholar of international law and development, draws on postcolonial legal theory, history, and ethnographic research in Latin America and elsewhere to show how the field of international law produces and is produced by “out of placeness.” The result is an

international legal order that has, for five hundred years, “continually wrecked and disciplined” people and places, especially in the Global South. Eslava sets up his “out of place” theory of international law by analyzing three moments in which he has come to understand how international law wreaks so much havoc on global culture. First, he uses the idea of a *trigueño* identity (“part-Indigenous, part-African, and part-Spanish”) to explore, autoethnographically, the fluidity of life in the South. Second, he explains how international law cannot adequately account for the disorder that it produces in the Global South and the Global North. Finally, he points scholars towards seeing that being out of place is fundamentally about dislocation, which is both a global reality and a sensible ethical position for contemporary interdisciplinary scholarship.

Chapter 9, “Becoming a Familiar Outsider: Multi-sited and Multi-temporal Research in Plural Legal Contexts,” concludes the book. In it, the legal scholar Keebet von Benda-Beckmann reflects on forty-five years of ethnographic fieldwork on legal pluralism in Indonesia and the Netherlands. In her fieldwork, and across her career, von Benda-Beckmann writes, she would begin as a “total stranger” and then slowly turn into a “familiar outsider.” She felt out of place as a lawyer in social science and as the descendant of a Dutch colonial sugar plantation administrator. She often conducted fieldwork with her husband, which meant that “We came as a family and had to divide our time between research and the children.” Von Benda-Beckmann, who died before this book’s publication, reminds us all that across a long and successful career, simply “being there” is ultimately what shapes our relationships and our ability to find “remarkable continuity” in the law across times and places.

Good, interdisciplinary research and fieldwork are not easy. Writing for an interdisciplinary audience is even more challenging. I learned from the contributions in this volume about the importance of not ignoring the place of the self during the research and writing process. Paying attention to our own lived experiences, marginalization, and privileges may help us to understand our own outsider status to our research subjects, and the ways that we also render our research subjects into outsiders. When we appreciate the power of positionality, we retrain our lens onto how law acts rather than what law says. We can see more clearly the imperfect and sometimes dangerous processes by which any person, powerful or weak, claims authority. It is important, then, for each of us to ask what hard places our experiences and our

research have taken us to, and how those hard places have shaped the meanings and work of the law.

CONCLUSION

Drawing on empirical research and professional experiences in the field of law and society, including my own, this Introduction has described the benefits and burdens associated with communicating positionality, particularly an out of place positionality. While the benefits – establishing credibility, promoting diversity, and empowering marginalized scholars – accrue to the global law and society community, the burdens – increasing anxiety, shifting attention away from theoretical contributions, and reproducing dominance – are disproportionately borne by a small minority of scholars. Correspondingly, the scholars for whom articulating positionality may have little to no cost are also those who do not do it.

Law and society scholars would do well to adopt what I call a “position sensibility” by recording privileges and vulnerabilities throughout their research and writing processes, as the authors do in the chapters that follow. A sustained inquiry into positionality in law and society reminds scholars that humans, not abstract rules, are the heart of a legal process, and that balancing rules and personhood improves scholarship as it does adjudication (Noonan 2002). Regularly considering positionality also helps to frame theoretical contributions, which renders positionality statements a more structured and integrated part of our methods. For some scholars, this could mean explaining how their marginalization overlapped with that of their research subjects, which helped or hindered their study in distinctive ways. For others, this could mean exploring how privilege – for instance, being a well-paid professor employed by an elite university – provided them with the space, time, and resources to perform a certain kind of research.

Positionality can be a primary motivator of some scholarship, so it is important for those in a majority to consider it with care and to avoid co-optation. Transgender persons and those who identify as gender-fluid or gender nonbinary often advocate for the regular sharing of personal pronouns (such as they, she, and he) even when a cisgender person’s pronouns may seem obvious. Likewise, disclosing positionality is not only a part of the conversation; for many people, it “is a conversation” in itself (Ballakrishnen and Dezalay 2021, 22).

Understanding identity and group experience is more crucial now than ever when studying the systemic pressures facing our societies. I write this Introduction to *Out of Place* during a time of roiling social change: Black Lives Matter, #MeToo, and renewed struggles against settler colonialism in North America, populism in Europe, and human rights abuses across all continents. As these social movements have shown, a counter-hegemonic productivity comes from exposing people to worlds other than their own. Such contemporary struggles have also created enemies in high places. In the US, for example, a remarkable effort has begun to stop the teaching of critical race theory, a field that intersects with law and society.¹⁴ The adversarial legal framework and its reverence for an impartial or “blind” justice may be hostile to the expressions of positionality at the heart of contemporary social movements. However, the long arc of the law – as much law and society scholarship has shown – can and does bend towards justice.

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¹⁴ In 2021, for instance, the Kansas Board of Regents asked state universities for a list of courses that include critical race theory, and other US states followed suit (Shorman and Bernard 2021).

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