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Finding space in EU law

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ABSTRACT
This paper suggests that we lack scholarship that analyses EU law spatially. A spatial reading of EU law can help reveal the incidence, contingencies, pathologies and contestation of EU law. This paper looks at one specific spatial dimension of EU law: the interaction between, and the construction of, the urban and its hinterland. It suggests that EU law is much more sensitive to the spatial dynamics that underpin urban life than rural life.

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The past years have seen an increase in focus on the relationship between different parts of the European Union (EU). This has revolved predominantly around the emergence of a tension between – in general terms – the Western and 'older' Member States (the core) and the 'newer' Central and Eastern European Member States (the periphery). This tension has been explored in political terms, in terms of political economy and in socio-cultural terms.[1] What emerges from these accounts in a sense that the EU's trajectory privileges its 'core' both in terms of the institutionalisation of its values and prioritisation of its interests. Legal scholars have been relatively slow to take up the core–periphery tension as an analytical category despite an increase engagement with the sites where it manifests itself.

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[1] J Becker, R Weissenbach and J Jager, 'Uneven Development in the EU: Processes of Core-Periphery Relations' in D Bigo, T Diez, E Fanoulis, B Rosamond and Y Stivachtis (eds), *The Routledge Handbook of Critical European Studies* (Routledge, 2021); Z Onis and M Kutlay, 'Reverse Transformation? Global Shifts, the Core-Periphery Divide and the Future of the EU' (2020) *Journal of Contemporary European Studies* 197; T Borzel and J Langbein, 'Core-Periphery Disparities in Europe: Is There a Link Between Political and Economic Divergence?' (2019) 42 *West European Politics* 941; J Magone, B Laffan and C Schweiger (eds), *Core-Periphery Relations in the European Union: Power and Conflict in a Dualist Political Economy* (Routledge, 2016).

This contribution invites EU scholarship to read EU law 'spatially'. There are many ways of reading law spatially, ranging from ethnographic research to doctrinal engagement.[2] In this short essay, I will focus on one particular dimension: the tension between core and periphery. At a time when contestation of the EU project is spreading ever more widely (and ever more eclectically) it is imperative that we construct legal categories that are able to articulate EU law's distributive and affective implications. A more explicit engagement with the spatial perspective through which distributive, political and institutional conflict plays out can only further increase the sophistication of our understanding of EU law. This article suggests that core–periphery dynamics are one of the ways of making sense of these implications. Below I describe, first, why the core–periphery tension is likely to become more pronounced in the EU and in EU law, and, second, why a particular form of core–periphery relations – namely between the EU's urban centres and its rural hinterland – merits closer attention. By way of example, the cases of *Festersen* and *Deutsche Parkinson,* and the way in which they introduce spatial, distributive, and affective biases, are discussed.

The EU's core and its periphery

The core–periphery tension in the EU manifests itself in an increasing number of policy domains, and is visible both in terms of the opposition of *interests* between the European core and the periphery and in terms of the *distributive effect* and consequences of EU law for different parts of Europe. In areas such as the management of the Eurocrisis, where certain (core) visions of political economy and (core) banking interests led to the imposition of significant demands on the periphery, this dynamic is relatively evident.[3] The same goes for the management of the refugee crisis, COVID-19, the reaction to the rule of law backsliding,[4] but also for domains that were long considered to be less explicitly distributive, such as the internal market, where questions relating to access of migrants to welfare systems,[5] the posting of

[2] See for an overview of diverse ways of bringing in space: F De Witte, 'Here be Dragons: Legal Geography and EU Law' (2022) 1 *European Law Open* 51.

[3] B Laffan, 'Core-Periphery Dynamics in the Euro Area: From Conflict to Cleavage?', in J Magone, B Laffan and C Schweiger (eds), *Core-Periphery Relations in the European Union: Power and Conflict in a Dualist Political Economy* (Routledge, 2016).

[4] D Dalakoglou, 'Europe's Last Frontier: The Spatialities of the Refugee Crisis' (2016) 20 *City: Analysis of Urban Change, Theory, Action* 180; A Agh, 'Decline of Democracy in the ECE and the Core-Periphery Divide: Rule of Law Conflicts of Poland and Hungary with the EU' (2018) 11 *Journal of Comparative Politics* 30; M Ceron and C Palermo, 'Structural Core-Periphery Divergences in the EU: The Case of Responses to the COVID-19 Crisis in 2020' (2022) 24(3) *European Politics and Society* 372.

[5] K Russell and O Marek, 'Diverse, Fragile and Fragmented: The New Map of European Migration' (2019) 8 *Central and Eastern European Migration Review* 9; I Torok, 'Migration Patterns and Core-Periphery Relations from the Central and Eastern-European Perspective' (2017) 25 *European Review* 388.

workers,[6] investment structures,[7] food standard practices,[8] or LGBTQ + family rights[9] are increasingly understood as articulating both an opposition of interest between core and periphery but also as having distributive consequences that can be understood along spatial lines.

Moreover, critical legal scholars have identified how the core–periphery tension affects the EU's accounts of justice or solidarity, suggesting that EU law's ontology and institutional practices struggle to be sufficiently sensitive to the interests of its periphery. The work of Damjan Kukovec, for example, highlights how the structure and conceptual language of EU law – in particular within the context of the internal market – masks a deep-seated distributive conflict that plays out to the detriment of the EU's periphery.[10] Jane Holder's work, likewise, highlights how spatial justice needs to be considered in the EU's policy-making, and particularly in the context of the transition towards a sustainable economy and ecology.[11] More generally, scholars have become attuned to the notion that the distributive consequences of the EU's legal order must be understood and made explicit,[12] a task even more important in light of the Next Generation EU and Green Deal policies, which will entail significant – and inevitably skewed – distributive demands on different constituencies in the EU. The same is true for the way in which the EU's colonial legacy – and the exploitation by the core of the peripheral colonies and their resources – is increasingly playing a role in portraying the conditions at the start of the integration project.[13] The EU has, of course, from its very start committed itself to spatial distributive transfers – in agriculture, through cohesion, regional and accession funds – that were at least partially motivated by concerns of justice in ensuring a fairer distribution of resources between the different spaces in the EU. But such transfers have never been critically scrutinised from the spatial perspective, paying attention to how EU law casts and mediates in the opposition between the core and the periphery.

[6] M Persdotter and A Iossa, 'Cross-Border Social Dumping as a 'Game of Jurisdiction' – Towards a Legal Geography of Labour Relations in the EU Internal Market' (2021) 59 *Journal of Common Market Studies* 1086.

[7] D Mertens and M Thiemann, 'Investing in the Single Market? Core-Periphery Dynamics and the Hybrid Governance of Supranational Investment Policies' (2022) 44 *Journal of European Integration* 81.

[8] F Duina and X Zhou, 'Europeanisation from the Periphery: The Case of 'Second-Class' Food in Central and Eastern Europe' (2021) 11 *Territory, Politics, Governance* 1537.

[9] Case C-490/20, *VMA v Pancharevo* ECLI:EU:C:2021:1008.

[10] D Kukovec, 'Law and the Periphery' (2014) 21 *European Law Journal* 406; D Kukovec, 'Economic Law, Inequality, and Hidden Hierarchies on the EU Internal Market' (2016) 38 *Michigan Journal of International Law* 1.

[11] J Holder, 'Building Spatial Europe: An Environmental Justice Perspective' in J Scott (ed), *Environmental Protection: European Law and Governance* (Oxford University Press, 2009).

[12] Editorial 'A Jurisprudence of Distribution for the EU' (2022) 59 *Common Market Law Review* 957; L Diez Sanchez, 'Integration Through Law and its Discontents: Unveiling the Distributive Impact of Judge-made Law in the EU' (PhD thesis, European University Institute, 2021).

[13] P Hansen and S Jonsson, *Eurafrica: The Untold History of European Integration and Colonialism* (Bloomsbury, 2014); HElkund, 'Peoples, Inhabitants and Workers: Colonialism in the Treaty of Rome' (2023) 34 *European Journal of International Law* 831.

The core–periphery question is also a useful analytical model to understand the process of centre formation of the EU. The past years have seen an increase in the speed and depth at which an EU centre is forming. This 'centre' of the EU is not the same as its 'core': the former is not meant as a spatial signifier but as a process of institutional and constitutional polity sophistication.[14] Charles Tilly's work on trust networks and the authority for governance highlights how this process can take shape. He suggests that there are three ways of solidifying the authority of a polity in construction: through coercion, capital or commitment: you force compliance, you buy it, or you strengthen allegiance to the polity.[15] The EU is becoming more comfortable in using of all of these technologies of centre formation: Member States are coerced through conditionality arrangements, debt restructuring rules, high-profile infringement procedures; they are bought off through the eye-watering amounts of money involved in public-sector purchasing programmes, Next Generation EU and the Green Deal; and the judicial and political articulation of the EU's values, its potential army, and re-democratisation of its institutions are well underway. The EU's external borders are being strengthened, and its central executive institutions – such as the ECB – are gaining power. This increased sophistication of the infrastructure of the centre of the EU as a polity is not necessarily a problematic development – it is an evolutionary process that can be expected of a polity engaging in complex integration processes. It is a stage in the development of a polity, however, in which distributive and socio-cultural tensions tend to become more pronounced given that the centre makes increasingly significant demands on its constitutive parts. In this context, it is important for the EU's authority to make sense of the core–periphery tension which can either stabilise the process of polity formation, or significantly disrupt it.[16] This gives rise to questions relating to the distribution between core and periphery of resources (energy, institutional investment, political access), costs (realignment of domestic institutions or political economy, greening targets, border management) and priorities (in the articulation of political strategies, geo-political action and internal reform).

The European metropolis and its hinterland

While the core–periphery tension is becoming increasingly visible not just in the EU but also in EU *law*, another spatial tension in the EU is not yet acknowledged or conceptualised. This is one where its metropolitan regions (including their interests, values and peculiarities) are becoming

[14] S Bartolini, *Restructuring Europe: Centre Formation, System Building and Political Structuring between the Nation State and the European Union* (Oxford University Press, 2005).
[15] C Tilly, *Trust and Rule* (Cambridge University Press, 2005).
[16] Bartolini (n 14).

linked across borders and its normativity projected outwards, while the EU's rural hinterland is, in a somewhat resigned fashion, understood as what lies *between* and *beyond*, without a similarly coherent narrative attached to it. This section teases out where and how this distinction manifests itself in the EU and the extent to which EU law is complicit in it and responsive to it.

The relationship between the metropolis and its hinterland is one that is historically fractured, being bound by economic interdependence but also divided by socio-cultural tension.[17] This relationship has to some extent been pacified through the processes of state-building, starting from the late 1800s, by strengthening the centrifugal power of the state through infrastructure, trade networks, welfare policies, redistributive taxation, knowledge networks, cultural standardisation and so on.[18] In the EU, we see an increase in territorial integration of Europe's metropolitan areas through projects such as the building of new rail connections, university networks and bottom-up cooperation by metropolitan areas in terms of access to decision-making, and in facing shared problems such as tourism, climate change or housing.[19] Such efforts seek to decrease the distance and difference between urban centres, both physically and meta-physically, and rely on coordination and sharing efforts underwritten by EU funds.

There is an emerging sense of what makes a 'European' city, not simply in terms of *aestethics* but also in terms of the lawscape that surrounds it, ranging from zoning and planning law and procurement to access to cultural products. EU policies – and particularly the free movement provisions which allow for access to the metropolis for EU students, workers, shops, service providers, tourists – are complicit in this process, increasingly imprinting a particular mould or vision of what a city *is to be* through its legal regulation and the conditions attached to funding mechanisms. The case law also plays an important part. Cases such as *Appingedam*, *Catalan superstores* or *Cali Apartments*[20] all essentially revolve around the question of what a city should look like, which forms of life it can protect, and to what extent such visions can displace the demands of free movement. In *Appingedam* and *Catalan superstores*, the Court was asked to consider to what extent concerns about liveability of town centres warranted licensing regimes that determined where different types of shops could be opened, and thereby limited the freedom to provide services protected under EU law. In both

[17] B Wilson, *Metropolis: A History of the City, Humankind's Greatest Invention* (Vintage, 2021).
[18] Bartolini (n 14).
[19] H Heinelt and S Niederhafner, 'Cities and Organised Interest Intermediation in the EU Multi-Level System (2008) 15 *European Urban and Regional Studies* 173; M Bontenbal and P Van Lindert, 'Transnational City-to-City Cooperation: Issues Arising from Theory and Practice' (2009) 33 *Habitat International* 131. See also J Marti-Henneberg, 'The Influence of the Railway Network on Territorial Integration in Europe (1870-1950) (2017) 62 *Journal of Transport Geography* 160.
[20] Case C-360/15 and C-31/16, *Appingedam* ECLI:EU:C:2018:44; Case C-400/08, *Commission v Spain* ECLI:EU:C:2011:172; Case C-724/18 and C-727/18, *Cali Apartments* ECLI:CU:C:2020:743.

cases, the Court indicated an openness to consider aspects such as sociability, social cohesion and the 'negative consequences of empty inner cities'.[21] The *Cali* judgment dealt with a Parisian rule that required authorisation for the short-term rent of accommodation on, for example, Airbnb. In certain high-demand parts of Paris, this authorisation was subject to an 'offset requirement' which meant that for any accommodation withdrawn from the long-term rental market in order to rent it out on Airbnb, another accommodation had to be returned *into* the long-term rental property market, in order to maintain long-term housing stock.[22] In essence, this requires the purchase of another apartment, ideally in the same arrondissement in Paris, before an apartment can be put on Airbnb. Both AG Bobek and the Court were sympathetic to this form of regulation of the rental market, particularly in so far as it served to combat housing shortage and rising house prices,[23] and was tailored to particularly high-demand areas of touristic interest.[24] While for AG Bobek these considerations could be subsumed under the need to protect the urban environment and social policy,[25] the Court more narrowly focused on the 'objectives of socially diverse housing, a sufficient supply of housing units, and maintaining rents at an affordable level'.[26] These rulings clearly influence local decision-makers in how they face recurring problems in maintaining the liveability of cities in respect of over-tourism, housing policies, or zoning laws.[27] This is not the place for an in-depth assessment of the Court's vision of the city. It is clear, however, that a certain juridical vision of European life – metropolitan life – is implicitly and slowly emerging. The rise of this form of metro-sensibility, both in terms of its ever more detailed substantive content and in terms of its centrality to the EU's own sensibilities, is perhaps most visible when we look at its counterpoint of rurality. The EU's hinterland – the spaces between and beyond the metropolis – is, unlike its urban counterpart, mainly characterised by an *absence* of reflective engagement. The specific needs and context of rurality;[28] its economic structure,[29] and, in a way, its constitutive

[21] Opinion of AG Szpunar in Joined Cases C-360/15 and C-31/16, *X en Visser v Appingedam* ECLI:EU:C:2018:44, para. 148.
[22] Case C-724/18, *Cali Apartments* ECLI:EU:C:2020:743, para. 14–18.
[23] AG Bobek in Case C-724/18, *Cali Apartments* ECLI:EU:C:2020:251, para. 98; Case C-724/18, *Cali Apartments* ECLI:EU:C:2020:743, para. 68.
[24] AG Bobek in Case C-724/18, *Cali Apartments* ECLI:EU:C:2020:251, para. 98; Case C-724/18, *Cali Apartments* ECLI:EU:C:2020:743, para. 69.
[25] AG Bobek in Case C-724/18, *Cali Apartments* ECLI:EU:C:2020:251, para. 100 with reference to Article 4 (8) of the Services Directive.
[26] Case C-724/18, *Cali Apartments* ECLI:EU:C:2020:743, para. 84.
[27] D Kramer, 'Airbnb, the City, and the Drive for European Legal Integration' (2025) 4 *ELO* (forthcoming).
[28] See also the EU's rural development agenda supported by the EAFDR (European agricultural fund for rural development) as part of the CAP.
[29] See also S Duhr, C Colomb and V. Nadin, *European Spatial Planning and Territorial Cooperation* (Routledge, 2010).

remoteness from the metropolitan areas[30] are often overlooked in the case law.

Let me take two cases – *Festersen* and *Deutsche Parkinson* – to briefly illustrate this point. *Festersen* dealt with a Danish law that conditioned the acquisition of agricultural property on the requirement that the buyer takes up fixed residence there and is active in the farming of the land, in an attempt to protect a traditional way of farming in Denmark, protect agricultural communities from becoming collections of second homes, and thereby resist pressure on the land that would come from the purchase of agricultural land by larger companies.[31] The Court notes that this rule infringes both the free movement of capital and the fundamental right 'to choose one's residence freely' protected under Article 2(1) of Protocol 4 attached to the European Convention of Human Rights,[32] and that the residence requirement is not necessary in order to meet the objectives set out by the Danish legislation.[33] Even to the extent that it could be considered as such, it goes 'clearly beyond what could be regarded as necessary, in particular as it implies a long-term suspension of the exercise of the fundamental freedom to choose one's place of residence'.[34] What is missed, here, of course, is that such a long-term suspension is not only the means but also the *objective* of the Danish policy, trying to preserve a particular type of community in its rural areas. The very nature of the rural community – the way of life that is constitutive to it – in other words, is completely lost in the case.

The same dynamic is visible in *Deutsche Parkinson*, where the Court was asked to make sense of a German fixed-price policy for pharmaceutical products that excluded online sale of medicines.[35] Part of the reason for this policy was, according to Germany, to prevent 'ruinous price competition which would result in the closure of traditional pharmacies, especially in rural or underpopulated areas which are less attractive areas for traditional pharmacies to set up business'.[36] Once again, then, the argument is premised on the particular properties of rurality – its physical distance from urban centres, its structures of and access to basic services. The Court is dismissive of such concerns, settling the case on the basis that price competition might be *beneficial* for the access to medicinal products, even arguing that 'increased price competition between pharmacies would be conducive to a

[30] See for example the concept of services of general economic interest (Commission Regulation 360/2012); I Ferencsik, A Milbert and M Stepniak, 'Accessibility of SGI in Urban, Suburban and Remote Areas – A Regional Comparison in Germany, Poland and Hungary', in H Fassmann, A Humer, E Marques da Costa and D Rauhut (eds), *Services of General Interest and Territorial Cohesion* (Vienna University Press, 2015).
[31] Case C-370/05, *Festersen* ECLI:EU:C:2006:63527.
[32] Ibid, para 37.
[33] Ibid, para 40.
[34] Ibid, para 41.
[35] Case C-148/15, *Deutsche Parkinson* ECLI:EU:C:2016:776.
[36] Ibid, para 33.

uniform supply of medicinal products by encouraging the establishment of pharmacies in regions where the scarcity of dispensaries allows for higher prices to be charged'.[37] In other words, the remoteness of rural areas are not a constitutive feature of the type of life to be protected, or at least recognised, but a market opportunity to be exploited.

These cases offer a glimpse into a form of metro-normativity at play in EU law, wherein the rigours of the internal market seem to be more sensitive to an urban 'way of life' than concerns seeking to protect a rural 'way of life'. Metro-normativity can be understood as a process through which EU law articulates and protects particular forms of life, or problematises particular challenges, that are specific to the urban context; while obscuring or making legally irrelevant concerns that predominate in rural areas. It is a process that can be traced not only in the cases mentioned above, but is also central in the increasing contestation of the re-introduction of large carnivores in the EU, the bio-diversity demands made on farmers in the Nature Restoration Act or the environmental impact of the Critical Raw Materials Act. In all these examples, the core–periphery tensions are rooted in EU law's understanding of how the interests and demands of its urban centres relate to those of its rural areas.[38]

Reading space

Reading EU law *spatially* offers a promising avenue for both understanding and critiquing the choices that underpin EU policies and the case law of the Court. It allows us to be more sensitive to the biases implicit in, and the framing of, EU law and to its consequences for different places in Europe. This can take place in different ways. At the more theoretical end of the spectrum, scholars such as Mariana Valverde, David Delaney or Andreas Philippopoulos-Mihalopoulos have come up with new concepts such as the 'nomosphere', 'lawscape' and 'chronotope' to make visible the ways in which law, space and time intersect in the structuring of society.[39]

This short contribution has suggested that the question of spatial justice can be looked at from different levels: on the level of the Member State (core–periphery) or on the transnational level (urban-rural). But reading EU law spatially can encompass many other things as well. Almost every policy area of the EU – from its agricultural policy to competition policy, from asylum policy to cooperation in criminal law – has remarkably clear

[37] Ibid, para 38.
[38] See for these examples F De Witte, *The Reality of EU Law: Space and Time in European Integration* (Cambridge University Press, 2025) (forthcoming).
[39] D Delaney, *The Spatial, the Legal and the Pragmatics of World Making: Nomospheric Investigations* (Routledge, 2010); M Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Routledge, 2014); A Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (Routledge, 2014).

spatial consequences, whether within or between Member States. On a smaller level, a city such as Maastricht, situated on the border between the Netherlands, Germany and Belgium, is forged by the spatial consequences of EU law: its international student population a direct result of EU free movement law but creating housing issues; its soft-drug policy an incentives for day-trippers and – after EU litigation – exempted from the rigours of the internal market; its southern edge bordering a Natura 2000 site strictly protected by EU law where urban planning must make space for conservation objectives. All these elements change what the city is like, how it is experienced by its inhabitants, and have distributive consequences. Empirical research on such dynamics can help us understand how spatialities perpetuate certain hierarchies.

Reading EU law spatially, in other words, opens up many potential avenues for research that can contribute to the methodological and conceptual vocabulary of EU law. But how does one read law 'spatially'? How to become a 'spatial detective', as aptly put by Luke Bennett and Antonia Layard?[40] The starting point is an awareness that while law affects space, spaces can also affect law.[41] It is a sensibility to the material and relational context of the case, legislation or commentary. What is it about, in the material world? What does it 'do' with the relationships between humans (and more-than-humans) in a particular setting? What matters, then, in spatial explorations, is not just what the law is *meant* to do, but how it is understood by its subjects, and how it *in actual fact* alters the socio-material and bio-geographical context in which it operates. This link between law and its reality, however, can also be reverse engineered for research purposes: by paying attention to the 'real life' consequences of EU legislation on posted workers, or on how and why EU law is contested in rural Slovenia as opposed to Amsterdam, we can start to see the spatio-temporal normativities at stake. This means a sensitivity – whether in reading cases or legislation – to the interests of actors that may not usually figure prominently in legal analyses and to different ways of 'knowing the world' that typify these actors, materials, or non-humans.[42] It means that in such analyses, it makes sense to start from the ground 'up' rather than from EU law 'down'. If we start from the latter, after all, it becomes difficult to see what EU law itself deliberately obscures or accidentally misses.

In a good example of what it means to be a 'spatial detective', Dion Kramer and Martien Shaub have analysed how the peculiarities of the centre of Amsterdam and the demands that local residents make on public space affects the interpretation of EU law rules on free movement of

[40] L Bennett and A Layard, 'Legal Geography: Becoming Spatial Detectives' (2015) 9 *Geography Compass* 406.
[41] De Witte, 'Here be Dragons' (n 2).
[42] Bennett and Layard (n 40) at 412.

services.[43] Another inspiring example is Tommaso Pavone's account of how EU law and its appropriation by local lawyers have transformed the regime governing the port of Genova, and the city with it.[44] EU law, in this way, is localised and made 'real' *in service of* a specific spatial context. Drawing the spatial context into the analysis of law itself allows us to better understand the distributive effects of EU law, the way in which it prioritises particular 'ways of life', and the way in which it manages the inevitable tension between the very different spatial contexts to which its norms, regulations and policies apply.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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[43] D Kramer and M Shaub, 'Liberalising Upstream, Regulating Downstream: The Platform Economy in the EU's Multilevel System' (forthcoming).

[44] T Pavone, 'From Marx to Markets: Lawyers, European Law and the Contentious Transformation of the Port of Genoa' (2018) 53 *Law & Society Review* 851.