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Legal Control of Marginal Groups

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Abstract

The legal control of marginal groups is a central topic in social scientific and legal scholarship. Examining the most influential research produced over the past two decades, as well as a broad collection of foundational and exemplary texts, this review addresses two overarching questions: First, what does it mean to study the legal control of marginal groups in the twenty-first century? Second, what are the recent developments, lingering concerns, and future directions of this work? We identify and examine the two most prevalent discussions found in contemporary research. The first centers on the practices of legal control, and the second focuses attention on the effects of these practices on their potential targets. Throughout the article, we draw specific attention to the need for future studies to more systematically account for the agency of, and ground-level dynamics impacting, both the controllers and the controlled.

INTRODUCTION

The legal control of marginal groups is a central topic in social scientific and legal scholarship. Long before the circulation of dedicated sociolegal journals such as this, scholars from a multitude of disciplines sought to reveal and understand the functions, manifestations, and consequences of legal control over those individuals and groups that challenge (or are perceived to challenge) the dominant social order. For Emile Durkheim, for instance, legal control constituted an empirical measure of the development of the division of labor and its associated form of social solidarity. In contrast, Karl Marx approached legal control not as an analytic lens for observing social change, but rather as a constituent element of that change. At the dawn of the twentieth century, Roscoe Pound positioned the legal control of marginal groups at the center of the emerging field of sociological jurisprudence, which is widely held as the predecessor of today's fields of sociolegal studies and the sociology of law. Although it is beyond the scope of this article to trace the development of this line of inquiry from its origins, or to analyze its historic decline or growth in interest, contemporary scholars clearly remain wedded to the topic. Indeed, our survey of 15 leading peer-reviewed journals for sociolegal scholarship reveals that over 10% of articles (of nearly 5,000 total) published over the past 15 years examine the legal control of marginal groups.¹ Drawing on these works, as well as a broad collection of foundational and exemplary texts, this review addresses two overarching questions: First, what does it mean to study the legal control of marginal groups in the twenty-first century? Second, what are the recent developments, lingering concerns, and future directions of this work?

We concentrate our review on the two most prevalent avenues of contemporary research, differentiated by what might be most appropriately described as units of analysis. The most established discussion of the legal control of marginal groups consists of writings that focus on the empirical practices of control—that is, the myriad laws, policies, rules, and techniques by which particular population groups and behaviors are defined and punished as unacceptable and/or “illegal.” A second, quickly growing cohort of studies is alternatively concerned with the effects of legal control on its targets, whether those are racial minorities, noncitizens, or others viewed as deviating from some standard or norm. A considerable number of studies in both strands of scholarship revisit (sometimes explicitly) the earlier, theory-driven efforts of Durkheim, Marx, Pound, and others to situate the practices and effects of control within larger social trends and transformations. We consider these in the final section of the article. Throughout our discussion, we draw specific attention to the need for future studies to more systematically account for the agency of, and ground-level dynamics impacting, both the controllers and the controlled. This includes the discretion of the agents of control to (or not to) enforce the law, the capacity of targets to subvert or resist practices of control, and how the dialectical relationship between the two contributes to the prevailing social order.

PRACTICES OF LEGAL CONTROL

The vast majority of contemporary writing on the legal control of marginal groups is concerned with the practices of control, which originate in and flow through several levels—including legislatures, administrative bureaucracies, courts, and penal institutions—before they make contact

¹Our (nonexhaustive) survey included the following peer-reviewed journals: *American Journal of Sociology*, *American Sociological Review*, *Annual Review of Law and Social Science*, *Annual Review of Sociology*, *British Journal of Criminology*, *Ethnic and Racial Studies*, *Gender & Society*, *Journal of Law and Society*, *Law & Policy*, *Law & Social Inquiry*, *Law & Society Review*, *Political and Legal Anthropology*, *Punishment & Society*, *Social & Legal Studies*, and *Theoretical Criminology*.

with marginal groups. Scholars who examine these processes have overwhelmingly focused on three trends emerging in the late twentieth and early twenty-first centuries: first, the so-called “punitive turn” in legal and penal sanctions; second, the devolution of responsibility and enforcement; and third, the increasing legal regulation of space. It is critical to note that, in each, control practices are neither perfectly nor universally executed. Rather, they are subject to interpretation and potential transformation upon implementation by police officers, state agents, private citizens, and other ground-level actors with more or less direct contact with marginal groups.

The “Punitive Turn”

Since at least the 1980s, sociolegal scholars have heralded a punitive turn, or “new punitiveness” in legal control, in which state surveillance, regulation, and punishment have become more aggressive, intolerant, and prolific (Feeley & Simon 1992, Garland 2001, Pratt et al. 2005, Wacquant 2009). An unmistakable indication of the growing punitiveness is the increasing fusion of civil and criminal laws—referred to as legal hybridity (Beckett & Herbert 2010)—alongside the growing use of legal sanctions as a means of governing difference more generally. The current regulation of immigrants is a case in point (Bosworth & Guild 2008, De Genova & Peutz 2010, De Giorgi 2010, Dowling & Inda 2013). An emerging literature documents the harsh punishments attached to civil immigration violations in the United States, and the growing convergence of the immigration enforcement system and the criminal justice system more generally (Miller 2002, Stumpf 2006). In the United States, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) expanded the range of crimes that make immigrants ineligible for permanent resident status, reduced the threshold for deportation, increased border control efforts, and removed opportunities for immigrants to petition to remain in the country. There were 69,680 deportations in the year prior to IIRIRA, but this number climbed to 392,000 by 2010 (Menjívar & Abrego 2012).

Across the world, nation-states rely on criminal justice imagery and tactics to manage undesirable immigrant populations. In the United States and Britain, foreign visitors endure increasingly intrusive forms of surveillance, such as the collection of biometric information at the border (Amoore 2006, Bosworth & Guild 2008). Australia subjects asylum seekers to mandatory detention (Welch 2011). In Norway, police and public prosecutors often pursue immigration charges on top of criminal charges, adding deportation to already long sentences (Aas 2014). Moreover, immigrants find themselves outside the law, not just in the sense that their physical presence is unauthorized but in more mundane ways as well. For example, in the United States, most unauthorized immigrants are not eligible for driver’s licenses, excluding them from important identity documents, permission to drive, and the ability to participate in the market and civil society (Armenta 2012, Coutin 2000, Stuesse & Coleman 2014).

Given the disproportionate representation of marginal groups within jails, prisons, and detention centers, it is unsurprising that most contemporary analyses of legal control are concerned with policing, sentencing, incarceration, and post-release supervision. In both the United States and Europe, escalating demands for public safety and harsher sanctions have produced three-strikes sentencing policies (Jones & Newburn 2006); zero-tolerance policing (Newburn & Jones 2007); and intermediate sanctions, such as electronic monitoring and probation (Nellis et al. 2013). Other forms of punishment are more exclusively American. These include “shaming punishments” that are designed to “teach offenders a lesson” through humiliation (see Pratt 2000a,b); sex offender registries, community notification, and civil commitment (Petrunik & Deutschmann 2008); and the death penalty (Hood & Hoyle 2008).

The growing use of punitive criminal laws and institutions to govern marginal individuals, statuses, and social problems has yielded a historic expansion of incarceration over the past four decades. By the end of the twentieth century, the number of inmates in American prisons had eclipsed two million, with 702 of every 100,000 residents behind bars (Tonry 2001). In the United States, for example, black men are seven times more likely to be imprisoned than white men, and black women are eight times more likely than white women (Clear 2007). Noncitizen offenders are over four times more likely to be incarcerated than citizen offenders (Light et al. 2014) and are significantly more likely to be subjected to abuses—such as strip searches—once in custody (Newburn et al. 2004). Studies find that over 23% of homeless people have been incarcerated within the past two years (Metraux & Culhane 2004), and recent homelessness is up to 11 times more common among jail inmates than among the general population (Greenberg & Rosenheck 2008). A staggering 25% of HIV-positive individuals, 33% of individuals infected with hepatitis C, and 40% of individuals with tuberculosis will be incarcerated at some point in a given year (Hammett et al. 2002). To a growing number of observers, incarceration is emerging as a new stage in the life course for a host of marginalized groups (Petitt & Western 2004).

The Devolution of Legal Control

As legal control has grown more punitive, it has also grown more diffuse and decentralized (Garland 1996, 2001). The regulation of marginal groups and their commonly associated behaviors has been increasingly devolved and responsabilized to a host of nonlegal and nonstate institutions and actors that carry out various forms of “plural,” or “third-party” policing (Desmond & Valdez 2013). As part of a recent legislative emphasis on public safety, K-12 schools increasingly house and rely on criminal justice actors, such as police and probation officers, to address students’ disciplinary problems—problems formerly handled by teachers and administrative staff as educational rather than criminal concerns (Rios 2011, Wald & Losen 2003). Punitive zero-tolerance policies, originally imposed to target guns and drugs in schools, are now deployed for a variety of relatively minor behavioral infractions, which ultimately serve to funnel minority, impoverished, and disabled youth into the juvenile justice system (Giroux 2003, Skiba et al. 2002). Had California’s Proposition 187 been implemented in 1994, teachers, along with doctors, social workers, and other frontline bureaucrats, would have been required to report undocumented immigrants. Similar forms of “deputization” (Walsh 2014) include punishing business owners for hiring undocumented workers, penalizing landlords for their tenants’ illegal or nuisance behavior, sanctioning pawnshop owners for their customers’ gun violence, and fining parents for their children’s truancy (see Desmond & Valdez 2013, Varsanyi 2010). In each case, this brand of legal control targets “people with some direct link, usually monetary, to the problem individuals whose behavior is the ultimate focus of the control efforts” (Buerger & Mazerolle 1998, p. 303). A key consequence of this development is that legal control, no longer confined within formal boundaries of legal institutions, reaches far deeper into the everyday lives of its targets, at times carried out by family, friends, and fellow members of their community.

As the law and order rhetoric spills into other social institutions and spheres, marginal groups become further stigmatized, and are ultimately marginalized to an even greater degree. By compounding implicit and institutional biases, the devolution of legal control leads police, bureaucrats, and citizens alike to view impoverished minorities as particularly dangerous, fraudulent, and suspicious (Epp et al. 2014, Harcourt 2001). Welfare policies increasingly assume a latent criminality among the poor and, as a result, bar those with criminal convictions from receiving benefits and impose criminal penalties on those accused of welfare fraud (Gustafson 2011). In medical institutions, such as hospital emergency rooms, the urban poor experience delays in service delivery

and protracted treatment based on their perceived criminality (Lara-Millán 2014). Stigmatization extends to everyday social relations as well. For example, when presented with footage and photographs of urban street scenes, citizens tend to associate the presence of black men with elevated rates of disorder and crime (Sampson & Raudenbush 2004).

Controlling Space

Although the massive increase in the physical containment of marginal groups—primarily in carceral settings—is the understandable focus of much sociolegal attention, a growing cadre of researchers are calling attention to new legal control practices that center on the physical expulsion and banishment of marginal groups from both private and public spaces (Atkinson 2003; Beckett & Herbert 2008, 2010; Mitchell 1997). In an attempt to attract mobile capital, revitalize downtowns, and cleanse urban landscapes, municipalities have adopted quality-of-life laws and broken-windows enforcement policies designed to force “undesirables” to quit certain areas (Beckett & Herbert 2010, Harcourt 2001, Stuart 2014, Wilson & Kelling 1982). The control of marginal groups through control of space often embodies elements of both legal hybridity and devolution. The city of Seattle, for instance, has begun issuing trespass admonishments, which prohibit a person from being on a certain property or group of properties for an extended period of time (typically one year) (Beckett & Herbert 2010). By entering into contracts with property owners, the police gain authorization to expel any individuals deemed “without legitimate purpose.” Because admonishments are considered civil sanctions, officers are not required to record the reason for “trespassing” someone. Nor does the banished person have the opportunity to contest the exclusion order. And yet, a violation of this “civil” order is considered a criminal offense. Examined demographically, legal practices to regulate public space are overwhelmingly directed at homeless people, minorities, individuals with alcohol and substance abuse histories, and those engaged in informal economic enterprise. For example, although they comprise only 8% of Seattle’s population, blacks received over 40% of the trespass admonishments issued in 2005. The Native American share of trespass admonishments was six times its share of the city’s total population.

Across the United States and Europe, local governments have criminalized “antisocial behaviors,” panhandling, off-the-books day labor, loitering, sitting on the sidewalk, sleeping in public, and distributing food and other resources (Atkinson 2003, Johnsen & Fitzpatrick 2010, Mitchell 1997, Stuart 2014). In large urban jurisdictions, police and prosecutors are increasingly securing gang injunctions—court orders that prohibit alleged gang members from gathering with one another in defined geographic areas (Rosen & Venkatesh 2007). Because racial minorities and young people are more likely to be perceived as gang members, they endure the brunt of this enforcement. Ultimately, by outlawing otherwise-mundane and basic life-sustaining behaviors required by some groups to merely survive, these policies effectively amount to the criminalization of social marginality (Mitchell 1997, Tosi 2007).

At the same time that spatialized regulations can act as a stick of legal control by negating the rights of the marginal, they can also represent a carrot that grants temporary and tenuous “rights of existence” in return for more conformist behaviors. In some areas of England, police regulate gypsies and Travellers through an explicit policy of “negotiated tolerance” (Cowan & Lomax 2003). Police permit these groups to remain in certain areas so long as they comply with an explicit code of conduct. The availability of stringent and vague laws enables the police to quickly expel these groups should they demonstrate a lack of responsibility over their actions. Halliday (2000) finds an analogous policy of negotiated tolerance, similarly predicated on conditions of ethical self-care, in the realm of affordable and supportive housing for homeless people in England and

Wales. To “win their right” to housing and move off the streets, individuals must first outwardly demonstrate to authorities that they are not “intentionally homeless.” As Cowan et al. (2001) observe, asking individuals to “behave better” in exchange for access to necessary spaces represents a significant move away from the rights-based discourse of the 1960s, 1970s, and 1980s, which helped to protect marginal groups. In their contemporary expression, rights become an additional means of majoritarian control.

Who Controls, and How?

Reviewing the vast body of literature concerned with the practices of legal control, we suggest that, following the long tradition of “gap studies” (Marshall & Barclay 2003, Nelken 1981, Pound 1910), researchers more systematically delineate and distinguish practices as they exist “on the books” versus practices as they unfold “in action.” Accounts must take care to consider the role of human agency and discretion in the legal control apparatus (see Cheliotis 2006). By focusing on regimes and systems of legal control, researchers risk ignoring the “panoply of personal values and idiosyncratic meanings that individual decision-makers bring to their decisions” (Cheliotis 2006, p. 323). Ultimately, legal control is created through those individual actions that sustain or subvert organizational imperatives, law, and policy. Take the current, overwhelming attention to the arrest and incarceration of marginalized social groups. Although the statistics on apprehension and confinement are no doubt startling, they necessarily underestimate the reach of legal control while overlooking the modal interaction between these groups and the legal system (see Kohler-Hausmann 2013). Indeed, in 2008 alone, an estimated 40 million people had face-to-face contact with police officers. Excluding routine traffic stops, 5.5 million people were involuntarily detained by officers, the majority of whom were released without charge (Brayne 2014, Eith & Durose 2011). The sheer frequency of these interactions, and decades of policing research, shows that officers do not enforce the law in any automatic fashion (Paoline 2004, Skolnick & Bayley 1986).

As political scientist Michael Lipsky (1980) reminds, patrol officers are quintessential examples of “street-level bureaucrats.” Like all frontline public employees, officers possess a significant amount of autonomy to determine precisely when and how they will and will not enforce the law. These discretionary actions effectively “add up” to official policy as concretely experienced by the targets of control. Although police administrators certainly have substantial authority over official policies and enforcement priorities, officers’ decisions about whether to invoke the formal law are contingent on several personal, situational, and ultimately subjective factors. These include the suspect’s attitude and demeanor (Van Maanen 1978); the complainant’s wishes regarding the suspect (Black & Reiss 1970); the neighborhood or district in which the interaction is taking place (Klinger 1997, Smith 1986); and the police officer’s orientation, culture, or style of policing (Herbert 1998, Moskos 2009). This discretion also extends to other agencies and actors. For example, in the southern United States and parts of Europe, the discretionary decisions of innovative judges and penal administrators have led to the reemergence of hyperpunitive shaming practices designed to degrade and humiliate offenders (Braithwaite 1989; Massaro 1991; McAlinden 2005; Pratt 2000a,b). Some examples include the return of chain gangs (Pratt 2000a,b), boot camps (Pratt 2000a), sending letters to the wives of men suspected of soliciting prostitutes (Matthews 2005a), broadcasting jail footage via the internet (Lynch 2004), and forcing individuals to hold signs that announce their offenses in public (Massaro 1991, McAlinden 2005).

Research that accounts for local variation and the dynamics of discretion importantly reveals that, amid a seemingly monolithic increase in punitiveness, ground-level enforcement (or lack of enforcement) may actually be trending toward more compassionate and accommodating means of regulating marginal groups (see Matthews 2005b, Phelps 2011). For example, probation officers

in European countries resist the move toward less rehabilitative and risk-oriented managerial approaches when doing their jobs. Instead, they rely on their professional experiences and expertise regarding what they believe will work best for probationers (Annison et al. 2008, Fitzgibbon et al. 2010). In the Netherlands, employees in the education and health sectors similarly find ways to provide services to undocumented immigrants despite laws that explicitly prohibit them from doing so (Van Der Leun 2006). Investigations that account for both what the law says formally and what its agents do informally are likely to illuminate an even wider range of the de facto, unintended, and ultimately empirically accurate ways in which marginal groups are legally controlled.

EFFECTS OF LEGAL CONTROL

Any comprehensive discussion of the legal control of marginal groups—or any public policy, for that matter—must take account of its implications for those who are its targets. Research in this vein primarily focuses on three broad effects of legal control. First, legal control contributes to stratification and inequality, exacerbating marginalization and stripping its targets of their ability to function as dignified, law-abiding participants in economic, political, and social life. Second, qualitative and ethnographic accounts of subjective experiences draw attention to forced precarity and exploitation. A third, more theoretical branch of research investigates larger, epistemological and sociological effects by examining the capacity of legal control to generate distinct social categories and reinforce their boundaries. Unsurprisingly, the effects of incarceration and criminal justice contact figure prominently throughout these discussions.

Stratification and Inequality

Despite the fact that legal control and punishment received very little attention in classic research on stratification and inequality (Blau & Duncan 1967, Wakefield & Uggen 2010), the historic expansion of the criminal justice system has led scholars to reconsider legal control as a premier stratifying institution—alongside schools (Mare 1981), families (Lareau 2003), and the labor market (Correll et al. 2007)—that sorts groups into more- or less-advantaged social positions. The past two decades have produced a wave of studies documenting the “collateral consequences” of incarceration (Rios 2011, Travis 2002), which illuminate how criminal justice contact serves to follow, “mark,” and constrain economic and civic opportunities long after the conclusion of imprisonment (Moran 2012, Pager 2007). In among the most powerful of such works, Pager (2007) uses an experimental audit approach in which matched pairs of men applied for entry-level jobs. She finds that having a criminal record decreased callbacks by employers by half for whites and by two-thirds for blacks. Whereas blacks without a criminal record were called back a mere 15% of the time, this number fell to 5% for those applicants with a criminal record. Legal controls thus produce “negative credentials”—that is, “those official markers that restrict access and opportunity rather than enable them” (Pager 2007, p. 32).

For those who do find work, their former incarceration corrals them into infrequent, low-paying, and low-status jobs. In a series of detailed analyses, Western (2006) describes the bleak labor market conditions that persist for former prisoners, particularly black men. Whereas imprisonment is associated with an estimated aggregate lifetime earnings loss of roughly 1% for white men, this loss jumps to 2.1% for Latino men and a staggering 4.0% for black men. Pettit & Lyons (2007) find that although this wage penalty decreases over time, it endures the longest for black men.

Lack of earning opportunities is compounded by additional consequences of criminal justice involvement, including legal debt and diminished health. Jurisdictions across the United States are increasingly imposing legal financial obligations (LFOs)—which include fees, fines, restitution orders, and other monetary sanctions—on misdemeanants and felons. Harris et al. (2010) find that

among a sample of 500 randomly selected defendants, these individuals had been assessed an average of \$11,471. LFOs place a drain on income and result in poor credit ratings, which further limit access to institutions such as housing and education. Failure to pay LFOs also leads to additional sanctions, including warrants, arrest, and reincarceration. Despite the fact that prisoners have a constitutional right to health care, some emerging research shows that incarceration is strongly associated with later health problems (Massoglia 2008). Given the disproportionate number of individuals with infectious diseases cycling through jails and prisons, even short periods of incarceration provide ample opportunity for exposure. As Massoglia (2008) demonstrates, the effect of incarceration on health is similar or greater in magnitude to more classic stratifying factors, such as marital status and employment. In fact, disparities in incarceration help to explain at least some of the persistence of racial disparities in health.

In addition to limiting market participation, legal control constrains marginal groups' civic and political participation. Over 5 million Americans are barred from voting as a result of a felony conviction (Manza & Uggen 2005). In some states, felon disenfranchisement excludes as many as one in four black men from the polls. This number increases when we include the additional individuals with felony convictions who mistakenly assume that they can never vote again (Manza & Uggen 2005). The size of the disenfranchised population has become so large that it now holds the power to change electoral outcomes. A prime example is the 2000 presidential election, which was decided by 537 votes in the state of Florida—a state that infamously excludes felons from the ballot box (Uggen & Manza 2002). Without recourse to electoral politics, felon disenfranchisement renders marginal groups unable to reform the legislation and legal sanctions to which they are subjected.

Although the research discussed above ostensibly focuses on the effects on marginal groups as a whole, it remains largely devoted to analyzing consequences primarily for those individuals with direct contact with the law. Yet, these are surely not the sole people impacted. In the face of political arguments that harsh legal sanctions reduce crime by deterring and incapacitating (potential) offenders, the physical removal of large numbers of predominantly young men of color from already-disadvantaged communities has a destabilizing effect. In high incarceration areas, or “prison places,” as much as 15% of the adult male population is cycling back and forth to prison (Clear 2007). In Chicago, more than half of those returning from prison go to just 7 of the city's 77 community areas. Drawing on social disorganization theory, Rose & Clear (1998) show that the concentration of legal and penal sanctions disrupts social networks, promotes instability, and reduces informal social control in a manner that renders entire neighborhoods more vulnerable to crime (also see Burch 2013, 2014).

A growing subset of work also traces the transformative effects of control on “legal bystanders”—those who are only indirectly exposed to the legal control meted out to their families and neighbors (Christian & Kennedy 2011, Comfort 2007, Morenoff & Harding 2014). Western (2006) reports that approximately three-quarters of minority men who go to prison are fathers, which leads to significant emotional and financial strain for partners. The significant loss of household income caused by incarceration “is compounded by additional expenses of prison visits, mail, telephone calls. . . and sending money to [the partner] imprisoned” (Murray 2005, p. 445). Incarceration also amplifies problems related to childhood development (for a review, see Murray 2005). Parental incarceration is a proven risk factor for later delinquency and is associated with school failure, underemployment, and illegal drug use. In fact, having an incarcerated parent makes a child two and a half times more likely to develop a serious mental disorder (Clear 2008). The immigration enforcement system also has substantial spillover effects. Restrictive immigration policies and enforcement tactics make the migration process more costly and dangerous, often forcing parents to leave their children behind in the home country (Dreby 2014, Menjivar & Abrego 2012).

Families left behind are also subjected to threats of violence and property seizures by debt collectors and smugglers who finance their family members' journeys (McKenzie & Menjívar 2011). Lastly, family separation, whether imposed by parents' migration or deportation, harms children's well-being and is linked to depression, anxiety, and poor academic performance (Abrego 2008, Dreby 2014).

Forced Precarity and Exploitation

Legal control results in a range of subjective experiences that elude traditional survey and demographic analyses. Through interviews, observations, and other qualitative methods, much recent work has revealed the various forms of "legal violence" endured by marginal groups. According to Menjívar & Abrego (2012, pp. 1384–85), legal violence denotes "forms of structural and symbolic violence that are codified in the law and produce immediate social suffering but also potentially long-term harm." Despite the suffering it causes, legal violence is nonetheless seen as normal and natural, precisely because it "is the law." Such laws and legal sanctions frequently purport to have a positive objective of protecting citizens and maintaining order for the common good while simultaneously causing disproportionate harms to particular social groups. Legal violence generates fear, increases vulnerability, and thwarts inclusion, among other negative outcomes.

In a pioneering study of a black neighborhood subjected to aggressive criminal justice surveillance and intrusion, Goffman (2009, 2014) finds that individuals are wary of being apprehended for any range of behaviors, from technical parole violations to outstanding court fines and fees. Within this climate of fear and suspicion, where "family members and friends are pressured to inform [police] on one another" (2009, p. 353), residents are compelled to "cultivate unpredictability and altogether avoid institutions, places, and relations on which they formerly relied" (2009, p. 340), which are otherwise "integral to maintaining a respectable identity" (2009, p. 344). Subsequent research confirms that fear of surveillance and legal sanctions leads disadvantaged groups to actively avoid medical, financial, economic, and educational institutions (Brayne 2014). Even individuals with low-level contact with the criminal justice system—such as a police detainment or arrest—have 31% higher odds of not obtaining medical care when needed compared with individuals with no criminal justice contact. This form of "system avoidance" (Brayne 2014, Menjívar 2006) represents a crucial mechanism that is at least partly responsible for larger stratification patterns over the life course. For example, avoiding financial institutions precludes marginal groups from building credit and economic power, whereas avoiding medical care can lead to higher morbidity and mortality rates.

Lacking key material and symbolic resources, legal control renders individuals more susceptible to exploitation by dominant groups, as well as by those within their own marginal group. For example, it is because of migrants' deportability that employers can pay substandard wages, withhold health care, and shirk legally mandated provisions such as bathroom breaks and protective gear (De Genova 2002, Holmes 2007). Immigrants' precarity also makes them subject to exploitation by coethnics. In a study of the Los Angeles janitorial industry, for example, Cranford (2005) shows that employers reward Mexican supervisors for replacing unionized employees with vulnerable immigrant workers. When forced into the informal labor market, immigrants often rely on fellow immigrants and coethnics to provide opportunities for work, but these "helpers" often take a large portion of the money earned as compensation (Menjívar 2013, Menjívar & Abrego 2012, Rosales 2013). In a study of black and Latino youth, Rios (2011) demonstrates that legal control can engender even more violent forms of mutual victimization among its targets. Viewing relentless police stops as challenges to their manhood, marginal youth attempt to prove their masculinity by engaging in physical and sexual domination of their peers. To reclaim the

dignity and autonomy they feel have been taken from them during the course of police stops, some youth commit crimes and break rules that they could easily follow. Those who cooperate with police and other authority figures run the risk of being frequently ostracized, assaulted, and labeled as “snitches” by their peers.

One of the most powerful subjective consequences of legal control among marginal groups is the development and reinforcement of “legal cynicism” (Brunson & Miller 2006, Carr et al. 2007, Kirk & Papachristos 2011, Tyler 1990). Legal cynicism refers to the belief that the law and the agents of its enforcement—such as the police and courts—are illegitimate, unresponsive, and ill-equipped to provide equitable and adequate public safety. Overly aggressive enforcement and harassing behavior constitute a major source of legal cynicism. Epp et al. (2014) document a direct link between legal cynicism and investigatory stops. Like the stop-and-frisk detainment technique, these are interrogations of pedestrians and drivers who “look suspicious,” “out of place,” or potentially “up to no good.” The more investigatory stops that an individual experiences over the life course, the more legal cynicism he or she develops. This pattern is particularly strong among blacks. As Kirk & Papachristos (2011) demonstrate, elevated levels of legal cynicism may lead to the persistence of neighborhood violence. When individuals feel that they cannot rely on the law to help them resolve grievances, they may be compelled to resort to violence and other destructive means (also see Anderson 1999).

The Construction and Perpetuation of Social and Legal Categories

Over the past few decades, the capacity of legal control to generate and reinforce distinct social categories has become a standard element of much of the legal control literature. Several studies identify how formal institutions and policies delineate and reinforce existing group boundaries, as well as create new dividing lines (Gonzales 2011, Hyde 2000, Massey 2014, Wakefield & Uggen 2010). Often, those groups who are “made” or reimagined through legal control are those most associated with marginality: individuals who are jobless, uneducated, poor, and/or racial minorities (Wakefield & Uggen 2010). As laws and policies define certain people as members of such distinct social categories, they typically demand that these groups follow particular guidelines and rules, or else face the distinct possibility of punitive ramifications (Kohler-Hausmann 2013). When negative preexisting stereotypes inform the passage of laws meant to constrain and exclude groups of people, new marginalized social categories can arise. The negative stereotypes that become affixed to these identities often lead to further (and unquestioning) popular support as legislators, courts, and other legal bodies devise increasingly punitive sanctions. Legal control thus creates durable divisions between marginal groups and the rest of society, which perpetuate social exclusion and naturalize the supremacy of dominant groups (Anderson et al. 2011; Brown 2013; Harris et al. 2011; Longazel 2013, 2014; Walsh 2014; Webster 2008). The capacity of legal control to construct and reinforce distinct social categories unfolds in a rather cyclical process. As Calavita (2007) shows, for example, a feedback loop exists between race, identity construction, and immigration legislation, as each element continuously informs the others (also see Vaughan 2000).

This process is well documented in the legal control of homeless people. Municipal leaders increasingly identify and castigate homeless populations as the primary scapegoats for contemporary urban problems, such as physical decay and disinvestment. In the process, a new social category—the “criminal-homeless”—arises that legitimates the forcible removal of practically anyone who might appear to be homeless (Hyde 2000). Gender scholars similarly demonstrate the capacity of legal control measures to (re)construct gender and gendered identities. These works find that the legal system authoritatively controls the accepted avenues and terms by which individuals are permitted to define themselves (Grabham 2010, Jenness & Fenstermaker 2014, Meadow 2010).

For instance, Grabham (2010) establishes that temporal mechanisms embedded in the 2004 UK Gender Recognition Act, such as durations, waiting periods, and the requirement that individuals “remain their acquired gender until death,” directly influence trans individuals’ experience of their bodies as well as current and future identities. Not only are these temporal mechanisms requirements expected of individuals navigating the legal process of gender classification, they are integral elements of the disciplinary structure that actively constructs trans identity more broadly.

Even when not creating an “identity category” *per se*, legal systems often work to create or fortify a marginalized group by defining who is and is not a legitimate participant in a given arena via regulatory strategies that limit access, resources, and mobility (Aliverti 2012, Cowan et al. 2001, Hyde 2000, Meneses-Reyes 2013, Toscano 2005). Immigration scholars devote significant attention to this particular facet of legal control by interrogating the formal role of the law in creating the social category of “illegality” (De Genova 2002, Gonzales 2011, Martinez & Slack 2013). Donato & Armenta (2011) trace the historical construction of this category and demonstrate that changes in immigration law have increased the shape and size of the population considered illegal. Other research shows that individuals may move in and out of this category over the life course. Given the immigration laws in place, many young immigrants move from a legally protected category to illegal status as they age. Young adults must “learn to be illegal” as they attempt to navigate the state’s mandates regarding their identity (Gonzales 2011).

The sanctions, stipulations, and monitoring mechanisms affixed to certain social categories reinforce the stigmatized characteristics popularly associated with particular groups (Spencer 2009, Walsh 2014). The requirement that former prisoners publicize their criminal record (to potential employers, for example) can quickly render other potential social categories insignificant in the face of an identity of “felon” or “ex-offender” (Kohler-Hausmann 2013, Lippert 2009). In this process, bureaucracies, organizations, and fellow citizens may interact with the contents of a criminal record instead of the individuals themselves. This works to depersonalize their social identities and, in effect, further reinforce the power and salience of the constructed social category over a holistic individual identity (Myrick 2013).

Accounting for the Perceptions, Actions, and Resistance by Marginal Groups

Several concerns require additional attention as scholars continue to refine their knowledge about the lived effects of legal control. A majority of these bottom-up studies privilege the statements and reports of the controlled over those of the controllers (for a notable exception, see Beckett & Herbert 2010). This is not to say that researchers are being misled. However, there is a real danger of accepting targets’ subjective understanding of legal control practices as objective accounts of those practices. For example, in her study of “wanted men,” one of Goffman’s (2009) informants was arrested in a hospital while attending the birth of his son. Apparently, the arresting officers, who had come to the hospital on account of an unrelated issue, had run the names of visitors through the warrant database. The young man’s name was flagged, and he was subsequently taken into custody. Upon hearing this story, and fearing that they might be similarly apprehended, the man’s peers elected to avoid hospitals thereafter. Unfortunately, from this account, it is difficult to ascertain whether the young man’s arrest reflected a systematic procedure, or merely a singular incident. To what extent are these targets’ experiences and reactions incongruent with actual legal practices? To what extent do targets mischaracterize the scope or prevalence of legal control? Unfortunately, we cannot effectively answer these questions without also incorporating the voices and actions of the agents of control—in this case, police officers. If the targets of legal control are indeed acting on faulty assumptions, then works like Goffman’s (2009) carry the potential to reveal additional insights into the striking power of the law to shape the perceptions and resulting

behaviors of marginal groups. Future studies should make a more consistent effort to identify and analyze these latent effects.

Research that collects data on both agents and targets is also better positioned to appreciate the dialectical process by which legal control unfolds (Jacobs 1997). Despite the fatalistic tone running throughout much of the existing literature, marginal groups are not uniformly hapless, self-destructive victims. Rather, they are agentic, quite often engaging in active, though often circumspect, forms of “everyday resistance” (Coutin 2005; Gilliom 2001; Hallett 2014; Rios 2011; Scott 1985, 1990; Stuart 2011). Social movement scholars have long documented these groups’ use of “tactical innovations” (McAdam 1983, p. 735)—that is, creative strategies designed to “overcome the basic powerlessness that has confined them to a position of institutionalized political impotence.” Dominant groups frequently respond through “tactical adaptations,” which neutralize resistance and reinstitute the original power disparities. This often ignites a fresh round of tactical innovations. Providing an example of this back-and-forth, Stuart (2011) shows that homeless and low-income residents develop innovative strategies for resisting zero-tolerance policing and officer misconduct. In some neighborhoods, residents are generating video recordings of officers engaged in unconstitutional behaviors. Residents submit these videos in court to add credibility to their legal claims of unfair treatment. As these claims become increasingly successful, however, officers deploy their own countermeasures—grafting contradictory information onto the footage, for example—to discredit residents and prove officers’ behavior as legitimate. A similar cat-and-mouse game ensues in Europe, where undocumented migrants burn their passports to conceal their identities and national origin as the state creates new technologies to identify them for deportation (Engbersen & Broeders 2007).

EXPLAINING RECENT TRENDS IN LEGAL CONTROL

The past three decades have witnessed both qualitative and quantitative shifts in the legal control of marginal groups. Legal and penal sanctions have become more punitive, have increased in absolute number, and reach deeper into the lives of targets. Academic observers continue to debate the cause and function of these changes. On one hand, scholars argue that recent trends in legal control are evidence of a heightened exclusionary impulse brought on by new social, economic, and political insecurities associated with late modernity and neoliberalism (Beckett & Western 2001, Garland 2001, King et al. 2012, Wacquant 2009). In *The Exclusive Society*, Young (1999) contends that deregulation, market volatility, and relative deprivation throughout the late twentieth century have led to an increasing realization that class boundaries are no longer as durable or impenetrable, which has amplified fear of downward decline. As a result, dominant groups display more intolerance of and social distancing from those positioned below. Instead of viewing the marginal and deviant as capable of (re)integration through rehabilitation, these groups cast them off as dangerous parasites who attempt to benefit at the expense of “decent” citizens. Thus, as economic vitality decreases, state welfare provision declines, and popular concerns about boundary vulnerabilities become more pronounced, we see correlative increases in immigrant detention, criminal deportation, propensity to imprison, penal severity, death sentences, and sex offender legislation (see Beckett & Western 2001, King et al. 2012, Lynch 2002, Zimring 2001).

On the other hand, rival accounts stress the inclusionary functions of contemporary legal control. Drawing largely on a Foucauldian (1991) governmentality framework, this approach contends that although legal control has undergone a punitive turn, it still centrally aims to discipline marginal groups to remake (and potentially reintegrate) them as productive, responsible, and self-governing individuals (Huey 2007, Loizidou 2004, Soss et al. 2011, Stuart 2014). Scholars in this camp caution that negative powers of restriction and expulsion are complemented by

productive powers that “incite, reinforce, control, monitor, optimize, and organize the forces under it” (Foucault 1991, p. 136). The growing rates of arrest and incarceration are prime examples. In the short term, the state is necessarily warehousing and thus excluding large numbers of people. Yet, in the long term, these legal sanctions function to discipline the labor pool and create new market subjects by making alternatives to wage work less attractive (Soss et al. 2011). Similarly, although juvenile justice has become less rehabilitative and more intolerant, it remains transformative in aim (Vaughan 2000). As legislation increasingly breaks from theories of delinquency that locate fault in a child’s social and familial environment, legal sanctions increasingly hold youth offenders accountable and demand that they take more responsibility for their own lives as contributing citizens. Viewed in this light, legal control thus provides a “manual of citizenship” (Loizdou 2004), not only for its targets, but sometimes even for the agents of control (Soss et al. 2011).

Amid this debate about the ultimate ends of legal control, a third strand of literature presents empirical evidence that complicates such global (and admittedly seductive) explanations. Rather than attempt to propose a single or dominant function of contemporary control measures, these scholars direct attention to the varying and context-specific functions of legal control. Whether practices are exclusionary or inclusionary is largely contingent on the bureaucratic structure (Hamlin 2012), organizational field (Marwell 2007), spatial location (Cowan & Lomax 2003; Frost 2008; Lynch & Omori 2014; Phelps 2011, 2013; Stuart 2014), and historical era (Matthews 2005b) in which they are designed, articulated, and carried out. For example, although international law provides nations with a common definition of a refugee, criteria for refugee determination, and guidance on how refugees should be treated, there is nonetheless striking cross-national variation in each of these areas (Hamlin 2012). Reflecting a more exclusionary regime, Australia accepted only 14% of Chinese refugee applicants in 2009. In contrast, Canada, adopting a more inclusionary stance, accepted roughly 58% of these claims. This divergence is a result of the varying degrees of turf wars waged between judicial, legislative, and executive actors. In Canada, members of parliament and federal courts largely defer to tribunal-level decisions. This is not the case in Australia, where these administrative bodies are far more interventionist.

Law enforcement and urban policing unfold in similar fashion (Johnsen & Fitzpatrick 2010, Lipsky 1980, Stuart 2014). In prime and commercial areas of cities, officers use zero-tolerance and order-maintenance styles of enforcement to literally purge homeless people from the visible landscape. Yet, in marginal neighborhoods, these same enforcement models are frequently used to push the down-and-out into disciplinary social services (Stuart 2014). In both locations, police departments and officers are responding to the demands of prominent local stakeholders. In prime space these are business interests, whereas in marginal space these are social service organizations (also see Huey 2007).

These studies stress yet again the importance of considering the agency of the political and organizational actors involved in legal control. Although it is tempting to interpret widespread shifts in the tone and practices of control as somehow necessitated in one way or another by the shifting tides of neoliberalism, globalization, or other recent developments, regimes of legal control are conditional outcomes, produced by specific and identifiable actors (Soss et al. 2011). These actors may very well be driven by emotions and concerns that run counter to the supposed needs of larger systems. To more systematically account for agency, future studies may need to work backward. Rather than begin our inquiries at the national or international level and attempt to explain local manifestations, accounts might instead begin by investigating how particular control policies and practices develop at the local level. From there, we can better ascertain how these measures diffuse and transmit to other locales in ways that appear to cohere into a seemingly unified system of control.

CONCLUSION

This review has argued that the legal control of marginal groups remains a central concern for sociolegal scholarship in the twenty-first century. Contemporary studies primarily investigate how legal control practices are implemented by bureaucracies, enforcement agents, and members of civil society; how these practices result in both intended and unintended effects on direct targets and legal bystanders; and how both of these processes are shaped by and help constitute distinct social groups, historical eras, and broad social change. Much has been made of harsh penal strategies in western countries (Garland 2001, Wacquant 2009), but it is important to identify the ways in which legal control strategies converge as well as diverge across countries, states, and municipalities. A closer look at even the largest of these scales reveals that despite harsh rhetoric, legal developments have not been uniformly punitive and have occurred alongside other reforms that emphasize tolerance and rehabilitation, such as restorative justice models and treatment programs (see Matthews 2005b, Snacken 2010, Tonry 2007). Over the past thirty years, prison rates within Europe have moved in different directions, with some countries experiencing a growth in the prison population and others experiencing a decline (Snacken 2010). Moreover, although some American developments, such as three-strikes sentencing and zero-tolerance policing, have traveled to Europe, the practices and effects of legal control largely emerge from the contingent historical events and political moments that vary from place to place (see Tonry 2007). Lastly, there is a pressing need for sociolegal scholarship to more adequately account for agency and discretion at all scalar levels of control. New research must account for the gap between law and its reconfiguration by a variety of social actors, from those who must implement and enforce the law to those who attempt to resist its effects. Future attempts to empirically represent and analyze the full scope of the legal control of marginal groups will be incomplete without rigorous attention to these issues.

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