

TYPE
OR PRINT
IN
PERMANENT
BLACK OR
BLUE-BLACK INK

CERTIFICATE OF LIVE BIRTH

CHILD

2. CHILD'S NAME: FIRST 3. MIDDLE 4. LAST

8. TIME OF BIRTH 9. THIS BIRTH (*Single, Twin,*

11. CITY, TOWN, OR LOCATION OF BIRTH

Legalizing LGBT Families

HOW THE LAW SHAPES PARENTHOOD

AMANDA K. BAUMLE & D'LANE R. COMPTON

PARENT A

15. PARENT'S NAME FIRST 16. MIDDLE

19. DATE OF BIRTH (*Mo., Day, Year*) 20. STATE OF BIRTH (*If not U.S.A., Name Country*)

23. CITY, TOWN OR LOCATION

25. PARENT'S MAILING ADDRESS-IF SAME AS ABOVE, ENTER ZIP CODE

PARENT B

27. PARENT'S NAME FIRST 28. MIDDLE

32a. INFORMANT'S NAME (*Type or Print*)

Legalizing LGBT Families

How the Law Shapes Parenthood

Amanda K. Baumle and D'Lane R. Compton



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Introduction

Our child was very aware that we were not married, that we were not allowed to get married. When she was really little, like kindergarten, . . . Bush was president. She would say, “Okay, pretend George Bush is dead,” and she would . . . have us exchange these plastic rings and she would say, “Now you’re married. You can keep your kids forever.” So for children I think, especially for . . . older adopted children who understand that the state can help form or destroy families, I just think that children like her really understand that it does matter what the state says about your family.

—Sandra

Given that the law typically coincides with social norms, conflict is rarely felt between formal law and one’s familial desires. Tension between the law and one’s family life seems to be particularly absent when it comes to issues surrounding family formation and having children, which are often viewed as private matters that are external to legality. It is when we find ourselves in conflict with the normative structure, however, that the coercive nature of the system is powerfully felt (Rousseau [1762] 1997). We rarely recognize the importance of the law for our family life *unless* we cannot have a child biologically, *unless* we are unable to get married, *unless* we want access to resources, *unless* we break up and cannot agree on custody issues, *unless* we cannot share our wealth with those with whom we identify as family, *unless* something undermines our desires and, in turn, renders the law salient.

Lesbian, gay, bisexual, and transgender (LGBT) individuals encounter conflicts with the normative sociolegal structure more frequently, which has the potential to make the law more tangibly felt within family decisions. For Sandra, quoted at the beginning of this chapter, legal same-sex marriage did not affect whether or how she became a parent.

Nor did it provide her any additional rights over her child, given that she lived in a state in which she had a registered domestic partnership that she understood to confer the same rights as legal marriage. However, the law and marriage became very significant for this woman, her child, and her family. It was evident, even to her child in kindergarten, that the state and those who govern us can “help form or destroy” families. To this child, as with many adults and much of society, legal marriage represents legitimation and permanence. Marriage means a “real” family. In this respect, the law becomes significant beyond actual rights, as well as on a symbolic, social, and emotional level. It can be understood as having the power to create or transform relationships, as well as to bestow benefits and obligations.

The effect of the law on the family might be felt even more for LGBT parents without access to rights, particularly when they live in a place that does not recognize them as legal parents. As relayed by one of our participants, Sarah, the absence of formal legal rights is powerfully felt when a relationship dissolves:

[My partner] completely walked away. And, there was nothing that I could do. I had no child support, nothing. . . . But at this point I think it's—not that it's a stupid decision, but it's a very risky decision for two women to have a child in a state that doesn't protect you. It's very risky, from my experience. You know, today's relationships. . . . You fall in love and you want them to work out, but a lot of relationships today don't work out and then you have these children that are in limbo and it all depends on how compliant the ex-partners are. It's scary.

In Sarah's state, there are few legal protections for same-sex couples. The state has no legal marriage, civil union, or state-level domestic partnership. Nor does the state provide access to second-parent adoption for a nonadoptive or nonbiological parent. In situations such as these, then, formal law is experienced not just through the social or emotional recognition that it is able to bring to the family, but also in the very tangible absence of legal rights and control over one's family and future.

In this book, we examine how the law becomes salient in the lives of same-sex families, how individuals navigate the law as part of their family decision-making, and how these practices and interpretations of

the law vary across legal contexts. Through in-depth interviews with 137 LGBT parents from throughout the United States, we explore the ways in which the law affects—or fails to affect—decisions to become a parent, the method of becoming a parent, and everyday parenting. The varied ways that LGBT parents grapple with legality shed light on the manner in which the law can be, at times, embraced, manipulated, modified, or rejected by those seeking to create and protect families within a heteronormative legal system.

LGBT Families and the Law

The family as an institution is heavily entangled in most of our other social institutions—including our legal system—and is often taken for granted as universal, innate, and essential (Powell et al. 2010). It is in the family that we typically spend the most time and where we are largely socialized. Further, it is often believed that our strongest social and emotional attachments are to our families, and without those ties we are considered to be at a disadvantage. In particular, various privileges, social acceptance, and rewards are associated with the family (Baca Zinn and Eitzen 2008). Consider the resources that are available based on marital status, and whether one is an “immediate family member”—from gym memberships and cell phone plans, to work-related social invites and health insurance access, to issues related to state and federal taxes. Because of the effects of family on access to social and material benefits, the family has a profound effect on our life outcomes, including our health and well-being, financial standing, and even life expectancies (Stolzenberg and Waite 2005; Waite 2005).

The parent-child relationship is a fundamental component of the ways in which family operates to affect life outcomes, including the effects of being a “parent” as a social identity and the manner in which parenting can affect the well-being of both parents and children. Accordingly, many of the earliest studies concerning LGBT families centered on questions related to the health and well-being of children growing up with LGBT parents. These studies largely focused on the social and emotional effects of these household types, in addition to the effects of household structure on child behavior (Stacey and Biblarz 2001; Biblarz and Savci 2010). More recently, researchers have advocated shifting the focus away

from examining whether children raised in LGBT families have equivalent outcomes to heterosexual families and toward understanding the manner in which social and institutional structures produce constraints or inequalities for LGBT families (Baumle and Compton 2014; Meadow 2013; Moore 2011; Richman 2008, 2013; Badgett 2010).

As with other family types, LGBT families are influenced by institutional and contextual factors—such as urbanization, market economies, education structures, and the law. Legally, LGBT families face a number of issues that are not relevant to, and are even taken for granted by, heterosexual families. For example, since most jurisdictions deny same-sex couples the right to legally marry and same-sex marriage is not recognized consistently across states, LGBT couples and their children typically do not share the same legal rights and protections as experienced by married heterosexual couples and their children (Demo, Allen, and Fine 2000; Cahill, Ellen, and Tobias 2002). Moreover, there are many laws, policies, and practices in the United States and internationally concerning the regulation of adoption, foster care, child custody, and visitation rights which are biased in favor of heterosexual people, their relationships, and their families (Cahill, Ellen, and Tobias 2002). These factors influence the organization and health of families and relationships, in addition to how they are viewed socially.

Faced with legal animus or outright legal prohibitions on adoption, fostering, or surrogacy, one might expect that LGBT individuals would be deterred from family formation. Indeed, this deterrence is the motivation for the proposal and enactment of many of these laws. Conversely, those living in states with family laws that prohibit discrimination on the basis of sexual orientation might be expected to form families more readily and to parent with fewer legal conflicts. According to US census data, however, a greater proportion of children are living in same-sex households in states considered legally and socially hostile to LGBT individuals—particularly, in the southern United States (Gates 2011). These data raise important questions regarding the manner in which LGBT couples form families, and whether unfriendly family laws actually deter or inhibit childrearing.

As exemplified by the comments from Sandra and Sarah, some of our participants believe that the law primarily serves to convey social recognition of their family; other participants believe the law can or

should play a role in decisions regarding family formation or dissolution. And yet still other participants believe that the law is entirely irrelevant, both in their decision to have a child and in regulating their everyday parenting. In this book, we examine these, and other, understandings about LGBT families and the law, paying particular attention to whether and how conceptions of the law in family life differ across legal contexts.

Our Framework: Examining LGBT Legal Consciousness

Our focus in this research is on examining the legal consciousness of LGBT parents. When we talk about legal consciousness, we are referring to the meanings given to the law by individuals, including the way in which these meanings are used, reproduced, or contested by individuals (Silbey 2005; Marshall and Barclay 2003; Nielsen 2000; Ewick and Silbey 1998). Throughout many everyday tasks, we encounter legality—whether in adhering to traffic signals, paying our bills, or completing administrative forms. In these mundane practices, as well as in more direct interactions with formal law, our understandings and our behaviors are guided by shared meanings about the law. These shared meanings reflect our legal consciousness—a consciousness that is communally experienced and communally constructed (Silbey 2005; Marshall 2005; Ewick and Silbey 1998).

In one of the seminal works on legal consciousness, Ewick and Silbey (1998) sought to identify some of these shared meanings about the law that comprise our legal consciousness. They described three schemas—before the law, with the law, and against the law—that reflect common understandings of, and interactions with, the law in the United States. In the case of the “before the law” schema, the law is understood as being derived from a legitimate moral authority. Having this understanding of the law results in individuals feeling very little agency over legal outcomes; instead, they view the law as a force external to individuals, which cannot be manipulated. When individuals rely upon this understanding of the law in their interactions with legality, they typically serve to reinforce the status quo of legal structures because they are more likely to both adhere to, and to believe in, the power of the law on the books.

In the case of the “with the law” schema, the law is understood as contingent and malleable. Individuals view legal outcomes as dependent on individual circumstances, context, and resources. Accordingly, people believe that they can marshal their resources in order to work within the existing system and achieve favorable outcomes. Having this understanding of the law can render differences in social networks, social class, and other assets as particularly important for how an individual understands his or her legal prospects.

In the “against the law” schema, the legitimacy of the law is rejected, the relationship between individuals and the legal system is understood to be adversarial, and individuals engage in acts of resistance. Some of these acts of resistance are the more traditional approaches of challenging the legitimacy of the laws themselves through the judicial system, or challenging the moral authority of legal actors. Others are everyday actions that serve to subvert the intent of the law, such as technical compliance with the law as written but in a manner that was clearly unintended by lawmakers. Viewing the law as oppressive and adversarial, and engaging in resistance to the law, has the potential to expose weaknesses in power structures and perhaps modify legality. The ways in which individuals’ understandings and use of the law vary from the formal law can serve as a powerful shaper of the law in action, thereby transforming what we understand to be the law.

These three schemas do not necessarily operate independently from one another or consistently over time (Ewick and Silbey 1998). A person might be “before the law” in one aspect of his or her life and “against the law” in another. Further, it is possible that individuals demonstrate conflicting understandings of the law and actions even on the same issue.

Through the lens of legal consciousness, the law can be understood as an interactive process, with persons receiving circulating discourses about law, and accepting, modifying, or rejecting these meanings. Preexisting legality is then either reinforced or new meanings might become institutionalized, rendering individuals active participants in constructing the law. This means that LGBT parents are not simply passive recipients of legality. Instead, they are participants in the process of shaping their legal options, including both those that further or that restrict their family goals.

Contributions of Our Research

Although research on LGBT families and the so-called same-sex marriage debate has increased, the majority of this work has sought to portray gay family life and family diversity, or to confirm or challenge myths and stereotypes (Weston 1991; Stacey 2011; Risman 2009; Garner 2005; Lareau 2003; Powell et al. 2010; Moore 2011; Lewin 2009). Further, some consideration of legal forces has been paid to LGBT families within the sociolegal literature. For example, some works have focused on explaining the manner in which understandings of what constitutes a family are shaped by legal and other cultural forces (Hull 2003, 2006; Richman 2013), and others have examined the manner in which legal definitions of family are too constraining for nontraditional families, including LGBT families (Polikoff 2008; Richman 2008). These works have not involved a close examination of the manner in which legality is understood, utilized, or challenged as part of the process of LGBT parenthood.

Our research, then, builds upon and extends prior work on both legal consciousness and LGBT families. First, we are focused on a broader analysis of LGBT individuals' interactions with the law than what has often been analyzed in studies of LGBT families. Rather than concentrating on what happens as LGBT individuals attempt to access the legal system via marriage licenses or pursue adoption through the courts (see, e.g., Richman 2008; Hull 2003, 2006; Connolly 2002), we examined both direct interactions with formal law and less direct, everyday interactions with laws, rules, and policies. In doing so, we sought to gain a comprehensive picture of the manner in which LGBT parents' understandings of and interactions with the law are shaped by formal law, institutions, social networks, and individual desire. Our hope was to shift the focus from describing the thoughts and behaviors of individuals who are interacting with formal law, and to examine instead the manner in which human agency and structure interact in the production of legality.

In addition, our research expands upon prior studies of legal consciousness that examine how disadvantaged groups understand or use the law (Connolly 2002; Hull 2003, 2006; Nielsen 2000; Marshall 2005; Sarat 1990) by paying particular attention to how variations in legal understandings occur *within* the group. The heterogeneity in legal con-

consciousness across legal contexts is particularly notable for LGBT parents, given the inconsistency of state and local laws across the United States. Few groups encounter as much variation in access to everyday legal rights as they pertain to the family. This variation in legal environments within and across states for LGBT families provides a rather unique opportunity to examine ways in which legal context affects understandings of legality. Prior research has often examined how legal consciousness is shaped by a particular social identity (see, e.g., welfare status [Sarat 1990], working class [Merry 1990], or race and gender [Nielsen 2000]) or by an organizational location or organizational structure (see, e.g., Larson 2004; Hoffman 2003; Marshall 2005; Dellinger and Williams 2002), but our research examines the manner in which geographic location affects cultural messages about the law and interactions with the law for individuals of a particular social identity. In this respect, we seek to integrate these bodies of literature by highlighting the manner in which the construction of legality is multidimensional, operating across individual, group, and structural levels.

Drawing upon these concepts, we develop a multifaceted theory toward understanding how LGBT parents participate in the construction of legality, and how legal context can serve to shape their understandings and uses of the law. As detailed in the conclusion, we observe that LGBT parents are active recipients of cultural schemas about legality, including those of being *before*, *with*, and *against* the law. Which schema prevails for an LGBT parent at a particular moment in time is determined in part by their legal context; mediating factors such as social networks, interactions with legal actors, and the media; and individual factors, including familial desires and demographic and socioeconomic characteristics.

Our findings illustrate that LGBT parents' interactions across these levels operate both to reflect and to create legality. Whether LGBT parents accept, modify, or challenge the law is dependent on how interactions occur across these three levels. For example, an individual without economic means who is located in a legally and politically conservative city, will often have little access to other LGBT parents or local organizations for assistance in becoming parents or navigating legal issues related to parenthood. Their economic, social, and geographic embeddedness can produce acquiescence to the law, as they might feel they do not have the informa-

tion or resources to manipulate the system or the support to challenge a hostile legal environment. Accordingly, throughout this work we trace sources of the law and the ways in which individual factors, mediating factors, and legal context interact to produce legality for LGBT parents.

About This Project

Prior to initiating this study, we were engaged in more quantitative examinations of US Bureau of the Census data on same-sex unmarried partners. We were particularly interested in exploring what these data could reveal about the ways in which demographic outcomes differed for individuals in same-sex relationships as compared to different-sex relationships, including variations in family structure. Our analyses typically incorporated a consideration of both individual and contextual factors in studying family structure, given that contextual factors such as legal environment can serve to shape structural forces that act upon individual desires and characteristics. In some respects we were surprised with our results, which suggested that restrictive laws limiting or prohibiting certain routes to parenthood might have little effect on parenting outcomes for same-sex couples (Baumle and Compton 2011; Baumle, Compton, and Poston 2009). This runs contrary to the expectations of many in terms of how prohibitive laws work for LGBT individuals (see chapter 2). These findings raised questions regarding the degree to which LGBT individuals consider the law when forming families and, more broadly, the ways in which they understand and use the law as parents. These questions pushed us toward taking a more in-depth, qualitative look at the manner in which legal consciousness is constructed for LGBT parents.

Accordingly, in this research we examine how and when the law becomes salient in the lives of LGBT families, and how individuals then choose to navigate the law in their family decisions. While our book focuses primarily on the results from our qualitative interviews, our ability to situate and inform our analysis with data from the national population lends added validity and context to our findings. Our interviews provide a fuller description of American LGBT family life and reveal the manner in which LGBT parents work with, around, or against the law in making very personal decisions about family formation and parenting.

Defining Legality

For this research, we define *legality* as a process in which organized patterns of beliefs and behaviors (i.e., cultural schemas) about rules and law are utilized in everyday interactions as well as in more formal legal settings (Silbey 2005; Marshall and Barclay 2003; Nielsen 2000; Ewick and Silbey 1998). This notion of “doing law” recognizes the role of human agency and structural constraints as interactive and reflexive in producing legality. Law is not something that is solely experienced as a force external to individuals, but is something that is at times grappled with, selectively invoked, or ignored.

This process of engaging with the law plays an important role in constructing legality. Current laws and legal structure are reflected or reified when individuals accept and act upon them. On the other hand, new legal meaning can be constructed when legal authority is resisted or rejected. When we examine the way in which law affects outcomes for LGBT parents, we are examining the manner in which interactions with the law take place in both unexpected, as well as expected, times and places and how these interactions affirm or modify legality.

Defining LGBT Families

Historically, definitions of *family* have frequently relied upon the existence of relationships established by blood or law (Weston 1991; Seidman 1993; Brown and Manning 2009; Powell et al. 2010). Families are also typically portrayed as being responsible for the bearing and the raising of children, for comprising the structure within which individuals reside, and for being the means by which property is shared and passed down (Waite 2005; Baca Zinn and Eitzen 2008). Upon closer inspection, these sorts of definitions are often based on legal or structural terms housed within heteronormativity. This becomes quite problematic for families that fall outside of the ideal nuclear heterosexual family type—as is the case with LGBT families.

For the purpose of our work, and in line with social and academic discourse, *LGBT families* refer to families that consist of at least one gay male, lesbian, bisexual, or transgender parent with one child or more, or to a gay or lesbian couple irrespective of whether children are pres-

ent (Cahill, Ellen, and Tobias 2002). The term *LGBT families* has been criticized because families do not have a sexual orientation, rather it is the individuals who make up families that have sexual orientations (Baca Zinn and Eitzen 2008). Nonetheless, this term persists in family literature and its usage is common practice. Based more on household form, it allows for a different and broader conceptualization of family irrespective of legal and blood ties. Further, it most appropriately fits our population of interest and recognizes the diversity of our participants' gender and sexuality.

Our definition of families was specifically inclusive of lesbian, gay, bisexual, transgender, and queer parents in order to examine any differences in the experiences and challenges faced by parents across gender and sexuality. To some degree, individuals in all of these categories experience similar restrictions on parenting, due to challenges in biological reproduction, access to legal marriage, or access to adoption. Further, individuals who identify as lesbian, gay, bisexual, transgender, or queer encounter similar stigmas due to their transgression from sexuality and gender norms. Nonetheless, individuals across these groups may have different experiences when navigating the heteronormative legal system, and a more inclusive definition of LGBT families allows for nuanced insights into the construction of legality. For example, speaking to a bisexual single parent illuminated the difference in legal concerns based on sex of partner and access to marriage. Similarly, some of our families with a transgender parent were able to fly more under the radar legally and access greater resources due to legal sex changes. At the same time, these individuals were highly cognizant of their privilege and expressed concerns about how their situation might change if they were "outed" as a nonheterosexual family. Given that these factors can play a role in experiences with the law, we elected a broad definition of LGBT families for our study.

Throughout this book, we refer to our participants as LGBT parents or LGBT families when referencing the sample as a whole; individual participants are referenced based on how they self-identified during the interview. Due to the variety of academic and nonacademic viewpoints on terminology for this population, we also include in the appendix a more detailed discussion regarding our election of the term *LGBT* to describe our participants (see "A Note on Terminology" in the appendix).

Locating Our Participants

To address our questions, it was important for us to gather a diverse set of parents across a range of legal contexts. To begin with, individuals must have been parents or in the process of becoming parents, and identified either as LGBT, that is, as being in a same-sex or LGBT partnership, or previously parented within an LGBT partnership to be considered for the study. Since we were dealing with a “hidden” or “invisible” population, we recruited our sample via multiple referral chains, using affinity or social groups, formal organization leaders, individuals, and contact lists including social media such as Facebook and Twitter. Because LGBT parents are often subjected to scrutiny from researchers and the public, referrals were an important mechanism for gaining trust and rapport with participants. We then employed a purposeful and theoretical sampling design, stratified by sex and nested within particular legal contexts—that is, a state’s legal position on LGBT family issues. Based on legislation and case law on LGBT parenting and marriage issues (see chapter 2 and the appendix for details), we categorized states as legally positive, legally negative, or legally neutral (having no relevant legislation or case law on the books, but typically negative leaning sociopolitically). Additional details about our theoretical approach and methodology are contained in the appendix.

Our approach resulted in a sample that was stratified across legal contexts, as well as fairly representative of the sociodemographic characteristics of same-sex parents (tables I.1 and I.2). The participants in our study represent seventeen states across the United States—33 percent from legally positive states, 34 percent from legally neutral (but negative-leaning) states, and 34 percent from legally negative states. Our participants were parents to 114 children (see table A.3 in the appendix for the demographics of their children). Children came to be in our participants’ lives via a number of routes, including heterosexual intercourse (17 percent), insemination (45 percent), adoption (25 percent), fostering (5 percent), surrogacy (3 percent), and other ways (5 percent; most often as stepchildren or siblings).

Throughout the sampling process, we were highly cognizant of the academic criticisms of studying LGBT populations and hidden populations as a whole—particularly the concern regarding homogeneity of participants drawn from convenience samples and the lack of racial and socioeconomic diversity. As such, we drew on data from nationally rep-

TABLE I.1. Descriptive statistics of participants ($N = 137$)

Demographic characteristics	Average	Std. dev.	Min.	Max.
Mean age	39	8.03	23	70
Median household income (\$)	100,000	91,600	9,000	800,000
Number of children	1.5	0.74	On the way	4
Mean child's age	8.5	8.5	On the way	44

TABLE I.2. Descriptive statistics of participants ($N = 137$)

	No. of participants	Percentage of N (%)
Gender identity		
Female	107	78.10
Male	23	16.79
Transgender	7	5.11
Sexual identity		
Gay/Lesbian	110	80.29
Bisexual	6	4.38
Queer	21	15.33
Race and ethnicity		
Non-Hispanic	124	90.51
<i>White</i>	115	83.94
<i>Black</i>	4	2.92
<i>Other</i>	3	2.19
<i>Multiracial</i>	2	1.46
Hispanic	13	9.49
<i>White</i>	2	1.46
<i>Nonwhite</i>	7	5.11
<i>Multiracial/-ethnic</i>	4	2.92
Marital status		
Married	59	43.07
Partnered	59	43.07
Single	19	13.87
Legal context		
Positive state	45	32.85
Neutral state	46	33.58
Negative state	46	33.58

representative surveys, such as the US Census Bureau's American Community Survey (ACS), to guide our recruitment of participants to ideally create the greatest applicability of our work. Our sample characteristics were relatively comparable to those of same-sex partners captured by the ACS, with the exception of racial and ethnic composition (see the appendix for a detailed discussion regarding how our sample characteristics compare with the ACS data). Although our participants are mostly non-Hispanic white (84 percent), their households are fairly diverse with 37 percent living in transracial households. Thus, while we wished for greater racial and ethnic diversity in our sample than we were able to achieve, we do offer a wide range of experiences at the individual level and a greater racial and ethnic representation at the household level.

Overall, our participants represent relatively diverse households and exemplified a wide array of backgrounds, circumstances, and experiences with respect to family formation, parenting, and the law. Our multifaceted approach to locating participants, as well as our larger sample size, generated a sample that is varied and able to speak to a range of LGBT parenting experiences across the United States.

The Interviews

In this book, we examine how LGBT individuals understand and use the law through the analysis of 97 in-depth interviews with 137 LGBT parents (some interviews were conducted with couples) or would-be parents (some parents were expecting, awaiting adoption, or no longer had custody of their foster children) from across the United States. Our interviews were semistructured and included topics and questions related to family, parental decision-making, social networks, and the manner in which laws affected family formation and parenting.

Both authors were present for 75 percent of the interviews, while we individually conducted the other 25 percent. We are both Caucasian females, with one of us identifying as heterosexual and one identifying as nonheterosexual, and one of us being a parent and the other a nonparent at the time of the interviews. Our insider status in each of these areas garnered trust with participants, leading to a reflexive dialogue. Further, our differing standpoints and academic interests (one of us identifies more as a legal scholar and the other as a family scholar) led us to ask

our participants probing questions that might not have been addressed by a single researcher. We believe this to be a notable strength to our data collection process and study. Additional details regarding our interview process and data analysis are included in the appendix.

Our interviews took place within states located in every region of the country, and in very diverse settings, including urban, rural, and suburban areas. We met participants at the days and times of their convenience, meaning that we interviewed on Saturdays through Sundays, and from very early in the morning to late at night once the children had gone to bed. We also interviewed at the locations selected by participants, including at their offices, at university campuses, in public libraries, and at restaurants. The majority of our interviews, however, took place in the homes of our participants. Our participants lived in single-family, multifamily, and communal households. Their homes varied from low-income apartments to manufactured homes, row houses, suburban pop-ups, brownstones, and mansions with paid staff. Some of our participants had tenants or friends living in attached apartments, rooms, or spaces, including one individual who lived in a tent in a garage.

During the at-home interviews in particular, we were able to see firsthand many of the legal effects of access, or lack of access, to resources on households. Additionally, participants' preferences regarding locations (private or public, quiet or loud, with children or without) provided indications of their level of comfort or concerns regarding their families, as well as how they felt their families were viewed socially and legally.

Book Overview

In this book we develop our theory of the legal consciousness of LGBT parents by examining family laws for LGBT parents, exploring the routes by which our participants came to be parents, discussing the various sources of legal information for LGBT parents, and then examining the ways in which human agency and structure interact to produce legality for LGBT parents. In chapter 1 we describe the legal environment for LGBT parents in the United States. Law and legal discourse play a role in LGBT families in ways well beyond the law on the books, but the formal laws within a state are one of the more visible forces in shaping access to parenthood and parenting rights. The ways in which these laws vary

across state lines are important, not just in terms of how the law can affect access but also in the manner in which variation in laws convey different cultural messages about whether and how the law can be used. Next, we examine differences in family laws across states and present statistical analyses that explore the manner in which formal laws appear to affect the presence of children in same-sex households and particular routes to parenthood. These analyses illustrate the ways in which formal law, at times, appears to have surprisingly little effect on the family outcomes of LGBT parents. Accordingly, these findings raise questions regarding how formal law might be ignored, modified, or rejected by LGBT individuals who are engaged in family formation, and whether legal context plays a role in shaping these outcomes. We conclude by discussing the manner in which we measure legal context for our study, including examining the challenges inherent in measuring a broad, dynamic concept such as the law. In the remainder of the book, we explore the conditions that produce legal understandings and interactions with the law for LGBT parents, paying particular attention to legal context.

In chapter 2 we focus on describing the particular paths to parenthood undertaken by our participants. We primarily examine the demographics of our participants as they pertain to the method of becoming a parent (e.g., insemination, prior heterosexual relationships, adoption, marriage, fostering) in order to begin to explore the ways in which individual factors produce family outcomes. We further examine some of the rationales offered for selecting a particular route to parenthood, and how legal context plays a role in producing choices and access for routes to parenthood. Our findings illustrate that factors such as income prove important in the route to parenthood, including the role that economic differences play in access to surrogacy for gay men. In addition, we find that legal context shapes the particular path to parenthood and participants' security regarding their parenthood status. Those living in legally positive states and who are nonbiological parents of their children, for example, indicated that they were able to acquire parenthood rights via second-parent adoption or marriage. Regardless of whether they actually elected to pursue these legal protections or whether they were correct in their belief that they were afforded parental rights via marriage, they nonetheless felt additional security over their parenthood status as compared to those in less friendly states. The findings in this chapter in-

dicating the manner in which individual factors and legal context interact to affect choices in paths to parenthood for LGBT parents.

In chapter 3 we highlight sources for legal understandings in order to examine more closely the process of constructing legality for LGBT parents. An important aspect to understanding LGBT parents' legal consciousness involves examining the sources from which they receive cultural messages about the law as it pertains to their families. Some participants described gaining legal knowledge through traditional venues, such as attorneys or consulting legislation, whereas others relied upon social networks, media, movies, books, or the Internet. We explore the manner in which learning about the law varies for LGBT parents across individual characteristics, as well as legal context. Legal context can affect whether individuals even pursue information about the law; some participants living in legally positive states articulated an assumption that they had legal rights, and some living in legally negative states an assumption that rights were absent. For LGBT parents, whether and how they gain information about the law plays an important role in how they then choose to interact with formal and informal law in their lives.

In chapters 4, 5, and 6 we examine more directly the ways in which LGBT individuals understand and use the law in becoming parents or in parenting. We organize our discussion across the *before*, *with*, and *against* the law schemas (Ewick and Silbey 1998), illustrating the manner in which LGBT parents navigate and construct legality. In chapter 4 we look at how our participants' interactions with the law indicated a belief in the legitimacy and permanence of the law. Our participants were more likely to embrace this sentiment in legally positive or neutral states, including articulating ways in which they understood the law to play an important role in "making families," legitimating relationships, or forming commitments between adults or adults and children. By voicing these understandings of the law, participants suggested that the law has a unique power in formulating identities and commitments, and that human agency is relatively absent from dealings with the law.

In chapter 5 we focus on the manner in which our participants' interactions with the law reflected an understanding of the law as contingent and malleable. We found that, across all legal contexts, our participants often viewed the law as a game, where they could utilize resources such as income, education, or social networks to achieve desired ends. In ad-

dition, they engaged in forum shopping for favorable judges or favorable laws, which broadened their family formation options. Although participants in all legal contexts manipulated or worked around the law, we found that this practice was particularly important for those located in legally neutral states given the uncertainty of legal outcomes. When participants employed a “with the law” understanding, they signaled an acknowledgement of the manner in which the law is subject to human agency and, accordingly, they indicated an awareness of the role that they might play in modifying legality.

In chapter 6 we examine the ways in which participants resist the law, eschewing its moral authority and enacting everyday resistance. Few participants engaged in collective action or overt legal challenges, despite their expression of resentment with formal law or administrative procedures. Nonetheless, through acts of everyday resistance, such as masquerading as single or heterosexual, or modifying documents, our participants reflected the manner in which they rejected legal authority over their parenting. These acts were particularly important for those residing in legally neutral or legally negative states, where participants were embedded in a negative sociolegal climate that produced greater hostility and defiance. This defiance, however, was tempered by the desire to achieve their family goals and to protect their children from retaliation, resulting in few overt legal challenges. Participants who expressed this understanding of the law indicated not only their rejection of the moral authority of the law, but an oftentimes gleeful resistance to power structures operating within their state.

In the conclusion we examine our emergent theory and our contributions to studies of legal consciousness and to social and legal policy. Our research reveals how LGBT individuals frame their access to the creation and maintenance of families; the legal, social, and geographic obstacles to those goals; and their responses and reactions to those obstacles. We find that individual factors such as demographics and familial desires; mediating factors such as social networks, legal actors, and organizations; and legal context all interact with cultural discourses about the law in order to shape LGBT parents’ legal consciousness. Our findings thus illustrate that there is no single experience of LGBT parents with regard to legality. Their legal consciousness as part of the parenting process is as varied and contextual as the legal and sociopolitical environments in which they reside.