



#IEE60

CARTE BLANCHE

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En 2024, l'Institut d'études européennes de l'ULB (IEE-ULB) a soixante ans ! Pour scander cette année anniversaire et très « européenne », il convie ses membres à réfléchir à des questions fondatrices de l'intégration européenne en 1964 et toujours d'actualité en 2024. Dans une forme courte et accessible, nos chercheurs proposent un portrait en mosaïque de l'Europe, entre continuités et mutations. Les auteurs sont libres de leurs propos qui ne représentent pas une position officielle de l'IEE-ULB.

An invitation to dare : legal imagination for the EU climate future

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This Carte Blanche questions whether current EU assumptions about growth, innovation, and justice are compatible with the complex reality of climate change. It raises concerns about inequalities in climate contributions and consequences, and the need to rethink legal standards. Professor Armeni proposes expanding legal imagination to address climate challenges more effectively. This contribution then sends an invitation for the EU to embrace legal imagination, create new links, and ask difficult questions to shape a better climate future.

Cette Carte Blanche pose la question de savoir si les hypothèses actuelles de l'UE concernant la croissance, l'innovation et la justice sont compatibles avec la réalité complexe du changement climatique. Elle soulève des préoccupations concernant les inégalités dans les contributions et les conséquences climatiques, ainsi que la nécessité de repenser les normes juridiques. Professeur Armeni propose d'élargir l'imagination juridique pour relever de manière plus efficace les défis climatiques. Cette Carte Blanche lance une invitation à l'UE pour embrasser l'imagination juridique, créer de nouveaux liens et poser des questions difficiles afin de façonner un avenir climatique meilleur.

Since its creation, the EU has sailed across a series of overlapping crises that questioned its stability. Today the climate crisis shows some unprecedented features, making its effects on the EU polity and legal order unpredictable.

Climate change is an existential threat, leading to other - economic, social, ecological or health - systemic failures. But climate change is also a crisis of imagination.[1] This is because it challenges our assumptions about the world and the ways in which we interpret it. This is not only visible in literature but also in law. Climate change is a 'legally disruptive' phenomenon because existing legal tools are ill-equipped to the type of issues raised by it.[2] This builds on a mismatch between law as an ordering force and climate change as a dis-ordering one, resulting in fragmented approaches and a struggle to deal with the invisible issues.

The last decades of EU climate policy offer an example of this mismatch. The EU has structured its response to climate change through three main axes: the market, technology, and legislative development. First, since early 2000, the EU created an internal market for carbon emissions as 'both the crown jewel and the work horse of the EU Climate Policy'[3]. Today its Emissions Trading Scheme (ETS) is the most developed in the world. The second axis is technology. The EU strategy combines decarbonisation with energy efficiency and renewable energy technologies objectives. Alternative technologies and energy sources (e.g. CCS, geoengineering, and hydrogen) are also key for supporting the climate transition. The third and overarching axis is legal. The 2019 European Green Deal (EGD) adopts a legally binding EU-wide climate neutrality target – i.e. no net carbon emissions – by 2050 and makes it legally binding under the European Climate Law. The Fit for 55% package implements the EGD through new and existing legislation in virtually all EU policy areas.



The EU does not ignore the socio-economic impact of its climate policies, stressing that ‘the transition must be just and inclusive. It must put people first, and pay attention to the regions, industries and workers who will face the greatest challenges.[4] “Leaving no one behind” is the EGD’s just transition mantra and dedicated funds are available to the most carbon intensive regions in the member states to support workers and vulnerable households.

Overall, the EU is assuming a world where investment and economic redistribution, technology and legal standards will do the job. But here is where a crisis of imagination manifests itself. There is a potential mismatch between the linearity of those assumptions, and the complexity of climate change. Can the climate transition coexist with current understandings of growth and innovation? Many ecological economists doubt it.[5] Is the EU vision of just transition sensible to multiple climate inequalities – from unequal contribution to climate change to unequal suffering of its consequences, from spatial to participatory inequalities? Many political and social scientists question that too.[6] How are those decisions taken? Today, many European citizens are taking legal action or resort to civil disobedience to challenge process and outcome. What is the weight of those voices within this framework? Many other critiques arise as the climate transition challenges assumptions about the EU societal and legal order built over the last 60 years.

EU law is generally ill-equipped to deal with these questions in an integrated and systematic way. But better legal imagination can help. In 1945, JB White described law as ‘an activity of mind and imagination’.[7] Legal imagination means rethinking the normative and interpretative tools of law to see more clearly the challenges ahead. Imagination is unescapable in dealing with climate change. It ‘not only shapes the perception of the climate change but co-fabricates it in ways that effect the possibilities to act on it’.[8] This is why the climate crisis demands an extraordinary ‘expansion of legal imagination’.[9]

We can think about at least two ways in which the EU can widen its legal imagination in climate policy. First, the EU could strengthen law’s ability to create bonds between ideas, tools and actors. For instance, EU institutions can explore ways in which social and climate law principles, tools and actors can be better integrated through legal and institutional mechanisms and decision-making processes.

Second, EU institutions and actors – including citizens - could ask new questions to law (and lawyers) opening new fields to legal imagination. How can we bridge the gap between scales of action? How can we envisage new forms of access to land and resources? How does law shape and is shaped by social concerns in e.g. agriculture, participation, labour? What are the potential and limits of law here? What about legal ideas for post-growth? As climate change requires system change, legal imagination can shape how ambitious ideas and debates can be operationalised to challenge our assumptions.

Widening legal imagination is an invitation to dare, to create new links and ask uncomfortable questions. The EU should take this invitation seriously in shaping a better climate future.

1] A Gosh, *The Great Derangement—Climate Change and the Unthinkable* (University of Chicago Press 2016) 9.

2] E Fisher, E Scotford and E Barritt, ‘The Legally Disruptive Nature of Climate Change’ (2017) 80 *Modern Law Review* 173.

3] Director-General of DG Climate Action, key note speech, 14th ETS compliance conference, Brussels 22 november 2023 (available at https://climate.ec.europa.eu/news-your-voice/events/14th-eu-ets-compliance-conference-2023-11-22_en)

4] COM(2019)640 final, “The European Green Deal” 2.

5] E Laurent, *Toward Social-Ecological Well-Being - Rethinking Sustainability Economics for the 21st Century* (Springer 2023).

6] S Bouzarovski, ‘Just Transitions: A Political Ecology Critique’ (2022) 54 *Antipode* 1003.

7] JB White, *The Legal Imagination: 45th Anniversary Edition* (Wolters Kluwer 2018) xxii.

8] K Yusoff and J Gabrys, ‘Climate Change and Imagination’ (2011) *WIREs Climate Change* 520.

9] E Fisher, *Environmental Law: A Very Short Introduction* (OUP 2017) 50.

