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Legal consciousness and migration: towards a research agenda

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Abstract

This paper reviews scholarship regarding migrants' legal consciousness. After discussing the personal, geographic and methodological scope of the reviewed studies, the conceptualisation of legal consciousness is examined in light of evolutions in general legal consciousness studies. Thereafter, factors emerging as shaping migrants' legal consciousness are analytically clustered at four levels: individual characteristics, relational factors, cultural dynamics, and public policies and discourse. Future research on legal consciousness could shift its gaze towards understudied migrant groups as well as places. We suggest being more explicit regarding the conceptualisation of dimensions of what is 'legal' and of 'consciousness', and adopting a pluralist approach to law. The analytical grouping of the factors impacting migrants' legal consciousness may serve as a useful reference point for future research and facilitate a more comprehensive appraisal of the various dynamics shaping migrants' legal consciousness.

Keywords: migration law; socio-legal studies; legal consciousness; literature review

1 Introduction

Studies on legal consciousness have become more prevalent in law and society research since the 1980s. These studies have focused on specific groups, such as same-sex couples (e.g. Hull, 2016), working-class people (e.g. Merry, 1990), homeless applicants (e.g. Cowan, 2004), the welfare poor (e.g. Sarat, 1990), disability support groups (e.g. Barton, 2004), sex workers (e.g. Boittin, 2013), as well as migrants (e.g. Abrego, 2008).

In this regard, studying migrants' legal consciousness appears to be both scientifically and societally particularly relevant. Migrants are an intriguing group to study because they 'travel' from one (state) legal system to another. State immigration laws have a considerable impact on migrants' everyday lives, as they determine where migrants are allowed to live; how they can form or reunify their families; and how they can access education, labour, health care and social security (de Hart and Besselsen, 2020). Whereas migrants need to engage with the state law of the host society, other formal and informal rules emanating from origin or transit countries or from particular social fields may impact their legal consciousness as well. Migrants' legal consciousness will thus often be informed by a reality of legal pluralism, where the legal system of the host state may or may not coincide with other rules that guide migrants' perceptions and actions. Studying migrants' legal consciousness can teach us more about these interactions between various legal and normative systems.

Moreover, migrants often find themselves in a disadvantaged situation in the host society, facing racism and discrimination on the one hand, and being expected to 'integrate' as swiftly as possible on the other. Therefore, studying migrants' legal consciousness may improve our understanding in how disadvantaged groups give meaning to and navigate law. Finally, such studies will help us to identify to what extent the characteristics of migrants' legal consciousness differ or concur with those of the 'native' population.

This paper undertakes a literature review of studies on legal consciousness and migration. These works mainly concern the legal consciousness of migrants, with some studies focusing on citizen family members. The reviewed publications are situated in the broader field of legal consciousness studies. Moreover, the factors that appear to shape legal consciousness in a migration context are clustered into four dimensions (individual, relational, cultural and public policy/discourse).

The literature review was limited to scientific publications in English and thus did not consider studies published in other languages or grey literature. Only publications explicitly analysing legal consciousness and framing it as such were selected. This implies that studies focusing only on legal mobilisation without inquiring into people's perceptions of law were not included. These methodological demarcations logically impact the findings: it is highly plausible that the nature and number of the studies in the sample would differ when applying a different method (see also Mieanskiene, 2020). A systematic search of the Heinonline and Jstor databases was complemented with snowball sampling. Seventeen publications on legal consciousness and migration were analysed in depth.

Halliday (2019) identified four (Weberian ideal types of) approaches to legal consciousness research: a critical approach, an interpretive approach, a comparative cultural approach and a law-in-action approach. Whereas the critical approach takes the enigma of the hegemonic power of law as its starting point, the interpretive approach focuses on the meaning people attach to their social action. Overall, the reviewed studies on migrants' legal consciousness can be situated within these critical and interpretive approaches. The comparative cultural approach mostly studies the legal consciousness of societies as a whole (e.g. Hertogh and Kurkchiyan, 2016), even though cultural groups within a society can also be compared (Halliday, 2019). Of the reviewed studies, only Gleeson (2010) included a comparative dimension and the overall approach adopted is more in line with the interpretive tradition, as it focuses on narratives of undocumented workers that explain why they refrain from making claims regarding their workplace rights. The law-in-action approach analyses the legal consciousness of key actors who are implementing the law in books, who usually do not include migrants.

After discussing the personal, geographic and methodological scope of the reviewed studies on migrants' legal consciousness, the conceptualisation of legal consciousness in these publications is examined in light of evolutions of general legal consciousness studies. Thereafter, factors emerging as shaping migrants' legal consciousness are analytically grouped as situated at the individual, relational, cultural and public policy/discourse levels.

Based on this analysis, a research agenda for future studies on migrants' legal consciousness emerges. Such research could include groups currently less visible in legal consciousness studies and be more diversified from a geographic and methodological point of view. Moreover, we suggest being more explicit in how the dimensions of what is 'legal' and of 'consciousness' are understood and adopting a pluralist perspective of law. Finally, the analytical clustering of dimensions shaping migrants' legal consciousness may facilitate a more comprehensive understanding of the relationship between legal consciousness and migration.

2 Personal, geographic and methodological scope

The migrants studied in the reviewed publications were mostly undocumented (Abrego, 2008; 2011; 2019; Gleeson, 2010; Hirsh and Lyons, 2010; Schwenken, 2013; Alpes, 2018; Flores *et al.*, 2019; Galli, 2020). This predominance of undocumented migrants is in line with the interest of critical legal consciousness studies in 'those who are failed by the state legal system' (Halliday, 2019, p. 864), as undocumented migrants can be considered to be among the most vulnerable within the already 'marginalized group' (Halliday, 2019, p. 864) of migrants. Other studies focus on family (Kulk and de Hart, 2013), labour (Namukasa, 2017), retirement (Gehring, 2013) and return migrants (Kubal, 2015) as well as refugees (Chakraborty *et al.*, 2015).

Two studies examined the legal consciousness of persons who are not aliens themselves but stand in close relationship to them. Abrego (2019) studied the legal consciousness of US citizen young adults of mixed-status families, namely families with at least one undocumented parent. Although these

young people have US citizenship themselves, the irregular status of their parents influences their legal consciousness. de Hart and Besselsen (2020) explored how Dutch citizen women with a migrant partner perceived family reunification policies. These two studies are included in the reference to 'studies on migrants' legal consciousness' in the remainder of this paper. Finally, one publication adopted a bird's-eye perspective, reviewing other studies relating to migrants' legal consciousness (Miežanskienė, 2020).

Studies on family migration (Kulk and de Hart, 2013; de Hart and Besselsen, 2020) and domestic violence (Graca, 2018) limited their research participants to women, for instance, because of the gendered functioning of family reunification laws (de Hart and Besselsen, 2020). Other studies included both men and women, with men sometimes in the majority, such as in the restaurant industry in the US (Gleeson, 2010).

Few of the reviewed publications included a comparative component with other groups with, for instance, similar socio-economic characteristics. Such a comparative approach may be interesting to more clearly identify particular factors shaping migrants' legal consciousness. An exception is Gleeson (2010), who compared the legal consciousness of undocumented migrant and native-born low-wage workers in the US. Whereas some elements impeding claims-making were shared by both groups (e.g. lack of legal knowledge), other reasons for the reluctant attitude towards claims-making were particular to migrant workers (e.g. language barriers and legal status) as further discussed below.

Regarding geographic scope, most studies focus on migrants in the US (Abrego, 2008; 2011; 2019; Gleeson, 2010; Hirsh and Lyons, 2010; Flores *et al.*, 2019; Galli, 2020) and in European countries (Gehring, 2013; Schwenken, 2013; Chakraborty *et al.*, 2015; Kubal, 2015; Namukasa, 2017; Graca, 2018; de Hart and Besselsen, 2020). These findings are partially in line with those of the review of Miežanskienė (2020), who also mainly discussed publications from the US, even though our sample here includes more publications from Europe. This unbalanced geographic distribution at a minimum indicates that English-language academic publication channels have concentrated on research on migrants' legal consciousness in Western host societies.

Many studies have used single-case-study designs (Yin, 2018) focusing, for instance, on a particular state in the US (e.g. Abrego, 2008), on a country such as Germany (Schwenken, 2013) or on a region such as the Costa Blanca in Spain (Gehring, 2013). Flores *et al.* (2019), on the other hand, compared how migrants experienced illegality in three cases, which differed not only regarding their geographic location (different states in the US), but also regarding legal jurisdiction (the national, state or municipal level), life domains (e.g. education and activism) and actions taken towards the law (e.g. circumventing and challenging). The authors found 'migrant illegality' to be place-dependent, as it was perceived differently in different places. Similarly, Gleeson (2010) conducted interviews in two cities with similar demographic and economic profiles but different labour policies: San Jose, California and Houston, Texas. Even though workplace provisions in San Jose were more protective, the experiences and narratives of undocumented workers in both cities were found to be 'strikingly similar' (Gleeson, 2010, p. 575). In a similar vein, Galli (2020) focused on different spaces in the trajectory of unaccompanied minors in the US (at the border and at the Office of Refugee and Resettlement) to analyse the effects of socialisation that occurred during these bureaucratic encounters as well as the role of state power therein. These spaces have different and sometimes contradictory mandates, such as care vs. control in the Office of Refugee and Resettlement. This shaped unaccompanied minors' legal consciousness in a dichotomous way, namely with contradictory elements such as fear from and trust in the receiving state. Moreover, the author found that, after the release from the Office of Refugee and Resettlement, interactions of the minors with their (often undocumented) family members further influenced their legal consciousness.

Methodologically, there was a predominance of qualitative empirical research based on, often semi-structured, interviews (Abrego, 2008; 2011; 2019; Gleeson, 2010; Gehring, 2013; Kulk and de Hart, 2013; Schwenken, 2013; Chakraborty *et al.*, 2015; Kubal, 2015; Namukasa, 2017; Graca, 2018; Galli, 2020; de Hart and Besselsen, 2020). More rarely, participant observation (e.g. Abrego, 2008; Kubal,

2015; Flores *et al.*, 2019), survey data (Hirsh and Lyons, 2010), document analysis (e.g. collection of popular media; see Flores *et al.* (2019)) and (exclusively) literature reviews (Kubal, 2013) were used. This finding is in line with the broader field of legal consciousness studies, where qualitative research similarly prevails among studies adopting a critical or interpretive approach to legal consciousness (Halliday, 2019).

Most reviewed publications drew on interviews conducted at one particular point in time. Nevertheless, Abrego (2008) carried out a longitudinal study with interviews before, shortly after and three to four years after the implementation of a bill exempting long-term residents, irrespective of legal status, from non-resident tuition fees for higher education. de Hart and Besselsen (2020) interviewed female sponsors in 2010 and 2016, which allowed them to assess the impact of the increased restrictiveness of Dutch family reunification law.

To examine employment discrimination, Hirsh and Lyons (2010) combined insights on the relevance of legal consciousness in the emergence of disputes (Felstiner *et al.*, 1980–1981) with other disciplinary perspectives. Concretely, the notion of legal consciousness was used to describe the extent to which workers invoked racial discrimination as a legal concept and named harmful actions at work as such. The authors integrated these socio-legal perspectives on legal consciousness with sociopsychological perspectives on perceptions of discrimination and organisational research on how workplace contexts relate to discrimination.

As a final methodological consideration, Graca (2018, p. 422) points to the importance of the choice of language when studying migrants, ‘as the conceptualisation of the legal phenomena that is made within a group may not align itself completely with that of the justice system of the country of destination’.

3 The concept of legal consciousness in studies on migration

When studying legal consciousness, scholars make a choice – implicitly or explicitly – as to how they understand the dimensions of what is ‘legal’ and of ‘consciousness’. In this section, we relate this conceptualisation and the different types of legal consciousness identified in the studies reviewed to some of the broader literature on the topic.

3.1 The ‘legal’ in legal consciousness

Most of the reviewed publications examined migrants’ legal consciousness in relation to state law. The legal order studied was often that of the state in which the migrant was currently residing (Abrego, 2008; 2011; Gleeson, 2010; Schwenken, 2013; Flores *et al.*, 2019), with some exceptions (Gehring, 2013; Kulk and de Hart, 2013; Chakraborty *et al.*, 2015; Namukasa, 2017). Gehring (2013) analysed the legal consciousness of Dutch persons who migrated to Spain after their retirement, investigating how these migrants perceived and dealt with access to care provisions in both Netherlands and Spain. Kulk and de Hart (2013) also studied legal consciousness from a transnational perspective, conducting interviews with Dutch women who were married to Egyptian men and lived in Egypt. The authors demonstrated that legal consciousness is largely developed within a specific social context, to which they referred as ‘transnational social space’, namely a small community that is closely connected (Kulk and de Hart, 2013, p. 1062). Chakraborty *et al.* (2015) analysed legal consciousness of refugees in Germany in relation to EU law (i.e. the Dublin III Regulation and the EURODAC Regulation) rather than national law. The authors demonstrated that the Dublin system is mainly perceived negatively because of its power and complexity. Finally, Namukasa (2017) examined how East African health workers in the UK perceived and experienced various roles of law – that is, as both a control mechanism and an empowering tool. To that end, the study went beyond state law perceptions, including migrants’ negotiations in the context of international human rights.

All the reviewed studies that analysed migrants' legal consciousness in relation to state law focused on a specific field of law, such as education, labour, social security, migration or family law. This is in line with Engel's (1998, p. 140) observation that '[d]ifferent substantive areas of law are associated with different perceptions, understandings and behaviours and must, therefore, be distinguished in research on legal consciousness' (see also Hertogh, 2018).

Divergent approaches could be identified based on the specific entry point to the field of law studied, ranging from a particular legal instrument over certain rights to a broader legal concept. Abrego (2008) analysed the impact of one education law on legal consciousness. California Assembly Bill 540 exempted all long-term residents in California, irrespective of legal status, from non-resident tuition fees for public colleges and universities, making public higher education more accessible for undocumented students.

In the field of labour law, Gleeson (2010) studied legal consciousness in relation to specific workplace rights, including minimum wages, overtime provisions, meal breaks and medical attention in cases of emergency. Gehring (2013) focused on access to health-care rights in Netherlands and Spain for Dutch retirement migrants. Even though Dutch migrants are EU citizens and can thus move and reside freely in the EU, they are confronted with different welfare systems regarding health care.

Other studies started their analysis of legal consciousness from a particular legal concept, such as illegality, citizenship, discrimination or domestic violence. As such, studies on legal consciousness in the area of migration law have analysed how undocumented migrants experience illegality (Abrego, 2011; Flores *et al.*, 2019). In her paper from 2019, Abrego used citizenship as an entry point to investigate the legal consciousness of US citizen young adults of mixed-status families. Citizenship was understood as 'the juridical category granting the most rights and protections' (Abrego, 2019, p. 645), being 'the only status that can protect them from expulsion' (Abrego, 2019, p. 650). In Hirsh and Lyons (2010), the central question was whether and when workers attributed harmful experiences in the workplace to racial discrimination. In the field of family law, Graca (2018) examined how Portuguese women in England understood and perceived domestic violence. Finally, Alpes (2018) examined how deportations of Cameroon migrants (bushfallers) were perceived by their family members in Cameroon. In contrast to her expectation, she found that the family members did not view illegality as the cause of deportation; rather, selfishness and laziness were explanatory factors for the success or failure of migrants.

Few studies explicitly included non-state normative orders in their conceptualisation of the 'legal' in legal consciousness. Nevertheless, Graca (2018, p. 422) asked Portuguese women for their understanding of domestic violence 'in their own words and without any legal contextualisation of the researcher', thus leaving reference to particular legal systems or norms to her respondents. Kubal (2015, p. 70) considered legal consciousness as a form of social remittance with the latter understood as 'the ideas, the values and practices of legality – at the ideational (normative) and behavioural level – remitted by "return" migrants'. She adopted the broad understanding of legality proposed by Ewick and Silbey (1998, p. 43) as referring to 'the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends'.

The predominance of state law in studies on migrants' legal consciousness echoes similar observations in the broader field of legal consciousness studies. In their ground-breaking work *The Common Place of Law*, Ewick and Silbey (1998, p. 40) reported that '[w]e did not want to ask people about their legal problems or needs, since it was the respondents' own understandings and definitions of these concepts ... that we wanted to hear about'. The authors aimed to unveil the various ways in which law is present in everyday life. To this end, the authors distinguished 'legality' from 'law', with the latter used to indicate 'aspects of legality as it is employed by or attributed by formal institutions and their actors' (Ewick and Silbey, 1998, p. 39). The authors wanted to study how law operates outside of these conventional institutional borders and formal settings. They shifted the focus from the 'traditional' places where official law was studied to its manifestations in common places and understandings by ordinary people. In this sense, the authors were inspired by the distinction made by Pound

between ‘the law in books’ (the ‘ideal’ law) and ‘the law in action’ (the ‘actual law’), namely the implementation of these rules on the ground.

Nevertheless, other scholars (Hertogh, 2004; Piana *et al.*, 2018) have argued that even if Ewick and Silbey intended to decouple legality from formal institutional law, their central focus was still on official law. Various authors have therefore suggested conceptualising law in a broader way when studying legal consciousness, given that official law is often not the only normative system that impacts social fields and societies (Sarat and Kearns, 1995; Engel, 1998; Hertogh, 2004; Halliday and Morgan, 2013; de Hart *et al.*, 2013). According to Hertogh (2018), it will be very challenging to assess the true importance of state law if other forms of (non-state) law are ignored.

Notwithstanding these calls from scholars to also take non-state normative orders into account, legal consciousness studies with this departing point have been rare (but see e.g. Engel and Engel, 2010; Graca, 2018; Hertogh, 2018). This seems odd, as the realisation that there are other normative systems beyond state law that influence daily life was one of the key insights and starting points of the field of socio-legal studies as a whole (Engel, 1998; Engel and Engel, 2010; Hertogh, 2018). As Engel (1998, p. 139) holds: ‘[Legal consciousness scholars] have failed to reinsert some of the very insights that represent the most distinctive achievements of law and society scholarship.’ Therefore, Hertogh (2018, p. 183) urges reconnecting contemporary legal consciousness studies with the ‘classic’ law and society tradition.

Given the importance of the host society’s state law to migrants’ everyday lives, it is understandable that much research on migrants’ legal consciousness takes (a specific field of) this state law as the object of analysis. This focus may obscure, however, the relevance of other normative orders. The call in general legal consciousness studies to include non-state normative orders when studying legal consciousness appears equally valid for studies on migrants’ legal consciousness.

3.2 ‘Consciousness’ in legal consciousness

In general legal consciousness studies, the dimension of ‘consciousness’ can refer to people’s ideas and perceptions of law (what people *think* and how they *express* this) or include people’s actions in relation to law (what people *do*, also defined separately as ‘legal mobilisation’).

Ewick and Silbey (1998, p. 46) understood ‘legal consciousness’ as ‘participation in the construction of legality’. The authors argued that consciousness is ‘not merely a state of mind’ but is ‘produced and revealed in what people *do* as well as what they *say*’ (Ewick and Silbey, 1998, p. 46, emphases in original). Similarly, Silbey (2005, pp. 337–338) critiqued the fact that ‘surveys often treat consciousness as a disembodied mental state, a set of attitudes and opinions, rather than a broader set of situation practices and repertoires of action’, implying that such practices and actions should be included in studies on legal consciousness. For Chua and Engel (2019, p. 336), legal consciousness also refers to ‘the ways in which people experience, understand and act in relation to law’, comprising both ‘cognition and behavior’ (see also Cowan, 2004).

Merry’s (1990; 2012) approach to the inclusion of ‘actions’ in the concept of legal consciousness seems to have evolved. In a publication from 1990, she defined consciousness as referring to ‘the way people conceive of the “natural” and normal way of doing things, their habitual patterns of talk and action, and their common sense understanding of the world’ (Merry, 1990, p. 5). ‘Patterns of action’ are included here in the conceptualisation of consciousness. Later, Merry (2012) identified legal consciousness as one of four dimensions of legal culture next to ‘internal legal culture’, ‘external legal culture’ and ‘legal mobilization’, explicitly distinguishing legal consciousness from legal mobilisation. Legal consciousness describes ‘the way individuals experience and understand the law and its relevance to their lives’ (Merry, 2012, p. 51). Legal mobilisation then refers to ‘the tendency for various individuals and groups to define their problems as legal ones and take them to some legal regime for help or settlement’ (Merry, 2012, p. 49).

Other authors have adopted an even broader approach to legal consciousness, explicitly including attention to compliance with and the impact of law. Nielsen (2000, p. 1059) has described legal

consciousness studies as being concerned with ‘individuals’ experience with law and legal norms, decisions about legal compliance, and ... the subtle ways in which law affects the everyday life of individuals’.

Turning to studies on migrants’ legal consciousness, most reviewed publications included both perceptions and actions in their definitions of legal consciousness, following the most prevalent approach used in general legal consciousness studies (e.g. Abrego, 2008; 2011; Gleeson, 2010; Gehring, 2013; Kulk and de Hart, 2013; Kubal, 2015; Flores *et al.*, 2019; Galli, 2020). For instance, in her study on the legal consciousness of undocumented students in California, Abrego (2008) used ‘legal consciousness’ as an overarching term covering understandings of law as well as the mobilisation of law, even though she dedicated a separate paragraph to legal mobilisation. In her 2011 study on the legal consciousness of undocumented Latinos in US society, consciousness equally covered both understandings of law and actions or claims-making (Abrego, 2011). Likewise, Gleeson (2010) included legal mobilisation in her understanding of legal consciousness when studying the relevance of undocumented status for workers’ claims-making. Legal-spatial consciousness as conceived by Flores *et al.* (2019) also concerns both understandings and actions: it concerns the impact (cf. Nielsen, 2000) of state law on people’s everyday lives as well as engagement with law.

A few studies on migrants’ legal consciousness understood consciousness as referring only to perceptions. In their study on racial discrimination in the workplace, Hirsh and Lyons (2010) focused on the ‘naming’ process in the classic ‘naming, blaming and claiming’ model developed by Felstiner *et al.* (1980–1981). Naming is considered the most crucial stage in the emergence and transformation of disputes, as an experience first has to be identified as injurious before blaming and claiming can take place. Naming is thus about perceptions and ideas. Different from her studies from 2008 and 2011, Abrego referred in her 2019 publication on US young citizens of mixed-status families to legal consciousness as ‘the commonsense understandings of the law’, thus not including actions or legal mobilisation.

In conclusion, both the general literature and studies on migrants’ legal consciousness have interpreted ‘consciousness’ in different ways. A majority of studies include both perceptions and actions in their understanding of consciousness, whereas other publications explicitly distinguish between legal consciousness and legal mobilisation. For the sake of analytical clarity and comparability, it is recommended that authors explicitly indicate how they understand consciousness.

3.3 Types of legal consciousness

Various proposals have been made to specify how people relate to the law, thus distinguishing ‘types’ or ‘categories’ of legal consciousness. One of the most widely known and used typologies is Ewick and Silbey’s (1998, pp. 45–49) ‘before, with or against’ the law. Some people conceive of legality in a certain situation as something objective and distant, and removed from everyday life. These people then stand ‘before the law’, which is governed by fixed rules in demarcated spheres. Sometimes legality is depicted as a game in which people strategically use social resources based on a certain, yet variable, set of rules: individuals play ‘with the law’ and legality operates in everyday life. Finally, people may perceive law as produced by power. Legality is seen as ‘arbitrary and capricious’: individuals act ‘against the law’.

Based on their studies of radical activism, a fourth dimension of legal consciousness, ‘under the law’, was proposed by Fritsvold (2009) and developed by Halliday and Morgan (2013). Within this category of legal consciousness, state law is seen as fundamentally illegitimate. Related to this is the emergence of a different conception of law that extends beyond the state and that is more linked to morality, thus integrating a legal pluralist approach (Halliday and Morgan, 2013).

The typology of Ewick and Silbey (1998) has been widely used to analyse findings on migrants’ legal consciousness (see e.g. Abrego, 2008; 2011; Gehring, 2013; Kulk and de Hart, 2013; Schwenken, 2013; Chakraborty *et al.*, 2015; Kubal, 2015; de Hart and Besselsen, 2020). For instance, Abrego (2008) drew on this typology to explain the legal consciousness of Californian undocumented students. Earlier studies have indicated that disenfranchised groups will be more likely to be ‘against the law’, as they feel trapped by authorities (Ewick and Silbey, 1998, p. 235; Nielsen, 2000). However,

Abrego (2008) showed that the legal consciousness of undocumented students in her study shifted from being ‘against the law’ to being ‘with the law’ by mobilising the law and claiming new rights to their benefit. Due to the enactment of Assembly Bill 540, the undocumented students felt that their merits were recognised and that the bill provided them with a more legitimate label. This positively influenced their social identity and empowered them to engage in legal mobilisation.

Similarly, de Hart and Besselsen (2020) used the typology of Ewick and Silbey to analyse how Dutch female citizens with a migrant partner experienced (the impact of) migration law in their everyday lives. The accounts of their interviewees about the law were inconsistent: whereas these Dutch women were critical about family reunification law on the one hand, they supported the increasingly restrictive policies on the other, referring to other categories of people who made this restrictiveness necessary. Nevertheless, the gendered implementation of migration rules made them feel excluded from citizenship and belonging.

Kubal (2015) found that the legal consciousness of Ukrainian return migrants was most related to the ‘under the law’ category, as they expressed strong criticisms of Ukrainian state law as fundamentally illegitimate. Their narratives of legality revealed the emergence of an alternative view of law rooted in communal principles and a ‘higher ideal of justice’ (Kubal, 2015, p. 83).

In the general legal consciousness literature, Ewick and Silbey’s typology has been criticised because ‘the salience of law is presumed rather than problematized’ (Levine and Mellema, 2001, p. 201). Even if people are ‘against the law’, law is still perceived as dominant or hegemonic, at least by scholars analysing these phenomena. Various authors have argued, however, that law is becoming more ‘alien’ or ‘irrelevant’ in people’s daily lives (e.g. Engel and Engel, 2010; Hertogh, 2018). This empirical finding has triggered a call to study situations in which the dog ‘does not bark’ (Engel and Engel, 2010, p. 161) or ‘law is absent’ (Hertogh, 2018, p. 74).

In this sense, Hertogh (2018) distinguished the conventional (or ‘critical’ or ‘hegemonic’) approach to legal consciousness from a secular approach. In his view, both approaches start from a shared observation in which (some) people are critical towards law or the justice system. Whereas the conventional approach then analyses why people turn to the law after all (and aims to be ‘critical’ towards the power of law and the state), the secular approach investigates why these people turn away from the law. A secular approach thus aims to study ‘if and how law matters in everyday life’ (Hertogh, 2018, p. 12), adding the ‘if’ to the ‘how’ question prevalent in the critical research tradition.

To describe this situation of turning away from the law, Hertogh proposed the concept of ‘legal alienation’, which means, in short, ‘the absence of law from everyday lives’. Concretely, he defines legal alienation as a ‘cognitive state of psychological disconnection from official state law and the justice system’ (Hertogh, 2018, p. 14). In our view, it is remarkable that his definition of legal alienation refers to ‘official state law’ and not to law in a broader sense. This seems to go against the plea, within a secular approach, to adopt a legal pluralist perspective and include non-state normative orders in the study of legal consciousness.

None of the reviewed studies on migrants’ legal consciousness identified instances of the irrelevance or absence of law. An open question is whether and how this more recent frame of ‘legal alienation’ developed by Hertogh will appear to be relevant when researching migrants’ legal consciousness. Migrants who travel from one state legal order to another frequently need to engage with specific provisions of the host society’s state law, such as to obtain residence rights and access to education and health care (de Hart and Besselsen, 2020). Therefore, the hypothesis would be that instances of legal alienation will occur less frequently among migrants because of the simple fact that they are often dependent on the state law of the host society.

In his review of Hertogh’s book, Halliday (2019, p. 871) argued that ‘a degree of legal alienation is consistent with the general legitimacy of state law and the general assent of people to the legal regime’. Complete legal alienation would come down to a society being governed by arbitrary oppression, which is not the case in liberal societies such as Netherlands, on which Hertogh focuses. In this sense, the concept of legal alienation could be more usefully considered a theoretical deepening of counter-hegemony evident in the ‘against the law’ narrative provided by Ewick and Silbey, Halliday

(2019) argues. Interpreted as an expression of counter-hegemony, the concept of legal alienation would probably be more relevant (and prevalent) when studying migrants' legal consciousness.

4 Factors shaping migrants' legal consciousness

There seems to be a scholarly consensus that legal consciousness is variable and dynamic (Hertogh, 2018, p. 60, referring to Ewick and Silbey, 1998, p. 50). Ewick and Silbey (1992, p. 742) hold that legal consciousness is 'something local, contextual, pluralistic, filled with conflict and contradiction'. Even though legal consciousness develops through an individual's experience with the legal system (Merry, 1990; 2012), it is not something purely 'individual'. Legal consciousness is shaped by social structures and relationships (Merry, 1990) and 'builds on shared understandings embedded in a local or national culture' (Merry, 2012, p. 51).

The studies reviewed identified various factors that influence migrants' legal consciousness. For analytical purposes, we have clustered these factors as being related to individual characteristics, relational factors, cultural dynamics, and public policies and discourse. Nevertheless, these factors are closely intertwined and interact in shaping legal consciousness in a migration context.

4.1 Individual characteristics

Various elements impacting migrants' legal consciousness can be situated at the level of the individual person: legal status, age, legal knowledge, educational level, language skills, gender, financial resources and social identity.

First, legal status was found to be a major driver shaping migrants' legal consciousness. Access to legal status is regulated by immigration laws, which have a tremendous effect on migrants' everyday lives and on their experiences with and understandings of the law (Menjivar and Lakhani, 2016). As Menjivar (2006, p. 1000) notes: 'Immigrants' legal status shapes who they are, how they relate to others, their participation in local communities, and their continued relationship with their homelands.' Differently from Miežanskienė (2020), however, our paper does not apply the lens of migrants' legal status to examine the main factors affecting migrants' legal consciousness. Rather, we reflect the variety of factors as they emerge from the empirical findings in our sample.

Various studies have analysed the legal consciousness of migrants with a particular legal status, with much attention paid to irregular migrants (Abrego, 2008; 2011; 2019; Gleeson, 2010; Schwenken, 2013; Flores *et al.*, 2019). For instance, Gleeson found undocumented Latino workers in the US to be more reluctant to make claims concerning their workplace than their documented counterparts (see also Schwenken, 2013). Due to their uncertain legal position, undocumented migrant workers perceived their working life in the US as temporary and felt that it did not pay to complain (Gleeson, 2010). The ever-present fear of deportation (see also Abrego, 2011), the fear of losing their jobs (see also Schwenken, 2013) and the threat of workplace raids were identified as other reasons preventing undocumented workers from claiming their rights simply to 'avoid problems' (Gleeson, 2010, p. 31). This does not necessarily mean that these undocumented workers do not know their rights. Gleeson (2010, p. 31) argued that 'not all undocumented workers are uninformed, passive individuals living in perpetual fear, but rather strategic agents who have a calculated plan for their time being in the United States'.

Not only undocumented legal status has an effect on legal consciousness. Gehring (2013) showed that in the migratory decision-making process of Dutch retired persons who had moved to Spain, their legal status as EU citizens, including the right to free movement, played an important role in shaping their legal consciousness, as this subjected them to different national laws as well as EU law.

Second, age appears to inform legal consciousness. 'Age' may relate to either the age at migration or to one's chronological age. Abrego (2011) examined the legal consciousness of different subgroups of undocumented Latinos in the US, distinguishing between persons who migrated as adults (first

generation) and persons who migrated as children (1.5 generation). The author analysed how age at migration and levels of socialisation through school and work affected legal consciousness. The legal consciousness of the 1.5 generation was driven less by fears of deportation than for adult migrants (first generation). The reasons Abrego identified included a mix of individual characteristics and societal contexts (see section 4.4.). First, the youth participated more often in highly visible collective actions, whereas the adults were afraid to participate in such actions. Second, undocumented youth were legally protected by education laws, which were not available for their adult counterparts. Third, there was more pressure from society to stop the deportation of undocumented youth, which was less the case for first-generation migrants. The author concluded that first-generation migrants were constantly aware of their unlawful situation and that because of their fear of deportation, they were less likely to engage in claims-making. By contrast, the 1.5 generation had a strong desire to fight against its weaker position in terms of legal status.

The legal consciousness of retired Dutch migrants in Spain was influenced not only by their legal status, but also by their chronological age (Gehring, 2013). Retirement migrants often moved at an age characterised by possible health declines. Therefore, access to health-care provisions in the country of origin (Netherlands) or country of destination (Spain) was an important element to consider in their migratory decision-making processes.

Hirsh and Lyons (2010) argued that (chronological) age, legal knowledge and education level interrelate in shaping legal consciousness. The authors assumed that the older migrants are, the higher their levels of education are and the more knowledge of the law they tend to have. This in turn impacts their perceptions of racial discrimination in that they will be more inclined to perceive discrimination as such.

The latter observations bring us to two other elements shaping legal consciousness, namely legal knowledge and language skills. Legal knowledge, understood as one's familiarity with specific legal rules, influenced legal consciousness in various of the publications reviewed (Gleeson, 2010; Hirsh and Lyons, 2010; Schwenken, 2013). Gleeson (2010) found that all migrant workers had at least a basic understanding of the rights granted to them but that a lack of language skills and culturally appropriate information impeded the acquisition of legal knowledge. As such, Gleeson identified limited language skills as one of the specific reasons explaining the reluctant attitudes of undocumented workers towards claims-making compared to documented low-wage workers. Abrego (2008; 2011) also mentioned language as an empowering factor influencing legal consciousness. While persons who migrated as children (1.5 generation) were able to learn the language of the new host society, the first generation had fewer opportunities to do so. This was identified as one of the reasons for the differences in legal consciousness found between the two generations.

Schwenken (2013), on the other hand, argued that undocumented migrants used transnational knowledge and consciousness to legitimise their legal mobilisation. The transnational dimension provided migrants a possibility to engage with otherwise restrictive laws in a more 'game-minded' way, corresponding to the 'with the law' view of Ewick and Silbey's framework. In other words, despite being excluded from formal rights in their host society, undocumented migrants found ways to informally 'enact' access to social services, in Schwenken's words, through the inspiration of experiences of undocumented migrants in other countries. Similarly, Kulk and de Hart (2013) found that Dutch women gained much information about Egyptian law from other Dutch women in Egypt and Dutch resources, such as the embassy website and a Dutch online forum.

Whereas various studies exclusively focused on women (Kulk and de Hart, 2013; Graca, 2018; de Hart and Besselsen, 2020), only one of the other reviewed studies explicitly mentioned gender as informing legal consciousness. Hirsh and Lyons (2010) found that women – especially those with children – were more likely to perceive racial discrimination as such.

Other individual characteristics identified as having an impact on legal consciousness include wealth in the case of Dutch retired persons migrating to Spain (Gehring, 2013). Retirement migrants with sufficient financial resources were less dependent on state care provisions. Hence, these retirees were able to live a transnational life without constraints, implying that their legal consciousness differed from others who had to rely on state care provisions.

As discussed above (see section 3.3), Abrego (2008) found that Californian law exempting all long-term residents from non-resident tuition fees had a positive influence on the social identity of undocumented students, and this enhanced social identity empowered the students to engage more actively in legal mobilisation. Abrego is the only author to discuss social identity as such.

4.2 Relational factors

In a sense, legal consciousness studies are always relational, as humans are social beings. Nevertheless, there are clear differences in general legal consciousness studies as to their emphasis on individualistic vs. relational perspectives (Chua and Engel, 2019). Studies adopting a relational approach, namely focusing on the significance of narratives and experiences of loved ones (Chua and Engel, 2019), emphasise the impact of the community on legal consciousness. The idea here is that an individual's legal consciousness is formed on the basis of experiences with one's social group.

A number of the reviewed studies on migrants' legal consciousness explicitly mentioned the importance of relational aspects in shaping legal consciousness (see e.g. Hirsh and Lyons, 2010; Kulk and de Hart, 2013; Abrego, 2019; Flores *et al.*, 2019). For instance, Hirsh and Lyons (2010) found that social context is crucial in naming harmful experiences on the job and that an individual's understanding of discrimination is influenced by larger social environments, such as intergroup contacts and relations. This finding is in consonance with Nielsen's argument that 'the social location of subjects, and the experiences that arise from that location' shape one's legal consciousness (Nielsen, 2000, as cited in Hirsh and Lyons, 2010, p. 273).

In the Special Issue entitled 'Law in the everyday lives of transnational families' published in the *Oñati Socio-Legal Series*, de Hart, van Rossum and Sportel (2013) wrote an introductory paper on the power of law, the legal consciousness of transnational family members and the role of family and networks. The authors showed that transnational family members may be inclined to navigate between multiple (state) legal systems. The authors emphasised, however, that limitations to or opportunities for using legal systems do not apply in the same way to the different members of transnational families. As such, Kulk and de Hart (2013) analysed legal consciousness on the basis of the experiences of Dutch-Egyptian families with family law in Egypt. The authors adopted a relational approach by focusing on narratives of kin ties affecting one's legal consciousness. The authors argued that looking at specific social contexts such as families and networks contributes to a stronger understanding of the concept of legal consciousness and of shared understandings of law.

Kubal (2015) examined how and to what extent return migrants' values and attitudes regarding legality influenced their practices after returning to their country of origin, Ukraine. Return migrants were related to different law and bureaucracy systems in their host countries (Netherlands, Norway, Portugal and the UK). The assumption was that this 'great number of relationships' (Kubal, 2015, p. 72) abroad influenced their legal consciousness. Kubal found that experiences concerning legal consciousness as remitted by return migrants to Ukraine were quite often ambiguous and that legal consciousness was shaped by experiences not only prior to migration, but also when migrants returned to Ukraine.

Chakraborty *et al.* (2015) found the existence of a 'chain reaction' among refugees with regard to the Dublin system. Even though the refugees did not have sufficient knowledge about Dublin, they were informed through informal interactions with fellow refugees. These interactions often increased their knowledge about the Dublin system, but also fuelled anxiety.

Finally, Abrego (2019) showed that undocumented status impacts not only the legal consciousness of the undocumented persons themselves, but also that of their family members, even if the latter have citizenship. Because their loved ones were excluded from citizenship and lived with an ever-present fear related to the consequences of being undocumented, US citizen young adults of mixed-status families were extremely aware of this fear of police and of unequal access to social institutions, such as education. These experiences reflected on and sharpened their legal consciousness.

Chua and Engel (2019) argued to expand relational perspectives used in legal consciousness studies to continuously develop and refine the field of legal consciousness. In this regard, some studies on

migrants' legal consciousness serve as inspiration for legal consciousness studies in other fields on ways to adopt such a relational perspective.

4.3 Cultural dynamics

Two of the studies reviewed highlighted the role of culture in informing legal consciousness. The literature review by Kubal (2013) on the relationship between migrants and the legal system of their host countries covered various theoretical approaches, such as legal assimilation, legal transnationalism, legal pluralism, legal culture and legal consciousness. The 'cultural lens' used in her study referred to the legal culture of the country of origin, which she defined as migrants' 'values, attitudes to law and accustomed patterns of legal behaviour' (Kubal, 2013, p. 67). The author concluded that cultural characteristics related to the country of origin may influence the perception of new experiences and understandings in the host country, even though this does not necessarily mean that these perceptions would involve an exact reproduction of meanings and understandings from the country of origin (cf. Kubal, 2015). Therefore,

'the legal pluralism, legal consciousness/culture research makes the claim for the proper recognition of the cultural background of immigrants, taking into account the cultural patterns of values, attitudes to law and means of dispute resolution stemming from the different legal orders that migrants were socialised to prior to their arrival and residence in the host country.' (Kubal, 2013, pp. 67–68)

Graca (2018) studied the influence of Portuguese culture on perceptions of and reactions to domestic violence against women of Portuguese origin living in England. The author used the concept of 'culture', as defined by Silbey (2010, as cited in Graca, 2018) as 'beliefs and practices associated with a specific group', here in reference to the traditional aspects of Portuguese culture in terms of family structures and gender roles within a family. Different aspects related to the culture of the country of origin seemed to play a role in shaping these women's legal consciousness and legal mobilisation in regard to domestic violence. These aspects were identified as 'familism' (women who value family interests above their own), 'shame and community pressure' and 'acculturation'.

4.4 Public policies and discourse

Local policy contexts appear to influence migrants' perceptions and ideas of law. This is highlighted by the term 'legal-spatial consciousness' developed by Flores *et al.* (2019), which refers to interpretations of individuals' personal experiences of how law and space are intertwined. Legal-spatial consciousness assumes that law, space and migrant identity are co-constituted and that this affects how individuals experience legal regimes. Flores *et al.* (2019) found that undocumented American youth in different places understood and experienced migrant illegality differently. The experience of migrant illegality is thus place-dependent: local laws and policies matter. For instance, in Nashville, undocumented migrants were labelled more as 'illegal' than in other places, since obtaining a driving licence was made more difficult; in Georgia, undocumented migrants were also often considered 'more illegal' through educational agreements that limited their access. As Flores *et al.* (2019, p. 29) stated, 'certain locations and people within a place can become more or less illegal than others, with laws becoming more and less legally binding in certain spaces than in others'. Thus, living in an area with predominantly anti-immigrant discourse will likely have an impact on undocumented migrants' legal consciousness. This recently proposed approach to legal-spatial consciousness may inspire future studies.

Access to social institutions also seems to have an effect on migrants' legal consciousness. For instance, considerations regarding access to health-care systems were found to be crucial in the migratory decision-making processes of retired Dutch migrants and their perceptions of different (i.e. national vs. European) legal frameworks (Gehring, 2013). The same applies to access to the workplace

(Gleeson, 2010; Schwenken, 2013) and access to education (Abrego, 2008; 2011). As described above (see section 3.1.), the fact that undocumented youth in the US with access to education are protected by education laws has played a role in shaping their legal consciousness (Abrego, 2011).

Abrego (2011) also clearly pointed to the power of public discourse and media, and their effects on legal consciousness. The public discourse regarding undocumented youth was found to be much more positive than that regarding first-generation undocumented migrants, resulting in more pressure from society to end deportations of undocumented youth. Furthermore, the media were found to play a crucial role in framing undocumented migrants. While images of adult undocumented migrants were mostly negative, the media portrayed students relatively positively.

Finally, Galli (2020) demonstrated that the ambivalent context of unaccompanied minors' interactions in various spaces with different state agencies in the US shaped their perceptions of law: whereas minors were protected by children's rights on the one hand, they were stigmatised as undocumented migrants on the other.

5 Towards a research agenda

This paper presented the results of a literature review of English-language academic publications in which the legal consciousness of migrants or their relatives was the main focus of analysis, situating these in the broader field of legal consciousness studies. Based on this analysis, the following concluding reflections are formulated, which include some signposts that may inspire future studies on legal consciousness in the context of migration, constructively building on existing work.

Regarding personal scope, given the current emphasis on undocumented migrants, future studies on migrants' legal consciousness could shift their gaze towards understudied groups such as asylum seekers, refugees and high-wage workers. More attention could also be paid to the internal diversity within a group of migrants from an intersectional perspective. From a methodological perspective, there seems to be room for more mixed-methods, longitudinal, comparative and/or multisited research on legal consciousness. Moreover, the study of legal consciousness could interestingly be combined with other disciplinary perspectives, such as social psychology, to study particular phenomena.

In the mainstream academic publication channels, there is a preponderance of studies conducted in the US and Europe. The studies are thematically split to a certain extent: whereas most publications emphasising the role of legal status in migrants' legal consciousness have concerned the US (e.g. Abrego, 2008; 2011; 2019; Gleeson, 2010; Flores *et al.*, 2019), publications adopting a transnational perspective have been situated in Europe (e.g. Gehring, 2013; Kulk and de Hart, 2013). In this sense, more diverse geographic coverage and cross-Atlantic inspiration could contribute to a more comprehensive appraisal of how legal consciousness is shaped in a migration context.

With regard to the demarcation of the 'legal' in legal consciousness, most studies have focused on the consciousness of migrants in relation to state law, mainly of the new host society. Whereas these studies have concentrated on a specific branch of state law, an interesting diversity of entry points was identified ranging from a specific law to a bundle of rights and a legal concept. As in the general literature, studies on migrants' legal consciousness would benefit from a more pluralist approach to law, including non-state normative orders.

Both in general and migrants' legal consciousness studies, different conceptualisations of 'consciousness' co-exist. While most studies consider consciousness to include perceptions as well as actions, others explicitly distinguish between legal consciousness (perceptions) and legal mobilisation (actions). For analytical purposes, we suggest being explicit in the conceptualisation of the dimensions of what is 'legal' and of 'consciousness'.

Our analysis also showed that the typology developed by Ewick and Silbey (1998) has been widely used in studies on legal consciousness and migration. Contrary to the claim made in general legal consciousness studies that marginalised groups would be more 'against the law', our review showed that migrants' legal consciousness often fluctuates between 'before the law' and 'against the law'. Whereas Kubal (2015) referred to the 'under the law' dimension (Halliday and Morgan, 2013), none of the

reviewed studies referred to ‘legal alienation’ (Hertogh, 2018), probably due to its relatively recent introduction. In this respect, we would suggest entering the field with an open mind and trying to identify the relevance of law in a specific situation without any particular hypothesis as to the hegemony or absence of law that risks ‘colouring’ the research design.

Moreover, the findings of the publications reviewed were organised according to four dimensions that, interrelatedly, have shaped migrants’ legal consciousness: individual characteristics, relational factors, cultural dynamics, and public policies and discourse.

First, individual characteristics identified as influencing migrants’ legal consciousness include legal status, age, legal knowledge, educational level, language skills and, in some cases, gender (Hirsh and Lyons, 2010), financial resources (Gehring, 2013) and social identity (Abrego, 2008). Considerable attention has been given to the impact of undocumented status on legal consciousness, such as in workplace environments (Gleeson, 2010; Schwenken, 2013). More attention could be paid to the impact of other (regular) migration statuses on legal consciousness. Both age at migration (Abrego, 2011) and chronological age (Gehring, 2013; Hirsh and Lyons, 2010) were found to affect legal consciousness.

Second, a number of the reviewed studies emphasised the importance of relational aspects in shaping migrants’ legal consciousness, varying from social contexts (Hirsh and Lyons, 2010) to the role of family and networks (Kulk and de Hart, 2013; Abrego, 2019). These studies confirm the argument made by Chua and Engel (2019) that the inclusion of relational factors will expand our understanding of legal consciousness.

Third, cultural characteristics related to the country of origin may have an influence on the perception of new experiences and understandings of law in the host country (Kubal, 2013; see also Graca, 2018). Future research could pay more attention to these cultural backgrounds of migrants.

Finally, public policies and discourse have shaped migrants’ legal consciousness. Flores *et al.* (2019) found the experience of migrant illegality to vary as a function of local laws and policies, which is an observation that may inspire future studies. Access to social institutions, such as health-care systems (Gehring, 2013) or education (Abrego, 2008; 2011), has also informed legal consciousness to a certain extent. Furthermore, Abrego (2011) highlighted the impact of media and public discourse on legal consciousness.

This analytical division into four dimensions as well as the identification of a variety of potentially explanatory factors may offer a useful reference point for future research on legal consciousness and migration. Moreover, it may facilitate a more holistic appraisal of the diverse dynamics shaping legal consciousness, and in this way deepen our understanding of the complex relationship between migration and legal consciousness.

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