

**CAN LEGITIMACY TRANSFER? –  
A COMPARATIVE STUDY OF PUBLIC SUPPORT  
FOR THE EUROPEAN COURT OF JUSTICE AND THE  
*BUNDESVERFASSUNGSGERICHT***

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## ABSTRACT

As the power of constitutional courts all over the world is increasing, we still know very little about support for emergent courts and especially support for supranational courts develops. So in order to better understand the development of support for constitutional courts, this paper uses a combination of the statistical and the comparative method to analyze the sources of confidence in constitutional courts in four cases. The comparison extends both cross-nationally and cross-institutionally by contrasting public support a well-established constitutional court — the Federal Constitutional Court or *Bundesverfassungsgericht* in West Germany — to support for three emergent courts — the *Bundesverfassungsgericht* in East Germany and the European Court of Justice in both West and East Germany.

Following the lead of David Easton and his notion of an interconnected support universe, the main source of diffuse support considered is support for the other institutions of government. For the supranational court, the European Court of Justice, the possibility of a transfer of support from the national to the supranational level is given special consideration.

Analysis of the data reveals that constitutional courts do indeed live in an interconnected support universe. Support for the legislative and executive, has a consistently strong, positive impact on support for the supreme court both at the national and the supranational level. In addition, there is evidence that support for national supreme courts does indeed translate into support for supreme courts at the supranational level, i.e., for the European Court of Justice. Overall, the similarity of the sources of support for these courts is more striking than the differences.

## INTRODUCTION

In 1987, German beer drinkers were outraged when with the stroke of a pen, a court struck down the centuries-old German beer purity law and allowed chemical additives, rice and soybeans to be used in beer-making. Just one year later, Italian cooks and connoisseurs were infuriated by a judicial verdict that forced Italy to allow the sale of non-durum wheat pasta. Yet the judicial institution responsible for these devastating blows to the heart (and stomach) of the German and Italian national identity was not a national supreme court, but an obscure supra-national institution: the European Court of Justice. In spite of these and similar disheartening experiences, Europeans nevertheless seem to consider the Court of Justice legitimate: Germany and Italy grudgingly complied. For the powerful and well-established constitutional court, such as for instance the U.S. Supreme Court, compliance is typically expected; however, the ability of an obscure *supranational* court to obtain compliance is quite puzzling. What sources of support can this relatively unknown but increasingly powerful court draw on to allow it to make such rulings and not face serious retaliation? Does it benefit from some sort of transfer of legitimacy from the national level? In order to suggest some answers to these questions, this paper will explore the sources of support for the European Court of Justice and compare it with the sources of support for a well-established national court, the German Federal Constitutional Court, the *Bundesverfassungsgericht*.<sup>1</sup>

The United States Supreme Court is maybe the most powerful and the most well-respected constitutional court we know today. Its power and influential position in the American political system has attracted an enormous amount of research not only on its institutional structure and impact, but also its relationship with public opinion (Murphy and Tanenhaus 1968; Tanenhaus and Murphy 1981; Caldeira 1986; Gibson 1989; Marshall 1989). It is from the study of the U.S. Supreme Court that we first gained an understanding of how powerful a constitutional court could be. For a long time, though, the Court's ability to impact policy and influence public opinion was thought to be a uniquely American phenomenon. It was not until the past decade or so that comparative scholars discovered the growing influence and importance of constitutional courts in national policy-making processes all over the world (cf. Tate 1987; Landfried 1992; Stone 1992; Shapiro and Stone 1994). Eventually, scholars realized that other courts do not operate in a public opinion vacuum either. On the contrary, a constitutional court's power to invalidate laws passed by a popularly elected legislature in combination with a lack of the enforcement powers of "either the purse or the sword" (Caldeira 1986) puts it especially at the mercy of public opinion to elicit compliance. Consequently, some scholars started to conduct comparative research on public opinion towards courts all over the world (see for instance Gibson and Caldeira 1995; Caldeira and Gibson 1997; Gibson and Caldeira 1998; Gibson, Caldeira et al. 1998).

Intensifying comparative research on constitutional courts has begun to fill the many gaps in our knowledge. While there is now a growing body of literature on well-established and powerful national constitutional courts, little is known about how they *built up* the kind of deep-

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seated support they enjoy today. The emergence of a powerful supranational court, the European Court of Justice, added another dimension to this question. How are *supranational* courts able to build a base of public support? Are they appreciably different from national courts in how they relate to public opinion? Scholars are just beginning to tackle this area of inquiry (c.f. Gibson and Caldeira 1998). So in order to understand how mass publics come to tolerate and accept the rule of national and supranational supreme courts, it is necessary to study support for emerging courts. The *Bundesverfassungsgericht* and the European Court of Justice provide a wonderful opportunity to do just that, since they allow us to study the same court both as an emergent and as an established court, while simultaneously allowing us to compare the levels of support for a national supreme court to that of a supranational court.

### *The Choice of Cases*

Europeans currently are witnessing an extraordinary case of the judicialization of politics. Many of them, much to their surprise, find themselves subject to the rule of not just one, but **two** constitutional courts<sup>2</sup>: their own national supreme court (such as the *Bundesverfassungsgericht* in Germany or the *Conseil constitutionnel* in France) and the European Court of Justice. This high court of justice of the European Communities transformed itself from a virtually unknown judicial institution into a powerful guardian of a quasi-federal European “constitution” (Stein 1981; Mancini 1989; Alter and Meunier-Aitsahalia 1994). The European Court of Justice is an especially interesting ‘new’ court because it allows us to study public support for a supranational institution against a backdrop of existing national institutions. This makes it possible to compare the sources of support for national courts to that of their emergent supranational counterparts and to assess any connections between them, as well as similarities and differences.

Ideally, to learn how support for well-established courts builds up we would need to observe an emergent supreme court beginning with its earliest attempts to establish itself and then follow it over time and assess any changes in public support (Gibson and Caldeira 1998). Obviously, this presents a number of practical problems: we would need to study a large number of courts over a long period of time since we would not know in advance which courts would succeed in establishing themselves. In addition, given the scarcity of resources in public opinion research, it might be difficult to justify using valuable survey space to conduct such research on potentially inconsequential judicial institutions. Furthermore, courts are part of a very specialized legal discourse which varies from country to country, making comparative studies extremely difficult (Shapiro and Stone 1994). As a result, emergent courts are understudied institutions.

One alternative strategy would be to compare supreme courts at various stages of institutional development and public approval. This approach, which typically involves large-scale comparison of support for high courts in various countries or support for the same court across many states (see for instance Caldeira and Gibson 1992; Caldeira and Gibson 1995; Gibson and Caldeira 1995; Gibson and Caldeira 1996; Caldeira and Gibson 1997; Gibson and Caldeira 1998), bears another risk. There might be certain national traditions and peculiarities

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<sup>2</sup> Throughout the paper, the terms constitutional court, supreme court, and high court will be used somewhat interchangeably. For the purpose of this paper, I am interested in courts which exercise constitutional review. It is in this capacity, when their actions reverse the legislation of a democratically legitimate body, that the legitimacy of the courts’ actions might be questioned most seriously and public opinion will matter most. In that sense, the above terms should be interpreted as connoting “constitutional court.”

that render comparison fundamentally questionable.<sup>3</sup> While it would be better to study two samples of the same underlying population subject to the rule of two political regimes identical except for how well-established their supreme courts are, it is practically impossible. Studying one population which is subject to the rule of TWO different courts, though, may well be the next best alternative. So instead of studying the same dependent variable in two different samples, we might study two **different** dependent variables **within** the same sample and compare the explanatory strength of the independent variables to each other. This is the opportunity that the European Court of Justice offers.

Nevertheless, the process of accumulating support may well be fundamentally different for national and supranational institutions. Therefore it is instructive to compare within the same sample how support for an emergent *national* institutions differs (or does not differ) from that of an emergent *supranational* institution. The case of Germany provides the opportunity to undertake all of these comparisons. The West of the country allows a comparison of support for an established national supreme court, the *Bundesverfassungsgericht*, with support for an emergent supranational court, the European Court of Justice. Given the unique history of the divided Germany, post-unification East Germany was confronted with the task of adopting both a national and a supranational court at the same time. The East of the country therefore allows a comparison between an emerging national supreme court, in this case the *Bundesverfassungsgericht*, and an emergent supranational court, the European Court of Justice. One country, recently reunited, and two courts thus provide four distinct cases in a quasi-experimental two-by-two design.

This study tries to bridge the methodological divide between the comparative method and its small-n comparisons and the statistical method by presenting an analysis of nationally representative individual-level data from several countries. The paper draws upon the strengths of both methods by utilizing a small number of carefully selected countries as cases to compare large numbers of individual-level sources of support analyzed with the help of the statistical method.<sup>4</sup>

## SOURCES OF SUPPORT FOR CONSTITUTIONAL COURTS

Before delving into the question of the sources of support for constitutional courts, the concept of support itself needs to be defined. As the initial puzzle in the introductory paragraph of this paper indicates, the ultimate question at the core of this inquiry is how an obscure judicial institution was able to engender compliance with controversial decisions. Hence the question of the sources of diffuse support, or institutional legitimacy, as conceptualized by Easton (1965; 1975) is the dependent variable in this analysis. By Easton's definition, every institution needs a certain store of diffuse support, or a "reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see

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<sup>3</sup> As the various terms used to refer to high courts indicate (see fn. 2 above), the functions of supreme courts, differ in various respects: the U.S. Supreme Court is not only the final arbiter of constitutional conflict, but also the highest court of appeal. The German *Bundesverfassungsgericht*, on the other hand, shares the function of exercising binding constitutional review of legislation, but does not operate as the ultimate appeals court in non-constitutional matters.

<sup>4</sup> This approach has most recently been suggested by Collier (1998).

as damaging to their wants” (Easton 1965 :273). In contrast to specific, performance-related support, “diffuse support is directed towards offices themselves as well as toward their individual occupants” (Easton 1975 :445).

Since diffuse support is thought to arise from childhood and adult socialization, as well as from direct experience with the institution (Easton 1975 :445-46) some general expectations about the levels of support for the courts analyzed can be derived. Diffuse support for the *Bundesverfassungsgericht* in West Germany should be the highest, since the court was established fifty years ago and now has been respected as a powerful player in the German political system for more than thirty years (see Brinkmann 1981; Gibson and Caldeira 1998). Diffuse support for the *Bundesverfassungsgericht* in East Germany, however, should be somewhat lower due to the fact that until unification in 1990 the East of the country had not been ruled by the institutions of the Federal Republic of Germany.

The European Court of Justice is also expected to enjoy relatively lower levels of diffuse support than the *Bundesverfassungsgericht* in West Germany, and possibly even lower than its levels of support in East Germany. It is not quite clear why we should expect lower levels of support and just how low we should expect those levels to be. The literature suggests a number of reasons why and under which circumstances we should expect low levels of support. The emergent literature on support for the European Court of Justice, however, argues that as a supranational court, the European Court of Justice faces additional legitimacy handicaps which lower its support (Caldeira and Gibson 1997; Gibson and Caldeira 1998; Gibson, Caldeira et al. 1998). I argue below that this assertion is largely based on erroneous assumptions that are not borne out by the empirical evidence. A review of the legitimacy handicaps of constitutional courts will facilitate a better understanding of what levels of support to expect for the supranational constitutional court and what reasons these are based upon.

### ***Legitimacy Handicaps of Constitutional Courts***

Constitutional courts in general are thought to be at the mercy of the public’s goodwill. There are three factors or “handicaps” that are typically cited to account for the vulnerability of constitutional courts as compared to parliaments. First of all, judicial institutions are deprived of the legitimacy provided by a direct electoral connection (see table 1). Support for parliaments is thought to derive from the fact that citizens are able to decide its composition and that there is a possibility to punish elected representatives for poor performance.

Constitutional courts, on the other hand, just like most judicial institutions in Europe, are consciously insulated from electoral pressures. While in some countries, most notably the United States, some lower court judges are elected, this practice is uncommon in other nations. Judges on a constitutional court typically have to undergo a confirmation process that involves the approval of the legislature. Neither the Federal Constitutional Court nor the European Court of Justice are an exception to this rule. Half of the judges on the Federal Constitutional Court are elected by the *Bundestag* ; half are elected by the *Bundesrat* (Kommers 1976: 89); judges on the European Court of Justice are appointed by “common accord of the member states” ( c.f. Weatherill and Beaumont 1993: 132), which amounts to approval of the legislative body, the Council of Ministers. Beyond the initial approval process, however, constitutional courts tend to be independent from legislative bodies for their long terms of tenure. This removes the judges from political pressure, but it also means that one chief source of legitimacy and public support is unavailable to them.

**Table 1:  
Legitimacy Handicaps and their Associated Classes of Judicial Institutions**

	National Constitutional Courts	New/Emergent Constitutional Courts	Supranational Constitutional Courts
1. Lack of a <i>direct</i> electoral connection	x	x	x
2. Potentially anti-majoritarian	x	x	x
3. No own enforcement powers	x	x	x
4. No association with tradition/constitution		x	?
5. No national “presumption of legitimacy”			x

A second legitimacy handicap that all constitutional courts face is their ability (and duty) to invalidate unconstitutional laws passed by a popularly elected majority. Courts are potentially counter-majoritarian institutions<sup>5</sup>. In that sense they can easily be diametrically opposed to the electorate and its elected representatives, forcing a clash of its own legitimacy with that of parliament. Given that the legitimacy derived from direct elections is considered supreme in a democracy, we would expect the legitimacy of the court to fare poorly in comparison.

The third legitimacy handicap constitutional courts have to contend with is the fact that they lack the power of either “the purse or the sword” (Hamilton, Madison et al. 1961), i.e. their own enforcement powers. In order to have its judgments enforced, courts depend on the government to send in the troops if all else fails. Due to these three reasons, constitutional courts are sometimes considered the “least dangerous branch” of government (Bickel 1962), but also one that we would not expect to have much legitimacy. One of the main purposes of this inquiry is to determine whether supranational courts face different problems of legitimacy than national courts. So far, the literature agrees that a supranational constitutional court would identical legitimacy handicaps

New constitutional courts, however, may fall short on another source of legitimacy. Association with a cherished constitution and a tradition of defending it are often cited in attempts to explain the power and respect the U. S. Supreme Court enjoys. New courts that cannot associate themselves with such a revered constitution lack access to this fourth source of legitimacy. Supranational courts, on the other hand, may or may not boast a connection with a

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<sup>5</sup> This judgment obviously depends on how you define a majority. While the courts’ counter-majoritarian potential is universally acknowledged, there is considerable debate over whether the actual behavior of courts such as the U. S. Supreme Court is counter-majoritarian or not (c.f. Dahl 1957).

constitution. Theoretically they can and do associate themselves with a constitution, as the example of the European Court of Justice demonstrates. After all, the court “constitutionalized” the founding treaties of the European Union (see for instance Mancini 1989). Whether they are able to make this association or not, however, crucially depends on whether there is any supranational constitution they are charged with upholding and on whether the court is ‘old’ enough to associate itself with this constitution. It is therefore not a handicap of a supranational court as such, but that of a new or emergent court.

Analyses of support for the European Court of Justice even take their argument one step further, by asserting that “transnational institutions of all kinds face special problems of legitimacy. These institutions cannot rely upon the ‘presumption of legitimacy’ associated with national institutions” ( see also Caldeira and Gibson 1995 :358; Gibson and Caldeira 1995 :464). It is unclear what this national “presumption of legitimacy” is, though and where it emanates from. What is clear is that according to this argument, the European Court of Justice would therefore be subject to two additional factors (handicaps 4 and 5) preventing high support. This would expect us to expect *much* lower levels of support for the European Court of Justice than for any national constitutional court, established or emergent.

The Gibson and Caldeira line of argument overlooks a credible alternative hypothesis, though. The European Court of Justice might be able to rely only on relatively lower levels of support not simply because it is a supranational court, but to a large degree because it is a relatively new court in the eyes of most citizens. By the admission of the same authors, the European Court of Justice operated in virtual anonymity and obscurity until the late 1980s,<sup>6</sup> which is the functional equivalent of nonexistence with regard to the development of support for that institution (Gibson and Caldeira 1998).

In addition, even if we concede that the supranational court may lack a ‘presumption of legitimacy’ (however defined), another viable source of support remains. A supranational court may even be able to tap a source of support not available to national courts: a transfer of legitimacy from the national level. The exact mechanisms through which such a transfer might be effected are presented in the ensuing discussion of the possible sources of support. Therefore a level of support similar to that of an emergent national court (such as the *Bundesverfassungsgericht* in East Germany) is expected for the European Court of Justice. Given the newness of the court to East Germany, levels of support should be lower there than in the West.

### ***Support for Other Institutions of Government***

What sources of diffuse support can a supreme court draw on to sustain itself? The literature suggests several potential candidates. One major source of support for constitutional courts which is often neglected in discussions of support might be the other institutions within the political system of which the court is a part. This hypothesis was first discussed by David Easton in one of his lesser known articles (Easton 1976). In his conceptualization of diffuse support, Easton clearly rejects the notion that it is justifiable to regard support for one institution

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<sup>6</sup> The earliest available survey data indicate that the Court was relatively well-known in 1992 (Caldeira and Gibson 1995; Gibson and Caldeira 1995), meaning it must have ‘emerged’ prior to that date. How much longer is impossible to say, but circumstantial evidence suggests that it was NOT as early as the 1960s, when the Court began the „constitutionalization” of the European Community (Stein 1981; Mancini 1989; Weiler 1991).



as independent of support for other institutions within the system, and for the system as a whole. There is no theoretical reason to believe that support is “summative” (Easton 1976 :445). Alternatively, he suggests a “tightly interconnected support universe” in which support for one institution depends on support for other institutions of government. While Easton’s considerations were exclusively theoretical, there is empirical evidence from the United States that support for Congress and the Presidency does influence support for the Supreme Court (Luck 1984), a phenomenon sometimes referred to as the “presidential association” (see for instance Casey 1975).

Easton bases his argument mainly on common sense arguments. There is little hard evidence to bolster a claim of disconnectedness between support for the different branches of government. Quite to the contrary, effects such as presidential coattails are well-documented in the voting literature. Practically suggesting a connection, even theories of legitimacy handicaps point out that constitutional courts are dependent on another branch of government to enforce its rulings. It is thus logical to take the argument one step further and assume a support connection between the two institutions.<sup>7</sup>

A related kind of interconnectedness might stem from cognitive sources. Easton does not explicitly point this connection out, but he alludes to it in two of his models of interconnectedness: the saliency model and the sequential model. The former model suggest that support for the most salient institution will partially determine support for the less salient ones. The latter assumes that the first institution a citizen will form attachments to will have a disproportionate impact on the other institutions of government. Ultimately, both of these models are based on the implicit assumption (after all, Easton wrote before the heyday of political cognition and information processing theories) that as cognitive misers, citizens will utilize cognitive shortcuts or heuristics. It is reasonable to assume that to the average citizen with limited interest and information, all governmental institutions are part of *government* and are partially evaluated as such, regardless of specific information. In that sense, Easton’s hypothesis has a considerable amount of face value. It still needs to be backed up by more empirical evidence, though.

For the question of the sources of support for supranational institutions, an interconnected support universe means that support could flow towards the European Court of Justice first by means of the other institutions of the European Community, and secondly directly through the institutions at the national level. It recently has been argued that one of the preconditions of the establishment of the European Court of Justice as the powerful player of European politics it has evolved into today was the general acceptance of judicial review at the national level. It is only under this precondition that the European Court of Justice became a “legitimate option” (Mullen 1998). Consequently, support for the national supreme court should lead to support for its supranational counterpart. Contrary to conventional wisdom, there are thus good reasons to believe that a transfer of legitimacy from the national to the supranational level might take place.

According to the same logic of interconnectedness, it can be argued that confidence in the legal or judicial system as such should foster confidence in its pinnacle, the constitutional court. The direction of the connection is not quite clear, but as argued above, there is good reason to

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<sup>7</sup> Easton calls one of his models of association the combinatorial model (Easton 1976), suggesting that combinations of support for certain institutions might matter.

assume some connection. On the one hand, support for the legislative and executive branches should also translate into support for the supreme court. On the other hand, low support for the executive, for instance, might well translate into high support for the supreme court if the executive is seen as overstepping its constitutional boundaries while the court is perceived as trying to prevent that. Yet another scenario would be a legislature that is held in such high esteem that the supreme court is looked down upon for encroaching upon the legislature's rights. By analogy, support for national institutions may or may not lead to support for supranational ones.

### ***General Systemic Support***

If support is indeed interconnected at the institutional level, there should also be some connection between support at a generalized, systemic level, and support for specific institutions. To the degree that there is a feeling of trustfulness in people in general and an absence of alienation from society in the widest sense, people might be more willing to extend diffuse support to the various institutions of government. Alienation and trust are not simply the two sides of the same coin. Easton (1975) argues that while alienation is often **used** as the synonym for withdrawal of support, and hence as a dimension of diffuse support, this is not theoretically appropriate. Concluding that the phenomenon of alienation "goes well beyond what might usefully be incorporated in the idea of support," he instead suggests it might be "more reasonable to consider it as one among a number of significant *determinants* of support" (Easton 1975 :456, emphasis original). Trust is therefore expected to lead to higher levels of support for supreme courts, while alienation should lead to lower levels of support.

### ***Specific Support***

Another potential source of diffuse support for supreme courts could be specific support; i.e., satisfaction with the judgments they make. After all, Easton conceptualized diffuse and specific support as interrelated (Easton 1975) and others followed his lead (e.g. Choper 1980). The empirical record is somewhat mixed, though. Some studies find evidence that specific support does influence diffuse support (Mondak 1992; Caldeira and Gibson 1995; Grosskopf and Mondak 1998), while other studies only find a moderate and somewhat inconsistent relationship between the two (Caldeira and Gibson 1997; Gibson and Caldeira 1998).

Overall, it appears that the current level of specific satisfaction is not strongly or consistently related to levels of diffuse support. From a theoretical perspective this makes sense in light of how specific support is hypothesized to translate into diffuse support. According to Easton, it is not only childhood socialization that produces the first positive orientation towards courts, but also an individual's own experience with the institution, which over time translates into deeper attachments in the form of diffuse support. Elsewhere, this process has been described as a "running tally" of evaluations, similar to those described for parties (Gibson and Caldeira 1998). Every new bit of information about the institution is only a very small component of the overall evaluation of the court. It is expected, though, that generally, specific support should lead to diffuse support for the supreme court.

### ***Attitudes Towards the Law***

In addition to the sources of support discussed above, previous work also found that support for the U.S. Supreme Court derives partially from basic political and legal value

orientations (Caldeira and Gibson 1992). The underlying logic for this connection is that even in the absence of more specialized information about the functioning and outputs of an institution, people often have a general sense of whether the institution advances certain cherished basic political values such as the idea that the law binds citizens, as well as their government, i.e. the rule of law (see Altman 1996 3-7 for a definition of the rule of law). One of the main functions of supreme courts is to patrol the boundaries of and governmental adherence to the law. It therefore makes intuitive sense that the willingness to adhere to the law should feed into support for the legal system. This hypothesis has been supported by some empirical evidence (see for instance Caldeira and Gibson 1995).

Having explored the theoretical underpinnings of support for constitutional courts in this section, the next section contains a description of the data utilized in the subsequent empirical analyses.

## DATA AND OPERATIONALIZATION

The data for this paper were drawn from two sources. The first source consists of a regular series of surveys conducted by the *Institut für praxisorientierte Sozialforschung* (Institute for Practical Social Research: IPOS, Mannheim, Germany) entitled “Einstellungen zu aktuellen Fragen der Innenpolitik” (Attitudes Towards Current Domestic Policy Issues)<sup>8</sup>. The Institute has collected nationally representative survey data on a yearly basis since 1984 (with the exception of 1994, when unfortunately, no survey was conducted). Starting in 1991, IPOS expanded into the new East German states with a separate, representative sample. The IPOS data provide information on the sources of support for the Federal Constitutional Court over time. In the subsequent analyses, these data will be used to present a long-term background against which to interpret the findings regarding the European Court of Justice.

The second source of data consists of the 1994 poll of the regular German survey series entitled German *Allgemeine Bevölkerungsumfrage der Sozialwissenschaften* (ALLBUS) 1994<sup>9</sup>. This survey has the rare advantage of providing items both on the Federal Constitutional Court and the European Court of Justice,<sup>10</sup> thus allowing direct investigation of the question whether individuals who trust their national constitutional court are therefore more likely to trust its supranational counterpart. Both data are nationally representative and have separate

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<sup>8</sup> These data were made available through the Central German Data Archive (*Zentralarchiv für Empirische Sozialforschung*) in Cologne (the regression analyses draw on study numbers ZA2120, ZA2288, ZA2396, ZA2625). They were collected by the *Institut für Praxisorientierte Sozialforschung* (IPOS) and processed and disseminated by the *Zentralarchiv*. Neither the data collector nor the *Zentralarchiv* bear any responsibility for the analyses and interpretations presented in this paper.

<sup>9</sup> The data were made available by the *Zentralarchiv für Empirische Sozialforschung* (ZA) in Cologne, Germany. The dataset and related documentation are available from the ZA under study no. 2400. Neither the data archive, nor the original collector of the data, the *Zentrum für Umfragen, Methoden und Analysen* (ZUMA) in Mannheim, Germany, bear any responsibility for the use and interpretation of the data in this paper.

<sup>10</sup> The most widely known and analyzed data on the European Court of Justice are contained in Eurobarometer 38.0. This paper is quite consciously based on different data, which allow the exploration of inter-institutional connections of support. The survey conducted by Professors Gibson and Caldeira in conjunction with the Eurobarometer series do not contain useful data on support for other institutions of European government, nor do they contain measures of diffuse support for national institutions.

representative samples from both East and West Germany, thus allowing for the separate analyses of both parts of the country required by this research design.

The dependent variables, diffuse support for the United States Supreme Court/*Bundesverfassungsgericht*/European Court of Justice, are operationalized as questions about the respondent's trust (*Vertrauen*) in the various courts in both datasets<sup>11</sup>. Easton describes the two dimensions of diffuse support as *trust* in the sense that individuals believe their interests will be taken into account even without direct supervision, and *legitimacy* in the sense of accepting the institution as right and proper, as well as a commitment to the institution as such (Easton 1975 :447-453). A question eliciting feelings of trust in the institution of the court clearly taps the first of those two dimensions.

Questions about confidence in the legislative, executive, and judicial branches of government were asked in essentially the same way as trust in the supreme courts, except that the questions referred to the Congress/*Bundestag*/*Europäisches Parlament*,<sup>12</sup> the executive branch of the federal government/*Bundesregierung*/*Kommission der Europäischen Gemeinschaft* and the judicial system respectively.

One *caveat* is in order, though. While the questions are almost identical in both sets of surveys, they are measured on different scales respectively. In the IPOS surveys, trust is measured on an 11 point scale, while the ALLBUS surveys only measure it on a 7 point scale. This makes a direct comparison of the analyses for the Federal Constitutional Court separately (from the IPOS surveys) and the Federal Constitutional Court and European Court of Justice combined (from the ALLBUS survey) inappropriate. Similar scaling differences can be found for other variables presented in this paper. However, since the analysis of the IPOS data will only provide a general analytical background for the analysis of the ALLBUS data, this caveat need not overly concern us.

Entering all above mentioned confidence scores into the analysis naturally raises the threat of multicollinearity problems. Problems only arose in the ALLBUS data for 1994, where for West Germany, the correlation between trust in the *Bundestag* and the *Bundesregierung* was rather high at  $r=.64$ . This is not unexpected at the theoretical level, since in a parliamentary system such as the German one, the *Bundesregierung*, i.e. the executive, is responsible to parliament and may be removed by it through a vote of no confidence. Consequently, we would expect confidence in the *Bundestag* and the *Bundesregierung* to mirror each other fairly closely. In order to avoid any multicollinearity problems, the two variables were added into one averaged confidence score for the legislative and executive, ranging from 1 to 7 (cf. Berry and Feldman 1985).

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<sup>11</sup> Unless otherwise noted, the operationalization discussed in this section refer to the 1994 ALLBUS data, which will be the main basis of the subsequent analyses. For the operationalization of concepts not mentioned in this section, please refer to the original analysis (Grosskopf 1999)

<sup>12</sup> It is quite curious that the item included in the survey asked about support for the European Parliament. After all, it is a true parliament only in the name. Technically, the legislative chamber of the European Community is the Council of the European Union, which is staffed by members of the national executives. The European Parliament is involved in some aspects of the legislative process through what is called the "cooperation and co-decision procedures," but it is not THE lawmaking body of the EU. Given the overall low levels of knowledge about the institutional intricacies of European Union politics, though, most people will likely assume that the European Parliament is indeed the lawmaking institution of the EU.

The multicollinearity of confidence in the institutions of the European Community was more problematic. In the West German sample, confidence in the European Commission and the European Parliament correlated at  $r=.824$ . Again, the two scores were combined into one single averaged trust item ranging from 1 to 7 in order to offset any problems from multicollinearity. Both confidence scores also correlated highly with confidence in the European Court of Justice, as did the combined score ( $r=.738$ ). This raises the issue of whether those questions measure distinct concepts or simply different dimensions of the same concept. There is reason to believe that the questions do indeed tap different concepts: the combined national legislative/executive variable correlates with confidence in its national counterparts at  $r=.381$ , but the correlation with confidence in the *Bundesverfassungsgericht* is only  $r=.173$  (compared to  $r=.738$  for the European Court of Justice confidence score); similarly, the Parliament/Commission confidence score correlates more highly with evaluations of the political system ( $r=.169$ ), than does the confidence score for the European Court of Justice ( $r=.135$ ). Consequently, there are some indications of construct validity. In addition, even in the presence of severe multicollinearity, the OLS regression coefficients will still be BLUE (Berry and Feldman 1985 :40). A very similar argument can be made in the East German case.

The next main independent variable, specific support, is typically operationalized as attitudes towards specific court decisions (Murphy and Tanenhaus 1967; Casey 1974; Handberg and Maddox 1982; Grosskopf and Mondak 1998). Unfortunately, no such measures were available in either of the surveys. However, it has also been suggested that ideology is a measure of specific support (cf. Segal 1995: for a discussion; Hausegger and Riddell 1998). Since omitting such an important concept would have posed a danger of model underspecification, ideology was operationalized as a measure of ideology (1=left to 10=right).

Generalized systemic support was operationalized in a straightforward fashion as a question asking respondents how well they think the political system was working. Those respondents who think the national political system works well are expected to be more supportive of the *Bundesverfassungsgericht* than those who think the system does not work well and requires changes. One other major source of alienation of Germans from the political system at large could stem from the stress and problems associated with German unification. The ALLBUS asked two different questions with regard to unification: agreement with the statement that unification brought more advantages than disadvantages for the East and agreement with the statement that unification brought more advantages than disadvantages for the West. Those respondents who think unification brought more disadvantages than advantages to their part of the country should be more alienated from the political system, while those who thought it brought more advantages should like the system that brought them those advantages.<sup>13</sup>

One additional variable tapping sources of the alienation with the political system was identified in the ALLBUS dataset. It asked whether the respondents thought that socialism was a good idea, but poorly executed. Agreeing with this statement would indicate that the respondents still identify with the Socialist system of the German Democratic Republic, or at least that they do not identify with the present political system in the sense that they would have preferred a separate East German state that would have allowed the citizens of the East to find their own

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<sup>13</sup> All of these measures (and more) were included in the fully specified model, which was presented elsewhere (Grosskopf 1998). In this paper, I only present excerpts from the fully specified models for the sake of analytical clarity. Please refer to that paper for complete details.

combination of Socialism and democracy instead of uniting with West Germany and adopting its institutions. While the variable tapping satisfaction with democracy is expected to contribute to diffuse support in both East and West Germany, most West Germans should be secure enough in their attachment to the country's institutions that dissatisfaction with unification should not lead to diminished support. In East Germany, however, where attachments are much less developed, these variables should have a noticeable impact.

We still need a measure of support for or alienation from the political system at the European level. In the case of the European Union, a measure of support for European integration would measure this dimension. Unfortunately, such a measure is not available in the ALLBUS dataset. The only feasible stand-in is Inglehart's measure of postmaterialism. According to Inglehart (1977), postmaterial values are conducive to the ideals of European integration. Therefore materialists should be less supportive of the European integration in general and less satisfied with the European political institutions. If the variable does indeed tap system support or alienation at the European level, it should be conducive to support for the European Court of Justice.

## ANALYSIS

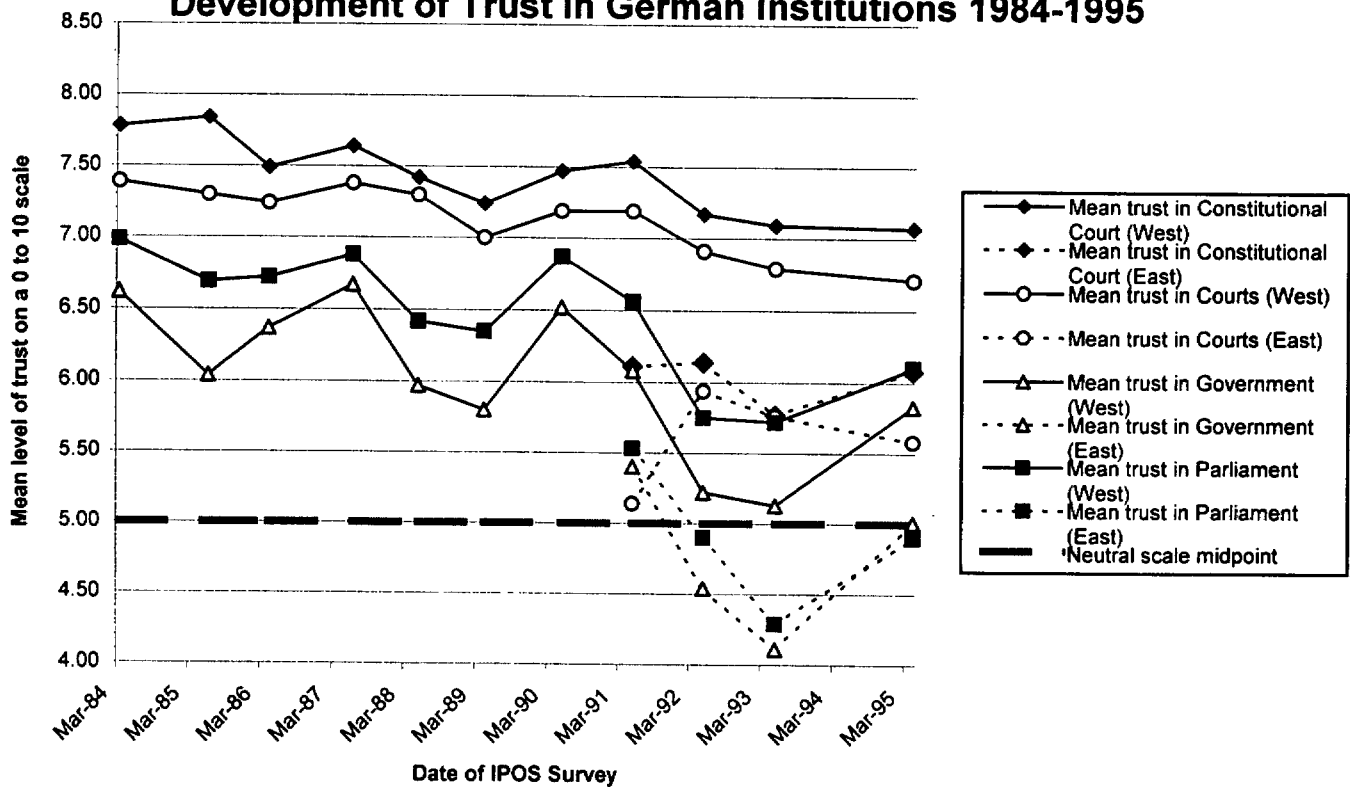
With all the main concepts operationalized, we can now proceed to the analysis of the data. One caveat is in order before we can delve into the core of the analysis. There is a possibility that levels of support may fluctuate quite considerably during the initial period when citizens form attachments to a new set of institutions. It is common knowledge that German unification was a deeply unsettling experience, especially for Eastern citizens. Therefore it is imperative to analyze the data in context. We need to have a baseline providing a set of expectations against which to judge support for the emergent court and the supranational court. Consequently, I begin this analysis by exploring support for the Federal Constitutional Court over time. From this initial exploration, a set of expectations about support for the *Bundesverfassungsgericht* and the European Court of Justice in 1994 will be derived. Finally, the analysis of the 1994 data will be presented.

### *Putting Support for the European Court of Justice in Context*

This analysis focuses on the inter-institutional connections of support for constitutional courts. We therefore need to analyze the levels of support for the Federal Constitutional Court in the context of levels of support for the other institutions of government and how their relationship has evolved over time. Due to the special kind of data needed to investigate the question of an interconnected support universe and whether support transfers from the national to the supranational level – support data for both the national court, other national institutions, the supranational court and the other supranational institutions are needed in the same data set – only data from 1994 are available for the core of the analysis. Cross-sectional data always run the risk of presenting atypical findings, limiting our confidence that a relevant relationship has been identified in the data. If, on the other hand, the cross-sectional analysis confirms findings from longer-term analyses – even if they do not contain data on the European Court of Justice – we can be much more confident of the validity of the results.

Figure 1 presents the development of trust in German institutions from 1984 to 1995 with separate data for East Germany starting in 1991. The stability of the pattern of support in West Germany is quite striking across the entire period. The relative support levels of the institutions of government are highly stable over time. Another striking finding from a visual inspection of the data is that in spite of all the theoretical legitimacy handicaps, the *Bundesverfassungsgericht* apparently is the most highly respected institution of government in both East and West Germany. Not only does it outperform all other institutions with regard to the level of support, but its support exhibits superior stability, as well. Only trust in the courts in West Germany exhibits a similar level of stability.

**Figure 1:  
Development of Trust in German Institutions 1984-1995**



The impact of unification on trust in institutions is also clearly apparent. Although support for parliament and especially government exhibited a fair amount of temporal instability before, a big drop in support after 1990 stands out clearly. Means levels of trust in the government even drop close to the neutral scale midpoint, though they do recover to pre-unification levels in 1995. Support for the Federal Constitutional Court and the courts also drops somewhat in the aftermath of unification, though much less than support for the other institutions. Overall, a picture of stability punctuated by systemic stress caused by German unification emerges.

Support for the institutions of government in East Germany presents a much more unsettled picture, as suspected. Not only are levels of support generally lower in the East – support for parliament and government even drops below the neutral scale midpoint by 1992 –

but the relative patterns of support also vary much more than in the West. Again, given the newness of the political system to Easterners and given the stress caused by unification, this is hardly surprising. Especially the first year of the survey shows a surprisingly low level of support for the courts. This pattern has normalized by the time of the following survey, though, most likely due to a complete overhaul of the East's legal system and Easterner's experience with it (c.f. Grosskopf 1999).

Figure 1 illustrates the aggregate development of support, but it does not tell us much about the individual-level sources of support. We need to understand these individual level processes if we want to gain insights into how support develops and whether it can transfer from the national to the supranational level. Table 2 presents an OLS regression analysis of support for the Federal Constitutional Court in West and East Germany for the years 1991, 1992, 1993 and 1995.<sup>14</sup> The regressions contain the indicators of trust in other institutions, a measure of ideology as a stand-in for specific support, a measure of generalized trust/anomie, and controls for socio-demographic background variables.<sup>15</sup>

The overall explanatory power of the four equations is quite impressive, constantly accounting for roughly half of the variance in the dependent variable in West Germany. The performance of the East German analyses cannot initially measure up to the benchmark of a society with firmly developed attachments to its institutions. However, by 1995, the equation for East Germany explains forty percent of the variance in the dependent variable, almost equaling Western levels of explanatory performance.

The evidence supporting the notion of an interconnected support universe as envisaged by David Easton is strong and consistent. Almost all of the variables measuring trust in the other institutions of government are significant and have a strong impact on support for the constitutional court. The data presented in the following section of this analysis were collected in 1994, which makes the findings from 1993 and 1995 especially relevant for generating expectations. As discussed above, levels of support hit rock bottom sometime around 1993 and possibly in 1994. We might therefore expect analyses from 1994 to present a somewhat abnormal picture overall with lower levels of support for all institutions.

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<sup>14</sup> IPOS did not conduct a survey in 1994. ALLBUS did conduct a survey that year, though. These data will be analyzed in the following section of the paper.

<sup>15</sup> This table mere presents excerpts of a more fully specified model containing various other indicators presented elsewhere (Grosskopf 1999). Please refer to that paper for complete details.



**Table 2: Excerpts of Regression Analysis of Trust in the German Federal Constitutional Court Over Time**

	May/June 1991		May 1992		May 1993		April/May 1995	
	West	East	West	East	West	East	West	East
Constant	1.215** (2.805)	3.224*** (3.221)	.937** (2.231)	-.952 (-1.260)	.394 (.797)	2.184* (2.510)	.038 (.083)	1.723* (2.237)
Trust in Bundestag/ Parliament	.019 .022 (.661)	.207*** .230 (5.165)	.113*** .131 (4.014)	.146*** .160 (4.174)	.050** .055 (1.833)	.032 .035 (.871)	.111*** .120 (3.777)	.137*** .155 (3.525)
Trust in Bundesregierung/ current government	.131*** .168 (5.699)	.106** .128 (2.775)	.062* .082 (2.479)	.142*** .163 (4.389)	.172*** .210 (7.144)	.236*** .273 (6.731)	.188*** .216 (7.076)	.164*** .186 (4.336)
Trust in Courts	.407*** .440 (16.21)	.190*** .208 (6.719)	.399*** .433 (17.335)	.280*** .300 (9.877)	.410*** .420 (16.830)	.345*** .357 (10.738)	.309*** .323 (12.082)	.254*** .283 (9.003)
Left-right orientation/ideology	.0002 .000 (.010)	.124** .100 (2.936)	-.0058# -.032 (-1.644)	-.016*** -.085 (-3.190)	.014 .012 (.546)	-.020 -.014 (-.463)	.021 .019 (.804)	.054 .039 (1.300)
Satisfaction with democracy and political system	.029 .006 (.251)	.087 .019 (.531)	.155 .035 (1.579)	-.282* -.059 (-1.968)	-.052 -.011 (-.525)	.210 .042 (1.310)	.225* .047 (2.057)	.079 .017 (.553)
Age	.022 .028 (1.303)	.065* .075 (2.230)	.0036 .031 (1.445)	.0032 .022 (.770)	.0024 .019 (.875)	.0011 .007 (.230)	.0035 .027 (1.151)	.0004 .003 (.104)
Female	-.248** -.057 (-2.701)	-.451** -.097 (-3.161)	.062 .015 (.687)	-.218# -.045 (-1.703)	-.360*** -.080 (-3.929)	-.182 -.037 (-1.266)	-.122 -.025 (-1.139)	-.089 -.019 (-.702)
Education	.069# .036 (1.640)	.251*** .106 (3.216)	.088** .047 (2.226)	.380*** .179 (6.311)	.037 .018 (.843)	.121# .053 (1.733)	.185*** .092 (3.880)	.133* .062 (2.171)
	N=1377 R <sup>2</sup> =.503 R <sup>2</sup> <sub>adj</sub> =.495	N=875 R <sup>2</sup> =.286 R <sup>2</sup> <sub>adj</sub> =.267	N=1501 R <sup>2</sup> =.470 R <sup>2</sup> <sub>adj</sub> =.461	N=1004 R <sup>2</sup> =.363 R <sup>2</sup> <sub>adj</sub> =.348	N=1287 R <sup>2</sup> =.559 R <sup>2</sup> <sub>adj</sub> =.551	N=841 R <sup>2</sup> =.389 R <sup>2</sup> <sub>adj</sub> =.371	N=1335 R <sup>2</sup> =.472 R <sup>2</sup> <sub>adj</sub> =.462	N=958 R <sup>2</sup> =.401 R <sup>2</sup> <sub>adj</sub> =.385

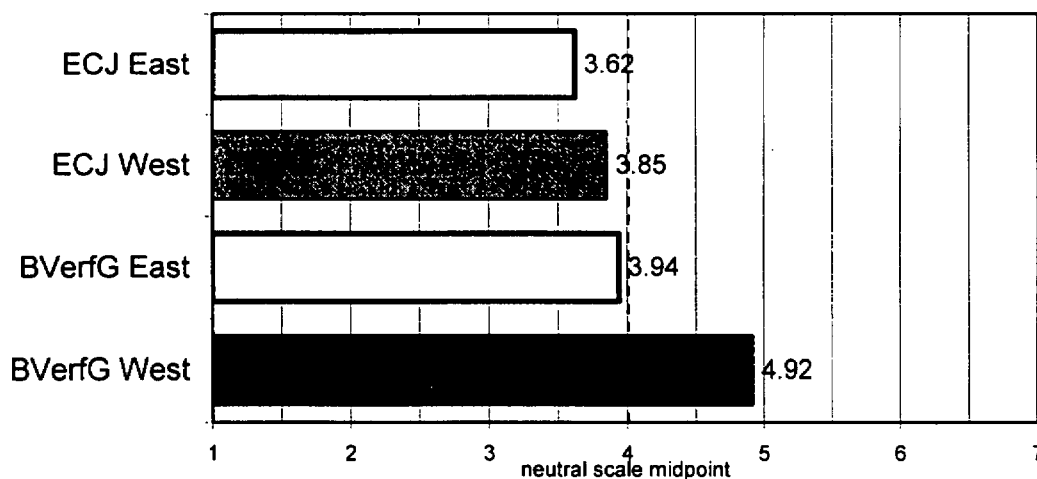
Cell entries (from top to bottom): regression coefficient B, beta coefficient b and t value in parentheses; significance levels: \*\*\* p<.001 \*\* p<.01 \* p<.05 # p<.10

In addition, the equation for 1994 is expected to explain roughly half of the variance in the dependent variable, since the later surveys generally showed comparable performance to the Western analyses. It is also expected that ideology will not have an impact on support for the Federal Constitutional Court. Overall, the pattern is very clear across all four surveys: the association of support for the Federal Constitutional Court with support for the courts should be strongest, followed by support for the government and parliament.<sup>16</sup> For support for the European Court of Justice lower levels are expected in 1994 than before 1990, due to demonstrably lower levels of support for EU institutions following the Maastricht Treaty on European Union and the associated legitimacy crisis (see for instance Eichenberg and Dalton 1998).

### *Analyzing Trust in National and Supranational Courts*

With the initial expectations established, let us now proceed to analyzing trust in the Federal Constitutional Court and the European Court of Justice in East and West Germany. Again, as a first step it is instructive to compare mean levels of trust for both courts in East and West Germany. Figure 2 depicts the mean levels of trust in both courts. As expected, the *Bundesverfassungsgericht* boasts by far the highest mean levels of support at 4.92 on a 1 to 7 scale. It is also the only of the four cases to display a mean of trust on the supportive side of the scale midpoint. Mean levels of support for the Federal Constitutional Court in East Germany and support levels for the European Court of Justice in both East and West are both slightly to the non-supportive side of the scale midpoint. This indicates that overall, the courts are regarded with ambivalence.

**Figure 2 : Germany --  
Mean Levels of Trust in Constitutional Courts**



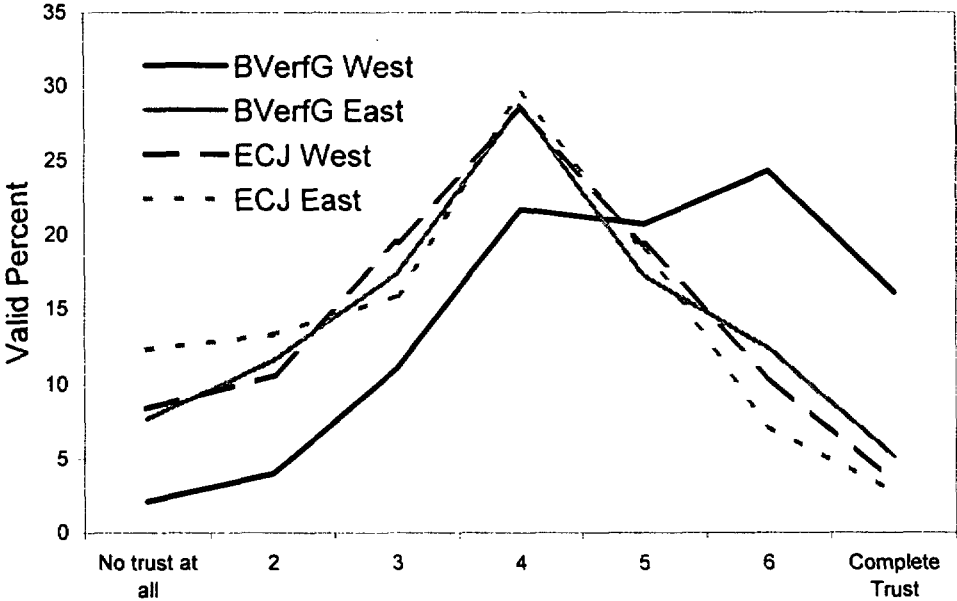
Data obtained from the 1994 ALLBUS survey.

<sup>16</sup> In the 1994 ALLBUS dataset these scores had to be combined due to multicollinearity problems.

It should be remembered in this context, though, that 1993/1994 was the nadir of trust in German institutions. The year after, trust levels had recovered substantially. However, these unusually low levels of trust are a blessing in disguise for this analysis. If there actually is the possibility of a transfer of support from the national to the supranational level, a constitutional court would need it the most when levels of support are low. In that sense, the 1994 ALLBUS data present an especially hard test for investigating connections of support when levels of support are at their lowest. If they can be found under these conditions, they exist when they are needed the most. On the topic of relative levels of support, trust in the *Bundesverfassungsgericht* in East Germany is somewhat lower than in the West of the country, as was expected. However, the data provide little evidence to bolster the contention that support for the supranational court will necessarily be much lower than support for a national constitutional court.

Figure 3 depicts the overall distribution of trust in the *Bundesverfassungsgericht* and the European Court of Justice in Germany. As the mean of 3.94 for the *Bundesverfassungsgericht* East Germany indicates, the center of the distribution actually lies just slightly on the less confident side of the scale. This near-normal distribution can indicate one of two things: either, respondents are genuinely neutral in their evaluations of the *Bundesverfassungsgericht*; or they simply do not know enough about the court to develop genuine attitudes, and therefore just proclaim neutrality or randomly guess an answer. Given the small refusal rate of 2.17%, however, which is comparable with that in the West, it appears that East Germans are genuinely neutral towards the *Bundesverfassungsgericht*.

**Figure 3: Germany --  
Distribution of Trust in Constitutional Courts**



BVerfG West Germany:	n=2301	missing=1.8%	$\bar{x}$ =4.92	s.e.=.031
BVerfG East Germany:	n=1084	missing=2.2%	$\bar{x}$ =3.94	s.e.=.048
ECJ West Germany:	n=1843	missing=21.3%	$\bar{x}$ =3.85	s.e.=.035
ECJ East Germany:	n=691	missing=37.6%	$\bar{x}$ =3.62	s.e.=.059

Data obtained from the 1994 ALLBUS survey.

The European Court of Justice elicits slightly more negative responses, though. The first striking impression the visual inspection yields is that support for the European Court of Justice in West Germany appears quite similar to support for the *Bundesverfassungsgericht* in the East. With a mean of 3.85, support for the Court of Justice in West Germany is actually slightly lower than support for the *Bundesverfassungsgericht* in the East. Note that the nonresponse rate has skyrocketed from virtually nothing for the national court to 21.31% in the West and 37.64% in the East. This clearly indicates that many Germans West and especially East do not know enough to actually answer the question.

Again, visual inspection of the distribution makes it clear that support for the European Court of Justice in East Germany tends towards the nonsupportive end of the scale: those East Germans who can gauge their confidence in the institution tend to be slightly nonsupportive. Overall, though, the European Court of Justice does not fare as poorly as might have been expected. On average, East Germans rate their confidence in the institution only a third of a scale point lower than their confidence in the *Bundesverfassungsgericht*, which in turn is rated roughly one scale point lower than in the West. Support for the European Court of Justice in both East and West Germany is fairly similar. Again, our first expectations about the overall levels of support and their relative strength with regard to each other have been confirmed.

The fact that support for the Federal Constitutional Court in East Germany and support for the European Court of Justice in both East and West group together quite closely does not necessarily mean that the sources of support for those two courts are similar. A multivariate analysis will indicate whether that is the case – but it raises at least the suspicion that it might.

### ***Modeling Sources of Trust in Constitutional Courts***

What sources account for the various levels of diffuse support that we observe for our high courts? Are those sources different for the national vs. the supranational courts? Is there a transfer of legitimacy from the national to the supranational level, i.e. everything else being equal, are respondents who are more trusting of the Federal Constitutional Court also more trusting of the European Court of Justice? Let us now proceed to the statistical analysis of the datasets. Table 3 presents the regression results of trust in the *Bundesverfassungsgericht* and European Court of Justice in both East and West Germany.

The left two columns depict the analysis of support for the Federal Constitutional Court in East and West Germany. It is noteworthy, that at the low point of support for German institutions, the models explain only a moderate amount of variance of trust in the Federal Constitutional Court (roughly 30 to 35% in both East and West), while they explain almost twice as much of the variance of trust in the European Court of Justice (roughly 60%). Clearly, there are exogenous factors depressing levels of trust that are not captured by the model.

The overall pattern of inter-institutional connections of support for the Federal Constitutional Court replicate in this dataset, as well. Support for the constitutional court is strongly and positively connected with support for parliament and government. It is noteworthy, though, that in 1994 this connection is almost twice as strong in East Germany ( $B=.432$ ) than it is in the West ( $B=.286$ ). Likely this fact also accounts for the better performance of the model in the East ( $R^2=.369$ ) than it is in the West ( $R^2=.323$ ). This indicates that when support levels come under pressure, East German more so than West Germans tend to default to a uni-dimensional evaluations of the institutions of government.

**Table 3: Regression Analysis of Trust in National and Supranational Constitutional Courts in Germany**

	FCC West Germany	FCC East Germany	ECJ West Germany	ECJ East Germany
Constant	.733** (2.778)	1.270*** (3.220)	.146 (1.613)	.655# (.097)
Trust in EU Commission and Parliament	—	—	.778*** .705 (37.939)	.814*** .746 (24.255)
Trust in Federal Constitutional Court	—	—	.167*** .166 (8.091)	.126*** .128 (3.844)
Trust in Legislative and Executive	.286*** .257 (11.052)	.432*** .381 (11.186)	-.037 -.033 (-1.508)	-.086* -.077 (-2.049)
Trust in Judicial System	.314*** .317 (14.876)	.264*** .261 (8.465)	.064*** .064 (3.211)	.053 .053 (1.628)
Specific support/ Ideology	-.007 -.008 (-.416)	.009 .009 (.304)	-.022 -.024 (-1.371)	.002 .002 (.076)
Age	.006*** .070 (3.342)	-.006* -.068 (-2.227)	-.001 -.011 (-.609)	-.006# -.060 (-1.914)
Subjective Class	.084 .038 (1.615)	-.044 -.017 (-.533)	-.050 -.022 (-1.080)	-.013 -.005 (-.154)
Education	.047 .035 (1.533)	.002 .001 (-.041)	.040 .030 (1.460)	-.040 -.026 (-.788)
Household income	.024*** .069 (3.219)	.010 .025 (.806)	.010 .027 (1.447)	.011 .028 (.908)
Gender (1= female)	-.373*** -.125 (6.187)	-.140 -.045 (1.603)	.129* .043 (2.377)	.079 .025 (.904)
Political interest	.086** .059 (2.810)	.107* .073 (-2.436)	.016 .011 (.564)	.005 .004 (.124)

Cell entries are (top to bottom) the regression coefficient B, the beta coefficient b and the t value in parentheses  
Significance levels: \*\*\* p<.001 \*\* p<.01 \* p<.05 # p<.10

**Table 3: Regression Analysis of Trust in National and Supranational Constitutional Courts in Germany (cont.)**

	<b>BverfG West Germany</b>	<b>BverfG East Germany</b>	<b>ECJ West Germany</b>	<b>ECJ East Germany</b>
Development of national economy)	.053 .030 (1.454)	.035 .018 (.569)	.049 .027 (1.499)	-.061 -.031 (-.990)
Development of R's financial situation	.088# .037 (1.773)	.020 .009 (.291)	.018 .007 (.395)	.076 .035 (1.147)
Does Political system work?	.085# .038 (1.769)	.106 .044 (1.429)	-.063 -.028 (-1.470)	.030 .013 (.403)
Unification more advantages for East	.120# .033 (1.677)	.080 .025 (.863)	-.007 -.002 (-.117)	-.015 -.005 (-.166)
Unification more advantages for West	.109# .032 (1.675)	-.074 -.022 (-.801)	.047 .014 (.808)	-.029 -.009 (-.320)
Postmaterialists	—	—	.096 .026 (1.444)	.060 .012 (.431)
	N= 1873 R <sup>2</sup> = .323 R <sup>2</sup> <sub>adj</sub> = .318	N= 920 R <sup>2</sup> = .369 R <sup>2</sup> <sub>adj</sub> = .360	N= 1473 R <sup>2</sup> = .586 R <sup>2</sup> <sub>adj</sub> = .581	N= 554 R <sup>2</sup> = .626 R <sup>2</sup> <sub>adj</sub> = .614

Cell entries are (top to bottom) the regression coefficient B, the beta coefficient b and the t value in parentheses  
Significance levels: \*\*\* p<.001 \*\* p<.01 \* p<.05 # p<.10

Furthermore, East Germans appear to identify the *Bundesverfassungsgericht* more as an institution of government rather than as just another court, as indicated by the smaller coefficient for trust in the judicial system in East Germany ( $B=.264$ ) than in the West ( $B=.314$ ). In contrast, evaluations of the legislative and executive figure much more prominently in explaining Eastern trust in the court than they do in the West. This is consistent with the findings from the IPOS data presented earlier. Possibly, East Germans have only a very limited experience with the German judicial system, while they do have much more direct experience with the political system at large. One of the important implications from this finding is that a decline in trust in the more politicized institutions (which, given the performance strain caused by unification is more likely to occur than a loss of trust in the judicial system) will have much more drastic impact on support for the Federal Constitutional Court in the East than in the West. This is one of the reasons why support is less stable in the Eastern part of the country.

In neither part of the country does ideology have an impact on trust in the *Bundesverfassungsgericht*. Quite apparently support for or opposition to the Federal Constitutional Court does not crystallize around ideological divisions. Of the control variables, a gender gap in attitudes towards the Federal Constitutional Court is noteworthy. In West Germany, women are less likely to trust the *Bundesverfassungsgericht* than men, while in the East, the gender gap is absent. Class and education did not matter in either part of the country. In West Germany, household income had a statistically significant effect, though. Those who had a higher income were slightly but significantly more likely to support the *Bundesverfassungsgericht* ( $B=.024$ ). In the East of the country, there were no income differences in support for the Court.

It is quite interesting to note that, while increasing age leads to higher support for the *Bundesverfassungsgericht* in West Germany ( $B=.006$ ), it leads to lower support in East Germany ( $B=-.006$ ). This phenomenon can be explained by the gradual acquisition of diffuse support through socialization. For an established court such as the *Bundesverfassungsgericht* in West Germany, older citizens have been exposed to the Court's legitimizing symbols and the socialization processes much longer than younger citizens have. Consequently, their support is higher. For a newly emergent Court such as the *Bundesverfassungsgericht* in East Germany, on the other hand, older citizens have been exposed to the legitimizing symbols of the *old* political system much longer. They might subsequently not be as susceptible to the socialization processes of the *new* court.

It is also interesting to note that one of the economic control variables emerged as significant for West Germany. Prospective pocketbook evaluations have a positive but small impact on support for the *Bundesverfassungsgericht* ( $\beta=.088$ ). In East Germany, on the other hand, the Court is completely divorced from any kind of economic evaluation. This bodes well for the Federal Constitutional Court and its support in East Germany, since economic conditions are bound to be dire in the East of the country for some time to come.

The final set of variables contains the measure of generalized systemic support and trust/alienation. None of them were significant in East Germany, which is quite surprising. Maybe East Germans have not yet learned to differentiate between the functions of the various parts of government. West Germans, on the other hand, do appear to credit the *Bundesverfassungsgericht* at least partially for the functioning of the political system by extending higher support to the Court if they think that the political system works well, even though the gain is quite small compared to the other variables ( $\beta=.038$ ). Similarly, West Germans extend higher support to the *Bundesverfassungsgericht* if they think that unification has brought more advantages to the either the West or the East of the country. General systemic support translates into higher support for the supreme court.

How does trust in the European Court of Justice fare by comparison to the Federal Constitutional Court? Let us now proceed to the columns of table 3 referring to the European Court of Justice. Will what we have found for the Federal Constitutional Court stand up for the European Court of Justice? Will there actually be a legitimacy transfer of some sort from the national to the supranational level?

As was the case in virtually all the other models of support, in both West and East Germany support for the European Court of Justice depends heavily on support for the other branches of government. Trust in the European Commission and the European Parliament, i.e., in the executive and pseudo-legislative bodies of the European Union, contributes to higher trust in the European Court of Justice ( $B_{\text{West}}=.778$ ,  $B_{\text{East}}=.814$ ) approximately twice as much as confidence for parliament and the executive does to confidence in the Federal Constitutional Court in East Germany ( $B=.432$ ). At the same level of government, regardless of whether it is national or supranational, a fairly close connection between the confidence scores manifests itself.

This connection does not only work at the same level of governance, though, but also between the national and supranational levels as the significant coefficients for most of the other institutional confidence scores indicate. Most striking is the substantial impact of confidence in the *Bundesverfassungsgericht* on confidence in the European Court of Justice in both West ( $B=.167$ ) and East ( $B=.126$ ) Germany. Even with all the other variables controlled for, support for the national supreme court does indeed translate into support for the supranational judicial institution. In that sense, it appears that a transfer of legitimacy does take place.<sup>17</sup> In a similar fashion, confidence in the judicial system translates into support for the European Court of Justice (even while support for the *Bundesverfassungsgericht* is controlled for), but only at a low rate and only in West Germany ( $B=.064$ ). East Germans appear to view the European Court of Justice more as a European institution than as another court. Given the findings of a lesser connection between support for the judicial system and the Federal Constitutional Court than in the West, this is not surprising, though.

While it has previously been argued that supranational institutions cannot share in the ‘presumption of legitimacy’ of national institutions (Caldeira and Gibson 1995; Gibson and Caldeira 1995), they do seem to be able to benefit from a *transfer* of legitimacy from the national level. In other words, the European Court of Justice cannot presume it will be accepted simply because it is part of a firmly established and unrivaled national political system; however, the Court can draw on public support to the extent that its national counterpart, which exercises similar functions of constitutional review, is considered legitimate. All indications are that support for the European Court of Justice behaves very much like support for an emergent national constitutional court, the *Bundesverfassungsgericht* in East Germany. The European Court of Justice does not exhibit different trust levels than the Federal Constitutional Court because it is a **supranational** court, but because it is an **emergent** court.

This transfer of support need not work for **all** supranational institutions, though. It stands in stark contrast to the relationship between support for the national legislative and executive: higher support for these national institutions leads to slightly *decreased* support for the European Court of Justice ( $B=-.086$ ). In other words, strong support for the national non-judicial branches of government leads to a slight but significant **nationalization** of attitudes towards the European Court of Justice in East Germany. In West Germany, on the other hand, there is no statistically significant effect. This indicates that East Germans, who were confronted with the daunting task of accepting not only one but

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<sup>17</sup> This result confirms the institutional argument of path-dependency in the sense that the acceptance of judicial review at the supranational level was contingent upon the acceptability of judicial review at the national level (Mullen 1998).



TWO complete new sets of governmental institutions when the two parts of Germany reunited, tend to favor the national institutions over the supranational ones. To the extent that East Germans have developed attachments to the *Bundestag* and *Bundesregierung*, they are less supportive of the European Court of Justice. Specific support, however, is not a determinant of support for the support for the European Court of Justice.

Unlike the support models for the *Bundesverfassungsgericht*, the models for the European Court of Justice display few signs of statistically significant control variables. Only age mattered in that older people in East Germany are less supportive of the supranational court ( $B=-.006$ ). This holds true with all the other factors controlled for, which indicates that older people in East Germany are not only more distrustful of the national supreme court, but they also have a harder time accepting its supranational counterpart. The data therefore confirm that the development of support is partially determined by socialization. The only other control variable with a significant impact is gender. In West Germany women are more supportive of the European Court of Justice than men : the gender gap is reversed from the findings for the *Bundesverfassungsgericht*. It is not surprising, though, when we consider that the European Court of Justice has made a number of judgments concerning the equal rights of men and women that greatly benefited women (cf. Weatherill and Beaumont 1993 : 544-561 for a discussion of the legal details). Although a recent decision of the European Court of Justice did challenge a North German affirmative action law, which might have made women more hostile towards the court, at the time of the survey in 1994 no such judgments had been made.

The last set of variables contains the general measures of system support and trust/alienation. None of them had an impact on support for the European Court of Justice. Overall, it is noteworthy that the models of support for the European Court of Justice clearly outperformed the models for the Federal Constitutional Court, explaining 58.6% of the variation of support in West Germany and 62.6% in East Germany. Yet it is striking that most of the explained variance of support for the European Court of Justice stems from support for other institutions, both national and supranational. It is truly part of Easton's tightly interconnected support system.

## CONCLUSIONS

This comparative analysis has produced a number of new and important insights into the intricate dynamics of support for constitutional courts. First, the analysis produced overwhelming evidence that support for supreme courts should not be viewed in isolation from support for the other institutions of government, nor should support for supranational institutions be considered independently of support for national ones. Easton (1976) was justified in urging researchers to make the connection between support for the various institutions of government. In Europe, this institutional connection even extends beyond the nation-state into the realm of the **supranational**. Even though many scholars have claimed that a transfer of legitimacy from the national to the supranational level is very unlikely, if not outright impossible, this analysis has presented substantial evidence to the contrary. Support for the *Bundesverfassungsgericht* was shown to have a strong and direct positive impact on support for the European Court of Justice. If support for the national court is relatively stable over time, this would also mean that support for the European Court of Justice is much more resilient than might be expected from such a supranational judicial institution. Given that these results emerge from 1994 data, well over three years into a general decline in support for European integration and a loss of explanatory power by the traditional economic variables (Eichenberg and Dalton 1997), the findings of this study are all the more impressive.

A second facet of this complex of findings is that support for the national legislative and executive can produce a nationalization of opinion at the European level, as it did in the case of East Germany. This inverse relationship is small, but it indicates that at least for some people, the European Union might be seen as a threat to well-functioning and trustworthy national institutions for which these individuals are just beginning to feel attached. For those who believe in judicial review at the national level, though, a more substantial transfer of legitimacy takes place. Since the European Court of Justice only provides a binding interpretation of the provisions of European law in question under the Article 177 Preliminary Reference Procedure, it leaves the actual judgment to the national court that brought the case to the European level. Therefore it makes sense that in the eyes of the public there would be a strong connection between the two.

Although cross-sectional analysis such as the one presented in this paper can never provide definite proof of dynamic relationships, the evidence of consistently strong, significant and robust coefficients for confidence in other governmental institutions emerging from virtually all models in this analysis is strong enough to warrant further investigation of this phenomenon. This tightly interconnected support universe extends beyond the nation state.

While this study has uncovered variations in the sources of support for supreme courts in those four cases, the similarity of the sources of support is even more striking. It is this very similarity that enables the European Court of Justice to make the kind of controversial decisions described in the opening paragraph of this paper. The European Court of Justice draws its support from the other European institutions; i.e., the Commission and the Parliament, but it also has its independent source of support through the *Bundesverfassungsgericht*. In this light it appears only natural that the European Court of Justice has lower support in East Germany, since support for the *Bundesverfassungsgericht* is lower in the East, as well.

Armed with this new understanding of the sources of support for supreme courts, scholars will be able to assess better what low levels of support really mean for a court. The next step will involve analyses of the sources of support for these supreme courts over time. If the above results can be replicated over time, we will be able to understand that given a stable base of support, relatively low overall levels of support will not be as worrisome. More work is needed to fill in the gaps, but it is not often that researchers have the opportunity to observe an emergent supreme court and to explore the sources of its support.

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