

1 | The Politics of Ghostwriting Lawyers

“The lawyers of the United States form a party which is but little feared and scarcely perceived, which has no badge peculiar to itself, which adapts itself with great flexibility to the exigencies of the time. . . it acts upon the country imperceptibly, but it finally fashions it to suit its purposes.”

– Alexis de Tocqueville, *Democracy in America*¹

If, as James Scott argues, most politics are “like infrared rays,” taking place “beyond the visible end of the spectrum” and contradicting or inflecting “what appears in the public transcript,” then lawyers are the virtuosos of democratic “infrapolitics.”²

For under “the auspices of a disinterested exchange in the service of the law,”³ lawyers can remake social relations, broker fields of knowledge, construct novel polities, and dismantle old ones. Ubiquitous in Western societies, they are embedded in any social movement challenging or consolidating political authority.⁴ Yet officially they are to remain offstage, neither representing their own interests (but those of their clients) nor providing decisions under law (for that is the judge’s job). Amidst clients ‘lawyering up’ and judges ‘pronouncing the words of the law,’ lawyers make do with the appearance of mere go-betweens.

¹Tocqueville, Alexis de. 2003 [1862]. *Democracy in America, Vols. I & II*. New York, NY: Barnes & Noble Books, at 254-255.

²Scott, James C. 1990. *Domination and the Arts of Resistance*. New Haven, CT: Yale University Press, at 4-5; 183-184.

³Vauchez, Antoine. 2015. *Brokering Europe*. New York, NY: Cambridge University Press, at 115.

⁴Halliday, Terence, and Lucien Karpik. 1997. *Lawyers and the Rise of Western Political Liberalism*. New York, NY: Oxford University Press.

Yet as far as go-betweens go, lawyers enjoy remarkable discretion for political maneuvering. Armed with professional expertise recognized by the state, they are free of the institutional shackles plaguing bureaucrats and remain embedded in societies oftentimes restless for change.⁵ To be sure, most lawyers tend towards the conservatism described by Tocqueville, being “disinclined to innovate when left to their own choice.”⁶ But not all complacently stop here. In democracies committed to the rule of law, a crucial politics is sparked when lawyers shed their go-between role, pushing for change by mobilizing clients and judges alike.

The central thesis of this book is that entrepreneurial lawyers were essential to the development of today’s most advanced transnational polity: The European Union (EU) established in 1957. While the EU lacks the coercive means of modern states, its ability to govern through law has grown to be unrivaled in world politics.⁷ Explaining how Europe has become “nowhere as real as in the field of law”⁸ in the shadow of two world wars and against the early expectations of European statesmen⁹ constitutes one of the great social science puzzles of our age. And it is a puzzle that cannot be addressed without taking seriously the identities, interests, and strategies - in a word, the *agency* - of lawyers in the study of politics.

My argument is that in some subnational communities, lawyers promoted European integration by weaponizing legal practice. By systematically encouraging clients to break state laws and mobilizing national courts against their own governments, they appealed to the au-

⁵Abel, Richard, and Philip Lewis. 1989. *Lawyers in Society: Comparative Theories*. Berkeley and Los Angeles, CA: University of California Press.

⁶de Tocqueville, Alexis de. 2003 [1862]. *Democracy in America, Vols. I & II*. New York, NY: Barnes & Noble Books, at 254.

⁷Kelemen, R. Daniel. 2011. *Eurolegalism*. Cambridge, MA: Harvard University Press; Kelemen, R. Daniel, and Kathleen R. McNamara. 2018. “How Theories of State-Building Explain the European Union.” Presented at the 25th International Conference of Europeanists (CES), Chicago, IL, March 28-30, 2018.

⁸Vaucher, Antoine. 2015. *Brokering Europe*. New York, NY: Cambridge University Press, at 1.

⁹“Nearly all EU legal scholars now accept that the singular trajectory of EU law was not implicit in the Treaty of Rome, making the EU’s constitutional trajectory the most striking example of . . . significant unintended consequence in world politics.” See: Moravcsik, Andrew. 2013. “Did Power Politics Cause European Integration?” *Security Studies* 22 (4): 773-790, at 786.

1.1. A Theory of Lawyers and Political Development

thority of supranational rules and converted them into on-the-ground practice. Yet lawyers acted in ways that are challenging to perceive, cloaked in the sheepskin of the seemingly innate rights-consciousness of litigants and the activism of judges. Their influence lay in forging transmission belts between civil society, state judiciaries, and European institutions without disturbing the appearance that others were doing all the work. Without their agency as “ghost-writers” of politics, the EU could not have developed into a “transnational legal order”¹⁰ that, by some estimates, has come to regulate up to 40% of state legislation.¹¹ Without taking lawyers seriously, we cannot understand how the EU has gradually and unevenly overcome its military, fiscal, and administrative weaknesses to become a modern version of what one historian termed a “law state:” A polity whose authority is forged through legal rules that are invoked, interpreted, and developed by an expanding network of courts.¹² Europe is a judicial construction, but its underlying politics involve actors beyond judges themselves.

1.1 A Theory of Lawyers and Political Development

To understand how lawyers catalyzed the judicial construction of Europe, we need to theorize the mechanisms and conditions whereby legal professionals promote institutional change.

Although lawyers rarely figure as protagonists in theories of comparative politics, they do hover over many processes of institutional change that most interest comparativists. *In primis*, the rise of the modern national state - particularly its liberal variant - is joined at the hip with

¹⁰See: Shaffer, Gregory. 2012. “Transnational Legal Ordering and State Change.” In *Transnational Legal Ordering and State Change*, Shaffer ed. New York, NY: Cambridge University Press; See also: Halliday, Terence, and Gregory Shaffer. 2015. *Transnational Legal Orders*. New York, NY: Cambridge University Press.

¹¹Toeller, Annette E. 2010. “Measuring and Comparing the Europeanization of National Legislation.” *Journal of Common Market Studies* 48 (2): 417-444.

¹²Strayer, Joseph. 1970. *On the Medieval Origins of the Modern State*. Princeton, NJ: Princeton University Press, at 61. See also: Kelemen, R. Daniel, and Tommaso Pavone. 2018. “The Political Geography of Legal Integration.” *World Politics* 70 (3): 358-397, at 358-360.

the professionalization of lawyers.¹³ On the one hand, the state bestowed legitimacy and status to lawyers by recognizing their expert knowledge and granting them monopoly rights to legal representation.¹⁴ On the other hand, lawyers' standardized and positivist reasoning,¹⁵ their provision of expertise to fledgling bureaucracies, and their consecration of rule-based social order benefitted state-builders. From France to Hungary to Italy,¹⁶ lawyers made states and states made lawyers.

Nevertheless, the relationship between lawyering and political development can be elusive to trace. Lawyers do not mount coups, levy taxes, or pass controversial legislation that make the headlines. Their efforts only become partially visible where they face less competition from soldiers, bureaucrats, and legislators for political influence. It is in this light that Europe serves as a laboratory to probe the political role that lawyers can play. Lacking a military, an independent tax system, and a large bureaucracy,¹⁷ the EU's political development must trek along more diffuse and less coercive pathways than traditional state-building.¹⁸ Combined with an emergent commitment to build "a community based on the rule of law,"¹⁹ an opening

¹³Halliday, Terence, and Lucien Karpik. 1997. *Lawyers and the Rise of Western Political Liberalism*. New York, NY: Oxford University Press; Liu, Sida. 2013. "The Legal Profession as a Social Process." *Law & Social Inquiry* 38 (3): 670-693, at 679-680; Dezelay, Yves, and Mikael Rask Madsen. 2012. "The Force of Law and Lawyers." *Annual Review of Law & Social Science* 8: 433-452, at 439-440.

¹⁴Abel, Richard. 1988. "Lawyers in the Civil Law World." In *Lawyers in Society, Volume II: The Civil Law World*, Abel and Lewis, eds. Berkeley and Los Angeles, CA: University of California Press.

¹⁵Bourdieu, Pierre. 1986. "The Force of Law." *Hastings Law Journal* 38: 805-853, at 820, 846.

¹⁶Malatesta, Maria. 1995. "The Italian Professions from a Comparative Perspective." In *Society and the Professions in Italy, 1860-1914*, Malatesta, ed. New York, NY: Cambridge University Press, at 23; Olgiati, Vittorio, and Valerio Pocar. 1988. "The Italian Legal Profession." In *Lawyers in Society, Volume II: The Civil Law World*, Abel and Lewis, eds. Berkeley and Los Angeles, CA: University of California Press, at 342-343.

¹⁷The EU's budget relies upon customs duties and semi-voluntary state contributions, and amounts to just 1% of Europe's GDP - only 6% of which is allocated to administration. The executive body of the EU - the European Commission - is staffed by just 33,000 employees, comparable to the civil service of a medium-sized European city. See: European Commission. 2015a. "Myths and Facts." Accessed Aug. 10, 2016, at: http://ec.europa.eu/budget/explained/myths/myths_en.cfm; European Commission. 2015b. "Frequently asked questions." Accessed Aug. 13, 2016, at: http://ec.europa.eu/budget/explained/faq/faq_en.cfm; European Commission. 2015c. "Who We Are." Accessed Mar. 14, 2016, at: http://ec.europa.eu/civil_service/about/who/index_en.htm.

¹⁸Tilly, Charles. 1993. *Coercion, Capital, and European States, A.D. 990-1992*. New York, NY: Wiley-Blackwell; Kelemen, R. Daniel, and Kathleen R. McNamara. 2018. "How Theories of State-Building Explain the European Union." Presented at the 25th International Conference of Europeanists (CES), Chicago, IL, March 28-30, 2018.

¹⁹Case C-294/83, *Les Verts v. European Parliament* [1986] ECR 1339, at par. 23; For historical overviews, see:

1.1. A Theory of Lawyers and Political Development

emerged for lawyers to construct political authority on a transnational scale.

On the ground, then, Europe stood to become a “lawyers’ paradise.”²⁰ Lawyers, in turn, stood to play a key role by appealing to “the force of law”²¹ to reshape domestic institutions and compensate for the EU’s weak military and administrative capacity. It is no small irony, given all the paeans to ‘the rule of law’, that those lawyers who did take up the mantle of change hardly did so ‘by the book’. This is the political story that remains untold. In the Anglo-American world, studies of “cause lawyering,” elite law firms, and lawyers-turned-lobbyists-turned-politicians²² have peeled back how “lawyers make the politics and produce the law.”²³ But few of these projects are comparable in scale to building a supranational polity in the wake of total war. Furthermore, in Europe the specters of “legal science”²⁴ and Weberian rationalism have hidden lawyers’ agency “behind a cult of traditions or legal technique.”²⁵

This book thus makes two complementary contributions. The first is empirical: To trace how lawyers supplied a decisive push for European integration by sparking a transnational “judicialization of politics”²⁶ in ways that have escaped official records. I thus spent three years building a geocoded dataset of thousands of lawsuits, interviewing hundreds of jurists across a dozen cities in three founding EU member states, and gathering historical evidence from

Scheingold, Stuart. 1965. *The Rule of Law in European Integration*. New Haven, CT: Yale University Press; Pech, Laurent. 2008. *The European Union and its Constitution*. Dublin: Clarus Press.

²⁰Vaucher, Antoine. 2015. *Brokering Europe*. New York, NY: Cambridge University Press, at 1.

²¹Bourdieu, Pierre. 1986. “The force of law.” *Hastings Law Journal* 38: 805-853.

²²For some representative examples, see: On cause lawyers: Sarat, Austin, and Stuart Scheingold, eds. 2006. *Cause Lawyers and Social Movements*. Stanford, CA: Stanford University Press; On business lawyers and elite law firms: Galanter, Marc, and Thomas Palay. 1991. *Tournament of Lawyers*. Chicago, IL: University of Chicago Press; On lawyer-lobbyist-politicians, see: Hain, Paul, and James Piereson. 1975. “Lawyers and Politics Revisited.” *American Journal of Political Science* 19 (1): 41-51.

²³Dezelay, Yves, and Bryan Garth. 1997. “Law, Lawyers, and Social Capital.” *Social & Legal Studies* 6 (1): 109-141, at 132.

²⁴Merryman, John Henry, and Rogelio Perez-Perdomo. 2007. *The Civil Law Tradition*, 3rd ed. Stanford, CA: Stanford University Press, at 61-67.

²⁵Dezelay, Yves, and Bryan Garth. 1997. “Law, Lawyers, and Social Capital.” *Social & Legal Studies* 6 (1): 109-141, at 132.

²⁶Shapiro, Martin, and Alec Stone Sweet. 2002. *On Law, Politics, and Judicialization*. New York, NY: Oxford University Press.

newspaper and court archives. The second is theoretical: To explicate what this evidence tells us about institutional development and what model of institutional change lawyers exemplify. I thus advance a historical institutionalist theory with two goals: (1) Explaining why lawyers - and not other potential 'change agents' - have been best placed to unite Europe through law; (2) Explaining the obstacles they encountered and the contexts under which their efforts take root. In so doing, I challenge the explanatory power of judge-centric theories of political change and qualify applications of American legal mobilization theories to the European context.

1.1.1 Origins

Why have lawyers, rather than other actors, tended to be the pioneers of European legal integration? In this prototypical struggle between innovation and inertia, the key is to consider the extent to which prospective change agents are anchored in place by pre-existing institutions.

After all, processes of gradual institutional change do not occur atop a *tabula rasa*: They are *reconstructions* of previous relations of authority.²⁷ By the time the the European Community was born in 1957, national states initially broken by war boasted reformed judiciaries and increasingly entrenched constitutions. Unwilling to displace these structures and give up the sovereignty necessary to create a European 'superstate', postwar statesman opted for a more incremental process of integration instead.²⁸ For example, rather than creating a US-style federal system of European courts, the EU Treaties provided for a single 'supreme' court: The European Court of Justice (ECJ) in Luxembourg. They then granted national courts the ability to apply EU rules (in addition to adjudicating national law cases) and to refer interpretive

²⁷Orren, Karen, and Stephen Skowronek. 2004. *The Search for American Political Development*. New York, NY: Cambridge University Press, at 21.

²⁸Boerger-de Smedt, Anne. 2012. "Negotiating the Foundations of European Law, 1950-57." *Contemporary European History* 21 (3): 339-356, at 347-348.

1.1. *A Theory of Lawyers and Political Development*

questions to the ECJ.²⁹ As European law was “layered”³⁰ atop national rules, areas of ambiguity and conflict were bound to emerge. And national courts, through their prospective dialogue with the ECJ, became the stage upon which these incongruences would be either resisted to maintain the status-quo or exploited to promote Europeanization.

The prospect of institutional change is likely to be recognized and mobilized first by those actors least constrained by pre-existing relations of authority. When institutions evolve incrementally, those most embedded in existing relations of authority will seldom incur the short-term costs of long-run change,³¹ as everyday habits and forms of consciousness tied to the repeated application of entrenched rules obscure the benefits of novelty. In contrast, those actors facing fewer constraints and who stand to ideologically or materially benefit from the new institutional environment are more likely to mobilize as innovators. Historically, then, judges anchored in civil service judiciaries have tended towards stasis, whereas lawyers shuttling between state and society have tended towards change.

This claim revisits the conventional wisdom that the EU exemplifies a judicialization of politics driven by the institutional incentives of judges themselves. In this view, self-interested national courts - particularly those at first instance - became “wide and enthusiastic”³² “motors”³³ of European integration by referring cases of non-compliance with EU law to the ECJ. In so doing, they waged a “quiet revolution,”³⁴ empowering themselves to review the legality

²⁹This mechanism, known as the “preliminary reference procedure,” was detailed in Article 177 of the 1957 Treaty of Rome; Currently, the provision is found in Article 267 of the Treaty on the Functioning of the European Union. It will be described at length in the following chapters.

³⁰See: Streeck, Wolfgang, and Kathleen Thelen. 2005. *Beyond Continuity*. New York: Oxford University Press, at 22-30; Mahoney, James, and Kathleen Thelen. 2010. “A Theory of Gradual Institutional Change.” In *Explaining Institutional Change*, Mahoney and Thelen, eds. New York: Cambridge University Press, at 16-22.

³¹Bednar, Jenna, and Scott E. Page. 2018. “When Order Affects Performance.” *The American Political Science Review* 112 (1): 82- 98, at 94.

³²Weiler, Joseph. 1991. “The Transformation of Europe.” *The Yale Law Journal* 100: 2403-2483, at 2426.

³³Alter, Karen. 1996. “The European Court’s Political Power.” *West European Politics* 19 (3): 458-487, at 467.

³⁴Weiler, Joseph H. H. 1994. “A Quiet Revolution.” *Comparative Political Studies* 26 (4): 510-534.

of national statutes and break from the decisions of their more Euroskeptic supreme courts.³⁵

By highlighting the non-ideational motives that may drive judicial behavior, the “judicial empowerment thesis” has important merits. Yet it tends to under-theorize or even dismiss the role of litigants and lawyers³⁶ while ignoring the constraints encoded in the daily lives of judges in civil service judiciaries, which at the lower rungs resemble street-level bureaucrats³⁷ more than they do the “culture heroes” familiar to scholars of common law judges.³⁸ To this day, non-supreme court judges remain undertrained in EU law, swamped by piles of case files involving entrenched national rules, and subject to forms of bureaucratic domination³⁹ in more hierarchical judicial orders that dissuade rebelling against domestic law in the name of European law. For judges to eschew a diffuse institutional identity legitimating inertia and repudiating change, they would have to be repeatedly pushed by outside actors intent on minimizing the costs and highlighting the benefits of judicial policymaking.

It was in this light that in the 1960s and 1970s a small group of “Euro-lawyers”⁴⁰ facing fewer bureaucratic shackles than their judicial counterparts mobilized to spark the judicial construction of Europe. Unlike judges, lawyers could shuttle between EU institutions, state judiciaries, and their local community, proactively mobilizing clients and civil society along

³⁵Other works in this tradition include: Burley, Anne-Marie, and Walter Mattli. 1993. “Europe Before the Court.” *International Organization* 47 (1): 41-76; Alter, Karen. 2001. *Establishing the Supremacy of European Law*. New York, NY: Oxford University Press. For a critical review, see: Pavone, Tommaso. 2018. “Revisiting Judicial Empowerment in the European Union.” *Journal of Law & Courts* 6 (2): 303-331.

³⁶For instance, Weiler claims that “individual litigants are usually not politically motivated in bringing their actions,” but given courts’ enthusiastic turn to EU law in the interest of judicial empowerment, “the Community citizen becomes, willy-nilly, a decentralized agent for monitoring compliance by Member States with their Treaty obligations.” See: Weiler, Joseph. 1991. “The Transformation of Europe.” *The Yale Law Journal* 100: 2403-2483, at 2421.

³⁷Lipsky, Michael. 2010. *Street-level Bureaucracy, 30th ed.* New York: Russell Sage.

³⁸Merryman, John Henry, and Rogelio Perez-Perdomo. *The Civil Law Tradition, 3rd ed.* Stanford, CA: Stanford University Press, at 34-37.

³⁹Weber, Max. 2013. *Economy and Society, Vol. II.* Berkeley and Los Angeles, CA: University of California Press, at 947-953.

⁴⁰Vauchez, Antoine. 2015. *Brokering Europe.* New York, NY: Cambridge University Press.

1.1. *A Theory of Lawyers and Political Development*

the way. To be sure, lawyers were not completely free-floating actors, and this is key. Their embeddedness in society endowed them with the local knowledge to identify potential litigants and salient social controversies for legal mobilization. Their technocratic expertise enabled them to translate these into courtroom disputes revealing non-compliance with EU rules or enticing opportunities for their expansion via judicial policymaking. In short, lawyers' Janus-faced "boundary work"⁴¹ enabled them to transcend their passive role as "go-betweens" and become active *ghostwriters* of political change (see Fig. 1.1), catalyzing a rights-consciousness in litigants and an activism in judges appearing to be innate.

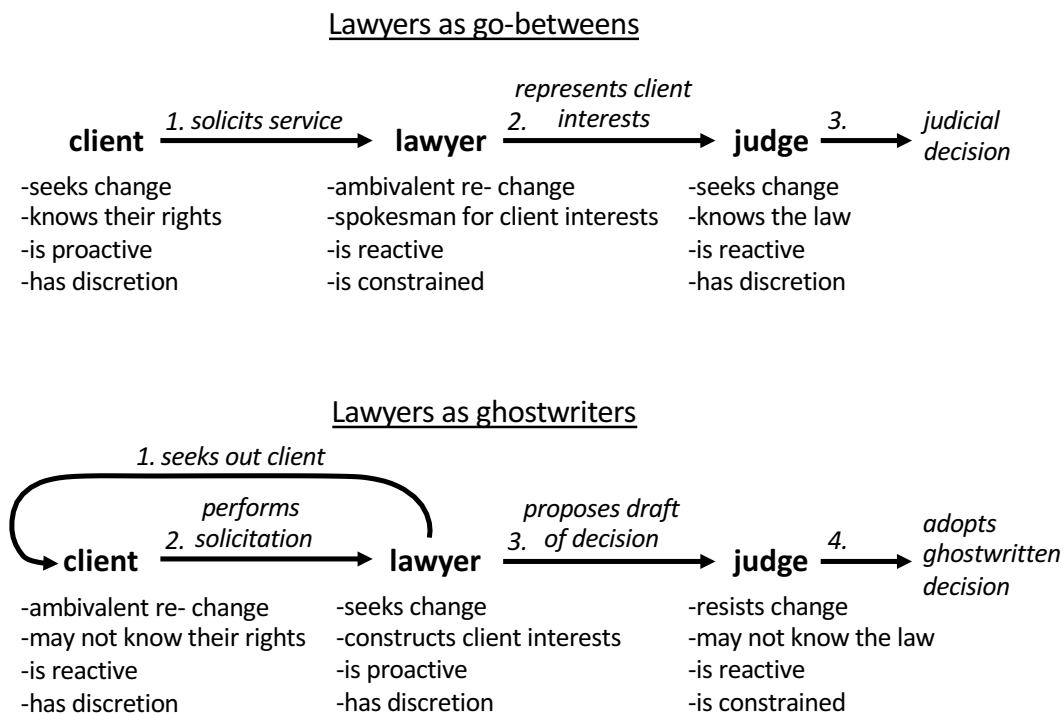
These first-movers were not principally driven by "ruthless egoism."⁴² More decisive was their idealism (to liberalize Europe) and their pleasure of exercising their agency (to reshape policy); Self-interest (to gain a comparative advantage in the legal services market) played a secondary role. To push for change, these pioneers converged upon the same strategic repertoire. They sought out clients willing to break national laws to reveal clear conflicts with EU law, occasionally turning to friends or family if a 'real' client was unavailable. In so doing, they played a crucial role in cultivating a European "legal consciousness" within civil society.⁴³ Once in court, they then pivoted from nurturing local knowledge to weaponizing labor and expertise. They educated judges about the duty and benefits of upholding EU rules - even in the face of contradictory Parliamentary statutes or supreme court decisions - by drafting

⁴¹Sida Liu defines boundary work as "the process by which a social actor defines the boundary of its spatial location vis-a-vis the locations of other social actors...boundary work can also move in the opposite direction, that is, blurring existing boundaries and making the distinction between professional jurisdictions ambiguous." It is this "boundary blurring" that is distinctive of actors like Euro-lawyers. Liu, Sida. 2013. "The Legal Profession as a Social Process." *Law & Social Inquiry* 38 (3): 670-693, at 673.

⁴²The assumption of self-interested behavior underlies many early accounts of European legal integration - most notably Burley and Mattli's. As I explain, lawyers' self-interest played a more important role in explaining the institutionalization (rather than the origins) of Euro-lawyering. See: Burley, Anne-Marie, and Walter Mattli. 1993. "Europe Before the Court." *International Organization* 47 (1): 41-76, at 54.

⁴³Nielsen, Laura Beth. 2000. "Situating Legal Consciousness." *Law & Society Review* 34 (4): 1059; McCann, Michael. 1994. *Rights at Work*. Chicago, IL: University of Chicago Press.

Figure 1.1: *Lawyers as Go-Betweens vs Lawyers as Ghostwriters: Two Ideal Types*



detailed memos serving as crash courses in European law. And they ghostwrote the referrals to the ECJ that judges were unable or reluctant to write themselves, supplying the European Court with opportunities to deliver pathbreaking judgments. In so doing, lawyers emancipated judges from the bureaucratic constraints obstructing judge-driven Europeanization and integrated them within a fledgling network of European courts.

In other words, the evidence in this book suggests that it was not only - or even primarily - the top-down appeals of the European Court that “convinced lower national courts to leapfrog the national judicial hierarchy and work directly with the ECJ.”⁴⁴ The more proximate, per-

⁴⁴Burley, Anne-Marie, and Walter Mattli. 1993. “Europe Before the Court.” *International Organization* 47 (1): 41-76, at 58, fn.78. Burley and Mattli also imply a more top-down pathway of knowledge diffusion and litigant mobilization than this book’s lawyer-centric narrative. For instance, they write: “... individuals (and their lawyers) who can point to a provision in the community treaties or secondary legislation that supports a particular activity they wish to undertake... can invoke community law and urge a national court to certify the question of whether and how community law should be applied to the ECJ. When litigants did not appear to perceive the boon that had been granted them, moreover, the [European] Court set about educating them in the use of the Article 177 procedure” (pg. 62).

1.1. *A Theory of Lawyers and Political Development*

ceptible, and decisive push came from the bottom-up. For by the close of the 1970s, nearly half of all national court referrals to the ECJ from the three largest member states (Italy, France, and Germany) could be retraced to just a handful of enterprising lawyers, who traveled from city to city and courtroom to courtroom soliciting the judicial construction of Europe.

1.1.2 Institutionalization

Any theory of institutional change would be incomplete if it only supplied an origins story. Indeed, in Europe the “age of the pioneers”⁴⁵ gradually gave way to a process of uneven institutionalization. That is, the entrenchment of Euro-lawyering and its push for the judicial enforcement of EU law exhibited a distinctly patch-worked structure in time and place: It tended to only take root in those subnational communities where lawyers had incentives to specialize by tapping into resource-rich client markets.⁴⁶

Pioneering “activists” derive great pleasure from exercising their agency and expressing their normative commitments.⁴⁷ The fact that most early EU lawsuits were of limited economic worth thus hardly dissuaded the first generation of Euro-lawyers. But the “routinization”⁴⁸ of Euro-lawyering could not depend on idealism or pleasure in agency: Specialization in EU law had to become perceived as professionally advantageous to lawyers’ bottom line. This is why EU legal practice gradually took root in cities like Milan, Paris, and Hamburg, which boast the densest networks of structured economic clients ready to reward specialized legal services. This dynamic incentivized lawyers to adopt a “logic of integration” within the EU le-

⁴⁵Interview with Charles-Henri Leger, Gide Loyrette Nouel in Paris, September 12, 2017 (in-person).

⁴⁶Pierson, Paul. 2004. *Politics in Time*. Princeton, NJ: Princeton University Press, at 79-102; Thelen, Kathleen. 2003. “How Institutions Evolve.” In *Comparative Historical Analysis in the Social Sciences*, Mahoney and Rueschemeyer, eds. New York, NY: Cambridge University Press.

⁴⁷Kuran, Timur. 1995. *Private Truths, Public Lies*. Cambridge, MA: Harvard University Press, at 50.

⁴⁸Weber, Max. 2013. *Economy and Society, Vol. II*. Los Angeles and Berkeley, CA: University of California Press, at 1111-1123.

gal order. As interactions between businesses, a growing number of Euro-lawyers in transnational “Euro-firms,”⁴⁹ and a few judges in specialized court chambers became regularized, so did the judicialized enforcement of EU rules. Yet as the first Euro-lawyers were displaced by later generations of practitioners within big law firms, the scales gradually tipped in favor of instrumentalizing references to the ECJ to further business’ interests in liberalization, trade, and competition.

Elsewhere, the political economy of litigation was (and remains) stacked against the entrenchment of EU legal practice. In rural communities and cities like Marseille, Naples, and Palermo, an anemic economy and a legal profession balkanized into solo-practitioners has proven hostile to the institutionalization of EU law. A few stubborn lawyers or judges may try to promote the practice of EU rules protecting potentially salient consumer, employment, and fundamental rights, but these efforts are crowded out by the swarm of more localized and mundane lawsuits. This dynamic prohibits specialization and fosters a “logic of partition,” or the perception that EU law is at best distant and at worst neglectful of those living at the margins of globalization. Rather than a tool to attract clients, specializing in European law is seen as a one-way ticket to unemployment. And with no lawyers invoking EU rules and soliciting referrals to the ECJ, local judges have little incentive to bear the costs to do so themselves.

This argument builds on studies emphasizing how organized resource mobilization underlies litigation and can thus reproduce socioeconomic inequalities.⁵⁰ Yet my theory is distinct in two ways. First, I treat legal mobilization by resourceful actors as more determinative of where judicialized enforcement becomes institutionalized rather than as an explanation of its

⁴⁹Vaucher, Antoine, and Bruno de Witte, eds. 2013. *Lawyerling Europe*. New York, NY: Hart; Kelemen, R. Daniel, and Tommaso Pavone. 2018. “The Political Geography of Legal Integration.” *World Politics* 7 (3): 358-397.

⁵⁰Galanter, Marc. 1974. “Why the “haves” come out ahead.” *Law and Society Review* 9 (1): 95-160; Conant, Lisa. 2002. *Justice Contained*. Ithaca, NY: Cornell University Press.; Borzel, Tanja. 2006. “Participation Through Law Enforcement.” *Comparative Political Studies* 39 (1): 128-152.

1.1. *A Theory of Lawyers and Political Development*

origins. American resource mobilization theories of litigation responded to the fact that the Supreme Court tends to only hear cases that have repeatedly arisen in multiple jurisdictions, percolated in the lower courts, and generated inter-court conflicts,⁵¹ such that a broad “litigation support structure”⁵² was a necessary precursor to court-driven change. Yet compared to its American counterpart, the European Court is substantially more accessible: If activist lawyers could persuade *any* judge to refer a case to Luxembourg, the ECJ’s mandatory jurisdiction in reference cases would require it to answer.⁵³ Consequently, legal entrepreneurs could develop a repertoire for court-driven change before any semblance of a broad-based litigation support structure emerged. Indeed, the institutional environment in Europe inhibited such broad-based mobilization: States like Germany, Italy, and France forbade legal partnerships well into the 1970s,⁵⁴ business and civic associations initially had less awareness of EU law and its potential benefits,⁵⁵ and law schools initially resisted integrating EU law in their curricula.⁵⁶

Second, existing studies tend to reproduce the “public transcript” limiting lawyers’ role to that of “proxies,” go-betweens, or as resources to be mobilized by social movements or big business.⁵⁷ For instance, Halliday, Karpik, and Feeley’s influential comparative study of “political

⁵¹Perry, H.W. 1994. *Deciding to Decide*. Cambridge, MA: Harvard University Press.

⁵²See: Epp, Charles. 1998. *The Rights Revolution*. Chicago, IL: University of Chicago Press.

⁵³Absent that the case was deemed inadmissible. Yet through the 1980s, the European Court feared being starved of cases rather than being overwhelmed by too many. Hence through at least 1995, the Luxembourg judges were happy to twist themselves into a pretzel to grant cases as admissible. See: Pavone, Tommaso, and R. Daniel Kelemen. Forthcoming. “The Evolving Judicial Politics of European Integration.” *European Law Journal*.

⁵⁴Partnerships of more than five lawyers were permitted in France after 1972; In Italy, partnerships were legalized in 1973; In Germany, as late as 1967 no law firm had more than nine employees. See: Abel, Richard. 1988. “Lawyers in the Civil Law World.” In *Lawyers in Society Vol. II*. Abel & Lewis eds. Berkeley and Los Angeles, CA: University of California Press, at 19-20.

⁵⁵See Chapter 5.

⁵⁶Vauchez, Antoine. 2015. *Brokering Europe*. New York, NY: Cambridge University Press, at 77.

⁵⁷“On the mainstream account, lawyers seem to act merely as transmission belts: they are nearly invisible proxies for a variety of contending players who, for their part, are assumed to be very real (States, EU institutions, companies, interest groups, NGOs, etc.)” See: *Ibid*, at 7.

lawyers" claims that "lawyers have specific resources to become porte parole (spokesmen) on behalf of civil society and to act in favour of political liberalism."⁵⁸ The introduction of Rachel Cichowski's excellent book on the role of civil society litigation and European integration mentions the word "lawyer" only once.⁵⁹ But precisely because lawyers occupy a boundary position, failing to theorize their partially autonomous behavior risks omitting an essential mechanism behind the institutionalization of transnational law. Instead, I trace this process to how lawyers' professional consciousness⁶⁰ interacts with local political economy to structure the perceived benefits of specializing in EU law. In so doing, I demonstrate that the presence of professional competition and the desire for social esteem are insufficient for specialization in the absence of resource-rich client markets.⁶¹ I also stress that even wealthy clients remain dependent upon the tactical repertoires that lawyers can supply.

Indeed, the agency of lawyers remains crucial even when traditional Euro-lawyering reaches its limits and the incremental institutionalization of European law is suddenly threatened. As the domain of EU law has expanded over time, it has increasingly clashed with longstanding and non-compliant local practices, sparking episodes of contentious resistance to Europeanization. These "critical junctures"⁶² indicate that European legal integration no longer proceeds as a uniformly "quiet" and elite-driven process couched behind the law's disinter-

⁵⁸Halliday, Terence, Karpik, Lucien, and Malcolm Feeley. 2007. *Fighting for Political Freedom*. New York, NY: Bloomsbury, at 4; See also: Halliday, Terence, and Lucien Karpik. 2001. "Political Lawyering." In *International Encyclopedia of Social and Behavioral Sciences*, Smelser and Baltes eds. New York, NY: Elsevier.

⁵⁹Cichowski, Rachel. 2007. *The European Court and Civil Society*. New York, NY: Cambridge University Press.

⁶⁰Kennedy, Duncan. 1980. "Toward an Historical Understanding of Legal Consciousness." *Research in Law and Sociology* 3 (1): 3-24; Sarat, Austin, and William Felstiner. 1989. "Lawyers and legal consciousness." *Yale Law Journal* (1989): 1663-1688.

⁶¹This claim modifies both Andrew Abbott's competition-centric "Chicago School" approach to studying professionalization, as well as a more Bourdieusian "field theory" approach centered on the quest for legitimacy and social capital. See: Abbott, Andrew. 1988. *The System of Professions*. Chicago, IL: University of Chicago Press, at 248-254; Bourdieu, Pierre. 1986. "The Force of Law." *Hastings Law Journal* 38: 805-853.

⁶²Capoccia, Giovanni, and R. Daniel Kelemen. 2007. "The Study of Critical Junctures." *World Politics* 59 (3) 341-69.

1.1. A Theory of Lawyers and Political Development

ested mask.⁶³ As previously dormant transnational laws trigger public contestations and calls for non-compliance, many scholars predict processes of “reverse spillover,” “revolt,” “backlash,” “pushback,” and “dejudicialization” eroding the authority of transnational polities like the EU.⁶⁴ I revisit this presumption by tracing how entrepreneurial lawyers can conditionally exploit moments of contentious politics to further Europeanization, provided that they move from behind-the-scenes Euro-lawyering towards a more public exercise of agency.

Specifically, when a new ECJ decision or the application of EU law sparks on-the-ground contestation, the public relevance of EU rules is suddenly revealed, and the rapid sequence of ensuing events generates social demand for interpretive “frames” to make sense of the changes underway.⁶⁵ Here, Euro-lawyers’ ability to translate between local knowledge and EU legal expertise creates an opportunity to step beyond their role as ghostwriters into that of *interpretive mediators* in the public sphere.⁶⁶ Provided that they mobilize quickly and vigorously engage the local press, Euro-lawyers can promote pro-EU frames and pre-empt Eurosceptic ones, rally resource-rich common market actors into “compliance constituencies,”⁶⁷ and tip public opinion against those resisting compliance. Conditional on a modest amount of diffuse support for Europeanization, moments of contentious politics can thus serve as political opportunities for

⁶³Weiler, Joseph H. H. 1994. “A Quiet Revolution.” *Comparative Political Studies* 26 (4): 510-534; Stone Sweet, Alec, and Thomas Brunell. 1998. “The European Court and National Courts.” *Journal of European Public Policy* 5 (1): 66-97, at 72; Vauchez, Antoine. 2015. *Brokering Europe*. New York, NY: Cambridge University Press, at 115; Burley, Anne-Marie, and Walter Mattli. 1993. “Europe Before the Court.” *International Organization* 47 (1): 41-76, at 72-73.

⁶⁴Alter, Karen. 2000. “The European Union’s Legal System and Domestic Policy.” *International Organization* 54: 489-518; Rasmussen, Hjalte. 2007. “Present and Future European Judicial Problems After Enlargement and the Post-2005 Ideological Revolt.” *Common Market Law Review* 44: 1661-1687; Madsen et al. 2018. “Backlash Against International Courts.” *International Journal of Law in Context* 14: 197-220; Voeten, Erik. Forthcoming. “Populism and Backlashes Against International Courts.” *Perspectives on Politics*; Abebe, Daniel, and Tom Ginsburg. Forthcoming. “The Dejudicialization of International Politics?” *International Studies Quarterly*.

⁶⁵Goffman, Erving. 1974. *Frame Analysis*. Cambridge: Harvard University Press; Snow, David, and Robert Benford. 1988. “Ideology, Frame Resonance, and Participant Mobilization.” 1 *International Social Movement Research* 197-217.

⁶⁶The term “interpretive mediator” is borrowed from: Fischer, Frank. 2000. *Citizens, Experts, and the Environment*. Durham: Duke University Press, at 80.

⁶⁷Alter, Karen. 2014. *The New Terrain of International Law*. Princeton, NJ: Princeton University Press, at 19.

legal entrepreneurs to make EU law known, meaningful, and ‘real’ to actors on the ground.⁶⁸

In short, as the on-the-ground politicization of EU law breaks a process of incremental “integration by stealth,”⁶⁹ an opportunity arises to make citizens broadly aware - usually for the first time - that EU law is relevant to them and can be mobilized as a tool for change. Yet the risk is that in the absence of interpretive mediators, EU law can be perceived as (and become) a top-down attack on local ways of being. Lawyers can prove decisive in tipping the scales, but only if they shed the ghostwriter’s cloak and plunge squarely into the public sphere.

Figure 1.2: *Outline of Theory: Lawyers & the Development of a Law State in Europe*

Temporal Stages	Explanatory Variables	Mechanisms	Outcomes	Qualifications	
Origins (1960s-1970s)	embeddedness in pre-existing institutional environment	higher: national judges	labor, reputational, & career costs of embracing new practices	more resistance to change	less career-focused judges more open to change
		lower: national lawyers	pleasure in agency & discretion to pursue new practices	more openness to change	most lawyers continue w/ business-as-usual
Institutionalization (1980s-present)	resourcefulness of local market for legal services	higher: financial centers & wealthy cities	lawyers' professional incentives to specialize & agglomerate	Europeanization of legal & judicial practices	"critical junctures" may deepen/reverse pathway of institutionalization
		lower: rural regions & poorer cities	lawyers' professional disincentives to specialize & agglomerate	little Europeanization of legal & judicial practices	"critical junctures" may deepen/reverse lack of institutionalization

1.1.3 The Takeaway

Without lawyers, the EU would not have developed into the transnational polity it is today. Rather than mere resources mobilized by prescient interest groups or benefactors of judicial activism, lawyers played a crucial role behind the scenes, diffusing a European legal consciousness and forging their own opportunities to ghostwrite political change. Their story exemplifies

⁶⁸Conversely, when Euro-lawyers fail to mobilize as interpretive mediators, EU law bears a heightened risk of being perceived as an invasive attack on local culture and identity, bolstering Euroskepticism and non-compliance.

⁶⁹Majone, Giandomenico. 2005. *Dilemmas of European Integration*. New York, NY: Oxford University Press.

1.1. *A Theory of Lawyers and Political Development*

a mode of social and political action wherein actors blurring the boundaries of multiple social spheres - civil society, state institutions, and international organizations - can exploit their mediatory position to become agents of political authority. Because they are unmoored by the pre-existing institutional environment, they are well-positioned to forge transmission belts amongst social and political actors that transgress extant jurisdictions. Yet their partially concealed, piecemeal, and bottom-up approach to institutional change has borne an uneven legacy. For lawyers' ability to drive the judicial construction of Europe has evolved as a subnational patchwork that is more contingent, contained, and co-optable than we might assume.⁷⁰ Their experience proves that transnational polities neither dissolve individual agency nor local context: In fact, they emerge from them.

By this, I am not suggesting that lawyers have singlehandedly engineered Europe's shape and form. Like any complex polity, the EU also comprises other distinct processes of political development: Treaty and legislative negotiation by governments,⁷¹ administrative bureaucratization by civil servants,⁷² and regulatory expansion by agencies and interest groups,⁷³ to name but a few. Rather, my claim is that a decisive engine has been neglected: To demonstrate why we should theorize lawyers as autonomous political actors rather than subsuming them within social movements or neglecting them in favor of judges and state executives. Sociologists of the professions have long taken lawyers seriously, but with few exceptions they neglected to derive the implications for politics. We thus ought to scout beyond the portrait of lawyers as mere go-betweens and mount an archeology of their role as political ghostwriters.

⁷⁰This is surprising, given that the EU is usually conceived of as the most entrenched transnational legal order. On conceptualizing TLO entrenchment, see: Shaffer, Gregory. 2012. "Transnational Legal Ordering and State Change." In *Transnational Legal Ordering and State Change*. New York, NY: Cambridge University Press, at 7.

⁷¹Moravcsik, Andrew. 1998. *The Choice for Europe*. Ithaca, NY: Cornell University Press.

⁷²Radaelli, Claudio. 1999. *Technocracy in the European Union*. New York, NY: Routledge.

⁷³Kelemen, R. Daniel. 2004. *The Rules of Federalism*. Cambridge, MA: Harvard University Press.

1.2 Research Design

1.2.1 Case Selection

The contours of this book's argument emerged in the summer of 2015, when I was conducting preliminary interviews with jurists in Italy. I was interested in what the construction of a European law state looked like subnationally, and Italy's patchwork of local communities seemed like a fertile place to start. I also knew that I stood a good chance of getting access as an Italian citizen. While I brought little theoretical baggage with me, I was aware that the scholarship stressed the role of judges and civic/business associations as agents of change. Through "soaking and poking,"⁷⁴ I expected that local variation in the percolation of EU law could be traced to various configurations of national judicial organization and civil society mobilization.

As conversations with Italian jurists proceeded, it became clear that while this intuition was not completely wrong, lawyers had played a pivotal role and I lacked a theory to make sense of it. With few exceptions,⁷⁵ as I scouted the existing literature it felt like much scholarly theorizing echoed Dick the Butcher in Shakespeare's *Henry VI*: "The first thing we do, let's kill all the lawyers."⁷⁶ It was equally clear, however, that the impact of Euro-lawyering is conditioned by lawyers' mediatory position. I therefore developed a research design maximizing variation in these dimensions to probe how far Euro-lawyering could be 'stretched'. I settled upon the cases of Italy, France, and Germany for three reasons:

- Data Richness and Comparability: First, all three are founding member states of the Eu-

⁷⁴Fenno, Richard. 1978. *Home Style*. New York, NY: Little, Brown, and Company, at 250-252.

⁷⁵See: Cohen, Antonin, & Antoine Vauchez. 2007. "Introduction: Law, Lawyers, and the Transnational Politics in the Production of Europe." *Law & Social Inquiry* 32 (1): 75-82; Vauchez, Antoine, & Bruno de Witte. 2013. *Lawyering Europe*. New York, NY: Bloomsbury; Vauchez, Antoine. 2015. *Brokering Europe*. New York, NY: Cambridge University Press.

⁷⁶Boyarsky, Saul. 1991. "Let's Kill all the Lawyers"" *Journal of Legal Medicine* 12: 571-574.

1.2. Research Design

ropean Community, providing six decades' worth of historical record that can be probed in each. This is critical for the evaluation of my argument, which focuses both on the origins and subsequent institutionalization of Europe's law state. It also bolsters comparability, since late-acceding states would be subject to 'newcomer effects' from joining a pan-European legal system already up and running. Second, these three states account for about a third of *all* national court referrals to the ECJ from the EU's 28 member states. Many of these references led to pathbreaking decisions, such as those establishing the supremacy of EU law, the doctrine of fundamental rights protections, the principle of mutual recognition, and the principle of state liability,⁷⁷ to name but a few. Hence in both quantitative and qualitative terms, Italy, France, and Germany account for an important slice of national lawsuits punted to ECJ to promote change.

- Theoretical Relevance: Italy, France, and Germany encompass theoretically relevant variation in the judicial organization of the state and in their subnational political economies. Embedded in a centralized unitary state, the French judiciary is more hierarchically organized than Italy's, which in turn is substantially more hierarchical than Germany's decentralized court system. If the degree of bureaucratic embeddeness of low-level judges constrains their openness to Europeanizing change, we should expect French judges to have historically been most resistant to Euro-lawyers' efforts, whereas German judges should be most open. Additionally, the three countries run the gambit of local economies, from financial centers like Paris to global port cities like Hamburg to anemic urban centers like Marseille and Naples. Some cities - like Bari and Milan - are substantially in-

⁷⁷Case C-6/64, *Flaminio Costa v. ENEL* [1964], ECR 1141; Case 11-70, *Internationale Handelsgesellschaft* [1970], ECR 1126; Case 120/78, "*Cassis de Dijon*" [1979], ECR 649; Joined Cases C-6/90 and C-9/90, *Andrea Francovich and others v Italian Republic* [1991], ECR I-5357.

terlinked with the agricultural economies in their hinterlands, whereas others are more dependent on the presence of state bureaucracies, like Rome and Berlin. This allows us to assess how local context conditions lawyers' incentives to specialize in EU law while also illuminating cross-contextual patterns.

- Accessibility: As an Italian and French speaker I was confident of obtaining access in Italy and France, trusting that my German interlocutors would converse with me in English (as they patiently did). In France and Italy, this also permitted reading original archival and other textual evidence without having to hire research assistants. Finally, the fact that Germany and France are central cases in the most sophisticated analyses of EU legal integration to date⁷⁸ assured that I would be able to build upon and engage a solid foundation of prior scholarship.

But which specific field sites would best enable (a) tracing how Euro-lawyers broker a bottom-up process of judicialization, and (b) comparing why this dynamic takes root in some communities over others? In identifying sites, I did not seek to approximate a random or representative sample of subnational communities within EU member states. Rather, my purpose was to follow in the footsteps of previous field researchers by purposively visiting a wide variety of local contexts and interacting with a diverse set of people.⁷⁹ I also aimed to maximize variation in the outcome of interest⁸⁰ to then permit identifying the sources of variation.

I therefore geocoded a proxy measure for my outcome variable - the number of cases referred from national courts in a given location to the European Court of Justice - and mapped

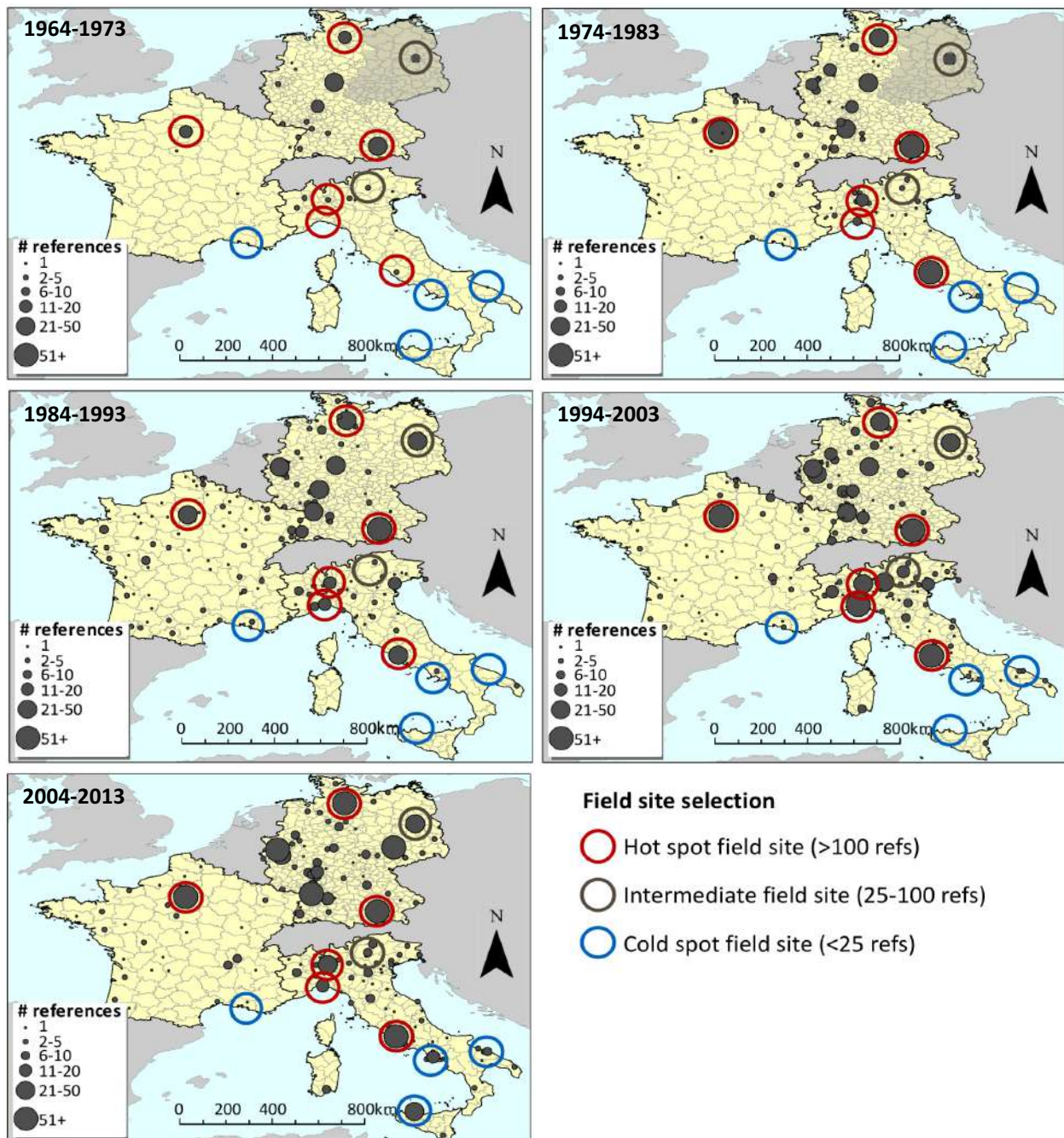
⁷⁸Alter, Karen. 2001. *Establishing the Supremacy of European Law*. New York, NY: Oxford University Press; Conant, Lisa. 2002. *Justice Contained*. Ithaca, NY: Cornell University Press.

⁷⁹Cramer, Katherine. 2016. *The Politics of Resentment*. Chicago, IL: University of Chicago Press, at 35-36; Pachirat, Timothy. 2018. *Among Wolves*. New York, NY: Routledge, at 85-88.

⁸⁰King, Gary, Keohane, Robert, and Sidney Verba. 1994. *Designing Social Inquiry*. Princeton, NJ: Princeton University Press, at 107-109.

1.2. Research Design

Figure 1.3: *Spatio-temporal distribution of national court referrals to the European Court of Justice (1964-2013), with primary field sites mapped and categorized*



its structure across place and time. Figure 1.3 visualizes the spatio-temporal distribution of all Italian, French, and German court referrals to the ECJ from 1964 through 2013. The maps illuminate just how much local variation exists in judges' engagement with the European Court.

Drawing on these maps to finalize site selection, I balanced “hot spots” - locations where judges referred many (over 100) cases to Luxembourg - with “cold spots” - where less than 25 references originated during the same time period. I also maximized political-economic variation - larger and smaller cities, port and financial hubs, poorer and richer locations - while maintaining cross-national comparability (by selecting the capitals and largest ports of each country). The final sample of 12 primary field sites is described in Figure 1.4. I did take side-trips whenever logistically possible to meet with particularly critical interviewees or acquire additional archival materials. The most extensive fieldwork period - 10 months - was in Italy. While this is partially due to the fact that Italy’s relative neglect by EU scholars convinced me that it should be the core case of interest, the primary reason is design-driven. In this comparative-sequential approach - which I term the “method of inductive case selection” elsewhere⁸¹ - Italy initially began as a “theory-building” case study open to inductive insights.⁸² Following immersion and process tracing, France and Germany then approximated “theory-testing” case studies to explore generalizability and scope conditions. Since fieldwork in France and Germany was more targeted, it did not need to be comparably exhaustive or intensive.

1.2.2 Original Data

In the spirit of multi-method research,⁸³ from 2015 through 2018 I gathered four original sources of data to develop and evaluate the proposed argument. The goal is to powerfully combine the satellite view of the transnational using geospatial methods, the granular view of the subnational using fieldwork, and the temporal view of the past using archival sources.

⁸¹Pavone, Tommaso. Forthcoming. “Selecting Cases for Comparative Sequential Analysis.” In *The Case for Case Studies*, Woolcock, Widner, & Ortega-Nieto, eds. New York, NY: Cambridge University Press.

⁸²Falleti, Tulia, and James Mahoney. 2015. “The Comparative Sequential Method.” In *Advances in Comparative-Historical Analysis*, Mahoney and Thelen, eds. New York, NY: Cambridge University Press, at 229-231.

⁸³Seawright, Jason. 2016. *Multi-Method Social Science*. New York, NY: Cambridge University Press.

1.2. Research Design

Figure 1.4: *Fieldwork design and description of primary field sites (n=12)*

Case Types	Sites	Nat'l Judicial Organization	Subnational Sites	# Prelim. Refs. (1964-2013)
Theory Building → Theory Testing	Italy: Jun-Aug '15; Sept '16-Apr '17	hierarchical: all jurisdictions	Rome	246
			Genoa	101
			Milan	102
			Trento/Bolzano	46
			Naples	15
			Bari	12
			Palermo	19
Theory Testing	France: Sept-Oct '17	very hierarchical: admin courts hierarchical: civil courts	Paris	129
			Marseille	4
	Germany: Nov '17-Jan '18	less hierarchical: all jurisdictions	Berlin	74
			Munich	127
			Hamburg	178

Key

Capital city		Poorer city	
Port city		Agricultural hinterland	
Financial hub		Large city (>1 million)	
Wealthier city			

Notes: Preliminary reference statistics comprise those from non-supreme courts in each site.

First, I built upon my efforts with R. Daniel Kelemen to construct the first geocoded dataset of all lawsuits referred to the ECJ by national courts since the 1960s. Through a geospatial analysis of these data, this book reveals for the first time the evolving subnational geography of national judicial enforcement of EU rules in Italy, France, and Germany (a preview was provided in Fig. 1.3). These empirics were not only crucial for field site selection, but they also lie at the heart of the analysis of the patchworked spread of EU law in Chapters 5 and 6. Throughout this book, geospatial data anchor, complement, and corroborate the qualitative evidence gathered via fieldwork.

Second, I conducted 353 semi-structured interviews with lawyers, judges, and law professors. These conversations provided key life histories (central to Chapter 5), as I managed to interview most of the Italian, French, and German pioneers of Euro-lawyering who are still alive. They also opened serendipitous opportunities to access documents from personal archives that could not be obtained elsewhere. More broadly, interviewees helped me understand how the official transcript of courtroom records may mislead and be misaligned with lived reality. Analytically, in Chapters 3 through 6 I repeatedly “triangulate”⁸⁴ between my conversations with lawyers and judges. When lawyers confided the impact of their efforts, I was captivated but wary that they may “exaggerate their roles”⁸⁵ (particularly given the emergent finding that ‘pleasure in agency’ drove some lawyers’ behavior). In the spirit of the dictum to “trust but verify,”⁸⁶ conversations with judges thus proved essential for validating their claims. In Chapter 2, I provide more details on the method of ‘standardized’ snowball sampling that I used to contact interviewees and ensure cross-site comparability.

Third, particularly vis-à-vis interviews with judges, I complemented these data with scattershot participant observation in national courts. When possible, I asked to meet judges in the places where they work. I kept a fieldnotes journal⁸⁷ that ultimately spun a couple hundred pages, and I depended on these observations and ‘notes to self’ to reconstruct the daily pressures and practices embodied by judges in Chapter 3. Visiting national courts alerted me - in a way that no phone interview could - to the ways that built and resource-scarce spaces can mold both habits and forms of institutional consciousness into resisting change. I left con-

⁸⁴Arksey, Hilary, and Peter Knight. 1999. *Interviewing for Social Scientists*. Thousand Oaks, CA: SAGE, at 21-32; Gallagher, Mary. 2013. “Capturing Meaning and Confronting Measurement.” In *Interview Research in Political Science*, Mosley ed. Ithaca, NY: Cornell University Press.

⁸⁵Berry, Jeffrey M. 2002. “Validity and Reliability Issues In Elite Interviewing.” *PS: Political Science & Politics* 35 (4): 679-682, at 680.

⁸⁶Moravcsik, Andrew. 2014. “Trust but Verify.” *Security Studies* 23 (4): 663-688.

⁸⁷I relied heavily upon: Sanjek, Roger. 1990. *Fieldnotes*. Ithaca, NY: Cornell University Press.

1.2. Research Design

Figure 1.5: *Types, Functions, and Sources of Original Data Gathered*

Type of Original Data	Functions	Sources
Geocoded litigation data: preliminary references from national courts to ECJ	Visualize the spatio-temporal geography of national judicial enforcement of EU rules	Online case law database of the European Court of Justice
Semi-structured interviews: with 352 lawyers, judges, & law professors	Provide oral histories & behind-the-scenes testimony on how European law has been/not been practiced on the ground	15 months of field research in Italy, France, & Germany, 2015-2018
Archival data: original dossiers of references to ECJ, newspaper records	Corroborate & complement oral histories, reveal textual evidence of lawyers ghostwriting decisions for judges	Historical Archives of the EU at the European University Institute, newspaper archives
Participant Observation: in national courts across 12 European cities	Reconstruct a granular account of everyday work in low-level national courts	15 months of field research in Italy, France, & Germany, 2015-2018

vinced that the interpretability, texture, and value of interview evidence is greatly diminished if it is not anchored “in its place” via on-site fieldwork⁸⁸ and an “ethnographic sensibility.”⁸⁹

Finally, I benefitted immensely from a stroke of luck: “In 2014, the [European] Court of Justice... began shipping more than 270 boxes of official documents with restricted access to the public to Villa Salviati, home of the Historical Archives of the European Union at the European University Institute (EUI) in Florence.”⁹⁰ For a notoriously secretive institution that had been denying researchers access to any archival evidence for decades, the ECJ’s move was something of an unexpected coup. In the subsequent two years, I requested and obtained access to dozens of the *dossiers de procédure originaux* for the first lawsuits punted to the European Court in the 1960s and 1970s. These dossiers are only as complete as the materials supplied by national judges, but for several lawsuits they reveal traces of the ‘hidden tran-

⁸⁸Smith, Dorothy. 2005. *Institutional Ethnography*. New York, NY: Rowman & Littlefield; Cramer Walsh, Katherine. 2012. “Putting Inequality in its Place.” *American Political Science Review* 106 (3): 517-532.

⁸⁹Schatz, Edward. 2009. “Ethnographic Immersion and the Study of Politics.” In *Political Ethnography*, Schatz ed. Chicago, IL: University of Chicago Press, at 5.

⁹⁰Nicola, Fernanda, and Bill Davies. 2017. *EU Law Stories*. New York, NY: Cambridge University Press, at 1.

script' omitted by the ECJ's public summaries of the 'facts of the case.' They provide proof of lawyers serving as ghostwriters of institutional change by drafting the first referrals that national courts submitted to Luxembourg, as documented in Chapter 5. This book thus includes the first archival reconstruction of how lawyers systematically educated, cajoled, and partially substituted themselves for national judges to obtain an audience before the European Court. To process trace selected lawsuits in greater depth (or compensate for the unavailability of dossiers), I supplement this evidence with local newspaper records, secondary historical accounts, and the personal archives of the lawyers themselves, as in Chapters 7 and 8.

1.3 The Road Ahead

The rest of this book is organized into three parts, each comprised of two to three empirical chapters. It concludes by proposing a normative evaluation of the findings.

This roadmap's logic is as follows: First, to demonstrate why national judges embedded in entrenched civil service judiciaries have historically been ill-suited as agents of Europeanizing change (**Part 2: Chapters 2-4**); Second, to reveal and reconstruct the origins of Euro-lawyering from the 1960s through the present, explaining why lawyers have been favored as change agents and tracing the spatially patchworked institutionalization of the practices they developed (**Part 3: Chapters 5-6**); Third, to show how the quiet, incremental temporality of European legal integration can be suddenly unmasked by local contentious politics, opening opportunities for lawyers to promote or resist the entrenchment of EU rules in the public sphere (**Part 4: Chapters 7-8**); Finally, to ask what this all means in light of the contemporary challenges and crises afflicting Europe's rule of law (**Chapter 9**). A more detailed mapping of the proposed theory to this book's chapters is provided in Figure 1.6.

