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# Legal Consciousness: Some Observations

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This article argues that US studies of 'legal consciousness' have much to offer UK socio-legal studies. It is, perhaps, surprising that so little attention has been paid to this set of understandings. I seek to rectify that imbalance in the transatlantic relationship by outlining legal consciousness and its critiques. I then draw on homelessness applicant interview data to discuss their 'legal consciousness', illustrating the importance of the value of dignity; how they make sense of their decisions; and the spaces in which legal consciousness may be produced. The study is a limited examination, but it enables us to question the assertion that welfare applicants 'know the law' and (ab-)use it.

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∴ . . . [T]he legal consciousness of the welfare poor is a consciousness of power and domination, in which the keynote is enclosure and dependency, and a consciousness of resistance, in which welfare recipients assert themselves and demand recognition of their personal identities and their human needs.<sup>1</sup>

In this paper, I suggest that a study of legal consciousness would have plenty to offer UK socio-legal studies.<sup>2</sup> Legal consciousness research represents a challenge to law and society scholarship concerning the focus of socio-legal research.<sup>3</sup> In a memorable sleight of hand, Ewick and Silbey refer to the shift in theoretical questions 'away from tracking the causal and instrumental relationship between law and society toward tracing the presence of law in society'.<sup>4</sup> The methodological

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\* University of Bristol. It is with some diffidence that this article appears in my own name. Simon Halliday was a crucial inspiration throughout the many months of its production; it was originally intended as a joint article between us and some parts of the paper were worked through jointly. We disagreed, however productively, on the proper place of 'law' in 'legal consciousness', and Simon graciously chose to allow me to pursue my approach. We co-presented this paper in rough form at the Law and Society Association meeting in Pittsburgh, June 2003. I would like to thank Ragini Shah, who chaired our panel and suggested the notion of 'dignity'. I am grateful to the Nuffield Foundation, which supported the research on which this article was based. Additional thanks go to Davina Cooper, who commented on an earlier draft of this paper; as well as the participants at a seminar given at the Centre for Socio-Legal Studies, Oxford University.

- 1 A. Sarat, "The law is all over": Power, Resistance, and the Legal Consciousness of the Welfare Poor' (1990) 2 *Yale Journal of Law and the Humanities* 343, 343–344.
- 2 To date there have been just two explicit UK studies of legal consciousness: D. Cooper, 'Local government legal consciousness in the shadow of juridification' (1995) 22 *JLS* 506; L. Gies, 'Explaining the absence of the media in stories of law and legal consciousness' (2003) 2 *Entertainment Law* 19.
- 3 A sample of this work is as follows: S. E. Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: Chicago UP, 1990); J. Comaroff and J. Comaroff, *Ethnography and the Historical Imagination* (Boulder: Westview, 1992); K. Bumiller, *The Civil Rights Society: The Social Construction of Victims* (Baltimore: Johns Hopkins UP, 1988); P. Ewick and S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998); A. Sarat, n 1 above, 343; L. B. Nielsen, 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment' (2000) 34 *Law and Society Review* 1055; D. M. Engel and F.W. Munger, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* (Chicago: Chicago UP, 2003); E. A. Hoffmann, 'Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies' (2003) 28 *Law and Social Inquiry* 691.
- 4 Ewick and Silbey, *ibid*, 35.

approach to socio-legal studies inherent in legal consciousness scholarship is a natural product of an interpretive approach to the social sciences and will be particularly attractive to those whose interests tend towards the 'socio' end of socio-legal studies. The primary concern of legal consciousness scholarship is the study of society, rather than the study of law per se – hence the critique of a 'law-first' approach. Legal consciousness research seeks to understand people's routine experiences and perceptions of law in everyday life.<sup>5</sup> The focus above all, then, is on subjective experiences, rather than on, for example, law and its effects in society. However, it can also offer insights which may resonate with the interests of law-first scholarship, and so be attractive to those whose interests tend (at least at times) to the 'legal' end of socio-legal scholarship.

The challenge to socio-legal studies of a legal consciousness approach is that it opens up a whole new arena of subjective experiences of law which is missed by scholarship which puts formally legal phenomena at the heart of its methodology.<sup>6</sup> The insight of the legal consciousness literature is that law is experienced in everyday life outwith the terrain marked by formal legality (however generously defined). Legal consciousness research consciously de-centres law as a social phenomenon.

This article applies this analytical approach to a study of (unsuccessful) welfare applicants, under the homelessness legislation. In addition to opening up their subjective experiences and perceptions of the housing application process, the analysis has allowed us to reflect on and critique the common perception of applicants held by government officials. In other words, this grounded study of the legal consciousness of homeless applicants permits us to critique an 'official' perception of the applicants' legal consciousness and to expose its shortcomings.

Applicants are often viewed as knowledgeable agents, conniving to screw the system (which they understand well) by dishonestly providing information which will compel the housing authority to offer housing (unless the dishonesty can be exposed).<sup>7</sup> Alternatively, teenagers are said to become pregnant in order to obtain the benefit of council accommodation.<sup>8</sup> Or, it is said that 'outsiders' (asylum-seekers and 'illegal' immigrants) have sought to abuse their status by seeking to gain access to social housing through the homelessness route.<sup>9</sup> In this study it is suggested that such a legal consciousness narrative is too simplistic. Instead, the data suggest that

5 See, for example, A. Sarat and T. Kearns, 'Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life' in A. Sarat and T. Kearns (eds), *Law in Everyday Life* (Ann Arbor: University of Michigan Press, 1995) 55.

6 Ewick and Silbey, for example, crucially argue that the law-first brand of socio-legal scholarship means that 'we exclude from observation that which needs yet to be explored and explained: how, where and with what effect law is produced in and through commonplace social interactions within neighbourhoods, workplaces, families, schools, community organisations and the like': above n 3, 20.

7 See, for example, S. Halliday, 'Institutional Racism in Bureaucratic Decision-Making: A Case Study in the Administration of Homelessness Law' (2000) 27 JLS 449, 464.

8 See, for example, DoE, *Access to Local Authority and Housing Association Tenancies* (London: DoE, 1994); D. Cowan, 'Reforming the Homelessness Legislation' (1998) 57 Crit Soc Pol 435.

9 This is reflected in the regular alterations to homelessness law since the Asylum and Immigration Appeals Act 1993; see also *Tower Hamlets LBC v Secretary of State for the Environment* (1993) 25 HLR 524.

homeless applicants perceive law in a number of ways: while some see law as a barrier to be surmounted, others regard it as authoritative, inflexible and final; while some see it as just, others regard it as inequitable; while some see it as empowering, others regard it as oppressive; and while some feel they understand the legal rules of entitlement to housing, many in the sample find them bewildering.

The first section of this article outlines the development of legal consciousness, and its impact on the methodology for the study of legal phenomena. I also discuss the methodology, drawing attention to its limits in terms of this article. I demonstrate where this article progresses the study of legal consciousness in the UK context and beyond. In the second section of this article, I provide a brief summary of homelessness law, which enables me to illustrate its discretionary nature, complexity, and judicialisation. Although on one level this places 'law first' within the structure, this is subsequently challenged through the data. Thus, in the third section, I consider how law matters in the everyday lives of the unsuccessful homeless applicant interviewees in negotiating the bureaucratic processes in which they are engaged. In particular, I am concerned to illustrate how law is mediated by the interactions and signals between the applicants and the welfare bureaucracy – how does their understanding of law take shape in this context and, equally, why does it not figure largely (or at all).

### LEGAL CONSCIOUSNESS

As noted above, the study of legal consciousness emerged out of a concern that law and society scholars were asking the wrong set of questions, or not penetrating into everyday life. In so doing, their antecedents were studies of legal needs and dispute processing. As Engel suggests, those early studies contained 'an initial exploration of positively conceived social facts or events [which] began to collapse back into an enquiry into subjectivity, meaning and cognition'.<sup>10</sup> The influential theoretical developments which enabled this transformation in scholarship were provided by the work of Foucault on power and de Certeau on everyday life. This was combined with the recognition that models of law were incapable of accounting for the individual experience of law. As Bumiller powerfully argued:

The model of legal protection reinforces a view of law and society in which the social and political realm is distinct from, and subordinate to, the legal. This view of the primacy of the legal order creates the illusion that law is a source of power and authority disconnected from other power structures in society.<sup>11</sup>

The focus on Foucault's work emphasises the decentred nature of power, as well as both its repressive and positive aspects, not only punishing but also constituting subjects. As Foucault suggested:

power is employed and exercised through a net-like organisation. And not only do individuals circulate between its threads; they are always in the position of simulta-

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<sup>10</sup> D. Engel, 'How Does Law Matter in the Constitution of Legal Consciousness?' in B. Garth and A. Sarat (eds), *How does Law Matter? Fundamental Issues in Law and Society Research* Volume 3 (Evanston: Northwestern University Press/American Bar Foundation, 1998) 126.

<sup>11</sup> K. Bumiller, above n 3, 10.

neously undergoing and exercising this power . . . In other words, individuals are the vehicles of power, not its points of application.<sup>12</sup>

Equally, power implies resistance:

there are no relations of power without resistances; the latter are all the more real and effective because they are formed right at the point where relations of power are exercised; resistance to power does not have to come from elsewhere to be real, nor is it inexorably frustrated through being the compatriot of power. It exists all the more by being in the same place as power; . . .<sup>13</sup>

Resistance is the theme of de Certeau's work, as he seeks to establish how we 'vigilantly mak[e] use of the cracks' in power through the use of tactics and strategies. A tactic 'is calculated action determined by the absence of a proper locus . . . The space of a tactic is the space of the other'; a strategy is a 'calculus of force-relationships which becomes possible when a subject of will and power . . . can be isolated from an "environment"'.<sup>14</sup> Importantly for these purposes, tactics and strategies are regarded as counter-methods, the former being the preserve of the excluded: 'a tactic is determined by the absence of power just as a strategy is organised by the postulation of power'.<sup>15</sup> And all of this is precisely what legal consciousness studies are seeking to achieve – rather than looking at the institutions of law and considering the effect they have (and, after all, there are plenty of studies of the implementation gap), studies of legal consciousness have focused on ordinary people's perceptions of law in everyday life.<sup>16</sup>

The definitions used by scholars differ, depending on the underlying methodological perspective. Merry, for example, in a well-worn definition suggests that

[t]he ways people understand and use law I term their *legal consciousness*. Consciousness, as I am using the term, is the way people conceive of the 'natural' and normal way of doing things, their habitual patterns of talk and action, and their common-sense understanding of the world.<sup>17</sup>

Ewick and Silbey develop a notion of legal consciousness as cultural practice. From this perspective,

. . . legality [is] an emergent structure of social life that manifests itself in diverse places, including but not limited to formal institutional settings. Legality operates,

12 M. Foucault, 'Two Lectures', reproduced in C. Gordon (ed), *Michel Foucault: Power/Knowledge* (London: Harvester Wheatsheaf, 1980) 98.

13 Interview with Michel Foucault: 'Powers and Strategies', in C. Gordon (ed), *ibid*, 142; Rose points out the often mundanity of resistance: 'They are concerned with the here and now, not with some fantasized future, with small concerns, petty details, the everyday and not the transcendental. They frequently arise in "cramped spaces" – within a set of relations that are intolerable, where movement is impossible, where change is blocked and voice is strangled': *Powers of Freedom* (Cambridge: CUP, 1999) 280.

14 *The Practice of Everyday Life* (Los Angeles: University of California Press, 1984) 36.

15 *ibid*, 38.

16 See the call for studies of 'everyday life' by A. Sarat and T. Kearns, above n 4.

17 Above n 3, 5.

then, as both an interpretive framework and a set of resources with which and through which the social world (including that part known as law) is constituted.<sup>18</sup>

Importantly, it 'is not merely a state of mind. Legal consciousness is produced and revealed in what people *do* as well as what they *say*.'<sup>19</sup> We find it in the minute, mundane and often obscure practices of the everyday. It is an ambitious, ongoing project. So, for example, Sarat's study of welfare recipients' views about law makes clear that '[l]egal rules and practices are all around, immediately and visibly present; yet the law itself is a shadowy presence'.<sup>20</sup> Resistance plays a crucial part in the construction of their lives – 'they are not the passive recipients of an ideology coded in doctrine . . .', but rather they are able 'to respond strategically, to maneuver and to resist the "they say(s)" and "supposed to(s)" of the welfare bureaucracy'.<sup>21</sup>

Importantly also, as Nielsen points out, 'Legal consciousness also refers to how people do *not* think about the law; that is to say, it is the body of assumptions people have about the law that are simply taken for granted.'<sup>22</sup> So, for example, Bumiller's study of people subjected to discrimination found that her interviewees (who had suffered discrimination but did not take legal action) had an 'ethic of survival'.<sup>23</sup> They 'legitimized their own defeat',<sup>24</sup> a point which Quinn observes affecting the employees of a company through various tactics of resistance, such as deflection (humour, not taking it personally).<sup>25</sup>

In Ewick and Silbey's book, *The Common Place of Law*, legal consciousness is interpreted through a study of 430 interviewees. It is impossible to do justice to the depth of analysis presented in that book in this article. Broadly, they reject attitudinal approaches to legal consciousness<sup>26</sup> as well as social structural approaches.<sup>27</sup> Rather, they concentrate on the cultural practices which make up legal consciousness, transmit it, and alter it subtly over time. Drawing on structuration theory, they argue for a balance between structure and agency. They concentrate on 'schemas' (by which they mean codes and vocabularies) and 'resources' (by which they mean the full range of human resources, from knowledge to physical strength).<sup>28</sup> It is the relationship between schemas and resources which provides much of the power in their presentation: 'The differential distribution of resources, together with the differential access to schemas, underwrites varia-

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18 P. Ewick and S. Silbey, above n 3, 23.

19 *ibid.*, 46.

20 Above n 1, 345.

21 *ibid.*, 346.

22 Above, n 3, 1059, original emphasis.

23 *ibid.*, 95.

24 *ibid.*, 29.

25 *ibid.*, 1151.

26 These present an irony in that 'despite the central focus on the capacity of individual desires, beliefs and attitudes to shape the world, the resulting research described not individual variation but deep, broad-based normative consensus': P. Ewick and S. Silbey, 'Conformity, Contestation and Resistance: An Account of Legal Consciousness' (1992) 26 *New Eng LR* 731, 739.

27 These 'often cast law and legal consciousness as products rather than producers of social relations': above n 3, at 38.

28 At 39–43, drawing on W. Sewell, 'A Theory of Structure: Duality, Agency, and Transformation' (1992) 98 *Am Jnl of Soc* 1.

tions in social power and agency'.<sup>29</sup> They discern three broad shapes and patterns of legal consciousness from their interviews,<sup>30</sup> whilst recognising that there is an interaction between them in each person's narrative. As I illustrate below, their descriptions are highly suggestive for this study.

In thinking about legal consciousness in these ways, particularly in shifting from the 'law first' model, there are implications for research design. Bumiller suggests that 'the problem emerges as a question of legal domination, which is, again, the problem of giving a meaningful voice to the subject apart from the rule of law'.<sup>31</sup> Early studies involved lengthy ethnographic work, which led to careful descriptions of the impact of place and class on the construction of law.<sup>32</sup> As studies have developed, there has been an increasing focus on understanding the variation in legal consciousness narratives. Nielsen's study of experiences and attitudes towards street harassment sought to capture differences across race, gender and class. Her research design of observation combined with in-depth interviews with 100 subjects sought to 'learn how the subjects *experienced* such interactions, not simply how they responded'.<sup>33</sup> Ewick and Silbey's focus meant that their 'empirical gaze' needed to be not only on formal legal events but also those events from which law was absent. Their interviews were constructed without asking about legal problems or needs in the foreground.<sup>34</sup> Interviewees were told that the interview was 'about community neighbourhood, work and family issues'. It began with open questions about neighbourhoods, friends and family to establish conversation. Then they asked about 'a wide range of events and practices that might have "troubled or bothered" their interviewees at some point, followed by focusing on one particular event. Only after this did the interview move law to the foreground. Engel and Munger's study of the Americans with Disabilities Act employed a novel methodology of affording their interviewees the opportunity to comment and criticise what had been written about them. This process emphasised 'that all narratives . . . are inevitably interpretations that are shaped by the narrator's purposes, perspectives, and assumptions and those of the researcher'.<sup>35</sup>

### *Critiques of legal consciousness*

The critiques of legal consciousness studies have tended to focus on the ways in which law is defined and represented, as well as the way consciousness is mobilised in these studies. Engel, for example, notes that 'consciousness' is developed in different ways by different authors – for example, Sarat links consciousness to ideology,<sup>36</sup> whereas others develop the notion in a more subtle, nuanced way. However, Engel then notes, particularly in relation to Ewick and Silbey's early article, that the distinction between 'consciousness as perceptions or images and consciousness as aptitude or competence' (the relationship between schemas and

29 *ibid.*, 41.

30 These are respectively 'before the law', 'with the law' and 'against the law'.

31 Above n 3, 31.

32 See, for example, Engel, above n 3.

33 Above n 3, 1062.

34 Discussed at 23–28.

35 D. M. Engel and F. W. Munger, n 3 above, 9.

36 See also Cotterell's similar approach: 'The Concept of Legal Culture', in D. Nelken (ed), *Comparing Legal Cultures* (Aldershot: Dartmouth, 1999) 27–29.

resources) is not made entirely clear, but is central to the debate.<sup>37</sup> In many ways, this point is linked with a concern for the place of law in legal consciousness studies.

For Mezey, for example, the shift to law in society in Ewick and Silbey's book is both a strength and a weakness. It is the way law is lost in society – 'once law is reconceptualised as all forms of power and authority, legal consciousness is no longer meaningfully legal.'<sup>38</sup> Such a criticism strikes at the root not only of that book but also at the radical reconceptualisation of law and society involved in studies of legal consciousness. The more subtle, nuanced version presented by Ewick and Silbey seems preferable partly because everyday life is not necessarily meaningfully legal.

By contrast, the critique of Levine and Mellema suggests that the problem inherent in Ewick and Silbey's approach is the assumption of the salience of law to everyday life. In other words, although the avowed intention of Ewick and Silbey is to transplant legal consciousness for law-first studies, they only succeed in re-inserting the law into everyday life (for example, through their three schemas of law). Levine and Mellema, on the other hand, suggest that law has less salience for the marginalised. Their meta-analysis of studies of women in the street-level drug economy suggests that the relationship of law with other situational factors requires illumination:

While their lives are overdetermined by the law, in that they are constantly bumping up against the criminal justice and welfare systems, these women do not consciously or consistently structure their lives so as to avoid future conflicts; instead, they take advantage of the law's loopholes or ignore law altogether, to better their chances of survival. In short, although street women are subordinated to the law, they are not subservient to it.<sup>39</sup>

This critique provides an important corrective to the more generalised studies. Indeed, as Engel suggests, 'more often law is mediated through social fields that filter its effects and merge official and unofficial systems of rules and meanings'.<sup>40</sup> Further, from Nielsen's work, legal consciousness is contingent, and 'may change according to the area of social life about which the researcher asks, with reference to the social location of the subject, and the subject's knowledge about the law and legal norms'.<sup>41</sup> For our interviewees, many of whom are the most vulnerable and marginalized people in society leading shadow lives, this is a valuable caveat.

## UK approaches

In many respects, it is surprising that studies of legal consciousness have (to my knowledge) yet to make an impact on UK socio-legal studies. When one thinks

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37 D. Engel, n 10 above, 119.

38 N. Mezey, 'Out of the ordinary: law, power, culture, and the commonplace' (2001) *Law and Social Inquiry* 145, 165.

39 K. Levine and V. Mellema, 'Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drug Economy' (2001) *Law and Social Inquiry* 169, 179, referring to L. Maher, *Sexed Work: Gender, Race and Resistance in a Brooklyn Drug Market* (Oxford: Clarendon Press, 1997).

40 Engel, n 10 above, 141; see also M. Hertogh, 'A "European" conception of legal consciousness: rediscovering Eugen Ehrlich' (2004) 31 *JLS* forthcoming – I am grateful to the author for early sight of, and permission to use, this article.

41 Above n 3, 1061.

of the important work on access to justice, advice deserts, legal impact studies, and grievance redress,<sup>42</sup> combined with the commonly expressed concern that the UK is becoming a 'compensation culture', it appears that legal consciousness studies would offer significant added value to the research methodologies available.

One answer to this apparent absence is that legal consciousness studies *do* appear, but sometimes adopt different languages. For example, early socio-legal work, such as Bankowski and Mungham's *Images of Law* offer insights into the ways in which lawyers and law teachers are captured by law;<sup>43</sup> or the classic studies of prosecution, which take issue about law and legal rhetoric.<sup>44</sup> Although the concerns in these works are similar, in that they appear to take on the 'law in society' debate, from a legal consciousness perspective they offer partial perspectives in that they omit discussion of individual narratives of law – the way law is experienced in everyday life by ordinary people.

More prominently, it can be argued that the study of legal culture (on some interpretations) incorporates notions of legal consciousness. Roger Cotterell's work has been important in this process, as he has interweaved studies of legal consciousness within a broader project of 'tying down' understandings of legal culture. For example, he views some of the early studies of legal consciousness (like Sarat's), which explicitly linked this concept with ideology, as correlative with understandings of legal culture as 'a cluster or aggregate of attitudes, values, customs and patterns of social action'.<sup>45</sup> Subsequently, he has placed legal consciousness studies within one sub-branch of work on culture, relating to law and popular culture.<sup>46</sup> Nevertheless, as Cotterell observes, use of 'culture' in legal research is often vague and contested; what the study of legal consciousness offers, by contrast, is a relatively tight, narrow framework for research.

That being so, studies which explicitly focus on legal consciousness in the UK have, arguably, offered insightful analyses and correctives to the North American approach. For example, Davina Cooper suggests that legal consciousness can be an important tool in identifying the different ways in which law is used within local authority bureaucracies. Indeed, contra the US perspective, party affiliation and political ideology are, in that study, argued to be important factors in British municipal consciousness which cannot be ignored.<sup>47</sup> Furthermore, these factors become particularly important in terms of interview design: '... it is important to recognise not only how different questions will produce different, competing images but also the extent to which interviewees may *consciously* choose, albeit

42 Various, H. Genn, *Paths to Justice*, (Oxford: Hart, 1999); M. Adler, 'A socio-legal approach to administrative justice' (2003) 25 *Law and Policy* 323; R. Sainsbury and T. Eardley, *Housing Benefit Reviews* (London: HMSO, 1991); S. Halliday and M. Hertogh, *Judicial Review and Bureaucratic Impact* (Cambridge: CUP, 2004).

43 Z. Bankowski and G. Mungham, *Images of Law* (London: Routledge and Kegan Paul, 1978).

44 Compare, for example, D. McBarnet, *Conviction: Law, the State and the Construction of Justice* (Basingstoke: MacMillan, 1981) and M. McConville, A. Sanders and R. Leng, *The Case for the Prosecution: Police Suspects and the Construction of Criminality* (London: Routledge, 1991).

45 'The concept of legal culture' in D. Nelken (ed), *Comparing Legal Cultures* (Aldershot: Dartmouth, 1999) 25.

46 'Law in culture' (2004) 17 *Ratio Juris* 1, 5.

47 Above n 3, 511.

within social constructed parameters, to present law in particular ways'.<sup>48</sup> Live Gies's study of the effect of mass media on the legal consciousness of residents of an inner city estate in Birmingham has explicitly problematized taken-for-granted assumptions about the role of the media, in contrast to North American studies. Set side-by-side, what is interesting about these studies is the different way in which they mobilise the 'law' in legal consciousness – Cooper is concerned (perhaps more traditionally within this paradigm) with *official* law, whereas Gies is concerned with the media's law.

That observation takes up the theme offered by Marc Hertogh, in his illuminating attempt to develop a distinctive 'European' approach to legal consciousness. Hertogh argues that American studies focus on *official* law in action; authors read that law into the narratives presented by their interviewees. In this respect, law is treated as an 'independent variable' which 'falls short in analysing people's *own* definitions of these concepts'. He offers a version, drawing on Ehrlich, which regards law as a 'dependent variable', where 'law is part of the empirical enquiry itself'. Instead of the research question 'How do people experience (official) law?', such a conception of legal consciousness asks 'what do people experience as "law"?' I return to this theme about 'law' in the next part, partly because it is controversial<sup>49</sup> and partly also to situate my approach and understandings.

### *This study*

At a broad level, this study was designed to assess why people do, and do not, challenge welfare decisions.<sup>50</sup> The homelessness legislation was our case study and fieldwork was conducted in two areas, Southfield and Brisford. Both of these areas were in large conurbations and had a comparatively significant number of homelessness applications as well as internal reviews. The administration of homelessness law made an excellent case study for three reasons. First, it might be anticipated that applicants are desperate for the benefit (that is, housing) for which they are applying. Second, applicants might also be expected to reflect some of the more marginalized groups in society for which law may have a different meaning. Third, there is a body of research in this area which refers to the bureaucratic perspective of applicants seeking to take advantage of the law. On the other hand, studies of applicants themselves, and their engagements with the process, have not appeared.<sup>51</sup> Allowing unsuccessful applicants to be heard provides a mechanism of voice against the dominance of bureaucracy and studies of it.

Initially, a period of observation took place over a period of ten weeks in both Homeless Persons Units ('HPUs').<sup>52</sup> During this time the fieldworkers learned about decision-making behaviour and routines within the HPU. This phase was

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48 At 522.

49 See below.

50 See generally, D. Cowan, S. Halliday, with C. Hunter, P. Maginn and L. Naylor, *The Appeal of Internal Review* (Oxford: Hart, 2003).

51 Even the then Department of Environment's own *Study of Homeless Applicants* (London: DoE, 1993) drew upon local authority data over and above the applicants own stories themselves.

52 There is an extended discussion of this data in Cowan and Halliday, n 50 above, chs 3–4. The focus in this article is on our applicant data and not on the observational data. However, where the latter does become relevant below, we draw on it.

followed by a period of interviewing with 'unsuccessful' homelessness applicants. Finally, a number of taped interviews and focus groups with local authority officers and interviews with local solicitors and housing advisors took place. During the course of fieldwork, daily routines were observed, as were officer meetings and officer-applicant interactions.

The research team conducted 94 'unsuccessful' applicant interviews, 30 in Southfield and 64 in Brisford. Homeless applicants as a group are difficult to contact because, by the nature of the application, their accommodation is often unsettled. The response rate across both sites was just under 10 *per cent* for Southfield and about 16 *per cent* for Brisford. The initial recruitment strategy was to attempt to send out a letter of introduction with every decision-letter. That strategy was modified subsequently (when it was appreciated that this was not necessarily happening), and letters were then sent out directly by the researcher. The gap between receipt of the decision-letter and receipt of the researcher's letter may have been a factor in the low response rate. Applicants were self-selecting by responding to that later, at which point the researcher arranged a time and location for the interview.

The topic guide had three broad parts. First, interviewees were asked questions about themselves and their current situation, as well as the circumstances which lead to their current homelessness. This, for example, enabled us to place their current homelessness in the context of their past engagement(s) with the homelessness and broader welfare processes. Second, they were asked about their experiences of the homelessness application process. This was not a question of 'satisfaction', whatever that might mean,<sup>53</sup> but to enable them to express their feeling about their treatment as well as the fairness of the actual process itself. In particular, we were interested in finding out how applicants responded to, and self-constructed the interview conducted by the homelessness officer. Third, they were asked about their engagement with the process of challenging the decision, the person with whom they had discussed their application, and what they thought of the process (including what they thought might happen in the internal review itself).

For the purposes of this article, I have analysed the homeless applicant interview data specifically so as to generate insights into the legal consciousness of the applicants. This required a focus on the second and third parts of the interview questionnaire, in which the interviewees were invited to discuss their approach to and feelings about the legal process of the application, as well as their decision whether or not to challenge the bureaucracy's assessment. In the subsequent sections of this article, I have interpreted the data around three themes – dignity, making sense of decisions, and spaces of production of legal consciousness. These organising themes were developed from those parts of the interview data where the interviewee described the relevance (or otherwise) of law to the processes in which they were engaged. In this sense, they were developed inductively, through focusing on the interviewees' fairly consistent self-descriptions of worth as well as the value attached to their own stories; how they negotiated the process; and the possible reasons why they saw, or did not see, law.

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53 For discussion, see L. Mulcahy and J. Tritter, 'Pathways, Pyramids and Icebergs? Mapping the Links Between Dissatisfaction and Complaints' (1998) 20 *Sociology of Health and Illness* 825.

To an extent, it should be accepted that this process involves my reading their version of law into the interview text and, for this reason, I need to be clear about the version of law deployed here. There are three levels to this understanding. First, the discussion of the data offers some insights into the interviewees' reception and understanding of official homelessness law, mediated (for example) through decision-letters or the interview. Second, in tune with socio-legal insights about law, the data offer insights about the ways in which unofficial law – local law – influences, or mediates, their approach to their situation. Being told by a welfare bureaucracy that burglary is a fact of life which everyone has to put up with, is an unofficial wisdom which influences the bureaucracy's use of law, and is understood by the interviewees as law. This type of 'administrators' law is official in one sense, but clearly goes beyond the doctrinal. Third, as with Engel and Munger, the interaction between identity and rights under the homelessness legislation provides an important avenue for analysis. In this sense, the interviewees' assertion of their own dignity or self-worth is argued to be part and parcel of their interaction with, and rejection by, the welfare bureaucracy. Self-identity, then, forms part and parcel of the rights which they are seeking, or have sought, to deploy: 'The perception that exclusion is appropriate or inappropriate, indeed the *awareness* that exclusion has occurred, hinges on the way in which individuals and those around them define their identity'.<sup>54</sup>

Whether or not the interviewees take legal action over their application (and most did not), these types of 'law' are what were gleaned from an analysis of the interview data. That analysis does require the reader to be sensitive both to the narrative of the interviewee as well as the implicit use or absence of law. Silences, themselves, are often as powerful as what is uttered,<sup>55</sup> and it is the silence about official law in the interviews that is often most interesting. It was from such a reading of the interviewees' narratives about their experiences with the bureaucracy and challenging it (sometimes in minute ways, such as simply throwing decision-letters in the bin), that the three themes emerged.

Finally, I need to stress that my approach lacks the methodological validity of much of the legal consciousness literature. The project was not set up as a study of legal consciousness *per se*, and so we were unable to explore the interviewees' legal consciousness in any depth to gain a deeper and more situated understanding of its genesis. Indeed, as can be seen by the description of our topic guide, the project was set up as a 'law-first' study to seek to understand the barriers to internal review amongst the sample.<sup>56</sup> Equally, by comparison with other studies of legal consciousness, this study is limited by the single set of interactions between applicant and bureaucracy, as well as applicant and audience. In this sense, there is only a partial view of the 'everyday life' of our applicants and their engagement with law. I am, therefore, unable to say how our applicants' feelings about law have shifted over time.

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54 Engel and Munger, n 3 above, 40 (original emphasis).

55 See especially M. Foucault, *The History of Sexuality* vol 1 (London: Penguin, 1981).

56 Cf Bumiller's concern that 'to focus on [deterrents] to pursuing claims . . . is to make a basic error. Such an exclusive focus suggests that, absent such barriers, victims have absolute freedom of action and that if the barriers were removed, they would be able to expend their full energies on the attainment of their legal rights': above n 3, 78.

Nevertheless, this data is suggestive in the following ways. Following both Nielson and Levine and Mellema, there are greater possibilities to observe how and why some of the applicants are able to 'see law and legality' – in other words, the way in which people construct the processes in which they are engaged as explicitly legal and others do not. Constructing a process as 'legal' actually has a number of potentially important consequences for homeless applicants. First, it broadens the nature of the emerging grievance, in the sense that implicating law changes its nature; second, it changes the potential audience, for example to include somebody with actual or assumed legal expertise; and third, it affects the power dynamic between the participants as each recognises that their decisions are bound by law. Seeing law in the process can happen at any stage, before, during or after the process.

Next, I develop what I have termed an 'interaction perspective'.<sup>57</sup> The suggestion is that legal consciousness in this context may be situated within the interactions between the welfare applicant and the welfare bureaucrat preceding and culminating in the refusal of help. I suggest that a focus on the citizen-bureaucracy relationship, and the messages about decision-making which are communicated both formally and informally by the bureaucracy, can (though not necessarily will) be influential in informing the applicant's ideas about the nature of the process, and the value of challenging the decision.

As Ewick and Silbey note, 'To the extent that consciousness is forged in and around situated events and interactions . . . a person may express, through words or actions, a multifaceted and possibly contradictory consciousness.'<sup>58</sup> The progression from this work is uncovering these situated events and interactions in one discrete context. However, I cannot suggest that the bureaucratic practices I highlight were necessarily determinative of a legal consciousness narrative. The argument is pitched at the level of suggestion, based on inferences from the data.

Third, returning to the introduction to this article, welfare officers and government rhetoric suggests that applicants have the relevant law at the forefront of their minds when they are making their application. This raises the assumption that welfare generally is given to those knowledgeable agents, unless they are found out. This is a peculiar form of 'law-first' reasoning. Some of the interviewees did, for example, hedge their bets through making multiple applications, and in this sense were knowledgeable. However, the emphasis on legal consciousness challenges these assertions and assumptions in that how and why the applicants see the processes in which they are engaged as involving law can be ascertained, as well as the types of events which pushed them in that direction. There is a note of caution attached to this discussion, though. The interviewees were self-selecting and may not have included those who 'knew' the system. Nevertheless, there is sufficient evidence to suggest that future studies should question this rhetoric.

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<sup>57</sup> See D. Cowan and S. Halliday, above n 50, chs 5–6.

<sup>58</sup> Above n 3, 50.

## THE HOMELESSNESS LEGISLATION

The homelessness legislation, the Housing Act 1996, Part VII,<sup>59</sup> is one of three routes into local authority and most other social housing in England and Wales.<sup>60</sup> Households must make an application to any local authority as a homeless person. The local authority must then decide whether the household passes the criteria for acceptance as homeless. That is, the household must, as a unit, be 'eligible', 'homeless', 'in priority need', and not 'intentionally homeless'. If the household is found to have passed these tests, then the local authority may refer the household to another authority if the applicant has no 'local connection' with the authority to which the application was originally made. The duty at the time of the research was to provide 'suitable accommodation' for a minimum period of two years.<sup>61</sup>

These concepts are suffused with discretion. Homelessness is, for example, defined as having no accommodation which that household can reasonably be expected to continue to occupy.<sup>62</sup> Households with children are only entitled to priority need if the child(ren) are dependent and reside with the applicant.<sup>63</sup> Single persons could generally only obtain a priority need if they were 'vulnerable' on certain grounds:

a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside.<sup>64</sup>

And, in order to find an applicant intentionally homeless, a local authority must decide that the household has deliberately done or failed to do something, which caused the loss of accommodation which was available for their occupation, and which it would have been reasonable to continue to occupy.<sup>65</sup>

The legislation has spawned considerable case law in its 26 years of operation. Vulnerability, for example, has been defined as meaning 'less able to fend for oneself so that injury or detriment will result where a less vulnerable man will be able to cope without harmful effects'.<sup>66</sup> As regards intentional homelessness, the local authority must ask a series of difficult questions relating to the reason(s) why the person left their previous accommodation, such as their income and expenditure and, for want of a better expression, their *mens rea*.<sup>67</sup>

Cowan has noted how the legislation, rather than empowering homeless people through its provisions, requires 'oppression of the homeless by making *moral judgments*, not about their housing need, but about *why* the homeless become

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59 This study took place before the Homelessness Act 2002 and the expansion of categories of priority need in Homelessness (Priority Need for Accommodation) (England) Order 2002, (SI 2002/2051).

60 The other routes are through the housing register, as governed by the Housing Act 1996, Part VI, and more nebulous routes such as through quota arrangements with other departments of the local authority.

61 S 193, 1996 Act.

62 S 175(3), 1996 Act.

63 S 189(1)(b), 1996 Act.

64 S 189(1)(c), 1996 Act.

65 S 191, 1996 Act.

66 *R v Waveney DC ex parte Bowers* [1983] QB 238.

67 See *R v Brent LBC ex parte Awwa* [1996] 1 AC 55.

homeless in the first place'.<sup>68</sup> As suggested below, this is reflected in the way the interviewees perceive the process – their felt need is an irrelevance, what matters is somebody else's judgement about their needs. Engel's study of the Individuals with Disabilities Act makes a slightly different, but equally valuable, point that 'the actors' identities in this domain are also constituted by the legal treatment of "difference" and by the tensions between legal entitlement and social disempowerment'.<sup>69</sup> This dichotomy also emerges out of the data as applicants struggle to empower themselves through disempowering terms – in order to be entitled to housing, they must show themselves to be vulnerable, disempowered, and marginal. As our applicants struggle to demonstrate their vulnerability to their interviewer, to use Ewick and Silbey's phrasing, 'the schema points to the power of naming as a fundamental aspect of social action'.<sup>70</sup> The schemas used by the interviewees are intimately related to the ways in which they perceive themselves to be treated by the bureaucracy; in turn, this is related to their belief that the bureaucracy treats them as lacking resources.

### LEGAL CONSCIOUSNESS AND THE HOMELESS

In this section, I draw on the applicant interview data to illustrate how legal consciousness can assist understandings of law in society in this one discrete context. In particular, I develop the three suggestions highlighted above – seeing law, interaction perspective, and the knowledgeable agent – through the three parts identified above. Each part engages a different aspect of the interviewees' emerging consciousness of law and legality shaping the processes in which they are engaged.

The first part concerns the interviewees use of, and concern for, their *dignity*. Specifically, the interviewees felt that their dignity was undermined by the failure of the bureaucracy to involve them in the decision-making process; and when they sought to involve themselves, this had a variable impact. Their dignity was also affected by the way in which time was handled by the bureaucracy and other agents. Here, legality was constructed around certain values of decision-making which the law has sought to prescribe for some time: participation and humane treatment. In some ways, this might be regarded as a consciousness not of law but of administration. Thus, the interviewees perceived administrative processes as engaging in valuation processes. The approach adopted in this article, however, is different. It is argued that these values are what our interviewees want from law; it is about their aspirations for law and legal values.<sup>71</sup> Here then I focus on the interplay between the processual element of law and our interviewees' self-identity discussed above.

The second part considers how the interviewees were able to make sense of their decisions. Some did this through a common sense application of 'law' as they saw it, regarding themselves as marginal. Some constructed an empirical

68 D. Cowan, *Homelessness: The (In-)Appropriate Applicant* (Aldershot: Dartmouth, 1997) 21.

69 D. Engel, 'Law in the Domains of Everyday Life: The Construction of Community and Difference' in A. Sarat and T. Kearns, *Law in Everyday Life* (Ann Arbor: University of Michigan Press, 1995) 146.

70 Ewick and Sibley, n 3 above, 40.

71 I am grateful to Doreen McBarnet and Simon Halliday for this observation.

version of law, which relied on their observation of the treatment of others. And others constructed the bureaucracy as drawing on positivist law, applying it in a neutral fashion to their cases. Here the focus is generally on the first element of law identified above – official law – not necessarily as it appears in the books, but as our interviewees received and perceived it.

The third part pays attention to two particular spaces in which legal consciousness was produced for our interviewees – the interview and the decision-letter. Here I argue that the interactions between applicant and bureaucracy provided the lens through which the applicant understood the decision on their application. They were able to read messages into the decision-letter received from the councils' officers. Here the focus is on both the first and second elements of law – the official and local law – as they appear from the data.

In turning to the data, I should acknowledge that organisation around the theme of legal consciousness requires some dexterity because of the variety of different stories told by the interviewees. For example, it is certainly the case that some of the interviewees construct themselves as knowledgeable agents and others as powerless in the face of an unwieldy (and unyielding) bureaucracy. Yet, the fault lines are not that simple and the categorizations produced below are not as neat in practice.

## DIGNITY

Our interviewees are some of the most marginal and marginalized persons, and it is not surprising that they felt this. Indeed, what often came across in interviews was the sense of desperation they felt, allied to the fact that, for some, they recognised in retrospect that the time when they made their homelessness application was the time when they felt the most stressed and least able to cope with the pressures of the bureaucracy.

### *Depersonalisation*

What applicants wanted from the bureaucratic process, was to be treated with dignity, by which they generally meant having their stories heard. Instead, many found that they were further marginalised and depersonalised by the process. The dignity that they had sought to assert, despite the labels they were seeking to become (homeless, vulnerable, suitable), were met with the opposite. Indeed, for some interviewees, it was precisely because they were homeless and marginal that they felt the bureaucracy treated them disrespectfully. In failing to understand them, or in stereotyping them, the bureaucracy was making a statement about itself and what it valued. Interviewee S2, to whom I will return later, said:

... they just understand statistics of law, things like that, policy of what their company says, you know what I mean, it's nowt to do with understanding the people, and you know, really helping the person. I realised that when I went through the process of it. Nothing to do with that at all. I think it's all about money to them and keeping a business running, more than anything.

A significant number of the interviewees across both research sites described being treated 'like a number', 'like cattle', 'like we are invisible', or, in one

memorable phrase, 'I felt like I was a victim of a robot' (Interviewee B63). These schemas provide an important link with the way the applicants believed the bureaucracy made assumptions about their lack of resources. In other words, these aphorisms carry with them observations about the individual's lack of power. The bureaucracy has something they need, and it makes them feel like that.

The depersonalisation was both in the way the applicant was treated by the bureaucracy as well as in the bureaucracy's construction of what a 'suitable' offer of accommodation was. Interviewee B55, who had rejected two offers of accommodation, said that she felt like she was on a 'conveyor belt of people being churned around and then I just dropped off really'. She went on to describe how she had sought to insert herself in the process but was unable to do so:

... if you're expressing your feelings to somebody, this was the thing with me, I was expressing myself, telling them personal things about myself, and it was all just being brushed under the carpet and brushed just to one side. Like, you know, I'm telling them things about my life, that I don't sit down and sort of discuss on a, on a sort of daily basis and it was just being walked over and, you know, taken like, like nothing really. You know and that made me, that made, that was hurtful to me and I think, you know, I just felt to myself, 'Well I, you know, I tried and what I feel has been personal good reasons, to them they weren't', so it didn't really make any sense to go any sort of further.

This point about the antagonism between what was important to the bureaucracy and important to the applicant was repeated again and again in the interviews. The information processed by the local authority was felt to reflect their priorities and not the very personal feelings of the interviewees.

Interviewee S12 was 27 years old and suffered from depression. He had been in receipt of incapacity benefits since his father died in 1996. After his mother died he 'got into drugs basically and ended up in jail, come out and had nowhere to live so I come here'. He was found to be not vulnerable, in part because his medication was insufficiently strong. He summarised his experiences in his interview:

... they asked for a bit like [about my housing circumstances], but it was mainly offences and all that. ... Its like they have no time for me, sort of thing. That's the way I feel about it. It's like, he looked at me report, 'he's done this, he's all right, put him in [hostel accommodation]'. You know what I mean. That's the way it comes across to me. *I had an interview here that lasted all of 5 minutes, you know what I mean and didn't ask me really anything about how I felt or anything like that, it was more like 'what have you been to jail for?' and all that.*

The power of the bureaucracy becomes apparent in structuring what needs to be known and in making silent that which does not need to be known. It was this silence which enabled the depersonalisation he felt and which was also symptomatic of his powerlessness.

The inability to participate in a meaningful way in the process was also sometimes suggested by the interviewees to be because of the construction of themselves as *unable* to participate. The interviews themselves are full of interviewees'

self-claims of intelligence. Perhaps this was not surprising given the above and the way they felt that the full range of their resources had been undermined during their interactions with the bureaucracy. Interviewee B33 particularly felt this, as he was struggling to claim that his two children were indeed living with him (despite his ex-partner continuing to claim child benefit). He, like others, spoke of the condescending and patronising attitudes of his interviewer:

... I was being condescended to, that, 'Oh well, you know, you've got yourself in this situation you mustn't be very intelligent', or, 'Why am I wasting my time telling you, you wouldn't understand.' You know, a very patronising sort of attitude.

*(Re-)inserting the self*

In the face of this bureaucratic failure to take account of the self, our interviewees developed various tactics to insert themselves into the process. For some, this was part of a belief – albeit sometimes contradictory – that the bureaucracy would value hearing them in the forum provided by the internal review process. The horrific story told by Interviewee B43 of how he and his family had escaped their country, and the killing of some of their relatives in front of their eyes, was used as grounds for review of a local connection issue. Through an interpreter, he said this was because '[the reviewers] feel something, they have some emotional feelings, of course they're going to make the right decision for him'. Interviewee B2 felt that what was important was that the reviewer 'heard the story from the horse's mouth' and not through an interlocutor, like a lawyer.

Yet, here again, some interviewees were met by the bureaucracy sorting out the information which was important to them. Interviewee B42, who worked for the council as a social worker, refused an offer of accommodation in writing herself. She wrote about her own *feelings* about the accommodation, as well as her belief that the accommodation would be unsafe for her small baby. Her original refusal was unsuccessful and so she sought an internal review of the decision. Her description about the process of the review and her own marginalisation was revealing:

... what happened when I re-appealed was they spoke to the housing association guy and said you know, 'Genuinely, was this property suitable for this girl and her baby?' and the guy said 'No'. ... And so when they wrote back to me, they still didn't want to say, the council still didn't want to say, 'You were right to refuse,' what they wrote was 'We don't accept your refusal on this ground, that ground, that ground or that ground,' ... I felt inferior cos they were on about saying 'Well no, you weren't right but, you know, the housing association guy said it wasn't suitable so that was fine'.

For others, there was a strong self-empowerment narrative, emphasised through the phrase 'I always do everything for myself'. Interviewee B9, a 45 year old female recovering alcoholic, was offered a flat in a block dominated by males. Although she said that she 'was doing everything off her own back', she did, in fact, use a solicitor successfully to challenge a finding that she was not vulnerable. However, when it came to the offer, she felt that they offered her the place because 'they weren't fucking interested, they think cos I'm an alcoholic, I'm a bit of a

loony, I'm not.' She did not challenge the offer of accommodation, partly because of the coercion she felt to accept it (see below for discussion) and partly because 'I'm a bit proud, I won't ask for help, you know what I mean? . . . I'm that sort of person, but I should have done really. . . . But I thought well they've offered me a place, take it'.

Even so, individuals did seek to empower themselves through legal advice.<sup>72</sup> For example, one reason given for seeking legal advice was that the bureaucracy had put the shutters down on the interviewee so that they could no longer discuss *their* story with the officer. Interviewee B33, who had been patronised and did not feel listened to, decided to seek legal advice as part of a tactic to insert himself into the process:

Then I went straight to the lawyer because I found that going there I would just be fobbed off. The decision seemed final, they weren't gonna listen to me, doesn't matter what I said, . . . So I thought all right, as far as I'm concerned, talking to them, they're not listening to me any more, I'd better get someone who they're gonna listen to, so they can do it officially through the channels that they do, send each other faxes and official letters and blah, blah, blah.

Accessing a lawyer to help them against the decision was perhaps the clearest assertion of power/resistance to the bureaucracy, as well as a recognition of their own powerlessness. As Interviewee B35 put it, 'me on my own, I wouldn't get anywhere'. Here again, this tactic could backfire with the interviewee feeling further marginalised as the relationship between bureaucracy and lawyer took shape about their individual case. The attempt to gain power through law caused feelings of powerlessness. Read in this way, schemas about the use of lawyers – such as the oft-repeated aphorism, 'I've left it all in the hands of my lawyer' – are diversionary, obscuring the fact that the interviewee's only contact is through the lawyer who now acts as an intermediary. In other words, in seeking to communicate with the bureaucracy, they only add a further, intermediate layer to that relationship and emphasise the lack of resources of the advice-seeker.

### *Time*

Sarat notes the importance of time in the welfare relationship – the 'interminable waiting that they said marks the welfare experience . . . power defines whose time is valued and whose time is valueless'.<sup>73</sup> For our interviewees, time is an important element in the production of power at three key moments – waiting for the interview, waiting for accommodation, and lawyers' time.

Interviewee S28 operated strategically in his interactions with the HPU. He had been forced to wait for five hours before his interview, 'just not knowing'.<sup>74</sup> He did wait, in the canteen, and felt the stigma of waiting. However, his strategy

<sup>72</sup> Sarat, above n 1, found that his interviewees believed their lawyer was part of the bureaucracy; by contrast, our interviewees often sought to involve lawyers as a medium of challenge, seeing them as independent and acting for their clients against the bureaucracy.

<sup>73</sup> Above n 1, 347–348.

<sup>74</sup> As Sarat, above n 1 argues (at 360), 'Waiting is, for them, the experience of being "spatialized", of having someone else's place triumph over their time. Waiting is the physical embodiment of their own weakness'.

involved dealing with officers and his interviewer calmly – this was both a resistance to the process as well as a recognition that he was the subject of it:

. . . they think that you have to wait so it calms you down, you have to calm down but it's the opposite that happens. I don't feel calm about it. When I see them, I'm certainly not, I don't even want to be polite but I know that I have to be polite because I need something off them.

His resistance, then, was by subduing his genuine emotion – anger – to the requirements of the administrative process – calm. As Ewick and Silbey suggest, resistance in part 'represents a consciousness of both constraint and autonomy, of power and possibility'.<sup>75</sup> It was a *masquerade*.<sup>76</sup> Such strategies were often hidden and unrecognised, as with his apparent subjection to the behavioural requirements of the process.

Waiting for an offer of accommodation made the applicants subject to the time-frame of the HPU. They had to wait in what was, by most accounts, poor quality accommodation at best. The experience of waiting for an offer was described by Interviewee S11: 'you might as well just be wrapped up with rope because you can't do nothing, just waiting and waiting that is the annoying bit, the waiting.' It was this waiting, combined with the depersonalising feeling of the temporary accommodation that made Interviewee S5 seek an alternative avenue for social housing:

[The hostel] is a very busy place. It can be a very sort of impersonal . . . they just think we're invisible, you know, but they won't ask you what you want . . . and I was getting frustrated, cos I was saying 'well, what can I do to help myself?', you know, and in a way, you bang your head against a wall, because you have to wait for them to . . . get the letter out or do this or that, that was frustrating . . . but you do feel powerless . . .

Outside the bureaucratic process, those of our interviewees who sought legal advice often referred to the time their lawyer had for them, as if law's time was somehow different, or more important. So, for example, Interviewee B16, when asked what her solicitor was doing for her in relation to her homelessness application, responded: 'you're also forgetting something. The solicitors are very busy and they only want to talk to you when they want you, not the other way around . . . You know what they're like, it's like doctors, when you see them, five minutes and click your fingers off you go through the door'.

### MAKING SENSE OF DECISIONS

The interviewees sought to make sense of their decisions in a number of ways: accepting the vulnerable label; comparing housing need; and 'going by the book'.

#### *Being vulnerable*

In reading their decision letters, the interviewees drew on their common sense either to accept the decision ('I'm not on the streets') or to reject it. They were

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<sup>75</sup> Above n 3, 183.

<sup>76</sup> *ibid*, 205.

forced to confront law, but on their own terms; and this was the reason for the retreat to common sense. They were 'forced to become a victim to assert a right'.<sup>77</sup> Such a retreat was best but emotionally expressed by Interviewee B59. She argued that she fitted within each sub-category of priority need, despite a finding to the contrary:

[they say] I'm not vulnerable as a result of old age, mental illness, handicap, physical disability or for any other special reason. But again I've already mentioned, because of the pain, painkillers I actually fall into the group . . . So, and also I suffer from depression, so I do fall into the mental illness category as well, suicidal depression is one of the most serious. And [they say] I'm not homeless or threatened with homelessness as a result of an emergency such fire, flood or other disaster. Attempted murder [by her Mother], I class as this other disaster. So I fall into a basically, all of those categories but one, cos I'm not pregnant, but I can't get pregnant cos of gynaecological conditions anyway. So, it's like 3 out of 4 categories, and he's made a decision and said that I don't fall into these categories.

She used her common sense resource against her perception of legal nonsense. Other interviewees made similar observations through common sense, which was brought out by negative findings on 'vulnerability' which were particularly, and vigorously, contested by our interviewees:

I don't understand it, I don't, I personally don't understand that letter. The way I've read it, the way my understanding of it is . . . they can't do anything for me, and . . . and me health and all that, on the streets, I'm safe enough to fend for meself on the streets, that's the way I read it, I read that letter. In other words, I'm all right on the streets, 'here's a sleeping bag, on your way', that's the way I read that letter (Interviewee S6).

But it says here, [that I am not vulnerable]. Now I think that's a little bit ridiculous when I'm stuck in a wheelchair and have been for four years. (Interviewee B51)

### *Comparative housing need*

The interviewees sought to make sense, or nonsense, of the decisions in their cases by comparing their housing need with others. Exceptionally, Interviewee S12 compared his decision (non-priority) with the apparent ready availability of properties in the area: 'there's places empty everywhere you look . . . and they are saying they haven't got the spaces'. More often, however, the comparison was made between the interviewee and a class of other homeless applicants. It was recognised that the 'system' prioritised these others:

I thought something else could have been done, something better could have been done for me, you know what I mean, because there are people out there like . . . who do get places . . ., who are, who've got less priority than myself, but they seem to get places and I seem to get nothing, you know, it's not that I'm getting the hump or nothing, about anything, just I really felt [my expectation] wasn't fulfilled . . . (Interview B17)

<sup>77</sup> Bumiller, above n 3, 99; also Quinn, above n 3, 1173.

These others may have been unnamed, as above, or named as a class; and if they were named, they were likely to be 'asylum-seekers', 'refugees' or 'foreigners':

In a lot of cases maybe, you know, like they do put up people there, but it was just full of refugees there as well, it was full of Iraqi refugees and things like that and . . . at the end of the day that's what they've decided to do, things like that . . . at the end of the day it could be full up with homeless people out of Britain at certain times . . . (Interviewee S2)

. . . when I first came here, they were having all the problems with the Kosovos too. There was a queue of Kosovos outside, you know, and they were getting, you know, I mean, I didn't agree with that, because I mean they were getting preferential treatment. Honestly, I mean, it was unbelievable, to think they were getting flats . . . they were getting grants to furnish it, they were getting all sorts of help from social security and all that, and us, we were getting nothing. You know, we were being sent to a freezing poxy hostel for bed and breakfast. (Interviewee B61)

These other people were always regarded as having less need than the interviewees and the narrative was about the apparently favourable treatment given to these people compared with the interviewees. The interviewees sometimes sought to bolster their arguments by references to what they had 'seen' or what they had 'researched'. Interviewee B14 was a remarkable applicant in that he successfully refused eight offers because of his various medical conditions and the failure of Brisford, as he saw it, to take those conditions into account in determining what was 'suitable'. His justification for refusing the accommodation was 'a good medical reason, I wasn't doing it on purpose . . . they would have to present a better reason than just saying that [Brisford] doesn't have enough property, you know, because surely somebody's medical need is more important you know . . .'.<sup>78</sup> He was bolstered by his personal research – walking round Brisford estates to 'check the kind of people living there' – which demonstrated his greater need:

I did a personal research myself and I actually found that people, a teenage girl who's pregnant, who has no disability, you know, they can offer her a whole house and live in [Brisford] whereas somebody who has a severe disability and he's black they would put him on the sixth floor estate you know and so to me that didn't make sense, you know, because pregnancy is not really a disability, you know, I felt that disabled people should be more, should have more priority than pregnant people because you hear this story about people who get pregnant just to get a council flat.

The notion of comparative housing need is important for two reasons. First, it establishes our interviewees' convictions in their claims to priority over others in the queue for housing. This may be seen as an emergent legal consciousness in which truth claims are prioritised according to how they see, or have researched, the life world. Second, it adds flesh to the concept of a knowledgeable agent.

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<sup>78</sup> This individual need chimes with the point made by Engel that his interviewees enjoyed 'fundamentally different perspectives on the question of community and the individual' and that the 'law supported the goal [of the "normal"] by requiring an individualized determination of the unique needs of each child': above n 65, 154.

Indeed, far from being knowledgeable about the actual law on homelessness, the interviewees *are* only knowledgeable on their own terms. It is in the translation of the myths of social housing allocation – the pregnant teenager or the asylum seeker (neither of whom have, in fact, fared particularly well generally in this process, but have been constructed as ‘queue jumpers’ by various sources<sup>79</sup>) – into truths that gives power and veracity to their knowledge.<sup>80</sup>

*‘Going by the book’<sup>81</sup>*

Ewick and Silbey’s first model of legal consciousness – ‘before the law’ – is a ‘dehumanized vision of legality’ in which law is separated off from society and exists independently.<sup>82</sup> At first sight, this was perhaps the most prominent vision of law experienced by the interviewees. Although one might have expected to see resistance (and did so, as discussed above), perhaps more prominent was an explanation by which the interviewees reified ‘the book’ above their housing need.

Interviewee S26 was 42 years old and living with her two young children in a private rented property in an isolated location. Youths began hanging round the shop next door and harassing her and her children regularly as well as attacking the property. She had reported this to the police and been given crime numbers. She made a homelessness application and was found not to be homeless as she had accommodation which she ‘could reasonably continue to occupy’. For her, this decision was part of a pattern of welfare agencies not believing her story. As she put it,

I feel as if I’m invisible, nobody’s listening to me. . . . They just don’t want to know, they say windows being put in and me being robbed is not. . . it happens everywhere. I’m scared. I am scared in this house and it’s awful to live in a house [where you] don’t feel safe.

Nevertheless, earlier in her interview with us, she made it clear that although she was ‘stuck’ and had nowhere else to go, she would not seek an internal review of the decision:

I don’t know what to do next. I am stuck . . . The [HPU] *know what they’re talking about, they go by the book, don’t they?* . . . what’s the point [in requesting a review] because they explained it quite clearly. . . I’ve got no more to tell them. Everything I’ve told them is true, and they don’t believe me so what can I do?

This is an exaggerated image of bureaucratic formal rationality whereby the officers apply clear and fixed legal rules in a simple and neutral fashion. Under this image of legal decision-making there is no discretion – the applicant is powerless. The role of the applicant is to give the bureaucrat all the facts of the situation. The

79 See D. Cowan, ‘Reforming the Homelessness Legislation’ (1998) 57 Crit Soc Pol 435; *id*, *Housing Law and Policy* (Basingstoke: MacMillan, 1999) ch 10.

80 Further discussion of the interrelation between media discourse and legal consciousness can be found in Gies, above n 2. Such discussion goes beyond the reach of our interview data.

81 See Cowan and Halliday, n 50 above.

82 above n 3, 78.

corresponding role of the bureaucrat is simply to apply the legal rules in a mechanistic fashion to those facts. As she had nothing new to impart, there was no point in appealing because, 'the book' will produce the same result on the same set of facts.

Interviewee S26 does, however, hint at where and how this image has been produced – in the explanations to her they provide her with the schema and the resource to explain the negative decision to herself. Although she says that she lives in these terrible circumstances, nobody believes her. The conflict of evidence, which is balanced against her, is not questioned. They have told her that 'it happens everywhere', and she has to accept this for what else can she do?

This notion of self-explanation actually underpins most similar explanations amongst interviewees. It provides a link between this version of legal consciousness and Bumiller's analysis of her interviewees' 'ethic of survival' and Quinn's 'not taking it personal'. Furthermore, it links with one of Sarat's interviewees' descriptions that 'the law is all over . . .'. What our interviewees did was to distance the person they had personal contact with from the actual decision – they explained this either because the interviewer had to 'go by the book' or, in fact, depersonalised the interviewer within a bureaucratic hierarchy:

Like at the end of the day like if they don't they could get sacked ain't they, so like they're just doing whatever he says, what he says you know what I mean, so like you can't really like, it's like I wouldn't turn around and smack one of these people you know what I mean, I might do a bit of shouting and ranting and stuff like that . . . (Interviewee B41)

The actual people actually, I know, okay, that's their job and they can't, they just can't turn around and give me like, you know, two hundred pound for passing go and all that, you know, type of thing, you know. But at the end of the day like, I mean, sometimes it would be nice to actually speak to somebody that, who actually understands and knows what you're talking about. (Interviewee B17)

Nevertheless, some of our interviewees could not resist becoming personal, not necessarily regarding the decision as personally against them, but against the case-worker. Interviewee B17, for example, wanted to be treated with 'dignity and respect . . . and when nobody will give you no help sometimes you feel like giving it up like, I mean, just telling 'em, 'Fuck you like' and all that'.

## PRODUCING LEGAL CONSCIOUSNESS

In this section, I draw attention to two particular spaces within the application process which contribute to the production of legal consciousness about the bureaucratic process. The notion of space plays a key part in Ewick and Silbey's discussion of legal consciousness. The notion of space is used to develop the argument that legal consciousness can be situated within the particularity of the citizen-bureaucrat relationship around the application for welfare. So, for example, I suggest that the signals imparted during this interaction contribute to the production of a reified set of immutable rules as discussed in the previous section. I concentrate on two spaces of production: interview styles and decision-letters. I

suggest that these contribute not only to whether applicants 'see' law but also to how they see law working.

Throughout *The Common Place of Law*, Ewick and Silbey draw attention to the twin processes of textuality and inscription, as these inform the three varieties of law.<sup>83</sup> Inscription is a way of making things 'real' – as Rose and Miller suggest, 'by means of inscription, reality is made stable, mobile, comparable, combinable.'<sup>84</sup> Similarly for our interviewees, text and inscription were particularly important – for example, in completing the forms during the interview, in proving their case, and in their decision-letter.

### *Interview styles*

I have already demonstrated how interview styles could operate to depersonalise the application process, which in turn created a sense amongst our interviewees that they were not being treated with dignity and respect. Two particular aspects of the internal decision-making practices may contribute to the formal rationality legal consciousness narrative discussed above.

### **Confidence**

Generally, officers in the study areas displayed confidence in their skill as decision-makers. They took professional pride in their knowledge of the law (or local law), contrasting their abilities with those of neighbouring councils' officers and former managers. This attitude, though laudable and positive from some perspectives, limited the opportunities for stressing the discretionary nature of their tasks to applicants, particularly when cases were being dealt with under pressure of time.

To a certain extent, this factor and other, broader productive factors can be seen at play in Interview B54, with applicants from a two-person household. They became homeless after losing a privately rented flat, when the female became pregnant and the male had a knee operation which made him unable to work (as an estate agent). They had not made a homelessness application before, although they had talked to friends about what might happen if they did, and described themselves as being 'on a massive learning curve'. They felt that from the first step into the HPU they were treated like animals, and were treated without respect or dignity. Their description of the interview was revealing, partly because it picked up on some of the themes discussed above and partly because it reflected their views about the bureaucracy:

I mean it was until proven guilty, really. And we were bombarded with a mass of questions, which I felt very intimidating, because we weren't allowed to fill out the question form ourselves. It was done by word of mouth through the screen, to a

83 'People expressed their understanding of the role of textualization in offhand but revealing ways, often counterpoising the authority of that which is written against that which is merely spoken': above n 3, 100.

84 N. Rose and P. Miller, 'Political Power Beyond the State: Problematics of Government' (1992) 43 *British Journal of Sociology* 173, 185.

very unhappy employee, and . . . just a bombardment of questions, and we were, I was in quite a stressful state as it was. Couldn't hear properly through the screen, and then, you know, I mean it was just like a firing line . . . interrogation.

Apparently, the interviewer kept repeating to them that if they lied, they would be prosecuted. Indeed, the interviewer 'had various questions staged throughout . . . to see if they could catch you out'.

Shortly after this interview, the couple retained a lawyer. Again, their description of why they did so is revealing, because it demonstrates their piecing together of a process and labelling it 'legal':

Well we had a lawyer involved by now, which . . . simply because they kept harping on about the legal side of it and everything is so strict on the Government Act, 1996 or whatever it is, we decided we would just get a lawyer involved, which was the correct thing to do . . . I hadn't weighed the process and the forms we filled in, I just thought I know where this is going . . . these legal technicalities, and at the end of the day neither of us were in a mental state to want to deal with it. It's easier for someone with a clear head who knows exactly what's going on.

The sheer prevalence and presence of law, all around the process, felt by them was evident from their description of, and frustration in, the information available to them about the law:

F: I remember when I said 'Could I have a copy of your Housing Act, I want to read through it?' 'No, we don't have a copy'. I said 'Well, you know, I'll sit on the premises and read it'.

M: They kept quoting it to us, that's why. . .

F: We have a right to know. You know, I as a citizen have a right to know what my rights are. You know, and I have the brain enough to work them out on my own.

Thus, they saw law because law was all around, blocking their path but yet effectively out of their grasp. Its power was emphasised to them through their interactions, particularly in the interview. They sought to nullify its effects by involving a lawyer in their application (before any decision had taken place).

### **Deflection of conflict**

We observed the formally rational image of law being used to deflect conflict in interview situations. In both fieldwork sites, it was common practice to communicate at least some detail of the decision before the actual decision-letter (see below). Framing prospective refusals in terms of legal rules and their rational application masked the use of discretion and so depersonalised the decision. Such an image acted as a palliative to the angry applicant and managed conflict within the confined, closed space of the interview room.

It also could be used to convey an image of the decision which was not subsequently reflected in the text of the letter. Here, then, the text was effectively bypassed in favour of a more open-texture - the decision letter becomes one event,

and not necessarily the most significant in conveying the actual decision. Such a practice was particularly used in parts of the Southfield HPU to make clear to an applicant that the *true* reason for the decision lay in their individual culpability. Personal culpability and tenantability (that is, the characteristics of a 'good' tenant) were dominant discourses within Southfield's decision-making practices, embedded within their mundane pre-interview checks of various databases of housing 'offences'.<sup>85</sup> And this message was accepted from the face-to-face interactions by applicants with bureaucrats. We have already seen how Interviewee S12 described his five minute interview as, essentially, concerning his past convictions and ignoring his actual, felt housing need.

Perhaps a more vivid example of this was Interviewee S2. He had a string of convictions for burglary and assault, including the use of firearms, which were partly the result of his involvement with drugs (which he was in the process of quitting). The oral information given to him during the interview (as opposed to the letter) was a key producer of his understandings:

I didn't, I didn't, I don't think, I don't know if I received [the decision-letter] but she just told me that over the interview. She said 'Right, you've got violence in your record and we can't, can't house you.' And I just thought, well, that's wrong . . . I just felt I was just being discriminated against because I'd not done nothing, I'd not committed no crime since I'd been out. I'd tried me best and . . . I've been out of prison for nineteen months now, which is the longest I've ever been out of prison all me life, so . . . all I was running up against was . . . policies of like ignorance . . .

He recognised that his lack of success in his homelessness application was nothing to do with 'priority need' and everything to do with his past criminal record. As he put it, 'it's just too confusing, the law turns round in the court and says "Your sentence is spent." And then when you get out they say no, but, this is a different society altogether . . . This is the world, they can't turn round and say "That's a different society."'

### Controlling the form

The purpose of the interview was to construct enough information to complete an application form. These forms contained personal information about the applicant and, in Southfield, a space for their story to be put in words. These forms contained the standard declaration that what was written was true and that the applicant appreciated that they were committing a criminal offence if they lied. They were generally signed at the beginning of the interview so that a warning could be transmitted at that stage. In both research sites, however, applicants did not complete the form; the interviewer had control over the form and the substance.

For Interviewee B40, the whole experience of a homelessness application had been a marginalising and undignifying one. She was 60 years old, in receipt of a pension, having recently retired from being a resident housekeeper. She was suf-

85 There is, as Rose and Miller have put it (*ibid*, 185), 'an accumulation of inscriptions' which produces power in the hands of the welfare bureaucracy; as the applicants rarely know about their records, and the interviewer rarely explains, the power is firmly against them.

fering from tinnitus and Raynard's Disease. Their (that is, her and her son's) interview seemed to progress satisfactorily but, ultimately, was problematic. The application form had been completed by the interviewer, including the statement about her housing history and reasons for applying, and he did not let them read it (as indeed was the case across both research sites): 'he did say he's only writing down what we said but then again he didn't because he didn't write down enough points of what we said to him'. As she subsequently said, 'I don't think I've ever signed anything I haven't read. I didn't like it.' But this was the cause of all their later problems as they saw it:

He hasn't listened properly to what we were saying and he hasn't put it down in black and white. So when we got the letter and we read it and we thought about what actually happened we thought but we said this and we said that, but as we didn't read the form we don't know what was on the form when it was assessed. So although he was a very nice chap and very friendly he didn't do his job properly.

What made this particularly clear to them, and linked all parts of the process, was a misspelling in the decision-letter of 'tinnitus'.

#### *Decision-letters*

Decision-letters were important, either because legal advice could not be accessed without one, or simply as proof of the treatment meted out by the bureaucracy. Receipt of a decision-letter created its own reality: 'it's different when you get something in writing. You got proof, you know?' (Interviewee B13). Yet, it was also something to be resisted in perhaps a simple, mundane way. When interviewees were asked during the interview whether they had received the decision letter, some said that they had, but had thrown it in the bin. Such an act was often a sign in itself of resistance to the text of the letter (and, without it, the interviewee would not know how to challenge the decision). And such an act might also emphasise our interviewees' assertion of their own resources over the text.

### **Legalism**

Misreadings of decision-letters were common amongst our interviewees, partly because of the way in which they were written. There was also a qualitative difference between the Southfield and Brisford decision-letters. The former tended to be short and standardised – for example, telling the applicant that they were not in priority need because they were not less able to fend for themselves than a homeless person; or briefly explaining why they were intentionally homeless in a few lines. These tended to evoke strong reactions, and created some confusion for our interviewees.

On the other hand, Brisford decision-letters were lengthy, usually around two pages, complete with case law references and attention to the detail of the applicant's case. Ultimately, the audience for the letter was not the applicant themselves but their legal advisor. However, some interviewees pondered on the meanings. Although Brisford's motives were to provide as full a decision as possible to explain their thought process, and for the purposes of transparency (both

highly-praised values in the literature on decision-making), the decision-letters were productive of a rather different consciousness. For example, Interviewee B4 viewed it as ‘bullshit’. It was an attempt to blind her with science in order to deny her claim because she was unable to express herself in the language of the bureaucracy:

I think they know when you're not clued up about what's going on and, you know, what the housing are capable of and stuff like that and they know the people that, you know, they can talk to in a certain way and whatever and, you know, use jargon with and if they've spoken to you and feel that maybe you're that, you know, you're not very clued up about the system they'll just give you the bullshit basically. Yeah, I just felt like, because I couldn't explain myself properly and I couldn't really make myself understood that they were just gonna like, you know.

Interviewee B50, on the other hand, was a recent Turkish immigrant whose English was limited. His English friend, who sat in on our interview, described her reading of the language of that part of the letter which related to the internal review:

It doesn't really give itself, what you call it, the Housing Act 1996 Part V one one, Section 202. What, what is that? I wouldn't understand that, all I know it's the Housing Act meaning they must at the time 1996, that's when the action come out or something, that's what I would understand that.

Subsequently, she argued that the letter was the most significant outward manifestation of the decision, but it was obscured by this excessive legalism which was simply incomprehensible to the ordinary layperson.

If the decision-letter provided the space in which the decision was communicated and explained, the fact that English was the only language used was clearly problematic. Non-English speakers, or those for whom English was a second language, found themselves effectively doubly disadvantaged – not only did they not understand the law, but also they could not understand the vessel in which it was carried. Interviewee B45, for example, had her letter translated by a Somali friend, but that friend translated only part of it for her and, only when it was too late did she understand its full import. For Interviewee B36, a family of Somalian asylum-seekers, the interpreter explained that ‘the system was complicated for them . . . So I understand that they don't understand that much’; and they certainly did not understand their decision-letter (a local connection referral to a neighbouring council).

## Coercion

Nevertheless, there were some areas where decision-letters were totally clear and had quite an impact on our interviewees. Chief amongst these was the dissemination of the ‘one offer’ policy operated in both study areas. These policies offer successful homeless applicants one offer of ‘suitable’ accommodation only. If the applicant rejects the offer, but the authority regards it as suitable, the authority will terminate its obligations to the applicant.

Interviewee S21 recognised that this was a further part of the bureaucratic process from which they were excluded. The decision about suitability was made by

the local authority on its terms. For this reason, challenging the offer would be unlikely to succeed.

They said if you don't take your offer you have to move out of here and you're not classed as homeless no more, because you've been offered a suitable property and you've not took it. But at the end of the day it's only suitable in their eyes, not in your eyes, do you know what I mean? Suitable for them in the way they see it but not suitable for you.

The process of offering accommodation was experienced as one in which the power of choice was wrested away from the applicant.

Information about the one-offer policy was not only contained in the decision-letter but was also consistently reinforced throughout the application process. And our interviewees felt the existence and pressure of this local law – for successful applicants, it was this rule which was 'all over'. It meant that they were forced into accommodation they would not have chosen (and their descriptions of the appalling quality of their offer were usually pretty vivid). For many, this created a quandary – either accept poor quality accommodation, or take their chances. Interviewee S15, for example, recognised that the one-offer policy meant precisely that, and any appeal was likely to be unsuccessful. She had left a violent and abusive relationship and compared her offer to living in a violent relationship:

It mentioned [the one-offer policy] in the letter which said that basically I had to take the house in [area Y] and yes there was an appeal system but basically reading between the lines it said it was likely to fail and I would be thrown out of here, I would be evicted from here . . . and I have got a baby to think about. Its kind of like being pushed into a corner really but at the end of the day it is better than being, marginally better than being in a violent relationship.

## CONCLUSIONS

I have argued that understandings of legal consciousness may provide a fruitful avenue for UK socio-legal scholarship. I certainly would not suggest that it is the *only* or the *best* approach – just that such investigations may yield important insights. I have identified some of the main themes in debates around legal consciousness, as well as its critiques. Despite the methodological limitations of this study in this context, I have drawn on homelessness applicant interview data to illustrate the formation of legal consciousness in that discrete context. The data does not afford more than a tantalising glimpse of more general perceptions of law (whether of belief or cynicism).

This has enabled me at least to question the assertion that welfare applicants are knowledgeable agents. Although some interviewees constructed themselves as knowledgeable, for example through their own personal research, their knowledge was of a different character. The knowledge they possessed was constructed as truth, but drew upon a socially and politically constructed narrative which suggests that incoming migrants and single mothers are being prioritised in the welfare system ahead of, or instead of, their own claims. That knowledge was required to explain their lack of success in the process.

This account of the interviewees' legal consciousness has sought to progress beyond 'law-first' scholarship, as sites for its production and resistance were sought to be uncovered, and discussed the ways in which our interviewees tried to make sense of their decisions. It would be reasonable to suggest that, were the original study more focused on legal consciousness, then there would be plenty more to say on these issues. That I have been able to explore as much as I have done suggests, indeed, that understandings of legal consciousness could reveal a Pandora's box.

Unlike Davina Cooper's work, which has stressed the importance of UK specific factors to local authority actors' legal consciousness, the data presented here suggests that the US scholarship may be more transferable to welfare applicants. In particular, I have suggested that Kristin Bumiller's sensitive examination of the 'ethic of survival' is, at least, suggestive; and Austin Sarat's interviewees description of the space and power of law is also of value (subject to the corrective that our interviewees saw lawyers as independent of the welfare bureaucracy and, thus, a more powerful weapon in their armoury). The data also suggest the potential use of the schema/resource duality, particularly amongst a sample that feels, and is regarded as, marginal. Nevertheless, this article is only able to provide more clues about the transferability of the considerable, important US scholarship.

What I have been able to do in this article is point to how law is seen and produced by our interviewees in their interactions with the bureaucracy. It lies, for example, in the bureaucracy's dehumanising processes and practices, sorting out what is valid and what is not. Clearly what is not valid is often what is important to the applicant – their emotions. Although I have sought to demonstrate how law is also unseen, this area remains a comparatively underdeveloped part of the legal consciousness scholarship as well as in this article, partly because of methodological limitations. One reason for that may lie in my willingness to expand the terrain of 'law' – indeed, for researchers to see law 'all over' – as the critics of the legal consciousness literature suggest. One group of people where these silences of law might be tested, however, is amongst recently arrived non-English-speaking households, where that inability to speak English might lead to a failure to see law operating.

From an admittedly limited base, I have demonstrated the potential 'Heineken effect' for socio-legal studies of legal consciousness. It offers the possibility of reaching parts traditional socio-legal methodologies have not yet reached. I offer four further ways in which socio-legal studies may benefit. First, specifically, studies of legal culture will undoubtedly be strengthened by a rigorous attention to pluralistic conceptions of law in society. Second, there is plenty of work which demonstrates that people's use of their strict legal rights is varied<sup>86</sup> – this not only accounts for welfare claimants, but most of society more generally – and studies of legal consciousness could, at least, supplement those studies. Throughout, I have tried to be careful not to overreach the claims which could be made from the data. In seeking to synthesise and thematise the data, I have also simplified it. Rights consciousness is clearly much more complex than has hitherto appeared in

86 See, for example, Genn, above n 42; L. Bridges, G. Meszaros and M. Sunkin, *Judicial Review in Perspective* (London: Cavendish, 1995).

socio-legal work. As Engel and Munger demonstrate, and I have sought to show, rights offer clues as to the complexity of the self even if they are rarely formally mobilised. Top down concerns about the lack of use of rights need to be mediated against the broader ways in which rights are used, explicitly or implicitly, in shaping individual tactics and strategies. Third, this study was not able to trace the development of our interviewees' legal consciousness over time. Ewick and Silbey offer the analogy of whale song to describe the development over time,<sup>87</sup> and Engel and Munger have demonstrated how the interplay between rights and identity shifts over time. It is suggested that time offers perhaps the most pertinent way of demonstrating the mutually constituting nature of law-society. Fourth, the data spoke to a broader version of law – official, local, and self-identity – than is often used in legal consciousness (and other socio-legal) studies. It also looked for sites of resistance, a key 'Heineken effect' of legal consciousness research. Allowing law to emerge in these ways from the interview texts offers an alternative to the more traditional 'law-first' or 'gap' studies. It is potentially valuable in mediating between law in the books and law in action.

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<sup>87</sup> Above n 3, 44.