CHAPTER SEVEN

EURO-LAWYERING GOES PUBLIC

Interpretive Mediation and the Politics of Compliance

> *The ruling handed down yesterday by the European Court of Justice in Luxembourg . . . [is] even more disruptive than expected, to the point of sweeping away all of the anachronistic organization of labor on Italian ports . . . [and] fully endorsing the position advocated by the Genoese law firm of Giacomini and Conte.*
>
> —*Il Sole-24 Ore*, December 11, 1991[1]

> *Do they really think they'll be able to dismantle our union on the basis of a ruling from Luxembourg? After all, it would be quite the problem, a huge socio-political clash. Do they want to get into it?*
>
> —Dockworkers on the Port of Genoa, December 11, 1991[2]

7.1 WHEN WAR IS WAGED ON EUROPEAN LAW

In normal times, Paride Batini did not like talking to journalists. But 1992 was not a normal year for the port city of Genoa, so the charismatic leader of the city's dockworkers' union took to the press to issue a threat: "The port appears headed towards an ever-more inevitable clash whose seriousness is without precedent … if forced, we will defend ourselves, in concrete form."[3] Batini's pugnaciousness betrayed newfound vulnerability: a few months earlier, national law protecting his union's control over port labor was rebuffed by a faraway European Court. Newspapers soon predicted a "war" that would "bring Genoa to its knees."[4]

[1] Dardani, Bruno. 1991. "La Corte di Lussemburgo Spazza il Monopolio del Lavoro Nei Porti." *Il Sole-24 Ore*, December 11, p. 11.
[2] Rizzi, Massimo. 1991. "CULMV: 'Lavoro, Non Sentenze'." *Il Lavoro*, December 11.
[3] Valentino, Piero. 1992. "Genova, Da La Spezia Un Attacco Ai Camalli." *La Repubblica*, June 14.
[4] Minella, Massimo. 1992. "Genova in Ginocchio, Camalli e Camionisti Assediano La Città." *La Repubblica*, October 15.

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Two decades later and 500 km to the south, a language of contention[5] surfaced anew. "This is a declaration of war!" shouted one hundred farmers before the city hall in Bari, "and we're ready to fight." In the rural hinterlands, protesters blocked highway traffic and triggered a police roundup.[6] Their anger targeted a decree implementing a European decision mandating the eradication of olive trees suspected of being infected by a deadly pathogen. Conspiracy was in the air, and tips began flooding local police that the researchers who diagnosed the disease had deliberately infected the plants. Warrants were drawn up, the scientists were called in for questioning, and their computers were confiscated.[7]

As we will see, these contentious events produced remarkably divergent legacies of compliance and court-driven change. Yet both were triggered by similarly disruptive efforts to reform local practices by mobilizing European law. As judicial policymaking and international law have expanded since the 1990s, these types of controversies have become more frequent, fueling backlash to polities like the European Union (EU) and courts like the European Court of Justice (ECJ). Some observers even posit the dawn of a populist era threatening to unravel the judicialization of politics. In this chapter and in Chapter 8, I problematize this view and evaluate the capacity of lawyers to serve as brokers of compliance when controversy erupts. By tracing how Euro-lawyering can adapt to moments of heightened contestation of judicial policymaking, I illuminate how legal entrepreneurs can exploit controversy and social mobilization to steer it toward compliance or toward defiance.

To do so, these pages abandon the domain of everyday judging, concealed litigation, and big, slow-moving evolutions for what William Sewell calls *eventful temporalities*: a "relatively rare subclass of happenings that significantly transform [social] structures."[8] We are now in the rapidly shifting world of breaking news, protest and counterprotest, and the public rush to "make sense of the ruckus."[9] Lawyers intent

[5] Tarrow, Sidney. 2013. *The Language of Contention: Revolutions in Words, 1688–2012*. New York, NY: Cambridge University Press.

[6] "Il Tar del Lazio blocca le ruspe, ma la rabbia dei contadini non si placa." *Lecce-News24.it*, October 13, 2015.

[7] Abbott, Alison. 2015. "Italian Scientists Vilified in Wake of Olive-Tree Deaths." *Nature*, June 1, 2015.

[8] Sewell, William. 2005. *Logics of History: Social Theory and Social Transformation*. Chicago, IL: University of Chicago Press, at 100.

[9] Cramer, *Politics of Resentment*, at 35, 168–169.

on sustaining judicial policymaking and Europeanization in these conditions cannot fall back solely on behind-the-scenes ghostwriting. Rather, they must go public and assume an additional political role: that of *interpretive mediators* in the public sphere.

To set the analytic stage for for this chapter and Chapter 8, Section 7.2 theorizes how moments of contentious politics can forge collective identities premised on obedience or disobedience of the law. It then outlines a comparative sequential approach to trace how the politics of lawyers can tip the scales toward one outcome over the other. In so doing, I challenge the assumption that "revolts" and "backlashes"[10] targeting international laws and courts are inherently regressive and destined to exacerbate noncompliance. For contentious politics are mutable, and under certain conditions backlash can counterintuitively expand opportunities for legal mobilization and judicial policymaking that is more socially embedded, publicly engaged, and ultimately "real"[11] to communities of stakeholders.

7.2 LEGAL MOBILIZATION AND CONTENTIOUS COMPARISONS

Through the 1990s, the conventional wisdom about the judicial construction of Europe was that it proceeded apace because it was sheltered by the "mask and shield" of the law.[12] Judicial policymaking transformed Europe because it unfolded as a "quiet revolution" and a "less visible constitutional mutation."[13] The gradualism of judicial decisions clothed in technocratic garb rendered them difficult to detect and to politically contest. The ECJ's transformative judgments were handed down in yawn-inducing cases on the regulation of cheeses and the shape of wine bottles.[14] In short, Europe's political development through law hinged on lawyers and judges banishing their agency from public scrutiny.[15]

[10] Rasmussen, "Present and Future European Judicial Problems"; Voeten, "Populism and Backlashes against International Courts"; Turnbull-Dugarte and Devine, "Can EU Judicial Intervention Increase Polity Scepticism?"
[11] Vanhala, *Making Rights a Reality?*
[12] Burley and Mattli, "Europe before the Court," at 72–73.
[13] Weiler, "Transformation of Europe," at 2453; Weiler, "Quiet Revolution."
[14] Maduro, Miguel Poiares. 1998. *We the Court: The European Court of Justice and the European Economic Constitution*. New York, NY: Hart.
[15] Vauchez, "Force of a Weak Field," at 130.

These efforts were bound to provoke controversy sooner or later. Indeed, in the past two decades scholars have made a 180-degree turn. Instead of probing how judicial policymaking hides from politics, they have pivoted to how politics unmasks and increasingly protests judicialization.[16] First, as national courts, the ECJ, and the EU accrue authority and engage in expansive policymaking, politicization has followed suit, including "the growing salience of European governance … polarisation of opinion, and … expansion of actors and audiences engaged in monitoring EU affairs."[17] Second, as "political awareness of the outcomes of integration through law has grown significantly," recalcitrant policymakers and interest groups "have become more skillful in penetrating the shield of law."[18] A "permissive consensus" supportive of integration has given way to the "constraining dissensus" of populist politics.[19] In particular, the judicial construction of Europe "reinforce[s] local populist mobilization narratives"[20] because it can be cast as an "external interference" protecting elite interests and as "zero-sum," in that it "increase[s] awareness and understanding among citizens regarding the sovereignty-diluting effects of EU integration."[21] Finally, these narratives render citizens prone to protest, emboldening governments and supreme courts to revolt against the ECJ,[22] provoke a "judicial retreat,"[23] and erode the EU's capacity to govern through

16 Zürn, "Opening up Europe," at 164; Blauberger and Martinsen, "Court of Justice in Times of Politicisation."

17 Zürn, "Opening up Europe," at 166; Schmitter, Philippe. 2009. "On the Way to a Post-functionalist Theory of European Integration." *British Journal of Political Science* 39(1): 211–215, at 211–212.

18 Blauberger and Martinsen, "Court of Justice in Times of Politicisation," at 395.

19 Hooghe and Marks, "Postfunctionalist Theory of European Integration."

20 Voeten, "Populism and Backlashes against International Courts," at 407.

21 Turnbull-Dugarte and Devine, "Can EU Judicial Intervention Increase Polity Scepticism?" at 7. See also: Blauberger, Michael, and Susanne Schmidt. 2017. "Free Movement, the Welfare State, and the European Union's Over-Constitutionalization." *Public Administration* 95: 437–449.

22 Imig, Doug, and Sidney Tarrow. 2000. "Political Contention in a Europeanising Polity." *West European Politics* 23(4): 73–93; Rasmussen, "Present and Future European Judicial Problems"; Madsen, Mikael Rask, Henrik Palmer Olsen, and Urška Šadl. 2017. "Competing Supremacies and Clashing Institutional Rationalities: The Danish Supreme Court's Decision in the *Ajos* Case and the National Limits of Judicial Cooperation." *European Law Journal* 23: 140–150; Madsen et al., "Backlash against International Courts"; Hofmann, Andreas. 2018. "Resistance against the Court of Justice of the European Union." *International Journal of Law in Context* 14: 258–274.

23 Conant, "Failing Backward?"

law. In this view, the EU typifies a broader wave of backlashes foreshadowing a "dejudicialization of international politics."[24]

This emergent consensus perceptively highlights that "judicialization should not be considered a teleological process."[25] Ironically, it also risks trading one teleology for another. Treating politicization, protest, and backlash as "regressive contentious politics" – and asking how much targeted institutions are constrained or corroded – ignores how contentious events open multiple opportunities for agency and change.[26] After all, elite-driven or concealed processes of judicial policymaking are no panacea – they have serious limits of their own. The previous chapters revealed that as a "quiet revolution,"[27] the judicial construction of Europe arguably proved *too* quiet, leaving EU law opaque to citizens, civic associations, and even judges who could otherwise mobilize it. From this street-level viewpoint, public controversies not only provide kindling for backlash; they also open opportunities to "vernacularize"[28] EU law and make it tangible to a broader array of prospective "compliance constituencies."[29] Indeed, those who have dedicated their lives to studying cycles of contentious mobilization emphasize that their outcomes are more contingent than predetermined,[30] as people are forced to negotiate "which ideas are considered 'sensible,' which constructions of reality are seen as 'realistic,' and which claims are held as 'legitimate.' "[31]

From this alternative perspective, when recalcitrant actors organize contentious backlash to laws or judicial decisions, they constitute critical junctures where "structural … influences on political action are significantly relaxed for a relatively short period."[32] As mobilization

[24] Abebe, Daniel, and Tom Ginsburg. 2019. "The Dejudicialization of International Politics?" *International Studies Quarterly* 63(3): 521–530.
[25] Ibid.
[26] Alter and Zürn, "Theorising Backlash Politics," at 740.
[27] Weiler, "Quiet Revolution."
[28] On this process of translation and vernacularization more broadly, see: Merry, *Human Rights and Gender Violence*, at 193–194; Simion, Kristina. 2021. *Rule of Law Intermediaries: Brokering Influence in Myanmar*. New York, NY: Cambridge University Press.
[29] Alter, *New Terrain of International Law*, at 19.
[30] For instance, see: Tarrow, Sidney. 1989. *Democracy and Disorder: Protest and Politics in Italy, 1965–1975*. New York, NY: Oxford University Press; McAdam et al. 2001. *Dynamics of Contention*. New York, NY: Cambridge University Press.
[31] De Wilde, Pieter, and Michael Zürn. 2012. "Can the Politicization of European Integration Be Reversed?" *Journal of Common Market Studies* 50: 127–153, at 143.
[32] Capoccia and Kelemen, "Study of Critical Junctures," at 343.

spills over from the courtroom to the public sphere, protest and public controversy broadens participation from a small network of institutional insiders to an expansive web of citizens, journalists, civic associations, and politicians. As people begin questioning the local practices that they previously took for granted, they can reshape their orientations to public institutions and the law.[33] Legal rules are discovered and their political salience deepens during moments of contentious politics,[34] and consequently so does public demand for ways to frame the prospect of socio-legal change.[35] This opens an opportunity to wage what Frank Fisher calls a "politics of local knowledge":[36] public advocacy aimed at reconciling people's quotidian objectives, expectations, and loyalties with disruptive laws and court decisions.

Enclosed within courthouses and banned from launching media-savvy public relations campaigns, judges are ill-suited to this task. But as mediatory actors, Euro-lawyers are uniquely positioned to wage a politics of local knowledge. Provided that they supplement strategic litigation with public advocacy, lawyers gain a political opportunity to mobilize as "interpretive mediators."[37] They can reconcile local narratives with newfound knowledge of European laws to promote

[33] Brubacker, Rogers. 1994. "Rethinking Nationhood." *Contention* 4: 3–14; Sewell, William. 1996. "Historical Events as Transformations of Structures: Inventing Revolution at the Bastille." *Theory and Society* 25(6): 841–881; Beissinger, Mark. 2002. *Nationalist Mobilization and the Collapse of the Soviet State*. New York, NY: Cambridge University Press, at 147–199.

[34] See: Zürn, Michael. 2014. "The Politicization of World Politics and Its Effects." *European Political Science Review* 6: 47–71, at 48–50; Hooghe, Liesbet, and Gary Marks. 2013. "Politicization." In *The Oxford Handbook of the European Union*, Erik Jones, Anand Menon, and Stephen Weatherill, eds. New York, NY: Oxford University Press.

[35] Frames constitute "schemata for interpretation," and framing processes are often essential for social mobilization: Snow, David, and Robert Benford. 1988. "Ideology, Frame Resonance, and Participant Mobilization." *International Social Movement Research* 1: 197–217.

[36] Fisher, *Citizens, Experts, and the Environment*.

[37] In Fisher's conception, "the postpositivist expert must function as an interpretive mediator operating between the available analytical frameworks of social science and competing local perspectives … Given the reduced distance between the experts and the citizens, the role of both can be redefined. In effect, whereas the citizen becomes the 'popular scientist,' the analyst takes on the role of a 'specialized citizen.'" See: Ibid., at 80.

compliance and cultivate a legal consciousness that blurs the boundaries pitting lived experience against transnational legality.[38]

The impact of this strategy, however, is contingent upon lawyers "play[ing] a role in creating their own legal opportunities"[39] in a well-timed sequence. First, by mobilizing clients and ghostwriting a national court's referral to the ECJ, lawyers can convert a salient but intractable local controversy into a judicially resolvable dispute at the European level. As first movers, Euro-lawyers can control the timing of legal mobilization to blindsight potentially recalcitrant actors and take advantage of favorable shifts in the political climate. By then working their social embeddedness to relocalize a judicial ruling and mobilize the local press, lawyers can anticipate, promote, and "amplify the impact of judicial decisions"[40] to preempt backlash. Conditional upon mobilizing quickly in a context with some diffuse support for a supranational intervention, contentious politics amplify lawyers' capacity to rally local stakeholders into compliance constituencies. A politics of backlash might then backfire, broadening "the radiating effects of courts"[41] by spurring citizens and interest groups to claim European laws and rights they previously ignored.

I empirically illustrate this argument by comparing the two explosive controversies opening this chapter, which sparked litigation before the ECJ and contentious backlash: the 1991/1992 *Port of Genoa* case (in this chapter), which quashed the monopoly rights over port labor of a centenarian union of dockworkers, and the 2015/2016 *Xylella* case (in Chapter 8), which mandated the eradication of thousands of centenarian olive trees across Puglia. While equally contentious, *Port of Genoa* produced a legacy of Europeanization and compliance whereas *Xylella* undermined the EU's legal authority and entrenched noncompliance. In the language of Chapter 6, *Port of Genoa* created a "hot spot" of European legal mobilization and judicial policymaking, whereas *Xylella* deepened a "cold spot" instead. How can we assess if lawyers lent a hand in tipping the scales?

To answer, I combine comparison, process tracing, and the triangulation of evidence. First, I draw upon the case selection logic known

[38] Liu, "Globalization as Boundary-Blurring."
[39] Vanhala, "Legal Opportunity Structures," 525.
[40] Hamlin, Rebecca. 2016. "'Foreign Criminals,' the Human Rights Act, and the New Constitutional Politics of the United Kingdom." *Journal of Law & Courts* 4: 437–461, at 458.
[41] Galanter, "Radiating Effects of Courts."

as the "methods of agreement and difference."[42] I compare *Port of Genoa* and *Xylella* because these otherwise similar cases witnessed divergent legacies of compliance and Europeanization that covary with whether Euro-lawyers mobilized public support via interpretive mediation. I then buttress this comparison by tracing the sequence of events and "entities engaging in activities" in each case that exacerbated backlash or steered contention toward compliance.[43] "By fusing these two elements, [this] comparative sequential method"[44] facilitates linking Euro-lawyering to variation in the outcome of backlash politics. Finally, to reconstruct the rapidly unfolding events animating contention in each case, I account for the "potential bias of evidentiary sources" by "gathering diverse and relevant evidence."[45] In particular, I triangulate between dozens of on-site interviews, court records, public opinion data, and historical newspaper coverage spanning across the ideological spectrum.[46]

The resulting case comparison is summarized in Figure 7.1. Both the *Port of Genoa* and *Xylella* cases emerged as social controversy and political gridlock triggered attempts to mobilize EU law and judicial review by the ECJ. In both cases, the result was the application of EU laws already in the books: these cases hardly constitute "turning points in the development of the law."[47] Yet complying with these rules meant massive disruption to deeply-rooted local practices, so unsurprisingly, in both instances recalcitrant interest groups mobilized contentious backlash to thwart compliance. What made the difference is that whereas in *Port of Genoa* Euro-lawyers preempted backlash via

42 Pavone, "Selecting Cases for Comparative Sequential Analysis."

43 Beach, Derek, and Rasmus Pedersen. 2019. *Process-Tracing Methods*. Ann Arbor, MI: University of Michigan Press, at 99–101.

44 Falleti, Tulia, and James Mahoney. 2015. "The Comparative Sequential Method." In *Advances in Comparative-Historical Analysis*, James Mahoney and Kathleen Thelen, eds. New York, NY: Cambridge University Press, at 225–226; 236.

45 Lustick, Ian. 1996. "History, Historiography, and Political Science: Multiple Historical Records and the Problem of Selection Bias." *American Political Science Review* 90: 605–618, at 616; Bennett, Andrew, and Jeffrey Checkel (eds.). 2015. *Process Tracing: From Metaphor to Analytic Tool*. New York, NY: Cambridge University Press, at 21.

46 From left-wing outlets like *Il Lavoro* and *La Repubblica* to the more conservative *Il Sole-24 Ore* and *Il Giornale*, to those with local knowledge, like Genoa's *Il Secolo XIX* and Bari's *La Gazzetta del Mezzogiorno*.

47 Vauchez, Antoine. 2017. "EU Law Classics in the Making." In *EU Law Stories: Contextual and Critical Histories of European Jurisprudence*, Fernanda Nicola and Bill Davies, eds. New York, NY: Cambridge University Press, at 26–29.

	Possible explanatory variables ↓					
Cases and outcomes ↓	**A:** ECJ solicited to resolve a local controversy?	**B:** ECJ decision disrupts existing EU law?	**C:** ECJ decision disrupts salient local practices?	**D:** ECJ decision sparks contentious backlash?	**E:** Euro-lawyers wage proactive litigation?	**F:** Euro-lawyers mobilize as interpretive mediators?
Case 1– *Port of Genoa*: Europeanization and compliance	*Yes*	*No*	*Yes*	*Yes*	***Yes***	***Yes***
Case 2– *Xyella*: Euroskepticism and noncompliance	*Yes*	*No*	*Yes*	*Yes*	***No***	***No***

Figure 7.1 Comparative case study design for the analysis of the *Port of Genoa* (Chapter 7) and *Xylella* (Chapter 8) cases

proactive litigation and media-savvy public advocacy, *Xylella* involved a reactive group of nationally-oriented lawyers whose litigation efforts emboldened civil disobedience.

7.3 THE *PORT OF GENOA* CASE

The year 1992 was always supposed to be a moment of rebirth for Genoa. But it was not supposed to happen contentiously via European law; it was supposed to happen festively via Christopher Columbus.

The timing could have hardly been better: the year coincided with Columbus' 500th anniversary, and the city was hosting the World Expo. For the occasion, a massive urban renewal project was commissioned. Renzo Piano – the city's most famous architect – was tasked with rebuilding the abandoned warehouses on the old port's docks and constructing Europe's largest aquarium. As William Weaver chronicled in *The New York Times*, "it is not just another world's fair. . . . The old focus of the city would be restored; Genoa's heart would beat again."[48]

Yet for over a century, what propelled Genoa into rivalry with Marseille and Barcelona over control of Mediterranean trade was not the old port, but the industrial port just to its west: some 25 kilometers' worth of cranes, containers, heaps of coal and steel, gigantic ships, and internal highways and railways spanning from the city's medieval lighthouse, the *Lanterna*, westward to the town of Voltri. And it was in this setting that, while Expo festivities unfolded on the old port, a clash between the liberalizing thrust of European law and the protectionist practices of local labor activists ensued.

7.3.1 A Crisis Engulfs a "Utopia That Would Make Marx Proud"

The "critical antecedents"[49] of the *Port of Genoa* case can be traced to the economic decline of Italy's largest industrial port and the political gridlock that frustrated reform efforts.

[48] Weaver, William. 1992. "Genoa Holds an Expo, Too." *The New York Times*, June 7, 1992, p. 8.

[49] By "critical antecedents," I mean background conditions that combine with people exercising their agency in subsequent events to produce divergent legacies of social change. See: Slater, Dan, and Erica Simmons. 2009. "Informative Regress: Critical Antecedents in Comparative Politics." *Comparative Political Studies* 43(7): 886–917, at 889.

Life had not always been difficult on Genoa's docks. From the 1950s through the early 1970s, the port witnessed remarkable expansion and became a motor of Italy's postwar "economic miracle."[50] With its geographically favored location at the southern tip of the "industrial triangle" comprising Turin and Milan, demand for imports from these industrial hinterlands fueled the port's economic boom. From 1950 through 1973, total loaded and unloaded goods increased by 669 percent (from 8.3 to 61.5 million tons).[51] Growth was driven primarily by imports of coal and oil alongside steel destined for Lombardy's steelworks industry (see Figure 7.2).[52] The boom in traded goods went hand-in-hand with important innovations. Genoa was the first Mediterranean port to invest in the infrastructure for the shipping and handling of containers, and in 1971 only Rotterdam surpassed Genoa in common market container traffic.[53] Burgeoning employment was another spillover effect: from 1950 to 1964, the number of dockworkers grew from 3,000 to 8,059.[54]

Yet the global recession and stagflation of the 1970s began to turn the economic tide against Genoa. From 1973 through 1990, loaded and unloaded goods dropped by 29.6 percent (from 61.5 to 43.6 million tons; see Figure 7.3).[55] As the center-left newspaper *La Repubblica* lamented, "to write about the woes of Genoa has almost become a literary genre."[56] Even more worrying was the gridlock frustrating a political response. At the Consorzio Autonomo del Porto (CAP) – the state authority responsible for the port's management since 1903[57] – the crisis became such a "hot potato" that when its longtime president's mandate concluded in 1981, nobody wanted to serve as his replacement, forcing him to reluctantly serve another term.[58] In Parliament, the mantra of "port reform" proved a nonstarter: ten different drafts of port reform legislation were drawn up from the

[50] Ginsborg, Paul. 2003. *A History of Contemporary Italy*. New York, NY: Palgrave Macmillan, at 210–253.
[51] Comune di Genova. 2003. *I Numeri e La Storia del Porto di Genova*. Genoa: Sistema Statistico Nazionale, at 145.
[52] Ibid., at 12; 22.
[53] Ibid., at 13.
[54] Musso, Bruno. 2008. *Il Porto di Genova*. Turin: Celid, at 21.
[55] Comune di Genova, *Numeri e La Storia del Porto di Genova*, at 145.
[56] Bozzo, Gianni Baget. 1991. "Il Primato di Genova." *La Repubblica*, May 24.
[57] Musso, *Porto di Genova*, at 18.
[58] Ibid., at 45.

Figure 7.2 The port in its prime: (a) the "Ponte Libia" container terminal – the first in the Mediterranean, 1969; (b) Genoese dockworkers, 1960s
Source: Comune di Genova (2003: 20; 315).

1970s through 1991, but none got past the drawing board.[59] "Years of statements and debates over port reform," port operators decried, "were sterile from the start."[60]

What were the sources of economic decline in Genoa, and why was a policy response so politically intractable? There is little doubt that external macroeconomic forces played a large role. As Saskia Sassen has written, the shift to services and finance underlying postwar globalization created new "geographies of centrality" and "hierarchies

[59] Dardani, Bruno. 1991. "Alla Camera la legge antimonopoli." *Il Sole-24 ore*, July 25, p. 10.
[60] Dardani, Bruno. 1991. "Gli Utenti all'attacco." *Il Sole-24 ore*, July 25, p. 10.

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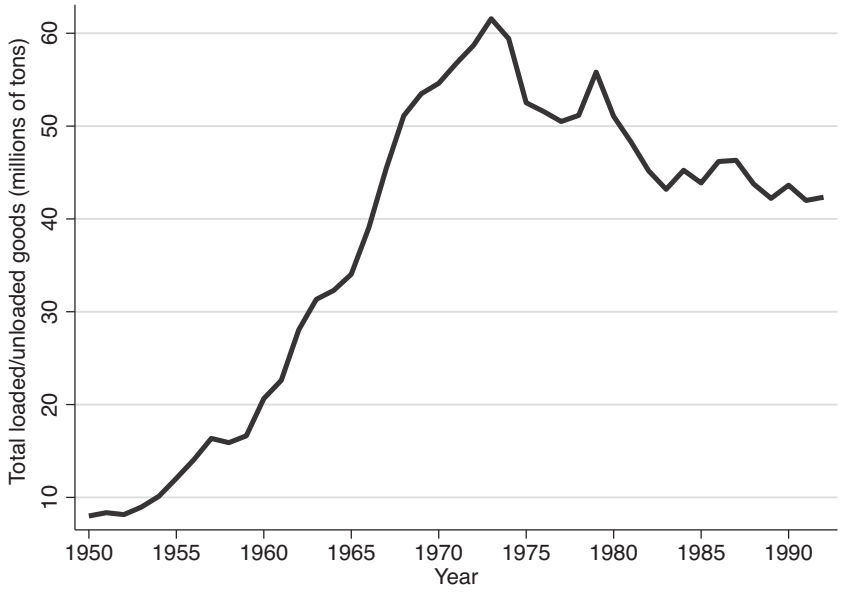

Figure 7.3 Total loaded and unloaded goods in the Port of Genoa, 1950–1992
Source: Comune di Genova (2003: 144).

of cities," wherein "a multiplicity of formerly important manufacturing centers and port cities have lost functions and are in decline."[61] This analysis was frequently invoked by the local press, which described Genoa as "a city that has departed the industrial age without entering the postindustrial age."[62] Yet there is also one critical cause of the decline of Genoa's competitiveness that is innate to local labor politics and that explains why reform efforts proved intractable: the monopolistic organization of dockwork by the state-sanctioned labor union, the *Compagnia Unica Lavoratori Merci Varie* (CULMV, or "exclusive labor union for various goods").

The CULMV's roots run deep through Genoa's history. The statute founding its progenitor dates back nearly seven centuries to 1340.[63] Known in Genoese dialect as *camalli*, dockworkers became the objects of folklore and served as the oft-romanticized embodiments of the city's history. Residents were well aware of how "the port and the entire

[61] Sassen, Saskia. 1994. *Cities in a World Economy*. Thousand Oaks, CA: Pine Forge Press, at 4–5.
[62] Bozzo, "Primato di Genova."
[63] Costamagia, Giorgio. 1965. *Gli Statuti della Compagnia dei Caravana del Porto di Genova, 1340–1600*. Turin: Accademia della Scienza.

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city depended upon the *camalli* … sooner or later, all needed to settle their debts with them: the Republic of Genoa, the French, the Savoy, the Kingdom of Italy, the fascist regime, the second and the third Republic."[64] "For seven hundred years" – one journalist concludes – only the *camalli* and a few privileged others could "live the perfume and mystery of the sea."[65] The CULMV's leaders (or *console*) were similarly hailed as protagonists in Genoese historiography, imbuing their labor union with a classic "charismatic authority."[66] In particular, the *console* from 1984 through 2009, Paride Batini, became a "romantic symbol,"[67] a larger-than-life figure "legendary for his intransigence and for his epic look: Jeans, dark turtleneck, Eskimo-style coat, a slender build, and the air of an American actor."[68]

With time, the CULMV's social control of port labor was codified into law by Article 110 of the 1942 Italian Navigation Code.[69] This outcome – and the CULMV's political power – stemmed from a history of working class contention. With their meeting hall adorned with portraits of Marx, Lenin, and Guido Rossa, the labor union's members had organized one of Italy's first major labor strikes in 1900.[70] Batini had been dubbed "the last communist" by prominent politicians and as "Genoa's Mao Tse Tung" by the local press.[71] It thus did not take long for the *camalli* and "their striped shirts … [to become] a symbol, a postcard of 'Red' Genoa": a fraternal order whose *lingua franca* remains a thick Genoese dialect[72] and whose collective pride lies in having "played a decisive role in the history of [Italy]." As one of their retired old guard explained, "it's true, here we are all communists. We know how to give life a sense of purpose."[73]

64 Musso, Bruno. 2017. *Il Cuore in Porto*. Milan: Mursia Editore, at 20, 23.
65 Cevasco, Francesco. 2009. "Tra i finti docks dove i camalli sono quasi spariti." *Corriere della Sera*, November 8, p. 35.
66 Weber, *Economy and Society*, vol. II, at 1111–1123.
67 Marchesiello, Michele. 2010. *La Città Portuale*. Rome: Aracane Editrice, at 153.
68 Imarisio, Marco. 2009. "Morto Batini, il 'camallo' che sfidava la storia." *Corriere della Sera*, April 24, p. 21.
69 Under Article 110 of the Navigation code, the loading, unloading, shipment, storage, and movement of materials goods within the port were reserved to dockwork companies whose members had (under Articles 152 and 156 of the Regulation on Maritime Navigation) to also be of Italian nationality. See: Regio Decreto 30 marzo 1942, no. 327.
70 Musso, *Porto di Genova*, at 18.
71 Imarisio, "Morto Batini."
72 Musso, *Porto di Genova*, at 17.
73 Cevasco, "Tra i finti docks."

Sense of purpose, indeed! For at its apex, the CULMV could exercise decisive influence over national politics. Consider the so-called events of Genoa of 1960. Giuseppe Giacomini – a Genoese lawyer whom we will return to shortly – was twelve years old when in 1960 the *camalli* took to the streets to oppose Prime Minister Tambroni's decision to allow the neofascist Movimento Sociale Italiano (MSI) party to hold its annual congress in Genoa.[74] The protests culminated in a "revolutionary moment" that brought down Tambroni's parliamentary coalition.[75] Giacomini recalls: "Some people died. The dockworkers were very driven. They waited for the police cars.... The police jeeps would drive up at high speed, the *camalli* would wait for them, with metal hooks, they hooked them from below as they sped by, and they overturned them! ... they were difficult people to control."[76]

The CULMV leveraged its monopoly rights and pugnacious reputation to its bargaining advantage. Special cranes had to be developed with seating for two workers instead of one, because the CULMV "imposed the presence of a number of laborers [for a given task] that was double that of other ports."[77] Shipments of liquid, which are less labor intensive to handle than dry goods, were charged as if they were dried goods. When it would rain, "all work would be halted, in the Port of Genoa. And [the *camalli*] were paid all the same."[78] CULMV dockworkers were allegedly paid 172 percent more per shift than the average worker at other Italian ports, with their shift capped at six hours instead of eight.[79] And most fatefully of all, union membership was strictly limited to Italian citizens.[80]

While for some the CULMV represented a sort of "utopia that would make Marx proud,"[81] its bargaining victories exacerbated Genoa's competitive disadvantage in the European common market. Even left-wing newspapers lamented how the "monopoly of dockwork at above-

[74] Benna, Alessandro, and Lucia Compagnino. 2005. *30 Giugno 1960*. Genoa: Frilli.
[75] Musso, *Porto di Genova*, at 17.
[76] Interview with Giuseppe Giacomini, November 2, 2016.
[77] Interview with Alessandro Vaccaro, president of the Genoa Bar Association, November 2, 2016 (in-person).
[78] Interview with Giuseppe Giacomini, November 2, 2016.
[79] Conte, Giuseppe, and Giacomini, Giuseppe. 1990. "Memoria ai sensi dell'art. 20 del protocollo sullo statuto della Corte di Giustizia C.E.E." September 20, Genoa, IT, p. 4. Shared from Giuseppe Giacomini's personal archives.
[80] See: Case C-179/90, *Merci Convenzionali Porto di Genova* v. *Siderurgica Gabrielli ("Port of Genoa")* [1991], ECR I-5889, at 5925.
[81] Interview with Giuseppe Giacomini, November 2, 2016.

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market rates" had "caused the Port to miss out on the transport of containers."[82] As Alessandro Vaccaro – the president of Genoa's bar association – recalls, "there were shippers … who preferred to dock in Rotterdam and then proceed [south] by land rather than to come to Genova, which was more expensive."[83] Local journalists claimed that efforts to honor shippers' request to open dockwork to outside competition[84] might allow the "Port of Genoa to really breathe in the air of renewal and rebirth."[85] The socialist president of the port authority (CAP) – Rinaldo Magnani – similarly stressed that "Genoa has thus remained the only port where, due to a total opposition by the CULMV, any experiment [for reform] has drowned before even being attempted."[86] Having repeatedly demonstrated their capacity to project their pugnacious political influence well beyond the city limits, "nothing and no one [was] able to break their monopoly."[87]

By the early 1990s, the Port's economic situation had become unsustainable. In 1991, it lost millions of dollars in revenue due to a decline of 200,000 tons of transported goods. In spite of multiyear state subsidies of over $800.5 million, the Port was on the brink of bankruptcy.[88] In just a couple of decades, the Port of Genoa had degenerated from motor of the postwar economic miracle into "the voice of the national debt."[89]

7.3.2 Mobilizing the Ghostwriter's Repertoire

It was in this historical moment that two second-generation Euro-lawyers decided to turn to Europe. The late Giuseppe Conte[90] was an established Genoese civil lawyer with iconoclastic inclinations. He believed that when innovative policy solutions to disputes or controversies were foreclosed by national law, they could be opened via

[82] Bozzo, "Primato di Genova."
[83] Interview with Alessandro Vaccaro, November 2, 2016.
[84] Valentino, Piero. 1991. "Gli Industriali Alla Riconquista del Porto di Genova." *La Repubblica*, May 25.
[85] Valentino, Piero. 1991. "Pace d'Agosto a Genova tra Porto e Camalli." *La Repubblica*, August 25.
[86] Dardani, Bruno. 1991. "'I camalli sono un caso nazionale'." *Il Sole-24 ore*, June 13, p. 10.
[87] Bozzo, "Primato di Genova."
[88] Valentino, "Gli Industriali Alla Riconquista"; Valentino, "Pace d'Agosto."
[89] Bozzo, "Primato di Genova."
[90] The lawyer discussed here should not be confused with a fellow lawyer by the same name who would become Prime Minister of Italy in 2018.

European law. A fluent French and Spanish speaker, he held personal connections to Brussels and was a close friend with Enrico Traversa, then a young lawyer at the European Commission who would climb the ranks of its Legal Service. Giuseppe Giacomini was a younger criminal lawyer, who "in one of those contingencies of life" began collaborating with Conte on cases that intersected between their areas of practice. Giacomini was captivated by how his senior colleague "had a way of confronting juridical issues that was completely different from mine and that of all the lawyers that I knew," and he became convinced that mastering European law could represent a "Copernican revolution" for his professional identity and advocacy.[91]

Like the first Euro-lawyers in Chapter 5, Conte and Giacomini were ideationally committed to European integration, drawing inspiration from famous pro-European declarations like the 1941 Ventotene Manifesto. Yet like later generations of Euro-firm lawyers in Chapter 6, Giacomini sought to complement Conte's "cultural passion" for EU law with a more pragmatic "business sense": the conviction that expertise in EU law could provide a competitive advantage in a legal services market saturated with nationally-oriented practitioners.[92]

By 1990 the duo had already pioneered multiple referrals to the ECJ from Genoese courts – the first being the 1982 *Luisi and Carbone* case[93] aimed at liberalizing capital flows in Europe. Like other Euro-lawyers they derived pleasure from exercising their agency: their goal, Giacomini recalls, was "to collaborate in the creation of this new [European legal] system via national jurisdictions … and through that genius institution, that truly supreme chapel of quality that the ECJ has always been." A "provincial approach" to the resolution of social problems, Conte and Giacomini believed, often led to political paralysis and stagnation, leaving EU law as "the only path forward" to promote change.[94] In other words, Conte and Giacomini knew that European judges might well "act when elected officials won't."[95]

In response to the port's economic crisis, the duo thus began to read up on the ECJ's case law concerning public monopolies,

[91] Interview with Giuseppe Giacomini, October 24 and 26, 2017.
[92] Ibid.
[93] Case 286/82, *Luisi and Carbone* v. *Ministero del Tesoro* [1984], ECR 377.
[94] Interview with Giuseppe Giacomini, October 24 and 26, 2017 (via phone).
[95] Frymer, Paul. 2003. "Acting When Elected Officials Won't: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions, 1935–85." *American Political Science Review* 97(3): 483–499.

abuse of dominant market position, and freedom of establishment. These antitrust laws were altogether novel domestically: until October 1990,[96] competition rules were absent from Italian law. Yet thanks to their previous lawyering experience before the ECJ, Conte and Giacomini knew that antitrust rules were an established cornerstone of European law. For instance, under Article 86 of the Treaty of Rome, "any abuse by one or more undertakings of a dominant position within the common market … shall be prohibited." And under Article 90, "Member States shall neither enact nor maintain in force any measure contrary to the rules" of Article 86, even "in the case of public undertakings and undertakings to which Member States grant special or exclusive rights."

"In these conditions," Giacomini recalls, "my partner and I … asked ourselves … if, given a ship … adorned with cranes that could load and unload shipments, it could possibly still be legitimate to mandate the services of the CULMV." Thus the idea of constructing a test case to be referred to the ECJ was born. Yet two difficulties remained. First, Conte and Giacomini had to identify a dispute vividly illuminating the conflicts between EU competition law and local labor practices. Second, they had to find a client willing to take on the city's most powerful labor union. And "in a very politically tense situation, we couldn't find a client willing to raise this issue. They were all scared to raise this issue!"[97] So Conte and Giacomini took the matter into their own hands, proactively pushing the ghostwriter's repertoire to its limits.

A serendipitous opportunity for the Euro-lawyers to exercise their agency emerged in 1988 with a ship named *Wallaroo*. The vessel was carrying a consignment of 5.5 tons of steel worth 6 billion lire ($4.6 million) from Hamburg destined to an Paduan steelworks company: Siderurgica Gabrielli SpA. *Wallaroo* docked in the Port of Genoa on December 22, 1988, and although it was adorned with four cranes and its own crew, it was prevented by Merci Convenzionali SpA (one of the public companies comprising the port authority) from unloading the steel on its own. The *coup de grâce* arrived in early 1989, when the CULMV engaged in a series of strike actions. For three months, the shipment of steel lay frozen on Genoa's docks. And Siderurgica Gabrielli, to whom the steel was due, sued.[98]

[96] See: Legge No. 287 del 10 Ottobre 1990, "Norme per la tutela della concorrenza e del mercato."

[97] Interview with Giuseppe Giacomini, November 2, 2016.

[98] For documentation of these facts, see: Tribunale di Genova, Ordinanza nella causa civile, Merci Convenzionali Porto di Genova SpA contro Siderurgica Gabrielli SpA

This public transcript suggests a rather organic origin of a legal dispute. But the reality is that the suit had been meticulously choreographed by Conte and Giacomini. Given widespread reticence to take on the CULMV, the Euro-lawyers (i) lodged the suit at their own risk, and (ii) devised an ingenious way "sue" the *camalli* without actually suing them. As Giacomini confides in an interview,

> we found a legal case that has a characteristic that has never been written about, but it's really important … we couldn't find a client willing to raise this issue … so we invented the case … we asked Siderurgica Gabrielli to authorize us to raise the legal case at our own risk, as lawyers. That is, not only did we lack a client paying us, but we bore the risk!
>
> We constructed it in the following way. The ship, *Wallaroo*, arrives … we asked Merci Convenzionali, one of the constitutive public companies in the [Port Authority], to unload the ship … to realize this, it was obliged to turn to the CULMV. But the CULMV was on strike! So Merci Convenzionali told us: "No, you have to wait because the ship can't be unloaded, because only the *camalli* can do so, and they're on strike." We replied, "no problem! We can unload on our own, because we are adorned with our own cranes." "You can't do that," they retorted. And so a lawsuit before the Tribunal of Genoa was born.[99]

The Euro-lawyers' timing was also intentional, coinciding with a favorable moment of political reckoning: even as the Port was on the brink of bankruptcy, the *camalli* were engaging in another series of disruptive strikes. But Conte and Giacomini made another key strategic move: they sued Merci Convenzionali – the state-run port authority – rather than the dockworkers. Why?

First, the Euro-lawyers knew that Merci would be more supportive of efforts to solicit the ECJ. Just a couple of years prior in a dispute between Merci and the dockworkers concerning a series of unpaid bills, Merci had suggested that national law protecting the *camalli*'s monopoly rights over port labor contrasted with the Treaty of Rome.[100] Indeed, once the dispute was lodged before the Civil Court in Genoa, Merci's unenthusiastic defense was that its hands were tied by Article 110 of the Navigation Code.[101] Its lawyers ultimately endorsed Conte

(Dimundo, relatore), May 28, 1990, pp. 1–3. Shared from Giuseppe Giacomini's personal archives.

[99] Interview with Giuseppe Giacomini, November 2, 2016.

[100] "CULMV 'torna' a Settembre." *Corriere Mercantile*, July 10, 1991.

[101] Filippo Schiaffini, the director of Merci, stated in September 1991 that "the breaking of the monopoly of port dockworkers unions is an enormous advantage

and Giacomini's argument that a referral to the ECJ would be desirable, and even the *avvocatura dello stato* (state legal service) declined to defend a law that, after all, had been subjected to countless reform efforts in Parliament.[102]

Second, Conte and Giacomini mobilized their expertise to exploit a more favorable legal opportunity structure at the supranational level. They knew that if the *camalli* could be excluded as a party to the domestic dispute, the ECJ's rules of procedure would preclude them from defending themselves in Luxembourg. "This was our own ingenious invention, it must be said," Giacomini recalls with a grin; for when the CULMV "became aware that there had been a preliminary reference to the ECJ that concerned it … it couldn't intervene before the European judges!"[103] By suing the port authority, Conte and Giacomini blindsighted the dockworkers and ensured that all the parties to the suit would support a European intervention before the ECJ and, later, before the local press.

The final obstacle to mobilizing the European Court was the President of the Tribunal of Genoa: Antonino Dimundo. A short man with a "vivacious" character, Dimundo was visibly torn. Tickled by the idea of challenging the CULMV, he was also wary of the political consequences and the impact that might befall his professional reputation. So when Conte and Giacomini ghostwrote a proposed reference to the ECJ, Dimundo cautioned: "I don't know this area of law. I understand what you are asking of me. Make no mistake, counsel, don't make me make a bad impression!" The Euro-lawyers' response sought to assuage these reticences by stressing their linked fate: "Mr. President," Giacomini replied, "I have no incentive to have you make a bad impression because I, too, am building my future in this way."[104]

7.3.3 From Ghostwriting to Public Advocacy

In the end, Dimundo collaborated, referring the case to the ECJ on May 28, 1990. At this point, Conte and Giacomini moved beyond their behind-the-scenes role as ghostwriters and became interpretive mediators in the public sphere. In-between their trips to Luxembourg to argue the case, they preemptively engaged the local press in a "very

for port companies like ours." See: Minella, Massimo. 1991. "Porto aperto ai non-cittadini." *Il Lavoro*, September 20, at 10.

102 "Monopolio in banchina, ultimo atto." *Il Secolo XIX*, July 10, 1991.

103 Interview with Giuseppe Giacomini, November 2, 2016.

104 Interview with Giuseppe Giacomini, October 24 and 26, 2017.

deliberate media strategy" to lay the groundwork for compliance with ECJ's decision. As Giacomini explains:

> Our strategy was legally well-founded, but it was so new that it wouldn't have been understood at first glance … [so through] multiple interviews with Genoese journalists, I tried to explain in simple, clear, and correct terms what the goal of our actions were …[given] the impact this lawsuit would have on public opinion … it was indispensable to work to prepare things ahead of time, and to accompany them after this legal action, which was … charged with cultural, sociological, and political meaning.[105]

While Genoa was a context with diffuse public support for European integration, as we will see, Conte and Giacomini realized it was hardly a foregone conclusion that a court decision disrupting long-standing labor relations would be welcomed. By getting ahead of the forthcoming blitzkrieg of news through a media-savvy framing campaign, the Euro-lawyers decreased the probability that the backlash to come would prompt confusion and rally the public to resist compliance.

This was no straightforward task. Even seasoned journalists had a difficult time understanding the procedures and logics of European law. As the lawsuit was punted to Luxembourg, some journalists incorrectly described the ECJ's Advocate General – a fellow judge who offers a preliminary opinion on how the case might be decided – as a member of the European Community's "public ministry," thereby conjuring up images of an intrusive bureaucracy.[106] Others erroneously claimed that the Advocate General's opinion was "binding" rather than advisory.[107] And even local interest groups, like the CEOs of shipping companies, confessed their lack of knowledge of core EU legal principles like direct effect and supremacy, prompting confusion about whether the ECJ's ruling "would be binding in Italy."[108]

In a context where most local stakeholders lacked a European legal consciousness, the seeds a Euroskeptic revolt were germinating. "In Italy and in Genoa in particular," journalists warned, "these mechanisms of the EEC still strike us as mysterious. And they are

[105] Ibid.
[106] See: "Il pubblico ministero Cee." *Il Giornale*, September 20, 1991; "CULMV alla sbarra." *Corriere Mercantile*, September 19, 1991; Carozzi, Giorgio. 1991. "Eurosberla per Batini e l'organizzazione portuale." *Il Secolo XIX*, September 20, 1991, p. 11.
[107] Minella, "Porto aperto ai non-cittadini"; Carozzi, "Eurosberla per Batini."
[108] Musso, *Porto di Genova*, at 60.

perceived with suspicion."[109] Ominous portrayals of European power politics – "What is circling around the EEC Court? What interests and forces are at play? And to what ends?"[110] – and of an asymmetric war pitting Europe against the dockworkers – "European cannonballs against the CULMV" read one headline[111] – were beginning to emerge in newspapers.

So Conte and Giacomini quickly mobilized the local press to promote clarity, diffuse their view that European law was the only way to overcome bottlenecks to reform, and cast the predicted ECJ judgment as an opportunity for the city's rebirth. In their rhetoric, they tapped preexisting efforts by local newspapers and the national shippers' association to "sensitize public opinion" and "confront the real problems" of the port by "liberating [it] from ideological clashes."[112] The Eurolawyers plainly described their strategy and goals. Their objective had always been "to raise an international lawsuit [and] force the Genoese judiciary to pronounce itself," namely by convincing the city tribunal "to delegate the judgment to the Court of Luxembourg."[113] In speeches before local civil associations they emphasized that "what the national legislator has been incapable of doing will be done by the European Court," for once "the ruling is read out it will enter into force, and it will be immediately binding … rendering inapplicable any law that contrasts with it."[114] Confident of their mastery of EU law by publicizing that they had never lost a case before the ECJ, they presciently predicted the result: "Article 110 on the port reserves will no longer exist," and the dockworkers and port authority will be forced into negotiations to comply with the European Court's ruling.[115]

Giacomini even preemptively rebutted the inevitable protests of the dockworkers. While the CULMV was unlikely to be persuaded via rhetoric alone, his logic was that "if you expect bad news with substantial advance notice, you can begin to prepare yourself … and when it arrives you're probably better able to deal with it."[116] To soften

[109] Malatto, Costantino. 1991. "Cannonate Europee contro la CULMV." *Il Lavoro*, July 31.
[110] *Il Secolo XIX*, "Monopolio in banchina."
[111] Malatto, "Cannonate Europee."
[112] Musso, *Cuore in Porto*, at 159.
[113] *Il Secolo XIX*, "Monopolio in banchina."
[114] "Porto, imminente la decisione CEE." *Il Giornale*, October 4, 1991, p. 22.
[115] Ibid.
[116] Interview with Giuseppe Giacomini, October 24 and 26, 2017.

the forthcoming blow, he underscored to labor-friendly newspapers that they were attacking national law and not the dockworkers, who had merely made the most of the domestic legal regime.[117] And he emphasized that "the dockworkers have nothing to fear, and they know it. They're undoubtedly capable as professionals, so in the free market they surely won't have any problems."[118] The result of this public advocacy was that Giacomini was often the only party to the suit quoted in newspaper coverage. So when the ECJ delivered its judgment on December 10, 1991, most local observers had seen it coming, and newspapers were able to make sense of it.

The European Court's decision crystallized the argument proposed by Conte and Giacomini and broadly endorsed by Merci Convenzionali, the ECJ's Advocate General, and their friend Enrico Traversa, who acted on behalf of the Commission's Legal Service in the dispute. The ECJ held that Article 90 of the Treaty of Rome "precludes rules of a Member State which confer on an undertaking established in that State the exclusive right to organize dockwork and require it for that purpose to have recourse to a dock work company formed exclusively of national workers."[119] In so doing, the Court underscored Europe's interest in the dispute given that the Port of Genoa "constitut[es] a substantial part of the common market," adding that a state-sanctioned dockworkers union was not part of those "services of general economic interest" allowed some leeway from the strict application of EU competition rules.[120]

From the standpoint of black letter law, the decision was an important albeit linear application of the existing case law of the ECJ. This was precisely why Conte and Giacomini had been confidently predicting the outcome in the press. But the domestic policy consequences are hard to overstate: "In one instant," Giacomini recalls, "Article 110 became illegitimate."[121]

The consensus in the local and national press was that the ruling was at once pathbreaking and thoroughly expected. Genoa's leading newspaper, *Il Secolo XIX*, described it as a "Euro-revolution" that was as

[117] Minella, Massimo. 1991. "Imputata la legge, non Batini." *Il Lavoro*, December 11.
[118] Minella, Massimo. 1991. "Una rivoluzione targata Cee." *Il Lavoro*, September 21, p. 8.
[119] See: C-179/90, *Siderurgica Gabrielli* ("Port of Genoa") at operative part, para. 1.
[120] Ibid., at para. 15; operative part, para. 3.
[121] Interview with Giuseppe Giacomini, November 2, 2016.

"predictable" as it was "certainly resounding."[122] "A 'historic' ruling," noted journalists at the left-wing *Il Lavoro*, "but also a ruling we largely anticipated."[123] Leading Euro-lawyers throughout Italy – like Fausto Capelli in Milan – rushed to the press to publish their own elucidations and push for compliance,[124] a strategy soon mimicked by representatives of the European Commission.[125] Should anyone have any remaining questions, Conte and Giacomini wrote their own plain language explanation of the ruling[126] and once again made themselves available for countless interviews. "Why is this judgment so important?" – Giacomini rhetorically inquired as he spoke to the press the day after the ECJ's decision – "Because I've not yet had a minute to stop talking to journalists."[127]

The success of these framing efforts did not hinge solely on promoting knowledge of European law. A key "permissive condition"[128] for the success of Conte and Giacomini's public advocacy was the fact that they were able to mobilize diffuse public support for a European intervention. While admittedly latent and amorphous, tapping into this reservoir of support bolstered the likelihood that the ECJ's intervention would be well received by local stakeholders.

Three complementary forms of evidence point to the mobilization of public support for court-driven reforms. At the narrowest level, the parties to the suit publicly welcomed the intervention with varying degrees of enthusiasm. They argued that the ECJ had bolstered legal certainty and provided a blueprint for reform. The vice president of the national employers' association (Confindustria) underscored that the ECJ ruling "has the virtue of pushing away all the uncertainties

[122] Carozzi, Giorgio. 1991. "In porto finisce il monopolio." *Il Secolo XIX*, December 11; Carozzi, Giorgio. 1991. "Alla Cee picconate al buio." *Il Secolo XIX*, December 11, p. 11.

[123] Minella, Massimo. 1991. "Ecco le picconate della Cee." *Il Lavoro*, December 11.

[124] Capelli, Fausto. 1991. "Porti, alt Cee al monopolio dei camalli." *Il Giornale*, December 11.

[125] Dardani, Bruno. 1991. "Bangemann 'presenta' a Genova il piano Cee per la politica del mare." *Il Sole-24 ore*. December 14, p. 10.

[126] Conte, Giuseppe, and Giuseppe Giacomini. 1991. "Stop Europeo al monopolio nei porti." *Italia Oggi*, December 11, p. 12.

[127] Minella, "Imputata la legge."

[128] According to Soifer, "permissive conditions can be defined as those factors or conditions that change the underlying context to increase the causal power of agency or contingency and thus the prospects for divergence." See: Soifer, Hillel. 2012. "The Causal Logic of Critical Junctures." *Comparative Political Studies* 45(12): 1572–1597, at 1574.

and perplexities … that conditioned political behavior working to reform the Italian port sector."[129] Leading shippers hailed the ruling as "clarifying the rules of the game, which had been costly and confused."[130] The president of the port authority told the press that "Genoa now has a unique opportunity to return to being an essential tool … at the service of the economy of the EEC."[131] Even the leader of the *camalli* – Paride Batini – refrained from directly attacking the ECJ's judgment: "It's about time!" he declared a day after scrambling to make sense of the decision; the "game will now be played in the open."[132] That a diverse set of interested parties interpreted the ECJ's ruling as clarifying the rules of the game points to how pro-European framings were beginning to pierce through the opacity of EU law.

Second, newspapers across the ideological spectrum cast the ECJ's ruling in a broadly positive light. From the left, *La Repubblica* argued that "the preliminary ruling is essential" for "the most ancient heart of Genoese production [to] return to being the biggest industry of the city."[133] From the right, *Il Sole-24 ore* hailed the ruling as "ten extremely cogent and clear pages that reply to all the questions that for years have hung over the inefficiency of Italian ports."[134] And Genoa's *Il Secolo XIX* described general sentiment as hopeful that the "EEC judgment might translate itself into a clarifying driving force," since "the monopoly was misused. Today, it sounds like old language devoid of content, a social and economic anachronism."[135] Notice how these frames channeled Conte and Giacomini's advocacy by inverting the status quo: what was cast as "devoid of content" was no longer EU law, but local labor politics that had run their course.

Finally, diffuse support extended to the broader public as well. Conte and Giacomini underscored the "great interest" and "broad breath that [the ECJ ruling] has found in the people," hoping that it would "help them know our work" and convince them to support reform.[136] Even though this support was superficial, public opinion and street-level

[129] Dardani, Bruno. 1991. "Linea dura degli utenti portuali." *Il Sole-24 ore*, December 18, p. 10.
[130] Razzi, Massimo. 1991. "Il buio oltre la banchina." *Il Lavoro*, December 12.
[131] Dardani, "Bangemann 'presenta' a Genova."
[132] Carozzi, Giorgio. 1991. "Batini: Era ora!" *Il Secolo XIX*, December 13.
[133] Valentino, Piero. 1992. "Alt alla Concorrenza nel Porto di Genova." *La Repubblica*, April 19.
[134] Dardani, "Corte di Lussemburgo spazza il monopolio."
[135] Carozzi, "Era ora!"
[136] Minella, "Imputata la legge."

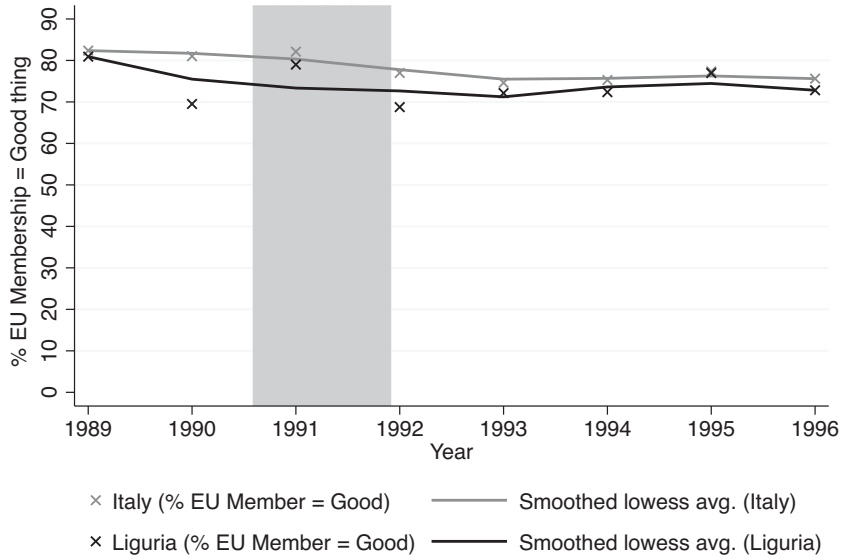

Figure 7.4 Percentage of Italians and Ligurians believing that EEC membership is a "good thing," 1989–1996
Notes: The gray shading denotes the dates from lodging of ECJ proceedings to judgment.
Source: Eurobarometer (1989–1996).

surveys confirmed that residents of Genoa were broadly supportive of European integration. First, *Eurobarometer* surveys taken as the Port of Genoa case unfolded suggest that approximately seven out of ten residents in the Liguria region deemed EEC membership to be "a good thing" (see Figure 7.4).

Second, everyday citizens interviewed by journalists in the streets of Genoa displayed remarkable awareness of the lawsuit and welcomed the ECJ's ruling. "We asked dozens of people … about their opinion of the judgment of the European Court of Justice," *Il Secolo XIX* reported the day after the decision was released; "Almost all those asked agreed to reply, and they often did so with an awareness of the lawsuit … on the merits, the general opinion is that this revolution can be a singular opportunity for rebirth, for the economy of the port, and thus for the entire city." Interview excerpts suggest as much: "It's a marvelous thing," declared the director of a public medical clinic; "I'm very favorable about the EEC ruling," a high school teacher responded; "I agree with the EEC judgment. The politics of the monopoly are

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unjust," noted the commander of the city firefighters; "We don't look too good, us Genoese, when it's the EEC that has to tidy things up for us," added the president of a retirement home; "In any case, this news has given me new faith in the future of our port."[137]

As *Il Secolo XIX* explained, Genoese residents were not only positively "judging the [ECJ's] judgment," but simultaneously "rediscovering traditions" of port-driven trade and labor politics. In so doing, they weaved the decontextualized language of the ECJ's judgment – which referred to the CULMV as if it were any other labor union and Genoa's port as if were any other important trade hub – within the fabric of local knowledge. This integration rendered the European Court's ruling intelligible and meaningful, cultivating a newfound awareness for transnational law and embedding it in the long shadow of local practice.[138] Even as the distant nature of EU law was perceived as the key to the speedy technocratic resolution of a local political quagmire, its "relocalization"[139] converted it back into meaningful knowledge to daily life.

Diffuse support for compliance bore the feedback effect of strengthening the ambitions of the resourceful interest groups that had been lobbying for port reform for years. The president of Genoa's port authority audaciously called on the Italian Parliament to enact an "urgent government law" to generalize the ECJ's ruling, transforming all public dockworkers' unions into "companies operating in a regime of free competition."[140] The leader of local shippers, Ugo Serra, claimed a mandate in the broadest possible terms: "The winner isn't us, but rather the law and the principles of the free market."[141] Indeed, some thirty shipping and transport associations would likely have foregone launching a political campaign titled "Genoa: Europe's Port" if they doubted that the public would be receptive.[142] And Genoa's social democratic mayor, Romano Merlo, would not have forcefully declared that "the judgment of Luxembourg should auspiciously bring newfound

[137] Carozzi, Giorgio.1991. "Caro, vecchio porto." *Il Secolo XIX*, December 12.
[138] On conceptualizing how new identities and practices are integrated within past cultural repertoires, see: Sewell, "Historical Events as Transformations of Structures."
[139] Miller, Clark. 2004. "Resisting Empire: Globalism, Relocalization, and the Politics of Knowledge." In *Earthly Politics*, Sheila Jasanoff and Marybeth Martello, eds. Cambridge, MA: MIT Press, at 83.
[140] Conte and Giacomini, "Stop Europeo."
[141] Ibid.
[142] Valentino, Piero. 1992. "La Guerra del Porto Deve Finire." *La Repubblica*, July 5.

serenity and new opportunities" if center-left voters did not generally side with the European Court.[143]

Local public support was thus bolstered by policymakers and interest groups rallying into compliance constituencies. In turn, this shifting political context marginalized dockworkers' delayed grumblings. After two days of vigorous internal debate over how to respond to the ruling, the CULMV was reduced to trying to turn the ECJ's decision against shippers by defining them as the "true" monopolists.[144] But when such delayed counter-framings gained little traction, the *camalli* resorted to their repertoire of contentious resistance, with stark unintended consequences.[145]

7.3.4 Europe's "Prima Donna": From Contention to Compliance

Having lost control of the way the ECJ decision was being framed in the public sphere, dockworkers decided to flex their muscles and make their displeasure clear. In March 1992, they sent a shot over the bow by organizing a brief strike that shut down all trade on the industrial port. Yet even as dockworkers grew intransigent, import–export and shipping companies began to the test the post-*Port of Genoa* waters.[146]

First, in April an association of shippers cited the "many damages that they incur from the *ancien regime*'s monopoly" by lodging a complaint with the European Commission requesting that it open an infringement proceeding against the Italian state.[147] Second, some shipping operators sought revenge for past defeats. None was more audacious than Bruno Musso, the CEO of Tarros. In 1970, Musso had attempted to dock one of his ships with his own crew, but "the CULMV threateningly surrounded him and his attempt failed." Musso had since transferred his activities to the nearby Port of La Spezia, and the ECJ's ruling was an irresistible opportunity "to return for a do-over."[148] So in June, he dispatched his fleet of ships for Genoa. This provoked "episodes of intimidation and violence"[149] – including a dockworker's

[143] Mattei, Elio. 1991. "Genova, regole di mercato anche per i 'camalli'." *Avanti!*, December 14, p. 22.
[144] Carozzi, "Era ora!"
[145] Mattei, "Regole di mercato."
[146] "Genova, l'Europa non va a Camallo." *La Repubblica*, March 6, 1992.
[147] Valentino, "Alt alla Concorrenza."
[148] Valentino, "da La Spezia un attacco ai camalli."
[149] Arcuri, Camillo.1992. "Il fronte del porto in azione, nave bloccata." *Corriere della Sera*, June 18, p. 16.

attempt to hit Musso over the head with a large log.[150] The *camalli* forged human shields and disrupted the ships' entry (see Figure 7.5), forcing three of Musso's vessels to turn around within the span of a week.[151]

Despite such initial victories, the judicial winds were not in the dockworkers' favor. With national politics disrupted by the *Mani Pulite* (Clean Hands) anti-corruption investigations in Milan and Parliament characteristically slow to debate reforms of the Italian navigation code, a "government of judges" emerged to enforce the new legal regime.[152] So when dockworkers sued Musso before a local small claims judge – as Musso had strategically anticipated[153] – their plan backfired. Not only did Musso summon Conte and Giacomini to argue his case,[154] but the duo proved victorious once again as the judge, Alvaro Vigotti, "recognized Musso's right to [employ his own dockworkers] … [because] the ruling of the ECJ in Luxembourg against port monopolies is valid, even in the absence of national antitrust legislation."[155] The fact that local public opinion was broadly supportive of compliance gave judges cover to apply EU law even if they were sympathetic to the dockworkers' cause. "That was truly a cultural moment, a cultural turn," Giacomini recalls, "because even judges who leaned left politically … applied [EU] law! Even if they didn't like it very much."[156]

Having lost in courts of public opinion and courts of law, dockworkers resorted to an extreme, last-ditch act of contentious disobedience. For eighty grueling days from late August into early November of 1992, the CULMV orchestrated an unprecedented strike that shut down the nation's largest port.[157] The strike may have been cathartic for dockworkers, but with time it backfired spectacularly. After all, they might have still hoped for solidarity from other port employees and working class laborers. But by freezing dockwork for months, the

[150] Musso, *Cuore in Porto*, at 187.
[151] Valentino, Piero. 1992. "Porto di Genova, Tregua Tra Camalli e Armatori." *La Repubblica*, July 1.
[152] Valentino, "La Guerra del Porto."
[153] Arcuri, "fronte del porto in azione."
[154] Musso also retroactively paid the expenses the Euro-lawyers' incurred in the *Port of Genoa* case with support of the national shippers' association. See: Musso, *Porto di Genova*, at 58.
[155] "Il Pretore da Ragione a Musso." *La Repubblica*, July 21, 1992.
[156] Interview with Giuseppe Giacomini, November 2, 2016.
[157] Minella, Massimo. 1992. "La Pace è Arrivata in Porto, I Camalli Tornano al Lavoro." *La Repubblica*, November 7.


16 VENERDÌ 26 GIUGNO 1992 CRONACHE ITALIANE CORRIERE DELLA SERA

Sotto la Lanterna continua il braccio di ferro tra la Compagnia unica merci varie e un imprenditore che vuole sbarcare con i suoi mezzi

I camalli scaricati dalla storia

Genova, i portuali contro la Cee per il monopolio in banchina
«Non difendono il posto di lavoro, ma solo quello di comando»

Dai sindacalisti critiche al ministro Facchiano

Qui sopra, il ministro della Marina mercantile, Ferdinando Facchiano e una manifestazione di «camalli»; in alto, il console del porto Paride Batini e i portuali sulla banchina

24 VENERDÌ 16 OTTOBRE 1992 ECONOMIA CORRIERE DELLA SERA

LAVORO 1 / Il governo interviene per decreto: tolta alla Culmv l'esclusiva degli imbarchi e degli sbarchi

A Genova cade il muro dei camalli

Abolito il monopolio dei portuali. «Adesso il rilancio è possibile»

I SINDACATI: SCIOPERO FINO A MARTEDI'

LAVORO 2 / Alla Ocm di Gruaro

«No, in cassa no è meglio ridurre orario e salari»

14 MERCOLEDÌ 14 OTTOBRE 1992 CRONACHE ITALIANE CORRIERE DELLA SERA

Con la battaglia sugli sponsor si riapre la guerra tra video e carta stampata

«No» agli spot mascherati

Gli editori scontenti per la posizione del governo favorevole a Rai e Fininvest
Viene invocata l'applicazione integrale delle norme Cee anti-pubblicità latente

Sciopero di camionisti e spedizionieri contro la crisi del porto

Genova invasa da autotreni per la protesta anticamalli

Stefania Tamburello

GENOVA — La protesta degli autotrasportatori: al porto e (a sinistra) per le strade del capoluogo (Foto Omega)

Top: Dockworkers blocking the arrival of one of Bruno Musso's ships, June 26, 1992;
Middle: CULMV leader Paride Batini addresses members, October 16, 1992;
Bottom right: Truckers protesting the CULMV's strike in Genoa, October 12, 1992

Figure 7.5 The CULMV's strike makes headlines in the *Corriere Della Sera*
Sources: Historical Archive of Fondazione Corriere Della Sera: Arcuri, Camillo. 1992. "I camalli scaricati dalla storia." *Corriere Della Sera*, June 26, 1992, p. 16; Grondona, Daniela. 1992. "A Genova cade il muro dei camalli." *Corriere Della Sera*, October 16, 1992, p. 24; Grondona, Daniela. 1992. "Genova invasa da autotreni per la protesta anticamalli." *Corriere della Sera*, October 14, 1992, p. 14.

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camalli threatened the jobs of all workers dependent on the port's supply chain. Thus in October truck drivers decrying how the CULMV's "arrogance" was placing their own livelihoods in jeopardy[158] protested in the streets for three days, blocking city traffic and calling for abolishing the dockworkers' monopoly rights. Other port laborers followed suit, threatening to indefinitely suspend their services lest the CULMV continue its strike. The police were dispatched to "avoid a confrontation," for "*camalli* and truckers clashed with their fists. Insults, shoving . . . a few days later tensions escalated" anew.[159]

Rather than rallying the working class, the *camalli*'s reactive backlash campaign splintered it instead. Public calls to end the "war" on Genoa's docks grew as protest diffused to the city streets and impacted the lives of citizens with no direct ties to the port.[160] One interviewee recalls dumpsters being set on fire throughout the city.[161] Residents no longer perceived this as clash between righteous laborers and elite interests, which was a battle that the *camalli* had repeatedly won in the past. The dominant narrative had shifted: an entire city rallying around European law and against the perceived arrogance of a monopolistic enterprise endangering the public interest.

Eventually, Batini and the CULMV acquiesced, ending the strike and joining the bargaining table on November 7, 1992. Perhaps the tipping point proved to be the promise of a $7.5 million payment from Port Authority President Magnani.[162] Perhaps it was the threat of shippers abandoning Genoa altogether, taking 60,000 containers' worth of annual traffic with them.[163] Regardless, what is clear is that the CULMV had sustained nearly a year's worth of bad press, alienated public opinion, and turned natural working class allies against it. In just over a year, the CULMV's status as custodian of local history had been disenchanted.

November 1992 thus marked the transition from contestation to compliance, culminating in the 1994 reform of the Italian Navigation

158 Grondona, Daniela. 1992. "Genova invasa da autotreni per la protesta antica-malli." *Corriere della Sera*, October 14, p. 14.

159 Minella, "Genova in Ginocchio"; Razzi, Massimo. 1992. "I Camalli in Mare Aperto." *La Repubblica*, November 29.

160 Valentino, "La Guerra del Porto."

161 Interview with Gerolamo Taccogna, lawyer and law professor at the University of Genoa, October 28, 2016 (in-person).

162 Minella, "Pace è Arrivata in Porto."

163 Minella, "Genova in Ginocchio."

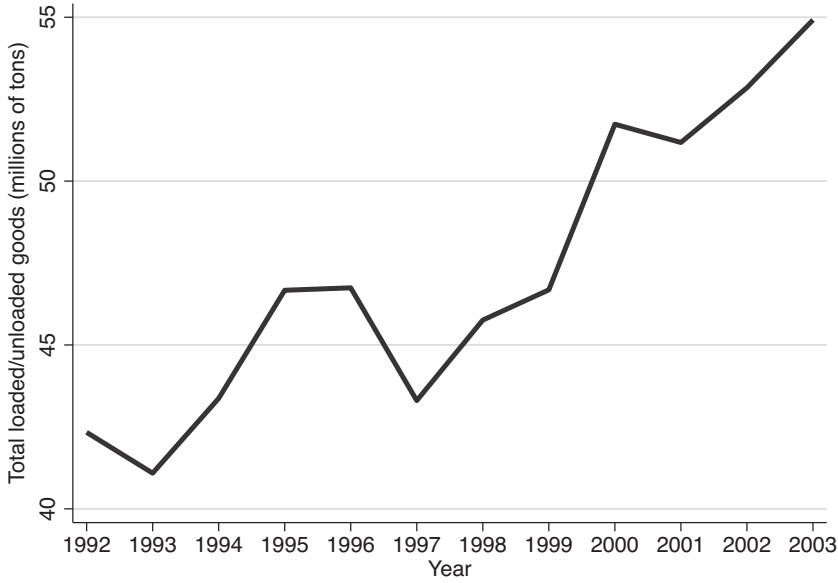

Figure 7.6 Total loaded and unloaded goods in the Port of Genoa, 1992–2003
Source: Comune di Genova (2003: 145).

Code[164] after "two nightmare years … [when] every two months … the text would change."[165] The reform finalized the liberalization of the Port of Genoa along the model of an Anglo-Saxon port authority.[166] Like other north European ports, private shipping operators were allowed to compete for control of specialized sections of the Port.[167] And dockworkers from across Europe were allowed to organize into their own unions and compete with the CULMV over the provision of labor.

Yet policy change was just the tip of the iceberg, for *Port of Genoa* became a catalyst for economic reform and legal mobilization. In the decade following the ECJ's ruling, the port experienced an increase in traffic of 30 percent (from 42.3 million to 54.9 million tons of goods; see Figure 7.6). A city council report argued that the port

[164] See: Legge 28 gennaio 1994, no. 84, "Riordino della legislazione in materia portuale."
[165] Musso, *Cuore in Porto*, at 187.
[166] Carbone, Sergio, and Francesco Munari. 1994. "La legge italiana di riforma dei porti ed il diritto comunitario." *Il Foro Italiano* 114(4): 367–392.
[167] Musso, *Cuore in Porto*, at 147.

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had "exited from the long and dark tunnel of the recession and its 'numbers' had returned to being those of a great European port."[168] In 1994, Genoa surpassed Marseille in container traffic and beat all Mediterranean competitors in passenger traffic.[169] By 1997, even left-wing newspapers were lauding the "brilliant results" of liberalization.[170] By 2001 the port had grown to directly or indirectly employ 35 percent of the city's working population and to comprise 11 percent of its GDP.[171] And with revenues on the increase, the late 1990s witnessed the "transformation and technological updating of the port infrastructure."[172]

Unfortunately the tide did not raise all boats: dockworkers bore the brunt of the distributional consequences of socio-legal change. With their monopoly rights gone, rising competition from foreign laborers, and the port authority investing in new technologies that replaced manpower with machine power, membership suffered. From 1991 to 1995, the CULMV's numbers plummeted from 1,497 to 689.[173] And when their legendary *console* – Paride Batini – passed away in 2009, journalists realized that, in fact, "the *camalli* have nearly disappeared."[174]

If the port's modest economic recovery proved a gradual transformation, *Port of Genoa*'s crash course in European law immediately diffused a transnational legal consciousness among local practitioners. Giacomini is unsurprisingly adamant that EU law only became "real" in Genoa after the lawsuit: "*Port of Genoa* is so well-known that it certainly drew the attention even of those lawyers who didn't even know that EU law existed.... If we hadn't existed, Conte and Giacomini, EU law would have arrived here with at least a decade of delay."[175] But we need not take Giacomini's word for it. In interviews with a diverse array of practitioners – including a maritime lawyer, competition lawyer, family lawyer, administrative lawyer, and

[168] Comune di Genova, *Numeri e La Storia del Porto di Genova*, at 145.
[169] Minella, Massimo. 1994. "Il Porto di Genova Risorge, Traffici Record Nel 1994." *La Repubblica*, December 14.
[170] Minella, Massimo. 1997. "Genova, Prima nel Mediterraneo." *La Repubblica*, April 1.
[171] Lampani, Aldo. 2001. "Un Genovese su Tre Lavora sui Moli." *La Repubblica*, February 3.
[172] Comune di Genova, *Numeri e La Storia del Porto di Genova*, at 14.
[173] Musso, *Porto di Genova*, at 46.
[174] Cevasco, "Tra i finti docks."
[175] Interview with Giuseppe Giacomini, October 24 and 26, 2017.

labor judge[176] – all stressed that the lawsuit "transformed a city" and persuaded them to take EU law seriously.[177] The president of Genoa's bar association recalls how he and his colleagues recognized the lawsuit's importance: "Its importance was immediately understood because … the port is the heart of the city … Newspapers debated it, because there were historical precedents everyone knew about … and [the *camalli*'s practices] were known to everyone. They held the port back."[178]

Across conversations with Genoese jurists, *Port of Genoa* was repeatedly referenced as a blueprint for legal mobilization. Consider the representative views of two lawyers – Gerolamo Taccogna, who teaches and practices administrative law, and Andrea La Mattina, who teaches and practices competition law:

> The ruling of the Court of Justice transformed a city … then there were preliminary references in the wake of that judgment.… The problematics of the port first and most completely taught the judges of the Tribunal of Genoa how to do these things. And once you know how, you also have more occasions to do so.[179]

> When talking about preliminary references [to the ECJ], undoubtedly the so-called *Port of Genoa* ruling played an important and driving role.… It transformed the Italian approach to port law. Other important preliminary references always dealt with the same sector … that is, a whole series of further precisions that were fundamental and all originated from Genoa.[180]

Some lawyers went so far as to sketch the contours of a hybrid field of law rooted in the city in the post-*Port of Genoa* era: "Genoese EU competition law."[181] That some would recognize this as a coherent

[176] Interview with Pierangelo Celle, Studio Legale Turci and law professor at the University of Genoa, October 19, 2016 (in-person); Interview with Francesco Munari, Munari Giudici Maniglio Panfili Associati and law professor at the University of Genoa, October 24, 2016 (in-person); Interview with Alberto Figone, Studio Figone, October 27, 2016, (in-person); Interview with Roberto Damonte, Studio Legale Damonte, October 28, 2016 (in-person); Interview with Marcello Basilico, judge at the Tribunal of Genoa, October 18, 2016 (in-person).

[177] Interview with Gerolamo Taccogna, October 28, 2016.

[178] Interview with Alessandro Vaccaro, November 2, 2016.

[179] Interview with Gerolamo Taccogna, October 28, 2016.

[180] Interview with Andrea La Mattina, BonelliErede and law professor at the University of Genoa, November 14, 2016 (in-person).

[181] Interview with Enrico Vergani, Studio Legale Garbarino Vergani and law professor at the University of Genoa, October 27, 2016 (in-person).

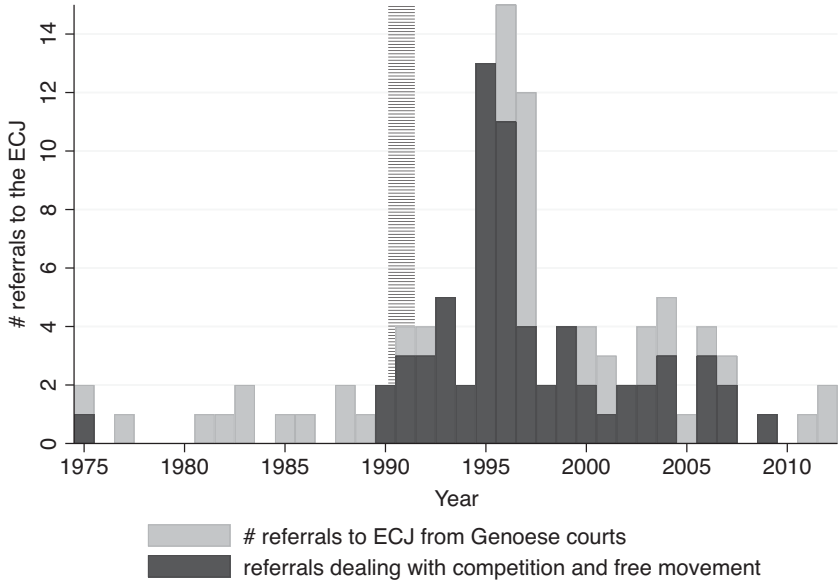

Figure 7.7 Referrals to the ECJ from Genoese courts, 1975–2013
Notes: The gray dashed shading denotes the dates spanning ECJ proceedings.

legal field is a testament to the ways that Euro-lawyers had incorporated EU law and the ECJ's ruling within the "social ordering that is indigenous" to Genoa.[182]

Litigation statistics corroborate lawyers' perceptions that the *Port of Genoa* case proved a catalyst of a "feedback loop" of litigation and judicial policymaking.[183] In the decade following the case (1992–2002), Genoese courts referred sixty-four preliminary references to the ECJ, or five times the number ($n = 12$) that they had submitted over the prior three decades (see Figure 7.7). Furthermore, 78 percent ($n = 50$) of these references dealt with those EU competition and free movement rules at the heart of *Port of Genoa*. Some of the most important cases in this period witnessed the return of this chapter's protagonists. For example, Conte and Giacomini were once again on the attack in the 1993/1994 *Corsica Ferries* case[184] expanding the freedom to provide maritime transport services, and Alvaro Vigotti –

[182] Galanter, "Radiating Effects of Courts," at 129.
[183] Stone Sweet and Brunell, "European Court and National Courts," at 16–22.
[184] Case C-18/93, *Corsica Ferries Italia Srl* v. *Corpo dei Piloti del Porto di Genova* [1994], ECR I-1812.

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the labor judge who first enforced the ECJ's ruling against the *camalli* – was the referring judge in the pathbreaking 2003/2006 *Traghetti del Mediterraneo* case[185] that broadened the state's liability for breaches of EU law. Importantly, however, legal mobilization expanded, as 77 percent of local court referrals to the ECJ in the decade following *Port of Genoa* were solicited by lawyers other than Conte and Giacomini. As one Genoese lawyer puts it, EU law became "a lived reality, and not just an exam one took at the university."[186]

Unsurprisingly, the most reliable allies were those judges at the Tribunal of Genoa who had witnessed their president collaborate with Conte and Giacomini in the *Port of Genoa* case. One judge in particular – Michele Marchesiello – became a reliable entrepreneur:[187] to "measure oneself" with the ECJ was "prestigious," "pique[d] his curiosity, and also energize[d] him," he recalls.[188] Crediting Euro-lawyers like Conte and Giacomini for "opening the prospective" of soliciting the ECJ, Marchesiello even wrote a book about globalization arguing that "the European Court of Justice had to intervene to awaken Italian ports – Genoa's first and foremost – from their sleep," thereby promoting a "dramatically inevitable transformation."[189] And before retiring, Marchesiello played an important role in "transmitting" his passion for EU law to his colleagues.[190] In the two decades following *Port of Genoa*, the Tribunal referred sixty cases to the ECJ. To put this in perspective, that is more than twice the number issued by any other Italian civil court of first instance during the entire sixty-year span of the Treaty of Rome.[191]

And so it was that Genoa was transformed into a laboratory for Europeanization and judicial policymaking. After *Port of Genoa*, local law firms became "trendy" when they "surface[d] EU law-related questions," and lower court judges referred cases to the ECJ "with great

[185] Case C-173/03, *Traghetti del Mediterraneo SpA* v. *Repubblica Italiana* [2006], ECR I-5177.
[186] Interview with Pierangelo Celle, October 19, 2016.
[187] Interview with Paolo Canepa, Studio Legale Roppo Canepa, November 3, 2017 (in-person).
[188] Interview with Michele Marchesiello, November 10, 2016.
[189] Marchesiello, *La Città Portuale*, at 165–166.
[190] Interview with Lorenza Calcagno, Tribunal of Genoa, November 8, 2016 (in-person).
[191] The second-most referring lower court is the Tribunal of Milan, with twenty-nine references.

frequency … [for] the judges were happy, as it were, to serve as the ECJ's *prima donna*."[192]

7.4 THE COMPLICATED LEGACIES OF COMPLIANCE

I want to close this chapter by acknowledging the complicated legacy of compliance and Europeanization that *Port of Genoa* left behind, a legacy that is hardly unique. Even when court-driven change triumphs over a politics of backlash, unintended consequences may only surface with the passing of time.

For instance, in the United States during the 1960s and 1970s, civil rights lawyers called for the enforcement of the 1964 Civil Rights Act to desegregate labor unions. Elected officials stonewalled and resisted these demands, so lawyers turned to the courts.[193] Judges proved more receptive to lawyers' calls for change, yet they did not fully appreciate how "even the most discriminatory of unions, if reformed, could serve to benefit civil rights causes down the road."[194] As unions' court losses and financial penalties piled up, the unintended consequence proved to be the "weakening of the chief opposition to free market capitalism."[195]

A strikingly similar leitmotif suffuses the *Port of Genoa* case. To be sure, the city's modest economic recovery and the ability of foreign laborers to work in Italy's largest port were profound achievements. Yet it did not turn out to be true that Genoa's centenarian union of dockworkers would survive liberalization unscathed, and that the tide of court-driven change would lift all boats.

In January 2018, I was invited to discuss an early draft of this chapter at Genoa's city hall, where dockworkers and truckers had clashed nearly three decades prior. The *Port of Genoa* case clearly continues to conjure up powerful memories. Midway through the conference, the longtime journalist for *Il Secolo XIX*, Giorgio Carozzi, delivered his prepared remarks. Carozzi lamented how the more pragmatic touch of political negotiation had been unable to resolve the port's crisis, such that the only way out was to turn to the adversarial rigidity of European

[192] Interview with Francesco Munari, October 24, 2016.
[193] Frymer, "Acting When Elected Officials Won't."
[194] See: Frymer, Paul. 2008. *Black and Blue: African Americans, the Labor Movement, and the Decline of the Democratic Party*. Princeton, NJ: Princeton University Press, at 41, 15.
[195] Ibid., at 25.

law.[196] Twenty years ago, Carozzi's lament would have seemed out of place. Today, it strikes a more perceptive note: as the winners and losers of the judicial construction of Europe crystallize over time, the legacies of court-driven change can instead become cloudier, as law's triumphs are complicated and reinterpreted by "the light of new history making."[197]

[196] For local coverage of the event, see: Scorza, Angelo. 2018. "Occhi americani puntati sul porto di Genova." *Ship2Shore*, January 19.

[197] Castells, Manuel. 1997. "An Introduction to the Information Age." *City* 6: 2–16, at 16.

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