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Legal Consciousness in Marginalized Groups: The Case of LGBT People

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Studies of legal consciousness have flourished over the last few decades, but these studies and the very concept of legal consciousness have recently come under critique. This article uses the case of studies of the legal consciousness of lesbian, gay, bisexual, and transgender (LGBT) people to demonstrate that legal consciousness has been a valuable conceptual tool for exploring experiences of sociolegal marginalization. Research on LGBT people advances the study of legal consciousness without sacrificing a critical stance or reading lack of overt resistance as evidence of law's hegemonic power. Consideration of this research highlights that focusing on marginalized populations is a way to retain a critical edge in legal consciousness research. Future research should include more exploration of the relationship between marginalization and legal consciousness, further theoretical elaboration of the forms and conditions of resistance to law, and greater attention to how social interactions and institutions produce legal consciousness.

INTRODUCTION

Legal consciousness has been one of the most studied, discussed, and debated concepts in law and society research over the last thirty years. The concept captured the imagination of a new generation of law and society scholars (while continuing to draw the attention of some of the most respected and established researchers in the field), and generated an outpouring of books and articles. These works examine the place of law in everyday life, and in the lives of ordinary people. Prominent studies trained their lens on "the ways people understand and use law" (Merry 1990, 5) across a range of social locations and situational contexts. Early exemplars of empirical investigations of legal consciousness include studies of the legal consciousness of legal elites (Kennedy 1980), poor and working-class people (Merry 1985, 1990; Sarat 1990; White 1990), plaintiffs (Yngvesson 1993), religious believers (Greenhouse 1986), social activists (McCann 1994; Silverstein 1996), and victims of discrimination (Bumiller 1988) and personal injury (Engel 1984).

Ewick and Silbey's seminal 1998 book, *The Common Place of Law*, offered a typology of three primary modes of legal consciousness ("before," "with," and "against" the law), and noted that people evince differing modes of consciousness in response to different problems and situations. Briefly, a "before the law"

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consciousness views law with reverence, as an objective, autonomous, transcendent, rational sphere that stands apart from the rest of the social world; a "with the law" consciousness views law as a game, with rules and procedures that can be manipulated to pursue preferred outcomes; and an "against the law" consciousness sees law in oppositional terms, as a dangerous, oppressive force that constrains individuals and prompts them to evade its power and engage in momentary resistances (Ewick and Silbey 1998, 47–49). Although it might initially seem puzzling that individuals switch among these seemingly contradictory modes of consciousness, Ewick and Silbey conclude that it is the availability of multiple modes of consciousness to account for different aspects of people's experiences with law that constructs and sustains law's legitimacy despite law's manifest failures and injustices.

A recent wave of legal consciousness research has further extended the concept's reach by exploring the socially situated nature of legal consciousness. Prominent examples include studies of legal consciousness in the workplace (Hoffman 2003, 2005; Marshall 2003, 2005, 2006; Albiston 2006), in economic markets (Larson 2004), on juries (Fleury-Steiner 2003, 2004), in social movements (Kostiner 2003, 2006; Kirkland 2008; Wilson 2013), and in public spaces (Nielsen 2000, 2004), as well as among people with stigmatized social identities, including the disabled (Engel and Munger 2003) and sexual minorities (Connolly 2002; Hull 2003, 2006, 2014; Harding 2006, 2011; Richman 2006, 2010, 2014).

But in 2005, the concept of legal consciousness was declared, if not dead, terminally ill. This near-obituary for legal consciousness was penned by a central figure in legal consciousness research and appeared in the *Annual Review of Law and Social Science*. In "After Legal Consciousness," Susan Silbey critiqued the evolution (or perhaps devolution) of the field of legal consciousness research and questioned the continuing value of the very concept of legal consciousness. Silbey's overarching critique was that the study of legal consciousness had lost its critical focus. She asserted:

> Recent studies of legal consciousness have both broadened and narrowed the concept's reach, while sacrificing much of the concept's critical edge and theoretical utility. Rather than explaining how the different experiences of law become synthesized into a set of circulating, often taken-for-granted understandings and habits, much of the literature tracks what particular individuals think and do. Because the relationships among consciousness and processes of ideology and hegemony often go unexplained, legal consciousness as an analytic concept is domesticated within what appear to be policy projects; making specific laws work better for particular groups or interests. (Silbey 2005, 324)

Silbey (2005) outlined two specific shortcomings of the recent legal consciousness research that undermined its ability to provide a critical perspective on the role of law in everyday life. First, she asserted that recent legal consciousness research has paid inadequate attention to the processes of cultural production that shape consciousness, and the conditions of cultural production that might be expected to produce variations in how unified the legal consciousness of different

social groups will be. This critique implies that future research must move beyond a methodological focus on individuals to consider institutional processes. Second, Silbey faulted recent studies for an overly empiricist bent, with detailed descriptions of the contours of actors' consciousness coming at the expense of efforts to explain the sources of that consciousness; in short, too much descriptive analysis and not enough theoretical elaboration. In Silbey's judgment, recent legal consciousness scholarship has not accomplished the goal that motivated the study of legal consciousness in the first place: accounting for the ongoing widespread legitimacy of law—what she terms "hegemonic legal consciousness, the rule of law" (Silbey 2005, 349)—despite repeated evidence of law's failure to live up to its own ideals.

Another review of the legal consciousness literature, by George I. Lovell (2012a; see also 2012b), raises different issues about the direction that legal consciousness research has taken. Lovell argues that studies of legal consciousness have appeared to confirm people's belief in what Scheingold (1974) called the myth of rights, but have not provided much evidence that people's adherence to legal ideals mobilizes them politically (as Scheingold speculated), for example, to resist perceived injustices or rectify inequalities (Lovell 2012a, 19). Lovell suggests that legal consciousness scholars too often have jumped from the observed lack of resistance to the conclusion that law exerts hegemonic power, resulting in acquiescence and compliance among ordinary people.

Based on his own research on citizens' letters to the Civil Rights Section of the US Justice Department (2012b), as well as findings in various legal consciousness studies, Lovell argues that people hold complex views about law that include both allegiance to core legal ideals and recognition of law's shortcomings:

> What legal consciousness studies have demonstrated is that respondents express understandings and commitments that are quite complicated. The studies show that people are familiar with and often give voice to various idealized myths about law, but they have also shown that people are not blinded by commitments to such ideals. In particular, studies show that interviewees are usually quite aware of law's routine inability to live up to its legitimating promises. The studies also suggest that people's commitments to law's legitimacy are conditional and limited. While law is a very important part of people's accounts, law is also in constant competition with other socially constructed frameworks for expressing normative commitments. . . . Such findings do not lead easily to the conclusion that law is hegemonic and legitimating. (Lovell 2012a, 20)

Rather than interpreting lack of observed resistance as evidence of law's hegemony, Lovell argues, we must consider the possibility that there are other explanations.

Specifically, Lovell suggests that the focus on allegedly ordinary people and people who belong to marginalized subgroups may partially account for the lack of evidence of resistance. For many ordinary people, and especially people in subaltern populations, the barriers to mobilizing and resisting may be too high. Many legal

consciousness studies have documented people's realistic appraisals that resistance will not be successful. Studies that focus on people active in organized movements and legal campaigns, of course, provide more evidence of the possibilities of meaningful resistance. Lovell's own (2012b) study of ordinary Americans writing letters to the government suggests that some degree of resistance can be observed even among relatively powerless people, depending on what kind of data are collected. In short, Lovell concludes that legal consciousness scholarship may underestimate the mobilizing impacts of adherence to legal ideals because studies are not designed to capture evidence of mobilization and resistance. Work in this field must rethink the conflation of lack of overt resistance among ordinary people with people's uncritical acceptance of law's legitimacy.

Both Silbey and Lovell offer important critiques of the state of legal consciousness research. In some respects, their critiques are at odds with each other. Silbey faults legal consciousness research for failing to help us make sense of how law's hegemony is created and reproduced in social institutions and processes of interaction, whereas Lovell argues that scholars may be too quick to interpret lack of overt resistance to injustices as evidence of law's hegemony. These kinds of critical reflections can provide a stimulating intellectual challenge to scholars who have become so close to a favored concept or theoretical approach that they lose sight of its limitations and the need to revisit key assumptions from time to time. However, it is perhaps too early to publish the death notice for legal consciousness as a concept and field of inquiry. In this article, I use the case of recent empirical investigations of the legal consciousness of lesbian, gay, bisexual, and transgender (LGBT) people to demonstrate that legal consciousness has been a useful conceptual tool for exploring experiences of sociolegal marginalization, and I argue that the research on LGBT people advances the study of legal consciousness without sacrificing the critical stance that originally animated this subfield or conflating the lack of overt resistance with the hegemonic power of law.

I am focusing on a particular marginalized group, sexual and gender identity minorities, but my intention is for a careful consideration of this body of research to suggest more broadly the possibilities of focusing on marginalized populations as a way to retain a critical edge in legal consciousness research and to wrestle with the problem of resistance (i.e., why those groups with the most to gain from actively resisting law appear mostly quiescent in the face of hegemonic legality). This approach is not meant to imply that studies of the legal consciousness of ordinary people who are not part of any particular marginalized group hold no value. Clearly, some of the best past legal consciousness research has not restricted its focus in this way, and therefore is generalizable in a way that research focused on particular subgroups is not, and certainly everyone, regardless of identity characteristics, experiences the gap between legal ideals and realities to some degree. However, my view is that groups experiencing social and legal marginalization warrant particular focus, for several reasons.

First, most ordinary people also fit into one or more of these marginalized group categories (with the possible exception of white, middle-class, heterosexual, able-bodied, cisgender men), so understanding the relationship between marginalization and legal consciousness produces insights that apply to a wide swath of the

general population in some form. Second, it seems reasonable to assume that many forms of marginalization will lead to *heightened* awareness of the gap between legal ideals and realities, with implications for legal consciousness. And third, not all forms of marginalization work the same way, so attention to the particularities of specific forms of marginalization will help us unpack the processes and mechanisms that link aspects of marginalization to modes of legal consciousness.

RESEARCH ON LGBT LEGAL CONSCIOUSNESS

Although LGBT issues and experiences have been a growth field in law and society scholarship (see Herman and Stychin 1995; Stychin 1995, 2003; Bernstein 2001; Goldberg-Hiller 2002; Andersen 2005; Barclay, Bernstein, and Marshall 2009; Canaday 2009; Keck 2009), the body of work specifically addressing the legal consciousness of LGBT people is relatively compact and recent. In this section, I provide an overview of this research in order to lay the groundwork for arguing that the concept of legal consciousness has proved valuable in expanding our understanding of LGBT legal subjectivities, and that this research has moved the legal consciousness literature forward in theoretical and empirical terms.[1] Interestingly, virtually all the work on LGBT legal consciousness to date focuses specifically on marriage and family issues, either in terms of populations studied (gay and lesbian parents, same-sex couples) or in terms of the dimensions of legal consciousness that define the work (definitions of family, legal marriage and partnership rights, etc.).[2] In addition, almost all of it focuses on gay men and lesbians, with the B and the T of LGBT receiving little specific attention.[3]

Parenting

Catherine Connolly's (2002) article on second-parent adoptions is perhaps the first published example of work on LGBT people that explicitly invokes the framework of legal consciousness. Connolly interviewed twenty parents who successfully

1. To identify the existing empirical work on LGBT legal consciousness, I did exhaustive searches of relevant academic databases and carefully reviewed the reference lists of works I had already identified to ensure I had not missed any relevant studies.

2. One exception to this pattern is Musheno's paper contrasting the legal consciousness of HIV-positive gay men and HIV-positive female intravenous drug users (Musheno 1995). Musheno found that differing experiences of marginalization and oppression in these two groups produced differing views of law, with gay men more likely to situate themselves as rights-bearers vis-à-vis the state and female IV drug users more likely to view law as a threatening, criminalizing force in their lives. Another recent study (Doan, Loehr, and Miller 2014) addresses the rights consciousness of gays and lesbians compared to heterosexuals, with respect to both formal relationship recognition and expressions of affection in public spaces, but the authors do not use the concepts of legal consciousness or rights consciousness to frame their analysis and findings theoretically.

3. This is particularly unfortunate with respect to transgender people because they face legal issues and obstacles that are somewhat distinct from the concerns of sexual orientation minorities, including heightened risk of hate crime victimization, lack of legal protections against discrimination in most US states, and challenges regarding legal forms of gender identification. See Currah, Juang, and Minter (2006) and Taylor and Haider-Markel (2014) for discussion of transgender rights politics and transgender legal issues.

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petitioned for a second-parent adoption of their same-sex partner's children.[4] While a successful adoption petition might superficially appear to indicate benign or even supportive treatment by the legal system, the interviewees described how their encounters with legality resulted in official narratives of their personal situations that were fundamentally at odds with their understanding of themselves and their families.

Connolly (2002) found that the adoption petitioners expressed all three modes of legal consciousness identified by Ewick and Silbey (1998) in recounting their adoption experience. In preparing their formal legal petitions, interviewees reflected a before-the-law consciousness, insofar as they acknowledged the law's power to grant a recognition and security to their relationships with their children that was otherwise unavailable. Some also spoke of the desire to "push the envelope" (Connolly 2002, 332) on behalf of the broader gay and lesbian community, which Connolly also interprets as evidence of before-the-law consciousness. And after the fact, some parents reported being surprised at the profound emotional effect of the legal proceeding, experiencing the successful petition as a "seal of approval" (342) for their partnerships and families.

But these parents were neither naïve nor obsequious in their approach to the legal system; rather, Connolly found that they were savvy and pragmatic in their dealings with courts and judges, and openly resistant to the distorting bias they encountered among social workers assigned to their cases. As evidence of a with-the-law consciousness, Connolly points to their efforts to find the most skilled and knowledgeable attorneys to handle their cases (regardless of the lawyers' sexual orientation) and their use of practices such as forum shopping to maximize the likelihood of a positive legal outcome. Connolly also identifies moments of against-the-law consciousness, particularly in petitioners' dealings with the social workers assigned to complete home studies as part of the adoption proceeding. In these encounters, parents pushed back against offensive and demeaning depictions of their lives and their families, and actively resisted the heterosexist bias that characterized many social workers' views of their cases.

In short, Connolly's study demonstrates how the veneer of ultimate courtroom success conceals processes of ongoing stigmatization and marginalization, particularly in the ways that judges and social workers compare same-sex parents' families to what they see as the heterosexual norm as a means of assessing their suitability as parents, and the ways the law arrogates to itself the power to define and create families. The parents interviewed by Connolly both recognized and resisted their marginalization, taking from law what they could get and drawing the line in those moments when legality's distortion of their lived reality was too great to bear.

Kimberly Richman has also explored the legal consciousness of gay and lesbian parents, and their legal advocates, drawing from her broader study (2009) of child custody, visitation, and adoption cases. Like Connolly, Richman finds that gay and

4. The specific circumstances of the petitioners varied in terms of their own and their partner's relationship to the children being adopted. In most cases, the children had been conceived through artificial insemination with donated sperm and the nonbiological parent in a lesbian couple was seeking to adopt. Other cases included people seeking to adopt children from their partner's previous heterosexual relationship, children who had previously been adopted by the partner in a single-parent adoption, and children born to surrogate mothers impregnated by one partner's sperm.

lesbian parents and attorneys involved in such court cases often report that the law and legal actors distort and misrepresent the lived experiences of LGBT people (Richman 2006).

In addition, Richman (2006) finds a notable lack of consensus among lesbian and gay parents and their lawyers about the proper outcomes in cases involving parental rights. Some parents and attorneys favor an expansive approach to defining legal parenthood, defining parenting rights based on functional roles rather than previously existing biological or legal ties, whereas others favor a more formalistic approach, requiring ties of blood or law to back up claims to parental rights in the wake of a relationship dissolution. Richman observes: "Though the two positions are clearly opposed . . . advocates of each felt their position to be fundamentally grounded in the same sociopolitical ethic of gay rights" (92).

Likewise, Richman finds no consensus on the desirability of legal recognition for same-sex couples with respect to its impact on parenting rights; some parents and attorneys were convinced that legal partnership status such as civil unions or marriage would simplify the legal issues around gay and lesbian parenting, but others feared that legal partnership recognition would place increased burdens on those pursuing parental rights who choose not to participate in the legal partnership status (Richman 2006). Thus gay and lesbian parents and their attorneys, who might be expected to share a similar legal consciousness at least with regard to the specific issue of parenting rights, turn out to have widely divergent perspectives on the very meaning of LGBT "family rights," and this diversity reflects both differing ideological commitments and different social locations and encounters with legality (Richman 2006, 96–97).

Partnership and Marriage

Several recent studies have examined LGBT legal consciousness with a focus on the issue of marriage and partnership rights. These include my past work on committed same-sex couples (Hull 2003, 2006), Kimberly Richman's (2010, 2014) research on same-sex couples who entered legal marriages in San Francisco and Massachusetts when they became available, Rosie Harding's work (2006, 2011) using online survey data and interviews to explore gay men's and lesbians' perspectives on legal recognition for sex-couples, and my recent work (Hull 2014) examining views on legal same-sex marriage across the full range of LGBT identities (rather than only people in same-sex couples).

My earlier work on same-sex marriage focuses on the experiences of ordinary same-sex couples in the period preceding the arrival of legal-same sex marriage in any US jurisdiction, or indeed anywhere in the world.[5] Some, but not all, of the people I interviewed had chosen to use wedding-like public rituals to formalize their commitments to their partners. Based on my interviews and my participant observation at public commitment rituals, I draw several conclusions about the legal consciousness of people in committed same-sex relationships (Hull 2003, 2006).

5. In 2001, the Netherlands became the first country to offer legal recognition of same-sex marriages. I conducted my interviews with members of same-sex couples in 1998–1999.

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First, I argue that people often used public commitment rituals as a way to create legality for their relationships in the absence of official law. In particular, respondents who held public rituals argued that the rituals gave their commitments a reality they had previously lacked, at least in the eyes of others. Many respondents pointed to the power of the public *witnessing* of their commitment to endow it with reality, and in some cases religious officials and religious settings served as an alternative source of legality, replacing the state. Also, many respondents expressed the belief that the public ritual established a new normative order for their relationship, making it more difficult for partners to break their commitment to each other and fostering a less individualistic approach to decisions within the relationship. Others in the study who had chosen not to hold a public ritual were skeptical about the value or purpose of such events in the absence of state recognition for the commitments being celebrated.

Second, my interview data reveal broad consensus among members of same-sex couples on the desirability of legal recognition for same-sex relationships, preferably in the form of marriage. Although reasons for the support and level of enthusiasm varied, respondents were united in their belief that legal recognition was an important political goal, and most saw alternatives to marriage, such as domestic partnerships or civil unions, as inadequate substitutes for full marriage rights.

Based on these findings, I argue that the legal consciousness of people in same-sex relationships evinces both unity and diversity: unity (but not uniformity) at the level of consciously articulated beliefs about the need for state recognition of same-sex relationships, but diversity in people's propensity to use public rituals to enact legality culturally outside of official law. I also describe evidence of all three modes of legal consciousness identified by Ewick and Silbey (1998) in the ways people in same-sex couples talked about same-sex marriage and relationship recognition.

Respondents expressed a before-the-law consciousness in asserting that state law had the power to render their commitments socially normal and equal to those of heterosexual married people, and a with-the-law consciousness in their interest in using law to secure concrete benefits and protections for their relationships. They also exhibited an against-the-law consciousness in their rejection of their own exclusion from the legal status of marriage, but I suggest that this resistance to legal marginalization does not fit neatly into the against-the-law schema as described by Ewick and Silbey (1998). Rather than seeking to evade legality, these respondents sought to engage it; rather than seeing legality as dangerous, they perceived it as desirable, albeit unavailable. My findings point to the need for better theorization of resistant legal consciousness and further examination of the linkage between social marginalization and against-the-law consciousness.

Between 2004 and 2015, legal same-sex marriage became an option for same-sex couples in some jurisdictions in the United States, although in some cases the option existed only briefly (e.g., San Francisco in 2004), and the federal government only began recognizing legal same-sex marriages in 2013.[6] Nationwide legal recognition for same-sex marriages came in 2015, with the historic US Supreme

6. Federal recognition of same-sex marriages resulted from the US Supreme Court's 2013 ruling in *United States v. Windsor*, which invalidated a section of the 1996 Defense of Marriage Act.

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Court ruling in *Obergefell v. Hodges*. Kimberly Richman's recent work (2010, 2014) explores the legal consciousness of people who entered legal same-sex marriages in San Francisco and Massachusetts between 2004 and 2007.[7]

Drawing on survey and interview data, Richman examines the reasons people articulate for pursuing legal marriage. Richman finds that people most often pointed to highly personal, seemingly nonlegal reasons for entering legal marriages with their partner, describing emotional motivations such as love and romance, or being a part of history and connecting with others in the lesbian and gay community. Richman characterizes these motivations as revealing an "outside-the-law" legal consciousness, in the sense that they were not directly tied to law in the way that other practical, symbolic, or political motivations were (Richman 2014, 169). After these personal motivations, people were most likely to identify validating motivations, such as making their relationship official, receiving public validation, or not wanting to be treated as second-class citizens by settling for a domestic partnership; Richman (2010) reads these motivations as expressing before-the-law consciousness. Less common were political or oppositional motivations, such as wanting to make a political statement or change the institution of marriage, which Richman (2010) characterizes as against-the-law consciousness. The least frequently identified motivations were instrumental reasons such as accessing the legal and financial benefits of marriage, reflecting a with-the-law consciousness.

Despite the fact that the people marrying in San Francisco in 2004 probably realized their marriages would later be invalidated, whereas the Massachusetts couples had more reason to expect the status to be permanent, Richman (2010) saw relatively few differences in the pattern of motivations for marrying in the two locations. Respondents in San Francisco were somewhat more likely to articulate political motivations, and those in Massachusetts placed more emphasis on before-the-law motivations of validation and official status, but the broad pattern of citing emotional motivations as primary and instrumental motivations as least important held for both groups. Richman (2014) also found that interviewees often described an evolution in their motivations over time, initially thinking they were motivated by practical or political considerations, but ultimately concluding that their primary motivations were more personal and emotional.

Respondents also described changes that they perceived to result from getting married, including changes in how their relationship was treated and viewed by others, changes in their own feelings of commitment and stability, and an increased sense of civil inclusion and even pride of citizenship (Richman 2014). Interestingly, some of these changes parallel findings from my earlier research on people who participated in public commitment rituals, who also felt other people viewed the

7. In San Francisco, 4,037 marriages were performed during a several-week period in February–March 2004, after Mayor Gavin Newsom ordered that marriage licenses be issued to same-sex couples. The California Supreme Court halted the practice in March, and ruled later that year that the San Francisco marriages were invalid because the mayor had overstepped his authority in issuing the licenses contrary to state law (Richman 2010, 361). In Massachusetts, the state Supreme Judicial Court ruled in *Goodridge v. Department of Public Health* that the denial of marriage licenses to same-sex couples violated the state constitution, and the state began performing same-sex marriages in May 2004 (Richman 2010, 360).

couple differently after the ritual or felt the ceremony strengthened their relationship internally (Hull 2003). Richman (2014) notes the parallel, but also comments that even the people in her study who had held public rituals prior to marrying insisted that changes flowed specifically from the participation in *legal* marriage.

In both cases, I would argue, the source of these perceived changes is access to legality, but in the period between the two studies, the political and legal context for same-sex relationships shifted significantly; Richman's respondents had the option to access legality through the state, whereas mine did not. Thus, I would suggest that same-sex couples' legal consciousness with respect to relationship rights has been fluid, and responsive to shifts in their external political and legal environment. Those who place high value on legality in defining their relationships have worked with the resources at hand to make their commitments "legal." Taken together, Richman's and my findings paint a picture of people in same-sex relationships as pragmatic sociolegal actors, and I would suspect that whenever state-sponsored legality became an option (which occurred at different times in different US states), it received priority as the preferred option for most same-sex couples wanting to "make it legal."

Rosie Harding's (2006, 2011) work on lesbian and gay legal consciousness broadens the scope from the United States to the international context. Harding draws on three main sources to examine gay and lesbian legal consciousness: qualitative responses to an online survey of gay men and lesbians' views on partnership recognition, published personal narratives of gay and lesbian parents, and in-depth interviews with ten gay men and lesbians about partnership recognition and parenting. The online survey drew responses from 1,538 people in twenty-seven countries, although the analysis of qualitative responses is limited to the 318 lesbian and gay respondents who provided answers to all of the substantive questions on the survey. The parent narratives are drawn from eight edited volumes reflecting the experience of people in "a range of geographical locations and therefore . . . a range of different legal frameworks" (Harding 2011, 107n2), whereas the in-depth interview subjects are all UK residents.

In an initial analysis of the online survey data, Harding (2006) identifies five broad themes in how gay men and lesbians talk about legal recognition for same-sex marriages: support for formal legal equality justified by the essential sameness of opposite-sex and same-sex relationships; discussion of the relationship between legal and social change; rejection of alternative legal vehicles such as civil partnerships as "not enough"; evocation of human rights rhetoric; and discourses of citizenship. Harding (2006, 531) concludes that "formal equality is the unitary discourse shaping lesbians' and gay men's perceptions of and attitudes towards the legal recognition of same-sex relationships." Further, she observes that the online responses contain some evidence of before-the-law and with-the-law consciousness, but resistance is more prominent, including "resistance to the naming of lesbian or gay sexuality as deviant or abnormal; resistance to legal formalizations of the differences between same- and different-sex relationships; and resistance to the lack of equality within the law as it relates to lesbians and gay men" (2006, 531). Harding (2006, 531) notes that "this form of active, equality-seeking resistance" is missing from Ewick and Silbey's (1998) tripartite typology.

In her 2011 book *Regulating Sexuality*, Harding supplements the online data with in-depth interviews and published narratives to elaborate further on the nature of resistant consciousness among gay men and lesbians. As a theoretical framework for her empirical analysis, Harding seeks to combine existing concepts from the legal consciousness literature with greater attention to concepts of power and resistance, and especially to examine the operation of resistance in against-the-law consciousness. To that end, Harding proposes three ways of conceptualizing resistance: stabilizing resistance, which is "the behaviours and ways of being that the imposition and enforcement of laws and norms seek to eradicate" (46); moderating resistance, which "reduc[es] power's exercise, so the exercise of power becomes less violent or intense or rigorous" (47); and fracturing resistance, "where the flow of power is fractured or broken completely" (47). Within the context of gay and lesbian lives, Harding offers the following examples to illustrate each form of resistance: simply living one's life as an "out" gay man or lesbian (stabilizing), gay pride marches (moderating), and the civil disobedience of the San Francisco marriages in the winter of 2004 (fracturing).

A few key findings emerge from Harding's (2011) analysis of gay and lesbian legal consciousness. With respect to relationship recognition, both the qualitative survey responses and the interviews reveal that formal legal equality is "prioritized and reified" (Harding 2011, 59) by the respondents, and discourses of rights and citizenship feature prominently in their discussion of relationship recognition. She sees evidence of both before-the-law and with-the-law consciousness in respondents' reverence for the abstract principles of rights and equality and in their desire to bend the law to their will.

But Harding again concludes that her findings do not fit neatly within Ewick and Silbey's (1998) typology because the against-the-law consciousness she uncovers, which draws on both stabilizing and moderating forms of resistance, does not bear much resemblance to Ewick and Silbey's description of a consciousness characterized by efforts to evade legality as a dangerous force. In this respect, Harding's cross-national findings echo my earlier conclusions from the US context. In her analysis of parenting experiences as well, based on both published narratives and her own interviewing, Harding again finds moments of all three forms of legal consciousness, and highlights the prevalence of both stabilizing and moderating modes of resistance. Her specific findings resonate with some of the earlier work in legal consciousness among lesbian and gay parents, including the practical difficulties encountered in parenting outside the law, the way legal and social forces combine to construct parenting hierarchies within same-sex couples (i.e., "legal and social constructions of 'real' or 'illegitimate' parents" [84]), and the treatment of gay and lesbian parents as second-class parents in comparison to a heterosexual norm.

Harding concludes that her analyses of her various texts—survey responses, published narratives, interview transcripts—have produced many examples of both stabilizing and moderating resistance, but almost no examples of fracturing resistance. In these texts, lesbians and gay men describe how they accommodate themselves to the reality of legal disadvantage, and sometimes challenge that disadvantage in visible ways, but descriptions of more radical efforts to dismantle legality or completely neutralize its impacts are absent. Harding concludes that this

absence of fracturing resistance may reflect the fact that the form of legality that is most constraining for gay men and lesbians is not official law (though surely that requires resistance and challenge in many ways), but the broader "law" of heteronormativity, which is reflected in official law but also transcends it. Harding (2011, 185) thus concludes that "dismantling heteronormativity has much less to do with law and legal struggle than it has to do with how we live our everyday lives." In other words, the source of lesbian and gay oppression transcends formal law and operates at the level of a broader cultural schema that the law both reflects and constructs; in Harding's interpretation, the lack of fracturing resistance to formal law signals not resignation or acquiescence, but recognition on the part of gay men and lesbians that the cultural "law" of heteronormativity ultimately must be the site for resistance and struggle.

In a recent interview-based study of LGBT people, I examined how respondents defined and viewed the institution of marriage (Hull 2014; see also Hull and Ortyl 2013). Unlike much past research concerning legal consciousness and same-sex marriage, this study was not limited to same-sex couples. With a broader and more diverse nonrandom sample of the LGBT population, I found overwhelming support for legal recognition of same-sex marriage as a social movement goal, but more tepid support for marriage as an institution and a relationship model for same-sex couples, as well as mixed views on personal aspirations to marry. Only a small minority of the respondents actually opposed the LGBT rights movement's pursuit of legal same-sex marriage. But only about half the respondents who supported legal same-sex marriage had positive perceptions of marriage overall. The rest had a more ambivalent or even negative perception of marriage: they had a mixed or negative view of marriage as an institution, they often did not see it as a positive relationship model for same-sex couples, and they were either unsure about aspiring to marry or they explicitly rejected marriage for themselves.

I argue that this apparent disconnect between almost universal support for legal same-sex marriage, on one hand, and more ambivalent views of marriage in general, on the other, provides important insight into the legal consciousness of LGBT people. On its own, the widespread support among LGBT people for legal same-sex marriage might be read as yet another example of hegemonic legality. However, the more ambiguous assessments of the institution of marriage overall strongly suggest the presence of a critical perspective on law, if not outright resistance to hegemonic legality, among many LGBT people. They know law matters, and they favor equal access for same-sex couples as a matter of principle, but their support of formal legal equality should not be read as a broader endorsement of legal marriage, nor as an aspiration to receive the material and symbolic riches of legal recognition for themselves.

CONTRIBUTIONS AND LIMITATIONS

The studies of legal consciousness among LGBT people make several important contributions to the legal consciousness literature. At the same time, reviewing the existing literature in this area does reveal its limitations. Here I offer brief

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evaluative comments on the literature, in light of the challenge posed by Silbey's (2005) and Lovell's (2012a) critiques of trends in the field of legal consciousness research.

First, the growing literature on LGBT legal consciousness has value for its expansion of our empirical knowledge on the legal consciousness of marginalized people. Although much work on legal consciousness has given special attention to groups and individuals that are *socially* marginalized (e.g., working-class people and the poor), I think there is a particular value in focusing on groups whose ongoing *legal* marginalization is not only de facto, but also de jure (enshrined in official law). The law tells a story about itself in terms of its impartiality and accessibility to all, and some social groups experience on-the-ground marginalization despite their formal equality in the law on the books because of their inability to afford adequate legal representation, for example, or because official legal actors choose to disregard the law on the books in dealings with group members.

But other social groups—including but not limited to sexual and gender minorities—continue to experience significant differential treatment in the law on the books, for example, by lacking access to legal partnership recognition or legal protections against discrimination in employment and housing, and this de jure marginalization makes the legal consciousness of members of such groups worthy of investigation. Examples of other groups that currently experience de jure marginalization in the US context include ex-felons and undocumented immigrants.

Ideally, the field of legal consciousness research will advance to a comparative analysis of the legal consciousness of differently situated marginalized groups. For example, how do patterns of legal consciousness compare in groups that experience formal equality but consistent de facto legal marginalization versus groups that experience ongoing deficits in formal legal equality (even as this de jure marginalization may be accompanied by various forms of social privilege for some group members, e.g., based on high socioeconomic status)? The recent work on LGBT legal consciousness lays valuable groundwork for a shift in this direction.

Juxtaposing the existing work on the legal consciousness of sexual minorities and racial minorities hints at the possibilities of such a shift. Several important studies have demonstrated that on-the-books legal equality for racial minorities often masks significant de facto marginalization of these groups, and this on-the-ground marginalization influences racial minority members' perceptions of law and their own legal options. Bumiller's (1988) seminal research on victims of race and sex discrimination found that people of color are well aware of the existence of legal antidiscrimination protections, but they generally refrain from taking legal action against perceived discrimination because they view law as a disruptive force in everyday life and they harbor cynicism about the likelihood of a positive outcome.

Both Nielsen (2004) and Morrill et al. (2010) document African American males' profound distrust of legal authority and cynicism about the possibility of reaching justice through legal avenues, whether the context be the public sphere and the regulation of offensive speech (Nielsen 2004) or the realization of students' rights within high schools (Morrill et al. 2010). De facto marginalization based on

racial identity often appears to produce a legal consciousness marked by resignation, distrust, and resort to extralegal forms of problem-solving.[8]

By contrast, the de jure marginalization experienced by many LGBT people in the context of relationship and parenting rights appears to have had more mixed effects, perhaps because some of these actors harbored the hope that removal of the on-the-books differential legal treatment would ultimately resolve the problems of marginalization.[9] Obviously, these are broad generalities about internally diverse social groups that all exhibit multiple modes of legal consciousness, but this does not preclude the possibility of some identifiable patterns in the relationship between different forms of marginalization and legal consciousness.[10]

A second contribution I see in the research on LGBT legal consciousness is attention to the internal variation in the consciousness of actors who appear similarly situated. Of course, it is by now a common finding in legal consciousness research that people who share group characteristics often display considerable diversity in their legal consciousness, and even that the legal consciousness of individuals varies across time and social context, but some of the work on LGBT legal consciousness has gone beyond remarking on this diversity to offer explanations for its sources or discussion of its impacts. For example, Richman's (2006) work on legal consciousness among lesbian and gay parents and their attorneys shows how people's current positioning by existing law affects their perspectives on what the law *should* do. For example, people who have acted as social parents to children with whom they have no biological or legal tie think about the law's definition of parent much differently than people who are already recognized by official law as parents, at least in the context of legal disputes over custody and visitation in the wake of a partnership breaking up. A comparison of Richman's (2010) work on same-sex couples who get legally married and my earlier work on same-sex couples who use public ritual to enact legality (Hull 2003, 2006) demonstrates overlaps in how members of same-sex couples describe the impacts of their encounters with legality, but also suggests that their expectations and evaluations of legality shift over time in response to changes in the sociolegal context.

8. A similar effect of de facto legal marginalization has been noted in studies of recipients of public assistance (e.g., Sarat 1990; Gilliom 2001). The experiences of welfare recipients in fact may represent an interesting gray area between de facto and de jure marginalization, since they must submit to heightened legal regulation and surveillance in exchange for receipt of benefits, but technically they have put themselves in this position voluntarily. In any case, writing of mothers on welfare in rural Appalachia, Gilliom (2001, 92) notes: "It seems clear that their legal consciousness is one of entrapment, fear, and some mystification, rather than the sort of empowering ascension to rights we might see elsewhere."

9. As legal recognition of same-sex marriage spreads around the world, we are provided an excellent test case for assessing the impact of eliminating some on-the-books forms of discrimination on the legal consciousness of the affected actors. The picture for sexual minorities is complicated, however, by the fact that other forms of de jure marginalization can persist in the wake of legal marriage recognition; in most US states, for example, it is still legal to discriminate against sexual minorities in areas such as employment and housing.

10. It also must be acknowledged that identities are intersectional, such that many sexual minorities are also racial minorities, so in reality many people have identities that expose them to *both* de jure and de facto legal marginalization. To give another example, many undocumented immigrants face both de jure marginalization based on their undocumented status and de facto marginalization based on membership in a racial minority category. Such cases make the analytic task of distinguishing the impacts of de jure versus de facto marginalization on legal consciousness more complex.

The third and perhaps most significant contribution I see in the research on LGBT legal consciousness is its engagement with, and constructive critique of, Ewick and Silbey's (1998) typology of modes of legal consciousness (before, with, and against the law). Almost every study reviewed here explicitly discusses the typology and attempts to apply it to the data. In most cases, this attempted application results in observations about how the existing typology does not quite fit the data at hand, resulting in constructive critique of the typology. This critique has taken two main forms. In her work on the consciousness of same-sex couples who married in San Francisco or Massachusetts, Richman (2010, 375) suggests the need for a fourth category of consciousness, which she terms "outside the law," to account for the emotional motivations of gay men and lesbians to enter legal marriages. I do not fully concur with Richman's initial assessment that couples' invocations of love and romance as motivations for getting legally married reveal motivations that are completely *outside* of law, and Richman herself subsequently qualified this choice of terminology, noting that "disentangling the emotions from the law is not only unnecessary but perhaps futile as well" (Richman 2014, 210). However, her finding does raise the interesting question of how to characterize the consciousness of people when they are quite clearly engaging legality, yet offering subjective accounts of that engagement that downplay or even negate the significance of law.

The other critique of Ewick and Silbey's (1998) typology is found in both my work on members of same-sex couples (Hull 2003, 2006) and Harding's (2011) work on gay men and lesbians of various relationship statuses. Both studies interrogate the meaning of an against-the-law consciousness and the capacity of that type, as described by Ewick and Silbey, to capture the resistant consciousness of some sexual minorities with respect to marriage and family recognition. We both note that the words and actions of our respondents do not reflect a desire to evade a dangerous legality so much as a resistance to exclusion from formal equality, and indeed a desire to embrace legality in the context of defining relationships and families. As described above, Harding offers a tripartite typology of forms of resistance and applies this to the resistant consciousness expressed in various narratives.

By contrast, Ewick and Silbey (2003) themselves offer a typology of forms of resistance to legal authority, and argue that recounting tales of such resistance is a way that momentary reversals of power, in which taken-for-granted social structures are exposed and at least temporarily subverted, can be extended through time and space. They outline a typology of resistant practices that include "masquerade (playing with roles), rule literalness (playing with rules), disrupting hierarchy (playing with stratification), foot-dragging (playing with time), and colonizing space" (Ewick and Silbey 2003, 1350).

Interestingly, their paper does not offer a way of synthesizing their typology of resistance with the typology of legal consciousness sketched in their earlier work (Ewick and Silbey 1998). I do not think this reflects a view of practices of resistance and legal consciousness as being categorically different because the earlier work emphasized that legal consciousness emerges through practice as well as words and beliefs and the later work defines resistance in the language of consciousness: "Resistance entails a *consciousness of being less powerful in a relationship of power* . . .

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[and] requires a *consciousness of opportunity*" (Ewick and Silbey 2003, 1336, emphasis in original). Some of their examples of stories of resistance imply that resistance to legality requires engagement with legality, not mere evasion (although resistant actors may not be engaging legality by choice). So the relationship between resistance to legality and modes of legal consciousness remains somewhat unclear. It appears that resistance may be evident in people expressing both with-the-law and against-the-law consciousness.[11] Can resistance ever be consistent with a before-the-law consciousness as well? The recent work on LGBT legal consciousness draws attention to the need for greater theoretical development and clarity in this area.[12]

The work on LGBT legal consciousness also addresses some of the concerns Lovell (2012a) articulated in his critique of legal consciousness scholarship. Most generally, none of the studies I have described falls into the trap of interpreting lack of overt, large-scale resistance as evidence of acquiescence to hegemonic legality or blind faith in the legal ideals captured in the alleged myth of rights. Both the parenting and the marriage studies provide ample evidence of ordinary LGBT people's pragmatic, realistic, and at times cynical or angry assessments of how law operates and what law can deliver.

The studies of adoption petitions and custody battles reveal LGBT legal actors who engage with law by necessity, in a quest to create or maintain legal ties that are fundamental to their ability to define and protect their families. This engagement is not read as passive acceptance of law's hegemony, and both Connolly (2002) and Richman (2006) document instances of parents resisting egregious instances of mistreatment. Further, Richman's study documents a diversity of views among LGBT people about how the law should define legal parenthood, so the implications for resistance are complex; some would seek to resist traditional legal definitions requiring biological or formal legal connection between parent and child, whereas others would resist an expansive approach to defining parenthood that grants recognition based on functional relationships rather than relations of blood and law.

The studies of LGBT legal consciousness around marriage further complicate the question of resistance. These studies document high support for legal recognition of same-sex marriage and the principles of formal equality underpinning the arguments for such recognition. But again, none of the authors reads this aspiration to marriage rights as acquiescence to hegemonic legality, and resistance can in fact be located in both the words and behaviors of ordinary LGBT people.

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11. Levine and Mellema (2001) make a similar point in their review essay on *The Common Place of Law*, noting that many of Ewick and Silbey's own illustrations of against-the-law consciousness involve people engaging in "avoidance and resistance strategies" that "appear to be just another characterization of how people use the law to their own advantage, which seems more appropriate to the 'with the law' category" (Levine and Mellema 2001, 178).

12. Brisbin's (2010) review article on resistance to legality attempts to provide a systematic overview of the work to date, but I do not think his synthesis resolves the issues I am raising. Bribsin usefully proposes that we can identify two main sources of resistance to legality: a recognition of how the constitutive aspect of legality produces disadvantage, or a perception of arbitrariness in the application of (otherwise fair) laws. He also distinguishes between inside and outside forms of resistance, which might line up with the distinction between with-the-law and against-the-law modes of consciousness, and he laments the lack of systematic knowledge on the effects of resistance to legality. Even in the area that has received the most attention, the effects of litigation campaigns, there is no scholarly consensus on effects.

In my earlier work on same-sex couples (Hull 2003, 2006), I argued that some respondents' extralegal commitment ceremonies represented a form of overt resistance to same-sex couples' exclusion from legal marriage. Other couples eschewed such ceremonies, either because they lacked formal legal meaning (a stance that might be read as acquiescence to the hegemony of formal law), or because they did not wish to imitate or reproduce the ideal of legal marriage (a perspective that seems to represent resistance to hegemonic legal meanings). Richman's work on legally married same-sex couples highlights how the act of legally marrying holds a range of meanings for these couples, and for some it represents an important and meaningful form of political protest. Overly narrow definitions of resistance—emphasizing collective, large-scale efforts at legal change—would miss important moments of resistance in the lives of ordinary LGBT people.

Further, as with the case of parenting law, LGBT individuals do not all share the same view of what needs resisting with respect to marriage. If the perceived injustice is exclusion from the existing institution of legal marriage, resistance will target that exclusion. But if the perceived injustice is a legal system that privileges some relationships over others through the institution of marriage (even more inclusively defined to include same-sex couples), then resistance may take other forms, including desisting from entering the institution of marriage even when that option exists.

The LGBT legal consciousness literature does have some limitations. It is a small literature, and many of the respondent samples have not been representative of the scope of experience and social locations to be found in LGBT communities, as I have already noted. Our limited knowledge about the potentially distinctive legal consciousness of bisexuals and transgender people is especially regrettable. Moreover, almost all the work has centered on consciousness with regard to legal issues connected to partnership and parenting.

This focus is understandable, given the prominence of these issues in recent years and the impact of fast-moving legal change in these areas on LGBT lives, but it leaves a serious gap in our broader knowledge of LGBT legal consciousness. How does legal consciousness with respect to marriage and parenting connect (or fail to connect) with other ways LGBT actors might think about and enact legality? How do LGBT people perceive and enact legality with respect to employment discrimination, hate crimes, and legal documentation of gender identity? What about issues and concerns that intersect with, but also transcend, sexual orientation and gender identity, such as affordable and respectful health care, living wages, safe and affordable housing, humane immigration policies, or crime and punishment in the era of mass incarceration?

Almost all the work on LGBT legal consciousness has hewed closely to Ewick and Sibley's (1998) typology of modes of consciousness, which is perhaps both a strength and a limitation of this literature. As I have just argued, the literature on LGBT consciousness does not take the typology at face value and slavishly apply it to the evidence on LGBT consciousness; rather, some of this work should prod us forward in refining, expanding, or rethinking the typology, at least for certain kinds of marginalized subjectivities. But I do wonder whether the existence of that typology has inhibited creative theoretical analysis to some degree. The before/with/

against distinction seems to serve as a starting point for almost every discussion of legal consciousness in this specific (LGBT) literature, and perhaps in the broader legal consciousness literature of the last dozen years. This certainly speaks to the resonance and utility of the typology, but it is perhaps time for legal consciousness scholars to reflect on whether reliance on the typology is constraining our research and analysis in ways that may be problematic.

An additional limitation of the existing research on LGBT legal consciousness is its heavy focus on the end state of individuals' legal consciousness rather than on the social processes and interactions that produce this consciousness. This lack of attention to process is one of Silbey's (2005) central critiques of recent legal consciousness studies in general, and the studies of LGBT consciousness reviewed here are mostly consistent with Silbey's observation. In part, this limitation results from the methodological choices of researchers studying LGBT legal consciousness, who have relied most heavily on in-depth interviewing and to a lesser extent on survey methods, with only very limited reliance on ethnographic observation. Process and interaction are difficult to capture with interview and survey techniques, suggesting that our understanding of LGBT legal consciousness may advance considerably if researchers' methods expand to include more ethnographic work, with an explicit focus on the interpersonal and institutional processes that shape the observed consciousness.

Kathryne Young's (2014) recent study of cockfighting rituals on an Hawaiian island provides an exemplar for such a shift toward greater focus on process. Young uses data from both ethnographic observation and interviews to demonstrate how people's interactions with others, as well as their perceptions and assumptions about other people's views of law (what she terms second-order legal consciousness), combine with individual experience to form individual and group consciousness in a dynamic fashion. This kind of attention to social process and interaction as productive of consciousness would enrich the research on LGBT people (as well as other marginalized groups).

Finally, LGBT legal consciousness studies have focused almost exclusively on the experiences of ordinary LGBT people, rather than actors who would have a higher probability of engaging in overt forms of resistance, such as cause lawyers and social movement activists. Some of these studies have included some of these kinds of legal actors among their respondents, but they have not been the primary focus of any of the research reviewed here.[13] As Lovell (2012a) points out, there is value in documenting and analyzing the perspectives of ordinary people, but it does limit our ability to gauge the depth and breadth of all forms of resistance to hegemonic legality. Research focused on LGBT people who become mobilized to collective action would supplement the existing studies and give us a more complete picture of the range of resistance within this marginalized population. When studies focus on even narrower subpopulations of ordinary LGBT people, such as legally

13. Other important studies have examined historical and contemporary cases of LGBT movements and activists deploying legal strategies, but their authors have not explicitly invoked legal consciousness to frame the studies (Barclay, Bernstein, and Marshall 2009; Stone 2012; Whitehead 2012; Bernstein and Taylor 2013; Chua 2014, 2015).

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married same-sex couples and adoptive gay and lesbian parents, there is necessarily a tradeoff between depth and breadth of insight into LGBT legal consciousness.

CONCLUSION

Has research on legal consciousness lost its critical perspective, as Silbey (2005) asserts? I submit that the literature on LGBT legal consciousness retains a critical edge. I do not read this literature as merely descriptive, unwilling to engage issues of power and inequality as required by a critical approach. But perhaps Silbey has set the bar a bit too high in defining what it means to be critical in this field of research. I would agree that *one* critical puzzle for legal consciousness scholars is understanding why ordinary people are willing to tolerate "the gap," the discrepancy between law on the books and law in action. Ewick and Silbey's (1998) seminal work on the legal consciousness of ordinary citizens offers a provocative argument on this very point, asserting that it is the coexistence of distinctive modes of legal consciousness—each able to tell a convincing story about *parts* of people's everyday experience of legality—that allows legality to retain its social force despite its internal contradictions.

But lack of overt resistance to legality among ordinary people does not always signify the embrace of law's legitimacy, and there is plenty of unfinished business in the field of critical scholarship on legal consciousness. We need a better understanding of resistant legal consciousness, and a better account of how resistance interacts with the modes of consciousness identified by Ewick and Silbey's (1998) typology. We also need more depth and breadth of understanding of the legal consciousness of marginalized social actors, including greater elucidation of the links between social location and variations in legal consciousness *within* marginalized groups, as well as better theorization of how various social processes and their attendant forms of marginalization—economic, cultural, or legal; de jure or de facto—produce different kinds of legal consciousness.

With respect to marginalized groups, I suspect Silbey's (2005) admonition about the need for greater attention to the institutional level and to processes of cultural production is worth heeding. Future work on the legal consciousness of LGBT people and other marginalized groups should attempt to incorporate greater attention to these issues. Ideally, it would also move beyond the issue-specific approach to analyzing legal consciousness that has characterized much of the work in the field in the past decade, to develop broader portraits of the place of law and legality in the lives of marginalized social actors. Following a point made by Levine and Mellema (2001) in response to Ewick and Silbey (1998), scholars of marginalized groups must be attentive to the relative salience of law and legality for various groups, and open to the possibility that law and legality are not in fact central and influential in the everyday lives of some marginalized people.

Finally, scholars of legal consciousness who are particularly interested in marginalized groups must develop better knowledge of how and when perceptions of the gap between legal ideals and realities catalyze some marginalized actors to engage in collective forms of resistance. It is not enough to refrain from interpreting lack of

participation in organized resistance as acquiescence to hegemonic legality (although that is certainly a start). We must also take the next step of studying legal consciousness through the prism of collective resistance, in part because hegemonic legality is not static. Recent dramatic developments with regard to legal recognition of same-sex marriage are a case in point. One need not pass judgment on whether the expansion of such recognition is a positive development to view it as a consequential change, and to acknowledge that our understanding of hegemonic legality would be enriched by more detailed insight into the legal consciousness of those who have worked collectively to bring about that change. Other examples abound of both successful and less successful collective resistance by people experiencing various forms of marginalization by law. A critical approach to the legal consciousness of marginalized actors will further our understanding of how law's hegemony is both reproduced and, occasionally, transformed.

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