

## CHAPTER THREE

# “PRETTY AND YOUNG” IN PLACES WHERE PEOPLE GET KILLED IN BROAD DAYLIGHT

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*You think because you are pretty and young, and people are friendly and smiling toward you, that this is a safe place. . . .  
People get killed here in broad daylight!*

These were the approximate words delivered by my host, Magogo, when she reprimanded me after I had arrived at her home after dark one evening. It was the first time in almost three years of doing research in the Msinga area – located in KwaZulu-Natal, South Africa – that I had seen or heard my usually extremely loving and friendly host so angry. I knew she must have been very worried about my colleague and me.

This interaction with my host was the first in a series of experiences that would lead me to seriously consider for the first time the relevance and impact of my psychological and emotional well-being, as well as physical safety and health, on my research and findings. From this place, I wrestled with the balance of dealing with the difficulties and responsibilities of fieldwork alongside personal (and professional) challenges. This journey is what has formed me as a scholar-activist, teacher, mentor, and, more generally, as a compassionate human being.

The brief but sobering exchange I had with my host that night brings out some of the important lessons I gradually learned about being an “out-of-place” researcher during my time of conducting research in Msinga. Here, I use out-of-place researcher in the more comprehensive sense of bearing a marginalized mix of identities in *both* the academy

and the field site, and thus being an insider-outsider wherever one goes.<sup>1</sup>

This crossover representation of the out-of-place researcher is legitimate because, even in the field, study participants recognize the Black, African woman PhD holder that I am as an anomaly and observe that, of those who have come to study the subject or the area before, few if any looked like me. That is not too surprising. The more daring claim I might make about the crossover significance of this out-of-place researcher persona is that the overlap that exists between my identities and those of the people I study in the field sometimes lowers my credibility in the academy because it is read as meaning that I am less “academic” or identify “too closely” with the study participants. This, as my story shows, has and continues to be a source of deep tension for me.

I am a young, Black, African woman. At least, those are the most salient parts of my identity, as people perceive me, and that very fact has largely shaped the ways in which I am experienced and I myself experience life “in the field.” Moreover, the parts of my identity that are less salient (being an Oxford postgraduate student, getting married, becoming a mother, being a Jo’burger by origin and later a Cape Town resident, being a daughter whose family cares for her, and more) have become more or less important to my fieldwork experience – often in ways that I had not anticipated.

Do I identify myself by these labels? With respect to being young: yes. However, I often find it quite entertaining to see how people interact with me when they perceive me as quite a bit younger than I actually am. With respect to being Black: indeed, that is how I would label myself. That is, I identify with the diaspora of melanin-enhanced peoples who have suffered roughly 400 years of systemic oppression under Western “imperialist white supremacist capitalist patriarchy” (hooks 2013, 4). Yet, I have long since learned that that shared identity means many different things in different places – from Johannesburg (the nine million-person-strong economic engine on the northeastern gold reef of South Africa) to Cape Town (the cosmopolitan city of about three million permanent residents in the south west corner of South Africa whose population is doubled by the influx of tourists at the height of the holiday season) to Battle (a storied, historic rural town of about 4,000 people in the south east of the United Kingdom)

<sup>1</sup> See Merriam et al. (2001) for a helpful discussion of the complexities of delineating who is an insider versus an outsider.

to Greater Boston (the metropolitan region of New England in the north east of the United States which, as a combined statistical area, boasts a population of over eight million). The same can be said of my self-perception as a woman: as the debates on western feminism, Black feminism, African feminism, womanism and more show, the definition of *woman* cannot be taken for granted.<sup>2</sup> As for "pretty," I would not have used it to describe myself and honestly found Magogo's use of that descriptor jarring.

My primary identification as a young, Black African woman is partly a response to how I am perceived not only in the field in Msinga, but also in the field of law and society. Until the fieldwork experience within which my interaction with Magogo is situated, I had conducted field-based research in sites that might be referred to as somewhat challenging and, as any well-trained ethnographer, I had spent a significant amount of time reflecting on the impact of my identity and positionality<sup>3</sup> as a researcher on my access and acceptance in my field sites as well as the research findings to which these led me. In other words, I had considered what it meant for me to be out of place in the locale where I was conducting my study, where people predominantly spoke a different language – or, at least, a different dialect – from me and were significantly poorer than I had ever experienced being. I was also often out of place in the patriarchal power centers in those communities where men mostly made decisions concerning legal matters.

Before this moment of confrontation with a side of Msinga I had mostly suppressed in my mind until then, I had grappled with questions of what it meant to be an interdisciplinary socio-legal scholar who is a minority in an academy in which the default representative is a white, middle-aged, European and/or American male locked in a single discipline. In other words, I had spent much time considering how best to position myself and my work studying legal power – especially

<sup>2</sup> For a taste of what I mean, see hooks (1981) and Oyěwùmí (1997).

<sup>3</sup> There is some debate in the literature about whether identity is an analytically useful lens as contrasted with location and positionality. (See the discussion of this in Anthias 2002.) I use both concepts here because I believe they bring different things to the discussion, in the ways that I use them, with the former, identity, perhaps emphasizing how one is perceived by others while the latter primarily emphasizes the vantage point from which a person engages with those others that they are studying and how that impacts how they see the "other." See England (1994) for more discussion.

considering the fact that I am out of place in the professoriate. This concern was particularly relevant because of how legal power in the formal corridors of executive, legislative and judicial power is substantially informed by, and sometimes mutually constitutive with the power of, voice that comes with being a white male in the academy. A simple example of this can be seen in the fact that, for centuries, the formal law's understanding of the customary law of Black, African people has been based on articulations of such by white, male anthropologists of European or American nationality or ancestry. This is still meaningfully the case.

The exchange I base this chapter on represents some of the heuristic tensions presented by my intersectional identities and how they mutually interacted – within me and with others – in the field site during the course of my research on law and society in remote rural areas of South Africa. As I share in concluding this chapter, my fieldwork has taught me several sobering lessons. Ignorance – by which I mean wilful blindness – is not bliss. Faced with serious risks in the field, instead of thinking carefully and realistically, the strategy that I adopted was to downplay the risks so as to build up my courage to venture into that field site. Relatedly, many lessons that I emerged from the field with center on the researcher's determination and how that impacts one's work for better and for worse. One consequence of working in such a challenging field site as mine was the vicarious trauma that I experienced – especially when I analyzed the data I had collected and wrote up my mostly devastating findings. This lesson was accompanied by the enhanced empathy that I emerged with, which challenged so much of what I had thought I had learned about placing critical distance between myself and my subjects in empirical socio-legal research.<sup>4</sup>

As pertains to legal power, I learned that the same dynamics that make *identity* matters (especially those of race and gender) *power* matters in how they manifest in law often express themselves very similarly in field research because intersectionality *always* matters (Crenshaw 1990; Collins 2019). This is partly a function of the fact that social and legal injustice go together. I sometimes had trouble finding legal power given that it is so diffuse. Due to the plurality of social and other institutions, legal power was both inside and outside

<sup>4</sup> See the ground-breaking critique by England (1994).

“courts,” often out of sight. Pursuing it also meant that I found myself embroiled in the tensions presented by my subject of choice because the subject (and my authority on it) was always impacted by my own positionality and intersectionality – raising questions such as whether I was too close to my subjects, not objective enough, or not academic at all.<sup>5</sup> In essence, intersectionality presents itself as a proverbial double-edged sword: with many benefits and drawbacks at once.

## RESEARCH BACKGROUND

I study law in informal places: that is, outside of state courts. In particular, I study law in traditional justice forums and ordinary rural people’s day-to-day lives. In other words, I study law’s interaction with society in often modest or dilapidated buildings established or funded by the government – like traditional council offices, schools with long drops (outhouses) for toilet facilities, small but often oversubscribed clinics, and chiefs’ homes, as well as police stations. I also study the relationship between law and society in wholly unofficial places such as under headmen’s trees, in their homes, in ordinary men and women’s day-to-day encounters with law (in the broadest possible sense) wherever those take them: whether that be to dirt roads, grassy trails, and thoroughfares; cornfields, irrigation scheme farm plots, or marijuana harvest fields; cattle kraals, wide open plains where sheep and goats graze, rivers by which women collect water or fresh tree branches, or cliffs where people might work to build a road for small change (in both meanings of money and transformation).

The experience I am sharing in this chapter is primarily based on empirical research that formed the basis of a study published as a book, *Access to Justice and Human Security: Cultural Contradictions in Rural South Africa* (Mnisi Weeks 2018). I originally completed the ethnographic research for the Rural Women’s Action-Research project while I was a Senior Researcher in the Centre for Law and Society at the University of Cape Town. At the time of the project’s inception, a controversial piece of legislation, the Traditional Courts Bill (B15–2008), was being considered in parliament. The object of the study was to document how traditional courts operate in contemporary rural South Africa and also what traditional leaders (particularly

<sup>5</sup> As observed by Zuberi and Bonilla-Silva (2008): “Ah, whiteness grants the gift of *eternal objectivity* to its grantees!” (emphasis in original).

headmen) do as their work on a day-to-day basis. This research could then inform policy discussions about how to regulate traditional courts through legislation under the Constitution of South Africa, 1996. It was, in that sense, aimed at being a kind of “critical ethnography” (Simon and Dippo 1986, 199).

The study was conducted between October 2009 and June 2015 with the bulk of data collected between March 2011 and January 2012 in the form of daily recording of headmen’s activities and day-to-day work, observation of traditional dispute management processes such as hearings for the disputes that the headmen participated in managing, follow-up interviews with parties to the disputes and traditional authorities, including traditional council support staff, and focus groups with the members of the traditional councils and groups of local men and women.

Preliminary interviews and observations were conducted from October 2009 to February 2011, and follow-up interviews, focus groups, and report back sessions were conducted from February 2012 to June 2015. During the most concentrated data collection period of March 2011 to January 2012, local fieldworkers and I recorded 183 instances of the informal process named *izikhalo* (cries/pleas), as contrasted with seventy-one formal hearings across the six wards in two traditional communities (what were formerly referred to as “tribes”) that were the sites of our research.

Msinga, KwaZulu-Natal, was chosen as the site for this study because, firstly, it is well known to be a very deeply rural and traditional area; therefore, if there was any place in South Africa where traditional courts could be expected to function optimally, Msinga was it. Secondly, the Centre for Law and Society has strong relationships with a nongovernmental organization that was long-established in Msinga as well as another researcher whose work was based there. These relationships served as lubricants for the relationships on which access and acceptance in the turbulent area would depend.

In brief, the findings of the research were that, indeed, for most people in rural South Africa, traditional justice mechanisms provide the only feasible means to legal solutions to conflict (Mnisi Weeks 2018). Yet, while these mechanisms are popularly associated with restorative justice, reconciliation and harmony, the political economy of rural South Africa in which the study was based reveals how historical conditions and contemporary pressures have resulted in a degree of human insecurity that has strained these mechanisms’ ability

to deliver the high normative ideals with which they are notionally linked.

The book shines a spotlight on the ways in which the South African government – under colonialism, apartheid, and democracy today – has failed to take truly seriously the volatile human conditions of ordinary people and traditional authorities alike, such as poverty, gendered social relations, delicate social trust, and plausibility of violent self-help. The book therefore provides a vision for access to justice in rural South Africa that attempts to address that failure by proposing a more practicable set of solutions to access to justice in rural South Africa. The proposal is of a cooperative governance model that maximizes the resources and capacity of both traditional and state justice apparatus for delivering legal and social justice that meets rural people's basic human needs.

As I will detail below, Msinga has a high propensity of guns as a result of the exploitative political economic arrangements established under prior governments. It experiences police brutality in the name of putting an end to crime and ridding the community of guns and the violence that comes with them. Children there are exposed to high levels of multiple forms of violence – largely grounded in multigenerational poverty and the destruction of the social fabric that were both produced by the political economy of the imperialist and racist regimes of colonialism and apartheid – but the state focuses primarily (really, rhetorically) on the interpersonal and mostly neglects to address the structural.

Furthermore, there is contestation over large swathes of the land (as well as their borders) in terms of who owns it, which law (amidst the plurality that exists) will govern it, and what the content of that law is, and what powers and limits it assigns. The state's role as protector is blurred as often enough the state also acts as violator of people's rights by exercising undue and excessive force against people there or, if not that, simply neglect. Also, there is no bright line between social and legal injustice as the two seem to flow into each other and come very much hand-in-hand. The setting is further complicated by the fact that cooperation between traditional justice mechanisms and the criminal and social justice mechanisms the state purports to make available is woefully inadequate while both institutional structures also compete with the pervasive reality of vigilantism in South Africa (Smith 2019). The above composition of political, economic, and social factors provides a much stronger explanation for the extent and kinds of violence

in Msinga than does the standard appeal to cultural explanations. It is in this context that the words of Magogo, my Msinga host, must be understood.

## BEING OUT OF PLACE

It had been a lovely afternoon and, on arriving in Msinga from Cape Town after a two-hour flight followed by a three-hour drive to reach our research site, my junior colleague and I had been faced with the decision whether to try to squeeze in one set of interviews before turning in. As the one who had to make the call, I had decided to give it a try. I opted to go to the home of the interlocutor who lived nearest to the place where we would be staying the night.

I was being optimistic – as it turned out, unrealistically so. Firstly, everywhere you go in Msinga is far. The distances between most locations are vast and mostly span dirt roads varying in their car-friendliness. Secondly, having failed to factor east–west variation, I had poorly estimated when it would become dark. Given that South Africa is all on a single time-zone, my expectation of when the sun would set based on living in Cape Town, which is on the southwest coast, was vastly out of sync with the reality in KwaZulu-Natal, which is on the east coast. Consequently, I was taken by surprise at the rapidity with which the sun was setting while we were trying to maneuver our miniature rental car over giant-sized boulders that stood in for a road to the home of the woman we were attempting to reach on the other side of the small mountain.

I shall not lie: It was a scary scene. As I tried to drive us up the mountain pass without damaging the vehicle, getting a flat tire, or ending up stuck there with little to no cellphone signal, and saw the sun setting, I had become quite nervous. Yet, we were so far into the journey that there seemed nothing to be gained by panicking, and turning back seemed like no better an option than proceeding forward. After all, it would be no easier to get our car off the rocks in order to turn around than it was proving to be to move it sideways to reach the then-closer apex. So, I tried my best to keep my cool while I prayed desperately (additionally struck by the weight of having my younger female colleague's life in my hands) and did my best to get us out of there. Thankfully, my prayers were answered.

Once we had reached the home of our intended interlocutor, the interview was so helpful as to feel like a justification of the risk we had

taken to secure it. Yet it was becoming dark quite quickly. I tried my best to expedite our departure without appearing rude and then, rather than impose on the grace of an impoverished woman we hardly knew by staying the night, I allowed optimism to lead me to take one final risk that evening. So, my colleague and I got back into our miniature rental and made our way – slowly sliding and rock-jumping – down the mountain pass. Yet again, I was praying like my life depended on it. Because, frankly, it did.

Thankfully, we made it to our accommodation without event. It was our arriving after dark that made our host in the deep rural village of Msinga livid. Magogo chastised us about how dangerous Msinga is for *all* people, but especially two young women driving on their own in what is (by Msinga standards) a flashy car. She went through a litany of scenarios of what could have happened: We could have gotten stuck in that mountain pass and been sitting ducks; on our drive back, we could have found a makeshift roadblock of giant-sized boulders set up by young men who saw us and the car we were in as an opportunity. Simply put, we could have been sexually assaulted, maimed, and/or killed. She ended by making it clear that the risk we had taken had been unbelievably stupid.

It seemed our host was determined to drive home to us in a way she had not done before just how dangerous a place Msinga is for young women like us. So, for added emphasis, Magogo told us of a young, white, female researcher who had been driving near the town center – and thus a presumably much safer part of Msinga than where we had been – while doing research on local beadwork several years ago. She had been shot and killed at 2 p.m. That is how indiscriminately violent Msinga is, Magogo concluded.

Because this was the first such conversation Magogo had had with me directly about my own personal safety in Msinga, I was compelled to think very seriously about it, which raised the daunting question of whether the risks of doing research there were too great for my family and me to bear. When I had told my mother that I would be doing research in Msinga, she had sounded the alarm. Msinga, she said, is extremely dangerous. Her statement was not entirely news to me. Growing up in the late 1980s and early 1990s, I had heard of Msinga as being particularly violent. This was during the height of the anti-apartheid struggle and the tumultuous time of fighting (nearing civil war) in the lead-up to the first democratic elections in South Africa, which had been most intense in KwaZulu-Natal where the Zulu-led

Inkatha Freedom Party had clashed with the Xhosa-led African National Congress.

However, I was determined to believe that Msinga was much safer now and folklore about this place was somewhat misplaced. Nor was I alone. In one of my final focus groups, local headmen were at pains to remind me that Msinga was much better than it had been; they wanted my book to let people know that they had made great strides toward ensuring peace. This is absolutely true. Yet Msinga is still very dangerous, with a history of large-scale violence taking place cyclically.

Through research, I learned that Msinga's history has a very heavy presence of firearms – predominantly illegal ones. According to Creina Alcock (Cousins et al. 2011), in 1868 men walked more than 600 km to work as diamond miners in Kimberley and were there reimbursed with guns as part of their wages. Alcock observes that at the time there was already a rumor that Zulu men possessed thousands of firearms, which rumor was borne out by 1932 when guns were coming to replace spears in local fighting as proven by the propensity of bullet wounds. Suffice it to say that firearms form a significant part of the comprehensively violent conflict landscape in Msinga and are therefore one of the dimensions of disputing that local forums I was setting out to study are required to manage on an ongoing basis.

Louise Meintjes (2017, 288) observes:

Consider what it might mean to be a gun trade center in a gun-ridden nation. At the millennium's turn, there were 4.2 million licensed firearms in South Africa (Cock 2001, 48). This figure is high for a country of about forty million people, giving some indication of the density of weapon ownership in a hotspot like Msinga. Such easy availability of guns ups the opportunities and perhaps the felt necessities of gun ownership as well as the potential for serious injury (Cock 2001), while the display of weaponry, as well as its use, is a product of years of opposition to apartheid (Xaba 2001).

Needless to say, conducting research in such a setting is probably dangerous – whether one confronts this probability or tends to mostly ignore it as I did. Nonetheless, being young and naïvely optimistic, to be honest, I had thought little of my mother's concerns. If anything, I now realize that I must have subconsciously worn Msinga's dangerous reputation as an article of some pride because doing research in the area then surely meant that I was somewhat of a "bad ass."

That sentiment in itself shows just how out of place I was because it was probably borne more out of privilege than I care to admit. Msinga is a very poor, rural, Zulu-speaking area, and I am a person of Swati heritage who grew up in an urban township (Soweto) but attended private school virtually all my life. From six years of age, I attended what was referred to colloquially in those days as a "white school," located in the Northern suburbs of Johannesburg. I was one of the lucky ones; as my family liked to say, I was "born with a silver teaspoon in my mouth." For reasons that are obviously related to my uncanny privilege considering the circumstances of my birth, I hold the highest attainable degree of education from a very well-known university abroad: Oxford.

The areas I have researched have always been very poor and, while I experienced poverty at times while growing up, it was nothing like the severity of poverty and isolation that many of the (especially female) people I study have and continue to experience. While I was born under apartheid like most who I engage with in my research, I was fortunate enough to grow up in its sunset decade and come of age when it officially ended so that, being as fortuitously positioned as I was, I benefited from many of the opportunities offered by the dawn of democracy.

Areas such as Msinga are very harsh places for (especially young) women; for men too, of course, but in different ways. While the socio-legal institutions I study are male-dominated, sometimes even exclusively male, I rarely felt unsafe or at risk. As far as I could tell, the idea that "ignorance is bliss" had so far proven true for me. In reality, in my personal life, I knew nothing of the overlapping forms of structural and interpersonal violence suffered by the people I often engaged with in my research. The truth, then, is that I probably did not know how to respond when presented with as real a risk as conducting research in Msinga for the first time.

## RESPONDING TO BEING OUT OF PLACE

I have generally responded to my being out of place in the areas where I conduct fieldwork by trying to fit in. For instance, I have sought to dress in ways that are considered respectable and respectful in those places, and I have changed my comportment to appear more suitably acculturated. As a Black woman going into spaces that emphasize such external appearances and personal conduct, I have honestly felt that I had no choice.

Invariably, I have misjudged situations at times – perhaps by over-compensating for my foreignness or not modulating my behaviors enough. The anecdote that opens this chapter is a challenging example of the latter fault, while I worry that my first marriage proposal was a product of the former error. The worst that had come of that was disruption of my PhD field research when I ultimately had to change site because of the persistence of one senior traditional leader's pursuits and determination to coddle and woo me,<sup>6</sup> thus denying me access to the places I wanted to study critically (using participant observation).<sup>7</sup> But that was doing research in Swati-speaking communities in Mpumalanga that were vastly different from Msinga.

Some practical challenges have been posed by my identities since the beginning of my empirical research journey; for instance, being a woman who is identifiable with the communities but also clearly an outsider has presented limitations such as the fact that women cannot enter certain spaces in which men have the important conversations. But my mix of identities has also offered a lot of opportunities simply because I am treated differently than other (that is, local) women. For example, because I am a highly educated woman, I have been permitted to visit places that I would not be allowed to if I was a local woman and have been permitted to ask questions that I might not otherwise have been allowed to ask.

These are the same ways in which my personal identity characteristics relate to or may even challenge the power of the colonially legislated and enforced patriarchy of law in my research sites, potentially reshaping my study through my identity, history, and background. Put differently, because of my identity, history, and background, I am able to straddle what (at least, preliminarily) presents as a deep patriarchal divide between men and women as inhabitants of the physical places and legal spaces in their rural lives. Aside from the aforementioned practical challenges, I have been unbelievably fortunate never to encounter severe forms of harassment (or discrimination other than

<sup>6</sup> I have previously written about this (Mnisi Weeks 2014).

<sup>7</sup> By participant observation, I mean that my primary method of information gathering was actively engaging in the daily routine of community members, their events, rituals, and culture, and also being generally vigilant in case opportunities for passive involvement or pure observation of family relations as well as corporate dispute settlement and law enforcement in the local courts would arise. This immersion in the community was complemented by interviews with its members. See Dewalt and Dewalt (2002 at 1, 19); Nader (1997); Marks (2005).

that already mentioned on the basis of access as a woman) in my research. One might even say I was somewhat spoiled.

My determinedly naïve attitude – what one might reasonably label “wilful blindness” (Heffernan 2011) – to Msinga changed quite significantly with the conversation with Magogo that I have recounted previously. From having regarded the personal and professional accounts I was collecting from study participants as mere anomalies (the exceptions that prove the rule of goodwill and safety even in Msinga), I shifted to seeing them for what they were: a patchwork of experiences of severe human insecurity among a near-forgotten people in remote parts of what is often found to be the most unequal country in the world.

As it turned out, the visit was followed by my first real deep dive into the data I had collected in Msinga to analyze it, and this data bore out what I was coming to believe about Msinga as crystallized by that conversation with my host: that Msinga is a comprehensively dangerous place. Confronting this truth led me to a challenging place psychologically and emotionally. Fortunately, this all happened toward the end of my extended data collection period because, frankly, it became very difficult for me to return to Msinga after that. On the one occasion when I returned for fieldwork, I asked a colleague to accompany me. A few months after, I experienced a debilitating case of extreme fatigue – otherwise known as burnout (Chen and Gorski 2015). My doctor placed me on medical leave. While I did not recognize it as such at the time, and did not fully confront until years later while writing this chapter, I was experiencing secondary trauma from delving so deeply into the narratives of struggle and violence that I was collecting through my research.

“Vicarious traumatization” was first named such by Lisa McCann and Laurie Ann Pearlman (1990) who defined it as the symptoms (or “enduring psychological consequences”) suffered by therapists who are exposed to traumatic events in and through the support they provide victims of said traumatic experiences. These “cardinal signs and symptoms of the aftermath of a serious victimization” include “nightmares, fearful thoughts, intrusive images, and suspicion of other people’s motives,” which commonly occur among people who have suffered victimization. What distinguished the study participants McCann and Pearlman were describing as experiencing these symptoms was that they were therapists who had not themselves “directly experienced a victimization or catastrophe” (132). What had brought them these

symptoms was their service in the role of “mental health professionals who spend a significant proportion of their professional time doing therapy with or studying persons who have been victimized” (132).

As McCann and Pearlman summarize the phenomenon: “Persons who work with victims may experience profound psychological effects, effects that can be disruptive and painful for the helper and can persist for months or years after work with traumatized persons. We term this process ‘vicarious traumatization’” (133). Since McCann and Pearlman’s 1990 publication, the phenomenon I describe has become widely identified in the literature under names including “vicarious trauma” and “secondary traumatic stress” (Newell and MacNeil 2010). It has also been closely associated with “compassion fatigue” and “burnout” (Ibid.). Yet, in its crispest definition, according to Dana Branson, “vicarious trauma” refers to “the unique, negative, and accumulative changes that can occur to clinicians who engage in an empathetic relationship with clients” (Branson 2019, 2). As Branson describes, vicarious trauma develops in direct relationship “to client disclosures of trauma, often detailed and graphic” (2), and results in changes that can be mental, emotional, physical and spiritual (2–3).

While I was obviously not serving in the role of therapist, through my research, I was witnessing – over and over again – the suffering of people who lived in deeply vulnerable circumstances and were regularly confronted with serious risks, if not the reality, of harm and helplessness in their locale. Studying the phenomena of access to justice in the context of profound human insecurity (lack of “freedom of want” and “freedom of fear” [Alkire 2003]), was causing me deep suffering that I sought to simply brush aside as “not that serious.” After all, I was not the one living with the trauma that faced my interlocutors day in and day out – and being a law and society scholar can hardly be equated with being a therapist, counselor, or social worker. Nonetheless, in hindsight, it is difficult for me not to relate the following summary by Branson (2019, 3) to my experience:

Engaging in an empathic relationship with a client and understanding trauma from the client’s person-in-environment point of view is an essential part of a clinician’s skill-set and therapeutic rapport (Chang, Scott, & Decker, 2013). This necessitates the clinician being open to the subjective disclosures of the client, suspending personal values and

judgments, and adopting the client’s worldview. Additionally, it entails comprehending what the traumatic events mean intrinsically to the client and corresponding dysfunction(s). This level of therapeutic intimacy creates a vulnerability for the clinician to be “infected” with the cognitive and affective aspects of the client’s trauma (Aparicio et al. 2013; Van Hook & Rothenberg 2009).

Much of what a therapist is trained to do is what I, as an ethnographer, sought to do. The sheer empathetic (or, as we anthropologists call it, “emic”) exposure to intimate narratives of the terrible insecurity with which people lived on a regular basis was enough on its own to trigger vicarious trauma for me but, as it turned out, it was compounded by my own personal identity’s interplay with the truth of that reality in which people in Msinga live.

When the identity lines between insider and outsider are so blurry as they were between my interlocutors in Msinga and myself – and the moral weight of our comparative experiences as great as it was and remains for me – it is difficult for me to see how I could not empathize at such a deep level as to become “vulnerable” to “infection” by their trauma. Thus, because of all the differentiating factors I have named between my study participants and myself, I feel like the main challenges posed by my identity were internal. They began with the impostor syndrome that many people attest to feeling when it comes to being a scholar or being in the ivory tower – especially when a woman, person of color or bearing other “minority” identities in these spaces.

For me, this impostor syndrome has wrapped into it a related “survivor guilt” of sorts (Hutson et al. 2015): that is, “guilt at having survived when others who seem to be equally, if not more, deserving” – as in the case of many of my very own immediate family members – did not (Piorkowski 1983). I have therefore spent a lot of time thinking about – and really struggling with – the fact that, *but for* a number of random events and immense fortune on my part, the positions of the people I study and myself could easily have been wholly reversed. In terms of my being Black, African, and female as are much of the world’s poorest and most disenfranchised, I could easily have been just as poor as the vast majority of my race and gender. Hence, my position and that of my study subjects could have been exactly the same; I could have been just as poor, marginalized, and insecure as they. Yet, what an unspeakable privilege to be in my

position as opposed to theirs – literally unspeakable, so much so that I could not even tell of the dehumanizing impact of the fundamentally racist separation between their daily worlds and my own that I was suffering to myself.<sup>8</sup>

Working with our local nongovernmental organization partners in Msinga, we had settled on ways to compensate people for their time and participation in the study (some limits were placed on this by our NGO partners' concerns about raising the costs and expectations associated with surveying local residents, as the NGO had to do in order to provide effective services to the local community). We gave the headmen blankets and cellphones as gifts for their extended participation. We gave stipends to the local fieldworkers who assisted us with recording data. We provided transportation to carry people over the vast distances and catered generous meals for focus group participants. We brought small gifts of material necessities to interviewees and, whenever I stopped to spend some time getting to know people and asking them about their lives, they expressed deep appreciation for my doing so – as if it was the first time that they had felt “seen.” To me, none of this felt adequate; only relief of their endemic insecurity would do.

Consequently, I sometimes (often?) struggle with entering the intimate spaces of people's lives for brief moments in order to excavate the legally relevant elements therein for the purposes of developing deeper understanding of the tensions between ordinary rural people's legal consciousness and practices, on the one hand, and the legal culture of formal institutions charged with making and enforcing the law, on the other. bell hooks's (1990, 151–2) words deafeningly resound in my mind:

Often this speech about the ‘Other’ annihilates, erases: ‘no need to hear your voice when I can talk about you better than you can speak about yourself. No need to hear your voice. Only tell me about your pain. I want to know your story. And then I will tell it back to you in a new way. Tell it back to you in such a way that it has become mine, my own. Re-writing you, I write myself anew. I am still author, authority. I am still the colonizer, the speaking subject, and you are now at the center of my talk.

<sup>8</sup> Here, I draw on and extend the literature arguing that experiences of racism themselves can be trauma-inducing. See, for example, Bryant-Davis and Ocampo (2005).

How is what I am doing different – not just “black skin” with “white mask” (Fanon 2008)? Yes, I think I have got the “why we speak” that hooks (1990, 151) emphasizes in order. Yet, to what end?

Especially knowing that any positive benefits or consequences of my scholarly contribution will not be immediate for study participants and will probably not be seen directly impacting the lives of those who shared their stories with me, I struggle with justifying to myself why I should dare to ask them to take time out of their daily attempts to merely survive in order to help me understand better the circumstances in which they make those efforts to survive and maybe one day thrive. Those are the inner challenges I grapple with. On the other hand, there are potentially openings presented by my identities too in that I am granted access to those spaces in ways that allow me to hopefully (at best) shed light on aspects of life and law on which others may not have been able. And I have to remind myself that the work I do will hopefully positively impact the lives of my study participants’ progeny, even if only indirectly.

In practical terms, how these challenges and opportunities all played out with respect to the ultimate completion of my Msinga project is that I had to step back from it for a long period – to take time to get well again. The first draft of my book was more of a therapeutic writing exercise than a research account of scholarly findings. As colleagues with whom I shared that draft for feedback responded, they understood that this was my attempt at making sense of some extremely dark elements of the human experience. It was an early part of my healing process. In essence, their feedback was to take a break and come back to it anew. Following that feedback, I found I could not really bring myself to revisit my draft again and finish the manuscript for a long time. Instead, I focused on other parts of my professional and personal life. I read. I taught. I wrote other products on mostly unrelated subjects. I attended therapy. I had twins.

It was toward the end of my parental leave that I very cautiously started revisiting my draft manuscript. The conviction that came from my learning of the brutal killing of one of the headmen who had partnered with us on the research largely returned me to the completion of the work. He was shot in broad daylight on February 13, 2016, by young men who were heard shouting, “Babulaleni bonke, bayizinja!” or “Kill them all, they are dogs!” According to our NGO partner’s annual report (which I received at the end of that year), “He was the third [Nakudala] induna to be killed in six months, a tally that makes it

difficult to find a replacement for the job.” Even though he had been one of the more difficult headmen to work with and to understand, I felt a sense of debt toward him. I had the distinct sense that I owed it to him – and to his daughters who I had gotten to know briefly – to tell his story.

My sense of conviction was also aided by my parental leave during Fall 2016 which I found refreshed me at a soul level (due to the sheer relief of safely bringing these two precious, tiny human beings into the world) rather than at a physical level (because it goes without saying that I was not getting much sleep or time to do anything solely for myself during that period). This, even as my high-risk pregnancy and emergency birth experience as a very educated and privileged but nonetheless *Black* woman in America (and the long journey I was beginning of recovery from it), had brought me fresh determination to better understand the very nature of trauma and, later, the best avenues for healing.

## LESSON(S)

The lessons I have learned are challenging to talk and write about, as they are still very much unresolved. Everything still feels raw to this day. Even as I wrote this chapter, I found that my recall of events was patchy; elements of a story would return in uncoordinated waves that were difficult for me to confront. As I have tried to understand what it is about the experience that still haunts me, I settle on one main thing: I remain challenged by the privilege of even describing the psychological challenges I encountered due to my fieldwork experience as “trauma.” As someone very dear once told me: “you can say that you are suffering because you can [afford to] go to a psychologist.” In other words, in a world in which the visibility and validity of human suffering depends on its legitimation by scientific and professional knowledge processes, it is my privileged access to the latter that permits me to say that I have “suffered trauma.” Even today, I feel that my “vicarious trauma” was a distinct marker of privilege: the equivalent of “white fragility”<sup>9</sup> or #firstworldproblems. What right then do I have to whine about it, even here, and what lessons do I really have the right to draw from it, as it were?

<sup>9</sup> Particularly in the sense of entitlement to comfort in this area of life being challenged. See DiAngelo (2018).

Yet, perhaps two lessons emerge. Firstly, clearly, ignorance during fieldwork is *not* bliss. Rather it can conceal a naïveté and youthful arrogance that is quite dangerous as is wilful blindness; or, perhaps, under a more charitable interpretation, it can conceal a sense of purpose and determination that may not always serve one. Whatever the case, it is important for researchers to think carefully – and realistically – about what risks they are prepared to take to gather their data and how their feelings or assessments of such might shift with time. Concerning my own physical safety, part of me worries that I silenced my own fears because I doubted that, if I faced them, I would have enough courage to persist in conducting the study. Nonetheless, one thing I had not sufficiently pondered in advance was the reality and potency of vicarious trauma. Had I done so, I might have counselled myself to engage in more active self-care in the radical sense in which Audre Lorde used that term (2017), ensuring that I treated it as being just as important to plan for and incorporate as other elements of my research plan and instruments.

Again, I do not wish to suggest that being an ethnographer in places “where people get killed in broad daylight” is equivalent to being a clinician. However, there are parallels as I have pointed out before. These parallels necessitate particular preparation. Branson (2019) writes of this need:

As a result of the client–clinician relationship, some researchers see VT as an inevitability, natural, and normal response to the therapeutic relationship (Barrington & Shakespeare-Finch, 2013; Sansbury et al., 2015) and therefore should be considered a hazard of the work and a catalyst for prevention development, training initiatives, and supports for practitioners (Branson et al., 2014; Ilesanmi & Eboiyehi, 2012; Iqbal, 2015; Shannon, Simmelink-McCleary, Im, Becher, & Crook-Lyon, 2014).

I know that I would have benefited from having strategic preparation and continued support in managing the psychosocial impacts and emotional aspects of my study to complement all the technical tools and assistance to which I had access. Just having planned on therapy throughout the study could have significantly changed things.

Secondly, I take away from my experience the lesson that identification with and empathy for one’s subjects can provide very helpful impetus to do justice to the project. What that looked like for me is that I knew I would rather not publish the findings than to tell a story

that amounted to “the natives are killing each other”; yet, at the same time, as I have shared, I also felt real conviction about telling the stories of those who suffered and those who had died. By foregrounding the social and political economy of Msinga and similarly placed communities, as well as taking an asset-based approach (Yosso 2005) (a variation on appreciative inquiry [Reed 2006]) and emphasizing potential solutions in the conclusion that are grounded (Charmaz and Mitchell 2001) in the wealth, strengths, and resilience of the local people as well as “interest convergence” (Bell 1980), the final draft of the book tried to reconcile those goals.

In hindsight, recalling that Msinga had been chosen as a field site because “if there was any place in South Africa where traditional courts could be expected to function optimally, Msinga was it,” so devastated was I by what I had found that by the end my narrative aspirations were not very ambitious: They were framed more negatively (in terms of what I wanted to *avoid*) than positively (in terms of the future to which I wanted to contribute). That was also partly an expression of the shame I carry from what I was taught in law school and graduate school is and is not “good” legal and anthropological scholarship. hooks captures this (mis)education (Woodson 1933; Goodman 1964) poetically when she writes:

This language that enabled me to attend graduate school, to write a dissertation, to speak at job interviews, carries the scent of oppression. . . . Dare I speak to oppressed and oppressor in the same voice? Dare I speak to you in a language that will move beyond the boundaries of domination – a language that will not bind you, fence you in . . .? Language is also a place of struggle. The oppressed struggle in language to recover ourselves, to reconcile, to reunite, to renew. Our words are not without meaning, they are an action, a resistance.

(hooks 1990, 146–7)

I realize that I need to write about law and society in places like Msinga in a different language – literally. Hence, the book project that helped get me the utmost privilege in an “imperialist white supremacist capitalist patriarchy” (hooks 2013, 4) – that is, the permanency of employment and income security characterized by “tenure” at an academic institution – has left me with the challenge of clarifying for myself and others what it is about my identification and empathy with my subjects that brings greater insights to the findings of research and how I can use that more effectively in my future work. Indeed, I have found the

question that might be summarized as "what does effectiveness even mean?" plague me more than ever.

The implications of this second lesson feel risky to own – let alone profess – if for no other reason than the fact that they push me further out of the mainstream (or "whitestream" [Grande 2003]) of academia than I already was, being as precariously positioned as I have always felt. As Sandy Grande (2016) explains: "The notion of precarity has emerged as a way of describing the effects of neoliberal policy on the human condition" (135–6). As an African raised under the dominance of "settler colonialism" and thus subject (even in my scholarship) to "white logic(s)" and "white methods" (Zuberi and Bonilla-Silva 2008), my existence has always felt like a "nervous condition" (Dangarembga 1988). The assumptions from which I have been taught to depart in looking for social and legal power have always been outside of those that came naturally for me as someone outside of the dominant intersectional identities of "whiteness," "maleness," or "Euro-Americanness."

Again, the prescient hooks (1990) narrates my experience when she writes: "Often when the radical voice speaks about domination we are speaking to those who dominate. Their presence changes the nature and direction of our words. Language is also a place of struggle" (p. 146). The disciplines from which I was methodologically departing in my study were and are imbued with an imperialist agenda and settler colonialist ideals (Mafeje 1976), despite repeated calls and efforts to "decolonize" (Harrison 1997), and, most recently, to embrace "an 'abolitionist anthropology' that unapologetically recasts anthropology as a 'genre of Black study' that troubles the tendency of anthropologists to refuse complicity in the structures of dispossession taken up as topics of research" (Jobson 2020, quoting Shange 2019; also see Ndebele 1994).

Perhaps then the primary way in which the persistent reality of my being "out of place" – in the field, in the academy, and ultimately in my very soul – has affected my study of law and society and shaped my knowledge production is by leading me to despair over the potential of the dominant logics and methods to bring about real understanding and true liberation. While I have always been drawn to applied anthropology and been, at least, intrigued by "ethnography as politics" (Harrison 1997), I have not been able to summon up the courage to really pursue it outside the bounds of what the dominant voices in the field (which, even in South Africa, are overwhelmingly white) say is "good legal scholarship."

The idea of “critical participatory action research” (Torre et al. 2012) as part of rigorous scholarship has seemed lacking for its over-investment in worldly application through justice outcomes. The possibility of making better sense of the tensions of law’s pluralism simultaneously with making better sense of the tensions of producing scholarly research on law and society – both from *within* the “hyphen,” “interstices,” or “third space” (Bhabha 1996) – through methods such as autoethnography has been rejected as being far from credible (Ellis, Adams, and Bochner 2011; Jones 2008).

In a country such as South Africa, where the Constitution was for a long time hailed as being the “most progressive” in the world and having helped to prevent civil war, it is a sacred cow: above questioning or doubt for fear of “opening the floodgates” and ushering in “anarchy” (Ramose 2018). Yet, whether one refers to the extreme and overlapping forms of structural and interpersonal violence prevalent in Msinga or my insider-outsider ethnographer’s vicarious trauma, the costs of this kind of silencing are real – an inevitable consequence of the nervous conditions brought about by colonialism. These costs are born of the schisms (cognitive dissonance) (Maté and Maté 2022; Santos 2015) of always being told to silence (or, at least, temper) your inner “rebel” who rages against the violations of your linguistic autonomy (Wa Thiong’o 1992), relational integrity (with each other and with the land) (Okoth-Ogendo 2008), and “temporal sovereignty” (Rifkin 2017) because your arguments are too radical (King 2015; Biko 2002; X 1992).

That said, I draw courage from communities of scholars who have become increasingly vocal and refused to remain silent (for example, see, Sibanda 2013; Madlingozi 2017; Modiri 2017), who have consequently challenged my own work and the analytical lenses I apply to it. With the help of these voices, I am *un*learning law and society – decolonizing my mind and its application to the subjects I study. Therefore, the biggest shift that has resulted from my “out of place” experiences is in who my supposedly “pretty and young” self wants to be “when I grow up.” That is not another figure in the law and society canon, as deeply as I appreciate the insights brought by the people who make up that illustrious body.<sup>10</sup> I am striving for a new socio-legal

<sup>10</sup> Laura Nader, Martin Chanock, Sally Engle Merry, Peter Delius, and Susan Silbey’s work – among that of others too numerous to name – continues to inform my work; and I am very grateful for the mentorship of scholars such as Heinz Klug, Thandabantu Nhlapo, Penelope Andrews, John Comaroff, Dee Smythe, Aninka

scholarship that is grounded in hidden pasts, forgotten futures, and rejected ways of being, seeing, and knowing.<sup>11</sup>

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Claassens, Chuma Himonga, Ben Cousins, Mark Fathi Massoud, and many more. However, I removed citations to Comaroff and de Sousa Santos in response to allegations that they had violated women's rights, except in two places where their work and/or mentorship influenced my thinking.

<sup>11</sup> For more, see my forthcoming book, *Alter-Native Constitutionalism: Common-ing 'Common' Law, Transforming Property in South Africa* (Cambridge University Press).

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