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INTRODUCTION

Special Issue: Breaching the Boundaries of Law and Anthropology: New Pathways for Legal Research

Legal Scholars Engaging with Social Anthropology: Hardships and Gains

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Abstract

This special issue of the German Law Journal showcases through concrete examples the conceptual and methodological toolbox that social anthropology has to offer and the added value of applying an anthropologically informed approach to legal thinking, argumentation, and practice. The contributions address a wide variety of highly topical, controversial social issues that are at the heart of the human condition, including gender recognition for non-binary people, family disputes brought before international courts, non-majoritarian language use in administrative settings, forced migration, and the impact of climate change and infrastructural development on local communities worldwide. This introduction outlines the research program into which the contributions gathered here fit; the choice of topics; and finally, the challenges the authors face in the process of integrating their intellectual encounter with anthropology into their reflections on law. The article concludes that taking recourse to anthropology can help jurists trained in state law to develop a more refined understanding of today's societal complexity and challenges and, ultimately, to reach more nuanced, sensitive, and just decisions.

Keywords: Interdisciplinarity; law and anthropology; applied anthropology; legal practice; reflexive turn; empirical legal studies; ethnographic methods; non-state normativities

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A. Introduction

The aim of this special issue of the German Law Journal is to invite a broad legal audience to contemplate the conceptual and methodological toolbox that social anthropology has to offer and the added value of applying an anthropologically informed approach to legal thinking, argumentation, and practice, especially when it comes to some of the most pressing legal questions and issues that we are facing today. One way to convince readers of the power of this approach is through concrete examples. With this in mind, we take the opportunity of this special issue to showcase the work of several early-career researchers, all of whom are members or associates of the Law & Anthropology Department at the Max Planck Institute for Social Anthropology in Halle, Germany.[1] They address a wide diversity of highly topical, controversial social issues that are at the heart of the human condition, including gender recognition for non-binary people, family disputes brought before international courts, non-majoritarian language use in administrative settings, forced migration, and the impact of climate change and infrastructural development on local communities worldwide. The authors share a common commitment to interdisciplinarity, combining two disciplines which at first sight have little in common: Law and anthropology. It is our hope that their contributions will arouse the curiosity of the reader and demonstrate persuasively that law and anthropology have much to gain from engaging in a mutual dialogue and, hopefully, joining forces.

For the purposes of this special issue, the authors were first invited to reflect on why and how, among the various possibilities open to them, they have chosen to draw more systematically on anthropological scholarship and on how they proceed to do so. Second, they were asked to discuss how and to what extent, within the framework of their own research projects, their efforts to integrate another disciplinary approach and body of knowledge into their legal reasoning provides the conditions for generating new approaches to law, including, to the extent possible, sustainable solutions in law.

In this introduction we will deal successively, albeit briefly, with the research program into which the various contributions gathered here fit (Part B); the choice of topics (Part C); and finally, the very *raison d'être* of this thematic issue: the vast challenges the authors face in the process of integrating their intellectual encounter with anthropology into their reflections on law (Part D).

B. Legal Scholars Engaging with Social Anthropology

When a legal scholar engages deeply with anthropology, it changes his or her perceptions about the law, with its apparently unshakeable institutional foundations, its rituals, and its centuries of sedimented order.[2] The question moves out of the realm of *what the law says* into the realm of *what is law? How and by whom is it generated? How do people whose lives are—most profoundly—affected by law perceive and relate to it?* And perhaps most importantly of all: *How do they struggle to change it?* Such questions are generally not considered to be within the remit—or competence—of legal practice, and are generally not addressed by doctrinal contributions to the academic literature. Sincerely asking them can shake one's confidence in the law down to the very core of its mission, i.e., to contribute to delivering justice in individual cases in the fairest, most impartial way possible. This is perhaps why legal practitioners and many legal scholars may have a hard time engaging with issues that go *beyond* the expert knowledge of the rules in force and

[1] *See Department 'Law &* Anthropology', MAX PLANCK INSTITUTE FOR SOCIAL ANTHROPOLOGY, https://www.eth.mpg.de/2951631/department_foblets.

[2] MICHAEL FREEMAN & DAVID NAPIER, *Introduction: Law and Anthropology*, *in* LAW AND ANTHROPOLOGY, CURRENT LEGAL ISSUES 1–12 (2009); Annelise Riles, *From Comparisons to Collaboration: Experiments with New Scholarly and Political Form*, 78 L. & CONTEMP. PROBS. 147–183 (2015).

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interpreting them more holistically.[3] But those who do so may find that their very *ways* of thinking about law are transformed.[4] The issue is, then, what to do about it. Should one do all that they can to transform law from within? The thought of trying to change the legal thinking about concrete issues may at first sight appear beyond daunting. Yet that is the challenge that the contributors to this special issue—all of them legal scholars—have taken upon themselves: To take the insights they have gained through their engagement with anthropology and bring it all back to law by looking for opportunities where such insights can actually lead to changes in legal language, legislation, policy, and implementation.

To ensure a clear understanding of the rationale that lies behind the initiative of this special issue, a brief preliminary word of explanation may be in order. Central to the research program of the Law & Anthropology Department is the in-depth study of normative frameworks of different types—formal/informal; state/non-state; faith-based/non-faith-based, etc.—as profound familiarity with and knowledge of these frameworks are necessary to properly apprehend and explain practices and relations that are regulated by them. Detailed analysis of such frameworks can help understand why, for example, in some cases state law has little or no impact at all with regard to the issues at stake, or even produces unintended effects that can, in the worst-case scenario, contravene or undermine what it was meant to achieve. Anthropology indeed offers a useful approach for grasping the multitude of variables that impact the effectiveness and efficiency of state law, and its ability to give recognition and protection to a plurality of life choices and orientations.[5] Through its research program, the Department seeks to give equal weight to, on the one hand, an anthropologically informed understanding of how normativity—and normativities—taken in the broadest sense, play out in multiple contexts, in particular in those situations where different normative logics are in competition with each other and, on the other hand, a more positivistic legal approach to normativity. By the latter approach one understands the views of legal practitioners—legislators, judges, lawyers, legal service providers, etc.—who, in their daily search for legal solutions, where it comes down to accommodating at times highly complex situations, are bound to stay within the constraints of formal state law, which is the main field of their professional responsibility.

Combining an analysis of the relevant legal sources with an analysis of ethnographic data that can help provide context and an empirical foundation in the search for justice is an intrinsically interdisciplinary endeavor.[6] It presents the researcher with a challenging balancing exercise: It requires looking for the appropriate conceptual frameworks and methodological tools that the two disciplines have to offer—of course, each within the framework of its own epistemological and methodological approaches—and investigating the extent to which a skillful combination of quite different forms of expertise can open up new perspectives. Such an exercise, which seeks to draw on the craft of anthropology—and more specifically its principal method, ethnography—while at the same time staying within the boundaries of both the technical and doctrinal tools that the law makes available, is an extremely ambitious enterprise and can therefore be very demanding. The Department offers the setting for nourishing such an endeavor and providing the

[3]For an interesting illustration, see Gustavo Capela, *The Possible Truths: The Importance of Anthropology to Law,* 5 Revista de Estudos Empirico em Direito [Brazilian Journal of Empirical Legal Studies] 134–147 (2018) (addressing the discussion of "truth" and the way it is applied in legal practice in Brazil and the possible contributions of empirical (anthropological) findings to a broader sense of "validity claims" that are brought before the court).

[4]*See id.* at 145.

[5]A very rich body of literature today shows that the study of law in the contemporary postcolonial and globalized era requires assessing how legal systems—formal and informal, international, regional, and local—interact and that new forms of law continuously emerge. *See* The Oxford Handbook Of Global Legal Pluralism (Paul S. Berman ed., 2020).

[6]*See* Carol Greenhouse, *Law and Anthropology: Old Relations, New Relations, in* Law and Anthropology, Current Legal Issues 47 (Michael Freeman & David Napier eds., 2009); Sally E. Merry, *Anthropology and Law*, *in* The Sage Handbook of Social Anthropology 105–120 (Richard Fardon, Olivia Harris, Trevor H.J. Marchand, Mark Nuttall, Cris Shore, Veronica Strang, & Richard A. Wilson eds., 2012).

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necessary academic space for anthropologists and legal scholars to meet and exchange views on the issues they scrutinize and how best to investigate them. It would be presumptuous of us to claim that the Department's efforts are without precedent.[7] They are part of a long tradition of interdisciplinary thinking that inspires our approach but that, in our opinion, is still too rarely put into practice, especially in Europe. The evidence of this tradition is reflected here is in the numerous works cited by the authors, each of which, in its own way, gives them the necessary anchorage to further develop their ideas and analyses, straddling the two disciplines.

This special issue offers a glimpse of what it entails for scholars trained in law, particularly young ones, to assess what is to be gained from transcending the limits of their own discipline and employing an anthropological lens. All of the authors who agreed to contribute to this issue have independently come to the conclusion that serious engagement with anthropology can enrich their legal analyses. Each seeks to contribute to a critical inquiry that not only draws on a variety of formally binding legal instruments—international conventions, laws and various regulations emanating from the competent national, regional, or local authorities, and case law, where applicable—but also engages, wherever possible, in an in-depth assessment of the concrete realities to which they apply, including the diverse sets of norms that have their origins outside the state legal system, but are still incorporated in local practice. This is a great deal to ask of a lawyer, who is often not trained to deal with situations that, against the background of increasing globalization and internationalization, require a more contextual approach, one that takes empirical complexity not just as an ancillary issue, but as the starting point of the search for sustainable legal solutions and a better understanding of how the law, in practice, could possibly operate in a more decisive way.[8]

C. A Diverse Range of Topics

The palette of topics presented in this special issue is wideranging and highly diverse. Each of the situations under investigation covers a multitude of concrete instances that present legal practitioners with a demanding task when it comes to elaborating concrete solutions.

The contributions of Marie Courtoy and of Dirk Hanschel and his team target the absence of suitable legal solutions when it comes to dealing with the most urgent situations caused by the irreversible deterioration of the environment—all of which are induced by human activity, if not directly, then indirectly—and of which entire populations today are victims. The same is true for the decisionmaking processes studied by Luc Leboeuf and Katia Bianchini, who, in their contributions, express serious concerns about critical flaws in the concrete implementation of European asylum and migration law and about the consequences of these flaws for the individuals who are directly affected. The authors agree that, in the face of increasingly forced—i.e., involuntary—migration, the legal instruments in place, most of them issued in the course of the nineties of the previous century, are no longer capable of adequately dealing with the situation in all its consequences. Alice Margaria, for her part, targets family conflicts. Her article illustrates some of the intricacies that come with divergent views on what constitutes a family and, in case of termination of the family project, to what extent these diverging views affect the best interests the children involved, if indeed there are any. In his contribution, Jonathan Bernaerts demonstrates some of the blind spots that come with the (over)protection of languages that are considered to be part

[7] *See, e.g.*, Rita Kesselring, Elif Babül, Mark Goodale, Tobias Kelly, Ronald Niezen, Maria Sapignoli & Richard Ashby, *The Future of Anthropology of Law: Emergent Conversation,* POL. & LEGAL ANTHROPOLOGY REV. ONLINE, (Feb. 10, 2017) https://polarjournal.org/2017/02/10/emergent-conversations-part-6/; Gerhard Anders, *Law at Its Limits: Interdisciplinarity Between Law and Anthropology*, 47 J. LEGAL PLURALISM & UNOFFICIAL L. 411 (2015); Jonas Bens, *Anthropology and the Law: Historicising the Epistemological Divide*, 12 INT'L J. L. CONTEXT 235 (2016); BAUDOIN DUPRET, MICHAEL LYNCH, & TIM BERARD, LAW AT WORK: STUDIES IN ETHNOMETHODS (2015).

[8] *See* DAVID NELKEN, *Can Law Learn from Social Science?*, *in* BEYOND LAW IN CONTEXT: DEVELOPING A SOCIOLOGICAL UNDERSTANDING OF LAW (2009).

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of the historical legacy of the majority society. Such languages benefit from a monopoly of sorts that comes with the status of official language and can foreclose the possibility of formally using any other language for official, administrative purposes. In the case under study, he shows what this means for members of minority communities who speak nonmajoritarian languages and therefore have to do without those specific protections. Through careful observations, gleaned in the field and complemented with interviews with civil servants, Bernaerts demonstrates the flaws of a legal framework that no longer resonates with the needs of the presentday context. The historical compromise solution remains blind to the current demographic situation, which calls for greater flexibility regarding linguistic accommodations.

In the next section, we shed light on different dimensions of the work done by the contributors to this issue. These are not necessarily explicitly mentioned in the individual texts themselves, but they relate more fundamentally to the genesis of their work and the approaches they have adopted.

D. Major Hardships and Methodological Options

We conducted two preparatory seminars, the first in September 2020, and the second in December 2021, which gave the authors the opportunity to discuss their contributions and exchange views among one another, both individually and in groups. Our discussions helped us, the guest editors, to better appreciate the nature of some of the hardships that the authors regularly confront as they strive to enrich their views on and in law. In what follows, we first present three such difficulties that we were able to identify and discuss during the two meetings, some of which are not systematically reflected in the contributions but which are, nevertheless, at play in the background. Next, we briefly sketch the distinctive methodological ways in which the authors have drawn on anthropological scholarship and how they have sought to learn from what it has to offer for the analysis of their topics. We address them in terms of "courses of action," three of which we have identified. These courses of action are not mutually exclusive, but they are of different natures and we have, for analytical purposes, tried to disentangle them.

I. Three Major Hardships in Developing an Interdisciplinary Understanding of Law

As happens with every attempt to open up the law to the contribution of other fields of knowledge, a number of difficulties or possible pitfalls along the way are inevitable. In this case, we have identified three major hardships.

1. The Episteme in Social Sciences

The first major hardship regards the need for researchers who are trained in law and have no advanced knowledge of the *episteme* that shapes understanding in the social sciences to familiarize themselves with the specificities of the anthropological approach generally speaking.[9] This involves not only a deep dive into the theoretical and conceptual apparatus of anthropology, along with its attendant terminology—some might call it "jargon"—but also understanding anthropology's critical approach,[10] which often seems more geared toward deconstruction—some might say "destruction"—than to reconstruction.

Once they have come to grips with that, they need to gain some degree of mastery over the specialized anthropological literature that is more directly relevant to the subject of their research or, in legal practice, to the case or file they are involved in. At what point has a person read enough to feel confident that they are not doing injustice to that "other" discipline they seek to integrate into the research process and the path of analysis they aim to develop? And why, very specifically,

[9]*See id.*

[10]On the critical rationale behind the anthropological study of law, see, e.g., John Comaroff, *The End of Anthropology: On the Future of an In/Discipline*, 112 AM. ANTHROPOLOGIST 524 (2010).

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anthropology? At what point does a researcher no longer have to worry that they will be accused of dilettantism, of cherry picking, of superficial analysis that merely pays lipservice to the other discipline? And for legal practitioners—judges, lawyers, etc.—once they feel comfortable enough to integrate anthropological data into their theory of the case or legal reasoning, to what extent does the legal system allow for such integration, for example, through rules of evidence?[11]

Almost half a century ago, John Bonsignore had some thoughts on the contribution that a better understanding of anthropology could make to research in law:

> There is much talk about the need for interdisciplinary approaches in research and teaching, but preciously little is ever done about it. Each scholar waits for feats of translation by others so that matters at the margin of the discipline can be understood. If the waiting is too patient there is a real risk that interdisciplinary research and teaching will never be a reality. The remedy for this academic paralysis is as simple as its cause: each scholar must read his way into pertinent materials which are important to competence in his chosen field. If this practice becomes common enough in law and other disciplines there may be an end to the tight disciplinary compartmentalization which is so characteristic of the modern university.[12]

Years have passed since Bonsignore published these reflections and how he sees the remedy to what he calls "disciplinary compartmentalization." There can be no doubt that the interdisciplinary approach is at present much more *en vogue* than it was in the 1970s, so much so that it is also ever more strongly promoted in calls for proposals for projects funded by large foundations, universities, and major research institutes. It is probably not an exaggeration to say that it has become a mainstream expectation. However, its implementation is anything but certain as long as the training of future jurists, lawyers, and legal scholars remains monodisciplinary. This is certainly true of those whose training is geared toward legal *practice* and requires them to be adept at the—sometimes very demanding—techniques of law, which leaves little room for indepth familiarization with any other discipline. That rare researcher who has been fully trained in both law and anthropology is quite the exception indeed.

2. The Requirements of Academic Rigor

A second major hardship regards the manner in which the researcher brings the interdisciplinary endeavor to fruition in their scholarly work. This is a difficult decision, and the responsibility for the direction they choose when it comes to drawing on anthropology lies entirely with them. It requires that the researcher assess very scrupulously how and to what extent the way they take recourse to anthropological expert knowledge meets the requirements of academic rigor *in both disciplines*. The empirical data that are the bread and butter of anthropology are in many cases difficult to gather. Doing so successfully requires longterm immersive fieldwork, which implies *gaining access* to the field and *building rapport* with interlocutors. This takes a great deal of time that most jurists simply cannot afford to devote to the task.

Admittedly, in practice, the realities that empirical data reflect are often messy, ineffable, complex, and difficult to "translate" into the clarity required by legal thinking and, even more so, by legal argumentation. This may in some cases mean that researchers decide to abandon the effort, not because they do not see what is to be gained from bringing the two disciplines together, but because they lack the certainty that, in their concrete case and with the available data, they can do so with the depth required to ensure such added value.

[11]In his article, Gustavo Capela clearly shows the difficulties, both scientific and practical, that accompany this question. *See* Capela, *supra* note 3.

[12]*See* John Bonsignore, *Prospects in Law-Anthropology*, 10 AM. BUS. L. J. 111 (1972).

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3. Outreach and Impact

A third and final hardship relates to outreach and impact. We are not writing anything new here when we say that, in practice, legal thinking and the search for legal solutions are still not particularly hospitable when it comes to incorporating notions, approaches, or frameworks of thought borrowed from other fields of knowledge. This is certainly true for the way law is practiced in the vast majority of the socalled continental legal systems. In practice, when recourse is made to any of those fields, it is generally done through the use of expertise.[13] Calling on expertise is very common in judicial practice; it gives the lawyer in a concrete case the additional professional knowledge required to propose an outcome. In case of doubt, counterexpertise may be requested. Anthropologists who have served as experts for courts, among other instances, have produced some highly relevant publications in which they explain their concrete experiences of putting their expert knowledge at the service of judicial practice, and what doing so entails in terms of making oneself correctly understood by legal professionals.[14] This difficulty, which consists in making insights gained from anthropology relevant from a legal standpoint, constitutes what is probably the harshest of the three adversities we have identified here, given that social science insights are often hard to translate into legally relevant arguments, and each field uses its own specialized terminology.

For a work to be seen as relevant to the particular purposes of those who will consult it, many factors come into play. A number of them are the responsibility of the researcher, such as the language in which the work is written, the topicality of the chosen topic and, of course, the way in which the topic is treated. One critical aspect is the fact that the results of the seven research projects presented in this special issue, while directly related to highly topical legal issues, draw on *empirical* data and anthropological literature that will be unfamiliar to the majority of trained lawyers. These studies may seem irrelevant to them, and may even be uncomfortable to read, because doing so may force them to fundamentally question how the law addresses these legal questions.[15] But we are convinced that the exercise will be worth the effort for those who invest the time.

Having carefully considered these difficulties and drawbacks, we remain convinced that legal scholarship has much to gain by being willing to consider what anthropology may bring to the table. Whether this contribution consists of empirical data concerning how individuals and groups organize their lives with or without the aid of state law, or theoretical insights about normativity and the relationship between state law and alternative normative orders, in the end legal analysis may turn out to be richer and subtler by allowing the contribution of anthropology to shine on it.

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[13]*See* Larissa Vetters & Marie-Claire Foblets, *Culture All Around? Contextualising Anthropological Expertise in European Courtroom Settings*, 12 Int'l J. L. Context 272 (2016).

[14]*See, e.g.*, Lawrence Rosen, *The Anthropologist as Expert Witness*, 79 Am. Anthropologist 555 (1977); Anthony Good, Anthropology and Expertise in the Asylum Courts (2007); Randy Frances Kandel, *A Legal Field Guide for the Expert Anthropologist*, 11 Nat'l Ass'n for Prac. Anthropology Bull. (1992); Maria Sapignoli, *Indigeneity and the Expert: Negotiating Identity in the Case of the Central Kalahari Game Reserve*, *in* Law and Anthropology: Current Legal Issues 247 (Michael Freeman & David Napier eds 2009); Livia Holden, *Anthropologists as Experts: Cultural Expertise, Colonialism, and Positionality*, 47 L. & Soc. Inquiry 669 (2022); *see also Cultural Expertise in Europe: What's it Useful For?*, https://culturalexpertise.net/ (Holden's ERC project); Gerhard Anders, *Contesting Expertise: Anthropologists at the Special Court for Sierra Leone*, 20 J. Royal Anthropological Inst. 426 (2014); John Jackson & Yassin M'Boge, *Integrating a Socio-Legal Approach to Evidence in the International Criminal Tribunals (Part 2)*, 27 Leiden J. Int'l L. 189 (2014).

[15]One of the authors mentions that a publication of hers, although very well received by the editorial board of a prestigious law journal, was ultimately rejected for fear that the readership of the journal, which targets practitioners, would not be prepared to come up against the limits of their own thinking about law. This experience is telling: true interdisciplinarity forces one *out* of his or her comfort zone, and when law journals are hesitant to step out of their own disciplinary boundaries, their reservations effectively limit the audience of those who genuinely strive to do so. For a revealing comparative assessment, see Riaz Tejani, *The Life of Transplants: Why Law and Economics Has "Succeeded" Where Legal Anthropology Has Not*, 73 Al. L. Rev. 733 (2022).

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II. Drawing on Anthropological Scholarship: Three Courses of Action

The authors have adopted distinctive methodological approaches from the anthropological scholarship in order to enrich the analysis of their topics. As with every scientific research project, the principle that the choice of the research method is dictated by the very nature of the research question(s) and the topic to be studied applies here too.

While conducting empirical, ethnographic fieldwork might be the ideal scenario for collecting relevant, first-hand data such as life histories and accounts of closely involved persons, it is often not practicable for jurists to carry out, *in situ*, immersive fieldwork in the classical sense of the term. A more realistic alternative is for them to proceed to a close reading of the available anthropological literature on their topic and, for academic jurists, to supplement their reading with a number of semistructured interviews with reliable interlocutors, if at all possible.[16] These should be sufficiently rich and detailed to give a more concrete picture of the topic under study.

As their presentations show, the contributors to this issue have opted for a combination of approaches that makes for their own "course of action." One such course of action consists of mainly desk research, that is, familiarizing oneself through reading with both theoretical and conceptual frameworks developed in anthropology, as well as with detailed ethnographies that help critically analyze the case law. This is the case for the contributions of Stefano Osella and Katia Bianchini. A second course of action is a combination of the first—reading—supplemented with conducting interviews and a degree of observation *in situ*—albeit not full immersion. Onsite observation can take up to a few weeks and allows the researcher to produce an indepth study of one or more previously selected court cases or case studies. This is how Jonathan Bernaerts, Marie Courtoy, Dirk Hanschel, and Luc Leboeuf's research teams have proceeded. This course of action comes the closest to what is more generally seen as socioscientific studies of law. A third course of action is to focus on concrete disputes that have been dealt with in the case law, and to enrich the study of these cases with semistructured interviews. Finally, Alice Margaria has chosen to approach her topic through the lens of litigation, a central approach in legal anthropology.[17] This approach allows the researcher to apprehend the way of reasoning about concrete issues and the extent to which the outcome of a dispute settled through adjudication is to be seen as a more or less sustainable solution to the conflict. Anthropologists are familiar with the extended case method,[18] and Alice Margaria shows how she uses this method to put her interpretation of international rulings in the field of family law in a broader context.

One specific aspect of the methodology that has become increasingly common for researchers in the vast field of social sciences, most noticeably since the *reflexive turn*[19] that occurred in the latter part of the last century, is the expectation that the researchers be transparent and explicit not

[16]Semi-structured or in-depth interviewing is a scheduled activity; it is open ended but follows a general script and covers a list of issues that, taken together, address the topic under study. There is vast literature on how to effectively conduct interviews in anthropology. For an illustration, see H. Russell Bernard, Research Methods in Anthropology: Qualitative and Quantitative Approaches 210–250 (4th ed., 2007).

[17]Francis G. Snyder, *Anthropology, Dispute Processes and Law: A Critical Introduction*, 8 Brit. J. L. & Soc. 141 (1981); Laura Nader & Harry F. Todd, Jr., Disputing Process—Law in Ten Societies (1978).

[18]*See* Michael Burawoy, *The Extended Case Method*, 16 Socio. Theory 1 (1998).

[19]The reflexive turn in anthropology refers to what was at the time a new intellectual positioning on the part of scholars and which became widespread from the 1980s onwards. It consists of abandoning the ambition to present research results in the neutral, distanced manner of purportedly "objective" and "scientific" research, instead putting more emphasis on the conditions, sometimes fortuitous, often haphazard, in which knowledge was acquired and which are reflected in the analysis itself. *See, e.g.*, A Crack in the Mirror: Reflexive Perspectives in Anthropology (Jay Rub ed., 1982); Michael Burawoy, *Revisits: An Outline of a Theory of Reflexive Ethnography*, 68 Am. Socio. Rev. 645 (2003); Fieldwork as Failure: Living and Knowing in the Field of International Relations (Katarina Kušić & Jakub Záhora eds., 2020) https://www.e-ir.info/publication/fieldwork-as-failure-living-and-knowing-in-the-field-of-international-relations/.

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only regarding their methods of data collection, but also regarding their *positionality*[20] visàvis the people they interact with in the field. This is particularly the case with anthropology. This often leads to a highly personal style of writing, sometimes even verging on the autobiographical, that many trained jurists are neither familiar nor comfortable with. It often requires a very prominent and selfconscious use of the first person, which is not common in legal texts. Indeed, most jurists are trained to avoid the first person in their writing. However, acceptance of and even insistence on the use of the first person is a hallmark of the reflexive turn and its premise that the injunction against the first person in academic writing has been part of the effort to create the illusion of objectivity and distanced authority. Embracing the use of the first person is a way for the author to show that they are aware of this dynamic and knows that the "I" behind it all is always there and can never be truly erased. The reader should not be surprised, therefore, that several authors here devote particular attention to their own position in relation to the subject of their work. For them, reflection on the researcher's position is an integral part of the assessment of the empirical data collected, and is a visible manifestation of the impact of anthropology—and the social sciences more generally—on legal scholarship in this special issue.

E. Conclusion

Today's societies are becoming increasingly complex. People reside in multiple worlds where various nonstate normative systems coexist with state norms, and where both minority and majority cultural codes are present and interact to a greater or lesser degree. These alternative norms and codes inform, and occasionally determine, how individuals and groups behave, and what their practices are. More than ever before, state and judicial officers are faced with situations requiring them to take such "alternative" normative systems and cultural codes into account. Yet, despite the fact that democratic legal systems generally grant recognition to a broad range of values in their application of both national constitutions and international human rights instruments, it is still not easy to make sense of them or to incorporate them into daily practice. Decisionmakers as well as other actors who participate in decisional processes are frequently at a loss when it comes to interpreting such "alternative," and often discrete, realities, as there is no set recipe for doing so.[21] Because state norms apply to real human beings, the first step arguably lies in exploring, in an indepth manner, what may explain how they actually behave, why they behave in a certain way, and so on, with a view to enacting better laws and rendering better justice. In that regard, anthropology is a field that is capable of helping jurists trained in state law to develop a more refined understanding of today's societal complexity and challenges, even though anthropology and law may seem to have little in common at first sight.

[20]"Positionality" refers to the researcher's personal positioning within her or her own society—in terms of gender, class, ethnicity, education, sexuality, religion, relative affluence, political leanings, etc.—as well as his or her positioning within the field along the same lines—as well as the power dynamics inherent in the fieldwork setting—as these various features can influence and bias the data one collects and the way one interprets those data.

[21]For a critical study, see Masua Sagiv, *Cultural Bias in Judicial Decision Making*, 35 B.C. J. L. & Soc. Just. 229 (2015).

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