THE GLOBAL EVOLUTION OF FOREIGN RELATIONS LAW

Online Appendix

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# Appendix I: Additional information on Data Collection

This Appendix provides additional information on our data collection process. Part A produces the full list of survey questions that we answer for each of the 108 countries in the dataset. The answers to these questions in the memorandums identify whether the answer to these questions changed over time, and if so, when and how. Part B list the 31 variables used in our ideal point estimation procedure. Part C produces a correlation matrix which reveals how these variables correlate.

## Full List of Survey Questions

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?

## Variables Used in Ideal Point Estimation

1. **Initiate:** Who has the power to initiate treaties, i.e., to negotiate and sign them?

0= Other

1= The executive branch

99= unable to determine

1. **Ratify:** Who has the power to ratify treaties, i.e., to formally express the state’s consent to be bound by the treaty?

0= Other

1= The executive branch

99= unable to determine

1. **Approval\_all:** Do all treaties require approval by Parliament?

0=no

1= yes

99= unable to determine

1. **Approval\_domestic:** Do any of the following treaties require approval by Parliament: those relating to human rights, those relating to domestic law, those that affect domestic spending or those that affect the rights of individuals. Also coded if all treaties require legislative approval.

0=no

1= yes

99= unable to determine

1. **Approval\_security:** Do any of the following treaties require approval by Parliament: those relating to the territory of the state, military treaties, or friendship treaties. Also coded if all treaties require legislative approval.

0=no

1= yes

99= unable to determine

1. **Approval\_trade:** Do trade treaties require approval by Parliament? Also coded if all treaties require legislative approval.

0=no

1= yes

99= unable to determine

1. **Approval\_intorg:** Do treaties that involve joining an international organization require approval by Parliament? Also coded if all treaties require legislative approval.

0=no

1= yes

99= unable to determine

1. **Executiveagts:** May the executive conclude binding international agreements that are not considered “treaties” for constitutional purposes and do not require legislative approval?

0=no

1= yes

99= unable to determine

1. **Legbinding:** If treaties require legislative approval, is this vote binding on the executive?

0=no

1= yes

99= unable to determine

1. Legislature:?

0=no

1= yes

99= unable to determine

1. **Supermajority:** If treaties require legislative approval, does the vote require a supermajority?

0=no

1= yes

99= unable to determine

1. **Reservation:** Can the legislature add reservations to the treaty prior to ratification?

0=no

1= yes

99= unable to determine

1. **Alternative:** 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?

0=no

1= yes

99= unable to determine

1. **Review:** Is ratification of treaties subject to contemporary review of conformity with the Constitution?

0=no

1= yes

99= unable to determine

1. **Withdraw**: Who has the power to withdraw from treaties?

0= the executive

1= parliament

99= unable to determine

1. **Intorg:** Does the constitution expressly authorize the State to join international organizations and/or delegate powers to them?

0=no

1= yes

99= unable to determine

1. **Treatstatus:** Do ratified treaties automatically become part of domestic law without implementing legislation?

0=no

1= yes

99= unable to determine

1. **Treatexception:** 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)?

0=no

1= yes

99= unable to determine

1. **Treaties\_const\_superior:** Are treaties superior to the constitution?

0=no

1= yes

99= unable to determine

1. **Treaties\_const\_equal:** Are treaties at least equal to the constitution?

0=no

1= yes

99= unable to determine

1. **Treaties\_supralegislative:** Are treaties at least superior to legislation?

0=no

1= yes

99= unable to determine

1. **Treaties\_statutes\_equal:** Are treaties at least equal to legislation?

0=no

1= yes

99= unable to determine

1. **Treaties\_statutes\_alinferior:** Are treaties inferior to legislation?

0=no

1= yes

99= unable to determine

1. **Treatinterpretation:** Is there a rule or presumption that domestic statutes (and/or other law) should be interpreted in conformity with obligations under ratified treaties?

0=no

1= yes

99= unable to determine

1. **Cil:** Does CIL automatically become part of domestic law without implementing legislation?

0=no

1= yes

99= unable to determine

1. **Cil\_const\_superior:** Is CIL superior to the constitution?

0=no

1= yes

99= unable to determine

1. **Cil\_const\_equal:** Is CIL at least equal to the constitution?

0=no

1= yes

99= unable to determine

1. **Cil\_supralegislative:** Is CIL at least superior to legislation?

0=no

1= yes

99= unable to determine

1. **Cil\_statutes\_equal:** Is CIL at least equal to legislation?

0=no

1= yes

99= unable to determine

1. **Cil\_statutes\_inferior:** Is CIL inferior to legislation?

0=no

1= yes

99= unable to determine

1. **Cilinterpretation:** Is there a rule or presumption that domestic statutes (and/or other law) should be interpreted in conformity with obligations under CIL

0=no

1= yes

99= unable to determine

## Correlation Matrix

The correlation matrix below shows the correlation between each of the 31 variables in our dataset for the year 2013.

Figure : Correlation Matrix for Each Pair ofCoded State Traits, 2013



*Note*: The blue/orange color denotes the correlation index for each set of country traits. High levels of correlation are denoted by dark blue; low (negative) levels of correlation are denoted by dark orange. Orthogonality is denoted by white.

# Appendix II: Dimensionality and Interpreting the Dimensions

This Appendix provides additional information on how to interpret the results from the ideal point estimation procedure. Part A provides information on how we established that our data is two-dimensional.

## Dimensionality

An important step in ideal point estimation is to estimate the dimensionality of the data. This means that, in our case, we have to establish how many issues divide states in their foreign relations law choices. One commonly used tool to analyze the dimensionality of data is through the use of a scree plot, which depicts through “eigenvalues” how much variation is explained by each of the dimensions.[[1]](#footnote-1) The appropriate number of dimensions is the number of observed eigenvalues prior to the last major drop in eigenvalue magnitude, which resembles (and is known as) an “elbow.” The scree plot for our data reveals that the elbow falls at the second dimension: the eigenvalues are sharply lower, and closely packed, from the third through tenth dimensions.

Figure : Scree Plot Showing Variability by Dimension



The Figure 13 scree plot depicts the eigenvalues for each estimated dimension. Using the so-called “elbow test” shows that it is appropriate to focus on the first two dimensions of the data. The elbow test asks where the line connecting the points takes an abrupt right turn (the “elbow”), implying a steep drop-off in eigenvalues, which in turns suggests that the dimensions prior to that point include a substantial portion of the variation.

## Meaning of the Dimensions: Discrimination Parameters

The specific model we use is Item Response Theory (IRT).[[2]](#footnote-2) IRT was initially developed for psychometric testing but was later adopted for estimating parameters of legislator roll-call votes.[[3]](#footnote-3) In addition to an ideal point, which captures a political actor’s position on a latent dimension, an IRT model also produces a “discrimination parameter,” which indicates which “votes” best explain the variation for each dimension. The discrimination parameteris an important diagnostic tool in determining the dimensions’ substantive meanings. In the testing context in which IRT was developed, the questions with the highest values were those which were best able to separate the strong and weak students. In the context of the Supreme Court, the discrimination parameter captures which cases are best able to separate the justices along liberal-conservative lines. Some types of cases – like civil rights, criminal sentencing, and immigration cases – usually reveal the justices’ positions on that spectrum better than other types – like jurisdictional and procedural cases. We might look closely at the former set of cases for evidence of where any given justice lies on the left-right dimension. Likewise, we can observe which foreign relations legal choices have the highest discrimination values for each dimension to infer what the dimensions represent.[[4]](#footnote-4)

We estimate a single ideal-point model that contains all country-years (1815–2014). An alternative approach would be to estimate a separate model for each year.[[5]](#footnote-5) We chose the former because it improves consistency, ensuring that the ideal-point estimates for the same or similar policy sets over time do not appear dissimilar because of the presence or absence of other states. We also normalized all values so that the mean is 0 and the standard deviation is 1, which eases comparison.

Table 1 depicts the discrimination parameters in two dimensions. It also presents a “difficulty parameter,” which captures It highlights those with the largest scores on each dimension. It shows that variables capturing the status of treaties are particularly important on both dimensions and that variables capturing legislative involvement in treaty ratification are important on the first dimension, while variables capturing the status of CIL are important on the second.

Table : Discrimination and Difficulty Parameters

|  |  |  |  |
| --- | --- | --- | --- |
|  | D1 | D2 | Difficulty |
| 1. treaties\_supralegislative | -21.00 | 11.16 | 0.94 |
| 1. treaties\_statutes\_equal | -20.40 | 10.85 | 0.92 |
| 1. treatstatus | -4.04 | 1.94 | -0.96 |
| 1. legislature | -3.66 | -0.13 | -1.72 |
| 1. approval\_intorg | -2.99 | -0.18 | 1.42 |
| 1. legbinding | -2.68 | -0.01 | -0.97 |
| 1. approval\_domestic | -2.41 | -0.20 | -0.60 |
| 1. approval\_trade | -2.29 | -0.31 | 0.89 |
| 1. approval\_all | -2.28 | -0.60 | 2.16 |
| 1. approval\_security | -2.05 | -0.18 | -0.13 |
| 1. treatexception | -1.92 | 0.96 | 0.28 |
| 1. reservation | -1.20 | 0.25 | 0.30 |
| 1. executiveagts | -1.06 | 0.09 | 0.36 |
| 1. treaties\_statutes\_alinferior\_ | -1.02 | 0.66 | 1.02 |
| 1. alternative | -0.93 | 0.19 | 0.16 |
| 1. review | -0.54 | 0.43 | 1.27 |
| 1. treaties\_const\_equal | -0.53 | 0.19 | 2.44 |
| 1. treaties\_const\_superior | -0.53 | 0.18 | 2.43 |
| 1. withdraw | -0.48 | -0.17 | 1.12 |
| 1. intorg | -0.46 | 0.26 | 1.02 |
| 1. cil\_const\_equal | -0.44 | 18.39 | 20.44 |
| 1. supermajority | -0.38 | 0.12 | 1.42 |
| 1. cil\_statutes\_equal | -0.16 | 19.37 | 21.70 |
| 1. cil\_supralegislative | -0.13 | 18.51 | 20.73 |
| 1. cil | 0.14 | 0.69 | -1.09 |
| 1. cil\_statutes\_inferior | 0.14 | 2.80 | 4.44 |
| 1. cilinterpretation | 0.50 | -0.04 | -0.07 |
| 1. treatinterpretation | 0.52 | 0.06 | -0.41 |
| 1. initiate | (omitted)\* | | |
| 1. ratify | (omitted)\* | | |
| 1. cil\_const\_superior | (omitted)\* | | |

*\*Note: Initiate, ratify*, and *cil\_const\_superior* are omitted because they take the same values for all states and therefore do not inform the estimates.

## Country Clusters



Figure 14: Correlation Matrix for Each Country Dyad, 2010

*Note*: The blue/orange color denotes the correlation index for each 2010 country dyad for all country traits. High levels of correlation are denoted by dark blue; low (negative) levels of correlation are denoted by dark orange. Orthogonality is denoted by white.

In the main text of the paper, we explore country clusters through a spatial map with policy points. Another way to inspect how states cluster together is to simply plot the correlation coefficients of their policy choices, capturing how much variation on the 31 variables they share in common. Figure 14 is a correlation matrix of all countries in the dataset in 2010. It illustrates the correlation coefficient for every country pair, or dyad. In other words, it shows how similar the foreign relations policy choices are for every set of countries. High levels of correlation are denoted by dark blue; low (negative) levels of correlation are denoted by dark orange. Orthogonality, or no relationship, is denoted by white. The countries are sorted so that, in general, similar countries tend to cluster together. For instance, Hungary and Slovenia have very similar policies, while Chile and Sri Lanka have completely different ones. A set of clusters near the bottom of the grid jumps out; one comprises common law countries, and the other cluster comprises civil law countries. Again, these grouping are consistent with theories that emphasize diffusion along colonial lines.

## Time Trends

Figure 15 depicts the average scores of the first and second dimension over time. Most notable is the marked increase of both dimensions in the 1990s, reflecting the growing openness towards international law during this period.

Figure : Mean Global Policy Point Trends



1. *See* Poole, *supra* note 68, at 141–46 (explaining that the “most practical approach” to identifying the appropriate number of dimensions is to plot “the eigenvalues of the double-centered agreement score matrix and then simply estimate the spatial model in the [number of] dimensions [that corresponds to] an elbow in the plot of eigenvalues”). [↑](#footnote-ref-1)
2. Specifically, we use the IDEAL quadratic parametric model. *See* Joshua Clinton, Simon Jackman, & Douglas Rivers, *The Statistical Analysis of Roll Call Data,* 98 Am. Pol. Sci. Rev. 355, 356–58 (2004). IRT is not the only form of ideal point estimation, and there is a lively debate in political science about the pros and cons of different types of ideal point estimation. *Compare* Howard Rosenthal & Erik Voeten, *Analyzing Roll Calls with Perfect Spatial Voting: France 1946–1958,* 48 Am. J. Pol. Sci. 620, 622 (2004) (using optimal classification) *with* James J. Heckman & James M. Snyder, *Linear Probability Models of the Demand for Attributes with an Empirical Application to Estimating the Preferences of Legislators*, 28 RAND J. Econ. 142, 150–57 (1997) (using factor analysis). [↑](#footnote-ref-2)
3. Krishna K. Ladha, A Spatial Model of Legislative Voting with Perceptual Error, 68 Pub. Choice 151, 153 (1991). [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. For similar approaches, *see* Law & Versteeg, *supra* note 49, at 1163; Yonatan Lupu, *The Informative Power of Treaty Commitment: Using the Spatial Model to Address Selection Effects,* 57 Am. J. Pol. Sci. 912, 914–17 (2013). [↑](#footnote-ref-5)