



On legal geography as an analytical toolbox for EU legal studies

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Abstract

EU legal geography concerns itself with the mutually constitutive relationship between EU law and space (also, and increasingly so, time). This requires reconstructing and systematizing the widely used concepts which reveal the geographical basis of EU law (such as movement and circulation), but also developing a particular viewpoint, indeed a specific “ethos of investigation”, which equips us with the tools to challenge and transcend the dominant ways of doing EU law. In particular, it is argued that a geographic turn in European legal studies will foster the study of how law works “on the ground” and will allow challenging taken-for-granted ideas about the relationship between law and political order, while throwing new light on the very technical concepts with which we reconstruct, analyse and assess EU law

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1. Introduction

This is a joint reply to Floris de Witte article, included in the present issue of *European Law Open*. We were very pleased to read de Witte contribution. It was about time that someone ventured into the uncharted lands of imaginary dragons and proposed a research agenda for legal geography in European Union (EU) legal studies! De Witte article is remarkably clear, comprehensive, and free from the type of conceptual excesses that mark many current debates on space and time.¹ De Witte describes in straightforward terms what it means to ‘think spatially’ and why it is useful to do so in order to understand the workings of EU law ‘on the ground’. In particular, de Witte identifies several concrete areas and developments in the EU legal order that both reveal the intertwined relationship between EU law and its spatial ‘context’, and that call for a legal geographic analysis, such as the changing status and role of city authorities in EU law.

As de Witte so expertly explains, legal geography is a truly interdisciplinary approach, concerned with the mutually constitutive relationship between law, space and, increasingly also, time.² These relationships are intensely concrete. The geography of both ‘natural’ and social life is thoroughly structured by law. Conversely, law is embedded in social and political processes, and

¹To be clear, some abstract theorising is necessary and unavoidable. However, a disproportionate focus on conceptual questions (eg ‘which concept is more appropriate to describe a phenomenon, x or y?’) risks precluding other types of empirical and theoretical inquiries. See discussion in Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Routledge 2015) 2. Existing literature in legal geography seems to us to be tilted towards conceptually and theoretically oriented work at the expense of more empirically oriented studies.

²Irus Braverman, Nicholas Blomley, David Delaney, and Alexandre Kedar (eds), *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press 2014).

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mediated by various spatial and biophysical factors. As de Witte notes, a substantial corpus of EU law deals with pre-eminently ‘spatial matters’: agriculture, environmental protection, transportation, waste management – and, of course, the ostensibly ‘free movements’ of goods, capital, services, and people. The lexicon of EU law is also full of inherently geographical terms and concepts: ‘circulation’, ‘free movement’, ‘internal market’, ‘regions’, and ‘territory’. We agree with de Witte that legal geography offers an especially productive analytical toolbox to explore the different fields of EU law, and to understand ‘what it means to live under EU law’. In this short response, we wish to emphasise and elaborate on some of de Witte arguments, and to offer some examples of how we have made use of the analytical tools of legal geography in our own work.

2. Where do we come from?

There is a personal aspect to the story of how we each found our way to the space of legal geography. We met while we were doctoral students in urban studies and European labour law, respectively. We became friends and later partners, but we also discovered that there was some overlap between our respective PhD research projects in so far as they both dealt with the geographies of labour and social rights in the EU. In our conversations, we also found that it was quite enriching to work across the divides between our respective disciplines. In our joint and separate work, we have made use of the analytical resources of legal geography to re-conceptualise the problem of social dumping and,³ more broadly, to explore the multi-scalar regulation of ‘work on the move’ in the EU,⁴ especially within the logistics and transport sectors.⁵ We have also done work on internal bordering in the context of intra-European so-called poverty migration.⁶

3. Starting from the ground up

Legal geography, as de Witte notes, is not a solidified sub-discipline, nor a systematic methodology. As the title of our response suggests, we prefer to think of it as a conceptual and analytical toolbox. It is also a way of asking questions, a particular ‘ethos of investigation’:⁷ a context-sensitive, empirically oriented and reflexive approach that is simultaneously attentive to the detailed workings of law. De Witte suggests that legal geographic analysis allows for an exploration of the everyday experience of ‘[living] under EU law’ and, with that, a better understanding of (popular) resistance to the project of EU integration. He is right in this. EU integration is not an a-spatial or ‘extra-territorial’ process; it does not unfold in an abstract space above or beyond the concrete geographies of everyday life.⁸ This fact is made clear by the evolving meaning of the concept of ‘territory of the Union’ in relation to the possibilities of individuals to exercise and claim rights attached to EU citizenship status.⁹ This, in a nutshell, is why it is useful to approach the study of EU law using the toolbox of legal geography.

³Andrea Iossa and Maria Persdotter, ‘Cross-border Social Dumping as a ‘Game of Jurisdiction’ - Towards a Legal Geography of Labour Relations in the EU Internal Market’ (2021) *Journal of Common Market Studies* 1086.

⁴Maria Persdotter, ‘Free to Move Along: On the Urbanisation of Cross-border Mobility Controls - A Case of Roma ‘EU migrants’ in Malmö, Sweden’ (PhD thesis, University of Malmö and University of Roskilde, Holmbergs 2019).

⁵Andrea Iossa, ‘Posting Highly Mobile Workers: Between Labour Law Territoriality and Supply Chains of Logistics Work—A Critical Reading of Dobersberger’ (2021) *Industrial Law Journal*, <<https://doi.org/10.1093/indlaw/dwab009>>.

⁶Jacob Lind and Maria Persdotter, ‘Differential Deportability and Contradictions of a Territorialised Right to Education: A Perspective from Sweden’ (2017) 3(1) *Movements: Journal Für Kritische Migrations-Und Grenzregimeforschung* 51; Vanna Nordling and Maria Persdotter, ‘Bordering through destitution: the case of social assistance to irregularised migrants in Malmö, Sweden’ (2021) 11(2) *Nordic Social Work Research* 155; Persdotter, *Free to Move Along*.

⁷We borrow the expression ‘ethos of investigation’ from the governmentality scholars. See Nikolas Rose, Pat O’Malley, and Mariana Valverde, ‘Governmentality’ (2006) 2 *Annual Review of Law and Social Sciences* 83.

⁸De Witte, ‘Here be Dragons: Legal geography and EU law’ 1(1) (2022) *European Law Open* 113.

⁹See Niamh Nic Shuibhne, ‘The ‘Territory of the Union’ in EU Citizenship Law: Charting a Route from Parallel to Integrated Narratives’ 38(1) (2019) *Yearbook of European Law* 267.

In what follows, we wish to highlight three characteristics of legal geography that, we believe, make it a productive analytical approach: first, the methodological orientation towards the workings of law ‘on the ground’; second, the attention to the technicalities of law; and third, the use of concepts that allow us to challenge taken-for-granted ideas about law and political order, not least in the context of the EU.

Legal geography encourages us to reconsider the epistemologies and methodologies of EU legal studies. If doctrinal analysis remains dominant in the field, legal geography ‘flips the script’ so that instead of treating law as an abstract set of principles and rules that are ‘applied’ to real-world situations, we start from a concrete case or situation to consider the complex workings of law ‘on the ground’. Qualitative, empirically oriented, and context-sensitive methodologies for data collection and analysis (such as ethnographic, interview, and case studies) can lead to new discoveries, and allow us to explore dynamics that might have been overlooked had we started from the abstract principles and rules set out in conventional legal source materials. An instructive example of this is Mariana Valverde’s detailed empirical studies of the mechanisms and effects of ‘everyday law on the street’.¹⁰

Legal geography is in many ways similar to the broader field of socio-legal studies. However, geographic methodologies allow for inquiries into the more-than-discursive dimensions of law and legal practices. Legal geographic methodologies involve an analysis of how abstract legal categories and regulations ‘map onto’ concrete, lived space and pays attention to the material/spatial and lived relations of power, oppression, and resistance. A good example is Ellen Gordon-Bouvier’s analysis of domestic work, which shows how the regulation of this type of work in English law reiterates a gendered division of labour, reflected into the spatial distinction between the private space of the home and the public domain presumed by property law.¹¹ In our joint work, we have explored how EU regulations on the freedoms of establishment and providing services – which are intended to promote market integration and economic development by removing barriers to company mobility – ‘map onto’ the uneven socio-economic geography of present-day Europe. They then create the conditions for social dumping to take place while simultaneously re-configuring both the legal and geographical space for action by trade unions and workers.¹²

4. Attention to ‘Legal Technicalities’

A second reason why we find legal geography to be so useful as an analytical approach has to do with its attention to the detailed workings and technicalities of law.¹³ This includes its focus on the ‘spatialities of law’. That is, how law ‘envisages both physical space and the space of governance’,¹⁴ whether it works through categories of space and, if so, how these spatial categories are defined and demarcated. Legal geographers have documented many examples of spatial tactics in law – including court-imposed spatial prohibitions (so called ‘red zones’)¹⁵ and spatial limitations on

¹⁰See Mariana Valverde, *Everyday Law on the Street: City Governance in the Age of Diversity* (Chicago University Press 2012).

¹¹See Ellen Gordon-Bouvier, ‘Crossing the Boundaries of the Home: A Chronotopical Analysis of the Legal Status of Women’s Domestic Work’ 15(4) (2019) *International Journal of Law in Context* 479.

¹²Iossa and Persdotter, ‘Cross-border Social Dumping as a ‘Game of Jurisdiction’; see also Andrea Iossa, ‘Collective Autonomy in the European Union. Theoretical, Comparative and Cross-Border Perspectives on the Legal Regulation of Collective Bargaining’ (PhD Thesis, University of Lund Mediatryck 2017).

¹³On the usefulness of studying ‘legal technicalities’, see Annelise Riles, ‘A New Agenda for the Cultural Study of Law: Taking on the Technicalities’ 53 (2005) *Buffalo Law Review* 973; also, Mariana Valverde, ‘Jurisdiction and Scale: Legal ‘Technicalities’ as Resources for Theory’ 18(2) (2009) *Social and Legal Studies* 139.

¹⁴Mariana Valverde, ‘Seeing Like a City: The Dialectic of Modern and Premodern Ways of Seeing in Urban Governance’ 45(2) (2011) *Law & Society Review* 277, 296.

¹⁵Marie-Eve Sylvestre, Nicholas Blomley, and Céline Bellot, *Red Zones: Criminal Law and the Territorial Governance of Marginalized People* (Cambridge University Press 2020).

begging,¹⁶ freedom of speech (eg free speech zones),¹⁷ and even kissing.¹⁸ These works interrogate the ability of law, and of legal actors, to govern people by governing space in ways that negatively affect already disenfranchised and marginalised subjects.

Drawing extensively on this subset of the legal geographic literature, Persdotter's PhD thesis explored how internal bordering took place in the EU in the mid-2010s. More specifically, it traced the multi-scalar governance of destitute mobile EU citizens (mainly Romanian Roma) in Sweden. It showed that the Swedish state, unable to enact restrictions on the entry of 'unwanted' EU citizens, have turned to enable local-level municipal governments to mobilise a host of measures to regulate how 'vulnerable EU citizens' are able to access and use urban space for securing shelter and livelihoods. Thus, individuals who are formally free to move and reside within the union have been subjected to a set of government practices (including systematic evictions) that aim to discourage and otherwise manage their mobilities by controlling their conditions of stay in such a way that they are effectively prevented from settling.¹⁹ Here, the analytical resources of legal geography were useful to explain not just how this shift happened, but also to shed light on its detailed workings, effects, and implications. For example, the thesis showed how the framing of destitute EU citizens as a nuisance and public order problem – due to the technicalities of nuisance law – effectively contributed to undermine claims for their rights and protections.²⁰

5. Conceptualising complexity and change

Finally, the main reason why we both find legal geography to be so suitable as an analytical approach to the study of EU law specifically is that it offers a language and conceptual framework to describe the always changing configurations and geographies of authority in the EU, as well as to explore their complexities.²¹ The project of EU integration is fundamentally about the re-scaling of state powers and the forging of multi-scalar institutions and relations of government. Static concepts are not helpful in understanding these processes. Instead, we need to think of categories such as 'regional', 'national', and 'supra-national' as open and, to some extent, always undetermined. That is, as historically specific representations and materialisations of socio-political relations.²² The same goes for the concepts of 'jurisdiction' and 'territory'. Indeed, the recent assertions of sovereignty by the Hungarian and Polish governments – and prior to these, 'Brexit' – serve as a stark reminder of the contingency of the EU's political and legal orders.

Different scales of regulation are not necessarily mutually exclusive.²³ On this point, we would like to echo de Witte suggestion that legal geography can help us to question a widespread assumption in EU legal studies: namely, the assumption of uniformity.²⁴ In our work, we have called attention to some of the many messy spaces of EU law. Drawing on recent studies of

¹⁶Nicholas Blomley, 'How to Turn a Beggar into a Bus Stop: Law, Traffic and the "Function of the Place"' 44(9) (2007) *Urban Studies* 1697.

¹⁷Timothy Zick, 'Speech and Spatial Tactics' 82(3) (2006) *Texas Law Review* 581.

¹⁸Phil Hubbard, 'Kissing is not a Universal Right: Sexuality, Law and the Scales of Citizenship' 49 (2013) *Geoforum* 224.

¹⁹Persdotter, *Free to Move Along*.

²⁰For a similar analysis, see Asher Ghertner, *Rule by Aesthetics: World-Class City Making in Delhi* (Oxford University Press 2015).

²¹This lexicon derives from the broader field of critical political geography, where scholars have kept busy for the past several decades attempting to explain the restructuring of the capitalist world economy and the changing forms of state power and state relations in the context of neoliberal globalisation. For a good overview of this literature, see Bob Jessop, Neil Brenner, and Martin Jones, 'Theorising Sociospatial Relations' 26 (2008) *Environment and Planning D: Society and Space* 389.

²²See Adam Moore, 'Rethinking Scale as a Geographical Category: From Analysis to Practice' 32(2) (2008) *Progress in Human Geography* 203.

²³On the complementarity of different scales on regulation, see Nicholas Blomley, 'What Sort of a Legal Space is a City?' in Andrea Mubi Brighenti (ed) *Urban Interstices: The Aesthetics and the Politics of the In-between* (Routledge 2013), pp. 1–20.

²⁴De Witte, p. 118

the spatialities of mobile work and EU labour law,²⁵ we have attempted to challenge the idea that EU integration unfolds through a one-directional transfer of powers ‘upwards’ from the Member States to the EU.

In a recent article²⁶, we argued that EU integration turns on the scalar *differentiation of powers* between various scales of government: a sorting of competencies between the EU institutions and the Member States. In the context of European labour law, this scalar differentiation of powers means that the EU institutions have been given the competencies to regulate cross-border company operations. Meanwhile, core labour law matters remain the competencies of the Member States. This gives rise to a cross-border jurisdiction where companies compete across the EU internal market on the basis of their geographical location and therefore on the basis of the labour law regime they formally belong to.²⁷ Thus, the contemporary European regime of labour law can be usefully thought of as a ‘patchwork’, characterized by ‘a situation of simultaneous fragmentation and overlap of labour law regulations across and within the EU Member States’.²⁸ This matters because the current scalar division and differentiation of powers makes national labour law functional to the working of the EU internal market, which, in turn, reinforces the inequality between capital and labour as social powers, while placing constraints on transnational actions by trade unions and workers.²⁹

6. Concluding remarks

To conclude, we want to, again, acknowledge the timeliness and importance of de Witte intervention. A research agenda oriented by legal geographic concepts and methodologies might guide us beyond the framework of the ‘crises of the EU’ that is (re-)currently used to describe the failures and shortcomings of the EU legal order. Challenging the view of the EU as monolithic, it allows us to carefully explore EU integration and law as historically and geographically situated and to investigate how it all works ‘on the ground’. Let’s start this journey!

²⁵Recent streams of research in European labour law and industrial relations make extensive use of spatial concepts and categories. While these works are not necessarily framed as legal geographic inquiries, they demonstrate the urgency to turn to legal geography as a way to systematise the multiple connections between legal regulation and spatial elements in the EU. In particular see Ines Wagner and Nathan Lillie, ‘European Integration and the Disembedding of Labour Market Regulation: Transnational Labour Relations at the European Central Bank Construction Site’ 52(2) (2014) *Journal of Common Market Studies* 403; Ines Wagner, *Workers without Borders: Posted Work and Precarity in the EU* (Cornell University Press 2018); Aukje von Hoek, ‘Re-embedding the Transnational Employment Relationship: A Tale about the Limitations of (EU) Law?’ 55(2) (2018) *Common Market Law Review* 449; Rebecca Gumbrell-McCormick and Richard Hyman, ‘In Search of Global Labour Markets’ 62(2) (2020) *Journal of Industrial Relations* 167.

²⁶See note 3.

²⁷Iossa and Persdotter, Cross-border Social Dumping as a ‘Game of Jurisdiction’, 1095.

²⁸*Ibid.*

²⁹Iossa and Persdotter, Cross-border Social Dumping as a ‘Game of Jurisdiction’, 1098; see also Nancy Fraser, *Scale of Justice: Reimagining Political Space in a Globalizing World* (Polity Press 2008); Judy Fudge and Guy Mundlak, ‘Justice in a Globalizing World: Resolving Conflicts between Workers’ Rights beyond the Nation State’ in Y Dahan, H Lerner and F Milman-Sivan (eds), *Global Justice and International Labour Rights* (Cambridge University Press 2016), pp. 121–158.