

## Everyone Knows the Game: Legal Consciousness in the Hawaiian Cockfight

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Past legal consciousness research has revealed a great deal about what individuals think and do with regard to law, but less attention has been paid to the social processes that underpin these attitudes, beliefs, and actions. This article focuses particularly on a “second-order” layer of legal consciousness: people’s perceptions about how others understand the law. Ethnographic observations and in-depth interviews with cockfighters in rural Hawaii reveal how law enforcement practices not only *affect* cockfighting rituals, but are embedded *within* them. Police practices and informal rules work in concert to shape fighters’ second-order beliefs. These beliefs have implications for participants’ understanding of central concepts, including order, disorder, and illegality. Examining legal consciousness from a second-order perspective also underscores that notions of legitimacy are constantly created and recreated. Recognizing legitimacy’s inherently relational nature helps us understand how experiences of law are synthesized into beliefs—for example, when an unusual police action directed toward a subgroup of fighters compromised the law’s legitimacy for them. Foregrounding the relational nature of legal consciousness offers scholars a means to better understand and operationalize the dynamic nature of human relationships to law.

Cockfighting is illegal throughout the United States. But although its criminalization drives the practice underground, cockfighting retains iconic cultural status in Hawaii, thriving among dedicated aficionados—a racially diverse, working-class group of men ranging in age from their teens to their eighties. The large weekly cockfights on the island of “Moa”<sup>1</sup> draw hundreds of people

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<sup>1</sup> “Moa” is a pseudonym. I should note, however, that the study did not take place on Oahu, which has more of a “cat and mouse” culture with regard to policing cockfights. I

each week. Two roosters, knives strapped to their feet, fight to the death in every match while participants and spectators wager on the outcomes.

Cockfighting arrests occur regularly on. They bear little resemblance to Geertz's iconic portrayal, wherein a raid prompts the crowd to scatter and flee (1971: 1–2). Instead, police interrupt fights only briefly, in a predictable pattern of “busts.” Rather than deterring cockfights, law enforcement processes are essentially phagocytized. Police do not merely act *upon* a fight; their actions sustain a role for law enforcement *within* the cockfighting ritual.

Throughout the cockfight, participants define, enact, and maintain a distinct notion of order. The messages cockfighters derive from each other and from police actions influences the fights' social structure and participants' legal consciousness. In this article, I pay particular attention to the fighters' attitudes toward police and how the fighters come to hold or change these beliefs. The data illustrate how a person's orientation toward law in a given situation is the fruit of a complex and dynamic set of processes involving numerous components—his experiences, attitudes, understanding of his identities, and his beliefs about social norms. In this way, legal consciousness is constantly created and reconstituted.

Contemporary legal consciousness literature centers more on identifying states of legal consciousness than on examining underlying processes. Silbey has observed the work's tendency to report beliefs various groups hold, underscoring commonalities in people's thoughts about law. Another vein of work describes the heterogeneity of legal attitudes and beliefs, often within the same social group (Silbey 2005). “Rather than explaining how the different experiences of law become synthesized into a set of circulating, often taken-for-granted understandings and habits, much of the literature tracks what particular individuals think and do” (Silbey 2005: 324). Put differently: too much product; not enough process.

Here, I track what cockfighters think and do with regard to law, but more importantly, I illustrate how their experiences of law translate into beliefs about order and legitimacy, and how these beliefs influence the cockfights' social structure. I remain interested in individual-level beliefs, but propose that we can gain insight about consciousness by considering the individual relationally. A person's beliefs about, and attitude toward, a particular law or set of laws is influenced not only by his own experience, but by his understanding of others' experiences with, and beliefs about, the law. In considering how a greater focus on relationality might

advance our understanding of legal consciousness, I draw on multiple literatures: procedural justice and legitimacy; identity theory; legal pluralism. These research agendas can be fused with a more dynamic account of legal consciousness that not only complicates the agendas themselves, but advances the discourse by foregrounding the social processes that create legal consciousness.

## **How People Relate to Law**

Often defined as an “outcome of social processes through which meanings and identities are collectively reconstructed” (Sommers and Roberts 2008: 23, citing Merry 1990: 247), legal consciousness draws on sociological and anthropological traditions, encompassing a person’s attitudes toward, willingness to mobilize, suppositions about, and experiences of the law (Young 2009: 68–69). It is her “commonsense understanding” of how the law works (Nielsen 2004: 7).

### **Second-Order Legal Consciousness**

Some scholars construe legal consciousness as residing primarily within individuals: documenting the beliefs various groups hold, underscoring intergroup commonalities, or emphasizing a heterogeneity of attitudes and beliefs about law under various circumstances (Boittin 2013; Ewick and Silbey 1998; Harding 2006; Sarat 1990). This work has examined the demographic factors correlated with particular beliefs (Hirsh and Lyons 2010; Nielsen 2000; Wagatsuma and Rosett 1987), as well as how attitudes and beliefs lead people to act (Sandefur 2007; Pleasence and Balmer 2013; Riggs, Edelman, and Matusik 2000). Other research has highlighted the social nature of legal consciousness, “identify[ing] the understandings and meanings of law that circulate in social relations” (Silbey 2001; see also DeLand 2013; Gallagher 2006; Hoffmann 2003).

Although less attention has been paid to the social processes that concretize people’s “experiences of law into attitudes and beliefs” (Silbey 2005), individual- and group-level analytical approaches are not at odds; each implicates the other. We can talk about a person’s beliefs as part of her legal consciousness, and at the same time, shared elements of consciousness among individuals comprise the legal consciousness of a group or local community—which, in turn, affects individuals’ understandings of law. But it is less clear how individual and group analyses inform each other. If legal consciousness is a social process, how do social processes affect the consciousness of an individual?

In this article, I use the term “second-order legal consciousness”<sup>2</sup> to describe a person’s beliefs about the legal consciousness of any individual besides herself, or of any group whether or not she is part of it. This relational understanding is useful largely for the questions it prompts us to ask. For example, how does legitimacy or illegitimacy contribute to people’s perceptions of order and disorder? How does a person come to know what her “community” believes? How do group-level processes affect a person’s understandings of law? What sub-communities are relevant, and when? These kinds of questions share a concern with the ways a person’s legal consciousness is shaped by his or her beliefs about *others’* beliefs. Thus, second-order legal consciousness offers a way to expand our current understanding of legal consciousness while building on existing theory.

Other work has touched on this “second-order” concept. For example, Hoffmann’s study of two taxi companies documents how institutional environment, including coworkers’ behavior, shapes legal consciousness, particularly employees’ understanding of conflict and willingness to engage formal grievance procedures (2003). Marshall’s work on workplace sexual harassment explicates grievance procedures’ effect on women’s rights consciousness in workplaces (2005). And Gallagher’s study of the Chinese legal system shows how factors like social institutions, media, and social support networks shape legal consciousness (2006). Earlier studies, too, have discussed others’ impact on people’s law-related actions—for example, Berkowitz and Walker’s (1967) finding that the moral judgments of their peers influence people’s assessments of morality more strongly than does the content of state-made law.

But while the idea of second-order legal consciousness is not wholly new to the literature, neither has it been identified, discussed, or operationalized as a *type* of influence upon legal consciousness. Second-order legal consciousness is consistent with the idea that legal consciousness is an “ever-changing, context-based concept, constantly altered by experiences and interactions” (Hoffmann 2003: 694), but is more specific. It centers on what a group’s members believe others think, and how *this* belief, specifically, affects their legal consciousness.<sup>3</sup>

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<sup>2</sup> I appropriate “second-order” from philosophical and psychological literatures on the theory of mind, which sometimes use the phrase “second-order beliefs” to describe a person’s beliefs about another person’s mind.

<sup>3</sup> As some readers will note, I implicate, but do not explicitly engage with, a vein of legal scholarship known as “law and norms.” This article is a partial answer to legal scholars’ call for an “in-depth, qualitative, and context-specific approach to analyzing the expressive effect of laws” (Lanni 2010: 49, citing Goodman 2001; Harcourt 2000; Tushnet 1998; Weisberg 2003).

Imagine a law professor contemplating illegally downloading the newest season of his favorite television show. Many groups' and individuals' attitudes could be salient in shaping his legal consciousness here. He may believe that the dean of his law school supports enforcing copyright laws only when necessary, or that she takes violations seriously as a moral matter. He may believe that other faculty members routinely download television shows illegally, or that as law professors, they feel a special obligation to follow the law. He may believe that lawmakers created copyright laws in response to financial pressure from television networks, or that copyright laws were created to protect actors' and writers' earnings. These second-order beliefs will also be colored by circumstances—for example, is the show unavailable for purchase (in which illegal download is his sole means of obtaining it), or for sale on iTunes (in which case he is merely avoiding paying \$29.99)? We might imagine many groups or individuals whose attitudes, as our law professor perceives them, could be salient in shaping his legal consciousness in this situation.

### **Legitimacy and Legal Consciousness**

The procedural justice literature on legitimacy illuminates the importance of this second-order layer of legal consciousness in understanding people's relationship to state actors, particularly police. Tyler and others focus on citizens' perceptions of state actors, defining legitimacy as "a property of an authority or institution that leads people to feel that that authority or institution is entitled to be deferred to and obeyed" (Sunshine and Tyler 2003). "Entitled" is crucial, denoting that people act not because they fear punishment, but because they believe authority "deserves" their obedience.<sup>4</sup> Note, too, that this literature generally focuses on individual beliefs, as opposed to the ways attitudes and beliefs are constructed by, or circulate within, social groups. Nonetheless, as I will describe, it is closely tied to second-order concerns.

Tyler finds that people are more likely to support police if they see police as legitimate authorities, and are more likely to see police as legitimate authorities if they believe police act fairly (2004). Whether a person is happy with a particular legal outcome, and regardless of whether she believes police are effective, she views them as more legitimate if they use procedures she deems fair (Tyler 2004). Perceived police legitimacy increases legal compliance (Sunshine and Tyler 2003) and general cooperation with legal authorities—for example, making people more likely to serve voluntarily as witnesses

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<sup>4</sup> Nor does the definition necessarily imply compliance, though the literature sometimes assumes that compliant acts follow from the belief that an authority is legitimate.

(Tyler 2003). This occurs partly because if people have decided to follow the mandates of legitimate authorities, they aren't constantly deciding whether to obey; they have already made a larger decision to follow the law, so a "different type of morality" tied to a broader duty of obedience takes over (Tyler 2004: 87).

Investigating legitimacy primarily on the individual level, though, has led procedural justice to conceptualize legitimacy as somewhat monolithic. Some recent scholarship has complicated this construction. Berrey et al. use the term "situated justice" to describe an approach that emphasizes the relational nature of how litigants understand fairness with regard to their orientation toward adversaries, as well as the resources and experiences the litigants bring (2012: 3). This work is primarily intended to connect litigants' stories about fairness "to the material and symbolic struggles and structural inequalities that characterize litigation" (Berrey, Hoffman, and Nielsen 2012: 3), but also models how legitimacy's relationship to legal consciousness might be more broadly understood.

According to Weber, legitimation "occurs through a collective construction of social reality in which the elements of a social order are seen as consonant with norms, values, and beliefs that individuals presume are widely shared, whether or not they personally share them" (Johnson, Dowd, and Ridgeway 2006: 55). In other words, someone might comply with an authority's directive only because they believe everyone else thinks the authority is legitimate. Dornbusch and Scott characterize Weberian legitimacy as comprising "propriety" (belief that a social order's norms are worth following) and "validity" (belief that these norms should be followed even if you disagree with them; Johnson, Dowd, and Ridgeway 2006: 55, citing Dornbusch and Scott 1975). Embedded in both concepts is the assumption that a person's perceptions of group norms are relevant to her beliefs about authority.

Second-order legal consciousness draws on this central insight about legitimacy, providing a framework for understanding the processes that engender complicated relationships to law and legal structures rather than focusing on obedience or disobedience. For example, we might ask why someone who believes police are corrupt would act as if he believes they are legitimate. We might ask how this varies from one situation to the next, in much the same way that orientation of self to law varies (Ewick and Silbey 1998). At any given point, we can assess a person's beliefs about the law's legitimacy or describe the "state" of his legal consciousness, but we should also think about the relational processes that create this state, such as how others' behavior affects a person's judgment about the legitimacy of a law, which "others" are salient when, and how beliefs are communicated. The ideas and understandings

that develop and proliferate within groups are central to our perceptions of others' beliefs. Second-order legal consciousness brings these questions to the forefront, in part by drawing on classical notions of Weberian legitimacy.<sup>5</sup>

## Methods

I conducted research on the island of Moa during May and June of 2007,<sup>6</sup> living for 6 weeks with Vincent, a cockfighter and small-scale breeder, and participating in his birds' daily care, feeding, and training. I accompanied Vincent and other fighters to the large weekly cockfighting events ("hack fights"), as well as to fighters' farms to attend smaller "backyard fights" and "sparring matches" (practice fights without knives). I also conducted approximately 250 hours of ethnographic observation outside of the cockfighting context, accompanying fighters to family get-togethers, to bars to watch sporting events on television, and to miscellaneous other informal social events. Prior to this research trip, I conducted a week-long exploratory visit, where I began meeting potential informants.

In addition to my ethnographic observations, I conducted 23 formal, semi-structured interviews. Given cockfighting's illegal status and underground nature, many fighters were reluctant to discuss their participation. I struck up conversations at the fights, but primarily used snowball sampling, using Vincent and his friends as starting points. Eventually I gained entrée of varying levels to seven different cockfighting gangs.<sup>7</sup>

My gender seemed not to impede my connection with cockfighters—and to my surprise, it may have offered advantages. For one, several fighters told me that since I was a woman, they figured I was unlikely to be a police officer. Additionally, several cockfighters' female partners or family members approached me, curious about my gender-atypical (in their view) interest in

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<sup>5</sup> Second-order legal consciousness also connects traditional legal consciousness inquiry with the expressive power of law by focusing on the collective and relational aspects of law's force. For example, an act's illegality may deter people from performing it, whether or not violations carry an official sanction. The disapproval of the act that the law expresses has a power unto itself (Feldman and Teichman 2010).

<sup>6</sup> Cockfighting-related offenses are generally charged as misdemeanors in Hawaii, but this is not always so (as evidenced by the "big bust" scenario I discuss below). Waiting for the statute of limitations on related crimes (e.g., racketeering) to pass ensured legal protection for informants. I am still in contact with a handful of Moa cockfighters, and by all accounts, the patterns I describe herein remain unchanged.

<sup>7</sup> Here, "gang" refers not to a criminal street gang, but to a group of other men with whom a cockfighter joins for the purpose of breeding and fighting roosters.



cockfighting. We “talked story”<sup>8</sup> often, and their perspectives and insights proved helpful. The only aspect of my identity that gave informants pause was my affiliation with a well-known university. Some fighters believed I was a “rich professor” just “slumming” on Moa. To dispel this idea, I was forthright about my family background, which bears similarities to many fighters’. My familiarity with Hawaiian Pidgin also allowed informants to talk to me without adjusting their usual speech patterns. Fighters whose trust I earned were often willing to vouch for me. In a stroke of ethnographic luck, one such fighter was Pat, the head of the House (the group of men in charge of running the fights), who was highly respected among fighters. Pat, Vincent, and others brokered introductions on my behalf. Understandably, some fighters remained unwilling to speak with me.<sup>9</sup>

Interviewees were racially diverse,<sup>10</sup> ranged in age from their early 20s to their early 80s, and were employed in a variety of working-class occupations. Interviews lasted from 30 minutes to over 3 hours. The average length was 90 minutes. In order to focus on the men most deeply involved, I primarily interviewed men who bred *and* fought roosters.<sup>11</sup> I took extensive field notes at my earliest opportunity after (and when possible, during) cockfights and social interactions. Typically, I made jottings in the field and typed detailed notes later that day. My raw data comprised approximately 350 typed pages. Back on the mainland, I coded the notes thematically, using an “open coding” system with particular attention to legality, police, and localism. I created no codes in advance. In order to let themes emerge rather than imposing them on the data, I consciously erred on the side of overinclusion, creating a code for every social theme I detected. I managed the codes using the software program Atlas.ti. After the initial round of coding, I grouped codes into 10 or 15 thematic “code families.” Several codes fell into multiple families. I extracted the data associated with each

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<sup>8</sup> “Talk story” is used as a verb in Hawaii to describe friendly, in-depth conversation.

<sup>9</sup> Also, several fighters talked to me only on the condition that I would not be speaking with the police; I honored this condition, which precluded me from interviewing law enforcement officials.

<sup>10</sup> I do not suggest that race or ethnicity were directly related to the foci of this article. Gang membership did not generally fall along racial lines, nor did I hear fighters discuss race in a way that deviated from discussions of race in Hawaii generally (Jung 1999). Interestingly, even in regions of the United States fraught with racial strife, some evidence suggests race is less salient in the cockfighting context (Maunula 2007). Additionally, local identity and traditions and Native Hawaiian identity and traditions are not coextensive. Cockfighting is associated primarily with *local* identity.

<sup>11</sup> I originally intended to audiotape interviews, but requesting fighters’ permission to record conversations made them uncomfortable, so I opted for written notes. For this reason, I am unable to reproduce lengthy quotes verbatim.



family. My methods are consistent with a modified grounded theory approach (McDermott 2006).

## The Fight and the Fighters

### Preparation for a Fight

In the 2006 and 2007 cockfighting seasons, the weekly “hack” fights were held each weekend in a secret location on private agricultural land.<sup>12</sup> Finding the fights requires navigating a network of unmarked dirt roads, and nearly all 200 people in attendance are regulars. A grove of trees separates the farmland from cliffs overlooking the ocean, and the fights are held in a clearing in the middle of this grove.

The cockfighting pit is bordered by a four-foot-high fence fashioned from chicken wire and scrap lumber. A small fluorescent orange square is spray-painted onto the dirt in the center of the pit, marking the roosters’ starting lines. If no fight is in progress, the rows of plastic chairs that surround the pit are mostly empty. Twenty yards away, a long, collapsible table with peeling wood veneer—the “betting table”—is the center of activity. Men<sup>13</sup> cluster around it, some smoking cigarettes or cigarillos, talking in Tagalog or Pidgin English. If a man wants to fight his rooster, he takes it to the betting table and announces the bird’s weight. A difference of more than two ounces between roosters is considered to unfairly advantage the heavier bird. Fighters inspect each others’ birds and speculate aloud about the animals’ strengths and weaknesses. To propose a match, a fighter offers his prospective opponent a bet, which the second man counter-offers, accepts, or rejects. To accept, a fighter says, “Go.” Then the other repeats, “Go.” They lift their birds toward each other and nod solemnly. The match is set.

Back at a fighter’s “camp,” he readies the bird for combat. A camp is a fighter’s home base at the fights, where members of his gang, usually between four and 20 people, sit around a truck bed or under a tarp. The money a fighter wagers is usually pooled with members of this group. Camps dot the land surrounding the pit, spreading hundreds of feet in all directions. Gangs bring plastic

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<sup>12</sup> Three kinds of cockfights occur on Moa. “Backyard fights” are small and casual, taking place between friends for relatively small amounts of money (\$20, \$50). “Derbies,” rare on Moa, are tournaments with brackets; fighters enter a set number of birds (e.g., a “three-cock derby”) and pay an entrance fee. The third type, “hack fights,” are the best-known and best-attended. When a person simply says that he is “going to the fights,” he is generally referring to the hack fights.

<sup>13</sup> The hack fight has few female attendees, none of whom ever enter the pit.

chairs, food and drinks (vendors sometimes set up informal snack booths as well), and accouterments (e.g., tape, scissors, dental floss) for “tying the knife”—the ritual of securing a razor-sharp, 3-inch steel knife to the bird’s foot in preparation for the fight. Knife-tying is viewed as an important skill. Only the closest members of a fighter’s gang usually help him tie the knife, and usually, one or two members of a gang specialize in knife-tying, though some fighters tie their own as a point of pride.

### **Go!**

When both parties to a match are ready, word circulates that a fight is on, and the crowd swiftly surrounds the pit. The tension is palpable. The fighters walk from their camps, birds in hand, flanked by the closest members of their gangs. When both handlers enter the ring, betting begins. The shouting is cacophonous. Spectators catch one another’s eyes, waving toward one side of the ring to indicate on whom they want to bet, and holding up fingers to indicate their desired odds. When parties to a possible bet locate each other, one asks, “How much?” and the other names a number. These are called “side bets,” and range from 10 or 20 dollars to a few hundred. Once an agreement is reached, both say, “Go,” to seal the bet, just as fighters do to confirm a match. The shouting continues until the referee counts, “One, two, three.” Then the fighters place their birds on the starting lines and the fight begins.

In the instant before the birds “break”—that is, before they fly at each other for the first time—the crowd is silent, drawing in a collective breath against the flapping of wings. It is no trick getting the roosters to fight; they fight in the wild, and this instinct is evident in the ring. A well-tied knife perfectly replicates the location of the rooster’s natural spur, so that the quick, punching kicks one rooster delivers to the back or chest of his opponent are placed just as they would be in the wild, but are made far deadlier and bloodier by the 3-inch knife.

When one bird pins the other for a count of three, the referee calls, “Handle!” The men separate their roosters and set them back down a foot from each other, re-releasing them when the referee counts again. As the fight wears on, the crowd grows louder, shouting at the birds (“Atta boy!” “Stick him!”) or at the handlers (“Take care your bird! Rub his chest!”). Each match has a 10-minute limit, but this is rarely reached, and many matches last less than 2 minutes. The fight continues until one of the birds no longer “shows bite”—that is, until one rooster no longer has the strength to peck at the other and collapses into the dirt.

## The Patterned Predictability of Cockfighting Busts

Fighting starts around 9:30 or 10:00 am, then slows by 11:30 in anticipation of the police “bust” that happens nearly every week between noon and 2:00 pm. As noon approaches, fighters still bring their roosters to the betting table and arrange matches, but back at their camps, they simply wait; no one enters the pit. This “standoff” between fighters and the police they suspect are in attendance can last for hours. Rumors may circulate about whether the police are present yet, and whether they’ve slipped into the crowd or are hiding in the surrounding forest. Fighters are eager for the bust to occur, but don’t want to be arrested. While waiting, they might speculate with friends about matchups or the quality of a particular line of birds that year. Their attitude is similar to baseball players waiting out a mid-game rain, though they also complain that law enforcement’s presence at the fights is “ridiculous.” Spectators are mostly good-natured, using the time to catch up with friends, buy dried squid or kahlua pork from vendors, smoke, and enjoy the sun. Everyone knows what the fighters are waiting for. This is part of the ritual.

Sometimes, both parties to a match will grow tired of waiting and decide to fight, thrilling the bored crowd. Some fighters mind risking arrest more than others do, and there is also a sense that by breaking the standoff, a fighter is doing a kind of “service” to his brethren. Alternatively, a fighter may hire someone to “handler,” or “pit,” his bird in the ring. Fighters sometimes use these “handlers” in other instances, too, but hiring handlers to break a standoff is typically intended to spare a fighter the risk of arrest. Hired handlers are usually spectators or fighters’ acquaintances, and are paid around \$200 for their services. As long as they stay out of the cockfighting ring themselves, fighters are unconcerned about the possibility of arrest. They make no spectacle of displaying their cockfighting accouterments in the camps, but do little to conceal them.

If an arrest occurs, it happens immediately after a match concludes. A plainclothes police officer, sometimes two, will meet the handlers as they are leaving the ring after a fight and tell them they are under arrest. Among the crowd’s cheers and the collection of bets, the arrest is easy to miss; there are no uniforms, visible weapons, or handcuffs, just three or four men walking away from the ring together. A latecomer to the fights who passes them on the dirt road might easily mistake them for a group of friends returning to their car. The arrestees are taken to the police station, where they are typically charged with misdemeanor gambling or cruelty to animals, fined \$400 each, and released.

Back at the camps, word circulates that the “vice” have hit, and the atmosphere turns jovial, relieved, even celebratory: the fights

can begin in earnest. As Josie, a fighter's wife, told me after one arrest, "Now we can rock and roll!" Within 15 or 20 minutes, two more fighters enter the ring. On rare occasions, a second fight is busted, but usually the fights now happen in quick succession, uninterrupted by law enforcement for the rest of the day.

As an outsider, it is difficult not to see the arrests as pro forma. Hack fights occur at the same time and location every week, and the evidence of continuing, large-scale fights would be impossible for any police officer to miss. And regardless of police presence, spectators gamble openly, though gambling is illegal in Hawaii.

According to Lucas, Ernie, Rhett, and others, the enforcement pattern has remained unchanged for decades. From fighters' perspective, they are required not just to comply, but to facilitate it. Several men explained that the vice don't like to be "kept waiting," and that if the standoff lasts too long, police may bust additional fights to express their annoyance. As Norbert told me, "Sometimes when you piss the vice off [by waiting too long to fight] they get mad and they hit again." Similarly, Rhett said that police carry out multiple busts if fighters try to "trick" them. He recounted an incident in which two fighters entered the ring without roosters and pretended to fight. The crowd played along, cheering, then quieting down. Thinking a fight had just ended, the cops "hit," then realized no fight had actually taken place. The police pretended to leave, then busted several fights in a row. According to Rhett, the police did this because they were angry at being tricked.

### **Informal Regulation and the Role of the "House"**

The "House"—the group of men that organizes the fights—institutes rules and enforces norms designed not only to help fights run smoothly, but to minimize law enforcement officials' incentive to deviate from their usual practices. Many House rules are designed to reduce the chance of conflicts between fighters. For example, the "weighing station" (the bed of a pick-up truck where members of the House weigh birds) allows fighters to double-check the weight of a prospective opponent's bird. And instead of money changing hands directly between fighters, a fighter gives his bet to the House up front in exchange for half of a playing card. When the fighters or handlers enter the ring, they hand the card to the referee, who ensures that the halves match. When a fight is over, the victor collects his winnings from the House, less a 10 percent House fee. In addition to paying for supplies such as fencing materials and lights for evening fights, the House fee covers the \$400 fine leveled against each arrestee in a bust, so that the prospect of arrest presents no financial risk to individual fighters. Rhett explained that the 10 percent fee is "like an insurance policy."

Members of a fighter's gang customarily help cover the nonrefundable 10 percent. This is called a "pinto" and is known as "pinto-ing" the fighter.

Respectful behavior was also evident among spectators. In the thousands of side bets I witnessed, I saw only one disagreement. According to Dennis, this lack of rowdiness is because cockfighting is a "gentlemen's game,"<sup>14</sup> and that if there were "fisticuffs" or "killing," police would shut it down. Indeed, Dennis, Vincent, and other fighters related a rare incident in the 1970s when a hack fight elsewhere on the island was permanently closed after someone was stabbed. Pat, the head of the House, told me that the biggest challenge of "running the game" was maintaining order: "If you see somebody getting too rowdy, we have to talk to that person."

Most fighters not only follow House rules, but help enforce them. For example, although the weekly fights might seem a convenient location for drug deals, and although some fighters use illegal drugs at other times, the House prohibits the use and sale of illegal drugs at the fights. One weekend, two newcomers set up a tent on a cliffside beyond the camps and tried to sell drugs. Several fighters became angry and told others not to go near the tent. Vinnie, for one, regularly used illegal drugs and sometimes had difficulty finding them on Moa, so I expected he might try to purchase some. Instead, he was angry about the dealers, and said they "should be run out." Vincent and others agreed. The following week, the dealers were gone; fighters reported that the House had asked the dealers to leave. And although I was initially skeptical of fighters' claim that no one used drugs at the fights, this accorded with my observations. I witnessed drug use only once at a fight, when Abraham and Juan used marijuana. Even then, they drove half a mile down the dirt road and smoked in the pineapple fields. I asked them why they bothered to go so far away, and they told me it was because they didn't want anyone to "get upset."

Fighters' conversations suggested that the House kept drugs out so as not to arouse extra police attention, and other House rules aligned with this interpretation. For example, no one under age 18 was allowed in the ring, even to pit his own birds. According to the fighters, this is because of the increased legal repercussions juveniles could face. Another rule was that fighters from outside Moa were not allowed to participate. This was particularly true for those from the mainland or from Honolulu, Hawaii's biggest city. Outside fighters were thought to have a greater propensity for violence, which could draw unwanted attention from police. Lucas told me,

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<sup>14</sup> The aversion to prolonged discord also echoes Native Hawaiian forms of dispute resolution (Matsuda 1988).

“If Honolulu guys come fight, they fucking just bust . . . three times one day sometimes,” and Rhett said, “If Honolulu guys come here, they gon’ bust all day long.”

### **Fighters’ Attitudes Toward Formal and Informal Regulation**

As I have described, fighters complied with House rules and even helped enforce them. The dynamic of the Sunday fights was influenced by fighters’ perception of law enforcement’s practices, beliefs, and attitudes, and these were a popular topic for discussion. Fighters shared, discussed, and interpreted rules. Especially while waiting for the police, fighters talked about the vice, how and when the vice “hit,” and aberrations that provoked more than one bust in a day. They listened to one another’s opinions about the vice’s motivations and other practical issues related to rules and enforcement, such as whether it was worth the trouble to hire a handler.

In contrast, the fighters tended to know little about state or federal laws regarding cockfighting. On the rare occasions that they discussed these laws with one another, their understandings and interpretations varied. A few weeks into my fieldwork, Hawaii made animal cruelty a felony but included an exception for cockfighting, which remained a misdemeanor. Some fighters knew this; others did not. Some believed the law had passed, but were unaware of the exception. Halfhearted disagreement and resigned confusion stemmed from other legal questions as well. Some were practical, such as whether a fighter could lose his government benefits if he was arrested too many times. Others were a bit far-flung, such as whether a fighter would be charged with attempted murder if he hired a handler who accidentally got stuck with a knife. The understandings that circulated about state-made law stood in marked contrast to conversation about enforcement norms and House rules, which fighters discussed more frequently, more intently, and with greater confidence.

Despite their desire to avoid busts and their belief that cockfighting should be legal, most fighters expressed little or no negative affect toward police. Seth told me, “The vice are cool here,” which Abraham followed up: “If you respect them, they’ll respect you back.” These sentiments were common. Fighters explained that showing respect for the police meant following the informal rules *and* the House rules: for example, not making the cops wait too long; not resisting arrest; not bringing drugs to the fights.

The fighters attributed two main motives to the police: (1) controlling hack fights as part of a larger goal: protecting the island from greater evils (drugs, violence); (2) a lack of interest or sense of futility in cracking down on a “sport” that was both harmless and

inevitable. They did not view these motives as mutually exclusive, and their attribution of motives was one reason they held no grudge against the officers policing the fights. Indeed, the fighters constructed the police's motives as partly consistent with their own: maintaining order at the fights was a goal that the fighters shared.

Although the fighters were annoyed when they were arrested, most took it in stride. Fred told me that at the hack fights, "There's no ill feelings against [the police] . . . Everyone knows the game. That's the chance you're taking." Caitlin, whose husband, Norbert, was regularly arrested for cockfighting, said she didn't begrudge police; they were "just doing their job." She and Norbert speculated that police officers were required to log a certain number of arrests each week, and that they busted cockfights simply to "get their arrests."

Fighters also emphasized police intolerance of any cockfights *besides* the weekly hack fights. Vincent said there were few derbies on Moa because, "In the eyes of the officials, it would draw many people here from other islands. [The police] think it would get out of control . . . When you've got an illegal system going and it's not controlled, it can get dangerous." The idea that law enforcement wanted to maintain "control" was echoed by others, who reported that derbies were immediately shut down if police found out about them. Fighters believed that by allowing hack fights to continue but keeping tabs on them, police could exercise more control, and that if the police tried to shut them down entirely, cockfights would simply continue in a less orderly manner. Rhett explained, "If they shut it down, we just gon' go [find] somewhere else," but said the current system let police "keep an eye" on the fights. Rhett, Vincent, and others also said it was important to police that fights occurred "away from the public"—that is, away from tourists and other nonlocals. Vincent told me, "They kind of let it slide when it's ethnic guys fighting chickens in the bushes."<sup>15</sup> Although some fighters participated only in the hack fights, many took part in backyard fights, to which only trusted friends were invited. When we arrived at one such fight, Vincent and I were instructed to park a few blocks away since a gathering of trucks in front of one farm might draw suspicion. Following particular rules of order at backyard fights wouldn't keep them from getting busted, fighters believed, so the wisest course of action was to ensure that police never found out about them. Fighters discussed this approach as a way to let police believe they had full information about cockfighting on the island.

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<sup>15</sup> I asked him what he means by "ethnic guys," and he said he meant locals—people who grew up on Moa.



In general, cockfighters expressed pro-law-and-order views, viewed themselves as law-abiding citizens, and stated broad support for the police. Particularly when discussing crimes they considered serious, such as break-ins and methamphetamine use, they drew a boundary between “family men” like themselves, and “criminals,” whom they lumped together with “lazy,” nonworking people who “expect handouts.” With regard to most laws, fighters aligned themselves with other law-abiding citizens.<sup>16</sup> Several men who had previously told me that they had been busted for cockfighting (nearly every fighter I interviewed had been arrested at least a few times) later said they had never been arrested. When I inquired about the contradiction, they clarified that they had never been arrested for a “real” crime.

### **The Big Bust**

A small contingent of interviewees expressed extremely negative attitudes toward law enforcement and the criminal justice system, deviating sharply from my conversations with other fighters. At first, I was puzzled by these fighters’ responses. However, coding my field notes revealed a clear pattern: only these five had been arrested in the “big bust” a few years earlier.

In the big bust, for the first and only time any of my interviewees could remember, the Moa police veered from their usual methods of enforcement. After gathering evidence for several months in an elaborate undercover investigation, police arrested dozens of cockfighters (to whom I’ll refer as the “big bustees”) who were involved in the hack fights. Though most arrestees were heavily involved, not all were—and plenty of fighters who *were* heavily involved were not arrested. When I asked the big bustees about the reasons for the bust, they all attributed different motives to the police. One believed the arrests were racially motivated, and said that no Filipino men had been busted (this was untrue). Another believed that the police were in league with a gang whose members were jealous of the big bustees. Yet another said it was “a political year,” and that police had crumbled under pressure from nonlocal whites “grumbling about the fights.”

Instead of being arrested at the fights, the big bustees were arrested at their homes and workplaces. They were charged with racketeering and other felonies punishable by prison sentences. Lucas said that the prosecutor told him he faced “370 years in prison,” and that each charge could carry a \$5000 fine. The precise

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<sup>16</sup> The exceptions were laws which, like cockfighting, were believed to threaten local culture. For example, many hunting and fishing regulations were viewed as illegitimate.

charges varied, but all were unusually serious in the context of cockfighting enforcement. In the end, only one big bustee served prison time; reportedly, he was the only man with a prior felony record. All five big bustees I interviewed pled guilty to multiple offenses, paid a few thousand dollars in fines, and were given deferred sentences and/or probation.

When these fighters told me about their arrests, it became clear that the punishments weren't the part they found most troubling; the worst consequence was being branded "criminals." In relating their stories, some of the men became very emotional. For example, halfway through our interview at his kitchen table, Rick excused himself, left the room, and returned with a manila envelope that he solemnly set on the table, slowly opened, and offered to me with trembling hands. It was the record of his conviction, and he asked me to read it, then took the paper back and continued to stare at it, repeating the charges several times, and saying that it was "crazy" and he couldn't believe it. He said that racketeering was something that crooked rich businessmen did, and that he was nothing like them.

The intensity and immediacy of Rick's emotion struck me, especially since it had been more than 4 years since the big bust. In addition to his sadness and chagrin, Rick was angry. He said the bust was "a dirty thing," and that he had been "railroaded." "Police are the real criminals," Rick told me. "They're the biggest crooks. *They're* the racketeers."

Like Rick, the other men arrested in the big bust expressed extremely negative attitudes toward the legal system. "I don't trust none of 'em," Lucas told me. "It's fucked. That's our system . . . I don't believe in the system now at all. Fuck that." Dennis said he didn't even trust his own defense attorney, because the lawyers all "know each other." Dennis also said he would never get involved in the legal system again, and never help the police in any way unless something extreme happened—for instance, if he was the sole witness to a violent crime. No matter what, he said, "the law" always ends up on top. Relatedly, Lucas recalled his jury duty experience the previous year. During jury selection, he had been surprised to see that the defendant was a personal acquaintance. Lucas ended up not being chosen for the jury, but told me that if he had been, he would have automatically voted not guilty, even though he disliked the man on trial. "I would have let that fucker loose for what they did to me," he said.

For their part, the fighters who were not arrested in the big bust did not view the big bust as especially threatening, nor as something likely to recur. They viewed it as an odd and unfortunate aberration, and viewed the big bustees as an unlucky few who had been snared in a flukish deviation from the normal arrangement.

## Discussion: Legal Consciousness in the Hawaiian Cockfight

This ethnographic examination animates the highly relational nature of legal consciousness. People orient to law and develop understandings of order and disorder in various settings based partly on the beliefs they think others hold. In the cockfighters' case, this includes their understanding and communication of House rules, their interpretations of law enforcement officials' actions, and their collective construction of the parameters of acceptable behavior the "game" allows. They derive messages and engage in meaning-making both individually and collectively, even absent explicit statements by the people and social groups around them.

### Expressive Policing and Second-Order Legal Consciousness

The cockfights can be understood as a ritual in which the cockfighters and the police both take part. Each week, a virtually identical pattern of enforcement ensues; as one fighter told me, "Everyone knows the game." The predictability of enforcement—occurring at a regular time and in a regular manner—allows cockfighters to understand the police's actions as a component of the game. Simultaneously, the police act *upon* the fights. The patterns of enforcement determine many of the cockfight's unofficial rules and influence the event's structure. Police have an ambiguous role. They are enforcers of state law, mediators between the state and the law, players in the cockfighting ritual, and members of the community. The fighters' interpretation of the police's behavior, and the ways in which these interpretations affect their orientation toward law, are examples of second-order legal consciousness.

The Moa police's style and pattern of enforcement, failure to shut down the fights altogether, and apparent acquiescence to the fights' continuation after the weekly bust, all lead the fighters to perceive that this is an agreed-upon ritual. "If an act presupposes consensus, the fact that others do nothing to contradict it confirms the consensus it presupposes" (Zelditch 2001: 46). From the fighters' point of view, police officers' deviation from their usual enforcement patterns when they are "tricked" or "kept waiting" is expressive. The fighters perceive that their unwillingness to structure fights to accommodate the police will be met with increased vigilance. Hired handlers aren't just a decoy, but a kind of "offering" to law enforcement.

The fighters know that their actions are illegal, and that theoretically, they could all be arrested in one fell swoop. But since this *doesn't* happen, and since police officers continue the tradition of enforcement every week, the fighters make assumptions and deductions about the officers' motives and beliefs. From the

fighters' perspective, the police recognize that cockfights are embedded in local tradition, self-contained, and harmless. Enforcement patterns implicitly acknowledge the fighters' collective identity, conveying that the Moa cockfighters are a group worthy of respect—or at the very least, that they understand cockfights as an inevitable staple of local culture, and respect the fighters' "acceptable" means of carrying them out. The perception among fighters that the police see them as a group with its own traditions and values may, in turn, increase the sense of collective efficacy they feel and make them more likely to act as a group: complying with House rules, communicating them to each other, and helping enforce them. Fighters' belief that police see the fights as inevitable also gives the fighters a certain amount of perceived agency. If the hack fights were shut down, they believe, smaller cockfights would spring up elsewhere—and *these* fights might be less orderly, which would be a convenient development for neither side. This belief is bolstered by the comparatively strict policing of derbies and backyard fights, communicating that the police's main concern is regulating and minimizing harm, not eradicating cockfighting. This, in turn, increases the fighters' perception of the activity as "valid."

To be sure, the fighters would prefer that anti-cockfighting laws not be enforced at all. They see these laws and *any* attempt to enforce them as an affront to local cultural identity. But through their behavior, the police implicitly convey that cockfighting is "allowed." As the fighters see it, law enforcement officials personally have little problem with the activity, but regulate it because nonlocals disapprove, which puts political pressure on police officers and their superiors to enforce anti-cockfighting laws. The fighters believe that the police benefit from the arrangement as well—they get two "easy arrests" each week, allowing them to give the larger community the impression that they are dutifully enforcing anti-cockfighting laws.<sup>17</sup>

Even so, the weekly busts still affirm and communicate the power of law enforcement. While the waiting period for the midday arrest is relatively relaxed, it also upsets the fighters. In his discussion of the welfare poor, Sarat points out that time is power; being made to wait tells a person that she is the object, not the agent, of power: "In . . . waiting they are frozen in time as if time itself were frozen; power defines whose time is valued and whose time is valueless" (1990: 347–348). By calling the waiting "ridiculous" and expressing their irritation with it, the fighters affirm the value of their own time, as well as their agency in the ritual. Unlike the

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<sup>17</sup> Support of anti-cockfighting laws is divided largely along "local" versus "nonlocal" lines. Newcomers to Moa tend to oppose cockfighting; those who were born and raised there tend to either support it or be indifferent. This correlates with a socioeconomic divide, and some fighters believe that the police pander to Moa's wealthier residents.

welfare recipients Sarat describes, the fighters do not feel completely at the government's mercy. They know they could create problems for law enforcement. Their nonhostile attitude toward police officers (e.g., "They're just doing their job") is not borne from a sense of gratitude, but from a sense of mutual respect. As Abraham, Seth, and Pat told me, if you "respect" the police, they'll "respect" you back. In this way, the expression inherent in policing is iterative. Whether or not police actually understand the cockfights as orderly, their adherence to the enforcement patterns I've described causes fighters to believe that they do, in turn affecting the fighters' attitudes toward law enforcement and the fighters' legal consciousness more generally.

While the "laxity" (as an outsider might see it) of the cockfighting busts is significant, the busts' regularity and predictability matters more. The precise type and degree of acceptable deviance from state law is made clear. The dissonance fighters might otherwise feel between their behavior (committing lots of misdemeanors) and their self-concept (law-abiding citizens) is virtually absent. They can follow the "rules," which keeps them on the correct side of the law. "A law can encourage or discourage a practice by manipulating the practice's social meaning in a way that renders it more or less compatible with the actor's social role or self-conception, resulting in social and cognitive pressures to alter behavior" (Lanni 2010: 47). So, too, can the law's enforcement. As Harcourt has written, policing techniques are not merely reflections of social norms, but "may also more deeply affect our very understanding of order or disorder, and may shape us as contemporary subjects of society" (2000: 182). The ritualized arrests inform the social meaning of the practice for the fighters, and in turn, inform the social meaning of taking part in the cockfights.

### **Defining "Order" and "Disorder"**

House rules are designed around the system of arrests and enforcement, but also contribute to the fights' orderliness. This is evident in myriad ways: the "insurance policy" against the financial risk of arrest is built into the betting structure; the prohibition on minors in the ring prevents juvenile arrests; the prohibition on drugs minimizes other illegal behavior. Order is constructed, maintained, and defined by adherence to these kinds of collective practices. By understanding, communicating, and following House rules and social norms surrounding the cockfights, fighters build a social order that usurps state law—the ritual *is*, itself, law within the context of the "game."

Rule adherence allows the cockfighters to understand the fights as "following the rules." This echoes DeLand's (2013)

observations about the injection of legalism into pickup basketball as a way to make the activity seem more “serious.” In cockfighting, collective understanding of the rules, and the police’s predictable responses to cockfighters’ observation of the rules, allows cockfighting to be seen by participants as an orderly activity. Cockfighters do not feel that they are “getting away” with breaking the law because they collectively construct “order,” allowing cockfighting to coexist with their views of themselves as law-abiding citizens. Partly for this reason, a record of cockfighting-related misdemeanor arrests does not threaten a fighter’s conception of himself as a good “family man,” provided his record is otherwise fairly clean (which was often the case). The cockfighters’ maintenance of order, and their role in creating an orderly pursuit, is part of the reason they consider their records clean despite a string of cockfighting convictions, and why they can genuinely believe that they have “never been arrested” when they are, in fact, arrested at the hack fights with some regularity. Orderliness thus “neutralizes” some of the effects that his illegal behavior might otherwise have on a fighter’s ability to see himself as law-abiding.

From fighters’ perspective, government law is usurped by effective order within the context of the cockfights. Although fighters are breaking the law, they are following a set of legitimated rules and acceptable behaviors; in a functional sense, a fighter is complying with the “law” as long as he stays within the bounds of those informal regulations, which closely track the rules set by the House. The law-in-action is not black and white, and “following” the law often means confining one’s behavior to the parameters of acceptable deviance—that is, to “the limit of behavior that is normatively acceptable . . . the informal standard that triggers enforcement . . .” (Edwards 2006:56). When the cockfighters follow the “rules,” the fact that they are technically breaking state law matters less than their compliance with the parameters of acceptable deviance. The sense that the cockfights embody order is reinforced by the police’s actions, as I discussed in the previous section—the hack fight attendees are only punished with additional busts if they deviate from the ritual.

Kochel, drawing on the work of Sampson et al., explains that a “sense of the collective” creates cohesion and increases the likelihood of informal social control (2012: 387, citing Sampson 2002 and Sampson, Raudenbush, and Earls 1997). Even men in rival gangs share a common understanding of order. By discussing House rules, they increase the sense that they are in a common situation, operating by common norms. “General agreement among members of a group about legitimacy reinforces normative behavior, increases the predictability of everyday behavior (because people comply), and enhances interpersonal trust that others will

conform to the shared expectations for behavior” (Kochel 2012: 389).

The fighters also have a strong sense of what constitutes *disorder*, and guard against it. Even fighters who smoke marijuana or use cocaine outside of the fights were upset by the arrival of the drug peddlers. At the hack fights, illegal drug use and sales, violence, and other crimes are understood to be “disorderly” behaviors; the few people who don’t conform to the rules must be “run out.” Moreover, fighters not only dealt with rule violations as they occurred, but proactively guarded against anything perceived as likely to lead to disorder—for example, keeping out fighters from the mainland and Honolulu, making bets clear to avoid discrepancies, and “talking” to friends or acquaintances whose behavior seems too boisterous (or merely ignoring them to express their displeasure).

In part, as I described above, these beliefs are shaped by the police’s behavior. The fighters’ understanding of the police’s beliefs (e.g., that the fights don’t cause “real” harm) and motives (e.g., avoiding nonlocals’ scrutiny) influences how the fighters perceive and define disorder in this social context. But so, too, are order and disorder defined by the cockfighters themselves.

### **Legal Consciousness and Legal Pluralism**

The coexistence of state-made law and House rules raises questions about the connection between legal consciousness and legal pluralism. At the most universal level, legal pluralism acknowledges that if we define law as the normative order within social groups, manifold types of law exist, and state-made law is only one variety. In the instant case, House rules are a type of law, and coexist with Hawaii state law. Legal pluralism emphasizes the nonhierarchical nature of this coexistence. Just because one set of law is on the books does not make it the “real” law, with other normative social ordering following from, or merely reacting to, it.

As Tamanaha has pointed out, legal pluralism scholarship is characterized by a handful of debates about its fundamental nature (2000). If we can agree, as legal pluralists do, that the term “law” is not confined to state-made law, we are confronted with a dilemma: social life itself is subject to informal regulation, so “How then can we distinguish ‘indigenous law’ from social life generally?” Which norms are legal, and which are social? (Tamanaha 2000: 298, citing Galanter 1981: 18–19). If group members face sanctions, however minor, for using particular words or wearing certain clothing, and they avoid such sanctions, are they obeying “law?” If we believe they are not, are we embracing the kind of centrist views



that privilege state law over indigenous normative ordering? Perhaps. And yet, as Tamanaha and Galanter point out, this privileging is difficult *not* to do unless we are willing to define law as *any* normative ordering within *any* social group—a very large chunk of social life, indeed.

Considering legal pluralism from a legal consciousness point of view—putting subjective experiences at the forefront of inquiry—takes us a step further, prompting us to define law as fundamentally endogenous. Of course, forms of what we might call “external law” (state law, federal law, a group’s rules, local custom) can be identified. But we can think of them as akin to the monochromatic layers of gelatin that comprise color film. Only by laying them atop one another do we get a full picture. Moreover, this “full picture” does not exist independently from an individual’s view of it. Rather, the heart of legal pluralism is the subjective experience of *seeing* this image. It is in this way that legal consciousness and legal pluralism may inform one another. Although Tamanaha (2000) does not engage directly with the legal consciousness literature, his “nonessentialist” conception of legal pluralism, which privileges subjective experiences of law and ordering, is certainly consistent with much of it.

The importance of “layering” and the inseparability of different types of ordering are underscored by the instant case. Hawaii state law, House rules, and the norms of local culture overlay one another. The cockfighting ritual defines order. It incorporates state law, but is not coexistent with it. Some “disorderly” activities, like violence and illegal drug use, violate state law, but so does gambling, which is allowed. Thus, it is not simply the case that cockfighters follow all laws *except* cockfighting prohibitions. Nor do some of the unofficially prohibited activities, such as inviting cockfighters from Honolulu, violate state law. State law informs cockfighters’ idea of what constitutes order, but is one of many factors relevant to the construction of legal consciousness.

Paying attention only to any one layer of social ordering produces an incomplete picture of the social order, and of cockfighters’ subjective experience. To continue the film metaphor: while fighters might be able to pick out particular metaphorical “layers” of color—for example, they might know that a particular practice, such as “pinto-ing,” is more local custom than House rule, or that a particular aspect of fighting violates Hawaii law—they do not *experience* these phenomena as separate types of ordering. Rather, the subjective experience is one of a highly complex regulatory reality. While it may appear that fighters are “breaking the law”—and while they are, no doubt, violating state-made laws—their holistic reality is one in which state-made law is merely one layer; they are following the overarching social order of their experience.

## Legitimacy and Legal Consciousness

Styles of policing have been shown to have nuanced effects on perceptions of legitimacy (Gau and Brunson 2010; Kochel 2012), and a considerable literature exists about police attitudes toward various methods and modes of enforcement (Brooks, Piquero, and Cronin 1993; Carlan and McMullen 2009; Petrocelli et al. 2014; Poteyeva and Sun 2009). However, outside of the procedural justice literature, little attention has been given to whether, and how, policing strategies affect the development of offenders' legal consciousness.

If a law is resisted by a particular group, enforcement of that law has the potential to weaken the legal system's legitimacy for that group—for example, the “war on drugs” (Lanni 2010: 47 citing Mearns 1997). But cockfighting represents a variation on this phenomenon. Instead, limited enforcement has the potential to leave untouched a fighter's general beliefs in the criminal justice system even though he believes that cockfighting laws are illegitimate. This may operate in part by facilitating a lack of dissonance between fighters' perceptions of themselves as law-abiding citizens and their own law-breaking behavior. Being objects of targeted police action does not orient them against the law *per se*. This observation is worth considering, for example, when designing community policing initiatives, and suggests that certain modes of enforcement may not undermine legitimacy or increase hostility.

Much of the existing “legitimacy research does not . . . distinguish between perceptions of the legitimacy of different types of legal authorities” (Farrell, Pennington and Cronin 2013). Procedural justice tells us little, for example, about whether someone might view an authority as legitimate but a law as illegitimate, or vice versa, and why this might occur. Farrell et al.'s study of juror perceptions of trust in the police versus trust in courts suggests that our perceptions of legal legitimacy are far from monolithic. My observations provide further evidence that this is so. Fighters view the police as legitimate authority figures who have the duty and ability to enforce laws, often including anti-cockfighting laws (e.g., “just doing their job”), while simultaneously viewing legal prohibitions of cockfighting as illegitimate. This difference demonstrates that when it comes to understanding the processes that create or undermine legitimacy, it is important not to conceptualize legal authority unilaterally—an idea recognized in the literature only infrequently. Mirroring Silbey's 2005 critique of the legal consciousness scholarship, examining legal consciousness from a second-order perspective also underscores that legitimacy is not stagnant; it is not simply carried around by an individual and deployed when a relevant situation arises. Instead, it is constantly

affirmed, undermined, created, and recreated in a process both dynamic and iterative. Recognizing legitimacy's inherently relational nature helps us understand the interpersonal processes through which experiences of law are synthesized into beliefs.

### **Identity, Legitimacy, and the Big Bust**

The attitudes of the men arrested in the big bust differed sharply from those of other fighters. Instead of expressing a general belief in the merits of the legal system, the big bust defendants were unilaterally critical. Some (such as Lucas, who said he'd "throw" a case if he became a juror) even expressed a desire to go out of their way to undermine the legal system. Why are these men so different from their fellow cockfighters?

Part of the explanation lies in identity maintenance.<sup>18</sup> Sheldon and Burke define identity as "parts of a self composed of the meanings that persons attach to the multiple roles they play" (2000: 284). Identity theory holds that psychological stress occurs if people receive feedback that contradicts an identity they view themselves as embodying (Burke 1991). Usually, people make automatic adjustments to account for social feedback incongruent with their identities. If a person regards himself as generous, but ignores a homeless woman who asks him for money, this encounter is unlikely to ruin his view of himself as a generous person. He may remind himself that he donates to charities, or speculate that the woman would have spent the money on alcohol. These "minimal discrepancies" are easily resolved or ignored; the potential contradiction between a person's perceived identity and the informational feedback he receives about his behavior's consistency with this identity may be outside his conscious awareness (Burke 1991).

The nature of legal procedures makes law a fruitful place to think about identity. Law frequently "brands" people with formal roles and labels that carry social meaning. Law can make someone "negligent" or "guilty." It can brand her a "felon" or a "spouse." Whether a person chooses to accept these meanings, law places

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<sup>18</sup> Identity theory (a social psychological literature rooted in symbolic interactionism) poses that identities form through self-categorization. A person puts herself in a particular role or group, and her behavior is guided by the meanings with which that role or group is associated (Stets and Burke 2000). A nutritionist might be loathe to eat candy not just to maintain his health, but because good health is consistent with being a nutritionist. "Salience" is the likelihood that an identity will become psychologically relevant in a situation, and "activation" refers to the likelihood that behavior in accordance with that identity will play out (Stets and Burke 2000). The *internal* importance of the nutritionist's role is that identity's salience. His refusal to eat the candy is the activation of that salient identity. Surprisingly, identity theory has made few appearances in the law and society literature, though a few scholars discuss identity's effects on engagement with law (see, e.g., Engel and Munger 2003).

them upon her. Assuming that a person regards the legal system as basically legitimate, these roles and labels have the potential to cause psychological distress if they do not accord with a person's view of herself.

Most of the time, this mechanism helps cockfighters consider themselves law abiding; their understandings of social order cause them to see themselves as responsible participants in a local ritual, despite the arrests. However, a drastic or irresolvable interruption in the identity process provokes psychological stress, as well as motivation to resolve the discrepancy (Burke 1991). The big bust was precisely this sort of drastic interruption. While the men arrested in the big bust had been previously arrested for cockfighting, the big bust arrests bore every indicia of "real" criminality. Cockfighters were arrested at their homes and workplaces by uniformed police officers, handcuffed, taken to the police station, and charged with felonies. Fred told me, "They treat us like we're murderers. They come to your job, print everything in the newspaper." Rick rejected the word "racketeer," and even years later, remained deeply occupied with the legal paperwork documenting his felony conviction.

The big bustees' psychological distress was acute, pitting their identity as good citizens and family men against their new identity as criminals. Unable to weather such a significant disruption in the identity feedback loop, a cockfighter arrested in the big bust could resolve his distress in one of two ways: changing his view of himself or changing his view of the process or people that gave him the new identity. Big bustees chose the latter, which for them gutted the legitimacy of the legal system—echoing Tyler's argument that the roots of legitimacy lie in identity concerns (Tyler 2001: 432). Although other fighters viewed the big bust as "wrong," they did not see it as something that was likely to happen again (since it had never happened before or since), and they did not experience it personally. Had the big bust taken place at the hack fights, the incident might have affected Moa's cockfighting culture more broadly.

Strikingly, the men arrested in the big bust did not simply perceive their arresting officers, or even Moa's entire police department, as corrupt. Instead, their sense of illegitimacy extended to the whole legal system, making them less likely (by their own accounts) to participate in civic duties that uphold law and order in the community. This reaction is consistent with Sunshine and Tyler's finding that people who assess police legitimacy favorably are more willing to cooperate with legal authorities in other ways (2003). My results thus underscore the finding that when the legitimacy of the legal system is undermined for a person, she is less likely to engage with it, even in ways that contribute to community

safety (Sunshine and Tyler 2003). Other fighters' reactions to the big bust suggest that this process is very specific, perhaps even inherently individual, though further work should investigate which encounters, experiences, or conditions undermine or bolster legitimacy broadly and which do so more narrowly.

Of course, not every felony arrestee abandons faith in the legal system. But in addition to the psychological distress I've described, group-level processes were at work. The police had broken from the accepted ritual. It was as if they had "pulled rank" on the fighters, reminding them that the relationship was not equal, and that ultimately, power rested with the police. Though they admitted to engaging in the activities that resulted in their charges, the big bustees viewed their arrests as underhanded or "dirty." As they saw it, they might have violated the "law," but they were obeying the collectively constructed notion of "order," and as such, were acting like responsible citizens. As they saw it, in addition to unfairly branding them felons, the legal system also violated an implicit, long-standing agreement about the parameters of acceptable deviance—about what it meant to be a responsible member of the local community.

Social order, as understood and constructed by and within the cockfighting community, was upheld through group norms, rules, and practices. The big bust challenged fighters' idea of what constituted order and citizenship, and since they were singled out, it also violated their sense of fair play. Moreover, it alienated them from the other local cockfighters. While the big bust defendants could still participate in backyard fights and socialize with other fighters, they could no longer participate in the hack fights, which were the central site of competition. If they were arrested again, they would face serious prison time, which was not worth the risk. It is not that the big bustees no longer saw order keeping as part of the hack fights' legitimacy, but rather that the experience of the big bust shifted the big bust arrestees' beliefs about the *police's* motives and understandings in a way that differed from other fighters' beliefs about the police. Here, "second-order" beliefs are crucial in understanding how fighters' experience of the law is synthesized into legal consciousness.

## Conclusion

This article advances the debate over which factors shape our actions, understandings, and beliefs with regard to law. I have proposed more, and more explicit, focus on second-order legal consciousness. The extant literature has explored the contributions of experience and identity to legal consciousness, but engaging in

more depth with second-order legal consciousness will help clarify the relational and contingent aspects of how legal consciousness is produced. Doing so prompts new inquiries; for example, when does a person's perception of others' beliefs influence that person's relationship to the law? Which groups of others are most influential, and when? Are certain aspects of legal consciousness more relationally influenced than others?

These kinds of inquiries may lead us not only to think about the production of legal consciousness with more theoretical depth and precision, but may also point to new ways to operationalize different kinds of influences on the production of legal consciousness. Through experimental research, for example, we might examine factors related to legal consciousness after activating a subject's awareness of particular groups. Or we might manipulate subjects' beliefs about various others' attitudes toward the law to better understand when these attitudes matter to the production of legal consciousness. These approaches would allow scholars of legal consciousness to parse its constitutive mechanisms at a more granular level, which could lead to findings with more predictive power—and perhaps more practical application as well. We might even expand our notion of “relational” a bit further.<sup>19</sup> That is, we might relate to people individually or as a group (e.g., fighters' idea that if they respect the police, the police will respect them back), or we might relate to law as a more abstract idea (e.g., the big bustees' negative beliefs about the law in general).

Hawaiian cockfighting also exemplifies how order and disorder are collectively defined and enacted in local settings, and how these definitions inform, and are informed by, participants' legal consciousness. Future work might also look at order and disorder with regard to the nature of particular relationships. For example, a person might be thought to bring disorder (such as the introduction of a Honolulu fighter to the hack fights) or an activity might be considered disorderly (such as drug use at the fights). Different relational influences on the production of individual-level legal consciousness offer another direction for inquiry about how legal consciousness comes into being.

The expressive nature of policing is an important aspect of second-order legal consciousness as well. Police carry out government-made law, but are also independent actors with roles in social rituals. People may simply dislike being policed, may think police are too tough or too lax, or may wish to avoid arrest. But as the cockfighting example demonstrates, interpretations of policing can be more nuanced. Understanding precisely how policing is

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<sup>19</sup> My thanks go to an anonymous reviewer for this insight.

interpreted in different social contexts, by looking at these interpretations from a relational perspective, holds the potential for more concrete payoffs: aiding in the development of strategically expressive policing strategies that take into account the identities of those being policed, effects on people's broader orientation toward law, and the costs and benefits of losing or gaining various kinds of legitimacy. It is worth noting that the ritualized enforcement at the cockfights bears similarity to some community policing approaches: "At the core of community policing initiatives is the attempt to integrate the police into the neighborhood's primary groups on which systems of informal social control are based" (Hawdon, Ryan, and Griffin 2003). Perhaps the most famous example of community policing is Kennedy's Project High Point, which works not to eradicate drug sales, but to reduce the harmful activities associated with it, such as violent crime and racial strife (Kennedy and Wong 2009). Police make it clear that selling in certain areas will prompt swift action. This partly echoes the Maa police's practice of shutting down derbies; in both cases, the emphasis appears to be on regulation and minimization.

Bringing procedural justice and legitimacy literatures to bear on legal consciousness may also help us disaggregate people's beliefs about various types of legitimacy and understand how conditions, characteristics, and experiences produce multidimensional orientations toward law. Viewing anti-cockfighting laws as illegitimate, but police as legitimate, allowed fighters to see themselves as "family men." They could break the law while maintaining "order." And bringing legal pluralism to bear on our analyses of legal consciousness further illuminates the manifold constructions of legality—or, put differently, that the very substance of what we might call "law" or "order" depends on the lenses through which we view it.

We must complicate legal consciousness inquiry both by bringing other law and society subfields to bear on it—a task for which ethnographic approaches are particularly apt (Harcourt 2000; Weisberg 2003)—and by probing the inherently relational nature of its constituent social processes. It is through these processes that legal consciousness is continually created, altered, and remade. Foregrounding the relational nature of legal consciousness, particularly by focusing on second-order beliefs, builds on existing insights and offers the means to more completely understand and operationalize the dynamism of human relationships to law.

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