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DIALOGUE AND DEBATE: SYMPOSIUM

Is this Europe?: EU law's rendering of European society

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Abstract

The question to what extent EU law is constitutive of European society as articulated in Article 2 TEU is, at its core, a question about the nature, scope and limits of EU law. This article suggests certain clear limits to EU law's ability to make the European society visible in law, or legible for law – let alone composable *through* law. The article is entitled 'Is this Europe?' as a direct challenge to the widely held belief that EU law is somehow constitute of European integration; that EU law contains all that European integration is, can and will be. Sure, the Europe that we see when analysing cases, treaties and legislation matters. But the 'real' Europe – the one that is felt, experienced, *lived* – resides in what happens due to, in spite, or irrespective of those cases, treaties and legislation. For EU law to remain sensitive to its society, then, EU law needs to reformulate the expectations it has of itself and create an analytical framework that allows it to transcend its immanent nature. This requires three changes to the way we 'do' EU law. First, more sensitivity to the material and relational context in which EU law operates. Second, creating space for forms of lay knowledge that are rooted in social praxis. Third, more ambition and playfulness in the way we – as scholars – 'speak' EU law.

Keywords: EU law; legal geography; European society; methodology

In his book 'This is Europe', Ben Judah travels through Europe and notes the lives that Europeans live. These are deliberately chosen to represent the 'ordinary' European: the labourers, the truck drivers, the sex-workers, dock-workers, fruit pickers, the jetsetters, the students, the newcomers and the old rich dynasties. They live in cities, in villages, in the middle of the forest, in Western and Eastern Europe, in wealthy countries and in less prosperous ones. What emerges is a rich tapestry of European society, an anecdotal but insightful account of the relationships between Europeans at work, online, in families and when travelling.[1] What is largely missing from Judah's account, surprisingly, is the EU. There is very little reference to the EU (let alone EU law) despite every single story revolving around material objects and relationships that are made possible or are conditioned by EU law.

This absence of the EU and EU law in the lived experience of citizens is telling, and hints at a wider issue that is also pertinent for EU law scholarship. The issue is not just that citizens may be unaware of the way in which EU law shapes their lives and affects their deepest, most intimate moments, memories, relationships and hopes, as Judah's book suggests. It is also that EU law is unaware of how it affects its citizens. EU law does not offer a methodological, epistemic or discursive framework that allows it to think of how law affects its society and how it, in turn, is

[1]B Judah, *This Is Europe: The Way We Live Now* (Picador 2023).

affected by society: how to analytically make sense of the basic fact that while EU law creates Europe, Europe also reshapes EU law itself.

An analysis of the interaction between EU law and Europe's society, which is the object of this symposium, then, presupposes that we consider the extent to which, and the ways in which, EU law is constitutive of Europe's society. Traditionally, mainstream EU law scholarship and EU institutional practice have taken this for granted: law is seen as a privileged form of securing European unification – both because of its apolitical and formal character and because of its ability to stabilise the objectives or values of integration itself. Only recently has this been explicitly challenged as offering (at best) a limited view of how European integration takes place: EU law certainly allows for novel economic, social and cultural relational forms that transform European societies. But it also creates or perpetuates forms of exclusion, promotes particular identities, and insulates certain political questions from contestation. The growing anti-European sentiment has emerged in part due to the constraints produced by the EU's legal order (section 1).

This article suggests that EU legal scholarship could do with shifting attention away from EU law itself and focus instead on the European society that is made by, resists, ignores or internalises the demands of EU law. It builds on work that approaches EU law from within its social context and suggests the need to move away from what EU law *says* it does to what EU law *actually* does. This presupposes three moves. First, a turn towards material and relational approaches to law that ground EU law analytically in the lived experience of its citizens. Second, a commitment to include lay epistemics alongside scientific expertise and political subjectivity. Third, more methodological ambition and playfulness in how we 'speak' EU law in order to resist the causal and teleological axioms that dominate EU law and make space for discursive practices that embrace the reflexivity between European law and European society (section 2).

This methodological suggestion is employed to analyse the EU's regulation of food heritage. Heritage articulates a range of socialisation practices which both descriptively engage with how we live but also normatively posits why certain forms of society have value. Heritage is increasingly employed as a discursive strategy to forge and stabilise local, regional and national identities and to resist the demands of EU law. This makes heritage an interesting lens if we want to understand how EU law and European society intersect, as it suggests two things: on the one hand, that EU law may not be necessarily be sensitive to domestic or local forms of society, and, on the other hand, that EU law articulates (implicitly) its own particular form of society. In line with the methodological commitments defended here, this paper will engage with food heritage by foregrounding its material and relational context, highlighting the ways in which EU legislation forecloses lay epistemics and the consequences that this has, and focusing on the spatio-temporal aspects of the legislative framework. What emerges is a picture of EU law as being deeply implicated in the creation, mediation and stabilisation of what makes society. This takes place by highlighting or obscuring different material realities and relational affinities that are central to citizens' understanding of themselves and their societies (section 3).

Ultimately, this paper suggests that EU law indeed shapes European society; but that this process is much more conflictual, contradictory, ambiguous and opaque than the majority of EU lawyers usually appreciate. The example of food heritage suggests, for instance, that the *actual* effect of EU law may be – in certain places, in certain conditions, in certain times –the exact opposite as the one that the legislation seemingly intended. This hints at some immanent limitations of EU law as a form of regulatory power, whose static nature, epistemic presuppositions, and focus on economic (rather than material) agency means that it risks reproducing contestation and conflict *regardless* of the regulatory strategy adopted. In the simplest of terms, EU law necessarily and inevitably ossifies specific socialisation practices and ignores others. Any society created through EU law will be partial and partisan. A societal reimagination of EU law, in which it is more sensitive to the alterities that make up society, therefore presumes, perhaps counterintuitively, the retreat from rather than the sophistication of EU law.

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1. The Law of European Society

The interaction between EU law (as a form of social ordering) and European society has predominantly and historically been conceptualised as the former shaping the latter. Ever since Pescatore's 'law of integration', it has been one of the very few assumptions that has survived the numerous re-imaginations of EU legal authority. Whether in the guise of 'integration through law', 'constitutionalism', or the view of EU law as sourcing its authority from the values articulated in Article 2 TEU, the assumption is the same: the 'point' of EU law is to secure the transformation of the way in which Member States, societies and individuals operate. EU law creates new types of relationships – economic, social, cultural, legal – that serve to create convergence in the way in which societies operate. While the above theoretical accounts of the authority of EU law clearly offer distinct views on the telos or ethos that this convergence aims at (ranging from the functioning of the internal market to the protection of democratic values), they share a sense that EU law is constitutive of the EU. All that the EU is, in a way, is contained, to be found, within its legal order.[2] All of its society can be translated into and depicted through legal concepts.

This section will not offer an exhaustive typology of the many ways in which EU law's authority has been understood conceptually.[3] The point, instead, is to suggest that regardless of the type of normative underpinning that we subscribe to EU law, two things have remained relatively stable in the most influential accounts of that authority: first, an awareness that the EU legal order is *different* – a difference often justified with reference to the need to rethink the interaction between law and political authority in the aftermath of the atrocities on the European continent before 1945. This has led to a focus towards law's normativity and not its facticity. The authority of EU law, across different accounts, is sourced not from a sort of objective reality or social fact but from a particular normative and institutional vision for European integration. The second element of EU law authority that has survived its many iterations over the past decades is the sense that the EU legal order both *has* a purpose and *is* a purpose – it is not (only) an instrument for the articulation of certain values but an object with a certain normative immanence. The consequence of these two qualities is that when EU lawyers want to understand how EU law operates, we turn to look inwards, to EU law itself, rather than outwards, towards the society upon which it acts.[4] It also means that for many EU lawyers, whenever European integration meets an obstacle – take, for example, the rule of law backsliding in numerous Member States – the solution is to be found by changing or re-interpreting the law, such as by discovering the justiciable elements of Article 2 TEU.

Throughout the years the most influential accounts of the nature of the EU's legal order have simultaneously *explained* and *justified* the role of EU law with reference to these two notions of difference and immanence. This can be traced in Pescatore's 'law of integration', that focuses on '*l'oeuvre commun*' (the common project) of bringing Europe together as underpinning the legal order and many of the interpretative methods and doctrines that have emerged in EU law: from dynamic interpretation to primacy, and from direct effect to the structural emancipation from domestic politics.[5] The transformation of European society, in simple terms, presupposes and is preceded by the formation of its legal structure. Pescatore's ideas were adapted in the 1980s by the scholars responsible for the 'integration through law' project at the European University Institute. The key insight of this theory is that legal supranationalism goes hand in hand with political intergovernmentalism to create a very particular type of authority for the EU. It implies that law is both the *object* of integration and the *agent* of integration.[6] Law is both the instrument through which European unity is fostered (by ensuring that Member States cannot, legally speaking,

[2]L Azoulai, 'Integration through Law and Us' 14 (2016) International Journal of Constitutional Law 449.

[3]See for a good example of this J Van de Beeten, *In the Name of the Law: Critique of the Systemic Rationality in EU Law* (PhD Thesis, LSE 2024, on file with author).

[4]J Mendes, 'Taking on the Structural Weakness of EU Law's General Principles' 2 (2023) ELO 693.

[5]J Baquero Cruz, *What's Left of the Law of Integration?* (Oxford University Press 2018).

[6]M Cappelletti, M Seccombe and J Weiler, *Integration through Law* (DeGruyter 1986).

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diverge from the collective objectives of European integration) and it is the 'point' of European integration (creating convergence between the Member States by creating a collective, common, legal structure where identical rules apply across the territory of the Member States irrespective of national loyalties). This conceptual account of the nature of EU law's authority has been very influential. Its genius resides in the way in which it both offers an explanatory account of the very particular evolution of EU law while normatively embedding the source of its authority within the EU's legal order itself.

The prevalent understanding of the authority of EU law from the 1990s onwards is that of the 'constitutionalisation' of the EU legal order. According to this account, the demands that EU law makes on its Member States, and the way in which it constrains the exercise of domestic political preferences, is justified with reference to the constitutional values that EU law articulates.[7] It is the EU's commitment to the rule of law, democracy, fundamental rights and other key values that underpins the claims to authority that EU law makes. This constitutional turn is, again, premised both on a descriptive account of several key judgments of the CJEU as well as a normative account that sources its authority from the constitutional values themselves. Once again, then, the source of EU law's authority lies *within* EU law itself, namely in its ability to secure the constitutional values that are (presumed to be) shared between the constituent parts of the EU – alternatively understood to be the Member States, the citizens directly, or a combination of the two.[8] EU law is authoritative, in simple terms, because it secures the value foundations without which integration cannot be pursued.[9]

One of the effects of the confluence between descriptive and normative accounts of the role of law in European integration is that there is a degree of immanence about EU law. All these accounts, in a way, offer an account of the authority of EU law that is internal, or intrinsic, to the legal system itself. In simple terms, there is an idea that to understand EU law (and perhaps the process of European integration as such) we need to look 'inside' EU law rather than its effects in the 'real' world. EU law operates in a closed system: it corrects itself and adjusts to the changes in the world in which it operates by reviewing and if necessary reconfiguring the basic concepts that have *created* and continue to create both European integration *and* its own authority.[10] There is no need, in other words, for direct engagement with actors or developments outside of the world of EU law. EU law *is* European integration. Everything that European integration is, has been and could possibly be is *already* to be found in EU law. As aptly put by Azoulai: 'law not only as a functional tool but as a cultural or symbolic form, as a carrier of a new spirit of cooperation and solidarity, and as the medium capable of containing political, economic and social forces, as well as the cement capable of holding these divergent forces together'.[11]

To some extent this perspective of immanence can be explained with reference to the nature of the doctrines of direct effect and primacy that are so central to the EU's legal order and its enforcement capacity. These doctrines locate the source of EU law's authority within the EU's legal order itself – divorced from political agreement or specific substantive 'real world' objectives. And this could arguably not be done in another way: if EU law's normativity indeed resides in the creation of a distinct and novel mechanism for governance, it makes sense for the source of that normativity to be innate. What this means is that we can trace a form of *systemic rationality* in the way in which we think about the authority of EU law. As Jacob van de Beeten has argued, the 'point' of EU legal authority – whichever telos or ethos we may subscribe to it – is above all to sustain *itself*.[12] This is visible not only in its self-referentiality, whereby all key doctrines of EU law

[7]A Von Bogdandy, *The Emergence of European Society through Public Law* (Oxford University Press 2024).
[8]M Patberg, *Constituent Power in the European Union* (Oxford University Press 2020).
[9]See Marcin Baranski in this symposium.
[10]P Linden-Retek, *Postnational Constitutionalism: Europe and the Time of Law* (Oxford University Press 2023).
[11]Azoulai, 'Integration through Law and Us' (n 2) 450.
[12]Van de Beeten, *In the Name of the Law* (n 3).

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emerge from and articulate an innate source of authority, but also in the CJEU's willingness to sacrifice substantive objectives and institutional constraints at the altar of the self-preservation of EU law as a complete, autonomous and coherent legal order.

EU law is premised, in other words, on a presumption that its imagination of what integration looks like is correct: that its normativity translates neatly into facticity, into the *actual* unfolding of European integration on the ground. What it cannot make sense of – the contestation of the legal order, for example – is seen as an anomaly from this perspective.

A second way of thinking about the interaction between EU law and European society focuses on the *types* of societies and relationships that are recognised or made possible by EU law and the types of relationships and forms of sociability that are obscured or rendered difficult. While this has been long discussed in more critical work, it has only recently become part of a more mainstream reading of EU law.[13] The objective in this line of research is not to make visible the way in which EU law transforms society but to critically reflect on the way in which it affects or obscures alternative forms of sociality and already existing relationships. This type of research takes seriously the contingent way in which EU law affects society: that there is more to society than the intentions, objectives and visions that are immanent to EU law itself. EU law, on this view, is not engaged in the process of creating Europe but in the process of *dividing* Europe: dividing it between the types of socialisation and the kinds of (economic, social, cultural) lives that *are* (made) possible and the ones that are rendered invisible (such as the ones without a transnational component) or more difficult.[14] This line of research highlights the contingency, precarity and forms of exclusion that are visible in the European society that EU law creates. It highlights EU law's commitments to individual emancipation, non-discrimination, and liberal values that have been applauded but also criticised on account of their disembedded nature, being unmoored from political forms of authority that can define their limits and the interaction with other interests or values.

Even this more critical component, however, is premised on the notion that the EU can (and does) in fact shape European society: that there is this privileged constructivist role for law in social ordering. We (for much of my own work falls within this category) may be critical of the way in which EU law creates European society, but we accept that it *does* create it. What this approach still misses, in a way, is a degree of reflexivity, in which we try to make sense of how European society experiences and affects EU law. It is a view that is sensitive to the fact that the way in which EU law affects European societies resides perhaps partially in the legal claims and demands it makes, but also partially (and arguably predominantly) in the way in which these claims are appropriated, mediated, affected, passively ignored or actively rejected by the society upon which it acts. It is a blatant fiction to presume that a piece of EU legislation has the same real-world effect in rural Ireland and in the centre of Munich; on the transnational elites and the unemployed; in multinational cooperations and a small local business. EU law perhaps shapes opportunities, but their use, appropriation, rejection or contestation hinges on the actual world in which it operates. And yet, despite (I think) all EU lawyers accepting this proposition, as a discipline we struggle to make analytical sense of this connection between the normativity of EU law and the facticity of the world in which it operates.[15]

My contribution in this paper is to start thinking about how we can give form in EU law to this third type of interaction: how to create an analytical model that allows EU law (scholarship) to be sensitive to how European society receives EU law or experiences it, that is, how it changes their

[13]See, eg, F Snyder, 'New Directions in European Community Law' 14 (1987) Law & Society 167; T Hervey, 'Realism, Empiricism and Doctrine in EU Legal Studies: Views from a Common Law Perspective' in R Nielsen and U Neergaard (eds), *European Legal Method: Towards a New European Legal Realism* (DJOF 2013) 125.

[14]L Azoulai, 'The Law of European Society' 59 (2022) SI Common Market Law Review 212–14.

[15]A Marketou, 'Local Meanings of EU Law: The Case of Proportionality' (*VerfBlog*, 2025). DOI: 10.59704/7786e6fa9e6db6e2.

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lives, how it leads to instances of hope, despair, fear, resistance or longing. This suggests, in a way, a move from what law says it does to what law actually does, and querying the (re)constructivist potential of EU law.

This may appear to some as a task for which lawyers are not particularly well-suited, and for which sociological studies, ethnographies or anthropology are more suited. I would argue that the privileged role of law as a technique of integration and social ordering of the EU means that lawyers can play an important role in tying together the legislative intents, the pathologies of EU law, and the case law to instances of resistance, transformation and affect. In the context of Union citizenship, recent contributions have started to trace these types of accounts of the way in which EU law is appropriated and experienced by its subjects.[16] The racialised undertones of the internal market and EU labour migration have, likewise, become the focus of a number of interventions.[17]

If we want to more structurally investigate the way in which society is affected by but also mediates EU law, however, we need to shift our interest from EU law to European society. How can we create an analytical model that gets us closer to the way in which people live, the way in which society is actually constituted through infinitely diverse relationships between actors, spaces, materials and ideas and that allows us to think beyond EU law and thereby see the immanent limitations of EU law as a regulatory technique? In this article, I suggest that such a form of investigating the interaction between EU law and European society presupposes three things. First, a turn towards material and relational approaches to law that grounds EU law analytically in the lived experience of its citizens. We have to start, in simple terms, from the ground 'up', rather than from the law 'down'. Second, a commitment to include within EU law lay epistemics alongside scientific expertise and political subjectivity, so that local and tacit understandings of the world – that is, how individuals relate to their environment – are made visible in EU law. Third, more methodological ambition and playfulness in how we 'speak' EU law in order to resist the causal and teleological axioms that dominate EU law and make space for discursive practices that embrace the reflexivity between European law and European society.

2. Reading European society

A. Material and relational approaches to law

If EU scholarship wants to engage with European society in a reflexive fashion – accounting for the legal norms but also their appropriation and experience – it needs to, first of all, focus on material and relational approaches to EU law. Whatever definition of society we take, what lies at its centre are the relationships between subjects and their entanglement with a particular place on earth – the way in which they relate not just to each other but their historical, biological, socio-cultural and environmental surroundings. It is about practices, conventions and understandings of how to live both *together* and *here*. This way of thinking about EU law, by paying attention to the ways in which it affects, in a thousand smaller and bigger ways, the reality that we each inhabit *here*, serves the purpose of bridging the divide between the studying of EU law on its own terms and the way in which it is experienced in society. In simple terms, this is about subverting the causal link between EU law and the construction of European society that is central to much of EU law scholarship: it is about starting from the ground 'up' rather than from the law 'down'. If we start from the law itself, the world that we see – what matters, what is made visible, the reality

[16]S Deel, 'Freedom through Movement? The Promise of EU Citizenship and the Limits of a Transnational Life' (PhD thesis, LSE 2023, on file with author). D Myslinska, *Law, Migration and the Construction of Whiteness: Mobility within the European Union* (Routledge 2024); V Pavlou, *Migrant Domestic Workers in Europe: Law and the Construction of Vulnerability* (Hart 2021).

[17]A Schrauwen, 'Essential, Invisible, Discriminated and Exchangeable: Labour Migrants in the EU' 15 (2024) Transnational Legal Theory 572; A Lewicki, 'East-West Inequalities and the Ambiguous Racialisation of "Eastern Europeans"' (2023) Journal of Ethnic and Migration Studies 1481.

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construed (that is, its spatio-temporal and affective orientation) is pre-configured by the law itself. It is only by starting from a material and relational perspective – from the wolf that ambles into a Romanian village, the beach in Italy that is at the core of a tension between cultural heritage, economic protectionism and European liberalisation, the food produced according to century-long tradition – that the full range of law's impact is made visible.

The reason to prioritise the material and the relational is therefore to better ground our understanding of EU law, to (literally) bring it back to earth and connect it to the way in which people actually live their lives. *Materiality* relates to the idea that we cannot just study law by reference to concepts internal to the law: the legislation, cases, doctrine, and its normative ambitions or presuppositions. In order to understand what law 'is', what it 'does' and how its authority is constructed and reflected in the shape of European integration, we *also* need to take account of law's effect on the material world: how it shapes, renders and is mediated by the bio-physical, spatial, infrastructural, or cultural reality upon which it acts.[18] Materialism sees to the entanglement of matter and meaning: not just focusing on physical matter, but also the way in which subjects are entangled with matter and the way in which we can ascribe agency to objects.[19] Material structures are not simply objects upon which EU law acts, but can also, for example, embody particular types of resistance or mediation, or offer alternative accounts of EU law's normativity. We can (and will, in the following section) tell a cogent story about European integration and the nature of EU law just by looking at material realities such as food, but also supermarkets, grain, football, hamsters, trains, artillery, lithium or forests.[20] These are not objects that passively undergo the demands of EU law, but material realities around which different experiences and legal representative practices about European integration converge. My claim here is not just that these objects of integration are ignored in contemporary European legal studies (although they largely are),[21] but that they offer wonderful starting points for the investigation in how EU law and its authority is mediated 'on the ground' by connecting it to aspects of life that come closer to the citizens' experiential reality. Starting from the material world, in simple terms, allows us to analytically include both law's normative expectations of reality *and* the actual reality that escapes, resists, or is obscured by that normative imaginary.

While the focus on EU law's materiality is largely absent in EU studies, there is much more work that focuses on EU law in a *relational* setting.[22] Relationality gives meaning to the different types of connection between subjects, between subjects and their communities, between subjects and their frames of references or groups of belonging, and between subjects and the material world in which they live. Relationality in law offers a way to highlight that the authority of legal concepts resides in part in its ability to articulate, reflect and protect the types of relational connections (economic, religious, social, political, affective, identarian) that are central to the construction of the self. In my study on food heritage in EU law, for example, it is not only interesting to see how EU law deals with the food as a material entity but also with the traditions tied to the consumption of production of food as relational categories of meaning.[23] These relations are codified and protected through the legal system, which, in the process, simultaneously legitimates itself as a normative grammar and reifies these food traditions as *relations that matter*. Paying attention to

[18]B Latour, 'Europe Is a Soil – Not a Machine' 57 (2020) Common Market Law Review 1.

[19]HY Kang and S Kendall, 'Legal Materiality' in M Del Mar, B Meyler and S Stern (eds), *Oxford Handbook for Law and the Humanities* (Oxford University Press 2020) 21, J Hohmann, 'Diffuse Subjects and Dispersed Power: New Materialist Insights and Cautionary Tales for International Law' 34 (2021) Leiden Journal of International Law 585.

[20]F De Witte, *The Reality of EU Law: Time and Space in European Integration* (Cambridge University Press 2026).

[21]L Azoulai, 'Infrastructural Europe: EU Law and Human Life in Times of the Covid-19 pandemic' 66 (2020) Revista de Derecho Comunitario Europeo 343.

[22]P Neuvonen, *Equal Citizenship and Its Limits in EU Law* (Hart 2016); C O'Brien, *Unity in Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK* (Hart 2017); F De Witte, 'The Liminal European: Subject to the EU Legal Order' 40 (2021) Yearbook of European Law 56.

[23]F De Witte, 'You Are What You Ate: Food Heritage and the EU's Internal Market' 47 (2022) European Law Review 647.

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which types of relations EU law prioritises, reflects or ignores is, then, an important part of shifting the focus of EU legal studies towards the experiential level while telling a story about the construction of law's authority. It is a way of 'seeing' (and contrasting) how society is understood and constructed by both the subject *and* EU law. It is in highlighting the gap between these that the critical potential of the approach defended here resides.

Evidently, this focus on the socio-material continency in EU law presupposes a methodological shift towards (engagement with) work that understands EU law and governance at an experiential level: empirical work, ethnographic studies, cultural or sociological studies. We do not all have to become anthropologists, however. We shouldn't give up on law: the task of EU legal scholars remains to make sense of (the effect of) legal categories and the systemic rationalisation of a complex society. In the words of Azoulai, EU law remains

> both an institutional language, reflecting the interests of the main political actors, and a grammar for social conflict, conveying the existential, social and cultural concerns of ordinary people. If we pay attention to both dimensions while deeply and completely immersing ourselves in the EU legal materials, we may gain some understanding of the kind of European society we live in.[24]

The study of EU law, instead, has to become more porous, more comfortable with engaging with the world in which EU law acts, because EU law's authority is increasingly dependent on the way in which it is experienced. More prosaically, this presupposes an openness to inter-disciplinarity, wherein insights from fields of study that are more squarely focused on socio-material and relational practices are used to guide and nuance the analysis of (what is missing in) EU law. The one domain within which EU law has moved in this direction is in its embrace of empirical legal studies, which allow us to make sense of the distribution, incidence and institutional variation in the implementation, application and interpretation of EU law.[25]

Disciplines surrounding EU legal studies have been more comfortable with this turn towards the socio-material contingency of EU law. Scholarship in international law, for example, has long engaged with material and relational approaches that ground the authority of legal norms in a concrete reality and factual context.[26] But closer to home, in a way, many disciplines focusing on European studies offer good insights into the conceptual tools and methodological approaches that might be useful in grounding EU legal discourse. This is not to downplay the socio-legal and critical work in EU law in the past decades,[27] but to highlight how the mainstream understanding of EU lawyers (in contrast with other disciplines engaging with the EU) remains wedded to an approach that reifies EU law's normativity and not its facticity.

A first way of grounding the authority for European integration in a material and relational context comes through in the work of authors such as Kathleen McNamara, who offer an account of how that authority is constructed by reshaping the daily experiences of citizens.[28] Her account is insightful because she sheds light on the hidden ways in which European integration manifests itself, and in doing so 'enters' the lived experience of the citizen.[29] She highlights how citizens change the way they think about themselves, their communities, affinities and relationships

[24]Azoulai, 'The Law of European Society' (n 14) 210.

[25]See for a recent overview of this literature the edited collection U Sadl, D Naurin and J Zglinski, *Empirical Legal Studies in EU Law* (Cambridge University Press 2025). See for a take on the interaction between empirical legal studies and EU law more generally G Davies, 'The Future of European Legal Scholarship' in U Sadl, D Naurin and J Zglinski, *Empirical Legal Studies in EU Law* (Cambridge University Press 2025) forthcoming.

[26]See for an overview this collection: J Hohmann and D Joyce (eds), *International Law's Objects* (Oxford University Press 2018).

[27]For the starting point to much of the law-in-context and critical work on EU law, see Snyder, 'New Directions in European Community Law' (n 13) 167.

[28]K McNamara, *The Politics of Everyday Europe: Constructing Authority in the European Union* (Oxford University Press 2015).

[29]McNamara, *The Politics of Everyday Europe* (n 28) 16.

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partially in response to the embedding of European material realities (the Euro, food labelling, the European passport, Champions League, Eurovision) and transnational relationships (free movement, Erasmus, foreign policy) within the daily experience of citizens. The techniques of deracination (through which the EU's activities are presented in abstract and unemotional registers) and localisation (though which EU authority is naturalised by borrowing accepted local loyalties or affinities) are presented as ways of cultivating the EU's 'banal' authority.[30]

More recently, the French sociologist Brice Laurent has offered an account that connects European integration more immediately to its material context.[31] He suggests that by looking at certain material objects (chemicals, drinking water, financial products) we can deduce not just the imprint of the different regulatory techniques of European integration (of which law is the most powerful one, in his account) but also the way in which EU regulation 'rearranges material and social practices'.[32] In a way, this work highlights how the material reality of European integration is an intimate and immediate proxy for understanding the bigger picture of European integration.[33]

A third and final approach in European studies that is useful in situating the interaction between EU law and the experience of integration is the work on transactionalism – first theorised by Karl Deutsch and more recently reintroduced in accounts of European integration by Theresa Kuhn.[34] The gist of this framework is that the 'time-space compression' that allows for increased interactions, transactions or relationships across borders (which can be economic, social, political, cultural) has led to an growth in trust in cross-border cooperative practices and a demand for increasingly complex institutional configurations that can reproduce and stabilise that trust and cross-border relations themselves.[35] Within the context of the EU, these transactions centre on both materials (such as the sale and consumption of food products across borders) and relationships (such as working abroad, transnational romantic relationships, or having colleagues from other Member States).[36] Even though not often theorised as such, EU law is clearly an institutional configuration that can be thought of as fulfilling exactly the role of stabilising cross-border trust relations.

In EU law scholarship itself we can also trace the contours of a turn towards 'the real world'. Païvi Neuvonen's meticulous disassembly of EU law scholarship has suggested the need to be sensitive to our methodological commitments in engaging with the 'reality deficit' of EU law. She bemoans our collective inability to move beyond the 'role of law' approach which takes too seriously what law says and ignores the reality in which it is embedded (which, in general terms, is similar to the immanent reflex discussed in the first sections of this contribution). EU law is embedded in 'a complex web of competing social rationalities'[37] which is lost from sight once we adopt the internal and formalist perspective on EU law that grounds its authority immanently. Connecting EU law with the world in which it operates is crucial, in Neuvonen's view, because it helps clarify 'how [law's internal normativity] is generated and sustained at different times and in different places'.[38] Tommaso Pavone's work on the way in which EU law has been employed as part of thick socio-economic transformation processes in Genoa also speaks to this project wherein the basic norms of EU economic law co-produce socialisation practices that are specific to

[30]McNamara, *The Politics of Everyday Europe* (n 28) 55–9.

[31]B Laurent, *European Objects: The Troubled Dreams of Harmonization* (MIT 2022).

[32]Laurent, *European Objects* (n 31) 53.

[33]Latour, 'Europe Is a Soil' (n 18) 1.

[34]T Kuhn, *Experiencing European Integration: Transnational Lives and European Identity* (Oxford University Press 2015).

[35]M Savage, N Cunningham, D Reimer and A Favell, 'Cartographies of Social Transnationalism' in A Favell and E Recchi, *Everyday Europe: Social Transnationalism in an Unsettled Continent* (Policy Press 2020) 35.

[36]A Favell and E Recchi, *Everyday Europe: Social Transnationalism in an Unsettled Continent* (Policy Press 2020) 3.

[37]P Neuvonen, 'A Way of Critique? What Can EU Law Scholars Learn from Critical Theory?' 1 (2022) European Law Open 86.

[38]Ibid., 71.

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a particular place and particular relationships.[39] Many other scholars also intuitively problematise the way in which EU law affects the material and relational conditions of contemporary society,[40] with recent projects highlighting the 'local meanings' of EU law,[41] the disciplinary blindspots that immanence leads to,[42] and the ways in which EU law obscures particular material realities.[43]

The most consistent reimagination of how to 'do' EU law, however, comes from Loïc Azoulai. In a number of contributions,[44] he has called for EU law scholarship to account for the ways in which it affects the lives of its people. Azoulai, here, is keen to highlight the reflexive nature of the exercise: the methodology employed in trying to tackle the 'reality deficit' is part of what we will see when we do it. This means that we must fully abandon the register that ties the authority of EU law to its functional or constructivist tendencies, and re-imagine EU law from the ground up, as it were: 'which is no longer sustained by a self-standing and self-referential structure without being a purely factual interdependence'.[45] This presupposes the creation of new categories of meaning in EU law. For Azoulai, for EU law to be authoritative in 2026 it must allow for lives that *already exist but it cannot 'see'*, rather than construct new forms of life. The focal point, for Azoulai, lies in the *existential*. In several contributions, he refers to the types of *lives* that EU law allows for and that it forecloses, and hints at the frustration, alienation and disenfranchising effect that such a process entails. There is an urgent need, in his view, to create space within EU law and its scholarship to valorise the types of lives that people care about *because they already live them*. This comes close to what I have above called the 'lived experience' of EU law, in so far as it places attention to the way in which EU law is *but one* of the vectors that plays a role in structuring the way we live. Unlike Azoulai, however, I am less convinced of the versatility and malleability of EU law to translate social praxis, material realities and relational affinities into legal categories. As will become clear, in my mind a project that makes EU law sensitive to its social reality presupposes a *retreat* rather than a sophistication of law.

In short, the starting assumption for this paper is that EU law is not to be understood as being primarily about European *integration* (more, less, social, economic, strategic, political) but also as articulating something about *European* integration; about the conditions under which it takes place on the socio-material, local, personal level. It takes seriously the fact that EU law is a very powerful instrument in shaping and transforming the integration process while also acknowledging its inevitable limitations as a regulatory form and that the socio-material reality upon which it acts necessarily mediates these ambitions. It is only by including both the law and the reality into our analytical framework that we can make sense of European society.

B. Lay knowledge

A second change to EU law that is required before it can 'read' and engage with European society is a valorisation of lay knowledge. At the moment, the epistemics that are privileged in (the study

[39]T Pavone, 'From Marx to Markets: Lawyers, European Law, and the Contentious Transformation of the Port of Genoa' 53 (2019) Law and Society 851.

[40]G Davies, *Internal Market Adjudication and the Quality of Life in Europe* (EUI Law 2014/07); G Tagiuri, 'Can Supranational Law Enhance Democracy? EU Economic Law and a Market-Democratising Project' 32 (2021) European Journal of International Law 57.

[41]Project by Mendes and Marketou on local meaning in EU Law: Marketou, 'Local Meanings of EU Law' (n 15). DOI: 10.59704/7786e6fa9e6db6e2.

[42]P Neuvonen and P Linden-Retek (eds), *Critical Theory and European Union Law: The Question of Postnational Emancipation* (Hart forthcoming).

[43]See the contribution by Jennifer Orlando-Selling and Silvia Steiniger in this symposium.

[44]L Azoulai, 'Solitude, désœuvrement, conscience critique. Les ressorts d'une recomposition des études juridiques européennes' 4 (2015) Politique Europeenne; L Azoulai, 'Living with EU Law' 1 (2022) European Law Open 140, L Azoulai, 'The Madness of Europe, Being Attached to It' 21 (2020) German Law Journal 100; Azoulai, 'The Law of European Society' (n 14) 210.

[45]Azoulai, 'Integration through Law and Us' (n 2) 460.

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of) EU law are the scientific one and the institutional one, which insulate EU law from the local, lay and often tacit knowledge that emerges from *within* social practices and that is a product of, and specific to, the socio-material and relational environment in which we live. If there is a form of 'societal' knowledge, that is, knowledge about how *we* live *here*, it is not to be found in government policy or expressed in rational scientific form, but it is to be found in how we *actually* live.

EU law – whether in its adjudication, interpretation or in its scholarship – prioritises two forms of knowledge.[46] On the one hand we can trace something that we can call the 'scientific epistemic', which relies on scientific consensus and presents itself as offering an objective picture of contemporary society. Importantly, this 'objectivity' is employed to stabilise its authority and make it immune to the public and private heterogenous preferences of the many actors involved in European integration. The logic here is that governing Europe is based on a neutral, objective, rational knowledge and scientific consensus. The way in which EU law is implicated in the transformation of Europe, on this view, is functional: it is simultaneously apolitical and neutral (although, of course, 'science' is never fully objective as it necessarily internalises particular assumptions) and transformative, demanding that Member States' policy objectives be pursued in ways that can be explained, justified, made intelligible not just with reference to their local communities but the wider political community that EU law pertains to.[47] The legal culture of the EU, and its clear discomfort with particularities, emotions, and conflicting localised forms of meaning, is largely legitimated and stabilised by its self-understanding as a 'law from nowhere', in which scientific epistemics are insulated from contestation, both as to its pertinence and as to its accuracy, in an attempt to prevent the EU legal system as being perceived to articulate particular (political) interests or normative projects. This means, however, that EU law must be presented as all-encompassing – both for the sake of its own authority and to occupy the space otherwise left to other epistemic forms – and that all that is European integration (and European society) must be articulated within this particular scientific, objective and rational straightjacket. These scientific epistemics can be traced throughout EU law, including in the legislative process (where impact assessments lay out all the competing interests, predict implications and legitimate the eventual decision), in the power of regulatory agencies (such as in EFSA, where scientific findings are structurally insulated from other forms of knowledge about the world), in comitology decision-making, but also on the judicial side of the EU (such as in the focus on empirical data in proportionality and justification in free movement cases).[48]

The priority of the scientific epistemic is mediated in EU law, to some extent, by the other leading epistemic commitment in EU law. Throughout EU law, we find place for resisting the rational and neutral heuristics of science when something is couched as being valuable because it pertains to state interests – which may relate to questions of policy coherence, national identity or socio-economic priorities. These 'institutional epistemics' are not produced with reference to a particular ontology but by specific actors that are considered particularly legitimate in making claims about what matters. This comes through in an institutional form, where Member States have ample opportunity to insulate their preferences within legislation, but also in the form of exceptions to free movement provisions or competition policy. These exceptions are considered prima facie necessary – their reasons *valuable* – not because of their content but on the basis of the institutional structure that articulates them. Perhaps counterintuitively, this competing epistemic account compounds the qualities of EU law articulated above: once again, there is a presumption

[46]C Radaelli, 'The Public Policy of the European Union: Whither Politics of Expertise?' 6 (1999) Journal of European Public Policy 757.

[47]See J Neyer, *The Justification of Europe: A Political Theory of Supranational Integration* (Oxford University Press 2012).

[48]V Delhomme, 'Minimum Harmonisation, Experimentation, and the Internal Market' in T Van den Brink and V Passalacqua (eds), *Balancing Unity and Diversity in EU Legislation* (Elgar 2024) 194; M Krajewski, 'On Crosswords and Jigsaw Puzzles: The Epistemic Limits of the EU Courts and a Board of Appeal in Handling Empirical Uncertainty' 2 (2023) European Law Open 784; M Weimer, *Risk Regulation in the Internal Market: Lessons from Agricultural Biotechnology* (Oxford University Press 2019).

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of the EU's legal system (and of law as a regulatory technique) as all-encompassing: all possible public policy interests, all that the Member State (and its society is) can be articulated as and defended in EU law. And once again, there is a presumption that EU law plays a justificatory role: a Member State, in justifying a breach of free movement law with reference to the protection of certain cultural form of life within that Member State, is essentially articulating why it considers something of value not just for itself but for the European society as a whole.

Both leading epistemic commitments in EU law, then, understand society as something that can be both articulated *in* law and co-created *by* law. Scientific and political-institutional views of society are, in other words, made valuable in and through EU law. What most EU scholars focus on, in a way, is the most appropriate balance – whether structurally or substantively – between these two epistemic commitments.[49] By presenting these two epistemic commitments as exhaustively articulating all that Europe is or can be, it obscures the existence and relevance of a possible third epistemic register of *lay knowledge*. My suggestion in this section is that a commitment to lay knowledge should supplement rather than replace EU law's current epistemic commitments. In brief terms, what is currently missing is an awareness of law's limits as a regulatory technique – both in terms of what it can articulate of and about society and in terms of what it can accomplish in that society. What is needed for EU law to capture the complexity of the European society is the creation of (epistemic) space for embedded knowledge, for not-knowing, for alterities and forms of life that are *inexplicable*; not in the sense that they defy rational or political beliefs, but because reproducing them as legal categories would inevitably reduce them *to* those rational or political beliefs.

Lay knowledge is situated knowledge: it pertains to the specific context to which it is relevant. It is, in simple terms, embedded in and a product of a particular society: it articulates how *we* live together *here*. Lay knowledge is knowledge about the world that is learned through experience.[50] It is practical, everyday knowledge that is based on peer learning, observations, experimentation and interactions with the world. Lay knowledge reflects how people make sense of themselves, their lives and their environment. It emerges from and is employed in navigating our relations, in problem-solving and decision-making on everyday matters. Lay knowledge is often *situated*, in that in pertains to and is applicable to very specific contexts or relationships: the effect of weather on the type of soil that a farmer works with; remedies against minor ailments; the habits of a particular pack of wolves; the effectiveness of different techniques for overcoming language barriers; the way to manage local bureaucratic processes; managing forms of cultural conventions or social hierarchies; or how to navigate the public transport network in an inner city. Lay knowledge is also often *tacit* knowledge: not something learned in school but gleaned by observing and being sensitive to the way in you and other people move through the world.[51]

Lay knowledge is not the same as lay beliefs. The convictions, opinions or views that people hold – even when based on their experiences or relations – are not what I am speaking about here. Lay beliefs about luck or fate; about karma and conspiracies; ideologies and stereotypes matter for understanding how and why EU law engenders particular feelings of resistance, anger, joy, or hope. Such beliefs matter in exploring the reasons for which EU law may be contested or ignored 'on the ground'. But they are not epistemic commitments that EU law must open itself to in order to make more sophisticated its reflexive position with respect to the with the European society. Lay knowledge, as opposed to lay beliefs, is still based on an epistemic commitment to fact, replicability and causality. When we think about including lay epistemics into EU law – in

[49]V Delhomme and T Hervey, 'The European Union's Response to the Covid-19 Crisis and (The Legitimacy of) the Union's Legal Order' 41 (2022) Yearbook of European Law 48; F De Witte, 'The Constitutional Quality of the Free Movement Provisions: Looking for Context in the Case Law on Art 56 TFEU' 41 (2017) European Law Review 313.

[50]On the similar notion of 'metis', see J Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (Veritas 2020).

[51]M Polanyi, *The Tacit Dimension* (Routledge 2009).

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legislation, adjudication, implementation – it is therefore not a question of creating space for ignoring the scientific or political demands of EU law. Instead, it is a question of translating those demands into a *particular* 'ground', with its particular socio-material properties, particular cultural and geographical complications, its particular relational context.

If we want EU law to be more sensitive to the European society, then, engagement with lay *knowledge* is valuable for three reasons. First, it gets us closer to the lived experience of EU law. If part of the challenge is to find ways to include in our analytical framework how European society mediates and engages with EU law, lay knowledge clearly matters for the construction of EU law. It is about how the local context – relational, material, bio-physical, infrastructural – affects, receives, ignores and mediates the demands of EU law and about how EU law is 'translated' (or not) in everyday practices or social conventions.

Second, inclusion of lay knowledge stabilises the authority of EU law.[52] It can tell us, for example, when the demands of EU law are (perceived to be) in conflict with local cultural conventions, socialisation practices or 'ways of living', such as when EU law disrupts heritage practices or alters relational forms. In order to prevent lay-expert conflicts from being recast as opposition to the EU and EU law,[53] EU law itself must offer space and valorise lay knowledge rather than merely dismissing it as being without merit. Such valorisation can help EU law's authority 'on the ground' and, conversely, mediate the functioning of EU law so that everyday experience of its demands are internalised in its interpretation rather than removed from it.

Third, engagement of EU law with lay knowledge dislodges the hubris of the currently privileged epistemic commitments in EU law, which at the moment prioritise expertise and formal training; documentation and proceduralisation; rationality and objectivity; precedent and order. The reality of Europe's society, however, is messier: it is situated, it is emotional, it is fleeting, felt, imagined, chaotic. Such perceptions of reality are much more likely to be embedded in lay knowledge than expert knowledge, and opening up EU law to these registers also means offering a counterweight to the pathologies that the current epistemic commitments in EU law carry. It also highlights the immanent limits of *EU* law as a regulatory form and the ways in which European societies can only be made sense of by law's retreat.

The accommodation of lay knowledge in EU law can take many forms. Most usefully, this can take place at the moments where EU law and the local environment 'meet', such as in local implementation practices or adjudication, wherein lay knowledge can be used to translate (or offer a ground for ignoring) EU law demands into the local context. Free movement litigation, and in particular the interpretation of proportionality within that context, are an obvious place for the insertion of (space for) lay epistemics that can mediate or translate the demands of EU law to the local context. Another example that I have highlighted in other work lies in the demands of the Habitats Directive, and in particular the way in which the protection of vulnerable animal species inserted in Annex IV of that Directive (such as wolves) can be balanced with the human claims to space for infrastructure, bio-safety or agriculture.[54] In its assessment of the proportionality of human interference with wolves, the Court unsurprisingly mainly highlights the ways in which human action is proportionate to the public policy aims pursued. What is missing is engagement with the (increasingly abundant) research on how lay epistemics can offer distinct ways of navigating the interaction between wolves and humans, for example by taking seriously wolf alterity, by erecting bio-fences that use sensory instruments such as wolf excrement to communicate with wolves,[55] or by learning from the regions in Europe where wolves never

[52]See also S Jasanoff (ed), *States of Knowledge: The Co-production of Science and the Social Order* (Routledge 2004).

[53]For a prescient take: D Chalmers, 'Food for Thought': Reconciling European Risks and Traditional Ways of Life' 66 (2003) Modern Law Review 532.

[54]F De Witte, 'Where the Wild Things Are: Animal Autonomy in EU Law' 60 (2023) Common Market Law Review 420 ff.

[55]B Morizot, *Les Diplomates: Cohabiter avec les loups sur une autre carte du vivant* (Domaine Sauvage 2016).

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disappeared from cultural landscapes and where local communities have learned to live with the wolf through a range of smaller and larger adaptations of daily rituals and routines.[56]

The valorisation of lay knowledge, of course, may very well come at the expense of the (in any event illusory)[57] commitment to uniformity in EU law, be it in implementation, application, enforcement or adjudication. Given that all lay knowledge is locally embedded, this may require much more flexibility in the EU's legal framework than is currently presumed. The valorisation of lay knowledge, of course, may also require a *retreat* or contestation of law, in so far as such forms of society cannot always be articulated in legal terms, or because law knowledge structurally resists codification and ossification. This may also mean that EU legislation explicitly exempts or valorises local conventions or norms, and that the hold of the national governments over implementation, enforcement and litigation in EU law is reimagined in order to offer space within EU law to other institutional forms of knowledge-production on the regional, local, and personal level where lay epistemics are much more central.

C. How to 'speak' EU law

A third necessary commitment to allow EU law (scholarship) to engage with European society lies in the way we 'speak' EU law. What we would need is more ambition and playfulness in resisting the causal and teleological axiom that dominates EU law, to make space for discursive practices that embrace the reflexivity between European law and European society. The basic presupposition of the position defended in this paper is that European law and European society are co-created: law influences society, but society also alters the law. We cannot understand the interaction between them unless our analytical model appreciates this reflexivity and flexibility and resists ascribing causality to one or the other. The current fixation in EU law with teleological or causal ways of reasoning privileges the former account and excluded the latter. This is how we have learned to 'speak' EU law in the classroom and textbooks, and how the CJEU 'speaks' EU law.

Re-learning how to speak EU law in line with a more reflexive sensitivity can take many forms. Ethnographic accounts that situate the interaction between law and its lived experience as a meshed and embedded negotiation are one possibility. It could be based on material or relational ontologies, such as the recent work by Horatia Muir Watt,[58] based on sociolegal approaches such as legal geography or critical legal studies; law and literature or law and language. What matters less is the precise methodological commitment. What matters more is the choice of methods that resist ascribing causal effect to the law in creating, framing, obscuring, transforming the European society: the analytical model must, in simple terms, be able to 'see' where EU law has its intended effect but also where it doesn't, and it must be able to make sense of the limits of law's (re) constructivist potential.

The method that I have been working with is legal geography.[59] Legal geography is a field in which scholars have analysed the mutually constitutive interaction between space and law. Law's inherent abstraction – by its very nature it is meant to apply to a range of *diverse* actors, sites, material realities and relationships – means that it cannot account for the peculiar characteristics of the many diverse actors, sites, material realities or relationships to which it applies. The basic presupposition of legal geography is, then, in very simple words, that law is always 'grounded' or 'worlded' by the way in which it affects and is appropriated by the specifics of the socio-material space upon which it acts. Law shapes, but is simultaneously shaped by, the

[56]D Kuijper et al, 'Keep the Wolf from the Door: How to Conserve Wolves in Europe's Human-Dominated Landscapes?' 235 (2019) Biological Conservation 104.

[57]F De Witte, 'Here Be Dragons: Legal Geography and EU Law' 1 (2022) European Law Open 113.

[58]H Muir Watt, *The Law's Ultimate Frontier: Towards an Ecological Jurisprudence* (Hart 2023).

[59]See in more depth: De Witte, *The Reality of EU Law* (n 20).

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reality upon which it acts. What this means, in simple terms, is that we cannot understand law or its claims to authority if we do not take account of its spatial entanglement: 'the legal and the spatial are, in significant ways, aspects of each other and as such, they are fundamental and irreducible aspects of a more holistically conceived social-material reality'.[60]

In studying this process of *translation* between the 'real' world and the world as imagined by law, legal geography suggests that we must pay attention to two variables. First, we must pay attention to how law constitutes or imagines space. This is a perspective that is intuitively the easiest for most lawyers: we know that law 'draws lines, constructs insides and outsides, assigns legal meanings to lines, and attaches legal consequences to crossing them'.[61] But more often than not, law acts upon a reality that precedes it. A wolf wondering the Transylvanian forests is both an animal and a species legally protected by Annex IV of the EU's Habitats Directive. An Italian beach is a place for swimming and socialising, but it is also part of an intricate licensing regime through which municipalities structure social, economic and cultural relationships and allow the commercial exploitation of public space. The piece of cheese you'll find in your salad in Greece may be produced by the local sheep, but it is also a product whose legal protection in a supermarket in Montreal has been negotiated by the EU. All material objects, social relations or human and non-human actors also have a *legal life* – which can be generative, naturalise socio-material realities, obscure them, or offer other forms of legal meaning.

Just as law imagines and shapes space, however, the opposite is also true. Space also shapes law. Law is altered by the particular bio-physical, cultural, socio-economic properties of the space in which it acts. Once law *is* produced, the space upon which it acts *alters* the legal norm itself. The application, interpretation and enforcement of law is contingent upon the socio-material upon which it acts.[62] A norm of Directive 2008/98 on waste management will have very different implications in rural Estonia compared to central Rome: this means that people's lives – how they dispose of their garbage, the social conventions around garbage disposal, the people employed to organise this process, the local municipal budget – are not just affected by the legal rules but also the specifics of the socio-material space in which they act. Law is mediated, in a way, by the reality upon which it acts. Space, in this sense, is not just a neutral canvas upon which law acts. Its particular properties – the material environment, the social relations, the human and non-human actors – are *constitutive* of the law that affect them because of the particular way in which they 'ground' or 'worlded' it. In studying the translation from the abstract law 'in the books' to the concrete law 'in the streets', then, in simple terms, we must pay close attention to what that street looks like.

This is particularly so because of the way in which law carves up space. The abstract quality of law means that something that is experienced as a single space by subjects is in fact the coming together of a large number of disparate legal norms. Layard uses the example of the national park to make this point, wherein – in legal terms – the road and tarmac are governed separately from the park, which is governed by a different legal regime from the vulnerable animal species, which is governed by a different regulatory system relative to the camping areas or the employment of forest rangers.[63] Likewise, the employment of the forest ranger in the national park, of the football star in the capital and the apprentice baker in the village are – despite being spatially distinct – governed by a similar legal notion of the 'worker'. This suggests that the way in which law regulates space – to make it manageable – both artificially reduces the way in which we can perceive materials and relations as being entangled and obscures the way in which the same space

[60]I Braverman, N Blomley, D Delaney and A Kedar, 'Introduction: Expanding the Spaces of Law' in I Braverman, N Blomley, D Delaney and A Kedar (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford 2014) 18.

[61]D Delaney, 'Legal Geography I: Constitutivities, Complexities, and Contingencies' 39 (2015) Progress in Human Geography 99.

[62]R Orzeck and L Hae, 'Restructuring Legal Geography' 44 (2020) Progress in Human Geography 832.

[63]A Layard, 'Law, Place, and Maps' in R Bartel and J Carter (eds), *Handbook on Space, Place and Law* (Elgar 2021) 121.

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is occupied by conflicting normative pressures.[64] Law's 'fear' of space comes from this deep socio-material entanglement of reality, which upsets the abstract and symbolic demarcations that legal systems employ to narrate the world.[65]

The reflexive quality of legal geography – we cannot understand law without understanding the reality upon which it acts but also from which it emerges – is why it is one of the 'ways of seeing' what traditional doctrinal or constitutional EU law might miss. It takes seriously the fact that law 'matters': that its objectives, values or preoccupations serve to structure and alter the reality 'on the ground', and that its abstract character articulate symbolic and representational meaning. But it also takes seriously the fact that the translation from such abstract categories into the real world is – at best – incomplete and incoherent, and at times contradictory. The challenge lies in figuring out how to bridge the abstraction of law and the immediacy of reality, how to make sense of 'a reciprocity through which the law is spatialized by its distributions across places and locales and space is differentiated and particularized by law'.[66]

These complex interactions between space and law suggest the need for an analytical model that can untangle the threads. Much of the more theoretically inclined work in legal geography has indeed been preoccupied with constructing a framework that can mesh space and law in ways that do not accord a priority – be it conceptual, normative or practical – to either law or space. As such, concepts such as 'nomosphere' by David Delaney,[67] 'chronotopes' by Mariana Valverde,[68] the 'lawscape' in the work of Andreas Philippopoulos-Mihalopoulos,[69] or 'splice' of Nicholas Blomley,[70] irrespective of the difference between them, offer a nuanced way to imagine socio-material reality in ways that play with the ambiguity and co-constituted nature of law and space. What these analytical frameworks offer is a way of seeing local entanglements of space and law without demanding that we separate out what belongs to 'law' and what belongs to 'space'. It allows us to move beyond the causal arrow that links law with its material reality and see them as co-constituted. This is an example of another way of 'speaking' EU law (although clearly not the only way) that makes analytical space for the European society *within* the study of EU law: that can make sense of how EU law renders the European society, but also of how the material and relational structures of that society are transformed, obscured, or valorised through the law.

3. Heritage and EU law

What does all of this mean for an analysis of the interaction between EU law and European society? How might a foregrounding of the material and relational aspects of the object of inquiry, a sensitivity to lay knowledge and a spatial reading of law contribute to grasp the ways in which EU law and European society are interconnected? In this section, I analyse one particular aspect of the EU's regulation of food heritage as an example of what this approach could look like: the geographical indications legislation.

The legal regulation of heritage is an interesting starting point for a project that aims to disentangle the way in which EU law and European society are interlinked as it explicitly deals with socialisation practices. The notion of heritage both descriptively articulates *how* we live together but also normatively posits that how we live has *value* – which is unsurprisingly often

[64]Something Nicolini calls 'idealogical interaction'. See M Nicolini, *Legal Geography: Comparative Law and the Production of Space* (Springer 2022).

[65]On law's fear of space, see A Philippopoulos-Mihalopoulos, 'Book Review of Mariana Valverde's Chronotopes of Law' (2015) 42 Journal of Law and Society 668.

[66]A Hyde, *Bodies of Law* (Princeton 1997) 235.

[67]D Delaney, *The Spatial, the Legal and the Pragmatics of World Making: Nomospheric Investigations* (Routledge 2010).

[68]M Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Routledge 2015).

[69]A Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (Routledge 2014).

[70]N Blomley, *Law, Space and the Geographies of Power* (Guildford 1994).

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at the heart of processes of contestation.[71] Heritage is spatio-temporally defined (its authority deriving both from a claim about how to live *here* and how we have *always* lived), leans heavily on experiential and local forms of knowledge, and usually relates to material objects (food, football, mountains, buildings) or socialisation practices (linguistic, religious, cultural, environmental). Heritage, in other words, is perhaps the most obvious place where EU law can be read 'societally', and where we can discover if and how EU law 'creates' society or, conversely, how society appropriates and absorbs EU law. The below analysis is (deliberately) somewhat stylised and clunkily divided between a 'traditional' analysis of the legislation and the way in which law envisages society (section 3.A) and a more 'societal' analysis of the way in which the legislation has *in actual fact* changed society (section 3.B).[72] The discrepancy between the two is evident, suggesting not just that the methodological position defended here helps us 'see' what would otherwise remain hidden, but also that (EU) law has a problem in making sense of complex and functionally differentiated forms of sociability that make up society (section 3.C).

A. The law (aka the traditional interpretation of EU law)

The EU's geographical indication legislation aims to protect traditional ways of producing food by insulating them from the ordinary functioning of EU internal market law.[73] Whereas the internal market is usually based on fostering competition between dissimilar goods, the geographical indication legislation abandons this logic in order to cater for deeply rooted social praxis that protects the heritage aspects of the product.

Regulation 1151/2012 (recast as 2024/1143) lays down the conditions under which a food product can obtain the label of 'protected designation of origin' (PDO), 'protected geographical indication' (PGI), or 'traditional specialities guaranteed' (TSG). These labels protect – to different degrees – producers of traditional food distinctly linked to a specific region (and often making reference to that region in its name) from competition by producers *outside* that region. Well-known examples of PDOs are Champagne, Feta, Prosciutto di Parma, or Port. PDOs offer the most protection against competitors, demanding that all parts of the production process take place within a clearly defined region. PDOs are available for a product where its name identifies products 'originating in a specific place, region or, in exceptional cases, a country; whose quality of characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and the production steps of which all take place in the defined geographical area'.[74] PGIs are similar, but only require 'at least one of the production steps to take place in the defined geographical area'.[75] PGIs include Irish Grass Fed Beef, Aceto Balsamico di Modena, Jamon Serrano, Gouda Holland, or Oktoberfestbier. TSGs, finally, are not linked to a particular geographical area but prescribe a traditional production process that must be followed before a certain product name can be used.[76] TSGs include Mozzarella, Pizza Napoletana, and Gueuze beer. As of 2022, 1922 PDOs have been registered, 1469 PGIs, and 66 TSGs.[77]

[71]R Harrison, *Heritage: Critical Approaches* (Routledge 2013).

[72]For an approach that explicitly employs the chronotope on this question, see De Witte, *The Reality of EU Law* (n 20).

[73]The subsequent section is worked through in more depth in De Witte, 'You Are What You Ate' (n 23) 647.

[74]Art 5(1), Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[75]Art 5(2), Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[76]Art 18, Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[77]See for a full list: <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/>, last accessed 13 June 2025.

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At first glance, the EU's geographical protection legislation appears to take the societal, relational and material context of heritage very seriously.[78] The legislation, for example, explicitly roots the demands for registration in space and time, showing a sensitivity to the contextual character of heritage. All PDO and PGI requests are required to establish a clear link to the specific geographical character of the region,[79] highlighting what makes it *unique* in terms of ecology, landscapes, human-animal-earth interaction, indigenous plants and trees, and so on.[80] Applications sometimes read like travel books, highlighting the herbs that grow and wild goats eat; the interplay between shade and sun; and properties of the soil and traditional farming techniques; the colour and organoleptic characteristics of the product that are directly linked to the region's environment (so we learn, for example, that the particular landscape of Sicily allows its oil to have the unique organoleptic attributes of 'grass, tomato and artichoke').[81] All applications require to indicate a history of production, with the term 'traditional', for example, 'meaning proven usage on the domestic market for a period that allows transmission between generations; this period is to be at least 30 years'.[82] Almost all PDOs, PGIs, and TSGs spectacularly exceed this threshold, often referencing century-old production or cultivation processes.

The EU's legislation also explicitly mentions the maintenance of heritage as a socialisation practice revolving around a specific material context and socio-spatial relations as an objective. The preamble highlights that 'the quality and diversity of the Union's agricultural, fisheries, and aquaculture production is one of its important strengths (...) making a major contribution to its living cultural and gastronomic heritage. This is due to the skills and determination of Union farmers and producers who have kept traditions alive'.[83] The Regulation tries to protect this heritage by 'securing a fair return for famers and producers for the qualities and characteristics of a given product, or of its mode of production',[84] and, in doing so, helps to support rural economies 'in less favoured areas, in mountain areas and in the most remote regions, where the farming sector accounts for a significant part of the economy and production costs are high'[85] by ringfencing their produce from competition from within and beyond the internal market. The GIP legislation, in other words, appears – much more than other areas of EU legislation – to be already attuned to what I have claimed in my previous sections is often lacking: an awareness of how law is entangled with material and social relationships that are constitutive of our reality and the subjects' experience of that reality.

By most accounts, the geographical indications are successful in securing income for the producers.[86] Research suggests a 100 per cent mark-up for products labelled as PDO or PGI,[87] while collectively the GI products represent a yearly sales value of around €77 billion.[88] Many empirical studies highlight a drastic increase in market share for products labelled as GI, and

[78]T Lähdesmäki, S Kaasik-Krogerus and K Mäkinen, 'Genealogy of the Concept of Heritage in the European Commission's Policy Discourse' 14 (2019) Contributions to the History of Concepts 128.

[79]Art 5, Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[80]See also Case 12/74 *Commission v Germany [Sekt]* para 8.

[81]OJ 2016 C186/15, see A Hilton, 'Selling or Saving Cultural Heritage? Sicilian Protected Geographical Indication Extra-Virgin Olive Oil' (PhD thesis, 2020, School of Anthropology, University of Arizona).

[82]Art 3(3), Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[83]Recital 1, Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[84]Recital 18, Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[85]Recital 4, Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[86]R Bendix, *In Search of Authenticity: The Formation of Folklore Studies* (University of Wisconsin Press 1997) on the process of turning the authentic into luxury.

[87]T Chever, C Renault, S Renault and V Romieu, 'Value of Production of Agricultural Products and Foodstuffs, Wines, Aromatised Wines and Spirits Protected by a Geographical Indication' (2012) International Final Report to the Commission (AGRI-2011-EVAL).

[88]European Commission, DG Agriculture and Rural Development, Evaluation support study on geographical indications and traditional specialities guaranteed protected in the EU [2021], <https://data.europa.eu/doi/10.2762/708630>.

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have highlighted that the economic success of the GI labelling has alleviated economic pressures on local farmers, allowing for more expensive and time-consuming 'traditional' fashions of cultivation to be maintained, and has stabilised migration away from rural areas to urban centres.[89] In fact, the economic success of GIs is particularly visible in the vehement opposition of producers and regions that risk being excluded,[90] and in the prominent role that the protection of European GIs take in trade talks between the EU and its international partners.[91]

B. The reality of EU law

While the GI Regulation offers a clear and relatively balanced view of how they envisage the norms having an effect in reality, that reality has turned out to be very different on the ground. To repeat the terms used several times in this article: what EU law does to its society is often very different from what it says it does. This is a product of the way in which the GIP Regulation understands heritage and its material and relational entanglement, and how the codification of heritage inevitably leads to a destabilisation of these entanglements. In a way, as we will see, this is an example of where the *retreat* rather than the sophistication of EU law appears necessary in light of the way in which it affects the experience of participants to the societal process of food heritage.

While the GIP legislation may seem at first glance to successfully codify and protect heritage, such codification – especially to the level of detail required by the GI Regulation – always comes with risk of *ossifying* heritage, of freezing a dynamic century-long process in an entirely artificial moment. Regulation 1151/2012 (unlike the original GI Regulation 2081/1992) makes an allusion to this ever-evolving nature of heritage by highlighting that 'farmers and producers have kept traditions alive while taking into account the development of new production methods and material'.[92] In the registration process for GIs, however, the Regulation demands an incredible level of detail on all aspects of the production process, including, for example, the nutrients in the earth, modes of farming, availability of indigenous plants, ripening processes, physical, chemical microbiological or organoleptic characteristics of the product, and, more generally, a specific interaction between human and technological actions in the process.[93] This search for an artificial and codified 'authentic truth'[94] is problematic for a number of reasons.

First, it leads to the creation of a static notion of heritage, wherein the continuous reassessment of 'what matters' from the past, and how it ought to influence the present and future, is prevented. This reassessment, however, is central to heritage, as it allows for it to be kept 'alive' and internalise new technology, new environmental factors, and mediate in the conflicts between different subjects that relate to heritage in different ways. As Bowen and De Master have argued, while 'the local cultures and production methods that have created these unique products are constantly adapting to changing market, social and biophysical conditions, regulatory mechanisms fix production

[89]B Ilbery and M Kneafsey, 'Niche Markets and Regional Speciality Food Products in Europe: Towards a Research Agenda' 31 (1999) Environment and Planning 2207.

[90]As an example of the tension between Slovenia and Italy on the name balsamic vinegar, see: <https://www.euractiv.com/section/agriculture-food/news/italy-slovenia-await-commission-to-settle-balsamic-vinegar-dispute/>.

[91]M Huysmans, 'Exporting Protection: EU Trade Agreements, Geographical Indications, and Gastronationalism' (2022) 29 Review of International Political Economy 979.

[92]Recital 1, Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[93]Art 7, Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[94]G Welz, 'Contested Origins: Food Heritage and the European Union's Quality Label Program' 16 (2013) Food, Culture & Society 265.

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techniques in time and space'.[95] Standardisation and replicability are central to both the GI Regulation and the expectation of the market, leading to an artificial understanding of food heritage.

Secondly, it has led to the homogenisation of food heritage and food production *within* regions protected by a GI. On the one hand, the GI registration requirements demand such a level of specificity regarding the properties of the product that *already existing variation* between producers of the same GI product required standardisation.[96] This has led, in practice, to a degree of internal discontent, forcing producers of the same product to agree on a specific production process, where internal differentiation might have existed beforehand.[97] It has also led to the exclusion of producers who are unable to meet the newly-established standardised rules.[98] The process of standardisation also prevents producers from experimenting with novel techniques that might be better suited to the changing environmental conditions of the production or cultivation of the GI product. On the other hand, we can trace a homogenisation of production *within* regions, wherein the surplus value of GI products creates an incentive for producers of other products to switch to the GI product,[99] depriving regions of the food diversity that might have existed for centuries.

Thirdly, the GI labels have attracted predatory behaviour by (mostly) international conglomerates who, interested in the surplus value that GI products create, purchase production houses in the GI region, putting significant economic pressure on smaller producers while lobbying for changes to the GI registration to allow for either cheaper production processes or a product better suited to the taste of global consumers while maintaining of the GI label.[100] This behaviour suggests that the economic benefits of GI are such as to put pressure on the socio-cultural and bio-physical relational and material dimensions of food heritage. The process of agri-piracy has been well-documented, wherein (mostly) internationally oriented corporations appropriate lay and local knowledge, foreclose access for local communities and thereby starve them from the economic rewards of their own knowledge.

Fourthly, the codification of food heritage in the GI Regulation creates onerous management structures, which come with certain implications for our understanding and use of food heritage. The GI Regulations incentivise the creation of a management structure internal to the GI producers, which writes the application (often involving detailed engagement by historians, scientists, universities, experts and private-public partnerships), mediates in the process of internal standardisation, inspects the production process, develops the GI brand, enforces the GI in the global market, and so on).[101] These management structures often develop sophisticated regulatory, brand, and legal strategies, but are a relatively easy target for capture, and, more crucially, entail the side-lining of the traditional producers, including the local and lay knowledge that they possess.[102] This professionalisation of heritage management, in other words, further

[95]S Bowen and K De Master, 'New Rural Livelihoods or Museums of Production? Quality Food Initiatives in Practice' 27 (2011) Journal of Rural Studies 77.

[96]M Fonte, 'Knowledge, Food and Place: A Way of Producing, a Way of Knowing' (2008) 48 Sociologia Ruralis 209.

[97]D Dentoni, D Menozzi and M Capelli, 'Group Heterogeneity and Cooperation on the Geographical Indication Regulation: The Case of the "Prosciutto di Parma" Consortium' 37 (2012) Food Policy 207; using the example of Corsican cheese: S Bowen and K De Master, 'New Rural Livelihoods or Museums of Production? Quality Food Initiatives in Practice' 27 (2011) Journal of Rural Studies 78.

[98]With reference to Barrancos ham, Mesenikola wine and Oscypek cheese see Fonte, 'Knowledge, Food and Place' (n 96) 210.

[99]Welz, 'Contested Origins' (n 94) 272.

[100]Dentoni et al, 'Group Heterogeneity and Cooperation on the Geographical Indication Regulation' (n 97) 208; S Bowen and K De Master, 'New Rural Livelihoods or Museums of Production? Quality Food Initiatives in Practice' 27 (2011) Journal of Rural Studies 78.

[101]Dentoni et al, 'Group Heterogeneity and Cooperation on the Geographical Indication Regulation' (n 97) 208.

[102]For a wonderful account of this process using the example of PGI Olio di Sicilia see Hilton, 'Selling or Saving Cultural Heritage?' (n 81).

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exacerbates the ossification of heritage, starving it from lay and local knowledge that keeps it alive and excluding actors central to the heritage process from its continuous reproduction.[103]

Finally, the Regulation offers a privileged role to the Member State, who serve a gatekeeping function in assessing whether or not a local GI should be submitted for approval to the Commission.[104] This feeds into the strategy of gastro-nationalism,[105] which flattens domestic diversity, re-appropriates regional products as national ones, transforms domestic heritage into economic opportunity,[106] and makes them central not just to the local diet but its identity, as becomes clear in the veto-power that Member States with many GIs, such as Greece, Italy, Spain, France and Portugal are willing to leverage in protecting GIs in international trade deals.[107] Reflecting on the ways in which local and national communities intersect in construing forms of heritage, and the ways in which EU law structurally prioritises institutional epistemics over local or lay knowledge, could go a long way towards alleviating some of the concerns expressed on these pages. This short overview suggests that the societal consequences of EU law – whether intended or not – are very different from those that can be gleaned just by looking at the law itself. It takes a more materially, relationally and spatially grounded approach to come to grips with the way in which EU law is appropriated, used or rejected on the local level and how it may feed into forms of political contestation or social resistance.

C. The place of society in EU law

The distinction drawn out in the previous sections – between the society as construed by EU law and the one that actually emerges from the realisation of EU law – is perhaps overly stylised, but this is deliberately done to make a point. The point is, at its simplest, that EU law does not always (or only) do what's on the box. EU law affects the reality that people inhabit, the relationships that matter to them, the society that they operate in, and the material, bio-physical and socio-cultural environment that they live their lives in. This happens partially in ways EU law intends, but also inevitably in unintended ways. This is not just because EU law is not implemented correctly, is appropriated by particular actors, or because the effective functioning of law is otherwise mediated by actors, institutions or environmental factors. It is also because law cannot internalise all its possible consequences and because it applies to places, materials and relationships that are widely different from each other. Regulating food, in the example discussed above, may be approached from the perspective of nutritional value or consumer protection, but it is also about identity, economic models, social conventions, even demographic developments. Moreover, different parts of Europe – east or west, urban or rural, mountainous or coastal – may bring to the fore distinct regulatory challenges or consequences that a unitary legal system struggles with. The discrepancy between the two parts explored above suggests not just that the methodological position defended in this paper helps us 'see' what otherwise remains hidden, but also that (EU) law has a problem in making sense of complex and functionally differentiated forms of sociability that make up society.

All of this is to say that EU law is perceived as an instrument that protects and promotes *particular* forms of society, socialisation and particular forms of life. It is unsurprising, in a way, that contestation of EU law emerges in relation to both its substance (too neo-liberal, too cumbersome, too elitist, too ecological) and in relation to law *itself* as a form of regulation. As Liz Fisher has highlighted in reference to the EU's climate policies, the authority of EU law as such is

[103]Fonte, 'Knowledge, Food and Place' (n 96) 200.

[104]Art 8 (2)(c) and Art 9, Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs ('GI Regulation'), [2012] OJ L343.

[105]Welz, 'Contested Origins' (n 94) 270, using the example of Cyprus.

[106]G Welz, 'Contested Origins' (n 94) 265.

[107]M Huysmans, 'Exporting Protection: EU Trade Agreements, Geographical Indications, and Gastronationalism' 29 (2022) Review of International Political Economy 979.

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in trouble where it is perceived as an instrument that serves particular substantive preferences.[108]

Let us translate this to the object of our brief case study. Through its GI Regulation, EU law takes heritage out of competition: it is considered something sufficiently important that the basic rules of EU free movement law are explicitly and permanently suspended. While this has had the intended effect of protecting income streams for local communities, it has also led to many *unintended* consequences that remain at first glance invisible and have significant impact on the way in which EU law alters local social interactions. It is unsurprising that contestation of EU law centres on its effect of displacing and freezing out local and lay knowledge, participation and access to the economic benefits generated. The EU's largely instrumental view on food heritage – wherein its codification serves to protect its economic viability – has led to the emergence of 'museums of production' throughout Europe; a sanitised, standardised, and carefully crafted and managed 'experience' of food heritage to be consumed by outsiders.[109] The socio-cultural and bio-physical elements of heritage, on the other hand, find little recognition, partially because they tend not to be expressed in the epistemic lexicon that is legible for EU law, and partially because they presuppose deference to local circumstance, lay knowledge and geographical variation that EU law seems constitutively allergic to.

In particular the relational commitments that underpin the evolution and dynamism of food heritage and the heterogeneity, close interaction and mutual interdependence between producers in a certain region are often ignored in the legal regulation. Bowen and De Master, in their research, for example, found that the management of the Comté PDO explicitly limits the potential for extra-local actors to enter the lucrative market and creates incentives for local actors to cooperate in the production process.[110] UNESCO, likewise, in its application process for intangible cultural heritage (of which food can be part) demands wide consultation and participation of a large number of local groups, individuals and communities and explicitly highlights that 'overly technical descriptions should be avoided'.[111] Challenging the scientific epistemics in this way, could be an interesting strategy to ensure that EU law remains sensitive to the heritage dynamics that are at the core of the way in which its regulation affects local communities. Other options could include giving up on the requirement of internal homogeneity before GPIs are accepted, allowing for the continued variation and experimentation within the production of food products, or limitations to the free movement of capital and establishment into GPI territories once registration has taken place. We could, in other words, envisage a legal system that is more sensitive to the material and relational dynamics that underpin European society.

But perhaps even the most inclusive imagination of EU law that is possible remains ill-equipped to make sense of (and let alone be constitutive of) European society. In structuring European society, EU law inevitably and invariably re-orients practices that are constitutive of that society. It does this in the regulation of food and in its protection of vulnerable animal species; in its rules on short-term rentals in cities and through its rules on migration; in the form of the regulation of trains or minerals as much as through its case law on the justiciability of Article 2 TEU. It is impossible for any legal system to take control for its societal implications in ways that prevent its contestation. What makes this a distinct impossibility for *EU* law, however, is that the institutions, epistemic commitments and spatial orientation that *could* mediate the translation from legislative (or judicial) intent and into the society in which it operates are largely missing. The involvement of local social institutions, the valorisation of local and lay knowledge and a commitment to spatial heterogeneity of application are, on this view, dynamics through which a legal system is made sensitive to how it is perceived or experienced by its society. All of these

[108]L Fisher, 'Challenges for the EU Climate Change Regime' 21 (2020) German Law Journal 5.

[109]S Bowen and K De Master, 'New Rural Livelihoods or Museums of Production? Quality Food Initiatives in Practice' 27 (2011) Journal of Rural Studies 73.

[110]Bowen and De Master, 'New Rural Livelihoods or Museums of Production?' (n 109) 80.

[111]L Di Fiore, 'Heritage and Food History' in I Porciani (ed), *Food Heritage and Nationalism in Europe* (Routledge 2019) 37.

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aspects, however, are largely (and deliberately) excluded from consideration in EU law – focused as it is on bootstrapping a particular reality and a particular society from the text of the Treaty. This particular society now has been given shape through Article 2 TEU, and it has been given meaning in so far as it is envisaged to lead to the transformation and coming together of the many societies that compose Europe. In such a vision, deference to local variation and lay knowledge, to the bio-physical and socio-cultural environment, to materials and relationships, to contestation, confusion and chaos – that is, to the experiential perception of what society is made up of – is not evident.

The challenge, then, is partially for significant epistemic and methodological re-imaginations of EU law, allowing us to see beyond uniformity and unification, and be sensitive to alternative forms of normativity and alterity that make up European societies. But the challenge is not only for EU law to become more sophisticated in its understanding of and enmeshment in society, but also for EU law to *retreat*. What is needed for EU law to capture the complexity of European society is the creation of (epistemic) space for not-knowing, for alterities and forms of life that are *inexplicable through law*; not in the sense that they defy rational or political beliefs, but because explaining them in legal terms would inevitably reduce them *to* those rational or political beliefs. The example of heritage is a good example of this dynamic. It is exactly *because* of its codification that heritage becomes ossified and its material and relational context unstable. More law, bluntly put, may mean less of society remains visible; and more sensitivity to European society may therefore require less (or at least a different type of) law.

It has been argued that EU law cannot help but being overbearing, fostering a sense of alienation and disaffection throughout its policy domains.[112] This is not, as we saw, only because of the substantive orientation of EU law, but because *no* legal system can be sensitive to the wondrous range of alterities that make up society. In a way, however, calling for a retreat of law – in certain places, at certain times – is not giving up on the idea of a European society. As Ben Judah's book 'This is Europe' shows us, that society *exists*. Europe is full of complexity and contradictions, it is full of winners and losers, people that despair and those that hope, who feel valued or ignored. Europe is more or less integrated depending on its laws, but also the choices, characters and encounters of its inhabitants. Making this complexity visible through law, or legible for law – let alone composable *through* law – is an illusion. The highest EU law can aspire to, in its interaction with European society, lies in making space for a structural sensibility for the alterities that make Europe.

4. Conclusion

This paper started with the suggestion that it is difficult for EU law (and EU lawyers) to 'see' European society, and to make analytical sense of it. This is mainly due to a degree of immanence through which the EU's legal order has been constructed. This article suggests that EU legal scholarship could do with shifting attention away from EU law itself and to focus instead on the European society that is made by, resists, ignores or internalises the demands of EU law. We need to move away from what EU law *says* it does to what law actually *does*. This presupposes three moves. First, a turn towards material and relational approaches to law that grounds EU law analytically in the lived experience of its citizens. Second, a commitment to include lay epistemics alongside scientific expertise and political subjectivity. Third, more methodological ambition and playfulness in how we 'speak' EU law in order to resist the causal and teleological axioms that dominate EU law and make space for discursive practices that embrace the reflexivity between European law and European society.

Using the example of (food) heritage, we can see how EU law, despite its best intentions, in regulating material realities also significantly affects forms of socialisation that are central to local

[112]D Chalmers, 'The Unconfined Power of European Union Law' 2 (2016) European Papers 405.

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communities. The spatio-temporal re-orientation that EU law produces highlights or obscures diverse actors, processes and relationships. It is unsurprising that this produces forms of contestation and resistance, especially when local knowledge, local actors and local communities are frozen out of administrative, regulatory, economic and political structures that govern (in this case) food regulation. Ultimately, this paper hints at some immanent limitations in EU law as a form of regulatory power, whose static nature, epistemic presuppositions, and focus on economic agency means that it risks reproducing contestation and conflict regardless of the regulatory strategy adopted.

The paper is entitled 'Is this Europe?' as a direct challenge to the widely held belief that EU law is somehow a constitute of European integration; that EU law contains all that European integration is, can and will be.[113] Sure, the Europe that we see when analysing cases, treaties and legislation matters. But the 'real' Europe – the one that is felt, experienced, *lived* – resides in what happens due to, in spite, or irrespective of those cases, treaties and legislation. For EU law to remain sensitive to its society, then, EU law needs to reformulate the expectations it has of itself.

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[113] Azoulai, 'Integration through Law and Us' (n 2) 449.

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