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### **Methodological Europeanism at the Cradle: Methodological Entrepreneurs, the *Acquis* and the Making of Europe's Cognitive Equipment**

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**METHODOLOGICAL EUROPEANISM AT THE CRADLE:  
METHODOLOGICAL ENTREPRENEURS, THE *ACQUIS* AND THE MAKING OF EUROPE'S  
COGNITIVE EQUIPMENT**

By Antoine Vauchez\*

“Even more so than in art, architecture and engineering, science offers the most extreme cases of complete *artificiality* and complete *objectivity* moving in parallel”

Bruno Latour, *Reassembling the Social*, Oxford University Press, 2005, p. 89

**Abstract**

This paper tracks the origins of one of Europe's most ubiquitous instrument: the *acquis*. Thereby, it aims at initiating a new research programme on the genealogy of Europe's cognitive and technique equipment. Instead of considering the *acquis* as a self-explanatory and transparent notion, the paper unearths its rich political meaning, pointing at its instrumental role in shaping a law-centred and supranational definition of Europe. Digging deep into individual and institutional genealogies, the paper follows the methodological entrepreneurs who crafted new knowledge instruments for calculating Europe's state of affairs (the Celex database) and analyzes the process through which they have progressively acquired a monopoly in the calculation of “the state of the Union”, thereby encapsulating within the very rules of the European game itself a form of “methodological Europeanism”.

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## Introduction

Ever since Jacques Delors prophesized in 1988 that within one decade 80% of national legislation would be of EC/EU origin, the figure has crystallized a passionate debate over issues as different as the loss of national sovereignty, the regulatory burden for business, the risks for national culture and identity, etc...<sup>1</sup>. While political, bureaucratic and academic actors take a great variety of standpoints in these controversies, from welcoming this alleged trend to elaborating strategies to stop this seemingly inexorable increase, all eventually draw from the same toolbox. When it comes to calculating the actual (legal) “state of the Union”, these actors inescapably rely on the notion of *acquis communautaire* (a concept so naturalized that it has become impossible to translate : Peyro 1999) and its related online database, Eur-lex (*the* official and legally-binding source of EU law)<sup>2</sup>. Nowadays, this cognitive and technical equipment is not just the instrument that *officially* defines and authenticates that “Europe” to which the candidates are applying in phases of enlargement<sup>3</sup>; it equally inserts itself into the most routine operations of the EU, turning into Europe’s “constitutional operating system [...], axiomatic, beyond discussion, above the debate, like the rules of democratic discourse, or even the very rules of rationality themselves, which seemed to condition debate but not to be part of it” (Weiler 1997).

Although all textbooks, multiple-choice questionnaires and European glossaries routinely refer to this toolbox as “the total sum of obligations that have accumulated since the founding of the European Coal and Steel Community”, it would be misleading to refer to it as a transparent technical device merely “calculating” a pre-existing body of “rights and duties” that lie “out there” in wait to be weighed up. In fact, there is much more to the *acquis* and its related Eur-lex database than just an amount of texts. As a variety of strands in the sociology of scientific knowledge have repeatedly established

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<sup>1</sup> While the Commission estimated this amount to 80,000 pages in 2001 (cf. Communication from the Commission to the European Parliament and Council, *Codification of the Acquis Communautaire*, 21 Nov 2001, COM/2001/0645), many have discussed the accuracy and the relevance of this figure ever since: see, inter alia, OpenEurope (2007) and Bertoincini (2009).

<sup>2</sup> The Eur-lex website actually claims “468,000 references, about 5.7 million documents in total, an average of 12,000 references are added each year, 23 languages” and an average of 7 million visits every month.

<sup>3</sup> On the *acquis* as the inescapable frame of reference in the recent enlargement negotiations to Eastern and Central European countries, see Cécile Robert (2003) and Rebecca Adler-Nissen (2011).

(M. Callon, 1986 ; B. Latour, 2005; D. Breslau, 1997), techniques and methods involve a number of operations and procedures that determine at one and the same time units of data aggregation (here: the EU institutions), a logic in ordering them (a supranational constitutional order) and relatedly relevant levels of public policy to act thereupon (the European level). As it formalizes a stable figure of Europe (its foundations, its missions) and of its value-objects (its body of law), the *acquis* implicitly *locates* the ability and the responsibility for the “rational guidance” of European affairs, in particular institutions (here: the Commission and the Court) and professional groups (Euro-lawyers and EU civil servants), while dispossessing others (here: Member States, constitutional courts, national diplomats and bureaucrats, etc.)<sup>4</sup>. As such, the instrument therefore encapsulates a form of “methodological Europeanism” that frames our perception of Europe’s polity, defining it as a law-abiding (a “Union of law”) and supranational entity. Famously, the concept of “methodological nationalism” has been used extensively by German sociologist Ulrich Beck (U. Beck, 2005). Yet, while the notion proved integral in his critique of nation-states’ iron cage and in his search for transnational ways to overcome these intellectual blinkers, Beck never actually turned the notion into an overall sociological *research* programme (D. Chernilo, 2006). Likewise, the notion of “methodological Europeanism”, a notion he actually only mentions *en passant*, is essentially thought of as bearing the same noxious effects as its national counterpart (“methodological nationalism”). However, this article stands on the premise that the notion of “methodological Europeanism” can actually prove to be a heuristic historical analyzer for how specific knowledge instruments and analytical concepts have been historically “caged” EU polity, in a way that is analogous to how notions of class, family, society, law, etc. have historically been “caged” in the framework of nation-states, thereby moulding our understanding of the space of political *possibles* in modernity (M. Mann, 1993). Through the genealogy of one of Europe’s most diffuse building blocks, this article suggests opening a broader research programme on the historical and contested process of “assemblage” (Latour, 2006) of a variety of theories, methods, and

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<sup>4</sup> On the “political potential” of methodologies, see Daniel Breslau (1997).

instruments into a form of “methodological Europeanism” on which Europe’s supranational pole of government rests an essential part of its authority<sup>5</sup>.

Tracking this historical process (this genealogy) requires a methodology that seizes the *doctrinal* but also *methodological* entrepreneurs that have contributed to establishing Europe’s cognitive and technical equipment. While a new strand of scholarship has recently unearthed the importance of doctrinal entrepreneurs in shaping Europe’s foundational pillars like “functionalism” (White 2003; Rosamond, 2014), “constitution” (Vauchez, 2010; Cohen, 2010), “governance” (de Lassalle and Georgakakis, 2012) or “single market” (Mudge and Vauchez, 2012), the role of methodological entrepreneurs shaping the related techniques of data production and collection (historical archives, economic statistics, legal compendia, diplomatic customaries, etc.) has still been given very little attention<sup>6</sup>. Yet, the State-building literature has actually long suggested that knowledge techniques have been an essential lever for modern States to establish their jurisdiction over competing forms of authority (church, feuds, chartered cities, etc.)<sup>7</sup>. The monopolization of the “informational capital” allows for a “theoretical unification” of the territory and of the corresponding population under the control of the emerging State bureaucratic apparatus : “taking the vantage point of the Whole, of society in its totality, the State claims responsibility for all operations of totalization (especially thanks to census-taking and statistics or national accounting) and of objectivation” (Bourdieu 1994, 3 and 7). In other words, the informational prerogative progressively acquired by State bureaucracies (and the related capacity to assess, compare, predict) paved the way and legitimized State intervention and policies.

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<sup>5</sup> While a part of the empirical material presented here is brought from my previous research drawing a history of EU law’s definitional power (Vauchez 2013), the present article expands on this previous research and brings it into a new research programme on the genealogy of the EU’s « methodological Europeanism ».

<sup>6</sup> But see Jay Rowell and Etienne Penissat (2014) on Eurostat in this dossier and Philippe Aldrin on the Eurobarometer (2011).

<sup>7</sup> In a very rich and diverse literature, see the seminal book by Alain Derosieres (2002), Pierre Bourdieu’s Lectures at the Collège de France on the State (2014) and the important project on the genesis of the modern State in Europe led by Wim Blockmans, Jean-Philippe Genet and Antonio Padoa-Schioppa (1997).

Strangely enough, while many scholars of EU studies have usefully drawn from the State-building analogy (Marks 1997), very few have pointed at the role of knowledge instruments in the shaping of Europe's polity<sup>8</sup>. Yet, the operation through which a chaotic set of political compromises, economic rationales and legal norms is turned into one unique figure of Europe is far from trivial. In fact, in a context in which the production of data has historically been anchored in national bureaucracies (Derosières, 2002), the capacity to officially reveal "the state of the Union" has been an essential battleground for Europe's supranational pole of government –in particular for the duopole formed by the European Court and the European Commission (Vauchez, 2014). Over the years, both these institutions (followed recently by the European Central Bank) have been active producers and collectors of data: and the cognitive advantage they have secured thanks to this supranational outlook (that no Member State or private party has been able to reach) has been one essential platform for their claim of a "rational guidance" of Europe.<sup>9</sup> In other words, the *political* capacity of the Court or the Commission to represent Europe's general interest and produce specific truths about its nature and future relates in part to their recognized ability to produce a *technically* robust representation of Europe<sup>10</sup>. And this relation proves particularly true in the case of law, as the recognition of a body's capacity to unearth the *authentic* state of the law of the (Euro-)land entails a related capacity to act as the *official* interpreter (and implementer) of its binding effects<sup>11</sup>.

In engaging with this broad *problématique*, the article suggests embracing a sociogenetic approach, as this has proved to be the more potent denaturalizing device. As the paper opens the black-box of Europe's most ubiquitous instrument<sup>12</sup>, it delineates

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<sup>8</sup> While the literature on "policy instruments" bears similarities with our approach, it does not, however, provide a specific statute for *knowledge* instruments and data collection (Lascoumes and Le Galès 2007).

<sup>9</sup> On the importance of this cognitive advantage in establishing jurisdiction over a given social problem, see Andrew Abbott (2005).

<sup>10</sup> This entanglement between scholarly production and broader social developments refers to the second (« the rejecting the internal/external divide ») of the four principles put forward in the introduction to this special issue (Adler-Nissen and Kropp, 2014).

<sup>11</sup> For an enlightening parallel, see the historical account of the creation of the Official Journal in France (Gougeon 1995).

<sup>12</sup> While there are many interesting studies of the *acquis* that point at its strategic importance in embodying the unity of the European project (Wiener 1998; Jorgensen 1999), none actually questioned its genesis and how this may have concretely *shaped* Europe.

the complex historical process through which the *acquis* has been formulated, stretched, criticized, revised, finally naturalized as the most rigorous and objective measure of “Europe” against other possible methods (political, diplomatic, economic, etc.). As this *problématique* calls for a thick description of the local context in which these instruments have been initially crafted<sup>13</sup>, the empirical focus is put on two specific moments, the enlargement to Great Britain (1969-1972) and the *relance* of the Single Market agenda (1988-1992), as they are critical junctures for the definition of the “European project”. The various political, bureaucratic and academic debates on the best methods for assessing Europe’s past achievements as well as the rich literature of EC documentation’s guides and digests make up the variegated empirical material for this research.

The article proceeds as follows. The first section depicts the constellation of knowledge producers on the state of the European Communities in the late 1960s as the Common Market is being fulfilled but no agreement exists among private and public, legal and non-legal, national and European actors as to what is the most accurate procedure to calculate “Europe”. The second section explains how the specific context of enlargement negotiations with Great Britain (1969-1972) form a turning point : it traces the coalescence of constitutional theories of EC law, technical innovations in information retrieval and the Commission’s institutional strategies into a new set of equipment that equates “Europe” to one single coherent and non-negotiable *corpus* of legally-binding norms. This progressive monopolization and juridification of Europe’s nature through the notion of *acquis* endows the duopole constituted by the Court and the Commission with the related power to “authenticate” what the “rights and duties” of the States are. In the third and last section of this article, I follow how this singular assemblage progressively solidified as Europe’s standard operating procedure.

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<sup>13</sup> On the principle of contextualism as a key empirical strategy for the sociology of knowledge, see the introduction to this dossier by Rebecca Adler-Nissen and Kristoffer Kropp (2014).

## **I/ Europe as we know it**

Up until when the mid-1960s, when the unexpectedly rapid implementation of the Common Market accelerated the pace of European integration, the assessment of the state of the European Communities did not raise a particular problem. Just like for every other international organization, an official gazette -the *Journal Officiel de la Communauté européenne du charbon et de l'acier*- had been created from the very first days of existence of the ECSC (30<sup>th</sup> December 1952), bringing together acts, resolutions, and parliamentary debates in four languages (French, Italian, Dutch and German)<sup>14</sup>. As the stock of texts amounted to few decisions and resolutions by the Council and the Coal and Steel High Authority, the apprehension about Europe's past decisions and agreements was hardly a matter of concern. However, the situation changed dramatically from the mid-1960s onwards as the Common Market unfolded swiftly and Europe's legislation developed exponentially. From 2,784 pages in 1958 and 7,905 pages in 1960, the Official Journal reached more than 45,000 pages a decade later (Prometti 2000)... In the midst of numerous technical and ephemeral regulations on agriculture, it had become difficult to ascertain with precision the *current* state of the Communities. In addition, the *Journal Officiel des Communautés européennes* was poorly accessible (only a couple of hundred libraries and ministries received it for free) and hardly intelligible (it was deprived of any totalizing index that would have allowed assessment of the state of the European affairs in one given policy domain)<sup>15</sup>. National bureaucracies, parliamentary committees, and research institutes had often engaged in building their own instrument of supervision of the decisions produced at the European level, but they were most often discontinuous in time (as these institutions lacked the resources for a continuous overview) and limited in scope.<sup>16</sup> Others kept track of the existing stock via national or international conferences<sup>17</sup>, the perusal of law journals<sup>18</sup>,

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<sup>14</sup> Ever since the League of Nations, publicity and publication have been an essential device for the legitimacy of international organisations: Megan Donaldson, "Renegotiating secrecy. The registration of treaties and international order between the wars", NYU Law school, on file with the author.

<sup>15</sup> In 1974, there were about a thousand free subscriptions to the Official Journal (compared with 3912 paying subscriptions) sent to libraries, embassies, national bureaucracies and international organisations (Official Publications Office 1975, 52).

<sup>16</sup> On these various attempts and their failure, see Heydt (1977, 59-60).

<sup>17</sup> See the important moment of the 1955 Stresa Conference, arguably the first important transnational academic conference on the ECSC as analyzed in Bailleux (2010).

and, quite importantly at the time, direct contacts with leaders and bureaucrats of EC institutions who would provide exclusive access to this otherwise semi-public world, although these remained interpersonal and diffuse channels of information. Many actually acknowledged the difficulty of navigating in this inchoate and scattered ensemble of texts, best described as this “enormous mass of papers in part diffused for free and in part not; only one part of the documents are printed while others are mere *duplicata* of dactylographed texts”.<sup>19</sup>

### **1) *The Political Stakes of Calculating Europe***

Europe’s lack of intelligibility triggered competing attempts to calculate its body of past decisions and resolutions. In a context in which EC regulations were reaching an ever more diversified group of companies and economic sectors, corporate interests were among the first to raise the issue. Various members of the European Parliament, most often close to the corporate sector, started echoing the difficulties that companies were encountering in assessing the state of European affairs in their own specific sectors. German conservative MEP, Arved Deringer, himself a prominent anti-trust lawyer and president of the Legal Committee of the European Parliament (and later of the Common Market Committee) brought the issue to Strasbourg: “does the Council or the Commission possess a survey (...) of their own law?”, he asked in a written question to the Commission in 1967. In reply, the German MEP was told that such inventory would be useless (“no more than generally informative”) since everything of legal value was already published in the Official Journal, and tedious as “it would require much time and energy” (Deringer 1967). Later on, Belgian MEP and businessman Baron Paul De Keersmaeker continued on the same vein, noting “how difficult it is for the administrations, legal authorities, and lawyers of the Member States to keep track of all the provisions of EC law” (de Keersmaeker 1974). Legal documentalists and law professors also sent some desperate calls to the Office in charge of the Communities’ Official Publications (hereafter: Opoce): “regarding your legal texts, have you nothing which codifies legislation by subject? For instance, where can we find in one place EC

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<sup>18</sup> Initially, EC law journals, such as the *Revue trimestrielle de droit européen*, actually devoted an essential part of their issues to the publication of a selection of documents (relevant resolutions or decisions) from EC institutions.

<sup>19</sup> *Ibid.*

laws and Member States' laws on copyright? Have you anything like a citation system, such as Shepard's in the US? We need common sources to refer to (...) We literally beseech you, in the light of the pollution of Communities' publications, to do something about this aspect!" (Heydt 1977), generating an embarrassed answer from the director of Opoce: "I fully recognize the problem, I personally cannot solve it" (Fitzgerald 1977).

## ***2) Competing Apprehensions of Europe's Past Achievements***

Unsurprisingly, commercial publishers quickly seized this opportunity by developing a vast array of practice-oriented compendia covering EC decisions in domains as different as agriculture, transport, restrictive trade agreements, etc. In the wake of the Common Market, many new book series and specialized newsletters were launched that provided updated digests of the state of EC affairs in a variety of policy domains. In France, a lawyer and former attaché at UNESCO, William Garcin, started a book series in 1958 entitled *Recueil pratique du droit des affaires dans les pays du Marché commun*, known as the *Collection Jupiter*, that would last for two decades<sup>20</sup>. Designed by and for corporate lawyers, in-house jurists, and company managers, these collections selectively compiled EC documentation, setting aside all non-legal material (EC parliamentary debates, Council's political resolutions, etc.). As they aimed at providing legal tools for companies, these companion volumes were sector-specific digests. Thereby, the "Europe" these commercial compilations were unearthing was made of slices (policy domains) with very little emphasis, if any, on the political and institutional developments of the European project.

However, with the "legal revolution" that accompanied 1963-64 landmark decisions by the European Court of Justice (*Van Gend en Loos* and *Costa c. ENEL*), a new understanding of Europe's past had crystallized (Vauchez, 2014). The emerging constitutional doctrine of EC Treaties paved the way for a new definition of Europe as a distinct "Community of law" and a coherent and self-sufficient "legal order" granted with direct effect and supremacy over national bodies of legislation (Vauchez 2010).

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<sup>20</sup> Cf. "Droit des affaires et Marché commun", *Le Monde*, 9 April 1958. For an English-speaking equivalent, see the *Encyclopedia of European Community Law* published from 1973 onwards by Sweet and Maxwell.

With the Court's jurisprudence being more and more firmly set on this constitutional track, the Commission established in 1967 a new classificatory system for the Official Journal of the European Communities that mimicked national legal letter codes: acts and resolutions taken by EC institutions were not anymore presented by the Community (Euratom, Coal and Steel, Economic Community) as had been the case so far, but they were exclusively distinguished in relation to their legal effects: from then onwards, all legally-binding texts would be indexed under the "L" rubric (emblematically entitled "Legislatio"), while the heterogeneous set of "merely" declaratory texts (opinions, resolutions, parliamentary debates, claims before the European Court", etc...) fell under the "C" rubric ("Communicatio")<sup>21</sup>. Throughout this new coding scheme, the "Europe" formatted by the Commission's senior civil servants was *one* consistent ensemble of legally binding texts defined in direct relation to the unfolding of the "European project" whose responsibility it was for the Court and the Commission to safeguard.

This constitutional representation of Europe ran counter to a third conception of Europe's past as a relatively informal and continuously changing series of *political* compromises (the Council's "package deals", political resolutions, consolidated diplomatic customs of EC summitry, etc.). The progressive diffusion of the constitutional understanding of European Treaties actually crystallized the emergence of this competing apprehension of Europe's past commitments. On the occasion of the "empty chair" crisis, French diplomacy had famously managed to impose upon the other five Member States (January 1966) a "compromise" that stated that "a vital interest" could suffice to escape from the Treaties' legal prescriptions and treaty procedures. While pan-European lawyers did try to qualify such *political* interpretation of the founding Treaties by refusing to grant any legal value to the "Luxembourg compromise" (Pescatore 1966, 66) and viewing the protocol as a mere *gentlemen's agreement* without any binding value (Cruz 2006), diplomats and foreign affairs ministers still considered it as a defining element of Europe's diplomatic *acquis*.

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<sup>21</sup> Strikingly, however, the decisions of the European Court of Justice, that had proved so important in interpreting the founding Treaties, still fell in neither of the two, leaving it up to the Court to publish its own decisions separately as it had done through the *Recueil de jurisprudence de la Cour* ever since its very first verdict in 1955.

**Competing Apprehensions of Europe’s Past Decisions (mid 1960s)**

	<b>Promoters</b>	<b>Knowledge instruments</b>	<b>Definitions of Europe’s past</b>	<b>Visions of Europe</b>
<b>Corporate</b>	Businessmen Commercial publishers	Legal digests Practice-oriented compendia	Commercial and trade regulations	A set of segmented public policies
<b>Constitutional</b>	Commission’s Legal Service Office of Official Publications (Opoce) EU law professors	<i>Official Journal of the European Communities</i>	Rights and duties An autonomous and hierarchized legal order	“Community of law“
<b>Political</b>	Diplomats and national politicians	Diplomatic customs of previous Member States’ package deals	Political compromises and diplomatic package deals	“Concert of Europe“

The existence of these various possible ways of totalizing Europe’s past achievements is indicative of the fact that, as the Common Market agenda was being completed, there was still a lot of uncertainty regarding which instrument, procedure and, ultimately, institution was most authoritative in assessing the actual state of European affairs.

**II/ A New Arithmetic of Europe’s State of Affairs**

The enlargement negotiations in view of the accession of Great Britain, Denmark, Ireland, and Norway to the European Communities (1969-1972) created a new context. As they required making explicit that “Europe” to which the candidate countries were applying, the negotiations formed a critical moment in which new methodologies for calculating Europe’s past emerged and consolidated.

### **1) Methodological Entrepreneurship**

While two previous attempts to enlarge the EC to the United Kingdom had ignited many diplomatic controversies, the third attempt raised little debate (Geary, 2013). Early on in the process, the Six had come to an important political agreement on requiring that the incumbents accept *all* the texts and norms enacted ever since the creation of the ECSC, thereby obstructing the repeated claims by the UK for an accession *à géométrie variable* in the name of the special links it maintained with the Commonwealth countries<sup>22</sup>. However, while the four candidates would have to adjust to this body of legislation *en bloc*, it remained unclear whether they were simultaneously adhering to the constitutional doctrine of the Treaties that had emerged throughout the decade in the Court's jurisprudence as well as in the Commission's policies ever since the mid-1960s. Marked as it was by parliamentary sovereignty, the UK did not appear culturally and politically well-equipped to accept the *Van Gend en Loos* doctrine, not to mention the overall constitutional paradigm, leading ECJ Judge Pierre Pescatore to opine in 1970 that "the new combination of direct impact with supremacy of EC law – which was accepted, though not without difficulties, on the continent – will require a fundamental revision of some deep-rooted habits of political and legal thinking in Great Britain. (...) I am under the impression that this has not yet been fully realized in the United Kingdom" (Pescatore 1970, 66). The negotiating phase confirmed this fear. Being the terrain par excellence of state sovereignty, the negotiations for the accession treaty actually provided little room for these legal concerns to be voiced.<sup>23</sup> Unsurprisingly, the recognition of the *Van Gend en Loos* doctrine was quickly rejected from the Accession Acts in the name of the "probable political difficulties [such a recognition] it would have posed"<sup>24</sup> and because it was deemed impossible to impose on new Member States more obligations than the ones that the Six had initially agreed to when they had signed the Rome Treaties in 1957.

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<sup>22</sup> The Council's declaration after The Hague conference of heads of States and of government, December 1<sup>st</sup> and 2<sup>nd</sup>, 1969 (European Commission 1970, 523).

<sup>23</sup> For a chronicle of the multiple political and diplomatic conflicts which surrounded the enlargement to Great Britain throughout the 1960s, see in particular Uwe Kitzinger (1973).

<sup>24</sup> In the words of the Director of the Council's Legal Service, Jean-Pierre Puissochet (1974).

In this context, it is no wonder that the Legal Service of the European Commission, which had been on the frontline in promoting the constitutional doctrine of EC Treaties (Baillieux 2013; Rasmussen 2012; Vauchez, 2010), engaged in providing an alternative view of that “Europe” to which Denmark, Ireland, and Great Britain were adhering. This took the very singular form of a *methodological* undertaking by which the Legal Service crafted a comprehensive and multi-lingual *database* of EC texts, acts and resolutions, baptized Celex (*Communitatis Europae Lex*). As early as 1967, in a period that constituted the heyday of the belief in computerized tools of legal information<sup>25</sup>, H el ene Bernet, a young member of the Legal Service, returning from a training course in legal information technology at the University of Michigan,<sup>26</sup> had developed a database on the “brand new IBM 360” thanks to its “document processing system” software. “The Commission’s lawyers themselves,” she recalled recently, “had begun to encounter ‘retrieval’ problems, and therefore some IT assistance in distribution and research of legal information appeared sensible”.<sup>27</sup> The fact is the system actually allowed “to analyze thousands of acts” at once. Thanks to its keywords search engine, it was possible to calculate the *current* and comprehensive “state of the law”. In December 1969, on the occasion of a conference on computerized legal tools organised at the initiative of the (Commission’s) Legal service, the first results drawn from the tedious work of collecting and transferring data into the system were presented (Bernet 2006, 17). Through this instrument, the circa 2000 acts that were in force at the time had become one long series of punch-cards (1kg or more)<sup>28</sup>.

## **2) Assembling the Acquis**

These first steps towards the aggregation of all the EC documents produced ever since 1952 were certainly not trivial. In fact, the database became concretely engaged in the transformation of the *maquis* of texts and acts of the EC institutions into a veritable

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<sup>25</sup> On the rapid development of information technologies and the emergence of computerized tools of legal information in the 1960-70s, see Evelyne Serverin (1985).

<sup>26</sup> In 1972, she would actually defend a doctoral thesis in German law at the University of Frankfurt am Main on the logic applied in international multilingual law (Bernet 1983 ; Bernet 2006).

<sup>27</sup> H el ene Bernet, Email exchanges with the author, 2008. Our translation.

<sup>28</sup> *Ibid.*

legal *corpus* organised according to Europe's constitutional paradigm<sup>29</sup>. In arranging and ordering the Communities' past documents by type of norms (treaties, international agreements, secondary legislation, supplementary acts, preparatory acts, jurisprudence, national measures implementing directives and parliamentary questions), year of adoption, duration and legal value, and so on (Nunn-Price 1994), the database effectively aggregated as much as it distinguished, bringing into being classes of equivalence between acts and texts born for reasons and in historical contexts which were profoundly different. Of particular importance was the fact that Celex also aggregated the decisions of the European Court of Justice (so far they fell in neither of the "L" and the "C" rubric of the Official Journal) to each one of the texts they were interpreting, thereby given concrete existence to the monopoly of interpretation of EU law granted to the ECJ by the treaties.

As Celex was progressively bringing to existence Europe's "body of law", the Legal Service coined a new term, the *acquis communautaire*, to name this new aggregate. To the broad principle of acceptance of the existing EC regulations by the new Member States (Opinion addressed to the Council on 1<sup>st</sup> October 1969), the notion of *acquis* added an essential interpretative guideline: the overall acceptance of Europe's past achievements had been organised along the lines of the constitutional doctrine. In an Opinion to the Council issued on the very eve of the signature of the Acts of Accession in Egmont Palace in Brussels on 19<sup>th</sup> January 1972, the European Commission averted that, while negotiators had actually kept "silent on the issue" (Puissochet 1974, 96) of the doctrine of direct effect and the supremacy of EC law, the "Europe" to which Great Britain adhered did in fact entail a commitment to:

"the legal order created by the Treaties establishing the Communities [which] is essentially characterized by the direct applicability of certain of their dispositions and of certain acts, the supremacy of EC law over national measures which contradict them, and the existence of procedures for ensuring the uniformity of interpretation of EC law;

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<sup>29</sup> The secretariat of the Commission had also created its own database, Ecdoc, but the objectives were different since it was more designed to collect background information and preparatory documents of EC legislation rather than to totalize the law into force.

[...] the binding nature of these rules, the respect of which is indispensable for guaranteeing the effectiveness and unity of EC law” (European Commission 1972, published 1987)

The notion of *acquis* promoted by the Commission differed significantly from the mere acceptance of what had been adopted by the EC in the past as it meant that the new Member States would have to accept not only a set of texts, but also a classificatory system ordering them by order of importance in Europe’s legal order<sup>30</sup>. Thereby, the *acquis* was not just the mere outcome of a natural process of *decantation* of dispersed acts of varying political status, but it was also an authentic *compilation* according to a constitutional logic. Combined with its technical equipment (Celex), the *acquis* is therefore able to concretely embody that “Community of law” that the Court and the Commission had pledged to safeguard.

### **3) The Commission’s Political Leverage**

In a context in which different expert groups had been tasked with the preparations for the accession of the four candidates “in order to provide the new Member States with a list of acts in force, that they would have to accept and introduce in their national legislations” (Bernet 2006, 10-11), it was far than trivial that the most extensive computer database of EU law was to be hosted and controlled by the Commission<sup>31</sup>. As the director of the Legal Service of the Council of Ministers indicated at the time, the enlargement was “a prodigious occasion to look over the whole of EC law and to arrive at a sort of radioscopy or spectral analysis of ‘secondary law’” (Puissochet 1974). And the Celex technology provided a representation of EC law that was far more current and comprehensive than that of the Member States or the commercial publishers. Although it had initially been sidelined from the highly *political* game of diplomatic horse-trading, the Commission was therefore able to gain a say through this cognitive advantage and related legal expertise (Geary 2013). In his account of the negotiations, the Director of

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<sup>30</sup> While the Opinion of the Commission would not gain official recognition in the subsequent Acts of Accession, it would continuously recall its importance in Opinions copy-pasted from that of January 1972: e.g. European Commission (1981, 119).

<sup>31</sup> Strikingly, until 1981, only the Legal Service and a limited network of “Celex correspondants” in the directorates-general were “entitled to consult the records and effect retrieval” of EU law on Celex terminals (Gaskell, 1977, 79).

the Legal Service of the Council acknowledged the “essential role (...) in the dry and complex domain of examining the totality of secondary EC legislation” (Puissochet 1974, 26), as the Commission would be “looking over, with the candidate states, all of the existing EC legislation”. As the negotiations continuously called for an objective assessment of the state of EC law to which the UK was subscribing, the Commission was the only institution capable of engaging in a systematic screening, gauging and compiling of “rights and duties” linked with participation in the European Communities (European Commission 1971, 28; European Commission 1970, 523).

With its purported rigorous calculus of the content and the contours of what “Europe” really meant and implied, the “inter-institutional system of automatic documentation of EC law” (Council of ministers 1974, 1108) – as was officially labelled the Celex database – became integral to the strengthening of the Commission’s authority in the politically sensitive context which presided over the preparation of the Acts of Accession.

### **III/ Europe’s Boundary Object**

Having successfully passed the test of the first enlargement negotiations, where its representativeness had been both tested and given the official seal of approval, the *acquis* progressively became the working basis for the European Communities as a whole. By a sort of boomerang effect, the notion, initially aimed outwards, became the essential benchmark of the Communities’ *internal* affairs. In this last section, I argue that this singular position as Europe’s “boundary object”, “both inhabiting several communities of practice and satisfying the information requirements of each of them” (Leigh and Griesemer 1989), is the by-product of a continuous tension and balance between two partly contradicting elements: the first one relates to the increasing variety of *users* (national bureaucracies, interest groups, NGOs, journalists, etc...), turning the *acquis* into an ubiquitous tool of Europe’s polity; the second element is the continued *robustness* of the instrument by which I mean its recognised technical capacity to objectively represent the “state of the Union”.

## **1) A Platform for European affairs**

Just a couple of years after Celex had been crafted, the European Court of Justice embraced it in its standard operating procedures. It proved instrumental in a context in which the generation of judges that had championed the *Van Gend en Loos* doctrine was progressively leaving the Court, putting the continuity of this “judicial revolution” at risk. This prompted a variety of attempts to solidify ECJ constitutional jurisprudence among the most active pan-European judges and *référéndaires*. Chief among these judges was the very influential Judge Pierre Pescatore who had been nominated at the Luxembourgish seat of the Court of Justice (1967-1984) after having contributed to the drafting of the Rome Treaties. Intellectually, he formalized the existence of what he called a “judicial *acquis*” “of constitutional rank” that was now an integral part of the Treaties themselves, and which was grounded on “four decisions : *Commission c. Luxembourg et Belgique* (1962), *Van Gend en Loos* (1963), *Costa* (1964) et *Consten et Grundig* (1966)” (Pescatore 1981, 620 and 648). In the same period, he also forged the methodological device that would secure the consistency of this jurisprudence. As all ECJ Decisions and Opinions had now been fully integrated into Celex (1974), Pescatore wrote for his colleagues and their *référéndaires* an internal document entitled **Vade-Mecum** - *Recueil de Formules et de Conseils Pratiques à l'Usage des Rédacteurs d'Arrêts*<sup>32</sup> that called for a rationalization of the Court’s judicial writing. The new digital context of Celex served as an essential lever for defining a stable lexicon (“*une bibliothèque de phrases*”) and a limited collection of “style clauses” and “typical formulations” for the Court’s jurisprudence. But the Judicial Compendium was not just about style: it also insisted on the fact that judges had to frame their decisions within the framework of previous decisions, thereby securing a continuous “jurisprudential chain” with the constitutional decisions of *Van Gend en Loos* and *Costa* : “the decisions of the Court are not referable by computer, nor can they achieve their greatest influence as ‘precedents’ unless they are created in terms which include easily identifiable elements” (Pescatore 2007, 30). Thereby, the rationalizing effects of the Celex system (and of the

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<sup>32</sup> The document was published only 22 years later (Pescatore 2007). While it would never receive any official statute within the Court, it is known for having had three editions along the years of Pierre Pescatore’s presence at the Court.

standardization of linguistic equivalencies: McAuliffe 2013) proved essential in locking in the Court's constitutional path (Vauchez 2012).

The *acquis* also became an essential instrument for the empowerment of both the European Commission and the European Parliament vis-à-vis Member States. In pretty much the same way it had allowed the Commission to involve itself in the diplomatic discussions about enlargement, Celex became one of the essential levers to monitor the implementation of EC directives in each one of the Member States. In 1977, a new lawyer, Claus-Dieter Ehlermann, was nominated to head the Commission's Legal service and this resulted in considerable reinforcement of the Legal service's control over EC law implementation (Snyder 1993). To this aim, a new database was crafted on the basis of Celex (Asmodee: Automated System for Monitoring Directives Execution) but extending it to national implementation measures. Although the gathering of this national information was not without creating tensions with national bureaucracies, this new technical equipment made it possible for the first time to follow and compare the pace with which the different Member States were conforming to EC law. As Asmodee provided an essential technical support for reinforcing the *legal* guardianship of Europe's past body of texts, it allowed the Commission to develop an *autonomous* policy for detecting violations (not anymore based exclusively on complaints brought by external actors<sup>33</sup>), bringing more and more cases before the ECJ (Ehlermann 1981). This resulted in concrete legal consequences: while only 30 total actions had been filed by the Commission between 1958 and 1977 on this basis, 100 were submitted in the period from 1977 to 1983 alone (Audretsch 1986, 161)!

It did not take long before the European Parliament took advantage of these new data. As they brought to light the extent of States' violations of EC regulations, they provided the statistical material for various reports from 1981 and 1982 in which the Committee of Legal Affairs of the European Parliament became alarmed at States' non-respect of their obligations. Supporting the Commission's new course of action, the Parliament called upon it to report annually on the state of national violations of EC law

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<sup>33</sup> As a result, the number of cases brought by the Commission to the ECJ moves from 28 in 1980 to 145 in 1984 (Audretsch 1986).

(Helmut Sieglerschmidt, 1981 and 1982). Thanks to the Asmodee database that allowed for a continuous evaluation sector by sector, country by country, and act by act, of the implementation of directives (European Commission 1983), the European Parliament became the arena in which, every year, MEPs and Commissioners, with numbers and data in hand, would point the finger at national pathologies and deficiencies, giving out good and bad points to the Member States (the latter mainly to Mediterranean countries, perceived as being systematically late or at fault...), thereby substantiating the new political role it claimed for its self in the context of the post-1979 period (Börzel 2001).

Here is not the place to account for all the usages of the *acquis*. Suffice it to say that during the 1970s-80s, the network of users actually significantly increased and diversified, making its way into the most routine operations of the Communities, from the *comitology* to the terrain of institutional reform. As each one of these users try to mobilize, interpret, fend off or even circumvent for their own advantage the *acquis*, identifying its “fundamental principles”, “ambiguities” or “gaps”, they all acknowledge its “reality” as the best proxy to Europe’s nature. The capacity of the *acquis* to “officially” measure, if not to “represent”, Europe, is therefore not the result of the intrinsic qualities of the instrument as, if this were so, many others could compete with it. Rather it is a direct function of a series of strategies and transactions of a variety of EC-implicated actors (the Court, the Legal Service, the Legal Committee of the European Parliament etc.) which provided value and saliency to the instrument.

## **2) Europe’s Official Code**

As Celex became increasingly used as the *official* calculation for States and individuals’ rights and duties, the expectations towards the database progressively moved towards a more *political* repertoire. It should be said that from the late 1980s onwards, the scope and the reach of EU law evolved dramatically, particularly with the completion of the *paquet Delors* which brought EC legislation to new record highs (more than 500 new regulations per year in the 1986-1991 period) and the entry into force of the Maastricht Treaty’s political union. An increasingly diverse set of interest groups, NGOs, firms and national bureaucracies kept track of European affairs: subscriptions to the Official

Journal of the European Communities actually grew exponentially, after stagnating at around 10,000 paying subscriptions (9,500 in 1974 ; 9,727 in 1985), the number of subscribers to the Official Journal rose to 12,000 in 1988 and more than 14,000 in 1991 (Official Publications Office, 1974 and following).

With this extension of the scope of EC-implicated policy domains and actors, new political and social expectations progressively emerged which increasingly referred to issues of “European citizenship”, questioning the database in terms of its representativity, accessibility and independence. Librarians, scholars, interest groups, NGOs and others pointed to its various biases and technical flaws. First among the issues was the question of representativity: while the database could claim to be comprehensive in terms of scope, Celex still had a linguistic bias as its French and German versions were far more complete (and therefore accurate) than the other versions (Hanson 1989). How could this official basis that potentially impacted all EU citizens fail to be fully multi-lingual? In a context in which the notion of European citizenship had made its way into the Treaties at Maastricht (1992), the issue of accessibility also came to the forefront. Although in 1981 it opened to users external to the European Commission, the Celex database was still commercialized by a private company (Honeywell Bull) and access remained de facto limited to “ministers and para-state organs, parliamentary assemblies, law firms, industrial and commercial groups, research centers and universities” (European Commission 1982) who could afford the cost of the fees. Along the same lines, many criticized the lack of practicability of Celex, which was most often described as “not (being) a database for novices” because its “language (was) quite inaccessible” (Jeffries 1991, 241). Last but not least, the issue of the database’s independence from specific institutional interests also became salient. As Celex was the undisputed basis for all European negotiations, the fact that it was under the control of the Commission was more and more difficult to swallow inside as well as outside EC institutions. Under pressure from the Secretariat General of the Commission, and then from the “legal I.T.” working group created within the Council in 1974, the database had already moved away from the Legal Service to DG

Administration<sup>34</sup>; but as it was still “produced” by the Commission, its capacity to be recognized as an objective measure of Europe was undermined.

These challenges to Celex were not trivial as they all questioned its capacity to be *the* official code of Europe and the inescapable working device for all EU-related negotiation tables. In fact, from the aftermaths of the Maastricht Treaty (European Council, 1992) to the Commission’s *Livre blanc* on European Governance (2001), “access, openness and transparency” of EU law documents had become a defining element of the emerging “European citizenship” policy. As a result, the *acquis* itself turned into an object of policy in its own right, with a variety of attempts to simplify and codify it (European Commission 2001; de Witte 2002). The related transformations of the database were crucial, as in less than a decade Celex became accessible via the Web (1997), then free of charge (2004), eventually aggregating with Eur-Lex into a unique portal of legal information on the EU as we know it today (Duro 2006). In the meantime, the database had also left the Commission’s umbrella to join an inter-institutional organ (Opoce), thereby marking its autonomy from its initial creators. On the whole, the process through which the *acquis* has become Europe’s key boundary object profoundly transformed the instrument itself from the Commission’s Legal Service, semi-public database to Europe’s official code. The 2013 Council Regulation that restricted the authentic (legally binding) version of the Official Journal to its Eur-lex online version is just one additional acknowledgement of the saliency of this cognitive and technical equipment<sup>35</sup>.

## **Conclusion**

This article has traced the genealogy of one of Europe’s most ubiquitous instruments: the *acquis*. The notion is so deeply entrenched in Europe’s daily practices that it has now become practically invisible. While most scholarship takes it as a self-evident fact, the article has opened this black box and debunked the complex historical process through which this specific model of measuring EU law has been produced and defined

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<sup>34</sup> On the history of Celex’s institutional affiliations (Official Publications Office, 2006).

<sup>35</sup> Ever since Council Regulation 216/2013, only the electronic editions of the OJ (e-OJ) published after 1 July 2013 are authentic (have legal force).

as Europe's best proxy. In particular, the article points at the role of methodological entrepreneurs and their many investments in terms of equipment, maintenance and administration as they craft what has now become the very terrain on which European affairs take place.

This result is not trivial if we consider that knowledge instruments are not just mere *descriptions* of Europe's reality but one essential channel through which it is actually filtered and framed into sets of possible alternatives (inter alia: Diez 1999). Interestingly, the *acquis* apprehends "Europe" as one specific supranational (legal) order; a unitary and closed (*autopoietic*) system that has its own causal mechanism, with internal relations and hierarchies, distinct from Member States. In other words, the European Union has an autonomy of its own and it exists in and out of itself. As the *acquis* delineates the EU as a self-sufficient ecology and the primary unit of analysis, it pinpoints the EU as the relevant level for both negotiations and problem-solving strategies. Thereby, it is an essential brick in the equation between the concept of Europe and that of the European Union, best coined as a "methodological Europeanism", on which Europe's supranational pole of government rests an essential part of its authority.

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