Introduction

Situating the Meanings of Marriage

In a small, little-known museum amid the store fronts on a side street of one of the United States’ most famous “gay-borhoods,” stands an odd display: among the political signs, photos, handbills, and other historical paraphernalia are two women’s pantsuits, one a vibrant turquoise blue and the other a deep shade of lilac. The outfits are unremarkable in most ways and would be equally at home in the aisles of JC Penney. But here in the Castro district of San Francisco, in the GLBT (Gay, Lesbian, Bisexual, and Transgender) History Museum, these pantsuits are instantly recognizable: they are relics of history, having been donned by two octogenarians and captured in photographs instantly beamed around the world. These pantsuits are the wedding attire of Phyllis Lyon and Del Martin, founders of the lesbian rights movement and, later, emblems of marriage equality in the United States, as the first same-sex couple to be married in San Francisco City Hall in February 2004, and again in June 2008. Although their 2004 marriage, performed at the invitation of then-mayor Gavin Newsom and under the watchful
eye of a close coterie of City Hall officials and lesbian, gay, bisexual, and transgender (hereafter, LGBT) rights figures, would eventually be annulled along with the other 4,036 licenses obtained that winter, the image of their first putative moment as spouses—heads leaned together and a knowing, contented gaze into each other’s eyes—became synonymous with the movement that it helped to propel. It is no accident that when they did become legal spouses in 2008—after more than a half-century together and a successful litigation process—they did so in the very same building, wearing the very same pantsuits, by now having cemented their place in history.

That the image of marriage equality embedded in many people’s minds would be a couple who did quite well as life partners before marriage came along—in part because of their own and others’ activism on behalf of LGBT individuals everywhere—is striking in a few ways. Phyllis Lyon and the late Del Martin, by this point in their lives—having survived decades of societal ignorance and anti-gay bias, and inspiring countless others to activism—lived comfortably in San Francisco’s idyllic Noe Valley neighborhood. They were long since established as a couple to those who knew them, and they had never sought to be married. Their only child, Del’s daughter from a prior marriage, was a grown woman with children of her own. As Lyon commented at the time, “We were happy to be able to do it, to show that it was do-able. But it’s not going to make a lot of difference in our lifetime.”

This couple differed in many ways from the namesakes of the Massachusetts case legalizing same-sex marriage just months before in November 2003, Hilary and Julie Goodridge. They had a young child together and had no other secure and comprehensive way to legally bind themselves to one another under state law. All four women no doubt benefitted in very real, tangible ways when they were finally recognized as legal spouses. But none took the plunge—a far steeper and more closely scrutinized one than the average couple getting married—for only that reason.

In this book I examine the significance of legal same-sex marriage for those couples seeking it in Massachusetts and San Francisco—the first two jurisdictions to offer it. The two settings, though alike
demographically in some ways as coastal, historically Roman Catholic, and traditionally liberal enclaves, provide an important set of contrasts for the study of same-sex marriage and the impact of new rights on historically marginalized citizens. Most obvious of these was the process to obtain these rights and their legal longevity. While the 2004 San Francisco marriages were the result of an act of defiance on the part of a local government and its officials, never gained the authorization of the state, and were ultimately successfully challenged in court, the Massachusetts marriages were solidly legal from the start—having been authorized by the highest law of the land in that state, the Massachusetts Supreme Judicial Court. Although attempts were made subsequently to ban same-sex marriage by constitutional amendment, this effort never gained enough traction to change the legal landscape in Massachusetts. The couples in San Francisco, having been through the roller coaster of receiving marriage licenses from their county only to have them annulled six months later, were again given the opportunity to marry—this time fully legally—in 2008. And again, six months later, they watched as the voters banned any future same-sex marriages in their home state. This time, at least, after additional litigation, couples were allowed to keep their marriage licenses. So tortuous was the path that a major California newspaper ran an ad, featuring a set of male newlyweds, with the caption: “Married. Unmarried. Married. Everything Changes, Every Day.” An additional aspect of the legal landscape, which bears repeating here, is the existence of a statewide Domestic Partnership law in California. This law carried many of the state-level rights of marriage in 2004 during the initial weddings, and nearly all of those rights by 2005 when the couples were interviewed. No such law existed in Massachusetts. This distinction in legal status between the two populations—not to mention the experience the San Francisco couples had of being given a right only to have it rescinded—are important points of contrast that help to broaden the scope of inquiry and illustrate the multifaceted significance and impact of legal rights, and their absence, on these citizens.

What is it about same-sex marriage that proves so compelling that partisans on either side are willing to stake millions of dollars on
advancing their positions on it? Why are couples who have no particular desire or need for the protections it offers—an incomplete set of protections since they were not recognized at the federal level—willing to go to great time investment, legal, and even geographical lengths to pursue it? And what is it about same-sex marriage that its approximation in both ritual form (through commitment ceremonies) and legal form (through civil unions) is for many couples somehow not the same? These questions strike at the heart of one of the most enduring themes of law and society scholarship—the relationship between legal institutions and social relations as well as personal consciousness—in the context of what is perhaps the most hotly contested social and political issue of the early twenty-first century.

I wrote this book during a particularly eventful period in the evolution of legal same-sex marriage in the United States. Only weeks before its completion, President Barack Obama, after three years of avoidance, became the first sitting president to publicly state his support for the right to same-sex marriage. The reasons he cited for his shift, mainly conversations with his family and interaction with his daughters’ friends’ same-sex parents, were notably personal rather than exclusively legal or political. At the same time, it was a decidedly political move in its way and had the potential to indirectly shift the legal landscape—and indeed, the landscape did shift dramatically just over a year later, when the U.S. Supreme Court invalidated both Prop 8 and the Defense of Marriage Act. The multiple dimensions of these events foreshadowed an important element of the focus of this book. *License to Wed* is not the first to document the legal consequences of same-sex marriage (or its denial), the politics of the debate, nor the social or emotional dimensions of such a ritual of commitment for same-sex couples. By examining both the motivations and the reactions of couples who married in two distinct locales in the early years of legal same-sex marriage in the United States, however, it takes as its subject the intersection of these various elements: the legal, the social, the political, and the personal. In analyzing same-sex couples’ reasons for seeking legal marriage (as opposed to another form of legal relationship recognition, such as
domestic partnership, or a non-legal wedding ritual, such as a commitment ceremony), we gain a window onto the couples’ legal consciousness—in other words, how they orient to, understand, and use the law. Combining these narratives of motive and orientations to law with a look at the perceived changes couples and individuals report as a result of legal marriage tells a compelling story about the effects of inclusion in—and exclusion from—the institution of marriage. Taken together, these insights offer a unique perspective on both the newest twist to an old institution, and the social significance of legality and rights more broadly.

Description of the Study

Rather than relying on secondhand accounts or briefs filed by legal advocacy organizations on either side of the debate, the explicit aim is to engage the words of the couples themselves in discovering and clarifying the personal, symbolic, material, and legal relevance of marriage for them, the meanings it evokes for them, and its effects on their lives. With that in mind, the analysis here is based on two forms of original data: (1) a database of 1,467 surveys (including both quantitative and open-ended qualitative questions) of same-sex couples married at San Francisco City Hall during the Winter of Love in February and March 2004; and (2) one hundred semistructured, in-depth interviews with same-sex couples married in San Francisco and Massachusetts (fifty in each locale) between 2004 and 2007. The surveys were mailed in early 2005 to every same-sex couple who registered a marriage license at San Francisco City Hall from February 12 to March 11, 2004, based on a list of public marriage licenses available through the San Francisco assessor-recorder’s office, obtained via the advocacy group Marriage Equality California. Approximately 40 percent of the more than four thousand surveys were returned at least partially completed, although some of these were excluded due to excessive missing data. These anonymous surveys included demographic data (such as gender, age, race, religion, residency, profession, income, and family size) as well as attitudinal data
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(such as the couples’ political orientations, reasons for wanting to get married, and reactions to the annulment of their licenses). The raw data from the survey were coded and entered both in qualitative and quantitative form in a comprehensive database, with particular attention paid to include verbatim any comment or qualification a participant might have added to his or her answers. Although the unit of analysis was the couple, space was provided on each survey for both members to include their own demographic information and feedback. Therefore, in the relatively rare cases that couples had vastly differing motivations for marrying, they were able to indicate this in their comments on the survey, which were in turn recorded in the database. Those questions I deemed the most analytically important, such as couples’ motivations for marrying, were asked in multiple ways—both as closed-ended Likert-type ratings on a one-to-five scale, and in open-ended qualitative questions—in order to triangulate the results and increase reliability. Once all of the information was gathered, entered, and coded, the survey data were analyzed statistically, primarily descriptively but also in some cases with simple correlational tests.

A brief descriptive snapshot of the surveyed couples, based on this data, reveals a population that was not dissimilar demographically from what we know about the overall population of those who married in San Francisco in 2004—and along several dimensions, with what we know about the overall same-sex married population in California. These demographics depict a stable, professional, older set of people, largely female, with long-standing relationships. Of the more than 2,900 respondents included in the 1,467 surveys returned, ages ranged from twenty to eighty-two, with the average age being forty-four. This is significantly older than the average age of heterosexual couples at the time of marriage (twenty-seven for women, twenty-nine for men). Couples had been together anywhere from three months to forty-seven years (with an average of eleven years)—much longer than the average heterosexual couple before they marry (for obvious reasons, due to their previous lack of access to the institution). Household income ranged from $10,000 per year to $1.8 million per year, with an average
combined income of $140,000 per year. Forty percent of these couples were male, 59.5 percent were female, and 0.5 percent identified as “other” or transgender. Thirty-six percent of the couples had children (anywhere from one to eleven per family).

These marriages were largely a Caucasian phenomenon, with 88 percent of respondents identifying as such (the second largest racial identification was Latin@ or Chican@ at 4 percent, followed by mixed race, at 3.5 percent). The range of their educational attainment was from eighth grade to postgraduate and higher (e.g., a PhD and JD or other advanced degree), with an average educational attainment of seventeen years of schooling—equivalent to a four-year bachelor’s degree. Although the majority of married people lived in northern California (nearly 73 percent), couples also came from twenty-seven states as well as one foreign country (Nicaragua), mainly from urban areas. Perhaps predictably, a little under half (43 percent) identified as agnostic or atheist, while the largest single religious affiliation was Christianity or Unitarian at 22 percent (this included all Protestant denominations and such gay-inclusive churches as the Metropolitan Community Church (“MCC”), as well as Unitarian/Universalists). Significantly, 70 percent were already registered domestic partners either in the state of California or their home state, and 55 percent had already had (non-legal) wedding or commitment ceremonies on their own. This meant that most of the couples seeking legal marriage already had access to the rights associated with marriage (at least at the state level), and many had already experienced the ceremonial aspect of marriage.

For the second phase of the research, interviewees were recruited in a number of ways. In San Francisco, they were primarily recruited via the survey; in an optional last page of the otherwise anonymous survey, they were given the opportunity to fill in their name and contact information for consent to be contacted for an interview. A few remaining couples in San Francisco or in the Bay Area were recruited via word of mouth. In Massachusetts, interviewees were initially recruited through advertisements in a major LGBT newspaper in Massachusetts as well as through references from San Francisco couples. Subsequent couples
were recruited by a combination of snowball sampling and mailings, with the assistance of one of the major same-sex marriage advocacy organizations in the state as well as some of the county clerks in heavily LGBT areas of Massachusetts. The demographic characteristics of the interviewees were slightly more evenly distributed than in the survey but were still skewed toward a largely middle-class female, Caucasian population: 55 percent were female, 75 percent were white, 23 percent were interracial, one couple Latina and one Asian American.

The one hundred interviews occurred after the original 2004 San Francisco marriages were invalidated by the California Supreme Court and before the same court's later decision to legalize same-sex marriage in 2008. This allowed the respondents from San Francisco to reflect on not only the experience of having received a marriage license but also having had it rescinded. Admittedly, it may have also led them to color their reflections on their initial marriage in light of subsequent events. However, most couples, when pressed in the interview, were able to parse out what had been their thoughts and motivations at the time and how their thoughts had evolved in the time since. The elapsed time also had the benefit of ensuring that these couples—interviewed in the comfort of their own homes, away from television reporters—did not feel pressure from the advocacy community or anyone else to bias their responses in ways meant to benefit the cause or “greater good.” I also did brief follow-up interviews with those couples in the summer and fall of 2008 in order to find out whether they had subsequently gotten married once it was legalized, and whether their attitudes had changed in the intervening time. The initial interviews ranged in length from thirty minutes to two hours and fifty-three minutes, with an average of just under one-and-a-half hours. Whenever possible, the interviews were done in person, with both spouses present. All but twenty-seven of the one hundred interviews were conducted in person (with equal numbers from each state occurring in person versus over the phone), and all but nineteen were interviewed as a couple.

In an effort to make the Massachusetts interviews as comparable as possible to those in California, I asked the interviewees there for the
same demographic and attitudinal information that had been included in the surveys of San Francisco couples, including Likert ratings on a scale of one to five for the various motivations for marrying about which I questioned both sets of couples. In addition, I asked all of the couples about their respective coming-out experiences and about their history as a couple, including how they met, when they moved in together, whether they had ever had a marriage-like ritual of any sort (or even exchanged rings), and about their family configurations. These interviews were then transcribed and searched systematically for analytical themes, especially those relating to the couples’ reasons for getting married, the types of legal consciousness they suggested, and the perceived changes in their relationship—or any other changes—as a result of marriage. Some interviewees also provided me with additional materials, including wedding photos, newspaper and magazine articles, their own reflections written at the time of the wedding, and vows, readings, or other portions from their ceremony.

Taken together, these multiple sources of data provide us with a compelling portrait of those same-sex couples seeking marriage—whatever their reason—in the earliest years of its legal existence in the United States. Admittedly, it does not tell us much about the many same-sex couples who choose not to seek marriage, except to the extent that some of the individuals surveyed and interviewed for this study had never expressed a desire to marry before presented with the opportunity and, in fact, had been somewhat hostile to the notion of marriage. Nonetheless, the task of this book is to examine the myriad ways and reasons those who do seek marriage conceive of it, why they choose to pursue it, what it means to them and in their lives, and how varying conceptions of legality are reflected (or not reflected) therein.

Legal Consciousness and the Constitutive Perspective

This book is theoretically grounded in the sociolegal concept of legal consciousness and constitutive studies of the meaning and role of law in social life. Legal consciousness has many definitions, but here
it is defined as the way that people understand, experience, engage, use, avoid, or resist law and its manifestations, whether in particular moments or on a regular basis in their everyday lives. This tradition of sociolegal scholarship builds on the foundations of both empirical studies of the legal needs of the poor in the 1960s and 1970s, and the school of Critical Legal Studies, which in the 1970s and 1980s sought to expose and explore the oft-present gap between the “law in the books” and the “law in action.” These “gap studies” revealed that the workings of “law on the ground”—that is, in day-to-day settings, in courtrooms, in workplaces, and in local disputes—were much different in practice from the idealized image of law as it is written formally. Specifically, formal civil rights conferred by the U.S. Constitution, in legislation, or in case law did not necessarily translate into equality in the day-to-day lives of citizens. This led law and society researchers to question the doctrinal study of law and rights, and to instead focus on the would-be rights-bearers themselves, their experiences in the legal context, how they viewed the place of law in their lives, and how or when they tended to invoke it. In the words of one of its founders, Susan Silbey, the project of this generation of law and society scholarship was to show how the lived experiences of ordinary people produced simultaneously open yet stable systems of practice and signification; to demonstrate how the law remained rife with variation and possibility; and to explore how we the people might simultaneously be both authors and victims of our collectively constructed history.

This understanding of “law in action” or “law on the ground” served as the basis for a growing body of research in the field of law and society that advanced the view that legality—in particular, legality involving civil rights—is constructed in interaction between the social world and the legal world. This perspective has been named the “constitutive” perspective because it takes the theoretical position that law and society are mutually constituted in interaction, when citizens act on and react to law (whether expressly or subtly, knowingly or unknowingly),
and vice versa. Most studies adopting this framework have, true to their roots, aimed to draw attention to the social end of this equation—noting that the law “in the books” is not always the way law is lived or experienced socially in the everyday lives of citizens. Sociolegal scholar Michael McCann, for instance, shows how even when workers’ rights are not formally implemented in ways that better the lives of citizens, the value that people attach to rights in their day-to-day lives, thoughts, and conversations is significant in itself, helping to constitute those rights by imbuing them with symbolic currency.  

Subsequent sociolegal scholarship has shown that legal consciousness can be diverse, fluid, situation-specific, and even contradictory. That is, one may believe that the courts and legislatures are responsible for providing everyone with equal access to marriage but also simultaneously believe these institutions are not responsible for providing equal access to health care, for instance. Because “[l]egality is among the rules and interpretive frameworks ‘that operate to define and pattern social life,’” legal consciousness may even influence how people think of social institutions such as marriage—and vice versa—in their own lives, and how they conceive of social change. Furthermore, as McCann notes, legal consciousness is “necessarily heterogeneous in character”—since every actor brings a different social position, history, and set of beliefs and experiences, different people may come to experience and understand the law in a multitude of ways—or, as he puts it, “to speak law in multiple dialects.” Therefore, “[w]hile legal consciousness structures the efforts of citizens to make sense of social relations, it thus dictates no particular course of action.” The study of legal consciousness may help to understand not only support for but also resistance to changing concepts of marriage, or domestic relational rights in general, by both citizens and lawmakers. It may also help to understand why some people will choose to invoke their right to marriage (or other institutions), and others will not.

Rather than emphasizing the difference between “rights-giver” and “rights-bearer,” the constitutive perspective aims to disrupt this binary by conceiving of rights and legality as constructs that are given meaning
in the back-and-forth processes of enacting law and acting upon it (or resisting it). In this case, the act of marrying is one-half of the constitutive process that gives meaning to the state’s decision to extend—or revoke—marriage rights. This book takes as its primary focus people’s reasons for seeking legal marriage and what they hoped it would bring to them. These reasons help to elucidate LGBT citizens’ legal consciousness—as defined previously, how people understand or relate to law and legal constructs (or don’t)—and how they rationalize their actions vis-à-vis the law. Because the study of any type of rights or legal mobilization is incomplete without an understanding of why, how, and when people act on law or resist it, a focus on the legal consciousness of citizens is of central theoretical importance. Because such an understanding tells us how, when, and why marginalized groups will act on or use the legal rights available to them—or, conversely, react against or try to change those laws they view as unfair—it is of practical importance as well. As political scientist Kristin Bumiller notes in *The Civil Rights Society*, “rationalizations are important because people act on them.”

Thus, changes in legal consciousness based on particular experiences greatly impact citizens’ sense of civic inclusion, confidence, and their personal and social interactions.

This analysis of legal consciousness, as illustrated in the narratives of couples seeking the new right to marry, draws on the insights of Patricia Ewick and Susan Silbey, who, in their book *The Common Place of Law*, give a detailed account and analysis of the range of legal consciousness among regular citizens in their day-to-day lives. Based on their findings in a variety of settings, they offer a series of “stories” that form a template of types of orientations vis-à-vis the law: (1) *Before the law*—meaning that the citizen orients to the law as a subject would to a sovereign, detached from it but subservient to it; (2) *With the law*—meaning a citizen sees oneself as an active participant who can “play the game” of law, manipulating it to serve his/her instrumental needs; and (3) *Against the law*—where the citizen sees the law as an opposing force against which he or she engages in struggle and resistance or avoids altogether. Although my aim here is not to replicate their findings, this
set of schemas provided a useful framework for initially thinking about how the couples I spoke to orient to the law and its role in their lives. Indeed, I heard quite clearly voices of resistance, utilitarianism, and reverence, which allowed me to begin to sort and group couples’ reasons for seeking legal marriage according to the type of legal consciousness that their narratives seemed to demonstrate. Inevitably, there is some degree of difference in how these modes of legality were conceived and described, in part because the “troubles” that Ewick and Silbey asked their participants about were far more diffuse and process-based than the relatively life-changing and distinct experience of getting married—not only a process but a change in status. But significant parallels can be made regardless. In the context of same-sex marriage, very similar to a “before the law” orientation, one set of narratives implied a deference to the law and often a search for validation or legitimation (these might be called “symbolic” or “civic” reasons for seeking marriage). Another, closely paralleled with the “with the law” schema, evinced a hope to use the law to achieve certain practical or material ends, such as legal or financial rights and responsibilities (what might be called instrumental motivations). While an “against the law” orientation might more intuitively assume resisting legal marriage itself or otherwise eschewing it, in this case a third schema viewed the use of marriage as a protest, gay rights statement, or tapped into some other political or oppositional motivation.

After an initial piloting of the survey and through discussion with the couples to be interviewed, I found that some of the narratives voiced by the couples displayed none of these orientations. There was, in addition to these other voices and stories, an unmistakable voice of romance, which did not quite fit with the tripartite model of legality, but rather expressed motives that were seemingly external to the law and legality—they were neither strategic, nor reverent, nor resistant. They were instead aimed at purely emotional, personal, or romantic drives. While it is not surprising that marriage would be a mechanism for attaining these things, it is not entirely intuitive why legal marriage, even without ceremony, was a necessary component to satisfying these drives or
produce these benefits. This can only be understood by first taking seriously—as Silbey has urged—the hegemonic power of law, and the way that it infuses human relations, even in barely perceptible ways.

Although hugely influential, the tripartite model of legal consciousness offered by Ewick and Silbey—and applications of it since—have also been the subject of critique, even by the authors themselves. Some, such as the observation that the schemas were not distinct enough to separate into a tripartite model, were addressed by the authors themselves, who noted the importance of understanding these differing modes of legality as intertwined, and the legal actors who invoke them as polyvocal. Other critiques, that the three schemas they use are not universal but rather may vary in not only presence but intensity according to substantive domain and social positioning, have since been addressed by scholars in the next wave of legal consciousness scholarship. Multiple authors since have shown how legal consciousness varies—or does not vary—according to race, class, gender, occupation, political affiliation, and setting. The most devastating critique, however, was leveled by Susan Silbey herself, who in 2005 declared that legal consciousness, in more recent studies, had lost “the concept’s critical edge and theoretical utility.” She argued that this was due to differing definitions of legal consciousness, an overemphasis on individuals and particular groups rather than the broader cultural production of legality and resistance, and a tendency of studies to be “empiricist to a fault”—missing the forest for the trees. The result was a loss of focus on law’s sustained power and hegemony, whose explanation were ostensibly the goal of the conceptual turn to begin with.

In response to this sweeping critique, sociologist Kathleen Hull offered a path for resuscitating the field of legal consciousness and pointed specifically to studies of legal consciousness among the lesbian, gay, bisexual, and transgender population to demonstrate how this might be accomplished. Using a sort of meta-analysis of the small field of empirical studies of LGBT individuals’ sociolegal subjectivities employing the concept of legal consciousness, she demonstrated how the paradigm still retains utility in examining the experience of
marginalization in this population and potentially in others. Responding to Silbey’s call for greater attention to institutional factors and political environments, for example, Hull points to a convergence in her previous work and my own on same-sex marriage and marriage rituals, which suggest that changes in the political context (for example the considerable shift in the legal landscape that occurred between Hull’s pre-Goodridge study and this book) significantly affect same-sex couples’ experiences, goals, and visions of legality. She also notes the importance of continuing to look at gender and sexual minorities who, despite variation within the LGBT population and across states, “continue to experience significant differential treatment in the law on the books, for example by lacking access to legal partnership recognition.” This is a noteworthy departure from the foundational “gap” studies, which ostensibly took as their subject instances of formal equality on the books but continued marginalization in practice. Finally, continued interrogation of Ewick and Silbey’s tripartite model of types of legal consciousness, particularly as it relates to ways to achieve a more nuanced understanding of resistance and how it is variably enacted, may help us to understand how ideas and experiences of legality vary not only between but within marginalized social groups, and how this model may be inhibiting further theoretical advances in legal consciousness—as both Silbey and Hull suggest may be the case. The chapters herein do not follow in strict linear fashion the before/with/against the law schemas, even if they are loosely informed by this model; they also demonstrate quite explicitly the degree to which different orientations to law overlap and intersect, both among same-sex couples and within them.

A Look at Things to Come

In the chapters that follow, I begin by legally and historically situating the unique contexts in which the couples whose stories are told in this book found themselves in the position to get married, starting in 2004. Chapter 2 relates, in brief, the history of the LGBT rights movement's
quest for marriage equality—the social and cultural forces, as well as legal developments, which led to the emphasis on marriage as a goal and eventually its reality in the United States. By tracing legal and political developments over the length of this movement and particularly since the 1990s, this chapter explains the confusing patchwork of laws governing same-sex partnerships across the fifty states as well as the convoluted path that led to them. This includes a description of the different sorts of legal partnership statuses that exist—including marriage—and how they differ from one another. The chapter then parses out the significant elements of the debate—the arguments for and against same-sex marriage both from a legal perspective and a social perspective, summarizing and evaluating the growing body of doctrinal and social scientific evidence.

The next four chapters are devoted to the voices of the same-sex couples who were among the first to marry in the United States. This includes couples married in San Francisco in the ill-fated City Hall ceremonies of 2004, many of whom thought they had been legally married and who oriented to them as such, only to later have their licenses invalidated. Chapters 3 through 6 represent the analytical heart of the book and are arranged thematically according to the various orientations to law, or schemas of legal consciousness. Chapter 3 examines narratives of utility—perhaps the most basic and intuitive of reasons to seek a set of legal rights. In fact, one need only be without the rights attendant to marriage to appreciate how fundamental and all-encompassing they are. However, marriage is very rarely conceived of as solely a locus of material rights and responsibilities. As important as access to these rights is for those lacking them, particularly in the family context, the data here suggest that the concerns raised by the inability to link legally to one’s partner are often inextricably entwined with broader ideological or deeply personal concerns that may begin with these rights, but extend far beyond them. In this sense, although a strategic or utilitarian orientation to law certainly exists among the tropes of legal consciousness found here, it is rarely unattached or unaffected by other modes of consciousness.
Chapter 4 takes up a set of motivations that is far less intuitive as a reason to marry: the desire to make a political statement, to commit civil disobedience, or to advance lesbian and gay rights. Particularly for those not party to or present at the time of the 2004 marriages at San Francisco City Hall, marriage as protest seems very nearly like a contradiction in terms. In fact, there was a distinct, if not necessarily ubiquitous, thread of political narrative woven through not only the experience of many of those married in San Francisco, but also (perhaps unexpectedly) in Massachusetts during the first year or two of same-sex marriage there as well. This strain of oppositional legal consciousness—a less expected mode of resistance than most acts of “protest” or even avoidance—took many forms but rarely stood alone. Rather, the data in this chapter reveal an evolution of sorts at work, whereby a resistant or political orientation to marriage is sometimes intersected or supplanted by significantly more reverent modes of legal consciousness that are often quite unexpected, even by the couples themselves.

The shifts in consciousness noted in chapters 3 and 4 are explained significantly in the two chapters that follow them, examining the law as a source of validation and of emotion. Chapter 5 explores perhaps one of the most well-studied functions of law and foci of studies of legal consciousness: the power of legitimation. From early studies of dispute resolution and “naming, blaming, and claiming” to later work on workplace rights, civil rights violations, and street harassment, the vision of law as a source of validation is one that looms large, particularly when examining the claims of marginalized actors. The evidence in this chapter suggests, true to both this extant literature and among some of the key judicial decisions supporting same-sex marriage, that indeed, marriage—or at least the ability to marry—acts as a proxy for full citizenship, and certainly to those excluded from it, a harbinger of broader acceptance. As the narratives in chapter 5 indicate, even when this acceptance is not the primary motivator of a couple to marry (though it often was), the symbolic currency of legal marriage sends powerful ripples through their thoughts and experiences in its wake and, as in San Francisco, in its disruption.
Chapter 6 concludes where the story of modern marriage begins: love. At one time a heretical position to take in legal studies, the schema of emotion is one that is at once expected and surprising in a study of newly gained legal rights such as this. On the one hand, marriage—whether same-sex or heterosexual—might be one of the few areas of law that is actually predicated on an assumption of love and emotion. Consider, after all, the consequences that might result in immigration law if a cross-national couple admitted marrying for practical purposes rather than love. On the other hand, it is not entirely intuitive why the legal, rather than ritual or religious, elements of a wedding would be necessary to achieve the emotional ends sought by those who marry. As might be predicted by the study of law as a conduit or cultivator of emotion, the newly emerging right of marriage for same-sex couples is one that is not confined to the instrumental, political, or even symbolic realm. Here again, the data show us that the personal or affective impact of law is often unsought or unexpected, but nevertheless profoundly felt.

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Taken together, these chapters present an eclectic, diverse, and perhaps seemingly contradictory set of answers to the question “Why do traditionally excluded people seek legal marriage?” Read separately (and to foreshadow a bit), they seem to suggest that the dramatic legal and financial consequences of not being able to marry are an obvious and driving force; or that gay and lesbian couples at San Francisco or Cambridge City Hall were well aware, conscious political actors fighting for gay rights; or that couples were driven by the desire for validation and, of course, by their love for one another—the ultimate trump card. All of these things are true, to greater or lesser degrees, in ways that are often more contingent than consistent or independent. In the chapters that follow there are stories of strategy, of political action, of validation, and of romance. These stories are not mutually exclusive. Often they are contained within the same series of events, lead to one another or
are even coexistent in the very same moment. Just how they interweave with one another, with some becoming more dominant while others recede into the background, is at the heart of this book. But to understand how marriage—and legality—have become so many things to so many people, we must first take a look at the long, convoluted road to legal same-sex marriage in the United States, and the bevy of legal, political, and social issues it has raised and continues to raise.