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Legal Systems and Variance in the Design of Commitments to the International Court of Justice*

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This paper explores the relationship between domestic legal systems and the design of commitments to the International Court of Justice (ICJ). Empirical analyses demonstrate that civil law states are more willing to recognize the compulsory and compromissory jurisdiction of the World Court than common law or Islamic law states. Common law states place the highest number of reservations on their optional clause declarations, with the majority of those restrictions relating to specific areas of international law. Civil law states typically embed compromissory clauses in multilateral treaties, while common and Islamic law states prefer recognition of the ICJ's jurisdiction through bilateral treaties.

KEY WORDS: ICJ, jurisdiction, legal systems, PCIJ, rational design, reservations, World Court

States join international institutions and sign treaties with other states frequently in world politics. The depth of cooperation and design of these commitments varies considerably. Some treaties are extremely detailed and span hundreds of pages, such as the United Nations Law of the Sea Convention (UNCLOS), while others spell out the terms of the treaty in a few hundred words, such as the original North Atlantic Treaty Organization (NATO) agreement. International relations scholars have pointed to a variety of factors that may explain the rich variation in the design and depth of cooperation in international treaties including relative capabilities, number of signatories, and regime types of the negotiating parties.

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In this paper, we focus on a factor that has received less attention in the literature, domestic legal systems. There is considerable variation in the form and design of contracts in civil law, common law, and Islamic law systems.[1] Contracts signed in these legal traditions differ in terms of their attention to detail, their length, and their inclusion of general principles. We assert that these contractual differences in the domestic realm carry over onto the international arena, where states make commitments with international institutions and with other states. International negotiators bring their legal backgrounds to the negotiating table, which influences both their willingness to sign treaties and the design of the resulting agreements. Negotiators are forward looking in the sense that they consider how commitments to international institutions and other states will affect future interstate bargaining situations. States can protect their self-interests by refusing to join international institutions, refusing to sign treaties, or by embedding reservations in treaties that they sign and ratify.

To understand the relationship between domestic legal systems and international commitments, we examine the declaration and design of states' commitments to the Permanent Court of International Justice (PCIJ, 1920–1945) and the International Court of Justice (ICJ, 1946–present). States have considerable leverage in their ability to place reservations on declarations to the PCIJ/ICJ, making these courts interesting empirical testing grounds for institutional design hypotheses. We argue that characteristics of domestic legal systems help to account for the manner by which states recognize the PCIJ/ICJ (e.g. compulsory vs. compromissory clause jurisdiction), as well as the number and types of reservations that states place on compulsory jurisdiction declarations. Empirical analyses of states' commitments to the PCIJ/ICJ from 1920 to 2002 show that civil law states are more willing to recognize the jurisdiction of the PCIJ/ICJ through both optional clause declarations and compromissory clause treaty memberships than common law or Islamic law states. Common law states place more restrictions on their declarations than civil law or Islamic law states, with the majority of those restrictions relating to specific areas of international law (*ratione materiae*). However, there are notable differences with respect to bilateral and multilateral treaties, with civil law states embedding compromissory clauses more often in multilateral treaties and common and Islamic law states preferring bilateral compromissory clause treaties. Interestingly, Islamic law states belong to the highest average number of bilateral compromissory clause treaties.

Our paper is organized as follows. First, we describe the various ways that states can recognize the jurisdiction of the PCIJ/ICJ. Second, we present our theoretical argument relating the characteristics of domestic legal systems to the design of states' commitments to the PCIJ/ICJ. Third, we describe our research design to evaluate our hypotheses and we present the results from several empirical tests. Finally, we talk about the broader implications of our findings for research on international courts and interstate cooperation more broadly.

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[1] For a discussion of the classification of domestic legal systems, see David and Brierley, 1985; Glenn, 2004; Joireman, 2001, 2004; La Porta et al., 1999.

The Design of State Commitments to the PCIJ/ICJ

The process of cooperation between states and international institutions is somewhat different from cooperation between states because institutions have a finite set of rules and procedures in place before negotiations with a particular state commence (Simmons and Martin, 2005). In other words, the basic legal core of the relationship between a state and an institution is not usually negotiable. Consider, for example, the situation states face when they are considering whether or not to accept the jurisdiction of the International Court of Justice. The basic rules and procedures of the ICJ are spelled out in its Statute and are not subject to negotiations or bargaining: "while the Statute as interpreted in practice permits reservations to its jurisdiction, it does not permit reservations as to the functioning and the organization of the Court."[2] Moreover, these core rules cannot differ in relation to each particular state. For example, the formal prohibition of precedent (Article 59 of the ICJ Statute) relates to the ICJ's method of deciding all cases, regardless of the domestic legal systems of the litigating parties.

While states cannot renegotiate the procedures or rules of the ICJ, they do have the ability to make decisions about the Court's competence and jurisdiction in situations where interstate disputes may arise. States may express this consent in advance, with reference to all possible legal quarrels that may arise in the future (ante hoc; compulsory jurisdiction). Recognition of compulsory jurisdiction occurs through states' acceptance of the Optional Clause, Article 36(2) of the ICJ Statute, indicating that a nation is willing to acknowledge the adjudication powers of the ICJ in all legal disputes regarding the interpretation of a treaty, any question of international law, and the interpretation of other international obligations (Bederman, 2001: 243). The Court's jurisdiction may also be established in compromissory clauses contained in multilateral or bilateral treaties. Further, a party may express its consent when the case has already been brought before the Court by the other disputant (post hoc) or once a dispute has arisen (ad hoc). Among these forms of jurisdictional recognition, compromissory clauses are the most common, with 80% of countries in the world belonging to one or more treaties with compromissory clauses. Compulsory jurisdiction is less common, with one-third of states making optional clause declarations (Powell and Mitchell, 2007), although 89 different countries have recognized the compulsory jurisdiction of the PCIJ/ICJ since 1920 (46% of the current number of states).

States can not only choose to accept or refuse to accept the jurisdiction of the PCIJ/ICJ; they can also accept its jurisdiction in a limited way by placing reservations on their optional clause declarations. Reservations are "restrictions relating to the content of the commitments entered into a particular declaration" (Szafarz, 1993: 46). Paving the way for future reservations, in 1921, the Netherlands restricted the PCIJ's jurisdiction "only to future disputes, and excluded disputes with respect to which the parties had agreed upon a different means of settlement" (Szafarz, 1993: 47). Formally, the admissibility of reservations was established in relation to the PCIJ by the resolution of the Assembly of the League of Nations, which stated that reservations may relate "either generally to certain aspects of any kind of dispute, or specifically to certain classes of lists of disputes."

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[2] Separate opinion of Judge Lauterpacht, *Case Concerning Certain Norwegian Loans* (*France v. Norway*), Judgment of July 6, 1957, 1957 ICJ Reports 9, 45–46.

The right of states to limit the competence of the Court via reservations was further upheld by the Statute of the ICJ (Article 36, Section 3). The doctrine of international law admits the existence of all types of reservations that restrict the jurisdiction of the Court. The general logic behind this approach is that since a state is able to refuse the jurisdiction of the PCIJ/ICJ altogether, it should also have the option to accept the jurisdiction in a limited way.

For compulsory jurisdiction, this inherent competence is embodied in the institution of a reservation.[3] There are numerous types of reservations that states may place on their optional clause declarations (Table 1), relating to other states (*ratione personae*), certain times of disputes (*ratione temporis*), or specific areas of international law (*ratione materiae*) (Szafarz, 1993). In the famous *Mavrommatis* case,[4] the Court established that declarations made by states under the optional clause have retroactive force: "in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment" (p. 6 of the judgment). States that want to exclude pre-existing disputes place *ratione temporis* reservations on their optional clause declarations, which limit the ICJ's jurisdiction to disputes arising after a certain date.[5] For example, numerous states place reservations excluding World War I (declaration of Poland, 1931), or World War II (Australia, 1940; United Kingdom, 1940; South Africa, 1940) from the Court's jurisdiction. The main justification for reservations *ratione temporis* is that they constitute a precautionary measure against unforeseen cases originating from the past (Alexandrov, 1995: 15).

The largest group of reservations relate to *ratione materiae,* which exclude certain types of disputes from the jurisdiction of the PCIJ/ICJ, including territorial disputes, disputes over sea resources, armed conflicts, and individual self-defense. If a state places a reservation *ratione materiae* on its declaration, all disputes dealing with the particular area subject to the reservation do not fall under the adjudication powers of the PCIJ/ICJ. For example, the United Kingdom's optional clause declaration of 1957 contained a provision that excluded the ICJ's jurisdiction from any question "which in the opinion of the Government of the UK affects the national security of the UK or any of its dependent territories" (Alexandrov, 1995: 91). Reservations *ratione personae* limit the jurisdiction of the PCIJ/ICJ by excluding disputes with certain states. The most common reservation of this type is the reservation placed by members of the British Commonwealth, which excludes disputes with any other

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[3] The widespread practice of placing many reservations on a declaration is often times criticized: "the reason for making reservations in declarations include: viewing judicial procedure as improper in certain disputes, lack of full confidence in the Court, excessive caution, political sensibility of certain issues" (Szafarz, 1993: 50).

[4] Mavrommatis Palestine Concessions (Greece v. United Kingdom), Judgment of August 30, 1924 (Jurisdiction), 1924 PCIJ Series A, No.2.

[5] As Alexandrov (1995: 41) notes, "the exclusion date itself can be determined in declarations of acceptance in different ways: signature, ratification, entry into force or depositing of a declaration, date of previous declaration, a fixed date, date or period relating to certain events, etc."

Table 1. Reservations on PCIJ/ICJ Optional Clause Declarations (1920–2002)[19]

	Percentage of state years among states accepting compulsory jurisdiction		
Reservation type	*Civil Law*	*Common Law*	*Islamic Law*
General Reservations	N = 2068	N = 645	N = 241
Relation to any other state accepting the same obligation*	82%	45%	73%
Reciprocity*	73%	82%	54%
Declarations are in conformity with article 36(2)	59%	84%	92%
Refer to the four categories of disputes in article 36(2)	21%	46%	57%
Ratione Materiae			
Recourse to other method of peaceful settlement*	36%	82%	76%
Territorial dispute	4%	4.5%	0%
Rights and status of adjacent sea areas, islands, sea resources	<1%	13%	0%
Adjacent airspace	3%	10%	0%
Domestic jurisdiction as determined by international law*	11%	58%	52%
Matters essentially within the domestic jurisdiction	0%	9%	0%
Matters within the domestic jurisdiction as determined by the state	3%	19%	38%
Disputes relating to multilateral treaties	<1%	9%	23%
Relating to a treaty or treaties	4%	4%	0%
Suspension of proceedings regarding a dispute under consideration by the League of Nations or the United Nations	3%	50%	0%
Subject to the right to submit the dispute to the council of the League of Nations	<1%	0%	0%
Excluding disputes that arose during hostilities	<1%	38%	0%
Excluding disputes relating to hostilities, armed conflict, individual and collective self-defense, resistance to aggression and occupation, fulfillment of obligations imposed by IGOs	3%	10%	19%
National security reservation	<1%	7%	0%
Other reservations *ratione materiae*	<1%	7%	19%
Ratione Temporis			
Object of exclusion	34%	81%	72%
Exclusion date	29%	68%	72%
Ratione Personae			
Excluding British Commonwealth countries	2%	56%	0%
Requiring recognition, diplomatic relations	<1%	7%	0%

(Continued)

Table 1. (Continued)

Reservation type	*Percentage of state years among states accepting compulsory jurisdiction*		
	Civil Law	*Common Law*	*Islamic Law*
Excluding non-sovereign states or territories	0%	4%	0%
Only states party to the statute or members of the UN	3%	8%	0%
Others			
Reserve the right to add, amend, withdraw declarations*	11%	20%	0%
The declaration of the other party should be deposited no less than 12 months prior to the filing of an application or the other party should not have accepted the compulsory jurisdiction exclusively for the purposes of the dispute	4%	20%	0%
Declaration made for specific types of dispute	0%	0%	0%

[19] We placed an asterisk(*) near each reservation considered by most international scholars as "unnecessary."

member of the British Commonwealth. Another quite popular reservation *ratione personae* excludes disputes with states with which the declaring state has no diplomatic relations.

All of these restrictions on states' commitments to the PCIJ/ICJ can vary across time as states modify declarations by adding new restrictions and removing old ones. France, for example, joined the ICJ in 1945, making an optional clause declaration. Two years later, it placed a reciprocity reservation on its declaration. In 1959, France added a reservation *ratione materiae*, which excluded the ICJ's jurisdiction in disputes arising out of any war or international hostilities and disputes arising out of crises affecting French national security. In 1966, France added a general provision to its declaration which states: "The Government of the French Republic also reserves the right to supplement, amend, or withdraw at any time the reservations made above, or any other reservations which it may make hereafter, by giving notice to the Secretary-General of the United Nations" (Declaration of France).

Restrictions can also vary across space because the declarations of each state can be unique as far as the number and types of reservations placed on optional clause declarations. The number of reservations placed by states on optional clause declarations varies from 0 to 19, with an average of five reservations per state. Some states choose not to place any type of reservation on their declarations (Georgia, Iceland, Gabon, Turkey, and Laos), some states place a moderate amount of restrictions (Canada's 10 reservations), while other states restrict the jurisdiction of the PCIJ/ICJ in a wide variety of situations (India's 19 reservations).

The diversity and use of reservations for optional clause declarations is well established in international law. However, states may also recognize the jurisdiction of the PCIJ/ICJ through compromissory clauses in bilateral or multilateral treaties. As discussed earlier, this is a common occurrence in world politics, with 80% of countries belonging to one or more compromissory clause treaties (Powell and Mitchell, 2007). Unlike optional clause declarations, which are negotiated between a state and a standing international organization, compromissory clauses are negotiated between states in either bilateral or multilateral negotiations. In these cases, the terms of the treaty negotiations may involve a wide variety of issues; dispute resolution mechanisms via the PCIJ/ICJ may constitute a small part of the overall negotiations. Design differences in compromissory clause commitments stem primarily from the nature of the treaty in which the clause is embedded, which may vary with respect to mandate (political, economic, security), membership scope (regional, global), and membership size (bilateral, multilateral). Our analyses focus on a comparison of bilateral and multilateral treaties, which constitute distinct forms of cooperation. We turn now to a description of how domestic legal systems influence the likelihood of and the design of international commitments to the PCIJ/ICJ.

Domestic Legal Systems and the Design of Contractual Relations

It is clear that the scope of the PCIJ/ICJ's jurisdiction varies tremendously across time and space. To understand this rich variation, we build upon our previous work, where we consider the relationship between domestic legal systems, interstate bargaining, and commitments to the World Court (Powell and Mitchell, 2007). We argue that states can send cheap talk signals about their willingness to bargain peacefully with other states through international courts. International courts are able to facilitate these signals by correlating strategies, creating focal points, and signaling information (McAdams, 2005: 1049; Garrett and Weingast, 1993; Ginsberg and McAdams, 2004). Our previous work assumes that states with similar preferences are better able to send cheap talk signals. The PCIJ and ICJ are designed as civil law courts, which makes it easier for the PCIJ or ICJ as an adjudicator to create focal points, signal information, and correlate strategies if the claimants are civil law states. Furthermore, because civil law systems are so prevalent in the international system, constituting between 48% and 78% of all states (Powell and Mitchell, 2007: 404), they can more easily coordinate their behavior through the PCIJ/ICJ because their dyadic bargaining interactions are very likely to involve other civil law states. This produces a theoretical expectation that civil law states are more likely to recognize the jurisdiction of the PCIJ/ICJ than states with other domestic legal systems.

Empirical analyses of state year data from 1920–2002 support the hypothesis, showing that civil law states are significantly more likely to recognize the compulsory jurisdiction of the PCIJ/ICJ in comparison to common and Islamic law states (Powell and Mitchell, 2007). We also find that civil law states are much more likely to embed compromissory clauses in interstate treaties than common or Islamic law states. In this paper, we expand upon our previously developed theoretical framework to uncover the relationship between the characteristics of domestic legal systems and the *design* of states' commitments to the PCIJ/ICJ. We focus on three design features

of states' commitments to the PCIJ/ICJ: (1) thoroughness of contracts, (2) necessary vs. unnecessary reservations, and (3) the substantive form of selected reservations (*ratione materiae*, *temporis*, and *personae*). Our argument rests on a key assumption that the law of contracts varies significantly across civil law, common law, and Islamic law systems, and that these differences influence states' choices about the form of commitments to international courts.

Domestic Legal Systems and the Thoroughness of Contracts

Table 2 presents several dimensions that separate civil, common, and Islamic law systems, including variation in contractual relations. These differences stem from divergent structures, legal philosophies, and varied histories of the three legal traditions. Civil law has its roots in the laws of the Roman Empire (Glenn, 2004). Major civil legal codes, including the Civil Code of Napoleon of 1804, the German Civil Code of 1900, and the Italian Civil Code, still reflect major legal principles of Roman law. The tradition of common law emerged in the British Isles following the Normans' military conquest of England (Glenn, 2004; Whincup, 1992). The Norman invaders introduced the basic structures of the common law system, most importantly the absence of the written letter of law and the institution of a jury. On a basic level, civil law systems are based on comprehensive codes; common law systems, on the other hand, evolve through case law (the doctrine of the precedent). Islamic law, the third major legal family, appeared as one of the major legal systems in the 17th century CE with the birth of Islam (Mourisi Badr, 1978: 187). One of the most important characteristics of the Islamic legal tradition is that it is based primarily on Islamic religious principles of human conduct (Al-Azmeh, 1988; Khadduri, 1956; Lippman et al., 1988).[6]

Civil, common, and Islamic legal systems are quite different from each other with respect to contract law. Divergent substantive and procedural rules apply to contracts drafted under each of these legal traditions. As the result, contracts concluded under civil law are different from common law or Islamic law contracts. These differences pertain to the length and thoroughness of a contract, conditions of fulfillment, and consequences of breach of a contract.

Contracts concluded in a civil law system are relatively straightforward, due primarily to the structure of the civil legal tradition. The main feature of a civil legal system is a system of law codified in various codes. A code is a "systematic, authoritative, and guiding statute of broad coverage" (Schlesinger et al., 1998: 271). As such, civil law is, to a large extent, classified, well-structured, and "contains a great number of general rules and principles" (Pejovic, 2001: 819). With regards to contractual relationships, all main principles that are to apply to contracts are contained in codes. Usually, these general principles appear in the front sections of the

[6] In this system, law is derived from four basic sources: the Qur'an (the sacred book of the Muslims), the Sunna (explanations, deeds, sayings, and conduct of the Prophet), judicial consensus ('a common religious conviction' of major traditional legal scholars), and analogical reasoning (used in circumstances not addressed by the other sources) (Glenn, 2004; Vago, 2000).

Table 2. Primary Differences between Civil, Common, and Islamic Legal Systems

	Legal Characteristics									
Domestic legal system type	*Doctrine of the precedent*	*Bona fides (good faith)*	*Pacta sunt servanda (keeping promises)*	*Freedom of contract*	*Usual legal remedy in contract cases*	*Design of contracts*	*Law and religion*	*Formalism in procedures*	*Type of litigation*	*Appeal*
Civil	No	Yes	Medium	Yes	Specific performance	Not detailed	Separate	High	Inquisitorial	Yes
Common	Yes	No	Medium	Yes	Award for money damages	Very detailed	Separate	Medium	Adversarial	Yes
Islamic	No	Yes	High	No	Specific performance or rescission (cancellation of a contract)	Detailed	Not Separate	Low	Not formalized	No

codes, implying their application to all contractual relations enumerated in a code.[7] For example, the *bona fides* and the *pacta sunt servanda* principles are included in civil codes. The first of these principles, *bona fides* or good faith, requires that contracting parties refrain from deceit. The principle originated in Roman law and has significantly affected the civil law tradition. Although modern civil legal systems vary to some extent, the general concept of *bona fides* constitutes one of the most important abstract rules in this system (Powell, 2006).[8]

The *pacta sunt servanda* principle is also firmly established in the civil legal tradition and included in general provisions of civil codes. As a general rule, when individuals sign contracts, such pacts are supposed to be binding and observed by the parties. According to civil law, when the subject of the contract has been destroyed, or the obliged party is prevented from keeping his promises due to illness, a contractual party may be partially released from a contract until the contract can be fulfilled.[9] These situations are examples of *force majeure* (greater force), a legal term which describes all unforeseen events beyond the control of a contracting party that prevents him/her from fulfilling contractual obligations. Because these and other general principles are included in the front stipulations of civil codes, there is no need to include them in the terms of a specific contract. The *force majeure* clause "operates independently of party agreement, which means that it will protect an obligee even if the contract does not contain a *force majeure* clause" (Pejovic, 2001: 824). The same rule applies to both *bona fides* and *pacta sunt servanda* principles.

We assert that there is a strong interrelationship between domestic and international law. The legal backgrounds of international negotiators will influence the manner in which they design international agreements. Negotiators from civil law countries bring to the table their experience with civil contract law, and thus they will be more amenable to signing and designing an international commitment that reflects the principles governing domestic contracts in civil law systems. The brevity of civil law contracts should carry over into commitments to international courts. Civil law states' optional clause declarations signed with the PCIJ/ICJ should be straightforward, with relatively few reservations. Civil law states should also be amenable to signing treaties with compromissory clauses, viewing these choices as complements rather than substitutes (Powell and Mitchell, 2007). However, civil law states may be more willing to embed compromissory clauses in multilateral treaties because their acceptance of general legal principles allows for multilateral negotiations to be more successful.

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[7] Of course, there are some differences between the codes of different civil law states, but there are also certain features of all of the codes that set them apart from laws of the other legal families (Pejovic, 2001).

[8] An example is provided by Article 242 of the German Civil Code, which binds the obligor to perform the contract in good faith.

[9] Interestingly, civil law systems do not usually recognize the *parol evidence* rule, which some have argued strengthens the sanctity of contracts in common law states relative to civil law states (Nassar, 1995).

The strong commitment to *bona fides* and *pacta sunt servanda* principles in civil law systems enhances the probability of success in multilateral negotiations. Simply put, civil law states constitute relatively desirable contractual partners. Furthermore, multilateral treaties must take all the parties' competing interests into account, and the more civil law states there are at the bargaining table, the more likely it is that a relatively simple agreement will satisfy the parties' needs. Civil law states have been dominant in the international system, constituting between 48% and 78% of all states from 1920 to the present. This dominance suggests that negotiations for large multilateral treaties are more likely to include multiple states with civil law systems and that such states should be amenable to recognizing the PCIJ/ICJ's jurisdiction for resolving disputes.

International commitments of common law states should reflect characteristics of common law contracts. Contracts in this legal tradition are much more detailed and meticulous than civil law contracts. Because there is much less codified law that incorporates overarching general principles, the parties are responsible for including certain stipulations (clauses) in their contract. For example, in common law, *force majeure* is not precisely defined. The parties must enumerate in a contract any events of *force majeure* that will preclude them for being liable on the grounds of nonperformance: "This is why the *force majeure* clauses in common law are often very long and comprehensive trying to cover as many *force majeure* events as possible" (Pejovic, 2001: 824). Moss (2007: 13) aptly describes the difference in contract design between civil and common law traditions: "A common law contract is written with the idea of expressing as much as possible and as detailed as possible the whole relationship between the parties, because that document will be, with few exceptions that are not very significant in commercial matters, the only basis upon which the judge will render its decision on any dispute. A civil law contract is traditionally written with the idea of regulating the specifics of the case, while leaving the rest to the legal system, which integrates the contract."

Interestingly, common law regulates the *bona fides* and *pacta sunt servanda* principles in a way that substantially diverges from civil law. English common law does not recognize a general duty to negotiate nor to perform contracts in good faith.[10] In the United Kingdom, for example, the doctrine of good faith is often perceived by lawyers as threatening and unworkable in the British common law system. Despite the fact that some efforts have been made to incorporate *bona fides* into the common law tradition, the position of *bona fides* in this legal family is still much weaker than under civil law (Zimmermann and Whittaker, 2000).

[10] Some common law states have gradually introduced the principle of good faith into their legal systems (examples: USA: the United States Uniform Commercial Code, the US Restatement (Second) of Contracts; UK: the European Consumer Protection Directive of 1994 (Summerst 1982)). Despite these developments, we argue that there still exist crucial differences in the status of *bona fides* in both of the Western legal traditions. According to some scholars, good faith constitutes a "legal irritant" in the common law tradition and "the imperatives of a specific Anglo-American economic culture as against a specific Continental one will bring about an even more fundamental reconstruction of good faith under the new conditions" (Teubner, 1998: 12).

Pacta sunt servanda and *force majeure* principles are also regulated slightly differently from the civil legal tradition. Common law systems recognize that events occurring after the signing of a contract, or a *force majeure*, might render a contractual relationship impossible or impracticable to fulfill, because the subject of the contract has been destroyed, or the obliged party is prevented from keeping his promises due to illness. Such circumstances in the common law tradition usually release all parties from their contractual obligations (Rayner, 1991; Whincup, 1992).

These characteristics of common law contracts lead us to expect that common law states will place a higher number of reservations on their optional clause declarations. These restrictions ensure that all of the states' rights and obligations are clearly specified, which resembles the 'all-inclusive' approach of domestic common law contracts. Common law states should also find the use of compromissory clauses attractive because they limit the Court's jurisdiction to the subject matter negotiated in a specific treaty. We also expect common law states to embed compromissory clauses more often in bilateral treaties than in multilateral treaties because it should be easier to strike a bilateral agreement than to reach a settlement in a multilateral negotiation if negotiators are very precise about contractual commitments. It is less costly to negotiate with only one contractual partner if the terms of the contract are diligently drafted. Also, the common law approach to the *bona fides* principle should prompt common law states to sign bilateral agreements. Just as civil law states' strong adherence to good faith warrants the high likelihood of multilateral agreements, common law states' relatively weak support for this principle makes them more likely to sign bilateral agreements.

Islamic law regulates contractual relationships in a way that is strikingly different from that of common and civil law. The Qur'an plays a crucial role in establishing the types of contracts admissible to the faithful, their rights, and obligations. Islamic law lacks a general theory of contracts comparable to its Western counterparts. The Qur'an, however, to some extent, plays the role of a code, in which general principles are included. Parties to a contract are also free, with some limitations, to place stipulations in a contract. These clauses cannot negate the legal purpose of a contract, or violate specific laws included in the Qur'an or the *sunna* (Arabi, 1998). The design of contracts under Islamic law is closely connected to its treatment of the *bona fides* and *pacta sunt servanda* principles. Good faith is very firmly established in the Islamic legal tradition. Both the Qur'an and Sunna permit cooperative interstate agreements as long as they are conducted according to the principles of good faith and honesty. Islamic law identifies fraud and dishonesty as a "serious moral wrong" (Rayner, 1991: 206).

The principle of *pacta sunt servanda* has also been granted a prime position in the Islamic legal tradition. All contracts and treaties are subject to the *pacta sunt servanda* rule "whether such action takes the form of an administrative, judicial or even legislative act" (Rayner, 1991: 87). The Qur'an states *"Ȧufū bi al-'Uqūd"* or: "Fulfill your obligations."[11] Muslims believe that "this is an order from God to fulfill a promise, whether it be a contract proper (*'aqd'*) or an agreement or obligation

[11] Qur'an V:1

created by any means other than verbal" (El-Hassan, 1985: 54).[12] The obligation of the faithful to respect their contractual obligations is binding not only in relation to other Muslims, but also towards non-believers.[13] Because Islamic law admonishes the faithful to keep their commitments, contracts concluded under Islamic law are very meticulously crafted. The rights and obligations of the parties are carefully delineated to ensure certainty as to fulfillment of the contract.

We anticipate international commitments of Islamic law states to reflect the general design of contracts in Islamic law. Thus, we expect that Islamic states will be very careful in signing international contracts with international institutions. If a state knows that it has to keep its international commitments, it will want to make sure that its obligations are very clearly specified and thorough. This strong commitment to contractual compliance (strong *bona fides* and *pacta sunt servanda* principles), as well as cultural differences between Islam and the West, should make Islamic law states hesitant to recognize the jurisdiction of the World Court through compulsory jurisdiction or compromissory clauses.[14] However, when Islamic law states recognize the Court, their commitments should be durable and specific. The number of restrictions placed on their optional clause declarations should be rather substantial, although not as large as for common law states. Islamic law states are also more likely to recognize the ICJ's jurisdiction in bilateral rather than multilateral compromissory clause treaties. Islamic law puts substantial limitations on states' contracting freedom, which implies that bilateral bargains will be easier to strike. Religious principles in Islamic law limit states' contracting freedom, which should result in a smaller number of interstate agreements. However, strong norms of *pacta sunt servanda* produce expectations that contracts negotiated under Islamic law will be upheld, even as circumstances change.

Necessary versus Unnecessary Reservations

In addition to the expectations regarding the number of optional clause reservations, our theory also allows us to formulate predictions dealing with specific types of reservations. Several of the reservations utilized in states' optional clause declarations are general in nature and merely repeat either general principles inherent to

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[12] A contract in Islamic law is often considered as constituting not merely secular law between the parties, but also "a *Shari'a*, that is, literally a sacred law between the parties" (Habachy, 1962: 467). The approach of Islamic law to fulfillment of contracts is fundamentally different from that of common and civil legal systems. Although the Catechism of the Catholic Church instructs in Article 2464 that the eighth commandment forbids misrepresenting the truth in one's relations with others, this article does not constitute a direct source of secular legal obligations.

[13] Despite such a strong position of the *pacta sunt servanda* rule under Islamic law, a contract may become temporarily invalidated if its fulfillment is impossible (*rebus sic stantibus)*.

[14] The data in the appendix make this clear, as only six Islamic law countries have ever recognized the compulsory jurisdiction of the PCIJ/ICJ.

international law, or provisions of the PCIJ/ICJ statute (Alexandrov, 1995: 21). For example, Article 36(2) of the ICJ Statute states that declarations of acceptance of the compulsory jurisdiction of the ICJ shall be "in relation to any other state accepting the same obligation." This article clearly establishes the principle of reciprocity. Thus the ICJ is bound by reciprocity "whether or not it is mentioned in the declaration of the state involved and there is no need to specifically make the reservation of reciprocity in a unilateral declaration" (Alexandrov, 1995: 27; see also Briggs, 1958: 267). Nevertheless, numerous states place the unnecessary reservation of reciprocity on their optional clause declaration.

Several states limit the jurisdiction of the ICJ in matters exclusively within the domestic jurisdiction as determined by international law, although such a clause is unnecessary. This reservation was first made by a common law country, the United Kingdom in 1929. As time went on, similar reservations appeared in 21 other PCIJ declarations, and in 26 ICJ declarations (Alexandrov, 1995: 67). Similarly unnecessary is the reservation that excludes disputes in regard to which the parties agreed to have recourse to another method of peaceful settlement from the PCIJ/ICJ's jurisdiction. This quite popular reservation is not needed since "the Court, however, may take into account an agreement to resort to other method of peaceful settlement even without such a reservation" (Alexandrov, 1995: 104). Finally, quite a few states place on their optional clause declaration a reservation which reserves the right to add, amend, or withdraw reservations or declarations. Yet even states that do not include such reservations can freely add, amend, or withdraw a reservation or a declaration. While many of these general reservations are redundant from an international law perspective, almost all states (95%) recognizing compulsory jurisdiction place one or more general reservations on their optional clause declarations.

Because domestically drafted contracts in common law states often contain general principles of law, we anticipate that these countries will also be more likely to place the above described "unnecessary" restrictions on their declarations. Common law states will feel more secure by including them in their commitments to the Court. Civil law states and Islamic law states should refrain from restrictions that repeat basic principles of international law or rules expressed in the Statute of the PCIJ or ICJ.

Reservation Types: Ratione Materiae, Ratione Temporis, and Ratione Personae

Our theory also allows us to construct hypotheses regarding specific types of reservations relating to time, space, and other states. The use of reservations *ratione materiae* and *ratione personae* reflects the willingness of a state to accept the jurisdiction of the PCIJ/ICJ as far as its substantive scope. Common law countries are more likely than civil or Islamic law states to employ *ratione personae* reservations, especially those that exclude fellow British Commonwealth countries from the Court's jurisdiction. The general pattern we expect to observe is a higher likelihood of *ratione materiae*, *ratione temporis*, and *ratione personae* reservations for common law and Islamic law states in comparison to civil law states, with common law systems having the highest chances for reservations in all categories due to the nature of contract law in common law systems.

However, all states should be inclined to place *ratione temporis* reservations on their optional clause declarations regardless of the breadth of their substantive commitment to the PCIJ/ICJ. Even states that are less willing to limit the jurisdiction of the Court across space should value the legal predictability that stems from placing a reservation *ratione temporis*. An optional clause declaration, which does not include any reservations *ratione temporis*, makes a state very vulnerable to potential suits regarding past and often unforeseen grievances.

Research Design

Our theoretical argument suggests that civil law states should be more accepting of the World Court's jurisdiction than common law or Islamic law states, and less likely to place reservations on their optional clause declarations. Common law states are expected to place a large number of reservations on their declarations, especially those that restrict the Court's jurisdiction over specific disputes or issues. We also expect common and Islamic law states to embed compromissory clauses more often in bilateral treaties, due to the difficulty they face in striking multilateral agreements. To evaluate these hypotheses empirically, we analyze data that cover the period 1920–2002, which includes the PCIJ (1920–1945) and the ICJ (1946–2002) eras.

Information on compulsory jurisdiction is compiled from the annual volumes of the Yearbook of the International Court of Justice (http://www.icj-cij.org). These volumes record optional clause declarations deposited with the United Nations' secretary general, including the text of the declarations, from which information about reservations can be coded. As noted earlier, one-third of all states currently accept the compulsory jurisdiction of the ICJ, although 89 different countries have recognized the compulsory jurisdiction of the PCIJ/ICJ since 1920 (46% of all states).

Our coding of reservations is based upon Alexandrov's (1995) typology, which identifies restrictions related to certain states (*ratione personae*), certain times of disputes (*ratione temporis*), divergent areas of international law (*ratione materiae*), general reservations (such as reciprocity), and others. Table 1 provides a comprehensive list of all reservations in each category. States have utilized 28 separate reservations, although the empirical range for individual states ranges from 0 to 19, with an average of five reservations per state.

A list of bilateral and multilateral treaties with compromissory clauses was collected from the International Court of Justice's website (http://www.icj-cij.org). The list of bilateral treaties includes each member state and the start year of the treaty. Multilateral treaties are listed only by the treaty name and the treaty start date, thus we did additional research to determine the members of each treaty and the signature and ratification dates for each member. The data include 159 bilateral treaties and 93 multilateral treaties. We created a monadic state year dataset that allowed us to count the number of compromissory clause treaties that each state belongs to in a given year. The empirical range for this variable is 0 to 97, with an average of 7 per year.

Our coding of domestic legal systems is based on four mutually exclusive dichotomous variables: civil, common, Islamic, and mixed. The first three categories capture our key legal systems, while the mixed category captures the legal system of countries

where two or more systems apply interactively or cumulatively. Information about domestic legal systems has been gathered using the *CIA Fact Book*, which describes major characteristics of legal traditions of each state in the world and several other subsidiary legal sources (Glendon et al., 1994; Opolot, 1980; Kritzer, 2002; http://www.droitcivil.uottawa.ca/world-legal-systems/eng-generale.html). The appendix provides a list of countries by legal type, as well as the years each state has an optional clause declaration in force.

Our multivariate analyses include several control variables. First, we include a measure of state power because powerful states are less likely to recognize the PCIJ/ICJ's jurisdiction (Bilder, 1998; Scott and Carr, 1987), which may also increase their willingness to place more restrictions on their reservations if they recognize the Court's jurisdiction. Given their advantage in bilateral bargaining, more powerful nations have incentives to limit the situations in which the PCIJ/ICJ has jurisdiction. We employ a commonly used measure of national capabilities developed by Singer et al. (1972), the CINC score.

We also include a measure of state age because newer states tend to view the ICJ as conservative and status quo biased (Gamble and Fischer, 1976), attitudes that were fueled by several unpopular ICJ judgments (e.g. the 1966 *South West Africa* decision). Newer states should be more reluctant to make optional clause declarations, although older states may declare more reservations or join more compromissory clause treaties, simply because their commitments to the PCIJ/ICJ are longer. The measure for state age captures the length of time a country has been recognized as a state, starting in 1200 CE (*CIA Fact Book*). We calculate the natural logarithm of a state's age to minimize its variance.

The third control variable is regime type. The democratic peace literature suggests that democracies are more likely to adopt peaceful methods of conflict resolution (Dixon, 1994), and more amenable to legalistic procedures, such as adjudication or arbitration (Raymond, 1994). While democracies may be supportive of the ICJ in general (Powell and Mitchell, 2007), they may be cautious about their international commitments because they face higher audience costs for reneging on agreements. Thus our expectation is that democracies will be more likely to place restrictions on the Court's prerogative in the form of reservations on optional clause declarations. To measure each state's democracy level, we use the Polity IV data set (Jaggers and Gurr, 1995), which combines information from four institutional characteristics into a single democracy score ranging from 0 (least democratic) to 10 (most democratic).[15] We turn now to multivariate analyses to empirically evaluate our theoretical hypotheses.

Empirical Analyses

We begin with an empirical evaluation of the design of commitments to the PCIJ/ICJ as measured first by reservations on optional clause declarations. As noted above, the full list of reservations employed by states is listed in Table 1. We report

[15] This includes the competitiveness of political participation, the level of constraints on the chief executive, and the openness and competitiveness of chief executive recruitment.

the percentage of reservation state-years for each domestic legal system type. These percentages include only those years in which states' optional clause declarations are in force. We find support for our theoretical conjecture that common law states will place the highest number of reservations on their commitments to the Court. In the majority of reservation categories (20 of 28), common law states have a higher percentage of years with reservations in force compared with civil law and Islamic law states. There are also some types of reservations that are unique to common law systems, such as the declaration excluding British Commonwealth countries from the Court's jurisdiction (56%) and the exclusion of disputes that arose during hostilities (38%).

With respect to differences across reservation types, we see a fairly large use of general reservations by all states. As noted above, this reflects in many cases a restatement of principles already embodied in the League/UN Charter or international law more broadly. As expected, common law states feel compelled to place on their optional clause declarations "unnecessary" restrictions. As Table 1 shows, these states are most likely to place a general reservation of reciprocity (82%) and a reservation *ratione materiae*, excluding from the ICJ's jurisdiction matters exclusively within the domestic jurisdiction as determined by international law (58%). A similar pattern emerges with regard to the remaining two "unnecessary" restrictions: a reservation containing the right of a state to add, amend, or withdraw declarations (20%) and a reservation *ratione materiae* excluding disputes in which the parties have recourse to another method of settlement (82%).

The exclusion of the Court's jurisdiction in areas relating to particular issues or disputes (*materiae)* is much more widely used by common and Islamic law states than civil law states. The lack of good faith and *pacta sunt servanda* principles in common law systems produces more detailed international commitments and a broader set of reservation categories. Islamic law states exclude disputes where there is recourse to other methods of peaceful settlement or the issue falls within domestic jurisdiction. Both common and Islamic law states frequently exclude disputes that arose prior to their optional clause declaration (*temporis*) from the ICJ's purview. The use of *personae* reservations is fairly limited and employed mostly by common law states.

Table 3 presents logit analyses of each reservation category, where the dependent variable equals 1 if a state declares one or more reservations of each type in a given year and 0 otherwise. The excluded reference category for legal systems is civil law. The positive and significant coefficients for all other legal types across the reservation categories supports our claim that civil law states will place the fewest restrictions on their optional clause declarations. The substantive effects for these models are presented in Table 4. We see a large increase in the probability of *materiae* reservations for common (p = .699), Islamic (p =.726), and mixed law (p = .689*)* systems relative to the baseline category for civil law (p = .262). A similar ordering obtains for *temporis* reservations, with civil law states having a moderate probability for these restrictions (p = .404) and common (p = .879) and Islamic (p = .901) law states being much more likely to employ one or more restrictions related to time.

As expected, all states regardless of their domestic legal system type are likely to include reservations *ratione temporis* in their declarations. The probabilities for

Table 3. Logit Analyses of PCIJ/ICJ Optional Clause Reservation Types (1920–2002)

Variable	*Model 1 General*	*Model 2 Materiae*	*Model 3 Temporis*	*Model 4 Personae*	*Model 5 Other*
Common law	2.43 (0.72)**	1.88 (0.14)**	2.38 (0.13)**	3.45 (0.15)**	1.48 (0.13)**
Islamic law	–	2.01 (0.24)**	2.60 (0.22)**	–	–
Mixed law	–0.06 (0.48)	1.83 (0.17)**	1.22 (0.16)**	2.25 (0.17)**	1.67 (0.14)**
Democracy	0.09 (0.03)**	0.06 (0.01)**	0.11 (0.01)**	0.09 (0.02)**	–0.01 (0.01)
Capabilities	1616.56 (180.42)**	74.73 (31.85)*	65.55 (31.09)*	–9.00 (1.28)**	–10.84 (1.83)**
State age	–0.33 (0.15)*	–0.13 (0.04)**	0.21 (0.05)**	–0.03 (0.05)	–0.11 (0.05)*
Constant	2.59 (0.63)**	–0.57 (0.21)**	–2.53 (0.21)**	–3.14 (0.33)**	–1.32 (0.24)**
Sample size	2785	3001	3001	2785	2785
Chi-square	186.42**	487.19**	571.01**	650.24**	283.87**
Pseudo-R^2	0.25	0.22	0.24	0.33	0.10

Entries are coefficients followed by robust standard errors; * $p < .05$, ** $p < .01$.
Smaller sample sizes in Models 1, 4, and 5 result from Islamic law cases being excluded from the model due to lack of variance.

Table 4. Substantive Effects, PCIJ/ICJ Optional Clause Reservations

Variable	*General Reservations Prob. (Change)*	*Materiae Reservations Prob. (Change)*	*Temporis Reservations Prob. (Change)*	*Personae Reservations Prob. (Change)*
Legal system				
Civil law	1.00	0.262	0.404	0.055
Common law	1.00 (none)	0.699 (+ .437)	0.879 (+ .475)	0.645 (+ .590)
Islamic law	–	0.726 (+ .464)	0.901 (+ .497)	–
Mixed law	1.00 (none)	0.689 (+ .427)	0.696 (+ .292)	0.354 (+ .349)
Democracy				
0 (minimum)	1.00	0.203	0.268	0.034
10 (maximum)	1.00 (none)	0.317 (+ .114)	0.524 (+ .256)	0.079 (+ .045)
Capabilities				
0 (minimum)	0.835	0.154	0.273	0.059
0.36 (maximum)	1.00 (+ .165)	1.00 (+ .846)	1.00 (+ .727)	0.002 (– .057)
State age				
0 (minimum)	1.00	0.608	0.210	0.062
7.31 (maximum)	1.00 (none)	0.122 (– .486)	0.552 (+ .342)	0.050 (– .012)

these reservations are very high (.404 for civil law states, .879 for common law states, .901 for Islamic law states, and .696 for mixed law states). Each state perceives these reservations as a guarantee that old disputes from the past will not be brought before the Court. The multivariate analysis also confirms what we observed in Table 1, namely that common law states use *personae* reservations much more frequently than states with other domestic legal systems.

The control variables reveal some interesting differences across reservation categories. As states' democracy scores increase, they become increasingly likely to employ all types of reservations. As previous research shows, democracies sign only those international commitments that they are likely to keep in the future (Gaubatz, 1996; Leeds, 1999; Simmons, 2000). Because democratic states know that they are very likely to keep their promises, they design their commitments in a very cautious way, making sure that all of their obligations and possible future circumstances are accounted for. The effect of state power varies across reservation types. More powerful states are significantly more likely to employ general, *materiae*, and *temporis* reservations, and significantly less likely to employ *personae* and other reservations. The substantive effects for capabilities are quite large as well, with great powers being almost certain to place general, *materiae*, and *temporis* reservations on their optional clause declarations. We also see varying effects for state age across reservation categories. Older states are less likely to employ general, *materiae*, and other reservations, while significantly more likely to restrict disputes occurring prior to the declaration (*temporis*). The probability of the submission of cases originating from the past is much smaller for new states.

We check the robustness of these findings in various ways. To control for potential selection effects, we present the results of a Heckman selection model in Table 5 that includes all state-years in the international system from 1920 to 2002. The first stage of the model captures a state's acceptance of compulsory jurisdiction, while the second stage captures the reservation categories analyzed in Table 3. The results are basically the same, with common and Islamic law states having higher numbers of reservations in all categories than civil law states. We also consider colonial legacies in our models. If we add a variable for British colony to each model in Table 3, we find that common law, Islamic law, and mixed law states are significantly more likely to have reservations in all categories than civil law states. The dummy variable for British colony is positive and significant for each reservation category, which is consistent with our argument for common law systems. We also estimated the models in Table 3 using an alternative scheme for domestic legal systems, which focuses on colonial legacy (La Porta et al., 1999).[16] Our logit models suggest that states with an English legal origin are significantly more likely to employ reservations in their optional clause declarations, consistent with our findings for common law states. On the other hand, states with French or German legal origins have significantly fewer reservations than the other legal systems, which is also consistent with our findings that civil law states have the fewest number of reservations.[17]

Table 6 presents empirical analyses of state-year commitments to treaties with compromissory clauses, divided into bilateral, multilateral, and all treaties. The similarity of results in Model 2 (multilateral) and Model 3 (all treaties) reflects the dominance of multilateral memberships in the dataset. There are 5518 state-year commitments to multilateral treaties, versus 3059 state-year commitments to bilateral

[16] La Porta et al. (1999) identify the following legal system categories: English, Socialist, French, German, and Scandinavian.

[17] These analyses are available from the authors upon request.

Table 5. Heckman Probit Analyses of PCIJ/ICJ Optional Clause Reservation Types (1920–2002)[20]

Variable	*Model 1 General*	*Model 2 Materiae*	*Model 3 Temporis*	*Model 4 Personae*	*Model 5 Other*
Stage 2: Design					
Common law	1.10 (0.30)**	0.97 (0.07)**	1.23 (0.07)**	1.71 (0.07)**	0.84 (0.07)**
Islamic law	–	–	2.26 (0.17)**	–	–
Mixed law	–0.22 (0.20)	1.02 (0.10)**	0.40 (0.09)**	0.83 (0.10)**	1.13 (0.09)**
Capabilities	906.32 (118.8)**	22.10 (2.05)**	20.05 (1.99)**	–2.58 (0.98)**	–6.82 (1.55)**
State age	–0.22 (0.05)**	–0.03 (0.02)	0.16 (0.02)**	–0.05 (0.02)*	–0.04 (0.02)
Constant	1.86 (0.24)**	–0.21 (0.11)*	–1.17 (0.11)**	–1.17 (0.11)**	–0.96 (0.10)**
Stage 1: Acceptance					
Common law	–0.28 (0.12)*	–0.27 (0.12)*	–0.27 (0.12)*	–0.27 (0.12)*	–0.27 (0.12)*
Islamic law	–0.41 (0.18)*	–0.42 (0.18)*	–0.42 (0.18)*	–0.42 (0.18)*	–0.42 (0.18)*
Mixed law	–0.004 (0.17)	–0.00 (0.17)	0.00 (0.17)	–0.00 (0.17)	0.00 (0.17)
Democracy	0.06 (0.01)**	0.06 (0.01)**	0.06 (0.01)**	0.06 (0.01)**	0.06 (0.01)**
Lagged acceptance	4.20 (0.12)**	4.20 (0.12)**	4.19 (0.12)**	4.20 (0.12)**	4.21 (0.12)**
Islamic law * Lag (Acc.)	0.91 (0.40)*	0.90 (0.40)*	0.92 (0.40)*	0.91 (0.40)*	0.87 (0.40)*
Common law * Lag (Acc.)	0.62 (0.24)*	0.60 (0.25)*	0.60 (0.24)*	0.57 (0.25)*	0.60 (0.25)*
Mixed law * Lag (Acc.)	0.24 (0.32)	0.23 (0.32)	0.23 (0.32)	0.25 (0.32)	0.24 (0.32)
Democracy * Lag (Acc.)	–0.01 (0.02)	–0.01 (0.02)	–0.00 (0.02)	–0.00 (0.02)	–0.00 (0.02)
Constant	–2.27 (0.07)**	–2.27 (0.07)**	–2.27 (0.07)**	–2.26 (0.07)**	–2.27 (0.07)**
Sample size	8499 (2994)	8498 (2993)	8499 (2294)	8499 (2994)	8499 (2994)
Chi-square	70.97**	446.85**	572.67**	673.52**	271.18**
Rho	–0.39 (0.11)**	–0.09 (0.06)	–0.10 (0.06)	–0.22 (0.09)**	–0.12 (0.07)

Entries are coefficients followed by robust standard errors; * $p < .05$, ** $p < .01$.

[20] The baseline model for compulsory jurisdictional acceptance is taken from Powell and Mitchell (2007). There we employ a Markov logit model, which is duplicated here by multiplying each independent variable by the value of the lagged dependent variable in stage one (0 = a state did not accept jurisdiction in the previous year, 1 = a state did accept jurisdiction in the previous year). This model is employed due to the differential effects of the independent variables on initial commitments to the World Court versus the durability of PCIJ/ICJ commitments. In order to identify the Heckman model, the variable for regime type is employed in Stage 1 only, while the variable for state age is employed in Stage 2 only.

Table 6. Negative Binomial Analyses of Monadic Compromissory Clause Treaty Memberships

Variable	*Model 1: Bilateral treaties Coefficient (S.E.)*	*Model 2: Multilateral treaties Coefficient (S.E.)*	*Model 3: All treaties Coefficient (S.E.)*
Civil law	0.250 (0. 080)**	1.066 (0.120)**	0.903 (0.100)**
Common law	0.625 (0.106)**	0.798 (0.124)**	0.724 (0.103)**
Islamic law	2.040 (0.101)**	−1.297 (0.183)**	−0.308 (0.113)**
Democracy	0.190 (0.006)**	0.072 (0.004)**	0.083 (0.003)**
Capabilities	8.889 (0.664)**	−3.213 (0.543)**	−0.179 (0.492)
State age	0.406 (0.016)**	0.180 (0.014)**	0.213 (0.012)**
Constant	−3.055 (0.111)**	0.440 (0.119)**	0.467 (0.105)**
α	2.563 (0.086)**	4.568 (0.104)**	2.931 (0.057)**
N	8359	8359	8359
χ^2	2910.62 ($p < .0001$)	1485.38 ($p < .0001$)	246.71 ($p < .0001$)
Pseudo-R^2	0.096	0.024	0.025

** $p < .01$.

Table 7. Substantive Effects, Monadic Compromissory Clause Treaties

Variable	*Number of bilateral treaty memberships Expected count (S.E.)*	*Number of multilateral treaty memberships Expected count (S.E.)*	*Number of all treaty memberships Expected count (S.E.)*
Legal System6			
Civil law	0.67 (0.02)	11.66 (0.21)	12.49 (0.21)
Common law	0.99 (0.07)	8.93 (0.30)	10.46 (0.32)
Islamic law	4.03 (0.24)	1.11 (0.16)	3.73 (0.21)
Mixed law	0.52 (0.04)	4.02 (0.47)	5.07 (0.49)
Democracy			
0 (minimum)	0.33 (0.01)	8.91 (0.23)	9.15 (0.22)
10 (maximum)	2.21 (0.08)	18.24 (0.53)	20.89 (0.50)
Capabilities			
0 (minimum)	0.62 (0.02)	12.03 (0.21)	12.50 (0.21)
0.36 (maximum)	19.79 (4.87)	3.60 (0.75)	11.89 (2.31)
State age			
0 (minimum)	0.14 (0.01)	5.75 (0.38)	5.37 (0.32)
7.31 (maximum)	2.63 (0.14)	21.32 (0.95)	25.60 (0.99)

Values are calculated using Clarify, Version 2.0 (King et al., 2000).

treaties.[18] Civil law states belong to a higher number of multilateral treaties than common, Islamic, or mixed law states. As Table 7 shows, civil law states belong on average to 11 multilateral treaties with compromissory clauses, compared with 9 for

[18] The excluded legal system category in Table 6 is mixed law.

common law states, 4 for mixed law states, and 1 for Islamic law states. A similar pattern emerges in Model 3 when examining all treaties (12.5 for civil law, 10.5 for common law, 5 for mixed law, and 3.7 for Islamic law).

These results are consistent with our expectations that contract law in domestic legal systems influences the design of international commitments. As expected, civil law states are more likely to be part of multilateral treaties with compromissory clauses, since the number of contracting parties does not deter these states from contracting successfully. Because civil law contracts are not overly detailed, the costs for negotiations on the international arena are not as high for these states as they are for Islamic or common law states. While we expected common law states to be less open to the Court, we did anticipate a preference for compromissory clause jurisdiction over compulsory jurisdiction, and this seems to be borne out in our analysis. Common law states are also more likely to embed compromissory clauses in bilateral treaties than in multilateral treaties. It is easier to sign a bilateral contract than a contract with multiple contracting parties if negotiators are very careful about each particular obligation. The same is true for Islamic law states, as they prefer to embed compromissory clauses in bilateral treaties.

Islamic law states, whose systems integrate law and religion, are not very amenable to resolving disputes with the assistance of the PCIJ/ICJ. However, Islamic law states have the highest number of bilateral treaty memberships (4) with compromissory clauses, much higher than for any other legal system (civil law, .67; common law, .99; mixed law, .52). Thus while our earlier research (Powell and Mitchell, 2007) shows that Islamic law states are significantly *less* likely to recognize the compulsory jurisdiction of the PCIJ/ICJ, our analyses in this paper suggest that Islamic law states are more open to compromissory clauses in restricted bilateral treaties. This may provide an interesting path for Islamic law states' acceptance of potential ICJ involvement in the future.

Conclusion

In this paper, we argue that domestic legal systems have important effects on the way that states design their commitments to the PCIJ/ICJ. We show that states belonging to different legal traditions (civil, common, and Islamic) design their commitments to the PCIJ/ICJ in quite different ways. Our results support theoretical conjectures that differences in the design of contracts in the domestic realm carry over onto the international arena.

Despite numerous insights provided by this paper, several questions remain unanswered. First, we show that Islamic law states have the highest number of bilateral treaty memberships with compromissory clauses, much higher than any other legal system. These results are somewhat puzzling, especially since Islamic law states are least likely to accept the compulsory jurisdiction of the PCIJ/ICJ. It is plausible that these states see the compulsory jurisdiction of the Court as constituting a permanent and firm submission to a western judicial institution. Acceptance of the PCIJ/ICJ jurisdiction via a compromissory clause embedded in a relatively limited international contract (a bilateral treaty) seems to these states less threatening and easier to change if desired. Also, withdrawal of the optional clause declaration is much more

visible on the international arena, and thus it affects a state's reputation to a much larger degree. Changing a compromissory clause in a bilateral treaty constitutes a relatively "low key" action that does not damage a state's reputation in the eyes of other "law-abiding" states. This behavior is somewhat consistent with the attitude of Islamic law in general towards keeping one's promises in the domestic realm and the survival of international commitments. Withdrawal of the optional clause declaration constitutes a much more severe breach of Islamic law. We can interpret this act as constituting a breach of contract not only with the PCIJ/ICJ, but also with other states accepting compulsory jurisdiction. Breaking a promise given to multiple contracting partners is much graver than breaking a promise given to only one party. These results constitute a fascinating venue for future research.

We would also like to analyze changes in the design of states' commitments to the PCIJ/ICJ over time. Legal systems are not static as far as the regulation of contractual relationships. Although basic features, such as the *bona fides* principle or attention to detail in contractual design, do not change, there have been some changes across legal systems over time concerning their attitude to codification and the doctrine of precedent. In particular, statute law (included in codes of various kinds) has recently become a much more important source of law in certain common law countries, especially the United Kingdom and the USA. Since more general principles are included in statutes or other codifications, perhaps the design of common law contracts will start to resemble civil law contracts over time. This process might suggest shifting dynamics in the design of states' commitments to the World Court and other international courts.

Finally, we have begun to expand our theoretical argument to other international courts, focusing on the International Criminal Court and the International Tribunal for the Law of the Sea. While the rules and procedures of the PCIJ/ICJ mimic those in civil law systems, the ICC is more of a civil–common law hybrid court. Our preliminary analyses suggest that civil and common law states have similar probabilities for signature and ratification of the Rome Statute. We hope to conduct a similar analysis for the UNCLOS court, which seems to be most attractive to common law states. Greater variation in the coverage of international courts will give us better leverage for understanding more clearly the relationship between domestic and international law. More broadly, the theory and empirical analyses presented in this paper suggest that scholars should consider the two-level game between domestic and international law more carefully when seeking to understand the design of states' international commitments.

Appendix. Domestic Legal Systems and Years of PCIJ/ICJ Compulsory Jurisdiction Acceptance

Common Law Countries

United States of America (1946–85), Canada (1930–), Bahamas, Jamaica, Trinidad and Tobago, Barbados (1980–), Dominica (2006–), Grenada, St. Lucia, St. Vincent and Grenadines, Antigua & Barbuda, St. Kitts-Nevis, Belize, Guyana, United Kingdom (1930–), Ireland (1930–46), Cyprus (1988–), Liberia (1952–), Sierra Leone, Ghana, Uganda (1963–), Tanzania, Zambia, Zimbabwe, Malawi (1966–), Lesotho

(2000–), India (1940–), Bhutan, Bangladesh, Myanmar, Nepal, Malaysia, Singapore, Philippines (1947–), Australia (1940–), Papua New Guinea, New Zealand (1930–), Solomon Islands, Kiribati, Tuvalu, Fiji, Tonga, Nauru (1988–), Marshall Islands, Palau, Federated States of Micronesia, Samoa

Civil Law Countries

Cuba, Haiti (1921–), Dominican Republic (1924–), Mexico (1947–), Guatemala (1947–52), Honduras (1948–), El Salvador (1930–88), Nicaragua (1939–), Costa Rica (1973–), Panama (1929–), Colombia (1937–), Venezuela, Surinam (1987–), Ecuador, Peru (1932–46, 2003–), Brazil (1921–53), Bolivia (1936–53), Paraguay (1933–38, 1996–), Chile, Argentina, Uruguay (1921–), Netherlands (1921–), Belgium (1926–41, 1948–), Luxembourg (1930–), France (1931–41, 1947–74), Monaco, Liechtenstein (1950–), Switzerland (1921–46, 1948–), Spain (1928–38, 1990–), Andorra, Portugal (1921–46, 1955–), Germany (1928–38), Poland (1990–), Austria (1922–42, 1971–), Hungary (1929–39, 1992–), Czech Republic, Slovakia (2004–), Italy (1931–36), San Marino, Albania (1930–40), Macedonia, Croatia, Yugoslavia (1930–35, 1999–), Bosnia-Herzegovina, Slovenia, Greece (1929–44, 1994–), Bulgaria (1921–46, 1992–), Moldova, Romania (1931–41), Russia, Estonia (1923–46, 1991–), Latvia (1930–46), Lithuania (1922–40), Ukraine, Belarus, Armenia, Georgia (1995–), Azerbaijan, Finland (1922–46, 1958–), Sweden (1921–), Norway (1921–), Denmark (1921–), Iceland, Cape Verde, Sao Tome and Principe, Guinea-Bissau (1989–), Equatorial Guinea, Mali, Benin, Ivory Coast (2001–), Guinea (1998–), Burkina Faso, Togo (1979–), Gabon, Central African Republic, Chad, Congo, Democratic Republic of the Congo (1989–), Burundi, Djibouti (2005–), Ethiopia (1926–36), Angola, Mozambique, Swaziland (1969–), Madagascar (1992–), Mauritius (1968–), Turkey (1947–72), Turkmenistan, Tajikistan, Kyrgyz Republic, Uzbekistan, Kazakhstan, Mongolia, Taiwan (1949–71), North Korea, South Korea, Cambodia (1957–), Laos, Vietnam, Indonesia, East Timor

Islamic Law Countries

Gambia (1966–), Nigeria (1965–), Namibia, Comoros, Morocco, Algeria, Tunisia, Libya, Sudan (1958–), Iran (1932–51), Iraq, Egypt (1957–), Syria, Lebanon, Jordan, Saudi Arabia, Yemen, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Afghanistan, Pakistan (1948–), Maldives

Mixed Law Countries

Malta (1966–), Senegal (1985–), Niger, Cameroon (1994–), Kenya (1965–), Rwanda, Somalia (1963–), Eritrea, South Africa (1930–67), Botswana (1970–), Seychelles, Israel (1950–85), China (1922–27, 1946–48), Japan (1958–), Myanmar, Sri Lanka, Thailand (1930–60), Brunei, Vanuatu

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