

# Public Opinion and the Legitimacy of International Courts

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*Public legitimacy consists of beliefs among the mass public that an international court has the right to exercise authority in a certain domain. If publics strongly support such authority, it may be more difficult for (democratically elected) governments to undermine an international court that takes controversial decisions. However, early studies found that while a majority of the public trusts international courts, this was based on weak attitudes derivative from more general legal values and support for the international institutions. I reexamine these claims with data for European courts, the International Criminal Court, and the International Court of Justice. First, using Google search data and media-analysis I find that, at least in Europe, information-seeking about international courts has increased and is at similar levels to national high courts and prominent international institutions. Second, trust in international courts remains strongly correlated with trust in international and domestic institutions. Countries in which more individuals trust their national courts are also countries in which more individuals trust international courts. Individuals who trust their national courts more are also more trusting of international courts. This undermines at least some interpretations of the credible commitment argument: in the minds of the general public, international courts may not be substitutes for poorly performing domestic courts, but extensions of a functioning rule of law system that they already trust.*

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## INTRODUCTION

International courts have greatly expanded their output in the past two decades.<sup>1</sup> They have by and large succeeded in doing so while staying out of the limelight of mass politics. Yet, the judicialization of politics may be leading to a politicization of the judiciary.<sup>2</sup> For instance, a majority of the British public now favors openly defying European Court of Human Rights (ECtHR) decisions and even withdrawing from its jurisdiction altogether. Bolivia, Ecuador, and Venezuela have all withdrawn from the ICSID amidst public outcries over decisions that assigned large damages to multinational corporations. Venezuela withdrew from the Inter-American Court of Human Rights amidst accusations of bias. The International Criminal Court (ICC) has been charged with bias against Africa and insufficient sensitivity to the politics of conflict resolution, and has gotten entangled in Kenyan electoral politics.

These and other high-profile events have increased scrutiny from citizenries, albeit in a highly selective way. Nonetheless, we know surprisingly little about public support for international courts. After a series of groundbreaking studies about the Court of Justice of the European Union (CJEU),<sup>3</sup> the topic has been virtually ignored by social scientists.<sup>4</sup> Indeed, questions about international courts are rarely asked in comparative surveys.<sup>5</sup>

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- 1 Karen J. Alter, *The Evolving International Judiciary* (Buffett Ctr. for Int'l & Comparative Stud., Working Paper No. 11-002, 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1859507](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1859507).
  - 2 John Ferejohn, *Judicializing Politics, Politicizing Law*, 65 LAW & CONTEMP. PROBS. 41 (2002).
  - 3 E.g., Gregory A. Caldeira & James L. Gibson, *The Legitimacy of the Court of Justice in the European Union: Models of Institutional Support*, 89 AM. POL. SCI. REV. 356 (1995) [hereinafter Caldeira & Gibson, *Institutional Support*]; James L. Gibson & Gregory A. Caldeira, *The Legitimacy of Transnational Legal Institutions: Compliance, Support, and the European Court of Justice*, 39 AM. J. POL. SCI. REV. 459 (1995) [hereinafter Gibson & Caldeira, *Compliance*].
  - 4 With the exception of a few studies of the temporary criminal tribunals in Yugoslavia and Sierra Leone, see, e.g., CHRIS COULTER, *BUSH WIVES AND GIRL SOLDIERS: WOMEN'S LIVES THROUGH WAR AND PEACE IN SIERRA LEONE* (2009); Donna E. Arzt, *Views on the Ground: The Local Perception of International Criminal Tribunals in the Former Yugoslavia and Sierra Leone*, 603 ANNALS AM. ACAD. POL. & SOC. SCI. 226 (2006).
  - 5 I have done searches in the databases Polling the Nations, Roper's IPOLL, PEW Global Attitudes, PIPA's World Public Opinion, Gallup's archives, ICPSR, the AFROBAROMETER, LATINBAROMETER, ARABBAROMETER, EUROBAROMETER, European Election Studies, European and World Values Surveys, and the International Social Survey Program. The exception is that the

One explanation for this lack of interest is the main conclusion from the earlier studies: Gregory A. Caldeira and James L. Gibson found that the CJEU is too obscure for people to form strong attitudes about it. Instead, people express opinions based on their overall evaluation of the European Union and their general perceptions of law and legal institutions.<sup>6</sup> If the CJEU, arguably the world's most established international court, is too little known for it to build up a stock of public legitimacy, then there is little hope of finding it elsewhere. Yet, Caldeira and Gibson noted that things could change rapidly once international courts start making more decisions that affect the mass public, as they obviously have.<sup>7</sup> Moreover, scholars increasingly emphasize the role of the general public in ensuring that governments comply with international law and court judgments.<sup>8</sup>

The purpose of this Article is to revisit the role public opinion plays by evaluating the available empirical evidence with regard to the European courts (CJEU and ECtHR), the International Court of Justice (ICJ), and the ICC (with an emphasis on Uganda). Although data is limited, I draw some tentative conclusions from this exercise.

First, based on Google search data from the United Kingdom, France, and Germany, I find that citizens engage in similar amounts of information-seeking about the European courts as they do about their national high courts and other prominent international organizations such as the World Trade Organization (WTO), the International Monetary Fund (IMF), and the World Bank. Moreover, British newspaper articles about the European Courts have increased manifold since the time of Caldeira and Gibson's surveys. Thus, it is clear that the salience of these courts has increased.

Second, despite increased attention, it is still true that opinions of international courts are strongly correlated with attitudes towards the international organizations most closely associated with a particular court and with legal values more generally. This finding holds not just for the CJEU but also for the ICJ and ICC. For example, the CJEU is most trusted in countries where trust of the European Union is high and where citizens most trust their national courts. Consequentially, a crisis in European institutions may negatively affect support for European courts.

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EUROBAROMETER regularly asks about trust in the CJEU, as it does about all E.U. institutions.

6 Caldeira & Gibson, *Institutional Support*, *supra* note 3.

7 *Id.*

8 Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (2009); Beth A. Simmons & Allison Danner, *Credible Commitments and the International Criminal Court*, 64 INT'L ORG. 225 (2010); Dai Xinyuan, *Why Comply? The Domestic Constituency Mechanism*, 59 INT'L ORG. 363 (2005).

Third, both across and within countries citizens who trust their domestic courts more also have more trust in international courts. This finding seemingly contradicts some interpretations of the credible commitment logic that underlies domestic politics theories of compliance with international courts. Credible commitment theorists imply that citizens who are least trusting of their national courts should insist most that their government commits to an international court. Instead, the findings suggest that citizens see international courts not as substitutes for, but as extensions to the domestic rule of law.

These conclusions come with caveats. The data is scarce and surveys do not always ask the questions that match the most relevant theoretical concepts. This Article takes a broad look at existing survey data and draws some tentative conclusions from it. Further analysis would be needed to further scrutinize the patterns uncovered here. I start in Part I with a discussion of conceptual issues. I then evaluate evidence about the profile of courts with internet search data and newspaper data: Part II looks at the European Courts; Part III discusses the International Criminal Court; and Part IV deals with the International Court of Justice. The Conclusion discusses what all this means for the legitimacy of international courts more broadly.

## I. WHAT IS PUBLIC LEGITIMACY AND WHY DOES IT MATTER?

Any conceptualization of legitimacy that involves public opinion is subjective rather than objective. In a subjective conception, an institution's legitimacy resides in the beliefs that actors have. These beliefs may be influenced by the degree to which institutional behavior meets normative or positive performance criteria, but not necessarily so. Even if all legal theorists agree about a court's legitimacy, the public may deem the institution illegitimate (or vice versa) for reasons that may seem unfair or arbitrary to normative theorists. For the purposes of this Article, it matters not what citizens *should* think, but what they *do* think.

I define public legitimacy as the beliefs among the mass public that an international court has the right to exercise authority in a certain domain. This is not the same as compliance. That legal institutions with greater stocks of legitimacy receive greater compliance is a hypothesis rather than an assumption.

This definition is consistent with other studies of international court legitimacy<sup>9</sup> and national court legitimacy.<sup>10</sup> It builds on the notion that institutions

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9 Caldeira & Gibson, *Institutional Support*, *supra* note 3.

10 Gregory A. Caldeira, James L. Gibson & Vanessa A. Baird, *On the Legitimacy of National High Courts*, 92 AM. POL. SCI. REV. 343 (1998).

need “diffuse support,” meaning support that is not contingent on short-term satisfaction with policy outputs.<sup>11</sup> Citizens may well disagree with individual court decisions while continuing to believe that the court has the right to make these decisions and that its decisions should be authoritative.

Theoretically, a stock of legitimacy may reduce the extent to which courts have to worry about the repercussions from unpopular decisions. This claim warrants some unpacking. The relationship between an international court and the general public cannot be described by a simple model in which publics make demands and judges deliver. There is no basis for such a direct input-output model. There is no electoral connection through which the public can punish or reward international judges. The public does not objectively observe whether a court’s decisions are rightful exercises of authority or transgressions. Thus, public legitimacy depends on trust, which is a coping device for dealing with the freedom of others.<sup>12</sup> The decisions of a trusted court are perhaps more likely to be accepted without a challenge than the decisions of a court that is less trusted. For example, a government confronted with an unfavorable opinion from a trusted international court may fear that it would be accused of undermining the rule of law if it were to reject implementing the ruling. By contrast, a government that faces a ruling from a less trusted court may have an easier time motivating its decision not to accept the consequences of a judgment.

Yet, Caldeira and Gibson find that despite high levels of trust in the CJEU, “few people are willing to accept a Court of Justice decision they find objectionable.”<sup>13</sup> They attribute this finding to the relative absence of experience with CJEU decisions. Since most CJEU decisions do not directly affect many citizens in visible ways, citizens have few opportunities to form informed and lasting attitudes towards the court. Instead, they conclude that “[i]n the absence of information about the Court of Justice, ordinary citizens depend on this institution’s connection with the EU, as well as its association with broad political and legal values such as the rule of law and individual liberty.”<sup>14</sup> This implies that the CJEU has little opportunity to build a stock of legitimacy through opinions that cater to specific constituencies. Abstract values and associations are a poor guide for behavior. Caldeira and Gibson therefore predict that decisions that create more public controversy may

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11 DAVID EASTON, *A SYSTEMS ANALYSIS OF POLITICAL LIFE* (1979).

12 Diego Gambetta, *Can We Trust Trust?*, in *TRUST: MAKING AND BREAKING COOPERATIVE RELATIONS* 213 (Diego Gambetta ed., 2000).

13 Gibson & Caldeira, *Compliance*, *supra* note 3, at 459.

14 Caldeira & Gibson, *Institutional Support*, *supra* note 3, at 365.

lead to “problems of acceptance and compliance.”<sup>15</sup> Thus, the high trust that people express for international courts in surveys may be misleading, as it is not based on extensive experience and can thus quickly be updated when new and less favorable information comes in.

This argument can be generalized to other courts. It suggests three observable implications. First, perceptions about international courts are correlated with perceptions about the international organizations with which these courts are associated. Second, individuals who trust national courts are also more likely to trust international courts. Third, support for international courts drops precipitously in the face of public controversy over unpopular decisions.

The first hypothesis is probably the most obvious, although it has important implications. In combination with the third claim, it implies that international courts should not worry on a daily basis about the general public other than avoiding decisions that lead to public outcries, although these may not be perfectly predictable.<sup>16</sup> Instead, they should focus their legitimizing behavior on other compliance constituencies, such as elites and nongovernmental organizations (NGOs). Or they may use their authority to strengthen the international institutions that they are associated with. It also implies that international courts may suffer if the organizations they are associated with enter a legitimacy crisis. That is: the European crisis may well have consequences for the CJEU and even the ECtHR regardless of whether these institutions carry any responsibility for the crisis.

The second hypothesis may seem obvious but it flies in the face of at least some interpretations of the argument that governments view international courts as a vehicle for making credible commitments to policy reform.<sup>17</sup> Credible commitment theorists argue that domestic and/or international audiences may not believe that a government is sincere when it promises to improve human rights, to respect the property rights of foreign investors, to prosecute war criminals, to adhere to the provisions of trade agreements, and so on. Or, these audiences may trust the current government, but fear that a future government will renege on these promises. One way to make such promises more credible is by doing something that makes any diversion

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15 Gibson & Caldeira, *Compliance*, *supra* note 3, at 485.

16 Yonatan Lupu, *International Judicial Legitimacy: Lessons from National Courts*, 14 THEORETICAL INQUIRIES L. 437 (2013).

17 Tom Ginsburg, Svitlana Chernykh & Zachary Elkins, *Commitment and Diffusion: How and Why National Constitutions Incorporate International Law*, 2008 U. ILL. L. REV. 201; Andrew Moravcsik, *The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe*, 54 INT’L ORG. 217 (2000); Simmons & Danner, *supra* note 8.

from the promised course costly. Joining international courts and complying with international court judgments is one way for governments to make a costly signal to these audiences that they are serious about their promises. To maintain legitimacy, an international court should hold governments to their legal commitments and impose costs on governments who deviate from the straight path.

Public opinion plays a role in some of these theories. One incentive for leaders to delegate to international courts is if domestic citizens do not trust domestic institutions. As Beth Simmons and Allison Danner put it in their study of the ICC:

The problem may be that domestic institutions may not be perceived as fair. . . . Thus, we advance a new interpretation of the ICC as a device to make governments' commitment to reduce civil violence credible by tying their own hands not only to prosecute fairly but potentially to be prosecuted as well. . . . The willingness of a government to subject itself to the risk of prosecution sends an important signal to a government's adversaries as well as the broader public that there are boundaries in quelling future threats beyond which the government will not go.<sup>18</sup>

The implicit implication is that those citizens who are *least* trusting of domestic institutions (especially courts) should be *most* insistent that their government make a commitment to the international court. A similar argument underlines other credible commitment theories which, like Simmons and Danner, emphasize domestic publics as a key audience for making credible commitments. On the other hand, more normative accounts of why states commit to international institutions would expect that those who trust domestic legal institutions more also trust international legal institutions more. Yet, this correlation is also consistent with the view that citizens generally do not have strong moral commitments regarding international courts and derive opinions based on shortcuts, such as their evaluation of international institutions and their trust in courts more generally.

A different way to think about the debate is to ask whether in the view of publics international courts are extensions of national courts that strengthen the overall rule of law or potential substitutes for less trustworthy domestic legal systems. The evidence gathered here points towards the first interpretation.

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18 Simmons & Danner, *supra* note 8, at 232.

## II. THE EUROPEAN COURTS

### A. Britain and the ECtHR

Anecdotal evidence suggests that public debates about the European courts have become more intense. The clearest example is the United Kingdom, where debates about the ECtHR now regularly feature on the front pages of newspapers, mostly spurred by two judgments on prisoner voting rights,<sup>19</sup> and the prohibition of the extradition of suspected terrorist cleric Abu Qatada to Jordan.<sup>20</sup> Public support for the ECtHR decreased precipitously. In June of 1996 seventy-one percent of the British public were in favor of the ECtHR and only sixteen percent were against.<sup>21</sup> By February of 2011, only nineteen percent of the British public believed that the ECtHR had been a “good thing” for Britain and only twenty-four percent were in favor of remaining a party to the ECtHR (with fifty-five percent preferring to leave and the others uncertain).<sup>22</sup>

This lack of public support may matter in two tangible ways. First, it encourages noncompliance. In direct defiance of ECtHR judgments, seventy-six percent of the British public opposes giving *any* prisoners the right to vote, even in a survey question that gave respondents the option to only allow voting rights for those serving a sentence of six months or less.<sup>23</sup> Amidst this public opinion, the Labour government delayed implementation until after the 2010 election. The ECtHR tried to force the hand of the British government by allocating monetary compensation to a new set of prisoners who were denied voting rights. The new Conservative Cabinet drafted a proposal that would grant at least some prisoners the right to vote.<sup>24</sup> At the same time, British Prime Minister David Cameron proclaimed that granting prisoners the right

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19 Hirst v. United Kingdom (No. 2) 74025/01, 2005 Eur. Ct. H.R. 681.

20 Othman (Abu Qatada) v. United Kingdom, App. No. 8139/09, Eur. Ct. H.R. (2012), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108629#{"itemid":\["001-108629"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108629#{).

21 *European Community*, POLLING THE NATION, [http://www.orspub.com/document.php?id=quest96.out\\_9466&type=hitlist&num=13](http://www.orspub.com/document.php?id=quest96.out_9466&type=hitlist&num=13) (June 1996) (by subscription).

22 For the poll results of the 2011 survey, see YOU GOV, SUNDAY TIMES SURVEY RESULTS (Feb. 10-11, 2011), [http://cdn.yougov.com/today\\_uk\\_import/YG-Archives-Pol-ST-results-11-130211.pdf](http://cdn.yougov.com/today_uk_import/YG-Archives-Pol-ST-results-11-130211.pdf).

23 YOU GOV, SUNDAY TIMES SURVEY RESULTS (Nov. 2, 2010), [http://d25d2506sfb94s.cloudfront.net/today\\_uk\\_import/YG-Archives-Pol-Sun-PrisonersVoting-021110.pdf](http://d25d2506sfb94s.cloudfront.net/today_uk_import/YG-Archives-Pol-Sun-PrisonersVoting-021110.pdf).

24 The ECtHR ruling held that a blanket ban violated the Convention, leaving open the possibility that more targeted bans could be justified.



to vote “makes me feel sick,”<sup>25</sup> and the Cabinet released its backbenchers, essentially dooming its own proposal.<sup>26</sup> Ultimately, the House of Commons voted down the Cabinet’s proposal 234 to 22, in open defiance of the ECtHR.

Similar pressures exist in other cases. For example, fifty-four percent of Britons agreed with the statement that the U.K. government should ignore the ECtHR ruling on Abu Qatada and deport him to Jordan. Thirty-three percent wanted the United Kingdom to get assurances from Jordan before deporting (which would not satisfy the ECtHR), and only four percent agreed with the statement that Britain “should not deport Abu Qatada and abide by the ruling.”<sup>27</sup> In all, there is little evidence that the ECtHR’s stock of public legitimacy helped create a pull in favor of compliance with unpopular decisions in the United Kingdom.

Second, the British government has been using its Council of Europe chairmanship to advance a reform proposal that curtails the ECtHR’s authority. At the time of writing it is unclear which, if any, of these reforms will actually be implemented. Yet supporters of the Court are concerned.<sup>28</sup>

## B. Salience of European Courts

The ECtHR example illustrates that international courts can create considerable public interest through their judgments. Yet this may be an unusual example. Internet searches offer a new way to acquire systematic information about changes in public interest. For example, Krzysztof Pelc finds that Google searches for the WTO increased markedly when the United States was being taken to the WTO Dispute Settlement Understanding.<sup>29</sup> He interprets this as

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25 Alison Little, *PM: Giving Prisoners Vote Makes Me Feel Sick*, EXPRESS U.K., Nov. 4, 2010, <http://www.express.co.uk/posts/view/209397/PM-Giving-prisoners-vote-makes-me-feel-sick/>.

26 This allows them to vote according to their individual preferences and incentives, meaning that their votes against the Cabinet’s proposal would not be seen as votes against the Cabinet.

27 YOUgov, SUNDAY TIMES SURVEY RESULTS 7 (Feb. 9-10, 2011), [http://cdn.yougov.com/cumulus\\_uploads/document/ly9ei68uye/YG-Archives-Pol-ST-results-10-120212.pdf](http://cdn.yougov.com/cumulus_uploads/document/ly9ei68uye/YG-Archives-Pol-ST-results-10-120212.pdf).

28 For an example of a concerned statement by NGOs on the matter, see Joint NGO Statement, *The Brighton Declaration Must Strengthen Human Rights Protection in Europe and Preserve the Integrity and Authority of the European Court of Human Rights* (Apr. 13, 2012), available at <http://www.statewatch.org/news/2012/apr/eu-brighton-declaration.pdf>.

29 Krzysztof Pelc, *Googling the WTO: What Search Engine Data Tell Us About the Political Economy of Institutions*, INT’L ORG. (forthcoming 2013), available

evidence for information-seeking behavior by the public. Instead, I evaluate how prominently European courts feature in the search behavior of citizens compared to other institutions. This helps us assess whether the European courts are still relatively obscure.

Figure 1 plots Google searches for the CJEU and ECtHR<sup>30</sup> as a proportion of searches relative to other international and domestic institutions.<sup>31</sup> The figure plots actual proportions and a smoothed average. Proportions are taken for two reasons. First, Google provides an index rather than actual search volumes. For example, a search for “European Court” would get value 100 at the time the search is most prominent relative to other searches and lower values at other times. This makes temporal comparisons difficult, as the composition of internet users has changed dramatically. Moreover, a proportion can tell us directly whether the searches for the European Courts are more (if the proportion exceeds 1) or less common at any time than searches for other institutions.<sup>32</sup>

Panel A plots searches for European courts relative to the House of Lords, the United Kingdom’s second legislative chamber and until 2009 its court of last resort. When the proportion exceeds 1 (above the dotted line) more people are searching for European Courts than the House of Lords. This happens with great frequency, but especially since 2010 when the Supreme Court of the United Kingdom came into existence. In a separate search, I found that “supreme court” generates roughly the same search volume as the European Courts. There are also significant spikes in search behavior, suggesting that Britons search for courts when these come down with important decisions.

Panel B compares the European Courts to the average search volumes for four well-known international institutions (IOs): United Nations (UN), World Bank, IMF, and WTO (both in abbreviations and full names). I use the four IOs to smooth out spikes in attention. Among these, the United Nations and the World Bank usually attract higher search volumes than the Courts. The WTO attracts less search volume and the IMF about the same, which is remarkable given the financial crisis. On average, the European courts attract about eighty percent of the search volume of the average of these four well-known IOs. The trend-line is up. Moreover, there is a notable difference in

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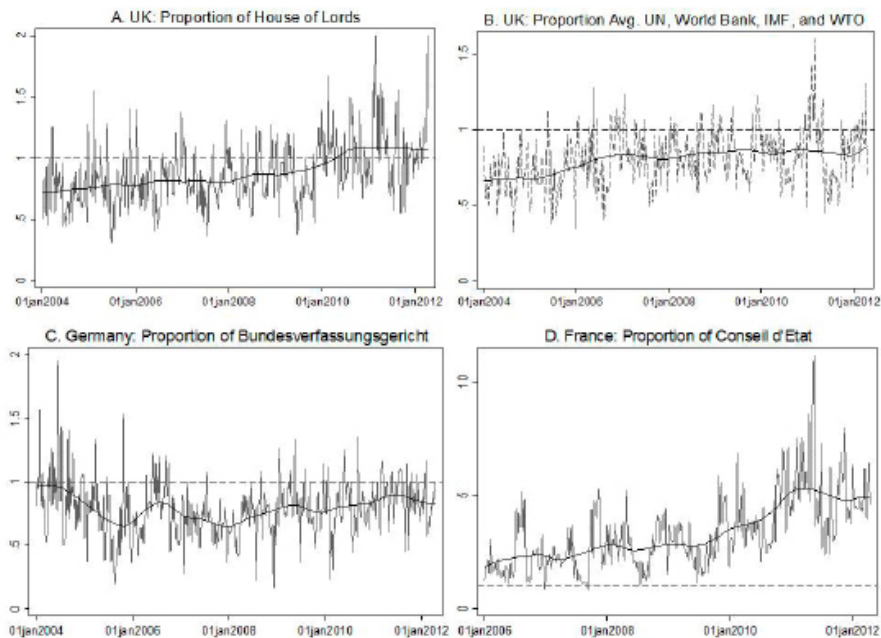
at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1943015](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1943015).

30 Unfortunately, searches into these courts are difficult to distinguish. I searched for the terms: “European Court” + “ECHR” + “ECJ” + “Strasbourg Court” + “Euro Court” + “EU Court” + “European human rights court.”

31 Searches were performed on April 20, 2012.

32 The proportion can be obtained by including both search terms in the same Google Insight search and then manipulating the data with statistical software.

**Figure 1: Google Searches for European Courts as a Proportion of Other Institutions**



where the searches are coming from. The top two cities for searches for the United Nations, World Bank, WTO, and IMF were Oxford and Cambridge. The two top cities for the European Courts were Inverness (Scotland) and Colchester (a commuter town outside London). This suggests that searches for the courts were less driven by students than for the other IOs. I also did a search (not plotted) comparing searches for the European Courts to searches for the “European Commission” and the “European Parliament.” At least since 2006, searches for the courts reliably and substantially outnumber searches for these other European institutions. In 2012, there were more searches for the Courts than for the Parliament and the Commission combined!

This challenges the notion that European courts are too obscure for citizens to look for information. However, the United Kingdom may be an exception. I therefore also compared searches for the European courts in Germany and France to searches for respectively the *Bundesverfassungsgericht* and the *Conseil d'Etat*.<sup>33</sup> In panel D I only look at data starting in 2006 because

33 As before, I use both full names and acronyms in the searches. In Germany, I searched for: “Europäischer Gerichtshof” + “EGMR” + “EuGHMR” + “EMRK” + “EuGH” + “EU Gerichtshof” And: “Bundesverfassungsgericht” + “BVerfG.”

earlier search data was too spotty in France to draw any reliable conclusions.<sup>34</sup>

In France, searches for the European courts far outnumber searches for the *Conseil d'Etat* (which attracts low search volumes, perhaps reflecting its relative obscurity). In Germany, searches for the *Bundesverfassungsgericht* outnumber searches for the European courts, but only just and decreasingly so. I also compared the searches for the courts to the IMF from 2004-2012 (not plotted). In France, search volumes were similar, whereas in Germany searches for the European courts outnumber searches for the IMF by a factor of 2:1. The exception was a period in 2011, when the news broke that IMF managing director Dominique Strauss-Kahn was arrested for sexually assaulting a hotel employee. Citizens in France, Germany, and the United Kingdom look for comparable levels of information about the European courts as they do about other international institutions and even their domestic high courts.

I also searched for newspaper stories in U.K. newspapers. As Figure 2 demonstrates, there have been remarkable changes over time, especially in media attention for the ECtHR. It should be noted that the CJEU and ECtHR are not always well distinguished in British newspapers. Many stories refer simply to the "EU court" when they actually mean the ECtHR.<sup>35</sup> This inflates the relative numbers for the CJEU a bit, especially in 2011.

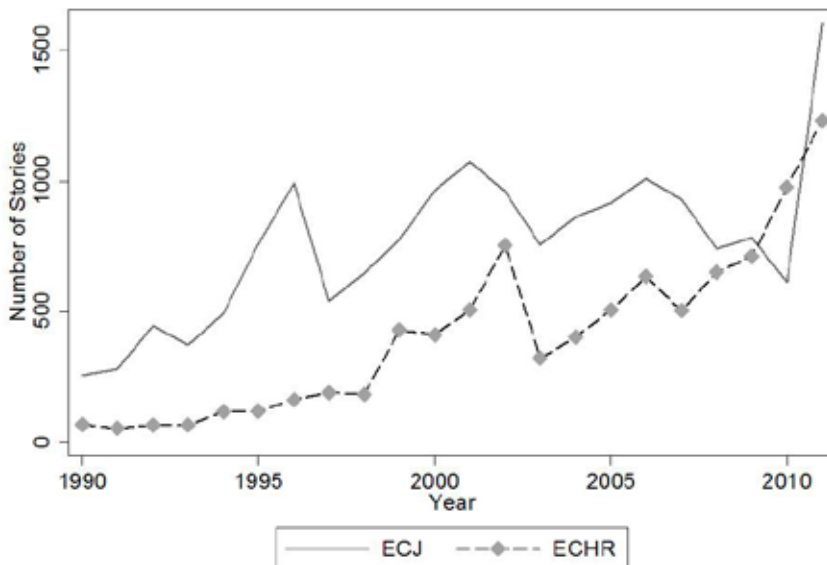
Large numbers of Google searches and newspaper stories about the courts do not necessarily mean that people now know and understand a great deal about these courts. It just indicates that they are paying attention to some aspect of what the European courts do. In the United Kingdom, for example, papers such as the *Daily Mail* and *The Sun* produce large volumes of critical articles about the ECtHR that are one-sided and not always well-substantiated, including, as mentioned above, confusing the CJEU and the ECtHR. I therefore now turn to some survey evidence.

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In France I searched for: "Cour européenne" + "CEDH" + "Cour de Strasbourg" + "Cour de justice de l'Union européenne" + "CJUE."

34 In many weeks, there were too few searches for the "Conseil d'Etat" to be indexed by Google.

35 The ECtHR count only contains articles that contain the term "European Court of Human Rights." The CJEU count includes "ECJ," "European Court of Justice," "Court of Justice of the European Union," and "EU Court."

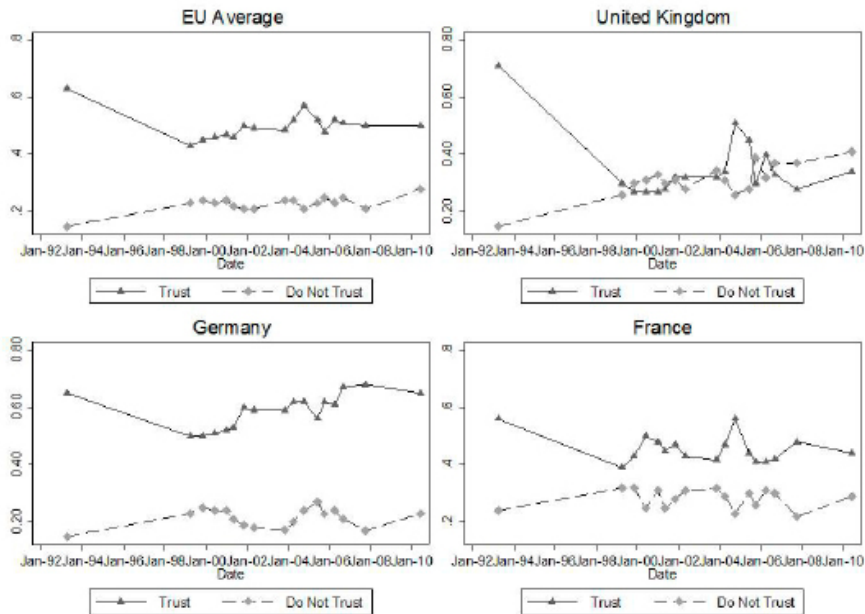
**Figure 2: U.K. Newspaper Stories About the CJEU and ECtHR**

Source: Lexis Nexis search

### C. Survey Evidence

Public opinion surveys have paid little attention to European courts. I have been unable to trace comparative surveys about the ECtHR.<sup>36</sup> With regard to the CJEU, there is only the Eurobarometer, which is the official public opinion survey conducted by the European Commission. The Eurobarometer has traced the degree to which people “trust” the CJEU. Figure 3 plots the proportion of individuals that answer “trust” and “don’t trust” in the European Union, the United Kingdom, Germany, and France. Levels of trust have dropped precipitously since the early 1990s (when Caldeira and Gibson conducted their surveys), although there is really only one data-point for comparison. Since then, levels of trust have remained relatively stable and high, with the notable exception of the United Kingdom where distrusters now outnumber those who trust the court. The United Kingdom is in this regard thus indeed exceptional.

<sup>36</sup> The exceptions are a few Eurobarometers for candidate E.U. members in the early 2000s.

**Figure 3: Trust and Distrust in the CJEU**

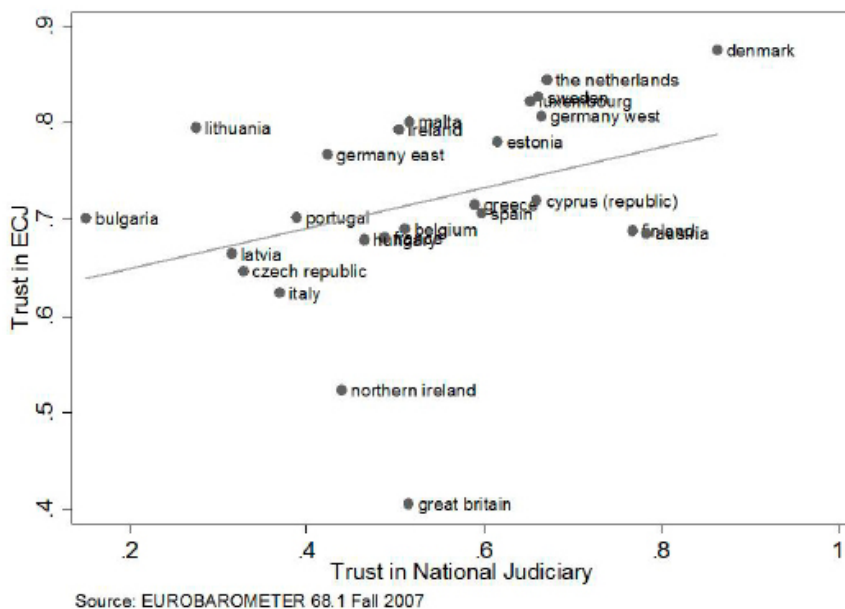
To further examine what explains variation in levels of trust in the CJEU, I analyzed data from Eurobarometer 68.1 (September–November 2007), which is the most recent survey that includes both questions about trust in the CJEU and trust in national legal systems.<sup>37</sup> I first focus on explaining variation across countries before looking at individuals within countries.

As expected, average levels of trust in the European Union and trust in national legal institutions are both strong positive and significant correlates of trust in the CJEU. In a simple linear regression model, these two variables account for forty percent of the cross-country variation in CJEU trust. Given that the correlation between trust in the European Union more generally and the CJEU is more obvious, I focus the analysis on trust in the national judiciary.

Figure 4 plots the proportion of individuals within countries who trust the CJEU against the proportion who express trust in the national judiciary.<sup>38</sup> On

37 *Eurobarometer 68.1: The European Parliament and Media Usage, September–November 2007* (ICPSR 23368), ICPSR, <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/23368> (last visited Apr. 3, 2013).

38 For the purposes of this figure, those who answer “don’t know” are treated as missing values.

**Figure 4: Trust in the CJEU by Trust in National Judiciary**

average, countries where fewer people trust their national judiciaries are also countries in which fewer people express trust in the CJEU.

The existence of a positive relationship at the aggregate level is not necessarily indicative of such a relationship at the individual level. It may well be that within countries those less trustful of their own judiciaries are those who are most likely to trust the CJEU. We may be especially suspicious about the United Kingdom, a clear outlier in Figure 4. In the United Kingdom, the argument that international legal institutions are intruding on the domestic judiciary is particularly pronounced. Moreover, attention to the issue of European court legitimacy (albeit more about the ECtHR) is arguably greater than in other countries. It may then be that while the pattern does not hold everywhere, U.K. citizens who trust their national judiciary are particularly distrustful of the CJEU as a potential intruder.

The data do not bear this out. Only twelve percent of those who trust the U.K. judiciary say that they do not trust the CJEU. This compares to fifty-seven percent of those who say that they do not trust the U.K. judiciary. Distrust in domestic judiciaries tends to go together with distrust in the international judiciary. Controlling for trust in the European Union, left-right placement, age, E.U. knowledge and gender, trust in the U.K. judiciary is correlated with

an eighteen percentage point increase in trust in the CJEU, which is significant at the one percent level ( $z=6.82$ ). There is no significant interactive effect between trust in the European Union and trust in domestic legal institutions (thus, it cannot be claimed that trust in domestic legal institutions would have the opposite effect among E.U. skeptics).

In order to examine the individual level relationships further, I ran a logit analysis on the entire sample with trust in the CJEU as the dependent variable and trust in national legal systems and the European Union as independent variables. I allow the coefficients to vary across countries and include fixed effects for countries in the model. In every country, both trust in the European Union and trust in national legal systems have positive effects on trust in the CJEU. The positive effect of trust in national legal systems is statistically significant at the five percent level in every country except for Bulgaria and Latvia. The positive effect of trust in the European Union is statistically significant in every country. These effects are robust to the inclusion of controls for left-right placement, age, knowledge about the European Union (based on factual answers), and gender.

In short: the evidence is consistent with the view that those who trust judicial institutions more generally also place greater faith in international judicial institutions.

### III. THE INTERNATIONAL CRIMINAL COURT

The International Criminal Court (ICC) has stirred a great deal of public debate. However, barely any public opinion surveys have been conducted asking citizens about their attitudes towards the court. In 2003, the PEW Global Attitudes Survey asked citizens in the United States and four European countries whether the ICC should be allowed to try national soldiers accused of war crimes if their governments refused to try them.<sup>39</sup> This is a good question that directly asks about acceptance of a potentially unpopular move by a court. Support for such ICC prosecutions varied from quite high in France (seventy-one percent) and Germany (sixty-five percent), middling in the United Kingdom (fifty-two percent), to low in the United States (thirty-seven percent) and Russia (thirty-three percent). The geographical range of the survey was limited, however, and there is some concern that the issue may be conflated with support for the Iraq war.

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39 PEW GLOBAL ATTITUDES PROJECT, VIEWS OF A CHANGING WORLD ch. 5 (2003), available at <http://www.pewglobal.org/files/2003/06/Views-Of-A-Changing-World-2003.pdf>.



I have found only one broad comparative survey that asked about the ICC: Gallup's 2005 Voice of the People survey,<sup>40</sup> which was conducted in sixty-seven countries and the province of Kosovo. In this survey, respondents were presented a list of ten IOs. They were first asked whether they had ever heard of the institution and then whether they had a positive, neutral or negative opinion of it. In no country did more than fifty percent of respondents both mention the ICC and have a positive opinion of it. Iceland was the only country where more than forty percent did both. In fifteen of the sixty-seven countries, ten percent or less of respondents both identified the ICC and claimed to support the institution.

Among those who mentioned the ICC, sentiment was largely positive. Over the sixty-seven countries, forty-five percent were supportive of the institution, while only thirteen percent had a negative opinion. There were only a few countries where those with negative sentiments outnumbered those who were positive: Austria, Croatia, Israel, Serbia, and the United States. These are, of course, not wholly insignificant countries in the world of criminal justice.

One strong suspicion is that for many people support for the ICC may mostly be a byproduct of support for global governance more generally. Of those who had positive sentiments towards the United Nations, fifty-eight percent were also positive towards the ICC and only nine percent were negative towards the institution. Among those respondents with negative attitudes towards the United Nations, twenty-eight percent were positive about the ICC and thirty-eight percent negative. Attitudes towards the United Nations were significant and substantively important correlates of ICC support in all countries in ordinal logit analyses with or without the inclusion of basic demographic controls (age, gender, income, education, and employment status).

Figure 5 illustrates this point at the aggregate level. Countries where support for the United Nations (on a three point scale) is generally low are also countries where the ICC is held in lower regard (and vice versa). The most notable exceptions are Serbia and Croatia, where support for the ICC is much lower than what we would expect from United Nations support. Presumably, this is related to their experience with criminal tribunals. This again suggests that where international courts have acted in controversial ways, their support is lower.

Unfortunately, respondents were not asked about their domestic legal systems. They were, however, asked whether they trusted their own governments.<sup>41</sup>

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40 *Voice of the People, 2005 (ICPSR 04636)*, ICPSR, <http://dx.doi.org/10.3886/ICPSR04636.v1> (last visited Jan. 22, 2013).

41 "Please tell me whether you agree or disagree with the following statement. Is that strongly or slightly? I don't trust the government." Options ranged from 1

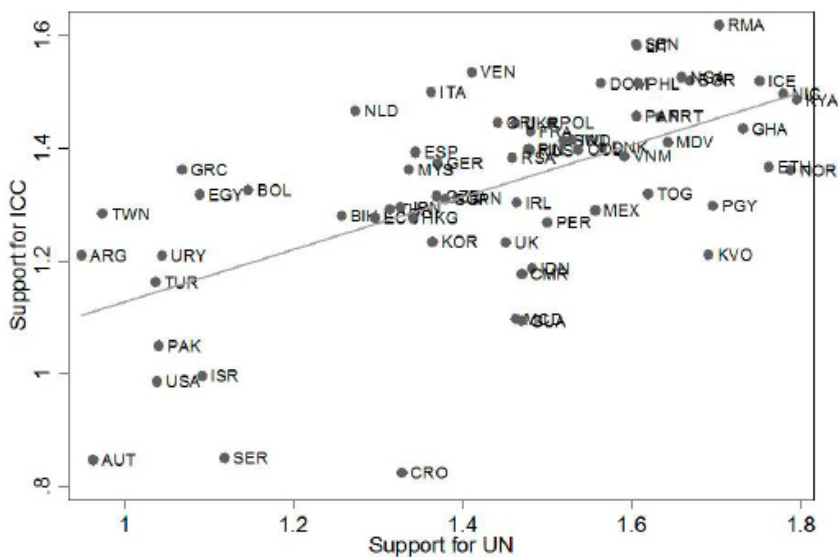
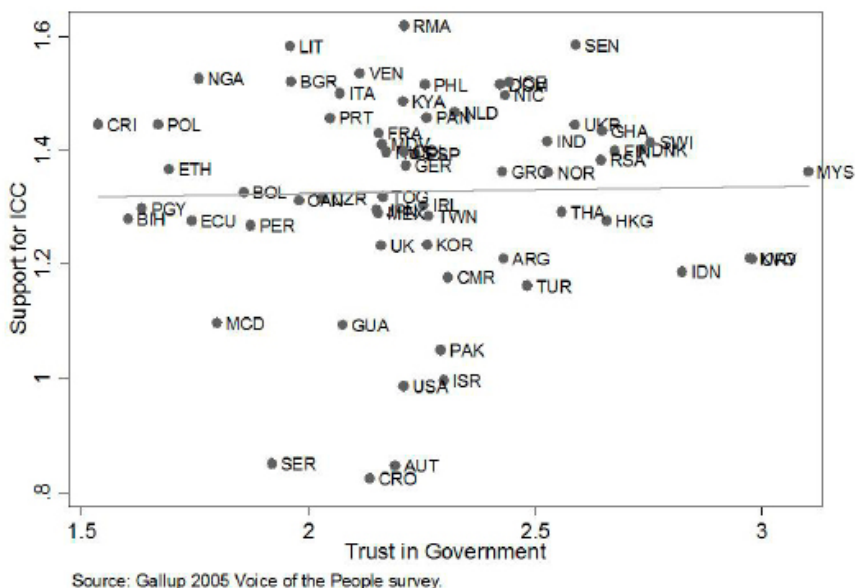
**Figure 5: Support for the ICC by Support for the United Nations**

Figure 6 shows that there is no correlation between aggregate trust in the government (higher values indicating more trust) and support for the ICC. So, it is not the countries in which government is less trusted that are more supportive of the ICC. In a linear regression analysis, support for the United Nations is a strong, positive and significant correlate of aggregate support for the ICC. Trust in government has a positive effect (more trust in government correlates with more support for the ICC), but it is not statistically significantly different from zero.

I also ran regression analyses to assess within-country correlations between trust in the government and support for the ICC. I controlled for support for the United Nations, age, education, income, and gender. There were seven countries with a significant (at the five percent level) negative correlation between trust in the government and support for the ICC: Bolivia, Canada, Japan, Kosovo, Macedonia, South Africa, and the United Kingdom. Three of these are plausibly related to lack of trust in the government to prosecute war crimes (Kosovo, Macedonia, and South Africa) and the others are probably

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“Agree strongly” to 4 “Disagree strongly.”

**Figure 6: Support for the ICC by Trust in Government**

related to partisanship. Significant positive correlations were found in Korea, Mexico, and Venezuela. In the other countries the correlations were insignificant.

It is not clear that we could expect to find fully formed attitudes and knowledge of an institution that was formed so recently and that had not engaged in much meaningful activity by 2005. I therefore turn to a more detailed analysis of attitudes towards the ICC in Uganda, the only country with ICC indictments and where the security situation is not so dire as to make survey research impossible. Moreover, Uganda ostensibly fits the conditions under which the hand-tying mechanism is most likely to operate: “[countries] with a recent history of civil wars, but weak domestic institutions of accountability.”<sup>42</sup>

The 2008 Afrobarometer asked a sample of 2431 Ugandans how much they trust the ICC (they did not ask this question in other countries).<sup>43</sup> Thirty-one percent of Ugandans said that they did not know or had not heard enough about

42 Simmons & Danner, *supra* note 8, at 234.

43 For the data and codebook, see *Round 4, 20-Country Merged*, AFROBAROMETER, <http://www.afrobarometer.org/data/data-rounds-merged> (last visited Mar. 24, 2013).

the ICC to provide a judgment. Of those that did provide a substantive answer, sixty-nine percent answered that they trusted the court either “somewhat” or “a lot.” This is more than any of the other institutions Ugandans were asked to rate, including their President and Parliament. For example, only fifty-two percent of Ugandans trust their national courts.

Such high levels of trust are surely a good thing for the ICC. Yet at the time of the survey the ICC had not yet delivered any final judgments. It had issued five arrest warrants in 2005 for Lord’s Resistance Army leaders at the request of President Museveni, though no arrests were made. It is thus unlikely that the high trust in the ICC stems from actions taken by the Court. Instead, trust may come from general values and preferences and/or an appreciation of the values the ICC stands for.

Figure 7 shows that support for the ICC in Uganda derives from very similar sources as it did in the early studies of CJEU legitimacy. First, legal values matter. Eighty-one percent of those who have some or a lot of trust in national courts also trust the ICC. By contrast, only fifty-five percent of those who have little or no trust in national courts trust the ICC. Similar results obtain with other questions about the efficacy of courts and support for the rule of law. Respondents do not view the ICC as a substitute for poorly performing national courts. Rather, trust in the ICC goes hand in hand with trust in the national court. This appears to contradict those who argue that governments bind themselves to the ICC because they are unable to credibly commit to prosecutions domestically.<sup>44</sup>

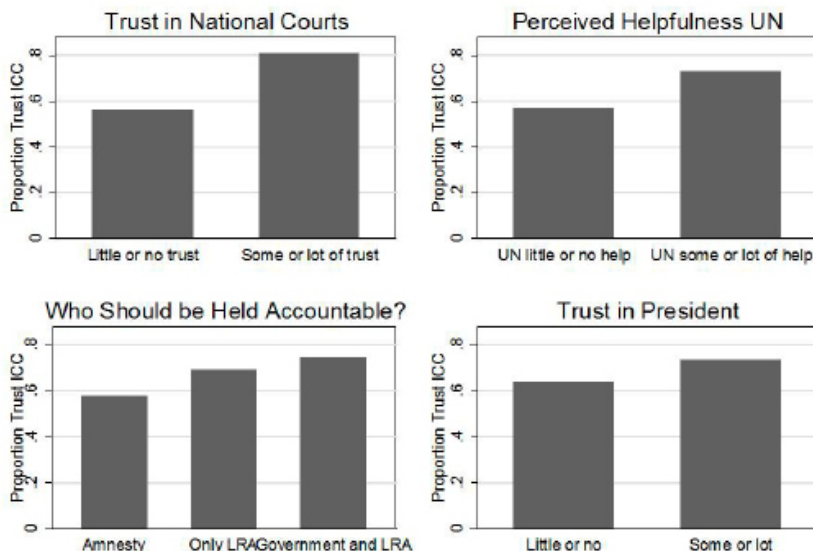
Second, and relatedly, trust in the ICC is positively correlated with trust in the President. Seventy-four percent of those who have some or a lot of trust in the President also trust the ICC. This effect is somewhat smaller than trust in national courts.

Third, seventy-five percent of respondents who believe that the United Nations has been a lot or some help to Uganda also trust the ICC. Seventy-three percent of these respondents also trust the ICC. This compares to fifty-seven percent of those who believe that the United Nations has been of little or no help to Uganda. Thus, trust in the ICC is strongly correlated with trust in global governance more broadly.

Fourth, those who want the government and the LRA to be held accountable are more trusting of the ICC. Of all Ugandans, twenty-one percent prefer amnesty, twenty-six percent want only the LRA leaders charged, and forty-nine percent want both LRA and government abuses addressed by criminal trials (only five percent answered “don’t know”). Of these groups, those who prefer amnesty have the least trust in the ICC. Sixty-two percent of those who

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44 Simmons & Danner, *supra* note 8.

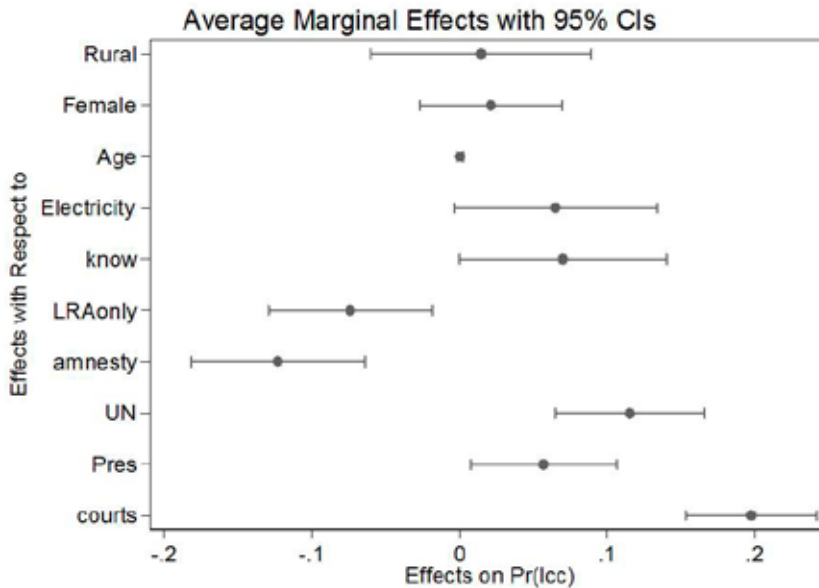
**Figure 7: Trust in the ICC Among Ugandans (2008)**

Source: 2008 Afrobarometer

prefer amnesty trust the ICC, as opposed to sixty-seven percent of those who only want to prosecute LRA leaders and seventy-three percent of those who want both government and LRA abuses prosecuted.

This finding is consistent with ICC values but not practice. The situation in 2008 offered no prospect that government abusers would be charged. Indeed, it was the government that requested the indictments. This suggests that respondents cared more about the values the ICC stands for (which would not exempt government abuses) than the actual actions it had taken. Nevertheless, it remains somewhat remarkable that over sixty percent of those who support amnesty also trust the ICC. This suggests that specific knowledge about the ICC may be quite limited.

Figure 8 shows the average marginal effects on the probability that a respondent will trust the ICC. The estimates come from a logit analysis that includes controls for whether there is electricity in the area, factual political knowledge measured by whether a respondent can correctly identify the prime minister and the minister of finance, whether the respondent lives in an urban or rural district, gender, and age. Respondents living in areas with electricity and respondents that have greater political knowledge are more likely to trust the ICC. This suggests that information makes respondents

**Figure 8: Average Marginal Effects on Trust in the ICC**

more trusting. There are no effects of age or gender. Results are similar with an ordinal logit model, but the logit results are easier to interpret.

The strongest effect is the link between a trust in courts and trust in the ICC. Those who have some trust in courts are on average twenty percentage points more likely to also trust the ICC. This is a strikingly large effect. The United Nations effect is also strong: those who trust the United Nations are on average twelve percentage points more likely to also trust the ICC. Yet the effect of preferences for justice remains. Those who prefer amnesty are twelve percent less likely to trust the ICC and those who want only LRA members prosecuted are seven percentage points less likely to trust the ICC than those who want both government and LRA members prosecuted (the reference category).

The ICC evidence tentatively supports the notion that for most people in most countries attitudes are derivative of their general views towards the United Nations and towards courts. The evidence from Uganda is especially telling: those who trust Ugandan national courts are much more likely to also trust the ICC than those who do not trust national courts. This suggests that Ugandans do not consider the ICC a substitute for but an extension of the national judicial system.

#### IV. THE INTERNATIONAL COURT OF JUSTICE

Finally, I take a brief look at the International Court of Justice (ICJ). The ICJ is an inter-state court and may therefore be somewhat further removed from publics than the Courts we have discussed so far, where individuals can be litigants or accused. However, publics may play a role in governments' decisions to accept the ICJ's jurisdiction, refer disputes to the court, and accept ICJ judgments. For example, some scholars have argued that ICJ decisions offer political cover for leaders who believe that voluntary concessions would generate high domestic audience costs.<sup>45</sup> This argument presumes that ICJ judgments are perceived as legitimate by the public.

In the 2009 World Public Opinion survey, respondents in twenty-one countries were asked how confident they were that an ICJ ruling involving their country would be "fair and impartial."<sup>46</sup> Unfortunately, this survey did not ask respondents what they thought of the United Nations or national courts. The survey did ask about the fairness of the domestic political process. In particular, it asked respondents how often opposition parties "get a fair chance to try and express their views and influence government policy." Although the connection is less direct than with trust in the legal system, if perceptions about the ICJ are an extension of general perceptions of fairness of institutions, we may still see the same pattern.

Figure 9 provides evidence for this at the cross-country level. Countries in which citizens more generally believe that opposition parties are treated fairly are also countries in which more citizens believe that the ICJ will decide fairly. The survey also asked whether citizens believed that their country should obey international law only when it is in the country's national interest or also when it is not. Average perceptions about international law are also correlated with perceptions about the ICJ, but only the perceived fairness of

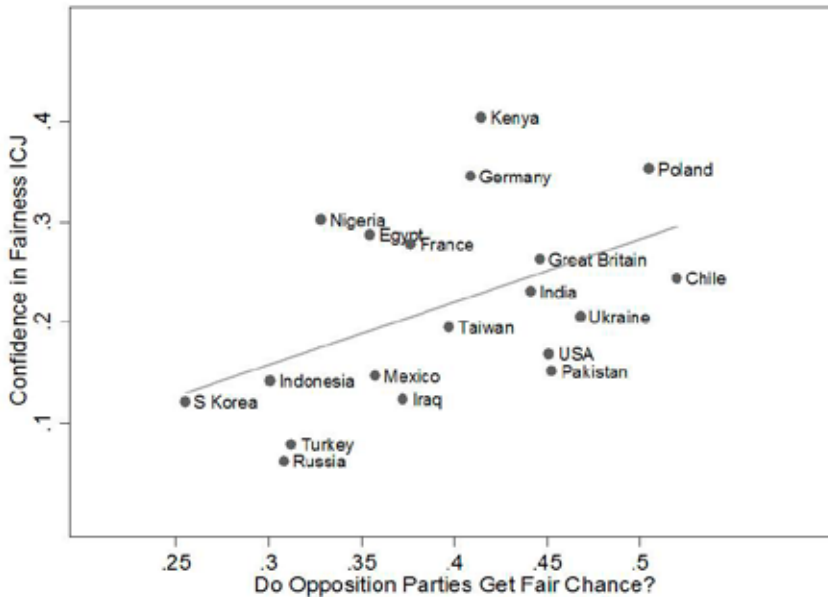
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45 See, e.g., Todd L. Allee & Paul K. Huth, *Legitimizing Dispute Settlement: International Legal Rulings as Domestic Political Cover*, 100 AM. POL. SCI. REV. 219 (2006).

46 *People in 17 of 21 Nations Say Governments Should Put International Law Ahead of National Interest: Most Trust World Court to Be Fair*, D.R.U.M. (Nov. 2, 2009), <http://drum.lib.umd.edu/handle/1903/10698>. The precise question was:

As you may know when there is a dispute about whether a country is abiding by international law, the case is tried in front of the International Court of Justice, also called the World Court. It is comprised of fifteen justices from around the world. If there were a case involving [country], how confident are you the Court's decision would be fair and impartial?

Respondents could choose that they were "very," "not very," "somewhat," or "not at all" confident. On average, only seven percent answered "don't know."

**Figure 9: Fairness of the ICJ and the Domestic Political Process**

the domestic political process is a significant correlate in a multiple regression model. Again, we find that positive perceptions about domestic institutions correlate positively with perceptions of the ICJ.

Turning to the individual level, I ran an ordinal logit model with levels of confidence in the ICJ as the dependent variable. As independent variables, I included perceptions about whether opposition parties get a fair chance and whether a country should abide by international law even if it is not in the country's interest. I also included age, gender, income, and education as control variables. Attitudes regarding the fairness of the domestic political process were significant (at the five percent level) correlates of perceptions of ICJ fairness in all countries except for the United Kingdom and Turkey. Attitudes towards international law were significant predictors in all countries but Pakistan and Mexico.

Just to put the size of the effect into some context, in the United States, attitudes towards international courts are heavily shaped by partisanship. This is confirmed in this survey: seventy-two percent of Democrats are somewhat or very confident that an ICJ judgment on the United States would be fair and impartial, but only forty-two percent of Republicans share this view. Sixty-six percent of Americans who believe that opposition parties always get a



fair chance have confidence in the ICJ, as opposed to twenty-three percent of Americans who believe that opposition parties only rarely have a fair chance. The effect of perceptions of political fairness remains substantially important and significant at the one percent level even after controlling for partisanship. This again supports the notion that attitudes towards the ICJ may be largely derivative of attitudes towards institutions more generally.

## CONCLUSION

The analysis yields a few tentative conclusions. First, at least in Europe, international courts are no longer obscure compared to national high courts and prominent international institutions such as the WTO, IMF and the European Commission and Parliament. However, support for international courts is still closely correlated with support for international institutions that they are most associated with. Moreover, it is not clear that high levels of trust in an international court mean that the court can withstand a firestorm of critique if it takes an unpopular decision. In that sense, Caldeira and Gibson's conclusions from the 1990s still hold.

Second, individuals who trust their national courts more are also more trusting of international courts. Countries in which more individuals trust their national courts are also countries in which more individuals trust international courts. There is a remarkable consistency in this finding across international courts and across countries. This undermines at least some interpretations of the credible commitment argument: in the minds of the general public, international courts may not be substitutes for poorly performing domestic courts, but rather extensions of a functioning rule of law system that they already trust. Thus, it may be more difficult for an international court to develop trust in countries where the domestic legal system is distrusted. In systems where domestic courts are already trusted, international courts may borrow legitimacy from domestic courts.

Third, at both the individual and the aggregate level public trust in international courts is correlated with trust in international institutions. This may mean that international courts can benefit from the legitimacy of international institutions. It could also be that they suffer when international institutions experience a legitimacy crisis, as is arguably occurring now with the Euro crisis.

Fourth, there is some suggestive support for the idea that international courts quickly lose support when they get embroiled in public controversy. The most notable evidence is from the United Kingdom, but it is also notable that the ICC gets less support in countries with histories of criminal tribunals. This

supports Caldeira and Gibson's conclusions that high levels of trust may not be based on actual experience and thus may be vulnerable to new information.

Finally, I must conclude that we know too little about public opinion towards international courts. There is a dearth of data for any court other than the CJEU. There are no carefully designed surveys or survey experiments aimed at figuring out causal mechanisms. At the same time, international courts feature increasingly in public debates. I must thus end the Article with the hopelessly general but justifiable conclusion that more research is needed. For example, it would be useful to design survey experiments to further investigate the link between trust in domestic and international courts, respectively.