

# Sexuality and Legal Consciousness

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Rosie Harding, [\*Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives\*](#) (Routledge 2011).

Legal consciousness studies is an area of socio-legal research that looks empirically at the narratives of law constructed in people's everyday lives. It challenges the distinction often made between law and society by illustrating their mutually constitutive relationship. Put simply, not only does law affect individual and collective lives and the nature of social groupings, but social patterns and narratives also constitute the law. Influential work by Patricia Ewick and Susan Silbey made the point emphatically that "legal consciousness" is not only about people's subjective experiences of law, but also about how people live the law, how they interpret, use, and resist law, and how they embed those meanings in their practical everyday settings.

In *Regulating Sexuality*, Rosie Harding takes the concept of legal consciousness in two new directions. First, she integrates it with legal pluralism, and in particular the critical legal pluralism which also defines legality by reference to everyday meaning-making and practice. Secondly, she undertakes an extensive empirical analysis of the legal consciousness of lesbians and gay men, an analysis that is important in its own terms, but that also contributes to the theoretical understanding of the effects of power on legal consciousness and how resistance by marginalised groups contributes to the legal meaning-making they engage in. Both elements of Harding's work are significant, not only for legal consciousness studies but also for legal theory, for understanding the legal agency and conditions of lesbian and gay lives, and also for providing additional grounding to the alternative conceptions of legality which underpin legal pluralism.

In relation to the first point – the connection between legal consciousness and legal pluralism – Harding argues that legal consciousness studies has an implicit openness to the alternative understandings of "law" and "legality" which pluralism offers. This openness is under-developed in legal consciousness theory, sometimes leading to an over-emphasis on state law or a reversion to the assumption that law is essentially state law. If, as Ewick and Silbey argued, legal consciousness refers not only to what people know or understand about law, but also how they themselves make the law in their own lives, then law can never simply be state law but must open out onto different beliefs and alternative normative patterns. Nonetheless, a more restrictive view of consciousness has sometimes emphasised subjective understandings of state law, obscuring the complexity of normative environments and in particular the ways in which power and social marginalisation are written into consciousness of law. As Harding says:

...a plural approach to legal consciousness studies can help to address some of the limitations of previous legal consciousness research. By explicitly recognising that the 'legal' part of legal consciousness can include structural or normative pressures, as well as 'official' law, a plural legal consciousness framework has the potential to be more sensitive to the position of marginalised individuals in society (32).

Bringing pluralism and consciousness of law together allows for a much more expansive definition of legality and a more nuanced analysis of everyday narratives of law. Engagement with and resistance to the formal law is refracted through a variety of normative lenses other than the state law itself.

The empirical dimension of Harding's book is equally significant and produces an amazingly rich picture of the complexities of lesbian and gay engagements with law, including the myriad forms of resistance and the diversity of positions which form lesbian and gay legal identities. Four very distinct empirical/textual sources are engaged in the analysis – a large online survey, published narratives about lesbian and gay parenting, semi-structured interviews about general regulation of sexuality, and utopian fiction. As Harding comments, only one of these, the semi-structured interviews, fall into the normal methodological parameters of legal consciousness studies, but the other three add texture and dimensionality to the exercise of unpacking legal narratives around sexuality regulation. This may appear far-fetched in the case of utopian fiction, which has little to do with “real” law but this chapter of the book casts a reflexive light on the possible and imaginable of thinking about sexuality and its regulation, and in this sense is entirely relevant to our present “everyday” contexts. It is illustrative of consciousness, not in the direct way that interviewing a participant might be, but because it taps into a cultural consciousness about alternative normativities – whether these are to do with genuine formal equality or a more substantial and thoroughgoing reimagining of sexual identities.

Different readers will undoubtedly find different things in Harding's book. I responded in particular to its theoretical sophistication, and the way it draws together different strands of theory in a logical and very thought-provoking way. The empirical and textual investigations, which illustrate the themes of power and resistance in extraordinary detail, are also very compelling. The book offers a thorough and fresh analysis of the regulation of sexuality and is not only an important contribution to sexuality studies but also to the theoretical paradigms which it draws upon and develops.

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