

The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage

Kathleen E. Hull

This paper examines the legal consciousness of same-sex couples with respect to marriage. Data from an interview-based study of 71 members of same-sex couples reveal strong consensus on the desirability of having same-sex relationships legally recognized, and considerable variation in couples' attempts to enact marriage culturally through various practices, including the use of marriage-related terminology and public commitment rituals. I argue that some of these efforts to enact marriage culturally should also be read as attempts to enact legality in the absence of official law. The findings from this study challenge the idea that marginalized social actors will tend toward a resistant legal consciousness: Rather than seeking to avoid and evade legality in their everyday lives, most same-sex couples seem to embrace legality for its practical and symbolic resources, even as they stand "against the law" in their opposition to the exclusion of same-sex couples from the institution of legal marriage. Approaching marriage from the perspective of same-sex couples, this research demonstrates that the legal and cultural aspects of marriage are deeply intertwined. Cultural enactments of marriage enact legality even in the absence of official law, and many actors ascribe to law a cultural power that transcends its specific benefits and protections, the power to produce social and cultural equality.

In my heart, I feel legally married to him.

—Andrew, a respondent explaining the significance of his recent public commitment ritual with his partner, Tim

Kathleen E. Hull is assistant professor, Department of Sociology, University of Minnesota. She thanks the following people for their helpful feedback at various stages: Scott Barclay, Wendy Espeland, Wendy Griswold, Elizabeth Hoffman, Erin Kelly, Anna-Maria Marshall, Robert Nelson, Laura Beth Nielsen, and Mary Rose.

It means *nothing* legally, which is what marriage is.

—Jenny, a respondent explaining her lack of interest in having a public commitment ritual with her partner, Sandra

How does law, broadly conceived, penetrate the consciousness of ordinary people and shape not only their thinking and sense of identity but also their cultural practices? In this paper, I examine the relationship between same-sex marriage as a cultural practice and a legal ambition. Specifically, I draw on in-depth interviews with members of committed same-sex couples to describe and analyze their views on the question of legal recognition for same-sex marriage and to consider the lawlike functions of public rituals of commitment in some couples' lives.

The concepts of legal consciousness and legality guide the investigation of these issues. Legal consciousness has been defined as "all the ideas about the nature, function, and operation of law held by anyone in society at a given time" (Trubek 1984, 592), or more simply as "the ways people understand and use law" (Merry 1990, 5). Recent work on legal consciousness applies interpretive methods to individual narratives in an effort to describe how various social actors experience and understand the law. Important studies explore the legal consciousness of average citizens (Engel 1984; Ewick and Silbey 1998; Feeley 1979; Nielsen 2000; Yngvesson 1988), working-class Americans (Merry 1990; Ewick and Silbey 1992), the poor (Sarat 1990), victims of racial and gender discrimination (Bumiller 1988), social activists (McCann 1994), and lawyers and their clients (Sarat and Felstiner 1989). Homosexuals constitute a social class that the law has defined—and in many places continues to define—as criminal, deviant, or undeserving of basic legal rights and protections (see Gerstmann 1999; Kaplan 1997; Herman and Stychin 1995; Phelan 2001; Stychin 1995). This second-class citizenship is arguably a defining element of gay and lesbian identity. While some studies of legal consciousness have focused on socially oppressed actors such as the poor, women, and racial minorities, a focus on gays and lesbians expands this analysis to consider the consciousness of another set of actors whose disadvantage is condoned and reinforced by the law.

In *The Common Place of Law*, Ewick and Silbey (1998, 22) elaborate the concept of legality, which they define as those meanings, sources of authority, and cultural practices that are in some sense legal although not necessarily approved or acknowledged by official law. The concept of legality offers the opportunity to move law and society scholarship beyond its traditional focus on formal legal institutions to a perspective that examines "how, where and with what effect law is produced in and through commonplace social interactions. . . . How do our social roles and statuses, our relationships, our obligations, prerogatives, and responsibilities, our identities, and our behaviors bear the imprint of law?" (1998, 20). Reconsidered in light

of this broad definition of legality, the concept of legal consciousness expands to encompass a range of social practices that both reflect and construct legality. "In this theoretical framing of legal consciousness as participation in the construction of legality," Ewick and Silbey state, "consciousness is not an exclusively ideational, abstract, or decontextualized set of attitudes toward and about the law. Consciousness is not merely a state of mind. Legal consciousness is produced and revealed in what people *do* as well as what they *say*" (1998, 46).

Ewick and Silbey identify three main forms of legal consciousness, which they call "before the law," "with the law," and "against the law" (1998, 47–49). Actors "before the law" experience or conceive of law as objective, autonomous, powerful, and sacred. Actors who are "with the law" approach law as a game, a terrain of contestation, and a set of procedures and resources that can be manipulated for personal advantage. Actors who stand "against the law" feel trapped by it and seek ways to manage its power over their lives, through distancing or acts of resistance. These forms of legal consciousness, according to Ewick and Silbey, are not static categories that neatly correspond to individual actors; rather, legal consciousness is "forged in and around situated events and interactions" and is therefore "plural and variable across contexts" (1998, 50). Thus, the same actor may express different forms of legal consciousness at different times and in different situations.

Despite this contingency and variability, forms of legal consciousness might be expected to correlate with some social statuses. In particular, Ewick and Silbey suggest that socially marginalized actors are most likely to express a consciousness of resistance to law (1998, 235). Resistance to law can be collective or individual, can take many forms, and is not always effective. The defining features of resistant consciousness are awareness of one's relative lack of power, a sense of the possibility of turning a situation to one's advantage, and an implicit "justice claim" that the current conditions are unfair and that those with more power are responsible for this unfairness (Ewick and Silbey 1998, 183). From the perspective of "against the law" consciousness, legality is "something to be avoided" because it is arbitrary, capricious, dangerous (Ewick and Silbey 1998, 192). Nielsen's (2000) analysis of experiences and attitudes regarding verbal harassment in public settings lends support to the idea that marginalized social actors will be most likely to express an "against the law" consciousness. Nielsen found that racial minorities were significantly more likely than whites to cite cynicism and distrust of law in explaining their opposition to legal regulation of offensive speech.

My research suggests that all three forms of legal consciousness identified by Ewick and Silbey are present in same-sex couples' beliefs and practices regarding marriage. Resistant consciousness is present to a degree, but it does not appear dominant. At the same time that couples resist their current exclusion from official law (i.e., their lack of marriage rights), many

couples also act “with the law” by appropriating its terms and practices to define their committed relationships, and some also stand “before the law,” awed by its perceived cultural power.

I will argue that the words and actions of people in committed same-sex couples reveal both the cultural power of official law and the cultural enactment of legality where official law is absent. Some, but not all, committed same-sex couples seek to replicate the functions of official law through cultural practices that include terminology choices and public rituals. Through such practices, these couples seek to define their relationship and commitment for others, and in some cases to enhance the stability and permanence of that commitment. In this sense, their cultural practices represent an effort to enact legality in order to compensate for the absence of official legal recognition. At the same time, many committed same-sex couples express strong interest in obtaining official legal recognition for their unions, and not only for the practical legal and financial benefits state recognition confers. Many also desire legal recognition for the social legitimacy they believe it would grant. These individuals look to official law to perform the cultural work of rendering them socially normal.

CONTEXT AND METHODS

Same-sex marriage emerged as a contentious cultural and legal issue in the context of rapid changes in marriage and family structures in late-twentieth-century America. Recent developments in the state of Vermont ensure that same-sex marriage will remain a significant policy question in the foreseeable future. In that state, same-sex couples successfully sued for the right to all the benefits and protections of legal marriage under state law. In a 1999 ruling, the Vermont Supreme Court found that the state was obliged to provide marriage benefits to same-sex couples under the Common Benefits Clause of the Vermont State Constitution (*Baker v. State*, 744 A.2d 864 [Vt. 1999]). The court gave the state legislature the option of either rewriting state marriage law to include same-sex couples or setting up a parallel legal vehicle to deliver the rights and benefits of marriage to these couples. The legislature chose the latter option, setting up a system of “civil unions” to deliver marriage benefits and protections to same-sex couples. The civil unions law took effect in July 2000. Since its implementation, over 2,000 same-sex couples have entered into civil unions in Vermont. Interestingly, a large majority of these couples (nearly 80%) are not Vermont residents (Goldberg 2001) and, thus, gain no benefits or protections from their civil unions, since civil unions are not recognized by any other U.S. state or by the federal government.

While same-sex couples in Vermont and elsewhere have pursued legal recognition for their relationships, it appears that growing numbers of same-

sex couples are using public, wedding-like rituals to solemnize and celebrate their intimate commitments, sometimes with the approval and participation of established religious groups but often without such formal recognition. Hard data on the frequency of such rituals do not exist, but clergy across many denominations interviewed for this research confirm that the size and frequency of these rituals have increased significantly over the past one to two decades.¹ In combination with other significant trends, these developments are complicating the question of who counts as family for both legal and cultural purposes.

The findings reported here come from a study of same-sex marriage based on in-depth interviews with members of committed same-sex couples and participant observation of public commitment rituals in the Chicago metropolitan area. The broad goal of this research is to understand the connection between the politics of legal recognition for same-sex couples and the emergence of same-sex commitment ceremonies as a cultural form. The interview sample consists of a total of 71 respondents representing 38 same-sex couples.² The interviews covered a range of subjects, including basic demographic information and personal history, respondents' "coming out" story and relationship history, basic features of the current relationship (such as division of labor, management of finances, and the nature of their sexual commitment), respondents' political views of same-sex marriage and domestic partnership, their social networks, and their connection to gay cultures, communities, and movements. For those respondents who had participated in a public commitment ritual, the interview also covered the story of the ceremony, including the planning of the event, the content of the ritual, personal and social reactions to the event, and the meaning of the event for the couple.

Respondents were recruited to the study through a combination of techniques, including referral chains and use of clergy contacts (to find couples who had held public commitment rituals). The target population was same-sex couples in the greater Chicago area who considered their relationships committed.³ The overall sample includes 49 people (69%) who had

1. I do not mean to suggest that cultural enactments of same-sex marriage are a new phenomenon. There is a wealth of historical evidence that same-sex couples have used various rituals and other cultural practices to define their relationships as marriages across time and place. For a good overview of this historical evidence, see Eskridge (1993). Despite the ample historical evidence of such practices in earlier times and other places, anecdotal evidence strongly suggests that same-sex public commitment rituals have increased in popularity in the United States over the past one to two decades.

2. In most cases I interviewed both members of the couple and interviewed them simultaneously (27 couples, 54 respondents). In some cases I interviewed both members of the couples separately (6 couples, 12 respondents), and in a few cases I interviewed only one member of the couple (5 respondents).

3. I did not try to impose my own definition of *commitment* on the couples, but to ensure some comparability across the sample, I established the following minimal criteria for including couples in the study: either they had held a public commitment ritual, or they had been together as a couple for at least two years.

held a public commitment ritual and 22 (31%) who had not. (I intentionally included more respondents who had held a ritual in order to facilitate comparisons within this portion of the sample.) The sample is fairly evenly divided in terms of sex (42% male and 58% female), but is less representative of the Chicago-area population on other social characteristics. Specifically, the sample is predominantly white (77%), middle or upper middle class (76%), and well-educated (75% with a bachelor's degree or higher). Just over half (56%) are city residents, and the rest live in the suburbs. Respondents' average age is 41, and the average relationship length is eight years.

Several principles guide my effort to plumb the legal consciousness of my respondents. First, following Ewick and Silbey, I approach legal consciousness as an enacted social phenomenon, meaning that legal consciousness is contingent on social context and is revealed in actions as well as words. Second, I embrace a broad conception of legality, one that does not confine itself to the meanings and operations of official (state) law. Third, I do not grant law primacy in my methodological approach; instead, I attempt to capture legal consciousness by examining the richness of everyday lives and experiences. (See Sarat and Kearns [1993] for other recent attempts to understand law in everyday life.)

These principles translate into a set of methodological choices and strategies. Since I conceive of legal consciousness as not merely beliefs and ideas but also behaviors, I investigate respondents' behaviors and the meanings they attach to those behaviors. And because I understand legal consciousness to be contingent on social context, I confine my analysis to a delimited set of social actors and a specific domain of social experience: same-sex couples and intimate commitments. This study is not an effort to delineate the legal consciousness of all gays and lesbians, or even the general legal consciousness of all members of same-sex couples.⁴ Instead, it is a focused analysis of same-sex couples' legal consciousness with respect to the particular issue of commitment and marriage. In an effort to avoid a law-centered approach to this topic, I intentionally designed the interview schedule to cover respondents' personal and relationship history and their beliefs and behaviors related to cultural enactments of commitment (choice of terminology for partners and relationships, public commitment rituals, etc.) *before* broaching the subject of legal recognition for same-sex marriage. Although respondents knew in advance that the general topic of the study was "same-sex marriage," the ordering of the interview topics did not en-

4. Reliable estimates of the size of the gay and lesbian population and the proportion of the population in committed relationships are hard to come by. Wald (1999) uses U.S. Census data and data from the National Health and Social Life Survey (Laumann et al. 1994) to produce an estimate that about 60% of adult gays and lesbians in the United States are cohabiting with an intimate partner. Of course it is possible, perhaps likely, that gays and lesbians who are single or in relationship forms other than "committed" dyads might express views on same-sex marriage that differ markedly from the findings of my study.

courage them to think about this topic in primarily legal terms. Thus, evidence of legality in the cultural enactments of commitment described by respondents cannot be easily dismissed as a mere artifact of the research design.

FINDINGS

In this section I first report my findings on respondents' views on the issue of legal recognition of same-sex unions, and then consider the goals that some couples are trying to accomplish through public commitment rituals. While the legal consciousness of my sample appears fairly unified on the question of legal recognition for same-sex relationships, these same-sex couples vary in their use of cultural practices to enact marriage in their own lives.

Legal Recognition of Same-Sex Marriage

Although they varied in the reasons they gave and in the importance they attached to the issue, my interview respondents were unanimous in their support for legal recognition of same-sex marriage.⁵ The specific reasons people gave for supporting legal same-sex marriage included the legal and economic benefits attached to marriage, the belief that it is a matter of fairness and equal rights, the legitimacy and recognition it would provide to same-sex relationships, and positive impacts on the gay and lesbian community generally and on gay and lesbian couples specifically.

Reasons for Support

Over two-thirds of the respondents pointed to legal and financial benefits in explaining their support for legal same-sex marriage. In particular, many mentioned the issues of health insurance benefits and perceived tax benefits. Many respondents expressed frustration that they were unable to get health insurance coverage as a spouse under their partner's insurance policy, or that they could not put their partner on their own health insur-

5. This finding echoes the finding of Stiers (1999), who reports that all but one of the 90 gays and lesbians she interviewed favored legal same-sex marriage. Our findings differ, however, with respect to the distribution of reasons given for favoring legal same-sex marriage and also the level of priority the marriage issue should receive from gay rights groups. Stiers found that all of her respondents who favored legal marriage cited the issue of civil rights and equal treatment as a reason, and the majority (73%) cited the legal and economic benefits associated with legal marriage, whereas only 7% said it would legitimize gay relationships in the eyes of society (Stiers 1999, 165, table 7.2). In my interviews, respondents have also mentioned all of these reasons, but they have expressed much greater interest in the impacts that legal same-sex marriage would have in legitimizing same-sex relationships in society.

ance as a dependent. On taxes, some respondents believed there would be a financial benefit to filing a joint tax return,⁶ and others mentioned problems with inheritance taxes and the taxation of dependent benefits under employee benefits plans.

Other legal and economic issues cited by respondents related to parenting and family law, life insurance and estate planning, immigration, health care, and the cost and uncertainty associated with establishing legal protections that are not backed up by legal marriage. Some discussed the difficulty of establishing legal parenthood for the nonbiological parent in couples raising children, and also the obstacles facing unmarried couples seeking to adopt or become foster parents. A few mentioned the problem of obtaining health insurance for children through the policies of partners who have no legal standing as parent.

In addition to insurance issues, the main difficulties raised in connection to health care were hospital visitation rights and the power to make health care decisions for one's partner in the event that the partner becomes incapacitated. Ted Grasskamp⁷ has special knowledge of such problems both professionally and personally. Ted's first lover had been in a serious car accident and was in the hospital intensive care unit. Despite being his partner, Ted had to request permission from his lover's biological family to visit him in the ICU, and the family retained complete control over health care decisions throughout the ordeal. As a hospital employee, Ted has also witnessed the misfortunes of other gay couples:

I work in a hospital. I've seen horror stories beyond people's wildest imaginations. One couple, both with AIDS, as one started deteriorating in health and needed 24-hour care in a nursing home, the family took him away from his partner, put him in a nursing home at an undisclosed location, wouldn't even tell him when he died. I've seen bank accounts frozen within hours after death. I've seen wills not followed. I've seen just horror stories after horror stories. And I had my own horror story too. And that's just not to be tolerated, just not at all.

Another respondent expressed anxiety about the possible interference of homophobic relatives if some kind of health crisis were to befall his partner, despite the fact that they had established health care powers of attorney for each other.

In fact, several people expressed skepticism about the effectiveness of

6. Some respondents seemed unaware that under the current tax code some married couples in which both partners work full time pay *higher* income taxes than they would if each filed individually as a single person (the so-called marriage penalty). However, married couples at lower income levels or with only one partner in the paid labor force do have income tax advantages.

7. All respondent names are pseudonyms. Other potentially identifying information, such as occupation, has also been altered as necessary to protect confidentiality.

some of the legal protections they had put in place to safeguard their relationships and financial wishes, including wills, trusts, powers of attorney, partnership agreements, and guardianship provisions. They perceived such protections as vulnerable to the whims of judges and blood relatives. Brenda Davis and Kim Pierson drew up their wills and related legal documents around the time of their public ceremony. Brenda expressed resentment about the added costs imposed on same-sex couples by the need to establish such protections outside the framework of legal marriage:

It was crazy to have to go and draw up wills and pay for wills, and draw up all these papers for when you're sick, and health whatever, and all the other stuff, power of attorney, all this legal stuff, to get married. And pay those full costs over and above all of that, when everybody else gets to do it for free. . . . I'm pretty adamant. I feel very fucked over when those things happen.

For Brenda, the denial of legal marriage represented lack of access to a relatively inexpensive and convenient legal vehicle for establishing a range of protections for her committed relationship.

One couple described their personal difficulties resulting from existing immigration laws. Peggy Wong and Anita Lindstrom have been together for over a decade. Peggy is a native of a Southeast Asian country and only recently obtained her green card after many years of trying. Peggy and Anita described how the first 10 years of their relationship were dominated by problems related to Peggy's immigrant status and the constant threat that she would lose her visa and be forced to return to her home country. At one point, they were separated for a period of several months when Peggy was not allowed back into the U.S. after visiting family in the United Kingdom.

After such tangible legal and financial concerns, the most frequently mentioned reasons for supporting legal same-sex marriage were the issue of equal rights and the desire to achieve legitimate status for same-sex couples in society. These reasons were mentioned by nearly half the people I interviewed. On the issue of equal treatment and civil rights, Linda Sanchez remarked,

I strongly feel that they [same-sex marriages] should be legalized. We should be allowed the same rights that straight people have, because we have a right to have a family and the right to live like everybody else does. What's wrong with that? We're people too! We're not animals. We're human beings! I think it should be legal.

Others frame it as an issue of basic fairness and equal treatment, without specifically invoking the language of rights. Robbie Caputo, in a six-year relationship with his partner, Alex Gellar, asked, "If a man and a woman

can just go to Las Vegas and get married, why can't two men and two women?" Andrew Minnelli recently held a public commitment ceremony with Tim Daniels, his partner of two and a half years. Discussing his interest in legal marriage, Andrew said he only wanted what his heterosexual brothers received when they married. "I feel legally married to him," Andrew said of Joe, "and I will want and fight for all the other things that straight couples have. I don't want anything more, I just want the same, nothing more."

In the view of some respondents, legal marriage holds the promise of important symbolic benefits in addition to the more tangible economic and legal advantages. Nearly half the respondents felt that legal same-sex marriage would provide legitimacy for same-sex relationships in the broader society, would put same-sex couples on equal footing with straight couples, or would at least force straight society to recognize the existence and seriousness of committed same-sex couples. Judith Klein emphasized the importance of legal recognition for the validation it would bring in the wider society, rather than for any personal validation of the couple's commitment to each other:

I don't need it to feel at this moment that my commitment to Carol is any stronger. I don't need that. But what it will do, when it happens, it's a basic civil right, which just shouldn't be denied, but it will also force a lot of people to reckon with the reality of couples that are same sex. So I kind of want the government to do it, so all these people, they can shut up! And [gays] can say, "See, it's legal, it's recognized." And I'm sure that's what happened when blacks could marry whites, when that became legal. I'm sure that just validated it. Not validated it for the people getting married, just validated it for the people on the outside. So there's going to be some outside equity gotten from it, big-time. I wouldn't mind that, really. I wouldn't mind that at all!

But some respondents felt legal recognition would bring more than just a grudging acknowledgment of the reality of committed same-sex couples, seeing legal recognition as the key to greater social acceptance for gay and lesbian couples through their normalization by the law. For example, Diane Wilson explained her strong support for legal recognition in this way:

I think [legal recognition] would go a long way to legitimizing our relationships, in the eyes of other people. That we do have committed relationships. The stereotype is that nobody who's gay can possibly have a committed relationship; well, that's not true. I know more people my age who are in committed relationships than not. And I think that would just be the step that would get people over those hurdles. And all that baloney about, you know, people are child molesters and all this stuff. I mean, what kind of crap is that? It's just that gay people, as marginal people in our society . . . well, the fact that you can't have all the same relationship rights as straight people, it just makes people

keep thinking like that. And if we had that ability, I think a lot of that would go away. . . . [Legal marriage] really would give us the correct status in our society that we need.

In Diane's view, lack of "relationship rights" is closely tied to the perpetuation of homophobic attitudes and stereotypes in mainstream society. Many respondents seemed hopeful that legal change could produce deeper, transformative effects in society as a whole, normalizing the presence of same-sex couples in a way that efforts to educate and persuade through argument and information never would. In most cases, what is central to these hopes is a belief that straight society will come to see that gays and lesbians are really just the same as they are, or as one respondent put it, "couples just like themselves."

Finally, a smaller number of respondents spoke of intangible benefits that would accrue to the gay community generally and to members of legally married couples specifically. About 20% of the interviewees imagined legal marriage would bring positive changes to the gay community or to same-sex couples. Some respondents specifically cited the likely emotional benefits for same-sex couples *as couples*. Contrary to the views of others, like Judith Klein, who felt that legal recognition would not strengthen their own relationships in any way, Gary Weaver argued that the legal bond would have salutary effects on partners' commitment to each other:

I'm really convinced, one thing that keeps straight couples together is how difficult it would be to disentangle legally, and that kind of gives you time to get over some difficult things. . . . That's what marriage does for people, it kind of gets you over those times. There's a tie that you would have to consciously break, that you would have to deliberately break, and that's a problem for gay couples, because your relationship has to be able to withstand breaks, because there are breaks that just happen in relationships. And that's why I think marriage is so important, because it gives you extra glue, like elastic, you can go further and further apart and still snap back. I think that's where gay relationships have problems.

Gary views the difficulty of extricating oneself from the legal bond of marriage as a chief advantage of legal marriage, rather than a drawback that just comes as part of the package.

And some respondents believe that this increased permanence in gay relationships would be good not only for the individuals involved but for gay culture and the wider gay community as well. Gary's partner, Jeff Muldoon, whose gay brother died of AIDS after 10 years in a committed but sexually nonmonogamous relationship, asserted that legal marriage "is important for the [gay] community, so that they don't always live like my brother. . . . And actually for society, not just gay society but society at

large, stability is going to have to be fostered, and I think more people are coming around to that. We can't revolve around bars for our social life forever." Here Jeff conflates marriage with monogamy, stability, and even protection from disease and death. Howard O'Hara, a former priest in a nine-year relationship with Barry, also discussed the salutary effects of legal recognition for the gay male community as a whole:

One of the things that I think is an issue here is that it would be really good for the gay community to have [legal marriage] as an option. . . . I think it's so hard for gay men to develop the skills they need for long-term relationships, to find long-term relationships, to sustain them once they have them. . . . And I really think it would help the gay community tremendously if there were more committed couples more openly.

Both Jeff's and Howard's remarks reflect an underlying belief that the strength of the gay community depends on the strength of the committed intimate relationships within that community, and that such relationships would be fortified by legal marriage.

Importance of the Issue

Respondents who had held a public commitment ritual and those who had not did not differ significantly in terms of the reasons offered for supporting same-sex marriage, but these two groups did differ substantially in the importance they assigned the issue of legal same-sex marriage. I asked people how high a priority they thought legal marriage should be, compared to other issues the gay rights movement might address. Some declined to give an opinion, usually because they felt they were not sufficiently knowledgeable of the movement or gay-rights politics to comment. Among those who did respond, about half said marriage should be a high priority, and the other half said that other issues are more important or that marriage is not a high priority.⁸ Among the respondents who had held a public commitment ritual, however, nearly two-thirds thought marriage should be a top priority (putting no other specific issues ahead of it), whereas less than one-third of the respondents who had not held a ritual ranked marriage as a top priority.

There are at least two possible explanations for this difference. First,

8. Here again, my findings differ somewhat from those of Stiers (1999, 179), who found that most of her respondents who felt marriage should be a priority saw other issues as even more important. It should be noted that being interviewed about the general topic of same-sex marriage may have biased respondents to attach greater priority to the issue than they would in other contexts. A 1996 national poll of self-identified gays and lesbians found that 44% thought "securing the right for gay and lesbian people to get married" was one of the most important issues or a very important issue for gay-rights groups to address; 25% said it was somewhat important, while 8% said it was a little important, and 16% said it was not important (Human Rights Campaign 1996).

people who care most about the issue of legal marriage may be more inclined to enact marriage culturally by holding a public commitment ritual. Second, the experience of such participation in a public commitment ritual may increase people's interest in access to legal marriage. These explanations are not mutually exclusive: It may be the case that people who are more "pro-marriage" are drawn to the cultural enactment of marriage through ritual, *and* the ritual experience itself may increase the desire for legal recognition. Whether one or both of these processes are operating, this finding illustrates the possible interaction between the cognitive and behavioral dimensions of legal consciousness. Conscious beliefs and values about law may affect cultural enactments of legality, and such enactments of legality through cultural practice may also influence beliefs and values.

Respondents who felt other issues were more important than marriage pointed to a range of issues deserving higher priority, including general anti-discrimination or civil rights legislation, hate crimes, health issues (including HIV/AIDS and cancer), and the repeal of sodomy laws. In addition, some argued that the gay community should try to change the public perception of gays and lesbians before pushing for specific legal remedies like same-sex marriage. For example, Sandra Drewitt commented,

I think the issue in front of [marriage] is normalizing gays and lesbians, which I think the community as a whole doesn't do a good enough job of that, of normalizing the upper middle class people living on Maple Street with a kid [referring to herself and her partner], rather than prancing around in the streets in bizarre outfits and that kind of thing, or this whole sexualized identity thing. I think they don't do a good job of that. Look at the papers. Look at the magazines.

Sandra's comment was representative of the views of a subset of respondents who expressed dismay at the risqué public image of gays projected at large public events like annual gay pride parades and the mainstream media's willingness or even eagerness to portray such images as representative of the gay community as a whole. This is a striking rationale for giving legal marriage lower priority in the gay rights movement, in light of the fact that so many other respondents saw the legitimacy and social recognition of same-sex couples within the wider society as one of the primary symbolic benefits that legal marriage would bring.

Others saw marriage as a top priority and did not specifically identify other issues that should take precedence over marriage. For example, Claire Bruno called legal marriage "the number-one issue" for the gay and lesbian community, and explained, "Marriage would help everybody more than any other single issue would, because if we have the right to marry, whether you ever get married or not, then things like job discrimination and all that would become moot." Like many other respondents who gave marriage the

highest priority, Claire anticipated a sort of domino effect in which legal marriage would build momentum for other remedies like hate crimes legislation and antidiscrimination measures.

Legal Alternatives to Marriage

I also asked respondents how they felt about alternative forms of legal recognition for same-sex couples, such as domestic partnership. Virtually everyone replied that domestic partnership was a first step, but was not sufficient. People said they would welcome some kind of domestic partnership, but they consistently used phrases like “stepping stone” and “temporary solution” to describe their attitudes toward this alternative. Only equal marriage rights were acceptable as the long-term goal, even if they were not achievable in the near term. I then asked how they would feel about some kind of alternative legal vehicle for gay couples that was identical to marriage in every way except it had a different name. (This hypothetical alternative is close to the Vermont civil unions, although civil unions do not confer federal marriage benefits.) Over half of those who expressed an opinion said this would be acceptable, but over one-third did not share this view. The remainder (about 10%) said a separate name would actually be preferable, because it would avoid some of the cultural baggage associated with (straight) marriage. Ethan Levinson, who had a commitment ceremony a year ago with his partner of four years, commented that “marriage in and of itself may need some changing in a social sense as well. . . . So part of me would say, no, let’s call it something else, and then maybe a new institution can develop that will encompass these issues.”

Those who do not find the idea of marriage by a different name acceptable as a final outcome are skeptical that anything with a different name could ever really be equal to marriage. A few respondents drew the analogy to “separate but equal” facilities for blacks under Jim Crow, which were merely separate and never equal. Becky Rodgers voiced similar concerns: “The reason it would be nice to have the same term, because then there would be no difference. There wouldn’t be any kind of ‘it’s less than marriage,’ or anything like that. As long as it wasn’t considered something ‘less than’. . . . I have a feeling, though, if there was a different name, a different term, it would be.”

In summary, I found broad support for legal recognition of same-sex relationships among gays and lesbians in committed relationships, although individuals differed in the reasons for their support and their attachment to marriage as the appropriate legal vehicle for this recognition. The most frequently mentioned reason for favoring legal recognition is the package of practical legal and financial benefits it would deliver. But many respondents also frame legal recognition as a matter of fairness, equal treatment, and civil rights, and many also describe the symbolic benefits it would pro-

vide in terms of legitimating same-sex relationships in the wider society. A smaller number anticipate beneficial impacts on same-sex couples and on the gay community generally. About half the respondents felt legal marriage should be a top priority for the gay rights movement, and none felt that other legal structures like domestic partnership were ultimately an acceptable alternative to marriage, unless they comprised an identical set of rights and benefits and differed in name only. People who had participated in a public commitment ritual were more likely to rank legal marriage as a high priority, suggesting an interplay between the cultural practices around marriage and beliefs about marriage as a legal institution.

These findings suggest a certain degree of unity in the legal consciousness of gays and lesbians in committed relationships, at least with respect to the specific issue of legal recognition for same-sex unions. But this consciousness is certainly not monolithic, as respondents differ in their visions of what law can deliver. Some imagine law in heroic terms, as the ultimate guarantor of rights, equality, and even social legitimacy. Others view law more practically, in terms of the tangible benefits and protections it would afford but also in terms of the desirable aspect of law's binding power, as the "extra glue" that might hold couples together through difficult times. Although some bristled at the notion that the state could legitimize intimate relationships or provide them with staying power they might not otherwise have, very few suggested that the law should have no role in regulating intimate relationships, gay or straight, as a matter of principle.

Next I shift to a consideration of same-sex couples' cultural practices related to marriage, how they enact marriage in words and actions. My main interest is to demonstrate how cultural practices sometimes construct legality outside the purview of official law.

The Cultural Enactment of Marriage and Legality

Many committed same-sex couples enact marriage culturally even though legal recognition for their relationships is unavailable. Two of the most prominent strategies for this cultural enactment of marriage among same-sex couples are choices of terminology for relationships and partners, and the use of public wedding-like rituals. Some, but not all, committed same-sex couples pursue these practices as a means of enacting marriage in the absence of official law.

Linguistic Enactments of Marriage

Although the institution of legal marriage is unavailable to same-sex couples, many respondents identified themselves as "married," regardless of whether they have participated in a public ritual to mark their commitment.

Questions of terminology pose both problems and opportunities for members of committed same-sex couples. I asked respondents what terms they used to refer to their relationship or their partner, and also how they would respond to an inquiry about their marital status from someone who knew nothing about their personal situation. Many respondents expressed frustration that there seems to be no good term for referring to their romantic partner, and the choice of terminology often depends on the context in which they are making the reference. Those who have participated in public commitment rituals are somewhat more likely to use the terms *husband*, *wife*, or *spouse*, although others employed these terms as well. For example, Robbie Caputo, who has not had a public commitment ritual with his partner, confided that he usually used “partner” but occasionally was inclined to say “husband” if he thought it would provoke or upset homophobic people.

While choice of terminology can be rather playful, it also has a more serious dimension, particularly when others seem not to respect one’s choices. Carol Moore and Judith Klein went to Alaska for their honeymoon right after their wedding. While hiking, Judith slipped and seriously injured herself. Carol related the confusion that ensued: “When I went into the emergency room . . . I went in and said, ‘my wife,’ and they said, ‘What do you mean, your partner?’ And I said, ‘No, my wife!’ And I was a little pissed off they wouldn’t accept that. And then, as soon as it was time, I went in there, just like anybody else would.” Ironically, *spouse*, not *wife*, is normally Carol’s preferred term; *wife* just slipped out in the heat of the moment. Nonetheless, the incident brought home the fact that terminology for partners and relationships is a contested site in interactions with straight society.

Jacob Berger reported similar linguistic frustrations in dealing with the insurance company that serves his small business. When he tried to add his partner to his health insurance policy, the insurer refused to comply, and a semantic skirmish ensued: “I was protesting with the insurance company, and they were like, ‘You guys aren’t married.’ And even though I said, well, we are married, [they said] ‘Well, show us the Illinois marriage certificate.’ . . . It’s frustrating!” Others resented having to self-identify as “single” on various forms and documents, since they considered themselves married.

Most respondents said that in most situations, they would reply in the affirmative to inquiries about whether they are married, but some noted that they were inclined to say no in the workplace. Some said they would only offer further details about their relationship (i.e., the sex of the partner) if they were specifically asked, or if the questioner proceeded to make faulty assumptions about the sex of their mate. Others said they would usually make a point of clarifying that they were “married” to someone of the same sex. As these cursory observations make clear, many committed same-sex couples refer to their partners and their relationships in the language of marriage, regardless of whether they have had a public ritual of commitment. In so doing, they choose to assert a reality that simultaneously conflicts

with legal reality and draws on terms and concepts that are at least partially inflected with legality.

The question of public rituals of commitment—whether to have them and what might be accomplished through them—also provides a window onto couples' efforts to enact marriage in the absence of legal recognition. I will first describe what respondents said these rituals could or did accomplish in their lives, and then provide the perspectives of those who were critical or ambivalent regarding rituals.

Doing the Rite Thing

Respondents described several motivations behind their decision to have a ritual (or, for the undecided, their consideration of why they might have one in the future). The most significant motivations include the reality-making function of ritual and the beneficial impacts for the couple both as individuals and as a committed partnership. Some of these motivations, I contend, represent an attempt to replicate functions normally fulfilled by official law. In particular, the reality-making function of rituals and their implications for normative behavior within couples represent enactments of legality in the absence of state law.

The reality-making function of ritual operates on several levels. At the most intimate level, the ritual provides an opportunity for members of the couple to communicate and confirm their commitment to each other. Virtually every respondent who had participated in a ritual made some mention of this motivation, but a few saw it as central to the purpose of the ritual. As Maria Martinez, who recently had a public commitment ritual with her partner, Linda Sanchez, put it, "Whether society accepts it or not, we made a commitment to each other because we felt very deeply for each other, and that's what mattered to us. We did it for ourselves, not for everybody else." Ricky Suarez viewed his holy union ceremony with his partner, Allen Lembas, as a turning point in their relationship, a significant deepening in the nature of their commitment. "The ceremony for me was very special," Ricky explained, "because for me it meant being one, and that I'm finally going to have someone that I can share my thoughts and ideas, my dreams with, someone that's going to support me and someone that I'm going to support."

But most respondents who had held a public ritual also discussed the importance of the ritual as a *public* event, witnessed by friends and family. The ritual gives the couple an opportunity to affirm or redefine the status of the couple's relationship for those who matter most to them. Several respondents identified this public assertion of the couple's status as a crucial aspect of the ritual event. Brenda Davis described how her partner Kim had proposed to her but did not necessarily have a public ceremony in mind. For Brenda, the ceremony was necessary as a device to communicate the seriousness of the relationship to her family members: "Kim could have pre-

tended to get married, and that was it. I needed the ceremony. I needed the big family thing. . . . I needed the witnessing of it, and that was my piece of it." From Brenda's perspective, a public commitment ritual provided a way to move beyond just "pretending" to be married. More specifically, Brenda felt compelled to mark this relationship as different from the many relationships in her past:

It was that statement to my family, that I had always said that I would tell them who I was going to be with the rest of my life. It meant that I had promised Kim the rest of my life with her. It wasn't one of my, up till then, kind of blowing through one to five years with various and sundry people. It felt very different, and it felt that in doing the ceremony, that it marked that different kind of relationship.

Brenda went on to explain how the ceremony gave her and Kim's families a new way of relating to them as a couple: "It made me her family's daughter-in-law, so I became an in-law. . . . And it gave everybody the right sense to know how to act, to approach us in this couple thing. . . . It made everybody an extended family." Thus the ceremony created a new reality for the partners' families, a way of understanding the couple within the conventional family context. Even some of the basic terms for defining family roles created through marriage implicate legality (for example, the term *in-laws*), despite the fact that official law did not bestow its stamp of acknowledgment in this instance.

Some who had rituals after already being together for several years felt the communication of the "reality" of their relationship to others was the main point of the ritual. Gerry Halloran and Heather Pryor, for example, had been together four years before they had their ceremony. They had already purchased a home together and exchanged rings privately, and they both agreed that they already considered themselves "married" before the occasion of their ceremony. As Heather stated, explaining the meaning of the ritual in their lives, "This was more, to me, a confirmation in front of the people we cared about, that this is real, we're committed to each other, and I think that's what it accomplished. That's what I wanted out of it." But other participants in commitment rituals implied that the public nature of the event also made the commitment more "real" to the participants themselves. Becky Rodgers, who had been in two other long-term relationships before she married Natalie, explained it this way:

It just became more of a reality, that it was more permanent. Earlier in my relationships, you get to know somebody, OK, go out with them, and before you know it you have a commitment to them, but it's not . . . you just kind of fell into that commitment. It wasn't structured, and it wasn't among a bunch of people, and all of the sudden you're saying, OK, you're going to love this person forever. And it became

much more a reality, and much more important, when I had to say those things in front of witnesses, and then it became much more of a commitment. And, I think it made a huge difference in our relationship, because it meant permanence.

For Becky, and for many other people who participated in rituals, the public witnessing of the commitment enhances its sense of reality and its prospects of success. For these individuals, the commitment of marriage is not merely a private or personal matter; it is socially produced and reinforced.

Religion and religious authorities play a variable but often important role in the reality-making project of these rituals. Many respondents specifically discussed the importance of religious settings or religious officials in the construction of their rituals. In some cases, religious symbolism and authority are used to make the event, and the commitment it marks, real to other people. Brenda Davis, for example, said it was important to have her ceremony in a church because “for everyone else, that’s a symbol of where you go to get married.” In other instances, religious sanction is important for making the ritual and the commitment real for the couples themselves. A minister of the United Fellowship of Metropolitan Community Churches (UFMCC) officiated at the union ceremony of Sue and Claire Bruno (Sue legally changed her last name to Claire’s at the time of their ceremony). UFMCC is a Christian denomination established in 1968 with special outreach to gays, lesbians, bisexuals, and transgendered people, and one of the few religious denominations to treat same-sex unions as equivalent to heterosexual marriages in terms of religious doctrine. Reflecting on their union ceremony, Sue stated, “The church made it real for me.” The role of the church is so significant in Sue’s conception of such unions that she suggested that same-sex couples who have non-religious commitment ceremonies are just “play acting.” Some respondents who were raised Catholic said it was quite important to find a Catholic priest to officiate at their rituals. Natalie Konstantos placed such significance on being “married” to partner Becky Rodgers by a Catholic priest that she would not start living with Becky until after their ceremony.

Clergy sometimes actively participate in constructing religious authority as a viable or even superior alternative to the authority of state law. The rabbi who officiated at Judith and Carol’s ritual, for example, pronounced them united “by a higher authority than the state of Illinois.” Other clergy enhance the sense of formality or official endorsement of these unions by providing same-sex couples with certificates at the end of their ceremonies, and some people seem to attach a sort of legal meaning to this kind of documentation. Andrew Minnelli, for example, mentioned the certificate provided by Dignity (the gay Catholic group in which he and partner, Tim Daniels, had their ceremony) in the midst of discussing state recognition for same-sex relationships.

All these examples point to religion's significance as an alternative source of legality for same-sex couples. State law is unavailable, but many couples look to religion as another way to make their commitment "formal" or "official." Indeed, religions have their own laws and thus their own capacity to enact legality for their adherents. Some same-sex couples seek religious sanction for their unions as sincere believers who respect the authority of religious law; others use religious symbolism more strategically, to reference religious authority and thereby express to others the seriousness of their commitment.

The intended audience for same-sex couples' ritual enactments of commitment can be as intimate as the couple itself, and its close circle of friends or family, or as broad as all of society. Ted Grasskamp, who has not yet had a ceremony with his partner but hopes to have one in the future, explained his motivation in these terms:

I think it's very easy for same-sex couples to not take their relationships as seriously as straight couples, because we're not affirmed. We're not supported in that. And I think doing a public commitment in front of others reinforces that commitment that we have. . . . That reinforcement is also going to have a rippling effect, for the community, and society. . . . They will see that, gosh, here's a couple that treats their relationship the same as a married couple. You mean same-sex couples can also have committed and faithful relationships? Gay and faithful is an oxymoron. I have coworkers who have told me that up to now they had never known that gay men could be in faithful relationships. They didn't know they could. They thought they were just all the time single, dating, having sex in bathhouses.

Another example of this effort at defining the reality of commitment for the wider society comes from Jacob Berger and his partner Joe Neufeld, who had a Jewish wedding and crafted their *ketubah* (Jewish marriage contract) to reflect their interest in being regarded as a married couple in the eyes of society and the law. The *ketubah* states, in part, "We have entered into this agreement with the knowledge and intent of having our relationship as between each other and with respect to third parties treated in all respects as a marriage. Any law of the State of Illinois or of the United States of America which is applicable to marriage or which affects married persons . . . shall be construed or reformulated by any reviewing court in such a way as to apply to this relationship to the maximum extent possible." In recognition of the possible legal challenges to the couple's commitment, the *ketubah* goes on to state, "Should our relationship ever be challenged by any person in any forum whatsoever, this document shall serve as clear and convincing evidence of the nature of our relationship and of the rights, privileges, and obligations which are appurtenant thereto." This example again highlights the role of religion as a competing source of legality, since

ketubahs represent binding contracts under Jewish law. Jacob and Joe's *ketubah* represents one of the most forceful and dramatic of many efforts at reality making recounted by ritual participants who sought, through the ritual enactment of marriage, to approximate as closely as possible the legal status of married.

In addition to these reality-making motives, some couples also use ritual to enact marriage in the belief that the ritual establishes a new normative order, a new code for behavior and interaction, within their relationships. Specifically, some respondents mentioned that the ritual represented a commitment to behave differently when times get hard, and the public nature of the ritual was crucial to this aspect for some people. Kim Pierson explained:

The ceremony meant that when things got tough I wouldn't just get up and walk out and say, "See ya!" It meant that I was going to try to work on this relationship, to make it last forever. . . . We stood up in front of everybody and said we were going to work on this and try to make it last. . . . So, I think by having the ceremony, it's just there in the back of my mind, I have to work on this. I stood up in front of people and I meant it when I stood up there, so it's something that you work on, always. You don't run away when it gets tough, which is my m.o.

Ethan Levinson and Peter Tyler said they felt things were different in their relationship after their ritual, describing the change as "a sense of being more responsible for each other" that was a product of the public expression of their commitment. They also said they had both looked back to their ceremony as a source of staying power during difficult times. Peter recalled the presence of his best friend's elderly mother who had traveled a great distance to attend the ceremony, and half-jokingly confided, "When we've had fights and I think, oh, this is not going to work, I think of Mrs. Martin, and I think, how can I possibly go to Mrs. Martin, I had her come all the way to Seattle, and say it didn't work out!!"

In addition to making exit from the relationship more difficult, rituals sometimes mark a transition from behaving as two individuals to behaving as a unit. Ricky Suarez described his ceremony with Allen as a transition point from acting as two individuals to acting as a couple and considering each other's interests and feelings at all times: "We do pretty much everything together now, and . . . everything is no longer like, well, *I'm* going to get this and do this. It's like we've got to talk about it before we do it." Similarly, Carol Moore stated, "I think our friends see us as what married must be like, meaning you have to consider the other person when you're married. You're not just by yourself anymore. It doesn't mean you can't move about by yourself, but just that you have another person to consider." Carol also described how the decision to have a public ritual had helped her and

Judith to coalesce around certain major life goals, such as raising children, which in the past had seemed nebulous and unresolved. In all of these cases, respondents are describing what they regard as behavior-changing impacts of the ritual enactment of marriage: working harder at keeping the relationship together, considering the other person's needs and interests, approaching resolution of important life decisions as a couple. These are not merely changes in their perception of the meaning of the relationship, but normative changes in conduct that they believe will ultimately benefit the couple.

Rejecting Public Ritual

While some couples use public ceremonies to make their commitment "real" and to establish a new code of behavior in their relationships, other people in committed same-sex relationships fail to see the point of enacting marriage through public ritual. Some respondents feel that since such rituals have no legal standing, they are pointless. Others worry over the kind of public recognition and affirmation that are being sought through the rituals. And some believe that rituals cannot in fact transform their relationships in any meaningful way.

Sandra Drewitt's partner, Jenny Pyrdol, stated her opposition to the idea of a public ritual in the bluntest possible terms:

I think it is a sham, an imitation of something you can't do. I would attend somebody else's if it's important to them, but it's completely unimportant to me. It means *nothing* legally, which is what marriage is. We've made a commitment, which is what some married people do effectively as well, but without any benefits to it. I just think it's a sham.

Sandra also expressed disdain for the idea of a public ritual, but put a slightly different spin on the issue. In her opinion, the legal institution of marriage has become so debased by the practices of legally married people that it is not worth emulating in ritual fashion:

It's easier to get divorced than it is to get married. It's cheaper to get divorced than it is to get married. I think people don't adhere to what it's supposed to be, if they would adhere to their vows. You know, "Well if it doesn't work out, we'll just get a divorce." I really don't believe that people believe that if they sign that piece of paper, they'll work harder. . . . The only time people work harder is because they have children. I think the research bears it out. They will work harder to save a marriage if they have children. If they don't have children, they can just pay their \$650 to a lawyer and they walk away. So I think the institution of marriage is kaput.

In essence, Sandra is arguing that the problem with public commitment rituals for same-sex couples is not so much that they lack any legal meaning, but that they represent an attempt to simulate a legal institution that no longer signifies a serious moral commitment.

Other respondents echoed the concerns of this couple. Robbie Caputo, himself ambivalent about the prospect of a ritual in his own future, wondered what kind of recognition is being sought through such rituals. He pointed out that if people are subconsciously pursuing the kind of validation that the law provides to straight marriages, they are likely to come away disappointed. He also expressed concern about the possible failure of such rituals to perform some of the reality-making functions that other respondents viewed as one of their chief benefits:

Part of the reason that I have issues with doing the ceremony . . . I have the people who are like, "Oh, do you have joint checking accounts? Oh, well then you're not. . . ." I had this one woman say to me, one of my coworkers, I was showing her pictures of my nephew, which is Alex's brother's son, and she's like, "Well he's not really your nephew yet, until you get married!" . . . So, I totally have this thing, if you're doing it to show other people or whatever, it would be difficult to hear someone say, "Oh you had a ceremony but you're not really married. You're not legally married." So I would be really concerned about doing it for some type of recognition.

A few respondents offered a feminist critique of marriage in explaining their lack of interest in public rituals. Silvia Mendez married a man in her teens and was divorced a few years later. Now in her forties, Silvia recalled getting little social support for exiting her marriage, and reflected on how this affected her understanding of the institution of marriage:

I felt like I couldn't get out of a marriage. And I know that those constraints were largely based on roles, that I was a mom, and I was a woman, and he was a man, and we belonged in a family, and I couldn't get any support for divorcing him. So it's hard for me to disassociate that trapped feeling that I had in my marriage. And it forces you to look outside, you know. Why do we need this institution? What's the purpose? I mean, the institution of marriage, it's really about chattel. It's property. . . . So I'm not sure, I'm not so hip on that part.

Another female respondent, Bess Hardin, shared Silvia's vision of marriage as an institution of inequality and oppression, calling it "an institution of ownership" and commenting that she wanted her own intimate relationship to be "more a partnership." Bess also expressed dismay that some same-sex commitment rituals appear to imitate straight weddings. She sympathized with same-sex couples' desire for social acceptance, and interpreted the ap-

parent imitation of straight weddings as a strategy to gain acceptance, but said she would prefer “to form our own homosexual tradition.”

On the whole, however, most respondents—even those who felt sure they would never use a public ritual to express their own commitment—did not openly disapprove of the choices made by other same-sex couples. Teresa Morton, who is in a seven-year relationship and has no personal interest in a public ritual, remarked, “If that’s what floats your boat, fine.”

Several respondents also noted that the idea of a ritual did not make much sense to them on a personal level, because their relationship was already as committed and permanent as it could possibly be. For some of these people, the duration of their relationship made the option of a ritual seem out of place. The moment for using ritual to mark a new status for the couple had come and gone. Paula Dunham and Sally Mitchell have been together for 30 years and jointly raised Sally’s children from a prior marriage. When asked about the possibility of a commitment ritual in their future, both agreed that a ceremony would seem out of place at this stage in their relationship. “It doesn’t seem like a priority,” Paula remarked, and Sally added: “In fact, it might be a little bit embarrassing at this stage!”

In addition, many of the respondents who had not had a public ritual pointed to other things as indicators of their commitment. A number of them had exchanged rings with their partners; in some cases the exchange of rings was accompanied by a private ritual between the members of the couple, in other cases not. Others pointed to the fact that they had merged their finances or purchased property together as tangible evidence of their commitment. And some viewed the establishment of legal protections through instruments such as wills and powers of attorney as the marker of their commitment.

Public rituals of commitment work for some but not all committed same-sex couples as an alternative means of enacting marriage despite its unavailability as a legal institution. Those who value ritual often point to its reality-making function for themselves, for family and friends, and for the wider society. Religion often functions as an alternative to the state as a source of legality. Some couples also use ritual as a way to establish a normative order that parallels the official legal order in some respects, in particular by making exit from the relationship more difficult and by elevating the importance of joint decision making and behaviors. But others express skepticism about the value of rituals, questioning the nature of the recognition they provide and their power to actually transform or enhance intimate commitments. The broad consensus on the desirability of legal recognition for same-sex unions (if not “marriage” per se) suggests a fairly unified legal consciousness among same-sex couples. But if legal consciousness is defined more generally to include cultural practices that enact legality, a more complex picture emerges, one in which some couples attempt to enact

marriage (and legality) culturally, while others reject such cultural practice or question its efficacy.

DISCUSSION

How can the case of same-sex marriage advance our understanding of legal consciousness and legality? Although it is useful to define legal consciousness broadly, to include not only beliefs about the law but also social practices that enact legality by drawing on legal concepts and meanings, my findings on same-sex marriage point to the need to understand legal consciousness as a layered phenomenon. At the surface layer of conscious beliefs about the law, my research finds consistency across the legal consciousness of social actors who are similarly disadvantaged by official law through lack of access to legal marriage. But at the layer of cultural practices that enact legality, this consistency of consciousness across same-sex couples evaporates. Some couples try to enact legality through ritual, while others do not. Attention to only the cognitive dimension would miss this important variation in the legal consciousness of same-sex couples.

If we agree to define legal consciousness in this broad fashion, however, it is worth noting that the behavioral layer of consciousness is to some degree *unconscious*. By this I mean that social actors can engage in practices that both reflect and produce legality without necessarily describing or recognizing those practices as in any sense “legal.” The respondents in this study, with rare exception, did not attach specifically legal meanings to their participation in public commitment rituals. And yet it is my argument that their practices represent an effort to construct a kind of legality in the absence of official law, sometimes through use of religion as an alternative source of legal authority. Specifically, participants use these rituals to assign quasi-legal identities and statuses to themselves and their families (the partners are now spouses; their extended families become in-laws) and to establish a quasi-legal normative order within their relationship, most importantly by making exit from the relationship more difficult.

The public nature of these events draws its importance from the need for witnesses to this enactment of marriage: In lieu of the third-party witnessing and legitimation of the state, family and friends are called on to play this role. Religion sometimes plays a part as well, either as a source of alternative law that is intrinsically meaningful for the couples or as a symbolic resource that signifies legality to the audience for these rituals. The case of same-sex marriage is interesting because it serves as a reminder that the state is not the only source of law, and therefore, not the single ultimate source of legality. This example suggests that studies of legal consciousness in other contexts should be alert to other sources of law and legality beyond the official law of the state.

Among the couples who do not use public rituals to mark their commitment, there are some people who might be called legal literalists. These are the people who reject ritual precisely because it lacks the force of official law. Recall the words of Jenny Pyrdol, who explained her lack of interest in a public ritual by stating: "It means *nothing* legally, which is what marriage is." For legal literalists like Jenny, there is no option to enact legality through cultural practice, because the meaning of marriage is so tightly bound up in official law. Her words stand in sharp contrast to those of another respondent, Andrew Minnelli, who so firmly trusted the transformative power of his ritual that he described feeling "legally married" to his partner, Tim. One might infer that the legal literalists like Jenny attach more importance to official law than do the ritual participants, but such a conclusion would ignore the fact that the ritual participants expressed relatively greater interest in legal recognition of same-sex marriage than the nonparticipants. Enacting legality outside the parameters of official law does not represent the rejection of official law or denial of its significance. Instead, it may signal that for some actors, legality is a source of meaning that is more salient and therefore cuts across more domains of their lives, freed from the boundaries of official law but still deeply connected to it.

Returning to Ewick and Silbey's typology of forms of legal consciousness, I find only limited support for a relationship between marginalized social status and a consciousness "against the law" in the case of same-sex couples. Certainly, most of the same-sex couples in this study stand "against the law" in the sense that they reject existing marriage law as unfair and desire legal reforms to acknowledge committed same-sex relationships. But couples' participation in collective resistance to the existing law appeared in only limited ways (e.g., supporting collective action to win legal recognition for same-sex marriage by making donations to gay-rights organizations). Very few were committed activists on this issue, and some explicitly disavowed any interest or willingness to participate in collective acts of resistance on the marriage issue.

Several respondents did engage in individual, everyday acts of resistance to their exclusion from legal marriage. Notable examples include Robbie Caputo's use of the term *husband* for his partner, explicitly intended to provoke or upset homophobic people, and Jacob Berger's efforts to get his business's insurance company to recognize his relationship as a *marriage* and include his partner in the health plan. Although many respondents in this study viewed existing marriage law as unfair, few seemed to view legality as something dangerous, to be avoided. Instead, they were interested in seeing legality expand to include their needs and relationships. In this respect, their consciousness does not seem to reflect the "against the law" consciousness described by Ewick and Silbey.

Many respondents expressed a consciousness "with the law" in their words and actions. Most respondents desired legal recognition for their rela-

tionships as a means to gain access to a range of concrete benefits and protections, and many had used alternate legal mechanisms to secure some protections for their relationships. Some respondents desired legal marriage as a pathway to other rights and benefits (the domino effect), expressing a “with the law” consciousness in talking about law in strategic, political terms, as a terrain of contest with winners and losers. And some respondents also expressed a “with the law” consciousness through their cultural enactments of marriage: borrowing the terms and practices associated with legal marriage, and sometimes turning to alternative sources of law (i.e., religion) to construct legality outside official law.

Many respondents also expressed elements of a consciousness “before the law.” This consciousness is evident in the pervasive concern and expectation that the law should be just, fair, and transcendent of the particularities of this historical moment with its attendant conflicts and prejudices. These appeals to rights and fairness draw on and reaffirm the story that the law tells about itself in the American context (see Ewick and Silbey 1998, 106). But beyond this rather predictable appeal to broad legal principles of justice and impartiality, some respondents stand “before the law” in a second sense: They bow “before the law” in attributing great cultural power to official law, the power to render marginalized actors not only legally equal but also socially normal.

In summary, some elements of an “against the law” consciousness can be identified among members of same-sex couples with regard to the specific issue of legal recognition for same-sex relationships, but most respondents express a consciousness “with the law” or “before the law” as well. And if “against the law” consciousness is narrowly defined to refer to efforts to avoid legality as an arbitrary and dangerous force in actors’ lives, little evidence of this kind of resistant consciousness exists among members of same-sex couples. Instead, they largely embrace legality, either as a practical weapon or as a source of awesome cultural power, or both. This finding suggests the need for further theoretical and empirical elaboration of the concept of resistant legal consciousness. What conditions determine whether marginalized social actors will be more likely to express “against the law” consciousness? Should the concept of resistant legal consciousness be refined to allow for the fact that actors may be “against the law” in important ways but at the same time embrace rather than reject legality as part of their resistance?

Finally, my findings indicate that the cultural and legal aspects of the status of “married” are deeply intertwined. Gays and lesbians who enact this identity culturally through ritual attribute lawlike consequences to this enactment. But the cultural enactment of marriage occurs in the shadow of official law, not only borrowing its terms and functions but always competing with it and being measured against it. Regardless of whether they have participated in commitment rituals, members of committed same-sex couples generally support legal recognition for same-sex relationships through mar-

riage or some similar legal mechanism. Some of this support is driven by practical considerations, including the range of legal and financial benefits that legal marriage would bring. Some of these practical benefits simply cannot be obtained in any other way, and some can be replicated outside the institution of legal marriage only with considerable expense and effort. But these practical benefits are not the only reason same-sex couples desire legal recognition. Many people in committed same-sex relationships also yearn for the symbolic benefits that legal marriage confers. At a minimum, these symbolic benefits consist of a grudging recognition from straight society that committed same-sex relationships exist. But most people who speak of the symbolic benefits of legal same-sex marriage frame them more positively. These individuals look to the law to perform an essentially cultural task, communicating to the broader society that gay and lesbian couples are “normal,” “the same,” “just like you,” deserving of recognition and respect for the commitment they have made.

In a society in which identities are so deeply saturated by a range of legal statuses and relationships—familial, economic, juridical—it is perhaps unsurprising that people expect the law to perform this kind of cultural work. The source of law’s cultural power, at least for some, is its assumed ability to produce cultural equality through pronouncements of legal equality. This belief appears naïve given the many historical instances in which formal legal equality has not translated into cultural equality for subordinated groups, but the prevalence of such a belief in the face of contradictory evidence attests to the central place of law in the cultural imaginations of many social actors. And efforts by some to enact legality outside the bounds of official law both reflect and reproduce this cultural power of law.

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