Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment

Laura Beth Nielsen

The legal consciousness of ordinary citizens concerning offensive public speech is a phenomenon whose legal status has been vigorously debated, but which has received little empirical analysis. Drawing on observations in public spaces in three northern California communities and in-depth interviews with 100 subjects recruited from these public locations, I analyze variation across race and gender groups in experiences with offensive public speech and attitudes about how such speech should be dealt with by law. Among these respondents, white women and people of color are far more likely than white men to report being the targets of offensive public speech. However, white women and people of color are not significantly more likely than white men to favor its legal regulation. Respondents generally oppose the legal regulation of offensive public speech, but they employ different discourses to explain why. Subjects' own words suggest four relatively distinct paradigms that emphasize the First Amendment, autonomy, impracticality, and distrust of authority. Members of different racial and gender groups tend to use different discourses. These differences suggest that the legal consciousness of ordinary citizens is not a unitary phenomenon, but must be situated in relation to particular types of laws, particular social hierarchies, and the experiences of different groups with the law.

"[H]ey white bitch, come suck my dick!"[1]

"I hate women; they're all sluts."[2]

"Monkey for a dollar!"[3]

"You fucking people need to go back where you came from, I'm sick of this, you come over here and think you can take everything away from us."[4]

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[1] Recounted by a 26-year-old white woman, interview #30.

[2] Recounted by a 24-year-old white woman, interview #10.

[3] Recounted by an 18-year-old African-American woman, interview #54.

[4] Recounted by a 29-year-old African-American woman, interview #29.

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I. Introduction

When one experiences remarks such as these in a public place, law may be the last thing that comes to mind. However, ideas about law, both conscious and unconscious, shape how people make sense of such interactions, what types of speech they consider problematic, and what remedies or responses they believe are possible. Examining the links between people's experiences with street harassment and their attitudes about its legal regulation can shed light on the roots and consequences of the "legal consciousness" of different social groups.

In this article I analyze the legal consciousness of ordinary citizens by examining how experiences with and legal attitudes toward offensive public speech vary by race, gender, and class. I find that white women and people of color experience dramatically higher levels of offensive public speech and that these experiences significantly affect their daily lives. Yet experiencing harms from offensive public speech does not translate into supporting its legal regulation. Subjects offer a variety of reasons to justify their opposition to the legal regulation of such speech. Members of different racial and gender groups articulate distinctive discourses about offensive public speech and the law that invoke various and competing schemas regarding law. These understandings reflect their prior experiences with the law and their attitudes about the prospects for social change through law. This variation suggests that an explicit comparison of particular legal phenomenon across categories of race, gender, and class provide a more nuanced understanding of legal consciousness.

II. Prior Approaches to Offensive Public Speech

Racist and sexist speech generate much debate about the proper balance between freedom of speech and protection of historically disadvantaged groups from verbal abuse. First Amendment absolutists argue that speech cannot and should not be legally restricted (Post 1991). Critical race theorists argue that racist speech results in substantial harms for its victims (Matsuda 1993), perpetuates inequality, and must therefore be legally limited to realize the equality guaranteed by the Fourteenth Amendment (Lawrence 1990). Cultural theorists contemplate how the performative aspects of speech translate into harms (Butler 1997). Feminist scholars identify sexist street harassment as a source of women's disempowerment (West 1987), investigate the harms associated with sexually suggestive public speech (Gardner

1980, 1995), explore potential legal remedies (Bowman 1993), and question if pornography is a legally actionable harm (MacKinnon 1993).

Several participants in these debates make empirical arguments about offensive public speech (Delgado 1993; Matsuda 1993) but with little empirical evidence about offensive public speech. Some research shows that the problems are pervasive for women (Gardner 1995), African Americans (Landrine & Klonoff 1996; Feagin 1991), and gays and lesbians (Garnets, Herek & Levy 1992).

Other studies examine how people think about the regulation of speech. The classic studies in public opinion by Stouffer (1992 [1955]) and McClosky and Brill (1983) examined attitudes toward the legal regulation of speech. Concerned about the fate of civil liberties in a democracy, these researchers focus on political tolerance. They show a correlation among class, education, public participation, and support for the First Amendment (the more education, the higher socioeconomic status, the higher the support for free speech). The studies of political tolerance have been large-scale empirical endeavors that survey attitudes and opinions toward the political speech of communists, socialists, and organized hate groups such as the Ku Klux Klan (McClosky & Brill 1983; Sullivan, Piereson & Marcus 1982; Stouffer 1992 [1955]). This work provides a set of hypotheses about attitudes toward the legal regulation of individually directed hate speech, but leaves open questions regarding how individuals think about and understand the law with respect to everyday incidents of targeted hate speech. Moreover, because it relies on structured attitude and opinion data, it does not capture the more complex and subtle character of legal consciousness that in-depth interviews may provide.

A third body of literature about offensive public speech and the law are case studies of celebrated incidents. These studies examine the people and organizations that constitute the players in particular debates on free speech. An example is Downs's (1985) analysis of the attempt by Nazis to march in Skokie, Illinois, the community organizations who organized both legal and extra-legal mechanisms of resistance, and those who defended the Nazis. Through in-depth interviews with key actors, Downs documents the events that took place and explores subjects' thinking about the role of law in the controversy. The struggle afforded insights into how different parties sought to gain a voice in the debate over free speech in Skokie. Yet such extraordinary cases are quite different from everyday incidents of hate speech.

My project builds on each of these bodies of work, but differs in several important respects. I sought to investigate the relationship between experience with offensive public speech and legal consciousness. Instead of asking about organized political

speech, I asked individuals about their experiences with and understanding of sexually suggestive speech, racist speech, and begging in public areas, allowing respondents to define what they considered offensive or problematic speech. Interviews were replete with subjects' reports of incidents in which they were made the target of offensive, sexually suggestive public speech, racist speech, and begging.[5] Many of these comments were considered offensive and problematic by at least some of their targets. There have been attempts to regulate all of these kinds of speech. My investigation of the relationship between experience and legal consciousness thus provides the basis for a more sociological inquiry into the nature of being in public, including the exploration of how hierarchies of race and gender are reinforced in micro-interactions on a regular basis. Finally, such interactions provide a point of reference for mapping the legal consciousness of different social groups, in that we can probe how people think about the use of the law as an instrument for defending against such abuses.

III. Theoretical Rationale for Studying Legal Consciousness and Offensive Public Speech

Research in law and society recently has shifted away from an instrumental conception of law toward a constitutive perspective that views law as one of many competing forces that affect and shape social life (see Suchman & Edelman 1996). In contrast to instrumental approaches in which law is treated as autonomous from social life, normative systems, and social institutions, the constitutive perspective examines law as it is connected to and embedded in these other arenas, allowing an examination of the cultural constraints and social norms that influence law.

One aspect of this shift has been to study the "legal consciousness" of ordinary citizens, exploring how they think about the law and how their understanding of legal institutions and legal rules affects their day-to-day lives. This study of legal consciousness not only explores how people think about the law (consciousness about law) but also the ways in which largely *un*conscious ideas about the law can affect decisions they make. Sally Engel Merry defines legal consciousness as "the way people conceive of the 'natural' and normal way of doing things, their habitual patterns of talk and action, and their commonsense understanding of the world" (1990:5). Thus it is prevailing norms,

[5] In addition to offensive speech, subjects of color reported being pushed, slapped, glared at, and spat upon because of their race, and women of all races reported being groped and fondled by strangers in a sexual manner while in public. Although this research focuses on offensive public *speech*, these assaults are noteworthy. Assaults often are preceded by offensive public speech. The threat of assault plays a role in how targets understand such interactions, even when they only involve speech.

everyday practices, and common ways of dealing with the law or legal problems. Legal consciousness research examines the role of law (broadly conceived) and its role in constructing understandings, affecting actions, and shaping various aspects of social life. It centers on the study of individuals' experiences with law and legal norms, decisions about legal compliance, and a detailed exploration of the subtle ways in which law affects the everyday lives of individuals to articulate the various understandings of law/legality that people have and use to construct their understanding of their world.

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. These assumptions may be so much a part of an individual's worldview that they are difficult to articulate. Thus, legal consciousness can be present even when law is seemingly absent from an understanding or construction of life events. Because studies of legal consciousness focus on ordinary people and how they view law and its efficacy, this line of research has broad implications for justice, legitimacy, and ultimately, social change.[6]

An important strand of research on legal consciousness attempts to explain how this knowledge about law translates into actions and decisions—what some scholars call the "mobilization of law" (see Ewick & Silbey 1992, 1998; McCann 1994; Merry 1990; Bumiller 1988).

Offensive public speech is a compelling context in which to explore legal consciousness. Because the nature of race- and gender-based street speech is central to personal identity, offensive public speech is personally significant to those who are routinely made its targets. And, offensive public speech connects, reinforces, and perpetuates existing hierarchies of race and gender. Moreover, law is implicated in such speech. If the law protects such speech, it grants a license to the practice. But targets of offensive remarks might also look to law as a tool for rectifying these problems, making law fundamental in constructing this aspect of social life.

A third reason to study legal consciousness regarding offensive public speech is that it implicates an area of legal doctrine that is ambiguous and contested. Unlike workplace discrimination on the basis of race or gender, offensive public speech remains largely unregulated. Finally, the ideal of free speech is a celebrated canon of American constitutional democracy. The

[6] Ideas about how individuals conceive of justice and what is normatively just have long been the subject of theoretical debate, and some political theorists claim that the legitimacy of law is derived from principles of fairness, equality, and justice (Fuller 1964; Thompson 1975). Only recently has empirical research turned to the question of how people think about the law. One important strand of this work develops theories about procedural fairness and substantive justice (see Tyler 1990; Lind & Tyler 1988).

cultural power of this concept increases the chances that ordinary citizens would be aware of First Amendment concerns and that such concerns might affect their attitudes toward the regulation of offensive public speech.

But how does an empirical study of legal consciousness situated with respect to offensive public speech aid our understanding of legal consciousness more generally? Ewick and Silbey's (1998) recent book represents an important attempt to develop an empirically based theory of legal consciousness. They asked respondents general questions about their lives and the problems they face in their schools, workplaces, and communities, allowing respondents to elaborate whether and how they thought of law's role in these spheres. They thereby allowed the subjects to articulate their understanding of the law and the role that the law might possibly play in various disputes, rather than introducing the concept of law into the interviews or limiting their interviews to people who already had mobilized the law in one capacity or another. Thus, they explored legal consciousness "organically"—as it came up for the subjects rather than as the researchers defined it. Ewick and Silbey found that there are three general orientations toward law; subjects can be "before the law," awed by its majesty and convinced of its legitimacy. Alternatively, subjects can be "with the law," utilizing it instrumentally when it favors them and generally understanding law to be like a game. Finally, subjects can be "against the law," cynical about its authority and distrustful of its implementation.

Ewick and Silbey's typology is instructive, but it is not meant to be a discrete set of options to describe the legal consciousness of particular individuals at particular times. Instead, in mapping the terrain of legal consciousness, Ewick and Silbey explain these prototypes as culturally available schema to be referenced and employed in different ways and at different times. Even as "law" is invoked, not invoked, ignored, and resisted, it is assigned a role in people's everyday lives. These processes of creating "legality" mean that legal consciousness is contingent and changing.

Ewick and Silbey's effort provides important insights into legal consciousness, but leaves some crucial unanswered questions. For example, they hypothesize that orientations toward law will correlate with social status: members of disenfranchised or subordinated groups will be more likely to be "against the law" and to employ methods of resistance to law (Ewick & Silbey 1998:235). Yet, as some commentators note, they do not systematically analyze the consciousness of informants by social status (McCann 1999). How does experience with law translate into attitudes and opinions about other areas of law that are not so commonly encountered? Do the three orientations or prototypes of legal consciousness hold true for individuals across problems and contexts? How do established cultural schemas about the law, such as

those surrounding the First Amendment, affect legal consciousness, if at all?

Although Ewick and Silbey sought to provide an overview of legal consciousness, my project is somewhat different. I constructed an analytic framework to explore variation in legal consciousness according to race, gender, and class. To do so, I thought it necessary to narrow the focus of inquiry and to hold constant certain variables. I inquired about a specific kind of problem, with a particular set of relevant legal categories (although I let the subjects define them), and I asked only about what happened in a particular location. Thus, my study of legal consciousness is situated doctrinally (the First Amendment), with reference to a particular social phenomenon (offensive public speech), and within a particular location (the public sphere).

Ewick and Silbey make a general argument about which types of individuals may be more likely than others to invoke the orientations they describe. I sought to examine this distribution more systematically. The research provides a format to examine the orientations toward law elaborated by Ewick and Silbey's subjects, thereby "testing" the scope of their theory and demonstrating how legal consciousness takes shape with reference to a particular event and across groups.[7]

Because legal consciousness is contingent, it 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. Indeed, I suggest that studies of legal consciousness should attempt to describe such contingency—to situate consciousness along these axes rather than treat it as a static set of opinions and attitudes. I designed a sample that allowed me to explore group differences in legal consciousness.

IV. Method

The empirical study of legal consciousness presents several methodological challenges. Legal consciousness is complex and difficult to inquire about without inventing it for the subjects, or, at the very least, biasing the subjects' responses. Only through in-depth interviews can legal consciousness emerge, leaving the researcher with lengthy transcripts and the daunting task of using them to determine how to gauge variation in legal consciousness and how this relates to broader social structures.

[7] These data provide a way to test the Ewick and Silbey framework, but the data collection and analysis were conducted prior to the release of their most recent book (1998). I describe four general orientations toward law, while they identify three. Although I use my own terms to describe the orientations, my findings generally compliment Ewick and Silbey's. The similarities in orientations to law are particularly interesting, given that my subjects were recruited from a different geographic location and were presented with very different legal issues than those used by Ewick and Silbey.

Early studies attempted to capture the complexities of legal consciousness through observation and in-depth interviews with small samples (see Ewick and Silbey 1992; White 1991; Merry 1990; Sarat 1990). These methods were necessary as theories of legal consciousness were developing. More recently, scholars of legal consciousness have begun to advocate broader data collection to understand variation in legal consciousness and to map the relationship between consciousness and social structure (McCann 1999; Ewick & Silbey 1998; McCann & March 1996). In contrast, studies of political tolerance have surveyed large, randomly selected samples of citizens. The structured protocols of this line of research document attitudes and opinions, but do not allow for an in-depth understanding of legal consciousness.

I bridge this gap by using qualitative research techniques to probe the complexity of legal consciousness, while also interviewing a large enough number of subjects of different races, genders, and classes (n = 100) to begin to gauge variation in it. The combination of field observation and in-depth interviews proved especially valuable. The field observations allowed me to witness and record various types of interactions between strangers in public places. Because I observed many subjects being harassed in public and their reactions to such comments, I was able to guard against the tendency some subjects might have had to inflate the bravado with which they responded to such comments. Of course, simply observing was not sufficient because I needed to learn how the subjects *experienced* such interactions, not simply how they responded. The in-depth interviews provided an opportunity to gain an understanding of how individuals think about such interactions, resulting in a "mutuality" between participant observation and in-depth interviews (Lofland & Lofland 1995).

I systematically sampled subjects from the public places I observed. This strategy has several advantages. First, I knew that the subjects were consumers of public space, and thus they constituted a set of potential targets for offensive public speech. From my observations at different locations at different times, I also had some appreciation for what the subjects experienced. Second, by approaching subjects in person, I could establish rapport in a way that would have been impossible if I had initiated contact by telephone. This rapport was essential, given the sensitive nature of the interview questions. Asking subjects about experiences with offensive racist and sexist speech required speaking bluntly and using racial epithets as examples. It would have been difficult to gain consent without such personal contact.

I followed systematic procedures to construct a sample that, while not a probability sample, included different types of people and minimized the possibility of researcher-biased selections because of my personal prepossessions and characteristics. Of course, my presence in the public spaces might have altered the

nature of the interactions that took place. Yet in most instances I was simply another person in the crowd and did not have much impact on the obvious interactions taking place.

I conducted a detailed assessment of data sites with the objective of maximizing variation in the socioeconomic status of potential subjects and guarding against idiosyncratic factors that might bias the results (Lofland & Lofland 1995). First, I selected field sites in a variety of locations in three communities in the San Francisco, California, Bay Area (Orinda, Berkeley/Oakland, and San Francisco) to insure broad representation across race, socioeconomic status, and gender among subjects selected to participate in the interviews. Second, I varied the day of the week, going to each of the locations on weekdays and weekends. Third, I varied the time of day by observing in each location during day, evening, and night hours. The field sites I selected were public places, such as sidewalks, public transportation terminals, and bus stops. Finally, to guard against approaching only potential subjects with whom I felt comfortable and to randomize subject selection within field sites, I devised a system whereby each person in the site had an equal chance of being approached.[8] I selected individuals to approach and asked whether they would participate in an interview about interactions among strangers in public places. I continued such selections until I achieved numerical goals for respondents with certain racial and gender characteristics. I oversampled white women and people of color for analytic purposes. Thus, even though I randomized selections within demographic subgroups and within strategically selected locations, this was not a random sample.[9]

Of 190 eligible subjects approached, 112 agreed to participate and 100 were interviewed, resulting in an effective response rate of 53%.[10] When subjects agreed, I asked each to review and sign a consent form and to provide a phone number to arrange the interview. In order to assess what types of people were more likely to refuse, I made note of individuals' observable demo-

[8] When I entered a field site, I recorded the scene in my field notes, noting the date, time of day, location, and characteristics of the people occupying that location. I also noted all instances of street harassment. I observed interactions, noting the types of individuals who made comments to strangers, and what responses they received. To determine whom to approach, I randomly selected a side of the location (north or south, east or west) by the flip of a coin. I rolled a die to determine the interval among individuals I would approach; for example, if the coin came up "heads" I went to the north side of the location (such as a train platform); then, if the die came up "3," I approached every third person to ask if he or she would be willing to participate.

[9] In the analyses that follow, I emphasize comparisons across race and gender and limit the statistical analysis to simple chi-square tests for differences across groups. Given the size of the sample, the results should be seen as suggestive in a statistical sense and worthy of examination in larger sample designs.

[10] Eleven people I approached were eliminated because of language barriers or because they were minors. Twelve people who agreed to be interviewed could not later be reached, despite repeated attempts to contact them.

graphic characteristics (observable race, gender, and approximate age).

There were no significant differences by race, gender, or estimated age among those who agreed to participate versus those who refused. Refusal rates did vary according to the city in which subjects were recruited. Those in Orinda, a wealthy suburb of San Francisco, were far more likely to refuse to participate than those recruited in Berkeley/Oakland or San Francisco. More people from Berkeley/Oakland and San Francisco were willing to participate, and all subjects were recruited from the San Francisco Bay Area; this may thus introduce a "liberal" bias in the sample. It is difficult to predict the effect of such a bias. Does a liberal bias translate into a sample more likely to favor speech restrictions (strongly anti-discrimination)? Or, does it translate into a sample biased in favor of fewer speech restrictions (strongly committed to civil liberties/First Amendment)? Ultimately, race and gender (and not city in which recruited, or education) proved to be the strongest predictors of attitudes about speech. Yet I cannot rule out the possibility that the location of subjects is associated with their experiences and attitudes about offensive public speech.

Many studies of legal consciousness to date have focused on the legal consciousness of a particular group, such as welfare recipients (Ewick & Silbey 1992; Sarat 1990) or working-class people (Merry 1990; but see Ewick & Silbey 1998; Bumiller 1988). As a result, they have left *variation* among types of subjects largely unexamined. Instead of limiting this research to particular groups who traditionally bear the burdens of offensive public speech, white women and people of color, I chose to interview people from a variety of social groups, including white men. I did so for three reasons. First, even those occupying privileged positions in society can be the target of what might be considered offensive public speech. Indeed, many subjects, including white men, report being the targets of begging and race-related remarks on a regular basis. It is important to understand their experiences and, as the group traditionally protected by the law as an institution, whether they feel the need for legal protection from this harm. Second, I sought a wide variety of stories about experiences on the street, making it important to include as many people representing as many groups as possible. This method provided a point of comparison regarding the difficulties of being in public for members of different social groups who have correspondingly different experiences with offensive public speech. Finally, and most important for gaining a better understanding of situated legal consciousness, I also wanted to include different racial and gender groups in order to examine group variation in attitudes about the First Amendment. This tactic proved to be very important. I found that many subjects were

not concerned with the First Amendment at all in the context of offensive public speech, although others were gravely concerned about it. And these differences correlated with race and gender.

The 100 respondents constituting the data set represent the racial composition of the areas in which they were recruited, but the sample is somewhat younger than the larger population.[11] This difference may be due to the fact that I was essentially interviewing the "mobile" population—those who travel in public places and utilize public transportation. Table 1 describes the sample in greater detail.

Some interviews were conducted in person, but most were conducted on the telephone. The interviews lasted from 30 minutes to two hours, and the average was about one hour. The interviews began as open-ended, relatively unstructured discussions about being the target of offensive public speech. I took care not to introduce the topic of law or legal regulation of such encounters, preferring instead to see if subjects brought it up spontaneously. The next section of the interview asked specifically about various forms of offensive public speech, including race-related speech, sexually suggestive or explicit speech, and beg-

[11] I selected field sites in Berkeley and Oakland in part because of their diverse racial compositions. I treat them together for analytic purposes, using Oakland's data to supplement the Berkeley data. I did not want a sample drawn predominantly from individuals associated with the University of California, either as students, faculty, or staff, because U.C. Berkeley has a unique history with respect to free speech. Thus, I solicited from Berkeley only in the summer months, reducing the chances that I would obtain a sample dominated by subjects with a university affiliation. During school months, I recruited in Oakland.

Berkeley has a population of 102,724 residents. Some 59% are white, 18% are African American, 15% are Asian, about 7% are Hispanic and 1% are of other races. The average household income in Berkeley is $42,902, with almost 10% of residents living below the federal poverty level (U.S. Census data 1990). In Berkeley, 28% of residents have obtained a bachelor's degree and an additional 30% have a graduate or professional degree.

Oakland is larger, about 372,000 people, of whom 28% are white, 43% are African American, 14% are Asian, about 12% are Hispanic, and some 3% are of other races (U.S. Census data 1990). The average household income is $37,099. About 7% of residents live below the federal poverty level. Only 16% of Oakland residents have a bachelor's degree, and 11% hold a graduate or professional degree (U.S. Census data 1990).

Because I suspect that some of the people most offended by street speech are those who have little contact with it, I chose the town of Orinda, California, from which to select another third of my subjects. Orinda is a suburb of San Francisco, with a population of approximately 16,000. Whites make up over 90% of Orinda's residents, and another 7% are Asian. One percent of Orinda's population is comprised of other races. Only slightly more than 1% are of Hispanic origin, and less than 1% are African American (U.S. Census data 1990). Orinda has a large number of educated residents. Of those 25 years and older, 38% of Orinda residents have obtained a bachelor's degree and an additional 28% also have a graduate or professional degree. The average household income in Orinda is over $106,000, and about 95% of Orindans have an income over twice the poverty level.

San Francisco is a large metropolitan city with a population of 723,000 and a diverse racial composition (U.S. Census data 1990). Whites make up about 47% of San Francisco's population, Asians about 29%, Hispanics 12%, and African Americans 11%. About 1% of the population is of other races. The average household income in San Francisco is $45,663, with 6.13% of residents living below the poverty level (U.S. Census data 1990). Of residents over 25 years of age the highest level of education achieved is high school graduate for 18% and college graduate for 22%.

Table 1: Demographic Characteristics of Respondents, by Race, Gender, Education, Age and City

Race		
White	51%	(N = 51)
African American	27%	(N = 27)
Hispanic	06%	(N = 06)
Asian/Pacific Islander	16%	(N = 16)
Total	100%	(N = 100)
Gender		
Male	37%	(N = 37)
Female	63%	(N = 63)
Total	100%	(N = 100)
Education		
<High school diploma	03%	(N = 03)
High school graduate	07%	(N = 07)
Some college	36%	(N = 36)
College graduate	37%	(N = 37)
Advanced degree	16%	(N = 16)
Self-educated	01%	(N = 01)
Total	100%	(N = 100)
Age		
<18 years	02%	(N = 02)
18–24	25%	(N = 25)
25–29	20%	(N = 20)
30–34	15%	(N = 15)
35–39	06%	(N = 06)
40–44	06%	(N = 06)
45–49	08%	(N = 08)
50–54	11%	(N = 11)
55–59	03%	(N = 03)
60 and over	04%	(N = 04)
Total	100%	(N = 100)
City Recruited		
Orinda	24%	(N = 24)
Berkeley/Oakland	55%	(N = 55)
San Francisco	21%	(N = 21)
Total	100%	(N = 100)

ging. I included begging as a form of offensive public speech to provide an example for discussion among those subjects not routinely the targets of the other forms of offensive speech. Additionally, begging potentially affects everyone and provides a point of comparison for assessing the harms associated with the other forms of speech. Finally, I employed closed-ended questions to explore general attitudes about law. The open-ended portions of the interview included a narrative component. I preserved the integrity of respondents' stories by tape recording and transcribing the interviews, including accounts of street harassment in the targets' own words.

The variety of the data collected proved crucial. The closed-ended questions allowed for systematic comparisons across groups. The open-ended portion of the interview contained the various discourses that subjects used regarding street harassment and law, which allowed me to interpret the legal consciousness of respondents.

V. Experiences with Offensive Public Speech

With few notable exceptions (Landrine & Klonoff 1996; Gardner 1995; Feagin 1991), little empirical evidence exists about experiences with offensive public speech. Although some scholars advocate its legal regulation (Matsuda 1993; Lawrence 1990), it is a social problem that remains largely invisible to members of privileged groups, perhaps because they are less often targets of such speech. In a study that did not specifically inquire about racist verbal attacks in public places, Feagin (1991) found that nearly half (45%) of randomly selected, middle-class African-American subjects had been the targets of such attacks. Similarly, Landrine and Klonoff (1996) found that 50% of African-American subjects reported being called a racist name in the previous 12 months. Gardner (1995) describes large numbers of instances of sexist speech, but offers no baseline estimate about its frequency.

I asked the question a bit differently than did the researchers in the above studies, but the reported frequency is similar. Table 2 provides summary results of the data regarding the frequency of sexually suggestive speech and racist speech, respectively.[12]

Among the respondents, experience with offensive public speech varies dramatically across social groups. A significant majority of subjects (87%) report that they are asked for money "every day" or "often." There are no significant differences across gender in the frequency with which subjects report being made the targets of begging, although whites report experiencing begging in greater numbers than do people of color. In contrast, women are far more likely to be made the target of sexually suggestive speech than are men. Many women (61%) report being made the target of sexually suggestive comments "every day" or "often," but a significant majority (86%) of the men reported hearing such comments only "sometimes," "rarely," or "never." Every woman questioned reported hearing sexually suggestive comments at one time or another in her life. Notably, women of color report more sexually suggestive speech from strangers in public places. Nearly one-quarter of women of color, compared to only 14% of white women, report that they hear offensive or sexually suggestive comments from strangers in public places *every day* (results not shown in tables).

Similarly, people of color are far more likely than whites to be the targets of race-related speech. Nearly half (46%) of the

[12] The size of the sample makes it difficult to explore variation across groups without categorizing subjects in ways that may otherwise make little or no sense. For example, by grouping "people of color," I am able to make comparisons across groups to examine certain questions, but it obfuscates differences among those in this category. I do not mean to equate the experience of being a member of one traditionally disadvantaged group with the experience of being a member of another.

people of color interviewed reported hearing racist comments "every day" or "often." And, the numbers are even greater when African Americans' responses are analyzed separately. Almost two-thirds (63%) of African-American subjects reported hearing comments about their race "every day" or "often," in contrast to less than 5% of white respondents. Every African-American subject reported that he or she had been the target of race-related remarks from a stranger in a public place at one time or another.

Critical scholars appear correct in their assertions about the frequency of these experiences; they are routine. And my findings concerning how often people of color experience such racist incidents are similar to those of others who have studied the phenomenon (Landrine & Klonoff 1996; Feagin 1991). But how does frequency of experience translate into attitudes about the legal regulation of offensive public speech, if at all? Given the striking differences in the frequency with which members of different groups are made the target of offensive public speech, we might expect to see significant differences by social group in attitudes about the legal regulation of such speech.

VI. General Attitudes Toward Legal Regulation

Who might support the legal regulation of offensive public speech? Critical race legal scholars suggest an instrumental hypothesis concerning support for legal intervention—those who are most often the targets of offensive public speech (white women and people of color) may be more likely than infrequent targets to turn to law as a potential remedy for their personal plight and the social ills it represents (Matsuda 1993). It follows that those who also view these incidents as a serious social problem may be more likely to favor the legal regulation of such speech than others. Alternatively, attitudes about legal regulation might correlate with commitment to the First Amendment. Scholars of political tolerance have found that support for free speech increases as education increases (McClosky & Brill 1983; Stouffer 1992 [1955]).

None of these patterns holds true in my quantitative data. Educational level does not explain the patterns of general support for the legal regulation of offensive public speech among my respondents. In fact, those with the highest levels of education were more likely to favor the legal regulation of offensive public speech. This result may be due to the truncated educational distribution of this sample, however. My subjects were more educated than the general U.S. population.[13]

[13] For the educational distribution, see Table 1. I do not report the results of analyses of education here, but they are included in the larger work (Nielsen 1999).

Additionally, the level of commitment one has to the First Amendment generally bears no relationship to attitudes about regulating offensive public speech.[14] It is important to remember, however, that the type of speech about which I inquired is not *organized* offensive political speech (which is the subject of the political tolerance literature). There may be more support for constitutional protection of organized hate speech among better-educated groups than there is for offensive remarks made between strangers in public places.

In my study, respondents' attitudes toward the regulation of speech were related to their experiences with the forms of speech (which is related to their race and gender) and to whether they consider such speech to be a personal and/or social problem. The data in Tables 2 and 3 demonstrate that, among these respondents, women are far more likely than men to report experiencing sexually suggestive speech, and women are much more likely than men to report it as a serious personal

Table 2: Frequency of Respondents' Experiences with Offensive Public Speech, as a Function of Race and Gender

	Every Day/Often	Sometimes/Less	Total (*N*)
Begging			
Gender			
Men	82%	18%	100% (33)
Women	90%	10%	100% (58)
All	87%	13%	100% (91)
Race*			
Whites	93%	07%	100% (44)
People of color	81%	19%	100% (47)
All	87%	13%	100% (91)
Sexually Suggestive Speech			
Gender***			
Men	14%	86%	100% (29)
Women	61%	39%	100% (54)
All	45%	55%	100% (83)
Among Women			
White women	55%	45%	100% (29)
Women of color	68%	32%	100% (25)
All	61%	39%	100% (54)
Race-Related Speech			
Race***			
Whites	05%	95%	100% (41)
People of color	46%	54%	100% (44)
All	26%	74%	100% (85)

Chi-square significance *p ≤ .10, **p ≤ .05, ***p ≤ .01

[14] I developed a scale to measure commitment to the First Amendment in more traditional contexts. Questions with Likert-scale responses were tabulated to assign respondents a measure of commitment to the First Amendment. Whether or not respondents had a low, medium, or strong commitment to the First Amendment (when asked about various schemes to restrict music, pornography, and political speech) bore no significant relationship to whether respondents favored restrictions on the speech about which I inquired. I do not report the results of analyses of First Amendment values here, but they are included in the larger work (Nielsen 1999).

Table 3: Respondents' Categorization of Offensive Speech as a Personal Problem, a Social Problem, and as a Subject of Legal Intervention, as a Function of Race and Gender

	Personal Problem % yes	Social Problem % yes	Favor Legal Limits % yes
Race-Related Speech			
Race	***	**	
Whites	20% (09)	96% (44)	33% (16)
People of color	51% (24)	83% (40)	40% (19)
All	36% (33)	89% (84)	37% (35)
	$N = 93$	$N = 94$	$N = 95$
Sexually Suggestive Speech			
Gender	***		
Women	55% (32)	78% (45)	39% (23)
Men	15% (05)	71% (25)	42% (15)
All	40% (37)	75% (70)	40% (38)
	$N = 93$	$N = 93$	$N = 95$

Chi-square significance **p ≤ .05, ***p ≤ .01

NOTE: Numbers in parentheses signify number of respondents answering "yes" to the following questions: "Do you consider race-related speech between strangers in public places to be a problem for you personally?" "Do you consider race-related speech between strangers in public places to be a social problem?" "Do you think that race-related speech between strangers in public places should be limited by law?" "Do you consider sexually suggestive or explicit speech between strangers in public places to be a problem for you personally?" "Do you consider sexually suggestive or explicit speech between strangers in public places to be a social problem?" and "Do you think that sexually suggestive or explicit speech between strangers in public places should be limited by law?"

problem. However, women are *less* likely than men to favor the legal regulation of sexually suggestive speech in public places. In addition, most of the women and men who compose this sample agreed that sexually suggestive speech poses a serious social problem.

Similarly, the figures in Tables 2 and 3 demonstrate that people of color are significantly *more* likely than whites to report experiencing racist speech and to identify it as a serious *personal* problem. Nonetheless, whites are significantly more likely than are people of color to believe that race-related speech between strangers in public places poses a serious *social* problem. Further, people of color are only slightly (and not significantly) more likely than whites to favor regulating offensive racist speech.

Thus, although respondents are in substantial agreement that racist and sexist speech pose serious social problems, the strong majority view is that offensive public speech should not be regulated except in its most extreme forms.[15] When asked gener-

[15] I inquired about both criminal and civil liability for offensive public speech. Where I report percentages of people who "favor the legal regulation of offensive public speech," I refer to people in favor of any type of legal restriction. When respondents indicated they may favor the legal regulation of speech, I asked, "Should that be an infraction, like a ticket with a fine? Or, should there be civil liability for that, meaning the target could sue the speaker for money? Or, should there be criminal punishment for that, meaning the speaker would have jail time or probation?"

ally about the regulation of offensive public speech, only 12% of respondents favored legal regulation (not shown in tables). Even when presented with specific examples of the types of speech, only 35% of respondents favor the legal regulation of begging (not shown in tables), 40% favor the legal regulation of sexually suggestive speech between strangers in public (Table 3), and 37% favor the legal regulation of race-related speech between strangers in public places (Table 3).[16]

This surface-level agreement masks the diverse underlying reasons that subjects gave for opposing the legal regulation of offensive public speech. One possible interpretation of these findings is that most people generally resist the intrusion of law into their lives. They prefer to handle problems—even problems they regard as fairly serious—on their own. Another interpretation of these data is that they vindicate conventional First Amendment theories. Even the "victims" of offensive speech are unwilling (or at least reluctant) to limit public speech because they recognize the value associated with allowing speech. A more critical analysis is that the dominant cultural ideology regarding the First Amendment has a powerful hegemonic effect, resulting in strong opposition to the regulation of speech. Because none of these theories is drawn out in the quantitative data, we must look to the discourses that respondents' use to talk about their opposition to the legal regulation of offensive public speech. In the section that follows, I relate what the respondents said.

[16] Measuring attitudes about the legal regulation of offensive public speech proved to be complicated. Answers varied according to how the question was presented to the subject. In the most general terms, almost everyone interviewed was opposed to the legal regulation of speech—even offensive speech. When the question referred to a specific type of speech, more people were willing to accept limitations. Finally, when the question was presented in the form of a hypothetical situation, which included a graphic example of racist or sexist speech coupled with conduct, the number of subjects who supported legal intervention increased greatly.

For example, when subjects spoke of their own experiences with offensive public speech in general terms, only about 12% favored restriction. The results cited in Tables 2 and 3 come from a more specific form of the question, when I asked if the respondent favored restrictions on begging, sexually suggestive speech, or race-related speech. In other words, I mentioned the type of speech, but did not provide an example. Finally, when I used graphic offensive hypothetical situations (such as cross-burning on private property), much higher percentages of respondents supported legal intervention.

I used the mid-level measure when reporting general attitudes about legal intervention (Tables 2 and 3). Based on my analysis of the full set of questions and open-ended responses, this measure more accurately reflects informants' attitudes than either of the extremes regarding the subjects' ultimate opinions about legal regulation. The use of inflammatory words in the hypothetical situations may have made subjects feel that they were somehow being tested regarding their compassion or political correctness. Many subjects hesitated during the interviews, even as they expressed a desire to regulate the most offensive forms of speech. This reluctance emerged in the less-structured portions of the interviews, and I discuss it in great detail in the section that follows.

VII. Discourses on Opposing Legal Regulation: Four Paradigms

The unstructured portions of the interviews reveal that respondents offered four "paradigms" for opposing the legal regulation of offensive public speech.[17] The four paradigms, which I document using the subjects' own words, are: the freedom of speech paradigm, the autonomy paradigm, the impracticality paradigm, and the distrust of authority paradigm. Each pattern represents a well-thought-out rationale for disfavoring the legal regulation of speech. Those who made a First Amendment argument said that they disfavor the regulation of any speech because of their allegiance to the principles they think the First Amendment embodies. Those who espoused the autonomy paradigm said that they disfavor the legal regulation of offensive public speech because these types of interactions are best dealt with by the individual target. Respondents in favor of the impracticality paradigm said that offensive public speech cannot feasibly be regulated because of resource constraints in every phase of the legal system, from law enforcement to the judiciary. Finally, some subjects opposed the legal regulation of offensive public speech because they do not believe such laws would be enacted or enforced fairly by legal officials, thus reflecting a general distrust of authority.

Paradigms vary by social group. As the data in Table 4 demonstrate, whites were more likely to say that the First Amendment was their primary reason for opposing the legal regulation of offensive public speech (46%) than were people of color (33%). People of color were far more likely to cite the distrust of authority paradigm (28%) than were whites (4%). Nearly one-third of women cited autonomy as their primary reason for op-

[17] There were those who supported the legal regulation of offensive public speech. Six subjects were genuinely undecided about the legal regulation of speech, and 12 were in favor of it. The latter individuals were, however, in the minority. The way that these subjects spoke about their reasoning is interesting, because they spoke in terms of a "right" to be left alone or a "right" to be in public without being bothered. There was no obvious pattern to explain why this small group favors regulations on speech, even in fairly innocuous forms. They came from all three cities/towns and were of various races, ages, and genders.

Because this section of the article focuses on reasons for opposing offensive public speech, I do not consider these particular respondents here. Thus, in this section I report results from 82 subjects, some who favored the legal regulation of offensive public speech in more extreme forms (see previous note). I include these subjects here because they articulated serious reservations about limiting speech, which mirrored the concerns of those more adamantly opposed.

I constructed the typologies by categorizing people's attitudes according to their *primary* reason for opposing the legal regulation of offensive public speech. Almost all of the respondents referred in some way to "freedom of speech" or to the First Amendment, although this was not always the major reason for disfavoring the legal regulation of offensive public speech. When respondents gave multiple reasons for their opposition, I asked them which was the most important reason and classified them according to the reason they claimed was the most important.

Table 4: Respondents' Primary Reason for Opposing the Legal Regulation of Offensive Public Speech, by Race and Gender

	First Amendment	Autonomy	Impracticality	Distrust of Authority	Total (*N*)
Race**					
Whites	46%	22%	28%	04%	100% (46)
People of color	33%	17%	22%	28%	100% (36)
All	40% (33)	20% (16)	26% (21)	15% (12)	100% (82)
Gender***					
Women	32%	28%	30%	09%	100% (53)
Men	55%	03%	17%	24%	100% (29)
All	40% (33)	20% (16)	26% (21)	15% (12)	100% (82)
Race/Gender					
White men	80%	—	13%	07%	100% (15)
White women	29%	32%	36%	03%	100% (31)
African-American men	22%	—	22%	56%	100% (09)
African-American women	46%	36%	—	18%	100% (11)
Other men of color	40%	20%	20%	20%	100% (05)
Other women of color	27%	09%	46%	18%	100% (11)
All	40% (33)	20% (16)	26% (21)	15% (12)	100% (82)

Chi-square significance **p ≤ .05, ***p ≤ .01

NOTE: Row totals may not equal 100% due to rounding.

posing the legal regulation of offensive public speech, whereas only 3% of men did so. Women were more likely than men (30% vs. 17%) to say that they think such regulation is impractical.

Like Ewick and Silbey, I do not mean to suggest that these categories are static. Indeed, a number of subjects demonstrated the polyvocality highlighted by Ewick and Silbey (1998:52), moving freely from one discourse to another as they justified their opposition to the regulation of offensive public speech. However, because this research is situated with regard to a particular social phenomenon and within particular legal doctrine, these paradigms, or orientations, may be more stable than the categories of legal consciousness that Ewick and Silbey have elaborated (p. 50). The orientations capture how this group of citizens depicted the problems associated with the legal regulation of offensive public speech in the current milieu.

Freedom of Speech Paradigm

Although many respondents mentioned First Amendment concerns about the legal regulation of offensive speech in public places, only some cited the First Amendment as their primary motive for opposing legal regulation. The most common argument put forth by respondents who fall into the free speech paradigm is what lawyers call the "slippery slope" argument. The reasoning is that if one form of speech is restricted, other, presumably more valuable, speech will ultimately be restricted as well because there is no way to make a principled distinction in content of speech for purposes of regulation.

This subject's comments were typical of those who made the layperson's version of the slippery slope argument:

> I don't know, I think it's hard. I think once you start restricting one thing, it can get carried away and you can restrict other things. I guess generally I think that people should just have a little more respect for each other and their own space and stuff. (30-year-old white man, interview #01)

This quotation demonstrates the respondent's recognition of the problem of the slippery slope and his nonlegal tactic (more respect for each other). His solution is to forget about law and to move toward a more "civil" society, in which we allow each other space. Consider another example of the slippery slope argument.

> I think there should [be legal limitations on sexually explicit speech in public places], but if they can illegalize that, what else can they?
>
> Q: So . . . you would be in favor of very limited type legal restrictions, or no legal restrictions?
>
> A: Probably none. Because once you restrict one, you can restrict others. (18-year-old African-American woman, interview #54)

This woman's concerns regarding the First Amendment trump her opinion that there should (in some ideal world) be restrictions on sexually suggestive speech between strangers in public places. This subject said that offensive, sexually suggestive speech is a routine and serious problem for her, but one she thinks should not be addressed by law.

Another respondent offered a similar analysis:

> I think it [sexually suggestive speech between strangers in public places] shouldn't be done. . . I think it would be best if people didn't do it, and I really wish people wouldn't do it, but I can't say I think it should be illegal because that's a violation of free speech. . . . Part of free speech is taking the good with the bad that comes from it, and I think it is really hard to separate the good from the bad . . . Because laws like that could be abused [and used to] keep other things silenced . . . So I think although it is bad, I think it is better to teach people to have more tolerance . . . rather than take away certain freedoms . . . Because I like think that *the freedom of speech is the most important thing in this case.* (21-year-old white man, interview #15, emphasis mine)

Both of these subjects appreciated the problems of offensive speech in public places, and yet their beliefs about the First Amendment were their primary concern. Although the last subject is clearly troubled by the problem of offensive, and even threatening, sexually suggestive speech between strangers in public places, he favors allowing this concrete harm rather than risking another, more serious, harm.

On the theory that Americans construct many problems in terms of rights, one might expect those employing the freedom of speech paradigm to cross social groups. Despite the assertion that rights are substantively vacuous (Tushnet 1984), some scholars claim that Americans increasingly talk about, and frame disputes in, terms of rights (Glendon 1991). Others claim that members of traditionally disadvantaged groups may have a greater stake than relatively privileged people in the use and preservation of rights as a strategic tool in the struggle for equality (Williams 1991).

My data suggest that none of these prerogatives is exactly the case. Although it is true that rights-based reasoning underlies much of the opposition to the legal regulation of offensive public speech, this is largely true only for a particular subset of respondents—white males. The people of color I interviewed were far less likely to cite the First Amendment or freedom of speech as their primary reason for the opposition to legal regulation of offensive public speech. Subjects who fall into the First Amendment paradigm have strong First Amendment values, although they do not discount the experiences they suspect are faced by white women and people of color in their day-to-day lives.

One reason the First Amendment category is mostly composed of white males may be the infrequency with which white men are targets of offensive public speech. When they *are* the targets of offensive speech, it tends to be begging, the least personally invasive of the forms of speech. Although white men experience begging regularly and race-related comments infrequently, they are not faced with the same sort of near-daily harassment faced by white women and people of color.

According to my interviews, white men are more likely to think that the current state of the law is satisfactory, at least in the area of offensive public speech. Given the high stakes associated with imposing legal regulations on speech (infringing on a fundamental right), white men are unlikely to favor legal intervention and are more likely than others to cite the First Amendment as a primary reason for their opposition. This pattern holds despite their acknowledgment of the seriousness of these problems for members of other groups. Those who fall into the First Amendment paradigm think of the law, particularly the First Amendment, as fair, just, and legitimate, despite occasional unfortunate outcomes.

The "Autonomy" Paradigm

About one-fifth of subjects studied oppose the legal regulation of offensive public speech because of their feelings about autonomy. As the data in Table 4 show, the autonomy paradigm is espoused almost exclusively by women; of the 16 subjects who spoke of autonomy, only one was a man. The autonomy paradigm is based on women's understanding of the phenomenon of street harassment, how best to remedy the problems of gender inequality, and their views of the proper role of law in the latter endeavor. Even women who reported being the target of frequent offensive speech from strangers in public places tended to downplay the seriousness of such interactions when the idea of law was introduced as a possibility for dealing with the problem. These subjects seem to have a sense that women can control being made the target of offensive public speech. They also imply that women do not need lawyers or courts to fight what should be considered "personal battles."

Subjects spent significant time explaining how and why these offensive comments are problematic, classifying them as personal and social problems, and detailing the complicated actions they take to avoid being made the target of sexually suggestive speech. Nevertheless, when asked about the possibility for legal intervention, these women responded by explaining strategies used to reduce the impact of unsolicited sexually suggestive comments. In other words, instead of embracing the law to remedy or to prevent the problems that accompany sexually suggestive street

speech, the women I interviewed said they prefer to control the situation by reinterpreting it as relatively harmless; some women denied that street speech affects them at all.

One way that women downplay the significance of sexually suggestive remarks from strangers in public places is by arguing that it is not as bad as it seems. Some respondents said that the problem of public sexual harassment is not as bad in the United States as it is elsewhere in the world.

> I don't know if it [sexually suggestive or explicit comments between strangers in public places] is so much a social problem—because I don't think they have to be stopped. I guess I would compare it to—well, one time I went to Mexico, and it seemed like there it was a lot more prevalent, and in Italy, too—there a lot more. They seem much more open that way, with that sort of stuff. So I would guess it is more of an individual problem. (35-year-old white woman, interview #34)

This attitude was not evident before I introduced the idea of law as a remedy, however. When I asked only about the interactions, the women espousing the autonomy paradigm said that they were deeply troubled and affected by suggestive comments. In addition to their argument that the law should not intervene because the problem is really not severe, women in this category disfavored legal intervention because they believe that women can avoid being made the target of such speech and that they can control the situation when they are, nonetheless, targeted.[18]

The autonomy paradigm is a location in which two powerful normative systems concerning appropriate gender roles conflict. One role that women must play to conform to social norms about appropriate female behavior is that of the "good girl" (Madriz 1997). The good girl avoids sexually explicit comments by not dressing or acting provocatively and by avoiding traveling to inappropriate areas of town (Madriz 1997). The other role women adopt is one of individualism or nonvictimization. According to this theory, women should be autonomous and self-sufficient and should not tolerate harassing behavior. Self-sufficiency implies taking care of problems on one's own rather than looking to others (men) or to institutions (the legal system) to solve problems of gender inequity. Several women referenced the tension between these two roles, but one subject put it very well:

[18] Some of the women I interviewed think that being made the target of sexually suggestive street speech is within their control. They said that by changing the way they walk, dress, interact, and travel, they could eliminate such comments. This process of negotiating oneself in public places is quite complex and is largely unarticulated among women. When I asked how they decide when or where they should travel, women referred to a set of unspoken rules that they assume all women share. This "detailed calculus for being in public" as I call it, is explored in greater depth in the larger work (Nielsen 1999).

> I don't think it would be sensible in some ways to make it illegal because . . . if we always try to crack down . . . when are people ever going to . . . defend themselves and speak up for themselves? And I think women really need to do that. And we're definitely not taught to. In fact, we're taught the opposite . . . [in a singsong voice] "Always be nice, and be polite, and respond appropriately," even when the initial comment is inappropriate. And it should be the other way around, where we should feel free to ask for information when we need it and also say, you know, "I think that's an inappropriate comment," and hopefully leave. But there's not always that option of changing your environment. (27-year-old white woman, interview #02)

There is tension among behaving in a way that is socially appropriate (being nice and polite), standing up for oneself (saying "that's an inappropriate comment"), and preserving one's own safety (leaving the situation if possible). A number of women said they do not want the law to intervene because it would weaken their own response and undermine their self-sufficiency.

The fundamental principle that underlies the autonomy paradigm is that women can and should be able to handle these types of situations on their own. Women who invoked the autonomy paradigm did not even reach the normative question of whether they should have to handle inappropriate speech situations. The fact that these interactions will occur was taken for granted by the women holding this position. In their view, the most important thing is that women should not rely on anyone else. Some women were blunt when placing the responsibility for these situations on women:

> A woman . . . can take care of herself. If she doesn't like what a man is saying to her, I think she can turn around and tell him. I think she can stop it if she wants to. (59-year-old white woman, interview #60)

The autonomy paradigm presumes that many problems of gender inequality cannot be resolved effectively by the use of law. In this view, women, by invoking the law rather than dealing with the problem at the individual level, make themselves appear helpless or as "victims." This posture ultimately would further undermine the status of women. Previous studies of legal consciousness also have found that invoking antidiscrimination law is equated with labeling oneself as a victim. This concern about being labeled a victim serves as one of the most serious barriers to mobilizing the law in the context of civil rights (Bumiller 1988). In Bumiller's view, her subjects had (or at least arguably had) a legal claim to civil rights. In the context of offensive public speech, however, the same thinking seems to be present even though subjects lack a legal remedy that would aid them. Indeed, viewing oneself as a victim prevents individuals from being able to conceive of having a legal remedy. Here, the desire to appear

strong and not to be labeled a victim justifies the absence of a legal remedy.

Some of the men I interviewed shared the view that women would be hindered, rather than helped, by laws to prevent sexually suggestive speech between strangers in public places. Some even made derogatory comments about women who would be in favor of such laws. Comparing the case of public sexual harassment to workplace sexual harassment, one male subject said,

> [E]very time something happens, especially with sexual harassment—they [women] run to "big daddy court," and "big daddy court" helps us out. I feel like, in a situation like this, with a man or a woman, whoever's making the comment, put them aside . . . in a safe place where we could talk about it, where we could address the issue. Not just go directly to the employer, or go to the lawyer and say, "I want to sue this person because he . . . said something derogatory." (26-year-old Asian man, interview #84)

These men agreed that using the legal system in such cases only makes women appear weak; they believe that handling the situation in the moment is the best way to proceed if one is interested in achieving gender equality.

Women who invoked the autonomy discourse made rational arguments against legal intervention in the area of public speech, and in gender relations more generally. They made this judgment based on their assessment of the magnitude of the harms posed by street harassment. When they compared the harms of street harassment to what they considered to be the more serious problems of gender equality, such as unequal pay or sexual harassment in the workplace, offensive public speech was relatively unimportant. Additionally, these women believe (perhaps correctly if the statements of some of the men are to be trusted) that utilizing the law to enforce equality claims makes them appear weaker in the eyes of men and other women.

The thinking that underlies the autonomy paradigm thus ignores the broader social apparatus of gender subordination and views street incidents as isolated from the social institution of sexism.[19] The autonomy paradigm reflects competing expectations

[19] Some may argue that such thinking represents a version of "false consciousness." This argument holds that sexism is so deeply ingrained in society that women are essentially unaware of the ways in which they are sexually subordinated and are thus unable to make rational judgments about their best interests regarding how to overcome such discrimination. Proponents of the theory of false consciousness would argue that although most women disfavor the legal regulation of offensive public speech, this judgment is clouded; laws should be enacted to combat sexually suggestive speech between strangers in public places because without powerful institutional support to combat the social structures that reinforce sexism, no change is likely to result. Critics of this view make the autonomy argument, saying that women are the best judges of whether laws are effective in such matters.

The false consciousness perspective fails to accept or to account for the lived experiences of women. Both learned feminist scholars and ordinary women who contemplate the status of women in American society have opinions about the best way to achieve

for women's behavior. Women must choose between being a "good girl" and being autonomous. The women in this group chose autonomy, adhering to traditionally masculine norms about self-sufficiency, despite life experiences with street speech that differ significantly from those of men. These women claimed significant harm when they reported stories of street harassment, and yet, as "equal" members of society, they do not have and do not want legal recourse for this harm. The price of citizenship, according to women in the autonomy paradigm, is that one must stand up for oneself, rather than rely on state intervention, in the face of these affronts to dignity.

It is difficult to determine if these women would view the problem of street harassment differently if it were recognized as a legally actionable harm; the absence of a legal remedy may partly account for their reluctance to construct one. Until recently, workplace sexual harassment was a common problem considered by many simply to be part of the employment landscape for women. And, many people resisted the imposition of laws designed to correct this abuse because they thought women should be able to handle it on their own and that there would be a backlash that would ultimately disserve the interests of women in the workplace.

The autonomy paradigm thus represents a "boundary of law." Offensive sexually suggestive speech between strangers in public places represents a point at which many women are willing to say the law should not intervene. This may be due, in part, to the seeming legitimacy of the status quo. In other words, because there is currently no law, women within the autonomy paradigm think there should not be a law. The law not only defines what *is* but also constructs what these women think *is possible*, at least in part. Nonetheless, women in the autonomy paradigm articulated rational reasons for the construction of such a boundary.

The women in the autonomy paradigm acknowledged the harm associated with offensive public speech; but, in their experience, laws intended to protect women actually work in the reverse. Thus, women within the autonomy paradigm are quite instrumentalist about the use of law as it regards unwanted speech. If they thought it would work and would not create the unintended backlash, they might be in favor of such a law. Or they might favor such a law if they felt the harm of lewd or racist speech was greater. Nevertheless, their experiences with law at-

social change and improve gender relations. The opinion that the law is not the appropriate mechanism for remedying social ills is shared by formal equality feminists. These scholars believe that providing any remedy specific to gender ultimately disserves women because it tends to reify differences between the sexes and thus ultimately serves to reinforce women's subordinated social position. Rather than attempt to determine if women suffer a form of "false consciousness," I seek to explore their legal consciousness, which I believe results from their attempt to resolve competing notions of appropriate social roles.

tempting to mediate gender issues makes them think it would not work in this case.

The "Impracticality" Paradigm

The third rationale that subjects invoked to oppose the legal regulation of offensive public speech is the sheer impracticality of catching, trying, and punishing individuals violating such laws. In general, people I categorized within the impracticality paradigm expressed concerns about enforcement both in the streets and in the courts. Those concerned with enforcement in the streets believe it would be difficult to find police officers to apprehend violators of proposed anti-hate speech regulations. For example, one woman said,

> I just can't imagine that [arresting or otherwise punishing people for making race-related remarks]. It would just tie up too much time for the police. No." (53-year-old white woman, interview #21)

Others within the impracticality paradigm reported that the nature of the comments—the fact that the comments are made quickly and quietly by strangers—makes it difficult to even identify the person who made them, thereby making apprehension (and later, proof) very difficult. Consider this woman's story:

> I was walking to work, or, my bus stop, a couple of weeks ago, and there was an older Caucasian man—he's a homeless man—*he came up really close, in fact, he was right up against my side, and um, he kind of made eye contact. I was startled because I turned right around into his face*, and he said, "You're a very pretty girl, very pretty girl." . . . There were a lot of people around so . . . I didn't feel immediately threatened by it, but it was definitely intrusive. (24-year-old Asian woman, interview #100, emphasis mine)

This woman's experience is not uncommon, and it illustrates the difficulty that might be associated with apprehending violators. People make offensive comments often in a very private manner, despite the broader public contexts in which this type of interaction occurs. This, in turn, may make the targets, familiar with this technique, skeptical about enforcing laws against such speech. The private or hidden nature of the act and the concurrent problem with proof are well-known as they correspond to date rape and workplace sexual harassment. Perhaps knowledge of and experience with these phenomena partly explains why these subjects were reluctant to approve of laws preventing such behavior.

Some respondents expressed the concern that, even if identifications and arrests for lewd speech could be made, enforcement of a law prohibiting offensive public speech would burden the courts. These subjects based their opinions on the pervasive-

ness of the problem and the relatively minor harm they associate with offensive public speech. They questioned whether it would be worthwhile to impose such a law on an already overburdened legal system:

> [I]t probably wouldn't do much, kind of like a jaywalking law, and it would tie up . . . precious court time and our tax-payer money essentially, so we wouldn't win anyway. (23-year-old African-American man, interview #23)

Despite their enforcement difficulty and cost, laws routinely are passed and enforced that prohibit crimes that occur in private places. The laws exist and are enforced because the regulated behaviors (spousal assault and drug dealing, to name only two) are considered to be troubling for society. In addition, laws often are passed for symbolic and deterrent effects. Simply having a law on the books (whether or not it is enforced) may discourage some illegal behaviors, and the existence of certain laws may convey a message of societal disapproval for certain conduct. Nonetheless, the respondents who hold the impracticality paradigm do not favor laws they think would be impossible to enforce.

The impracticality paradigm is interesting, in part, because many subjects made the argument that there *ought* to be laws prohibiting this type of speech, but their concerns about the inability to enforce such laws overwhelm this normative belief. Consider this woman's comments.

> I don't know how you would do that [enforce laws prohibiting offensive public speech]. Because you can't have a policeman on every corner—*I think you should be arrested for that . . . But, like I say, that's impossible. Because we can't have a policeman everywhere in the city.* (51-year-old white woman, interview #26, emphasis mine)

She firmly believes that making racist comments to strangers in public places should be a criminal offense, but she also believes that the First Amendment does not provide a barrier to the criminalization of this action. Her reservations about a legal remedy are based on her opinion that the police would be unable to enforce such a law.

Another facet of the impracticality argument addresses the reality of a society in which perpetrators of very serious offenses are not always apprehended. Despite a belief that these sorts of comments should be illegal, some subjects interviewed believe that police attention should not be diverted from more serious matters:

> [G]ranted, it's a problem, it's a burden, it's an annoyance to the general public, but to lock someone up for that kind of offense . . . when there are people committing, like, murders or assault. I mean, I would rather see those people put behind bars. (28-year-old Latino man, interview #68)

These comments represent an implicit ordering of criminal wrongdoing. This subject has made a calculation about what crimes or actions he would prefer to see the police, courts, and corrections system focus on. As long as there are more serious offenses occurring that demand official attention, offensive public speech will have to wait.

Among respondents, women were far more likely than men to cite impracticality as their primary reason for opposing laws against offensive public speech, with nearly one-third (30%) of women citing impracticality and less than one-fifth (17%) of men doing so. Impracticality was an important consideration for white women, but white men did not express practicality concerns, perhaps because they adopted the First Amendment model instead. And, African-American men did not reach practicality concerns because they adopted the distrust of authority model.

Distrust of Authority/Cynicism about Law Paradigm

The fourth reason subjects cited when opposing the regulation of offensive public speech seems to stem from a general distrust of authority and cynicism about law. Those who employ this paradigm connect past experiences with law and legal actors to the issue at hand—the regulation of offensive public speech. Their responses are predicated on the belief that the law cannot really help or that it will actually be used against those it was intended to protect. As the figures in Table 4 show, the distrust of authority paradigm is a view widely held among African-American men in this sample. Although some African-American women echoed this concern, the idea that eventually the law would be used against those it was designed to protect is largely absent from the discourse of white respondents.

The cynicism and impracticality paradigms are similar. In both, subjects believe that the law can neither affect changes in the behavior of others nor in a broad social sense. What distinguishes respondents primarily engaged in a discourse of cynicism from those who espoused the impracticality paradigm is that the former based their opinions on past bad experiences with the law or legal actors. Some subjects believe they were treated unfairly, or were dismissed completely, in past interactions, and this behavior serves as the basis for their current opinions about the law.

For example, despite frequent instances in which she was the target of offensive sexually suggestive speech in public places, one subject was skeptical of laws prohibiting such behavior, not because of her commitment to the First Amendment but because of her cynicism about the ability of law to alter behavior. Her cavalier attitude toward the First Amendment was typical of many white women and people of color. Consider this woman's com-

ments about the efficacy of laws prohibiting sexual harassment in the workplace and how her experiences there affect her thinking about the prospect of restricting street speech:

> Well, yeah, the First Amendment and all that . . . But, you know, even if it were illegal, it wouldn't do anything. I mean this kind of thing has been going on forever. I mean, sexual harassment in the workplace, I mean, *I have been harassed at every job I have ever had and it's illegal,* but it doesn't do any good. (19-year-old Latina woman, interview #06, emphasis mine)

Clearly, this woman has little hope for the law to change behavior, much less effect broad-based social change. She based her opinion on her experiences with another form of sexual harassment—that which occurs in the workplace. Laws intended to protect her in that setting have not worked to her benefit, and the mere existence of these laws has not made her work life any more tolerable.

Others who invoked the cynicism, or distrust of authority, paradigm simply do not believe that any action the government could take would translate into altered behavior by those who engage in offensive public speech:

> I don't see how . . . a total stranger coming up to you and saying something totally derogatory, sexually or racially, and he gets fined for how many dollars or thrown in jail or whatever. I don't see how that would actually make him learn or make him understand that it's not the right thing to do. (26-year-old Asian man, interview #84)

This subject believes that if the law cannot make the individual understand that sexual comments or sexual harassment in public places are not the "right thing to do," then the law should not be employed to control such behavior. He thinks that the ultimate goal is to teach tolerance and understanding and that the law is not the effective mechanism for doing so.

Others had a more insidious view of government, believing not only that the legal system would be ineffective but also that "the system" itself is corrupt and would therefore not work to achieve the goal of eliminating racist and sexist speech.

> Well, the dilemma I'm in is that I think the whole [legal and political] system is so bad and so rotten that uh—making it larger doesn't make a lot of sense. I think the whole thing needs to be—I think we need to scrap this one and start over. (59-year-old African-American woman, interview #85)

African-American men told sadly familiar tales of unjust police actions that have led them to question the implementation of any law designed to protect them from racially harassing speech. Others within the distrust of authority paradigm discussed legal and political institutions and their view that they are corrupt and unhelpful. One African-American man said, "They're never going to enforce laws like that anyway. Look at

affirmative action—it's all going away anyhow" (32-year-old African-American man, interview #89). Even if such laws could be passed, he is skeptical about enforcement. After all, affirmative action was designed to help people like him, and in California, where these subjects were recruited, affirmative action had recently been eliminated by the electorate in a ballot initiative. Uncertainties about remedy made this subject and the others who fall into this paradigm uncertain about the future of laws designed to protect the disadvantaged from certain classes of harms.

VIII. Toward a Theory of Situated Legal Consciousness

Both attitudes about and experiences with offensive public speech are complex. I found significant differences in people's experiences with offensive public speech across groups: White women and people of color are far more likely to experience racist and sexist speech from strangers in public than are white men. Members of traditionally disadvantaged groups are more likely to view these interactions as personal problems. However, whether offensive public speech is viewed as a social problem does not vary by group—there is near unanimity that racist and sexist speech pose serious social problems, while relatively few subjects think begging does. Moreover, there appears to be a near consensus that offensive public speech should *not* be regulated by law.

This near-unified opposition to the regulation of offensive public speech masks the variation in citizens' reasoning about the problem and the role of law in dealing with it. Accordingly, analysis of offensive public speech that does not probe beyond opinion research would be somewhat misleading. Although it is possible to explore opinions about legal intervention and street harassment (or any other social problem, for that matter) and to find patterns (in this case, that people generally disfavor the use of the law to remedy this social problem), such research does not provide the insight that a more nuanced study of legal consciousness provides. This surface consensus opposing the regulation of speech obfuscates the underlying differences that tell an important story about the law, legality, their role in people's lives, and how people's experiences in one area may sometimes provide the basis for general attitudes toward law, legal institutions, and legal actors.

It is only through an examination of ordinary citizens' discourses that a fuller picture of legal consciousness as it relates to offensive public speech emerges. There is *not* unanimity across social groups as to why people disfavor the legal regulation of offensive public speech. The white males in this sample were most likely to disfavor legal intervention because they hold tradi-

tional First Amendment values. African-American male subjects were more likely to disfavor legal regulation because of a distrust of authority and a cynicism about law generally. Among all respondents, women were far more likely than men to argue that offensive public speech should not be legally regulated both because it is "impractical" to do so and because regulating it may present them as victims and further undermine their social status. The study subjects' responses are not randomly distributed across the reasons for opposing the legal regulation of offensive public speech. This result suggests that the social location of subjects plays an important role in the shaping of their attitudes concerning this topic specifically and perhaps legal consciousness more generally.

My purpose was to explore situated legal consciousness and to map variation across social groups, and as such, my data do not provide a basis for a competing system to Ewick and Silbey's (1998) model of legal consciousness. Instead, these findings emphasize the value of studies of legal consciousness that hold constant legal doctrine and social phenomenon to better understand variations in legal consciousness. Respondents in each of the paradigms reported bear some relationship to those in Ewick and Silbey's general orientations. Those within the First Amendment paradigm are not unlike Ewick and Silbey's (1998:79) subjects classified as "before the law," privileging law above even their own life experiences. Women within the autonomy paradigm in my study espoused a legal consciousness similar to Ewick and Silbey's subjects who are "with the law," treating law instrumentally to serve their purposes when it can be made to do so. In the latter's analysis, offensive public speech is not one such arena. Those within the distrust of authority paradigm in my study are not dissimilar to those within Ewick and Silbey's "against the law" model.[20] Ewick and Silbey's subjects recounted frustrations dealing with the law on a variety of topical matters, from welfare and social security to criminal law, and complained that the law and legal actors downplay or ignore the needs of some people. The data in my study demonstrate the lived truth of this orientation toward law. What is more important, they demonstrate that the various orientations people used were not distributed randomly.

[20] The primary difference between these subjects and those with the "against the law" orientation described by Ewick and Silbey hinges on a theoretical understanding of the meaning of resistance. Ewick and Silbey say that "against the law" involves resistance to law. The "resistance" employed by those who are in this "distrust of authority" paradigm is complex. They "resist" law because they view it as unhelpful and corrupt, but (at least regarding offensive public speech) they do not tell of active forms of resistance. Nonetheless, they resist the intrusion of law into their lives.

Active forms of resistance highlighted by my subjects were in the form of resistance to existing social hierarchies of race, gender, and class and were directed at the speaker in these interactions. Subjects resisted being defined according to their race, gender, or class by responding to the speaker in some way. These variations on the theme of resistance are explored in greater depth in the larger project (Nielsen 1999).

Studies of legal consciousness that elaborate typologies of legal consciousness demonstrate variation in that consciousness (Nielsen 1999; Ewick & Silbey 1998), but how do we account for these variations? The data herein go beyond describing general orientations toward the law to trace the factors that influence how people arrive at their general position vis-à-vis the law, demonstrating that people make connections from their past experiences—good or bad—which arise in part from the social positions they occupy—and that these experiences shape their understanding of the law. Thus, the social location of subjects, and the experiences that arise from that location, are a vital part of our understanding of legal consciousness. From this study we see that being a member of a traditionally disadvantaged group has a significant effect on an individual's orientation to the law.

This study also clearly demonstrates that past experiences with law and legal actors affect a person's legal consciousness. Obviously, experiences in which one is the target of offensive public speech may increase if one is a member of a traditionally disadvantaged group. Many women report a backlash when they invoke the law to solve gender problems; many African Americans, especially men, report indifference, corruption, and blatant racism in their brushes with law. This study has demonstrated how subjects relate such experiences to offensive public speech and to the First Amendment.

Because the data show that many people do not favor legal intervention to solve the problem of offensive public speech, one may read that the law is nowhere to be found in these types of interactions. I argue the opposite. Although most subjects denounced the idea of introducing the law to solve what they perceived to be a serious social problem, their reasoning nonetheless was based upon their understanding of "law" in the broadest terms. Legal consciousness affects not only how people think about invoking the law or the general utility of law but also how people interpret events in their everyday lives. The law shapes what remedies respondents believe are possible and plausible, as well as respondents' understanding of these common everyday events as a troubling, yet unavoidable and unremediable, part of social life.

Having asked about offensive public speech, rather than law, as the interviews began, I was able to explore the phenomenon of street harassment, to understand how people make sense of such interactions, and to observe that the law was prominent in this understanding for most subjects even before I introduced law as a topic in the interviews. Most subjects believed (probably correctly) that speech—even offensive public speech—is legally protected. Thus this perceived legality of speech is the primary mechanism through which subjects transform what they describe as a significantly troubling experience into something that simply

should be tolerated. Some said this type of speech must be tolerated as the price of living in a free society; others said the police could not or would not enforce these types of laws, anyway. Still others proposed tolerating such events because they believe that making speech illegal transforms targets into "victims" and thereby reinforces their subordinate status in society. Even without inquiring about the law, it is obvious that law affects what ordinary people think is possible as a remedy for this social problem.

Even as the interview subjects specifically denounced or ignored law as a possible solution for the problems associated with offensive public speech, and even as they explained that they thought there should not be laws prohibiting it, their beliefs were couched in and explained with reference to their understanding of the law. None of these subjects could or did express an understanding of offensive public speech outside of their knowledge of the law, even though their conceptions about the influence of law varied dramatically.

That people's responses are not randomly distributed across the four paradigms in this study is an indication of how important it is to explore variation across social groups when examining legal consciousness. This complexity among targets' attitudes about offensive public speech demonstrates similarities to the orientations toward law elaborated by Ewick and Silbey and provides support for the assertion that members of subordinated groups are more likely to be "against the law"—cynical about the law and its enforcement.

The respondents' different discourses and the complex reasoning that underlies each demonstrate that they understand law and their position within it, perhaps better than either absolutists or critical theorists. Attention to differences in social location and careful consideration of the life experiences of members of different social groups leads to a clearer understanding of the role of law in the everyday lives of ordinary citizens.

Thus, these data demonstrate systematic variation in legal consciousness, at least with respect to the issue at hand (offensive public speech), the relevant legal doctrine (the First Amendment), and within a particular social location (the public sphere). We do not yet know how these orientations change as the researcher asks about different legal issues. To better understand the contingencies inherent in legal consciousness, further studies that are situated within particular sociolegal phenomenon are required. Nonetheless, these data suggest that race and gender play an important role in understanding legal consciousness.

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