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## ORIGINAL ARTICLE

# The object(s) of legality

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## Abstract

In this article, we argue for the relevance of studying the association between objects and people as co-constituting legality in everyday life rather than solely focusing either on people or on ‘icons’. Indeed, we go further and argue that scholarship is in danger of producing an impoverished version of legal consciousness if it fails to look beyond the human actors, the people in society. Studying objects and associations, and their role in the making of legalities, is enriched by engaging with the insights of legal consciousness, and its close attention to the way in which everyday forms of engagement with legal orders are co-constitutive of legality. We illustrate through two different case studies how associations between objects and people (in a homeless shelter for young people and among herbalists) mediate and shape legal consciousness.

## 1 | INTRODUCTION

In a discussion of legal consciousness, Susan Silbey returned to the example that illustrated the front cover of *The Common Place of Law*, the field-defining text that she co-authored with Patricia Ewick.<sup>1</sup> The example was of a chair in the snow in New Jersey. On its own, it is apparently meaningless, but the chair gains a form of legal meaning by ‘invoking the concepts, terms and traditions of law’ to denote a parking spot cleared through the labour of the owner of the

<sup>1</sup> P. Ewick and S. Silbey, *The Common Place of Law: Stories from Everyday Life* (1998).

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chair.<sup>2</sup> Silbey argued that ‘the chair in the snow is an icon of legality because it illustrates how law lives and works *in* society, exposing what is “latent in experience”’.<sup>3</sup> In this article, we argue for the relevance of studying the association between objects and people as co-constituting legality in everyday life rather than solely focusing either on people or on ‘icons’.<sup>4</sup>

We go further by arguing that scholarship is in danger of producing an impoverished version of legal consciousness if it fails to look beyond the human actors, the people in society. Indeed, studying objects and associations, and their role in the making of legalities, is enriched by engaging with the insights of legal consciousness, and its close attention to the way in which everyday forms of engagement with legal orders are co-constitutive of legality. Associations between objects (such as documents, icons, software programmes, and artefacts) and people mediate and shape legal consciousness,<sup>5</sup> as with the chair in the snow mediating legality. Ewick and Silbey have themselves argued that law’s ‘thinglike legality’ must be considered, noting how law’s textualization materializes potential relations and scope for action, thereby influencing the social.<sup>6</sup> They have emphasized that ‘professionals and laymen ... locate social authorship in non-human artifacts’ as they locate legal authority in written texts.<sup>7</sup>

With an interest in analysing associations between objects and people, science and technology studies (STS) offers conceptual lenses to unbox such co-constitutive networks. As Virginie Albe and Stéphanie Lacour have argued, there are forceful parallels between legal consciousness and STS.<sup>8</sup> From an empirical perspective, our separate work on legal consciousness and STS spontaneously brought us to the workshop that preceded this Special Supplement with the same thesis drawn from our different datasets – namely, that associations between people and objects must be taken seriously to analyse and comprehend their co-constitutive significance for shaping of legality. As Joanne Conaghan has put it,

[m]atter *matters* because it plays an active role in processes of meaning and apprehension. In this sense, epistemology, as currently understood, must give ground to ontology, including new investigations of the ontological premises upon which critical thinking, particularly that characterized by the cultural or linguistic turn, has been based.<sup>9</sup>

<sup>2</sup> S. Silbey, ‘Studying Legal Consciousness: Building Institutional Theory from Micro Data’ (2018) 100 *Droit et Société* 685, at 710.

<sup>3</sup> *Id.*

<sup>4</sup> On the controversy in legal scholarship, see E. Cloatre and D. Cowan, ‘Indefensible and Irresponsible: Interdisciplinarity, Truth and #Reviewer2’ in *Routledge Handbook of Socio-Legal Theory and Methods*, eds N. Creutzfeld et al. (2020) 97.

<sup>5</sup> J. Bennett, *Vibrant Matter: A Political Ecology of Things* (2010) ch. 1.

<sup>6</sup> Ewick and Silbey, *op. cit.*, n. 1, pp. 99–106.

<sup>7</sup> *Id.*, p. 100. A curious footnote appears in B. Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (2005) 7, in which he suggests overlaps between Ewick and Silbey’s work and this approach. See also S. Silbey and A. Cavicchi, ‘The Common Place of Law: Transforming Matters of Concern into the Objects of Everyday Life’ in *Making Things Public: Atmospheres of Democracy*, eds B. Latour and P. Weibel (2005) 556.

<sup>8</sup> V. Albe and S. Lacour, “‘Legal Consciousness Studies’ and “‘Science and Technology Studies’: Drawing Parallels?” (2018) 100 *Droit et Société* 633. See also Latour, *id.* Cloatre and Cowan argue that this way of thinking suggests ‘a radical dissolution of the stability of law as a defined social field, ... seeing in its place a field always in making and deeply entangled in other forms of social making and unmaking or unsettlement’: E. Cloatre and D. Cowan, ‘Legalities and Materialities’ in *Routledge Handbook of Law and Theory*, ed. A. Philippopoulos-Mihalopoulos (2018) 433, at 438.

<sup>9</sup> J. Conaghan, ‘Feminism, Law and Materialism: Reclaiming the “Tainted” Realm’ in *The Ashgate Research Companion to Feminist Legal Theory*, eds M. Davies and V. E. Munro (2016) 31, at 39.

In this article, we consider objects, or matter, as actants, inspired by Bruno Latour's coining of the concept: 'An actant can literally be anything provided it is granted to be the source of an action.'<sup>10</sup> Analysing objects as actants of everyday legal consciousness offers insight into the co-construction of legality between actants and persons' actions. The datasets on which we draw in this article related to the everyday work lives of, first, welfare professionals at a homeless shelter and, second, herbalists, as they negotiate and traverse legality. The pooling of our datasets and ideas, though different in their empirical focus, enables us to draw out and illustrate two central propositions:<sup>11</sup> first, objects in associations with people are significant in shaping the possibility of legalities; second, where objects are at the core of what law tries to do, they are always more than the passive recipients of legal framings but can be transformative of legal relationships. Our first case study illustrates how objects co-constitute legality in association with welfare professionals at a homeless shelter for young people, establishing that the practices are to a large extent informed and assigned legality through documents and objects. Our second case study, of the regulation of herbalists, demonstrates how the relationship between herbalists, their products, and legalities are mediated through everyday material practices.

## 2 | OBJECTS, PEOPLE, AND LEGALITY

Legal consciousness scholarship generally focuses on what *people* say and do (or do not say and do) in relation to law. Our starting point here is that intersections of both people and objects are of relevance for analysing the co-constitution of legality in which what people do and how they do it happen through materials and/or material practices. We argue that the legal, just like the economic or the social, is best appreciated through analyses of networks, or associations, between the practices, objects, and relations on which it is based.<sup>12</sup> Latour has argued: 'As I see it, things are unfairly accused of being just "things"; and all things also means an assembly of a judicial nature gathered around a topic, reus, that creates both conflict and assent'.<sup>13</sup> According to Latour, one can trace the visible connections that make up the object: the moment of innovation in the laboratory; when there is distance in time or space between the users; or by accidents, breakdowns, and strikes.<sup>14</sup> Consciousness is an effect of the connections, mostly fragile, between things that stabilize at particular moments in time.<sup>15</sup> Even when things have

<sup>10</sup> B. Latour, 'On Actor-Network Theory: A Few Clarifications, Plus More than a Few Complications' (2017) 27 *Philosophical Literary J. Logos* 173, at 179.

<sup>11</sup> See further Cloatre and Cowan, op. cit., n. 8.

<sup>12</sup> See for example M. Callon, 'An Essay on Framing and Overflowing: Economic Externalities Revisited by Sociology' in *The Laws of Markets*, ed. M. Callon (1998) 244.

<sup>13</sup> B. Latour, 'When Things Strike Back: A Possible Contribution of "Science Studies" to the Social Sciences' (2000) 51 *Brit. J. of Sociology* 105, at 117. Law refers to this as 'a semiotics of materiality. It takes the semiotic insight, that of the relationality of entities, the notion that they are produced in relations, and applies this ruthlessly to all materials – and not simply to those that are linguistic': J. Law, 'After ANT: Complexity, Naming and Topology' in *Actor-Network Theory and After*, eds J. Law and J. Hassard (1999) 1, at 4.

<sup>14</sup> J. Johnson, 'Mixing Humans and Nonhumans Together: The Sociology of a Door-Closer' (1988) 35 *Social Problems* 298.

<sup>15</sup> M. Callon, 'The Sociology of an Actor-Network: The Case of the Electric Vehicle' in *Mapping the Dynamics of Science and Technology: Sociology of Science in the Real World*, eds M. Callon et al. (1986) 19; M. Callon, 'Some Elements of a Sociology of Translation: Domestication of the Scallops and Fishermen of St Brieuc Bay' in *Power, Action and Belief: A New Sociology of Knowledge*, ed. J. Law (1984) 196.

receded into the background for good, it is always possible – but more difficult – to bring them back to light by using archives, documents, memoirs, museum collections etc., to artificially produce, through historians' accounts, the state of crisis in which machines, devices, and implements were born.<sup>16</sup>

Legality generally involves translations or codings of often complicated ideas onto paper which take on a new (sometimes unintended) form as legal. As Richard Freeman and Jo Maybin have reminded us, 'the practices of government become formal or official to the extent that they are documented',<sup>17</sup> and, once documented (physically or virtually), they become both immutable and mobile, producing action.<sup>18</sup>

There are many examples through which one can think about how objects interact with materials and material practices, which reflect and do work in the active processes of meaning making in spaces of legality. For instance, the judge's panic button operates as an accepted part of the court infrastructure and one that makes assumptions (of some form of violence, for example) about the protection of judges and welfare professionals;<sup>19</sup> documents serve as case files that are 'mundane and such a taken-for-granted part of the infrastructure of legal practice';<sup>20</sup> or the smoke alarm in your home that you forget (until you burn the toast) is actually (in England, at least) a cypher for housing tenure.<sup>21</sup> These diverse objects are mediators that actively shape meaning and legality. Legalities are brought into effect by their interactions, enrolments, and translations with, and by, other things.

Other studies in the field of legal consciousness illustrate, however indirectly, how objects such as documents play an active role in processes of constituting the meaning and apprehension of legality. For example, passports are material translations that mediate relationships between citizens and the state (as we in the United Kingdom know only too well through the post-Brexit change in passport colour); the passport is a physical manifestation of citizenship. Thus, the symbolic and material value of citizenship is transformed into texts through the passport as document or the passport stamp (indicating, for example, that the holder has no recourse to public funds) – demonstrating how the passport has become such a contested site of sovereignty, entitlement, fear and anxiety.<sup>22</sup> As Annelise Riles has put it, legal documents also 'anticipate and enable certain actions by others – extensions, amplifications, and modifications of both content and form'.<sup>23</sup>

These illustrations demonstrate how objects operate as translations, mediating and interweaving legality in our everyday lives. This is not merely a one-way translation, like the textualization

<sup>16</sup> Latour, op. cit., n. 13, p. 117.

<sup>17</sup> R. Freeman and J. Maybin, 'Documents, Practices and Policy' (2011) 7 *Evidence & Policy* 155, at 155.

<sup>18</sup> How law's categorization of case handling informs bureaucratic processes and practices is demonstrated in B. Latour, *We Have Never Been Modern* (1993); S. P. P. Nielsen, *Ikke-jurister i et retligt højspændingsfelt: Når sagsbehandlere og borgere samproducerer sagsbehandling* (2020).

<sup>19</sup> See for example D. Cowan and R. Harding, 'Legal Consciousness and Administrative Justice' in *The Oxford Handbook of Administrative Justice*, eds M. Hertogh et al. (2021) 437.

<sup>20</sup> I. van Oorschot and W. Schinkel, 'The Legal Case File as Border Object: On Self-Reference and Other-Reference in Criminal Law' (2015) 42 *J. of Law and Society* 499, at 502.

<sup>21</sup> D. Cowan, 'Home: Socio-Legal Interventions' in *Research Handbook on Housing, the Home and Society*, eds K. Jacobs et al. (2024) 109.

<sup>22</sup> L. J. Abrego, 'Relational Legal Consciousness of US Citizenship: Privilege, Responsibility, Guilt, and Love in Latino Mixed-Status Families' (2019) 53 *Law & Society Rev.* 641.

<sup>23</sup> A. Riles, 'Introduction: In Response' in *Documents: Artifacts of Modern Knowledge*, ed. A. Riles (2006) 1, at 21.

of legal ideas,<sup>24</sup> but an ongoing process of meaning making. Even where form and substance are difficult to dissociate, as users engage both with the material form of the document and the inscribed script of law, material expressions and circulation continue to matter, and there are both spatial and temporal effects in material translations. Material translations of law produce an indispensable thing as an 'obligatory point of passage'.<sup>25</sup> Though anchored, they are also mobile and travel through space, and our understandings about them (including the ways in which we see them as legal objects) change over time. These objects have agency; they are actors, or, to use the word sometimes employed by actor-network theorists, actants, which stresses their mobility, as translation and association are ongoing endeavours.<sup>26</sup>

It is through such translations and associations that the social and the legal are performed.<sup>27</sup> This focus on associations leads to the rallying call, or slogan, for the kind of scholarship where

you have 'to follow the actors themselves', that is try to catch up with their often wild innovations in order to learn from them what the collective existence has become in their hands, which methods they have elaborated to make it fit together, which accounts could best define the new associations that they have been forced to establish.<sup>28</sup>

The significance of this is that no single actor can necessarily be prioritized analytically, because size is an irrelevance; a simple microbe, as we well know through the COVID-19 virus, can exert more influence than the sovereign. This is not to deny that large and small exist, but it is to say that such words explain nothing if we assume that size does not matter.<sup>29</sup> The key point is that actors, such as microbes and other things, have causal influence on outcomes.

There have been a number of insightful studies in which objects have been used in one way or other to work out the effects of the particular kinds of assemblages of law.<sup>30</sup> These show how the workings of law are heavily dependent on materials of all kinds – from the spaces of courtrooms and their peculiar furnishings, to the multiple documents and forms that circulate to 'make law happen', to the very objects that law conditions.<sup>31</sup> The key point is that materialities do not pre-exist social and legal relations, but are always produced by them.<sup>32</sup> Emilie Cloatre has suggested that 'a broader analysis of legal objects, both in their making and their deployment, suggests a revisiting of the boundaries of the law'.<sup>33</sup> This seems to us to re-state the legal consciousness

<sup>24</sup> As Ewick and Silbey neatly put it, 'the law is materially in the texts it produces': Ewick and Silbey, *op. cit.*, n. 1, p. 99.

<sup>25</sup> Callon, *op. cit.*, n. 15, p. 26.

<sup>26</sup> Ewick and Silbey, *op. cit.*, n. 1, p. 44. See also E. Grabham, *Brewing Legal Times: Things, Form, and the Enactment of Law* (2016) 29–31.

<sup>27</sup> Latour, *op. cit.*, n. 7.

<sup>28</sup> *Id.*, p. 12.

<sup>29</sup> M. Callon and B. Latour, 'Unscrewing the Big Leviathan: How Actors Macro-Structure Reality and How Sociologists Help Them to Do So' in *Advances in Social Theory and Methodology: Towards and Integration of Macro and Micro Sociologies*, eds K. Knorr and A. V. Cicourel (1986) 277.

<sup>30</sup> See for example M. Valverde, 'Authorizing the Production of Urban Moral Order: Appellate Courts and Their Knowledge Games' (2005) 39 *Law & Society Rev.* 419; Van Oorschot and Schinkel, *op. cit.*, n. 20; M. A. Jacob, 'The Strikethrough: An Approach to Regulatory Writing and Professional Discipline' (2017) 37 *Legal Studies* 137.

<sup>31</sup> B. Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (2010); Cloatre and Cowan, *op. cit.*, n. 8.

<sup>32</sup> Cloatre and Cowan, *id.*, p. 435.

<sup>33</sup> E. Cloatre, *Pills for the Poorest: An Exploration of TRIPS and Access to Medication in Sub-Saharan Africa* (2013) 21.



problematic – that legality in everyday life produces and is produced by new and differently constituted boundaries.

Focusing on associations between objects and people centres our research on the particular rather than on the general as we methodologically zoom in on the associations between objects and people in the context of everyday social life. Nevertheless, as our illustrations in the next sections demonstrate, the particular and the general interact, as they do in all legal consciousness studies.<sup>34</sup>

### 3 | STUDYING ASSOCIATIONS OF LEGALITY

In this section, we draw on our empirical work to illustrate the relevance of studying associations between objects and people in the social context of everyday life.

#### 3.1 | Case Study 1: the co-constitution of legality at a Danish youth shelter

This section illustrates how associations between objects and welfare professionals' legal consciousness spur actions and co-constitute legality. It does so by analysing how objects, as actants, inform practices that are assigned legality in the everyday practices of the professionals. We zoom in on the everyday practices of welfare professionals at a Danish municipal youth shelter, which offers temporary residence for young persons (between 18 and 25 years of age) experiencing homelessness. Being introduced to the professionals' everyday work life, we were struck by the number of documents and objects for documentation that influenced their practices. This motivated an analysis of objects' relevance for the professionals' construction of legality. To understand the processes of legality construction, we conducted participant observations and semi-structured interviews with the professionals.<sup>35</sup> Participant observations offered insights into the professionals' everyday practices in their physical work setting and their interactions with specific objects such as documents, forms, and whiteboards that were considered relevant for the ordering of their work life.<sup>36</sup> Inspired by Latour's argument that 'every single interview, narrative, and commentary, no matter how trivial it may appear, will provide the analyst with a bewildering array of entities to account for the hows and whys of any course of action',<sup>37</sup> we supplemented the participant observations with semi-structured interviews with the welfare professionals. Semi-structured interviews elicited insights into interviewees' perceptions of legality, experiences with law, motivation for practices, and how legality would feed into their everyday work life.<sup>38</sup> We conducted a total of 45 interviews with professionals at a number of different youth shelters. However,

<sup>34</sup> For this type of study, see for example Nielsen, op. cit., n. 18.

<sup>35</sup> For a detailed account of the methodology applied, see S. P. P. Nielsen and O. Hammerslev, 'Velfærdsstatens regulering af ungdomshjemløshed: Retlige handlemuligheder og deres potentielle effekt' (2022) 172 *Retfærd* 11; S. P. P. Nielsen and O. Hammerslev 'Digitalizing Welfare: The Role of Encounters in Supporting Marginalised Citizens' Access to Rights in the Danish Welfare State' (2022) 43 *Recht der Werkelijkheid* 33.

<sup>36</sup> Latour, op. cit., n. 31.

<sup>37</sup> Latour, op. cit., n. 7, p. 47.

<sup>38</sup> L. B. Nielsen, 'Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment' (2000) 34 *Law & Society Rev.* 1055, at 1061.

in this article we draw only on observations from one shelter and one interview with a welfare professional working at that shelter. Though the empirical findings from these observations and interview resonate with findings from observations and interviews with welfare professionals in similar positions, we chose only to include this limited data to expand on and illustrate in depth the relevance of associations between objects and persons for the co-construction of legality in the micro cosmos of everyday work life.

### 3.1.1 | Objects regulating processes

The shelter is located on the outskirts of one of Denmark's largest cities. It has a capacity of more than ten small apartments. There is access to an open common room with a kitchen, a computer, sofas, and a garden. In the common room, a whiteboard hangs on the wall with daily information on staff availability, meetings, and activities. Staff offices and meeting rooms are placed at the other end of the building. In one of the staff offices, a large whiteboard is drawn up with an overview of the case-handling process related to each shelter resident. As our interviewee explained to us, this whiteboard is central for the staff's work as it outlines the name of each resident, the resident's contact person (one of the shelter staff), the actors involved in the case-handling process (such as the job centre or the substance abuse clinic), and how far the process has progressed (what the next step is). The whiteboard is thus a central actant for the welfare professionals' everyday work life as it prompts actions based on the focus of which steps to take in the process of supporting the young persons in exiting homelessness. As the professionals keep themselves up to date through the whiteboard and use it to inform their practices, we suggest that it is in this association between the whiteboard as actant and professionals as actors that legality for practices is constituted.

During one of our visits to the shelter, we interviewed a member of staff and asked about the processes of supporting the young persons, to which our interviewee replied:

I will just get some paper to show you [the interviewee fetches a document outlining procedures related to the course of resident stays]. There, you see, we have an overview of our resident course: what it is that one must participate in when staying here. You can see it here [points at the document]. First day, one comes from the receiving unit. There, you look at previous enrolment, residence agreement, and so forth. And what does it mean, all these things? They are all resource-demanding tasks in practice. What must the resident complete during the stay? All staff go through this document. Then, the welcoming, the house rules, guided tour around the house, medical agreements, consent forms. All these things.

The document outlines processes to follow whereby its textualization potentially informs staff practices. As mentioned, we were initially struck by the number of documents that in different ways inform and legitimize the everyday work practices at the shelter. In our reading of the data, this example illustrates how associations between objects, such as the document referred to by the interviewee, and the shelter staff inform staff practices. The document mentioned does not in itself make the interviewee and her colleagues act. However, the fact that the interviewee stood up, walked away, found the document, returned to the interview, and used the document to describe processes for staff practices demonstrates that she considers it central for structuring everyday work life at the shelter, whereby we suggest that the association between the document and the



interviewee's practices in this specific situation reflects the relevance of objects in the process of co-constituting legality.

### 3.1.2 | Objects regulating associations

Table 1 illustrates the document's focus on the first steps related to the young persons' registration and stay at the shelter.<sup>39</sup> The document's textualization materializes associations between people and institutions as it outlines responsibilities and (in)directly offers agency to the persons involved – for example, that the young persons through their consent play a potentially pivotal role in initiating the process of gaining residency. Moreover, the document's focus on tasks to be completed reflects negotiated understandings of relevant practices in the process of supporting exit from youth homelessness. The textualization of the category 'procedures/tasks' reflects an inherent understanding of legality that specific practices ought to take place to transform options for support into practice. Reading through the document, there is a temporal aspect related to the task performance – namely, that on a young person's arrival from the recipient unit, a specific set of tasks must be performed, including filling out forms and introducing the newly arrived person to house rules. The document states that everyone (meaning everyone among the shelter staff) can perform the outlined tasks; in this way, the document, from a temporal perspective, stresses the relevance of rapid response to new arrivals. Thus, legality is assigned to addressing social needs as quickly as possible.

One of the first tasks to complete is filling out a registration paper, which includes different forms, such as consent forms and forms of agreements. We now zoom in further on the form on consent to information sharing.<sup>40</sup> Residence municipalities pay for expenses related to the stay of 'their citizens', as our interviewee described. Thus, as she explained, without the young person signing this consent form, there would be no economic foundation for their stay. It therefore appears that legality is assigned to the prioritization of signing this form; the form is prioritized in the checking-in process at the shelter as it produces the legal tie between the young person and the residence municipality that enables the economic relation between the shelter and the residence municipality to come into being. Signing the form thereby materializes relations between the staff and the municipality that are essential for the staff's ability to provide support to the young person. From this, it follows that the document becomes a central actant for guiding staff practices, thereby co-constructing legality related to filling out consent forms as a decisive step for the process ahead.

Our interviewee explained that some young persons may at first be hesitant about signing the consent form, as a result of negative experiences with their residence municipalities. In such cases, the significance of the form often trumps those experiences. She explained to us that, in cases of hesitation over signing the form, the shelter staff stress to young persons that it is pivotal for their stay as, without their signature, there can be no admission: '[That] always make[s] them sign. I never experienced that they didn't [sign the form], then.' In our interpretation, the form is thus a central actant in the association between the shelter staff, the young persons, and the residence municipality, as it assigns legality to the process ahead; as an actant, the form makes it possible to materialize these necessary economic relations.

<sup>39</sup> The text in the table has been translated by the authors, as have the quotes from interviewees.

<sup>40</sup> This form relates to the sharing of information between shelter staff and the young person's residence municipality, which is the municipality where the person was last registered as residing.

**TABLE 1** Overview of resident course at the shelter

TASK	TIME	WHO	PROCEDURE/TASK	PRACTICAL CONDUCT
Registration for shelter stay	Day 1	Everyone	<b>Arrival from the recipient unit</b>	
			Decision on potential previous registration (stay agreement, attention to specific behaviour)	Citizen is registered on the whiteboard [ <i>vagttavle</i> ] with the assigning of contact person and team
			Filling out registration paper: <ul style="list-style-type: none"> <li>- consent form to information sharing</li> <li>- consent form on payment</li> <li>- cleaning agreement</li> <li>- agreement on medication to be signed if relevant</li> </ul>	First contact person conversation is scheduled Relevant documents are combined
			Introduction to the shelter: <ul style="list-style-type: none"> <li>- go through the welcome folder, including house rules</li> <li>- potential assessment of risks</li> <li>- tour of the shelter</li> <li>- room checklist (form in CSC [the computer-based case-handling system used at the shelter])</li> <li>- go through potential stay agreement (template in CSC)</li> </ul>	'Welcome to the shelter' form is filled in and handed over to the citizen
			Assignment of contact person and introduction to Team 1 or Team 2: <ul style="list-style-type: none"> <li>- user is informed about date for first contact person conversation within next four days</li> </ul>	
			Combine documents from registration conversation	

Other elements of relevance related to practices of filling out registration papers are the consent form on payment and the cleaning agreement. The former refers to young persons' own payment for their shelter stay. Though residence municipalities pay the majority of the cost, there is still a payment for which young persons are responsible. Again, if this form is not signed, there can be no admission, as this form also constructs the economic basis for shelter practices. Thus, it is in the association between this form, the young persons, and the shelter that legality for the process ahead is co-constructed. In itself, the form establishes the young persons' responsibility and agency related to their stay, which is also reflected in the agreement concerning cleaning. This agreement outlines the residents' responsibilities for keeping their apartment and the common facilities tidy, reflecting ongoing negotiated understandings of acceptable behaviour at the shelter. However, the shelter staff can be flexible in relation to that requirement, as the interviewee explained:

One of the residents is in such a poor state that he can't even care for himself. Every day we clean up vomit, we wash his clothes. He shouldn't be admitted here but there is no alternative place for him anywhere at the moment.

Thus, though the resident in question does not appear to be able to adhere to the cleaning agreement, his stay is temporarily tolerated, motivated by an understanding that his need for social support outweighs the internal agreement made between him and the shelter. From the perspective of studying associations between objects and people, this argument for his continued stay reflects a prioritization of elements. Reading through Table 1, the cleaning agreement is, from a temporal perspective, textualized as a priority task because it must be signed on residents' arrival day. However, when analysing the interviewee's accounts, it seems that legality is assigned to the performance of social support (cleaning up) rather than making sure that residents observe their obligations. Thus, in this example, legality related to the welfare professionals' practices is constructed around the overall aim of providing support, reflecting a more flexible approach among the shelter staff to the importance – or lack of – of the cleaning agreement.

At the shelter, objects reflect formal legal elements – for example, as the form on information sharing materializes residence municipalities as central actors in the process of providing the economic basis for shelters' supply of social support. Introducing new residents to house rules and the welcome folder is, from a temporal perspective, a prioritized task. In these processes, young persons are guided through the documents that materialize social relations through their textualization as they outline standards of conduct. Sometimes, residents may violate the rules, such as by displaying violent or threatening behaviour, which forms grounds for exclusion from the shelter. Decisions related to exclusion based on such behaviour are assigned legality as they contribute to restabilizing social order at the shelter.

Table 1 also structures conversations between contact persons among the shelter staff and the young persons. Each young person is assigned a contact person. Their conversations have a crucial function in negotiating the purpose of the young person's stay at the shelter and steps to realize that purpose. Are they to be enrolled in an educational programme? Do they need to find employment? What are their housing needs and budget? Thus, the person-to-person interaction is to a large extent structured around already identified categories of relevance for stabilizing the social situation of the young person. These categories motivate practices in the interaction, thereby reflecting how they co-constitute legality in the conversations between the two actors.

This case study illustrates how everyday work life at the shelter appears to be regulated through documents, forms, and professional understandings, formulated and constructed on site. These include consent forms, house rules, and whiteboards. All of these elements in different ways influence constructions of legality, perceptions of legitimate practices, and acceptable and unacceptable behaviour. The case study also highlights that the documents are flexible and mobile and can be assigned varying importance. In practice, there is a hierarchy of forms. Consent forms are decisive, whereas cleaning agreements are not. Concerning the latter, priority is given to the provision of care and social support, reflecting a perception of legality as that which contributes to the stabilization of young persons' situations. The case study thus illustrates how associations between different objects and persons form grounds for actions and co-constitute legality for the shelter staff's everyday practices.

### 3.2 | Case Study 2: materials and herbalists' negotiation of the boundaries of (il)legality

As well as shaping and mediating legal relations, materials can be enrolled to stretch the boundaries of legality, supporting competing visions of the (il)legal in daily practices. Social and material identities are open to negotiation and reconfiguration, becoming strategic tools in the redefinition

of legal positions, and participating in the processes of everyday rewritings of legality to which others have pointed.<sup>41</sup> The example that we use is borrowed from research on traditional and alternative healers, particularly those who operate without a clear legal status, in which Cloatre and colleagues have explored how these actors negotiate a fragile position on the edge of law, and rely on a degree of state tolerance where they remain within boundaries deemed acceptable. Here, we focus specifically on French herbalists, a group of practitioners whose activities are highly bounded by law, yet who often find ways to overcome its limits.

In their everyday practices, herbalists frequently blur boundaries between legality and illegality to be able to sustain what they view as the core of their traditions, and as caring practices towards their clients. Rather than clearly breaking the law, herbalists negotiate the boundaries of acceptability that surround it, so that their practice is not endangered, while the inadequacy of the limits currently imposed by law is challenged. As legal consciousness scholars have explored in other contexts, they develop their own versions of legality, where norms and the possibilities that they offer are enacted through everyday practices.<sup>42</sup> Just like herbalist practice itself, these negotiations happen with and through materials (herbs, their packaging, and the environment in which they are exchanged) and away from materials (privileging the ephemerality of the spoken word over the material form of written advice). In the account below, we briefly review some of these techniques, before reflecting on what they suggest of the relevance of thinking about materials when analysing the lived expressions of legality. Our account is based on empirical research conducted in France between 2017 and 2020, including 15 interviews with practising herbalists that detail the practices that we describe below. The research was part of a broader international comparative project on the regulation of traditional and alternative medicine that informs our analysis.

Though herbalism has been a part of the healing landscape in France for centuries, its position is fragile. Medicinal plants have continued to attract interest, even as biomedicine has become the main resource for healthcare.<sup>43</sup> However, herbalists perceive their role as generally threatened by an unwelcoming legal landscape, and by the social fragility that this creates. In France, herbalism has no formal recognition as a profession, and the only agents recognized by law as experts in medicinal plants are pharmacists.<sup>44</sup> Products that are considered ‘medicinal, including medicinal plants and manufactured herbal medicines’, can only be sold by pharmacists, and in pharmacies, according to Article 4211-1.5 of the *Code de Santé Publique*. Anyone else selling medicinal plants can be found guilty of illegal pharmacy practice, which is punishable under criminal law. For herbalists, this framing of pharmacists as the legitimate experts in plants is problematic; misalignment between how herbalists conceive of medicinal plants and how pharmacists view them makes medicinal plants a contested material whose very existence is seen as threatened by the current arrangements. As a result, since the 1980s, herbalists have organized to contest this de facto monopoly, rewriting through practice and through campaigning the possibilities of herbal medicines, and the social and legal place of medicinal plants.<sup>45</sup>

<sup>41</sup> R. Harding, *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (2011); K. Hull, ‘The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage’ (2003) 28 *Law & Social Inquiry* 629.

<sup>42</sup> Hull, id.; E. Cloatre and M. Enright, ‘“On the Perimeter of the Lawful”: Enduring Illegality in the Irish Family Planning Movement, 1972–1985’ (2017) 44 *J. of Law and Society* 471.

<sup>43</sup> R. Garreta, ‘Ces plantes qui purifient: De l’herboristerie à l’aromathérapie’ (1998) *Terrain: Anthropologie & Sciences Humaines* 77.

<sup>44</sup> M.-D. Champion, ‘Les résonances actuelles de la loi de Germinal: Monopole pharmaceutique et exercice illégal de la pharmacie’ (2003) 91 *Revue d’Histoire de la Pharmacie* 395.

<sup>45</sup> I. Bost, *Herbaria: Ethnologie des herboristes en France, de l’instauration du certificat en 1803 à aujourd’hui* (2015).

In their campaigning, herbalists have had some success, carving out some exceptions to the pharmacists' monopoly, particularly for plants deemed innocuous. In 2008, it became legal to sell 148 listed plants outside of pharmacies. However, there are material restrictions on how those plants can be sold; they cannot be mixed (with a few exceptions of specifically authorized mixtures) and should be sold in raw form (except for a few that can be sold as powders), placing significant limits on what herbalists can do. In addition, only pharmacists can provide advice on the use of these plants. A herbalist advising a client on how to use the plants that they sell would be an encroachment on the medical/medicinal sphere, which remains the reserved field of pharmacists and doctors.

Though some herbalists are happy to work within these limits, many find them problematic, arguing that it is not possible to practise genuine herbalism without being able to mix some plants, advise customers, process plants, or use more than the 148 plants authorized by the regulators. As a result, a degree of rule bending is seen as inevitable, but to be approached with caution – as a negotiation with law, maintaining an illusion of compliance, or a partial degree of compliance, that will prevent sanctioning. In these arrangements, plants and materials are mobilized to define legal boundaries and shape the possibilities of alternative healthcare; legality is produced through the relations between lively materials and humans, each playing its own role in creating networks of resistant practice.

Here we review some of the techniques used to negotiate the boundaries of legality, and the mobilization of materials as actors in these techniques.

### 3.2.1 | Challenging the list

Despite apparently clear legal boundaries, created through neat-looking lists and detailed regulations, the trade of medicinal plants in France is messy and dispersed. While law affirms that pharmacies are the primary spaces where medicinal plants should be sold, plants considered by their users to have healing powers are also sold at markets, in health stores, or in specialized *herboristeries*.<sup>46</sup> Though many of these plants belong to the precise list of 148 plants authorized for general sale, not all of them do.

The list itself is reconstructed and resisted through practice. While a point of reference as to what is permitted by law, it is also frequently set aside, both as a statement of dissent with the portrayal of herbalism proposed by law, and because some herbalists believe that following the list to the letter would make it impossible to practise herbalism in any useful way (for example, because some essential plants are missing, or because the parts of some plants that are listed are not the ones deemed useful). As some of our interviewees put it, the list 'makes no sense', and following it too closely would represent an existential threat for traditional herbalist practice.<sup>47</sup> For its critics, the list is only as it is because it was created by people who do not understand herbalism and perceive plants only through a scientific lens; as well as a regulatory document, it is the material expression of a particular vision of herbalism. As a result, it is seen as devoid of authority, and has become a symbol of the tensions between law and traditional herbalist practice, and between contrasting understandings of the medicinal value of plants.

<sup>46</sup> Garreta, op. cit., n. 43; C. Brousse, *Ethnobotanique et herboristerie paysanne en France: Anthropologie de la relation des hommes au végétal médicinal (deuxième moitié du XXe siècle – première moitié du XXIe siècle)* (2018).

<sup>47</sup> Interviewee Fr. 3, 25 February 2018; Interviewee Fr. 4, 25 February 2018; Interviewee Fr. 1, 6 April 2017.

Because of this dissent, plants and parts of plants that are not included in the list are commonly sold outside pharmacies. Rather than a straightforward act of illegality, this is seen as a defensible and necessary practice, and a minor deviation from a rule made unenforceable by the ubiquity of plants, and their ability to grow and be grown. Herbalists argue that they need to resist the list because it underestimates the risks of users turning to wilder sources to procure plants (though the list is supposed to ensure the safety of patients by controlling the sale of more powerful plants). They also resist it because of what it embeds: a vision of herbalism seen as inadequate. The materiality of the list, as of all legal documents, is of course ambivalent; while an embodiment of a set of rules, its form also matters, enabling it to be a virtual and physical reference point used both to position oneself against law and to point to the incoherence of an entire legal framing. Where law is complex and spread across different regulatory texts and decisions, the list becomes a material anchor point where requirements as well as political visions are gathered.

Deviations from the list are best described as negotiations – often tolerated by the state in practice, as long as a degree of discretion and restraint is followed. This discretion is enacted through plays of (in)visibility and in association with the ubiquity of plants. Unauthorized plants can be entirely hidden from view, in a dedicated cupboard only to be opened for trusted customers,<sup>48</sup> or they can be discreetly placed behind their ‘legal’ counterparts, unlabelled, with authorized plants displayed more prominently. The hope is that this will make them less likely to be noticed through the light-touch checks that, in practice, often constitute the only way to be caught by state agents.

The particularities of plants as living materials also opens other avenue for negotiating law. For example, the list is only about the selling of plants, and therefore does not prohibit users from cultivating them in their own gardens, something that herbalists can point out, thereby respecting the letter of the law while deploying a different understanding of the riskiness of plants. In doing so, plants are mobilized not only as objects to sell, but also as the expression of a challenge to the approach to classification and categorization undertaken by the state. In response to a list that they consider ill-adapted and inconsistent, herbalists take some calculated risks to sustain a different vision of medicinal plants and their legitimacy, maintaining the possibility of healing practice by ensuring that a wider range of plants than those officially authorized can continue to circulate.<sup>49</sup> Like others who seek to resist the worldviews underpinning legal framings, when moving away from the limitations of the list, herbalists therefore embark on their own world-making project, where safe plants are not those deemed to be so by regulators.<sup>50</sup>

### 3.2.2 | Materializing ‘advice’ and non-medical identities

A second controversial limitation placed on herbalist practice is the monopoly of pharmacists over the act of advising on the medicinal uses of plants. Again, herbalists regard this limitation as a legal flaw. They consider themselves to have relevant expertise to share on the use of plants, from which customers should benefit. They also see the act of selling plants without offering advice on their medicinal use as a risky practice in itself, and a blind spot of law that may expose users rather

<sup>48</sup> Interviewee Fr. 6, 10 April 2018.

<sup>49</sup> Interviewee Fr. 9, 6 September 2018.

<sup>50</sup> On legal consciousness and world making, see also E. Fritsvold, ‘Under the Law: Legal Consciousness and Radical Environmental Activism’ (2009) 34 *Law and Social Inquiry* 799; A. J. Cohen and B. Morgan, ‘Prefigurative Legality’ (2023) 48 *Law & Social Inquiry* 1053.



than protect them.<sup>51</sup> The boundary between the type of guidance that would be seen as a breach of law and what might be seen as sufficiently benign to be tolerated by the state is also difficult to determine with any certainty, creating possibilities for negotiation.

As a result, herbalists, both individually and collectively, develop their own understandings of what may or may not be acceptable from a legal perspective. Acknowledging the complexity of the legal framework, they produce their own individual and collective translations, developing markers as to what may or may not be seen as (il)legal advice. Herbalist associations participate in this process of vernacularization, translating the language of law, and its opaqueness, into recommendations as to what acceptable practices might entail.<sup>52</sup> They balance the potential risk to customers of not providing any guidance against the potential legal risk to themselves of being seen as offering medical advice. Finding this balance is achieved through both material and rhetorical techniques. Words are chosen carefully to suggest that the advice given is informal or non-medical, based on tradition rather than science, and general rather than targeted at a particular patient's condition. However, materials also play a significant role. Writing is approached with particular care, so that suggestions are not taken to be prescriptions in a medical sense. Labels are avoided altogether, or, when attached to a plant, explicitly or implicitly construct the guidance as non-medical and non-specific.<sup>53</sup> Such crafting can blur the boundary between health advice of the type reserved for pharmacists and doctors and a broader type of non-expert suggestion provided to customers, traversing the boundary of (il)legality.

Material crafting as enacted through labels and (non-)written advice also comes to define the very boundary between medical and non-medical acts and objects that sit at the core of the framing of herbal medicines by law. This boundary between medicines and other herbal products (such as food supplements and traditional herbal medicines) has significant implications in terms of legal regimes: who can sell them and where, and whether their producers or sellers can claim that they have therapeutic properties. However, this boundary is also constructed in part through the claims attached to these products. Any herbal product to which therapeutic properties are attached, whether materially (such as on a label) or through practice, can be considered to be a medicine and requalified as such for legal purposes.<sup>54</sup> In these processes, legal identities are produced through material shaping, and the minute negotiations around which plants are defined as medicinal and which are regarded as more benign, natural, or traditional, to which lesser restrictions can apply.

The techniques deployed by herbalists to stretch law, and to continue to practise a form of herbalism that they see as meaningful and safer than the options created by law, are built around this understanding of the co-production of (il)legality through material practices. Through the use of these techniques, they avoid blatantly traversing both the boundaries of medicine and the boundaries of legality; language, writing, and objects are adjusted and manipulated to suggest that nothing of (legal or medical) significance is at play. Those who blur the boundaries of law try to avoid attention (of pharmacists who may report them, and of law enforcement officials) through material techniques and practices, sometimes enabled by the particularities of plants as living,

<sup>51</sup> Interviewee Fr. 8, 6 September 2018; Interviewee Fr. 2, 6 April 2017.

<sup>52</sup> On such processes of translation, see also L. J. Chua, 'The Vernacular Mobilization of Human Rights in Myanmar's Sexual Orientation and Gender Identity Movement' (2015) 49 *Law & Society Review* 299; S. E. Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (1990).

<sup>53</sup> Interviewee Fr. 4, 25 February 2018.

<sup>54</sup> N. Urquiza-Haas and E. Cloatre, 'Tradition and Reinvention: The Making and Unmaking of Herbal Medicines in the UK' (2021) 49 *J. of Law and Society* 317.

and discreet, materials. These efforts are shaped by an uncertain legal landscape that offers scope to stretch and debate boundaries, but is also limited by the liveliness of plants themselves; for example, any attempt to list and control medicinal plants is challenged by the fact that plants can always be grown and foraged. Enforcement of law is also, perhaps inevitably, light touch. Negotiations with law are therefore less a matter of deception and more a matter of everyday resistance to a legal system that does not quite align with the understanding of plants that herbalists want to sustain, reflecting the ambiguity of illegality.<sup>55</sup> Herbalists' resistance can be understood as part of a broader project of legitimation and alternative world making.

## 4 | CONCLUSION

In this article, we have provided illustrations of thinking jointly through a legal consciousness lens about the role of objects (be they forms or lists of plants) in exploring the making of legality. This is both a methodological point and a theoretical challenge. In noting the significance of non-human objects in the construction of legality, we are also reminded of the particular forms and ambivalence of legal objects (such as lists, documents, and whiteboards) that are both mobilized and mobilizing, both actants and assemblages (of rules, ideas, and expectations). In our two case studies, objects also appeared as discreet political players. Some, as Langdon Winner has suggested, created ways of settling an issue in a particular community (in the youth shelter or among herbalists). Others, such as plants, were maybe more inherently political, at least to the extent that the negotiation of their very identity (as scientific or not, medicinal or not) was at the core of competing world-making projects.<sup>56</sup>

The methodological point is a nudge.<sup>57</sup> In one sense, the kind of semi-structured interview with human actors that predominates in legal consciousness studies emphasizes the human role in constituting legal consciousness. In our first case study, the significance of the objects (the whiteboard, the schedule, and the forms) became apparent during the semi-structured interview as the interviewee paused to get the paper as a frame. It was then that the object inserted itself into the study. The observation method, however, sensitized the research team to the crucial role of objects in mediating the everyday lives of both the young persons and the staff, directing their activities through such simple acts as writing and rubbing out on whiteboards. In our second case study, by contrast, the objects were the list and the plants themselves, which took centre stage and around which the various human actors constantly negotiated their understandings and approaches. Medicinal plants were also from the outset a core focus of our research, whose liveliness we knew made them tricky to regulate. The role of the list in governing the activities, understandings, and resistance of the herbalists unfolded through interviews, as did the role of other materials in negotiating the everyday boundaries of legality.

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<sup>55</sup> Cloatre and Enright, op. cit., n. 42; D. Cooper, 'Institutional Illegality and Disobedience: Local Government Narratives' (1996) 16 *Oxford J. of Legal Studies* 255.

<sup>56</sup> L. Winner, 'Do Artifacts Have Politics?' (1980) 109 *Daedalus* 121, at 123.

<sup>57</sup> D. Cowan et al., 'Nominations: An Actor-Network Approach' (2009) 24 *Housing Studies* 281, at 296–298.