

CHAPTER ONE

THE POLITICS OF GHOSTWRITING
LAWYERS

This is a book about political actors who rarely make the headlines and a political outcome that often does. It is about the concealed politics behind a conspicuous transformation: the growing reliance on law and courts to shape public policy and resolve political struggles. Across many countries, memories of men on horseback past who built states through war¹ have been gradually displaced by jurists in robes who govern through law.

This transformation is often attributed to the political empowerment of courts and the activism of judges themselves. As successive waves of democratization swept the post–World War II (WWII) world, many countries across Europe, Asia, the Americas, and Africa committed to liberal constitutionalism. Two dozen transnational courts with permanent jurisdiction proliferated alongside states’ obligations under international law. As judicial supremacy waxed, parliamentary sovereignty and executive power partially waned. Policymakers were increasingly forced to govern alongside an emboldened network of judges at home and abroad. Scholars, journalists, and politicians disagree about whether to celebrate or malign this “judicialization of politics,” but few deny this momentous change.²

¹ See: Finer, Samuel. 1966. *The Man on Horseback*. London: Pall Mall Press; Tilly, Charles. 1993. *Coercion, Capital, and European States, A.D. 990–1992*. New York, NY: Wiley-Blackwell.

² For some exemplary contributions to this debate, see: Shapiro, Martin, and Alec Stone Sweet. 2002. *On Law, Politics, and Judicialization*. New York, NY: Oxford University Press; Ginsburg, Tom. 2003. *Judicial Review in New Democracies: Constitutional Courts in Asian Cases*. New York, NY: Cambridge University Press; Hirschl, Ran. 2007. *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*.

1 THE POLITICS OF GHOSTWRITING LAWYERS

The European Union (EU) is widely regarded as the “model of expansive judicial lawmaking” propelling this “new world order.”³ For it is national judiciaries that enable the EU to govern through law and implement policy across twenty-seven member states without a supranational army, an independent tax system, and a capacious bureaucracy. In this view, audacious national judges mobilized to hold states accountable to their treaty obligations and claim judicial review powers denied by their domestic legal orders. They referred cases of state noncompliance to the EU’s supreme court – the European Court of Justice (ECJ) – and refused to apply national laws violating supranational rules. Along the way they Europeanized domestic public policies and supported the ECJ’s rise as “the most effective supranational judicial body in the history of the world.”⁴

The Ghostwriters challenges this judge-centric narrative by showing how it conceals a crucial arena for political action. Without decentering courts as fulcrums of policymaking and governance, it uses the puzzle of how Europe became “nowhere as real as in the field of law”⁵ to rethink the origins, agents, and mechanisms behind the judicialization of politics. Contrary to the conventional wisdom, I argue that the promise of uniting Europe through law and exercising judicial review was not sufficient to transform national courts into transnational policymakers. National judges broadly resisted empowering themselves with European law, for they were constrained by onerous workloads, lackluster legal training, and the careerist pressures of their domestic judicial hierarchies. The catalysts of change proved instead to be a group of lesser-known “Euro-lawyers” facing fewer bureaucratic shackles.⁶ Under the sheepskin of rights-conscious litigants and activist courts, these World War II survivors pioneered a remarkable

Cambridge, MA: Harvard University Press; Alter, Karen. 2014. *The New Terrain of International Law: Courts, Politics, Rights*. Princeton, NJ: Princeton University Press.

³ Alter, Karen, and Laurence Helfer. 2017. *Transplanting International Courts*. New York, NY: Oxford University Press, at 4; Slaughter, Anne-Marie. 2004. *A New World Order*. Princeton, NJ: Princeton University Press, at 33–34; 134–135.

⁴ Stone Sweet, Alec. 2004. *The Judicial Construction of Europe*. New York, NY: Oxford University Press, at 1.

⁵ Vauchez, Antoine. 2015. *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity*. New York, NY: Cambridge University Press, at 1.

⁶ I borrow this term from: Dezelay, Yves, and Bryant Garth. 1995. “Merchants of Law as Moral Entrepreneurs.” *Law & Society Review* 29(1): 27–64, at 54; Vauchez, Antoine. 2009. “The Force of a Weak Field: Law and Lawyers in the Government of Europe.” *International Political Sociology* 2(2): 128–144, at 132. I explain and distinguish how I use the term “Euro-lawyer” later in this chapter.

1.1 A THEORY OF LAWYERS, COURTS, AND POLITICAL DEVELOPMENT

repertoire of strategic litigation. They sought clients willing to break national laws conflicting with European law, lobbied judges about the duty and benefits of upholding EU rules, and propelled them to submit cases to the ECJ by ghostwriting their referrals.

Beneath the radar, Europe has to a large extent been built by lawyers who converted state judiciaries into transmission belts linking civil society with supranational institutions. Yet Euro-lawyering was neither limitless in its influence nor static in its form. Over time, burgeoning networks of corporate law firms displaced the more idealistic pioneers of Euro-lawyering, and the politicization of European integration exposed the limits of strategic litigation in the absence of vigorous public advocacy. These evolutions stratified access to transnational justice, catalyzed new risks and opportunities for court-driven change, and continue to refract the EU's capacity to govern through law.

By shadowing lawyers who encourage deliberate law-breaking and mobilize courts against their own governments, this book reworks conventional understandings of judicial policymaking, advances a novel narrative of the judicial construction of Europe, and illuminates how the politics of lawyers can have a profound impact on institutional change and transnational governance.

1.1 A THEORY OF LAWYERS, COURTS, AND POLITICAL DEVELOPMENT

This book “starts with individuals to better understand institutions – to show how institutions impose themselves on actors while institutions themselves are also the product of the actors’ continuing struggles.”⁷ Specifically, it uses the European experience as a springboard to tackle three broad questions:

- First, how do political orders forged through multilevel networks of courts emerge and evolve?
- Second, why would judges resist these institutional changes if they would augment their own power?
- Finally, under what conditions can lawyers mobilize as agents of change and overcome resistances to judicialization?

⁷ Dezalay, Yves, and Bryant Garth. 1996. *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*. Chicago, IL: University of Chicago Press, at 16–17.

1 THE POLITICS OF GHOSTWRITING LAWYERS

Answering these queries begets a number of important payoffs. First, it pushes us to critically assess a “long presump[ption]” that courts in Europe are the primary architects of their own empowerment and are uniquely supportive of transnational governance.⁸ If European integration has been spearheaded by a spontaneous, self-reinforcing, and jointly empowering partnership between national judges and their counterparts at the ECJ,⁹ then the European experience has little in common with other world regions where judiciaries are less independent and courts are reluctant to flex their policymaking muscles. But if European judges have actually borne similar apprehensions and wrestled with their own institutional constraints, then the judicial construction of Europe may be less exceptional and more comparable than we thought. Even in what appears to be a transnational cradle of judicial activism, judicialization may be less of an inevitable process driven by the ambitions of judges and more of a contingent process hinging on how “judicial institutions interact with the nonjudicial world.”¹⁰

Second, this revisionist lens invites us to unpack when lawyers can erode judicial obduracy and become motors of court-driven change. It focuses our gaze on the fact that judges and lawyers do not always work in tandem: though they jointly constitute the heart of a “legal complex” of professionals, surface-level alliances for judicial policymaking may conceal deeper struggles between bar and bench.¹¹ Identifying when and why lawyers are the first movers pushing for institutional change requires that we take their agency seriously instead of focusing predominantly on structural factors.¹² It also requires that we resist vaporizing lawyers into go-betweens¹³ or pawns maneuvered

⁸ Alter and Helfer, *Transplanting International Courts*, at 7–8, 16.

⁹ For a discussion of this view, see: Stone Sweet, *Judicial Construction of Europe*, 20–21; Kelemen, R. Daniel, and Alec Stone Sweet. 2017. “Assessing the Transformation of Europe.” In *The Transformation of Europe*, Marlene Wind and Miguel Poiras Maduro, eds. New York: Cambridge University Press, at 204.

¹⁰ González-Ocantos, Ezequiel. 2016. *Shifting Legal Visions: Judicial Change and Human Rights Trials in Latin America*. New York, NY: Cambridge University Press, at 289.

¹¹ See: Halliday, Terence, Lucien, Karpik and Malcolm Feeley. 2007. *Fighting for Political Freedom*. New York, NY: Bloomsbury, at 9–23.

¹² For more on this critique, see: Vanhala, Lisa. 2009. “Anti-discrimination Policy Actors and Their Use of Litigation Strategies.” *Journal of European Public Policy* 16(5): 738–754, at 740–741.

¹³ For instance, Fligstein and Stone Sweet describe legal mobilization in the EU as a sequence of “lawyers activated by their clients and judges activated by lawyers”:

1.1 A THEORY OF LAWYERS, COURTS, AND POLITICAL DEVELOPMENT

by other actors – such as social movements, interest groups, and resourceful clients¹⁴ – presumed to be the true protagonists of political action. A few perceptive studies have begun trekking this path by demonstrating that the experience, reputation, and size of lawyers' teams condition judicial decisions.¹⁵ But political scientists still need to move beyond probing *attributes* of lawyer capability to portray how their *agency* can shape processes of political development transcending individual wins or losses in court. This is surprising, given that one of the central concerns of political science – the development of the modern state – is intimately tied to the rise of the legal profession.¹⁶ As states bestowed status to lawyers by granting them monopoly rights to legal representation, lawyers labored to legitimate rule-based social order and supplied expertise to fledgling bureaucracies.¹⁷ From

- Fligstein, Neil, and Alec Stone Sweet. 2002. "Constructing Politics and Markets." *American Journal of Sociology* 107(5): 1206–1243, at 1222; See also: Shapiro, Martin. 1993. "The Globalization of Law: An Institutional Account of European Integration." *Indiana Journal of Global Legal Studies* 1(1): 37–64, at 41–42.
- ¹⁴ See: Hilson, Chris. 2002. "New Social Movements: The Role of Legal Opportunity." *Journal of European Public Policy* 9(2): 238–255; Smith, Miriam. 2005. "Social Movements and Judicial Empowerment: Courts, Public Policy, and Lesbian and Gay Organizing in Canada." *Politics & Society* 33(2): 327–353; Szmer, John, Donald Songer, and Jennifer Bowie. 2016. "Party Capability and the US Courts of Appeals: Understanding Why the Haves Win." *Journal of Law and Courts* 4(1): 65–102.
- ¹⁵ See: McGuire, Kevin. 1995. "Repeat Players in the Supreme Court." *Journal of Politics* 57(1): 187–196; Kritzer, Herbert. 1998. *Legal Advocacy: Lawyers and Nonlawyers at Work*. Ann Arbor, MI: University of Michigan Press; Haire, Susan, Roger Brodie, and Stefanie Lindquist. 1999. "Attorney Expertise, Litigant Success, and Judicial Decisionmaking in the US Courts of Appeals." *Law & Society Review* 33(3): 667–686; Szmer, John, Susan Johnson, and Tammy Sarver. 2007. "Does the Lawyer Matter? Influencing outcomes on the Supreme Court of Canada." *Law & Society Review* 41(2): 279–304.
- ¹⁶ Halliday, Terence, and Lucien Karpik. 1997. *Lawyers and the Rise of Western Political Liberalism*. New York, NY: Oxford University Press; 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.
- ¹⁷ Abel, Richard. 1988. "Lawyers in the Civil Law World." In *Lawyers in Society, Volume II: The Civil Law World*, Richard Abel and Philip Lewis, eds. Berkeley and Los Angeles, CA: University of California Press; Bourdieu, Pierre. 1986. "The Force of Law." *Hastings Law Journal* 38: 805–853, at 820, 846.

1 THE POLITICS OF GHOSTWRITING LAWYERS

Hungary to Italy to the United States,¹⁸ lawyers made states and states made lawyers.

To be sure, tracing the constitutive relationship between lawyering and political development can prove remarkably elusive. Lawyers rarely spearhead protests, mount coups, levy taxes, or pass controversial legislation that make the headlines, least of all in their own name. As Alexis de Tocqueville wrote in *Democracy in America*:

[L]awyers ... 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.¹⁹

The challenge of intercepting the imperceptible ways that lawyers fashion politics renders polities that govern through courts ideal laboratories for social inquiry. With less of a role for soldiers and bureaucrats, these “law-states”²⁰ allow us to place the politics of lawyers in starker relief. While there are many examples of such polities – from the nineteenth-century American “state of courts and parties”²¹ to present-day “transnational legal orders” like the Andean and Caribbean Communities²² – none is as exemplary and successful as the EU. Having grown into the world’s only quasi-federal, supra-national polity, EU officials have nonetheless lacked the resources to

¹⁸ Malatesta, Maria. 1995. “The Italian Professions from a Comparative Perspective.” In *Society and the Professions in Italy, 1860–1914*, Maria Malatesta, ed. New York, NY: Cambridge University Press, at 23; Olgiati, Vittorio, and Valerio Pocar. 1988. “The Italian Legal Profession: An Institutional Dilemma.” In *Lawyers in Society, Volume II*, Richard Abel and Philip Lewis, eds. Berkeley and Los Angeles, CA: University of California Press, at 342–343.

¹⁹ Tocqueville, Alexis de. 2003 [1862]. *Democracy in America, Vols. I & II*. New York, NY: Barnes & Noble Books, at 254–255.

²⁰ Strayer, 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: Visualizing Institutional Change in the European Union.” *World Politics* 70(3): 358–397, at 358–360.

²¹ Skowronek, Stephen. 1992. *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920*. New York, NY: Cambridge University Press, at 29.

²² Halliday, Terence, and Gregory Shaffer. 2015. *Transnational Legal Orders*. New York, NY: Cambridge University Press; Caserta, Salvatore. 2020. *International Courts in Latin America and the Caribbean: Foundations and Authority*. New York, NY: Oxford University Press; Alter and Helfer, *Transplanting International Courts*.

1.1 A THEORY OF LAWYERS, COURTS, AND POLITICAL DEVELOPMENT

command compliance²³ and emulate the pathways of traditional state-building.²⁴ Yet their postwar commitment to building a transnational “community based on the rule of law”²⁵ opened a political opportunity to invoke the force of law to mobilize judges, reshape state institutions, and compensate for the EU’s weak military and administrative capacity.

But why, precisely, was it lawyers that grabbed the baton of change, and what was the extent of their influence? This is the political story that remains untold. In the United States, studies of cause lawyering, elite law firms, and lawyer-politicians²⁶ have peeled back how “lawyers make the politics and produce the law.”²⁷ Yet these accounts often presume that lawyers’ political influence may not travel beyond the uniquely litigious American system of “adversarial legalism.”²⁸ In response, other scholars have started uncovering how lawyers in authoritarian and transitional regimes are often at the

²³ The EU’s budget relies upon customs duties and semi-voluntary state contributions, and amounts to just 1 percent of Europe’s GDP – only 6 percent 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.” Available at: http://ec.europa.eu/budget/explained/myths/myths_en.cfm; European Commission. 2015b. “Frequently Asked Questions.” Available at: http://ec.europa.eu/budget/explained/faq/faq_en.cfm; European Commission. 2015c. “Who We Are.” Available at: http://ec.europa.eu/civil_service/about/who/index_en.htm.

²⁴ Kelemen, R. Daniel, and Kathleen McNamara. 2021. “State-building and the European Union: Markets, War, and Europe’s Uneven Political Development.” *Comparative Political Studies* (ahead of print): 1–29.

²⁵ Case 294/83, *Les Verts v. European Parliament* [1986] ECR 1339, at par. 23; For historical overviews, see: Scheingold, Stuart. 1965. *The Rule of Law in European Integration*. New Haven, CT: Yale University Press.

²⁶ For instance, see: Sarat, Austin, and Stuart Scheingold, eds. 2006. *Cause Lawyers and Social Movements*. Stanford, CA: Stanford University Press; Halliday, Terence. 1987. *Beyond Monopoly: Lawyers, State Crises, and Professional Empowerment*. Chicago, IL: University of Chicago Press; Hain, Paul, and James Piereson. 1975. “Lawyers and Politics Revisited.” *American Journal of Political Science* 19(1): 41–51.

²⁷ Dezelay, Yves, and Bryant Garth. 1997. “Law, Lawyers, and Social Capital.” *Social & Legal Studies* 6(1): 109–141, at 132.

²⁸ See: Kagan, Robert. 2003. *Adversarial Legalism: The American Way of Law*. Cambridge, MA: Harvard University Press; Kagan, Robert. 1997. “Should Europe Worry About Adversarial Legalism?” *Oxford Journal of Legal Studies* 17: 165–184. For a nuanced retort, see: Kelemen, R. Daniel. 2011. *Eurolegalism: The Transformation of Law and Regulation in the European Union*. Cambridge, MA: Harvard University Press.

1 THE POLITICS OF GHOSTWRITING LAWYERS

forefront of civil rights battles in the name of political liberalism.²⁹ Yet in the liberal civil law states of post—WWII Europe, the absence of such dramatic political struggles and the specter of “legal science” continues to obscure lawyers’ influence “behind a cult of traditions or legal technique.”³⁰ Even the few instances where lawyer activism is acknowledged³¹ usually end up being treated as curiosities or exceptions that prove the rule. And the presumed rule is that the judicial construction of Europe has always been “essentially, if not exclusively, a judicial task” wherein courts actively “retain control over such matters.”³² Or, as the French government tersely put it in 1958: “The [European] common market can have nothing to do with lawyers.”³³

Yet there is more to this story than meets the eye. Europe’s political development through law is an exemplary story of how lawyers mobilize courts to catalyze institutional change, alongside the limits, mutations, and consequences accompanying these efforts. To make this case, this book combines a geocoded dataset of thousands of lawsuits, hundreds of interviews across three of the EU’s founding states, and historical evidence from newspaper and court archives. In so doing, I build a historical institutionalist theory explicating when lawyers – and not other potential change agents – are best placed to advance political development through law, alongside the obstacles they encounter and

²⁹ Halliday, Karpik and Feeley, *Fighting for Political Freedom*; Liu, Sida, and Terence Halliday. 2016. *Criminal Defense in China: The Politics of Lawyers at Work*. New York, NY: Cambridge University Press; González-Ocantos, *Shifting Legal Visions*; Massoud, Mark. 2021. *Shari’a, Inshallah: Finding God in Somali Legal Politics*. New York, NY: Cambridge University Press.

³⁰ Dezelay and Garth, “Law, Lawyers, and Social Capital,” 132; See also: Merryman, John Henry, and Rogelio Perez-Perdomo. 2007. *The Civil Law Tradition*, 3rd ed. Stanford, CA: Stanford University Press, at 61–67.

³¹ One well-known example is of Belgian lawyer Éliane Vogel-Polsky’s campaign for gender equality in the ECJ’s *Defrenne* cases. See: Cichowski, Rachel. 2004. “Women’s Rights, the European Court, and Supranational Constitutionalism.” *Law & Society Review* 38(3): 489–512.

³² Schermers, Henry. 1987. “Introduction.” In *Article 177 EEC*, Henry Schermers, Christiaan Timmermans, Alfred Kellermann, and J. Stewart Watson, eds. New York, NY: Elsevier, at 12; Koopmans, Thijmen. 1987. “The Technique of the Preliminary Question – A View from the Court of Justice.” In *Article 177 EEC: Experiences and Problems*. Henry Schermers, Christiaan Timmermans, Alfred Kellermann, and J. Stewart Watson, eds. New York, NY: Elsevier, at 328.

³³ Quote from a reply to the national bar association president, found in: Laguette, Serge-Pierre. 1987. *Lawyers in the European Community*. Luxembourg: Office for Official Publications of the European Communities, at 269.

1.1 A THEORY OF LAWYERS, COURTS, AND POLITICAL DEVELOPMENT

the conditions under which their efforts take (and do not take) root. The result recasts judge-centric narratives of European integration and reveals how legal mobilization in Europe takes on a different hue from the better-known American context.

1.1.1 Euro-lawyers and a Repertoire for Court-Driven Change

Why have lawyers, rather than judges, tended to be the drivers of the EU's political development through law? What advantages did lawyers have as agents of institutional change? 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 preexisting institutions.

After all, processes of political development do not occur atop a *tabula rasa*: they are reconstructions of previous relations of authority.³⁴ By the time 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.³⁵ For example, rather than creating a US-style federal system of European courts, the Treaty founding the European Community provided for a single supreme court: the ECJ in Luxembourg. It then granted national courts the ability to apply European rules in the disputes before them, and to refer interpretive questions or noncompliance cases to the ECJ.³⁶ As European law was “layered”³⁷ atop national law, 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 resisted to maintain the status-quo or exploited to promote European integration.

³⁴ Orren, Karen, and Stephen Skowronek. 2004. *The Search for American Political Development*. New York, NY: Cambridge University Press, at 21.

³⁵ Boerger-de Smedt, Anne. 2012. “Negotiating the Foundations of European Law, 1950–57.” *Contemporary European History* 21(3): 339–356, at 347–348.

³⁶ This mechanism, the “preliminary reference procedure,” is described in detail in Chapter 2.

³⁷ See: 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: Ambiguity, Agency, and Power*, James Mahoney and Kathleen Thelen, eds. New York, NY: Cambridge University Press, at 16–22.

1 THE POLITICS OF GHOSTWRITING LAWYERS

Upon this stage, the prospect of institutional change is likely to be perceived first by those actors least constrained by preexisting relations of authority. When institutions evolve incrementally, those most embedded in existing institutions will seldom incur the short-term costs of long-run change:³⁸ everyday habits and forms of consciousness tied to the application of entrenched rules can powerfully obscure the benefits of novelty.³⁹ In contrast, mediatory actors facing fewer constraints who stand to ideologically or materially benefit from a new institutional environment are more likely to mobilize as innovators. Historically, then, judges anchored in civil service judiciaries have tended toward stasis, whereas lawyers shuttling between states, societies, and nascent international institutions have tended toward change.

This claim flips the conventional wisdom that national judges bore sufficient discretion and institutional incentives to spur their participation in the construction of Europe. In this view, judges in lower national courts in particular became “wide and enthusiastic” “motors”⁴⁰ of European integration by referring cases of state noncompliance with EU law to the ECJ.⁴¹ Through this “quiet revolution,”⁴² judges empowered themselves to disapply national legislation and rebel against disliked decisions of their own supreme courts.⁴³ They acquired expansive judicial review powers unavailable under domestic law and

³⁸ Bednar, Jenna, and Scott E. Page. 2018. “When Order Affects Performance: Culture, Behavioral Spillovers, and Institutional Path Dependence.” *The American Political Science Review* 112(1): 82–98, at 94.

³⁹ González-Ocantos, *Shifting Legal Visions*, at 32–36.

⁴⁰ See, respectively: Weiler, Joseph. 1991. “The Transformation of Europe.” *The Yale Law Journal* 100: 2403–2483, at 2426; Alter, Karen. 1996. “The European Court’s Political Power.” *West European Politics* 19(3): 458–487, at 467.

⁴¹ This book spans the periods before and after the Treaty of Maastricht subsumed the European Economic Community (EEC) into one of the three pillars of the EU in 1993 and the EU acquired a single legal personality in 2009 via the Treaty of Lisbon. For ease of reading, I use European, Community, and EU law interchangeably, though I try to avoid using “EU” anachronistically.

⁴² Weiler, Joseph H. H. 1994. “A Quiet Revolution: The European Court of Justice and Its Interlocutors.” *Comparative Political Studies* 26(4): 510–534.

⁴³ Other 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.