

## **Making the European Court Work: Nicola Catalano and the Origins of European Legal Integration**

Draft book chapter for *The Italian Influence on European Law: Judges and Advocates General, 1952-2000*, Gallo, Mastroianni, Nicola, and Cecchetti, eds.

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### **Abstract**

Nicola Catalano is seldom included among the pantheon of Europe's founders. To the extent that he is remembered, it is for stint as one of the first judges at the European Court of Justice (ECJ). In this chapter, I challenge this consensus to retrace the agents and struggles underlying the early development of the EU's judicial order. I argue that Catalano made fundamental contributions to shaping European law, but these contributions occurred *before* and *after* his ECJ tenure. Catalano's time at the ECJ fell as the fledgling Court was starved of cases, ignored by member states, and staffed with judges hostile to Catalano's Eurofederalism. Catalano played a critical role in transforming this idle state of affairs – but only once he was removed from the Court and could mobilize European law as a lawyer. Through strategic litigation and public advocacy, Catalano was the first practitioner in Italy to push clients and judges to activate Article 177 of the Treaty of Rome: the preliminary reference procedure, which Catalano perceived as a transmission belt linking civil society, national judiciaries, and the ECJ. Catalano thus shaped the destiny of an institutional mechanism that he invited when he was part of the committee of jurists drafting the terms of the Treaty of Rome. While the preliminary reference procedure is widely acknowledged as the motor of European legal integration – the fuel that makes the European Court work – this chapter traces how this institutional development was highly uncertain, contingent, and dependent on the agency of entrepreneurs like Catalano, who blurred his roles as legal architect, judge, commentator, and attorney. Leveraging archival, interview, and secondary evidence to retrace Catalano's professional life, I demonstrate that the development of the EU's judicial order rested less on the supranational willpower of ECJ judges or faceless functionalist forces and more on the tireless entrepreneurship of "Euro-lawyers" determined to erode resistances to Europeanization within member states. These findings highlight how processes of institutional change hinge on agents who integrate insider expertise with outside mobilization and who balance their ideational commitments with tactical pragmatism.

## I. Introduction: Two Photographs and the Development of European Law

Buried deep within the Historical Archives of the European Union (HAEU) at the European University Institute in Florence lies dossier “CJUE-2557.” It is the sole file in the archive dedicated to a man that is seldom included among the pantheon of Europe’s founders: Nicola Catalano. Usually cited for his relatively uneventful stint as Italian judge at the European Court of Justice (ECJ) from 1958 to 1961, it was during his time “tucked away in the fairyland Duchy of Luxembourg”<sup>1</sup> that someone snapped some of his few available photographs. In turn, those photos made their way to the back of dossier CJUE-2557, which was made available to researchers 2015 – three decades after Catalano’s death.<sup>2</sup>

Two contrasting photos of Catalano are particularly striking, because they appear to capture two very different men (see Figure 1). The photo on the left – “MU 811” – is the portrait of a jovial, collegial, and relaxed man. It captures a smiling jurist subtly avoiding the camera’s gaze, the portrait of someone who gets along without rocking the boat. Conversely, the subject of the photo on the right – “MU 809” – confronts the camera head-on, staring straight into its lens. It is the portrait of an obstinate jurist, perhaps haunted by an air of frustration but clearly steadfast in his mission. Which of the two photos is closer to the mark?

To answer this question, we need only search the dossier for adjectives used to describe Catalano by those who knew him. A “militant federalist,”<sup>3</sup> according to a co-author; a “missionary” and a “tenacious” “burning flame,” according to two fellow judges; a man “devoted to the cause of Europe,” according to one of his daughters.<sup>4</sup> In line with these witness accounts, this chapter channels the man in the fiercer of the two photos, depicting a determined change agent on a quest to shape the origins of the European Community. Yet this chapter also channels the contrast between the two photos, illuminating a mutable man whose influence stemmed precisely from his capacity to transform himself and adjust to setbacks. To borrow from a popular Italian chansonnier: “ideas can change the world, but the world doesn’t often change. So your first revolution must be to change yourself.”<sup>5</sup>

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<sup>1</sup> E Stein, ‘Lawyers, Judges, and the Making of a Transnational Constitution’ (1981) 75 *American Journal of International Law* 1, 1.

<sup>2</sup> On the opening of the archives and their significance, see: F Nicola and B Davis, *EU Law Stories: Contextual and Critical Histories of European Jurisprudence* (New York, Cambridge University Press, 2017) 1; F Nicola, ‘Waiting for the Barbarians: Inside the Archive of the European Court of Justice’ in C Kilpatrick and J Scott (eds), *New Legal Approaches to Studying the Court of Justice* (New York, Oxford University Press, 2019).

<sup>3</sup> Letter from Riccardo Scarpa (18 September 1984). CJUE-2257, “CATALANO Nicola,” Historical Archives of the European Union (HAEU), 18.

<sup>4</sup> CJUE-2557, 18, 29, 32, 9.

<sup>5</sup> This is an excerpt of the lyrics of the song “Vivere la Vita,” written by Roman musician Alessandro Mannarino.

**Figure 1:** *Two contrasting photographs of Nicola Catalano during his time as judge at the ECJ*



Source: CJUE-2557, 88.

This chapter leverages the remarkably mutable professional life of Nicola Catalano as springboard to exhume the agents and struggles underlying the uncertain founding of the European Community and its judicial order. I argue that Catalano made fundamental contributions to shaping European law, but I also emphasize that these contributions occurred before and after his tenure as ECJ judge. Catalano's brief stint at the ECJ fell as the fledgling Court was starved of cases, ignored by member states, and staffed with judges hostile to Catalano's Eurofederalist compulsions. Catalano played a critical role in transforming this idle state of affairs – but he could only do so once he was (unceremoniously) pushed out of the Court and could transform himself into an activist lawyer. Through strategic litigation and public advocacy, Catalano was the first practitioner in Italy to repeatedly push clients and national judges to activate Article 177 of the Treaty of Rome: the preliminary reference procedure, which Catalano perceived as a transmission belt linking local civil society, national judiciaries, and the ECJ to advance European integration. In so doing, Catalano shaped the destiny of an institutional mechanism that he designed himself as part of the *groupe de rédaction* summoned by Paul-Henri Spaak to draft the Treaty of Rome in 1956. While today the preliminary reference procedure is widely acknowledged as the motor of European legal integration – the fuel that makes the European Court work – this paper traces how this institutional development was highly uncertain and contingent on the agency of jurists like Catalano, who blurred the boundaries between his roles as legal architect,

judge, commentator, and attorney to become one of Italy's first "Euro-lawyers."<sup>6</sup> Triangulating between archival, interview, and secondary evidence, this chapter ties Catalano to the origins of a process of legal mobilization that hinged less on the supranational genius of judges in Luxembourg or an innate functionalist demand for European rules and more on the tireless labor and entrepreneurship of attorneys determined to erode diffuse resistances to European law within member states.

This analysis proceeds in five parts. In Section II, I unpack the origins of Catalano's Eurofederalist convictions and trace his impact as an innovative legal architect. While Catalano's influence as an agent of change culminated during the drafting the Treaty of Rome, his ideas were forged years prior when he contributed to purging the Italian state of fascism and served as legal adviser in the Tangier International Zone and the European Coal and Steel Community (ECSC). In Section III, I reconstruct Catalano's work as a judge once he was nominated to serve on the ECJ, uncovering novel evidence that what may appear like the climax of his career arguably proved to be its nadir instead. It was during his frustrating time in Luxembourg that Catalano shed his functionalist faith that the ECJ would "work" on its own and began to identify the obstacles precluding the Court from serving as motor of European integration. Section IV recounts Catalano's tireless labor as legal scholar and commentator after he was pushed out of the ECJ by the Italian government and he returned to Rome. It highlights Catalano's efforts to draft legal commentaries promoting the ECJ's rulings and excoriating recalcitrant national governments and courts, while also noting that his public advocacy proved limited in its impact. Section V then traces Catalano's resurgent influence in the final mutation of his professional life as an entrepreneurial Euro-lawyer. It situates Catalano within a rag-tag group of trailblazing practitioners who mobilized European law before national courts to Europeanize domestic legal orders and propel preliminary references to the ECJ to advance European integration – the "ghostwriters"<sup>7</sup> that ultimately made the ECJ work. Finally, Section VI concludes with what Nicola Catalano's example can teach us about the uncertain origins of European legal integration and the agents undergirding political development through law. I suggest that processes of institutional change depend on agents like Catalano capable of integrating insider expertise with outside mobilization and balancing strong ideational commitments with tactical pragmatism.

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<sup>6</sup> On the concept of "Euro-lawyers," see: A Vauchez, *Brokering Europe: Euro-lawyers and the Making of a Transnational Polity* (New York, Cambridge University Press, 2015); T Pavone, *The Ghostwriters: Lawyers and the Politics Behind the Judicial Construction of Europe* (New York, Cambridge University Press, 2022).

<sup>7</sup> Here, I draw heavily on my new book; see *ibid*.

## II. If Your Build It...: Catalano as Legal Architect

In a 1984 celebration honoring Catalano following his death, ECJ President Alexander Mackenzie Stuart highlighted Catalano's "co-authorship of the Treaties of Rome" and his personal invention of perhaps the most "spectacular" institutional provision undergirding the European judicial order:

"It's to M. Catalano that we owe the idea behind one of the most spectacular innovations of the Treaties of Rome... the preliminary reference procedure... Was he able, at the time, to predict the exceptional judicial developments that could be realized upon this cornerstone?... without this procedure, the most important judgements of our Court wouldn't have seen the light of day."<sup>8</sup>

Indeed, both contemporary accounts and novel historical evidence decisively confirm Article 177 of the Rome Treaty was the brainchild of Catalano, who proposed the procedure as part of the *groupe de rédaction* charged with drafting the Treaty text in late 1956 and early 1957. Yet even within the *groupe*, Article 177 was debated and drafted "without awareness of this innovation's importance."<sup>9</sup> How did Catalano develop this idea – and find himself at the right place at the right time – to make his decisive contribution?

Catalano modeled the preliminary reference procedure on the constitutional blueprint of the Italian legal order. He was "inspired by the new Italian system of judicial review" created by Law No. 87 in March of 1953, which enabled any judge doubting the constitutionality of legislation to stay the proceedings and refer the case to the Italian Constitutional Court.<sup>10</sup> In transplanting the outlines of this referral system to the European level, Catalano mobilized two distinctive ideas: that European law serves as a 'higher' law that is constitutional or federal in nature; and that courts should exercise judicial review powers and disapply national laws conflicting with European law. Particularly repugnant for Catalano were state rules obstructing trade, free movement, and the liberalization of state monopolies. These ideas, it turns out, grew out of three professional experiences that defined Catalano as a jurist years before Treaty of Rome's drafting: Catalano's role in dismantling the overbearing fascist state in Italy, followed by his role as legal adviser in the Tangier International Zone and then his involvement in the European Coal and Steel Community (ECSC).

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<sup>8</sup> ECJ President Alexander Mackenzie Stuart at the audience solennelle in honor of Nicola Catalano (18 October 1984). CJUE-2557, 27.

<sup>9</sup> P Pescatore, 'Les Travaux du 'Groupe de rédaction' dans la Negociation des Traités de Rome' (1981) 34 *Studia Diplomatica* 159, 173.

<sup>10</sup> A Boerger and M Rasmussen, *The Dual Nature of the European Community: The Making of the Institutional and Legal Dimensions of European Integration, 1950 to 1967*, 17. Draft book manuscript on file with author.

Catalano witnessed firsthand how state power can be abused when he joined the state legal service – the *avvocatura dello stato* – as a 29-year-old in 1939, at the height of fascist rule and the outbreak of the Second World War. We know little about Catalano’s activities during this period, but there is evidence that he certainly did not develop a reputation as a fascist sympathizer (Catalano would later cite the “horrors” committed by the Axis powers during WWII as the prime motive undergirding his Eurofederalism).<sup>11</sup> We know this because with the fall of fascism, Catalano was selected to play a central role in the so-called “purges” of the Italian state and professions. One month after the liberation of Rome and under pressure from the United States and Allies to “liquidate” fascism,<sup>12</sup> in July 1944 the caretaker Bonomi government created a commission headed by anti-fascist diplomat Carlo Sforza to sanction and remove fascists from both the state bureaucracy and the liberal professions, with a special focus on journalists. Catalano was recruited by Sforza to supervise the “de-fascistization” of *Il Giornale d’Italia*, which had served as a notorious megaphone of fascist propaganda during the war – he undertook this task for two years while on leave from the state legal service. Had he harbored sympathies for the fascist state, it is unlikely that he would have been selected to play this role instead of being purged himself.<sup>13</sup> Indeed, the Italian government soon tapped him again to serve as agent in the conciliation commissions created by the 1947 peace treaty with the Allies. These commissions were tasked with managing the return of goods and property stolen from citizens and states by the Axis powers, with the goal of fully integrating Italy within the new United Nations system.<sup>14</sup> From 1948 to 1950, these peace commissions provided Catalano with his first experience applying a new body of international law capable of regulating the actions of national states.

Second, in the 1950s Catalano gained firsthand experience within two supranational institutions wherein he cultivated his federalist conception of international law and courts. In 1951 he left the Italian state’s legal service to serve as chief legal adviser to the Tangier International Zone.<sup>15</sup> The Zone was a complex institutional system created by the Sultan of Morocco (a French protectorate), several European colonial states, and the United States to establish a neutral free trade

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<sup>11</sup> N Catalano, *La Comunità Economica Europea e l'Euratom* (Milano, Giuffrè, 1959) 1.

<sup>12</sup> M Giannetto, ‘Defascistizzazione: legislazione e prassi della liquidazione del Sistema fascista e dei suoi responsabili (1943-1945)’ 2 *Ventesimo Secolo* 53.

<sup>13</sup> For more on this period in Catalano’s life, see: V Fritz, *Juges et avocats généraux de la Cour de Justice de l’Union européenne (1952–1972): Une approche biographique de l’histoire d’une révolution juridique* (Frankfurt, Vittorio Klostermann, 2018) 197.

<sup>14</sup> A Arena and A Rosanò, ‘Nicola Catalano (1910-1984): Eurolawyer Extraordinaire’ (HEC Working Paper 2022/05, Alcide de Gasperi Centre for Research at the EUI) 1, 8, 9; Fritz, *Juges et avocats généraux*, 198.

<sup>15</sup> On Catalano’s nomination by the Italian government to serve as legal adviser to the Tangier International Zone, see: Fritz, *Juges et avocats généraux*, 198.

zone and international tax haven.<sup>16</sup> Paul Reuter, one of the primary legal architects of the ECSC, cited the Tangier Zone as the first “form of federal integration” at the international level, and for good reason.<sup>17</sup> The Zone established an international court – the Mixed Tribunal, comprised of five foreign judges from Italy, France, Spain, Belgium, and Britain – charged with safeguarding the commercial and property rights of foreign nationals against encroachment by the Sultanate.<sup>18</sup> The Mixed Tribunal was both active and innovative: not only did it hand down thousands of yearly rulings, but it proclaimed that it could exercise supranational judicial review. The Tribunal interpreted the international laws creating the Tangier Zone as “constitutional treaties” and regularly disappplied legislation of the Sultanate when “it deemed it contrary to the economic freedoms guaranteed” by the treaties.<sup>19</sup> Michel Eperlding has recently uncovered how in 1951 Catalano was asked to draft a memo expressing his opinion on the Tribunal’s constitutional authority, in his role as legal adviser to the Zone. Although Catalano expressed skepticism that the tribunal was a full-fledged “constitutional judge,” he endorsed and approved the Tribunal’s authority to disapply legislation when it infringed upon the treaties constituting the Tangier Zone.<sup>20</sup>

In 1953, Catalano left Tangier for Brussels to join the Legal Service of the first supranational institution in continental Europe: the High Authority of the ECSC. It was in this third international stint that Catalano was able to truly put his federalist convictions into action. As Anne Boerger and Morten Rasmussen have meticulously traced in their archival research, “we know that the Legal Service of the High Authority already championed a constitutional approach to the interpretation of European Law” during Catalano’s tenure in the mid-1950s.<sup>21</sup> In defending the High Authority before the Court of Justice, Catalano and fellow members of the Legal Service promoted the teleological and federalist approach to European law (albeit with only partial success at the time) that would eventually become the defining feature of the ECJ’s “law of integration.”<sup>22</sup> On several occasions, Catalano even chose to defend the High Authority against the Italian government in litigation before the Court of Justice.<sup>23</sup> Reflecting on these years, future ECJ judge Riccardo Monaco recalled his “friendly legal

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<sup>16</sup> JP Bebat, ‘Tanger, son statut, sa zone (1923-1956)’ (1996) 31/32 *Horizons Maghrébins* 17.

<sup>17</sup> M Eperlding, ‘Juristes internationalistes, juristes mixtes, Euro-Lawyers: l’apport de l’expérience semi-coloniale à l’émergence d’un droit supranational’ (2022) 22 *Clio@Themis. Revue électronique d’histoire du droit* 1, 8.

<sup>18</sup> K. B. N, ‘Twenty-Five Years of Mixed Court of Tangier’ (1952) 1 *American Journal of Comparative Law* 115.

<sup>19</sup> Eperlding, ‘Juristes internationalistes’, 9.

<sup>20</sup> Ibid, 10.

<sup>21</sup> A Boerger and M Rasmussen, ‘Transforming European Law: The Establishment of the Constitutional Discourse from 1950 to 1993’ (2014) 10 *European Constitutional Law Review* 199, 203.

<sup>22</sup> Ibid, 204; JB Cruz, *What’s Left of the Law of Integration?* (New York, Oxford University Press, 2018).

<sup>23</sup> Fritz, *Juges et avocats généraux*, 199.

jousting [with Catalano] before the Court of Justice... me as jurisconsult for the Italian government and he as counsel of the European Communities.”<sup>24</sup> Catalano’s Eurofederalist zeal was becoming increasingly evident.

These were the experiences that Catalano brought with him when in November 1956 he was summoned by Paul-Henri Spaak to serve in the *groupe de redaction* to draft the Treaty of Rome. Instantly, the group “split between a federalist faction and a more conservative group,” and unsurprisingly, Catalano became leader of the federalist contingent alongside Michel Gaudet of France and Pierre Pescatore of Luxembourg.<sup>25</sup> Catalano and Gaudet – who were friends from their days serving together in the High Authority’s Legal Service<sup>26</sup> – were in charge of designing the institutional features of the new European Community. While the jurists were constrained by clear directions from government heads of delegation concerning the design of the Treaty’s political institutions – the Commission and the Council – member states were far less interested in the “subtle constitutional elements” and design of the European Court of Justice. This provided Catalano and his allies with sufficient room of maneuver to “smuggle in solutions” and to ghostwrite the “breakthrough” of Article 177: the preliminary reference procedure and its system of judicial review.<sup>27</sup>

Catalano did not waste time mobilizing as an innovative legal architect and to set the agenda behind the scenes. He proposed his “daring” innovation just two days after the first meeting of the *groupe juridique*, stunning his colleagues with a full-fledged design for the preliminary reference procedure. According to novel archival evidence unearthed by Boerger and Rasmussen, Catalano’s proposal proved controversial because it “completely sidestepped the national governments that were at the centre of the infringement procedure” and signified “an important step towards turning the ECJ into a European constitutional court.”<sup>28</sup> Even Catalano’s Eurofederalist ally – Pierre Pescatore – doubted that this controversial innovation was as “crucial” as Catalano made it out to be.<sup>29</sup> Catalano retorted by framing the procedure as an institutional failsafe, given the likelihood that intergovernmental pressures on the fledgling European executive – the Commission – would

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<sup>24</sup> Vauchez, *Brokering Europe*, 110.

<sup>25</sup> Boerger and Rasmussen, *The Dual Nature of the European Community*, 54.

<sup>26</sup> Gaudet had served as head of the High Authority’s Legal Service during Catalano’s tenure. See: J Bailleux, ‘Michel Gaudet a law entrepreneur: the role of the legal service of the European executives in the invention of EC Law and of the Common Market’ (2013) 50 *Common Market Law Review* 359.

<sup>27</sup> Boerger and Rasmussen, *The Dual Nature of the European Community*, 54.

<sup>28</sup> *Ibid*, 17.

<sup>29</sup> P Pescatore, ‘Les aspects fonctionnels de la Communauté Économique Européenne, notamment les sources du droit’ in, *Les aspects juridiques de la Communauté Économique Européenne* (Liège, Faculté de droit de Liège, 1958) 60.



sometimes block it from availing itself of the infringement procedure to enforce the law.<sup>30</sup> To then obtain the support of the more conservative faction of the group, Catalano agreed to drop some of the more ambitious yet controversial elements of his proposal. For instance, instead of the ECJ possessing the exclusive authority to interpret European law, that authority would be shared with national courts, and a sentence in Catalano's proposal stating that national courts had the "obligation" to apply ECJ judgements was dropped.<sup>31</sup>

Upon reaching consensus, the group of jurists submitted the proposed text for Article 177 to the heads of delegation of member governments. With their sights set squarely on the design of the EC's political institutions, government representatives approved the proposal in January 1957 "without much discussion and endorsed what would become one of the most famous articles in the EEC treaty."<sup>32</sup> As its prime architect, this result was a major triumph for Catalano who, as we will see, initially held onto a functionalist faith that citizens and national courts would soon flock to the ECJ via Article 177. And when it rains good news, it pours: a few months later in early 1958, Catalano received notice from the Italian government that he would be nominated as the new Italian judge on the ECJ. Novel archival evidence even indicates that Catalano was being seriously considered to serve as President of the Court.<sup>33</sup> These months arguably represented the apex of Catalano's Eurofederalist triumph. Little did Catalano know that a series of setbacks and frustrations were waiting for him in the years to come, which would also threaten the European judicial order that he helped build.

### III. ... They Won't Come: Catalano as ECJ Judge

As one of the ECJ's institutional architects, being nominated by the Italian government to serve on the Luxembourg court in 1958 was a crowning achievement for Catalano. Yet we must be wary of reading history backwards. For the ECJ that Catalano joined was not yet the active, renown, and prestigious Court that we know today. The ECJ was "tucked away" in Luxembourg with "benign neglect," in a humble mansion on a temporary lease.<sup>34</sup> Its early members were "very disappointed" that the Court remained largely unknown in national jurisdictions, a state of affairs that was "not

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<sup>30</sup> On how this intuition proved extraordinarily prescient, see: R.D. Kelemen and T Pavone, 'Where Have the Guardians Gone? Law Enforcement and the Politics of Supernational Forbearance in the European Union' (Forthcoming 2023) 75 *World Politics*.

<sup>31</sup> Boerger and Rasmussen, *The Dual Nature of the European Community*, 19.

<sup>32</sup> Ibid, 21.

<sup>33</sup> Fritz, *Juges et avocats généraux*, 200.

<sup>34</sup> Stein, 'Lawyers, Judges, and the Making', 1.

particularly satisfactory.”<sup>35</sup> Furthermore, Catalano’s pugnacious personality gained him few allies on the Court and enabled his ideological rival – the jurist selected as the Court’s President, André Donner – to forge a conservative majority to sideline Catalano’s “militant federali[sm].”<sup>36</sup>

The honeymoon period in Luxembourg thus proved short for Catalano, who had numerous reasons to grow disillusioned as ECJ judge. First, as the creator of the preliminary reference procedure, he had to wait until his final year at the ECJ (1961) before a national court – the Court of Appeal in the Hague – finally referred a case to Luxembourg.<sup>37</sup> While that referral was reason enough to open a bottle of champagne,<sup>38</sup> this was a rather sorry state of affairs, compounded by the fact that Catalano would never witness a solicitation by an Italian judge during his tenure in Luxembourg. “If you build it, they will come,” the functionalist ethos goes: institutions should create their own social demand.<sup>39</sup> To Catalano it must have been painfully evident that even though the ECJ was built, few lawsuits were coming.

Catalano’s disenchantment with a functionalist faith in Article 177 generating its own demand for European justice caused him to have a change of heart. When in November 1956 Catalano had proposed the preliminary reference procedure as part of the Treaty of Rome’s *groupe de rédaction*, he drew inspiration from the Italian system of constitutional referrals and thus deemed it “preferable” that “only courts of last instance be prescribed to stay the proceedings and solicit a preliminary ruling from the Court of Justice.” The reason is that he worried that the ECJ would be plagued by the same “excessive multiplication” of referrals as had beset the Italian Constitutional Court, since he assumed that national “lower courts will not hesitate” to solicit the ECJ.<sup>40</sup> But whereas the Italian Constitutional Court had been “flooded” with 16 referrals in its first year alone, the ECJ had not received any. So, by the close of his second uneventful year at the ECJ Catalano “changed his views:” All national judges needed to be encouraged to solicit the ECJ as much as possible.<sup>41</sup>

Catalano’s pragmatic change of heart led to public skirmishes with his colleagues. In a 1959 ECJ visit to the Netherlands, he “openly disagreed” with fellow judges in front of Dutch officials over

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<sup>35</sup> M Lagrange, ‘The Court of Justice as a Factor in European Integration’ (1967) 15 *American Journal of International Law* 709, 717; M Rasmussen, ‘The Origins of a Legal Revolution’ (2008) 14 *Journal of European Integration History* 77, 92.

<sup>36</sup> Letter from Riccardo Scarpa (18 September 1984). CJUE-2257, 1.

<sup>37</sup> Case 13/61 *De Geus en Uitenboger v Bosch and Others*, [1962] ECR 47.

<sup>38</sup> D Kochenov, ‘Book Review: Preliminary References to the European Court of Justice, by Morten Broberg and Niels Fenger’ (2010) 37 *Legal Issues of Economic Integration* 375.

<sup>39</sup> The idea that institutions drive social demand for formal rules in an expansive feedback loop is captured by the notion of “spillover” in neofunctionalist theories of European integration drawing on Ernst Haas’ work: E Haas, *The Uniting of Europe: Political, Social, and Economic Forces, 1959-1957* (Stanford, Stanford University Press, 1958).

<sup>40</sup> Catalano, *La Comunità Economica Europea*, 35.

<sup>41</sup> Boerger and Rasmussen, *The Dual Nature of the European Community*, 18.

how frequently national courts should turn to Luxembourg. When Advocate General Lagrange recommended that “national courts avoi[d] using the [Article 177] system too much,”<sup>42</sup> Catalano interjected, rebutting “to Dutch Ministry of Justice's officials that national courts should avail themselves generously of the preliminary preference procedure and send as many questions to Luxembourg as possible.”<sup>43</sup> As we will see, this skirmish presaged how Catalano’s willingness to defend his views would spark clashes with fellow judges and erode his influence at the Court.

What must have also become evident to Catalano was that national governments were as neglectful of the ECJ as national courts. Government officials accorded little deference to the Court in its early years and initially appeared uninterested in the Article 177 procedure. When in 1961 the ECJ served the member states a special “notice to attend” arguments in the first preliminary reference case, it was met with radio silence. State representatives “did not appear at the hearing,” the Court bitterly pointed out in its judgement.<sup>44</sup> Even worse, Catalano’s home state treated the Luxembourg Court more as a site for political patronage than as an independent judicial authority, and this was made clear to Catalano in the brusquest of ways.

When in October 1961 Catalano was reappointed for a full six-year term, he did not know that the Italian government had decided several months prior that it would cut Catalano’s term short. This forced ousting of a sitting ECJ judge would allegedly serve as a courtesy to the Italian Minister of Finance, Giuseppe Trabucchi, who wanted to see his younger brother, Alberto Trabucchi, appointed to the Court. Unlike Catalano, the younger Trabucchi had no professional experience outside of academia and had little contact with European law or public law (he was a specialist in Italian and comparative private law). ECJ President André Donner worried about the consequences: in December 1961, he penned a letter to the Council of Ministers urging member states not to “weaken the efficacy of the Court” in the field of public law.<sup>45</sup> The Italian Government ignored Donner’s request, pushing Catalano to resign to make way for Trabucchi barely a month into his second term.<sup>46</sup> In his resignation

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<sup>42</sup> M Rasmussen, ‘Revolutionizing European Law: A History of the Van Gend en Loos Judgement’ (2014) 12 *International Journal of Constitutional Law* 136, 146.

<sup>43</sup> Boerger and Rasmussen, *The Dual Nature of the European Community*, 18.

<sup>44</sup> *Ibid*, 49.

<sup>45</sup> Letter of ECJ President André Donner to the President of the Council of Ministers of the European Community (15 December 1961). CJUE-2557, 44.

<sup>46</sup> Some scholars have highlighted the early departure of British Advocate General Eleanor Sharpston after Brexit as an example of member state meddling with the Court and a threat to judicial independence. Catalano’s forced departure from the ECJ suggests that such meddling is hardly new. D Kochenov and G Butler, ‘Independence of the Court of Justice of the European Union: unchecked member states power after the Sharpston affair’ (2021) 27 *European Law Journal* 262.

letter, Catalano attributed his “most regretful” departure to “personal and family reasons”<sup>47</sup> – an evidently facetious euphemism to anyone who knew Catalano’s personal commitment to the Court and to serving the European Community.

Catalano had one last reason to regret his departure from the ECJ. As he was reminded on the day he left the Court, Catalano’s difficult personality had worn on his colleagues and clipped his wings in Luxembourg. Catalano made it a habit to wear his militant Europeanism on his sleeve, pedantically reminding fellow judges of his participation in the Treaty of Rome’s *groupe de rédaction* and how he felt “responsible for the institutional system of the Rome Treaty.”<sup>48</sup> So during his farewell speech to Catalano, President Donner could not resist a not-so-subtle jab at how his colleague’s scorched-earth Europeanism had come back to bite him:

“A flame consumes, one could even get burned and those who get too close to the fire can sometimes get scorched. “Terar dum prosim,” I am consumed by the cause that I defend, that could be your motto. That is to say that your ardent conviction didn’t contribute to making life easy on yourself and those with a different point of view. But even if you weren’t always the most accommodating colleague, we gladly accepted it, precisely because we know that your obstinacy and your tenacity stem from your total devotion to the European idea...

We were forced to recognize that you always strove to logically lay out your opinions... which often placed those who didn’t share your ideas in a difficult situation... I wouldn’t dare say we come from the same school of thought, but that’s of little importance...”<sup>49</sup>

Responding to Donner, Catalano defiantly made his colleagues’ criticisms his own:

“[ECJ Judge Charles Leon] Hammes, to tease me, once told me that I had the spirit of a missionary. I accepted this characterization. I think it matches what I firmly believe, the mission of Europe, the construction of Europe which is in the process of being built, and thus the mission of our Court.”<sup>50</sup>

Such rebuttals aside, Donner’s jab stung because it betrayed how Catalano had been marginalized as a European judge. Donner really did come from a different school of thought than Catalano: he

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<sup>47</sup> Letter of resignation of ECJ Judge Nicola Catalano to ECJ President André Donner (30 November 1961). CJUE-2557, 57.

<sup>48</sup> N Catalano, *Zehn Jahre Rechtsprechung des Gerichtshofs der Europäischen Gemeinschaften* (Cologne, Institut für das Recht europäischen Gemeinschaften, 1965) 42.

<sup>49</sup> Speech by ECJ President André Donner on the occasion of Nicola Catalano’s departure from the Court (8 March 1962). CJUE-2557, 32.

<sup>50</sup> Speech by departing ECJ Judge Nicola Catalano (8 March 1962). CJUE-2557, 29.

resisted both a Eurofederalist and a constitutionalist interpretation of the Treaties,<sup>51</sup> and he exercised his authority as President to sideline Catalano's views. For instance, throughout Catalano's tenure Donner had the sole prerogative of assigning judge rapporteurs to the cases brought to Luxembourg. Rapporteurs play a significant role because they draft a preliminary report on the case for their colleagues, suggest the chamber allocation, and prepare a draft judgement. In so doing, rapporteurs have particular agenda-setting influence over the outcome of a case,<sup>52</sup> and there is compelling empirical evidence that ECJ Presidents select rapporteurs based on whether they deem them trustworthy, competent, and sufficiently influential to broker consensus.<sup>53</sup> By this metric, Donner did not hold Catalano in high esteem. Of the seven judges that served from 1958 to 1961, Catalano was the least likely to be selected as rapporteur (see Figure 2 and Table 1), despite being most familiar with the Treaty of Rome and its drafting history. Specifically, Catalano was rapporteur in only six cases – an average of only 1.5 cases per year. By contrast, Donner's favored judge – Louis Delvaux of Belgium, a more moderate personality than Catalano – served as rapporteur in fourteen cases during the same time period – an average of 3.5 cases per year.<sup>54</sup> Catalano had so little to do at the ECJ that he regularly petitioned his colleagues to depart from Luxembourg to attend slews of academic and professional conferences, including more than a dozen conferences in 1960 alone.<sup>55</sup>

Where these statistics suggest Catalano's marginalization at the Court, the historical record confirms it. First, the six cases where Catalano served as rapporteur were of limited importance and scarcely contributed to the development of European law.<sup>56</sup> They included rejections of a couple of nitty-gritty applications for annulment of ECSC High Authority decisions,<sup>57</sup> declarations of inadmissibility of another couple of applications,<sup>58</sup> and resolving a dispute concerning ECJ procedural

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<sup>51</sup> J.H. Reestman and M Claes, 'For History's Sake: On Costa v. ENEL, André Donner and the Eternal Secret of the Court of Justice's Deliberations' (2014) 10 *European Constitutional Law Review* 191.

<sup>52</sup> M Jacobs, M Munder, and B Richter, 'Subject Matter Specialization of European Union Jurisdiction in the Preliminary Rulings Procedure' (2019) 20 *German Law Journal* 1214.

<sup>53</sup> S Hermansen, 'Building Legitimacy: Strategic case allocations in the Court of Justice of the European Union' (2020) 27 *Journal of European Public Policy* 1215; S Hermansen and D Naurin, 'Holding Judges to Account: Policy, Performance, and Impartiality' (2021). working paper on file with author.

<sup>54</sup> One indicator that Delvaux was more conservative than Catalano is the fact that he was one of only three out of seven ECJ judges who did not publicly promote the 1963 *Van Gend en Loos*: A Vauchez, 'Integration-through-Law: Contribution to a Socio-History of EU Political Commonsense' (2008) *EUI Working Papers RSCAS 2008/10* 1, 14.

<sup>55</sup> CJUE-2557, 75.

<sup>56</sup> Arena and Rosanò, 'Nicola Catalano (1910-1984)', 1.

<sup>57</sup> See: Joined Cases 15/59 and 29/59 *Société métallurgique de Knutange v High Authority*, [1960] ECR 2; Joined Cases 2/60 and 3/60 *Niederrheinische Bergwerke AG v High Authority*, [1961] ECR 134. Catalano as rapporteur dismissed these mundane applications for annulment lodged by an operator of a blast furnace challenging an additional contribution for excess scrap metal purchased that was imposed by the ECSC High Authority.

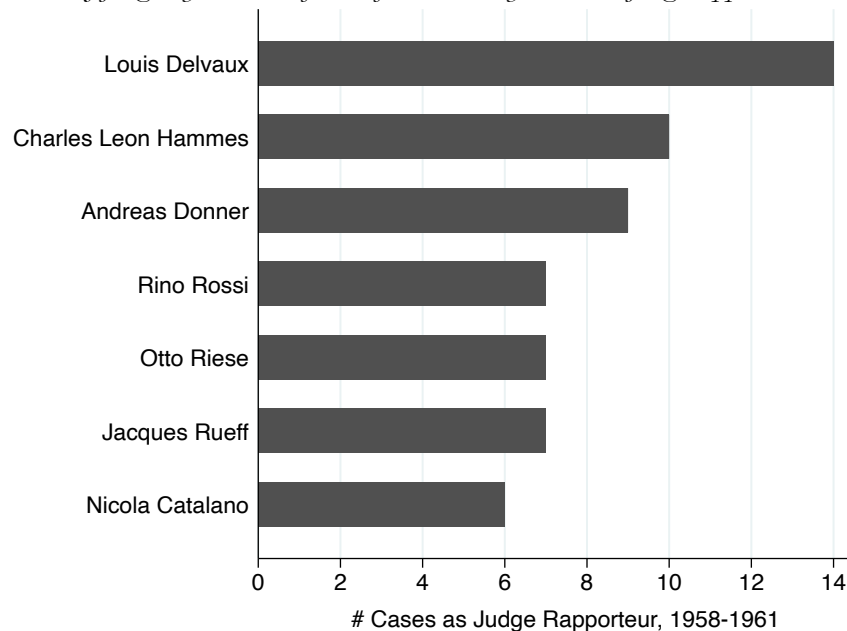
<sup>58</sup> Joined Cases 9/60 and 12/60 *Vloeberghs v High Authority*, [1961] ECR 199; Case 12/61 *Wilhelmus Severinus Antonie Nannes Gorter v Councils of the European Economic Community and of the European Atomic Energy Community*, [1961] ECR 271.

rules governing documentary languages.<sup>59</sup> Catalano's only judgement of note was in an internal ECJ staff case spotlighting his willingness to challenge Donner: in Case 15/60, Catalano annulled a decision by the ECJ President that had revoked a separation allowance due to a typist formerly employed by the Court.<sup>60</sup> By contrast, the very few ECJ decisions advancing European law delivered during Catalano's tenure were drafted by other judge rapporteurs – most prominently Otto Riese in *Humblet*, where the Court first claimed it had the authority to adjudicate whether “a legislative or administrative measure adopted by the authorities of a Member State is contrary to Community law.”<sup>61</sup>

**Table 1:** *ECJ judges ranked by number of cases for which they were selected as judge rapporteur, 1958-1961*

ECJ Judge	# cases as rapporteur 1958-1961	avg # yearly cases as rapporteur 1958-1961	total # cases as rapporteur	years as ECJ judge
Louis Delvaux	14	3.5	42	1952-1967
Charles Léon Hammes	10	2.5	35	1952-1967
Andreas Donner	9	2.25	172	1958-1979
Rino Rossi	7	1.75	12	1958-1964
Jacques Rueff	7	1.75	10	1952-1962
Otto Riese	7	1.75	22	1952-1963
Nicola Catalano	6	1.5	6	1958-1961

**Figure 2:** *ECJ judges by number of cases for which they served as judge rapporteur, 1958-1961*



<sup>59</sup> Case 1/60 *Acciaieria Ferriera di Roma v High Authority*, [1960] ECR 165.

<sup>60</sup> Case 15/60 *Simon v Court of Justice*, [1961] ECR 116.

<sup>61</sup> Case 6/60 *Jean Humblet v Kingdom of Belgium*, [1960] ECR 560, 569.

Second, recent legal histories have traced how Donner initially succeeded in steering the Court away from Catalano's Eurofederalism and towards a more moderate stance. Allying himself with the more traditionalist Riese and Jacques Rueff, Donner sought "not to break with the elements of international law and [to] instead emphasise the contractual nature of the EEC Treaty."<sup>62</sup> Representative in this regard is the 1959 *Stork* ruling (also drafted by Riese as rapporteur), where the ECJ refused to recognize that Community law protected citizens' fundamental rights common to the constitutional traditions of the member states.<sup>63</sup> Ironically, it was Catalano's departure from the Court that helped constitute the more Eurofederalist majority that had eluded him. Catalano's replacement, Alberto Trabucchi, quickly won over his colleagues with his sharp wit and a persuasive collegiality that Catalano lacked. Fellow Italian judge Rino Rossi, for instance, was so "mutually hostile" with Catalano that he would "most probably have voted the opposite of Catalano" in any case concerning direct effect and supremacy out of sheer spite.<sup>64</sup> The more affable Trabucchi, on the other hand, drew on his private law expertise to persuade colleagues like Rossi and Delvaux that European law must be endowed with the capacity to advance individual rights – a view that contrasted with Donner's, yet proved decisive in *Van Gend*. When French judge Rueff was replaced with future ECJ President Robert Lecourt in 1962 – another ambitious judge marked by his capacity to persuade – Trabucchi gained a Eurofederalist ally to spearhead the "legal revolutions" of 1963-1964 and overcome the dissents of Donner, Riese, and Hammes.<sup>65</sup>

#### IV. A Voice Crying in the Wilderness: Catalano as a Legal Commentator

By the time that *Van Gend* was decided, Catalano had returned to Rome as a law professor. He immediately got to work celebrating the "rightful" *Van Gend* decision in *Il Foro Padano* and promoting the doctrine of direct effect by drafting a report on the subject for the Federation Internationale Pour le Droit Européen (FIDE). Catalano also publicly urged the Court to take the "next step" of

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<sup>62</sup> Rasmussen, 'The Origins of a Legal Revolution', 94; M Rasmussen, 'Establishing a Constitutional Practice of European Law: The History of the Legal Service of the European Executive, 1952-65' (2012) 21 *Contemporary European History* 380.

<sup>63</sup> Case 1/58 *Friedrich Stork & Cie v High Authority of the European Coal and Steel Community*, [1959] ER 19. Of course, the ECJ would later reverse this decision in the *Stauder* (1969), *Internationale Handelsgesellschaft* (1970) and *Nold* cases (1974). See: F Schimmelfennig, 'Competition and community: constitutional courts, rhetorical action, and the institutionalization of human rights in the European Union' (2006) 13 *Journal of European Public Policy* 1247, 1252; Arena and Rosanò, 'Nicola Catalano (1910-1984)', 11.

<sup>64</sup> Rasmussen, 'Establishing a Constitutional Practice', 375, 389 fn80.

<sup>65</sup> Ibid; Reestman and Claes, 'For History's Sake', 193; W Phelan, 'The revolutionary doctrines of European law and the legal philosophy of Robert Lecourt' (2017) 28 *European Journal of International Law* 935, 943; W Phelan, 'Robert Lecourt: The ECJ Judge as Journalist and Political Organiser' (2020) *TRiSS Working Paper Series* 1, 7.

establishing the primacy of European law in *Costa*.<sup>66</sup> Yet these judicial victories were also bittersweet. For with his feet squarely back in Rome, Catalano was growing concerned that the ECJ's legal revolution was meeting far more resistance within the political and judicial confines of the member states than his ex-colleagues may have realized.

Indeed, by the mid-1960s the gap between the ECJ's ambitions in *Van Gend* and *Costa* and the "Eurosclerosis" gripping member states had become all-too-evident to Catalano, who repeatedly took to law reviews to channel his frustrations and call for Europeanizing change. Yet in such a turbulent political context, Catalano's Eurofederalist laments sometimes rang like the proverbial voice crying in the wilderness.

To wit, this period marked the beginning of the era of political Eurosclerosis unleashed by the "empty chair crisis" of 1965, wherein Europe's most powerful anti-federalist politician – French President Charles de Gaulle – paralyzed the Council of Ministers for seven months by recalling France's permanent representative.<sup>67</sup> The "Luxembourg compromise" that resulted in January 1966 enabled any member state government to veto new European legislation by declaring that an important national interest was at stake, thereby threatening to paralyze intergovernmental decision-making for years to come.<sup>68</sup> Catalano lamented these political developments in his commentaries, noting how they made "unworkable" the promise of European federalism:

"The construction of Europe is passing through a moment of crisis, characterized especially by the strenuous resistance of state powers to Community action. Despite the repeated and overt affirmations of Europeanism, States still do not fully submit to the necessary supremacy of Community action, without which the very structure of European economic integration, which is a federal-type structure, would be unworkable."<sup>69</sup>

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<sup>66</sup> Vauchez, *Brokering Europe*, 125, 128.

<sup>67</sup> N.P. Ludlow, 'Challenging French leadership in Europe: Germany, Italy, the Netherlands and the outbreak of the empty chair crisis of 1965–1966' (1999) 8 *Contemporary European History* 231.

<sup>68</sup> On the public and press perception of the empty chair crisis and Luxembourg compromise as threatening the entire project of European integration, see: H Wallace and P Winand, 'the Empty Chair Crisis and Luxemburg Compromise Revisited' in J-M Palayret, H Wallace, and P Winand (eds), *Visions, Votes, and Vetoes: The Empty Chair Crisis and the Luxembourg Compromise Forty Years On* (Brussels, Peter Lang, 2006). For more sanguine empirical evidence that, behind the scenes, the Luxembourg compromise may not have had as paralyzing effect as was publicly perceived (at least in the 1970s and 1980s), see: J Golub, 'In the Shadow of the Vote? Decision Making in the European Community' (2003) 53 *International Organization* 733.

<sup>69</sup> N Catalano, 'Sentenza 1 marzo 1966 (in causa 48/65)' (1966) 89 *Il Foro Italiano* 81, 94. For a broader discussion of the contemporary relevance of this commentary and Catalano's views: Arena and Rosanò, 'Nicola Catalano (1910-1984)'.



But the 1960s also opened an era of judicial Eurosclerosis, as national high courts signaled their resistance to the full reach of the ECJ's direct effect and supremacy doctrines.<sup>70</sup> None was clearer on the matter than the Italian Constitutional Court, which became a target of fierce criticism by Catalano. In 1964 the Constitutional Court refused to acknowledge the direct effect and supremacy of European law,<sup>71</sup> affirming instead a dualist theory whereby Italian legislation could trump preceding Community laws (the principle that *lex posterior derogat legi priori*). In its judgement, the Constitutional Court channeled the “predominant opinion of Italian international law scholars,” including the early writings of Catalano himself.<sup>72</sup> By 1964, however, Catalano had read the tea leaves and renounced his earlier views: national judges' continuing devotion to dualism and the *lex posterior* principle was as threatening to the future of European integration as the obstinacy of Charles de Gaulle.

So Catalano took to the newly minted *Common Market Law Review* and to *Il Foro Italiano* to convey “respectful but definitive disapproval.” European integration was “a real and fundamental turning point in the history of our times... whether one wishes it or not,” giving rise to a polity with “all the aspects of a structure of a federal nature.” Catalano then addressed the Constitutional Court's judges directly:

“It is time to conclude. The conclusions are rather bitter ones. It suffices to [note] the impressive brevity of the [Constitutional Court] judgment under discussion... to realise, once again, how much a limited knowledge of the relevant texts, and a lack of interest in them, risks transforming our widely proclaimed but vague enthusiasm for Europe into a mere verbal demonstration... Could the Constitutional Court change its attitude? This would be particularly desirable.”<sup>73</sup>

In all, Catalano authored 50 publications in the years following his departure from Luxembourg. This corpus of writings was decidedly Janus-faced, at once “plead[ing] the cause for Europe to which he dedicated his entire life”<sup>74</sup> while also criticizing recalcitrant national governments and courts. Yet

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<sup>70</sup> For broader historical overviews of national supreme court resistance to the ECJ, see: L Goldstein, ‘State resistance to authority in federal unions: the early United States (1790–1860) and the European Community (1958–94)’ (1997) 11 *Studies in American Political Development* 149; K Alter, *Establishing the Supremacy of European Law* (New York, Cambridge University Press, 2001); B Davis, *Resisting the European Court of Justice* (New York, Cambridge University Press, 2013); Pavone, *The Ghostwriters*.

<sup>71</sup> Judgment No. 14/1964 *Costa v. Ente Nazionale per l'Energia Elettrica* (Italian Constitutional Court).

<sup>72</sup> See, for instance: Catalano, *La Comunità Economica Europea*, 145. For an analysis of Catalano's u-turn on dualism and the *lex posterior* principle: A Arena, ‘From an Unpaid Electricity Bill to the Primacy of EU Law’ (2019) 30 *The European Journal of International Law* 1017, 1025.

<sup>73</sup> N Catalano, ‘Annotation by M. Nicola Catalano’ (1964) *Common Market Law Review* 225, 225, 228, 234.

<sup>74</sup> ECJ President Alexander Mackenzie Stuart at the audience solennelle in honor of Nicola Catalano (18 October 1984). CJUE-2557, 27.

despite his many forceful calls for change, there is little evidence that Catalano's pen was persuading many Italian judges – or Italian legal scholars – to alter their views. With the exception of the occasional law professor who sympathized with Catalano, “his voice remained relatively isolated in the Italian debate,”<sup>75</sup> which continued to follow in the dualist wake of the Italian Constitutional Court. As Catalano's former ECJ colleague Maurice Lagrange bitterly wrote in 1969, in Italy the promise of European integration had become the “victim of its professors,” who conservatively looked to Rome with far more interest than they looked to Luxembourg.<sup>76</sup>

By the late 1960s, then, the traditional avenues for Catalano to participate in advancing European integration were closing. As judge he had been unceremoniously pushed out of the ECJ by his own nominating state, and as law professor his legal commentaries were having limited impact. The only unexplored pathway left was to take matters into his own hands as an entrepreneurial lawyer.

## **V. Breakthrough: Catalano as a Practicing Euro-Lawyer**

Catalano foretold his turn to Euro-lawyering and litigation in his writings. In 1966, he argued that private litigation and the construction of preliminary references to the ECJ may be the only means to combat Eurosclerosis and compensate for the absence of political will:

“[In this] moment of crisis for the Community... It is only the Court that, through a lucid but courageous interpretation of Community law, can incite member States and Community institutions to scrupulously respect the obligations sanctioned by the Treaties founding the European Communities. But for this to be possible, it is necessary to ensure any means for action to those willing to act... litigation proposed by private [citizens]... constitutes at once a driver and a defense against political pressures that would otherwise be insurmountable.”<sup>77</sup>

Strikingly, even Catalano's closest collaborators ignored or understated their colleague's pioneering role as a lawyer. Upon being contacted by the ECJ on occasion of Catalano's death, Riccardo Scarpa – with whom Catalano co-authored *Principi di Diritto Comunitario* – replied that there was “little to say” about Catalano's professional activities.<sup>78</sup> In this dismissive view, Scarpa channeled the initial consensus amongst member governments themselves. When the president of the French bar association contacted his government in 1958 requesting that lawyers have a seat at the policymaking

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<sup>75</sup> Boerger and Rasmussen, ‘Transforming European Law’, 208.

<sup>76</sup> M Lagrange, ‘Les obstacles constitutionnels à l'intégration européenne’ (1969) 5 *European Constitutional Law Review* 240, 242.

<sup>77</sup> Catalano, ‘Sentenza 1 marzo 1966’, 94.

<sup>78</sup> Letter from Riccardo Scarpa (18 September 1984). CJUE-2557, 18.

table in the new European community, the government replied in a terse letter that “the [European] common market can have nothing to do with lawyers.”<sup>79</sup> Yet Catalano was one of the first lawyers to prove that consensus wrong by seizing an opportunity for strategic litigation. Catalano and a few fellow pioneers exploited the growing chasm between the ECJ’s Eurofederalist jurisprudence and the foot-dragging and diffuse resistances to European law pervading states and national courts. Through this process of legal mobilization, Catalano resurrected his capacity to impact European integration, becoming part of a cohort of lawyers who aspired to serve as a “private army of the [European] Communities”<sup>80</sup> by catalyzing preliminary references to the ECJ.

In my book, *The Ghostwriters: Lawyers and the Politics behind the Judicial Construction of Europe*, I identify Catalano as part of a rag-tag group of first-generation Euro-lawyers who mobilized European law before national courts to promote policy changes and propel referrals to the ECJ (see Table 2). Catalano and these legal practitioners shared four traits distinguishing them from the rest of the bar.

First, all of the first Euro-lawyers were old enough to remember surviving the destruction of the Second World War and were deeply suspicious about abuses of state power (born in 1910, Catalano was just old enough to also remember surviving the First World War). These Euro-lawyers were prototypical agents of political liberalism<sup>81</sup> – ideationally committed to European integration as an opportunity to unite states and moderate their power via peaceful, legalistic means. Catalano opened his first book – *La Comunità Economica Europea e l'Euratom*, published as the ink was still drying on the text of the Treaty of Rome – by appealing to the “idealistic impulses” of his readers, reminding them of the “horrors, devastations, and miseries” of WWII and the need to overcome the “increasingly anachronistic” state “barriers” to the creation of a “United States of Europe.”<sup>82</sup>

Second, most of the first-generation Euro-lawyers participated in the founding and leadership of the first European law associations – such as FIDE founded in 1961 – and their national branches – such as the Associazione Italiana Giuristi Europei (AIGE) in Italy established in 1958. Catalano became President of AIGE and was active in FIDE (whose very founding he brainstormed in correspondence with Michel Gaudet), the governing council of the Italian branch of the European

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<sup>79</sup> S.P. Laguerre, *Lawyers in the European Community* (Luxembourg, Office for Official Publications of the European Communities, 1987) 269.

<sup>80</sup> Vauchez, *Brokering Europe*, 88.

<sup>81</sup> On lawyers as (contingent) agents of political liberalism, see: T Halliday and L Karpik, *Lawyers and the Rise of Western Political Liberalism* (New York, Oxford University Press, 1997); T Halliday, L Karpik, and M Feeley, *Fighting for Political Freedom* (New York, Bloomsbury, 2007).

<sup>82</sup> Catalano, *La Comunità Economica Europea*, 1.

Federalist Movement, and the federalist wing of the Italian Liberal Party.<sup>83</sup> Although these associations mostly remained a “miscellaneous network”<sup>84</sup> rather than a full-fledged “jurist advocacy movement” or “litigation support structure,”<sup>85</sup> their pedagogical and advocacy activities were still important because in the 1960s and 1970s most national law schools neglected any coursework in European law.<sup>86</sup>

**Table 2:** *Catalano and other leading first-generation Euro-lawyers in Italy, France, and Germany*

Country	Euro-lawyers	Born before WWII?	Worked at European Institution?	Member of European lawyers' association?	# Refs. to ECJ (Total)	# Refs. Pre-1980	# Cases argued before ECJ	Time span
Italy	Fausto Capelli and Giovanni Maria Ubertazzi (Milan)	Yes (both)	No	Yes (AIGE)	78	42	97	1970–2018
	Emilio Cappelli and Paolo De Caterini (Rome)	Yes (both)	Yes (Commission)	Yes (FIDE, AIGE)	25	9	35	1971–2014
	Wilma Viscardini (Padova)	Yes	Yes (Commission)	Yes (UAE)	19	3	35	1975–2015
	Nicola Catalano (Rome)	Yes	Yes (ECSC, ECJ)	Yes (FIDE, AIGE)	16	15	27	1968–1982
France	Lise and Roland Funck-Brentano (Paris)	Yes (both)	No	Yes (AJE, UAE)	15	4	26	1977–1997
	Marcel Véroone (Lille)	Yes	No	Yes (CCBE)	9	6	16	1974–1988
	Paul François Ryziger (Paris)	Yes	Yes (ESCS)	Yes (FIDE)	6	1	12	1962–1992
	Robert Collin (Paris)	Yes	No	Yes (AJE)	8	5	11	1964–1993
Germany	Fritz Modest, Jürgen Gündisch, Klaus Landry, Barbara Festge, Gabriele Rauschnig (Hamburg)	Yes (all)	No	Yes (FIDE, UAE, DNRV)	140	65	163	1967–2014
	Dietrich Ehle (Cologne)	Yes	No	?	90	36	143	1962–2019
	Peter Wendt (Hamburg)	Yes	No	?	22	18	26	1965–1985
	Gert Meier (Cologne)	Yes	No	Yes (FIDE)	17	6	21	1973–2001

**Source:** Table is reprinted from Pavone, *The Ghostwriters*, 143.

**Notes:** Beyond FIDE and AJE, association names are: AIGE, Associazione Italiana Giuristi Europei; DNRV, Deutsch-Niederländische Rechtsanwaltsvereinigung; UAE, Union des Avocats Européens; CCBE, Conseil des Barreaux Européens.

Third, the first Euro-lawyers derived pleasure from exercising their agency. Like the independent-minded and irascible Catalano, they tended to have difficult, mischievous personalities,<sup>87</sup> and they saw

<sup>83</sup> Fritz, *Juges et avocats généraux*, 201; Letter from Riccardo Scarpa (18 September 1984). CJUE-2557, 18.

<sup>84</sup> R Byberg, ‘A Miscellaneous Network: The History of FIDE 1961–94’ (2017) 57 *American Journal of Legal History* 142; A Bernier, ‘Constructing and Legitimizing: Transnational Jurist Networks and the Making of a Constitutional Practice of European Law, 1950–70’ (2012) 21 *Contemporary European History* 399.

<sup>85</sup> On jurist advocacy movements and litigation support structures, see: K Alter, ‘Jurist Advocacy Movements in Europe and the Andes’ (2016) 65 *iCourts Working Paper Series* 1; C Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago, University of Chicago Press, 1998).

<sup>86</sup> Vauchez, *Brokering Europe*, 77; J Bailleux, ‘Penser l’Europe par le droit’ (PhD thesis, Université Paris 1 Panthéon-Sorbonne 2012), 422.

<sup>87</sup> Besides Catalano, other difficult personalities were Peter Wendt in Germany and Emilio Cappelli in Italy. See: Pavone, *The Ghostwriters*, 152.

their lawyering as a politics via other means: a tool to contribute to what Catalano described as the “mission of Europe... and thus the mission of our Court” from the ground-up.<sup>88</sup> Paolo de Caterini, a first-generation Euro-lawyer and law professor who knew Catalano and other pioneers of Euro-lawyering personally, recalls how

“we just happened to be the only actors on the stage!... [We] set the fuse, and it exploded, with big booms well into the 1980s! There was a sense that we could do the unthinkable!... That by [constructing test cases], we could sometimes bring down the whole closet! It wasn’t about omnipotence, but about participating.”<sup>89</sup>

Finally, although the first Euro-lawyers were a relatively uncoordinated group, they encountered the same obstacles to mobilizing European law before national courts and thus converged upon a shared repertoire of strategic litigation. Facing overworked judges who ubiquitously lacked training and knowledge of European law,<sup>90</sup> these trailblazing lawyers sought clients willing to lodge test cases illuminating non-compliance with European law; they educated national judges about the duty and benefits of applying European rules; and they literally ghostwrote the preliminary references to the ECJ that judges lacked the time, knowledge, and inclination to write themselves.

**Table 3:** *Preliminary references solicited by Catalano as a practicing Euro-lawyer*

Case	Case Name	Referring Court
C-13/68	Salgoil v Ministero del commercio con l'estero	Corte d'appello di Roma
C-82/71	S.A.I.L.	Pretura di Bari
C-113/75	Frecassetti v Amministrazione delle finanze dello Stato	Tribunale civile e penale di Genova
C-27/77	Cargill v ONIC	Corte suprema di Cassazione
C-36/77	AIMA v Greco	Tribunal administratif de Paris
C-811/79	Amministrazione delle finanze dello Stato v Ariete	Corte d'appello di Torino
C-826/79	Amministrazione delle finanze dello Stato v MIRECO	Corte suprema di Cassazione
C-66/80	International Chemical Corporation v Amministrazione delle finanze dello Stato	Tribunale civile e penale di Roma
C-206/80	Orlandi	Tribunale civile e penale di Roma
C-207/80	Carapelli	Tribunale civile e penale di Roma
C-209/80	Saquella	Tribunale civile e penale di Roma
C-210/80	De Franceschi	Tribunale civile e penale di Roma
C-212/80	Meridionale Industria Salumi and Others	Corte suprema di Cassazione
C-215/80	Orlandi	Corte suprema di Cassazione
C-216/80	Molino	Corte suprema di Cassazione
C-199/82	San Giorgio	Tribunale di Trento

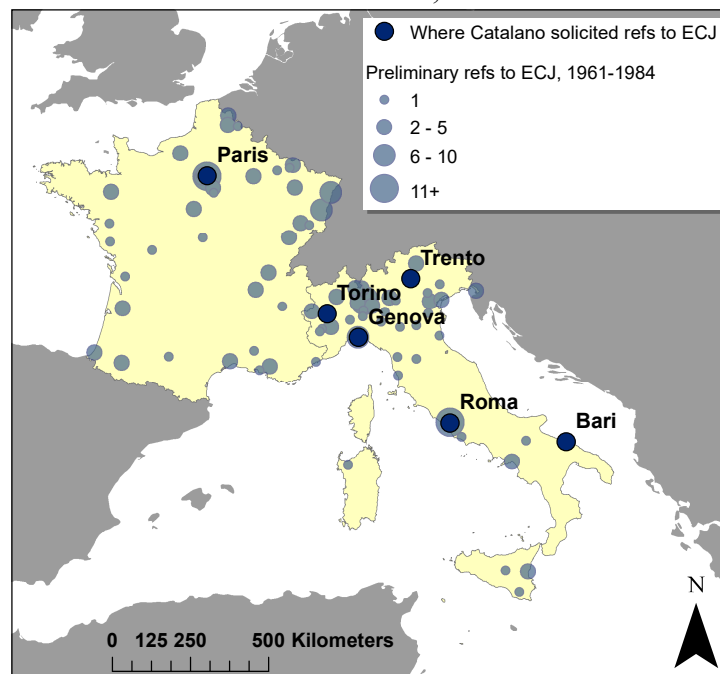
<sup>88</sup> Speech by departing ECJ Judge Nicola Catalano (8 March 1962). CJUE-2557, 29.

<sup>89</sup> Pavone, *The Ghostwriters*, 131, 151.

<sup>90</sup> Ibid, 52; T Pavone, ‘Revisiting Judicial Empowerment in the European Union: Limits of Empowerment, Logics of Resistance’ (2018) 6 *Journal of Law & Courts* 303.

Novel qualitative and archival evidence illuminates how from 1968 until his death in 1984, Catalano mobilized the foregoing repertoire of strategic litigation to catalyze 16 preliminary references to the ECJ – most from Italian lower courts, but also one from a French court (the Tribunal administratif de Paris; see Table 3 and Figure 3). Three courts – the Court of Appeal of Rome, the Court of Appeal of Turin, and the Pretura of Bari – solicited the European Court for the very first time when Catalano showed up. And the geographic scope of Catalano’s solicitation of referrals was impressive, spanning seven courts from Paris to Bari. In soliciting these referrals, Catalano not only supplied the ECJ with opportunities to develop European law and hold states accountable to their treaty obligations. Perhaps even more importantly, Catalano sought to teach the bench how to think and write like a European court of first instance. Catalano acknowledged as much in an article he wrote in *Il Foro Italiano*, wherein he called on national courts to mimic the reasoning and “style” of ECJ judgments.<sup>91</sup> He also sought to directly impact the fate of the preliminary reference procedure, for which he unsurprisingly felt so personally “responsible.”<sup>92</sup>

**Figure 3:** *Locations where Catalano solicited national court referrals to the ECJ and distribution of referrals from Italian and French courts, 1961-1984*



<sup>91</sup> N Catalano, ‘Lo stile delle sentenze della Corte di giustizia delle Comunità europee’ (1965) 92 *Il Foro Italiano* 141.

<sup>92</sup> Catalano, *Zehn Jahre Rechtsprechung*, 42.

But how, precisely, did Catalano influence national judges? To unpack Catalano's pugnacious strategy for Euro-lawyering, it is helpful to focus on novel archival evidence concerning an exemplary preliminary reference: The *SAIL* case (C-82/71), or the first ever referral to the ECJ by a southern Italian court (the Pretura of Bari, near Catalano's hometown of Castellaneta in the Apulia region) and a "veritable masterclass in judicial ghostwriting."<sup>93</sup> This case spurred the ECJ to strike down two Fascist-era national regulations (promulgated in 1929 and 1938) establishing state "milk centers," which held a monopoly on local milk production and distribution. For instance, in Bari milk could only be imported into the city when local demand exceeded supply, and state prefects held exclusive authority to determine the territorial boundaries of the centers' monopoly. Given his commitment to economic liberalization via Europeanization, Catalano detested state-owned monopolies and price controls exemplified by the Italian milk centers<sup>94</sup> – so he lodged a lawsuit designed to dismantle them.

The public facts of this dispute are as follows. A farmer from a hillside town imported some cases of milk "within the boundary of the 'prohibited' urban area of Bari" wherein a state milk center operated. Two city officials reported the farmer and criminal proceedings were lodged. Before the Pretura, a surprisingly vigilant judge doubted that the milk centers complied with Article 37 of the Treaty of Rome, which forbids "State monopolies of a commercial character" from serving as de-facto quantitative restrictions on trade. So, the judge referred the case to Luxembourg.<sup>95</sup>

The foregoing narrative constitutes the "public transcript" of the *SAIL* case. But there is a "hidden transcript" to this case:<sup>96</sup> newly-obtained documents from the ECJ's Historical Archives reveal that Catalano was the referral's central choreographer, as he returned to Puglia, where he was born in 1910, and persuaded a humble local judge to take the unprecedented step of soliciting a faraway European Court. The original dossier for the *SAIL* case demonstrates that Catalano drafted a 28-page memo providing his judicial interlocutor with a (strategic) crash course in European law, an excoriation of national law, an elaboration of the imperative of soliciting the European Court quickly, and a full-fledged preliminary reference ready for copy-and-paste.

First, Catalano opened his memo by implicitly drawing on his inside expertise as ex-ECJ judge: he discussed the "rationale" of "The authors of the Treaty," used adjectives like "certain" and

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<sup>93</sup> Pavone, *The Ghostwriters*, 184.

<sup>94</sup> On Catalano's views on the matter, see his editorial: N Catalano, 'Quel Pasticcio Agricolo Comunitario' (1984) *Mondo Economico* 28. Many thanks to Daniela Caruso for bringing this editorial to my attention.

<sup>95</sup> Consolidated version of the Treaty establishing the European Community [2002] OJ C 325, 24/12/2002 P. 0047 – 0048.

<sup>96</sup> On "public" versus "hidden" transcripts, see: J.C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven, Yale University Press, 1990).

“definitive” to quell all interpretive doubts regarding European law, and supplemented these affirmations with cogent language and underlining to make the memo easy to skim. Notice also how Catalano clearly learned his lesson from his time as Luxembourg judge: instead of debating or patronizing his judicial counterpart – the kind of pedantic obstinacy that had turned off his ECJ colleagues a decade prior – he collaboratively cajoled his “illustrious” interlocutor to pivot his attention from Rome to Luxembourg:

“We could ask the Illustrious Pretore to refer to the Constitutional Court... but we prefer to base our defense upon the much more certain grounds of the monopoly’s incompatibility... with the Treaty of Rome ...

The European Economic Community, is first of all based upon a customs union implying the definitive and total suppression – within a transition period happily expired on 31.12.1969 – of customs duties and quantitative restrictions... and all “measures having equivalent effect” to a quantitative restriction.

In this vein art. 37 of the treaty “progressively adjusts any State monopolies of a commercial character in such a manner as will ensure the exclusion, at the date of the expiry of the transitional period, of all discrimination between the nationals of Members States in regard to conditions of supply or marketing of goods.”

The rationale of the foregoing provision is evident. The authors of the Treaty realized that the abolition of quantitative restrictions would be insufficient to eliminate discriminations brought by state monopolies of a commercial character... Any monopoly, especially a local one, is certainly incompatible if its sole objective and effect is to prevent market exchange...”<sup>97</sup>

Catalano proceeded to make a forceful, Janus-faced appeal, casting national law in the poorest possible light (an “absurd” means for legalized corruption, an outdated fascist legacy, and a “suicidal” policy) while outlining the judge’s “imperative” and “binding” obligation to recognize the primacy of European law:

“...this anachronistic monopoly of the milk centers... this absurd monopoly... the corporative origins of this system during the full- fledged fascist regime... represent local centers of power with notable bearing for politics- or, more precisely, for local sub-politics...

The vigorous opposition to the milk centers’ monopoly by all agricultural associations proves that... applying criminal sanctions to protect these very monopolies is in truth a suicidal violation, in that it conflicts with the agricultural, economic, and even public health interests of this Country...

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<sup>97</sup> CJUE-1277, affaire 82/71, Società Agricola Industria Latte SAIL, 23-24. Historical Archives of the European Union (HAEU).



We must now demonstrate the reach and imperative of Art. 37 EEC, even within the national legal order and particularly before national courts.

It must first be recalled that, unlike traditional international law, the EEC Treaty not only contains obligations binding upon member states and laws that are directly applicable and operable without implementing legislation, but it forbids (art. 5, section 2) member states from adopting any laws which compromise the realization of the Treaty's objectives...

This structure – which is a federal-type structure – is indeed characterized by the transfer of sovereignty and new powers to the Community... the Court of Justice . . . affirmed that contraventions of the foregoing provisions constitute violations of the rights of citizens, rights which national courts are required to protect... the national judge is required to disapply national law if it contrasts with the Community rule that must prevail.”<sup>98</sup>

What is striking here is that even as Catalano worked to educate the judge about European law, he did so strategically, focusing his interlocutor's gaze on some favorable aspects to his case while omitting others. For instance, Catalano did not mention that as he was pushing forth the *S.A.I.L.* case (in June and July of 1971), the EEC's Council of Ministers was drafting Regulation No. 1411/71,<sup>99</sup> which authorized the Italian state to maintain its milk center regime until March 1973 – an inconvenient fact that would have problematized his mobilization of European law.<sup>100</sup>

Finally, Catalano cajoled the judge to solicit the ECJ by subsidizing the labor costs of motivating the preliminary reference and drafting the questions to be submitted to Luxembourg. In so doing, Catalano was careful not to impugn the judge's authority or to appear like a snake oil salesman: while acknowledging the judge's “abilities,” Catalano nonetheless underscored the pragmatic reasons to solicit the ECJ immediately and the risks of interpreting European law directly. One cannot help but suspect that Catalano's sense of urgency – his appeal to solicit the ECJ “right now” – may have been strategic too. By obtaining a speedy referral, Catalano ensured that the case file would be on its way to Luxembourg before the publication of Regulation No. 1411/71 in the *Official Journal* could attract the judge's attention:<sup>101</sup>

The Pretore charged [with the dispute] would certainly have the discretion to decide the question. However, in good conscience and while being fully convinced of his abilities – we

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<sup>98</sup> Ibid, 23, 32.

<sup>99</sup> See: Council Regulation (EEC) 1411/71 of 29 June 1971 laying down additional rules on the common organisation of the market in milk and milk products for products falling within tariff heading No 04.01 [1971] OJ L 148/4, 414-415.

<sup>100</sup> I thank Daniela Caruso for highlighting this point. Before the ECJ, the Commission sided with Catalano, arguing that the entry into force of Regulation No. 1411/71 is “irrelevant” and “the fresh authorization cannot, in accordance with the principle which must be fundamental in Community law, adversely affect rights acquired by individuals on the basis of a provision which at that moment produces direct effects in the legal system of the Member States.” See: CJUE-1277, 236.

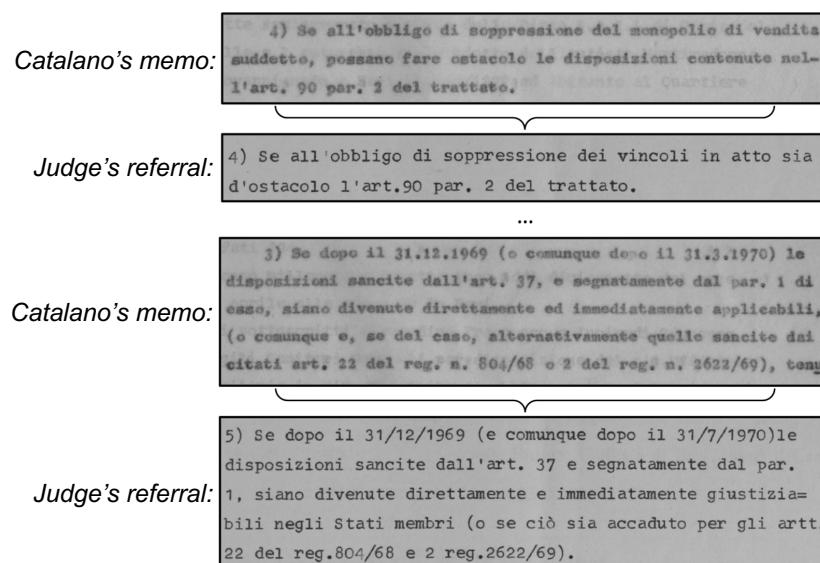
<sup>101</sup> Ibid, 160.

believe that due to the delicate nature and the novelty of this very question, a judgment that eschews the light of the only specialized court in this domain could be deemed unwise... Reasons of opportunity, prudence, and procedural economy advise soliciting the Court of Justice right now...

With this premise... we will permit ourselves to suggest the questions of interpretation to submit to the Court of Justice...”<sup>102</sup>

The Pretore was clearly persuaded. One month later, the judge copied Catalano’s proposed reference largely verbatim and submitted it to Luxembourg (see Figure 4). Once back before the ECJ, Catalano restated his position and achieved his desired outcome. Although the Italian state’s legal service asked the ECJ to dismiss the case since “the answers... would influence the application of the criminal law of a Member State,” the Court sided with Catalano, declaring “inapplicable” “all provisions of national legislation” establishing the milk centers’ monopoly and imposing criminal penalties (and holding that Regulation No. 1411/71 was also “inapplicable to [the] events” in the case because they occurred before the regulation entered into force). For good measure, the Court took the liberty to remind the Italian government that the “effectiveness of Community law cannot vary according to the various branches of national law which it may affect.”<sup>103</sup>

**Figure 4:** *Catalano’s draft preliminary reference and the Pretore of Bari’s nearly identical referral in the SAIL case*



**Source:** CJUE-1277, 12, 44.

**Notes:** Adapted from Pavone, *The Ghostwriters*, 188.

<sup>102</sup> Ibid, 41.

<sup>103</sup> Case 82/71 *SAIL* [1972] ECR 120, 135, 139.

Catalano’s litigation strategy in *SAIL* fits a broader pattern. Like other first-generation Euro-lawyers listed in Table 2, Catalano wielded preliminary references primarily to seek the interpretation of European law and to reform national law rather than to challenge the validity of European rules.<sup>104</sup> Indeed, the last preliminary reference that Catalano solicited before his death – *San Giorgio* (C-199/82)– testifies to how he never lost his “creative passion” for advancing European law.<sup>105</sup> In brokering that referral from the Tribunal of Trento, Catalano empowered the ECJ to “modify [its caselaw] in a substantive manner” by prohibiting member states from placing conditions upon the repayment of domestic charges when those charges violate individuals’ free movement rights.<sup>106</sup> Legal commentators hailed how the Court took a “step forward... towards a more effective and useful protection of the individual’s rights” and “strengthen[ed]...the remedies against a violation of the rule of law.”<sup>107</sup>

The *SAIL*, *San Giorgio*, and 14 other preliminary references solicited by Catalano testify to his resilience and creative capacity to reinvent himself as a Euro-lawyer. Ironically, Catalano’s renewed impact as a litigator also served to prove one of his former rivals right. In a speech delivered on Catalano’s last day at the ECJ, President André Donner predicted that one way or another, his Eurofederalist counterpart would find his way back to Luxembourg:

“We are certain that in the future we will encounter you once again involved in European affairs, either as theorist in your publications, or as a practitioner in your other activities... one cannot easily neglect the opinion of Mister Catalano.”<sup>108</sup>

## VI. Conclusion: Leopards, Chameleons, and European Legal Integration

In a recent editorial, Joseph Weiler – who did more to advance the study of the judicial construction of Europe than any scholar of his generation – emphasized the dangers of a “court-centric” view of the development of the EU legal order in light of recent scholarship:

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<sup>104</sup> 80% of preliminary references solicited by first-generation Euro-lawyers sought the interpretation and application of European law, whereas only 20% challenged its validity. See: Pavone, *The Ghostwriters*, 154.

<sup>105</sup> ECJ President Alexander Mackenzie Stuart at the audience solennelle in honor of Nicola Catalano (18 October 1984). CJUE-2557, 27.

<sup>106</sup> F Hubeau, ‘Annotation of Case C-199/82, *Amministrazione delle Finanze dello Stato v. San Giorgio S.p.A.* [1983], ECR 3595’ (1984) 22 *Common Market Law Review* 96, 99.

<sup>107</sup> *Ibid.*, 100, 108.

<sup>108</sup> Speech by ECJ President André Donner on the occasion of Nicola Catalano’s departure from the Court (8 March 1984). CJUE-2557, 32.

“My generation of European Law lawyers are hopelessly Court-centric. That’s what we know (or think we know). That is what interests us. European Law is about the Court of Justice of the European Union... But there is another blind spot (more a black hole than a spot) in the Court-centric view of European law: the role of lawyers – in bringing cases, in arguing cases, in strategizing litigation, in virtually putting words in the mouth of the judges.”<sup>109</sup>

Nicola Catalano’s tortuous yet steadfast quest to promote the development of European law exemplifies how Weiler’s conclusion is not only fertile theoretically, but also imperative practically. Taking the role of Euro-lawyers seriously and broadening our lens beyond the ECJ’s *Palais de justice* not only helps us better understand the patchworked development of the EU and its legal order; it also helps us appreciate what actions were necessary to make the European Court work in the first place. Like any judicial institution ensconced in an uncertain process of political development, the fledgling ECJ risked being starved of cases, being ignored by citizens and civil society, and having its rulings infringed by the inertia or intransigence of national governments. Convinced Eurofederalists like Catalano could not sit idly by in Luxembourg and will a supranational legal order into being. Constrained as institutional insiders, they could not passively presume to “have history on their side.”<sup>110</sup> Instead, they had to *make* history by rolling up their sleeves and engaging in various forms of legal mobilization beyond and outside the ECJ.

Entrepreneurs like Catalano first had to invent an institutional infrastructure – the preliminary reference procedure – that could interlink the ECJ with domestic “compliance constituencies”<sup>111</sup> – such as citizens, interest groups, legal professionals, and national courts. Once they embedded this infrastructure within the Treaty of Rome, Euro-lawyers soon realized that they could not rely on a functionalist faith that “if you build it, they will come.” Instead, they had to blur the boundaries between their institutional role as judges and their social role as members of civil society to catalyze demand for European justice. They crafted favorable legal commentaries, founded and participated in Euro-lawyers’ associations, and constructed the necessary test cases that could gradually embed national courts into a federated network of European courts.<sup>112</sup> They had to forge the lifeblood of the European legal order and imprint its skeletal infrastructure with a human face.

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<sup>109</sup> J Weiler, ‘10 Good Reads 2022’ (*EJIL:Talk*, 2 December 2022) < [www.ejiltalk.org/10-good-reads-2022/](http://www.ejiltalk.org/10-good-reads-2022/)>.

<sup>110</sup> As Albert Hirschman has written, “people enjoy and feel empowered by the confidence, however vague, that they ‘have history on their side’.” A Hirschman, *The Rhetoric of Reaction* (Cambridge, Harvard University Press, 1991) 158.

<sup>111</sup> K Alter, *The New Terrain of International Law: Courts, Politics, Rights* (Princeton, Princeton University Press, 2014) 19.

<sup>112</sup> On the role of lawyers as “boundary-blurbers” and architects of transnational legal change, see: S Liu, ‘Globalization as Boundary-Blurring: International and Local Law Firms in China’s Corporate Law Market’ (2008) 42 *Law & Society Review* 771.

None of these efforts were preordained to succeed in the long-run, and even in the short-run Euro-lawyers hit their fair share of setbacks. What distinguished the more impactful legal entrepreneurs like Nicola Catalano was the missionary zeal that propelled them to learn from their frustrations and to reinvent themselves for the cause of European legal integration. Ideationally, these pioneers were *leopards*, never changing their spots when it came to their drive to unite European states through law. This was the *fil rouge* that kept individuals like Catalano going in the face of failure. Yet, practically these jurists were *chameleons*, pragmatically modifying their actions, developing new strategies, and switching roles in pursuit of their commitments. This was the mutability that enabled Nicola Catalano to overcome his own shortcomings and to leave a definitive mark on the development of a European community based on the rule of law.