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# Resistance and the paradox of legal entitlement – a theoretical analysis of migrant women’s responses to domestic abuse in the host country

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## ABSTRACT

This article provides a theoretically informed examination of migrant women’s responses to domestic abuse in the host country. It departs from an analysis of research on South Asian women in England, on Portuguese women in England and on Portuguese women in Canada to suggest that women’s apparent lack of mobilisation of law (primarily by eschewing contact with the justice system of the host country and preferring informality), both perpetuates hegemonic discourses and presents a possibility for change. The theoretical approach undertaken combines literature on legal consciousness, power and resistance, and on socio-cultural structures and barriers that affect migrant women. The article ultimately suggests that, rather than an acceptance of hegemonic discourses, women’s behaviour is best understood as a form of resistance to, and from within, socio-cultural pressures encountered in everyday life; as a form of “entrenched” resistance.

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## Introduction

In 1990, with more people using courts to address inter-personal problems than before, Merry’s landmark study on the legal consciousness of working-class Americans’ mobilisation of law described it as a “paradox of legal entitlement”. According to her, individuals saw the use of courts as an empowering tool to resolve disputes; however, this was also a source of anxiety, resulting from an engagement with the legal machinery that they felt not always reflected their discourses and ambitions (Merry 1990, 180). Merry’s study highlights the complex nature of the legal consciousness that underpins individuals’ mobilisation of law. Other research has since demonstrated how a variety of factors may impact this process.<sup>1</sup>

Understanding the mobilisation of law, and specifically, the question of why individuals who are aware of their rights (or at least have a notion that action could be taken via the justice system to improve their situation) do not invoke them to protect themselves is no less relevant in the field of domestic abuse, and it is part of what

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this explorative study proposes to do. To address domestic abuse effectively among migrant women, whom these laws and policies are meant to benefit and without whose embracement will most likely not achieve their goals, it is important to understand and reflect on their perceptions and reactions to domestic abuse. One way of doing this is by analysing their legal consciousness, which entails a methodological ‘bottom-up’ approach, discussing how individuals are (or are not) aware of the law, how they interact with legal phenomena and the subjacent power dynamics (Harding 2011, 21).

The article begins with a theoretical analysis of how power and resistance operate, are revealed, perpetuated and challenged. Departing from Ewick and Silbey’s suggested forms of legal consciousness (“before”, “with” and “against” the law), it goes beyond a mere description of the forms of legal consciousness adopted by individuals to explore the collective impact of women’s behaviour. If we accept that individual acts and narratives influence the actions of others, can bring about change and have the power to effectively challenge structures of power (as proposed by Ewick and Silbey 1999), then we can start interpreting migrant women’s discourses and behaviour as potentially signalling to others successful and socially acceptable avenues for action. In this context, apparent inaction or a preference for informality do not represent a lack of mobilisation of law (in the sense of state law) but can be interpreted as resistance, both to perceived inadequacies of the justice system to address domestic abuse and to cultural and community pressures.

To better illustrate how power dynamics influence migrant women’s legal consciousness and associated behaviour, the article departs from the analysis of three studies. These are: Gill’s research on South Asian women in England (Gill 2004), Graca’s examination of the behaviour of Portuguese women in England (Graca 2015, 2018) and Barata et al’s study of Portuguese women in Canada (Barata et al. 2005). These studies were selected for several reasons: they span a large amount of time, demonstrating some consistency of women’s reactions to abuse within certain socio-cultural precepts, they provide rich and detailed accounts by the women researched and they discuss similar points, such as perceptions of domestic abuse, reactions to it and the influence of culture on these. In addition, while Gill and Graca offer a qualitative take on the subject, Barata et al’s larger scale study provides a counterpoint in terms of methodology that adds to the robustness of the findings presented here.

By adopting this stance and highlighting common perceptions and responses to abuse of the women studied in the work of Gill (2004), Graca (2015, 2018) and Barata et al. (2005), a number of questions arise, such as: whether some migrant women are experiencing a “paradox of legal entitlement”, in that they feel empowered by the existence of legal tools to address domestic abuse, but anxious about the implications of using them; whether their apparent inaction represents an agreement with dominant narratives, or whether they are simply highly rational actors, making a cost-benefit exercise when deciding how to respond to abuse; furthermore, we are led to ask whether, regardless of motivations, migrant women’s behaviour merely supports existing power dynamics, or whether it can also present an opportunity for change. To answer these questions, this article bridges the study of hegemonic discourses, which is central to most research of legal consciousness, with other forms of

approaching legal consciousness, particularly those related with identity and the mobilisation of law (Hertogh 2018, 7).

Although this article focuses on the (itself heterogenous) marginalised group of migrant women, it recognises that some of the factors highlighted here may be applicable to other populations. It is not the objective of the article to devalue the experiences of other women or draw comparisons with other groups. Rather, it proposes to advance the understanding of legal consciousness and resistant behaviour within a broader theoretical framework, with the acknowledgment that some of its findings may extend to different communities, while others may be contingent to the populations studied here.

This article's original contribution, therefore, consists in using three pieces of empirical research on migrant women and domestic abuse as case studies for a theoretically informed contextualisation of migrant women's legal consciousness. It ties in different approaches to the study of legal consciousness, power and resistance, as well as the impact of socio-cultural structures on behaviour, in order to do this. It hopes that this approach, not only highlights shortcomings in existing provisions to support women, but also assists statutory bodies and service providers in better understanding the populations they work with. Moreover, it advances current literature on legal consciousness, which has given little attention specifically to migrant women and domestic abuse.

### Theoretical underpinning

Socio-legal researchers vary in their approaches to the complex relationship between law, the social and the individual, in a distinction that Sarat and Kearns (1993) classify as “instrumental” versus “constitutive”. The first is concerned with the impact of law in society, seeing these as separate systems, while the second emphasises the inter-relationship between the two. By adopting a “constitutive” approach, legal consciousness scholars see the law as one of various constraints of social life that, in turn, is affected by cultural and social practices (Ewick and Silbey 1998, 35; Nielsen 2000, 1058). The study of legal consciousness is, therefore, concerned with plural manifestations of law and draws from the historical distinction between “law in the books” and “law in action” (Harding 2011, 17). Albeit with a different approach, it is close to the tradition of legal pluralism in which, ‘(...) law is a system of meanings, a cultural code for interpreting the world. It cannot be abstracted from cultural meanings, everyday experiences or language’ (Anleu 2010, 72). A legal consciousness approach also sees the law interacting with social, structural and contextual variables that coexist in the production of legal meanings and systems (Harding 2011, 17). This de-centring of the law shifts the focus of the analysis to cultural codes and vocabularies that individuals use to interpret everyday facts in a legal way; to a common sense understanding of the law, as experienced and produced in everyday life (Ewick and Silbey 1998, 20–21; Hull 2003, 630; Cowan 2004, 928–932; Harding 2006, 513; Saguy and Stuart 2008, 158).

Ewick and Silbey were particularly influential in the development of a framework for the study of legal consciousness that builds on ideas of hegemony, power and

resistance. According to these authors, it is common for individuals to have different perceptions and experiences of law and of the justice system; for example, some will avoid any contact with it, while others will use it with confidence to achieve their goals (Ewick and Silbey 1998, 28). These stances reflect different “forms” of legal consciousness, which result from an interaction of schemas and resources. Schemas are cultural codes, common vocabularies and conventions used to make sense of the world (Ewick and Silbey 1998, 40). Resources include both material assets and human capacities, such as capital, property, political connections and even physical strength (Ewick and Silbey 1998, 41). Schemas and resources constantly redefine each other; schemas give resources meaning and, in turn, rely on resources to be invoked and to maintain their relevance (Ewick and Silbey 1998, 41).

### ***Forms of legal consciousness***

Ewick and Silbey suggest three forms of legal consciousness that actors may adopt to make sense of legal phenomena: “before the law”, “with the law” and “against the law”. These forms of legal consciousness are not mutually exclusive and are evoked whenever legality is created, that is, whenever facts are interpreted in legal terms (Ewick and Silbey 1998, 45; Hull 2003, 630).

For individuals “before the law”, the law is an object that is powerful, distant and well-guarded; it is something that exists in itself, with an ontology and authority outside social reality (Ewick and Silbey 1998, 80). These individuals are, for example, reluctant to “bother” the police, unless the matter is one that affects the community as a whole. Not resorting to authorities can even be seen as a sign of moral strength, in a world that they believe relies too much on law to achieve personal gain (Ewick and Silbey 1998, 85). Examples of this form of legal consciousness can be found in the work of Felson and Paré, and Bumiller. According to Felson and Paré (2005, 601), the most common reason for victims of domestic abuse not to report an offence is because they interpreted the event as “too minor”. Bumiller (1987, 426), in turn, found, when researching the use of anti-discrimination laws, that some individuals preferred to reconfigure events in a way that justified them and therefore did not warrant the intervention of the justice system, and allowed them to distance themselves from the label of “victim”.

Individuals “with the law” perceive themselves as consumers. The law is seen as a commodity that they have the right to use to pursue their interests in the “arena” of legality (Ewick and Silbey 1998, 143). Far from being transcendent and all-powerful, here laws are seen as contingent and changeable, open to challenge and manipulation (Ewick and Silbey 1998, 146). An example of this type of attitude can be found in Hull’s respondents’ appropriation of the ritual of marriage to address the absence of state sanctioned institution between same-sex couples (Hull 2003, 655). Ford also found that some women use the threat of criminal prosecution as a bargaining tool in situations of domestic abuse, for example, to persuade their partners to attend counselling or to grant them a divorce. The threat of prosecution was deemed more useful than the actual prosecution, as it gave women leverage to control the situation. In this context, the decision not to prosecute was a rational one, aimed at altering the balance of power within a relationship (Ford 1991, 314, 318, 331).

Individuals “against the law” try to avoid the justice system, as they see it as volatile and dangerous (Ewick and Silbey 1998, 184–186). There is the sense that, although the law can alter reality (for example, through court decisions), it lacks true impact in social relations (Ewick and Silbey 1998, 199–200). As examples, of Genn’s respondents who experienced problems with “relationships and other family matters”, 14 per cent did not take any action; common reasons were a disbelief that something could be done to improve the situation, fear of damaging the relationship and fear of the negative repercussions (Genn 1999, 47, 49). Confusion about legal proceedings, not knowing what to expect and frustration with the lack of speed of proceedings were also aspects found by Bennett, Goodman, and Dutton (1999, 767–769) to discourage victims’ engagement with the justice system that fit with being “against the law”.

Ewick and Silbey’s tri-partite typology of legal consciousness has been expanded by some authors, who felt that it did not fully reflect the populations they researched. As such, Fritzvold (2009, 813) added a fourth dimension: “under the law”, where the law is perceived as “actively protecting and defending a larger social system that is fundamentally corrupt and illegitimate”. Halliday and Morgan (2013), using Mary Douglas’ cultural theory, added the fourth dimension of “collective dissent”, where the law is fought against in the name of a collective interest. Harding, in turn, called for a “more nuanced” exploration of the dynamics of power and resistance and proposed different ways in which this could be expressed, which will be discussed further below (Harding 2011, 53).

### **Resistance**

Resistance underscores the relationship between the powerful and the subjugated, the “haves” and “have nots” (Ewick and Silbey 1999). The study of resistance relates to postmodern approaches to power and the discourses that reinforce or challenge it. The work of Foucault is often at the basis of such discussions, according to whom, “individuals are the vehicles of power, not its points of application”, illustrating the dynamic and interconnected nature of power and resistance (Foucault 1980, 98). This leads those who research legal consciousness to enquire not just how the law is experienced in everyday life, but also how (in)actions reinforce or challenge hegemonic discourses.

Literature on resistance explores different ways in which individuals react to their positions of powerlessness, usually against a state, and usually by engaging in some form of collective action. The symbiotic relationship between power and resistance (“there are no relations of power without resistance”; Foucault 1980, 142) means that acts of resistance have the potential to perpetuate power and bring about change. Change can occur in different ways, though, and resistance can take on a variety of forms, from the most subdued and individualised to the most overt, collective public acts. De Certeau (1984, 36), for example, discusses resistance as taking the form of a tactic (“a calculated action determined by the absence of a proper locus”) or a strategy (a “calculus of force-relationships which becomes possible when a subject of will and power ... can be isolated from an ‘environment’”).

According to Ewick and Silbey (1998), when confronted with a justice system that they generally distrust, individuals “against the law” attempt to resist it and gain some control of the situation (Ewick and Silbey 1998, 216, 220). They do so by masquerading as being less competent than they are, subverting rules, subverting hierarchies, taking the time of those against whom a dispute exists (for example, when complying with requests) or appropriating space (defined in a wide sense, including physical space, written records and phone lines) (Ewick and Silbey 1998, 1349–1362). The imbalance in the power dynamics experienced by those in a marginalised position determines how they respond to the law:

Recognizing themselves as the “have nots” facing some more legally, economically, or socially endowed opponent, people use what they can to get what they need (Ewick and Silbey 1999, 1034).

Some authors, however, have found that the forms of resistance proposed by Ewick and Silbey do not reflect the behaviour of the populations they researched. For example, Hull (2003) and Levine and Mellema (2001) suggest that there is evidence of resistance in respondents “with the law”. He, Wang, and Su (2013) describe both more aggressive forms of disruption adopted by migrant wage claimants in China, and “minor” forms of behaviour that challenge it, in which claimants can be said to be “quietly revolting”.

As already mentioned, Harding also proposed a reconceptualization of the framework of resistance described by Ewick and Silbey. According to her, resistance can take three forms: “stabilising resistance” (trying to re-balance power relations without directly challenging the law but by adopting transgressive behaviour instead, such as smoking or binge drinking), “moderating resistance” (adopting public expressions of resistance, such as participating in marches and public protests) and “fracturing resistance” (resistance that is of a revolutionary nature and requires immediate attention from those who hold power, and includes acts such as riots or violent protests) (Harding 2011, 45–48). Using a diffuse notion of power and reflecting the interconnection between power and resistance proposed by Foucault, Harding acknowledges different sites of power and resistance, which do not necessarily emanate from the state. This broadens the analysis to include power originating from socio-cultural pressures, an aspect that is essential in the understanding of the complex and multi-layered experiences of migrant women that will be reprieved later in this article.

### ***Group dynamics and identification of the self***

Group dynamics, external factors, interactions with power structures, all contribute to shape individual perceptions of legality. Indeed, Berkowitz and Walker (1967), long before the rise in popularity of studies on legal consciousness, revealed that previous knowledge of criminal laws and of peers’ opinions heavily influenced individual judgements of morality, with the greatest influence coming from peers (1967, 421). Although an approach focused on legal consciousness is concerned with individual, everyday understanding of the law, it is important that this individualised level is transcended in order to comprehend how acts of resistance have the power to enact change at a wider level.

Interactions can evolve to reinforce or change shared identities. For example, Abrego (2011) compared the legal consciousness of undocumented migrants in the USA who arrived in the country as adults with those who arrived as children. While those who migrated as adults forged a legal consciousness heavily informed by fear of deportation, those who migrated as children, and therefore interacted with different institutions in the USA (most notably the education system), were informed by stigma. Each group developed a different sense of identity that influenced their invocation of law. First-generation migrants rarely engaged in forms of collective action to claim rights but those who migrated as children were more likely to do so; however, as both groups interacted and exchanged stories and experiences, they began sharing the same concerns with deportation and stigma (Abrego 2011, 361).

Individuals themselves can also give meaning to and bring about change in the circumstances or settings where legality is invoked. DeLand (2013), using the concept of “keying” by Goffman, articulates this by demonstrating how players in informal basketball games conceptualise and transform meanings of legality through disputing. He argues that the same basketball game can have different meanings depending on whether players see it as amateur practice, a workout or part of a professional championship:

[players] do not dispute “because” the games are significant, they dispute “in order to” make the games significant (DeLand 2013, 682).

The place where disputes occur (eg, private or public) and time (of day, for example) can also change the meaning of actions (Cowan 2004, 945, 946; DeLand 2013, 659). As illustrated by DeLand again, calling violations of the rules in a game played in the morning is expected, but the same behaviour in the evening can be met with resistance and a call to change the “key of law” to reflect the less litigious nature of the event; this behaviour also signifies to spectators that the day of basketball is nearing its end, thus further illustrating the interconnected generation of meaning between individuals and the collective (DeLand 2013, 678).

Young’s (2014) work adds another important aspect to these perspectives. Young researched how people perceive others’ understanding of the law in the context of cockfighting in Hawaii (which is illegal in the USA but holds significant cultural value in this state) and how this influences the identification of the self and the group, and the consequent development of legality. She found that a mixture of police practices and informal rules worked to create a “second-order” of legal consciousness (specifically, of beliefs regarding cockfighting and associated rituals), which influenced notions of legitimacy of those participating in these rituals and their reactions to law enforcement (Young 2014, 519).

It is not only inter- and intra-group dynamics that can affect legality, however. External changes in circumstances can also impact the development of self-identity and that of the group, and subsequent mobilisations of law. Abrego demonstrates this in her analysis of the impact of the enactment of California Assembly Bill 540, which made some forms of higher education more accessible to non-documented migrants, empowered students and replaced a sense of stigma with a “new, neutral, and, therefore, more socially acceptable label and identity”; this led to the identification of other



students who shared the same circumstances and collectively requesting more rights (Abrego 2008, 723, 726–727).

The importance of close interactions with formal structures of power in the development of individual and group identities is evidenced by Cowan (2004), who draws attention to the dynamic between welfare applicants and the authorities that they encounter in shaping a sense of self and (importantly) of dignity that leads to different forms of legality and uses of the law (Cowan 2004, 942–945). Lei and Zhou (2015) also demonstrated how various actors contributed to shape public opinion and influence political change, following the Sanlu milk scandal of 2008, in China. They found that a top-down message from government was met by a “cacophony of voices”, that disputed the official narrative of events and saw the government’s approach as indicative of the problems with the political regime and its instrumental use of law (Lei and Zhou 2015, 588). A further example of the impact of external sources of power is found in the role of the media in shaping migrants’ behaviour and portrayals of the self in Menjívar’s (2016) research into Latino workers’ in Arizona, USA, who, when faced with negative depictions of their community, distanced themselves from these characterisations and tried to project an image of being “hard workers” instead (Menjívar 2016, 599).

Finally, the structure and culture of the place of the dispute can also affect how it is conceived and addressed. For example, Hoffman (2003) explored how workers in more and less hierarchically organised taxi cab companies perceived work-related laws and regulations. Her study demonstrates how companies in the same business, operating in the same city, turned out to have staff with very different attitudes towards workplace disputes. She found that developing a sense of identity with the different companies’ grievances cultures meant that workers, and the companies themselves, adopted more or less formal processes to settling disputes as a consequence (Hoffman 2003, 714).

Interactions with various participants, at various stages, locations and times inform a complex network that impacts the development of legality and illustrates the dynamic and variable nature of legal consciousness. As Engel put it:

There can be little doubt that interactions with third parties are capable of substantially changing one’s thoughts and self-conceptions concerning important matters, including how to respond to a personal injury (Engel 2013, 328).

An important first step is, therefore, to uncover how, when and where these dynamics occur, and how they relate to power. A logical second step is to reveal their potential for effecting sustained change in these same structural relations.

### ***Narratives and storytelling***

One way of understanding the dynamic relationship between power and resistance and identifying the potential for change is to look at individual and collective narratives of legality. In this remit, Ewick and Silbey (1995, 217) mention “subversive stories”, which are counter-hegemonic narratives that defy authority and juxtapose an individualised reality to that of the “experts” and “professionals”, often by reinterpreting and highlighting inaccuracies. These counter-narratives are, in themselves, a form

of resistance, told by the socially marginalised who understand well how hegemonic discourses operate, and find a “common opportunity to narrate and a common content to the narrative” (Ewick and Silbey 1995, 220–221).

Engel and Munger (2007) also focus on narratives to understand the mobilisation of law. The authors argue that, more important than how factually accurate individuals’ accounts are, is “their role in a process of identity creation and transformation.” (Engel and Munger 2007, 86). They, therefore, propose a “recursive theory of rights”, in which rights are relevant to the extent that our experiences and interactions with others make this possible. There is a relational and temporal dimension to the development of legal consciousness that is revealed and shared through the narration of events and is key for the development of a sense of community, and the reformulation and perpetuation of hegemonic discourses. Indeed, Engel later reinforces these points by saying that:

A conceptual model of injuries ... must also consider the recursive effects that take place when narratives are shared with others, whose reactions influence future telling of the same event (Engel 2013, 332).

An example of the power of storytelling in reinforcing or challenging narratives of power can be found in Regev-Messalem (2014) research on welfare recipients’ non-compliance with the law in Israel. She found that when women recounted their stories, either their own or of others who had acted in a noncompliant way, they impacted other women in different forms (Regev-Messalem 2014, 758). Even though sharing stories helped to maintain hegemonic power, as these emphasised the difficult circumstances that women faced, which generated a “sense of isolation and despair”, and pulled them away from acting as a collective, it also meant creating an identity with a group by teaching other women how to deal with the system, or promoting certain social norms (Regev-Messalem 2014, 760).

The significance of narratives and storytelling in perpetuating and challenging hegemonic discourses is another central aspect of the analysis of the studies presented here that will be reprieved later in this article.

### ***Informality, pragmatism and the mobilisation of law***

A significant part of socio-legal research has found a large gap between the “law in action” and the “law in the books”. This has several manifestations and consequences; here, we are concerned specifically with situations where, although state law provides individuals with mechanisms to assert their rights, many do not use them, preferring instead to do nothing or to engage in informal practices to address their problems. One potential mistake to elicit from this is to assume that it means an acceptance of one’s “misfortunes”, which, in turn, proves the hegemonic power of the law. This is, however, most often an over-simplification. Indeed, as Lovell (2012, 21) reminds us, inaction should not be mistaken for an acceptance of law’s moral authority, and other factors should be explored in its relationship with resistance.

A lack of mobilisation of law may be due to several factors, from the way a problem is perceived and conceptualised, to external and group dynamics. Felstiner, Abel, and Sarat (1980–1981) drew attention to the need for claimants “naming” and

“blaming” before “claiming” in civil disputes. In a similar vein, Genn states that individuals tend to assess the seriousness of events before deciding whether to resort to the justice system; if they interpret potential justiciable problems as not injurious, then they will not, for example, act to claim compensation (Genn 1999, 36); or, as Engel puts it: “Lumping” in these circumstances is not a deliberate choice, “it is the only conceivable response to a human experience, and no alternative response is even imaginable” (Engel 2013, 320).

A lack of mobilisation of state law is not unusual, either. Merry concluded that, unlike the widespread belief that Americans are inherently litigious, going to court is cumbersome and a last resort option for potential claimants. The reason behind this is the existence of a “paradox of legal entitlement”, in which the mobilisation of law is both a source of empowerment and anxiety (Merry 1990). Gallagher’s (2006) research on legal aid dispute plaintiffs in China resonates with Merry’s findings. Gallagher found that, rather than the existence of what seemed like a unidirectional increase in rights awareness and consequent mobilisation of law promoted by the Chinese state, plaintiffs were reluctant to use the justice system due to an “informed disenchantment”. Albeit becoming more positive and confident in the knowledge of their rights, plaintiffs were also more aware of these rights’ limitations; this disenchantment did not stop them from using the system again (indeed, most were “with the law”) but there was a sense of disempowerment that came from engaging with it (Gallagher 2006, 786). Similarly, Jiang and Wu (2015), who researched differences between individuals’ intended and actual use of courts to resolve disputes, also in China, state that although there have been changes in recent years, traditional Chinese culture is still predominantly averse to litigiousness and seeking formal redress through courts is less common than seeking informal solutions (Jiang and Wu 2015, 42–43). Hertogh’s (2018, 7–12, 177) more recent work on legal consciousness proposes a different approach, in that the law’s pervasive existence in everyday life (and consequent hegemony) should be questioned as a fact. Rather, there is a “sullen toleration” of the justice system, that leads individuals to “turn their back to law” (Hertogh 2018, 14–15, 43, 179–180). This manifests itself as “legal alienation” (a process that can elicit different responses), in which individuals become distant from the law’s discourse, which they no longer identify with (Hertogh 2018, 149–153).

A lack of mobilisation of state law most likely, therefore, reflects a more complex dynamic of legality than an acceptance of a dominant discourse. It may, in fact, be interpreted as an act of resistance. Indeed, Gallagher (2006, 810) suggested that “legal mobilization by Chinese workers is an ongoing act of engagement with and resistance to the law” to secure desired outcomes. Similar tactics of survival are adopted by the sex workers researched by Fassi (2011) in Argentina, who, in the absence of legal protection, sought help from friends and peers in an individualised, pragmatic way to ensure their freedom and continue their work (Fassi 2011, 12, 23).

Sarat’s (1990) research on the welfare poor further adds to the understanding of this dynamic. Constant contact with the law, gave individuals insider knowledge and a realistic prospect of what they could achieve. As a result, they engaged in strategic forms of resistance, such as using the welfare bureaucracy in a way that subverted its reach, invoking the law to seek redress and at the same time contesting it (Sarat

1990, 347, 377–378). Sarat refers to this as “tactical” responses to the law, echoing, to an extent, Certeau’s (1984) work on resistance.

Also reflecting the impact of a deep immersion in the structures of oppression that result in certain forms of resistance, Chua (2012) highlights the existence of dance of “pragmatic resistance” by gay activists in Singapore. In order to ensure the survival of their movement, gay activists “push the limits of those norms, while simultaneously adhering to them” (Chua 2012, 714). Because civil-political liberties are repressed in Singapore, activists did not challenge power in an overt, public way; instead, to ensure their survival as a group, with each “win” they adapted their tactics but did not change them completely, in a “dance” of power and adaptation that lead incrementally to change (Chua 2012, 721–722).

Gleeson’s (2010) research on Latino restaurant workers in the USA, and how documentation status influenced their claims on workplace protection, illustrates well how seeking informal solutions can be the result of rational decision-making in different contexts. Fear of the deportation, a sense of isolation (that is reminiscent of that found among welfare claimants in Regev-Messalem’s study), precarious employment, the possibility of being fired easily and a desire to portray a good work ethic led them to act inconspicuously and, for example, not to complain about poor work conditions (Gleeson 2010, 585, 590; Regev-Messalem 2014). However, these workers did not simply accept their illegitimate status as the cause of their misfortunes; rather, they acted in a way that best preserved their socio-economic aspirations (Gleeson 2010, 583).

A preference for informality can also be found in responses to sexual harassment, as the work of Blackstone, Uggen, and McLaughlin (2009) demonstrates. These include, developing “passive” strategies, quitting jobs or transferring to other locations, directly confronting harassers, talking to co-workers, friends and family. These responses to sexual harassment were not one-dimensional, which led the authors to move away from a dichotomy of formal/informal mobilisation of rights and consider different degrees of engagement with formal structures and self-help in their analysis of what they called a “sexual harassment mobilization continuum” (Blackstone, Uggen, and McLaughlin 2009, 655).

Having discussed legal consciousness, the links between power and resistance, and how individual and group dynamics feed into these, it is now time to turn our attention specifically to the field of migrant women and domestic abuse. This will illustrate how the theoretical points made so far can help to better understand women’s relationship with the law, each other and the communities they live in.

### **Migrant women and domestic abuse**

To begin to understand migrant women’s responses to domestic abuse as a form of resistance, it is important to understand their perceptions of abuse and what they deem to be appropriate reactions to it. To do so, a small number of studies of women’s experiences of domestic abuse are analysed here in detail. These are: Gill’s (2004) research on South Asian women in England, Graca’s (2015, 2018) research on the experiences of Portuguese women in England and Barata et al’s (2005) research on

Portuguese women in Canada. These studies have a different remit than that which is addressed in this article and, except for Graca's, were not conducted with a view of specifically understanding participants' legal consciousness. The concept of law used was fairly consistent in all, relating to state law, and they focused on a variety of help-seeking behaviour (rather than the narrower understanding of mobilisation of law via the use of the justice system that is used here).

Although these studies encompass different populations, geographical areas and time frames, they are included here because they offer detailed accounts of perceptions and reactions to domestic abuse and the role of culture in these, that make it possible to elicit conclusions about the subjacent power-resistance dynamics and possibilities for change. Rather than a weakness, the diversity in approaches, scales and populations in the studies selected highlight the consistency of how, across time, socio-cultural structures and barriers can inform perceptions and reactions to abuse, which, in turn, can be interpreted as forms of resistance and avenues for change.

Gill interviewed eighteen South Asian women regarding definitions and experiences of domestic violence (Gill 2004, 467). Participants' ages reflected a cross-section of generations, from eighteen to 69 years of age, and their length of stay in England was between one and 30 years (Gill 2004, 468–469). Their experience of domestic abuse varied in type and severity and all, but one, had children (Gill 2004, 468). All identified their (current or former) husbands as the main perpetrators of abuse, with nine also mentioning 'in-laws' as other perpetrators and one their birth father (Gill 2004, 469). Six of the women were separated, one was divorced and eleven remained in their relationships (Gill 2004, 469). Participants were recruited through refuges for Asian women in London and the analysis of their discourses focused on four themes: "cultural socialisation", "support", "survival" and "power and gender" (Gill 2004, 467).

Graca interviewed 24 Portuguese women, between 2011 and 2012, to understand the factors that influenced their relationship with the English justice system (in a broad sense) in situations of domestic abuse. Participants' ages ranged from 23 to 65 years, and their length of stay in England varied between six months and 30 years (Graca 2018, 421). Six participants disclosed being victims of domestic abuse; all identified their (current or former) partners as the main perpetrators of abuse (Graca 2018, 5). Sixteen of the women were in a long-term relationship and all but five had children (Graca 2018, 6). Participants were recruited in London, Reading and Norfolk through a snowballing method that started by contacting local support agencies and community groups (Graca 2018, 5); the analysis of women's discourses was conducted under the themes: "cultural schemas", "resources" and "service providers" (Graca 2018, 6).

To add to the robustness of the argument presented here, the research conducted by Barata et al. (2005) is also analysed. This publication uses a different methodology and sample size, which adds a wider dimension to the discussion, but maintains a link with Gill and Graca. Barata et al.'s population consisted of 80 first generation and 54 second generation Portuguese women, living in Canada (Barata et al. 2005, 1136–1138). Unlike Gill and Graca's studies, the description of the makeup of the population does not include specific data on how many women were in relationships

or how many children they had. Participants were asked to complete a questionnaire with open and close-ended questions on definitions of domestic abuse, appropriate responses to it, tolerance of abuse and patriarchal behaviour (Barata et al. 2005, 1136–1138). More specifically, regarding definitions of abuse, participants were asked to define it with an open-ended question, which was followed by 25 close-ended situations that might be construed as abuse, which they were asked to rate on a scale, in which 1= not abuse, 2= minor abuse and 3= serious abuse; a combination of items from the Revised Conflict Tactics Scale, the Physical Assault scale, the Psychological Aggression scale, the Sexual Coercion scale, the Negotiations scale and a list of items deemed culturally relevant by the researchers were used for the latter (Barata et al. 2005, 1137). In terms of the questions on appropriate responses to abuse, participants were asked to rate eighteen actions on a visual analogue scale of 0–100 on how strongly they agreed or disagreed that action should be taken (Barata et al. 2005, 1138). Open-ended questions were read aloud in individual meetings with the participants, and their answers taken down by a researcher; close-ended questions were answered by participants themselves (Barata et al. 2005, 1138). Participants were recruited via a combination of presentations to local populations, conversations with research assistants, distribution of flyers, publication of adverts in local newspapers, calling on service providers and using word of mouth (Barata et al. 2005, 1136).

Both Gill and Graca’s studies provide detailed accounts of participants’ narratives on domestic abuse. The relatively small size of the samples is justified with the sensitivity of the topic and consequent difficulty in identifying and persuading women to participate (Gill 2004, 467; Graca 2018, 420–421). Gill and Graca share a similar geographical location for their populations, and Graca and Barata et al share an analysis of populations with the same cultural background (Portuguese). All discuss experiences of migrant women, specifically, perceptions and reactions to domestic abuse and the role of culture in these. In both Graca and Barata et al’s research, participants were not asked to discuss their own experiences of abuse, as this would most likely elicit a lower level of participation than desired. Both studies discussed, instead, women’s perceptions of and reactions to domestic abuse in general terms, with reference to Portuguese culture.

### **Understandings of domestic abuse**

Graca’s participants were asked what they understood by “domestic violence”; their definitions were generally broad and in line with what would be considered as violent, coercive and controlling behaviour in a domestic setting (Graca 2015, 9; 2018, 422). Most respondents mentioned “physical” and “psychological” abuse (18 out of the 24); expressions such as “emotional violence” or reference to specific types of conduct, such as “shouting” and “name-calling” were also used (Graca 2018, 422–423). The most common form of physical abuse mentioned was “hitting”, with “socially isolating the other”, “being cold”, “diminishing the other”, being “overly jealous”, “bullying or controlling” given as examples of psychological abuse (Graca 2018, 423). Respondents who experienced domestic abuse described mainly behaviour that they encountered during their victimisation, such as forcing others to obey every whim, and controlling one’s phone calls or access to a passport (Graca 2018, 424).

Graca's findings confirm those of Barata et al's (2005, 1144), where women also had a broad understanding of behaviour that could be configured as domestic abuse, including in its definition "physical", "psychological", "sexual", "financial", "infidelity" and "patriarchal" abuse.

The impact of traditional gender stereotypes in discouraging women from either identifying behaviour as abusive, or seeking ways to escape it, has been widely documented across migrant populations and is present in the studies reviewed here (for reviews of literature including Latinas and South Asian women, in a variety of English-speaking countries, see Raj and Silverman 2002, 369, 370 and Rai and Choi 2018). Illustrations of this can be found in Graca (2018), where some forms of violence mentioned by the women interviewed included men holding the power to make important decisions, telling women what to do, not helping around the household, and generically referring to a "very traditional" way of organizing family life (Graca 2018, 423).

In both Graca and Barata et al, there were gradations in the forms of behaviour considered to be abusive, particularly depending on the context of the abuse itself. A similar perception of a continuum of abuse can be found in Gill's (2004) work with South Asian women living in London. In her study, most women associated domestic abuse primarily with physical violence, but an exploration of their discourses revealed a broader inclusion of behaviour under this remit, such as psychological and emotional abuse, but also economic and sexual abuse, with different degrees of severity associated with it (Gill 2004, 470–472). Seventeen of the 18 women interviewed by Gill revealed having experienced severe forms of physical abuse, including: "being slapped, pushed, physically restrained, choked, hit with a closed hand or hit with an object" (Gill 2004, 472). Gill's findings have been confirmed by more recent publications on South Asian women's experiences of abuse, as attested by Rai and Choi (2018) literature review, as well as in a cross-section of migrant women of various nationalities in the USA (eg, Erez, Adelman, and Gregory 2009).

## **Domestic abuse and the mobilisation of law**

Broadly, there is consistency in the perceptions of and responses to abuse of the migrant women who participated in the studies reviewed here, namely that this is not a form of behaviour that they should endure (although they may be led to do so for a variety of reasons) and for which a solution that includes using the justice system is conceivable. Why is it then that they, also consistently, seemingly prefer not to mobilise the law, particularly by using either civil or criminal avenues, to protect themselves? Successive reviews of literature on migrant women and domestic abuse, and individual pieces of research on the same subject, have partly answered this question by identifying common structural and cultural barriers that migrant women experience when seeking support for situations of domestic abuse. Some of these barriers are not only applicable to migrant women, but it is only on this population that we will focus here. Barriers usually act cumulatively, and examples include: lack of command of the language of the country of destination, isolation from and contact with family members and the community, lack of access to public funds, economic status and dependency from partners or the state, unstable legal and immigration status,

lack of knowledge of the support available, using the home country as a frame of reference for the justice system in the country of destination, “familism” and the importance of motherhood in decision-making, shame and family honour, religion, levels of acculturation and partners’ alcohol consumption.<sup>2</sup> Some of these barriers are also identifiable in Graca, Barata et al and Gill’s populations and intersect to explain the behaviour adopted. However, a more in-depth analysis of participants’ discourses reveals that a better understanding of the power dynamics subjacent to these factors could further explain their actions.

As mentioned earlier, the existence of a discrepancy between a perception of the legal relevance of behaviour and the mobilisation of state law, particularly in marginalised groups, is not unusual. It is therefore not surprising that, although considering domestic abuse not acceptable, migrant women tend to avoid the justice system to address it. Indeed, most of Graca’s (2015, 23; 2018, 425) participants, irrespective of variations in education and experiences of family life, had a pragmatic approach to the justice system, akin to Ewick and Silbey’s form of legal consciousness “with the law”, yet they preferred to avoid using it if they could (deciding instead to seek help from family and friends). When personal experience of abuse was considered, respondents’ primary choice was to leave the abuser or to talk to a “stranger” (someone they did not know but felt could help them, such as a police officer or a doctor) (Graca 2015, 22). Respondents who used courts, and could be deemed ‘against the law’, would not elect them as a preferred way of dealing with domestic abuse either. However, they did not find the system unfair or lacking in social impact, as respondents “against the law” would, according to Ewick and Silbey (1998, 191–193, 199); instead, their stance resonates more with the sense of “disenchantment” expressed by Gallagher (2006) and Jian and Wu’s (2015)’s respondents, who would use the justice system to assert their rights but were acutely aware of the limitations of doing so.

Earner (2010) research on Mexican migrants in the USA also revealed that many women saw a pragmatic purpose for state intervention in cases of domestic abuse. However, as with Graca’s participants, using the justice system of their country of origin as a frame of reference led Earner’s interviewees to say that seeking help from formal structures in cases of abuse was “useless” (Earner 2010, 292; Graca 2015, 48). Their fear in bringing state intervention into their private lives had to do with a reconceptualization of their rights by formal agencies (not unlike Merry’s respondents) and the possibility of their children being taken away from them, not from an acceptance of abuse in itself or thinking that their personal experiences were not important enough to be addressed by the state (Merry 1990; Earner 2010, 292).

Although the result was the same (that is, if possible, avoiding the justice system to seek help), Graca’s findings somewhat differ from Gill’s, whose respondents often minimised the abuse, with honour and shame playing a particular role in this dynamic (Gill 2004, 474–477). While most of Graca’s population seems to be “against the law” or “with the law”, using Ewick and Silbey’s terminology, Gill’s respondents seemed to better fall under the description of “before the law”. These populations’ views of abuse can signify different forms of legal consciousness, but nonetheless elicit the same result in terms of mobilisation of state law.



A common aspect in Barata et al. (2005) and Graca (2018) is the distinction between the course of action that women deemed most appropriate and that which they thought other women would actually engage in. Indeed, the overwhelming majority of Barata et al.'s (2005) respondents considered domestic abuse unacceptable, with almost three quarters saying that women should seek help to end it and almost one quarter advocating the use of the justice system to escape it (Barata et al. 2005, 138). Nevertheless, when asked what they thought other Portuguese women actually did in such situations, only a very small minority of respondents mentioned using the justice system (3 per cent), and taking steps towards independence (1 per cent) (Barata et al. 2005, 138). Similarly, Graca's participants, despite saying that they would take steps to stop the violence if they experienced it themselves, mostly agreed that other Portuguese women would either endure or hide it; the reasons given for this included the influence of Portuguese culture, "familism" and pressure from the community (Graca 2018, 425).

Again, a preference for informality is not unusual, particularly in domestic abuse, as documented by, for example, Sokoloff and Pearce (2011) and Kyriakakis et al (2015). The fear of repercussions from abusers and the community is not unfounded and something that migrant women have to content with when considering taking steps to escape a violent relationship (see, for example, Erez, Adelman, and Gregory 2009). What is particularly interesting in understanding the power dynamics subjacent to women's perceptions of abuse and reactions to hegemonic socio-cultural discourses, is the influence of culture and pressure from the community in the discrepancy between women's views on what "should" be done to address domestic abuse, what they would do themselves, and what they think others would do and why.

## **Resistance and the mobilisation of law**

Although Graca (2018) overtly analysed participants' legal consciousness, using Ewick and Silbey's typology, none of the studies discussed here considered how perceptions of abuse and reactions to it can be related to ideas of resistance, and how the mobilisation of law of some women can impact other women's decision-making when responding to abuse.

Ewick and Silbey (1998, 190–192) use the concept of resistance to discuss the behaviour of individuals who avoid the justice system for fear of it being unfair or ineffective, that is, respondents that they identify as "against the law". Individuals in these circumstances try to subvert a system that oppresses them by masquerading as being less competent than they are, disrupting rules and hierarchies, taking the time of those against whom a dispute exists, or appropriating space (Ewick and Silbey 2005, 1349–1362).

These actions have not always been borne out in research and do not seem to reflect the behaviour of the participants in the studies reviewed here. Harding's concept of "stabilising resistance" is useful to explain these women's responses, as it includes subtler behaviour, mundane reactions that counterbalance power in a variety of dimensions (Harding 2011, 45–46). If we accept a wider concept of resistance than that suggested by Ewick and Silbey, then migrant women's preference for informality

gains a different facet. In this context, aspects that shape behaviour, such as “familism”, shame and pressure from the community, can be said to form a “second” normative order (Young 2014) and are important sites of power and, therefore, also of resistance. As a result, women’s behaviour can be seen as a form of resistance, both to the perceived inadequacy of the justice system to address domestic abuse and to cultural and community pressures.

However, while Harding’s (2011, 45–46) respondents engaged in more visible forms of resistance, the women interviewed by Graca (2015, 2018), for example, preferred to act inconspicuously. They saw informality as the best way to protect themselves against a possible cultural and community backlash, particularly when their children’s interests were also involved.

Acting informally or inconspicuously, for example by hiding the abuse (Gill 2004, 479; Graca 2018, 426), seeking financial and emotional support from family and friends (Graca 2018, 426), adapting one’s behaviour to avoid abusive incidents, being patient (Barata et al 2005, 1146), or taking steps to leave a relationship discreetly (Graca 2018, 428) may, therefore, simply reflect the interplay of schemas and resources, that is, the impact of individual tools and social and cultural pressures on women’s behaviour, rather than acceptance of such values. Migrant women’s stance not only does not necessarily mean that they are “lumping it”, or accepting of domestic abuse, but confirms Lazarus-Black’s contention that domestic abuse victims’ agency should be perceived beyond exiting a violent relationship (Lazarus-Black 2008, 390). This is an important point when devising support for women in situations of domestic abuse, which must be underpinned by knowledge that goes beyond their willingness to engage with formal instances of power, and include an understanding of the broader pressures that they are subjected to and a potential backlash.

Ewick and Silbey (1998, 234–235) propose that individuals who are socially disadvantaged tend to be “against the law”. This has not been found to be always the case, both in the research reviewed here and other literature. For example, Hull (2003, 830) demonstrated how some LGBT individuals’ legal consciousness can be “with the law”, despite their marginalised status in society. In Graca (2015, 48), the use of service providers was often linked to perceptions of their usefulness and pragmatism was central for the women interviewed (Graca 2015, 47).

A straightforward use of Ewick and Silbey’s categories of legal consciousness might indicate that many of the women interviewed by Gill (2004) and Graca (2018) were “in awe” of the justice system, believing that it should only be used in cases of a public nature, that is, that they were “before the law”, however and with few exceptions, because they saw domestic abuse as a continuum, they were not necessarily rejecting the use of the justice system altogether, but distinguishing between levels of seriousness and consequent acceptable responses to it. For example, abuse that could not have been prevented was deemed more serious than that which could have been foreseen; both should be addressed primarily informally but if this failed, then the use of the justice system was justified (Graca 2018, 424).

Most of the women interviewed by Gill (2004), Barata et al (2005) and Graca (2015, 2018) identified a pragmatic role for the law in defining familial, economic and judicial relationships. However, they also acknowledged the law’s limitations, in the same way

as Gallagher (2006) and Jian and Wu's (2015) respondents did in their disenchantment with the use of the justice system to assert their rights, and consequent preference for informality. When faced with cultural and community expectations that they did not agree with, unlike Merry's (1990, 173, 176) respondents who used the justice system to escape a community whose social hierarchies they found oppressive, the migrant women in the studies analysed here preferred not to engage with it. Instead, they sought or recommended seeking alternatives, such as support from family and friends. Their behaviour is an example of how everyday life influences the mobilisation of law by placing certain cultural expectations on women that form a normative order, which is, in turn, challenged in a nuanced, interactive process.

A lack of overt resistance should therefore not be conflated with an acceptance of the discourse of power, as demonstrated by Hull (2016), Fassi (2011) or Chua's (2012) research, already mentioned here. It is widely accepted that migrant women experience specific barriers in their invocation of law in the country of destination; however, their behaviour may instead indicate a constant negotiation of these within specific cultural and social settings, rather than an acceptance of abusive behaviour or of the overwhelming power of the law. Informality may be understood as a strategy to overcome a situation for which there is a lack of a "realistic" alternative, as Lovell (2012, 195) expressed. By acting, or suggesting to act informally, migrant women may be trying to overcome cultural norms that they are subjected to, from within the structural and cultural constraints that they are trying to avoid, and without attracting a backlash.

This supports Ewick and Silbey's (1995) contention that resistance reflects a deep understanding of hegemonic discourses by those who are marginalised. Only, regarding the migrant women discussed here, resistance is enacted not just by those who are "against the law" but extends to other forms of legal consciousness. Furthermore, individuals' resistance depends on their degree of marginalisation, their understanding of the hegemonic narrative and the resources they have (Olson and Batjer 1999, 155). As with Sarat (1990), Cowan (2004) and Chua's (2012) populations, who were regularly exposed to oppressive systems, the migrant women studied by Graca, Barata et al. and Gill are adopting "realistic" responses to abuse, within the constraints of the sites of power they continuously engage with. A difference is that, while in Sarat, Cowan and Chua's cases, participants were mostly contending with formal instances of power (the welfare system and the state), here, migrant women are also resisting the pervasive power of other socio-cultural structures.

Extending the power-resistance nexus beyond the state is therefore important to understand this dynamic. In a similar way as Connolly's respondents recognized the power of the law to legitimize relationships, secure protections and benefits for themselves and their children, but at the same time remained mainly uncompromising, "kept their dignity" and were strategic in their choices (2002, 331, 338), migrant women can also be seen to be strategic in protecting themselves and their families not only from abuse, but also from potential community and cultural backlashes. Their behaviour can be described as a form of "entrenched" resistance that results from a deep understanding of the structures of power they encounter in everyday life, and is intended to secure the best possible outcome for their situations.

## Hegemonic discourses and the potential for change

So far, it has been argued here that migrant women's inconspicuous behaviour most likely does not represent an acceptance of domestic abuse, and may be better interpreted as an entrenched, pragmatic form of resistance to socio-cultural powers. This leads us to the last question that we proposed to address in this article, which is, whether migrant women's behaviour merely perpetuates existing power dynamics, or whether it also holds the potential for change.

Ewick and Silbey (1995, 220–221) suggest that resistance can be achieved through a reinterpretation of dominant narratives, or the deployment of counter-hegemonic discourses that challenge authority and present an alternative version of events. Even though individual acts of resistance may lack the ability to produce institutional change by themselves, their impact is often incremental and transcends the specific events in which they are deployed (Ewick and Silbey 2003, 1331). As discussed earlier, storytelling has performative and normative dimensions. As a result, narratives contribute to the reproduction of existing structures of power, bring events under a coherent whole, conceal the social organisation that underlines their production and sustain structures by repetition (Ewick and Silbey 1995, 214, 222). However, narratives can also be subversive by making the connections between individuals and social structures come to light and, as a result, when re-telling events of resistance, individuals are challenging hegemony and opening up the possibility for change (Olson and Batjer 1999, 126; Engel and Munger 2003, 11; Ewick and Silbey 2003, 1331, 1342).

In their apparent lack of help-seeking practices to escape abuse, the migrant women in the studies analysed here may be, indeed, demonstrating to other women, either that they do not see domestic abuse as problematic or that the only acceptable ways of seeking help are inconspicuous ones, which contributes to perpetuate hegemonic discourses of appropriate behaviour. However, as with Regev-Messalem (2014) welfare recipients, passing on stories of interactions with socio-cultural structures of power also teaches other women how to navigate these when faced with similar circumstances. Although these stories may not, by themselves, change dominant narratives, they have the possibility to do so by presenting other women with avenues for challenging them.

Similarly, Halliday, Kitzinger, and Kitzinger (2014) suggest that the end of life decisions and actions of carers of severely brain-injured patients may be perceived as facilitating change that would benefit others, particularly when challenging the law (Halliday, Kitzinger, and Kitzinger 2014, 72). The authors found that the decision-making regarding ending the life of a loved one may be interpreted as a way of avoiding the power of the law (which would forbid it in those circumstances) and as “a way to *escape or change* it for the benefit of all others in a similar situation” (italics in original) (Halliday, Kitzinger, and Kitzinger 2014, 72).

The power of narratives to effect change becomes evident in the dynamic between the individual and the community, which demonstrates the way in which (more or less conspicuous) acts of resistance transcend the individual sphere to influence a collective conscience. As discussed above, interactions with those in our closest or more extended proximity shape the way we develop individual and group identities. This results from an interactive process with peers (eg, Berkowitz and Walker 1967), family members (Abrego 2008, 2011), friends, acquaintances and even strangers (DeLand

2013; Lei and Zhou 2015). Also important are the locus of the disputes, which can change the meaning of actions (Sarat 1990; Cowan 2004, 945–946; DeLand 2013, 659). Disputes in a family setting can have a different perceived level of acceptability than those between strangers, for example, as can those that happen in private or in public. Previous experiences with authorities (Cowan 2004; Lei and Zhou 2015) and the culture of the place of the dispute (Hoffman 2003) are also relevant in the development of individual and group identities. All these factors intersect to, not only determine individuals' responses, but also shape the way in which others in their community develop interpretations of acceptable or expected behaviour and act accordingly. It is in the development of a joint consciousness of power and resistance that individual, often pragmatic and informal, acts of resistance gain the power to challenge the status quo and present avenues for change.

It can, therefore, be said that by acting inconspicuously, the migrant women studied here are at the same time maintaining and challenging instances of power. This is a form of resistance that results from a deep understanding of the powerful hegemonic discourses that they experience, as found with other marginalised groups (eg, Sarat's welfare recipients; Sarat 1990). These discourses include culture, "familism", pressure from the community, shame and honour, which all intersect to inform their experiences of abuse and configure possible responses to it. With their behaviour, migrant women are demonstrating to others alternative avenues of achieving desired outcomes, with the least negative consequences for themselves and their families. Resistance is, therefore, done from within the socio-cultural precepts they live with in their everyday lives, in what can be described as "entrenched" resistance.

## Conclusion

The analysis of the legal consciousness of the migrant women studied here reveals that they do not necessarily see domestic abuse as acceptable, arguably, a first step in the mobilisation of law (Felstiner, Abel, and Sarat 1980–1981; Genn 1999), but neither do they challenge it overtly by seeking help via the justice system (including the police, service providers or the court system). The impact of cultural pressures on women's responses to abuse has been highlighted in a wealth of literature on this subject. However, there is a more complex dynamic underpinning the responses of the migrant women discussed in the articles analysed here. As an illustration, both in Barata et al. (2005) and Graca's (2018) populations, although most women said that they would stop the violence and considered using the justice system in doing so, they thought that other women would hide and endure it, demonstrating almost a cognitive dissonance between the community and the individual. This would seem like an irreconcilable position with the argument proposed here that migrant women are challenging hegemonic discourses of power with their individual actions, which resonate at a collective level. However, it is precisely in this paradox that the justification for their behaviour is revealed. By accepting the existence of a multitude of sites of power and resistance, particularly socio-cultural ones, women's behaviour becomes clearer.

Common barriers in the mobilisation of law experienced by migrant women, such as cultural stereotypes, the availability of support from the family, shame and levels of acculturation help to explain, to an extent, their behaviour. For example, shame

and pressure from the community encourage women to hide abuse for fear of being ostracised or blamed for it (especially if the abuse stems from patriarchal expectations); support from family members, in turn, offers a viable alternative that steers them away from the justice system when escaping or conceiving escaping abusive relationships (Graca 2018, 431–432). Despite an acknowledgement of the importance of such barriers, the overwhelming preference for informality demonstrated by these women requires a more nuanced explanation. Albeit departing from a limited sample, we suggest that, by choosing to act inconspicuously, respondents were at the same time reflecting and rejecting expected cultural norms. They proposed addressing domestic abuse in their own terms, without drawing sanctions from the community and culture that they associated with. However, because legality results from a dialectic relationship between resources and schemas that sustains power (Ewick and Silbey 2005, 349), they were also, paradoxically, reinforcing the discourse of a culture perceived as tolerant of domestic abuse.

The interplay between individual action and cultural and social pressures, and the performative and normative dimensions of storytelling (Ewick and Silbey 1995, 213–214, 222) explain the apparent contradiction in migrant women’s legal consciousness. Social interactions influence individuals’ interpretation of events (Berkowitz and Walker 1967, 422; Hoffman 2003, 715; Gallagher 2006, 805–806; DeLand 2013, 678; Engel 2013, 306, 331) and by engaging with a particular form of behaviour, women are contributing to this interaction. However, rather than simply accepting hegemonic and oppressive discourses, by suggesting alternative, pragmatic ways of escaping abuse, from within the communities they live in and associated socio-cultural pressures, they are simultaneously opening up the possibility for change. Similar to experiencing a “paradox of legal entitlement”, migrant women are both empowered by the law but anxious about deploying it. Their anxiety is, however, not (only) due to negative experiences with, or expectations of, engaging with the justice system, but with realistic fears of the sanctions they will incur by deviating from dominant socio-cultural narratives of acceptable behaviour. These are narratives that they encounter in their everyday lives and can be interpreted as strong normative powers that shape their behaviour.

The interpretation of women’s agency needs, therefore, to include a deeper understanding of the socio-cultural structures of power they experience. A situated, contingent assessment of the barriers encountered by migrant women in accessing help for abuse is exceedingly important when devising ways of supporting them, but should not be the end point when assessing the success of policies and legislation. In preferring informality, migrant women may well simply be reflecting an acute awareness of the dangers of challenging these overtly, and therefore engaging in pragmatic inconspicuous behaviour instead. This behaviour reflects the possible form of resistance towards instances of power, from within the “trenches” of the hegemonic discourses they encounter; in a form of “entrenched” resistance.

## Notes

1. See, for examples of this, participants blaming themselves for their problems (Bumiller 1987), “lumping it” (Lovell 2012), not conceiving problems as serious enough to engage

- the justice system (Felstiner Abel and Sarat 1980–1981; Genn 1999 and Felson and Paré 2005), adopting rational or pragmatic decision-making (Ford 1991), previous experiences with the justice system (Messing, Vega, and Durfee 2017), the internalisation of a status of illegitimacy, and fear of deportation (Abrego 2008, 2011 and Gleeson 2010).
- See Menjívar and Salcido 2002; Zadnik, Raj and Silverman 2002; Adames and Campbell 2005; Burman and Chantler 2005; Midlarsky et al. 2006; Lee 2007; Erez, Adelman, and Gregory 2009; Sokoloff 2008; Kelly 2009; Earner 2010; Kulwicki et al. 2010; Vidales 2010; Wallach et al. 2010; Fucshel, Murphy and Dufresne 2012; Tartakovski and Mezhibovsky 2012; Postmus et al. 2014; Reina et al. 2014; Choi and Byoun 2014; Paat 2014; Kyriakakis et al. 2015; Choi, Elkins and Disney 2016; Pretorius et al. 2016; Messing, Vega, and Durfee 2017; Reina and Lohman 2015; Zadnik and Sabina 2016; Tonsing 2016; Femi-Ajao 2018.

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## References

- Abrego, L. 2008. “Legitimacy, Social Identity, and the Mobilization of Law: The Effects of Assembly Bill 540 on Undocumented Students in California.” *Law & Social Inquiry* 33 (3): 709–734. doi:10.1111/j.1747-4469.2008.00119.x.
- Abrego, L. 2011. “Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5- Generation Immigrants.” *Law and Society Review* 45 (2): 337–370.
- Adames, S. B., and R. Campbell. 2005. “Immigrant Latinas’ Conceptualizations of Intimate Partner Violence.” *Violence against Women* 11 (10): 1341–1364. doi:10.1177/1077801205280191.
- Anleau, S. 2010. *Law and Social Change*. 2nd ed. London:Sage.
- Barata, P. C., M. J. McNally, I. Sales, and D. E. Steward. 2005. “Portuguese-Speaking Women Voice Their Opinions: Using Their Words to Teach about Wife Abuse.” *Women’s Health Issues* 15: 134–144. doi:10.1016/j.whi.2004.12.005.
- Bennett, L., L. Goodman, and M. Dutton. 1999. “Systemic Obstacles to the Criminal Prosecution of a Battering Partner: A Victim Perspective.” *Journal of Interpersonal Violence* 14 (7): 761–772. doi:10.1177/088626099014007006.
- Berkowitz, L., and N. Walker. 1967. “Laws and Moral Judgments.” *Sociometry* 30 (4): 410–422. doi:10.2307/2786186.
- Blackstone, A., C. Uggen, and H. McLaughlin. 2009. “Legal Consciousness and Responses to Sexual Harassment.” *Law & Society Review* 43 (3): 631–668. doi:10.1111/j.1540-5893.2009.00384.x.
- Bumiller, K. 1987. “Victims in the Shadow of the Law: A Critique of the Model of Legal Protection.” *Signs: Journal of Women in Culture and Society* 12 (3): 421–439. doi:10.1086/494337.
- Burman, E., and K. Chantler. 2005. “Domestic Violence and Minoritisation: Legal and Policy Barriers Facing Minoritised Women Leaving Violent Relationships.” *International Journal of Law and Psychiatry* 28 (1): 59–74. doi:10.1016/j.ijlp.2004.12.004.
- Certeau, M. 1984. *The Practice of Everyday Life*. California:University of California Press.
- Chua, L. 2012. “Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore.” *Law & Society Review* 46 (4): 713–748. doi:10.1111/j.1540-5893.2012.00515.x.
- Cowan, D. 2004. “Legal Consciousness: Some Observations.” *Modern Law Review* 67 (6): 928–958. doi:10.1111/j.1468-2230.2004.00518.x.

- DeLand, M. 2013. "Basketball in the Key of Law: The Significance of Disputing in Pick-Up Basketball." *Law & Society Review* 47 (3): 653–685. doi:[10.1111/lasr.12034](https://doi.org/10.1111/lasr.12034).
- Earner, I. 2010. "Double Risk: Immigrant Mothers, Domestic Violence and Public Child Welfare Services in New York City." *Evaluation and Programme Planning* 33: 292–298.
- Engel, D. M. 2013. "Perception and Decision at the Threshold of Tort Law: Explaining the Infrequency of Claims." *DePaul Law Review* 62: 293.
- Engel, D., and F. Munger. 2003. *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*. University of Chicago Press.
- Engel, D. M., and F. Munger. 2007. "Narrative, Disability, and Identity." *Narrative* 15 (1): 85–94. doi:[10.1353/nar.2007.0004](https://doi.org/10.1353/nar.2007.0004).
- Erez, E., M. Adelman, and C. Gregory. 2009. "Intersections of Immigration and Domestic Violence: Voices of Battered Immigrant Women." *Feminist Criminology* 4 (1): 32–56. doi:[10.1177/1557085108325413](https://doi.org/10.1177/1557085108325413).
- Ewick, P., and S. Silbey. 1995. "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative." *Law & Society Review* 29 (2): 197–226.
- Ewick, P., and S. Silbey. 1998. *The Common Place of Law: Stories From Everyday Life*. University of Chicago Press.
- Ewick, P., and S. Silbey. 1999. "Common Knowledge and Ideological Critique: The Significance of Knowing That the "Haves" Come out Ahead." *Law & Society Review* 33 (4): 1025. doi:[10.2307/3115157](https://doi.org/10.2307/3115157).
- Ewick, P., and S. Silbey. 2003. "Narrating Social Structure: Stories of Resistance to Legal Authority." *American Journal of Sociology* 108 (6): 1328–1372. doi:[10.1086/378035](https://doi.org/10.1086/378035).
- Fassi, M. 2011. "Dealing with the Margins of Law: Adult Sex Workers' Resistance in Everyday Life." *Oñati Socio-Legal Series* 1 (1): 1–36.
- Felson, R., and P. Paré. 2005. "The Reporting of Domestic Violence and Sexual Assault by Nonstrangers to the Police." *Journal of Marriage and Family* 67 (3): 597–610. doi:[10.1111/j.1741-3737.2005.00156.x](https://doi.org/10.1111/j.1741-3737.2005.00156.x).
- Felstiner, W., R. Abel, A. Sarat. 1980. "The Emergence and Transformation of Disputes - Naming, Blaming, Claiming..." *Law & Society Review* 15 (3–4): 631–654. doi:[10.2307/3053505](https://doi.org/10.2307/3053505).
- Femi-Ajao, O. 2018. "Intimate Partner Violence and Abuse against Nigerian Women Resident in England, UK: A Cross- Sectional Qualitative Study." *BMC Women's Health* 18: 123. doi:[10.1186/s12905-018-0610-4](https://doi.org/10.1186/s12905-018-0610-4).
- Ford, D. A. 1991. "Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships." *Law & Society Review* 25 (2): 313–334. doi:[10.2307/3053801](https://doi.org/10.2307/3053801).
- Foucault, M. 1980. "Two Lectures', Reproduced." In *Power/Knowledge*, edited by C. Gordon and Michel Foucault. Harvester Wheatsheaf. pp. 78–108.
- Fritsvold, E. 2009. "Under the Law: Legal Consciousness and Radical Environmental Activism." *Law & Social Enquiry* 24 (4): 799–824.
- Fuchsel, C., S. Murphy, and R. Dufresne. 2012. "Domestic Violence, Culture, and Relationship Dynamics among Immigrant Mexican Women." *Affilia* 27 (3): 263–274. doi:[10.1177/0886109912452403](https://doi.org/10.1177/0886109912452403).
- Gallagher, M. 2006. "Mobilizing the Law in China: "Informed Disenchantment" and the Development of Legal Consciousness." *Law & Society Review* 40 (4): 783–816. doi:[10.1111/j.1540-5893.2006.00281.x](https://doi.org/10.1111/j.1540-5893.2006.00281.x).
- Genn, H. 1999. *Paths to Justice: What People Do and Think about Going to Law*. Oxford: Hart Publishing.
- Gill, A. 2004. "Voicing the Silent Fear: South Asian Women's Experiences of Domestic Violence." *The Howard Journal of Criminal Justice* 43 (5): 465–483. doi:[10.1111/j.1468-2311.2004.00343.x](https://doi.org/10.1111/j.1468-2311.2004.00343.x).
- Gleeson, S. 2010. "Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making." *Law & Social Inquiry* 35 (03): 561–602. doi:[10.1111/j.1747-4469.2010.01196.x](https://doi.org/10.1111/j.1747-4469.2010.01196.x).



- Graca, S. 2015. "Use of Domestic Violence Services by Portuguese Women in England." *Journal of Social Welfare and Family Law* 37 (1): 38–15. doi:10.1080/09649069.2015.998003.
- Graca, S. 2018. "Portuguese Culture and Legal Consciousness: A Discussion of Immigrant Women's Perceptions of and Reactions to Domestic Violence." *International Journal of Law in Context* 14 (3): 416–436. doi:10.1017/S1744552317000544.
- Halliday, S., C. Kitzinger, and J. Kitzinger. 2014. "Law in Everyday Life and Death: A Socio-Legal Study of Chronic Disorders of Consciousness." *Legal Studies* 35 (1): 55–74. doi:10.1111/lest.12042.
- Halliday, S., and B. Morgan. 2013. "I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination." *Current Legal Problems* 66 (1): 1–32. doi:10.1093/clp/cut002.
- Harding, R. 2006. "Dogs Are 'Registered', People Shouldn't Be': Legal Consciousness and Lesbian and Gay Rights." *Social & Legal Studies* 15 (4): 511–533. doi:10.1177/0964663906069545.
- Harding, R. 2011. *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives*. Abingdon: Routledge.
- He, X., L. Wang, and Y. Su. 2013. "Above the Roof, beneath the Law: Perceived Justice behind Disruptive Tactics of Migrant Wage Claimants in China." *Law & Society Review* 47 (4): 703–738. doi:10.1111/lasr.12043.
- Hertogh, M. 2018. *Nobody's Law. Legal Consciousness and Legal Alienation in Everyday Life*. London: Palgrave.
- Hoffman, E. 2003. "Legal Consciousness and Dispute Resolution: Diferente Disputing Behavior at Two Similar Taxicab Companies." *Law and Social Inquiry* 28 (3): 691–716.
- Hull, K. 2003. "The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage." *Law & Social Inquiry* 28 (3): 629–657. doi:10.1111/j.1747-4469.2003.tb00210.x.
- Hull, K. E. 2016. "Legal Consciousness in Marginalized Groups: The Case of LGBT People." *Law and Social Inquiry* 41: 551–572.
- Jiang, S., and Y. Wu. 2015. "Chinese People's Intended and Actual Use of the Court to Resolve Grievance." *Social Science Research* 49: 42–52. doi:10.1016/j.ssresearch.2014.07.009.
- Kelly, U. A. 2009. "I'm a mother first": The influence of mothering in the decision-making processes of battered immigrant Latino women." *Research in Nursing & Health* 32: 286–297.
- Lazarus-Black, M. 2008. "Vanishing Complainants: The Place for Violence in Family, Gender, Work, and Law." *Caribbean Studies* 36 (1): 25.
- Lee, E. 2007. "Domestic Violence and Risk Factors among Korean Immigrant Women in the United States." *Journal of Family Violence* 22: 141–149.
- Lei, Y., and D. Zhou. 2015. "Contesting Legality in Authoritarian Contexts: Food Safety, Rule of Law and China's Networked Public Sphere." *Law & Society Review* 49 (3): 557–593. doi:10.1111/lasr.12153.
- Levine, K., and V. Mellema. 2001. "Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drug Economy." *Law & Social Inquiry* 26 (01): 169–205. doi:10.1111/j.1747-4469.2001.tb00175.x.
- Lovell, G. 2012. *This is Not Civil Rights, Discovering Rights Talk in 1939 America*. Chicago: University of Chicago Press.
- Menjívar, C. 2016. "Immigrant Criminalization in Law and the Media: Effects on Latino Immigrant Workers' Identities in Arizona." *American Behavioral Scientist* 60 (5–6): 597–616. doi:10.1177/0002764216632836.
- Menjívar, C., and O. Salcido. 2002. "Immigrant Women and Domestic Violence: Common Experiences in Different Countries." *Gender & Society* 16 (6): 898–920. doi:10.1177/089124302237894.
- Merry, S. E. 1990. *Getting Justice and Getting Even, Legal Consciousness among Working-Class Americans*. Chicago: University of Chicago Press.
- Messing, J. T., S. Vega, and A. Durfee. 2017. "Protection Order Use among Latina Survivors of Intimate Partner Violence." *Feminist Criminology* 12 (3): 199–223. doi:10.1177/1557085116678924.

- Nielsen, L. B. 2000. "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment." *Law & Society Review* 34 (4): 1055–1090. doi:[10.2307/3115131](https://doi.org/10.2307/3115131).
- Olson, S., and C. Batjer. 1999. "Competing Narratives in a Judicial Retention Election: Feminism versus Judicial Independence." *Law & Society Review* 33 (1): 123–160. doi:[10.2307/3115098](https://doi.org/10.2307/3115098).
- Rai, A., and Y. Choi. 2018. "Socio-Cultural Risk Factors Impacting Domestic Violence among South Asian Immigrant Women: A Scoping Review." *Aggression and Violent Behavior* 38: 76–85. doi:[10.1016/j.avb.2017.12.001](https://doi.org/10.1016/j.avb.2017.12.001).
- Raj, A., and J. Silverman. 2002. "Violence against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence." *Violence against Women* 8 (3): 367–398. doi:[10.1177/10778010222183107](https://doi.org/10.1177/10778010222183107).
- Regev-Messalem, S. 2014. "Trapped in Resistance: Collective Struggle through Welfare Fraud in Israel." *Law & Society Review* 48 (4): 741–772. doi:[10.1111/lasr.12110](https://doi.org/10.1111/lasr.12110).
- Reina, A. S., and J. Lohman. 2015. "Barriers Preventing Latina Immigrants from Seeking Advocacy Services for Domestic Violence Victims: A Qualitative Analysis." *Journal of Family Violence* 30 (4): 479–488. doi:[10.1007/s10896-015-9696-8](https://doi.org/10.1007/s10896-015-9696-8).
- Reina, A. S., B. J. Lohman, and M. M. Maldonado. 2014. "He Said They'd Deport Me": Factors Influencing Domestic Violence Help-Seeking Practices among Latina Immigrants." *Journal of Interpersonal Violence* 29 (4): 593–615. doi:[10.1177/0886260513505214](https://doi.org/10.1177/0886260513505214).
- Saguy, A., and F. Stuart. 2008. "Culture and Law: Beyond a Paradigm of Cause and Effect." *The Annals of the American Academy of Political and Social Science* 619 (1): 149–164. doi:[10.1177/0002716208320458](https://doi.org/10.1177/0002716208320458).
- Sarat, A. 1990. "The Law is All over": Power, Resistance and the Legal Consciousness of the Welfare Poor." *Yale Journal of Law & the Humanities* 2 (2–6): 343–379.
- Sarat, A., and R. Kearns. 1993. *Law in Everyday Life*. USA:University of Michigan Press.
- Silbey, S. 2005. "After Legal Consciousness." *Annual Review of Law and Social Science* 1 (1): 323–368. doi:[10.1146/annurev.lawsocsci.1.041604.115938](https://doi.org/10.1146/annurev.lawsocsci.1.041604.115938).
- Sokoloff, N. 2008. "Expanding the Intersectional Paradigm to Better Understand Domestic Violence in Immigrant Communities." *Critical Criminology* 16 (4): 229–255. doi:[10.1007/s10612-008-9059-3](https://doi.org/10.1007/s10612-008-9059-3).
- Sokoloff, N., and S. Pearce. 2011. "Intersections, Immigration and Partner Violence: A View from a New Gateway-Baltimore, Maryland." *Women & Criminal Justice*, 21 (3): 250–266.
- Tonsing, J. 2016. "Complexity of Domestic Violence in South Asian Context in Hong Kong: Cultural and Structural Impact." *Social Work Education* 35 (1): 18–30.
- Vidales, G. 2010. "Arrested Justice: The Multifaceted Plight of Immigrant Latinas Who Faced Domestic Violence." *Journal of Family Violence* 25 (6): 533–544. doi:[10.1007/s10896-010-9309-5](https://doi.org/10.1007/s10896-010-9309-5).
- Young, K. 2014. "Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight." *Law & Society Review* 48 (3): 499–530. doi:[10.1111/lasr.12094](https://doi.org/10.1111/lasr.12094).
- Zadnik, E., C. Sabina, and C. Cuevas. 2016. "Violence against Latinas: The Effects of Undocumented Status on Rates of Victimization and Help-Seeking." *Journal of Interpersonal Violence* 31 (6): 1141–1153. doi:[10.1177/0886260514564062](https://doi.org/10.1177/0886260514564062).