

INTERNATIONAL BOOK ESSAY

Revealing the Hidden Influencers: Euro-Lawyers as Ghostwriters of European Legal Integration

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TOMMASO PAVONE, *The Ghostwriters: Lawyers and the Politics behind the Judicial Construction of Europe* (Cambridge University Press, 2022).
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Introduction

For decades, literature on the evolution of European legal integration has focussed on what is argued to be a struggle between two sets of actors: EU member state governments that resist European integration and promote national sovereignty and differentiation; and judges in European and national-level courts who have been the key advocates for EU integration through their rulings over time. Some of the giants in the field of international law have promoted the “judicial empowerment” thesis that judges in domestic courts in EU states were the strongest advocates for promoting European legal principles and standards, referring cases of violation of European law within their own states up to the European Court of Justice (ECJ), whether out of sheer admiration for European law or in an attempt to boost their authority and reputations (Weiler 1994; Alter 1996). Tommaso Pavone persuasively upends our perspectives on agency in *The Ghostwriters* by revealing the underlying and heretofore largely ignored roles of individual pro-EU lawyers in member state countries themselves. He argues, through meticulous research supported by recent parallel findings in other contexts from other scholars (such as González-Ocantos (2016) on Latin American human rights trials), that the forces of inertia and barriers to change in national courts make the judicial impetus argument unconvincing, or at least incomplete. *The Ghostwriters* is quite simply a model of outstanding socio-legal research. From the compelling puzzle he seizes upon to the multiple methods employed and the data sources marshalled, and the importance of the findings at the levels of both academic theory and real-world implications, Pavone has produced a

remarkable work that will stand out as an example to scholars of this field for a long time to come.

The remainder of this essay focuses first on how and why *The Ghostwriters* is such an excellent contribution to the field in terms of its theoretical innovation and resonance with parallel questions in socio-legal studies, meticulous methods and analysis, and empirical significance. The final portion of the essay turns to consider the questions that *The Ghostwriters* leaves unanswered and begs for further comparative analysis in the future.

Uncovering the Hidden Agents in Europeanization

Pavone argues that existing scholarship has overstated the agency of judges as advocates for European law and integration. In fact, he argues, there are many barriers preventing national-level judges from being able to promote Europeanization, even if they desire to in principle. The barriers are bureaucratic and educational in nature because of their training and appointment systems, as well as the sheer workload burden of the judiciaries to which they are appointed. Pavone's stunning original contribution is to argue that it is in fact individual lawyers who are the key promoters of European law over time. He argues that this role has been forgotten, and these actors have remained largely hidden in our existing historical accounts. Instead, he counters, we must "resist vaporizing lawyers into go-betweens or pawns maneuvered by other actors – such as social movements, interest groups, and resourceful clients – presumed to be the true protagonists of political action" (6–7). Instead, he argues, these "Euro-lawyers" were "ghostwriters" in the sense that they were in fact "political entrepreneurs who tackled these resistances to court-driven change, cloaked in the sheepskin of rights-conscious clients and activist judges" (p. 132).

Following the introduction of his argument, Pavone spends Chapters 2 through 4 debunking the judicial empowerment thesis by demonstrating, with meticulous evidence, how judges were not the main drivers of European legal integration, and in fact were reluctant adopters in almost all cases, due to judiciaries' institutional routines, workloads, and power hierarchies. The sections of the book that follow then tell the story, across multiple chapters examining the history of Euro-lawyers' legal mobilization in Italy, France, and Germany, of how lawyers came to play such an important role, the conditions underlying their success, and how their profession changed over time through organizational pressures.

Chapters 5 and 6 trace the rise of "Euro-lawyering" as a profession and the reasons for uneven "hot" and "cold" spots of ECJ litigation across EU member states. Early generation lawyers developed a repertoire of litigation that Pavone dubs "construction" of lawsuits – embracing a midpoint strategy between fabricating disputes where there were none, and acting merely as passive legal representatives of conscious clients. Instead, early Euro-lawyers would encourage acquaintances to become their clients by provoking legal disputes in real situations in order to make a point about a question of European legal integration. In certain areas of the EU, Euro-lawyers transformed over time, from being creative and persistent outliers motivated by passion for local compliance with European ideals, into a highly professionalized and corporatized class of ambitious lawyers who sought prestige and monetary rewards in sleek "Euro-firm" legal offices in Brussels and Paris. This process itself

produced a stratified Euro-law profession in which well-resourced firms pursue the European “economic rules of interest to the ‘haves’ (those governing competition, taxation, and intellectual property) rather than those that advance the public interest and the standing of the ‘have nots’ (rules governing the environment, consumer protection, employment, and fundamental rights)” (p. 234). Moreover, “hot spots” and “cold spots” of Euro-lawyering developed so that cities and towns more removed from central hubs of Europe (like Marseilles and Naples) tended to maintain legal communities that were dominated by solo general practice lawyers who did not focus primarily on European law.

Pavone then explores the interactions between Euro-lawyers and the local communities at the heart of grievances sparking key cases these lawyers took up, focussing on two ECJ cases from Italy concerning union labor gatekeeping (*Port of Genoa*) (Chapter 7) and the destruction of diseased olive trees (*Xylella*) (Chapter 8). Pavone shows how, in cases of controversial Europeanization issues, Euro-lawyers must be savvy political actors and mediators in local environments in order to avoid excessive backlash and succeed in their strategic litigation efforts.

Resonances with Russian Judges and European Human Rights Law

Pavone’s argument is very persuasive and several elements of his findings echo what I have found in my own research in a different but parallel universe—the work of activist lawyers from Russia at the European Court of Human Rights (ECtHR) (a brief and ultimately tragic story) (Sundstrom 2012; Sundstrom, Sperling, and Sayoglu 2019, Ch. 3). Everything in Chapter 3 that Pavone writes about the barriers to national judges implementing or referencing European law principles rings startlingly true to me regarding Russian judges and lawyers and their interactions with the European Convention and Court of Human Rights. Not surprisingly, given Russia’s shorter history in the Council of Europe, the level of education of judges in Russia on international human rights law was even lower than that of judges in the longtime EU states Pavone studied, many of whom had been trained under the Soviet system. Several scholars of the Russian judiciary and the ECtHR have demonstrated how judges often relied on lawyers submitting cases to inform them about ECtHR law during Russia’s two-decade status as a Council of Europe member state (Burkov 2007; Trochev 2009). Correspondingly, I found in my own research with Russian human rights activists and lawyers that they cited the same reticence of Russian judges to refer to the European Convention on Human Rights (never mind case law) because of insecurities about their own lack of education and fear of making mistakes (Sundstrom 2012). In the Russian context, judges felt the same nervousness about lawyers oriented to ECHR law, and justifiably so, because a subset of lawyers in fact *did* know more than judges generally did: at that time, in the 2000s and 2010s, there were many entrepreneurial advocacy lawyers who were very enthusiastic about the ECtHR and made it their business to take cases to Russian courts, thereby exhausting domestic remedies, and many of them were (in contrast to judges) being trained at least to some extent in ECtHR law, usually by transnational organizations and/or earlier generations of pioneering lawyers active at the ECHR.

Another element that rang true to me from Chapter 3 was the discussion of the *physical* burden of paper files and how they weigh on judges and their staff’s

perceptions of burden and needing to clear the files. In my case, I noticed similar piles of paper when I visited staff lawyers within the ECtHR in Strasbourg about a decade ago. Is this a factor that could be transferred to thinking about *international* court judges as well? At least in the case of the ECtHR, the piles of paper typically derived from a combination of a massively increasing caseload over time with a lack of correspondingly rapid increase in secretariat staff to process case applications, judges' materials, or, indeed, oversight of the execution of Court judgments once they had been rendered. This problem, at least partially, led to a common perception among applicants' lawyers that the Court increasingly rejected cases that the lawyers viewed as clearly admissible. Here I see a bureaucratic political logic that is parallel to Pavone's argument, but with different reasons behind it: court bureaucracies being resistant, not because of inertia and routine, but, instead, due to an impossibly heavy workload. Human rights lawyers and non-governmental organizations (NGOs) submitting cases questioned why the Court sometimes ignored certain article violations they claimed in their applications (such as Article 14, prohibiting discrimination). Sometimes, these lawyers, and also scholars, tend to look for purposive motivations of the Court, such as political deference to member states or fear of opening a Pandora's box to new floods of applications based on the expansion of rights interpretations (Sundstrom, Sperling, and Sayoglu 2019). But perhaps a major reason behind high rejection rates is simply the overwhelm of the case burden that makes them rule more conservatively.

An additional chapter I particularly enjoyed in *The Ghostwriters* was Chapter 5, on the background experiences of lawyers and how these shaped their passion for EU law (particularly living memory of WWII and, in some cases, the Holocaust, but also elements such as their educational training institutions and career experiences previously). I think, honestly, that this is something that political scientists underestimate and overlook far too often when we consider actors' commitments to particular ideals or goals. In my own research on Russian human rights lawyers and their organizations, I have found that these elements of personal and organizational history feature significantly in shaping the kinds of litigation that different NGOs have engaged in at the ECHR and the philosophy of litigation that they adopt (Sundstrom 2014). Who they were in their earlier life deeply affected the approach they would take to the ECHR.

For Once, an Academic Monograph that is Fun to Read!

One of the most admirable features of Pavone's book is how interesting it is to read, and how beautifully it is written. Unlike many academic books, it is interesting and *actually fun* to read because of Pavone's impressively engaging style of writing and the way in which much of the analysis is centered around particular case studies told as stories, often in the direct words of the hundreds of judges and lawyers he interviewed across three countries in his research for the book. I found myself laughing out loud at some of the accounts. For example, in providing evidence of national-level judges *not* being key drivers of Europeanization, Pavone includes the stories of particular judges who did not know the difference between the European Court of Justice in Luxembourg and the Council of Europe's European Court of Human Rights in Strasbourg. On the other side, in arguing for the crucial roles of pro-EU lawyers and their early-stage creativity in "constructing" ideal cases, he provides entertaining accounts, such as one involving

some pioneering Italian Euro-lawyers, who went too far in trying to construct a case themselves involving differential French taxes on French fortified Vermouth-type wines versus those from Italy and other EU countries, by shipping a case of Italian vermouth from a wine trader acquaintance in Piedmont to one of the lawyers' aunts on the Italian border in France. The case was rejected by the ECJ as being obviously artificially constructed (pp. 168–170).

Persistence and Transparency in Finding Methods to Answer Questions Persuasively

Aside from being a fun book to read, *The Ghostwriters* is also a model of superb qualitative analysis (and some quantitative, in the form of very valuable descriptive comparative statistics at certain points). Pavone has simply excelled at being transparent in his data and methods and discussing openly throughout the analysis the methodological dilemmas and the challenges he faced along the way, and the ways he found of tackling them. Throughout, he uses multiple sources of evidence – including the geocoding of thousands of lawsuits; hundreds of interviews in the three EU founding states of Italy, France, and Germany; and even photographic evidence at numerous points to triangulate the findings and render them rock-solid and persuasive. Because of this, *The Ghostwriters* would be an excellent addition to graduate course syllabi as an example of the wide variety of methods and forms of data that can be used to answer questions, and a model of transparent reporting of failures and twists and turns in a research project.

Questions for the Future

As compelling as Pavone's stories and the patterns he uncovers are, there is still more to explore about the roles of lawyers in European law. One question that remains with me is that of the inevitability of change in lawyers' career goals across generations as fields of law became established. Pavone tells a very interesting story, echoing that of sociologists' studies of legal fields (such as Dezalay and Garth 1996), about how Euro-lawyers evolved from the first, more idealistic and scrappy, generation to more recent generations of lawyers who work in close coordination with the largest corporations in Europe, and very lucratively at that. I suspect that the extent of this evolution in the field over time may be specific to the particular areas of European case law that Pavone focuses on (largely commercial competition and labor mobility issues in EU law). In the concluding chapter, Pavone alludes briefly to the contrast between the work of his Euro-lawyers and the more often-studied "cause lawyers" in other areas of European rights law that other scholars have examined, such as gender discrimination (Cichowski 2016), environmental protection (Vanhalala 2022), or migration (Passalacqua 2022). I wonder how change over time in legal culture would have appeared if he had examined litigation in the less financially rewarding fields of European law as opposed to business competition and commercial law. In my experience, at least in the human rights field, lawyers can be lone operators, yet often they are embedded not in corporations but in NGOs, where the distinction between "activist" and "lawyer" can sometimes be blurry indeed. Although they are not necessarily devoid of politically biased agendas (see Madsen 2012), human rights lawyers may be more consistently idealistic over time than the Euro-lawyers that Pavone focuses on, who are focussed more on the legal harmonization of other kinds of standards.

The Ghostwriters is a fantastic book, and I encourage anyone interested in European law or regional legal integration in other parts of the world to read it. I am convinced this book will have staying power as one of the “great books” on legal mobilization and European legal studies for decades to come, as indicated by the numerous awards that Pavone has already won in recognition of this achievement.

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