

## THE GHOSTWRITERS

The European Union is often depicted as a cradle of judicial activism and a polity built by courts. Tommaso Pavone shows how this judge-centric narrative conceals a crucial arena for political action. Beneath the radar, Europe's political development unfolded as a struggle between judges who resisted European law and lawyers who pushed them to embrace change. Under the sheepskin of rights-conscious litigants and activist courts, these "Euro-lawyers" sought clients willing to break state laws conflicting with European law, lobbied national judges to uphold European rules, and propelled them to submit noncompliance cases to the European Union's supreme court – the European Court of Justice – by ghostwriting their referrals. By shadowing lawyers who encourage deliberate law-breaking and mobilize courts against their own governments, *The Ghostwriters* overturns the conventional wisdom regarding the judicial construction of Europe and illuminates how the politics of lawyers can profoundly impact institutional change and transnational governance.

TOMMASO PAVONE is Assistant Professor at the University of Arizona, where he researches how lawyers and courts impact social and political change. His work has been published in leading peer-reviewed journals and has won the LSA and the EUSA best dissertation prizes alongside APSA's Corwin Award. He holds a PhD from Princeton University.

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# THE GHOSTWRITERS

Lawyers and the Politics behind the Judicial  
Construction of Europe

Tommaso Pavone  
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This book concerns the politics of ghostwriters and their place in two worlds. First, it shadows lawyers in several national contexts in Europe as they choreograph legal actions and judicial decisions for others, triggering important policy reforms and institutional changes. In probing the influence of these actors in the social world, this book's secondary aim is to rectify their place in the research world. The forging of the world's sole supranational polity in Europe has spurred troves of perceptive scholarship. Therein, you will be hard-pressed to come across even passing references to the protagonists of this book.

And yet, many policymakers and jurists who witnessed firsthand the tortuous construction of the European Union (EU) and its legal order will likely know exactly who and what this book is about. They might even dismiss its findings as obvious. Yet well into the seven years it took to produce this manuscript, the implicit narrative that the following pages make explicit was hardly obvious to me. It took months before its contours became perceptible, years before I felt like I had a grip. In your hands is my imperfect yet best effort to piece this story together for you, in a more mercifully compressed span of time.

I wrote this book aspiring that it sit at the junction of several debates and research streams. Despite my initial worry that by trying to speak to everyone I would convince no one, I have been heartened that early drafts have been recognized by the three research communities that I most desired to engage: EU studies and comparative politics (the EU Studies Association [EUSA] awarded the dissertation prize to this manuscript, which also received an honorable mention for the Ernst B. Haas award of the European Politics section of the American Political Science Association [APSA]); law and society (this manuscript won the dissertation prize from the Law and Society Association [LSA]); and judicial politics (the manuscript received APSA's Edward S. Corwin award). I owe the realization of my dream of becoming a university professor, in no small part, to the members of

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the foregoing award committees who put my research on the map as I navigated the bloodiest academic job market in recent memory.

In broad brushstrokes, what does this book add? For readers interested in comparative and EU politics, *The Ghostwriters* contributes a revisionist, bottom-up, and less teleological analysis of European integration that places legal practitioners at the heart of the study of institutional change and transnational political development. For the law and society community, this book illuminates in textured detail how lawyers mobilize their boundary position between states, societies, and international organizations to construct the litigation strategies of clients and the behavior of judges when both prove less inclined to change than we might think. And for students of judicial politics, *The Ghostwriters* recenters the presumed policymaking drive of courts by elucidating when and how lawyers fuel processes of judicialization often misattributed to innate judicial activism.

This book began its life as a PhD dissertation at Princeton University and grew into a book at the University of Oslo and the University of Arizona, racking up a number of debts along the way. The Princeton Institute for International and Regional Studies (PIIRS) and the Bobst Center for Peace and Justice funded an initial round of interviews in the summer of 2015. PIIRS became my dissertation-writing home, while the PluriCourts Center at the University of Oslo became my book-revising home, providing the first office I could proudly call my own – at least until the COVID-19 pandemic intervened. In fall of 2020 I presented a draft of the revised manuscript at the School of Government and Public Policy at the University of Arizona. A few weeks later, on the same day that television networks called the 2020 US Presidential election for Joe Biden, I received a call with a job offer from Arizona. With these news, I gained the peace of mind necessary to finish revisions. The primary financial support for the book's fieldwork came from the American taxpayer, in the form of a Dissertation Grant (DDRIG) from the National Science Foundation's (NSF) Law & Social Sciences Program. Conversely, support for completing the book came from the Norwegian taxpayer, via the Research Council of Norway and its Centers of Excellence funding scheme under project number 223274, which financed my postdoctoral fellowship in Oslo.

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and expand its empirical scope from one country to three; a small selection of the interview evidence in Chapters 4 and 6 appears in my 2019 *European Law Journal* article (with Dan Kelemen), “The Evolving Judicial Politics of European Integration,” and my 2020 *European Constitutional Law Review* article, “Putting European Constitutionalism in Its Place”; finally, a draft of the case study in Chapter 7 was published as my 2019 *Law & Society Review* article, “From Marx to Market.”

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