

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

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ABSTRACT

Previous research suggests that civil law states are more likely to accept the jurisdiction of the International Court of Justice (ICJ) than common law, Islamic law, or mixed law states. This paper extends that research by exploring the relationship between domestic legal system characteristics (good faith, contractual compliance, and use of precedents) and the *design* of commitments to the World Court, including the number and types of reservations placed on optional clause declarations and the number of treaty memberships with compromissory clauses. Empirical analyses suggest that civil law states are more willing to recognize the jurisdiction of the 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.

One of the basic principles of international law is that no state can be compelled to submit its disputes with other states to peaceful settlement.¹ This rudimentary principle has been embodied in the Statute of both the Permanent Court of International Justice (PCIJ, 1920-1945) and its successor, the International Court of Justice (ICJ, 1946-present).² The consent of the parties to a dispute brought before the Court constitutes the source of its competence and jurisdiction.³ This consent may be expressed 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 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). Lastly, consent may be articulated by states 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 1/3 of states making optional clause declarations.

¹ Status of Eastern Carelia case, reply to request of advisory opinion 07/23/1923, 1923 PCIJ, Series B, No.5, p.7 at 27; also quoted in Alexandrov, 1995:1.

² We often make reference to the International Court of Justice (ICJ), although our theory and analyses focus more broadly on a World Court, which includes both the PCIJ and ICJ.

³ This basic principle has been reiterated numerous times by the Court. For example, in the Anglo-Iranian Oil Company Case (United Kingdom v. Iran), the ICJ states: "Unless the parties have conferred jurisdiction on the Court in accordance with Article 36, the Court lacks such jurisdiction (Judgment of July 22, 1952 (Preliminary Objection), 1952, ICJ Reports 93:103; also quoted in Alexandrov, 1995:2. According to Szafarz (1993), jurisdiction of the ICJ should be understood as "the general and the specific capacity of the Court to settle contentious cases between states with binding force, and the capacity to issue advisory opinion (p.93, endnote 1).

States can not only choose to accept or refuse to accept the jurisdiction of the ICJ, they can also accept its jurisdiction in a limited way. For compulsory jurisdiction, this inherent competence is embodied in the institution of a reservation. There are numerous types of reservations that states may place on their optional clause declarations. The main goal of any reservation is to limit the ICJ's adjudication prerogatives or the scope of the Court's jurisdiction. Restrictions may relate to other states (*ratione personae*),⁴ certain times of disputes (*ratione temporis*),⁵ or specific areas of international law (*ratione materiae*) (Szafarz, 1993). Restrictions can vary across time and space. First, states can modify their declarations by adding new restrictions and removing old ones. Second, the declarations of each state can also be unique as far as the number and types of reservations. Some states choose not to place any reservations on their optional clause declarations (Georgia, Gabon), while others have placed as many as 19 reservations (India). 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).

In this paper, we seek to understand the variance in the design of states' commitments to the World Court, building upon our earlier research connecting states' domestic legal institutions to interstate bargaining and the use of optional clause declarations and compromissory clause treaties as a form of cheap talk (Powell and Mitchell, forthcoming). We argue that characteristics of domestic legal systems help to account for the design of states' commitments to the World Court. States representing civil, common, and Islamic legal traditions regulate their

⁴ The Court's jurisdiction does not cover certain disputes between the accepting state and a particular group of states. The most common reservation of this type is the reservation placed by the members of the British Commonwealth, which excludes from the ICJ jurisdiction disputes with any other members of the British Commonwealth.

⁵ Disputes originating before a certain date are excluded from the ICJ's jurisdiction.

contractual relationships in quite divergent ways. Contracts signed under each legal system look different as far as their attention to detail, their length, and inclusion of general principles. We assert that these differences in the design of contracts in the domestic realm carry over onto the international arena, where states make commitments with one another and with international institutions. Our analyses suggest that civil law states are more willing to recognize the jurisdiction of the ICJ through both optional clause declarations and compromissory clause treaty memberships than common law or Islamic law states. Furthermore, 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.

Our paper proceeds as follows. First, we discuss the differences between the world's three major legal systems: civil law, common law, and Islamic law.⁶ Next we discuss the design of states' commitments to the World Court, including reservations for optional clause declarations and variation in the design of compromissory clause treaties. Third, we derive hypotheses relating characteristics of domestic legal systems to the design of international legal commitments. Finally, we discuss the research design for empirically evaluating our hypotheses and we present our empirical results. Our theory and analyses demonstrate the important link between domestic institutions and commitments to international institutions and treaties, and suggest that legal institutions should be accorded greater priority in future research.

⁶ Other typologies for legal systems have been developed, including La Porta et al's (1999) classification based on colonial influence (French, British, Socialist, etc.). We prefer the common, civil, and Islamic law typology because it distinguishes systems based on procedural and substantive differences in legal practices, rather than encompassing broader cultural differences based on colonial empires.

Domestic Legal Systems: Civil, Common, and Islamic Law

Procedural and substantive characteristics of each domestic legal tradition stem from the diverging historical and cultural experiences of different states. Civil law originated in the law of the Roman Empire and proliferated throughout Europe via the Empire's influence (Glenn 2000, 119). As the Empire declined, so did its exquisite legal system. This situation, however, did not last very long as the Roman *ius civile* was rejuvenated and revised in European universities in the 11th to 13th centuries. This revitalized civil legal tradition gave birth to numerous key legal codes, including the Civil Code of Napoleon of 1804, the German Civil Code of 1900, and the Italian Civil Code. The influence of these codifications spread not only throughout Europe, but also to numerous colonized territories (David and Brierley 1985).

Common law emerged in the British Isles following the military conquest of England by the Normans (Glenn 2000; 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. The doctrine of *stare decisis* constitutes the most important feature of the common law tradition, whereby judges are bound by precedents established in previously given judgments. Common law spread globally throughout the British colonial empire.

Islamic law, the world's final major legal tradition, appeared as one of the major legal systems with the birth of Islam in the seventh century A.D. (Mourisi Badr 1978, 187). As the Muslim religion spread with the growth of the Arab Empire, Islamic law became predominant in many Central Asian and Middle Eastern states. One of the most important characteristics of this legal tradition is that it is based primarily on religious principles of human conduct; law constitutes an integral part of the Islamic religion (Al-Azmeh 1988; Khadduri 1956; Lippman, McConville, and Yerushalmi 1988).

The historical development of the world's three major legal systems created substantial variance in the substance and procedures of domestic law. While we could compare these legal systems on a wide variety of characteristics, we focus on three primary differences: 1) the use of precedents (*stare decisis*), 2) good faith in contracting (*bona fides*), and 3) conditions under which contracts must be fulfilled (*pacta sunt servanda*).

Stare Decisis

The principle of *stare decisis* (the use of precedents when making legal judgments) is present in common law systems, but virtually absent in civil law and Islamic law systems (Opolot 1980). The doctrine of precedent obliges a judge to examine previous judgments in similar cases (Darbyshire 2001). By looking back, a judge is hoping to discover legal decisions relevant to a case under consideration. As a result, a decision consistent with existing principles is rendered. Generally, the doctrine of *stare decisis* states that when a point of law has been previously established in a judicial decision, it forms a precedent, which is to be followed from here on out (Opolot 1980). In contrast to the common law systems, judges in civil law states are prohibited from relying on previous judgments. In these systems, law making is a function of the legislature. A judge's role, on the other hand, is relatively passive. In the process of making a decision, a civil law judge implements legal rules contained in codes, laws, and statutes. Each case is treated as a particular incident without precedent. The doctrine of judicial precedent is alien also to the Islamic legal tradition, which is inescapably intertwined with Islamic faith. In this system, law is derived from four basic sources, the Qur'an, the Sunna, judicial consensus, and analogical reasoning (Vago 2000).⁷

⁷ The Qur'an is the sacred book of the Muslims, and it literally means 'the Reading'; the Sunna literally means 'the path taken or trodden' by the Prophet, and it contains explanations, deeds, sayings, and conduct of the Prophet (Glenn 2000). Judicial consensus is established by 'a common religious conviction' of major traditional legal

Bona Fides

The three major legal systems differ as far as their treatment of the principle of *bona fides*, or good faith in contracting. Probably the best description of this principle has been provided by medieval jurists, to whom good faith meant that a party to a contract “must keep his word, refrain from deceit and overreaching, and honor obligations that are only implicit in his contract” (Zimmerman and Whittaker, 2000:93, Powell, 2006). The concept of *bona fides* originated in Roman law, and as such it has significantly affected the civil law tradition. Although modern civil legal systems vary to some extent, “the general concept of *bona fides* constitutes in this legal family one of the most important abstract rules” (Powell, 2006).⁸ Good faith is also firmly established in the Islamic legal tradition. Both the Qur’an and Sunna permit trade relations as long as they are conducted according to the principles of good faith and honesty. Generally speaking, Islamic law identifies fraud and dishonesty as a “serious moral wrong” (Rayner 1991, 206).

English common law stands in sharp contrast to its civil and Islamic counterparts in that it does not recognize a general duty to negotiate nor to perform contracts in good faith. 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: “the concept of a duty to carry on negotiations in good faith is inherently repugnant to the adversarial position of the parties when involved in negotiations” (Zimmermann and Whittaker 2000, 40). Despite the fact that some efforts have been made to incorporate *bona fides* to the common law tradition, the position of *bona fides* in this legal family is still much weaker than under civil and Islamic law

scholars (Glenn 2000) and it regards specific points of Islamic law. Analogical reasoning, the fourth source of Islamic law is used in circumstances not addressed by the Qur’an or the other two sources (Vago 2000).

⁸ An example is provided by Article 242 of the German Civil Code, which binds the obligor to perform the contract in good faith (Traub and Glaubien) (Powell, 2006).

(Zimmermann and Whittaker 2000).⁹ The general resentment towards the general idea of good faith present amongst most British lawyers “is inherently bound to England’s extensive affection to the liberal concept of contract and the free choice of contracting parties” (Powell, 2006).

Pacta Sunt Servanda

As a general rule, when individuals sign contracts or states sign treaties, such pacts are supposed to be binding and observed by the parties. There are crucial differences in the way that the three major legal systems treat the *pacta sunt servanda* rule. 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). In contrast, in civil law systems, such events are viewed as allowing for only a partial release from a contract until the contract can be fulfilled.¹⁰

In Islamic law, the principle of *pacta sunt servanda* has been granted a prime position. Generally speaking, 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”

⁹ Some common law states have gradually introduced the principle of good faith into their legal systems. For example, the United States Uniform Commercial Code in section 1-304 establishes that: “Every contract or duty within this Act imposes an obligation of good faith in its performance.” In addition, the US Restatement (Second) of Contracts (adopted by the American Law Institute in 1979 and published in final form in 1981) establishes that individuals have duties of good faith that cannot be waived. This act constitutes a great improvement over the first Restatement of Contracts (1932), in which a comparable good faith provision was not included (Summerst 1982). In Great Britain, the European Consumer Protection Directive of 1994 incorporates the doctrine of good faith directly into the British contract law. 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).

¹⁰ On the other hand, 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 *parol evidence* rule assumes that a written contract embodies all of the terms of the agreement, and thus that external evidence, such as verbal communication between the parties, could not alter the parties’ obligations.

(Rayner 1991, 87). The Koran states that “*Aufū bi al-‘Uqūd*” or: “Fulfill your obligations.” This obligation of the faithful to respect their contractual obligations is binding not only in relation to other Muslims, but also towards non-believers. 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*).

These institutional differences in domestic legal systems should influence the frequency and design of states’ international commitments.¹¹ Common law states may design very specific and detailed treaties due to the weakness of the *bona fides* and *pacta sunt servanda* principles, and the possibility that future events may render contracts null and void. Contracts in civil legal systems, backed firmly by principles of good faith will be more frequent although less precise. Contracts do not spell out all the legal principles that are to apply to a contract because the written codes already enumerate these general overarching principles. 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.

Domestic Legal Systems and Acceptance of ICJ Jurisdiction

Elsewhere (Powell and Mitchell, forthcoming), we develop a detailed theoretical argument linking the characteristics of domestic legal systems to states’ choices to accept or not accept the jurisdiction of the ICJ. We build upon McAdams’ (2005) expressive theory of adjudication, where adjudication enhances interstate cooperation by correlating strategies, constructing focal points, and signaling information. Our theory emphasizes the ability of states to communicate with each other through adjudicating bodies, focusing on acceptance of

¹¹ We are making an assumption that the principles, procedures, and norms established in domestic law carry over into international law and interstate negotiations.

compulsory jurisdiction as a form of cheap talk. We argue that civil law states can correlate their bargaining strategies and generate clear focal points for coordination through the ICJ more easily than common law or Islamic law states. This occurs because 1) civil law states are predominant in the international system, 2) the rules and procedures employed by the ICJ are very similar to those utilized in civil law systems, and 3) the adjudicator's role as a signaler of private information works most efficiently in civil law dyads. First, civil law states can correlate their equilibrium behavior through the ICJ more easily than common or Islamic law states due to the institutional similarity between the ICJ and civil law. The costs of coordination are reduced and it is easier for the parties and the adjudicator to come to a consensus about what constitutes cooperation and defection. Second, acceptance of the ICJ's jurisdiction serves as a focal point for interstate bargaining. Cheap talk works best when sent to similar states, and because civil law states have been dominant in the international arena (48-78% of states have civil law systems from 1920-2002 (Powell and Mitchell, forthcoming)), recognition of the Court's jurisdiction has very diffuse benefits. Furthermore, civil law states face less uncertainty working with the ICJ due to the similarity of the Court's rules and procedures to their own legal systems. Third, the adjudicator's role as a signaler of private information also works more efficiently in civil law dyads. Legal principles that civil law states apply to interstate bargaining, such as *bona fides*, help to reduce each side's private information, making it easier to strike an accord.

Our empirical analyses focus primarily on compulsory jurisdiction, and we find that civil law states are more likely to accept the Court's jurisdiction than common or Islamic law states. However, once optional declarations are made, Islamic and common law states have more durable commitments than civil law states, which reflects the strong norms for *pacta sunt servanda* in Islamic system and the precise design of commitments in common law systems. In

this paper, we extend the analyses in our previous research to help understand more clearly the *design* of commitments to the World Court.

Cooperation between States and the International Court of Justice

The process of cooperation between states and international institutions is somewhat different from cooperation between two or more states. Negotiations and bargaining are more limited in the first instance due to the fact that an institution already consists of a finite set of rules and procedures (Simmons and Martin, 2005) before negotiations with a particular state commence.¹² In other words, the basic legal core of the relationship between a state and an institution is not usually negotiable. The basic rules and procedures of the World Court 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.”¹³ 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.¹⁴

In the case of the PCIJ and the ICJ, however, states may limit the Court’s jurisdiction by placing reservations on their optional clause declarations. Reservations are “restrictions relating to the content of the commitments entered into a particular declaration” (Szafarz, 1991:46). They

¹² Mearsheimer provides a similar definition of international institutions as “sets of rules that stipulate the ways in which states should cooperate and compete with each other” (1994:95). Krasner understands international regimes to be “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actor’s expectations converge in a given area of international relations” (Krasner, 1983:2).

¹³ Separate opinion of Judge Lauterpacht, *Case Concerning Certain Norwegian Loans (France v. Norway)*, Judgment of July 6, 1957, 1957 ICJ Reports 9, 45-46.

¹⁴ When two or more states negotiate with one another, all the terms of their cooperation, both substantial and procedural, are subject to bargaining. Unilateral declarations based on Article 36(2) of the ICJ Statute are very different from treaties in that they are not subject to negotiations: “The unilateral character of the declarations and the unilateral procedure of their entry into force make it very important for the Court to clarify and establish the actual scope and contents of the consent of the declaring state, i.e. the scope of the jurisdiction it intended to confer upon the Court (Alexandrov, 1995:13)

should be distinguished from formal conditions included in these declarations that deal with termination, modification, and duration of a state's commitment to the Court. The Netherlands was the first state to make reservations in 1921. The declaration "related only to future disputes, and excluded disputes with respect to which the parties had agreed upon a different means of settlement" (Szafarz, 1993:47). This practice of limiting the World Court's adjudication powers eventually became a widely accepted practice by the international community.

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". 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 generally 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 ICJ altogether, it should also have the option to accept the jurisdiction in a limited way.

Thus reservations allow the commitments of states to vary substantially both across time and space. First, a state can alter its commitment to the Court by adding or removing reservations from its optional clause declaration (variation across time). France, for example, joined the ICJ in 1945, making an optional clause declaration. Two years later, however, it placed a reciprocity reservation on its declaration, which indicates that any reservation declared by country "A" can be employed by country "B" in a dispute with country "A". In 1959, France added a reservation *ratione materiae*, which excluded the ICJ jurisdiction in disputes arising out of any war or international hostilities and disputes arising out of a crisis 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.”¹⁵

Reservations can also vary across space; different states place a wide array of reservations on their declarations. The number of reservations placed by states on their optional clause declarations varies from 0 to 19 (Powell and Mitchell, forthcoming), with an average of five reservations. Some states choose not to place any type of reservation on their declarations, such as Georgia, Iceland, Gabon, Turkey and Laos, while other states place a moderate amount of restrictions, such as Malawi and Canada (10). Finally, there are states, such as India (19 reservations), that restrict the jurisdiction of the World Court in many situations.

There are three primary types of restrictions that states can place on their optional clause declarations which can significantly limit the World Court’s jurisdiction: *ratione personae*, *ratione materiae*, and *ratione temporis* (see Table 1 for a complete list of all reservation categories). In the famous *Mavrommatis* case,¹⁶ 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.¹⁷ For example, numerous states place reservations excluding the Court’s jurisdiction from World War I (declaration of Poland, 1931), or World War II (Australia, 1940,

¹⁵ France withdrew its acceptance of the optional clause in 1973 after being sued by New Zealand and Australia in the Nuclear tests cases (Fischer, 1982:262).

¹⁶ *Mavrommatis Palestine Concessions* (Greece v. United Kingdom), Judgment of August 30, 1924 (Jurisdiction), 1924 PCIJ Series A, No.2.

¹⁷ 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.”

United Kingdom, 1940, South Africa, 1940). The main justification for reservations *ratione temporis* is that they constitute a precautionary measure against unforeseen cases originating from the past (Alexandrov, 1995:15).

Reservations *ratione materiae*, which form the largest group of reservations, exclude from the jurisdiction of the Court certain types of disputes, and include a wide variety of issues such as territorial disputes, disputes over sea resources, armed conflicts, and individual and collective self-defense. If a state places a reservation *ratione materiae* on its declaration, then all the disputes dealing with the particular area subject to the reservation do not fall under the adjudication powers of the ICJ. An interesting example of a reservation *ratione materiae* is the reservation which excludes national security issues from the Court's jurisdiction.¹⁸ For example, the United Kingdom's optional clause declaration of 1957 contained a provision that excluded the ICJ 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."¹⁹ France introduced a similar reservation in its 1959 optional clause declaration, excluding "disputes arising out of a crisis, affecting the national security out of any measure or action regulating thereto."²⁰

Reservations *ratione personae* limit jurisdiction of the World Court 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 from the ICJ jurisdiction disputes with any other member of the British Commonwealth. Another quite popular reservation *ratione personae* excludes disputes with states with which the declaring state has no diplomatic relations.

¹⁸ Another famous reservation *ratione materiae* is the Connally Reservation, which the United States introduced in its 1946 optional clause declaration. It declared that the ICJ would have not jurisdiction over disputes that were essentially within the domestic jurisdiction of the US. Ironically, the reservation was intended to shield the United States from unnecessary litigation and yet became one of the most frequently invoked reservations by other states sued by the US in the ICJ, due to the reciprocal nature of optional clause declarations (e.g. any state can take advantage of its opponent's reservations) (Bederman, 2001: 244-245).

¹⁹ ICJ Yearbook 1957-1958:211-212; also quoted in Alexandrov, 1995:91.

²⁰ ICJ Yearbook 1958-1959, p.212. also quoted in Alexandrov, 1995:92.

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 World Court through compromissory clauses in bilateral or multilateral treaties. In this case, design differences stem primarily from the nature of the treaty in which the clause is embedded. Compromissory clause treaties may vary with respect to mandate (political, economic, security, etc.), membership scope (e.g. regional vs. global), and membership size (bilateral vs. multilateral). Our analyses focus on a comparison of bilateral and multilateral treaties, although in the future, we plan to expand our coding to include more design features of these treaties.

Domestic Legal Systems and the Design of Contractual Relations

Design of International Contracts: Attention to Detail

It is clear that the scope of the ICJ's jurisdiction varies tremendously across time and space. We believe that domestic legal system characteristics provide purchase for understanding the design of commitments to the World Court, including the number and types of reservations that states place on their optional clause declarations and the number of compromissory clause treaty memberships. As noted above, differences in legal principles based on good faith, the use of precedents, and contractual compliance influence the likelihood that states will make international commitments and the design of those commitments. We assume that states representing civil, common, and Islamic legal traditions will draft their international commitments in a way that closely resembles domestic contracts.

The weakness of the *bona fides* and *pacta sunt servanda* principles in common law systems should produce very detailed and specific contracts. Unforeseen events may render contracts null and void, thus common law lawyers will be careful to draft contracts that specify

precise contractual terms. In addition, because there are for the most part, no codes that would spell out all of the general principles applicable to a contract under common law, contracting parties must make sure that all of the principles and rules that are to apply to their agreement are explicitly addressed in their contract. Thus, in the domestic setting, common law contracts are much more detailed and lengthy when compared with contracts concluded under civil or Islamic law. As far as commitments to the ICJ, common law states will be more likely to place more reservations on their optional clause declarations. These restrictions are included in order to ensure that all of the states' rights and obligations are clearly specified. 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 reach a settlement in a multilateral negotiation if negotiators are very precise about contractual commitments.

Contracts in civil legal systems, backed firmly by the principle of good faith, will be much less precise. Contracts do not spell out all the legal principles that are to apply to a contract because the written codes already enumerate these general overarching principles. For example, in a civil law state, it would be unnecessary for contracting parties to include good faith as one of the contractual stipulations because contractual relations in civil law systems are automatically governed by this principle. Just as contracts according to the civil contractual law are rather simple and straightforward, so should be the international commitments of these states.²¹ We expect, therefore, that civil law states will place fewer reservations on their optional clause declarations. Civil law states should also be amenable to signing treaties with

²¹ Analyses of the number of specific obligations embedded in military alliance treaties supports this claim, with common and Islamic law states placing a larger number of restrictions on alliance commitments than civil law states (Powell, 2006).

compromissory clauses, viewing these choices as complements rather than substitutes (Powell and Mitchell, forthcoming). 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. In other words, multilateral treaties must take all the parties' competing interests into account, and the more civil law states at the bargaining table, the more likely it is that a relatively simple agreement will satisfy the parties' needs. Civil law states have dominated in the international system, comprising 48%-78% of all states in the world from 1920 to the present (Powell and Mitchell, forthcoming). This implies 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 Court's jurisdiction for resolving disputes.

We anticipate international commitments of Islamic law states to reflect the general design of contracts in this legal tradition. As stated above, the principle of *bona fides* holds a particularly strong position in this legal system due to the fact that religious sources, which are of utmost importance to every Muslim, admonish the faithful to keep their agreements. The faithful are expected to respect their contractual obligations not only in relation to other Muslims, but also towards non-believers. According to the Qu'ran, even the state of war by itself is not a sufficient justification for violation of a contract. 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, 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. 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.

Design of International Contracts: 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 international law, or provisions of the ICJ/PCIJ 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). Nevertheless, numerous states place on their optional clause declaration the unnecessary reservation of reciprocity.²² As Briggs (1958) notes, "since reciprocity is a jurisdictional requirement of Article 36(2) of the Statute, it applies even to Declarations made without reservation of reciprocity" (p.267).

There are other reservations that seem to be unnecessary, since they just repeat basic principles of international law or provisions of the ICJ/PCIJ Statute. For example, several states

²² In Table 1, we placed an asterisk (*) near each reservation considered by most international scholars as "unnecessary".

limit the jurisdiction of the ICJ in matters exclusively within the domestic jurisdiction as determined by international law. Such a reservation was first made by a common law country, the United Kingdom in 1929. As time went on, under the PCIJ similar reservations appeared in 21 other declarations, and under the ICJ in 26 declarations (Alexandrov, 1995:67). Similarly unnecessary is the reservation that excludes from the ICJ jurisdiction disputes in regard to which the parties agreed to have recourse to another method of peaceful settlement. 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. This statement expresses in essence the inherent right of states to alter their relationship with the Court. The principle that no state can without its consent be compelled to submit its grievances with other states to any type of peaceful settlement is well grounded in international law. States have the right to choose the extent of their commitment to the ICJ/PCIJ. It is, thus, unnecessary to include in a declaration a reservation that simply reiterates that basic right. In other words, even states that do not include such a reservation 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.

In a common legal system, there is usually no code that would exhaustively regulate all types of contractual relations. As a result of this, parties to a contract must clearly spell out all the conditions, rights and obligations in their contract. Because domestically drafted contracts in

the 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. Despite the fact that it is not required to include such reservations, common law states will feel more secure by including them in their commitments to the Court. Civil law states and Islamic law states should also refrain from restrictions that repeat basic principles of international law or rules expressed in the Statute of the World Court.

Design of International Contracts: Types of Reservations

Our theory also allows us to construct hypotheses regarding specific types of reservations. As far as reservations *ratione materiae*, *temporis*, and *personae*, we expect that all states, regardless of the type of their domestic legal system will be more likely to use reservations *ratione temporis*. The use of reservations *ratione materiae* and *personae* reflects the willingness of a state to accept the jurisdiction of the ICJ as far as its substantive scope. States that are more supportive of the ICJ are also less likely to limit the Court’s jurisdiction across space. For example, the scope of ICJ jurisdiction in the case of a state that places on its declaration a reservation which excludes all disputes relating to multilateral treaties (*ratione materiae*), is smaller than the scope of the ICJ jurisdiction in relation to another state that chooses not to place such a reservation *ceteris paribus*. States that accept the Court’s jurisdiction, but considerably limit it as far as different substantive areas of international law, types of disputes, or subjects are in general less willing to submit to the ICJ adjudication prerogatives.

We expect all states to be more likely to place reservations *ratione temporis* on their optional clause declaration regardless of the width of their substantive commitment to the Court (number of reservations *ratione materiae* and *personae*). Even states that are less willing to limit the jurisdiction of the Court across space should value 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, often unforeseen grievances. Thus, limiting the Court's jurisdiction by using *reservations ratione materiae* and *ratione personae* reflects to a much larger extent a state's unwillingness to grant the Court unlimited adjudication prerogatives. A reservation *ratione temporis* constitutes a 'legal necessity', which provides legal predictability.

Research Design

Our theoretical argument suggests that civil law states should be more accepting of the 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 years 1920-2002, which includes the eras of both the PCIJ (1920-1945) and the ICJ (1946-2002).

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 any optional clause declarations deposited with the United Nations' secretary general, and provide detailed information about the text of the declarations, from which information about reservations can be coded. About one third of states have made optional clause declarations in the past century, with over 80% placing one or more reservations on their declarations (Powell and Mitchell, forthcoming).

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 includes 159 bilateral treaties and 93 multilateral treaties. We created a monadic state year data set 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. We also created a dyad-year dataset that counts the number of shared dyadic memberships in compromissory clause treaties. This variable ranges from 0 to 71, with an average of 3.7.

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 theory 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, Gordon, and

Osakwe, 1990; Opolot, 1980; <http://www.droitcivil.uottawa.ca/world-legal-systems/eng-generale.html>). The appendix provides a list of countries by legal type as of 2002.

Our multivariate analyses include several control variables. First, we include a measure of state power because powerful states are less likely to recognize the ICJ's jurisdiction (Bilder, 1998; Scott and Carr, 1987). We also anticipate that powerful states will place more restrictions on their reservations if they recognize the Court. Given their advantage in bilateral bargaining, more powerful nations have incentives to limit the situations in which the ICJ has jurisdiction. We employ a commonly used measure of national capabilities developed by Singer, Bremer, and Stuckey (1972), which creates an index of a state's proportion of total system capabilities in six areas: iron/steel production, energy production, urban population, total population, military expenditures, and military personnel. We obtained values for this variable using the Expected Utility Generation and Data Management Program (EUGene) (Bennett and Stam 2000).

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). Thus 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 Court are longer. The measure for state age captures the length of time a country has been recognized as a state, starting in 1200 A.D. (The 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, forthcoming), 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 recognize the ICJ's jurisdiction, but willing 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 (Jagers and Gurr 1995), which combines information from four institutional characteristics into a single democracy score ranging from 0 (least democratic) to 10 (most democratic). This includes the competitiveness of political participation, the level of constraints on the chief executive, and the openness and competitiveness of chief executive recruitment.

Our dyadic analyses for compromissory clauses utilize relational measures for capabilities and regime type. We calculate the capability asymmetry between two states by calculating the ratio of state A's CINC score to the sum of A's and B's CINC scores. We also create a dummy variable for joint democracy, which equals one when both states score six or higher on the Polity IV democracy scale. Finally, we include a dummy variable for joint acceptance of ICJ compulsory jurisdiction. Our expectation is that states should share more memberships in compromissory clause treaties if they are both democratic and jointly accept compulsory jurisdiction. Capability asymmetries should produce more shared treaty memberships, especially for multilateral treaties where the variance of member states' power is large. We turn now to multivariate analyses to empirically evaluate our theoretical hypotheses.

Empirical Analyses

We begin with an empirical evaluation of reservations on optional clause declarations.

Theoretically, we expect civil law states to have the fewest number of reservations and common

law states to have the most reservations. As noted above, the full list of reservations employed by states is listed in Table 1. We report 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 the reservations in force. There are also some types of reservations that are fairly 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 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 recourse to which the parties agreed to 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 2 presents several logit analyses of each reservation category, where the dependent variable equals one if a state declares one or more reservations of that type in a given year and zero otherwise.²³ The excluded reference category for legal systems is civil law. The positive and significant coefficients for all other legal types across the reservation categories support 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 5. 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 highly 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 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

²³ A regression analysis for the number of all reservation types is presented in Appendix 2. This demonstrates that common law states place 2.3 more reservations on their declarations than mixed law systems, while Islamic states place 1.7 more reservations. Civil law states place the fewest restrictions, with 1.7 fewer reservations than mixed law systems.

before the Court. This attitude does not vary according to the width of substantial commitment to the Court (the number of reservations *ratione materiae and personae*). The multivariate analysis also confirms what we observed in the descriptive table, namely that common law states use *personae* reservations much more frequently than states with other 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 these international commitments that they are likely to keep in the future (Leeds, 1999, Gaubatz, 1996, Simmons, 2000). Because democratic states know that they will keep their promises (abide by the international norm *pacta sunt servanda*), they design their commitments in a very cautious way, making sure that all of their obligations and possible future circumstances are accounted for (Powell and Mitchell, forthcoming).²⁴ However, the most frequently employed reservations include general, *materiae*, and *temporis*. 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. The overall fit of these models is fairly good with pseudo-R² values ranging from .10 to .33.

²⁴ These results are further supported in (Powell, 2006), where democracies are also shown to be also more likely to place restrictions on their alliance commitments.

Table 3 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 treaties.²⁵ The excluded legal system category in this table is mixed law. Our theoretical argument finds support when examining the number of multilateral or all compromissory clause treaty memberships. Civil law states belong to a higher number of multilateral treaties than common, Islamic, or mixed law states. The expected counts based on these models are presented in Table 6. Civil law states belong to 11 multilateral treaties with compromissory clauses, compared to 9 for 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, 3.7 for Islamic law).

These results are consistent with our expectation that civil law states will utilize commitments to the ICJ as a form of cheap talk in interstate bargaining. 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. Because civil law contracts are not overly detailed, the cost for negotiations on the international arena is not as high for these states as it is 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 simply easier to sign a bilateral contract than a contract with multiple contracting

²⁵ For the dyad-year dataset, there are 4,911 years of shared membership in bilateral compromissory clause treaties versus 197,521 years of shared membership in multilateral compromissory clause treaties.

parties if negotiators are very careful about each particular obligation. The same is true for Islamic law states, which prefer bilateral treaties.

Islamic law states, whose systems integrate law and religion, are not very amenable to resolving disputes with the assistance of the World Court. 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 we found in previous research that Islamic law states are significantly less likely to recognize the compulsory jurisdiction of the Court, they are more open to compromissory clauses in restricted bilateral treaties. Interestingly, though, the dyadic results for shared compromissory clause treaty memberships in Table 6 seem to suggest that these bilateral treaties are not always formed with other Islamic law states. In fact, two Islamic law states are much less likely to share membership in bilateral or multilateral compromissory clause treaties than any other dyad (both civil law, both common law, both mixed law, divergent legal systems).

The dyadic results for bilateral treaties in Table 4 are puzzling because they imply that states with similar legal systems are less likely to jointly belong to bilateral treaties with compromissory clauses. The coefficients for each legal system pair are negative, and three of the four are statistically different from zero. On the other hand, the results for shared multilateral treaties support our theoretical expectations, with two civil law states having the highest number of shared memberships, common law states having the next highest, and Islamic law states having the fewest. Jointly democratic and capability asymmetric dyads are significantly more likely to share membership in bilateral or multilateral compromissory clause treaties. We also see the two forms of ICJ jurisdiction as complements rather than substitutes; if two states both recognize compulsory jurisdiction, they are significantly more likely to share membership in

bilateral and multilateral treaties. Older states also tend to belong to a larger number of dyads with shared compromissory clause treaty memberships.

Conclusion

In this paper, we argue that domestic legal systems have important effects on the way that states design their commitments to the World Court. Building on our earlier research (Powell and Mitchell, forthcoming), which links states' domestic legal institutions to interstate bargaining and the acceptance of ICJ jurisdiction (through both the optional clause declaration and the compromissory clauses), 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 our theoretical expectations that differences in the design of contracts in the domestic realm carry over onto the international arena. We find support for our theoretical expectations that civil law states will place few restrictions on their optional clause declarations. Islamic law and common law states, on the other hand, include a large number of reservations in their declarations, which mirrors the design of contracts within each of these legal traditions. Contracts in civil law states, backed strongly by the principle of good faith and other general principles included in codes, are much less precise than contracts signed under the common law. Because there are no codes that would list all general principles in common law systems, the parties to a contract must specifically list them in the contract. This contributes significantly to the specificity and attention to detail of international contracts concluded by these states. Also, Islamic law states design their contractual relationships with the World Court in a very careful way. Because the likelihood of survival of international commitments of these states is high, they place a large number of reservations in their optional clause declarations.

Our descriptive statistics and empirical results also confirm our expectations regarding specific types of reservations. All states, regardless of the type of domestic legal system, are more likely to place reservations *ratione temporis* on their declarations. Legal predictability seems to be important to all states. In addition, common law states tend to include in their declarations a large number of “unnecessary” reservations and a large number of reservations relating to specific disputes, which reflects the fundamental structure of common law contracts.

Domestic legal systems also seem to influence which treaties with compromissory clauses states choose to sign. Civil law states belong to a higher number of multilateral compromissory clause treaties than common, Islamic, or mixed law states. States representing the latter two legal traditions clearly prefer to negotiate their contractual obligations with only one partner. It is simply much easier to specify all the necessary contractual terms if one is negotiating in a bilateral context.

Despite numerous insights provided by this paper, quite a few questions remain unanswered. First, we show that Islamic law states have the highest number of bilateral treaty membership 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 ICJ. Also surprising is the fact that these bilateral treaties are not always formed with other Islamic law states. 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 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 to a much larger degree a state’s reputation.

Changing a compromissory clause especially 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. As noted above, the Koran admonishes the faithful to keep their commitments and fulfill their contractual obligations. Acceptance of the compulsory jurisdiction of the World Court constitutes a much more important contract than inserting a compromissory clause in a bilateral treaty, which simply signifies that for the purpose of this particular treaty, the parties agree to submit their disputes to the ICJ. Thus, 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 World Court, 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. Perhaps that is why Islamic law states prefer bilateral treaties to multilateral ones. These results constitute a fascinating venue for future research.

We would also like to further explore changes in the design of states’ commitments to the Court over time. Legal systems are, for the most part, 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. For example, the amount of enacted law in the United Kingdom has significantly increased mostly as a result of the integration of British law with the European legal culture (Markesinis 2000). Also, the number of codifications in the US

has been constantly increasing over time. These changing processes within common legal systems can potentially influence the way that these states design their international commitments. Since more and more general principles are included in statutes, or other codifications, perhaps the design of common law contracts will over time start to resemble civil law contracts, which are much more general. This process might suggest shifting dynamics in the design of states' commitments to the ICJ.

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TABLE 1: Reservations on PCIJ/ICJ Optional Clause Declarations (1920-2002)

Reservation Type	Percentage of State Years among States Accepting Compulsory Jurisdiction		
	Civil Law	Common Law	Islamic Law
	N=2068	N=645	N=241
<i>General Reservations</i>			
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%
<i>Ratione Materiae</i>			
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 <i>ratione materiae</i>	<1%	7%	19%

TABLE 1: Reservations for PCIJ/ICJ Optional Clause Declarations (1920-2002), Continued

Reservation Type	Percentage of State Years among States Accepting Compulsory Jurisdiction		
	Civil Law	Common Law	Islamic Law
<i>Ratione Temporis</i>			
Object of exclusion	34%	81%	72%
Exclusion date	29%	68%	72%
<i>Ratione Personae</i>			
Excluding British Commonwealth countries	2%	56%	0%
Requiring recognition, diplomatic relations	<1%	7%	0%
Excluding non-sovereign states or territories	0%	4%	0%
Only states party to the statute or members of the UN	3%	8%	0%
<i>Others</i>			
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%

TABLE 2: 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 3: 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 $\chi^2 = 2910.62$ (p<.0001) Pseudo-R ² = 0.096	N = 8359 $\chi^2 = 1485.38$ (p<.0001) Pseudo-R ² = 0.024	N = 8359 $\chi^2 = 2426.71$ (p<.0001) Pseudo-R ² = 0.025

** p<.01

TABLE 4: Negative Binomial Analyses of Shared Dyadic 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.)
Both Civil Law	-0.517 (0.032)**	1.081 (0.008)**	1.077 (0.008)**
Both Common Law	-0.079 (0.072)	0.985 (0.020)**	0.983 (0.020)**
Both Islamic Law	-10.979 (0.050)**	-1.314 (0.205)**	-1.316 (0.205)**
Both Mixed Law	-13.732 (0.085)**	0.391 (0.162)*	0.388 (0.162)*
Joint Democracy	1.690 (0.031)**	1.040 (0.009)**	1.044 (0.009)**
Capability Ratio	0.975 (0.050)**	1.393 (0.013)**	1.393 (0.013)**
State Age (A)	0.865 (0.014)**	0.148 (0.004)**	0.150 (0.003)**
State Age (B)	0.480 (0.011)**	0.396 (0.004)**	0.395 (0.004)**
Joint ICJ Acceptance	0.582 (0.033)**	0.402 (0.012)**	0.404 (0.012)**
Constant	-11.405 (0.080)**	-2.417 (0.019)**	-2.419 (0.019)**
α	8.021 (0.275)**	8.291 (0.029)**	8.055 (0.028)**
	N = 519,567 $\chi^2 = 176,127$ (p<.0001) Pseudo-R ² = 0.21	N = 519,567 $\chi^2 = 75,515$ (p<.0001) Pseudo-R ² = 0.04	N = 519,567 $\chi^2 = 76,388$ (p<.0001) Pseudo-R ² = 0.04

* p<.05, ** p<.01

TABLE 5: Substantive Effects, PCIJ/ICJ Optional Clause Reservations

Variable	General Reservations Prob. (Change)	<i>Materiae</i> Reservations Prob. (Change)	<i>Temporis</i> Reservations Prob. (Change)	<i>Personae</i> Reservations Prob. (Change)
Legal System				
Civil Law	1.00	.262	.404	.055
Common Law	1.00 (none)	.699 (+ .437)	.879 (+ .475)	.645 (+ .590)
Islamic Law	---	.726 (+ .464)	.901 (+ .497)	---
Mixed Law	1.00 (none)	.689 (+ .427)	.696 (+ .292)	.354 (+ .349)
Democracy				
0 (minimum)	1.00	.203	.268	.034
10 (maximum)	1.00 (none)	.317 (+ .114)	.524 (+ .256)	.079 (+ .045)
Capabilities				
0 (minimum)	.835	.154	.273	.059
0.36 (maximum)	1.00 (+ .165)	1.00 (+ .846)	1.00 (+ .727)	.002 (- .057)
State Age				
0 (minimum)	1.00	.608	.210	.062
7.31 (maximum)	1.00 (none)	.122 (- .486)	.552 (+ .342)	.050 (- .012)

TABLE 6: 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 System ⁶			
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)

Note: Values are calculated using Clarify, Version 2.0 (King, Tomz, and Wittenberg, 2000).

APPENDIX 1
Domestic Legal System Types, 2002

Common Law Countries

United States of America, Canada, Bahamas, Jamaica, Trinidad and Tobago, Barbados, Dominica, Grenada, St. Lucia, St. Vincent and Grenadines, Antigua & Barbuda, St. Kitts-Nevis, Belize, Guyana, United Kingdom, Ireland, Cyprus, Liberia, Sierra Leone, Ghana, Uganda, Tanzania, Zambia, Zimbabwe, Malawi, Lesotho, India, Bhutan, Bangladesh, Myanmar, Nepal, Malaysia, Singapore, Philippines, Australia, Papua New Guinea, New Zealand, Solomon Islands, Kiribati, Tuvalu, Fiji, Tonga, Nauru, Marshall Islands, Palau, Federated States of Micronesia, Samoa

Civil Law Countries

Cuba, Haiti, Dominican Republic, Mexico, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, Surinam, Ecuador, Peru, Brazil, Bolivia, Paraguay, Chile, Argentina, Uruguay, Netherlands, Belgium, Luxembourg, France, Monaco, Liechtenstein, Switzerland, Spain, Andorra, Portugal, Germany, Poland, Austria, Hungary, Czech Republic, Slovakia, Italy, San Marino, Albania, Macedonia, Croatia, Yugoslavia, Bosnia-Herzegovina, Slovenia, Greece, Bulgaria, Moldova, Romania, Russia, Estonia, Latvia, Lithuania, Ukraine, Belarus, Armenia, Georgia, Azerbaijan, Finland, Sweden, Norway, Denmark, Iceland, Cape Verde, Sao Tome and Principe, Guinea-Bissau, Equatorial Guinea, Mali, Benin, Ivory Coast, Guinea, Burkina Faso, Togo, Gabon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Burundi, Djibouti, Ethiopia, Angola, Mozambique, Swaziland, Madagascar, Mauritius, Turkey, Turkmenistan, Tajikistan, Kyrgyz Republic, Uzbekistan, Kazakhstan, Mongolia, Taiwan, North Korea, South Korea, Cambodia, Laos, Vietnam, Indonesia, East Timor

Islamic Law Countries

Gambia, Nigeria, Namibia, Comoros, Morocco, Algeria, Tunisia, Libya, Sudan, Iran, Iraq, Egypt, Syria, Lebanon, Jordan, Saudi Arabia, Yemen, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Afghanistan, Pakistan, Maldives

Mixed Law Countries

Malta, Senegal, Niger, Cameroon, Kenya, Rwanda, Somalia, Eritrea, South Africa, Botswana, Seychelles, Israel, China, Japan, Myanmar, Sri Lanka, Thailand, Brunei, Vanuatu

APPENDIX 2: Regression Analysis of the Number of Optional Clause Reservations

<u>Variable</u>	<u>Coefficient (S.E.)</u>
Common Law	2.30 (0.21)*
Civil Law	-1.66 (0.19)*
Islamic Law	1.65 (0.27)*
Democracy	0.12 (0.01)*
Capabilities	4.45 (1.85)*
State Age	0.00 (0.00)*
Year	0.03 (0.00)*
Constant	-45.89 (4.33)*

* p<.05

N=3084 (States Accepting Compulsory Jurisdiction)

F(7,3076)=242.84 (p<0.0000)

R² =0.3559

Note: this table reproduces an analysis presented in (Powell and Mitchell, forthcoming).