



## EU law, down to earth

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### Abstract

The emergence and consolidation of European Community law (later European Union law) was rendered possible by key legal and political actors drawing a map of supranational law with the key concepts of direct effect, primacy and uniformity. The underlying assumption was that the actual territory of the law, the law on the ground, would come to fit into the drawn map. However, the last two decades have seen trust on the transformative power of the map drawn through such concepts decline, not least due to related developments. First, what looked like residual points of resistance have become polarized sources of contention over the scope and meaning of EU law; (2) sheer indifference towards EU law has emerged as a relevant attitude, partially replacing acceptance or opposition. Both developments have not led not only to a crisis of European law, but also to an existential crisis of the very actors (the “cartographers”) in charge of drawing the map of European law.

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For a long time, we – scholars working on European Union (EU) law – have had a map but little idea of the underlying territory. The map had been designed carefully with a relatively limited number of cardinal points (direct effect, primacy and uniformity across the EU) that were supposed to orientate our compass as we moved across the geography of EU law. It was both descriptive of a (slow but surely incremental) process of legal integration documented by political scientists in large-n databases *and* prescriptive as it gave lawyers and in particular legal scholars, a clear mission as analysers of this ever-growing process of integration-through-law. While there were some echoes of legal oppositions or non-implementation coming from the territory, this feedback would not cause much stir as the general view was that the territory was bound to progressively fit the map.

And yet, over the past two decades, there has been an increasing sense that the map proved somehow deceptive and increasingly incapable of providing an accurate description of the complex and unequal territory of EU law in European societies and economies. Two series of facts have cast doubt on the representative quality of the map. We have first discovered that the three cardinal points did not quite have the gravitational pull and traction that they were supposed to have on the whole field of law and lawyering in Europe and that, what looked like residual points of resistance, had now turned into a polarised field of contention over the scope and meaning of EU law now spreading all across the EU territory.<sup>1</sup> The second discovery documented by recent scholarship is even more troubling: one of the most ordinary relationships to EU law across the

<sup>1</sup>Antoine Vauchez, ‘Vicarious Hegemony. The German Crisis of European Law’ (VerfBlog, 6 Oct 2020) <https://verfassungsblog.de/vicarious-hegemony>. (last accessed 13th February 2022)

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territory of the EU is neither defense nor opposition but sheer indifference.<sup>2</sup> To be sure, EU law practice has become entrenched in some centres, creating powerful enclaves of legal practitioners.<sup>3</sup> Starting with Brussels – where a whole world of law firms had concentrated ever since the 1960s – this created a unique agglomeration of expertise somewhere in-between the Avenue Louise and the EU district. In addition, a number of ‘hot spots’ of EU law practice have also developed in each one of the Member States. Yet, in the ‘bureaucratic silence’ of ministries, local tribunals and bars, the lack of interest for EU law and its much-acclaimed potentialities is still diffuse, thereby challenging the progressive narrative of empowerment through EU law that had long prevailed.

These discoveries have not only pointed out the holes and unknown regions in the map – they have also triggered an existential crisis among the *cartographers* themselves, namely EU law scholars, as they were faced with increasing difficulties in making sense of the society and the geography that lies ‘underneath’ EU law. The good news is that this critical situation has given rise to an important ‘reflexive moment’ among scholars prompting a new series of inquiries into the ‘society’ of EU law,<sup>4</sup> its ‘forms of life’<sup>5</sup> and its social and political embeddedness, with a view to address the ‘reality deficit’ of the discipline. Floris de Witte’s review article is an important contribution to these ongoing attempts to refurbish the discipline with new lenses and sensors. Its exploration of the potentialities of the field of legal geography for EU law is more than just a metaphorical usage of the geographical lexicon. It brings new bibliographies and new research questions to a scholarly field in need of reloading. And it also suggests a new scholarly balance between the map and the territory, the law and the society, the normative and the descriptive, the deductive and the inductive. Rather than opposing these two poles, or choosing one against the other, Floris de Witte proposes to relocate the scholarly attention somewhere *in-between*, that is in the continuous interactions and mutual influences between both the sides of the coin. By doing so, Floris de Witte questions not only how EU law is *territorialised* in (and also outside of) Europe through a mapping of its centres and peripheries, its poles and its holes, and its many inequalities and asymmetries, but also how EU law *territorialises* Europe tracking its *constitutive* dimension in a large array of political, social and professional contexts. A research agenda thereby emerges centred on the interactions (or lack thereof) between European societies, EU law and EU polity, which could provide a platform for future interdisciplinary endeavours. Overall, the paper reads like an invitation to change the focus of our inquiries and look at EU law not only from the bottom but also with a microscope – with an interdisciplinary team able to move from the goat pastoralists in Ikaria to the house markets of Amsterdam, from the size of the net meshes of Brittany to the self-proclaimed ‘LGBT-free’ zones in Poland. As seen from provincial tribunals, harbours, cities or local communities, the map of EU law certainly loses part of its imagined monumentality as it looks more like a patchwork or an archipelago than a cathedral. Yet what may be lost in terms of *grandeur* is more than compensated for by what is gained in terms of descriptive capacity. Thereby, it holds the promise of providing EU law scholars with the proper equipment to address the pressing normative issues of our time regarding spatial, social and ecological justice.

<sup>2</sup>See Tommaso Pavone, “‘In This Bureaucratic Silence EU Law Dies’: Fieldwork and the (Non)-Practice of EU Law in National Courts”, in Mikael Rask Madsen, Fernanda G. Nicola and Antoine Vauchez (eds), *Researching EU Law’s Embeddedness: New Approaches and Methodologies* (Cambridge University Press 2022, forthcoming), p. 27–48.

<sup>3</sup>Lola Avril, ‘Le costume sous la robe. Le costume sous la robe: les avocats en professionnels multi-cartes de l’Etat régulateur européen: genèse, consolidation, contestations (1957-2019)’ (PhD thesis, Université Paris 1 Pantheon-Sorbonne 2019). See also by geographers: Mathieu van Criekingen, Jean-Michel Decroly, Moritz Lennert, Pierre Cornut, and Christian Vandermotten, ‘Local Geographies of Global Players. International Law Firms in Brussels’ 13 (2) (2005) *Journal of Contemporary European Studies* 173–87.

<sup>4</sup>Armin von Bogdandy, ‘Our European Society and Its Conference on the Future of Europe’ (VerfBlog, 14 May 2021) <<https://verfassungsblog.de/our-european-society-and-its-conference-on-the-future-of-europe>>. (last accessed 13th February 2022)

<sup>5</sup>See also Loïc Azoulay’s research project on the ‘Forms of Life and Legal Integration in Europe’ (SciencesPo) <https://www.sciencespo.fr/fole/index.html>. (last accessed 13th February 2022)