

# Domestic Law and the Credibility of Treaty Commitments

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## Abstract

Every country has an extensive body of law governing treaty-making procedures and the enforcement of treaties in domestic courts. Yet, existing scholarship largely disregards the impact of these rules on treaty formation and effectiveness. We develop an account under which states use domestic law to enhance the credibility of their commitments. First, requiring politically costly steps to conclude treaties reveals private information relevant to the likelihood of future compliance. Second, delegating treaty enforcement to domestic courts makes it costlier to defect. To investigate this theory, we draw on an original dataset which covers 101 states for the period 1815-2013. We construct a Domestic Constraints Index (DCI) and a Treaty Receptiveness Index (TRI) and test their effect on the formation of bilateral investment treaties (BITs), whose attractiveness plausibly hinges on the perceived credibility of host countries. We find strong empirical support for the theory: the DCI and the TRI have a statistically and substantively significant effect, controlling for other factors previously found to influence BIT formation. This finding is robust to a range of alternative specifications, including extreme bounds analysis.

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## INTRODUCTION

In October 2016, the German Constitutional Court approved Germany's proposed ratification of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union. The outcome was in some doubt, as the court had become increasingly assertive in reviewing the constitutionality of proposed treaties, a prerequisite to their ratification under the German Constitution. Yet, CETA soon faced another obstacle: the Parliament of the Walloon region of Belgium voted against the treaty, preventing the country from ratifying it under its constitution, which provides each region with a veto on treaties. Prime Minister Trudeau warned that Europe risked making itself irrelevant if it could not ratify treaties painstakingly negotiated with foreign partners. He faced few such obstacles at home: under Canada's constitution, the executive may ratify treaties without approval by Parliament or court review. However, while ratification would make CETA a legally binding commitment of Canada, the treaty would not be enforceable in domestic courts until Parliament adopted implementing legislation. By contrast, in most European countries, treaties become part of domestic law upon their ratification and can be enforced by courts without further legislative action.

Every country with a minimally functioning legal system has an extensive body of domestic public and constitutional law governing treaty-making: while some allow the executive to ratify treaties autonomously, many require approval by one or both houses of the legislature, while others require prior constitutional review by a court. In many countries, different requirements apply to different categories of treaties. Domestic law also governs whether private parties can bring suits in domestic courts to enforce their treaty rights, and whether treaties override statutes and other sources of domestic law when they conflict.<sup>1</sup> Indeed, the relationship between international law and domestic legal systems has long been a central topic of international law scholarship, and in recent years legal scholars have produced detailed qualitative surveys of major jurisdictions.<sup>2</sup>

Yet, the implications of these choices are not well understood. While some political scientists have examined the relationship between domestic political institutions and the credibility of international treaty commitments, they have emphasized the informal role of the legislature in foreign policymaking and the credibility-enhancing features of established constitutional democracy (such as a mass electorate and a free press) rather than the formal legal framework that governs the state's engagement with international law.<sup>3</sup> With a few exceptions, the impact of these domestic rules and procedures on treaty formation and effectiveness has remained unexplored.<sup>4</sup> The international law literature examines these domestic rules and procedures in more detail, but typically frames their design as a straightforward trade-off between facilitating international cooperation and ensuring democratic accountability at the national level.<sup>5</sup>

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<sup>1</sup> Verdier & Versteeg (2015, forthcoming).

<sup>2</sup> Hollis et al. (2005), Sloss (2009), Shelton 2011.

<sup>3</sup> Martin (2000), Lipson (2003).

<sup>4</sup> Haftel and Thompson (2013), Sandholtz (2012, 2015).

<sup>5</sup> Jackson (1992).

In this paper, we propose a theory under which states use their domestic rules on treaty-making and the status of treaties in domestic courts to enhance the credibility of their commitments. First, by requiring politically costly steps to conclude treaties, such rules reveal private information—such as the executive’s preferences and domestic political support for the treaty—relevant to the likelihood that the state will abide by its promises. Second, by making treaties part of its law, a state delegates to domestic courts the authority to enforce them, making it more costly to renege. In other words, domestic law rules on treaty-making and enforcement force political actors to sink costs and tie their hands, thus enhancing the credibility of the state’s commitments.<sup>6</sup> The adoption of a model that combines these two features effectively serves as a credibility-enhancing package that increases the state’s opportunities for international cooperation. Thus, our theory suggests that greater prior constraints on treaty-making and stronger enforcement by domestic courts may result in a state concluding more treaties, at least in areas where the credibility of its commitments is of primary importance to potential partners. In contrast with prior scholarship, it also suggests that these benefits are not limited to constitutional democracies.

To investigate this theory, we draw on a new dataset of domestic constraints on treaty ratification and the domestic status of treaties, which currently covers 101 states for the period 1815-2013. We find that prior legislative approval of treaties is widespread, its scope has increased over time to cover more treaties, and prior constitutional review of treaties is increasingly common. We also find that most countries make treaties directly applicable by their courts, that many grant them hierarchical superiority over ordinary statutes, and that domestic courts often apply a presumption of conformity to interpret domestic law in accordance with treaties. To quantify these changes, we construct a Domestic Constraints Index (DCI) and a Treaty Receptiveness Index (TRI). Both indices show upward trends in recent decades and these trends are correlated, suggesting the emergence of a model that combines stronger treaty-making constraints with robust incorporation.

We then investigate the effect of these features on the prevalence of an important type of treaty commitment whose attractiveness plausibly hinges on the credibility of potential partners: bilateral investment treaties (BITs). Based on our theory, we expect that the strength of domestic constraints and the degree to which treaties are domestically enforceable should be correlated with a higher willingness of partners to sign BITs with a given host country, controlling for other factors found by prior literature to influence BIT formation. We find strong empirical support for the theory: both indices have a statistically and substantively significant positive effect on BIT signatures. The findings are robust to a range of alternative specifications, including extreme bounds analysis. Moreover, when we estimate the same empirical model for human rights agreements—the ratification of which should not depend on perceived credibility—the DCI and TRI have no effect.

This paper contributes to several strands of scholarship. First, it advances the literature on credible international commitments by introducing domestic law and courts as sources of treaty credibility. It also shows that their benefits are not limited to democracies, thus departing from the literature’s dominant emphasis on regime type. Second, it advances the growing literature on BITs by looking at the role of domestic treaty-making constraints

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<sup>6</sup> Schelling (1960), Fearon (1997).

and the status of treaties in domestic courts in the credibility of BIT commitments. More generally, it furthers our understanding of the central role of domestic law and courts in the legalization and judicialization of international relations.<sup>7</sup> Finally, it introduces a new dataset which measures domestic constraints on treaty-making and the domestic status of treaties much more extensively and precisely than previously available data, thus facilitating further research on the implications of domestic law for international cooperation.

Part I develops our theory of the impact of domestic law on the credibility of international treaty commitments. Part II describes our data and salient trends in treaty-making procedures and the domestic legal status of treaties. Part III presents our empirical analysis and findings.

## I. DOMESTIC LAW AND CREDIBLE COMMITMENTS

### A. *Domestic Politics and Credible Commitment*

Many treaties, like contracts, are “voluntary undertakings that contemplate the joint production of collective welfare.”<sup>8</sup> They involve promises by states to do something in the future, when circumstances may have changed so as to make defection attractive—especially if one party has already performed all or part of its obligations. BITs provide a clear illustration: a state may want to induce foreign firms to invest in its territory by promising to refrain from expropriating or impairing the investment, but once the investment is made, it may be tempted to renege on these promises and use its sovereign power to extract additional value from the investment.<sup>9</sup> As a result, treaty-making faces the same obstacles as private contracts: time-inconsistency and opportunistic defection.<sup>10</sup> These problems can preclude mutually beneficial cooperation, or at least make it less efficient, as bargains are constructed to minimize reciprocal exposure to defection.<sup>11</sup>

In well-functioning domestic legal systems, valid contracts are enforced by courts, which reinforces their credibility and allows parties to create more efficient bargains. But while treaties create binding international law obligations, states often lack reliable means of enforcing them. There is no centralized international court system or executive. If the treaty so provides, a party may initiate dispute resolution procedures, including bringing a case before an international court or tribunal. But these institutions can only declare the other state in breach; they lack the capacity to forcibly enforce treaties. A state affected by a material breach may terminate or suspend the treaty, but it is likely the damage will already have been done. Retaliation is often an unappealing option except for the gravest breaches, as it is costly and faces well-known collective action problems. There are reputational costs to breaching a treaty or ignoring an international court ruling, but these costs are plainly insufficient to deter breach in many instances.<sup>12</sup>

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<sup>7</sup> Goldstein et al. (2000), Alter et al. (2016).

<sup>8</sup> Scott & Stephan (2006, 30).

<sup>9</sup> Vernon (1998), Tobin and Busch (2010), Büthe and Milner (2014), Simmons (2014).

<sup>10</sup> Salanie (2005).

<sup>11</sup> Scott & Stephan (2006, 65).

<sup>12</sup> On the role of reputation in compliance, see Downs & Jones (2002); Guzman (2008); Brewster (2009).

In those circumstances, how can states enhance the credibility of their commitments? This question has spurred an extensive literature on how states design international agreements and institutions to overcome commitment problems.<sup>13</sup> Koremenos, Lipson & Snidal (2001) review multiple institutional design choices that states use to facilitate cooperation, including centralized bargaining and rule enforcement. Several contributions specifically examine the role of legalized international dispute resolution. Keohane, Moravcsik & Slaughter (2000) develop a typology of international third-party dispute resolution and the circumstances in which they are likely to be effective to enhance treaty effectiveness. Koremenos (2007) finds that agreements that address complex cooperation problems—characterized by uncertainty, prisoner’s dilemmas, or time inconsistency—are more likely to include third-party dispute resolution provisions.<sup>14</sup> Yet, as noted above, international courts and tribunals face substantial limits to their ability to effectively enforce treaties against states, which raises the question of what other institutional factors can enhance the credibility of treaty commitments.

Many scholars have examined the impact of domestic politics and institutions on international commitments. One strand analyzes their implications for international bargaining. Putnam (1988) argues that greater domestic constraints can allow leaders to secure more favorable outcomes in international negotiations.<sup>15</sup> According to Milner (1997), domestic interest group politics drive the formation and distributional outcomes of international agreements. Another strand examines the impact of domestic regime type on treaty formation and content. For example, Mansfield, Milner & Rosendorff (2002) find that democracies are more likely to conclude international trade agreements, and a large literature examines the impact of democracy on alliance formation and durability.<sup>16</sup> Others examine the impact of domestic legal traditions—such as common law, civil law, and Islamic law—on support for international adjudication and human rights practices.<sup>17</sup> Finally, scholars such as Dai (2007), Simmons (2009) and Linos (2013) argue that international agreements and institutions can mobilize domestic political constituencies that support compliance.

Some contributions specifically analyze the impact of domestic institutions on the credibility of treaty commitments. Martin (2000) examines the role of national legislatures in foreign policy, principally through indirect means of influence over the executive (such as logrolling, the power of the purse, and appointments). She argues that the constraints imposed by the legislature make international commitments more credible, to the benefit of the state as a whole. Lipson (2003) argues that “deep-seated features of established constitutional democracy ... facilitate international agreements and lessen fears.”<sup>18</sup> These features include accountability to a mass electorate, a free press, opposition parties, and independent officials, which increase transparency and mitigate information asymmetries,

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<sup>13</sup> Keohane (1984)’s insight that international institutions can facilitate information by providing information and reducing transaction costs provided the impetus for much of this research, although early work focused on theoretical questions rather than specific institutional design choices.

<sup>14</sup> See also Fortna (2003), Allee and Elsig (2016).

<sup>15</sup> The contributions in Evan, Jacobson & Putnam (1993) further examine the impact of domestic constraints on international bargaining.

<sup>16</sup> See below for alliance formation; [on regime type and treaty formation, see also Garriga (2009)].

<sup>17</sup> Simmons (2009), Mitchell & Powell (2011), Mitchell, Ring & Spellman (2013), Powell (2013, 2015).

<sup>18</sup> Lipson (2003, 12).

making established democracies more reliable partners than nondemocratic states. While these two contributions argue that democracies make more credible treaty commitments generally, a large literature also debates democratic credibility in the specific context of alliance formation and durability.<sup>19</sup> However, the existing literature does not specifically examine the impact of domestic legal rules and procedures governing treaty-making and enforcement on the credibility of treaty commitments.<sup>20</sup>

We argue that states can use their domestic legal system to enhance the credibility of their international treaty commitments. First, domestic rules that constrain treaty-making enhance credibility by revealing private information on the likelihood that a state will abide by a proposed commitment. By incurring the costs of these procedures, the executive signals that it values the long-term benefits of cooperation over the short-term benefits of defection. These procedures also reveal information about domestic political support for the treaty, thus mitigating the asymmetrical information problems that undermine credibility. Second, rules that embed ratified treaties in the country's own legal system and allow domestic courts to enforce them also enhance credibility by making it costlier for the government to breach the treaty. Thus, domestic law forces the executive to both "sink costs" and "tie its hands" when making treaties, thus enhancing the credibility of its commitments.<sup>21</sup> We develop each mechanism in the following sections.

In its emphasis on formal domestic legal rules and procedures governing treaty-making and enforcement, our theory departs from the literature's focus on regime type, and especially from Keohane, Moravcsik & Slaughter (2000), Martin (2000), and Lipson (2003), who hypothesize that the benefits of domestic institutions to international treaty credibility are unique to democratic states. By contrast, our theory implies that domestic law mechanisms may enhance credibility even for non-democratic states. As such, it follows recent studies such as Weeks (2008) and Potter and Baum (2014) that attribute credibility to specific political and institutional features of countries rather than to regime type. Also, unlike Moravcsik (2000), Ginsburg (2006), and Simmons & Danner (2010), who see treaties as a means for governments to credibly commit to domestic audiences, we focus on the credibility-enhancing effects of domestic rules and procedures vis-à-vis foreign treaty partners. In contrast with the conventional view among international lawyers,<sup>22</sup> our theory implies that domestic constraints on treaty-making and strong domestic enforcement of treaties can encourage rather than deter new commitments. As explained further below, this effect is likely to be most salient in areas where the credibility of treaty commitments is of primary importance to potential treaty partners.

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<sup>19</sup> E.g., Cowhey (1993), Gaubatz (1996), Gartzke and Gleditsch (2004), Leeds et al. (2009), Mattes (2012).

<sup>20</sup> Indeed, Keohane, Moravcsik & Slaughter (2000, 94) directly argue that the effect of these rules and procedures is subordinate to regime type: because "[l]iberal democracies are particularly respectful of the rule of law and most open to individual access to judicial systems ... attempts to embed international law in domestic legal systems should be most effective among such regimes." There are exceptions: Voigt (2006) examines the impact of the domestic status of international law on country risk ratings; Haftel and Thompson (2013) examine the impact domestic treaty-making rules on treaty ratification delays; Sandholtz (2012, 2016) examines the impact of the domestic status of treaties on human rights performance.

<sup>21</sup> Fearon (1997).

<sup>22</sup> Jackson (1992).

B. *Domestic Law Constraints on Treaty-Making*

One strategy a state can employ to enhance the credibility of an international commitment consists of voluntarily taking steps that signal to its prospective partners that it is likely to comply. Such signals are important because treaty partners have limited information on which to assess the likelihood that the state will uphold its promises. A government might be looking for a quick advantage by breaching the treaty, rather than waiting for the long-term benefits of cooperation to come to fruition. Even if the government is sincere and values cooperation, it may be ousted by electoral defeat, parliamentary machinations, or outright revolution, or simply come under domestic political pressure to breach the treaty. In sum, *ex ante* promises to uphold treaty obligations suffer from a classic time-inconsistency problem.<sup>23</sup> The government may try to reassure its partners by professing its intention to comply, but in equilibrium every state will send this sort of “cheap talk” signal, making it meaningless. A more effective approach is to take costly steps, contemporary with ratification, to signal that the state values the long-term benefits of cooperation more than the short-term benefits of defection.

One way to signal good intentions to potential treaty partners is to establish domestic procedures that make it costly to commit to treaties. To illustrate, consider the U.S. Constitution’s requirement of treaty approval by two-thirds of the Senate. Apart from the most routine treaties, this process is a costly hurdle for the President. The Senate leadership must be courted to place the treaty on the agenda; individual Senators must be lobbied to vote in favor; even a handful can delay or block approval. Failure of a treaty in the Senate has political costs for the President. It would make little sense for her to devote time and energy to obtaining approval if she expected the treaty to be soon breached or terminated. More generally, legislative approval requirements force the executive to undergo a costly process to make treaties, one that would not be worthwhile if it did not value the long-term benefits of cooperation. Thus, by undergoing this process, the executive credibly signals that she has a low discount rate, that is, she values future benefits enough to incur the short-term costs associated with treaty ratification.

There is a related but distinct mechanism by which legislative approval increases the credibility of treaty commitments: by revealing information that allows partners to better assess the likelihood of future compliance. In contrast with a system in which the executive can ratify treaties alone, approval by the legislature reveals broader domestic political support for the treaty, increasing the partners’ confidence that compliance will survive changes in the executive. Beyond demonstrating majority support, a vote on a treaty reveals more granular information on the preferences of important political actors, such as opposition parties and politicians that may come to power in the future.<sup>24</sup> Consideration by the legislature also provides publicity for the treaty and is often the occasion for broader public debate, which provides further information on the domestic politics involved, including the positions of major interest groups. In the case of non-self-executing treaties, a positive vote also increases treaty partners’ confidence that the legislature will adopt legislation to implement the treaty’s provisions. Finally, by making the commitment more public,

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<sup>23</sup> Elster (1984).

<sup>24</sup> Farber (2002, 86), Lipson (2003, 106-107).

legislative approval may increase the domestic audience costs the government would incur by later renegeing on the treaty.<sup>25</sup>

Although somewhat less common, constitutional review of treaties plays a similar role in enhancing credibility. One way a state may renege is by arguing that prior treaty obligations clash with the state's constitutional rules or values, and are therefore invalid. This possibility may be particularly worrisome when partners fear that a later government may use such grounds as an excuse to repudiate treaties it finds distasteful. Requiring treaties to obtain a constitutional seal of approval prior to ratification may alleviate such fears, especially if this procedure insulates the treaty from later constitutional challenge. In addition, like legislative approval, contemporary constitutional review imposes *ex ante* costs on the government. It must devote resources to defending the treaty's constitutional standing, and risk domestic political costs if the proposed treaty is found unconstitutional. Thus, the fact that the government is willing to undergo this review also signals that it has a low discount rate and is a credible partner for long-term cooperation.

The treaty-making rules and procedures we examine are typically embedded in the country's constitution or in public laws having quasi-constitutional status. As a result, the executive is not free to dispense with requirements such as a legislative vote or constitutional review—it must follow them in order for the treaty to be validly ratified. One might object that even in a country with no such requirements, the executive could voluntarily submit a treaty to a legislative vote or court review. By enhancing the credibility of its commitment, it might obtain better terms or convince a partner that would otherwise be unwilling to conclude the treaty at all. Indeed, from time to time governments voluntarily submit treaties to a legislative vote or a referendum. But this is the exception rather than the rule. Even if such procedures might facilitate the conclusion of a specific treaty, the executive will be wary of establishing a precedent that might require the involvement of the legislature or courts in the ratification of future treaties. In addition, these procedures may simply be unavailable without an established legal framework. U.S. courts, for example, do not possess the authority to review the constitutionality of a treaty prior to its ratification even if the executive wished them to do so. Finally, by systematically submitting treaties to these procedures, a state may enhance its reputation for credible promises, a benefit unavailable by submitting them opportunistically on a case-by-case basis. Hence, our argument is that a state's credibility can be enhanced by established treaty-making rules and procedures that are independent of the wishes of the executive concerning a specific treaty.

If these constraints indeed enhance the credibility of treaty commitments, we should expect states that adopt them to be more attractive partners. However, as a theoretical matter, the overall effect of treaty-making constraints on the amount of international cooperation a state engages in is ambiguous. This is because such constraints make treaties more credible, but also harder to conclude.<sup>26</sup> This does not mean that the existence of the positive effect cannot be verified empirically. If we find an overall positive effect of domestic constraints

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<sup>25</sup> Lipson (2003, 81, 110-11).

<sup>26</sup> Ginsburg (2006, 743). A related conjecture from the bargaining literature is that greater domestic constraints may improve the bargaining position of the state in international negotiations, allowing it to reach more favorable outcomes (Putnam 1988). It is unclear what the net effect is on how many treaties are made, but once again it is plausible that the tradeoff is that less treaties will succeed.

on treaty-making, it will suggest that the (positive) credibility-enhancing effect exists and is greater than the (negative) constraining effect. In other words, treaty partners will be more eager to enter into treaties with a state where treaty-making is difficult but credible, than with a state where the executive can easily make less credible treaties. The positive effect should be greater for treaties for which a state's credibility is more important to its attractiveness as a partner. Therefore, we expect to find an overall positive effect for such treaties.

### C. *Domestic Law on Treaty Enforcement*

Another way of enhancing the credibility of commitments is to delegate to a third party the authority to enforce them. This strategy relies on *ex post* rather than *ex ante* costs: states tie their hands by appointing someone to punish them if they breach their obligations.<sup>27</sup> There is an extensive literature on the use of international courts and organizations to monitor treaty compliance, resolve disputes, and impose sanctions.<sup>28</sup> Yet, as discussed above, international institutions face substantial limitations in enforcing treaties: they have little autonomous coercive capacity; they often cannot resolve collective action problems in responding to breaches; and states do not always care about the reputational consequences of disobeying them. Indeed, states can—and occasionally do—withdraw from international courts and institutions that threaten their interests.

An important alternative is for states to use their own domestic legal system as a commitment mechanism. As Keohane et al. (2000, 93) note, making international commitments domestically binding and enforceable by litigants “opens up an additional source of political pressure for compliance, namely favorable judgments in domestic courts.” In so-called “monist” countries, treaties become part of domestic law upon ratification. Domestic courts are empowered to invalidate government action inconsistent with treaties, and sometimes to order the government to comply with treaty obligations.<sup>29</sup> Thus, by ratifying a treaty, the government ties its hands: it cannot disregard the commitment, at least not without incurring political costs to convince the legislature to override it.<sup>30</sup> Many states go beyond this and make treaties superior to domestic statutes, so that even the legislature may not legally override the treaty. In such a system, to legally breach the treaty the government must secure a constitutional amendment, which is usually more difficult than amending ordinary legislation.<sup>31</sup> Alternatively, the government could ignore the constitution or treaties with quasi-constitutional status altogether. While disregard for the constitution is not uncommon,<sup>32</sup> it is not without costs, as the constitution can serve as a powerful tool for societal groups to pressure the government and hold it accountable.<sup>33</sup>

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<sup>27</sup> Schelling (1960), Fearon (1997).

<sup>28</sup> See, e.g., Moravcsik (2000); Helfer & Slaughter (2005); Hawkins et al. (2006); Mitchell & Hensel (2007); Bradley & Kelley (2008); Alter (2008); Simmons & Danner (2010).

<sup>29</sup> Slaughter (1995); Posner & Sykes (2013, 140).

<sup>30</sup> Members of U.S. Congress discuss the U.S.'s international obligations extensively when passing legislation that broaches upon existing international commitments. Cope (2014).

<sup>31</sup> Lutz (1992)

<sup>32</sup> Law & Versteeg (2013).

<sup>33</sup> Epp (1998).

A growing literature examines the role of domestic courts in enforcing international human rights treaties.<sup>34</sup> Yet, few political scientists have examined the role of domestic courts in enforcing treaty commitments outside the human rights sphere. This is surprising, because domestic courts routinely enforce treaties dealing with a broad range of topics including international trade and investment, cross-border taxation, extradition, diplomatic privileges and immunities, the laws of war, and the status of international organizations. Benvenisti (2008) argues that domestic courts have increasingly drawn on international law to impose constraints on the executive. Thus, we argue that across several issue-areas, giving domestic courts the authority to enforce treaty commitments can make them more credible vis-à-vis international partners.

Even in monist systems, not all treaties can be enforced by domestic courts. In general, treaties must be “self-executing” in order for courts to enforce them.<sup>35</sup> This rule, along with other intricacies such as the political question doctrine, is sometimes invoked by courts to avoid enforcing treaties in politically sensitive contexts.<sup>36</sup> However, direct application by courts is not the only way treaties can enter the national legal system. Even if a treaty is non-self-executing, courts may still apply it indirectly, by interpreting national law to conform to treaty obligations.<sup>37</sup> For example, in the well-publicized “Madonna Adoption” case, the Malawi Supreme Court of Appeal referred to the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child to interpret provisions of Malawi’s adoption law.<sup>38</sup> Where treaties are considered part of the domestic legal system, administrative agencies and officials may use them to guide their decisions. Indeed, some national courts have held that agencies must take into account treaty obligations.<sup>39</sup> Finally, giving treaties formal legal status may activate pro-compliance domestic constituencies and legitimize their demands, making it more costly for the state to breach its obligations.<sup>40</sup>

In sum, monist systems entrench treaties in the domestic legal system and delegate to national courts the authority to enforce them. As a result, treaty commitments are more credible *ex ante*, because treaty partners know that the government will face significant domestic legal obstacles if it later wishes to breach the treaty.<sup>41</sup> This credibility-enhancing effect should be even greater for countries that follow the modern trend of giving treaties explicit hierarchical superiority over ordinary laws.<sup>42</sup> Even in dualist systems, some degree of entrenchment is achieved if courts follow a presumption of conformity of statutes with

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<sup>34</sup> E.g., Powell and Staton (2009), Conrad and Ritter (2013), Conrad (2014), Lupu (2013).

<sup>35</sup> *Medellin v. Texas*, 552 U.S. 491 (2008). See Verdier & Versteeg (2014a) (documenting that virtually all monist systems recognize this exception).

<sup>36</sup> Benvenisti (1993).

<sup>37</sup> Lupu, Verdier & Versteeg (2016).

<sup>38</sup> *In the matter of the Adoption of Children Act and In the Matter of Chifundo James (An Infant)*, MSCA Adoption Appeal No. 28 of 2009, ILDC 1345.

<sup>39</sup> See, e.g., *Minister of State for Immigration and Ethnic Affairs v. Teoh*, [1995] H.C.A. 20 (Australia).

<sup>40</sup> Dai (2007), Simmons (2009).

<sup>41</sup> Voigt (2006).

<sup>42</sup> If the government can easily withdraw from treaties (therefore removing them from the domestic legal order), the credibility-enhancing effect of entrenchment may be reduced. But as Brewster (2009) explains, this is often not a viable strategy: treaties often cover multiple issues, but the government must withdraw from the entire treaty, not just the provisions it does not wish to follow; and they are often linked to other treaties or international organizations, such as the WTO, from which withdrawal would be costly.

ratified treaties, as they do in several dualist countries.<sup>43</sup> By choosing amongst these mechanisms, states can entrench treaties in their domestic legal system to various degrees. As in the case of *ex ante* treaty-making constraints, the effect of *ex post* entrenchment on international cooperation is potentially ambiguous. Greater domestic legal status for treaties should enhance their credibility and make the state a more attractive partner for cooperation. On the other hand, because giving greater legal effect to treaties restricts the government's future policy discretion, governments may be hesitant to conclude treaties.<sup>44</sup> Again, the pro-cooperative effect is more likely to dominate where credibility is pivotal to the state's attractiveness as a partner.

#### D. *Credibility and Bilateral Investment Treaties*

BITs are bilateral treaties that provide for the promotion and protection of investments by investors of each state party into the other. The typical BIT includes several substantive commitments, such as to admit inbound investments, refrain from expropriating them, and grant them "most favored nation" status, "national treatment," and "fair and equitable treatment." Many BITs also contain further commitments, such as to respect contracts with investors, allow them to transfer funds outside the country without restrictions, refrain from imposing performance requirements, and allow movement of personnel.

The commonly-cited rationale for BITs is the "obsolescing bargain" problem: *ex ante*, states are eager to attract inbound investment, but once the investment is made, the investment is vulnerable to expropriation and other forms of impairment.<sup>45</sup> Knowing this, foreign investors will be reluctant to make investments unless the host state can credibly promise to treat them fairly. BITs provide a solution to this problem, by allowing a state to commit to binding protections. But how can these promises be made credible? One possibility is to include features in the BITs themselves that create incentives for compliance. Most saliently, modern BITs typically allow investors who believe that the state has breached its commitments to submit the dispute to an international arbitral tribunal. Allee & Peinhardt (2011) find that non-OECD countries that sign BITs and subsequently face arbitration cases brought by investors suffer significant losses of FDI. Thus, by submitting to arbitration in the BIT, the state ties its hands and makes its commitment more credible. A burgeoning literature examines how dispute settlement provisions and other design features of BITs attempt to address the credibility problem.<sup>46</sup>

Yet, bringing a case before an investment tribunal is clearly a second-best option from the perspective of a foreign investor. These cases are costly, take years to resolve, can bring unfavorable public attention to the investor, and their outcome is uncertain.<sup>47</sup> Moreover, even a successful claim may not result in full compensation, as monetary awards

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<sup>43</sup> Lupu, Verdier & Versteeg (2016).

<sup>44</sup> Jackson (1992, 326); Posner & Sykes (2013, 142).

<sup>45</sup> Vernon (1998), Tobin and Busch (2010), Büthe and Milner (2014), Simmons (2014).

<sup>46</sup> Allee and Peinhardt (2010, 2011, 2014), Blake (2013), Hafner-Burton, Steinert-Threlkeld & Victor (2016), Broude, Haftel & Thompson (forthcoming).

<sup>47</sup> Pelc (2016).

often underestimate actual losses.<sup>48</sup> Ideally, the host state would simply comply with the commitments in the BIT in the first place, and potential violations would be prevented or remedied domestically before they reach the level of a dispute that must be settled through international adversarial proceedings. The ability of a state to credibly commit not to violate its commitments is thus likely to enhance its attractiveness as a BIT partner. This can be an important benefit: Elkins, Guzman and Simmons (2006) find that developing countries with similar economic profiles compete to attract inbound investment by concluding BITs with industrialized countries.<sup>49</sup> Further, they show that most BITs appear to be initiated by industrialized countries, who develop model BITs and enter into negotiations with potential hosts. In this process, a plausible criterion for home states in choosing BIT host partners is the credibility of their promises.<sup>50</sup> If our theory is correct, one factor that should affect the perceived credibility of a potential host is its level of domestic constraints on treaty-making and the receptiveness of its legal system to treaty obligations.

First, a more demanding treaty-making process—one that, for instance, requires prior legislative approval and constitutional review of the BIT—signals deeper political support for the policy of attracting and protecting foreign investment than ratification by unilateral executive action. Haftel and Thompson (2013) find that less than half of BITs are ratified within two years of their signature, indicating that the ratification stage often encounters significant domestic political obstacles. For example, in Brazil, the executive signed fourteen BITs with capital-exporting countries in the 1990s, which were then submitted to Congress as required by the Brazilian constitution. However, opposition by left-wing legislators in the relevant committees caught the BITs in a legislative deadlock for eight years. The opposition focused primarily on the BITs' international arbitration clauses, which were seen as an affront to Brazilian economic sovereignty, as well as objecting to other provisions. The government's lackluster performance in defending the treaties signaled its relatively weak commitment to the policy. The Congressional committees voted for amendments that would have required several treaties to be renegotiated. In the end, the government simply chose to withdraw the BITs and they were never ratified.<sup>51</sup>

This example illustrates an important point: greater domestic constraints mean that, when signing a BIT, the home state knows that it will not be ratified and enter into force unless there is sufficient domestic political commitment in the host state. It also knows that the debate will signal important information about whether the host state is likely to uphold its obligations in the future, which the home state can take into consideration when it itself considers whether to ratify. Therefore, it should be more attractive to sign BITs with partners with more robust domestic constraints on treaty-making. However, the effect on actual ratification is less straightforward, for an obvious reason: domestic constraints make BITs more credible, but also more likely to be rejected at the domestic level. In other words, they likely contribute to the ratification delays identified in Haftel and Thompson (2013) and to the failure of some BITs. As a result, we expect the level of domestic constraints to result in

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<sup>48</sup> The costs (and deterrent effect) of BIT arbitration to the host state may also be offset by other factors, such as lower bond yields as violations improve the host's fiscal situation. Wellhausen (2015a, 2015b).

<sup>49</sup> See also Tobin and Rose-Ackerman (2011).

<sup>50</sup> On the diffusion of BITs, see also Jandhyala et al. (2011), Poulsen and Aisbett (2013).

<sup>51</sup> Lemos and Campello (2015).

more BIT signatures, but to have a smaller effect on the number of BITs the host state actually ratifies.

Second, domestic rules that give more robust domestic legal status to ratified treaties provide additional assurance that the host state's commitments will be upheld. The BIT will become part of domestic law upon ratification, overriding inconsistent prior law. Other domestic actors, such as agencies responsible for regulatory approvals, are also more likely to consider the country's BIT commitments when fulfilling their duties. In addition, if the host state's legal system considers treaties to be superior to statutes, even the legislature will be disabled from impairing rights granted to foreign investors by the BIT. On the other hand, an important benefit of many BITs is to allow foreign investors to substitute international arbitration for adjudication in the host state, which suggests that home states and their investors may not rely much on domestic courts to enforce BIT provisions. This would be consistent with the idea that BITs are most valuable to countries with weak domestic institutions.<sup>52</sup> However, other studies find that BITs increase FDI most in countries with strong domestic institutions, which suggests that foreign investors do rely on these institutions—including courts—to give BITs “bite.”<sup>53</sup> Thus, we expect greater enforceability of treaties by domestic courts to result in more BIT signatures and ratifications.

An important benefit of using BITs as a test of our theory is that many host countries are not well-established democracies. Therefore, if we find a positive effect of domestic constraints and court enforcement, it will support our argument that credibility can be enhanced by specific domestic law rules on treaty-making and reception rather than by democratic institutions and practices in general, as argued in the democratic commitments literature cited above. To further buttress that argument, we control for democracy in our regression analysis.

Alongside BITs, we conduct a separate test of the effect of treaty-making constraints and domestic court enforcement on the signature and ratification by states of universal human rights agreements. These agreements differ from BITs in fundamental ways that should reduce or eliminate the importance of credibility. First, because noncompliance by a state does not directly harm its partners, human rights agreements lack the element of reciprocity commonly found in treaties.<sup>54</sup> Thus, potential partners should care less about whether the domestic approval process reveals a strong commitment to future compliance, or whether the treaty will be enforceable domestically. Second, because these agreements are open to all states, existing members cannot turn down proposed new partners because their promises are insufficiently credible. Thus, neither domestic constraints nor the availability of domestic court enforcement should make signature or ratification of these treaties more likely.<sup>55</sup>

## II. DOMESTIC LAW AND TREATIES: DATA AND DESCRIPTIVE FINDINGS

Although the question of how domestic legal systems deal with international law has long been of interest to international lawyers, our dataset is the first of its kind. Existing

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<sup>52</sup> Rosendorff and Shin (2012).

<sup>53</sup> Hallward-Driemeier (2003), Tobin and Rose-Ackerman (2011).

<sup>54</sup> Simmons (2009).

<sup>55</sup> However, more domestic constraints on ratification may make a state less likely to join.

initiatives are less systematic and/or more limited in scope. Specifically, Hathaway (2008) and the Comparative Constitutions Project (Ginsburg et al. 2008) assemble information on the domestic status of international law based on the constitution alone. Yet, many relevant aspects of a domestic legal system's relationship to international law are not found in the text of the constitution but in ordinary legislation, case law, practice, and executive orders. In addition to quantitative coding of constitutions, several qualitative surveys offer more in-depth information. However, such surveys cover a limited number of countries (Shelton 2011) or specific issues (Council of Europe 2001; Hollis et al. 2005; Sloss 2009), and do not reflect change over time.

In collecting our data, a first step was to identify and define the substantive issues that define a state's relationship with international law. We identified about 50 issues, many of which deal with treaty ratification and implementation. Appendix 1 lists all the survey questions. For each country, we commissioned a written memorandum that provides a narrative answer to each of the questions, using information not only from the constitution, but also court decisions, legislation and secondary sources, and, where applicable, documents how this answer has changed over time.<sup>56</sup> Where multiple interpretations existed, we relied on the most authoritative source of that system to make a judgment call. All judgment calls were made by the principal investigators. We have so far coded 101 countries for the period 1815-2013, and are in the process of adding more countries. All coding was conducted by the principal investigators.

An initial exploration of the data reveals that treaty ratification is increasingly subject to domestic constraints, that domestic legal orders have become more receptive of ratified treaties, and that the two trends are likely related to each other.

#### A. *Domestic Constraints*

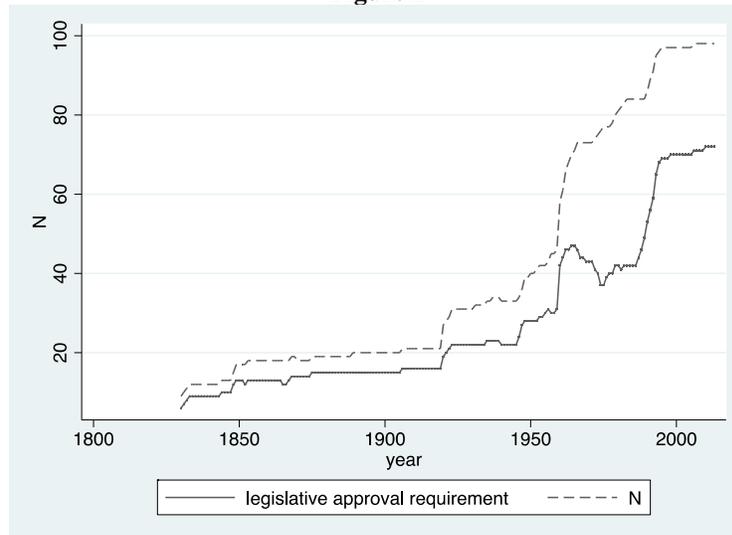
As treaties have proliferated and have come to cover areas that used to be the realm of domestic law and policy, many states have insisted on a greater role for national legislatures in the treaty-making process. Figure 1 reveals that the number of states that require legislative approval of at least some treaties has increased over time, although that number has remained relatively stable as a proportion of all states in our data.

The overwhelming majority of the legislative approval requirements involve the lower house of the legislature, which is usually a larger and more democratic body than the upper house. More specifically, 55 percent of all countries that require legislative approval grant that power to the lower house, while 37 percent grant the power to both houses. Today, Mexico, the Philippines and Tajikistan are the only other countries that, like the United States, grant this power to the upper house alone.

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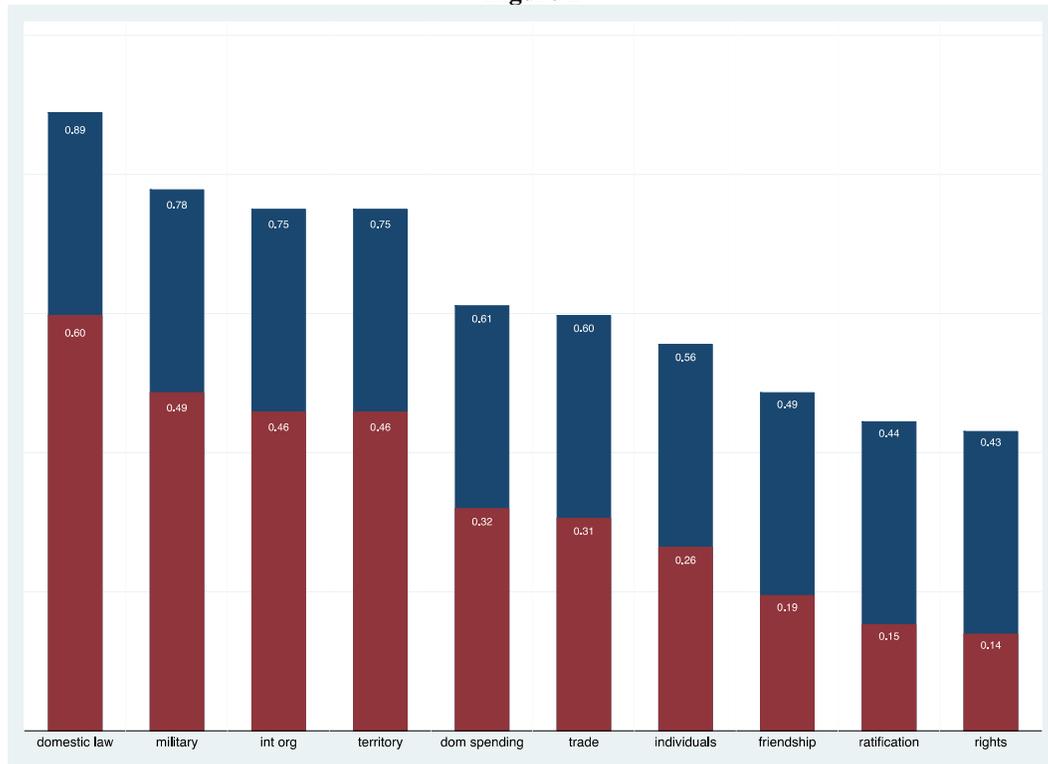
<sup>56</sup> We thank the Comparative Constitutions Project for providing us access to their historical repository of constitutions.

Figure 1



The scope of legislative approval requirements has also expanded over time. Traditionally, only a small set of treaties required approval, such as peace treaties, alliances, and cessions of territory. Since World War II, states have expanded this list to include many treaties that fall within traditional legislative domains, such as those that modify domestic laws, liberalize trade, or commit state spending. Figure 2 shows the percentage of countries that require legislative approval for each treaty type (among those that have some legislative approval requirement) in 2013. Treaties that modify domestic law now require legislative approval in 89% of those countries; military treaties in 78%; and treaties relating to international organizations in 75%. By contrast, in 1948 only 36% of all countries explicitly required legislative approval for treaties that modified domestic law; 32% for military treaties; and 7% for treaties relating to international organizations.

Figure 2



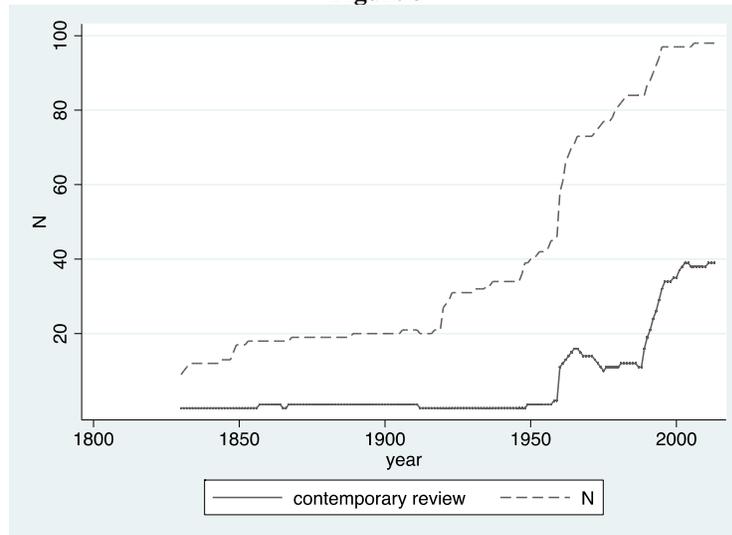
Yet, while legislative approval requirements have grown both in number and in scope, such requirements are not new.<sup>57</sup> As Figure 1 shows, a substantial portion of countries has required legislative approval of at least some treaties throughout the period covered by our analysis. While commentators sometimes suggest that treaty-making was historically an executive prerogative, this is not true for most countries.

Another, often-overlooked, domestic constraint is constitutional review of treaties prior to their conclusion. Figure 3 depicts the number of countries that require such review. It reveals that this practice has become more prevalent in recent decades, although it is largely confined to civil law countries. Until recently, such review was often perfunctory, but domestic courts have become increasingly active in policing the constitutionality of international commitments. For example, in addition to the CETA example cited above, the German Constitutional Court recently reviewed several challenges to the constitutionality of proposed EU treaty amendments related to the European financial crisis.<sup>58</sup>

<sup>57</sup> See Hagenmacher (1991).

<sup>58</sup> See Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Mar. 18, 2014, docket number 2 BvR 1390/12 (Ger.); Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Feb. 28, 2012, docket number 2 BvE 8/11 (Ger.); Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Sept. 7, 2011, docket number 2 BvR 987/10 (Ger.).

Figure 3



To provide an overall measure of domestic treaty-making constraints, we created a Domestic Constraints Index (DCI). The DCI captures the level of constraints for each country-year by combining information on whether a country has a legislative approval requirement, what types of treaties require approval, and whether treaty ratification is subject to constitutional review. The index consists of nine theoretically constructed categories and ranges from 0 to 9. Appendix 2 lists the categories in this index.<sup>59</sup>

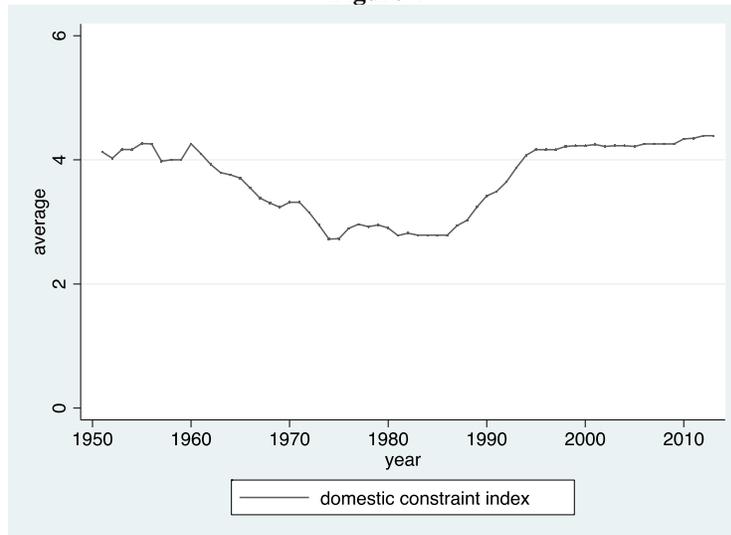
Figure 4 depicts the average country score for this index from 1950 onwards, when most countries entered our sample. It reveals a small downward trend in the 1960s, when many former colonies entered the sample, and an upward trend starting in the late 1980s.<sup>60</sup> Today, the most constrained countries are Mexico, Venezuela, and Colombia (with a score of 9 each). On the other end of the spectrum sit a number of mainly common law countries that remain entirely free of such constraints.

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<sup>59</sup> We opted for a theoretically constructed scale rather than one obtained through factor analysis. The resulting scale has a scale reliability coefficient of 0.76 (“Cronbach’s alpha”). This means that the correlation between this scale and all other possible 10-point scales measuring the same thing is 0.76, which is “respectable” according to DeVellis (2012, 109).

<sup>60</sup> Indeed, the 1990s not only witnessed an increase in the mean of the domestic constraint index, but also its median and mode. Specifically, in 1993, the median shifts from 4 to 5 (and remains at 5 from that point onwards), while in 1994 the mode shifts from 0 to 5 (and remains at 5).

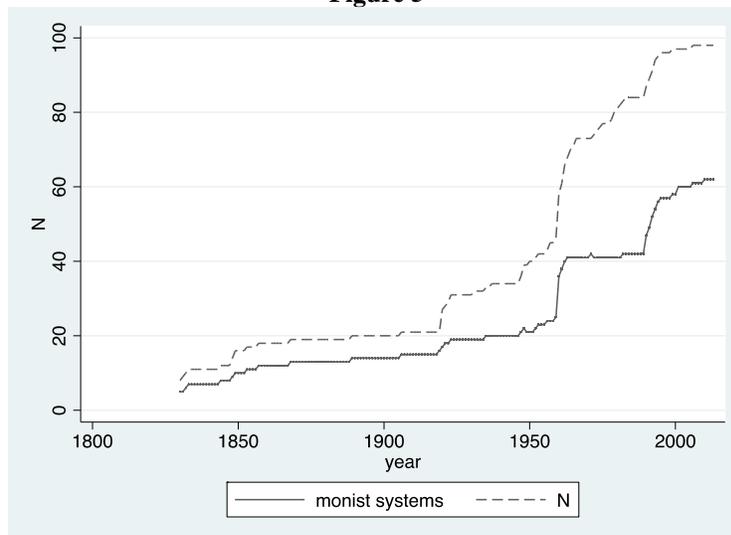
Figure 4



### B. Treaty Receptiveness

Our data reveals that, as states have imposed more domestic constraints on treaty-making, they have also made their legal orders more receptive to ratified treaties. The number of countries where treaties apply directly in domestic law (so-called “monist systems”) has increased over the past decades.<sup>61</sup> Figure 5 depicts their number, and reveals that these systems have proliferated.

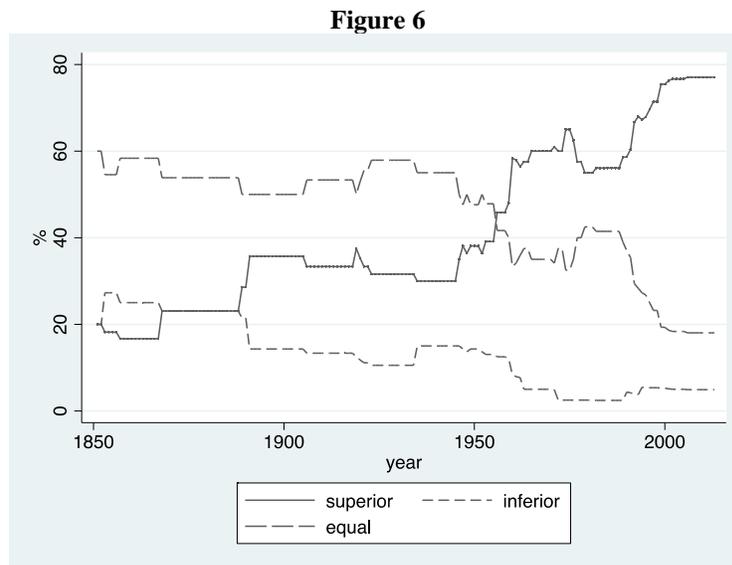
Figure 5




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<sup>61</sup> We classify as “monist” countries where ratified treaties become part of the domestic legal system without the need for further action by the legislative body. Thus, we include countries where some formal steps must be taken by the executive itself, such as adoption of a government or presidential decree, or publication of the treaty in the official journal.

Not only do more countries apply treaties directly, such treaties also increasingly trump domestic statutes. Figure 6 shows the proportion of monist countries where treaties are superior to domestic statutes (solid line), equal (dashed line), and inferior (dotted line). The figure reveals that the proportion of monist systems that make treaties superior to domestic statutes has been rising, especially since the 1950s. In a few countries, treaties are even equal or superior to the constitution (currently: the Netherlands, Belgium, Luxembourg, Switzerland, and Montenegro). There has been a corresponding decline in the number of countries that consider treaties equal or inferior to domestic statutes. Today, roughly 80 percent of monist systems consider treaties superior to ordinary legislation.



A final indication that domestic legal orders have become more receptive to treaties is that a growing number of courts apply a presumption of conformity with ratified treaties in interpreting domestic law. In other words, courts presume that by adopting (or not changing) domestic law that appears to contradict a treaty, the legislature did not intend to violate the state's international obligations, but rather intended these laws to be interpreted consistently with the treaty. In the United States, this is known as the *Charming Betsy* principle (Bradley 1998). Figure 7 depicts the number of countries in which courts apply a similar canon. It reveals that such countries have grown in number but remained fairly stable as a proportion of all countries in the data.

Figure 7



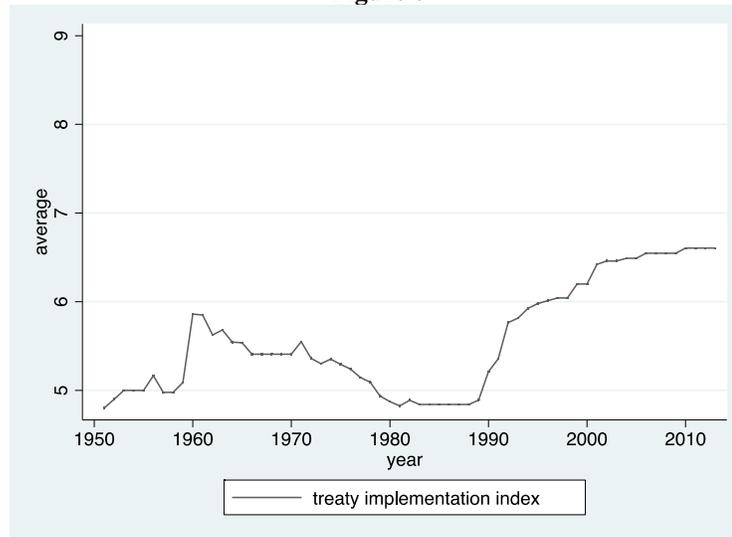
To construct an overall measure of the treaty receptiveness of a domestic legal order, we combined these various dimensions of the domestic legal status of treaties into a single Treaty Receptiveness Index (TRI). The TRI combines information on whether treaties apply directly in the domestic legal order, the status of treaties relative to ordinary legislation, the status of treaties relative to the constitution, and whether courts interpret domestic legislation in line with treaties.<sup>62</sup> The resulting index has eighteen theoretically defined categories, ranging from 1 to 18. Appendix 2 provides full information on this index.

Figure 8 depicts the average country score on the TRI from 1950 onwards, and reveals an upward trend. Like for the DCI, there was a slight decline in treaty receptiveness in the 1960s, when many newly independent colonies entered our sample, and then a gradual increase starting in the early 1990s. Today, the most receptive countries are the Netherlands, Switzerland, Belgium and Luxembourg (14 points). Least receptive are Sri Lanka, Bangladesh and Zimbabwe (0 points). Notably, some of the most receptive countries are also the ones with the most constraints on treaty-making, while some of the least receptive countries also have very few constraints in ratifying treaties.

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<sup>62</sup> The Cronbach's alpha for this index is 0.87, which is relatively high, and suggests that the various components lend themselves well to combination into a single scale (DeVellis 2012, 109).

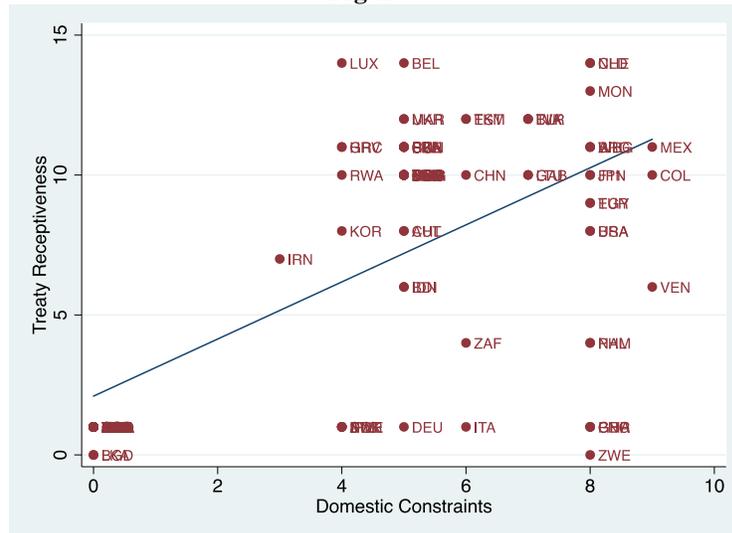
Figure 8



C. Relationship between Treaty Constraints and Receptiveness

The similar trajectories of the DCI and TRI raise the question of whether the growing prevalence of domestic constraints and increased treaty receptiveness are related to one another. A cursory exploration of the data suggests as much. Figure 9 plots the DCI against the TRI for the year 2013, along with a trend line. It reveals that many of the countries with high treaty receptiveness scores also have a high level of domestic constraints on treaty-making. The pairwise correlation between the two indexes is 0.64 in 2013.

Figure 9



### III. EMPIRICAL ANALYSIS

To test the theory developed above, we investigate the impact of domestic constraints and treaty receptiveness on the number of Bilateral Investment Treaties (BITs) a country concludes as a host for international investment. We estimate the following negative binomial fixed effects model:<sup>63</sup>

$$BITS_{it} = \beta_1 dci_{it} + \beta_2 tri_{it} + \beta_3 gdp_{it} + \beta_4 dem_{it} + \alpha_i + \gamma_t + \varepsilon_{it} \quad (1)$$

In this model,  $BITS_{it}$  is the cumulative number of BITs that country  $i$  signed in year  $t$ . We collected data on BIT signing and ratification from the database by the United Nations Conference on Trade and Development (UNCTAD).<sup>64</sup> Following Elkins et al., we distinguish host countries, which receive FDI inflows, from home countries, whose investors invest in the host countries.<sup>65</sup> Because our theory concerns host countries' ability to use their domestic legal system to credibly commit to BITs, we do not count the BITs signed by home countries. Our data includes all country-year observations from 1960 onwards, when the first BITs were concluded.<sup>66</sup>

Our main variables of interest are the domestic constraints index ( $dci_{it}$ ) and the treaty receptiveness index ( $tri_{it}$ ), as described above. We also include a number of control variables that have previously been identified as statistically significant predictors of BIT signing and that might also be related to our variables of interest. First, we control for democracy ( $dem_{it}$ ) because some democratic institutions (such as open government, free press, elected and accountable legislatures, stability) could make democracies inherently more credible regardless of how difficult they make it to ratify treaties or how receptive they are to treaties in the domestic legal order.<sup>67</sup> Democratic regimes might also be more inclined to place domestic constraints on treaty-making, in order to ensure democratic involvement

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<sup>63</sup> Our data consist of count data, that is, the number of bilateral investment treaties that a country has signed as a host country. An important feature of count data is that it has only positive values (i.e., -1 treaties is not possible) and integer outcomes (i.e., 1.5 treaties is not possible). As a result, a regular ordinary least squares (OLS) model is statistically inefficient, does not have consistent standard errors, might yield negative predicted values, and can be biased (King 1989; Li 2005). In our case, the Poisson model is not a good alternative to the OLS model, because our data is overdispersed. Specifically, the variance of the dependent variable exceeds its mean by about 20 times, suggesting that the assumptions that underlie the Poisson model do not hold. We therefore use a negative binomial model, which deals with overdispersion through the inclusion of an overdispersion parameter (Allison 2009, 61). If we re-estimate our baseline model using a Poisson model, both the DCI and TRI are statistically significant at the 5 percent level. If we re-estimate our baseline model using a regular OLS model, the TRI is statistically significant at the 5 percent level, while the DCI is no longer statistically significant.

<sup>64</sup> [http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20\(IIA\)/Country-specific-Lists-of-BITs.aspx](http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/Country-specific-Lists-of-BITs.aspx)

<sup>65</sup> Elkins et al. (2006).

<sup>66</sup> There are almost no developed country BIT pairs (with the notable exception of NAFTA chapter 11), which makes the home-host classification appropriate (Tobin and Busch 2010). For each BIT pair, we designated the country with the highest GDP per capita at the time of signing as the home country, while country with the lower GDP per capita is the host country. This approach is consistent with Elkins et al. (2006).

<sup>67</sup> Lipson (2003).

and accountability.<sup>68</sup> To capture democracy, we used the polity2 variable from the Polity IV database.<sup>69</sup>

We also control for the natural log of GDP per capita ( $gdp_{it}$ ), obtained from the World Bank's world development indicators. Although our analysis focuses on host countries only and excludes the home countries, wealthier host countries may nevertheless be more attractive treaty partners. Moreover, it is possible that GDP is correlated with other factors that make countries more likely to improve the credibility of their commitments through domestic constraints and treaty receptiveness.  $\alpha_i$  is a set of country fixed effects that control for all the non-time-varying characteristics of nations.<sup>70</sup> The inclusion of the fixed effects takes away the need to control for non-time-varying covariates, such as whether a state has common law or a civil law legal system.<sup>71</sup> Controlling for a country's legal origins is important because the emerging model that combines a high level of domestic constraints with monism has its origins in the civil law tradition.  $\gamma_t$  is a set of decade dummies that control for changes in BIT adoption over time.<sup>72</sup> Finally,  $\varepsilon_{it}$  is an idiosyncratic error term. To account for heteroscedasticity and the dependence of errors over time, we calculate robust standard errors clustered at the country level.<sup>73</sup>

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<sup>68</sup> The correlation between democracy and our domestic constraints index is 0.08, suggesting that the two are largely unrelated.

<sup>69</sup> Specifically, we used the polity2 democracy variable that ranges from -10 to 10.

<sup>70</sup> The inclusion of country fixed effects in a negative binomial model is not straightforward. Specifically, the fixed effects negative binomial model suffers from the incidental "parameters problem" which means that for a fixed number of within-group observations and a growing number of groups, the fixed effects cannot be estimated consistently (Heckman 1981). One solution that has been proposed (and that is implemented in standard software packages such as STATA) is to estimate a conditional fixed effects model (Hausman, Hall and Griliches, 1984). However, subsequent research has shown that the conditional fixed effects negative binomial estimator is not a true fixed effects estimator: it does not actually account for non-time-varying country characteristics (Allison and Waterman 2002; Guimarães 2008). Moreover, as Allison and Waterman (2002) show through Monte Carlo simulations, unconditional fixed effects negative binomial models do not reveal any substantial bias from the incidental parameters problem (see also Allison 2009, 64). We believe that, in our case, the benefits of the unconditional fixed effects negative binomial model outweigh the cost, and opt for the unconditional fixed effects negative binomial model in all our baseline specifications (we do so by manually adding country dummies to a regular negative binomial model).

<sup>71</sup> In our robustness analysis, we will experiment with an additional set of control variables that have been shown to be correlated with BIT signing, but that substantially reduce our sample size.

<sup>72</sup> We use decade dummies instead of year dummies, because including year dummies causes a substantial loss of variation given the size of our dataset. When including a time trend in the negative binomial model, the model does not converge, which is a well-documented problem with count models (Silva and Tenreyro 2011). When we add year dummies to our baseline model, the DCI and TRI have p-values of 0.11 and 0.14, respectively, while their size is similar. When we take out the decade dummies entirely, the results are similar to those reported in the baseline specifications (with the DCI and TRI both statistically significant at the 5 percent level).

<sup>73</sup> Elkins et al (2006) have shown that there is interdependence in BIT adoption across countries. We therefore also experimented with alternative clustering at the year level, to allow for serial correlation across countries, but found that this did not substantially change our results. Indeed, the results become more significant when we cluster at the year level. In addition, we experimented with including two binary variables that capture being a British former colony post-1975 and a French former colony post-1970. The U.K. and France started their BIT programs in 1975 and 1970 respectively. If they were more likely to conclude BITs with their former colonies, and colonial origin is also correlated with our indexes, then our results could be driven by colonial ties. When adding these variables, our baseline results remain the same.

### A. *Baseline Results*

Our results reveal that states that place more domestic constraints on treaty-making and those that are more receptive to ratified treaties are able to negotiate and sign more BITs. Table 1, column 1, reports incidence rate ratios and standard errors from the baseline model. It reveals that the treaty receptiveness index and the domestic constraints index are statistically significant at the 5 percent level. The effect of these variables is positive:<sup>74</sup> higher levels of domestic constraints and treaty receptiveness are associated with more BITs. The effect is also sizeable: a 1-point increase on the domestic constraints index (which ranges from 0 to 9) increases the number of signed BITs by a factor of 1.103, or 10.3 percent. The effect of treaty receptiveness is even more substantial: a 1 point increase on the treaty receptiveness index (which ranges from 0 to 18) increases the number of signed BITs by a factor of 1.153, that is, 15.3 percent.

Both the control variables are statistically significant at the 1 percent level and have the expected signs: democratic countries and wealthier countries generally sign more BITs. Specifically, a one-point increase on the democracy scale (which ranges from -10 to 10) increases BIT signing by a factor of 1.038, that is, 3.8 percent. The effect of GDP per capita appears larger than for the other variables, but that is because it is log transformed: specifically, when a state's GDP per capita increases by 100 percent, the number of BITs signed increase by a factor 3.317.<sup>75</sup>

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<sup>74</sup> An incidence rate ratio larger than 1 means that the effect is positive, while an incidence ratio smaller than 1 denotes a negative effect.

<sup>75</sup> Finally, the alpha coefficient is statistically significant, which means that a negative binomial model is a better fit for our data than a Poisson model.

**Table 1: Effect of Treaty Receptiveness and Domestic Constraints on BITs**

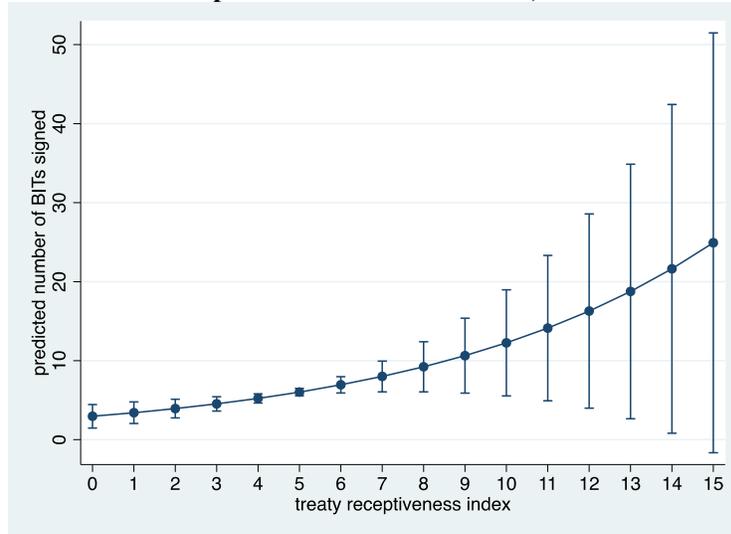
	(1) baseline	(2) additional controls	(3) ratification	(4) factor analysis
Treaty receptiveness index	1.1525** (0.073)	1.1639* (0.108)	1.2212*** (0.085)	
Domestic constraints index	1.1035** (0.052)	1.1219** (0.061)	1.0676 (0.051)	
Common variance in TRI and DCI				2.6474*** -0.826
Democracy	1.0375** (0.015)	1.0033 (0.011)	1.0209 (0.016)	1.0374*** -0.015
GDP per capita	3.3170*** (0.734)	1.6381*** (0.265)	3.9267*** (0.895)	3.3335*** -0.737
Literacy rates		1.0197** (0.009)		
Population size		10.6826*** (4.328)		
FDI		0.9994 (0.004)		
Political Risk		1.0097 (0.006)		
Constant	0.0000*** (0.000)	0.0000*** (0.000)	0.0000*** (0.000)	0.0000*** (0.000)
Lnalpha	0.2293*** (0.056)	0.0275*** (0.022)	0.1939*** (0.055)	0.2311*** (0.056)
Country fixed effects	Yes	Yes	Yes	Yes
Decade dummies	Yes	Yes	Yes	Yes
Observations	3,685	1,488	3,685	3,685

Robust standard errors clustered at the country level reported in parentheses. \*\*\* p<0.01, \*\* p<0.05, \* p<0.1

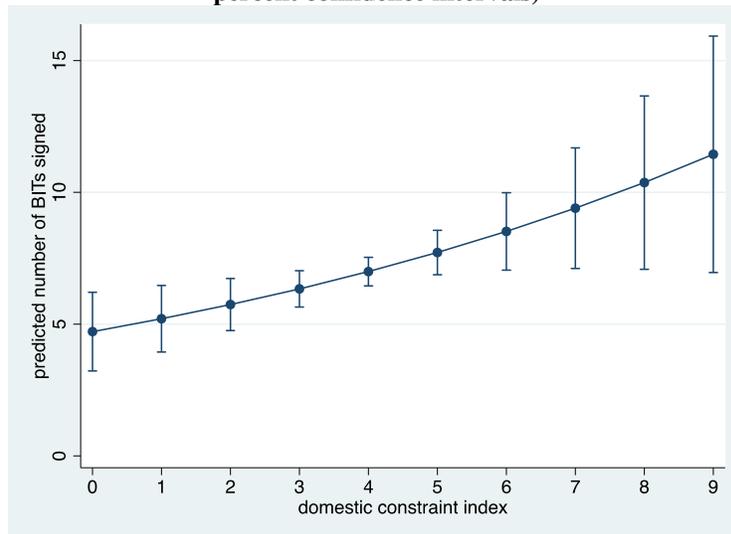
To further disaggregate the effect of domestic constraints and treaty receptiveness, we calculate the predicted number of BITs signed at each level of the TRI and DCI, setting all other variables at their observed values. The predicted number of BITs, along with 10 percent confidence intervals, is depicted in Figures 10 (for the treaty receptiveness index) and 11 (for the domestic constraints index). Figure 10 shows that the effect of treaty receptiveness gets larger as countries move up the scale. A score of 0 on the TRI (dualist system with no presumption of conformity) means that countries are predicted to sign 2.9 BITs, while a score of 14 (monist system in which treaties are equal to the constitution and there is a presumption of conformity) means that they are predicted to sign no less than 21.6 BITs. Likewise, at a value of 0 on the DCI (the executive can conclude treaties without legislative approval) countries are predicted to sign 4.7 BITs, while at a value of 9

(ratification of all treaties is subject to a binding legislative vote and contemporary judicial review) they are predicted to sign 11.4 BITs.

**Figure 10: Predicted Number of BITs at different values of the treaty receptiveness index (with 90 percent confidence intervals)**



**Figure 11: Predicted Number of BITs at different values of the domestic constraints index (with 90 percent confidence intervals)**



### B. Robustness

In this section, we perform various tests to verify the robustness of our findings. First, we check whether our results are robust to alternative model specifications. A well-documented problem in empirical research is that authors estimate a large number of models, but only report a few ‘preferred estimates’ in publication, which might represent the most

favorable results.<sup>76</sup> While the usual standard errors reported in regression tables reflect how estimates might change in repeated sampling, estimates can also change through “repeated modeling,” that is, selectively adding and dropping control variables.<sup>77</sup> To test the robustness of our findings to alternative model specifications, we estimate all possible combinations of  $k$  control variables for our treaty receptiveness and domestic constraints indexes, yielding  $2^k$  coefficient estimates for each. To assess whether the effect of a variable is robust, we calculate the percentage of regressions in which the variable of interest is significantly related to the dependent variable, as proposed by Sala-i-Martin.<sup>78</sup>

**Table 2: Results from Extreme Bounds Analysis**

	N models	average incidence ratio	average SE	modeling SE	upper bound	lower bound	sign stability	significa nce rate
1) Treaty receptiveness	512	1.13	0.063	0.104	1.44	1.02	100%	68%
2) Domestic constraints	512	1.12	0.056	0.086	1.41	0.99	99%	59%
<i>Additional controls:</i>								
3) Treaty receptiveness	8,192	1.13	0.078	0.079	1.38	1.039	100%	88%
4) Domestic constraints	8,192	1.08	0.054	0.089	1.39	0.952	80%	49%
<i>BIT ratification:</i>								
5) Treaty receptiveness	512	1.18	0.070	0.122	1.503	1.041	100%	99%
6) Domestic constraints	512	1.08	0.057	0.078	1.330	0.943	79%	40%
<i>Factor analysis:</i>								
7) Combined TRI-DCI	256	2.44	0.681	1.705	11.46	1.141	100%	87%

The results from this analysis, commonly referred to as “extreme bounds analysis,” are reported in Table 2, rows 1 and 2. The results show that the average size of the effect across the 512 specifications is rather similar to the results reported in Table 1 (1.13 versus 1.15 for the treaty receptiveness index and 1.12 versus 1.10 for the domestic constraint index). The average standard errors across all estimates are also very similar to the original for both indexes. Indeed, the p-values calculated from the average incidence ratio and the average standard error are 0.02 for the treaty implementation index and 0.03 for the domestic constraints index.<sup>79</sup> The modeling standard error, that is, is the standard deviation of the

<sup>76</sup> Young et al. (2013, 1).

<sup>77</sup> *Id.* Gassebner et al. (2013).

<sup>78</sup> Sala-i-Martin (1997). Leamer proposes using the extreme bounds to analyze the robustness of a variable of interest. According to the extreme bound test, a variable is not robustly related to the dependent variable if the lower bound (the lowest value for its beta minus two standard deviations) is negative, while the upper bound (the highest value of its beta plus two standard deviations) is positive. Sala-i-Martin has criticized this test for being too stringent, as variables are almost never statistically significant using this measure. He therefore proposes looking at the percentage of specifications in which the variable of interest is statistically significant. In our analysis, we rely on Sala-i-Martin’s approach, as implemented in STATA by Young et al (2013). This approach is consistent with recent literature. See, e.g., Gassebner et al. (2013); Dreher et al. (2013). We do, however, also report the extreme bounds in Table 2.

<sup>79</sup> We manually calculated the p-values based on the standard normal distribution.

modeling distribution, is higher than the average sampling standard error, which means that some variation in the estimates comes from uncertainty about the model. The sign stability of both indexes is very high; there is a positive effect in 100% of all specifications for the treaty implementation index, and 99% of the domestic constraints index. The treaty implementation index was statistically significant at the 10 percent level in 68% of all specifications, while the domestic constraints index is statistically significant in 59% of all specifications. The literature has suggested a 50% significance rate as a minimum threshold for weak robustness, and both of our indexes pass that threshold.<sup>80</sup> Even though the Extreme Bounds Analysis reveals that our results show some sensitivity to modeling choices, the overall impression is that our results are fairly robust.

We next experiment with adding additional control variables to our model. The baseline specification reported in Table 1, column 1, only includes a limited number of control variables: democracy and GDP per capita. The literature, however, has identified a number of other factors that affect host countries' propensity to enter into BITs, such as literacy rates, existing FDI inflows, and general political risks for investors.<sup>81</sup> We excluded those variables from our baseline specifications because we have no reason to believe that they are correlated with our variables of interest and the inclusion of these variables substantially reduces our sample size. To explore whether the omission of these variables might have affected our results, we repeated the baseline specifications from Table 1, column 1 but added four additional variables: (1) national literacy rates (percentage of adult population), (2) net FDI inflows (as percentage of GDP), (3) political investment risk, (4) the natural log of the country's population size. We obtained the first two variables from the World Development Indicators. The rationale behind the inclusion of these variables is that higher literacy rates make a country more attractive to investors and that the presence of higher existing investment flows signals that a country offers a strong and sound investment climate. The political risk variable was obtained from the PRS Group, which is a commercial provider of political and country risks forecasts to international investors.<sup>82</sup> The political risk variable we use is a composite measure of a number of political risks that investors face when investing in a country, including government instability, law and order, and risk of expropriation. The index purports to capture whether the political climate is conducive to foreign investment. Finally, empirical studies have shown that larger and more populous countries generally are able to conclude more treaties,<sup>83</sup> which might also be true for BITs, since larger markets might be more attractive to investors.

The addition of these additional variables to our model reduces the sample size by half. Nonetheless, the domestic constraints index and the treaty receptiveness index are still statistically significant predictors of BIT signing at the 10 percent and 5 percent levels, respectively. The results, reported in Table 1, column 2, also suggest that the size of their effects is comparable to the original. Like in the baseline model, democracy and GDP per capita are statistically significant predictors of the number of signed BITs. In addition, the model reveals that higher literacy rates and a larger population size are statistically

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<sup>80</sup> Raftery (1995).

<sup>81</sup> Elkins et al. (2006); Chilton (2016).

<sup>82</sup> <https://www.prsgroup.com/about-us/our-two-methodologies/icrg>

<sup>83</sup> Miles & Posner (2011).

significantly associated with more BIT signing. By contrast, net FDI inflows and the political risk index are not statistically significant.

To explore the robustness of this model with additional control variables, we again perform extreme bounds analysis. The results, reported in Table 2, rows 3 and 4, reveal that the TRI is more robust in this model than in the baseline model: it is positive and statistically significant in 88% of the 8,192 models estimated. This approaches the literature's definition of "very robust," which is a significance rate of 95%. By contrast, the DCI is only just around the threshold for weak robustness, and is statistically significant and positive in 49% of all specifications. Since the results from the model with additional variables are close to the original, we use the sample with fewer control variables but a larger number of observations as our preferred specification.

We next replace the BIT signing data with BIT ratification data. Importantly, signing a BIT does not always result in ratification. As noted above, domestic constraints on treaty-making might improve the credibility of the treaty commitment, but they might also make it harder to actually ratify BITs. In other words, the two effects might cancel each other out. To explore whether the effect of the domestic constraints index is different for signing than for ratification, we re-estimated the baseline model presented in Table 1, column 1 but replaced the BIT signing variable with a BIT ratification variable. The results, presented in Table 1, column 2, reveal that the results are very similar to the baseline result. Yet, one notable difference is that the domestic constraints index is merely statistically significant at the 16 percent level, and that the size of the effect is smaller. This suggests that the increased difficulty of ratifying treaties dampens to some extent the effect of increased credibility. Extreme bounds analysis further supports this finding. The results, reported in Table 2, rows 5 and 6, reveal that the TRI is statistically significant in no less than 99 percent of all specifications. By contrast, the DCI is statistically significant in only 40 percent of all specifications, confirming that this finding is not robust.

We next explore the impact of the general strategy of making international commitments credible through a combination of strong domestic constraints and treaty receptiveness. Thus far, our analysis has explored the impact of the DCI and TRI separately. Yet, high levels of both might be part of the same strategy to make commitments credible. Indeed, the DCI and TRI have a correlation of 0.55 in our sample period. To capture the latent factor that makes states more prone both to adopt more stringent domestic constraints and to make their domestic legal orders more receptive to treaties, we perform exploratory factor analysis with a varimax rotation and calculate each country's scores on this factor. We believe that this latent factor captures a state's propensity to make its commitments credible through such rules. The countries with the highest scores on this factor in 2013 are the Netherlands, Switzerland and Montenegro (which have high scores on both the DCI and TRI), while the countries with the lowest scores are Bangladesh and Sri Lanka (which also have the lowest scores on the DCI and TRI). The country scores on the factor range from -1.1 to 1.3.

To estimate the effect of states' propensity to adopt the high-constraints, high-receptiveness model, we replaced the DCI and TRI in our regression analysis with a variable that contains each country's factor score. The result of this exercise, reported in Table 1, column 4, indicate that countries' propensity to make their commitments credible as captured

by the factor variable is a statistically significant predictor of BIT signing at the 1 percent level. The effect is also sizeable: a 1-point increase on the factor variable (which ranges from -1.1 to 1.3) increases the number of BITs signed by a factor 2.65, that is no less than 265 percent. Extreme bound analysis (reported in Table 2, row 7) reveals that this finding is rather robust to alternative model specifications: the factor scores are statistically significant predictors of BIT signing in 87% of all specifications. This exercise further suggests that the imposition of domestic constraints combined with a high treaty receptiveness of the domestic legal order can help states to improve the credibility of their international commitments and to conclude more BITs.

Finally, we perform the same analysis for human rights treaties. As mentioned, human rights treaties are multilateral treaties the ratification of which does not depend on states' credibility. As a result, our theory suggests that high levels of domestic constraints and treaty receptiveness should not affect signature or ratification of these treaties. To test this conjecture, we re-estimate our baseline model but replace the BIT signing variable with the a variable that captures whether the total number of core human rights treaties and their associated optional protocols (a total of 18 possible treaties) states signed or ratified.<sup>84</sup> The results from this analysis reveal that neither the TRI nor the DCI are statistically significant predictors of human rights treaties signing or ratifying.<sup>85</sup> What is more, the incidence ratios are close to 1, which means that the effect is also close to zero in substantive terms. This finding is consistent with our theory.

## CONCLUSION

In this paper, we have argued that states can use their rules on treaty-making and the domestic legal status of treaties to enhance the credibility of their international commitments. We provided a first empirical assessment of this theory by creating a new dataset on these rules across countries and over time, constructing indexes of domestic constraints and treaty receptiveness, and assessing their impact on the ability of host countries to sign and ratify bilateral investment treaties. Overall, we found a statistically significant and robust effect of adopting a model that combines strong domestic constraints and treaty receptiveness on BIT formation. By contrast, this same model does not affect states' ability to sign or ratify human rights agreements. In this conclusion, we address some implications of our findings, as well as some necessary qualifications.

First, some relevant actors may be conscious of the link between domestic constraints, the status of treaties in the domestic legal order, and the credibility of their state's international commitments. However, we do not argue that the emergence of a model that combines high levels of domestic constraints and treaty receptiveness is necessarily a conscious strategy pursued to enhance their state's credibility and facilitate international cooperation. The relevant rules are developed over long periods of time by many actors—constitution-makers, but also courts, legislatures and the executive—with different motivations. Indeed, it may be that some changes, such as establishing prior legislative

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<sup>84</sup> Unlike for BITs, it is common for states to ratify human rights treaties without first signing them. We therefore use a variable that captures whether a country either signed or ratified.

<sup>85</sup> These results are available upon request.

approval and constitutional review requirements for treaties, are sometimes driven by actors hostile to international law. Our argument is that, whatever the immediate motivations, the trend towards combining stronger domestic constraints and treaty receptiveness enhances the credibility of commitments and therefore increases the feasibility of some forms of international cooperation that might not arise absent these features.

Second, this impact may vary depending of the type of treaty at issue. BITs are admittedly a strong case for our theory, because the “obsolescing bargain” problem makes the desirability of the commitment to the home country hinge on the credibility of the host’s promises. This may not be the case in settings where credibility is less salient or where states cannot choose their partners. Besides human rights treaties, the effect should also be weaker for treaties that typically do not require legislative approval or whose obligations are not easily enforceable by courts, such as military alliances. More generally, domestic constraints—and arguably treaty receptiveness—make treaties more credible, but they also make them more difficult to conclude. In the case of BITs, where credibility plausibly matters a lot to treaty formation, we have found an overall positive effect. However, the coexistence of positive and negative effects may make the theory more difficult to test empirically in other settings. Nevertheless, the overall positive effect in the case of BITs suggests that the positive effect may also exist elsewhere.

Finally, our findings have implications for treaty design. In the absence of centralized enforcement, states design treaties to minimize their exposure to defection by their partners. In extreme cases, such as nuclear arms reduction treaties, commitments have to be carefully synchronized and verified at each step because of lack of mutual trust. In more mundane treaties, such as trade agreements, states include numerous features—sunset and renegotiation clauses, arbitration clauses, complex countermeasures provisions—to address similar problems. Many of these features are costly and likely inefficient from the perspective of maximizing mutual gains. By making treaty commitments more credible, the domestic mechanisms we describe may reduce the need for such features and therefore increase—in a modest but perceptible way—the overall efficiency of international cooperation.

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**Appendix 1: Survey Items**

- 1) *Who has the power to initiate treaties, i.e., to negotiate and sign them?*
- 2) *Who has the power to ratify treaties, i.e., to formally express the state's consent to be bound by the treaty?*
- 3) *Is ratification of treaties subject to a legislative vote, and if so, by which chamber of the legislature?*
- 4) *Which type of treaties require a legislative vote?*
- 5) *Do all treaties require legislative approval?*
- 6) *Do treaties dealing with friendship, mutual assistance, cooperation and neutrality require legislative approval?*
- 7) *Do treaties dealing with human rights require legislative approval?*
- 8) *Do treaties dealing with borders and the territory of the nation require legislative approval?*
- 9) *Do treaties dealing with international finance and loans require legislative approval?*
- 10) *Do treaties dealing with joining international and regional organizations require legislative approval?*
- 11) *Do military treaties and peace treaties require legislative approval?*
- 12) *Do treaties dealing with trade and commerce (including treaties of a commercial nature) require legislative approval?*
- 13) *Do treaties that require the modification of domestic laws require legislative approval?*
- 14) *Do treaties that provide for ratification (that is, provide that consent to be bound will be expressed through ratification) need legislative approval?*
- 15) *Do treaties that require domestic spending/ affect the state's finances require legislative approval?*
- 16) *Do treaties that individually impact/ affect citizens require legislative approval?*
- 17) *Do extradition treaties require legislative approval?*
- 18) *Do treaties that deal with international arbitration and/ or regulate the judiciary require legislative approval?*
- 19) *Are there any other types of treaties, not captured by any of the categories above that require legislative approval?*
- 20) *Is there an exception for times of emergency, urgent and/or secret treaties?*

- 21) *May the executive conclude binding international agreements that are not considered “treaties” for constitutional purposes and do not require legislative approval?*
- 22) *If treaties require legislative approval, is this vote binding on the executive?*
- 23) *If treaties require legislative approval, does the vote require a supermajority?*
- 24) *If some treaties require legislative approval by super-majorities, which type of treaties require supermajority vote?*
- 25) *If treaties require legislative approval, are there alternative procedures the executive can use to conclude treaties or international agreements that would normally require a legislative vote without such a vote?*
- 26) *Is ratification of treaties subject to contemporary review of conformity with the Constitution?*
- 27) *Who has the power to withdraw from treaties? Is this power subject to a legislative vote or other requirements?*
- 28) *Are the answers to the questions above different for specific categories of treaties, e.g., human rights treaties?*
- 29) *Does the constitution expressly authorize the State to join international organizations and/or delegate powers to them? If so, which one(s)?*
- 30) *Do ratified treaties automatically become part of domestic law without implementing legislation?*
- 31) *If treaties automatically become part of domestic law, is the domestic legal effect of treaties limited by doctrines under which certain treaties lack such effect (e.g., non-self-executing treaties)?*
- 32) *If treaties automatically become part of domestic law, what is the relationship of treaties to ordinary statutes (superior, equal, inferior)?*
- 33) *If treaties automatically become part of domestic law, what is the relationship of treaties to constitutional provisions (superior, equal, inferior)?*
- 34) *Is there a rule or presumption that domestic statutes (and/or other law) should be interpreted in conformity with obligations under ratified treaties?*
- 35) *Does the constitution expressly refer to international human rights treaties (e.g., the International Covenant on Civil and Political Rights or the European Convention on Human Rights)? If so, which one(s) and are they formally incorporated into domestic law?*
- 36) *Other than human rights treaties, are the answers on the status of treaties different for specific categories of treaties?*
- 37) *In the case of a federal state, may the federal government enter into treaties that relate to matters within the jurisdiction of subnational governments?*

- 38) *May the federal government adopt legislation to implement a treaty that would not normally be within its constitutional legislative jurisdiction?*
- 39) *Is there a requirement that the federal government consult and/or obtain the approval of subnational governments before entering into treaties?*
- 40) *What is the relationship of treaties to subnational legislation (superior, equal, inferior)?*
- 41) *Do subnational governments have the authority to enter into binding international agreements?*
- 42) *Are the answers to the questions above different for specific categories of treaties, e.g., human rights treaties?*
- 43) *Do CIL rules automatically become part of domestic law without implementing legislation?*
- 44) *If the answer to CIL is yes, what is the relationship of CIL to ordinary statutes (superior, equal, inferior)?*
- 45) *If the answer to CIL is yes, what is the relationship of CIL to constitutional provisions (superior, equal, inferior)?*
- 46) *Is there a rule or presumption that domestic statutes (and/or other law) should be interpreted in conformity with CIL?*
- 47) *Does the constitution expressly refer to international human rights instruments other than treaties (e.g., the Universal Declaration of Human Rights or the American Declaration of the Rights and Duties of Man)? If so, which one(s) and are they formally incorporated into domestic law?*
- 48) *Other than as may relate to the instruments mentioned in the previous questions, are certain categories of CIL treated differently? If so, which ones?*
- 49) *In the case of a federal state, what is the relationship of CIL to subnational legislation (superior, equal, inferior)?*
- 50) *Are these answers different for specific categories of CIL rules, e.g., human rights obligations?*

**Appendix 2: Domestic Constraints Index and Treaty Receptiveness Index**

<b>Domestic Constraints Index</b>	<b>Treaty Implementation Index</b>
<p>0=Executive can conclude treaties without legislative approval.</p> <p>1 = All or some treaties are subject to a legislative vote, but this vote is not binding.</p> <p>2 = Ratification of some political treaties is subject to a binding legislative vote (that is, it requires approval for any or all of the treaties relating to: territory, international organizations and military alliances)</p> <p>3 = Ratification of some political treaties is subject to a binding legislative vote (that is, it requires approval for any or all of the treaties relating to: territory, international organizations and military alliances). Ratification of these treaties is also subject to contemporary judicial review for conformity with the constitution.</p> <p>4 = Ratification of treaties that fall within traditional legislative domains is subject to a binding legislative vote (that is, it requires approval for any or all of the treaties relating to international finance, trade, domestic law, domestic spending or the status of individuals).</p> <p>5 = Ratification of treaties that fall within traditional legislative domains is subject to a binding legislative vote (that is, it requires approval for any or all of the treaties relating to international finance, trade, domestic law, domestic spending or the status of individuals). Ratification of these treaties is also subject to contemporary judicial review for conformity with the constitution.</p> <p>6 = Ratification of all treaties is subject to a binding legislative vote, with limited exceptions</p> <p>7 = Ratification of all treaties is subject to a binding legislative vote, with limited exceptions Ratification of these treaties is also subject to contemporary judicial review for conformity with the constitution.</p> <p>8 = Ratification of all treaties is subject to a binding legislative vote.</p> <p>9 = Ratification of all treaties is subject to a binding legislative vote. Ratification of these treaties is also subject to contemporary judicial review for conformity with the constitution.</p>	<p>0 = Dualist system (implementation required), no presumption of conformity.</p> <p>1 = Dualist system (implementation required), but courts apply a presumption of conformity.</p> <p>2 = Monist system (direct application), but treaties are inferior to domestic statutes. There is no presumption of conformity. There are exceptions for non self-executing treaties.</p> <p>3 = Monist system (direct application), but treaties are inferior to domestic statutes. There is no presumption of conformity. There are no exceptions for non self-executing treaties.</p> <p>4 = Monist system (direct application), but treaties are inferior to domestic statutes. There is a presumption of conformity. There are exceptions for non self-executing treaties.</p> <p>5 = Monist system (direct application), but treaties are inferior to domestic statutes. There is a presumption of conformity. There are no exceptions for non self-executing treaties.</p> <p>6 = Monist system (direct application); treaties are equal to domestic statutes. There is no presumption of conformity. There are exceptions for non self-executing treaties.</p> <p>7 = Monist system (direct application); treaties are equal to domestic statutes. There is no presumption of conformity. There are no exceptions for non self-executing treaties.</p> <p>8 = Monist system (direct application); treaties are equal to domestic statutes. Courts apply a presumption of conformity. There are exceptions for non self-executing treaties.</p> <p>9 = Monist system (direct application); treaties are equal to domestic statutes. Courts apply a presumption of conformity. There are no exceptions for non self-executing treaties.</p> <p>10 = Monist system (direct application), treaties are superior to domestic statutes, but inferior to the constitution. There are exceptions for non self-executing treaties, and courts do not apply presumption of conformity.</p> <p>11 = Monist system (direct application), treaties are superior to domestic statutes, but inferior to the constitution. There are exceptions for non self-executing treaties, but courts apply presumption of conformity.</p> <p>12 = Monist system (direct application), treaties are superior to domestic statutes, but inferior to the constitution. There are no exceptions for non self-executing treaties.</p> <p>13 = Monist system (direct application), treaties are equal to the constitution. There are exceptions for non self-executing treaties, and courts do not apply a presumption of conformity.</p> <p>14 = Monist system (direct application), treaties are equal to the constitution. There are exceptions for non self-executing treaties, but courts do apply a presumption of conformity.</p> <p>15 = Monist system (direct application), treaties are equal to the constitution. There are no exceptions for non self-executing treaties.</p> <p>16 = Monist system (direct application), treaties are superior to the constitution. There are exceptions for non self-executing treaties, and courts do not apply presumption of conformity.</p> <p>17 = Monist system (direct application), treaties are superior to the constitution. There are exceptions for non self-executing treaties, but courts apply presumption of conformity</p> <p>18= Monist system (direct application), treaties are superior to the constitution. There are no exceptions for non self-executing treaties.</p>

