

**The International Court of Justice and the World's Three Legal Systems**

Emilia Justyna Powell  
Assistant Professor  
Department of Political Science  
Georgia Southern University  
2206 Carroll Building  
Statesboro, GA 30460  
[emiliapowell@georgiasouthern.edu](mailto:emiliapowell@georgiasouthern.edu)

Sara McLaughlin Mitchell  
Associate Professor  
Department of Political Science  
University of Iowa  
341 Schaeffer Hall  
Iowa City, IA 52242  
[sara-mitchell@uiowa.edu](mailto:sara-mitchell@uiowa.edu)

ABSTRACT

This paper seeks to understand why some countries accept the jurisdiction of the International Court of Justice (ICJ) more readily than others. The theory focuses on institutional differences between the world's major legal systems: civil law, common law, and Islamic law. Important characteristics of these legal systems (*stare decisis*, *bona fides*, *pacta sunt servanda*) are integrated in an expressive theory of adjudication, which focuses on how adjudication enhances interstate cooperation by correlating strategies, constructing focal points, and signaling information. The theory considers the ability of states to communicate with each other, using acceptance of ICJ jurisdiction as a form of cheap talk. Empirical analyses show 1) civil law states are more likely to accept the jurisdiction of the ICJ than common law or Islamic law states, 2) common law states place the greatest number of restrictions on their ICJ commitments, and 3) Islamic law states have the most durable commitments.

For nearly ninety years, a World Court (Permanent Court of International Justice (PCIJ), 1920-1945; International Court of Justice (ICJ), 1946-present) has been accessible to all countries for the peaceful settlement of disputes.<sup>1</sup> However, initial hopes that states would view the Court as a legitimate and effective conflict manager have not been fully realized. Only one third (63 of 192) of countries in the world accept the compulsory jurisdiction of the Court,<sup>2</sup> and an overwhelming majority of these states (84%) place reservations on their optional clause declarations, which can limit the Court's adjudication prerogatives. On the other hand, it is much more common for states to recognize the ICJ's jurisdiction through compromissory clauses in bilateral or multilateral treaties. Close to 80% of countries in the world are signatories to one or more treaties that recognize the ICJ's jurisdiction should a dispute arise in the context of the treaty.<sup>3</sup>

Pessimistic views of the ICJ emphasize its under-utilization, flawed internal organization, declining influence over time, and external factors, such as power disparities, that undermine its authority (Elkind 1984; Eyffinger 1996; Goldsmith and Posner 2005; Janis 1987; McWhinney 1991; Odutan 1999; Posner 2004; Scott and Carr 1987; Scott and Csajko 1988). More optimistic views emphasize the ICJ's role in pushing parties towards conflict resolution even if the disputants never go to court (Bilder 1998; McAdams 2005). The ability for both sides to sue in court could produce more efficient bargaining out of court, allowing the parties to reach agreements that they will comply with more often (Gamble and Fischer 1976).

This research project engages the debate between optimists and pessimists by posing a number of research questions. Why do some states accept the jurisdiction of the ICJ, while others do not? If two states accept the jurisdiction of the ICJ, how does this influence their bargaining behavior? Conversely, how do expectations about international bargaining influence unilateral

state decisions to accept or not accept the ICJ's jurisdiction? To address these questions, we focus on institutional differences between the world's major legal systems: civil law, common law, and Islamic law.<sup>4</sup> We link characteristics of these legal systems to an expressive theory of adjudication, which focuses on how adjudication enhances interstate cooperation by correlating strategies, constructing focal points, and signaling information (McAdams 2005).

In addition to the important role played by the adjudicator (ICJ), we also consider the ability of states to communicate with each other, focusing on acceptance of 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, and hypothesize that civil law states are most likely to accept compulsory jurisdiction. Furthermore, among states recognizing the ICJ's compulsory jurisdiction, we expect common law states to place the greatest number of restrictions on their ICJ commitments and Islamic law states to have the most durable commitments. Thus understanding the institutional features of domestic legal systems also gives us purchase for understanding the design of states' international commitments.

Our paper begins with a discussion of the major institutional characteristics of civil, common, and Islamic legal systems, focusing on the use of precedents, good faith in contracting, and the conditions under which contracts must be fulfilled. This is followed by a comparison of the legal procedures utilized in domestic legal systems to those employed by the ICJ. We then develop our theoretical argument relating the institutional features of domestic legal systems to states' unilateral choices to accept or not accept the jurisdiction of the ICJ, building upon the expressive theory of adjudication. Finally, we present a series of empirical analyses of states' acceptance of compulsory jurisdiction, as well as the design of commitments to the Court. We

find that civil law states are more likely to accept compulsory jurisdiction than common law or Islamic law states, and that they place significantly fewer reservations on their optional clause declarations. However, Islamic and common law states have more durable commitments in comparison to civil law states, which stem from strong norms of contractual obligation and more precise obligations. Our theory highlights the importance of legal systems in world politics and sets the stage for exploring further the relationship between domestic legal institutions, commitments to international legal institutions, and interstate bargaining processes.

### **Domestic Legal Systems: Civil, Common, and Islamic Law<sup>5</sup>**

Differences among the world's three legal systems reflect the great variance in states' historical and cultural experiences. The origins of the civil legal system can be traced to the Roman Empire. Roman law was established by Roman jurists and spread throughout Europe via the Empire's influence (Glenn 2000, 119). It fell out of fashion after the fall of the Roman Empire, but *ius civile* was rejuvenated and revised by legal scholars in European universities in the 11<sup>th</sup> to 13<sup>th</sup> centuries. Roman law evolved into a series of civil codes, including the Civil Code of Napoleon, the German Civil Code, and the Italian Civil Code, which influenced not only legal systems within Europe, but the legal structures of colonies as well (David and Brierley 1985).

On the territories of Great Britain, a distinct system of law known as common law developed. The birth of this legal tradition is interpreted by some legal scholars as simply the result of a historical accident, the military conquest of England by the Normans (Glenn 2000; Whincup 1992). The Norman invaders established the fundamental components of the common law system, most notably the absence of the written letter of law, and the system was upheld by English kings resistant to the continental influences of Roman law. The *stare decisis* doctrine

became well established in common law, where judges were bound primarily by precedents established by previous judgments. Common law practices spread throughout the British Empire, influencing many states' legal systems on multiple continents.

The world's final major legal tradition, Islamic law, arose with the birth of Islam in the Arabian Peninsula and Mesopotamia in the seventh century A.D. (Mourisi Badr 1978, 187). As the Arab empire expanded, Islamic religious and legal traditions became predominant in many Central Asian and Middle Eastern states. The Islamic legal tradition is based primarily on religious principles of human conduct, and law is an integral part of the Islamic religion (Al-Azmeh 1988; Khadduri 1956; Lippman, McConville, and Yerushalmi 1988).

In Figure 1, we plot the percentage of states for each legal system type (civil, common, Islamic, mixed) from 1920-2002. The civil law system is the modal category each year, although Islamic and common law states have become more widespread in recent years. Next, we compare the procedures and legal principles prevalent in these legal systems, focusing 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*). Table 1 provides an overview of these institutional differences.

### ***Stare Decisis***

The use of precedents when making legal judgments is prevalent in common law systems, but virtually absent in civil law or Islamic law systems (e.g. Opolot 1980). The doctrine of precedent, or *stare decisis*, states that, when trying a case, a judge is obliged to examine how previous judges have dealt with similar cases (Darbyshire 2001). In the process of looking back, a judge discovers principles of law relevant to a case under consideration, and renders judicial decisions consistent with existing principles in the law. Stated in a general form, *stare decisis*

signifies that when a point of law has been previously settled by a judicial decision, it forms a precedent, which is not to be departed from afterward (Opolot 1980).<sup>6</sup> The *stare decisis* doctrine does not exist in civil law systems based on Roman *ius civile*, where law making is a function of the legislature. A judge's task is considered to be passive, to implement legal rules contained mainly in codes, laws, and statutes.<sup>7</sup> The *stare decisis* doctrine is also absent in Islamic law systems, where law is derived from four principle sources: the Qur'an, the Sunna, judicial consensus, and analogical reasoning (Vago 2000).<sup>8</sup>

### ***Bona Fides***

Another major distinction between civil, common, and Islamic law systems stems from the principle, *bona fides*, or good faith in contracting. In general, the concept of good faith requires parties to a contract to abstain from dishonesty and to keep their promises. The *bona fides* principle is comprised of three essential elements: honesty, fairness, and reason (Zimmermann and Whittaker 2000). Originating in Roman law, the *bona fides* principle is an essential feature of civil law systems. A doctrine of good faith establishes principles for trustworthy and honorable conduct, permitting judges to denounce breaches of good faith, while taking into consideration the particularities of each case (O'Connor 1991, 117). Civil law systems treat *bona fides* as an overarching legal principle, including it in general and specific legislation and civil codes. Good faith also constitutes one of the most important principles in the Islamic legal tradition. Both the Qur'an and Sunna permit trade if it is carried out according to the principles of good faith and honesty (Rayner 1991).

On the other hand, common law systems do not, on average, 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 simply unworkable in the

British law system. Some scholars even state that good faith “could well work practical mischief if ruthlessly implanted into our system of law” (Bridge 1984, 426, quoted in Zimmermann and Whittaker 2000, 15). While some efforts have been made to introduce good faith into the common law tradition and put limits on the absoluteness of contractual rights and obligations (e.g. the doctrine of economic duress), the position of *bona fides* in this legal family is much weaker than under civil and Islamic law (Zimmermann and Whittaker 2000).<sup>9</sup>

### ***Pacta Sunt Servanda***

When individuals sign contracts or states sign treaties, such pacts made in good faith are supposed to be binding. Several scholars have examined whether common law nations exhibit higher levels of respect for the rule of law and commitment to contracts compared to their civil law counterparts (Joireman 2001, 2004; Nassar 1995), while others have analyzed whether contracts are most stable in Islamic legal systems (Rayner 1991; Nemeth 2005). Common law systems recognize that events occurring after the signing of a contract, or a *force majeure*, might make the contract impossible or impracticable to fulfill, which can release all parties from their contractual obligations (Rayner 1991; Whincup 1992). Civil law systems view such events as creating only a partial release from a contract until the situation conducive to the fulfillment of contract is restored. On the other hand, civil law systems do not recognize the *parol evidence* rule<sup>10</sup>, which some have argued strengthens the sanctity of contracts in common law states relative to civil law states (Nassar 1995).

In the Islamic legal tradition, the principle of *pacta sunt servanda* is paramount, “because it is God Who is the witness of all contracts” (Rayner 1991, 100). Contractual obligations governed by Muslim law require all parties to uphold their commitments: “a national Islamic state has no vested right to cancel or alter a contract by unilateral action, whether such action

takes the form of an administrative, judicial or even legislative act” (Rayner 1991, 87). This obligation of the faithful to respect their contractual obligations is binding not only in relation to other Muslims, but also towards non-believers. According to the Qur’an, even the state of war by itself does not constitute a sufficient justification for contractual violation (Rayner 1991, 87). However, a contract may, under Islamic law, be invalidated temporarily by subsequent clauses such as impossibility of performance (*rebus sic stantibus*) and *force majeure*.

### **The Design of Contracts**

We contend that institutional characteristics of domestic legal systems will influence both states’ willingness to make commitments in international politics and the design of such commitments. The weakness of the *bona fides* and *pacta sunt servanda* principles in common law systems should produce very specific and detailed 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. 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. 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.

Islamic law, being rooted firmly in religious principles, limits parties’ contracting freedom, which should result in a smaller number of contracts. However, strong norms of *pacta*

*sunt servanda* produce expectations that contracts negotiated under Islamic law will be upheld, even as circumstances change. Islamic states should also be very careful in signing contracts on the international arena. Because contracts are sacred, Islamic states should make sure that all of their contractual obligations are clearly spelled out. To sum up, there are significant institutional differences between civil, common, and Islamic law systems that influence both the frequency and design of interstate contracts. Next, we describe similarities and differences between the rules and procedures of the ICJ and those employed in civil, common, and Islamic law systems.

### **Practices and Procedures of the International Court of Justice**

The creation of the Permanent Court of International Justice was surrounded by significant disagreement about the legal principles and rules to be utilized by the newly established court. “In addition to differences governing the laws of naval warfare, there was also believed to be a difference between the ‘Anglo-Saxon’ (i.e., Anglo-American) approach to international law and the ‘continental’ (i.e., European) approach to international law” (Lloyd 1985, 35). The crux of the problem was a potential clash between opposing legal orders with judges of divergent legal traditions serving on the Court. Such a concern was expressed by numerous English judges and politicians involved in the formation of the international court: “It was inevitable that the majority of judges on the Court would be ‘continental’ lawyers or would follow that school...By virtue of sitting at the Hague they would be exposed to the pernicious influence of extreme German doctrines” (Lloyd 1985, 35). The winning influence of the continental approach to international law produced many similarities between the Romano-Germanic legal tradition embodied in civil law systems, and the rules and procedures adopted by the PCIJ (and later ICJ).

For example, the doctrine of *stare decisis* would not be applied in international law. On the contrary, the ICJ in its decision-making is bound by Article 59, which states: “The decision of the Court has no binding force except as between the parties and in respect of that particular case”. As most legal scholars agree, the object of this article is simply to prevent legal principles accepted by the Court in a particular case from being binding on other states or in other disputes (Brownlie 2003). The ICJ is, therefore, forbidden from formally introducing jurisprudential continuation by invoking its previous judgments.<sup>11</sup> Nevertheless, judges often invoke previous decisions of the Court, in order to support their decision in a particular case. Invoked previous judgments do not, however, constitute a binding precedent, but are merely treated as “a statement of what the Court regarded as the correct legal position” (Shahabuddeen 1996, 63).<sup>12</sup> The lack of formal judicial precedent in the activity of the ICJ makes it very similar to civil legal systems where this doctrine is forbidden for the most part (Rosenne 1962).

As far as the remaining two legal principles (*bona fides, pacta sunt servanda*), international law mostly closely resembles the *ius civile* tradition. *Bona fides* constitutes one of the general principles of law and is considered to be one of the formal sources of international law (O’Connor 1991). The ICJ has recognized the doctrine of good faith in several judgments, including the *Norwegian Fisheries* case (1951), the *North Sea Continental Shelf* cases (1969), the *Nuclear Test* cases (1973), and the *Arbitral Award made by the King of Spain on 23 December 1906* (1960).<sup>13</sup> Additionally, the principle of good faith is articulated in the Court’s basic documents, including Article 38 of the ICJ Statute as well as Article 2(2) of the United Nations Charter. The principle of good faith is sometimes viewed as an overarching principle, from which the *pacta sunt servanda* derives, and not surprisingly, the ICJ also treats contractual compliance as an important part of international and customary law (O’Connor 1991).

Thus far we have described major institutional differences between civil, common, and Islamic law domestic systems and argued that the practices of the ICJ are very similar to those employed in civil law systems. What incentives do states have for accepting the compulsory jurisdiction of the ICJ and how is this influenced by their domestic legal institutions? In the next section, we build upon an existing theory of adjudication and consider how the parties can utilize optional clause declarations as information about their willingness to resolve disputes peacefully.

### **Interstate Bargaining and the International Court of Justice**

We assume that interstate bargaining experiences and future bargaining expectations influence states' choices to accept or not accept the jurisdiction of the ICJ. Countries are aware of the multiple contentious issues that may arise in world politics, including disagreements over land borders, maritime zones, and trade. State leaders have incentives to send strong signals to other states about their resolve and strength, yet they also may wish to signal a willingness to bargain peacefully and avoid military contests because they realize that conflict is costly (Fearon 1995). However, signals about peaceful conflict management are hard to convey, because they are often perceived as *cheap talk* (Crawford and Sobel 1982; Farrell 1987; Farrell and Gibbons 1989; Farrell and Rabin 1996; Kim 1996; Matthews 1989).<sup>14</sup> It is interesting to consider what role the ICJ plays in this interstate bargaining process.<sup>15</sup> Unbiased adjudicators may be effective at helping parties strike cooperative agreements by correlating strategies, creating focal points, and signaling information (McAdams 2005, 1049; Garrett and Weingast 1993; Ginsberg and McAdams 2004). Furthermore, states may be able to transmit information about themselves through the adjudicator by formally recognizing its adjudication powers. Thus interstate

bargaining may be influenced both by the presence and behavior of an adjudicator and by the parties' ability to send information to each other through the adjudicator.

Beginning with the adjudicator's own behavior, he/she may convince parties to coordinate their behavior by focusing on some random event, or to correlate their equilibrium behavior. For example, a coin flip could be used to select between two equilibrium outcomes, but this solution is problematic. First, if a randomized process for dispute resolution could be agreed upon by the disputants, then this would preclude the need for a third party mediator. Second, it would be tempting for the disputants to renege on any agreement reached through a randomized decision-making mechanism (McAdams 2005, 1057). To overcome this problem, the adjudicator "uses cheap talk to construct a 'focal point' in a coordination game" (McAdams 2005, 1059), by focusing on particular equilibrium outcomes and conveying this information to the disputants. Thus adjudicating institutions like the ICJ and European Court of Justice help to "create a shared belief system about cooperation and defection in the context of differential and conflicting sets of individual beliefs that inhibit the decentralized emergence of cooperation" (Garrett and Weingast 1993, 184). The ECJ, for example, has been successful at creating a focal point of mutual recognition, which has created a shared framework about how the common market works (Garrett and Weingast 1993). Adjudicators may also promote cooperation by revealing private information to disputants, such as the players' types, which works best if the adjudicator is unbiased and has strong reputational incentives for being truthful (McAdams 2005). All three mechanisms underlie the expressive power of adjudication and help to explain the emergence of a single dominant adjudicator (PCIJ/ICJ), as well as the parties' willingness to comply with the Court's judgments.

McAdams' (2005) expressive theory focuses on the adjudicator's influence as a third party actor<sup>16</sup>, but does not consider the possibility that some states may have stronger incentives than others to resolve interstate disputes with an adjudicator's assistance. First, the theory assumes that the adjudicator is unbiased. And yet as we argued above, the procedures and rules of the ICJ are extremely similar to those used in domestic civil law systems, which creates a bias in favor of civil law states.<sup>17</sup> This institutional similarity between the ICJ and civil law systems encourages civil law states to correlate their equilibrium behaviors naturally because the costs of coordination are reduced and because it is easier for the parties and the adjudicator to "agree on what each will regard as cooperative and defective behavior" (McAdams 2005, 1081). Civil law states accept similar legal principles domestically, which makes it easier for them to correlate their behaviors, and the adjudicator (ICJ) and civil law disputants will converge naturally on the same outcomes. Civil law states are also more likely to view ICJ judgments with legitimacy due to their recognition of the principles the Court applies in reaching its decisions, which produces high compliance rates with ICJ rulings.

Second, McAdams' theory considers the role of cheap talk for creating focal points, but does not examine how the similarities of the disputants' preferences influence the effectiveness of cheap talk for promoting coordination.<sup>18</sup> Analyses of domestic courts and their indirect role in resolving disputes provide insight into the relationship between cheap talk and bargaining. In the United States, many disputes are settled absent of a formal court decision (Bilder 1998). This is most likely to occur when the dispute lies between parties whom "have, and expect to continue, long-term relationships with each other [for] such relations might be disrupted by resort to the courts" (Bilder, 1998: 235). Most disputes never reach the court, and most of those that do are settled prior to a final decision being made by the court.<sup>19</sup>

Bilder's argument that out-of-court effects are strongest for parties with similar interests and long-term relationships meshes well with the equilibrium findings in cheap talk bargaining models. Crawford and Sobel's (1982) path-breaking model demonstrates that cheap talk promotes cooperation more readily in bargaining settings if the parties have common interests. Theoretical extensions of Crawford and Sobel's (1982) model confirm Bilder's beliefs that the shadow of the future matters as well. Kim (1996), for example, shows that reputation effects in infinitely repeated interactions can enhance the credibility of cheap talk and produce more efficient agreements. Long term interactions mitigate incentives to lie about one's type because bargaining parties seek to avoid future losses from damaged reputation (Sartori, 2005).

In the process of bargaining, states can engage in cheap talk about their willingness to work with the designated adjudicator (ICJ). We can thus extend McAdams' (2005) expressive theory by treating optional clause declarations as a form of cheap talk. States would like to convince other states that they prefer to settle interstate disputes peacefully, and recognition of the ICJ's jurisdiction sends information about a state's willingness to view the adjudicator as a legitimate third party conflict manager. The similarities between civil law states and the practices of the ICJ produce great benefits for civil law states' use of jurisdictional cheap talk. Civil law systems are the most frequent domestic legal systems in the world. From 1920-2002, civil law states constituted 48-78% of all states in the world (Figure 1).<sup>20</sup> The predominance of civil law states creates high probabilities that any two states bargaining in international politics will both have civil law systems. If we drew two states randomly from the international system in a given year, the probability of selecting a pair of civil law states would at a minimum be 0.23 (for 48%) and at a maximum be 0.61 (for 78%). Any dyadic interaction for a civil law state has the highest chance of being with another civil law state. Because civil law states dominate in the

international arena, and because cheap talk works best when sent to similar states, civil law countries stand to benefit most from acceptance of the ICJ's jurisdiction. There are more states like themselves in the international system, so recognition of the Court's jurisdiction has very diffuse benefits. In addition to the ICJ creating focal points more easily with civil law states that share its basic principles, civil law states are better equipped than common or Islamic law states to use optional clause declarations as cheap talk. The parties' own communication is just as important as the adjudicator's communication, although talk is "easier" for civil law states.

Third, the adjudicator's role as a signaler of private information also works more efficiently in civil law dyads. The similar principles that civil law states apply to interstate bargaining, such as *bona fides*, help to reduce each side's private information. Legal rules that govern contracts and their enforcement are clear; hence uncertainties surrounding future compliance are reduced, making it easier to strike an accord. These assertions about legal institutional similarity accord with previous research on regime, economic, or cultural similarity: the likelihood of cooperation increases as similarity increases. Yet the ICJ as an adjudicator plays an important role in interstate bargaining between civil law states. The ICJ is more likely to be perceived by civil law states as an unbiased and fair adjudicator, increasing the likelihood that the disputants will believe the signals sent by the institution. The high probability for civil law states to interact with other civil law states opens up more opportunities for the adjudicator to signal private information effectively. In short, the expressive power of adjudication in the form of correlated strategies, focal points, and information signaling are enhanced when the disputing parties are civil law states, which leads to our first hypothesis.<sup>21</sup>

*H1 (Acceptance): States with civil law systems are more likely to accept the compulsory jurisdiction of the International Court of Justice than states with common law or Islamic law systems.*

In addition to providing leverage for understanding why certain states are more likely to recognize the Court's jurisdiction than others, domestic legal systems and their prominent characteristics can also give us insight into the design and success of international legal commitments. Freedom of contracting and lack of religious principles will increase international commitments made by common and civil law states relative to Islamic law states. These states are simply free to sign more contracts. On the other hand, the lack of good faith and compliance principles in common law systems suggests that common law states will be much more cautious and specific about their international obligations. Common law contracts are elaborate and very detailed, and parties feel obliged to include all of the principles that are to govern their contractual relations. Thus we anticipate that common law states will be hesitant to accept the ICJ's compulsory jurisdiction, but if they do accept the optional clause, they will place a large number of reservations on their commitments. These restrictions should enhance the durability of common law states' commitments to the Court, because they will limit the Court's jurisdiction, especially over highly salient matters.<sup>22</sup>

The prime position of the *bona fides* principle in civil law systems should produce optional clause declarations with a small number of reservations. Civil law states are aware of the fact that the fulfillment of their contractual obligation to the ICJ will be governed by the principle of good faith, which should substantially decrease the number of reservations on their declarations. Contracts in civil law are not overly detailed due to the fact that most of the overarching legal principles that govern contractual relationships are clearly spelled out in codes. The same contractual design should carry over from the domestic to the international realm. Moderate compliance principles in civil law states should also produce long-standing commitments to the Court, although such commitments may be shorter than those for Islamic

law states. It is simple much easier to break an international commitment that is not as clearly specified. Islamic law states, while very reluctant to make any optional clause declarations, will remain firmly committed to the ICJ once they recognize its jurisdiction due to the preeminence of the *pacta sunt servanda* norm in Islamic law. Islamic states will design their commitments to the ICJ carefully, making them more likely to stay steadfastly committed to the Court. It is much easier to keep a commitment that has been carefully and meticulously crafted.

*H2 (Durability): Islamic law states will have more durable commitments to the ICJ than civil or common law states.*

*H3 (Design): Among states recognizing the ICJ's compulsory jurisdiction, common law states will place the greatest number of reservations on their ICJ commitments.*

## **Research Design**

The temporal domain of this study is 1920-2002, which includes the eras of both the PCIJ (1920-1945) and the ICJ (1946-2002). We believe that these two judicial organs can be treated as an equivalent and functionally unchanged highest court of international law, or as a “World Court.” Most legal scholars agree that the ICJ was created in the aftermath of WWII as a *successor* of the PCIJ (Allain 2000; Janis 2003; Jennings 1992; Gamble and Fischer 1976; Shaw 2003). The statutes of both courts, the scope of their jurisdiction, organization, procedures, and their purposes are virtually identical. Both courts rely on equivalent sources of international law, both are to be comprised of fifteen members that shall be elected for nine years, and both are to provide states with an alternative to a forceful resolution of disputes. Declarations granting jurisdiction to the PCIJ in the optional clause or treaties/conventions continue to be in force with respect to the ICJ (Shaw 2003, 980).<sup>23</sup> Moreover, no distinction is made between cases decided by the PCIJ and those by the ICJ (Shaw, 2003, 960); many PCIJ judgments have been highly influential for the development of international adjudication. Given the strong similarities

between the Courts and the continuity that exists across them, we think it is reasonable to combine the PCIJ and ICJ time periods into a single sample.<sup>24</sup>

The basic unit of analysis in our empirical model is the state-year. A state can accept compulsory jurisdiction without any reservation; after some time, however, the same state may add a restrictive reservation to its declaration, or else withdraw its declaration. Using state-year as our unit of analysis allows us to capture the behavior of states over time. One issue with employing a state-year design is the potential to equate transitions to compulsory jurisdiction acceptance with continued acceptance year to year. In other words, if we simply coded in each year whether a state accepts compulsory jurisdiction or not, we would be treating the emergence and survival of commitments as equivalent. Such an approach would also assume implicitly that the probability of transition is equivalent to the probability of survival. We employ the Markov transition logit model, because this allows us to distinguish between states that transition from not accepting to accepting compulsory jurisdiction from those that continue to recognize the jurisdiction of the ICJ year to year. The model can be written as:<sup>25</sup>

$$\begin{aligned} P(y_{i,t} = 1 \mid y_{i,t-1} = 0) &= \text{Logit}(x_{i,t}\beta) \\ P(y_{i,t} = 1 \mid y_{i,t-1} = 1) &= \text{Logit}(x_{i,t}\alpha) \end{aligned}$$

Our theoretical hypotheses are expressed as relationships where the independent variable (e.g. civil legal system) increases or decreases the likelihood that a state will accept the compulsory jurisdiction of the ICJ. The transition model, when the lagged dependent variable equals zero, is best suited to testing Hypothesis 1 because this demonstrates an active decision by a state to deposit an optional clause declaration with the League of Nations or United Nations. However, we also examine the influence of our independent variables on the survival of ICJ commitments, in conjunction with analyses on optional clause reservations, to evaluate our second and third hypotheses about the durability and design of such commitments.

### **Accepting Compulsory Jurisdiction**

The primary dependent variable in this study is acceptance of compulsory jurisdiction under the PCIJ and/or ICJ. We code the dependent variable into two categories: (1) a state accepts the compulsory jurisdiction with or without reservations or (0) a state does not recognize the ICJ's jurisdiction.<sup>26</sup> The data are collected from the annual volumes of the Yearbook of the International Court of Justice (<http://www.icj-cij.org>), noting any declarations by states with respect to the optional clause and any reservations placed on these declarations. From 1920 to 2002, states accepted compulsory jurisdiction in 34.4% of state-years, with a majority placing some reservations on their declarations (27.5% of state-years). To evaluate our third hypothesis relating to the design of ICJ commitments, we count the total number of reservations states place on their optional clause declarations in each year. These analyses select out only those countries that have recognized compulsory jurisdiction. To code reservations, we draw upon a typology created by Alexandrov (1995), 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.<sup>27</sup> The total number of reservations ranges from 0 to 19, with the average state placing five reservations on their optional clause declaration in a given year.

### **Legal Systems**

In order to capture the impact of divergent legal systems on the propensity of states to accept the compulsory jurisdiction of the ICJ, we construct 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.<sup>28</sup> 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 international system, and several other subsidiary legal sources.<sup>29</sup> Appendix 2 (online) provides a list of countries for each legal type in 2002.

### **Control Variables**

Power constitutes one of the most frequently mentioned factors that influence whether states bring their disputes to the ICJ (Lloyd, 1985). Powerful states prefer to bargain bilaterally because their material advantages translate into bargaining leverage. “In theory, one may expect a particular reluctance to accept compulsory jurisdiction by powerful nations, or at least nations which see themselves as likely to be in a superior bargaining position in the kinds of disputes that they think might arise” (Bilder 1998, 249). Less powerful nations, on the other hand, see impartial adjudication more as a protection than a risk; it allows these states to feel “legally equal to the world’s powers” (Scott and Carr 1987, 57). We therefore expect more powerful states to be less likely to accept the ICJ’s compulsory jurisdiction. To measure state power, we employ the national capabilities index as developed by Singer, Bremer, and Stuckey (1972).<sup>30</sup> We obtained values for this variable using the Expected Utility Generation and Data Management Program (EUGene) (Bennett and Stam 2000).<sup>31</sup>

Some legal scholars compare attitudes towards the ICJ of relatively new states with the mind-set of well-established nations (Gamble and Fischer 1976). Typical of the conventional wisdom in this area is that new states view international law as an alien system that Western nations have imposed on others (Brierly 1963, 43) and “the product of European imperialism and colonialism” (Rosenne 1962, 173). Newer states came to view the ICJ as conservative and strongly determined to preserve the status quo (Gamble and Fischer 1976), attitudes that were fueled by several unpopular ICJ judgments (e.g. the 1966 *South West Africa* decision).<sup>32</sup> Thus

newer states should be more reluctant to make optional clause declarations. The measure for state age captures the length of time a country has been recognized as a state (The CIA Fact Book). For countries which trace their origins to times B.C., as a starting point of a nation, we chose 1200 A.D. We calculate the natural logarithm of a state's age to minimize its variance.

The normative explanation for the democratic peace suggests that when two democratic states disagree over an issue, they should be more likely to resolve the dispute peacefully because they realize that their adversary is operating under a norm of bounded competition, which supports the use of compromise (Dixon 1994). These conciliatory democratic norms should increase the likelihood of democracies adopting peaceful methods of conflict resolution. Democratic states' respect for judicial processes and regard for constitutional constraints carries over into international relations and democracies are apt to engage third parties in the resolution of disputes in binding ways such as adjudication or arbitration due to their trust in legal procedures (Raymond 1994).

Our theoretical argument asserts that optional clause declarations as cheap talk work better between parties with similar preferences. While we focus on the similarity of legal institutions, we can also evaluate our argument by looking at the similarity of political institutions. Democratic states should be more likely to accept the compulsory jurisdiction of the ICJ than non-democratic states both because of greater preference similarity and the transparency of democratic regimes, which reduces privately held information that can impede cooperation. Commitments made by democratic countries are more credible, hence democratic states should be more likely to stay committed to the ICJ once they sign on. To measure each state's democracy level in a given year, 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. We turn now to multivariate analyses to empirically evaluate our theoretical hypotheses.

### **Empirical Analysis**

Table 2A reports the percentage of state-years representing each of the legal traditions for the entire sample (1920-2002), while the annual percentages are plotted in Figure 1. In Table 2B and 2C, we report the percentages of countries accepting the compulsory jurisdiction of the PCIJ/ICJ in 1922, 1946, 2002, and all years. Our first hypothesis finds preliminary support, as the percentage of civil law states accepting compulsory jurisdiction is higher than the percentage of civil law states in the world. Civil law states comprised 59.8% of all state-years in the data, yet accepted compulsory jurisdiction in 64.6% of all state-years. Furthermore, civil law states dominate the set of countries accepting the Court's jurisdiction without any reservations (91%). Islamic countries, making up 12.7% of the sample, accept compulsory jurisdiction in only 6.2% of state-years, consistent with Hypothesis 1, and they are likely to place reservations on their commitments when they recognize the Court. Common law states comprise 20.9% of all state years and accept jurisdiction in 20.9% of state-years. As expected (H3), common law states make up a significant portion of states that place reservations on their ICJ commitments (24.3%).

Turning to multivariate analyses, Table 3 presents estimates from the Markov transition logit models. Model 1 presents the estimates for transition from non-acceptance to acceptance, while Model 2 provides estimates for durability, or whether states that accepted the jurisdiction of the PCIJ/ICJ last year continue to do so this year. Common law states are utilized as the

omitted legal type category. Table 3 also presents the predicted probabilities for each model to ascertain the substantive effect of each variable holding all others at their mean or mode.

The coefficient for the civil law dummy variable is positive and statistically significant in the transition model (Table 3, Model 1), providing support for our first hypothesis that civil law countries are more likely than common or Islamic law states to accept the compulsory jurisdiction of the International Court of Justice.<sup>33</sup> In Table 3, we see that the transition probability for civil law systems (0.019) is nearly twice as large as the probability of acceptance for common law states (0.0096), and more than two and a half times as large as the probability of acceptance for Islamic law states (0.0073). States with mixed legal systems have the highest probability of acceptance overall (0.0204), although these states are not very numerous in the international system. The low values of these predicted probabilities reflect the reality that most countries do not make new optional clause declarations in a given year. However, the variance in domestic legal system types does give us purchase for explaining why some states are willing to make optional clause declarations more readily than others.

The coefficient for the Islamic legal system dummy is negative as predicted, although not significantly different from zero. Thus while we cannot distinguish significantly between common law and Islamic law states in the transition analyses (Model 1), we can conclude that countries with an Islamic legal tradition are less likely to accept compulsory jurisdiction than civil law states. These results clearly demonstrate the importance of taking into consideration domestic legal systems for understanding the expressive power of adjudication. Civil law states benefit most from acceptance of the Court's jurisdiction because they are more likely to view the ICJ as an unbiased adjudicator, which facilitates the adjudicator's ability to correlate strategies and create focal points. Islamic states prefer not to subject themselves to an alien legal system

because Islamic law puts limits on the types of international commitments that Islamic states can make and because Islamic states are more likely to view the ICJ as a biased adjudicator.

However, Hypothesis 2 predicted that Islamic law and common law states would have more durable commitments to the ICJ than civil law states. Islamic law states have very strong *pacta sunt servanda* norms, while common law states draft very precise contracts in international relations, enhancing the durability of their commitments. The durability results are presented in Table 3, Model 2. The Islamic variable gets excluded from our survival analysis because it perfectly predicts success.<sup>34</sup> We can infer from this that once they are committed to the ICJ, Islamic law states do not withdraw optional clause declarations. While Islamic states are wary of accepting international institutions and rarely do accept them, any recognition of the ICJ by Islamic states remains durable over time due to strong norms of contractual compliance. The negative and significant sign for the civil law dummy variable in the survival model shows that civil law states are open to the Court, but more likely to renege on their commitments over time. The substantive effects for the legal type variables, however, illustrate that all states are extremely likely to remain committed to the ICJ over time. The predicted probability of continued ICJ acceptance ranges from 0.9934 (civil law states) to 1.00 (Islamic law states).

Two of the three control variables exert significant influences on commitments to the ICJ: capabilities and democracy. The coefficient for capabilities is positive but insignificant in the transition model (Model 1), while negative and statistically significant in the survival model (Model 2). We conjectured that powerful states would be less inclined to recognize the jurisdiction of the ICJ, due to their bargaining advantages in bilateral negotiations. Our results suggest that both weak and powerful states may be willing to accept compulsory jurisdiction, although powerful states are much less likely to remain committed to the institution over time.

Furthermore, the substantive effect of capabilities in the survival model is extremely large. The probability that a country as powerful as the United States will continue to recognize the ICJ's jurisdiction in a given year is only 49%, while the weakest states in our sample (e.g. Lichtenstein) almost always remain committed (99% chance of survival). The lack of major power commitment to international legal institutions is perhaps best illustrated by the withdrawal of the United States' optional clause declaration in 1986. While the creation of new world orders after victory in major wars such as World War I and World War II may include the creation of international courts for adjudication, the major power victors may become less willing to support these institutions when their national interests are directly challenged (Posner 2004).

On the other hand, our results demonstrate that democratic states are much more willing to accept compulsory jurisdiction of the ICJ and they are also significantly more likely to maintain those commitments over time. Perhaps in this regard, the United States' behavior with respect to the Court is an outlier when compared to the rest of the democratic community. Fully democratic states are four times more likely to recognize the ICJ's jurisdiction than fully autocratic states. Furthermore, the commitments made by democratic states to these institutions are durable; there is only a 2 in 1000 chance that a democratic state will withdraw its optional clause declaration. This provides additional support to our theoretical argument that optional clause declarations work more effectively as cheap talk between similar states.

Finally, we empirically assess our third hypothesis relating to the design of ICJ commitments. We argued that the lack of the *bona fides* principle in common law systems would increase the chances that such states draft very detailed and precise international commitments. When examining the number of reservations states place on their optional clause declarations, common law states should have the highest number of restrictions. Table 4A

presents the results of a regression analysis, where the dependent variable is the total number of reservations a state places on its PCIJ/ICJ commitment each year. In these analyses, mixed legal systems are treated as the omitted category. The results support the hypothesis, showing 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. Democratic, powerful, and older states place more reservations on their optional clause declarations. The overall model explains quite a bit of variance in the dependent variable, with an R-squared of 0.36.

## **Discussion**

Our three theoretical hypotheses find robust empirical support. However, we focus exclusively on acceptance of compulsory jurisdiction, which might be problematic if common and Islamic law states recognize the Court's jurisdiction frequently through other means, such as the placement of compromissory clauses in interstate treaties. This form of jurisdiction is granted much more frequently, with 80% of all states belonging to one or more compromissory clause treaties. One might argue theoretically that common law countries prefer recognition of the ICJ's jurisdiction through compromissory clauses, because such commitments are more precise and limited only to the treaty at hand. The lack of good faith in bargaining creates specific and limited obligations, which can be done more easily through a bilateral or multilateral treaty. Compulsory jurisdiction is a more risky proposition, because it can be applied to any legal matter in international law. Thus while the placement of reservations might help to limit the Court's prerogative, common law states may nonetheless prefer to limit the Court's potential involvement to the more specific subject matter of interstate treaties. If our theory is apt, on the other hand, then all forms of ICJ jurisdictional acceptance should exhibit similar empirical

patterns. Civil law states have greater incentives to employ jurisdictional acceptance as cheap talk, and this should hold whether we are examining compulsory or compromissory jurisdiction.

To assess these arguments, we have taken an initial cut at identifying the members of all bilateral and multilateral treaties with compromissory clauses, available on the ICJ's website (<http://www.icj-cij.org/icjwww/basicdocuments/basictext/basic treaties and other docs.htm>). Bilateral treaty members are listed on the website, while multilateral treaties are listed by simply the name of the treaty and signature year. Using information from the United Nations Treaty Database and other sources, we tracked down copies of each multilateral treaty to determine the member states and years of acceptance. We created a count measure of the total number of bilateral and multilateral treaty memberships for each of the 192 COW system members as of 2002. The average state belongs to 28 treaties (26 multilateral, 2 bilateral) with compromissory clauses, with a standard deviation of approximately 15 treaty memberships.

In Table 4B, we present the results of a regression analysis, where the dependent variable is the total number of treaty memberships with compromissory clauses. In addition to our legal system type variables (omitting civil law), we also include a dummy variable coded one if a state also accepted the compulsory jurisdiction of the ICJ, and zero otherwise. The results provide further support to our theoretical argument, showing that civil law states have the highest average number of treaty memberships. Common law states have six fewer ( $p=0.01$ ), mixed law states eight fewer ( $p=0.023$ ), and Islamic law states 4.5 fewer treaty memberships (although not significant,  $p=0.136$ ) than civil law states. Thus civil law states use both forms of jurisdiction as cheap talk. The positive and significant sign for the compulsory jurisdiction variable demonstrates the positive correlation between the two; states recognizing compulsory jurisdiction belong to 11 more treaties with compromissory clauses.

The question remains, however, whether simply accepting the International Court of Justice's jurisdiction in any form has any significant influence on bargaining over contentious issues in international relations. Pessimists would still point to the large number of reservations states place on their optional clause declarations, and would argue that even though the number of cases before the Court has increased, the increase in the number of states has far outpaced this growth (Posner and Figueredo 2004). Our other research tries to address this question more directly by examining the influence of joint ICJ acceptance on bargaining (Mitchell et al 2005) and compliance with ICJ judgments (Mitchell and Hensel, 2006). Our initial look at these important questions provides some reason for optimism.

We find that contending states accepting the ICJ's compulsory jurisdiction are 20% more likely to reach agreements to help resolve contentious issue claims.<sup>35</sup> States are also 15% more likely to comply with any agreements reached when both sides jointly accept the compulsory jurisdiction of the ICJ. Additionally, joint acceptance of the optional clause significantly reduces by 4% the likelihood that conflicting parties will resort to militarized force. Once cases involving territorial, maritime, or cross-border river issues come before the PCIJ or ICJ, compliance with judgments is almost guaranteed. Contending parties have complied with 28 of 29 PCIJ and ICJ decisions over these issues, an impressive record indeed (see Appendix 3 (online) for a list of all cases).<sup>36</sup>

As noted above, similarity of legal institutions should promote cooperation between states in general. However, the logic of our theory suggests that the use of optional clause declarations as cheap talk will work best for civil law states. Peaceful bargaining should succeed most often when two states have civil legal systems *and* when they both accept the jurisdiction of the ICJ. In these situations, the threat of being sued in Court is most credible, and thus, out-of-

court negotiations will be more efficient. In the future, empirical analyses of interstate negotiations need to discriminate between the general effect of legal system similarity and the specific effect of the ICJ signal, and consider their interactive effects as well. We also need to consider the interactive effects of other sources of state similarity, such as regime type and shared culture. Democratic states are more accepting of international legal institutions and make more durable commitments to these institutions than non-democratic states. The growth in democratic states worldwide<sup>37</sup> suggests that a larger percentage of states may accept the legitimacy of the International Court of Justice in the future.

## **Conclusion**

In this paper, we argue that domestic legal systems have important effects on foreign policy behavior and interstate bargaining, and that civil law countries are more likely to recognize the jurisdiction of the International Court of Justice than common law or Islamic law countries. On the other hand, common and Islamic law states design more precise commitments to the court with more reservations and have more durable commitments. The lack of attention to legal systems in the International Relations literature is puzzling given that most interstate contracts are governed by a variety of legal principles and are often negotiated by lawyers. By focusing on legal systems, our project contributes to the legalization project in IR (Goldstein, Keohane, Kahler, and Slaughter 1991) and interdisciplinary research integrating insights from International Relations and International Law (Slaughter, Tulumello, and Wood 1998).

Our argument speaks more broadly to the liberal research tradition in international relations. Liberals argue that domestic political variables play an important role in states' behavior on the international arena, and our analyses of domestic legal institutions and regime

type support this view. A domestic legal system, which constitutes an embodiment of societal preferences, interests, and ideas, can determine a state's behavior towards other states and international institutions (Moravcsik 1997). We find that the characteristics of internal legal systems account for a great deal of variance in the acceptance rates and design of international commitments. Our argument also bolsters democratic peace research, showing that democratic states are more accepting and committed to international legal institutions than autocratic states.

Our findings regarding the relationship between domestic legal systems and states' attitudes towards the ICJ provide interesting insights into the dynamics of international institutions. Understanding the characteristics of states' legal systems may give us leverage for analyzing a wide variety of international courts and institutions. Preliminary research by Powell (2006b) suggests that common law states tend to lend higher levels of support to the European Court of Justice than civil law states because the ECJ embraces the *stare decisis* principle. States' behavior towards the ICJ may also have important implications for other international courts, such as the Law of the Sea Tribunal and the International Criminal Court. Extending our argument to other international courts will further our understanding of the intricate relationship between domestic legal structures and foreign policy choices.

Although this paper has significantly increased our understanding of the ICJ, numerous questions still remain unanswered. First, it is plausible that state members of other peace-promoting organizations are more prone to accept the jurisdiction of the ICJ. In other words, acceptance of the Court may be part of a broader acceptance of international institutions. Our finding that democracies are more likely to recognize the jurisdiction of the ICJ, for example, is consistent with Russett and Oneal (2001)'s argument that democracies are more likely to join

international organizations in general. Sorting out the particular effect of international legal institutions on state behavior will be an important avenue for future research.

We would also like to explore changes in the Court's practices over time and the implications of these changes for our theoretical argument and empirical analyses. Numerous legal scholars have pointed to the fact that the practices of common law and the ICJ have become increasingly similar over time (Shapiro 1986; Shahabuddeen 1996; Markesinis 2000). The jurisprudence of the World Court has developed over time in the direction of a powerful inclination to adhere strongly to its previous decisions. Furthermore, courts of last resort in common law systems have come to accept that they are not compelled to follow their previous judgments, but within well-defined boundaries they might depart from them (Shahabuddeen 1996). The practice of common law courts is, therefore, becoming progressively more similar to the rules and practices of the International Court of Justice, which may produce an increasing willingness on the part of common law states to recognize the Court's jurisdiction. Moreover, statute law has recently become a much more important source of law in certain common law countries. For example, the output of enacted law in the United Kingdom has noticeably increased mostly as a result of the integration of British law with the European legal culture (Markesinis 2000). These changing processes within the ICJ and within common legal systems have brought the two legal orders closer together (although see Legrand 1996, 1997), and suggest shifting dynamics of states' behavior towards the ICJ. Our theory and empirical analyses show that states may view the Court not only as a last-resort forum for resolving disputes, but also as an institution through which countries can credibly send information to each other about their commitment to peaceful bargaining practices.

## **Acknowledgments**

Previous versions of this paper were presented at the 2005 Midwest Political Science Association meeting, Chicago, IL and the Journeys in World Politics Workshop, October 28-30, 2004, Iowa City, IA. We are grateful to Fred Boehmke, Terry Chapman, Matt Golder, Mike Grieg, Tanya Janulewicz, Kelly Kadera, Eric Posner, Anne Sartori, Ross Schoofs, Chuck Shipan, Jeff Staton, Jana von Stein, Clayton Thyne and participants in the Political Science Colloquium at the University of Iowa for their helpful comments, suggestions, and assistance.

## References

- Al-Azmeh, Aziz. 1988. *Islamic Law: Social and Historical Contexts*. New York, NY: Routledge.
- Allain, Jean. 2000. *A Century of International Adjudication: The Rule of Law and its Limits*. The Hague, The Netherlands: T.M.C. Asser Press.
- Baird, Douglas G., Robert H. Gertner, and Randal C. Picker. 1994. *Game Theory and the Law*. Cambridge: Harvard University Press.
- Bederman, David J. 2001. *International Law Frameworks*. New York, NY: Foundation Press.
- Bennett, Scott and Allan Stam. 2000. "A Universal Test of an Expected Utility Theory of War." *International Studies Quarterly*, 44: 451-480.
- Bilder, Richard B. 1998. "International Dispute Settlement and the Role of International Adjudication." Pp. 233-256 in Charlotte Ku and Paul F. Diehl (eds.), *International Law: Classic and Contemporary Readings*, Boulder, CO: Lynne Rienner.
- Brierly, James L. 1963. *The Law of Nations: An Introduction to the International Law of Peace*. Oxford: Oxford University Press.
- Brownlie, Ian. 2003. *Principles of Public International Law, 6<sup>th</sup> Edition*. Oxford: Oxford University Press.
- Crawford, Vincent P., and Joel Sobel. 1982. "Strategic Information Transmission." *Econometrica*, 50(6):1413-1451.
- Darbyshire, Penny. 2001. *Eddey and Darbyshire on the English Legal System, 7<sup>th</sup> edition*. London: Sweet and Maxwell.
- David, Rene, and John E. Brierly. 1985. *Major Legal Systems in the World Today*. London: Stevens.
- Dixon, William J. 1994. "Democracy and the Peaceful Settlement of International Conflict." *American Political Science Review*, 88(1):14-32.

Elkind, Jerome B. 1984. *Non-Appearance Before the International Court of Justice: Functional and Comparative Analysis*. The Netherlands: Martinus Nijhoff Publishers.

Eyffinger, Arthur. 1996. *The International Court of Justice, 1946-1996*. The Hague: Kulwer Law International.

Farrell, Joseph. 1987. "Cheap Talk, Coordination and Entry." *Rand Journal of Economics*, 18:34-39.

Farrell, Joseph, and Robert Gibbons. 1989. "Cheap Talk with Two Audiences." *American Economic Review*, 95(5):1214-1223.

Farrell, Joseph, and Matthew Rabin. 1996. "Cheap Talk." *Journal of Economic Perspectives*, 10(3):103-118.

Fearon. James D. 1995. "Rationalist Explanations for War." *International Organization*, 49:379-414.

Gamble, John King, Jr., and Dana D. Fischer. 1976. *The International Court of Justice: An Analysis of a Failure*. Lexington, Mass.: Lexington Books.

Garrett, Geoffrey and Barry R. Weingast. 1993. "Ideas, Interests, and Institutions: Constructing the European Community's Internal Market." In *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, eds. Judith Goldstein and Robert O. Keohane. Ithaca: Cornell University Press.

Ginsberg, Tom and Richard H. McAdams. 2004. "Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution." *William and Mary Law Review* 45(4): 1229-1339.

Glendon, Mare A., Michael W. Gordon, and Christopher Osakwe. 1994. *Comparative Legal Traditions; Text, Materials and Cases on the Civil and Common Law Traditions, with*

Powell and Mitchell

*Special reference to French, German, English and European Law*. St. Paul, Minn.: West Publishing Company.

Glenn, Patrick H. 2000. *Legal Traditions of the World: Sustainable Diversity in Law*. Oxford: Oxford University Press.

Goldsmith, Jack L. and Eric A. Posner. 2005. *The Limits of International Law*. Oxford: Oxford University Press.

Goldstein, Judith L, Robert O. Keohane, Miles Kahler, and Anne-Marie Slaughter, eds. 1991. *Legalization and World Politics*. MIT Press.

Jagers, Keith and Ted R. Gurr. 1995. "Tracking Democracy's Third Wave with the Polity III Data." *Journal of Peace Research*, 32(4):469-82.

Janis, Mark W. 2003. *An Introduction to International Law*. New York: Aspen Publishers.

Janis, Mark W. 1987. "Somber Reflections on the Compulsory Jurisdiction of the International Court." *The American Journal of International Law*, 81(1): 144-146.

Jennings, Sir Robert and Sir Arthur Watts. (ed.).1992. *Oppenheim's International Law*. Essex, England: Longman.

Joireman, Sandra F. 2001. "Inherited Legal Systems and Effective Rule of Law." *Journal of Modern African Studies*, 39(4): 571-596.

Joireman, Sandra F. 2004. "Colonization and the Rule of Law: Comparing the Effectiveness of Common Law and Civil Law Countries." *Constitutional Political Economy*, 15: 315-338.

Khadduri, Majid. 1956. "Islam and the Modern Law of Nations." *American Journal of International Law*, 50(2): 358-372.

Kim, Jeong-You. 1996. "Cheap Talk and Reputation in Repeated Pretrial Negotiation." *RAND Journal of Economics*, 27(4): 787-802.

La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Schleifer, and Robert Vishny. 1999. "The Quality of Government." *Journal of Law, Economics, and Organization*, 15(1):222-279.

Legrand, Pierre. 1997. "Against a European Civil Code." *Modern Law Review*, 60:44-63.

Legrand, Pierre. 1996. "European Legal Systems Are Not Converging." *International and Comparative Law Quarterly*, 45:52-81.

Lippman, Matthew, Sean McConville, and Mordechai Yerushalmi. 1988. *Islamic Criminal Law and Procedure*. New York, NY: Praeger.

Lloyd, Lorna. 1985. "'A Springboard for the Future': A Historical Examination of Britain's Role in Shaping the Optional Clause of the Permanent Court of International Justice." *The American Journal of International Law*, 79(1): 28-51.

Long, J. Scott. 1997. *Regression Models for Categorical and Limited Dependent Variables*. Beverly Hills, CA: Sage.

Markesinis, Basil S, ed. 2000. *The Coming Together of the Common Law and Civil Law: The Clifford Chance Millennium Lectures*. Oxford: Hart Publishing.

Matthews, Steven A. 1989. "Veto Threats: Rhetoric in a Bargaining Game." *Quarterly Journal of Economics*, 104:347-369.

McAdams, Richard H. 2005. "The Expressive Power of Adjudication." *University of Illinois Law Review*, 5:1043-1121.

McWhinney, Edward. 1991. *Judicial Settlement of International Disputes: Jurisdiction, Justiciability, and Judicial Lawmaking on the Contemporary International Court*. The Netherlands: Martinus Nijhoff Publishers.

Merryman, John H. 1969. *The Civil Law Tradition*. Stanford: Stanford University Press.

Mitchell, Sara McLaughlin and Paul R. Hensel. 2006. "International Institutions, Cooperation,

Powell and Mitchell

and Compliance with Agreements.” Working paper, University of Iowa.

Mitchell, Sara McLaughlin, Jacqueline H. Rubin, Effie Charalampaki, and John Brady. 2005.

“Facilitating Conflict Resolution: The World Court and the Compulsory Jurisdiction Clause.” Working paper, University of Iowa.

Moravcsik, Andrew. 1997. “Taking Preferences Seriously: A Liberal Theory of International Politics.” *International Organization*, 51(4):513-553.

Mourisi Badr, Gamal. 1978. “Islamic Law: Its Relation to Other Legal Systems.” *The American Journal of Comparative Law*, 26(2): 187-198.

Nassar, Nagla. 1995. *Sanctity of Contracts Revisited: A Study in the Theory and Practice of Long-Term International Commercial Transactions*. Dordrecht: Martinus Nijhoff Publishers.

Nemeth, Stephen C. 2005. “Domestic Legal Systems: An Explanation for Alliance Behavior?” Paper presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL.

O’Connor. J.F. 1991. *Good Faith in International Law*. Dartmouth Publishing Company.

Oduntan, Gbenga.1999. *The Law and Practice of the International Court of Justice (1946-1996)*. Enugu, Nigeria: Fourth Dimension Publishers.

Opolot, James S.E. 1980. *An Analysis of World Legal Traditions*. Jonesboro, TN: Pilgrimage Press.

Posner, Eric A. 2004. “The Decline of the International Court of Justice.” John M. Olin Law and Economics Working Paper No. 233; Public Law and Legal Theory Working Paper No. 81.

Posner, Eric A. and Miguel de Figueiredo. 2004. “Is the International Court of Justice Biased?” John M. Olin Law and Economics Working Paper No. 234.

Powell, Emilia Justyna. 2006a. *Conflict, Cooperation, and the World’s Legal Systems*. Ph.D.

Powell and Mitchell

Dissertation, Florida State University.

Powell, Emilia Justyna. 2006b. "The Dynamics of Support for the European Court of Justice."

Working paper, Florida State University.

Raymond, Gregory A. 1994. "Democracies, Disputes, and Third-Party Intermediaries." *Journal of Conflict Resolution*, 38(1):24-42.

Rayner S.E. 1991. *The Theory of Contracts in Islamic Law: A Comparative Analysis with Particular reference To The Modern Legislation In Kuwait, Bahrain and The United Arab Emirates.* Graham & Trotman Ltd.

Reisman, W. Michael. 1989. "Respecting One's Own Jurisprudence: A Plea to the International Court of Justice". *The American Journal of International Law*, 82: 312-317.

Rosenne, Shabtai. 1962. *The International Court of Justice: What it is and How it Works.* New York, NY: Oceana Publications.

Russett, Bruce and John R. Oneal. 2001. *Triangulating Peace: Democracy, Interdependence, and International Organizations.* W. W. Norton & Company.

Sartori, Anne E. 2005. *Deterrence by Diplomacy.* Princeton, N.J.: Princeton University Press.

Scott, Gary L. and Craig L. Carr. 1987. "The ICJ and Compulsory Jurisdiction: The Case for Closing the Clause." *The American Journal of International Law*, 81(1): 57-76.

Scott, Gary L. and Karen D. Csajko. 1988. "Compulsory Jurisdiction and Defiance in the World Court: A Comparison of the PCIJ and the ICJ." *Journal of International Law and Policy*, 16(2-3): 377-392.

Shahabuddeen, Mohamed. 1996. *Precedent in the World Court.* Cambridge: Cambridge University Press.

Powell and Mitchell

Shapiro, Martin M. 1986. *Courts: A Comparative and Political Analysis*. Chicago, IL: University of Chicago Press.

Shaw, Malcolm N. 2003. *International Law, 5<sup>th</sup> edition*. Cambridge: Cambridge University Press.

Singer, J. David, Stuart A. Bremer, and John Stuckey. 1972. "Capability Distribution, Uncertainty, and Major Power War, 1820-1965" in Bruce Russett, ed. *Peace, War, and Numbers*. Beverly Hills, CA: Sage.

Slaughter, Anne-Marie, Andrew S. Tulumello, and Stephan Wood. 1998. "International Law and International Relations Theory: A New generation of Interdisciplinary Scholarship." *The American Journal of International Law*, 92(3):367-397.

Summerst, Robert S. 1982. "The General Duty of Good Faith: Its recognition and Conceptualization in the New Restatement of Contracts." *Cornell Law Review*, 67:810-40.

Szafarz, Renata. 1993. *The Compulsory Jurisdiction of the International Court of Justice*. The Netherlands: Martinus Nijhoff Publishers.

Teubner, Gunther. 1998. "Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences." *The Modern Law Review*, 61(1):11-32.

Vago, Steven. 2000. *Law and Society*. Upper Saddle River, NJ: Prentice Hall.

Virally, Michael. 1983. "Review Essay: Good Faith in Public International Law." *The American Journal of International Law*, 77(1):130-134.

Whincup, Michael H. 1992. *Contract Law and Practice. The English System and Continental Comparisons*. The Netherlands: Kulwer Law and Taxation Publishers.

Zimmermann, Reinhard, and Simon Whittaker. 2000. *Good Faith in European Contract Law*. Cambridge University Press.

**Table 1: Characteristics of Legal Systems**

<b>Type</b>	<b>The Use of Precedents (<i>Stare Decisis</i>)</b>	<b>Good Faith in Contracting (<i>Bona Fides</i>)</b>	<b>Keeping Promises (<i>Pacta Sunt Servanda</i>)</b>	<b>Thoroughness of Contracts</b>
Civil Law	No	Yes	Medium	Low
Common Law	Yes	No	Medium	High
Islamic Law	No	Yes	High	Medium

**Table 2: ICJ/PCIJ Compulsory Jurisdiction Acceptance Rates****2A: Legal Type Frequency**

<u>Legal System</u>	% of all state years			
	<u>1922</u>	<u>1946</u>	<u>2002</u>	<u>All</u>
Civil Law	77.1%	69.6%	54.9%	59.8%
Common Law	14.8%	14.5%	24.0%	20.9%
Islamic Law	3.3%	13.0%	11.2%	12.7%
Mixed Law	4.9%	2.9%	7.6%	6.5%

**2B: Legal Type Frequency for States Accepting Jurisdiction**

<u>Legal System</u>	% of all state years accepting ICJ/PCIJ compulsory jurisdiction (with or without reservation)			
	<u>1922</u>	<u>1946</u>	<u>2002</u>	<u>All</u>
Civil Law	100%	71%	61.9%	64.6%
Common Law	0%	19.4%	20.6%	20.9%
Islamic Law	0%	3.2%	6.6%	6.2%
Mixed Law	0%	6.5%	9.5%	8.3%

**2C: Legal Type Frequency for States Accepting Jurisdiction, With or Without Reservations**

<u>Legal System</u>	% of all state years accepting ICJ/PCIJ compulsory jurisdiction		
	<u>All</u>	<u>W/O Reservation</u>	<u>With Reservation</u>
Civil Law	64.6%	91.3%	57.9%
Common Law	20.9%	7.2%	24.3%
Islamic Law	6.2%	0.0%	7.9%
<u>Mixed Law</u>	<u>8.3%</u>	<u>1.5%</u>	<u>9.9%</u>
Total	100%	100%	100%

**Table 3: Markov Transition Logit Model and Substantive Effects  
ICJ Compulsory Jurisdiction Acceptance, 1920-2002**

		Markov Transition Logit Model Results		Substantive Effects (Probabilities)			
		Model 1: Transition to Compulsory Jurisdiction Acceptance	Model 2: Survival of Existing Commitment	Transition to Acceptance		Continued ICJ Acceptance	
<b>Key Variables</b>	<i>Civil Law</i>	0.687* (0.311)	-1.863 (1.081)	0.0190		0.9934	
	<i>Common Law</i>	Reference category		0.0096		0.9990	
	<i>Islamic Law</i>	-0.284 (0.624)	-----	0.0073		-----	
	<i>Mixed Law</i>	0.760 (0.490)	-1.465 (1.238)	0.0204		0.9956	
<b>Control Variables</b>	<i>Democracy</i>	0.152* (0.029)	0.122* (0.044)	<i>(Change from 0 to 10)</i>			
				0.0122	0.0532	0.9930	0.9979
	<i>Capabilities</i>	1.986 (3.495)	-14.587* (4.061)	<i>(Change from 0 to 0.384)</i>			
				0.0211	0.0435	0.9956	0.4857
	<i>State Age</i>	0.009 (0.091)	-0.197 (0.188)	<i>(Change from 0.02 to 7.44)</i>			
				0.0204	0.0218	0.9964	0.9956
	<i>Constant</i>	-5.208* (0.455)	6.751* (1.234)				

N = 5364

N = 2756

\* p&lt;.05

**Table 4: Regression Analyses****4A: Number of Optional Clause Reservations**

Variable	Coefficient (S.E.)
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)*

N=3084 (States Accepting Compulsory Jurisdiction)

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

R<sup>2</sup> =0.3559

**4B: Monadic Count of Treaty Memberships with Compromissory Clauses**

Variable	Coefficient (S.E.)
Common Law	-6.15 (2.38)*
Mixed Law	-7.88 (3.43)*
Islamic Law	-4.52 (3.02)
Accept ICJ Compulsory Jurisdiction (in 2002)	11.44 (2.08)*
Constant	27.43 (1.55)*

N=192 (Number of States in 2002)

F(4,187)=11.09 (p<0.0000)

R<sup>2</sup> =0.1917

\* p<.05

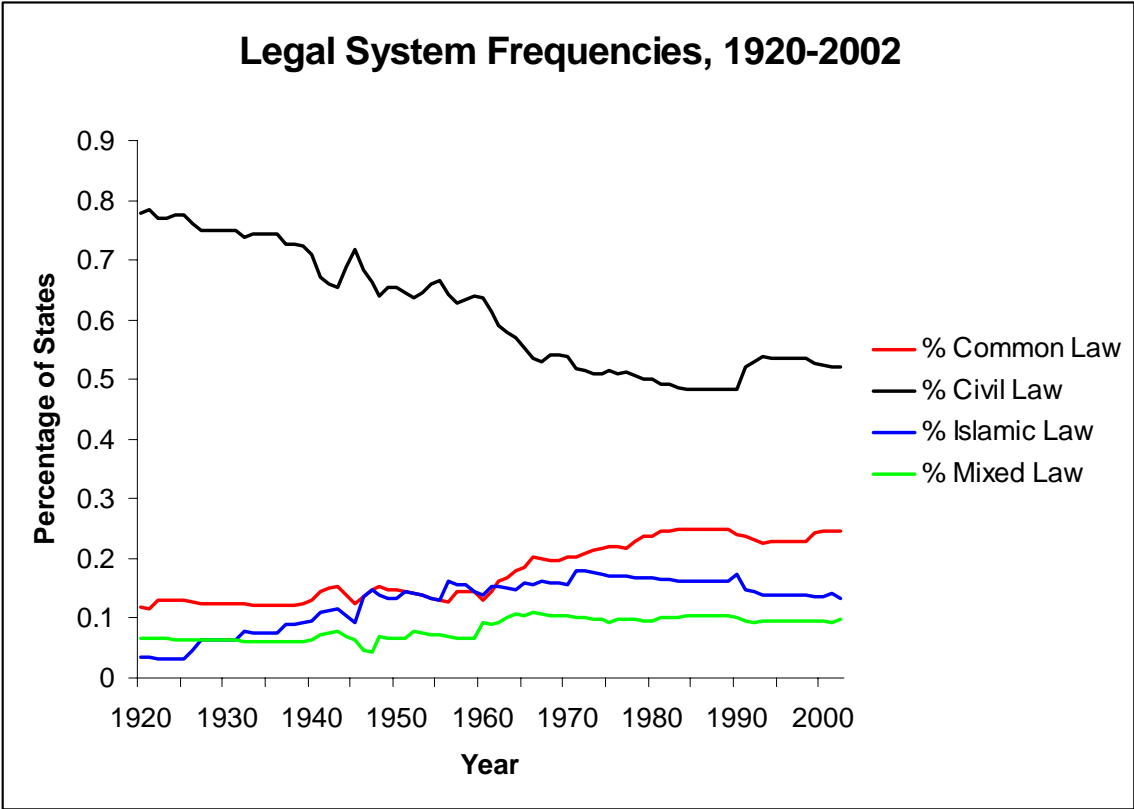


FIGURE 1

---

<sup>1</sup> In our discussion, 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.

<sup>2</sup> States recognize the compulsory jurisdiction of the ICJ, with or without reservations, through acceptance of the Optional Clause, Article 36(2) of the ICJ Statute, thereby acknowledging 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).

<sup>3</sup> This figure is based on our own collection of data on compromissory clauses, described in more detail in the research design section of the paper. The basic data on relevant treaties was obtained from the International Court of Justice's website: <http://www.icj-cij.org/icjwww/basicdocuments/basictext/basictratiesandotherdocs.htm>.

<sup>4</sup> We have examined other typologies of legal systems (La Porta et al 1999), but have found this three system typology to be best suited to our research project.

<sup>5</sup> The arguments in this section draw upon research by Powell (2006a).

<sup>6</sup> The main advantage of the doctrine of judicial precedent is that it leads to consistency in the application and creation of principles in each branch of law. It also enables common law lawyers to forecast with some degree of certainty what kind of judgment may be expected in a particular case. Prior to 1966, the highest courts of England and the United States of America took conflicting positions on the question of what a judge should do if he or she is confronted with an unreasonable or outdated precedent. The House of Lords decided in 1898 that it was bound by its own decisions. In the United States, on the other hand, the principle of *stare decisis* has never been considered an absolute command, and the duty to follow a precedent is held to be qualified by the right to overrule prior decisions. The highest courts of the states, as well as the Supreme Court, have the right to depart from a rule previously established by them. The British interpretation on precedents moved closer to the American view in 1966, when the Practice Statement of the House of Lords established that previous decisions of the House are treated by it 'as normally binding', but this is subject to a right 'to depart from a previous decision when it appears right to do so' (Shahabuddeen 1996). Some legal scholars argue that although formally present in the common law countries and absent in civil law nation, *stare decisis* does not constitute the most important disparity between the two systems (Shapiro 1986).

<sup>7</sup> It is crucial, however, to note that common law countries may also have codified bodies of written legal rules, norms, and principles, such as the numerous codes of the State of California. Nevertheless, as many legal scholars underscore, the codes in common law nations often recapitulate principles established beforehand in judicial decisions (Merryman 1969).

<sup>8</sup> 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 himself, and it contains explanations, deeds, sayings, and conduct of the Prophet (Glenn 2004). Judicial consensus is constituted by 'a common religious conviction' (Glenn 2004), and it is thus a consensus of traditional Islamic scholars regarding specific points in Islamic law. Analogical reasoning, the fourth source of Islamic law is used in circumstances not provided for in the Qur'an or other sources (Vago 2000). According to this method, the provisions of the Qur'an and Sunna may be applied to a new problem if there exists a similar operative or effective cause.

<sup>9</sup> 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 states: "Every contract or duty within this Act imposes an obligation of good faith in its performance." Also, the US Restatement (Second) of Contracts adopted by the American Law Institute in 1979 and published in final form in 1981 provides that individuals have non-waivable duties of good faith. This act stands in a sharp contrast with the first Restatement of Contracts (1932), which did not include a comparable good faith provision (Summerst 1982). In Great Britain, the European Consumer Protection Directive of 1994 transplanted good faith directly into the body of British contract law. Despite these developments, we agree with numerous legal scholars that there are still fundamental differences in the status of *bona fides* in civil and common law traditions. As some scholars state, good faith is 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).

<sup>10</sup> 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.

<sup>11</sup> Despite the inability of the ICJ to formally rely on its previous judgments, the ICJ has retained a form of judicial consistency by invoking its previous judgments and the judgments of its predecessor, the PCIJ, in both arguments and decisions (Jennings and Watts 1992, 41). Some authors, however, accuse the ICJ of defecting from this

stabilizing practice (Reisman 1989). On a few occasions in recent years, the ICJ misstated its own prior holdings by selective quotation (Military and paramilitary Activities in and against Nicaragua, Merits, 1986 ICJ Rep.14, Judgment of June 27).

<sup>12</sup> Professor Kisch best describes this feature of the ICJ in the *Guardianship Convention* case (ICJ Reports 1958, 55), where he states: “Of course I am well aware that the Court is not bound by the *stare decisis* principle, British or American style. Of course I use the word ‘precedents’ in the general and not in the strictly technical sense, and what I wanted to convey was this: that any lawyer in any country, any judge, and any advocate, when confronted with a difficult case, tries to find, if not some support, at least some enlightenment and some inspiration, from what judges, and particularly the best judges, have found in similar cases. I refer to precedents in that wide sense, including even such situations - as we have had in this very country – where a judge has explicitly declared himself inspired by French or English or German decisions. Certainly that is not a phenomenon of precedents in the Anglo-American sense.” ICJ Pleadings, Application of the Convention of 1902 Governing the Guardianship of Infants, p. 259, (Shahabuddeen 1996, 237).

<sup>13</sup> In the *Norwegian Fisheries* case, the ICJ upheld Norway’s right to establish maritime baselines, arguing that Britain could not contest them after a long period of inaction (Kolb 2006, 21). In the *North Sea Continental Shelf* cases, the ICJ recognized estoppel, an important doctrine derived from good faith (O’Connor 1991). In the *Nuclear Test* cases, the ICJ argued that “[o]ne of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith” (cited in Virally 1983, 130). In the *Arbitral Award* case, the ICJ argued that Nicaragua could not renege on the territorial award in the arbitration because it had agreed to carry out its terms in good faith (Kolb 2006, 22-23).

<sup>14</sup> Cheap talk can be defined as a “statement that may convey information even though the statement is costless, nonbinding, and nonverifiable” (Baird, Gertner, and Picker 1994, 303). One could debate whether optional clause declarations are cheap talk or costly signals, especially if states face significance audience costs (domestic and/or international) for renegeing on ICJ judgments. Given the anarchic nature of the international system and the ability of states to restrict and/or withdraw optional clause declarations at any point in time, we think it is reasonable to view such declarations as cheap talk.

<sup>15</sup> Like McAdams (2005), we treat interstate bargaining as a coordination or mixed-motive game. Future research will explore more carefully how conclusions are altered if we select different baseline bargaining models (see for example, Goldsmith and Posner 2005).

<sup>16</sup> McAdams (2005:1078) argues that a single adjudicator is important for getting parties to converge on a single outcome, and that *ex post* compliance with the endorsed outcome is enhanced when a *single* actor or institution serves as the adjudicator.

<sup>17</sup> Posner and Figueiredo (2004) find strong evidence for bias in the ICJ at the level of the individual justices, showing that justices tend to vote in favor of their own states and in favor of states that have similar wealth, regimes, and culture to their home states.

<sup>18</sup> Political scientists have examined a variety of sources of state similarities including institutions (e.g. regime type), economic interactions (e.g. trade), and cultural ties (language, history, etc.). We focus on similarities between legal institutions because our theory focuses on adjudication, but our theory also explains our findings that democratic states are more willing to accept compulsory jurisdiction. The similarity of preferences between democracies and the transparency of their regimes enhances the use of optional clause declarations as cheap talk.

<sup>19</sup> The pattern of judgments for ICJ cases seems to follow a similar pattern, with 61% of cases having no judgment, often due to the disputing parties reaching a settlement before a judgment by the Court is rendered (<http://www.icj-cij.org/icjwww/idecisions.htm>).

<sup>20</sup> This information was collected from a variety of sources, including the CIA Factbook, Glendon et al (1994), Opolot (1980), and a website created at the Law Faculty of the University of Ottawa: <http://www.droitcivil.uottawa.ca/world-legal-systems/eng-generale.html>. The remaining 19 states of the 192 total not listed here have mixed legal systems, which combine characteristics of two or more of the major legal systems.

<sup>21</sup> Space constraints preclude us from elaborating on the relationship between common and Islamic law institutions and the ICJ. Common law and Islamic law states face greater costs when negotiating with the assistance of an international court that employs less familiar legal rules and principles. They also experience greater uncertainty with respect to the Court's potential rulings. Furthermore, because the International Court of Justice does not base its decisions on religious laws (especially Islamic law), Islamic law states are least likely to view the Court as a legitimate conflict manager.

<sup>22</sup> For example, Canada, a common law state, recognized the compulsory jurisdiction of the PCIJ in 1930, placing seven reservations on its initial commitment relating to certain states (*ratione personae*), certain times of disputes (*ratione temporis*), and divergent areas of international law (*ratione materiae*) (Alexandrov 1995). Several of these reservations were targeted to deal with very important issues to Canada, such as their sovereignty rights over resources of the sea off their coasts. Canada added three other reservations across time, bringing the total to ten, although such reservations arguably strengthened Canada's long-standing commitment to the Court.

<sup>23</sup> Article 37 of the ICJ Statute declares: "Whenever a treaty of convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice."

<sup>24</sup> The most crucial difference between the Statute of the ICJ and that of its predecessor is that the ICJ was established as the principal judicial organ of the United Nations. The Statute of the ICJ constitutes an integral part of the Charter, and all member of the UN become *ipso facto* parties to the ICJ Statute (Gamble and Fischer 1976, 4). The PCIJ, although established under the auspices of the League of Nations, was entirely independent of the Covenant. Despite the official 'independence' of the PCIJ from the League of Nations, these two international bodies were inescapably interconnected. "In spite of the formal autonomy of the two institutions, functionally the Court was a part of the machinery for the settlement of international disputes envisaged in the very conception of the League of Nations" (Gamble and Fisher 1976, 4).

<sup>25</sup> We are grateful to Matt Golder for suggesting the use of this model and providing very useful notes on how to estimate it. The model can be estimated in one of two ways, either through estimation of the two models separately, conditional on the value of the lagged dependent variable (0 or 1) or by creating a series of interaction terms which multiply each independent variable by the lagged dependent variable. We employ the first strategy, which we think facilitates an easier presentation of our results, although the results are identical in the two procedures.

<sup>26</sup> We ran some analyses with an ordinal scale (do not accept, accept with reservations, accept with no reservations) employing ordered logit. Ordered logit models make a parallel regression assumption that the slope of the line expressing the relationship between independent and dependent variables is constant across categories (Long 1997). The parallel regression assumption does not hold in this case, which justifies our use of the simpler logit model. The Markov logit model is also superior for evaluating our separate claims about onset and durability.

<sup>27</sup> We include the complete typology in Appendix 1 (online).

<sup>28</sup> Countries belonging to the mixed category constitute a rather small portion of the entire data set. This group includes hybrid, or composite legal systems, in which civil, common, and Islamic traditions are mixed with one another, or in which either of these is amalgamated with the customary law of nations. Examples include Botswana, Brunei, Cameroon, China, Israel, and Japan.

<sup>29</sup> The following sources have been utilized: Glendon, Gordon, and Osakwe 1994; Opolot 1980; “An Analysis of World Legal Traditions”, *Pilgrimage Press*, website created at the Law Faculty of the University of Ottawa: <http://www.droitcivil.uottawa.ca/world-legal-systems/eng-generale.html>.

<sup>30</sup> This is 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.

<sup>31</sup> McAdams (2005) points out that power asymmetries can undermine the expressive power of adjudication, thus it would be interesting for future analyses to look at interactions among our key variables and capabilities.

<sup>32</sup> ICJ Reports (1966, 6)

<sup>33</sup> In order to check the robustness of our results, we estimated our models with year as an independent variable. The coefficient for the year variable is negative and statistically significant indicating a declining propensity for states to recognize compulsory jurisdiction over time. However, the coefficient for the civil law dichotomous variable is still positive and statistically significant ( $p=.09$ ). This shows that our results are not driven by the fact that in the early years of PCIJ and even ICJ there were far more civil law countries than common law or Islamic law states. Clustering by year produces similar results, although the p-value for civil law becomes larger ( $p=.125$ ). Powell (2006a) finds that even in the most recent years (1984-2002), the effect of civil law tradition on states’ propensity to transition to acceptance is positive and significant.

<sup>34</sup> Five Islamic law states have recognized the jurisdiction of the ICJ: Gambia, Sudan, Iran, Egypt, and Pakistan.

<sup>35</sup> The issue claims we analyzed were collected by the Issue Correlates of War Project ([www.icow.org](http://www.icow.org)) and include territorial border disputes and the usage, access to, or ownership of cross-border rivers and maritime zones.

<sup>36</sup> Ginsburg and McAdams (2004, 1229) argue that judicial resolution is more likely for territorial disputes because the underlying dispute is a coordination problem; high compliance rates are expected in these cases.

<sup>37</sup> In our monadic dataset, 55% of states were considered democratic, scoring six or higher on the Polity IV scale in 2002.