

**LEARNING TO TRUST
THE EUROPEAN COURT OF JUSTICE –
LESSONS FROM THE GERMAN CASE**

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ABSTRACT

Even though the European Court of Justice has always played a significant role in European integration, its importance is bound to increase further as the European Union enlarges and the constitutionalization process continues. Yet despite the Court's growing importance, we still know very little about why and how European publics tolerate the rule of *any* unelected, let alone a *supranational*, court. Even less is known about how newly democratized countries *first learn to trust* institutions such as the ECJ. This paper utilizes a quasi-experimental design to analyze the development of public support for the ECJ by comparing the nature, levels and development of support in West Germany to those in East Germany. Particular attention is given to the question of how support for the Court differs from support for the other institutions of European government and to how support for the supranational institutions compares to support for their national counterparts, as well as how perceptions at both levels square with a popular wish for "stealth democracy." Based on evidence from two ALLBUS public opinion surveys and a series of focus groups conducted in West and East Germany, it appears that people make a *functional* connection between the national and the supranational court, evaluating them along similar dimensions. Unlike the other institutions of government both courts are seen as neutral, technical arbiters of the law that are fundamentally trustworthy because they do not benefit from their decisions. The European Court of Justice is considered as the functional equivalent of the *Bundesverfassungsgericht* at a different level of government. There are some differences between East and West Germany, but they are slight. The evidence suggests that citizens learn to trust supranational courts by first learning to trust the national constitutional court as a disinterested arbiter of political conflict.

INTRODUCTION¹

Even though the European Court of Justice has always played a significant role in European integration, its importance is bound to increase further as the European Union enlarges and the constitutionalization process continues. Yet these same processes go hand in hand with intensifying public scrutiny of the Union, its institutions and policies – including those of the European Court of Justice. Yet as the importance of understanding public support for the European Court of Justice is increasing, we must realize that we still know woefully little about the two important questions this paper addresses: **Why** and **how** do European publics tolerate the rule of *any* unelected – let alone a *supranational* – court? Furthermore, how do newly democratized countries *first learn to trust* institutions such as the ECJ?

The accession of ten new member states to the EU in May of 2004 widened the Court's jurisdiction to ten new countries with approximately 75 million citizens. Just a few months later, the acceptance of a draft EU constitution that includes a legally binding Charter of Fundamental Rights promised to deepen the Court's power even further (if and when the constitutional draft is ratified). However, as the European Union both widens and deepens simultaneously, the role of the European Court of Justice is likely to become more challenging, as well, as the Court will have to navigate increasing diversity under the brightening glare of public scrutiny. As the example of the Supreme Court of Canada demonstrates, rights-based issues are often controversial and thus destined to propel the courts in the limelight – at least eventually – and change the level and nature of public support for the Court (see Hausegger and Riddell 2004). Understanding the *nature and origin of trust* in the European Court of Justice is thus becoming particularly crucial.

Investigating the Leads: The Research Design

Despite the burgeoning of literature on public support for the U.S. Supreme Court (for example Caldeira and Gibson 1992, Gibson, Caldeira et al. 2003, Grosskopf and Mondak 1998, Hoekstra 2000, Mondak and Smithey 1997), studies of support for Constitutional Courts in other countries remain rare (but see Gibson, Caldeira et al. 1998, Hausegger and Riddell 2004). The European Court of Justice (ECJ) is no exception to this rule. Other than the Eurobarometer-based studies of James Gibson and Greg Caldeira (Caldeira and Gibson 1995, 1997, Gibson and Caldeira 1993, 1995, 1998), there are no studies of support for the Court of Justice.

While these latter studies provide important insights into support for the ECJ, they also leave many questions open. First, these studies judged support for the Court to be rather low, yet often without providing the respective national support levels as points of reference (but c.f. Gibson and Caldeira 1998 who investigate support for the ECJ as compared to support for national high courts, but only in a bivariate analysis). Yet as we know from recent research on the perception of the U.S. Congress, *functional process evaluations* are crucial for understanding institutional support (Hibbing and Theiss-Morse 2001, 2002). Thus, it is imperative to analyze support for the ECJ *in conjunction with and relation to* support for the ECJ's national counterparts, while controlling for other relevant factors. Second, these studies of support for the ECJ were based on only three datasets collected within a two-year time period (1992-93) that was remarkable due to the post-Maastricht turmoil: two

¹ The author gratefully acknowledges the financial support of the American Political Science Association. The paper is based in part on focus group data that the author collected with the help of funds from an APSA Small Research Grant.

Eurobarometer surveys and an in-depth follow-up survey.² None of the existing analyses have ever been compared to research based on different datasets collected during different time periods. Third, while existing studies of support for the ECJ cover many different countries, by necessity, they lack in-depth contextualizing information that enables us to understand support for the Court against a fuller understanding of its national backdrop and unique national circumstances. In other words, in a large-N analysis, it is exceedingly hard to ensure the “everything else being equal” part of comparing support cross-nationally³.

This paper addresses these issues by taking advantage of the natural quasi-experimental research opportunity created by German unification. By historical accident, we are given the unique opportunity to analyze the development of public support for two courts (the ECJ and the national Constitutional Court, the *Bundesverfassungsgericht* (BVG)) *as both old, established and young/emergent* courts **simultaneously**, by comparing the nature, levels and development of support for those institutions in West Germany to those in East Germany. In doing so, this paper adds to the existing literature on support for the European Court of Justice in three main ways:

- (1) The statistical analysis of support for the ECJ is based upon two German ALLBUS datasets from 1994 and 2000. These datasets have the advantage of containing questions on both the national and the supranational courts and of allowing a comparison across a longer period of time.
- (2) This paper complements the customary statistical analysis of support for Constitutional Courts with rich, contextualizing focus group data collected in Germany in 2002. Surveys tend to be *high* on *external* validity and thus permit generalizable statistical inference, but even those researchers who can afford the luxury of conducting their own survey and asking the questions they really wish they *could* ask⁴ (rather than having to rely on the more common secondary data analyses) run the risk of being relatively *weak* on *internal* validity. However, a multi-method approach (presented here) that combines externally valid statistical analysis with a rich qualitative analysis of focus group interviews that is high on internal validity provides a more balanced approach to understanding public opinion⁵. In addition, the insights gained from the right contextual analysis can then be used to enhance the design of survey questions.
- (3) The unique quasi-experimental research design allows to hold “everything else equal” as much as possible, as the institutions citizens do or do not trust are literally identical. Yet East and West Germany provide two different, yet not completely dissimilar contexts for judging support towards constitutional courts.

Germany is a particularly interesting case to study in this context, not only because it offers a quasi-experimental setup, but also because Germans trust the European Court of Justice far more than

² The former are publicly available as Eurobarometer 38.0 “The European Court of Justice” (ICPSR study no. 6044) and Eurobarometer 40.0 “Poverty and Social Exclusion” (ICPSR study no. 6360). The re-interview follow-up survey to EB 38.0, i.e. the dataset that contains the national court data, is **not** publicly available.

³ See for instance Gibson and Caldeira and Baird’s difficulty in selecting comparable courts for their cross-national analysis (1998: 346-47).

⁴ Gibson and Caldeira once again are an exception to the rule, as they obtained grants to conduct their own surveys on support for the ECJ (Caldeira and Gibson 1995, 1997, Gibson and Caldeira 1993, 1995, 1996, 1998, 1998).

⁵ See Hibbing and Theiss-Morse (1995, 2002) for two excellent examples of how insightful and powerful such an approach can be.

Europeans do on average (Hanßen and Holst 2002: 23). Maybe not coincidentally, (West) Germany also ranks far above-average than other European countries for diffuse support of their national constitutional court, the *Bundesverfassungsgericht* – even surpassing levels of support for the U.S. Supreme Court (c.f. table 4 in Gibson, Caldeira et al. 1998: 351). There is thus *prima facie* evidence to believe that support for the national and supranational court might be interconnected.

TRIAL ONE: ANALYZING THE SURVEYS

In the first layer of this analysis, the focus will be on survey data and how they can help us understand the sources of trust for national and supranational constitutional courts. The analyses of trust in constitutional courts in this section of the paper is based upon the German *Allgemeine Bevölkerungsumfrage der Sozialwissenschaften* (ALLBUS) surveys. In particular, data from the 1994 and 2000 waves of the survey series⁶ are analyzed since they contain questions about trust in various institutions, including the *Bundesverfassungsgericht* and the European Court of Justice.

However, before delving further into the question of the *sources* of institutional trust, the concept of trust itself needs to be clarified. Ultimately, researchers worry about a court's levels of public support because they are concerned about compliance with controversial decisions. Hence this analysis focuses on diffuse support, or institutional trust and legitimacy, as conceptualized by Easton (1965, 1975). According to Easton, 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 as damaging to their wants” (1965: 273). So when respondents are asked about trust in the various institutions, they are asked about their trust in these bodies *as institutions*, tapping what is commonly known as diffuse support for the institution.

The Visibility of the Courts

One of the preconditions of trust in and support for an institution is *awareness* of the institution, since citizens can hardly be truly supportive of something about which they know nothing. Some analysts (e.g. Gibson and Caldeira 1998) even insist on excluding respondents who profess no awareness of institutions from their analysis of support. Unfortunately, the ALLBUS surveys contained no awareness item for the Courts. However, it is possible to infer relative levels of visibility for the Courts by examining how many newspaper stories mention the Courts. The more stories the newspapers run on the institutions, the greater is the likelihood that citizens are aware of the institution.

Figure 1 displays the number of newspaper articles over time in the national German newsdaily Frankfurter Allgemeine Zeitung (FAZ)⁷ that mention the *Bundesverfassungsgericht* and European

⁶ The data were made available by the *Zentralarchiv für Empirische Sozialforschung* (ZA) in Cologne, Germany. The data were extracted from the ALLBUS cumulative file (1980-2002) which is available from the ZA as study no. 1795.

⁷ Despite its regional base in Frankfurt, the FAZ is the leading and most well-respected German daily newspaper, occupying a position similar to that of the New York Times in the United States. The FAZ has an approximate circulation of 400,000 copies (based on 2004 data available on the paper's website at http://www.faz.net/IN/INtemplates/faznet/default.asp?suchzeitraum=3&term=auflage&Go.x=0&Go.y=0&tpl=common%2Fsuche_erg.asp).

Court of Justice. It also presents data for various other national and supranational institutions⁸ in order to provide a frame of reference (though the time series are incomplete for these)⁹.

[INSERT FIGURE 1 APPROXIMATELY HERE]

As is clearly evident, the *Bundesverfassungsgericht* has consistently received greater coverage than the European Court of Justice. In 1994, for instance, the *Bundesverfassungsgericht* was mentioned in just under 1000 newspaper stories, while the European Court of Justice was covered in only a handful of stories. In the late 1990s, however, newspaper coverage of the Court of Justice improved dramatically, coming respectably close to the reporting levels of the national Court by 2000. Thus it seems safe to assume that the ECJ was a much more visible institution in 2000 than in 1994.

When the coverage levels of the two courts are compared to those of the other institutions of national government, however, the dominance in newspaper reporting of the legislative and executive branches of government becomes readily apparent. While the *Bundesverfassungsgericht* only rarely surpasses the mark of 1000 stories a year, the legislative and executive are routinely covered in four to six thousand stories. Equally striking is the relative dearth of coverage of the other European institutions. The national struggles between the legislative and executive branches of government is the clear and consistent focus of political reporting in the FAZ.

Nonetheless, the visibility of the two courts should not be underestimated. It is easy to assume that this relatively small number of stories would be drowned out by the wave of stories on the other institutions. However, it is important to keep in mind that Court decisions can be very controversial, such as the *Bundesverfassungsgericht*'s "crucifix judgment" in 1995 or the proceedings before the Constitutional Court (*Parteiverbotsverfahren*) to outlaw the National-democratic Party of Germany (NPD) as an unconstitutional neo-Nazi party in 2000/2001 (note the associate peaks in reporting).

The Development of Trust in Constitutional Courts

Now that the relative visibility of the institutions has been established it is time to examine the dependent variable, i.e., the levels of trust in the *Bundesverfassungsgericht* and the ECJ in 1994 and how they changed by 2000. Since West Germans have had decades to develop trust towards these institutions whereas East Germany has had much less time to do so, it makes sense to begin the analysis by examining trust in West Germany first. Figure two therefore presents a comparison of the West German mean trust levels¹⁰ in the national and supranational institutions over time. Trust levels in 1994 and 2000 are grouped together for each variable in order to permit easy comparison of the *development over time* of trust.

[INSERT FIGURE 2 APPROXIMATELY HERE]

As far as overall levels of support are concerned, the *Bundesverfassungsgericht* stands out as the most trusted institution, followed by the ECJ. These two are the only institutions to boast mean trust scores that are on the trusting side of the scale, i.e. higher than the middle category of four on the seven-point trust scale. The national legislative and executive are slightly more trusted than their

⁸ National institutions are depicted with black lines, while supranational ones are characterized by gray ones.

⁹ The author gratefully acknowledges the tireless and dedicated work of her graduate research assistant Gregory May, who compiled the data for 1999-2004.

¹⁰ The survey measures trust in institutions on a scale ranging from 1 "no trust at all" to 7 "very much trust."

European counterparts, though all have mean levels of trust that indicate a lack of trust. Overall, the supranational institutions mirror the national pattern, but at a slightly lower, less trusting support level.

When we turn to a comparison of trust over time, interesting differences emerge. While levels of trust in the European Parliament and Commission, as well as trust in the Federal Government are almost identical in 1994 and 2000 (mean trust varies between 0% and 2% for these institutions), the other institutions have undergone more dramatic trust changes. The *Bundesverfassungsgericht* has lost almost 5% of its (previously very high) mean trust, while the Bundestag, the Federal Parliament has had to cope with an even steeper decline in trust of 7% from its relatively lower level of trust. During the same time period, however, the European Court of Justice has managed to *increase* its trust levels by a respectable 6%, making it the only institution to improve its mean trust level between 1994 and 2000. This is quite remarkable.

How did mean trust levels develop in East Germany during this same time period? Figure 3 depicts the East German trust levels for 1994 and 2000.

[INSERT FIGURE 3 APPROXIMATELY HERE]

It should be noted that overall trust levels are lower in East Germany than they were in the West. Furthermore, trust bars are more similar to each other across the board, indicating that East Germans do not yet differentiate the different institutions as much as their Western counterparts do. Once again, trust in the *Bundesverfassungsgericht* stands out as the highest bar, with the European Court of Justice coming in as a clear second. However, the only institution to score trust beyond the neutral scale midpoint at four is the *Bundesverfassungsgericht* in 2000. Clearly, East Germans are still much less trustful of *all* institutions than Westerners are.

Notwithstanding the lower levels of trust and generally lower levels of institutional trust differentiation in the East, the data once again indicate fascinating developments of trust over time. In East Germany, the national and supranational legislative bodies, as well as the European Commission have experienced rather stable levels of mean trust (with insignificant variations ranging from -3% for the Commission to +2% for the *Bundestag*). In stark contrast to this stability is the impressive *increase* of trust in both the European Court of Justice (+11%) and even more dramatically, in the *Bundesverfassungsgericht* (+16%). Evidently, both Constitutional Courts have benefited from a sizeable surge of trust in the East.

The Sources of Trust in Constitutional Courts

What explains these high levels of trust in the *Bundesverfassungsgericht* and the European Court of Justice? It is now time to proceed to a multivariate analysis of trust in those two institutions. Due to space and data considerations, an analysis of the 2000 data only is presented below¹¹.

The literature on support for constitutional courts indicates a number of likely candidates for sources of support and trust¹². Caldeira and Gibson identify attitudes towards democracy and the rule of law as crucial elements of support for the ECJ (1995). Unfortunately, the survey contained no data

¹¹ See Grosskopf (1999) for a statistical analysis of the 1994 data. The results of both analyses are fundamentally comparable, even though I do not have the space to discuss some of the extant differences between the two here.

¹² It goes almost without saying that it is important to control for a variety of socio-demographic background variables, i.e. the 'usual suspects' such as age, gender, level of education, household income, as well as religiosity.

on attitudes towards the law¹³, but it did contain a series of questions that elicit respondents' preferences of security (law and order, as well as economic; v96-99) over freedom of speech and citizen control over the government. Answers to those questions are combined in the Inglehart index that commonly refers to post-materialist value orientations (v100). This variable is included in the models in order to tap general law-related attitudes. Furthermore, the survey featured a question about satisfaction with democracy (v17) that is also been included in the model. In addition, two indicators of anomy were included in the models: one dummy variable asking whether respondents though politicians were uninterested in what common folk want (v350); and one dummy variable asking whether respondents though people in general could be trusted (v352).

Another important source of diffuse support for the Courts could be specific support for them, that is agreement with the judgments/policies that they have produced (see for instance Gibson, Caldeira et al. 1998). Once again the questions the ALLBUS has to offer are less than ideal, forcing the common replacement of respondent's ideology (v19) for specific support (c.f. Campbell 2004 for a successful example of such a substitution).

Furthermore, since Constitutional Courts derive their justifications for judgments from their respective constitutions, the models include questions about pride in the Constitution (v183)¹⁴. Since Carey showed that national loyalties can stand in the way of European attachments (2002), various national and supranational attachment/pride variables have also been added to the model. They explore respondents' connection to Germany as a whole (i.e., the current political system; v211), the old FRG/GDR (v209/210; to measure attachment to the respective pre-unification political systems) and the European Union (v212). In addition, the model also controls for general pride to be German (v193), as such pride may prevent attachment to the European institutions.

Another complex of variables deals with the impact of utilitarian evaluations of the economic situation on institutional support. Since Campbell clearly showed that in the case of re-unified Germany, economic evaluations outperform civic culture models as predictors of institutional support (2004), variables gauging the respondents' judgments of their personal (v11) and the country's (i.e. sociotropic; v9) economic situation. An additional dummy variable indicates whether a respondent is unemployed or not, as this also has the potential of affecting institutional trust.

Finally, trust in both the national institutions (for all) and the other supranational institutions (only for supranational) is included in the models. This choice is based on David Easton concept of an "interconnected support universe" laid out in one of his lesser-known articles (1976). In his conceptualization of diffuse support, Easton clearly rejects the notion that it is justifiable to regard support for one institution as independent of support for other institutions within the system, and for the system as a whole. 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).

¹³ However, the survey contains in a different split version (unfortunately it is the Computer Assisted split version 1, a variant that does not contain the crucial trust questions for the European institutions) a question about agreement with a statement that laws must always be obeyed, regardless of whether one agrees with them or not (v389). I intend to estimate for future versions of this paper the "must obey laws regardless" variable for the CAPI 2 and PAPI (paper and pencil interview) variants of the survey that also have the European institutional trust questions.

¹⁴ This is a dummy variable indicating whether the respondent mentioned the constitution as one of the four things to be proud of out of a battery of items.

Recent research by Hibbing and Theiss-Morse (2001) squares well with the notion of an interconnected support universe. Even though they analyze the dire public image of the U.S. Congress, their findings add a crucial facet to the nature of institutional trust in general and trust in Constitutional Courts in particular : Hibbing and Theiss-Morse conclude that the low trust scores of Congress derive mostly from unfavorable *process* evaluations and not as much from *policy* evaluations as previously thought (Hibbing and Theiss-Morse 2001). Members of Congress are widely perceived as being selfish, personally benefiting from their decisions. This leads Hibbing and Theiss-Morse to speculate that the Supreme Court is held in high regard in large part because the Justices are thought *not to benefit personally from their decisions* (Hibbing and Theiss-Morse 2002: 158). It therefore seems plausible that the link between trust in national and supranational constitutional courts could be a *shared favorable process evaluation*, as both institutions are perceived as fundamentally similar. If support for the supranational court is different from support for the national court, on the other hand, the varying evaluations might well stem from differing process evaluations of courts. Even in this case, however, if the supranational court is evaluated along the same dimensions as the national court, at least there is the *potential* for a legitimacy transfer (even though the link right now might indicate but a cognitive shortcut), once the supranational court lives up to the standards of the national court.

Table one presents the results of four separate OLS regressions analyzing trust in the *Bundesverfassungsgericht* and European Court of Justice in West and East Germany respectively.

[INSERT TABLE 1 APPROXIMATELY HERE]

The Case of the Bundesverfassungsgericht in West and East Germany

The analysis begins with an investigation of the sources of trust for the *Bundesverfassungsgericht* in both parts of the country, as the national court provides the baseline for the ECJ. Both the West German and East German models perform adequately, explaining a solid 42.5 and 49 percent of the variance in trust for the *Bundesverfassungsgericht* respectively.

In West Germany, only a small number of variables have a statistically significant impact on trust in the Court. Most conspicuously among those, mentioning the Federal Constitution as something to be proud of is a significant and strong predictor of trust in the *Bundesverfassungsgericht* (B=.355). In East Germany, however, this variable has no significant impact when everything else is controlled for. Trust in the Constitutional Court is not independently drive by pride in the constitution – possibly an expression of the fact that East Germans adopted the constitution in a “take it or leave it” decision as the economic pressure of a transforming Socialist economy threatened to bankrupt the GDR.

In both parts of the country, however, almost all inter-institutional trust relationships emerge as strong , as well as statistically significant. Even while controlling for everything else, support for the Federal Government, Bundestag, and for the Justice system exert an independent impact on trust in the *Bundesverfassungsgericht*, with unstandardized coefficients ranging from a low of .118 (*Bundesregierung*) to a high of .279 for the Parliament in the West and a low of .270 (Justice system) to a high of .437 (Parliament) in the East. In the East, support for the Federal Government alone does not reach statistical significance, thus indicating that Easterners perceive the Government to be part of an entirely different trust dimension.¹⁵

¹⁵ Interestingly, a significant relationship between education and trust also emerges in West Germany, but not in East Germany. Only in the West are more educated citizens also more likely to trust the Court, while in the East trust is independent of education levels. Equally interesting is the fact that in West Germany, trust in the Court is gendered (i.e., women feel significantly less trusting towards the Court than men) while no such gender gap emerges in the East.

The Case of the European Court of Justice in West and East Germany

The models predicting trust in the European Court of Justice perform even better than the national models, as they explain a remarkable 62.9 and 59.2 percent of the variance in West and East Germany respectively. Again, most of this variance is explainable through just a small number of independent variables.

Once again, the strongest impact comes from inter-institutional trust connections. In West Germany and East Germany, the strongest predictor is the average trust in the European Commission and Parliament.¹⁶ The second strongest factor explaining trust in the ECJ is trust in the national court, the *Bundesverfassungsgericht* with a coefficient of .253 and .230 in West and East Germany respectively. Trust in the Justice system is significantly associated with higher trust in the ECJ in the West ($B=.137$), but this link is apparently not being made in the East. Furthermore, in West Germany, trust in the national parliament leads to slightly **lower** support for the ECJ ($B=-.098$), i.e., to a nationalization of support. Once again, the East German data fail to show a comparable connection.

A feeling of connectedness with the EU and its citizens does produce higher trust in the ECJ in the West only ($B=.146$), but once again the effect fails to materialize in the East. East Germans do manifest a similar symptom, though, in that in the East only, expressions of generalized national pride translate into lower trust in the ECJ ($B=-.189$). In the West, no such relationship is significant.¹⁷ A few other variables barely approach statistical significance ($p<.1$; pride in the Constitution in West Germany, the anomy items in East Germany), but the relationships are tenuous enough to justify resisting the urge to interpret them.

Overall, the evidence thus suggests Easton and Hibbing and Theiss-Morse appear to be on the right track with their theories, even though it does not fully explain exactly why and how people make the inter-institutional connections (functional or cognitive shortcuts?) or why they fail to make it.

So after analyzing the surveys, three main questions require further investigation with richer, qualitative data:

- 1) **Why** do people trust constitutional courts so much **more** than they trust the other institutions of government?
- 2) **How** and **why** do people make the connection between national and supranational courts?
- 3) What **differences** (if any) are there between the nature of the trust connection in East and West Germany?

¹⁶ Respondents did not appear to differentiate between the two institutions very much as indicated by a Pearson's correlation coefficient of over .85. This created multicollinearity problems that necessitated the creation of an average score for the two institutions.

¹⁷ Perhaps this is an expression of the fact that while West Germans developed an aversion to nationalism due to post WWII re-education efforts, as the FRG considered itself the successor state to the Third Reich. The GRD, on the other hand, developed its national identity based on the anti-fascist roots of its Communist/Socialist heritage and thus never took responsibility for the atrocities of the Third Reich.

TRIAL TWO: ANALYSING THE FOCUS GROUPS

In the second layer of analysis, I will explore a series of focus group interviews in order to answer the questions posited above. Focus groups¹⁸ are especially valuable as part of a multi-method approach. They are then used, as in this case, to provide additional, rich data against which a hypothesis is tested. While care must be taken in interpreting the results in order to avoid overstating external validity (Merton, Fiske et al. 1990: xxi), they are well-suited to following up previous research with very specific open-ended questions. According to Denzin and Lincoln (1994: 365) this is exactly the type of research situation for which Merton coined the phrase “focus group.”

In a focus group, a small group (approximately 6-10 people) of homogeneous participants is convened. It is important that participants feel comfortable enough with the other participants to become a part of the group. Therefore members need to be relatively similar to each other. The researcher uses a discussion guide outlining the questions that will be asked during the interview. However, deviations from the guide commonly occur, as each discussion develops its own dynamics.

In this case, due to the quasi-experimental research design, two sets of focus group interviews were conducted: one set in West Germany, another set in East Germany. College students are a particularly interesting population to conduct such focus group interviews with. Not only are they readily available (recruitment of focus group participants can be both difficult and costly), but they tend to be more articulate than the average population. In addition, for East Germany, i.e., for the “new” courts, college students represent one of the youngest politically aware population groups that have been socialized into the current political system. Older generations likely have received their primary political socialization pre-unification, thus potentially muddying the results with attachments to the previous political system. If no functional connection can be found in this population, i.e. if the null hypothesis cannot even be rejected for the ‘most likely suspect,’ we can be all the more confident that the hypothesis is incorrect and that no relationship exists. If, on the other hand, a functional connection *does* emerge, further investigation is warranted.

The West German focus group interviews were conducted at the University of Mainz in the state of Rhineland-Palatinate, and the East German ones at the University of Erfurt in the state of Thuringia.¹⁹ Both universities are located in cities of similar size (around 200 000 inhabitants) and both are located in their respective state capitals. Fundamental similarities (both cultural and economic) between the two cities led to a twinning arrangement in 1988. The cities and states

¹⁸ The focus group technique goes back to the work of the social scientist Robert Merton, who used it to analyze audience reactions to World War II morale films (Stewart and Shamdasani 1990). It is essentially a reaction to the forced structure that surveys and highly structured interviews imposed on respondents. Its primary advantage is that it allows participants to freely define the meaning of her or his comments. Through group interactions, respondents are able and supposed to influence each other in order to reveal underlying meaning and connections that they make. As Lewis (Lewis 1995: 2) put it: “It [the focus group interview, A.G.] taps into human tendencies where attitudes and perceptions are developed through interaction with other people. During a group discussion, individuals may shift due to the influence of other comments.

¹⁹ The research at the University of Mainz and the University of Erfurt were made possible through the gracious support and hospitality of Professor Dittgen in Mainz and Professor Herz in Erfurt. I would also like to thank all of the staff members at both universities for making my stay both enjoyable and efficient. Without their logistical support, this research would not have been possible. Two preliminary focus group interviews were conducted at the University of Mainz, Germany, on February 1, 2001. The main set of focus groups was conducted at the University of Mainz on June 3, 2002 and at the University of Erfurt on June 7, 2002. Each session lasted roughly two hours and was conducted in a room at the respective University. Each group contained from 3-14 participants.

represent neither the richest area of Germany, nor the poorest. They both share a relatively central geographical position within the country. As such, they are well suited for a comparison.

German citizenship was a prerequisite for participation in the focus group interviews²⁰. A further requirement was that participants were born and raised in the old and the new German states for the West and East German interviews respectively. These requirements were necessary, as only citizens' views towards their political system were of interest.

All group discussions followed basically the same format. Moderation of the group was based upon a discussion outline that had been prepared in advance.²¹ Though not all questions were asked in the same order in each group, depending on the discussion dynamics, almost all of the questions were covered by both groups at one point or another. Both discussions began by exploring what respondents are proud of as Germans and then proceeded to what they thought the institutions should be doing right now and whether they are doing it or not. In a next step, participants were asked to evaluate which institution had the most power. Then, discussion proceeded to evaluations of trust in the Federal Constitutional Court compared to the other institutions. This same structure was then repeated for the European institutions, including the European Court of Justice.

Given the quasi-experimental research design, it is imperative to analyze the West German and East German data separately, so that communalities and similarities become readily apparent. Since we already know more about established courts than about emergent ones, and since they will serve as the baseline for comparison, the West German focus groups will be analyzed first.

The West German Case: Established National v Emergent Supranational Court

Discussion in all groups was quite lively. Even though all groups reacted to the questions in slightly different ways, a number of common themes emerged from the discussions. The first complex of communalities concerns the way participants perceived government and parliament. It was quite evident that all participants had clear ideas of which problems they wanted the Federal Government and Parliament to tackle. A number of current buzzwords of the political debate ranging from right wing extremism, unemployment, pension reform, perceived inflation due to the introduction of the Euro, all the way to trust in government were brought up.

Constitutional Court v the Other Institutions

It was striking during discussion, that participants did not perceive the government and parliament as tackling the main problems of the day effectively. They did see activities regarding these problems, but they were generally judged to be blind and mindless activism designed to give the illusion of actual solutions. Ideological differences and partisan squabbles and mudslinging with an eye to the next election were cited as causes that prevent consensus that would lead to true solutions to the problems from emerging. Ironically enough, the mechanics of democracy and the ensuing discussions are being held against these institutions. Instead of representing interests, participants mainly expected leadership and problem solving capabilities from the overtly political institutions. Maybe it is unsurprising that this image squares quite well with Hibbing and Theiss-Morse's findings on the U.S. Congress (1995). In the eyes of participants, the government and the legislature were

²⁰ A complete description of the recruitment process and group characteristics/composition is available from the author upon request.

²¹ A copy of the moderated discussion outline can be obtained from the author upon request.

simply engaging in a more or less futile process of wanting to appear effective at solving problems, without actually doing so. Again, the similarity to Hibbing and Theiss-Morse's recent findings concerning the negative process evaluations as a reason for distrusting the U.S. Congress (2001) is quite striking.

A second complex of communalities emerged around perceptions of the Federal Constitutional Court. The Court was seen as quite a contrast to the other, squabbling institutions of government. Participants in all West German groups cited four main interrelated reasons for their trust. First, the institution is viewed as passive/reactive and only potentially and temporarily powerful. Comments relating to this point are well represented by the following two remarks:²²

Participant 11 (male): "It is not its task to exercise power."

Participant 9 (male): "Power in a political sense is not vested in the Court by the constitution, so you need to exclude that aspect."

Second, the Constitutional Court is seen as staffed with highly competent professionals and good democrats. The following sampling of comments illustrates this line of argument well:

Participant 1 (male): "They [the Federal Constitutional Court, A.G.] are a multifaceted institution where everybody specializes on a particular type of law. They are specialists."

Participant 5 (male): "They have a high level of competence."

Third, the Court is viewed as non-political/non-partisan since it is insulated from political and/or public pressures. A few representative comments illustrate this point. A female participant (participant 2) succinctly summed the core of the argument up as "It stays out of small fights and party squabbles."

Fourth, the Federal Constitutional Court is seen as constrained by the constitution and therefore as linked to the common good. One participant put it thus:

Participant 7 (male): "There is, well, let me say, a concrete body of rules, right? They [the justices, A.G.] need to come to their judgments based on the, well, constitution. In parties it is the cases that they represent certain opinions. The Federal Constitutional Court doesn't have that. They must not be subjective, but objective, right? There are rules, and they are being applied to cases and, well, it is simply a logical chain of argument."

Amazingly, this firm belief in the myth of judicial neutrality even holds up to direct challenge from another participant. Even when the participant is alerted to the fact that decisions change and that court decisions are a matter of interpretation, he still insists on trusting the court.

Participant 3 (female) interjects:

"Excuse me. I think it is a bit subjective because if you compare ... uh ...decisions, for instance, from ... I don't know ... well from the past, then there have well been different decisions."

Participant 7 (male) replies: "Yeah sure, of course, some leeway is certainly there, but it is always the case that you can say, ok, well *this is the law and we based our decision on that and that you can follow that*. And for – in politics there are certain opinions, that you say it is liberal, somewhat conservative, and well, you cannot really label it right or wrong, but it is always the degree to which it coincides with yourself and your inclinations are being valued more." [Emphasis added]

Trust in the Federal Constitutional Court emerges here as **socialized** trust. Participants' judgments are not necessarily based on actual knowledge, however, as participants admit with

²² All translations are the author's own work, based on focus group transcripts. The author owes special thanks to Romy Langeheine at the University of Erfurt for transcribing the East German focus groups, as well as to Vanessa Habermann and Tatjana Kober at C.W. Post University for transcribing the West German focus groups.

surprising candor. Almost everybody keeps repeating, “at least I hope so...” It is interesting to note that due to the respondents’ socialized basic propensity for trust, the absence of negative news is taken as an affirmation of their basic trust.

Participant 8 (male): His trust in the FCC is highest of the three institutions “perhaps because you hardly ever hear of it. [...] Your really never hear of failures.”

Furthermore, it is interesting that to note that participants are quite aware of the fact that their trust is related to the nature of the court:

Participant 4 (female): “Well, I somehow have a kind of ... I don’t know ... some kind of basic trust in the Federal Constitutional Court and I don’t necessarily have that in the parties because they simply – well, um – I basically assume that the Justices of the Federal Constitutional Court, well that they succeed [in staying non-political and true to the constitution, A.G.]. I can’t control them, either, but if they really are like this, if they really are democratic, and then they really make their decisions so that they would be best for the people. And for parties I do not assume that because I currently see that some parties completely oppose my views, for instance. And so it cannot possibly be, well, the best for everyone. But I connect it [the Federal Constitutional Court, A.G.] much more with such democratic values than I connect parties because some parties exist that don’t stand for democratic values, or for values that I don’t suit me. And – it is quite obvious, because the Federal ... the parties – they are – they articulate actively and the Federal Constitutional Court is only passive. That means it is only called upon and so there are many more opportunities for me to be cross with those parties somehow. But somehow it cannot really be justified.” ...

The participants’ deeply internalized, socialized trust in the Constitutional Court appears close to unshakable. When asked to imagine the worst possible decision the Court could make, they had difficulties to imagine the Court making ANY kind of bad decision. For as long as they could find some sort of halfway reasonable interpretation of constitutional provisions, they were willing to acquiesce to any kind of judgment. Only if the Court openly disregarded fundamental human rights would they be willing to stand up to it and protest. In contrast to the Federal Constitutional Court, however, the other institutions of government were seen as slaves of the voter and the media. Table 2 summarizes the findings for the German national institutions of government in West Germany.

[INSERT TABLE 2 APPROXIMATELY HERE]

European Court of Justice v Bundesverfassungsgericht

Notwithstanding the varied opinions within the groups, it was striking to note that virtually all participants, regardless of their level of trust in the European Court of Justice, DID make the functional connection between the national and supranational constitutional court. However, the strength of the connection did vary across individuals, as did the nature of the argument. The tenor of opinion was that overall, members of the ECJ are seen as judges and are consequently accorded trust. There was SOME DEGREE of legitimacy transfer for almost all participants, but it varied according to the interaction of two factors (see Table 3):

- 1) The perceived differences between themselves and the rest of Europe and
- 2) mitigating factors that allowed participants to tolerate difference.

[INSERT TABLE 3 APPROXIMATELY HERE]

Respondents who generally view the values represented in the Court and other European systems and cultures as alien and remote trust the ECJ less than even the national government.

Participant 7 (male): “The problem with the European institutions is that they do not only take German values, and -- yeah, German priorities into account, but that you always have to find some compromise

which is somehow acceptable for all European member states. And because of that I find myself saying that I trust the Federal Government more because I know that they only take into account traditional values and the – whatever – basic ethical rules with which I can somehow identify, that are dominant in our culture. There are certain differences within Europe, after all.”

Other participants clearly recognized differences to other Europeans, but their overriding support for European integration enables them to tolerate displeasing outcomes.

Participant 8 (male): “I have equally strong trust [in both courts, A.G.] because I, well, think that there, too, decisions are being made based on the law and secured through the law. Only I have to say yes, there sometimes are decisions that the Germans brought to the Court, I mean a case that the Germans have taken to court, which is then being decided for the benefit of Germany, or it corresponds more to Germany’s point of view. Sometimes the result corresponds more closely to the views of the Mediterranean countries or something like that. Then you have to, as he said, give in to that or you even have to acquiesce to it, yes. But viewed in the long run, this is certainly good, because everyone gains and loses sometime, uhm, and only in this fashion can a way to integration be found. I have complete trust in that.”

Another striking finding was the extreme to which some participants were willing to push the skills argument. Those individuals who had most internalized the view that the justices’ competence was the primary reason for trusting them were even willing to trust the European Court of Justice more than the Federal Constitutional Court. Those participants did not even bother to mention differences. Participant 3 (female): “Well, if you extend the Federal Constitutional Court – that the best judges in Germany are on the Federal Constitutional Court, then the European Court of Justice would have to have the best judges of all of Europe. And then, I would personally say, I trust the European Court of Justice more than the Federal Government. As for [the trust comparison with, A.G.] the Federal Constitutional Court, well, I’m not quite sure right now, perhaps, yes, equally or similarly, because I simply think that – it is untouchable. The government are, well, I don’t know, completely normal people like you and me, I think, well, they are just human, but for me, the judges are more like, well for me somehow on a higher level. [...] As I said, I’m not well-informed enough in order to really say. It is simply a kind of feeling, but I don’t have real information.”

Participants also made it clear, however, that similarly to the national court, their thoughts were not necessarily based on detailed knowledge. This is a strong indicator that trust in the European Court of Justice grows out of the deeply socialized trust in the Federal Constitutional Court. In that sense, both the functional and the cognitive hypotheses appear to apply. It has to be noted, however, that support based on a cognitive shortcut will likely be more easily eroded than truly socialized support.

The East German Case: Emergent National v Emergent Supranational Court

Participants in the East German focus groups were easily able as their Western counterparts to recite a whole litany of current political problems that they thought ought to be tackled. Clearly, none of the participants in any of the focus groups – not even the ones who said they had very low interest in and knowledge of politics – thought that there were no urgent issues to be addressed. In the East German groups, the main current problems had a slightly different focus than those Westerners perceived, though. In the East, as in the West, the rising prices due to the Euro conversion were an urgent problem participants wanted to see addressed by the political institutions. In addition, however, concerns included unemployment, corruption, taxes and the budget deficit, a fair distribution of wealth, and the restructuring of the economic system. The Euro-effects clearly were a national debate, while

more fundamental perceptions of injustices within society emerged as the central complaint in East Germany.²³

Constitutional Court v the Other Institutions

When respondents were asked to specify which institutions should address these issues, one readily apparent difference between East and West Germans was that where West Germans were almost unanimous in assigning the problem-solving responsibility to the overtly political institutions, rather than the Constitutional Court, participants in the Eastern groups were slightly more willing to take the Court to task, as well. However, this was mainly due to the perception that the legislative process was in danger of failing²⁴ and the Court would now be required to step in to rectify the situation. At the same time, no implied worry about the Court living up to the occasion was noticeable – quite in contrast to the perceived likelihood that the other problems would be solved to participants' satisfaction.

In most other respects, the similarities to Western perceptions of the Constitutional Court compared to the other institutions of government were overwhelming. Participants expected the Court to step in and defend the constitution when other political actors had failed to do so. Just as in the West, most participants saw the Court as overwhelmingly trustworthy, because it was seen as isolated from the corrupting pressures of special interests and parties, while simultaneously being constrained by the constitution. Even when a participant was reminded that seats on the Federal Constitutional Court are filled according to party quotas, participants insisted on the justices' impartiality. Participant 39 (male): "Ok, at that moment [when the justice joins the bench, A.G.] he has to sit on the Federal Constitutional Court – and there partisan affiliation no longer plays a role." Moderator: "Do they check it at the door, or what?" Participant 39: "Yes, they are then really independently responsible only as a Constitutional Justice. Then any sorts of interests no longer play a role."

In addition, East German participants shared the Western counterparts' view that the Court was trustworthy as an institution that has to come to the rescue when the other institutions fail, without being able to initiate steps on its own. When another respondent suggested the Federal Constitutional Court step in and institute more equitable criminal penalties (which as a Kelsenian constitutional court, it cannot do), a more informed participant replied with a reason why the Court cannot solve problems: Participant 49 (female): "And the problem is that with the Federal Constitutional Court (inaudible, A.G.) they only can regulate something when something else has already gone wrong. This is always an ex-post affair. Something always has to happen first. Then somebody must sue. This must then be so grave that – ok, something will be changed now. And then something happens. That is the point, though: they [the Justices, A.G.] cannot decide something in advance at their own discretion."

²³ Given its Socialist history, East Germany tends to lean more towards left ideologies. In addition, questions of social justice and distribution of wealth are a greater concern to East Germans simply because the new states are less well to do than the old states. So this perceptions of current problems was to be expected.

²⁴ The respondent was referring to the Immigration Law, which was quite contentious at the time. It was proposed by the Social Democratic/Green coalition government. After relatively smooth passage in the Federal Diet (*Bundestag*), passage in the Christian Democrat-dominated Federal Council (*Bundesrat*) was questionable. It was widely expected that even *if* the law were to pass, it would be challenged before the Constitutional Court. The law was indeed challenged before the *Bundesverfassungsgericht* later that year and struck down by the Court on procedural grounds (the state of Brandenburg had not cast its votes *en bloc*, as constitutionally required). A revised version of the law was finally passed in the summer of 2004 and took effect on January 1 of 2005.

Participants in the East also agreed that the Constitutional Court was a neutral institution that did not stand for particular interests. To the extent that they do take sides, Justices are seen as taking the side of the law and the constitution, not as imposing their own interests. After saying that she trusted the Constitutional Court more than politicians and saw them as more trustworthy because they are never visible in the media trying to gain support for their personal viewpoint, participant 49 explained why she thought Constitutional Justices do not seek the media limelight:

Participant 49 (female): “They [Constitutional Justices, A.G.] represent their opinion, but they always represent the opinion of the law – I don’t know how to express this. In politics, this is different. [...] And I think that they also make decisions there [at the Federal Constitutional Court, A.G.] that are free from personal value judgments. I do think that they simply see their position and then they judge according to the law. And [I think, A.G.] that the responsibility is much greater that it [the decision, A.G.] is neutral – and this is different in politics. There, your own opinion is pushed through or not pushed through.”

Table four summarizes the results from East Germany.

[INSERT TABLE 4 APPROXIMATELY HERE]

The most significant difference between East and West German views of the Federal Constitutional Court is that East German participants did not emphasize the role of expertise as much as their Western counterparts. Hence, the table entries were omitted from this table. While expertise was occasionally alluded to in side references, the main source of trust in the Federal Constitutional Court seemed to derive from the absence of political pressures on the court that led to a perception of neutrality. Once again, process evaluations favor the Constitutional Court with respect to the political (and arguably more democratic) institutions of government.

European Court of Justice v Federal Constitutional Court

If similarities between East and West Germans abound at the national level, the question then becomes whether these similarities continue at the supranational level, as well. As discussed above, West Germans were – under certain conditions – willing to transfer their trust in the national court to the supranational level. Will East Germans be willing to transfer their trust in the Federal Constitutional Court to the European Court of Justice?

The answer is – as in West Germany – it depends. However, there are clear differences in what the transfer of legitimacy depends on for East Germans. The first striking finding is that East Germans feel very poorly informed about the European Union, even more so than West German participants. At the same time, however, *a few* East German participants had much more detailed knowledge of EU affairs than the overwhelming majority of Western participants.²⁵

Attitudes towards European integration were also different in both parts of Germany. While identification with Europe and the European Union in West Germany was frequently seen in terms of creating peace and stability in Europe, East Germans portrayed a different image of “Europeanness.” While they did claim to feel European, for East Germans this seemed to be more in a cultural than in a political sense. The following comments illustrate this sentiment.

Participant 40 (female): “I do feel like a European. I feel as if I am in a community in Europe and this connects me with other Europeans. This is not necessarily seen politically or something like that, but it is [inaudible, A.G.]. I would – if someone asked me if I felt more as a German or more as a European – would I feel more like a European, and that I feel a connectedness with the other people. That I do not

²⁵ Mostly, this information concerned aspects of the EU that respondents disliked.

distinguish Germans are such and such and French are such and such. I feel connected with the people.”

Participants made clear distinctions between Europe in a cultural sense on the one hand, and the European Union on the other hand. For West Germans, the two tended to be inseparable. Clearly, Europeanness and the European Union are not synonymous in East Germany. When asked what they saw as the main problems facing the European Union, participants therefore tended to name different problems, if they felt they had enough information to name specific problems in the first place.

First and foremost, participants who had enough information to name specific problems thought that the EU needs to reform itself and create a true constitution. Right away, the discussion became controversial, though, as not all participants thought that a deepening of the European Union was a desirable aim. For those participants who were in favor of further integration through the European Union, however, the most important problem was that the system does not allow for sufficient majoritarian decision-making. Further problems concerned the lack of powers for the European Parliament. Oddly enough, the first sign of democratic responsibility of the European Commission, which resigned after some members had been involved in scandals, was also seen as problematic. Overall, respondents who favored European integration wanted more democratic accountability, transparency, and more powers for the European Parliament. It should be noted that these are not really policy problems, but more fundamental, constitutional problems. While at least some of the participants liked the idea of a European Union, they were dissatisfied with the current political structure because they perceived a democratic deficit.²⁶

At least one participant appeared to reject the notion of European integration through the European Union (in its current form) altogether. When asked about the most important problems currently facing the EU, the participant replied:

Participant 47 (male): “The problem that the EU thinks that ‘community or a feeling of union can only be achieved by harmonizing. I think that is the greatest [expletive deleted, A.G.] that they attempt to make all legal systems the same.”

When challenged by other participants that integration could not be achieved without legal integration, the participant replied that he would trust the market more than the EU to take care of things. If anything, the only justification for the European Union he could see was to conduct a joint foreign policy. To this participant, then, European integration should be a confederation, nothing more.

Overall, participants associated mostly negative perceptions and emotions in connection with the European institutions. The ECJ was no exception to this rule. What was exceptional, however, was that one respondent had enough information about the Court to venture the most detailed and case-based evaluation of the European Court of Justice. The following was his explanation for the greatest challenge currently facing the ECJ.

Participant 39 (male): “Independence from the Advocate General, the European Advocate General. When I think of the tobacco story with the formula 1 [racing car league, A.G.] – this was the first time so far that a European Advocate General has essentially made a recommendation and the European Court of Justice always agrees with it. I find that too transparent. There would have to be a greater disentangling [of interests, A.G.]. It cannot be that when the Advocate General makes a recommendation even against the Commission – this was the point – against the Commission, and that the Court of Justice always follows the petitions of the Advocate General. There must be greater

²⁶ Oddly enough, if the European Union were to create clearer lines of democratic accountability, the experience of the national institutions would suggest that the ECJ would stand to benefit more than the political European institutions.

disentanglement [of interests, A.G.]. I mean, that is the way it is in any normal court, that the court has its own opinion between the public prosecutor and the defense attorney. This seems weird to me.”²⁷

Even though this participant was quite critical of the ECJ, though, he clearly placed great hopes in the institution. When participants were asked what images or ideas they associated with the various institutions, the same participant volunteered this answer.

Participant 39 (male): “In the future [...] when we get to the point that the Parliament, as well as the Court of Justice, are given more powers, it will automatically be like in the USA in the Supreme Court, that one really [takes, A.G.] the trust that one has in the Federal Constitutional Court right now, that you transfer it to the Court of Justice.”

For this participant, then, the negative evaluation of the Court derived from negative process evaluations (i.e., the Court as catering to the Advocate General’s interests), NOT from a lack of a national presumption of legitimacy. He even expressed a desire for the Court and the European Parliament to be given more powers so they could become trustworthier. Interestingly, then, the one individual that appeared to trust the ECJ the least is also the one who sees a great potential for trust in the future, when the Court and the structure of which it is a part is more clearly democratically legitimated in his view. Quite clearly, then, the participant makes a functional link between the two courts, even though he judges them differently, possibly due to a strong identification with German national interests as his comments later on in the discussion indicate.²⁸

Most participants found it very difficult to express specific opinions about the European institutions. They experienced them to be very remote, cumbersome, hard to get good information about, and potentially corrupt. When pressed to venture a comparison despite their lack of information, respondents were only willing to express an opinion about the ECJ.

Participant 40 (female): “You would associate it [the European Union, A.G.] or transfer it as you know it from Germany and say: ok, I would grant the European Court of Justice the most competency or trust [...] and I would essentially transfer the small Germany to the large Germany [the European Union, A.G.]”

The participant took pains to emphasize the hypothetical case, however. In subsequent discussion it was repeatedly emphasized that participants felt it was simply too difficult to obtain good information. In particular, a lack of information about ECJ judgments was not taken – as in the national case – as good news. They felt the Court did not have enough of a track record to warrant their unqualified trust just like the national court.

[INSERT TABLE 5 APPROXIMATELY HERE]

Other participants who felt they had little information about the ECJ also thought it would be the trustworthiest of the European institutions. For two of the participants, the ECJ was perceived as more competent than the other institutions for the exact same reasons as the Federal Constitutional Court, as the following excerpts demonstrate.

Participant 49 (female): “Because they bring a certain qualification with them. [...]”

²⁷ It should be noted that the institution of Advocate General comes from French law. It is alien to the German legal system. Consequently, the term is translated as “Europäischer Staatsanwalt” or literally, European public prosecutor. However, the Advocate General’s task is very different from that of a public prosecutor, despite the similarity that the German terms seem to imply. This confusion of terms may in part explain the dissatisfaction the participant expressed.

²⁸ At the end of each group discussion, participants were given an opportunity to make final statements for the record. Respondent 47 (male) took the opportunity to add “I really just want to say that from a government, political point of view, I would not want to live in any other country on this earth, because I think we have the optimum [political system, A.G.]. Except maybe for something in the Scandinavian direction, but in no case anything different.”

Participant 48 (female): “Well, because the Court cannot necessarily do what it wants, like for instance the Federal Government. I think that this is why it is this way [that the ECJ is more trustworthy than the other political institutions, A.G.]”

Participant 49 even made a greater leap of faith when she said “I think this [the presence of trust in the absence of information, A.G.] is connected with the fact that trust has not been disappointed in that way. It is roughly like this: Why is Joschka Fischer [the German Foreign Minister, A.G.] so popular? He is so popular because he does not do anything wrong. And in this point, when you make a mistake, trust is disappointed²⁹. And when you do not do much, then you do not make many mistakes – and the whole European affair is not on the media that much and due to this we do not know that much about what they do. [This is why, A.G.] they make even fewer mistakes than for instance the Federal government.”

Clearly, this participant has a presumption of legitimacy for the supranational court just as much as for the national court.

The mechanisms for a functional connection are undoubtedly present in virtually all participants. However, different sets of constellations prevent people from making the link. Table five summarizes the results. Admittedly, the linkage between support for the national and supranational court is weaker in East Germany than in West Germany. Even though trust in the national court appears to be well socialized, transfer of this trust is hampered by skepticism about the democratic nature of the current European Union or, at least in one case, by fundamental doubts about the justification of European integration as such. None of the participants showed the strong version of the competence link from the national to the supranational level which led to higher trust scores for the supranational court than for the national one. Notwithstanding this difference, even most critics of the ECJ appeared to have the fundamental wherewithal to make the legitimacy link once they see greater democratic legitimation of the overall political structure of the EU (hence the perceived need to create a European constitution). Most participants were in the third category with low information about the Court, though, and made at least a tentative legitimacy link.

CONCLUSION

Based on the data presented above it is quite clear that people with very different viewpoints do make a functional connection between the two levels of courts. This is due to the fact that courts are perceived as different, and in many cases, as more successful institutions than the more overtly political ones. In a way, expectations towards courts are lower than they are towards the government and parliament. After all, one important difference participants cited was that courts do not often have to deal with political problems. When they do, participants tended to blame this fact on the failure of the political process that was originally designed to take care of the problem. Different sets of expectations lead to different evaluations. Based on this evidence, the findings of a legitimacy transfer from the national to the supranational level were not a methodological artifact. It is also evident that people do not know much about the European Court of Justice. This might mean that their support does not signify much. By the same token, however, participants freely admitted that they knew very little about the *Bundesverfassungsgericht*. Yet for this court, no researcher is willing to claim that its

²⁹ Even though this sounds strangely prophetic now, this focus group interview was conducted roughly three years *before* Fischer became embroiled in the so-called “visa scandal” that is currently threatening both his popularity, as well as his political career.

legitimacy is seriously endangered at this time. It may be a cognitive shortcut, but it enables the supranational court to *tap into a national source of legitimacy*.

Whether participants ended up trusting the European Court of Justice as much as the Federal Constitutional Court depended upon a number of mitigating factors, though: attitudes towards Europeans and European integration evidently matter. But clearly, as a court, the European Court of Justice has *some* presumption of legitimacy. In West Germany, as well as in East Germany, even people who do not trust it that much now see the **potential** of trusting it in the future, *since it is staffed with judges* and since it operates based on the same principles as the national court. Currently, they are just afraid that the legal norms those judges represent are not compatible with German notions of law and appropriateness or that the supranational court does not yet operate according to the same principles as its national counterpart. In both cases, however, participants clearly did make a functional connection between the two courts.

The findings from these focus group interviews square quite well with notions of a process-driven evaluation of institutions as advanced by Hibbing and Theiss-Morse (2001). As suspected, under many – though not all – circumstances, courts benefit from their more favorable process evaluations relative to those of the political institutions. Even though this flies in the face of conventional wisdom and democratic theory, citizens hate observing the day-to-day workings of democracy. They perceive the representation of interest as standing in the way of the common good because they have a rather cynical (though not entirely unwarranted) perception of the democratic process. They believe that politicians are in the game for their own benefit. Justices, however, are presumed to have more noble motives: the law, the constitution, and overall, the common good embodied in it. Under the right conditions, this legitimacy can transfer to the supranational level. This study suggests that the right conditions consist of general support for European integration in the form of the European Union, and the perception that the ECJ actually follows the same processes as the Federal Constitutional Court. For some, presumably extremely well-socialized individuals, even the **absence** of negative information about the ECJ and its decision-making process suffices.

Overall, the evidence thus support the legitimacy transfer hypothesis, even though it complicates the interplay of factors under which such a transfer can be successful. Now the next main task is to design process-oriented questions about the courts and to test empirically whether the linkages participants in these focus groups exhibited reproduce in the general population or not. If they do reproduce, we will then have to gauge which segment of respondents simply extrapolates due to a lack of information, i.e. takes a cognitive shortcut, and which parts of the population transfer legitimacy in a more durable and substantive sense. The difference between the two categories will be crucial for understanding the legitimacy of the European Court of Justice.

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FIGURES AND TABLES

FIGURE 1:

**The Visibility of National and Supranational Institutions Over Time in the Newsdaily
*Frankfurter Allgemeine Zeitung***

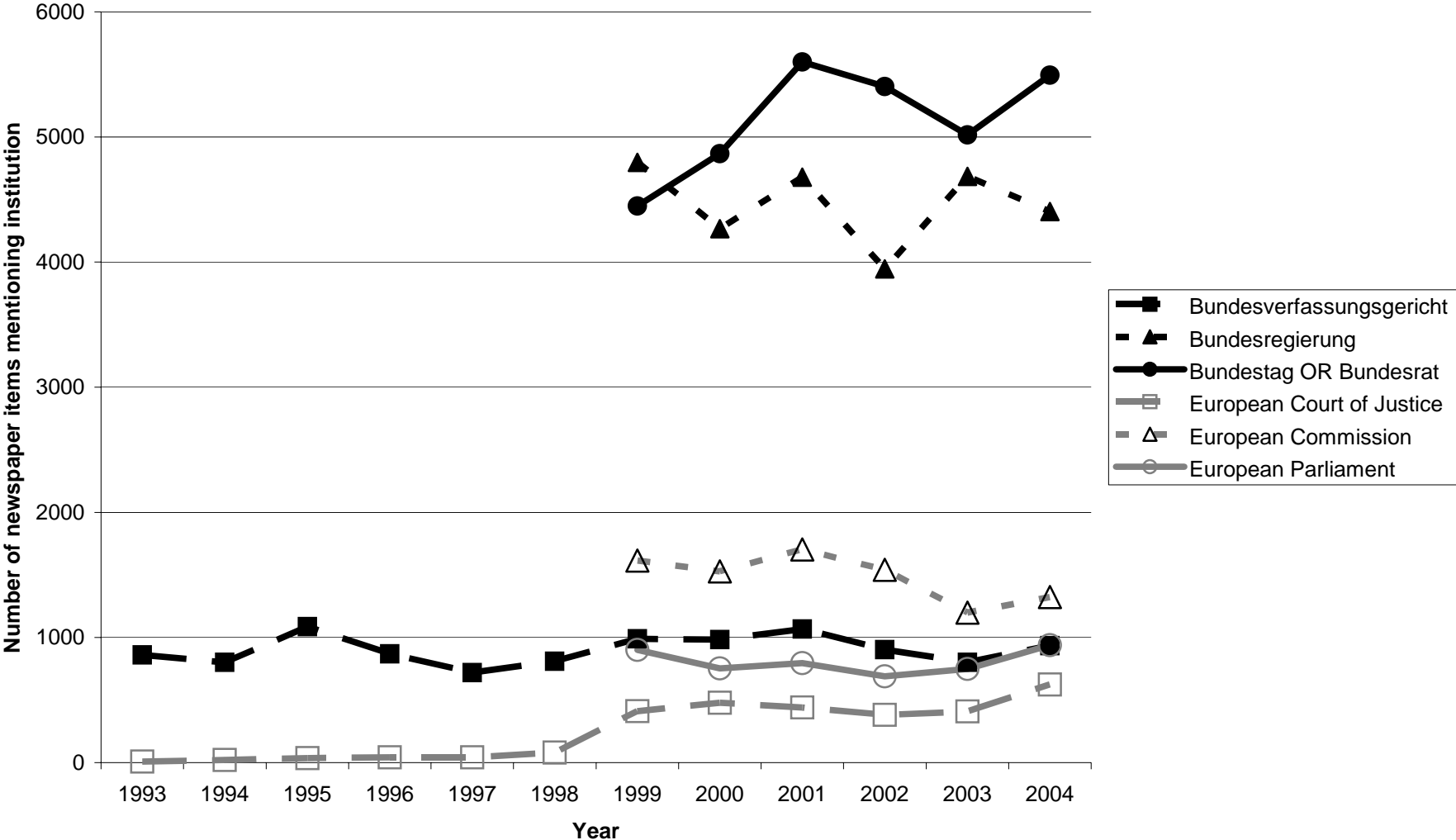


FIGURE 2:

**Trust in National and Supranational Institutions
in West Germany, 1994 v. 2000**

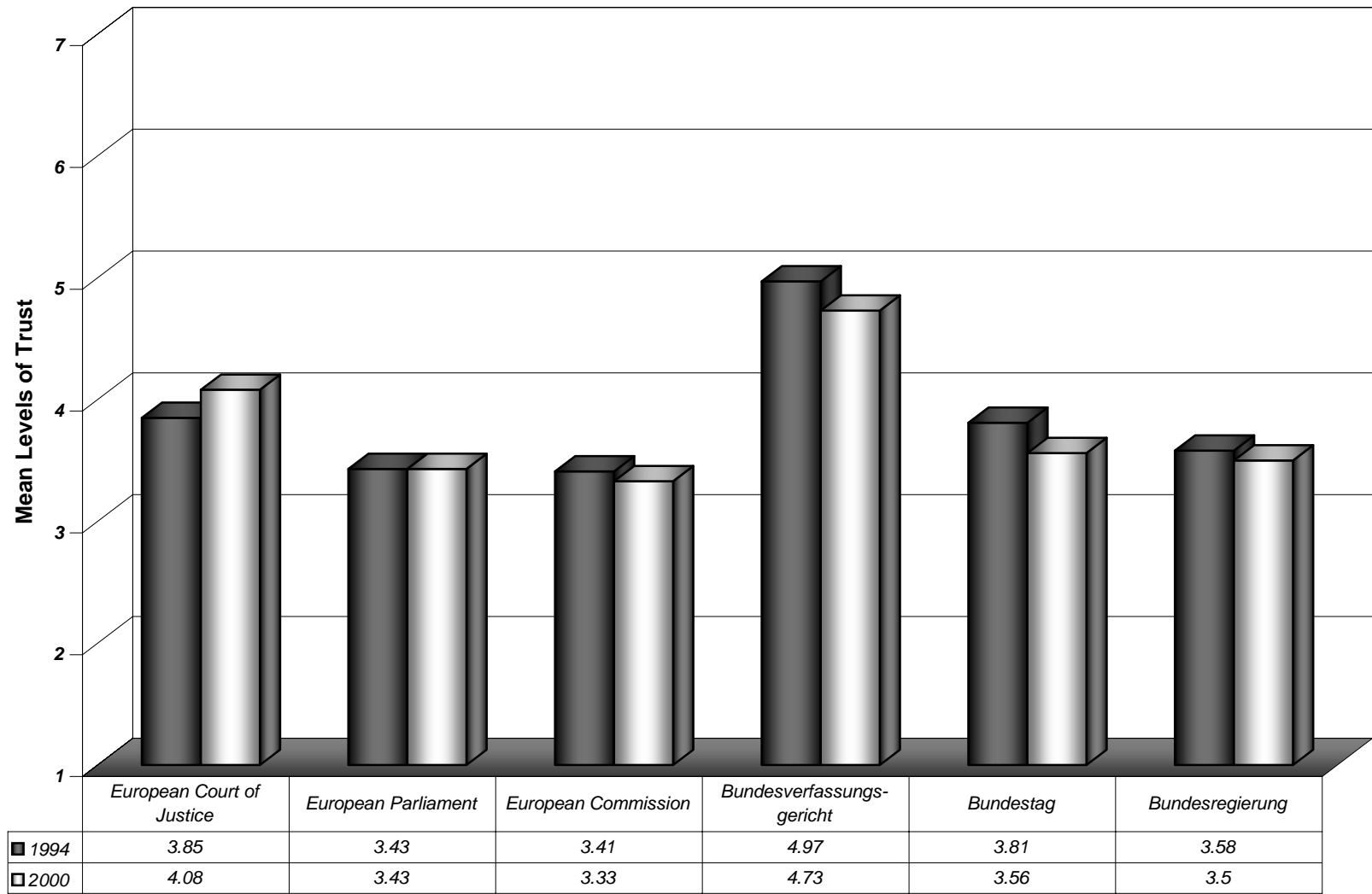


FIGURE 3:

**Trust in National and Supranational Institutions
in East Germany, 1994 v. 2000**

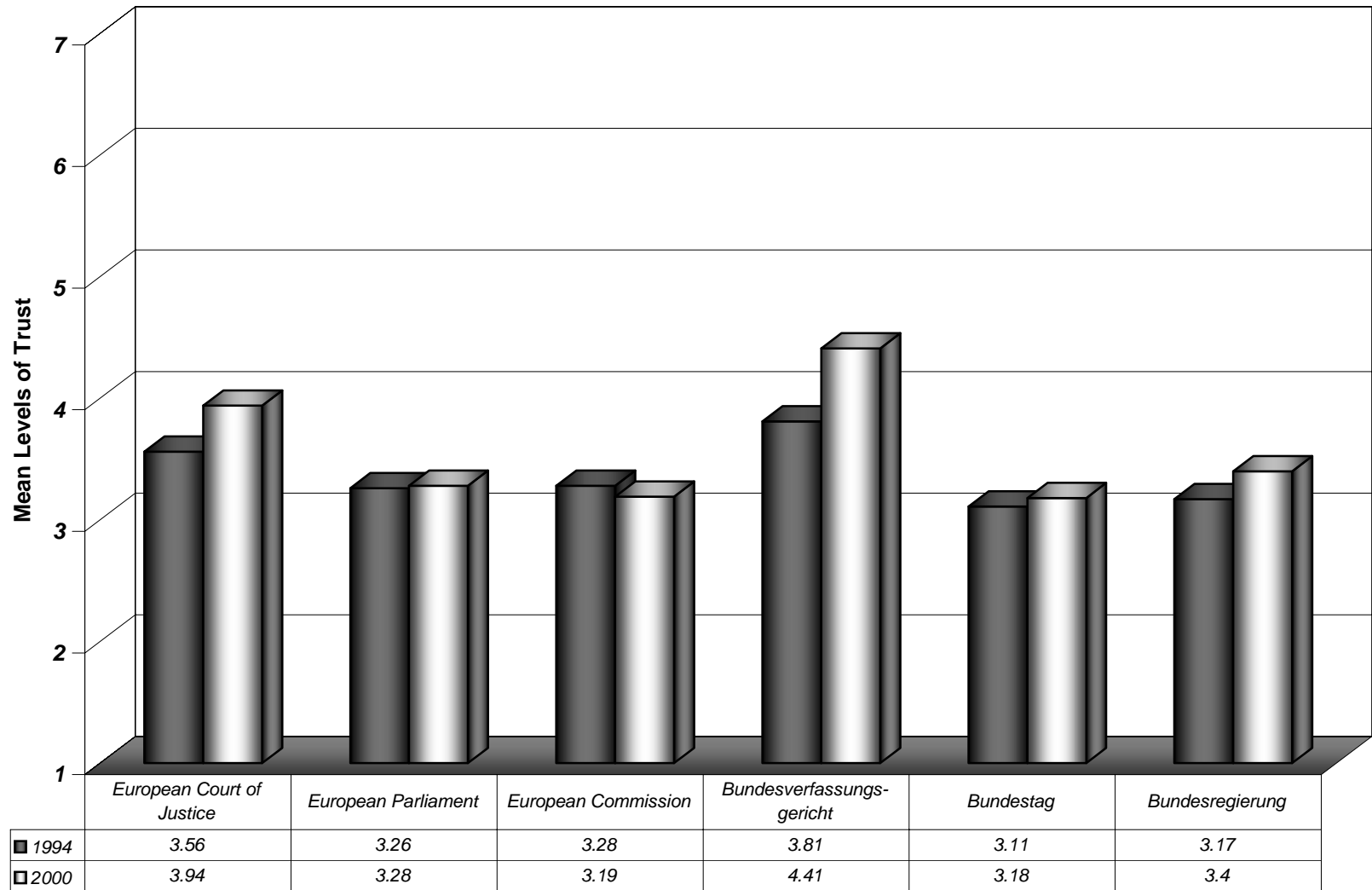


TABLE 1:

OLS Regression Analysis of Trust in Constitutional Courts ^(a)

	Models							
	Trust in Bundesverfassungsgericht				Trust in European Court of Justice			
	West Germany		East Germany		West Germany		East Germany	
	B	Std. Error	B	Std. Error	B	Std. Error	B	Std. Error
(Constant)	1.037 #	0.571	-0.114	0.844	-0.198	0.483	1.539	0.788
Average trust in European Commission and Parliament	—	—	—	—	0.672 ***	0.036	0.707 ***	0.049
Trust in the Bundesverfassungsgericht	—	—	—	—	0.253 ***	0.034	0.230 ***	0.050
Trust in the Bundesregierung	0.118 **	0.043	0.077	0.061	0.011	0.037	0.038	0.057
Trust in the Bundestag	0.279 ***	0.046	0.437 ***	0.059	-0.078 *	0.040	-0.036	0.059
Trust in the Justice System	0.266 ***	0.035	0.270 ***	0.049	0.137 ***	0.032	0.009	0.049
Ideology (left-right self-identification)	0.0780 ***	0.028	0.013	0.040	-0.043 #	0.024	-0.034	0.037
Satisfaction with democracy	0.074	0.048	0.181 ***	0.060	0.000	0.040	-0.023	0.057
People can be trusted	0.126	0.115	0.015	0.184	-0.098	0.097	-0.331 #	0.172
Politicians are uninterested in common folks	-0.039	0.144	0.106	0.236	-0.077	0.121	-0.386 #	0.221
Inglehart-Index	-0.041	0.049	-0.016	0.071	0.039	0.041	-0.101	0.066
Proud of constitution	0.355 ***	0.096	0.170	0.145	0.141 #	0.081	0.053	0.136
General pride to be German	-0.100	0.064	0.015	0.083	-0.057	0.054	-0.189 *	0.078
Connection to Germany as a Whole	0.121	0.082	-0.033	0.101	-0.002	0.069	0.036	0.094
Connection to EU and its Citizens	-0.023	0.071	0.079	0.095	0.146 *	0.061	0.056	0.092
Connection with old FRG/GDR	-0.049	0.069	0.124	0.081	0.032	0.058	0.036	0.076
Respondent's economic situation (very good to bad)	-0.062	0.075	-0.098	0.101	0.078	0.063	-0.050	0.094
Economic situation in Germany (very good to bad)	-0.057	0.079	0.142	0.097	-0.065	0.066	0.092	0.092
Respondent unemployed	-0.002	0.221	-0.233	0.216	0.323 #	0.187	-0.027	0.202
Age	0.006	0.003	0.000	0.004	0.002	0.003	-0.002	0.004
Gender	-0.281 ***	0.097	0.095	0.125	-0.024	0.082	0.035	0.118
Level of education	0.134 ***	0.047	0.099	0.070	0.017	0.040	0.017	0.065
Household income	0.014	0.012	0.018	0.017	0.005	0.010	0.001	0.016
Religiosity scale	0.011	0.017	-0.026	0.025	0.020	0.015	0.010	0.023
	R-squared	0.425	0.490		0.629		0.592	
	Adjusted R-squared	0.406	0.459		0.614		0.562	

(a) Regression analysis based on 2000 ALLBUS survey. Table entries are unstandardized OLS regression coefficients and their associated standard errors.

Significance levels *** = p<.001 ** = p<.01 * = p<.05 # = p<.1

TABLE 2:
FACTORS EXPLAINING TRUST IN THE FEDERAL CONSTITUTIONAL COURT RELATIVE TO TRUST IN THE FEDERAL GOVERNMENT AND PARLIAMENT IN WEST GERMANY

Perceived characteristics of the Federal Government and Parliament	Perceived characteristics of the Federal Constitutional Court
Active Leadership expected	Passive/reactive Leadership expected in crisis
Staffed with people just like you and me (who are fallible)	Staffed with highly competent professionals (who are infallible)
Political/partisan Subject to external pressure	Non-political/non-partisan Independent
Constrained only by ideology Self-interested	Constrained by constitution Interested in common good

TABLE 3:
FACTORS EXPLAINING TRUST IN THE EUROPEAN COURT OF JUSTICE RELATIVE TO TRUST IN THE FEDERAL CONSTITUTIONAL COURT IN WEST GERMANY

Degree of Experience and Information	Perceived difference between self/Germans and Europeans	Mitigating Factors	Functional Link	Trust in European Court of Justice Relative to Trust in Federal Constitutional Court
Low	Strong	None	No	Lower
Low	Medium to Strong	Support for European integration	Yes, but cognitive shortcut	Equal
Low	Irrelevant	Competence/Skills of Justices	Yes	Higher

TABLE 4:
FACTORS EXPLAINING TRUST IN THE FEDERAL CONSTITUTIONAL COURT RELATIVE TO TRUST IN THE FEDERAL GOVERNMENT AND PARLIAMENT IN EAST GERMANY

Perceived characteristics of the Federal Government and Parliament	Perceived characteristics of the Federal Constitutional Court
Political/partisan Subject to external pressure	Non-political/non-partisan Independent
Constrained only by ideology Self-interested	Constrained by constitution Interested in common good
Active Leadership expected	Passive/reactive Leadership expected in crisis

TABLE 5:
FACTORS EXPLAINING TRUST IN THE EUROPEAN COURT OF JUSTICE RELATIVE TO TRUST IN THE FEDERAL CONSTITUTIONAL COURT IN EAST GERMANY

Degree of Experience and Information	Perceptions of the European Union and the ECJ/EU law	Mitigating Factors	Functional Link	Trust in European Court of Justice Relative to Trust in Federal Constitutional Court
Medium	Threatening to 'harmonize away' national identity, no human rights protection	None	Yes	Lower
Medium	ECJ as dependent (on the Advocate General), not part of a democratic structure	Hope for disentanglement/strengthening of democratic structures	Yes	Lower, but potential for equal trust
Low	A good thing, necessary for integration	Support for the idea of political integration in order to play a more important international role	Yes, but cognitive shortcut	Equal