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► To cite this version:

Afroditi Marketou, Joana Mendes. Taking Legal Diversity Seriously: EU Law as Local Knowledge. 2026. <hal-05519132>

HAL Id: hal-05519132

<https://hal.science/hal-05519132v1>

Preprint submitted on 19 Feb 2026

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Luxembourg Centre for European Law
Research Paper Series

N° 2025/2

Taking Legal Diversity Seriously: EU Law as Local Knowledge

LCEL

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Luxembourg Centre for European Law Research Paper Series
ISSN: 2309-0227



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Taking Legal Diversity Seriously: EU Law as Local Knowledge

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Draft: 24 November 2025

Abstract

Claims of identity – whether national or European, more or less supported by constitutions and treaties – abound in the current context of crises and risk further imperilling integration. Against this background, we argue that it is urgent to reflect on the capacity of EU law to express different claims, worldviews and identities from those of the Euro-lawyers who invented and promoted it. To do so, we propose to approach EU law as local knowledge, i.e. as a set of legal practices, techniques, patterns of reasoning, concepts and formulas that are locally constructed to respond to local needs and standards of argumentation. This perspective contrasts with the functional thinking that has permeated EU law, which risks stretching the law beyond what it can realistically achieve. Showing the variety of local meanings of EU law, we argue, can give valuable insights on the reasons of the disconnection between EU law and society, but also – and importantly – on possible ways to reconnect.

Keywords

Uniformity of EU Law – Legal Diversity – Comparative Law – Functional Legacy – Local Meanings

Cite as

Marketou Afroditi and Mendes Joana, 'Taking Legal Diversity Seriously: EU Law as Local Knowledge' (2025) 2 LCEL Research Paper Series [www.lcel.uni.lu].

1. Identities and EU law*

In the past few years, we have witnessed an emphasis placed on the importance of diversity of the Member States' legal orders. This awareness has coincided with the fencing in against the potential derailing of integration, by virtue of the challenges posed by illiberal constitutional transformations in the Member States. The tension between, on the one hand, the Court's moves to close the floodgates and, on the other, the space that it necessarily must acknowledge to Member States for the preservation of their national identities in view of Article 4(2) TEU, is particularly illustrative of this double movement.¹ To the Treaty recognition of national identities, the Court has promptly added the "identity of the European Union as a common legal order", as per Article 2 TEU.² AG Ćapeta went one step further: "Article 2 TEU expresses the choice of the founders of the European Union as to the type of society that the Member States have pledged to create together within the framework of the European Union" – "the vision of what a good society is in the EU constitution" – and that that choice "represents the very identity of the European Union."³ The paradox is clear: the EU affirms its identity most strongly where it falters. Such identity draws on universalistic claims that are juxtaposed to "mental maps" where commonality is anything but a given.⁴ Judicial solutions pursue the logic of "unfolding (...) an original (...) project, enshrined in the founding Treaties",⁵ grounding important legal developments on the law itself, in a leap forward that appears to ignore historical contingency, social conflict and political compromise.⁶ Sceptics would thus be tempted to look beyond the puzzling affirmations of AG Ćapeta, to the (geo)political, social and economic drivers of the current evolution of EU law. They would likely read claims of identity and of foundational choices as superficial legal jargon, dressing up deeper ideological choices. "Could anyone really believe this?", sceptics would be tempted to ask.⁷

Attention to the context in which EU legal integration unfolds shows that EU's identity and the core debated matters in EU law have always varied across time and place. While the dream of Social Europe might seem utopian or irrelevant for those who master the technicalities of EU legal knowledge today, it was not so aberrant for the European Left during the "long 70s".⁸ In different sectors, circles, or at different periods of time, the EU can be about peace, an ever closer union of the peoples of Europe, consolidating democracy, securing and enhancing economic integration, protecting fundamental rights, facing the financial crisis, strengthening the rule of law, or striving for trustworthy AI, just to mention a few examples. What has remained constant in the dissonance of these different arguments and perspectives, is the particular force of law as an agent of European integration, and the privileged position that Euro-lawyers

* The authors are grateful to the participants of the Workshop Local Meanings of EU Law held on 10-11 December 2024, at the University Paris – Créteil, and those of the European Society Unbound Panel on Local Meanings, held on 24 September 2025 in Prague, in particular to Michal Bobek and Leticia Díez Sánchez for their insightful comments. This paper continues to be work in progress, and the authors welcome comments at afroditi-ioanna.marketou@u-pec.fr and joana.mendes@uni.lu.

¹ C 156/21, *Hungary v Parliament and Council* (EU:C:2022:97, paragraphs 232 to 235, and C 157/21, *Poland v Parliament and Council* (EU:C:2022:98, paragraph 264 to 266).

² *Idem*, para 232 ; *idem*, para 264, respectively (emphasis added)

³ Case C-769/22, 5 June 2025, ECLI:EU:C:2025:408, paras 155 to 158.

⁴ Julian Scholtes (2025), "The Venice Commission and the Mental Map of European Constitutionalism" *Hague Journal of the Rule of Law* (first view).

⁵ Agustín José Menéndez (2024), "[The Triumph of EU Law in Context?](#)", *Verfassungsblog*, "Controversies over Methods in EU Law" Symposium, accessed 13 May 2025.

⁶ On the importance of these factors for the understanding of EU law, see Fernanda Nicola and Bill Davies (eds.), *EU Law Stories: Contextual and Critical Histories of European Jurisprudence* (Cambridge University Press, 2017). See also the special issue of the *American University International Law Review*, 28:5, 2013; and Bill Davies and Morten Rasmussen (2012), "Towards a New History of European Law", *Contemporary European History*, 21:3, 305–318.

⁷ Annelise Riles, "An Ethnography of Abstractions?", *Anthropology News*, September 2000 on the singularity and universality of meaning of the rule of law, cited by Vincent Réveillère (2020), « Prendre au sérieux les pratiques des juristes. Le cas du formalisme », *Cahiers de méthodologie juridique*, RRJ, no 34, 1675-1690, at 1688.

⁸ Aurélie Dianara Andry, *Social Europe: The Road Not Taken. The Left and European Integration in the Long 1970s* (Oxford University Press, 2022).

have enjoyed in shaping the course of the EU. We know much today about the shared knowledge practices, professional habits and worldviews of this transnational community, and of the way their technical work has been put into the service of unprecedented legal, economic, political, and social changes that were hardly imaginable some decades ago.⁹ For a long time the synergy between EU legal studies and the practice of EU institutions was sustained by a continuous belief in the intrinsically emancipatory character of EU integration.

However, times have changed dramatically and the values turn that the Court has been taking increasingly appears as a hardly convincing leap forward when confronted with the weaknesses of the law to weigh in on troubled political processes. Even Euro-lawyers, who had always believed in the benefits of EU integration, have lost faith in the “positive force of law” in the current context of crises. Importantly, they are not alone; Eurosceptic tendencies mount in all spheres of legal economic, social and political action. Appeal to a common *telos* or *ethos* no longer seem to suffice to sustain the process of integration.¹⁰

Against this background, it is urgent to reflect on the capacity of EU law to express different claims, worldviews and identities from those of the Euro-lawyers who invented and promoted it. There is a widely shared intuition among EU lawyers that EU law would have much to gain from closer attention to social practices and to the lived experiences of individuals and social groups.¹¹ This is expressed in multiple ongoing projects that share the ambition to bring EU law “down to earth”,¹² closer to European society and to forms of life in Europe.¹³ In line with such projects, we propose to account for the variety of experiences, worldviews and aspirations that have inspired the mobilisation of EU law in different contexts or on the contrary that have inspired criticism and distrust towards such mobilisation. In other words, what we propose is an inquiry into the “infinitely rich varieties of human experience and their specifically legal expressions” in the different local meanings of EU law.¹⁴ In this endeavour, legal comparatists’ recent attention to local sentiments, mentalities, worldviews and meanings that developed as a reaction to global constitutionalism, can give important insights for the study of EU law and can lead to a better understanding of the role of law in European integration. This is even more so, as the CJEU’s recent turn to values echoes theories of the total constitution that underpin the global constitutional narrative.

Our project is, thus, situated at the intersection of two fields that do not communicate so much after all: European law and comparative law theory and method. EU law, precisely because of its aspiration to uniform application and to harmonisation across so different contexts, is a unique field of inquiry for comparative law: it allows to shed light on the relationship of law to context and on the potential and limits of legal convergence in Europe. While comparative law has always been crucial to the development of the European project and to the practice of European institutions, European legal studies have rarely taken legal divergence seriously. Research on the local meanings of EU law, we argue, can give valuable insights on the reasons of the “disconnection” between EU law and society,¹⁵ but also – and importantly – on possible ways to reconnect.

In what follows, we set out the premises of this proposal, flesh out its main dimensions, and further explain why we think it is a promising path of inquiry. We start by characterising law as local knowledge and by

⁹ On the social field of Eurolawyers, see the work of Antoine Vauchez.

¹⁰ Loïc Azoulay (2016), “Integration through law’ and us”, *International Journal of Constitutional Law*, 14:2, 449–463.

¹¹ Antoine Vauchez (2020), “The map and the territory: Re-assessing EU law’s embeddedness in European societies”, *Maastricht Journal of European and Comparative Law*, 27:2, 133–136.

¹² Antoine Vauchez (2022), “EU law, down to earth”, *European Law Open*, 1, 148–149. Charlotte O’Brien (2022), “Bringing EU law back down to Earth”, *International Journal of Law in Context* 18, 450–460.

¹³ Loïc Azoulay (2024), “[Reconnecting EU Legal Studies to European Societies](#)”, *Verfassungsblog*, “Controversies Over Methods in EU Law” Symposium, accessed 12 May 2025. See also the [FOLIE](#) project at Sciences Po Paris, and the workshop organised at the EUI, “Is this Europe? Conceptualising the Everyday in European Law” on 10 June 2025.

¹⁴ The phrase is taken from Roger Cotterrell, “Is It so Bad to Be Different? Comparative Law and the Appreciation of Diversity” in Esin Örücü and David Nelken (eds.), *Comparative Law: A Handbook* (Hart, 2007), 133, at 152.

¹⁵ See the call for papers for the workshop on “EU Law and Its Disconnections From Society” at the University of Copenhagen.

outlining the consequences that this approach has for the tenet of uniformity of EU law (Section 2). While EU law has accommodated difference in multiple ways (something expressed from the outset in the motu “united in diversity”), it has also always been clear that EU law needed to remain uniform legal knowledge, overseen by the Court of Justice (Section 3). We probe this conception, by analysing the nexus between legal uniformity and integration, which we argue is not as fundamental as usually conceived (Section 4). It is clear that the EU needed to be built on the premise of commonality, but neither was commonality a sufficient condition of integration nor were the implications of diversity sufficiently accounted for in understanding EU law. The obstacles to drawing them out come, in part at least, from the functional legacy of comparison in the development of EU law which has turned functionalism into a general characteristic of EU legal thinking (Section 5). Finally, we argue how important it is, in inquiries regarding diversity in EU law, to move beyond the opposition between European integration and the national dimension of law and politics (Section 6) and we explain how our proposal may take important steps in that direction (Section 7). *Local* meanings of EU law are much richer than *national* meanings of EU law. They can give voice to the unheard experiences of EU law, which are as important to understanding EU law as those that are institutionally expressed either through national or EU channels.

2. Contesting the uniformity of EU law

The approach that we propose implies to see law not as a universal or European science but as local knowledge.¹⁶ It implies to see that legal practices, techniques, patterns of reasoning, concepts and formulas –all this kind of expert legal knowledge– are locally constructed to respond to local needs and standards of argumentation. This is also the case with EU law. When received in different contexts, EU law provokes legal change and affects the way local actors think about law and its relation to society. At the same time, EU law is reinvented within local legal argumentation, it is remodelled within local legal worldviews and narratives. The way core EU legal concepts such as the values of the Union, primacy, direct effect, *effet utile*, fundamental rights or national constitutional identity will be understood depends not only on the differences between the legal systems of the Member States, but also on what is locally perceived as important by legal actors, on local sources of law and on local ways of producing legal knowledge. Ultimately, EU law’s success or failure does not so much rely on its effective application, its capacity to promote European integration or an abstract conception of its legitimacy or identity.¹⁷ Rather, the success or failure of EU law depends on what EU law replaces and on the possibilities that it creates, on local legal actors’ expectations of its use and on locally prevalent criteria for evaluating legal arguments. In this way, peculiar uses of EU legal concepts express particularly local representations of law, of what should be conceived of as a problem in a particular context and of possible legal solutions, peculiar visions of the state, society and Europe.

This approach takes issue with an assumption that, albeit implicit and sometimes criticised, still underpins EU legal common sense: the uniformity of EU law. This assumption is core to what Jacob van de Beeten calls “a systemic understanding of EU law – the idea that EU law is a coherent, uniform whole that is governed by its own rationality and foundational principles”.¹⁸ The premise of uniformity underlies the autonomy of EU law, and fundamental principles such as primacy,¹⁹ direct effect or non-discrimination,²⁰ as well as the core mechanisms of EU integration, such as the preliminary reference

¹⁶ Clifford Geertz, *Local knowledge: further essays in interpretive anthropology*, 3rd ed., Basic Books, 1983.

¹⁷ Case C-156/21, Hungary v Parliament and Council, ECLI:EU:C:2022:97, para 127 and 232.

¹⁸ Jacob van de Beeten, *idem*.

¹⁹ Via primacy, “the incorporation of EU law into domestic legal systems responds to its own logic and modalities” (Loïc Azoulay, “Structural Principles in EU Law” in Marise Cremona (ed.), *Structural Principles in EU External Relations Law* (Hart, 2018), 31-45, 36).

²⁰ On this, see for example Marcus Klamert (2022), “Supremacy, the Uniformity of EU Law, and the Principle of Equality”, *Austrian Law Journal*, 82-92.

procedure or the take-it-or-leave-it approach of the European *acquis*. Uniformity of EU law has been crucial to legal integration in the EU. As the CJEU has stated:

The success of Community law in embedding itself so thoroughly in the legal life of the Member States is due to its having been perceived, interpreted and applied by the nationals, the administrations and the courts and tribunals of all the Member States as a uniform body of rules upon which individuals may rely in their national courts.²¹

So important has uniformity of EU law been to the development of EU legal system that it is even said to have a truly existential character, connected to the construction of a new, *sui generis* legal order that is disembedded or 'emancipated' from the historical, political and legal contexts from which it emerged.²²

And yet, it suffices to compare some EU law handbooks in different Member States to realise the diversity in the ways EU law is conceived and conceptualised, to see that, as Neil Walker put it, "there remain as many versions of EU law as there are member states".²³ EU legal knowledge – the legal problems that EU law raises, debated concepts, landmark decisions and standard types of EU legal argument – is fragmented among different national communities.²⁴ This is the case, even when EU legal concepts or ways of reasoning spread in domestic jurisdictions. As Michal Bobek observes, "what is being passed on is, at the same time, being modified, amended, and contextualized, often to the extent that a critical observer might start wondering whether the ensuing 'product' received is still a copy of the original model or already a new creature in its own right".²⁵

But difference exists even within national communities, among different social groups, ideologies, networks or institutions. Difference exists also in the field of EU law, among its different branches, which makes a general EU law increasingly difficult to maintain, or increasingly divorced from rich sector-specific manifestations of EU law. To take the example of proportionality in the ECJ case law, this principle is very differently applied according to the field: competences of EU institutions, EU citizenship, fundamental rights or internal market.²⁶ Its more recent application to monetary policy has revealed how the variety of meanings of proportionality in EU law must be taken seriously.²⁷ What we propose then is to adopt a reflexive attitude as EU lawyers, and to see what every linguist, translator or comparative lawyer knows: that EU law *cannot* be applied in a uniform manner – cannot *be* uniform – because it simply cannot have the same meaning in different contexts, irrespective of whether those contexts are delimited by jurisdictional boundaries, by specific time periods and spatial arrangements, by institutional settings or by sector-specific developments. Acknowledging legal diversity is all the more urgent, as illiberal and anti-European forces claim a say in re-defining the terms of EU law and the shape of the EU polity.

²¹ Report of the Court of Justice (and Court of First Instance) on Certain Aspects of the Application of the Treaty on European Union, Luxembourg, May 1995, para.4, cited by Carol Harlow (2002), "Voices of Difference in a Plural Community", *The American Journal of Comparative Law*, 50:2, 339–367.

²² Jacob van de Beeten, *The EU's Unwritten Constitution: A Critique of Judicial Constitution Building in the EU*, book project presented at the Local Meanings of EU Law workshop, 10–11 December 2024, University Paris-Est Créteil.

²³ Neil Walker (2005), "Legal Theory and the European Union: A 25th Anniversary Essay", *Oxford Journal of Legal Studies*, 25:4, 581–601, at 582.

²⁴ See for example, Daniel Thym (2016), "[The limits of transnational scholarship on EU law. A view from Germany](#)", *EUI Working Paper. LAW*, accessed on 3 April 2024. For such an inquiry in the field of international law, see Anthea Roberts, *Is International Law International?* (Oxford University Press, 2017). See also Jaka Kukavica's project, "Transplanting Approaches: From Comparative International Law to Comparative European Law" presented at the Local Meanings of EU Law workshop, 10–11 December 2024, University Paris-Est Créteil.

²⁵ Michal Bobek, 'Europeanization of Public Law' in A. von Bogdandy, P. M. Huber, and S. Cassese (eds.), *The Max Planck Handbooks in European Public Law—Vol. 1: The Administrative State* (Oxford University Press, 2017), 631–73, Section D.2.

²⁶ Vicky Kosta, "[The Principle of Proportionality in EU Law: An Interest-based Taxonomy](#)", in Joana Mendes (ed.), *EU Executive Discretion and the Limits of Law* (Oxford University Press 2019). Jacco Bomhoff makes the same remark in the field of comparative law in "Beyond Proportionality: Thinking Comparatively about Constitutional Review and Punitiveness" in Vicky Jackson and Mark Tushnet (eds.), *Proportionality: New Frontiers, New Challenges* (Cambridge University Press, 2017), 148–170.

²⁷ Kosta, *idem*.

3. Uniform law, differentiated interpretation and application

No one denies that there are differences in the interpretation and application of EU law but these differences are simply not taken seriously as relevant EU legal knowledge. If those differences are not envisaged in EU law itself (if the possibility of different application is not regulated by common norms or recognised by the Court), they are seen as imperfections, as indications that EU integration in a given field has not been fully accomplished yet. Sometimes they are taken as the result of an error, a misconception of EU law, or as expressions of local resistance to the project of integration.²⁸ But what motivates resistance is seen as external to the law: it comes from a particular political, ideological, institutional, or strategic calculation. Hence, the reassuring idea that EU law is a coherent, rational system persists. When adopting this perspective however, the capacity of different kinds of legal rationality and legal consciousness to influence EU law and the construction of Europe is largely neglected. Differences in the understanding of EU legal concepts and techniques might not be only matters of contingency, the result of an accident or of lawyerly strategies to win concrete cases. They might express profound elements of the cultures and kinds of legal consciousness that convey them.

EU law techniques of contextual reasoning and of accommodating diversity are not always enough to accommodate such elements. This becomes evident when cultural or religious practices are themselves evaluated according to the precepts of EU law. To take a well-known example, the CJEU's use of proportionality in *Achbita* failed to do justice to a major conflictual point of legal interpretation: wearing the hijab constitutes an exercise or a manifestation of the Muslim religion?²⁹ Assuming the uniformity of EU legal knowledge obfuscates these kinds of conflict, presents the point of view of the winners as hegemonic and excludes or at least marginalises the kinds of legal knowledge, and the underlying worldviews and expectations that are silenced.

This is not to say that EU law gives no room to difference. The tensions between uniformly interpreted and uniformly applied law, on the one hand, and the diversity of legal, socio-economic, political and cultural contexts to which it applies, on the other, is inherent in EU law. The preliminary ruling procedure illustrates those tensions. While the Court continues reiterating that "the meaning and scope [of an EU legal provision] must normally be given an autonomous and uniform interpretation throughout the European Union"³⁰ – and autonomous interpretation is meant to secure uniform application³¹ – the application of EU law, a competence of national courts, is necessarily varied. The preliminary reference procedure cannot, therefore, aim at uniform application, but at "proper application" of EU law.³² And yet, it is clear that demarcating boundaries between interpretation and application is far from straightforward.³³

More broadly, that tension between uniformity and diversity grounded different developments of EU law. Differentiated integration is among the most conspicuous. It has been, since the Maastricht Treaty, a response to economic, cultural and political divergences, as well as different capacities among Member States, to avoid paralysis as the EU advanced into areas identified with state sovereignty (currency, security, migration, welfare), and concerns for national identity increased.³⁴ Non-participating Member

²⁸ Magnus Esmark, "The 1989 buy-Danish clause: Making sense of legal error through allodoxia" *European Law Open* (2025, forthcoming).

²⁹ Joseph Weiler (2017), « Je Suis Achbita! », *International Journal of Constitutional Law*, 15(4), 879-906.

³⁰ Case C-340/21, *Natsionalna agentsia za prihodite*, EU:C:2023:986, para 23.

³¹ Case C-110/24, *Sindicat de Treballadores i Treballadors de les Administracions i els Serveis Públics*, EU:C:2025:768, para 22; Case C-507/18, *Associazione Avvocatura per i diritti LGBTI*, EU:C:2020:289, para 31.

³² Case C-144/23, *Kubera*, EU:C:2024:881, para 35. See, further, Opinion of Advocate General Jacobs, Case C 338/95, *Wiener Sl*, EU:C:1997:352, para 42 (arguing that, in preliminary ruling procedures, the focus of the Court should be on uniform interpretation) and, on the same line, Opinion of Advocate General Bobek, Case C-923/19 *Van Ameyde España SA*, EU:C:2021:125, para 56 to 59. We are grateful to Michal Bobek for pointing out this nuance in the case law.

³³ Opinion AG Jacobs, cit., para 15; Opinion AG Bobek, cit., para 50 and 58.

³⁴ Frank Schimmelfennig and Thomas Winzen (2019), "Grand theories, differentiated integration", *Journal of European Public Policy*, 26:8, 1172-1192.

States are then legally exempted or excluded from a designated area of EU law. Room for differentiation exists also when all Member States are covered by common legal frameworks that give them discretion on how to accommodate those regimes to their national legal orders.³⁵ Techniques to deal with diversity range from minimum harmonisation, derogations to specific provisions, possibilities to deviate from the legal regime without that entailing a breach of EU law, or to temporarily suspend or restrict EU law subject to duties of information and reason-giving to the Commission, or simply the possibility that Member States exempt certain issues from the legal regime.³⁶ Diversity of national and regional conditions was also at the origin of “experimentalist governance”, more flexible and open to accommodating those differences and focusing on how they influence the content of the law and how policies develop over time through local experimentation and mutual learning between the actors involved in policy-making.³⁷

But none of these additional layers of complexity has led to a reflexive analysis on what diversity means for the nature of EU law, on whether and how local legal worldviews and narratives can give new meanings to EU law, or overridden EU law’s systemic understanding. It remains unquestioned that diversity occurs only in EU law’s terms, as interpreted by the Court of Justice and as overseen by the European Commission. Within the spheres of differentiated integration, the tenets of EU law as uniform legal knowledge remain unchanged. In this case, difference is externalised, as it excludes certain Member States from some aspects of integration.³⁸ Where diversity is accommodated within common legal regimes, this is considered a matter of *implementation* of EU law, that is, of putting it into practice. Here, difference is no longer only a problem of deviation from the standard norms, but rather a “deliberate strategy to deal with diversity”.³⁹ Indeed, the focus seems to have changed more recently from compliance – and, hence, from divergence as a problem – to understanding the processes through which Member States adjust EU determinations to their diverse national realities, and how the EU “[achieves] responsiveness to Member State preferences and idiosyncrasies”.⁴⁰ Experimentalism responded to a similar need, insofar as it found its way into EU legal regimes.⁴¹

Yet, in all these forms, EU law as uniform legal knowledge produced by the EU institutions and overseen by the Court continues to determine the conditions under which diversity remains compliant with its strictures. What is not uniform within the scope of EU law remains so only insofar as EU law allows. Deviance continues to be perceived as a problem: if not legally recognised, it creates “unstable situations” which must be dealt with legally.⁴² Locality is something to be *accommodated* but always *on European conditions*, justified in EU legal terms. Unequal treatment between the Member States and excessive divergences remain a concern, as does the possibility that Member States use diversity as a means to

³⁵ Sebastiaan Princen, Frank Schimmelfennig, Ronja Sczepanski, Hubert Smekal and Robert Zbiral (2024), “Different yet the same? Differentiated integration and flexibility in implementation in the European Union”, *West European Politics*, 47:3, 466-490.

³⁶ For examples, see Princen et al, 478-482.

³⁷ Charles F. Sabel and Jonathan Zeitlin (2008), “Learning from difference: The new architecture of experimentalist governance in the EU”, *European Law Journal*, 14 :3, 271-327.

³⁸ See, i.a., Bruno de Witte, Andrea Ott, Ellen Vos, *Between flexibility and disintegration: the trajectory of differentiation in EU law*. (Edward Elgar, 2017),

³⁹ Asya Zhelyazkova, Eva Thomann, Eva Ruffing & Sebastiaan Princen (2024), “Differentiated policy implementation in the European Union”, *West European Politics*, 47:3, 451.

⁴⁰ Zhelyazkova et al, *idem*. 439-465. They aim to understand how EU policies change as a result of differentiated implementation (442-443, 451) and to place it in pair with differentiated integration.

⁴¹ See the contributions in Charles Sabel, and Jonathan Zeitlin (eds) *Experimentalist Governance in the European Union: Towards a New Architecture* (Oxford, 2010).

⁴² Tobias C. Hofelich, “De Facto Differentiation in the European Union: Circumventing Rules, Law, and Rule of Law”, in Benjamin Leruth, Stefan Gänzle and Jarle Trondal (eds.), *The Routledge Handbook of Differentiation in the European Union* (Routledge, 2022), 66-80, 77. Nevertheless, he calls for de facto differentiation (“cases that fall under the definition of differentiation but are not enshrined or recognized by EU law”) to be recognised as a feature of EU integration and indicates that it covers both non-compliance and cooperation outside of the EU legal framework (68).

bypass EU law.⁴³ Awareness of the importance of diversity has not steered the analysis to query the effect it can have in the meaning of EU law itself, beyond the possibilities to design more inclusive or responsive norms of EU law. In this way, EU law remains uniform knowledge. The concern that differentiated integration may fragment the EU and its law shows how far diversity persists as a problem, rather than as a feature that may call for a different understanding of EU law itself.⁴⁴

Of the many crucial questions that have remained unanswered, one is particularly important for our purposes: "How should outliers be dealt with?"⁴⁵ To be clear, our interest in this question does not lie in the EU law mechanisms that allow for sanctioning unlawful difference. But, rather, how are outliers defined to begin with, how to differentiate lawful from unlawful difference, where may one draw the line between what is required by way of EU law and what may be left for the Member States to accommodate diversity, which increasingly comes to the fore as a condition for the legitimacy of legality claims by the EU. By reference to EU law, to the common legal framework that it establishes, would be the immediate answer. Yet, that leaves unanswered a crucial point: what does the treatment of difference tell us about EU law itself? The term "outliers" presumes, again, a deviation from the norm. Where the Treaty has given legal recognition to difference – chiefly through the protection of national constitutional identities (Article 4(2)) – difference is then a limit to integration, not an integral part of EU law.⁴⁶

4. The legal uniformity-integration nexus and the place of diversity

Difference in EU legal thinking is commonly perceived as a shortcoming, "a *modus deficiens*" of an ideally uniformly applied and interpreted EU law.⁴⁷ This assumption mainly results from the nexus between legal uniformity and EU law's integrative dynamic. Indeed, the concern with uniformity is a legacy from a legal order which was formed around the construction of a common market. The common market and its good functioning required the establishment of an autonomous, uniform meaning of EU law concepts to harmonise the laws of the Member States and to allow for mutual recognition of national legislations.⁴⁸ The uniform application of EU law was also necessary to ensure the principle of non-discrimination and free competition within the internal market.⁴⁹ Deviation from common rules remained an exception, justified according to the local context or the concrete conditions of each case, and tolerated insofar as it did not affect the process of market-building.⁵⁰ Local justifications of public policy expectations have

⁴³ Erik O. Eriksen (2018), "Political Differentiation and the Problem of Dominance: Segmentation and Hegemony", *European Journal of Political Research*, 57:4, 989–1008; Daniel R. Kelemen (2021), "Epilogue: A Note of Caution on Differentiated Integration", *Swiss Political Science Review*, 27:3, 672–81, cited by Zhelyazkova et al., 457. See also Daniel R. Kelemen (2019), "Is differentiation possible in rule of law?", *Comparative European Politics*, 17, 246–260.

⁴⁴ Matej Avbelj (2013), "Differentiated integration – farewell to the EU- 27?", *German Law Journal*, 14:1, 191–211.

⁴⁵ Monica Claes and Maartje de Visser, "Reflections on the Comparative Methods in European Constitutional Law" in Maurice Adams and Jacco Bomhoff, *Practice and Theory in Comparative Law* (Cambridge University Press, 2012), 143–169.

⁴⁶ Bobek, 152–3. This is an instance where the Treaty attributes legal meaning to diversity ("constitutional diversity [is] a matter of EU law" (idem, 152)). Yet, Claes and de Visser seem to confirm that diversity has not been given the same importance as commonality when they argue: "as least equally important is the conceptualization of diversity in legal terms and the development of legal techniques to deal with national constitutional diversity within the EU" and call for empirical studies to develop this point (159). They also add, in line with our proposal, that diversity "could even be a source of inspiration" (165) and that "due attention should be given to the local perception of the constitutional system by the local constitutional actors" (167, emphasis added).

⁴⁷ On the commonly shared perception of difference as "a *modus deficiens* of sameness" in comparative legal studies, see Pierre Legrand, "The Same and the Different", in Pierre Legrand and Roderick Munday (eds.), *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press, 2003), 240–311.

⁴⁸ See the famous Cassis de Dijon judgment, ECJ, 20 February 1979, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, Case 120/78, ECLI:EU:C:1979:42. Mutual recognition was explicitly recognised only later in the ECJ case law.

⁴⁹ On the construction of an autonomous meaning of EU law through comparison by the ECJ in the context of the internal market, see Michele Graziadei (2020), "The European Court of Justice at Work: Comparative Law on Stage and Behind the Scenes", *Journal of Civil Law Studies*, 13:1, 1–31, at 8–11 and 16.

⁵⁰ This is expressed in general doctrines such as proportionality, but also in specific legal instruments such as the General Block Exemption Regulations of the Commission concerning state aids for example, which have exempted small amount or local interest aids from the application of the relevant Treaty rules.

had to be translated in EU legal terms, as functional to ends legally recognised by the Treaties or by the CJEU case law.⁵¹ In this process of translation, the normative and symbolic dimension of alternative systems of legal thought, their peculiar prioritisation of values, and the narratives and worldviews that they convey have been largely neglected.⁵²

As EU law's centre of gravity shifted away from market making to areas that until recently were the preserve of state sovereignty, EU legal scholars accepted the pluralist nature of the EU constitution and conceded contestations of the absolute primacy of EU law.⁵³ This idea found concrete expression in the case law of the CJEU⁵⁴ and in the Treaties: most tellingly, Article 4(2) TEU requires respect for the constitutional diversity of the Member States. But even in its pluralist version, the constitutional narrative on the EU assumes the existence of a common normative substratum or frame of reference that can serve as a basis for transnational dialogue and conflict resolution.⁵⁵ The constitutions of the Member States are seen as variations of a common theme. Difference and resistance have been perceived as symptoms of the early stage of evolution of the EU towards its constitutional *telos* or of lack of maturity of the national processes of Europeanisation. They have come more recently to the fore in a different form, as 'rebellious' Member States follow legal trajectories that imperil the project of integration.⁵⁶

However, the nexus between legal uniformity and integration has nothing necessary or natural. The example of Brexit and the rise of Eurosceptic movements across Europe shows that legal convergence has not brought about the social and political integration that was assumed to be in the cards. In the same way, legal diversity has not impeded the construction of a supranational legal and institutional system. Differences and resistance are inherent to EU law and its evolution, and have been central to the construction of Europe and its law.⁵⁷ Even the most fervent promoters of EU integration acknowledge the need to account for legal diversity in Europe.⁵⁸ Against this background, what we propose is a shift in perspective to see difference no longer as a limit to integration but as inherent to the European project.⁵⁹ Indeed, we may say that EU integration has been possible precisely *because* local legal actors do not share the same concepts and patterns of reasoning. This is not only because different legal traditions, styles of reasoning and legal rationalities have provided rich resources for EU legal argumentation.⁶⁰ More

⁵¹ Vincent Réveillère, "Inquiring into Conceptual Practices: Legal Controversy at the Court of Justice of the European Union" in Mikael Rask Madsen, Fernanda Nicola and Antoine Vauchez (eds.), *Researching the European Court of Justice* (Cambridge University Press, 2022), 133-157, at 150 ff. See also his project, "The Local Meaning of National Law Before the ECJ: Justification as a Translation Process", presented at the Local Meanings of EU Law workshop, 10-11 December 2024, University Paris-Est Créteil. On the functional legacy of comparative law in the European context, see section 3 below.

⁵² See Afroditi Marketou (2020), « Intégration et pluralité de normes et de valeurs : réflexions à partir de l'arrêt SM », *Revue du droit de l'Union européenne*, 2-3, 259-274.

⁵³ Neil MacCormick (1995), "The Maastricht Urteil: Sovereignty Now", *European Law Journal*, 1:3, 259-266; Miguel Poiates Maduro, "Contrapunctual Law: Europe's Constitutional Pluralism in Action", in Neil Walker (ed.), *Sovereignty in Transition* (Hart, 2003), 501; Ingolf Pernice (2001), "[Multilevel Constitutionalism in the European Union](#)", WHI Paper 5/02, accessed 7 May 2025; Armin von Bogdandy and Stephan Schill (2011), "Overcoming Absolute Primacy under the Lisbon Treaty", *Common Market Law Review*, 48:5, 1417-1453.

⁵⁴ A famous example where difference was judicially sanctioned (in EU law terms) is Case C-36/02, *Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn*, EU:C:2004:614, paras 30 and 31.

⁵⁵ On this literature, M. Avbelj and J. Komárek (eds.), *Constitutional Pluralism in the European Union and Beyond*, (Hart, 2011).

⁵⁶ Opinion of AG Spielmann on Case C-448/23, *Commission v Poland*, EU:C:2025:165, characterizing the judgment of 7 October 2021 of the Polish Constitutional Court as an "unprecedented revolt" (para 75).

⁵⁷ Bill Davies, *Resisting the European Court of Justice: West Germany's Confrontation with European Law, 1949-1979* (Cambridge University Press, 2012). Peter Lindseth, *Power and Legitimacy: Reconciling Europe and the Nation-State* (Oxford University Press, 2010). Karen Alter, *Establishing the Supremacy of European Law* (Oxford University Press, 2003).

⁵⁸ Armin von Bogdandy (2016), "European Law Beyond Ever Closer Union Repositioning the Concept, Its Thrust and the ECJ's Comparative Methodology", *European Law Journal*, 22:4, 519-538; *idem*, *The Emergence of European Society through Public Law: A Hegelian and Anti-Schmittian Approach* (Oxford University Press, 2024); Koen Lenaerts (2017), "The European Court of Justice and the Comparative Law Method", *European Review of Private Law* 2, 297-312.

⁵⁹ Ian Ward, "Identity and difference: The European Union and Postmodernism", Jo Shaw and Gillian More (eds.), *New legal dynamics of European Union* (Clarendon Press, 1995), 15-28.

⁶⁰ Fernanda Nicola (2016), "National Legal Traditions at Work in the Jurisprudence of the Court of Justice of the European Union", *The American Journal of Comparative Law*, 64:4, 865-889; Graham Butler and Adam Lazowski (eds.), *Shaping EU Law The British Way*

fundamentally, if local actors adhered to the European project and accepted to mobilise EU law, they were not always aspiring to the construction of a common market or to “an ever closer union between the peoples of Europe”. In different contexts and at different moments in history, the use of EU law has been inspired by and has promoted individual or group projects of emancipation,⁶¹ judicial strategies of liberalisation,⁶² lawyers’ aspirations to rationalisation, local modernisation policies⁶³ or efforts to consolidate democracy,⁶⁴ which are themselves conceived of and constructed within local legal cultures or forms of legal consciousness. We posit that these are not merely sociological uses of the law, but important anchors to understand law itself. Taking legal diversity seriously can thus advance our understanding of EU law and of its integrative dynamic. The most evident candidate for exploring the themes of legal culture, legal consciousness and legal pluralism is socio-legal comparative law. Adopting such an approach however, implies to break with a long tradition of legal comparison in EU legal studies.

5. Challenging the functional legacy in European comparative law

The development of EU law as a normative system and as an academic discipline has been deeply anchored in comparison.⁶⁵ Yet, we argue, comparison has not led to a nuanced account of legal difference within Europe, given the focus on the creation of an “overarching frame of reference”. This framework has given coherence to EU law as a legal order or as a system that can evolve therefrom. But, normatively, it did more than that: it ended up grounding it, as reflected since long in the accession criteria and, today, in Article 2 TEU. The task of creating that overarching framework is the reason why “EU law attributes *legal meaning* to the presence of commonality”,⁶⁶ but not – we argue – to difference. Commonality translated into general principles of EU law, and, as such, was part of the process of keeping EU law separate from the political reality of the Member States.⁶⁷ Indeed, the normative world of EU law is one that channels “the process of integration into the legal form and into certain patterns of thought favourable to integration”.⁶⁸ It was in this spirit that comparative law was part of the everyday work of the EU institutions since the outset. It has been a pillar of integration, because it was instrumental to the search for common solutions that could be suitable for the development of EU law and compatible with the legal traditions of the Member States.⁶⁹ For decades the search for commonality among national concepts has driven the development of EU law, fuelled also by the “common constitutional traditions of the Member States” as an interpretative device used by the Court of Justice in particular in the face of lacunae of positive EU law.⁷⁰

(Bloomsbury, 2022); Daniele Gallo, Roberto Mastroianni, Fernanda G. Nicola, and Lorenzo Cecchetti (eds.), *The Italian Influence on European Law. Judges and Advocates General (1952-2000)* (Bloomsbury, 2024). While these studies focus on the influence of national legal traditions, this is also true for other types of legal rationalities and cultures, whose boundaries are not necessarily defined by the borders of the nation-State.

⁶¹ Floris De Witte, “Emancipation Through EU Law?”, in Loïc Azoulay, Ségolène Barbou des Places and Étienne Patout (eds.), *Constructing the Person in EU Law: Rights, Roles, Identities* (Hart, 2016), 15.

⁶² Mitchel Lasser, *Judicial Transformations. The Rights Revolution in the Courts of Europe* (Oxford University Press, 2009).

⁶³ Afroditi Marketou, *Local Meanings of Proportionality* (Cambridge University Press, 2021).

⁶⁴ Signe Rehling Larsen (2021), “Varieties of Constitutionalism in the European Union”, *Modern Law Review*, 84:3, 477-502.

⁶⁵ On the role of comparative law as a core characteristic of legal scholarship in the European context, see Armin Von Bogdandy (2012), “National legal scholarship in the European legal area—A manifesto”, *International Journal of Constitutional Law*, 10:3, 614-626. See also *The Emergence of European Society through Public Law: A Hegelian and Anti-Schmittian Approach* (Oxford University Press, 2024), esp. 272-276.

⁶⁶ Monica Claes and Maartje de Visser, “Reflections on the Comparative Methods in European Constitutional Law” in Maurice Adams, and Jacco Bomhoff, *Practice and Theory in Comparative Law* (Cambridge University Press, 2012), 143-169, at 145 (emphasis added). They note that in the EU context comparative constitutional law *produced* law (see also 159).

⁶⁷ *Ibidem*.

⁶⁸ Azoulay, “Structural Principles in EU Law”, 33 and 36, referring to Pescatore’s law of integration.

⁶⁹ Pierre Pescatore (1980), “Le recours, dans la jurisprudence de la Cour de justice des Communautés Européennes, à des normes déduites de la comparaison des droits des États membres” *Revue Internationale de Droit Comparé*, 32:2, 337-359.

⁷⁰ Armin von Bogdandy, “Founding Principles” in Armin von Bogdandy and Jürgen Bast (eds.), *Principles of European Constitutional Law* (2nd rev. ed, Hart, 2010), 11-54, at 24-25. Takis Tridimas, *The General Principles of EU Law* (2nd ed, Oxford: 2006), 17-23. On the

From this perspective, legal comparison in the European context went hand in hand with the practical commitment of EU legal scholarship to the construction of a common market and polity.⁷¹ Comparative law in the European context has generated manifold country reports that could show a particular concern to understand difference. Yet, they have not brought us closer to understanding the role of difference in EU law. This is because their aim or scope has not been to understand what commonality and difference could say about EU law; rather, they were mostly part of processes of legal harmonization or convergence, directed towards identifying a common core of rules and principles that could serve as a basis for the development of EU law.⁷² Through these processes, commonality created the grammar of EU law. Diversity came in the way of the establishment of that grammar.⁷³ Indeed, for a long time, being a European lawyer meant “to be able to be a bridge for communication [...] through the development on a comparative basis of a new European *ius commune*.”⁷⁴ This archetypical role of European lawyers is most neatly illustrated in the FIDE biennial congresses, where representatives from each national EU law association unite to discuss issues of common interest.⁷⁵

The system-building function of legal comparison in the European context is even more obvious when one considers vertical comparisons between the EU and individual states.⁷⁶ Since the ‘80s comparison with the US has nourished the project of constructing a “federal union” in Europe and has sometimes inspired the evolution of the CJEU case law.⁷⁷ Vertical comparison has also been at the foundations of European administrative law as a system and a scholarly field, despite the difficulties of transposing the rich “repository” of national legal solutions to problems arising in transnational or supranational situations.⁷⁸

functions that “common constitutional traditions” had over time, see, Jaka Kukavica (2024), “Common Constitutional Traditions: A Story of Genesis and Normative Transformations”, *Maastricht Journal of European and Comparative Law*, 31:2, 234–253.

⁷¹ It is indicative that many CJEU judges and advocates general, in their extra-judicial writings, have explored the role of comparative law in EU law or have themselves conducted comparative research. Among them, Pierre Pescatore, Koen Lenaerts and Walter Van Gerven. For an account of this literature, see Graziadei (2020), at 5.

⁷² See Claes and de Visser, 156–7. Prominent examples of this kind of scholarship are the ‘common core’ projects in private law [on this, see David Gerber (2004), “The Common Core of European Private Law: The Project and Its Books”, *The American Journal of Comparative Law*, 52:4, 995–1001] and administrative law (see the Oxford University Press series on The Common Core of European Administrative Law, edited by Giacinto della Cananea). Similar projects have been conducted in other areas, such as unfair competition law (mentioned by Antonina Bakardjieva Engelbrekt (2015), “Comparative Law and European Law: The End of an Era, a New Beginning or Time to Face the Methodological Challenges?”, *Scandinavian Studies in Law*, 61, 88–104, at 92–93). This kind of scholarship still abounds in comparative European law, even though the ambition to identify a common core of rules has subsided. For a recent example in constitutional law, see Stephan Griller, Lina Papadopoulou and Roman Puff (eds.), *National Constitutions and EU Integration* (Bloomsbury, 2022); in public contract law, Stéphane De La Rosa and Patricia Valcárcel Fernández (eds.), *Les principes des contrats publics en Europe* (Bruylant, 2022).

On the use of comparative law in the EU legislative process more generally, see Rob Van Gestel and Hans Micklitz, “Comparative Law and EU Legislation: Inspiration, Evaluation or Justification?” in Maurice Adams and Dirk Heirbaut (eds.), *The Method and Culture of Comparative Law* (Hart, 2014), 301–317.

⁷³ “[Common] constitutional principles are the grammar of the constitutional discourse in Europe; there simply is no other suitable grammar” (Claes and de Visser, 159, emphasis added).

⁷⁴ Luigi Moccia (2015), « Dalla comparazione alla integrazione giuridica: la via della cittadinanza europea », *La cittadinanza europea*, 5–33, at 5, translated and cited by Graziadei (2020), 12. On the aspiration to a common European law, see Mauro Cappelletti (ed.), *New Perspectives for a Common Law of Europe*, 1978. See also Reinhard Zimmermann, “Comparative Law and the Europeanization of Private Law” in Mathias Reimann and Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (Oxford University Press, 2012), 509–578. For a critical reflection, see Bernard Jackson, “Legal Visions of the New Europe: *Ius Gentium*, *Ius Commune*, European Law”, in Bernard Jackson and Dominic McGoldrick (eds.), *Legal Visions of the New Europe* (Graham and Trotman, 1993).

⁷⁵ <https://www.fide-europe.org/> On the role of this association in the development of EU law, see Antoine Vauchez, *Brokering Europe. Euro-Lawyers and the Making of a Transnational Polity* (Cambridge University Press, 2015), ch. 2.

⁷⁶ On the methodological challenges involved in such comparisons, Renaud Dehousse (1994), “Comparing National and EC Law: The Problem of the Level of Analysis”, *The American Journal of Comparative Law*, 42:4, 761–781.

⁷⁷ Mauro Cappelletti, Monica Seccombe and Joseph H.H. Weiler (eds.), *Integration Through Law. Europe and the American Federal Experience* (De Gruyter, 1986); Koen Lenaerts, *Le juge et la Constitution aux États-Unis d’Amérique et dans l’ordre juridique européen* (Bruylant, 1988); More recently, Koen Lenaerts and Kathleen Gutman (2017), “The Comparative Law Method and the European Court of Justice: Echoes Across the Atlantic”, *The American Journal of Comparative Law*, 64:4, 841–864. On the influence of US Supreme Court case law on the CJEU, see Peter Herzog (1998), “United States Supreme Court Cases in the Court of Justice of the European Communities”, *Hastings International and Comparative Law Review*, 21:4, 903–919; see also Graziadei (2020), 19–25.

⁷⁸ Joana Mendes (2022), “The Foundations of EU Administrative Law as a Scholarly Field: Functional Comparison, Normativism and Integration”, *European Constitutional Law Review*, 18: 4, 706–736, referring to the work of Jürgen Schwarze, *European Administrative*

Comparison with the nation-state also underlay the constitutional narrative on the EU, provoking criticism of the “as if” character of the European constitution and numerous debates on the possibility to transpose the constitutional vocabulary beyond the state.⁷⁹ Through such exercises of vertical legal comparison, EU lawyers pioneered the development of constitutional and administrative law beyond the state and the EU was reimagined as a pillar of a larger cosmopolitan legal order centred around the rule of law and the protection of fundamental rights.⁸⁰

Another important strand of comparison in EU law has had a different focus and direction: it was not concerned with the construction of the EU’s legal system, but with the way EU law thus constructed operates in the domestic contexts. EU lawyers have been more concerned with EU law enforcement, which largely relies on national institutional structures and capacities,⁸¹ while national scholarship has focused on the influence of EU law on national legal categories and procedures.⁸² The study of EU-induced changes in national legal systems was not the only focus of the so-called Europeanization of national laws. In a broad sense, Europeanization encompassed also how national legal systems have shaped EU law (bottom-up influences), how interactions between Member States may change national and EU law (horizontal influences), and these interactions under EU and ECHR regimes, all dynamics contributing to the creation of European public law.⁸³ Still, even in this more complex picture, by definition Europeanization is biased towards commonality. Difference is the starting point to study legal systems that, albeit to different degrees, are in a trajectory of convergence under the impulse of EU law (or European law, more broadly).⁸⁴

In these strands of literature, comparative law has been functional in a double sense. First, it has assumed a function itself. The comparative method has served as a tool in the construction and legitimation of a European legal system and polity, and has been crucial to the Whig narrative of EU legal integration. Indeed, for a long time, the development of EU law has been a story of convergence, even homogenisation, cross-fertilisation and legal transplants.⁸⁵ It has been presented as the result of judicial cooperation and dialogue between the European and national courts.⁸⁶ Legal culture has been perceived as a constraint, a variable explaining difference in national courts’ reception of European case law, and not as a resource for imagining the EU and its law.⁸⁷ Divergence has been the remit of comparative lawyers

Law, 2nd edn. (Sweet & Maxwell, 1992[2006]). In this legacy, see also Jean-Bernard Auby and Jacqueline Dutheil de la Rochère, *Traité de droit administratif européen* (Bruylant, 2006).

⁷⁹ Peter Lindseth (2016), “The Perils of ‘As If’ European Constitutionalism”, *European Law Journal*, 22:5, 696-718.

⁸⁰ Alec Stone Sweet (2012), “A Cosmopolitan Legal Order: Constitutional Pluralism and Rights Adjudication in Europe”, *Global Constitutionalism*, 1, 53-90; J. Weiler and M. Wind (eds.), *European Constitutionalism Beyond the State*, (Cambridge University Press, 2009).

⁸¹ See, for an extensive literature review, Bobek, ‘Europeanization of Public Law’. For some recent examples, the research conducted within the Jean Monnet Network on Enforcement of EU Law (EULEN) <https://jmn-eulen.nl/>; Or Brook and Barry James Rodger (eds.), *Judicial Review of Competition Law Enforcement in the EU Member States and the UK* (Kluwer, 2024).

⁸² For some examples, see Francis Jacobs and Mads Andenas (eds.), *European Community Law in the English Courts* (Oxford University Press, 1998); Jean-Bernard Auby (ed.), *L’influence du droit européen sur les catégories du droit public* (Daloz, 2010).

⁸³ On the limits of such top-down studies and on the complexity of Europeanization, see Bobek, ‘Europeanization of Public Law’, sections C and D respectively. In section D1, he analysis the various directions of such a “multifaceted traffic”.

⁸⁴ But see Bobek, *idem*, p. 21, Section C4, asking whether “the notion of Europeanization inextricably linked with convergence”.

⁸⁵ In private law, Mark van Hoecke and François Ost (eds.), *The Harmonisation of European Private Law* (Hart, 2000); Jan Smits, *The Making of European Private Law: Towards a Ius Commune Europaeum as a Mixed Legal System* (Intersentia, 2002). In public law, Jack Beatson and Takis Tridimas (eds), *New Directions in European Public Law* (Hart Publishing, 1998); Paul Beaumont, Carole Lyons & Neil Walker (eds.), *Convergence and Divergence in European Public Law* (Hart Publishing, 2002).

⁸⁶ Anne-Marie Slaughter, Alec Stone Sweet and Joseph Weiler (eds.), *The European Court and National Courts: Doctrine & Jurisprudence* (Bloomsbury, 1998), esp. ch. 9 and 11; Takis Tridimas, “The ECJ and the National Courts: Dialogue, Cooperation, and Instability” in Damian Chalmers and Anthony Arnall (eds.), *The Oxford Handbook of European Law* (Oxford University Press, 2015), ch. 16, 403-430.

⁸⁷ See for example, Walter Mattli and Anne-Marie Slaughter, “The Role of National Courts in the Process of European Integration: Accounting for Judicial Preferences and Constraints” in Anne-Marie Slaughter, Alec Stone Sweet and Joseph Weiler (eds.), *op. cit.*, ch. 9, 253-276.

and socio-legal scholars, of little concern to the community of European lawyers. Studies emphasizing legal difference have remained marginal and very much focused on the common law/civil law divide.⁸⁸

But comparative law has been functional in a deeper, more fundamental sense: it has built upon and propounded a functional vision of law as a means-to-an-end. Functionalism was fruitful in European lawyers' quest for similarities, as it reduced the comparative enterprise to a search for similar solutions to similar problems. However, soon the functional vision of law went far beyond comparative studies to become a general characteristic of EU legal thinking – from administrative law to EU constitutionalism and to European private law – and a major one. The reason why functionalism is so important is that it allows EU lawyers to accommodate legal differences in their search for a uniformly applicable law, it is part of EU lawyers' peculiar way of "living with legal diversity".⁸⁹ This is illustrated in principles like subsidiarity or proportionality, or in theories such as experimentalist governance, which are informed by an instrumental perception of legal measures emerging from a plurality of sources as means to common goals. It is this functional vision of law that has allowed translating different legal rationalities in EU legal terms and has thus sustained the fiction of a uniform EU law.⁹⁰ Indeed, reference to commonly shared aims defined in the Treaties or in the ECJ case law, has allowed EU lawyers to establish the commensurability of the different legal regimes interacting with EU law, by representing them as more or less efficient ways to achieve those aims, and introducing exceptions as techniques to accommodate difference within the legal system. In this way, EU law has accommodated differences only by keeping them abreast and relegating them to the realm of the factual, not the normative.⁹¹

We accept that functionalism fulfilled an important role in EU law. We argue, however, that it was a product of its time, which must be gauged against the criticisms that comparative lawyers have formulated on this method.⁹² More importantly, functionalism cannot remain the orthodoxy in EU law. Law, and EU law in particular, is not only a means to an end nor does it accomplish the same function everywhere. Even if one may accept that functionalism was needed or suited to the construction of a European market, neither this market, nor its law and the polity that emerged took place in a normative void. Today, sticking to functionalism can be misguided. In the period of integration running roughly to the early 2000s, an emphasis on diversity could, in fact, have prevented the formation of a grammar of EU law. That risk progressively disappeared – in strictly legal terms – as the common framework of EU law became part of the Treaties in 2009, and as the elements of the EU's legal system that had been anchored in commonality between the Member States legal orders found an autonomous source in EU law.⁹³ What focus on diversity can do now is disrupt the grammar that is established – a positive disruption that can unlock different meanings of EU law and enrich our understanding of this legal order. This is especially the case since the identification of commonly shared aims and values has become increasingly challenging.

⁸⁸ Pierre Legrand (1996), "European Legal Systems Are Not Converging", *The International and Comparative Law Quarterly*, 45:1, 52-81; *idem* (1997), "The Impossibility of 'Legal Transplants'", *Maastricht Journal of European and Comparative Law*, 4:2, 111-124; Gunther Teubner (1998), "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Differences", *The Modern Law Review*, 61, 11-32; Vivian G. Curran (2001), "Romantic Common Law, Enlightened Civil Law: Legal Uniformity and the Homogenization of the European Union", *7 Columbia Journal of European Law*, 7, 63-126; Carol Harlow (2002), "Voices of Difference in a Plural Community", *The American Journal of Comparative Law*, 2002, 50:2, 339-367.

⁸⁹ Jan Smits, "Plurality of Sources in European Private Law, or: How to Live with Legal Diversity?", in Roger Brownsword, Hans-W Micklitz, Leone Niglia & Stephen Weatherill (eds.), *The Foundations of European Private Law*, 323-335 (Bloomsbury, 2011).

⁹⁰ See Vincent Réveillère's project, "The Local Meaning of National Law Before the ECJ: Justification as a Translation Process", presented at the Local Meanings of EU Law workshop, 10-11 December 2024, University Paris-Est Créteil.

⁹¹ The term is from Loïc Azoulay, "Structural Principles in EU Law", 32. On EU law as a system, Jacob Van de Beeten, (2024) *In the name of the law: a critique of the systemic rationality in EU law*. PhD thesis, LSE.

⁹² See for example Fernanda Nicola and Günther Frankenberg, *Comparative Law. Introduction to a Critical Practice* (Elgar, 2024). See also Fernanda Nicola's book project on the *Misuses of Comparative Law in International Development*, presented at the Local Meanings of EU Law workshop, 10-11 December 2024, University Paris-Est Créteil.

⁹³ See Kukavica's analysis (n 70), regarding the role of common constitutional traditions of the Member States for the establishment of fundamental rights, before and after the Charter was given a binding character.

6. Beyond the opposition national democratic politics vs. European legal integration

Our proposal is inserted in the ongoing reflexive turn of EU legal scholarship. Critics have pointed to EU law's negative effects on the quality of life in national societies,⁹⁴ its asymmetrical distributive impacts among different social groups⁹⁵ and its unintended consequences for certain local communities.⁹⁶ EU lawyers become cautious of power imbalances and disparities among EU Member States and regions, in the form of core-periphery or urban-hinterland dynamics, and the way these affect the development and implementation of EU law.⁹⁷ While these power imbalances and disparities are often seen as the result of a representation deficit within EU decision-making institutions, the absence of political consensus renders an institutional reform in the direction of more inclusive representation at the EU level difficult to conceive. Much of the EU law-in-context literature has thus turned to a political analysis and critique of the advancement of EU legal integration to remind us that the EU legal order, often described as constitutional, lacks the democratic and social credentials of national constitutions and is detrimental to national democratic politics.⁹⁸

This is also expressed in a more recent strand of comparative legal scholarship in the EU context. During the last decades, a wealth of studies on the reception of EU law in the Member States has put emphasis on instances of national resistance, and criticism of EU legal precepts.⁹⁹ Often concerned with particular moments of EU integration, such as EU enlargement, the adoption of the Charter or the Eurocrisis, such studies challenged the commonly shared perception of the reception of EU law as a "top-down" process, and of EU legal integration as a linear evolution.¹⁰⁰ But they advanced little regarding the nature of EU law itself, i.e. on what this interaction between, on the one hand, a general "striving toward uniformization" or, more broadly, convergence, which remained the ethos of EU law, and, on the other, "retaining the diversity of the national constitutional cultures" signified for EU law.¹⁰¹ Some have indicated that path, however. Albi

⁹⁴ Gareth Davies, *Internal Market Adjudication and the Quality of Life in Europe*, EUI Working Paper 2014/07

⁹⁵ Leticia Díez Sánchez (2021), *Integration through law and its discontents: unveiling the distributive impact of judge-made law in the EU*, EUI PhD Thesis. Ivana Isailović (2024), *Gender in political economy and EU law*. *Transnational Legal Theory*, 15:4, 525–542.

⁹⁶ Maria Gaglia Barelli, Miranda Geelhoed, Louisa Parks, Elisa Morgera, and Elsa Tsioumani, "The unintended consequences of the Common Agricultural Policy for local communities", in Paul James Cardwell and Marie-Pierre Granger (eds.), *Research Handbook on the Politics of EU Law* (Elgar, 2020), 335–356.

⁹⁷ Damjan Kukovec (2015), "Law and the periphery", *European Law Journal*, 21:3, 406–428; Jennifer Orlando-Salling (2024), "The Digital Services Act in the European Periphery: Critical Perspectives on EU Digital Regulation", *European Law Open*, 3, 849–864; Floris De Witte (2024), "Finding space in EU law", *Transnational Legal Theory*, 15:4, 543–552; see also the project "EU Law and the City", developed by Carlo Colombo at Sciences Po Paris and presented at the Local Meanings of EU Law workshop, 10–11 December 2024, University Paris-Est Créteil.

⁹⁸ Marco Dani and Agustín José Menéndez, "European Constitutional Imagination" in Jan Komárek, (ed.) *European Constitutional Imaginaries* (Oxford University Press, 2023), ch. 3.

⁹⁹ Anneli Albi and Samo Bardutzky, "Revisiting the Role and Future of National Constitutions in European and Global Governance: Introduction to the Research Project" in idem (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law* (Springer, 2019), 3–37, at 8. See also Ana Bobić's project "Judicial conflict and the reconfiguration of control in the EU constitutional order" at the Hertie School, Berlin.

¹⁰⁰ On EU enlargement, see, among others, Alfred Kellermann, Jaap W. de Zwaan and Janö Czuczai (eds.), *EU Enlargement: The Constitutional Impact at EU and at National Level* (Asser Press, 2001); Wojciech Sadurski, Adam Czarnota and Martin Krygier (eds.), *Spreading Democracy and the Rule of Law?: The Impact of EU Enlargement for the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders* (Springer, 2006); Wojciech Sadurski, *Constitutionalism and the Enlargement of Europe* (Oxford University Press, 2012); Dimitri Kochenov, *EU Enlargement and the Failure of Conditionality* (Kluwer Law International, 2008); Anneli Albi, *EU Enlargement and the Constitutions of Central and Eastern Europe* (Cambridge University Press, 2009). See also the book series "EU Law in the Member States", edited by Jeremias Adams-Prassl and Michal Bobek, <https://www.bloomsbury.com/uk/series/eu-law-in-the-member-states/> accessed 15 May 2025.

On the Charter, Michal Bobek and Jeremias Adams-Prassl, *The EU Charter of Fundamental Rights in the Member States* (Bloomsbury, 2020). On the Eurocrisis, see among others the Constitutional Change Through Euro-Crisis Law project at the EUI in the mid-2010s, which led to the publication of a collective volume edited by Thomas Beukers, Bruno De Witte and Claire Kilpatrick, *Constitutional Change through Euro-Crisis Law* (Cambridge University Press, 2017).

¹⁰¹ The citations are from Anneli Albi and Samo Bardutzky, idem, 27: the authors call for a discussion on the optimal balance between the two.

and Bardutzky called for “a greater inclusion of perspectives that are more accommodating of national and comparative constitutional values and concerns, in a two-way or multi-directional, pluralist process”.¹⁰² But their concern was the loss of constitutional law knowledge (local knowledge), they were not asking whether and how diversity could unveil different understandings of EU law, which kept on being defined in circles that were different from those of national public lawyers.

Most importantly, the focus on *national* law and politics has impeded a nuanced account of the relationship of EU law to social context, beyond the classical opposition between national constitutional/democratic politics vs. European legal integration. Yet, the nation-state is not the only site for the formation of political claims and collective identities. While the development of EU law might have disempowered traditional actors within national constitutional democracies, it has also contributed to the creation of transnational communities and movements, and it has made new forms of legal mobilisation possible.¹⁰³ The opposition between national constitutional/democratic politics vs. European legal integration proves to be overly simplistic, at least in some cases. EU law is often mobilised as a tool or argument in national politics and is often a major stake in national democratic elections or referendums. In her recent work on the rule of law in Poland for example, Nicola accounts for the way EU law and the strategic engagement of EU institutions created spaces for local resistance to domestic authoritarian policies.¹⁰⁴ It is well known that, while EU law affects national politics, the inverse is true as well. We are likely to experience a very different EU as far-right political forces gain ground in national democratic elections in the Member States. Beyond the national vs. EU cleavage, the inquiry into the local meanings of EU law allows to focus on the infinitely different communities that “mediate and negotiate life” through EU law.¹⁰⁵ By doing so, it can also provide an interface for conversation and communication between those communities.

7. Inquiring into the local meanings of EU law

The inquiry that we propose implies to see EU law not as a system of norms that have to be interpreted and applied to give solutions to concrete cases, but as a kind of knowledge and practice that is socially and culturally embedded. From this perspective, the variety of local meanings of EU law is not seen as a shortcoming or an imperfection; it is the result of EU law’s insertion in local language structures, webs of significance, narratives, local ways of making sense of the world and of characterising social situations, local ways of “imagining the real”.¹⁰⁶ This premise has a specific constitutional implication for EU law: as the empirical assumption of the uniformity of EU law collapses, we may ultimately need to shed the normative requirement of uniform application as well. At the very least, the delimitation between the “issues [that] matter for [the] purpose” of uniform application from “those that do not” may need to heed the necessary variety of local meanings.¹⁰⁷ Irrespective of this possible implication, the approach we propose renders less enigmatic local understandings of EU law that EU legal scholarship would perceive as deviant or incorrect. It does not minimise the differences between those local understandings, and focuses on the conflicts that they may convey. By refusing any hierarchy between the different ways of thinking and knowing EU law, research on the local meanings of EU law might expose as partial or parochial dominant interpretations of EU law and mainstream visions of EU integration. It may reveal that the idea that Article 2 TEU values “define the very identity of the European Union as a common legal order” is, in itself a local meaning of EU law, specific to the EU Court, and eventually to the Commission and specific

¹⁰² *Idem*, 28.

¹⁰³ On legal mobilisation in the field of EU law, see the special issue “Strategic Litigation in EU Law” edited by Pola Cebulak, Marta Morvillo and Stefan Salomon, *German Law Journal*, 25:6, 2024. See also Edoardo Stoppioni, “[Evolving strategic Interactions: how Mirin reframes the ECJ’s Dialogue with Strasbourg on LGBTIQ+ Rights](#)”, *EU Law Live*, 21 May 2025, accessed on 17 July 2025.

¹⁰⁴ Fernanda Nicola, *Mis-Uses of Comparative Law in International Development* (Cambridge University Press, forthcoming).

¹⁰⁵ Floris De Witte (2022), “Here be Dragons: Legal geography and EU law”, *European Law Open*, 1:1, 113-125.

¹⁰⁶ Geertz, *Local knowledge*, 173.

¹⁰⁷ Opinion of Advocate General Bobek, in *Van Ameyde* (cit.), para 59.

circles of expert lawyers and legal academics.¹⁰⁸ By focusing on the possibilities of translating local practices, experiences and worldviews in EU legal terms, this perspective opens the way for developing a grammar of EU law that is more inclusive, and may have the potential to reimagine Europe and its law.

Differently from most critical approaches, the inquiry into the local meanings of EU law does not seek to unveil what is hidden “behind” the mobilisation of EU legal arguments, the ideologies, the interests or the philosophies that inspire peculiar uses of EU law – it is not, or not only, about exposing the neoliberal rationality of EU legal arguments or their use in court activism. Following Geertz, we propose a

shift away from functionalist thinking about law—as a clever device to keep people from tearing one another limb from limb, advance the interests of the dominant classes, defend the rights of the weak against the predations of the strong, or render social life a bit more predictable at its fuzzy edges (all of which it quite clearly is, to varying extents at different times in different places); and a shift toward hermeneutic thinking about it—as a mode of giving particular sense to particular things in particular places (things that happen, things that fail to, things that might), such that these noble, sinister, or merely expedient appliances take particular form and have particular impact. Meaning, in short, not machinery.¹⁰⁹

Thus understood, the inquiry into the local meanings of EU law is “an exercise in cultural interpretation and translation, concerned with law’s own structures”.¹¹⁰ This is a promising inquiry, not least because EU legal structures and knowledge have a peculiar agency. When used in different contexts, EU legal concepts, techniques and patterns of reasoning produce new practices and professional routines, new objects, new representations, new kinds of social links and hierarchies. Materialised in documents, files, legal databases, bureaucracies, and other sociotechnical assemblages, such as the EU Passenger Record Name, they determine what local actors can do and what they may *want* to do.¹¹¹ Hence, EU law is not simply an instrument that serves other objectives, external to the law. In order to understand its dynamic better, we need to see the kinds of worlds that it propounds, the kinds of worlds that it displaces and what it makes possible.¹¹² Inquiry into the local meanings can shed light on the particular force of EU legal knowledge and on the power imbalances and injustices that it conveys, amplifies and justifies, beyond issues of politics and representation. It can also shed light on mundane material and conceptual features that hamper EU legal change, legal creativity and legal imagination.

This is not to ignore the strategies of different actors when negotiating EU law and when using EU legal arguments, nor the economic, political or social stakes of particular interpretations of EU law.¹¹³ Like other kinds of expert or technical knowledge, EU law is politics; but it is “politics by other means”.¹¹⁴ We know today much more about the strategies behind judicial cases, about how legal practices compound to produce specific outcomes, about the “micro-politics of EU case law”, both of the historical and of the more recent past.¹¹⁵ EU legal rules, concepts, techniques and formulas are always subject to contestation and manipulation by different actors, according to their views about what constitutes a problem in a particular

¹⁰⁸ *Hungary v Parliament and Council*, paragraph 127, and, *Poland v Parliament and Council*, paragraph 145.

¹⁰⁹ *Ibidem*, 232.

¹¹⁰ *Ibidem*, 218.

¹¹¹ Vincent Réveillère, “Inquiring into Conceptual Practices. Legal Controversy at the Court of Justice of the European Union”, in Mikael Madsen, Fernanda Nicola and Antoine Vauchez (eds.), *Researching the European Court of Justice* (Cambridge University Press, 2022), 133-157.

¹¹² See, for such an approach in domestic public law, Jacco Bomhoff (2022), “Making Legal Knowledge Work: Practising Proportionality in the German *Repetitorium*”, *Social & Legal Studies*, 32:1, 28-54.

¹¹³ On *strategies and stakes* as a useful concept in the study of the meanings of EU law, see Nicholas Haagenen (2024), “The multiple meanings of EU law: using sociological interpretivism to make sense of the Eurozone crisis”, *European Law Open*, 3:2, 402-427.

¹¹⁴ Vincent Réveillère, *Annelise Riles, Pour une anthropologie des savoirs juridiques* (Daloz, 2022, coll. « Rivages du droit »), referring to STS scholarship.

¹¹⁵ Mikael Rask Madsen, Antoine Vauchez and Fernanda Nicola, “From Methodological Shifts to EU Law’s Embeddedness” in *idem* (eds.) *Researching the European Court of Justice: Methodological Shifts and Law’s Embeddedness* (Cambridge University Press, 2022), 1-24, at 13.

situation and about whether and how EU law can be mobilised to resolve it. This includes, of course, the Court of Justice, as much as the EU institutions and bodies that produce and apply EU law on a daily basis, and the many communities and networks that, in one way or another, mobilise in EU legal arguments. From this perspective, EU legal knowledge is not a univocal and coherent whole waiting to be produced according to an abstract theory or model. Rather, it is “active, operating and profoundly social, oriented and validated by the experience of a community.”¹¹⁶ Research on the local meanings of EU law can account for how EU legal knowledge is fabricated, invoked, reinvented, contested, and rejected in practice, and with what effects. This can lead to a better understanding of the development of EU law and can unveil patterns of influence and dominance of certain kinds of actors and their worldviews over others. By pointing to what counts as EU legal creativity in certain contexts and what EU legal arguments and techniques are commonly rejected as inoperable or wrong, it can offer valuable information for appraising the ability of different legal cultures and ideologies, as well as of different kinds of legal consciousness to shape the content of EU law and the process of European integration.

Different kinds of inquiry are possible within the approach we propose. Unravelling the characteristics of national legal cultures of EU Member States is perhaps the more immediate.¹¹⁷ But national legal actors do not monopolise the meaning of EU law. There is a growing literature on the peculiar characteristics of EU legal knowledge as it is developed by EU lawyers themselves, and on what is sometimes described as an EU legal culture.¹¹⁸ The study of third countries or of institutions of global reach, such as the IMF or the World Bank, can give important insights on the local legal actors’ visions of Europe, as well as on the role of the EU as a global actor and as a source of inspiration for other projects of integration. ‘Locality’ can be broadly defined by the existence of a community, network or *milieu* displaying shared understandings of EU law. It can be an epistemic community, such as constitutionalists,¹¹⁹ a professional community such as elite tax lawyers,¹²⁰ street level bureaucrats,¹²¹ or the ‘troika’,¹²² a policy community, such as EU officials and firms cooperating on a particular EU policy or research programme,¹²³ an institution, such as the Commission, the French Council of State or a private enterprise, a civil society organisation such as NGOs

¹¹⁶ Pascale Cornut St-Pierre (2020), « [La technique juridique, objet de science sociale ? Pour une sociologie pragmatique des controverses techniques en droit](#) », *Jurisprudence – Revue critique*, 9, consulté le 10 juillet 2025, p. 11.

¹¹⁷ For some well-known studies attentive to the different national meanings of EU law, see Gunther Teubner (1998), “Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences”, *Modern Law Review*, 61:1, 11-32; Pierre Legrand (1996), “European Legal Systems Are Not Converging”, *The International and Comparative Law Quarterly*, 45:1, 52-81. See also Marketou, *Local Meanings of Proportionality* (Cambridge University Press, 2021); Michal Bobek and Jeremias Prassl (eds.) *The EU Charter of Fundamental Rights in the Member States* (Hart, 2020), analysing inter alia how the Charter is mobilized in different Member States.

¹¹⁸ For some examples, see Joseph H.H. Weiler (2011), “The political and legal culture of European integration: An exploratory essay”, *International Journal of Constitutional Law*, 9:3-4, 678-694; Jacco Bomhoff (2012), “Perfectionism in European Law”, [Cambridge Yearbook of European Legal Studies](#), 14, 75 – 100; Toni Marzal (2023), “Between Integration and the Rule of Law: EU Law’s Culture of Lawful Messianism”, *German Law Journal*, 24:4, 718-734.

¹¹⁹ For some works in the EU legal field showing sensibility to the worldviews and imaginaries of constitutional lawyers, see Von Bogdandy, “National legal scholarship in the European legal area—A manifesto”; Jan Komárek, *European Constitutional Imaginaries. Between Ideology and Utopia* (Oxford University Press, 2023).

¹²⁰ For such a study in international tax law, see Pascale Cornut-St Pierre (2019), “Investigating Legal Consciousness through the Technical Work of Elite Lawyers: A Case Study on Tax Avoidance”, *Law & Society Rev*, 53:2, 323-352. See also Nicholas Haagensen (2024), “The multiple meanings of EU law: using sociological interpretivism to make sense of the Eurozone crisis”, *European Law Open*, 3:2, 402-417 who studies the multiple meanings of EU law as constructed and negotiated by legal actors in three cases concerning the Euro-crisis.

¹²¹ See Jean-Marc Weller, ‘Pouvoir réglementaire et discrétionnarité. Perspectives pragmatique et praxéologique de la règle de droit’, in Thomas Angeletti et Vincent-Arnaud Chappe, *Les modes de présence du droit* (éd. EHESS, 2024), who studies street level bureaucrats’ perceptions of their discretionary powers when applying EU law.

¹²² Marylou Hamm, *Les conditions de l’Europe : sociologie de l’assistance technique européenne dans la crise grecque (2011-2015)*, PhD thesis, University of Strasbourg and Université Libre de Bruxelles.

¹²³ On such a study in the field of EU defence policy, see Bruno Oliveira Martins and Jocelyn Mawdsley (2021), ‘Sociotechnical Imaginaries of EU Defence: The Past and the Future in the European Defence Fund’, *Journal of Common Market Studies*, 59:6, 1458-1474.

active for the defence of the rights of migrants,¹²⁴ or an association of hunters,¹²⁵ a social group such as hijab wearers or Caribbean students,¹²⁶ a social movement such as the LGBTQ, a political party or movement, such as the Polish Civic Coalition, or the European Left.¹²⁷ Focus on elite lawyers will tend to point to the parochialism of dominant understandings of EU law and to features of EU legal knowledge that entail closure and hamper legal transformation in different contexts, while attention to the EU legal consciousness of less explored communities or social fields will rather point to alternative modes of legal imagination and to the possibilities of translating them in EU legal terms. The mobilisation of EU legal arguments is then the criterion to delimit the scope of our research, if we want to – as we must – avoid seeing EU law everywhere. And yet, in concrete cases, the absence of EU law or of some of its aspects can also be interesting and unveil peculiar characteristics of local actors' EU legal consciousness.¹²⁸

Instead of departing from abstract concepts or theories, the inquiry into the local meanings of EU law implies adopting a "micro-legal perspective" and proceeds through the study of concrete cases in which the knowledge practices of actors mobilising EU law are observable.¹²⁹ Such case studies allow establishing "comparable local meanings" of EU legal concepts and techniques.¹³⁰ We may choose to delimit the scope of the research within a specific space, such as the island of Lesbos,¹³¹ a specific case, such as the contestation of Cypriot bail-ins during the Eurocrisis before the CJEU,¹³² or a specific moment or time period, such as "the long seventies".¹³³ Shedding light on the different meanings of EU law that coexist within those settings will put emphasis on the antagonistic nature of EU law and of its development, but also on the 'locality' of EU legal knowledge, in the sense that it is negotiated and determined within the context of concrete cases, spaces, and moments, according to what different actors consider to be relevant and negotiable. The focus on a particular instrument of EU law or on a particular concept and to provide a genealogy of its evolution is another inquiry relevant for our approach. Zooming in on how legal categories, concepts and techniques have originated, which meanings they had at the time, which reactions they provoked and which dimensions still inform current understandings, limit or foster current developments, is also a means of unveiling the 'locality' of EU law. The work of sociologists and legal historians of the last decade and a half has shed a different light on the origins of principles, such as direct effect, and has unearthed the intellectual history behind some of the EU's legal constructions, in particular from the perspective of the Court, the Commission's legal service and their respective

¹²⁴ See Virginia Passalacqua (2024), 'Explore the Silence: The Absence of Preliminary References from Greek Courts on Migration and Asylum', *German Law Journal*, 25:6, 977-1001, pointing at the importance of local actors' EU legal consciousness in EU legal mobilisation.

¹²⁵ Julian Mischi and Julien Weisbein (2004), « L'Europe comme cause politique proche ? Contestation et promotion de l'intégration communautaire dans l'espace local », *Politique européenne*, 12:1, 84-104.

¹²⁶ Camille Dabestani (2024), « (Re)penser l'Union européenne depuis la Caraïbe : imaginaires, identités et projections des étudiant-es en Guadeloupe et en Martinique », *L'Espace Politique*, 53-54:2/3.

¹²⁷ Andry, *Social Europe: The Road Not Taken*.

¹²⁸ Passalacqua, 'Explore the Silence'; Kris van der Pas (2024), 'All That Glitters Is Not Gold? Civil Society Organisations and the (Non-)Mobilisation of European Union Law', *Journal of Common Market Studies*, 62:2, 525-545.

¹²⁹ Pascale Cornut St-Pierre (2020), « [La technique juridique, objet de science sociale ? Pour une sociologie pragmatique des controverses techniques en droit](#) », *Jurisprudence – Revue critique*, 9, consulté le 10 juillet 2025, p. 11.

¹³⁰ Jacco Bomhoff, "Comparing Legal Argument", in Maurice Adams and Jacco Bomhoff (eds.), *Practice and theory in comparative law* (Cambridge University Press, 2012), 74.

¹³¹ In this sense, our approach intersects with Floris De Witte's proposal to study EU law through the angle of legal geography. See "Here be Dragons".

¹³² Haagensen, "The multiple meanings of EU law".

¹³³ Andry, *Social Europe: The Road Not Taken*.

members.¹³⁴ While this research has led to collaborations with lawyers,¹³⁵ much space remains to explore the legal significance of those “local meanings” for the current understanding of EU law. This kind of inquiry will shed light on how EU law is shaped by collective mental programmes that remain unconscious, on EU law’s agency, and on patterns of influence and domination that characterise the process of legal integration.

The inquiries that we just outlined share the close attention to the different ways in which EU law is locally experienced and practiced. Our purpose is to interpret these experiences and practices as such, not to evaluate them as right or wrong according to a preconceived theory or template nor to reduce them to the cause or the effect of other social phenomena. “[F]rom within law, we can look out on science and politics – law offers an understanding of both. But it does so without collapsing into either.”¹³⁶ Thus understood, the research on the local meanings of EU law invites us to an exercise in legal imagination to reinvent the EU and its law, and this is a timely enterprise for EU lawyers.

8. Conclusion: Local Meanings and Legal Diversity

That the EU and its law face unprecedented challenges hardly needs demonstration in late 2025. Geopolitical and technological shifts, as much as environmental turning points, the entrenchment of socio-economic inequalities and the steady progress of extreme right-wing parties and governments in various Member States defy the very premises on which for decades the system of EU law has been built. It is not only the liberal constitutional premises of this legal system that are at stake, but also its ability to generate solutions to the problems that it now faces.

In this context, the functional understanding of law, predicated on law being a means to ends that are external to the legal realm, which is deeply ingrained in EU law, risks stretching the law beyond what it can realistically achieve and, at the same time, reduce it to “what makes law work”.¹³⁷ More deeply, we argue, it distracts from a much richer account of how EU legal arguments and techniques have been – and continue being – accepted and rejected through patterns that do not conform to an ideal of uniformity. Taping into how EU law is mobilised and experienced in different times, spaces and in relation to different objects or phenomena, by different communities or social fields, will allow us not only to shed light on the agency of EU law – how it enables the creation of certain worlds and displaces others – but also generate a knowledge on practices of EU law that is neglected or discarded as deviant from, or marginal to, the system that has been set up on the basis of well-known principles and structures. Taking diversity seriously will ultimately shed light on the scope of EU law and on the meanings of the “common framework” that it represents, beyond the self-referential logic of a system that aims to resist and accommodate the challenges that it currently faces, and beyond the premise of linear evolution and progress that it currently struggles to uphold.

¹³⁴ E.g. Antoine Vauchez (2010), “The Transnational Politics of Judicialization. Van Gend En Loos and the Making of EU Polity” *European Law Journal*, 16.1, 1–28. Morten Rasmussen (2014), “Revolutionizing European law: A History of the Van Gend en Loos judgement”, *International Journal of Constitutional Law*, 12:1, 136–163; Anne Boerger, Morten Rasmussen (2014), “Transforming European Law: The Establishment of the Constitutional Discourse from 1950 to 1993”, *European Constitutional Law Review*, 10:2, 199–225.

¹³⁵ Albertina Albors-Llorens, Catherine Barnard, Brigitte Leucht (eds.) *Cassis de Dijon: 40 Years On* (Hart, 2020).

¹³⁶ Paul Kahn (2004), “Comparative Constitutionalism in a New Key”, *Michigan Law Review*, 101, 2677–2705.

¹³⁷ Michele Graziadei, “The Functionalist Heritage” in Pierre Legrand and Richard J. C. Munday (eds.) *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press, 2003), 100–128, 115.



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