

What Drives Public Support for the European Court of Justice?

An Evaluation of Court Legitimacy, National Sovereignty, and Democracy in Europe

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Defense Date

April 4th, 2017

Abstract

The European Court of Justice as it stands today is one of the most influential transnational judicial institutions. The court exercises an unusually expansive range of jurisdiction over the member states of the European Union, and has played a creative role in expanding its own competencies through the process of constitutionalization. The mechanisms through which the court embellishes its own abilities, especially its ability to supersede the law of its member states, is a point of concern when analyzing the court's legitimacy and democratic deficit within the European Union. This study follows trends of public support for the European Court of Justice and aims to further discern which societal and political factors most affect support for the court. This paper examines the roles of variables such as awareness of the ECJ, trust in national governments, support for the grander European Union, and political composition along the traditional Left/Right spectrum and quantitatively illustrates the relationship these variables maintain with trust in the European Court of Justice. The results hold that a positive relationship exists between awareness of the court and support for the ECJ, while no relationship is found between the remaining three variables. These results suggest that the European Court of Justice is becoming less of an obscurity in the lives of everyday European citizens, and that its legitimacy is increasingly differentiated from that of national governments or of the European Union as a whole.

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Introduction

What is the European Court of Justice? Why does it matter?

Although the European Union is at its heart an economic project, its contemporary institutions illustrate that the organization has expanded beyond its original economic objective. The European Union, from its inception in the 1950s, has widened its jurisdiction to cover an unprecedented range of fiscal, monetary, political, and social policies. The judicial arm of the EU, known as the European Court of Justice (interchangeably the Court of Justice of the European Union or CJEU) epitomizes this transition from trading community to supranational institution. The Union has widened its competencies, through a series of treaties and international agreements, to cover a range of policy areas dwarfing the two covered by the 1952 European Coal and Steel Community. This significant increase in scope comprises the expansion of the EU's competencies in "macroeconomic policy, judicial cooperation, and foreign affairs."¹

Considering the ECJ's integral role in deepening this process of integration throughout Europe, it stands today as perhaps the world's most powerful transnational judicial body. It is regarded as "an usually influential international court" by means of its ability to "strike down both [Community] laws and national laws which violate the Treaty of Rome in areas traditionally considered to be purely the prerogative of national governments."² The ECJ's expansion of capabilities speaks to the greater trend of delegation of policy-making power to supranational institutions within the European Union. Particularly relevant to this elaboration is the trend of "constitutionalization," in which European Union law grows to increasingly resemble

¹ Christopher Bickerton, Dermot Hodson, and Uwe Puetter. "The New Intergovernmentalism and the Study of European Integration." In *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era*. Oxford University Press. 2015. Print.

² Karen Alter. "Who are the 'Masters of the Treaty'? European Governments and the European Court of Justice." *International Organization* vol 52.01 (1998): 121-147.

constitutional law more than it does archetypal treaty law through the accumulation of its own power via a series of attributed competencies. Although each European institution plays a role in this process, the European Court of Justice that plays a unique and creative role in asserting and embellishing its own laws and decisions. Despite lacking a formal constitution, the EU's treaties and agreements invoke this process which renders the legally binding documents of the European Union more similar to constitutional law than standard treaty law.

Constitutionalization is crucial to our understanding of the ECJ and its role in furthering European integration. This trend ultimately comprises the doctrines of supremacy, direct effect, implied powers, and human rights. These of course play into the supranational power the European Union can exert over its member states, but more significantly into the effect European Union law has on individual citizens. This ability of individuals to invoke Community Law in both European and national settings illustrates the expansion of competencies and widening of jurisdiction enjoyed by the court in its early history. These doctrines, although not originally determined by the EU's treaties, were established by a series of landmark cases. In each, the European Court of Justice's ultimate ruling expands the scope of application of European law.

The process of constitutionalization at its core represents a transition in the relationship between European citizens and public authority. The deepening of European competencies and increased integration affect public perceptions of democratic legitimacy regarding the power European institutions yield. In light of this turning point, I will examine any observable shift in public opinion data that accompanies the introduction and ratification of the Treaty on European Union (TEU) in 1993, the treaty formally establishing the European Union from the European Community, European Coal and Steel Community, and Euratom.³ This treaty, perhaps most

³ "Treaty of Maastricht on European Union." EUR-Lex. 7 Feb. 1992.

importantly, marks an unprecedented era of European integration, in which member states voluntarily pool their competencies in more nuanced issue areas, or even allocate certain policy areas to the supervision of the European Union as a supranational body. Maastricht embodies the process of constitutionalization, but more importantly serves as a marker for the most recent studies conducted on the intersection of public opinion and the European Court of Justice. In “Changes in the Legitimacy of the European Court of Justice: A Post-Maastricht Analysis,” scholars Gibson and Caldeira analyze mass attitudes towards the legitimacy of the ECJ from years 1992-1993.⁴ This paper measures short-term changes in the court’s public legitimacy. Additional survey data, however, especially those after 1993, suggest that there is room for this work to be continued.

This shift of competencies marks Maastricht as a crucial turning point not only for the institutional and structural elements of the European Union, but for public perceptions of the transitioning body. Maastricht furthermore signifies a point of contestation between the process of integration and the consent of member states. Its significance as a turning point for democratic contestation is evident immediately after the introduction of the treaty, as several member states held referendums and made revisions to the treaty before ratification. In Denmark, the treaty was rejected in a referendum and required alterations before it was legally ratified. France, one of the founding members of the European Union, also held a referendum on the document, which only narrowly supported its ratification in a vote known as the “petit oui.”⁵ The significance of this

⁴ James Gibson and Gregory Caldeira. “Changes in the Legitimacy of the European Court of Justice: A Post-Maastricht Analysis.” *British Journal of Political Science* vol. 28.1 (1998): 63-91.

⁵ Michael Lewis-Beck and Daniel S. Morey. “The French “Petit Oui”: The Maastricht Treaty and the French Voting Agenda.” *Journal of Interdisciplinary History* vol. 38.1 (2007): 67-87.

document was not to be overlooked by European member states, and the referendums of Denmark and France best illustrate this tension between citizens and European authority.

What is public opinion and why does it matter?

Public opinion can be defined as the collective opinion of a state, society, or any group of people toward an issue, institution, or problem. Throughout this paper, public support is the most important phenomenon I observe, which is measured by the percentage of European Union citizens that state they “trust” the Court. While this term might seem similarly vague, it is important to differentiate trust from other attitudes toward the court as this will mostly highly affect the extent to which individuals uphold the laws and decisions of the court. This ties directly into the idea of public legitimacy and its relevance to the proceedings on transnational bodies of law. Legitimacy arises from the belief of individual actors and ‘faith’ in the asserted competencies or authorities of an institution. When we factor in public opinion, legitimacy can be described more accurately as the belief held by individuals that a court has a right to exercise jurisdiction in a particular field.

This belief is important to the functioning of the court, especially in such instances in which it embellishes its own abilities, as the EU comprises independently sovereign democratic states. As part of the criteria for accession articulated by the European Commission, EU member states must maintain the stability of political institutions “guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”⁶ The political and governmental

⁶ "Accession Criteria - European Neighbourhood Policy And Enlargement Negotiations." *European Commission*, n.d. Web. 24 Jan. 2017. < https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/accession-criteria_en>

structure of these democracies implies that member states should be inherently concerned with the democratic structures of the more supranational European Union. Especially as the competencies of the EU continue to grow, individual members are concerned with the extent to which citizens and national governments are represented within European institutions and policymaking. The European Court of Justice is no exception to this rule: as a democratic judicial institution, the ECJ is concerned about public perceptions of democracy and attitudes toward it. Furthermore, the European Union relies on voluntary membership, so its institutions should be concerned with ideas of legitimacy and public concerns about possible democratic deficits. These concerns will only be emphasized in areas where states sacrifice a high degree of autonomy – the less a state is able to govern and monitor the legality of its own actions or policies, the more scrutiny the institutions with that specific jurisdiction are likely to face. As this paper will explore, the European Court of Justice exercises a high level of authority in not only economic law, but also in political, civil, social, and constitutional fields. This is certainly unique among international institutions and necessitates a hefty sacrifice from European member states that must abide by the ECJ's arbitration.

Organization of this Research Project

The organization of this paper will lead as follows: I will first narrate the evolution of the European Union through a Pre and Post-Maastricht (1993) lens. This document further expands European competencies over individual nation states by increasing the areas in which European institutions may dictate policy or exercise authority which supersedes that of individual member states. This section will discuss the extent to which the ECJ has expanded its own competencies and the significance of this aggregation in regards to public perception of European institutions.

This essay will then discuss the changes within the ECJ and of public opinion following the ratification of Maastricht. These chapters will provide a historical framework for the paper and address the concrete, chronological changes made to the European Court of Justice over time.

Next, I will address the extant body of literature concerning courts and public opinion. This section will focus heavily on Constitutional Courts or Supreme Courts in general due to the stark lack of research done on the ECJ itself. Although there are few sources which explicitly study the ECJ and the intersection of public opinion, there is an evident gap in this body of literature which fails to fully delve into the unique nature of European law. This chapter will address overarching questions such as: Are Courts sensitive to public opinion? Restricted by it? Is there variance between International and Domestic Courts? Where does the ECJ, then, fall in this spectrum, and what does this say about the application of this body of literature in regards to this specific judicial body? I will elaborate on some problems regarding this application: is evidence concerning the United States Supreme Court and public opinion at all relevant to the ECJ? Can we reliably draw on these sources to make a connection within Europe? This section will provide a theoretical background to this relationship, but most importantly will indicate key variables which should affect public opinion toward the ECJ. From this literature review in which scholars attempt to delineate the relationship between key societal values and overall public perceptions toward the European Court of Justice, I will determine my testable variables and hypotheses.

This will transition into the next section of the paper, in which I will present quantitative measures of public support, finally addressing the dependent variable beyond a theoretical framework. This chapter will include analyses of key variables and their relationship to overall trust in the ECJ. **This includes 1) trust in national institutions, 2) overall attitude or support**

toward the greater European Union, 3) level of awareness of the ECJ in any individual country, and 4) political composition of that state along the Left/Right spectrum. Each of these variables is measured alongside trust in the ECJ and according to scholars, should maintain some correlation to trust in the court. Literature suggests that increasing public awareness, as well as higher levels of support in national governments and the greater European Union, should lead to increased trust in the ECJ. Furthermore, this paper utilizes the political composition of a country along the traditional Left/Right spectrum as similarly indicative of the level of political awareness and involvement in a country. As polarization increases, support for the ECJ will decrease, as citizens are more aware of the court.

This paper will conclude by expanding on the success or failure of certain variables to affect levels of support and addressing those findings. To this end, this paper finds a positive relationship between the level of awareness of the court and a (albeit weaker) relationship between trust in national governments and trust in the ECJ, but finds no correlation between support for the grander European Union or demographic composition along party lines. The statistical significance of each relationship will be discussed and visually illustrated, providing some analysis on determinants for trust in the court. This study overall finds that the European Court of Justice is becoming less of an obscurity in the lives of everyday European citizens. The effects of this transition on the court's legitimacy and perceptions of democracy, especially concerning national and European institutions, will be further examined in this section. Lastly, I will address continual gaps within literature on the European Court and Justice and avenues for future research to explore based on the findings of this project.

Chapter One: Historical Framework

What is the significance of “constitutionalization,” especially in the earlier years of the European Union and the European Court of Justice?

A key element toward understanding the unique jurisdiction of the European Court of Justice is similarly understanding the process of “constitutionalization” as it applies within the European Union. Constitutionalization refers to the “processes which might tend to confer a constitutional status on the basic legal framework of the European Union.”⁷ Rittberger and Schimmelfennig draw upon previous definitions of constitutionalization to summarize this process as:

The transformation of the EU displacing the traditional, state-centered, “international organization” of the diplomat and the “regime” of the international relations scholar with a polity which has evolved from a set of legal arrangements binding upon sovereign states into a vertically integrate legal regime conferring judicially enforceable rights and obligations on all legal persons and entities, public and private, within the sphere of application of EC law.⁸

This growth in European Union law and accretion of its power is “arguably the clearest manifestation of the transfer of sovereignty from nation-states to a supranational institution [in] modern politics.”⁹ Although the European Union remains an international organization and its members retain a good portion of their independent national sovereignty, European states sacrifice autonomy in many key areas to European institutions. The European Court of Justice, in

⁷ Francis Snyder. “The unfinished constitution of the European Union: principles, processes and culture.” In *European Constitutionalism Beyond the State*. Cambridge: Cambridge University Press. 2003. Print.

⁸ Berthold Rittberger and Frank Schimmelfennig. “Explaining the constitutionalization of the European Union.” *Journal of European Public Policy* vol. 13.8 (2006) 1148-1167.

⁹ Garrett, Kelemen, and Schulz. “The European Court of Justice, National Governments, and Legal Integration in the European Union.” *International Organization* vol. 52.1 (1998): 149-176.

particular, exercises an unusual amount of power in comparison to fellow transnational judicial bodies, and may resemble the United States Supreme Court or a constitutional court more than its international counterparts. Some of these areas in which the ECJ exercises a unique level of jurisdiction include civil, political, economic, and social rights. These normally do not fall under the jurisdiction of international treaties due to difficulties of association and discrepancies of core values among countries. International organizations, for example, typically serve to address a common issue of security, trade, health, etc., but fail to confer such rights on individuals under those treaties and agreements. International law, although it is not the focus of this paper *per se*, is often regarded as weak and inefficient. It is rare that such agreements affect individuals legally, but rather serve some operational purpose in its member states. This differentiation marks the European Court of Justice as an usually influential judicial body.

One unique factor of this overarching process, separated from the amount of power held by the Court, is the EU's lack of a constitution. How, then, do we apply the term "constitutionalization" if this organization lacks such a document? Scholars argue that the extant body of treaty law serves as an informal constitution for the Union, especially by virtue of the decisions of the European Court of Justice. The Court's decisions are founded on the legal bases of the Treaty of Rome especially, but also draw from the EU's international agreements and international norms. The European Court of Justice interprets EU treaties "as if they represent a *de facto* constitution for Europe and exercises judicial review over laws and practices within member states."¹⁰ Although the EU lacks a formal constitution, its treaties and agreements invoke this process which renders the legally binding documents of the European Union more similar to constitutional law than standard treaty law despite this fact.

¹⁰ *Ibid*

As it is understood today, this trend of constitutionalization comprises several constant key elements which help to separate Union legalese from the remaining body of treaty or international law. The first of these, the doctrine of direct effect, is consistently defined as “vehicle for private individuals to challenge national legislation as incompatible with Community Law,”¹¹ and is among a set of political and social rights that have been indoctrinated in the Union’s treaties since its beginning. Although earlier documents are primarily in line with the purely economic function of the European Community, concerns about equal access to the market and other economic forces such as equal pay or nationalization/privatization of industries have implicitly encouraged the expansion of social and political rights as well.

The first assertion of direct effect comes from the ECJ’s landmark case, *Van Gend en Loos v. Nederlandse Administratie der Belastingen* (1963). The case arose from a conflict concerning the customs classification and appropriate customs duties of a chemical being transported between the Benelux countries. Article 12 of the Treaty of Rome (now Article 30 of Treaty on the Functioning of the European Union (TFEU) or Lisbon) requires member states to progressively reduce customs duties between themselves, a provision that was not withheld during the exchange of Van Gend en Loos and the Dutch customs authorities. The Article holds that “customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.”¹² Van Gend, a postal and transportation company, imported the chemical urea-formaldehyde from West Germany to the Netherlands and was charged an import tariff by Dutch customs, which the company objected. The national court, Tariefcommissie, then turned to the

¹¹ Anne-Marie Burley and Walter Mattli. “Europe before the Court: A Political Theory of Legal Integration.” *International Organization* vol. 47.1 (1993): 41-76.

¹² “Treaty on the Functioning of the European Union.” EUR-Lex. 26 November 2012.

European Court of Justice via preliminary ruling to debate the imposed tariff, which ruled that Van Gend en Loos was entitled to recover the paid duties. The duty was declared a violation of Article 12 by the ECJ in that it was a direct result from either a rise in tariff rates or a reclassification of the transported chemical into a higher, more expensively taxed category.

The European Court of Justice stated in this case, therefore, that the articles of the Treaty of Rome confer directly on individuals in application against national actors. The final decision ultimately rules that:

The European Economic Community constitutes a new legal order of International law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the member states but also their nationals. Independently of the legislation of member states, Community law not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the treaty but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community.¹³

Van Gend en Loos was the first to raise the question of whether a provision of a European treaty “could be a source of individual rights that national courts should protect.”¹⁴ The corresponding decision establishes the principle of direct effect and rules that Community law in fact enables individuals within member states to invoke a provision of European law before not only European, but national, courts. The effect of this is not only significant on individual citizens, but of course on European member states. Direct effect requires national courts to interpret national law “in the light of” European law. This principle requires that International Treaty law as

¹³ “Treaty on the Functioning of the European Union.” EUR-Lex. 26 November 2012.

¹⁴ Chalmers Damian. “What Van Gend en Loos stands for.” *International Journal of Constitutional Law* vol. 12.1 (2014): 105-121.

dictated by the Community's extant treaties step into the legal field of private law, thus contributing to the "constitutionalization of private law."¹⁵

The next prominent example of this is *Defrenne v. SABENA*, which rearticulated the doctrine of direct effect in European Union law as previously established by *Van Gend*. This case also illustrates the creation of individual rights. Belgian national Gabrielle Defrenne took a dispute with her employer, *Société Anonyme Belge de Navigation Aérienne Sabena*, to the European Court of Justice after Defrenne was terminated upon reaching the age of forty as according to her contract. Defrenne brought her case originally to the Belgian Tribunal du Travail, claiming that Sabena's actions had violated Article 119 of the Treaty of Rome, which prohibits discrimination in the workplace on the basis of sex. Gabrielle Defrenne applied for 1) compensation for the duration of her employment, in which she had been paid significantly less than her male counterparts of the same position, 2) supplementary allowance on termination of service representing the difference between what she had received at the age of retirement and the amount received by her male colleagues, and 3) compensation for the damages suffered as an appellant.¹⁶ The Court ultimately ruled in Defrenne's favor, using the Treaty of Rome and Article 119 as legal justification. The judgment, delivered April 23rd of 1975 reads:

The principle that men and women should receive equal pay, which is laid down by Article 119, may be relied on before the national courts. These courts have a duty to ensure the protection of the rights which that provision vests in individuals, in particular in the case of those forms of discrimination which have their origin in legislative provisions or collective labour agreements, as well as where men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public.¹⁷

¹⁵ Hugh Collins. "The constitutionalization of European private law as a path to social justice?" In *The Many Concepts of Social Justice in European Private Law*. Edward Elgar Publishing Limited. 2011. Print.

¹⁶ "Defrenne v. Sabena." EUR-Lex. 8 April 1976.

¹⁷ *Ibid*

The first consequence of this ruling is that it determines that Community Law will supersede national law. In this case, the Belgian constitution lacked an Article guaranteeing equal pay for men and women. In this preliminary ruling, the European Court of Justice establishes that upon signing the Treaty of Rome, the Belgian national courts agreed to uphold its laws and ensure their domestic laws were in compliance with such supranational treaties. This hints at a second characteristic of constitutionalization, the doctrine of supremacy, although for this section it is viewed solely as the precedent for direct effect in the European Union. The Court decision continues:

Even in the areas in which Article 119 has no direct effect, that provision cannot be interpreted as reserving to the national legislature exclusive power to implement the principle of equal pay since, to the extent to which such implementation is necessary, it may be achieved by a combination of Community and national provisions.

As with the Van Gend case, the ECJ thus rules here that Community Law confers rights directly on individuals even if that right is not paralleled by that citizen's national law. Direct effect, therefore, is the principle that Union law may confer rights on individuals which member states are bound to enforce. Citizens of the European Union are enabled by this provision to invoke a European law in their national courts. It is significant to note that direct effect, like the remaining doctrines that comprise this process of constitutionalization, is not explicitly written or even mentioned throughout the body of Community treaties at the time of its introduction. It therefore illustrates the creative role the court played during this period, in which the European Court of Justice (perhaps unintentionally) expanded its own jurisdiction through such rulings. Direct effect contributes to this process of constitutionalization in that this application to individual citizens is unique in international or treaty law, and more common to constitutional law. This doctrine, as dictated by the Van Gend and Defrenne cases, adds to the subtle building of a federal

framework for the European Union in which the organization's power is determined by a series of attributed competencies.

The doctrine of supremacy (also primacy) is the second key characteristic of this unique process within the European Union. This principle states that the law of the European Union will prevail over that of the member states. In its landmark case, *Flaminio Costa v. ENEL*, the ECJ resolved a conflict between Italian and Community laws concerning the monopolization and nationalization of electricity. In this case, the European Court of Justice specifically addresses the lack of explicit legal precedent for the principle of supremacy, as well as the unique manner in which the court asserts its own competencies. The court states: "by contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply."¹⁸ This asserts the obligation of member states to adapt to extant European law in a way that archetypal treaties and international agreements do not. Furthermore, the court's decision withholds "in case, and to the extent, or irreconcilable results in the application of both legal systems to the same situation, the conflicting national law of member states becomes inapplicable."¹⁹ In any instance of conflict between a member's domestic law and European law, EU law, including its institutional statutes, administrative acts, and international agreements, will prevail. The ECJ argues that member states, upon joining the Community complete with its own institutions and legal capacities, limit their own sovereign rights in certain areas, which allows the Community to create law that binds them.²⁰

¹⁸ "Flaminio Costa v. E.N.E.L." EUR-Lex - 61964J0006 – EN.

¹⁹ Stefan Enchelmaier. "Supremacy and Direct Effect of European Community Law Reconsidered, or the Use and Abuse of Political Science for Jurisprudence." *Oxford Journal of Legal Studies* vol. 2 (2003): 281-299.

²⁰ "Flaminio Costa v. E.N.E.L." EUR-Lex - 61964J0006 – EN

Supremacy, however, is not always honored by European member states. This tension illustrates the limits of supranational policies within the European Union and is a frequent source of discord between the Union and its member states. To this end, the ECJ has further developed the doctrine of supremacy in order to enforce and assert its precedence. In 1978, the ECJ's decision in *Amministrazione delle Finanze dello Stato v. Simmenthal SpA* stated: "every national court must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the Community rule."²¹

The expansion of these doctrines within the European Union is ongoing, and the court has made subsequent attempts to affirm its competencies as they continue to develop. The ECJ recognizes that its doctrines of direct effect and supremacy were essentially null and void if they could not be applied to the member states, which leads to the introduction of the doctrine of implied powers. In 1971, the ECJ held that "the grant of internal competence must be read as implying an external treaty-making power" and that "Community international agreements would be binding not only on the Community as such, but also, as appropriate, on and within the member states."²² As Weiler states, this adds "another rung in [the court's] constitutional ladder." The doctrine of implied powers further differentiates Community law from International Treaty law in that it makes no attempt to minimize its effect on state sovereignty, but rather defines its limits within the Community. This constitutional interpretation contributes to the federal foundation of the European Union and provides a vehicle for the ECJ to assert its implicit

²¹ "Amministrazione delle Finanze dello Stato v. Simmenthal SpA." EUR-Lex - 61977J0106-EN.

²² J. H. H. Weiler. "The Transformation of Europe." *The Yale Law Journal* vol. 100.8 (1991): 2403-2483.

power. Not unlike the doctrines of direct effect, supremacy, and implied powers, the doctrine of human rights had no explicit provision within the treaties of the European Union upon its establishment.

Human rights cases are among those that give the Court of Justice's decisions, as well as the overarching body of European Union Law, a uniquely federal or constitutional flavor. It expands the jurisdiction of the ECJ beyond primarily economic agreements and enables it to confer social, political, or civil rights on individuals. Early in its history, the court stated that it would review all Community measures and provisions for violations of fundamental human rights and make any necessary revisions. This doctrine affirms the provisions of the previous three doctrines and assures that they will not be left unchecked, but will be "subjected to a human rights scrutiny by the Court."²³

These doctrines are not only distinctive features of European Union law, as most international law is subject to the sovereignty of individual signatories, but is a mechanism through which the Court of Justice and the Union itself increases their competencies during this time. This competency, as 'stretched' by the principles of direct effect and supremacy, embodies the tension between public perceptions of legitimacy and European authority. These policy-making abilities were not extant in European law before the aforementioned landmark cases.

As highlighted by this process, the European Court of Justice plays a creative and expansive role in this Pre-Maastricht period. The doctrines of direct effect, supremacy, implied powers, and human rights are similar in that they all lack explicit provisions within European Treaty law at the time they are asserted by the Court of Justice. The Court in this period

²³ *Ibid*

continually expands the competencies of the EU through a series of cases that might appear unrelated to Community law. The rulings of the court hold greater implications regarding the overall power of the Union.

This era may be characterized as one of deepening and broadening integration, in which the European Court of Justice expands the policy areas in which it exercises jurisdiction and similarly limits that of national courts through its liberal interpretations of Community law. This time frame also introduces several instance of supranational policy-making, in which the doctrines determined by the court potentially limit the sovereignty of member state governments in some way. Extant literature of the 1990s defines this period of European integration as one that has “transformed a network of sovereign national states into a system of multilevel governance” in which authority is “[dispersed] and [stretched] beneath as well as above the central state.”²⁴ This transition to increasingly transnational decisions dictates the extent to which domestic law is constrained by Community law in certain fields, including those which do not align neatly with the original economic objective of the European Union. The court expands these areas of conflict to those of fundamental social and political rights as well.

How, then, was this period of integration possible? Literature marks this era as one “permissive consensus” among member states, although Maastricht is recognized by scholars as the end of this consensus. This treaty shifts the dynamic between member states and the European Union in terms of policy-making. Eichenberg and Dalton summarize this transformation: “Through 1991, public opinion responded very much in the way that the existing literature would lead us to expect: support for integration responded positively to increased trade

²⁴ Liesbet Hooghe and Gary Marks. “European Union?” *West European Politics* vol. 31.1 (2008): 108-129.

within the EU and to improvement in economic conditions. Since Maastricht, however, these relationships have essentially disappeared.”²⁵ Even in areas concerning tangible benefits for individual states, members begin to become more wary of the policy-making capacities they might be sacrificing to European authority. Decline for integration, in general, sees an abrupt shift as support for European integration decreases.

Another theory states that the European Court of Justice was able to develop its constitutional framework because it was “blessed with benign neglect by the powers that be and the mass media.”²⁶ Eric Stein thus attributes the relative freedom of the court to the lack of knowledge held by the general public. Therefore, this theory would lead us to expect that increased public knowledge of institutions encourages increased discord with that institution’s decisions. This theory aligns with the legal autonomy perspective toward constitutionalization, which argues that national governments “paid insufficient attention to the Court’s behavior during the 1960s and 1970s when the Court developed a powerful set of legal doctrines... [and] by the time member governments finally realized that the ECJ was a powerful actor in the 1980s, reining in the Court’s power had become very difficult.”²⁷ Fortunately, trends in awareness are observable through quantitative data provided by Eurobarometer surveys which measures individual awareness as well as perceptions of the European Court of Justice and other Union institutions. The same year’s surveys similarly measure support or approval for the court, so these should illustrate some relationship between the awareness and support for the ECJ. If true,

²⁵ Richard Eichenberg and Russell Dalton. “Postmaastricht Blues: The Transformation of Citizen Support for European Integration, 1973–2004.” *Acta Politica* vol. 42.2 (2007): 123–52.

²⁶ Eric Stein. “Laywers, Judges, and the Making of a Transnational Constitution.” *The American Journal of International Law* vol. 75 (1981): 1-28.

²⁷ Garrett, Kelemen, and Schulz. “The European Court of Justice, National Governments, and Legal Integration in the European Union.” *International Organization* vol. 52.1 (1998): 149-176.

this would elicit lower levels of support for the ECJ beginning in the late 1980s or the early 1990s with the introduction of Maastricht. In an earlier period, before the ratification of Maastricht, we thus expect to see low levels of public knowledge accompanied by high levels of support. Inversely, as public awareness increases after Maastricht, we expect lower percentages of support through the Union.

This body of literature provides this paper with several avenues to pursue in order to further address the values or factors that affect support for the European Court of Justice. First, we can examine awareness and knowledge of the Court and its operations. We can hypothesize that greater knowledge of the institution would lead to a higher level of support for it. This paper will therefore test this hypothesis: As levels in public awareness of the European Court in Justice increase, trust in the court increases as well.

What is the significance of the Maastricht Treaty, and how can we expect the Court to change upon the ratification of Maastricht?

The introduction of the Treaty of Maastricht, interchangeably called the Treaty on European Union (TEU), marks a shift in the role of the European Court of Justice as one that is increasingly restricted by public concerns of a democratic deficit in Brussels, questions of Court legitimacy, and the pressure to reassert national sovereignty in the face of supranational European policies. In this text, the European Union blatantly expands beyond its original economic scope and purpose and institutionalizes its political ambitions. Maastricht officially introduces the European Union as we know it today, as well as its many of its distinctive structural elements. This structure, although obsolete today, comprised three pillars: the European Communities, common foreign and security policy, and judicial cooperation in

criminal matters. The first of these pillars combines the institutions known as the European Community, the European Coal and Steel Community, and Euratom. The second, the pillar of common foreign and security policy (CFSP), enables member states to take joint action to address issues of security through intergovernmental decisions. The third pillar of justice and home affairs (JHA) further allows member states to make joint decisions concerning the security of European Union citizens. While Maastricht outlines primarily intergovernmental decision-making procedures in each of these pillars to determine more universal policies, it is significant to note that the European Union nonetheless expands beyond the economic objectives of the preceding European Community.

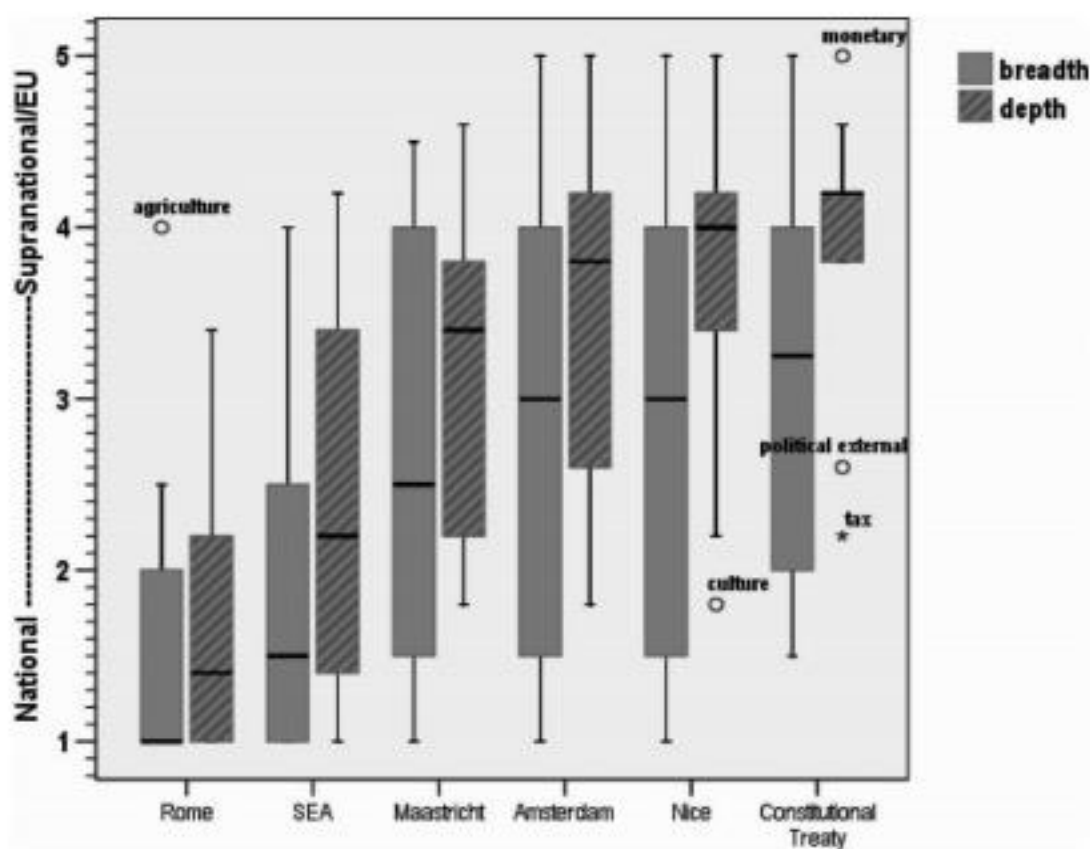


Figure 1: Evolution of EU Authority (Policy Breadth and Depth) (1957-2004)²⁸

The Treaty of Maastricht was signed by the European member states on February 7th, 1992 and entered into force on November 1st, 1993.²⁹ The treaty was the second major revision to the Treaty of Rome, or that establishing the European Economic Community back in 1957. Until this point, the organization of states was referred to as the European Community and the term “European Union” was formally introduced in 1992. Maastricht is significant in that it provides a clear first instance of the Community expanding its jurisdiction “well beyond its original economic objective”³⁰ to a more expansive range of political and social policies. Its overall aims were “wider and deeper European integration [through] European cooperation such as building up a European monetary union, a new social dimension, legal cooperation, and European citizenship” to name a few.³¹ With this stark expansion of competencies and policy areas, the European Union becomes more deeply integrated. Figure Two visually represents this transition.

This figure illustrates the transition of several competencies from those belonging solely to member states to increasingly complex multi-level competencies shared or dominated by the European Union. Many of these shifts include those of intergovernmental policies into supranational policies. 1992, which occurs in the middle of the figure, non-coincidentally marks the introduction of Maastricht, in which several policy-making areas clearly shift from

²⁸ Hooghe, Liesbet and Gary Marks. “European Union?” *West European Politics* vol. 31.1 (2008): 108-129.

²⁹ Treaty of Maastricht on European Union. *EUR-Lex*. 7 Feb. 1992.

³⁰ Treaty of Maastricht on European Union. *EUR-Lex*. 7 Feb. 1992.

³¹ Karen Siune and Palle Svensson. “The Danes and The Maastricht Treaty: The Danish Referendum of June 1992.” *Electoral Studies* vol. 12.2 (1993): 99-111.

“exclusively national” to “mostly national,” “national and European Union,” or “mostly European Union” competencies. Maastricht therefore delineates a moment of increased European integration as well as one in which member states lose part of their policy-making autonomy. The European Union, with the introduction of this treaty, becomes more deeply involved in the abilities once reserved only to member states.

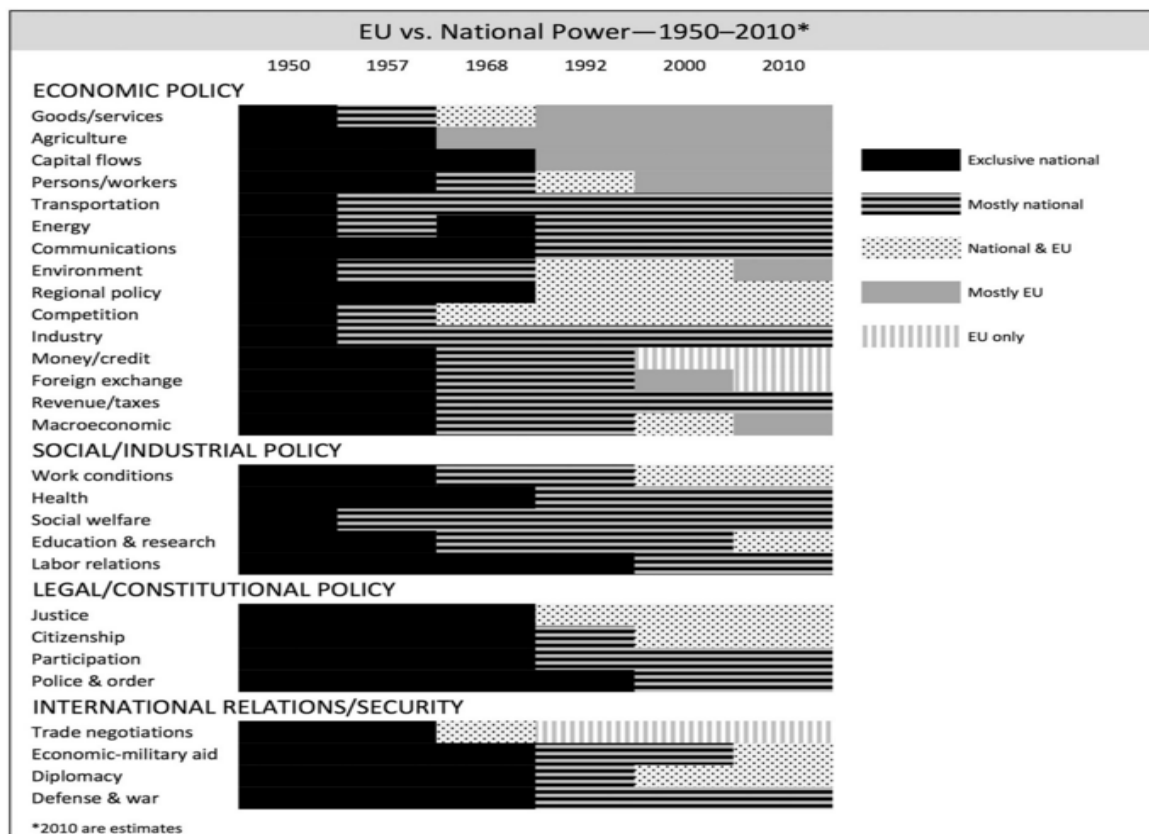


Figure 2: Transition of EU vs. National Competency Areas (1950-2010)³²

What is the significance of democratic legitimacy in this time period and in regards to European integration?

³² Joe Weinberg. “European Union Member States in Cross-National Analyses: The Dangers of Neglecting Supranational Policymaking.” *International Studies Quarterly* vol. 60.1 (2016): 98-106.

As the role of the European Union becomes more apparent in the quotidian decision-making of its member states, public opinion is expected to shift along with institutional and structural changes. Maastricht signifies a singular point of time as the end of the “permissive consensus,” in which member states become more aware of the increasingly integrated European Union. This marks a point of contestation between this continual integration and the passive acquiescence of member states and introduces in its place democratic contestation.

This contestation is embodied by the democratic responses of individual member states to the treaty, particularly that of Denmark and of France. In the year of Maastricht’s formal introduction, the Danish government decided to hold a referendum to gauge the Danish people’s responses toward the treaty. The Danish people criticized the treaty for its “lack of openness and democracy in the suggested decision-making processes” and its principle of subsidiarity, which states that “no decisions should be taken by the EC if the national authority could deal with the matter better.”³³ This referendum ultimately concerns several key tenets of democracy concerning policy-making in the European Union. Referendum is a mechanism through which the national government should be able to relay direct attitudes of citizens toward a certain issue, and encourages individuals to seek information on both Maastricht and European integration in order to make an informed decision. 83.1 percent of Danish voters participated in the referendum, of which 50.7 percent rejected Danish ratification of Maastricht. This rejection provides a clear moment of democratic contestation in relation to Maastricht and the integration of the European Union.

³³ Karen Siune and Palle Svensson. “The Danes and The Maastricht Treaty: The Danish Referendum of June 1992.” *Electoral Studies* vol. 12.2 (1993): 99-111.

In the French case, the treaty was narrowly approved for ratification. French voters were concerned with the idea of monetary union as proposed by Maastricht, an area in which the country was hesitant to reserve to a power other than the national authority. 51.04 percent of voters said ‘yes’ to the treaty’s ratification, while 48.95 said ‘no.’³⁴ Both instances are notable in that they provide clear examples of tension between European and national authority and the European Union attempts to expand its competencies into areas once dominated solely by states themselves. Maastricht, therefore, is a decisive moment for member states: Is the deepening and widening of European integration legitimate? If European integration does not enjoy the support of its member states, can it be considered a democratic process? This tension is bound to impact public opinion throughout the Union.

Chapter Two: Literature Review and Theoretical Framework

This chapter will seek to explore the theoretical foundations which assess the relationship between public opinion and courts. This framework has its limitations, however, as there is very little written concerning the intersection of public opinion and the European Court of Justice in particular. For this reason, it is necessary to pull from extant literature on public opinion and national Supreme or Constitutional Courts. Because of its unique nature and ongoing process of constitutionalization, the European Court of Justice is more similar to constitutional courts than other international courts, so we expect this comparison to be viable.

From this literature review, I will draw several hypotheses concerning variables which I expect to influence the public level of trust in the European Court of Justice. These are taken

³⁴ Pierre-Guillaume Méon. “Voting and turning out for monetary integration: the case of the French referendum on the Maastricht treaty.” *Applied Economics* vol. 41.18 (2009): 2369-2384.

from previous studies conducted on constitutional and transnational courts. I anticipate these variables – which include public attitudes towards various institutions apart from the ECJ, as well as broader political perceptions and allegiances – to maintain either a positive or negative relationship with public opinion toward the European Court of Justice.

Are Courts sensitive to Public Opinion? Restricted by it?

Epstein and Martin conduct a qualitative survey of the influence of public opinion on the Supreme Court of the United States on a case-by-case level. This work sympathizes with the previously existing body of literature written by Barry Friedman on the same topic, who also comes to the conclusion that public “mood” is likely to influence the likeliness of the Court to make any given decision that is aligned with or antithetical to that ideology. Friedman’s work hypothesizes that the Court and its Justices “bend to the will of the people because the Court requires public support to remain an efficacious branch of government.”³⁵ Before beginning their own analysis, Epstein and Martin note that existing literature on the intersection of public opinion and the Supreme Court generally follows the same methodological approach, primarily by calculating the percentage of classically ‘liberal’ or ‘conservative’ votes and utilizing this figure as the dependent variable, while assessing the liberal v. conservative ideologies of the public simultaneously. This study illustrates an indirect effect of public opinion, although this is thought to be more a consequence of the public’s political ideology at the time of elections. The

³⁵ Lee Epstein and Andrew D Martin. “Does Public Opinion Influence the Supreme Court? Possibly Yes (But We’re Not Sure Why).” *University of Pennsylvania Journal of Constitutional Law* vol. 13.2 (2010): 263-283.

American public elects the President and the Senate, who in turn appoint and confirm Supreme Court Justices in line with their ideology.

Epstein and Martin find it more difficult to justify and support any direct effect of public opinion on court decisions. To this end, the ideologies of the Senate, House, and President are taken into account in order to further calculate the probability of the Court making a liberal decision as the median ideology moves from highly liberal to highly conservative. Although Epstein and Martin make no direct statement asserting causality, their findings suggest that there is a strong correlation between the “public mood” and Supreme Court decisions as in line with Friedman’s work.

Authors Casillas, Enns, and Wohlfarth conduct a similar quantitative test to assess the restrictive influence of public opinion. Their article finds that public opinion constrains the Supreme Court as “individual justices have an institutional incentive to think about the context in which they make decisions.”³⁶ This study is similar to that of Epstein and Martin in that the authors first examine the percentage of liberal decisions during a certain period and analyze trends of strategic voting. Second, their “attitudinal change hypothesis” holds that social forces which shape public opinion similarly impact justices. Again, the dependent variable of this research is the annual percentage of liberal Court decisions. This test contends that the influence of public opinion is most visible in that a liberal public sentiment will issue a greater proportion of liberal judgments in that same term.

Both of these works suggest there will be a relationship between the most dominant political ideologies of Europe and the leanings of the ECJ’s decisions. If the European public, for

³⁶ Christopher Casillas and Peter K. Enns. “How Public Opinion Constrains the U.S. Supreme Court.” *American Journal of Political Science* vol. 55.1 (2011): 74-88.

example, were undergoing a period of right-wing populism, we might expect to see more “right” leaning decisions in the Court. However, because the aim of this research is not to measure the extent to which the European Court of Justice rules in favor of the majority’s ideology, but to better delineate which societal factors drive support for the Court, the leaning of such decisions is not as important throughout this work. Instead, we can test to see if there is any relationship between a left vs. right political stance and support for the Court. Is either group of political parties more skeptical toward the European Union in general? This would hypothetically affect that group’s approval level for all European institutions. Is one ideology more optimistic about the role of transnational institutions and their ability to effect change? Although it does not seem practical to imitate the tests of Epstein and Martin, we can still draw important factors from this work and consider their impact on levels of support for the ECJ.

How, then, can we expect political ideology to shape attitudes toward the European Union or toward the European Court of Justice? Hooghe, Marks, and Wilson examine how views on European integration are structured around political parties in European member states. Due to party discrepancies concerning government regulation of market outcomes, as well as “political dimensions tapping communal, environmental, and cultural issues,”³⁷ Hooghe et al anticipate that political allegiances will elicit different opinions toward the European Union in general and European integration. The study assesses whether and how the traditional Left/Right political divide shapes party positioning on European integration by first charting a party’s position on the Left/Right spectrum, and then adding a dimension measuring support for integration. The result is an inverted U shape, which suggests that parties on either extreme side

³⁷ Hooghe et al. “Does Left/Right Structure Party Positions on European Integration?” *Comparative Political Studies* vol. 35.8 (2002): 976-977.

of the Left/Right spectrum strongly oppose integration, while parties toward the middle enjoy higher levels of support for the EU regardless of their Left/Right stance. This paper attributes this variance in support to the hierarchy of political parties: “Parties that are successful in the existing structure of contestation have little incentive to rock the boat, while unsuccessful parties, that is, parties with weak electoral support or those that are locked out of government, have an interest in restructuring contestation.”³⁸

According to Epstein and Hooghe, as the political climate of a country (or of the Union) shifts more radically to the right, we should expect to observe more right-leaning decisions by the European Court of Justice if the institution is indeed sensitive to public opinion, and more importantly, decreased levels of support for the court. This trend will be especially evident in countries where skepticism and distrust toward the EU in general is rampant.

Another body of literature focuses solely on the impact of public opinion on International Courts. These courts clearly differ from Constitutional or Supreme courts in the areas of membership, legitimacy, enforcement, and the scope of jurisdiction allotted by member states. As this paper has previously stated, the European Court of Justice exercises an usual amount of power for a transnational court, and as the process of “constitutionalization” shows, has grown and expanded its competencies through a mechanism unique to the European Union. We can, however, draw certain parallels between International courts and the ECJ. Both rely on voluntary membership from individual, sovereign states, and encourage those members to sacrifice a certain degree of autonomy to the court’s jurisdiction.

Erik Voeten examines the role of public opinion in International Courts, in particular testing the claim that public attitudes towards International Courts “[derive] from more general

³⁸ *Ibid*

legal values and support for international institutions” as well as an individual’s support for their domestic institutions: “Countries in which more individuals trust their national courts are also countries in which more individuals trust international courts.”³⁹ From this statement, I draw another independent variable which I expect to affect public levels of trust in the Court of Justice: trust in domestic institutions. This hypothesis states that higher levels of trust in national governments will accompany higher levels of trust in the court. This assumption relies on the belief that individuals will associate more the court with institutions that are likely less obscure and that they already have formed opinions about.

In addition, Voeten briefly alludes to the studies conducted by Gibson and Caldeira in 1995, which tests diffuse support for the European Court of Justice. The study’s ultimate conclusions on the effect of public opinion on court legitimacy can be explained by the fact that the ECJ is “too obscure for people to form strong attitudes about it.” Instead, consistent with his hypothesis about International courts, Voeten states that opinions of the European Court of Justice are expressed based on an individual’s “overall evaluation of the European Union and their general perceptions of law and legal institutions.”⁴⁰ Therefore, this study anticipates that support for the European Court of Justice (known interchangeably as the Court of Justice of the European Union or CJEU, as it is referred to in this article) will enjoy the highest levels of trust in countries that similarly express high levels of trust for their own domestic courts. These attitudes toward the international institution most closely associated with that specific court are likely to shape opinions toward that court. Therefore, I aim to test the relationship between levels of trust in national institutions and the European Court of Justice.

³⁹ Erik Voeten. “Public Opinion and the Legitimacy of International Courts.” *Theoretical Inquiries in Law* vol. 14.411 (2013): 411-436.

⁴⁰ *Ibid*

This inquiry continues to examine public awareness of European courts, although this knowledge is not restricted to that of the European Court of Justice. Voeten measures internet searches for the broader category of “European courts” in key states of France, Germany, and the United Kingdom. This data is used to counter the idea that transnational courts are too obscure to be transparent to the public, and attempts to quantify the extent to which European citizens seek information about their courts. These numbers are then compared to the amount of searches in relation to domestic courts to compare public salience of each. This is consistent with hypotheses of Gibson, Caldeira, and Stein, who argue that public awareness influences the level of support for the court. Regarding this relationship, the author finds a high correlation between national and transnational courts: those who trust judicial institutions are also more likely to trust international judicial institutions. These studies and results suggest that both public knowledge and public faith in national judicial bodies are important factors when testing the level of support enjoyed by the European Court of Justice in both Pre and Post-Maastricht eras.

Summary of Literature Review and Hypotheses

The previous chapters on both historical and theoretical frameworks provide an analysis of extant research so as to discern which variables (as determined *by* that literature) might be the most relevant to the intersection of public opinion and the ECJ. Based on which of these variables are discussed in both existing literature and measured by the European Commission’s public opinion database, I have chosen several key variables to test. **This includes 1) trust in national institutions, 2) overall attitude or support toward the greater European Union, 3) level of awareness of the ECJ in any individual country, and 4) political composition of that**

state along the Left/Right spectrum. Each of these variables is measured alongside trust in the ECJ and according to scholars should impact that level of trust.

The first variable, trust in national institutions, aligns with the work of Erik Voeten in “Public Opinion and the Legitimacy of International Courts” in which the author hypothesizes that states with higher trust in national judicial institutions will similarly enjoy higher levels of trust in transnational institutions.⁴¹ In line with this hypothesis, Gibson and Caldeira draw a similar conclusion in regards to the correlation between domestic and European authorities among respondents. Their 1998 study holds that there is “little appreciable difference in the ability of citizens to judge the ECJ and the national high court.”⁴² To this end, Eurobarometer surveys ask the extent to which individuals have a favorable view of their domestic governments. This hypothesis holds that public committal to democracy and rule of law, fair and just court proceedings, and perceptions of the court’s overall legitimacy, effectiveness, and fairness, which inherently shape views on national courts, will also influence trust in the transnational ECJ. Therefore, I expect this study to find increasing levels of trust in the European Court of Justice as support for domestic institutions increases as well.

Secondly, I will address any relationship between overall support for the European Union as a whole and the European Court of Justice. This hypothesis might seem obvious, but it is valid to expect fluctuating levels of trust in European institutions as overall views toward the EU change over time. Overarching views toward the organization are bound to impact the more nuanced views toward any of its institutions. Citizens inherently associate the agenda and

⁴¹ Erik Voeten. “Public Opinion and the Legitimacy of International Courts.” *Theoretical Inquiries in Law* vol. 14.411 (2013): 411-436.

⁴² James Gibson and Gregory Caldeira. “Changes in the Legitimacy of the European Court of Justice: A Post-Maastricht Analysis.” *British Journal of Political Science* vol. 28.1 (1998): 63-91.

policies of the European Union with its legislative, executive, and judicial bodies. This hypothesis also draws from Voeten's paper, which assumes that individuals will associate more obscure institutions with the closest organization that they are familiar with.⁴³

Thirdly, this paper will attempt to discern any correlation between level of awareness of the European Court of Justice and support for it. Eric Stein's "Fairy Duchy" hypothesis states that the court enjoyed high levels of trust in its earlier years simply because people were not aware of the activities it was carrying out on a day-to-day basis. Although the court in this period was almost constantly building its own competencies, this process was not at all transparent to the public. This accounts for the high levels of trust despite the depth of supranational decisions made by the ECJ at this time as well as the accretion of supranational abilities within European institutions and continued integration. Therefore, I hypothesize that countries with greater awareness and knowledge of the Court itself will be more skeptical toward it.

Lastly, this research will assess the relationship between a state's political composition along the Left/Right spectrum and its trust in the court. This variable is pulled from the work of Hooghe et al, which anticipates that political allegiances will elicit different opinions toward the European Union in general and European integration. The study assesses whether and how the traditional Left/Right political divide shapes party positioning on European integration by first charting a party's position on the Left/Right spectrum, and then adding a dimension measuring support for integration. The result is an inverted U shape, which suggests that parties on either extreme side of the Left/Right spectrum strongly oppose integration, while parties toward the

⁴³ Erik Voeten. "Public Opinion and the Legitimacy of International Courts." *Theoretical Inquiries in Law* vol. 14.411 (2013): 411-436.

middle enjoy higher levels of support for the EU regardless of their Left/Right stance.⁴⁴

According to this literature, I hypothesize that as the political polarization of a country increases, trust in the European Court of Justice will decrease. Individuals who identify strongly with a certain political party are likely to be influenced by that party's views on integration and European institutions. Therefore, countries with more polarized populations along the traditional Left/Right political spectrum will see lower levels of trust in the ECJ.

Chapter Three: Public Opinion and the ECJ and Discussion of Methodology

How do we test public opinion?

Public opinion throughout the European Union is measured by the European Commission (another EU institution) through a series of "Eurobarometer" surveys. The standard Eurobarometer was established in 1973, and has since been published twice every year. The survey comprises about 1000 in-person interviews within each European Union member country. Of course, this data expands over time as the Union itself enlarges and expands beyond its original membership. We can then expect the data to be more diverse as the surveys become more recent as more states are being represented within later surveys. Occasionally, the Eurobarometer addresses specific key issues which are relevant throughout the Union. For example, Eurobarometer 38.0 (1992) asks individuals questions on "Passive Smoking and Consumer Issues" while no. 46.0 (1996) attempts to measure attitudes toward "Personal Health, Energy, Development Aid, and the Common European Currency." And while not all questions

⁴⁴ Hooghe et al. "Does Left/Right Structure Party Positions on European Integration?" *Comparative Political Studies* vol. 35.8 (2002): 976-977.

conducted within these surveys will be relevant to this paper, there is a set of consistent key questions which will serve as the primary quantitative base for this research.

Among finalized Eurobarometer surveys, there are 20 which explicitly ask the public about the European Court of Justice. Some of these questions vary over time, or become more elaborate in certain surveys. Other Eurobarometers ask simply one or two questions about the institution. On a very basic level, Eurobarometers ask: “***Have you ever heard of the European Court of Justice of the European Communities?***”

Responses are then measured by a yes, no, or don’t know response. This measures public awareness of European institutions and the degree to which Europeans are knowledgeable about their governing supranational bodies. Of course, this same question asks about the remaining EU institutions, including the Parliament, Commission, Council of Ministers, and the European Central Bank. While there is incredible variance between public knowledge and transparency among these separate arms of the EU, it is not the aim of this paper to compare the ECJ to its relative European institutions. This simply measures public awareness of the institution itself. The survey continues to ask: “And for each of the following European institutions, do you think it plays an important role or not in the life of the European Union?” and finally, “***For each of them, please tell me if you tend to trust it or tend not to trust it?***”

This last question is the most important to this research as it provides a solid, quantifiable dependent variable – trust in the European Court of Justice. It is necessary to first determine levels of support if we want to examine which variables directly affect it. I will therefore begin the quantitative section of this paper by addressing trends within public trust in the ECJ and examining any potential anomalies or exceptions to the norm. What is the average level of trust

in the ECJ? How has this trust varied, has it increased or decreased? Is there a consistent trend or do numbers perhaps seem random?

More nuanced surveys will delve more in depth into public attitudes toward the European Court of Justice, although these polls are obviously not as consistent as the previous three questions. Eurobarometer 38.0 is one of the best examples we have of this more elaborate study on the ECJ. This particular study, conducted in 1994, also asks individuals if they have recently heard or read about the European Court of Justice in order to further quantify public knowledge of the Court. Then, the survey follows up by asking if what those individuals had heard or read has given them a “generally favourable or unfavourable impression of the European Court of Justice.” It is important to note that this does not measure public attitudes toward the institution, but rather impressions toward what is presented on the ECJ in the news or media we consume. Question 73 of the survey therefore elaborates on individual perceptions: “Generally do you have a favourable or unfavourable impression of the European Court of Justice?” This provides yet another measure of support for the ECJ by gauging public impressions as favorable or not. This particular Eurobarometer continues to measure the importance of the role of the ECJ as well as awareness of the ECJ’s activities. Further statements assess public attitudes toward legitimacy by asking if it might be better to do away with the Court altogether IF it began making decisions that most people disagree with, and if its decisions should be obeyed regardless of whether or not individuals agree with them. These questions will be more important in the following chapter which directly applies such variables to the overarching level of trust in the ECJ to examine their relationship.

What are the limits of this quantitative test?

One of the most difficult problems facing this research is simply the lack of data collected on public attitudes toward the European Court of Justice. Eurobarometer is the only survey I have found that measures public trust or awareness in the Court. Other European institutions are considerably more studied, especially the Parliament and Commission, which are perhaps the most transparent European institutions in the lives of everyday people. For whatever reason, however, there is very little polling data that studies the ECJ. Of the existing body of Eurobarometer surveys, not all of them ask questions about the ECJ, and often times the questions vary which leaves only more gaps within the database. Some years delve more in depth into the Court and public perceptions toward it, as well as attitudes toward national Courts, while others seem to skip over judicial institutions altogether.

Originally, I had planned to “mimic” fieldwork done by Gibson and Caldeira, whose work comprises a large fraction of the body of quantitative and qualitative literature on the intersection of public opinion and the European Court of Justice. In this particular article, “The Legitimacy of the Court of Justice in the European Union: Models of Institutional Support,” the authors run two tests which provide room for further research under a similar model. The first of these tests measures diffuse support for the ECJ by country. Diffuse support is defined specifically as institutional commitment or “a willingness to defend the institution against structural and functional alterations that would fundamentally alter the role of the institution in society.”⁴⁵ In order to measure such support, the authors conduct a survey in which they ask individuals to respond to: “If the European Court of Justice started making a lot of decisions that

⁴⁵ James L. Gibson. “Understandings of Justice: Institutional Legitimacy, Procedural Justice, and Political Tolerance.” *Law and Society Review* vol. 25 (1991): 469-496.

most people disagree with, it might be better to do away with the Court altogether.”⁴⁶ Those who agreed to this statement are cited as expressing weak institutional commitment to the European Court of Justice. Gibson and Caldeira elaborate: “This statement represents the antithesis of diffuse support: it says that the institution should only be supported to the extent it produces satisfactory outputs.” The results reveal that the Court of Justice seems to have limited levels of support and consequently, limited levels of legitimacy throughout the European Union. Gibson and Caldeira’s tests showed higher levels of support in the Netherlands and Italy, with particularly weak support in Spain, Ireland, Portugal, and East Germany.

The second of these empirical test measures the relationship between specific support and diffuse support for the European Court of Justice by country in 1992. Individuals were asked if what they have heard or read has given them a generally favorable or unfavorable impression of the European Court of Justice. This test shows that diffuse support remains weak even when there is favorable specific support. Gibson and Caldeira continue this research of diffuse support in yet another quantitative test examining diffuse support for the Court, published in 1998.⁴⁷ This later article presents a further comparison of diffuse support for the European Court with that of National High Courts in order to assess variance in legitimacy across national and European levels of litigation.

There are considerable gaps and room for further research among these tests originally conducted by Gibson and Caldeira, however. While I had originally aimed to use these empirical

⁴⁶ James Gibson and Gregory Caldeira. “The Legitimacy of the Court of Justice in the European Union: Models of Institutional Support.” *The American Political Science Review* vol. 89.2 (1995): 356-376.

⁴⁷ James Gibson and Gregory Caldeira. “Changes in the Legitimacy of the European Court of Justice: A Post-Maastricht Analysis.” *British Journal of Political Science* vol. 28.1 (1998): 63-91.

results as a model and to expand these regressions as the assess only a short variance in time – from 1992 to 1993 only, there is high variance between questions asked on the Eurobarometer every year. Over twenty years later, the available data concerning levels of support for the European Court of Justice has certainly expanded, but is not entirely consistent. As I have previously discussed, there is great variance between questions surveyed every year, and those conducted by Gibson and Caldeira have not been revisited in more recent years.

Elaboration of Methodology

I plan to first accumulate a database of up-to-date surveys assessing levels of support for the European Court of Justice and categorize them by year in order to catalogue results. After solidifying this expansion of data since the most recent quantitative analysis, I will run regressions similar to the models established by the research of Gibson and Caldeira. The largest discrepancies between these two quantitative tests, however, is that I will not be focusing on diffuse or specific trust as much as examining the values that affect overall trust in the European Court of Justice as it is recorded by Eurobarometer surveys. The quantitative section of this research includes 13 Eurobarometer surveys. Several years were excluded due to codebook issues in which the data presented was incomprehensible. Among the remaining 13 surveys, questions directed toward respondents are not always consistent which leads to some instances of missing data. Not every survey measures the political party of the respondent, for example. The extent to which a specific year studies each variable will be evident throughout the quantitative section of this analysis.

From these surveys, I will also measure my hypothetical independent variables. Support for the European Union, trust in domestic authority, as well as awareness of the court and political composition of the respondent pool are values included in Eurobarometer surveys. After collecting these data and accumulating them into the national-level, I will run simple bivariate regressions to determine any positive or negative relationship between each variable and trust in the European Court of Justice. Each variable will be presented along with its calculated “trend line,” slope of that line, and the r square variable in order to further examine the statistical salience of the relationship. The interpretation and significance of each relationship will be discussed in the following chapter.

Chapter Four: Results of Quantitative Tests and Interpretation of Findings

How does the dependent variable, trust in the European Court of Justice, change over time?

Based on the data drawn from Eurobarometer surveys, we can observe the way trust in the European Court of Justice has changed over time, beginning in 1992 and ending in 2012.

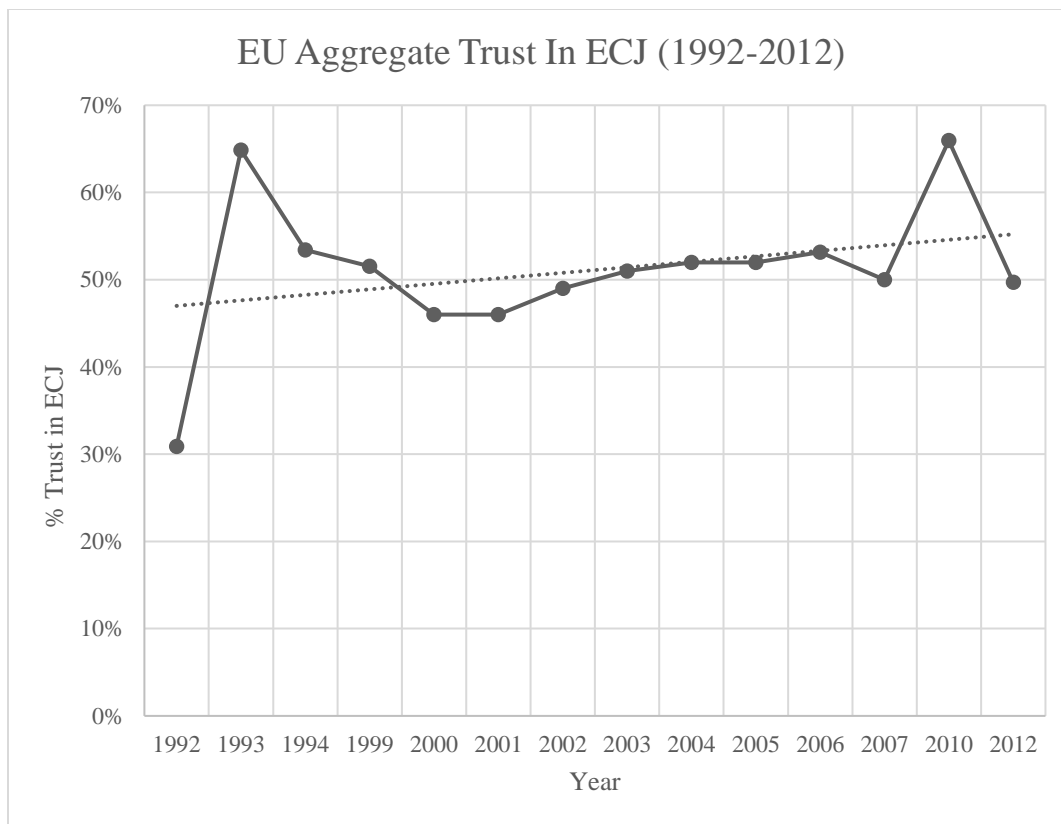


Figure 3: Changes in Trust in the ECJ (EU totals) (1992-2012)

This chart visually illustrates several observations concerning the purpose of this study. For the most part, this graph concludes that trust toward the court is relatively stable in the years studied. Trust in the European Court of Justice is the highest toward the beginning of the surveys measured, although the absolute lowest point of trust is that in 1992. In 1992, the average level of trust throughout the European Union was 31 percent. This percentage is in stark contrast to the next year's level of trust, which is among the highest in the years measured. The remaining years seem to follow a clearer trend: 1994-2007 measures trust in the court to be around 50 percent, and support seems to stay there. 2010 sees an increase in trust of about 16 percent, although in the following year, the dependent variable falls back to the 50 percent range.

The trend line suggests that trust in the European Court of Justice has increased slightly since the beginning of these surveys, although not by a significant margin. Especially in the

years 2000-2006, trust enjoys a steady rise. The exceptions to this trend are years 1993, 1994, and 2010. These are most likely impacted by singular, EU-wide events, although it is beyond the scope of this paper to speculate which events might affect these levels. Instead, the relationships tested are those of grander societal and public perceptions towards democratic institutions and political organizations. In contrast, the years toward the center of the graph might represent a period of relatively stability, in which levels of trust do not fluctuate widely.

Concerning the role of Maastricht in influencing public opinion toward the Court of Justice, it is impossible to discern only from this graph whether Maastricht affects levels of trust in the following years. Extant literature anticipates that concerns about democratic override and deficit in the European decision-making process, as embodied by the referendums held on the ratification of Maastricht in Denmark and France, would lead to decreased levels of public support for European institutions in the Post-Maastricht years. This chart does not confirm this assumption. It is notable, however, that the lowest recorded level of trust in these data occurs the same year Maastricht is signed. This low point faces a backlash, however, in the following year in which trust reaches 65 percent. Again, it is impossible to distinguish any type of relationship between the ratification of Maastricht and public opinion toward the European Court of Justice.

Considering the work of Gibson and Caldeira in “Changes in Legitimacy of the European Court of Justice: A Post-Maastricht Analysis,” their hypotheses toward public attitudes toward the legitimacy of the ECJ are further questioned by this finding. The authors in general question the future course of legitimacy within the European Union:

Many scholars and members of the Court recognize the treacherous waters the ECJ must navigate in the coming years. Whether the Court can build its institutional legitimacy at the very time at which it is coming under increasing attack from national politicians is perhaps the most important question left unanswered by our analysis to date.⁴⁸

⁴⁸ *Ibid*

Although the study does not necessarily reflect on the extent to which the court will be challenged by public opinion in the Post-Maastricht years, the data available from years 1992-2012 suggests the waters might not be as treacherous as previously proposed. The European Court of Justice, despite events which challenge the solid democratic foundation of the European Union or events of democratic contestation, seems to have maintained a steady aggregate level of support in the years measured.

It is notable, however, that more recent Eurobarometer surveys do not include polls concerning the European Court of Justice. The study therefore lacks data beyond 2012. Of course, these years provide more instances of singular events or continued trends which might influence public opinion toward the EU and its judicial body that this study cannot yet observe.

What do these survey data say about the relationships between our independent and dependent variables?

Hypothesis 1: Higher levels of trust in national governments will elicit higher levels of trust in the court. As trust in national governments increases, so does trust in the ECJ.

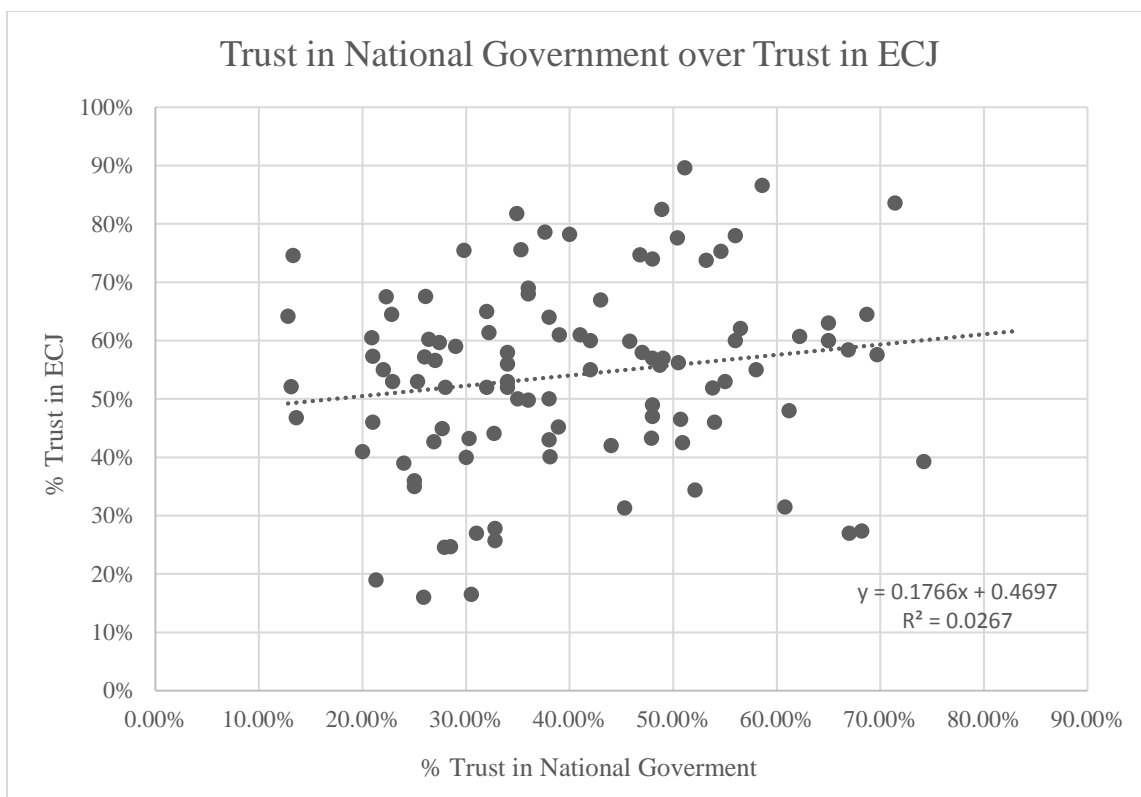


Figure 4: Trust in National Government over Trust in the ECJ (1992-2012)

These data find no relationship between levels of trust in national governments and that in the European Court of Justice. This lack of correlation contradicts what literature hypothesizes concerning the impact of trust in domestic and European authority. Among this literature, Gibson and Caldeira find that respondents are more willing “to express a view towards their national judiciary than towards the ECJ” although their surveys determine “little appreciable difference in the ability of citizens to judge the ECJ and the national high court.”⁴⁹ This collection of data suggests this is not an accurate assessment, but that individuals differentiate between national governments and European authorities. Rather than associating their views of national governments with that of the Court of Justice, individuals hold separate opinions towards each.

⁴⁹ *Ibid*

The level of trust an individual places in their domestic authority has no correlation with the level of trust they place in the ECJ.

This study finds that there is greater distinctiveness between attitudes towards the two institutions than extant literature might suggest. This differentiation might suggest increasing knowledge of both national and European institutions among the public, or that the European Court of Justice is becoming less of an obscurity among everyday citizens. If an individual is not knowledgeable about a particular institution, it is likely that respondents will draw upon their opinions of an associated institution to make assumptions. If an individual is informed, however, it is perhaps more likely that they will hold separate views on separate institutions.

This study holds that each institution has its own unique legitimacy that does not draw from that of other authorities, but has its own, distinguished source which elicits distinct public attitudes towards each.

Hypothesis 2: As support toward the European Union as a whole increases, so does trust in its institutions. This should be observable through increased trust in the European Court of Justice in member states with high levels of trust in their national authorities.

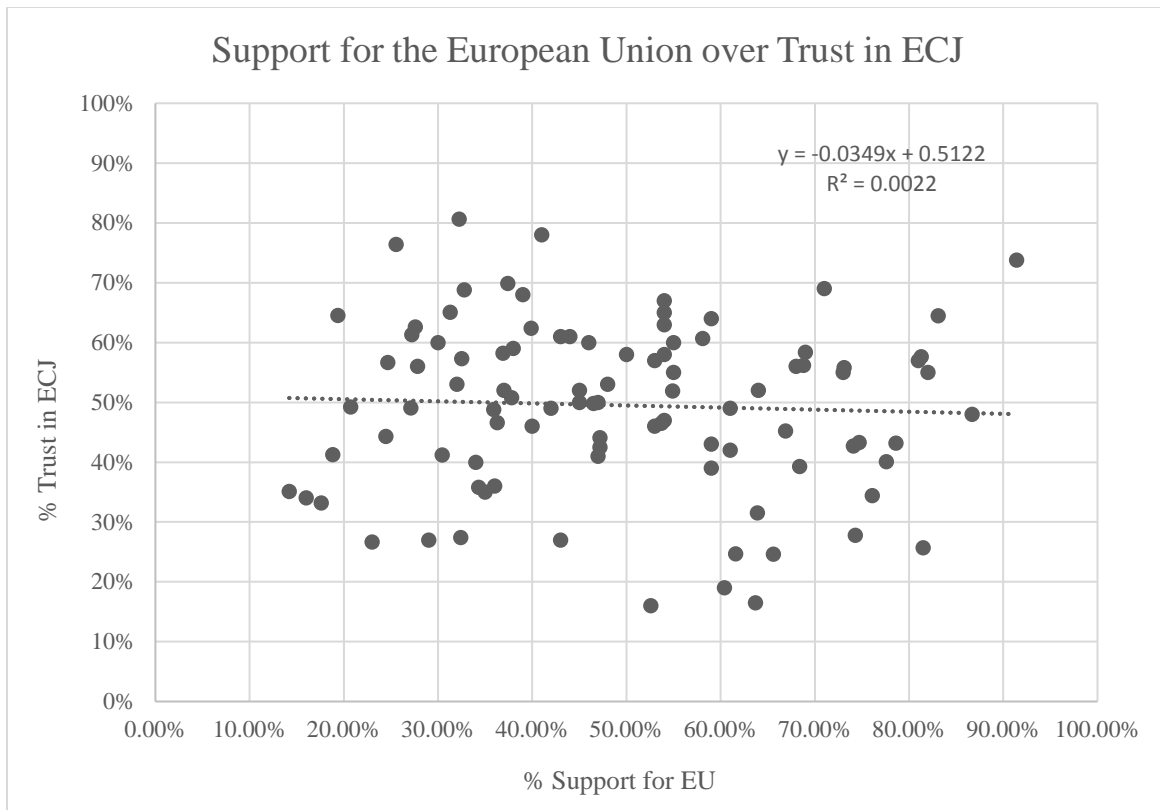


Figure 5: Support for the European Union over Trust in the ECJ (1992-2012)

Based on the surveys of this study, there is no observable relationship between an individual's attitude toward the European Union and an individual's trust in the European Court of Justice. This finding is contrary to extant literature, which proposes that higher levels of support in the grander EU will correspond with higher levels of support for its individual institutions, not limited to but including, the ECJ. These data, however, do not affirm this relationship.

This has similar implications as the level of trust in national government. The lack of relationship here suggests that individuals not only differentiate the European Court of Justice from their national institutions, but from the overarching body of the European Union as well. This is potentially more significant, as the European Union is more closely associated with the Court of Justice than any domestic court. Nevertheless, survey data illustrates that individuals

distinguish their opinions of the European Court of Justice from the European Union in its entirety. This distinctiveness could also have something to do with the decreasing level of obscurity surrounding the ECJ in recent years. If the public is knowledgeable about the separate functioning bodies of the EU, it is less likely that they might “lump” these institutions together when forming opinions toward them. This study obviously makes no attempt at discerning any changes in public attitudes toward other European bodies such as the Parliament, Commission, European Central Bank, or Council of Ministers, although I expect to see greater levels of distinctiveness concerning trust in each. These data suggest that individuals separately categorize the independently functioning systems from their overarching organization: the European Union.

Hypothesis 3: As awareness of the European Court of Justice increases, trust in the court will decrease.

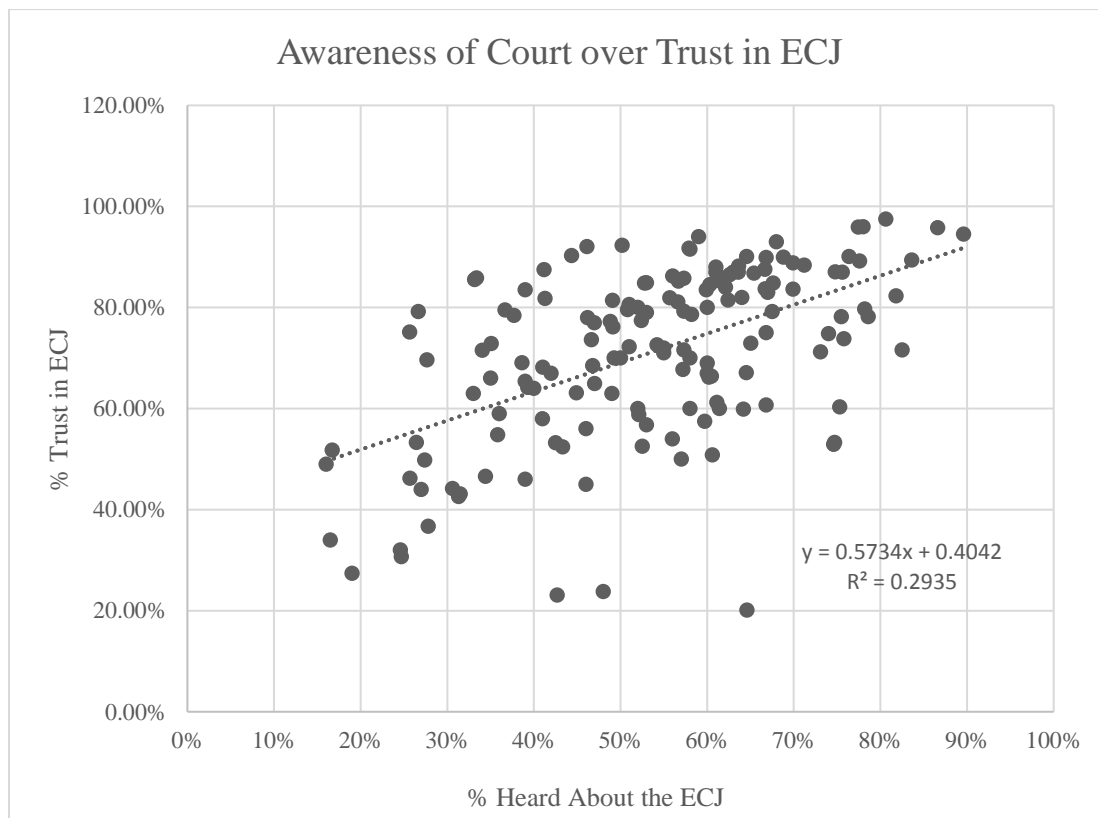


Figure 6: Awareness of the ECJ over Trust in the ECJ (1992-2012)

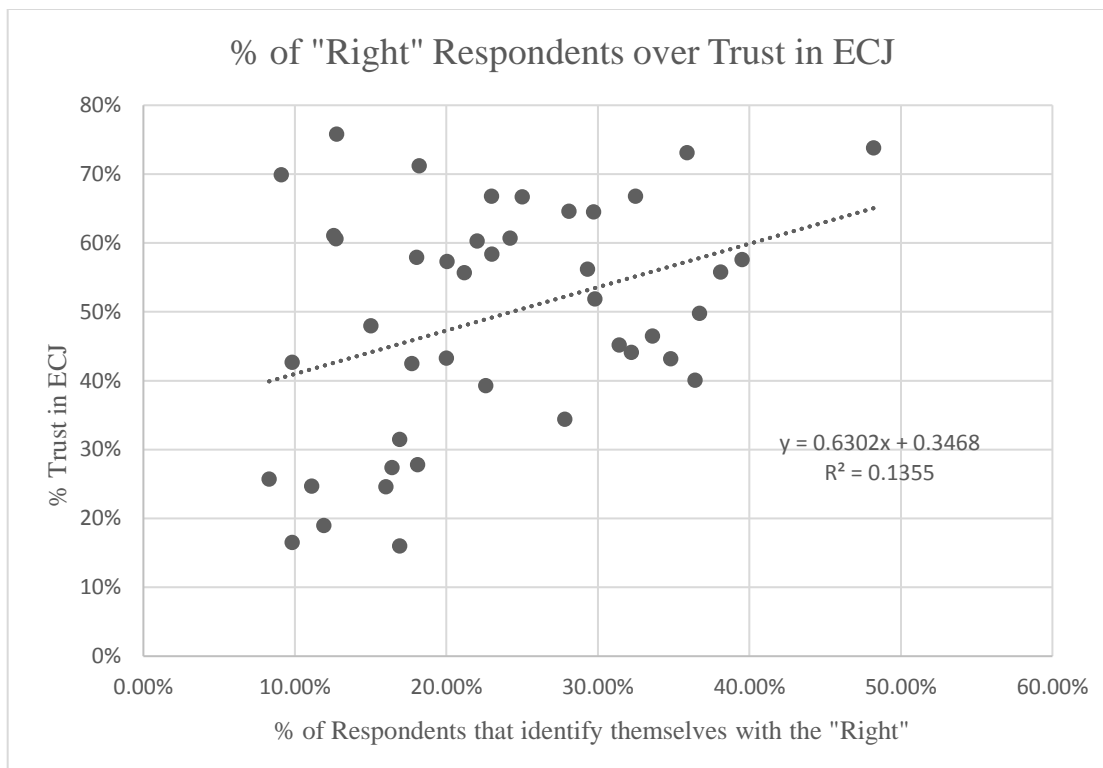
These data illustrate a positive relationship between awareness of the court and trust in the court that is contrary to hypothesis 3. The original hypothesis, as articulated by the literature of Stein, stated that increased levels of awareness in the court will lead to decreased levels of support as individuals became more aware of judicial institutions. This original theory holds that individuals will be less supportive of the court if they are determined to be somewhat knowledgeable of them. This theory presumes that issues which are likely to decrease public support for the institution, such as possible democratic deficits, sovereignty loss, or disagreements on policy and decision-making processes, will become more apparent as awareness of the court increases. These issues, then, play a larger role as public knowledge increases. The media can play a key role in this shift in trust, as the media serves as a source of information but may also frame stories or events in a certain manner shaped by current events. If contemporary media outlets portray the court (or the EU) in a negative light, this has the effect of 1) increasing public knowledge of that institution, and 2) creating a bias toward that institution that might extend to viewers and those who seek information from that outlet. This speculation largely shapes the third hypothesis, especially in light of recent events which have hit the European Union. These events, which are reported on the most frequently, are most likely to shape public perceptions toward the bodies of the European Union. The hypothesis, therefore, again states that public awareness will negatively affect levels of support for the court.

The relationship as displayed here, suggests the opposite. Rather than seeing increased levels of awareness accompanied by decreased support, the opposite is shown. As the public becomes more aware of the ECJ, the trust placed in that institution grows. This finding is more similar to that of Gibson and Caldeira than Eric Stein. Their 1998 study finds “among those who

do hold opinions about the work of the ECJ, most hold positive views.”⁵⁰ This statement holds two assumptions about both awareness and public trust in the court: primarily that, the more aware an individual is, the more positive their views toward the European Court of Justice. This finding is more in line with that of this research paper. As the public becomes more aware of the existence and functioning of the court, they are more likely to support it. This says nothing, however, about the factors which encourage that support. Are individuals correctly informed, and to what extent? Are public conclusions about the European Court of Justice based on the court’s publicized rulings and the degree to which they agree with those decisions? These questions provide avenues for future research which are not addressed in this study.

Hypothesis 4: As political polarization of a country increases, trust in the European Court of Justice will decrease. Countries with more polarized populations along the classic Left/Right political spectrum will see lower levels of trust in the ECJ.

⁵⁰ *Ibid*

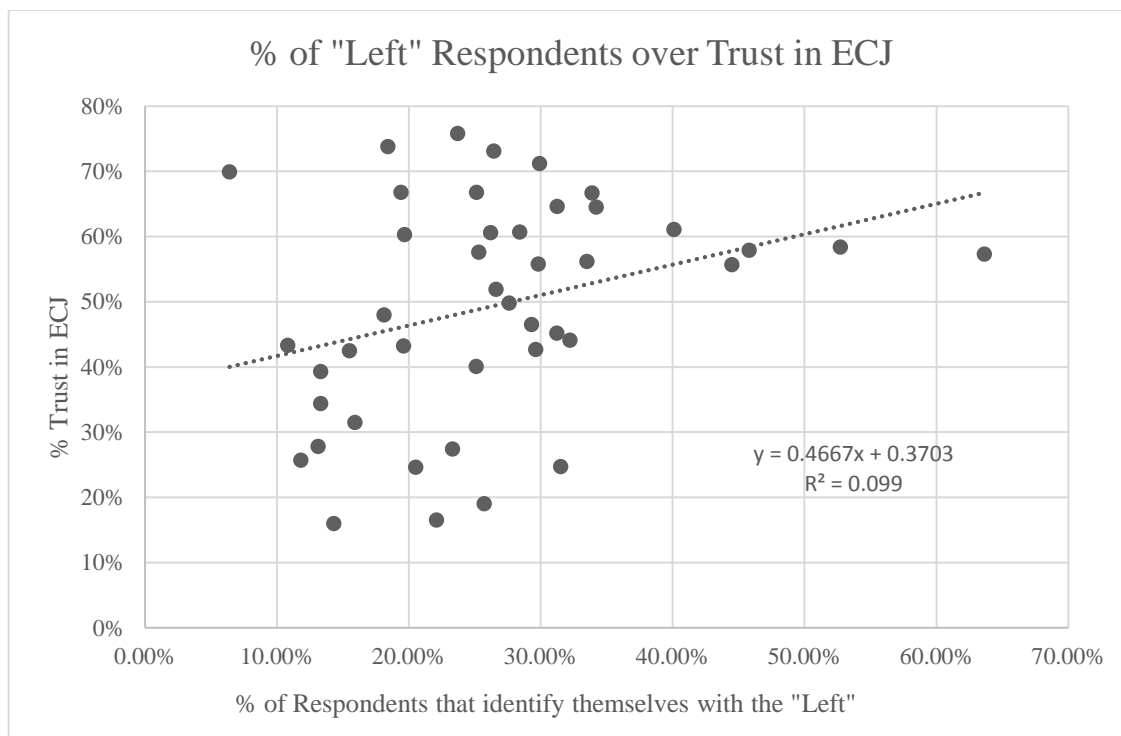


**Figure 7: Political Composition Along the Left/Right Spectrum over Trust in the ECJ
(1992-2012)**

Any presumed relationship between the percentage of respondents who identified themselves on the Right of the political spectrum and trust in the European Court of Justice is too weak for us to draw any conclusions. The original hypothesis assumes that more politically polarized nations are more likely to be hit by radical views such as nationalism or populism, which concentrate on issues of national sovereignty and democratic deficit that are also core concerns regarding European institutions. Contrary to literature concerning this relationship, which suggests that more polarized populations will hold overall more negative views toward the European Union, this trend hints toward the opposite. The trend line hints that countries with a greater percentage of right-leaning respondents will express higher levels of trust in the ECJ. However, it would be necessary to collect more data regarding public political allegiances and opinions toward the ECJ. Perhaps this relationship could be more clearly illustrated or elaborated

upon if an individual-level, rather than national-level, survey was conducted. This could draw important conclusions concerning the extent to which an individual's political party or political views shape their perceptions toward the court.

This might be due to the extent to which an individual is involved and informed in the general political sphere. An individual who expresses strong opinions about their political preferences or allegiance is likely to express similarly strong opinions about European institutions. Of course, this is purely speculation and cannot be concluded from the results of this study. This particular hypothesis would benefit from some additional years worth of data to more accurately examine the relationship between these independent and dependent variables.



**Figure 8: Political Composition Along the Left/Right Spectrum over Trust in the ECJ
(1992-2012)**

Similar to the results of the previous graph, which simply measured the opposite side of the classical political spectrum, there is no relationship between a more polarized public along the left and decreased trust in the European Court of Justice. These variables also reflect a positive correlation more so than a negative one, which also implies that a greater percentage of left-leaning public does not accompany decreased levels of trust in the ECJ, but *increased* support. Although this cannot fully differentiate the effects of left versus right-leaning preferences on views toward European integration or institutions, it may be important to note that both sides of the spectrum follow a similar trend. This indicates that views toward the European Union and its functioning bodies are not so much shaped by the binary views held by separate political parties, but rather an individual's attitude toward political parties and engagement altogether. Again, I would like to stress that the "correlation" here is too weak statistically to suggest any real relationship, and this particular hypothesis would benefit greatly from further study and additional survey data.

Conclusion

This study aims first to illustrate the importance of public support, especially with respect to transnational institutions. The European Union is no stranger to skepticism, and its institutions and decision-making processes are often called into question concerning their legitimacy and democratic accountability. The EU and its individual institutions, such as the European Court of Justice, however, are democratic and thus should be concerned with public perceptions regarding the organization's legitimacy. The European Court of Justice provides an interesting background for these questions, especially when we reflect on the court's creative role in expanding the competencies of the European Union, the court itself, and furthering European integration. This

role is embodied by the process of constitutionalization, through which the ECJ was able to further integrate its member states and embellish its own decision-making, law-making ability.

This study then attempts to answer the broad question of: “What drives support for the European Court of Justice?” If European institutions are thought to be concerned with these levels of public support, then it should be just as significant to note how these levels change over time. This research pulls four hypotheses from extant literature referencing the intersection of transnational courts and public opinion, and then utilizes more than a decade of public opinion data to analyze the relationships between the independent and dependent variables. The independent variables include trust in national institutions, overall attitude or support toward the greater European Union, the level of awareness of the ECJ in any individual country, and political composition of that state along the Left/Right spectrum. Each variable is thought to maintain either a positive or negative correlation to the aggregate level of trust in the ECJ.

Relating to these relationships, this study finds no correlation between three of the four variables: trust in national government, support for the European Union, or polarization of the nation along the classic Left/Right political spectrum. This lack of correlation still reveals key insights about how individuals form their own perceptions toward separately functioning political bodies, as well as how individuals shape their attitudes about the legitimacy of these institutions. The positive relationship found is that of awareness in the court and trust: As levels of awareness increase, so does trust in the Court of Justice. Overall, this research suggests that the European Court of Justice is becoming less of an obscurity in the lives of everyday Europeans, and that individuals are growing to increasingly differentiate between organizations that were once closely associated.

There is still much room for further research on the European Court of Justice, and especially on the intersection of the court and public opinion. This study did not even attempt to delve into questions of whether or not the ECJ is concerned with public opinion in its decision-making. Yes, we assume that as a democratic institution, the court is sensitive toward public attitudes. This does not indicate, however, the extent to which the court actualizes this concern in its law-making. The research design as presented by this paper has room for elaboration as well. There seems to be little data available on levels of trust in the Court of Justice, as this is not consistently measured by Eurobarometer surveys. Are there any other sources that quantify public attitudes toward the court? It is also possible to test an almost infinite amount of independent variables in order to observe their correlation to trust. These variables should not be limited only to political perspectives, but could include economic and sociological indicators as well.

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