Unbundling the State:
Legal Development in an Era of Global, Private Governance*

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Abstract

What happens to a public, domestic institution when its authority is delegated to a privately-run, transnational institution? In this article, I first present a theoretical framework for understanding how governmental tasks that have traditionally been "bundled" together in state institutions become "unbundled" and outsourced to private bodies. I apply this framework to international commercial arbitration (ICA), a widely-used system of cross-border commercial dispute resolution. I argue that ICA provides commercial actors an "exit option" from weak public institutions, thereby reducing pressure on the state to invest in capacity-enhancing reform. Using a variety of difference-in-differences estimators, I demonstrate that the enactment of strong protections for ICA leads to the gradual erosion of the quality of local legal institutions, particularly in countries with already weak legal systems. I test the underlying mechanism driving this dynamic using dispute data from the International Chamber of Commerce. I find that pro-arbitration laws increase the use of international arbitration by national firms. I find no evidence, however, that such laws increase the number of arbitrations that take place within a given jurisdiction and would therefore be subject to domestic oversight. This suggests that firms use ICA as an escape from domestic institutions. This paper contributes to debates on globalization and development as well as burgeoning work on the second-order effects of global governance institutions.

1 Introduction

Private, transnational governance regimes with the power to write, interpret and enforce commercial rules have proliferated in recent decades. As Braithwaite (2008, 3) wrote, many countries have "become rule-takers rather than rule-makers." Because much of the scholarly work on this form of private regulation focuses on the transnational regimes themselves, we know relatively little about the consequences of this changing international institutional landscape for domestic political development. In this article, I argue that the growth of private, transnational authority carries with it an implicit model of political and legal development, what I called the "unbundled state," that cuts against traditional models of political development. "Unbundling" governance refers to the delegation of rulemaking authorities—that is, the power to write, interpret or enforce rules—that have traditionally been "bundled" in centralized public institutions. Under this model, rather than supporting holistic competence building within centralized institutions, states have the option of delegating piecemeal governance tasks to actors with little accountability to domestic publics. One unintended byproduct of the growth of transnational institutions is that countries with weak state capacity may suffer from institutional stagnation and divestment as powerful domestic and foreign actors, who would otherwise have a stake in the strength of domestic institutions, instead make use of transnational substitutes for the same services. This in turn diminishes the incentives states face to engage in capacity-enhancing reform. In this article, I offer a theory for understanding the domestic consequences of the growth of global governance institutions and apply this theory through an empirical analysis of international commercial arbitration (ICA), a highly effective, privately-run system of international contract enforcement.

On its face, there might be a net gain when states privatize governance tasks like contract enforcement. Perhaps contract enforcement through private arbitration, for example, simply eases the process by which firms involved in international business enforce

contracts and settle disputes while no one else is made worse off. The central theoretical claim I put forward below, however, is that the emergence of transnational governance institutions can have important implications beyond their specific policy domains. I argue that this is due to the externalities of bundled and centralized institutions. Centralization establishes simple lines of accountability and creates externalities that, when positive, benefit a wider constituency, and, when negative, ease the process of building broad political coalitions for reform.

The implications of unbundling for the underlying public institution depends on how the public and private bodies interact, specifically whether the private body acts as a complement or substitute to the public institution. Substitution provides actors an "exit option" from the public institution, thereby reducing the incentive for states to invest in maintaining or improving the quality of service. Complementarity, by contrast, implies that unbundled institutions will enhance governing quality because civil society actors remain invested in the quality of the public institution.

The privatization and export of services traditionally entrusted to public institutions is not new (Strange, 1996). But this dynamic is particularly prevalent in the area of commercial dispute resolution (Hale, 2015; Sharafutdinova and Dawisha, 2017; St John, 2018). Resource-rich individuals and firms can access strong contract enforcement institutions by submitting disputes to foreign jurisdictions or arbitral tribunals, while those without such resources are left to deal with sub-par domestic legal institutions. Nougayrède (2013) refers to this phenomenon as the "outsourcing" of law. The development of ICA has been a key driver within modern global economic governance facilitating legal outsourcing. ICA refers to a widely-used system of private arbitration for international commercial disputes. Parties typically enter into ICA through contractual provisions stipulating that future disputes will be sent to private arbitration rather than national courts. ICA allows disputants to choose the relevant procedural and substantive laws and pick the arbitrators who will hear the case, among other things. Most importantly, an award issued by an

arbitration panel can be enforced through national courts almost anywhere in the world.

Since the inception of modern commercial arbitration in the early 20th century, arbitration has sparked intense debate about the role of private authority in public affairs (Cutler, 2003). This debate has taken on added urgency in light of the increasing deference legislatures and judiciaries around the world have granted to arbitration (Resnik, 2015; Stone Sweet and Grisel, 2017). Through my examination of ICA, I seek to contribute to the growing literature on global governance (e.g., Lake, 2018; Henry and Sundstrom, 2021) by providing a framework for conceptualizing the interactions between global governance institutions (such as international arbitration) and local institutions (such as national courts).

Specifically, I focus on the consequences of enacting pro-arbitration domestic laws based on the United Nations Commission on International Trade Law's (UNCITRAL) Model Law on International Commercial Arbitration (hereafter, the Model Law). The Model Law is a ready-made legislative text incorporating key features of the "state-of-the-art" in ICA: it limits judicial intervention in the arbitral process by severely circumscribing the scope of judicial oversight while at the same time requiring courts to enforce arbitration agreements and awards without substantive review unless one of a very narrow set of exceptions are met. After arguing that ICA is best thought of substitute for national courts, I find that enactment of the Model Law has a deleterious effect on the development of domestic legal institutions, particularly in countries with already weak legal institutions. Resting on a similar logic, this finding extends results concerning the potentially harmful influence of aid dependence on public institutional development (e.g., Knack, 2001) into the realm of global governance.

I also examine empirically how arbitration reduces firms' dependence on local courts by exporting or "de-localizing" what would otherwise be *domestic* legal disputes and shifting them into transnational fora. I demonstrate this using new data from the International Chamber of Commerce's (ICC) Court of Arbitration—the world's premier ICA center.

Using a variety of nonlinear and linear difference-in-differences estimators, I find that the enactment of ICA-friendly laws increases the use of international arbitration by national firms, but that arbitration tends to take place *outside* the purview of the state. This implies that ICA is both diverting disputes out of national courts and also further shielding them from domestic public oversight. This cuts against one of the primary goals behind the global adoption of ICA laws: the "re-localization" of political and legal authority overseeing international commercial dispute resolution (Yusuf, 2017).

The paper proceeds as follows. In the next section, I briefly present the arguments of the two main competing hypotheses concerning the interaction between private and public systems of commercial dispute resolution. I then seek to synthesize the conflicting approaches particular to international arbitration by contextualizing this debate within broader literatures on political development, globalization and global governance. Following that, I apply this theoretical framework to the case of international commercial arbitration. I argue that ICA is best thought of as a substituting institution that risks hindering investment in local legal reform. In the subsequent section, I use a variety of difference-in-differences estimators to examine the effect of enactment of strong protections for ICA on the development of a country's legal infrastructure. I find that enacting the Model Law results in the gradual degradation of public legal institutions in countries, particularly where such institutions are already weak. I then examine the mechanism driving substitution before concluding.

2 International Commercial Arbitration & the Rule of Law

In this section I provide a brief overview of the debate between scholars and practitioners concerning the interaction between international arbitration and local legal institutions. I draw from the literature on the interaction between national courts and international arbitration in the context of both investor-state dispute settlement (ISDS) and ICA. ISDS

refers the global system of arbitration for resolving violations of international law between investors and host states, while ICA concerns the resolution of cross-border contract disputes (which may or may not be between investors and host states).

Much of the debate around international arbitration and local legal development has focused primarily on ISDS (e.g., Ginsburg, 2005; Schultz and Dupont, 2014; Sattorova, 2018; Bodea and Ye, 2020). While ISDS and ICA can be thought of as distinct systems, there are many legal and substantive similarities between them and they enjoy similar levels of protection from oversight by domestic courts. The basic structure of ISDS and ICA *vis-à-vis* national courts is essentially similar: each is designed to be a private, transnational alternative to national courts in their capacity to issue legally binding rulings over commercial disputes. Due to these similarities, I also draw on the theoretical and empirical debates surrounding ISDS, though I later argue for why ICA provides a more reliable test-case. Below, I divide the literature into two camps: those who think arbitration will *enhance* the rule of law and those who think arbitration will *undermine* the rule of law.

International arbitration enhances the rule of law. Franck (2007, 367-370) contends that a successful international investment regime requires the mutual support of both national courts and international arbitration, in other words that arbitration and courts are complementary. In addition to being a venue for resolving disputes, Franck writes that international arbitration provides a "useful model" that helps "promote adherence to the rule of law" through both the power of example and the introduction of competitive pressures on judiciaries (p. 372). Arbitration, Franck argues, increases competitive pressure on judiciaries by taking away cases that would otherwise go to court, thereby spurring local reform by jealous judiciaries to win back their former caseloads.

Rogers (2015) shares Franck's central thesis but argues that we should expand our focus to include ICA as well. Unlike ISDS, which is rooted in international law, ICA is directly tied to the reform of domestic institutions through national legislation and domestically-oriented initiatives meant to promote and legitimize arbitration. Rogers (2015, 74) expects

local legal elites—eager to integrate into transnational business and legal networks—will work to entrench rule-of-law norms locally through "legislative reforms, judicial training, reforms in legal education, and attorney training that improve rather than detract from national legal institutions." In this way, rule-of-law norms are expected to spillover from the transnational to the national setting. In a subsequent extension and empirical analysis of this theory, Rogers and Drahozal (2022) argue that pro-ICA reforms support the diffusion of rule-of-law norms for two reasons. First, ICA creates new business opportunities for local legal elites who work to diffuse stronger rule-of-law norms in order to secure those opportunities (pp. 5-9). Second, legal and business elites demand a similar level of treatment from local courts that they enjoy in international arbitration (p. 8). Using a two-way fixed effects model, they find that the enactment of the UNCITRAL Model Law is associated with increased quality of rule-of-law institutions, though only when a country has a history of ISDS claims against it.

International arbitration undermines the rule of law. Others are skeptical of the "good governance" narrative behind the promotion of international arbitration. Sattorova (2018) shows that the emergence of this narrative grew out of the realization within the practitioner community that BITs may not have the positive economic developmental effects for which their advocates had hoped. Some argue that rather than providing complementarities that facilitate the spillover of rule-of-law norms or "race-to-the-top" dynamics, the substitution of courts by ICA and ISDS may instead lead to the deterioration of local legal institutions (Puig and Shaffer, 2018, 395-7). That is, commercial actors' exit from local courts is expected to reduce political pressure for capacity-enhancing rule-of-law reforms because they no longer have a stake in the quality of local courts. Ginsburg (2005, 119) argues that the availability of international arbitration therefore "may reduce courts' incentives to improve performance by depriving key actors from a need to invest in institutional improvement." Ginsburg finds moderate support that signing BITs containing binding arbitration clauses are correlated with weaker legal institutions in the

Mechanism:	Competition	Norm Transfer	Reform Pressure
Direction of effect:	↑	↑	↓

Table 1: Causal Pathways and Expected Effect on Legal Development

future.

The harmful effect of substitution may be exacerbated in poorer countries or those weak rule-of-law institutions. In a study of commercial arbitration in Sudan, Massoud (2014) argues that the Sudanese regime promoted ICA in order to provide high-quality legal services demanded by foreign investors without risking spillover of such services into the broader judiciary. Arbitration thus grants key interest groups access to an effective and neutral contract enforcement institution, without undermining the regime's use of the judiciary as a tool for maintaining a repressive public order. This dramatically reduces the opportunity costs nondemocratic states face for failing to invest in reforms promoting transparency, accountability and efficiency within domestic legal institutions.

In sum, the literature has identified three causal pathways through which the growth of international arbitration could influence the development of local legal infrastructure (see Table 1): institutional *competition*, elite-driven *norm transfer* and political *reform pressure*. Scholars disagree, however, over which of these mechanisms is operating in the context of ICA. Both sets of scholars largely agree that arbitration will to some extent deprive local courts of cases. But we do not know to what extent this diminishes state control over the adjudicative process or lessens political pressure from commercial interest groups for reform. For example, many would agree that promoting integration with transnational arbitral practice may lead to some knowledge and normative transfer, but, again, we do not know how much knowledge is transferred, to whom and whether that translates to broader reform and therefore improved outcomes overall.

In the next section, I situate the specific debate about international arbitration and the

rule of law in the broader literatures on globalization and global governance. Bringing these strands of research together provides useful tools for understanding the domestic effects of transnational legal institutions by integrating the mechanisms of substitution and knowledge spillover within a common analytical framework. Then in the subsequent section, I apply this framework to ICA, arguing that it better approximates a substitute for national courts, rather than a complement.

3 Transnational Legal Institutions & the Unbundled State

In this section, I draw on the concept of "unbundling" from work on globalization and apply it to political and legal development. One of the key consequences of technological change over the last two centuries has been the incremental "unbundling" of commerce (Baldwin, 2006). The first victim of the unbundling dynamic was the tight nexus between the locations of production and sale. Cheaper transport costs allowed for firms to fragment supply lines and production around the globe and ship to consumers anywhere. More recently, the firm itself has become unbundled as technology allows for the decoupling of an increasingly large set of service-based tasks that were not thought of as tradable before the reduction of communication costs (pp. 22-35). The common theme in each of these examples is that the efficient allocation of tasks between and within firms, occupations, etc. is largely a function of external and contingent technological and institutional constraints. As these constraints disappear or change, pressures build to alter the distribution of tasks which, in turn, disrupts traditional forms of political and economic organization. While this literature has focused primarily on the effect of technological change on the organization of production, firms, and occupations, I posit that we can fruitfully extend the concept of bundling and unbundling to state institutions in an age characterized by the proliferation of private and transnational sites of rulemaking authority unmediated by state actors.

A typical modern state is made up of "bundled institutions" that have authority over a wide set of diverse governance tasks. The judiciary is a prime example of a bundled, public institution. Broadly speaking, the same court will hear cases in any number of issue areas. This allows for a high degree of professional movement and knowledge sharing within bundled institutions. The same judge might sit on a national security case one week then an intellectual property case the next. Even in jurisdictions with distinct commercial courts, such as England and Wales, the judges appointed to the court are part of broader, more general judicial organization and often sit on other courts hearing non-commercial cases. In addition to intra-institutional knowledge building, bundling also provides simple lines of accountability linking task to institution to outcome. Bundling thereby "internalizes externalities" which helps resolve collective action problems (Gerring and Thacker, 2004, 322-324). Because the policies of a bundled institution affect a wider range of actors, it is easier to identify negative externalities. This eases the process of building a coalition for reform as the policy affects a larger set of actors than it would have if the policy were implemented by an institution with a smaller task-set. This is especially true with respect to the law. Bundled legal institutions enhance public accountability by developing and applying broad principles to disparate cases, reducing the risk of contradictory rules forming in different issue areas.

One benefit of unbundling is the creation of specialized, nimble governing authorities. Generalist public officials and broad principles found in bundled institutions, while providing simplicity, might not offer the most optimal solution to any given problem. In the regulatory space, private authorities often develop when consumer demand is unmet due to unresponsive or overstretched public entities.

One example of this occurred after food scares in the 1990s, when the British government imposed steep fines and strict liability on retailers for tainted food products they sold. That liability both incentivized the food retail industry to create strong private mechanisms for standard setting and monitoring of food safety practices, but also provided the

state a mechanism for ratcheting up or down the level of regulation through its interpretation of that liability. This ultimately led to creation of what is now called GLOBALGAP, an effective transnational, private food regulatory body (Meidinger, 2011). GLOBALGAP is one of many such bodies making up the global field of private regulatory bodies for food. One key to its success has been the sustained role of governments in directing the goals of GLOBALGAP and its relation to other bodies in the space. Abbott and Snidal (2009) refer to this as the varying extent to which a state can "orchestrate" the regulatory activities of transnational private bodies. Such transnational regimes work best "where government and private actors carry out many similar activities and overlap, cooperate, compete, feed off, and sometimes mimic each other" (Meidinger, 2011, 243).

While the orchestration model was developed to explain varying outcomes in transnational regulation, the concept carries implications for the underlying public institution as well. Given the state's continued involvement in the (now private) regulatory network, civil society remains invested in the quality of the public institutions orchestrating the private bodies. Adopting an orchestration model can thus lead to enhancements in the quality of the bundled state institution. The state institution must commit resources to monitor, learn and direct its regulatory intermediaries. By successfully deploying its ideational and material resources to orchestrate the unbundled, private rulemaking authority, the state remains a site of political accountability (Abbott et al., 2016, 4).

Orchestration thus retains some level *dependence* between the private and public institutions. This allows for the resulting public-private governing complex to take advantage of both the flexibility and expertise of the specialized, unbundled task-set while retaining the simple lines of authority that enhances public accountability. For example, Franck argues that national courts are natural complements to investor-state arbitration because the success of ISDS depends on the "critical support" public courts provide to the process (Franck, 2007, 367-370). They do this by imposing stays on parallel judicial proceedings, enforcing interim measures, appointing arbitrators and so on. If courts provide the necessary infras-

tructure for arbitration to succeed, then local actors retain an interest in promoting reforms that benefit users of the legal system outside of commerce. If, however (and as I argue below), arbitration has minimal to no institutional linkages with local legal institutions, then we should expect a reduction in the incentive to invest in reform due to commercial actors' diminished dependence on local institutions. This mirrors the logic behind the potentially harmful effects of aid dependence on institutional outcomes (Knack, 2001; Djankov, Montalvo and Reynal-Querol, 2008). In the context of human rights and legal development, Lake (2014) warns that while NGOs have the capacity to dramatically improve outcomes within their remit (particularly in weak states), there nevertheless remains the possibility that the presence of NGOs undermines efforts to increase the capacity of local institutions that would have to step in if the NGO were to exit.

The growth of transnational rulemaking institutions disconnected from public accountability not only risks reducing international reform pressure, but domestic pressures as well. Abbott and Snidal (2009, 558) write that such "orchestration deficits" serve as transnational governance's "most serious limitation." Because of the latitude given to contractual parties in defining what constitutes an "international" contract or dispute and the mobility of capital today, domestic actors can take advantage of the growth of transnational rulemaking institutions, as well. Sharafutdinova and Dawisha (2017) call this phenomenon "institutional arbitrage," whereby well-resourced domestic actors can exit out of national rulemaking institutions. The authors present evidence that Russian oligarchs and commercial interests have taken their capital abroad in order to avoid local institutions and take advantage of British courts and international arbitration bodies like the London Court of International Arbitration or the International Chamber of Commerce (ICC) to settle disputes and enforce contracts (pp. 369-71). The availability of these institutional exit options worsened the collective action problem facing Russian commercial interests (which had a history of advocating for liberal legal reform) when faced with an increasingly extortionate and illiberal state (pp. 364-5). It became easier to simply rely

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on transnational contract enforcement institutions than to lobby for domestic reforms. Sharafutdinova and Dawish argue that the availability of high-quality, transnational contract enforcement institutions not only reduces political pressure for domestic reform but instead *increases* the incentives for local business elites to maintain the illiberal domestic status quo (see also Sonin, 2003). As they write, "business elites take advantage of weak institutions at home to make profits, while using strong institutions abroad to safeguard them" (p. 363).

Another proposed causal pathway, emphasized by Rogers (2015), is through the diffusion of norms and knowledge through elite actors that move between transnational and national settings. For this to occur, professionals and experts in the private and public institutions must move between each site of authority, carrying with them "best practices" or higher expectations of local institutions that lead local elites to lobby for reform. Henry and Sundstrom (2021) argue that NGO can act as "mediators" between international and domestic policy realms, enabling them to translate global norms for domestic audiences. Other research on norm transfer has found that progressive standards tend to diffuse where actors with incentives to promote reform move between sites with relatively "high" and "low" standards. For example, the work on the diffusion of womens' rights through trade and foreign direct investment (FDI) argues that the diffusion of such norms happens because of the greater integration of women into a workforce increasingly defined by multinational firms with relatively more progressive gender policies (Neumayer and de Soysa, 2011). Crucially, diffusion depends on women moving from the site of higher standards (the MNC) into sites with lower standards (local firms) and demanding change. Without movement and political demands, there is no mechanism of change. In the case of private governance, we need to identify bidirectional movement within and integration between the national and transnational professional classes granted governing authority.

To summarize, institutions can be thought of as bundles of tasks and authorities. Increasing economic interdependence has put pressure on state institutions to delegate

State Dependence

	High	Low
High	Enhancement	Mixed
Low	Mixed	Stagnation

(row label: Professional Integration)

Table 2: Theoretical Expectations

authority to private transnational authorities. As private, transnational institutions develop to take over tasks that were previously bundled in more general public institutions, rulemaking authority risks becoming more diffuse, decentralized and complex. Increased complexity risks entrenching the power of well-resourced actors, while the export of governance authority risks undermining local political and legal development incentives.

The framework presented here highlights two aspects of the design of transnational institutions that influence domestic developmental outcomes (see Figure 2). First, if the resulting public-private governing retains private actors' dependence on the quality of state institutions, then the quality of the unbundled local institutions is expected to be enhanced due to the added capabilities from integrating with a transnational authority paired with the sustained political pressure from interest groups to maintain governing quality. An alternative possibility is that the private body offers an independent functional equivalent to the public institution that allows for only minimal or even no state oversight. Because some subset of actors can then select out of the public institution into the private institution, the political and economic pressure to reform the public institutions decreases. The second factor is the degree of integration between transnational and national professionals. Professionals moving between the transnational and national realms may support the transfer of norms and knowledge from one realm to the other. High dependence and high professional integration between private and public bodies

should have an *enhancing* effect on local rule of law institutions. Whereas I expect low dependence and low professional integration to have a *stagnating* effect. In the next section I apply this framework to the case of international commercial arbitration.

4   ICA as an Unbundling Institution

This study builds on the rich and growing literature on the interaction between global and domestic governance institutions by exploring the unique dynamics of private, transnational governance. Why focus on the case of international commercial arbitration? Prior work testing the relationship between investor-state dispute settlement (ISDS) and legal development has found mixed results (Ginsburg, 2005; Rogers and Drahozal, 2022). There are a few aspects of ISDS that limit its potential to substitute for local institutions. First, ISDS might be better described as a complement due to the frequent requirement to exhaust local remedies before an ISDS panel can grant itself jurisdiction over a dispute. Second, the influence of ISDS on domestic development incentives may be weak because it is not a very active international dispute resolution regime relative to ICA. In 2018, 56 cases were filed at the International Centre for Settlement of Investment Disputes (ICSID), a popular ISDS venue within the World Bank. Compare this to the 842 cases that were filed at just the International Chamber of Commerce the same year (141 of which involved a state-entity); 301 cases at the London Court of International Arbitration; 152 cases at the Stockholm Chamber of Commerce; and 343 cases at the Singapore International Arbitration Center. Third and relatedly, ICA's larger caseload is driven by the wider jurisdictional scope of ICA relative to ISDS. ISDS deals primarily with international law violations. Foreign and domestic firms may thus still be sensitive to the quality of local dispute resolution mechanisms in countries that are party to treaty-based arbitration clauses. ICA, by contrast, is equipped to resolve almost any cross-border contract dispute (very broadly defined), which may hinge on the arbitrators' interpretation of public law. ICA therefore

offers a more complete substitute for a country's local contract enforcement institutions that applies to both fully private as well as public-private disputes. The comparatively limited ambit and activity of ISDS may help explain the mixed findings to date. In sum, while there are many institutional similarities between ISDS and ICA, the increased activity, the broader jurisdictional scope, and, as Rogers (2015) argues, its deeper integration with local legal systems suggest that ICA is more likely to influence the development of local legal institutions for better or, as I argue below, for worse.

It is also important to note that international arbitration is one part of a burgeoning movement to unbundle domestic judiciaries to the benefit of international commerce. We see this dynamic also at work with the rapid development of commercial courts and "legal hubs" that cater to the needs of international commercial actors (Bookman and Erie, 2021). Many of these activities are concentrated in authoritarian states seeking to enhancing their "legitimacy as a legal service provider" without extending these services to the broader, local population (Erie, 2020). For example, high-capacity autocratic states such as Qatar, Saudi Arabia, Singapore and China are actively developing and promoting their international commercial courts to foreign commercial actors (Bookman, 2020, 239-60). As Bookman (2020, 40) argues, these states are not motivated to make "better" courts. Instead these countries consider the development of specialized courts for commercial actors as a means of competing for foreign capital (or legal services export) without the need to invest in reforms promoting transparency, efficiency and independence throughout their domestic-facing judiciary. While the goal of the present article is to focus on one aspect of the broader strategy of unbundling (i.e. commercial arbitration), it should be noted that states around the world are experimenting with novel institutional methods for providing high-end legal services to international commercial actors in order to attract foreign capital without investing in similar reforms for broader domestic publics.

In the rest of this section, I briefly situate the international commercial arbitration regime within the analytical framework summarized in Table 2. First, I examine the

limited potential of ICA to promote exchange between transnational and national legal communities (i.e., low *professional integration*). Then, I argue that ICA admits very limited institutional dependencies that would retain simple lines of accountability and retain political pressure for reform (i.e., low *dependence*).

Low professional integration. As discussed above, normative spillover requires social and professional interpenetration between global and domestic actors. But in the highly lucrative world of international commercial arbitration, it is typically a one-way street from public judge to private arbitrator. It is thus more common for ICA to encourage the *export* of actors with strong credentials for independence and competence from the public to the private sector, not the other way around.

It is also unclear that promoting ICA domestically will bring increased interpenetration between national and transnational sites of authority. Instead, it seems that ICA leads to a professional reorientation *away* from local practice and towards more lucrative transnational practice. Dezalay and Garth (1996, 243) find that the burgeoning arbitration profession in Egypt typically shunned local professionals and institutions: "A state company lawyer underscored this point by referring to a list of fifteen top arbitrators who would be acceptable as the chair of an important arbitration—none were Egyptians." Second, the structure of the arbitral regime works against the diffusion of norms through lawyers working across local and transnational contexts. Instead, local professionals may seek to take advantage of ICA as a means of *escaping* local practice. Dezalay and Garth (1996, 242-244) find that the introduction of Model Law-based legislation in Egypt helped spur local activities to promote local arbitration leaders. Prior to enactment of the law, local arbitration centers sought to portray their services as an Islamic-law alternative to Western-dominated ICA. But, interestingly, after enactment of the Model Law, these same leaders began portraying Islamic contract law instead as "the same in practice as that found in civil systems;" they had given up their "distinctive identities" (p. 243). In other words, it appears that rather than acting as *mediators* translating global norms for local

audiences (or vice versa), lawyers tended to shift their activities away from local practice entirely.

Low levels of state dependence. One proposed benefit of unbundling is the creation of competition between the specialized and bundled institutions. This is the logic behind Franck's "race to the top" hypothesis (Franck, 2007, 367-8). For competition to produce a "race to the top," however, there must be some mechanism by which competition creates costs that the public institution will seek to minimize or recoup. As the judiciary is not compensated on a per-case basis, it is unclear what those costs would be. Judges retain their salary and the judiciary as a whole retains its monopoly on the rest of its adjudicative task-set. As Ginsburg (2005, 119) puts it, local judges do not internalize the benefits of the law they provide. Therefore, there is little reason to expect courts to suffer when dispute resolution is outsourced to a third-party—judges do not lose from the growth of arbitration. We should therefore expect the quality of local legal services to instead be the product of *political* coalitions pressing for reform.

To the extent that public institutions are insulated from competitive pressures we might see the opposite outcomes: the state may see a *benefit* from a private exit option for discontented actors (Gerring and Thacker, 2004, 317-8). This is especially true in autocratic states, where the growth of a private judicial alternative would relieve pressure from commercial interests on the state to implement reforms promoting judicial neutrality, predictability, expertise and independence. Privatization therefore enables autocratic states to provide neutral, efficient judicial-like adjudication while maintaining tight control over the judiciary in matters of public order (Massoud, 2014, 19-21).

If the state is still involved in orchestrating a private authority, then the users of the private authority will remain dependent on (and invested in) the quality of the state-orchestrating institution too. As I argue below, opportunities for state orchestration over ICA have been declining for decades. The two main opportunities for orchestration for ICA are in the design of domestic legislation governing ICA and in the judicial enforcement of

arbitration agreements and awards. I deal with each of these factors in turn.

There are many ways a country can both promote ICA and orchestrate its practice. A country can grant the right to judicial review on the merits; require arbitrators to state the reasons for their decisions; require that awards be made public; etc. Few countries do so. Instead, most countries enacting ICA reforms today base those reforms on the UNCITRAL Model Law on International Commercial Arbitration (often considered the "gold standard" of a modern ICA regime), which expressly denies all of the potential orchestration mechanisms outlined above. UNCITRAL's advocacy has been instrumental in harmonizing and increasing ICA protections around the world. While there is some variation in the enactment of these reforms, by and large the reforms are quite uniform across jurisdictions (Binder, 2010). Because the pressure for reform typically comes from a desire to attract capital, rather than reform of the judiciary, countries have opted into adopting the Model Law with minimal revision. Moreover, competition for trade and investment drive states towards focal standards such as the Model Law and incentivized states to limit the scope of public oversight over the practice.

Another mechanism for retaining dependence is for courts to carve out certain areas of law over which they have exclusive jurisdiction. But arbitrators today have wide latitude to base decisions on their own interpretations of almost any relevant rules of law. Judiciaries in the major arbitration states have been gradually increasing the authority of arbitrators to interpret and apply public law. For example, through a series of interpretations of the Federal Arbitration Act, the United States Supreme Court has increased arbitrator's powers to rule on mandatory rules. This has given actors an avenue to circumvent mandatory rules in areas like securities law and antitrust (Guzman, 2000). European courts have similarly granted increased authority to arbitrators to root decisions in their own interpretations of mandatory EU law (Stone Sweet and Grisel, 2017, 178-85). Stone Sweet (2006) argues that this deference has led to the transnationalization of commercial law and its decoupling from domestic law. Using both legal analysis and interviews with practitioners, Karton

([2013](#)) finds that the culture of ICA has led arbitrators to arrive at unique, though internally consistent, interpretations of domestic law (which, despite the divergence, public courts are required to enforce). If the legal reasoning of an arbitration award were reviewable by a court for errors in law, this would not pose any problem. But the Model Law bars courts from reviewing arbitral awards for mistakes of law, further limiting the opportunity for state orchestration through judicial oversight.

A final potential avenue for state dependence written into the Model Law is an exception that allows courts to deny enforcement of awards that cut against "public policy." The scope of this exception is very narrow and appears to be shrinking (Redfern and Hunter, 1999, 471-474). Recently, courts in major enforcement states have increasingly interpreted this to mean not domestic public policy but *transnational* public policy. Courts in Italy, France and Switzerland have ruled that public policy challenges to international arbitration awards should be considered in light of international—not national—policy grounds, further limiting domestic authorities ability to oversee arbitration practice (Stone Sweet and Grisel, 2017, 147-150).

In sum, the modern ICA regime is best characterized as promoting low professional integration and low levels of dependence on public institutions. There is little reason to believe competitive pressures will nudge local courts to invest in costly reform. The modern ICA regime is designed to prevent orchestration, thereby removing the state from the regulation of commercial disputes. And rather than providing a mechanism for importing rule-of-law norms, ICA may instead encourage the export of local legal talent to more lucrative opportunities abroad. These factors together push the state into the background and minimize incentives that would otherwise exist to invest in costly legal reforms. I therefore expect to find stagnation or a *negative* association between the promotion of ICA and legal development. In the next section, I test this hypothesis on a cross-national panel of countries that have implemented UNCITRAL's Model Law on ICA.

5 Data & Methods

Dependent Variable: Legal Development. The "rule of law" is a notoriously slippery and multifaceted concept. I make no pretension to contributing to the vast literature on the rule of law as a concept. Instead, I draw my operating definition from the growing field of rule-of-law development practitioners. This definition is particularly useful here because it represents the approach adopted by the very experts from whom public officials often seek advice and know-how when implementing rule-of-law reforms (Carothers, 2006, 10-11). If there is reduced pressure for legal reform, then we should expect to see a reduction in legal development along the lines defined by the international development community actually involved in legal development efforts around the world. These practitioners deploy what Kleinfeld (2006, 47-54) refers to as an "institutional approach" for promoting the rule of law. They focus on a set of concrete institutional reforms. Kleinfeld identifies three main features of such a definition:

- "**Laws**...which are publicly known and relatively settled;
- "A **judiciary** schooled in legal reasoning...efficient...[and] independent of political manipulation or corruption; and
- "A **force able to enforce laws**, execute judgements, and maintain public peace and safety" (p. 47)

Kleinfeld's synthesis accords with common strategies adopted by rule-of-law development practitioners. The American Bar Association's Rule of Law Initiative, for example, focuses on these very institutions through its legal development efforts supporting broad-based reform initiatives such as "drafting and implementing codes of judicial ethics; promot[ing] judicial education and training; and help[ing] to enhance court administration and efficiency."[1] Moreover, each aspect of this definition is tied to the interests of commercial actors seeking fair treatment and efficient, predictable contract enforcement. In the ab-

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[1] See https://www.americanbar.org/advocacy/rule_of_law/what-we-do/governance-justice-system-strengthening/

sence of an exit option, commercial actors would have an interest in pressuring the state to pursue goals that align with the "best practices" of the development community (or, similarly, avoid states that do not achieve these goals). This definition thus serves to capture both what is lost when commercial interest groups exit to international arbitration and the practices adopted by the kinds of actors to which states that do feel the pressure to invest in reform would turn.

I use the Rule of Law Index from the Varieties of Democracy Project (V-Dem) to measure the quality of rule-of-law institutions cross-nationally and over time (Pemstein et al., 2018). The V-Dem Rule of Law Index an aggregation of expert-coded measures pertaining to both the independence and competence of multiple levels of each country's judiciary along with other aspects of modern legal development including the openness and transparency of laws, judicial independence, access to justice, quality of public administration, and the predictability of enforcement (Coppedge et al., 2020, 281-2). Aside from the substantive similarity of the Index to the definition of the rule of law adopted here, the index is ideal because it has very wide coverage. It allows for the inclusion of over 150 countries in the sample across the full length of the relevant time span (1985, the year the UN General Assembly adopted the Model Law). This is ideal compared to other measures that either have an overly narrow theoretical focus or cover a relatively short time span.[2]

Independent Variable: Protections for International Commercial Arbitration. To proxy for integration into the transnational ICA regime, I collected data on the enactment of domestic legislation based on the UNICTRAL Model Law on ICA. Introduced in 1985, the Model Law is considered to be the "state-of-the-art" in permissive arbitration laws. By 2020, over 75 countries had enacted national legislation based on the Model Law (see Figure 1). The data were collected from the UNCITRAL's yearly "Status of Conventions" reports. These reports update UNCITRAL members when a country is recognized by UNCITRAL for having legislation based on the Model Law (and other UNCITRAL ini-

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[2]Though, below I find the results are robust to alternative measures of the rule of law.
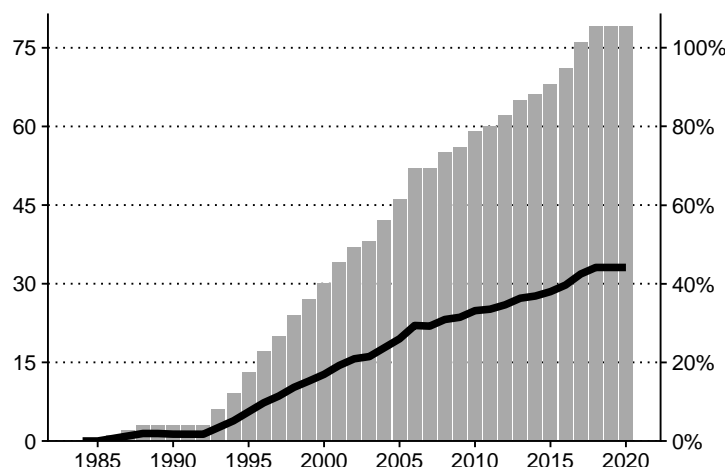
Note: Grey bars represent the total number of countries with Model Law-based legislation in force per year. The black line plots the global percentage of such countries per year (count of total countries per year is derived from Varieties of Democracy Dataset, v10).

Figure 1: Rate of National Legislation based on UNCITRAL Model Law on International Commercial Arbitration, 1985-2020

tiatives) enter into force.[3] Because of the flexibility built-in to all of UNCITRAL's legal instruments, it does not have an official and clear set of rules for inclusion in the reports. While UNCITRAL allows countries to shape local implementation as they see fit, transnational legal harmony is a primary goal (see Block-Lieb and Halliday, 2007). This discretion does not mean that any country can win the approval of UNCITRAL as a "Model Law country," however. UNCITRAL has an interest in maintaining the value of its legal instruments as not only guides for commercial law reform, but also as heuristics for the international legal and commercial communities. This has led to significant legal harmony across Model Law jurisdictions. As one Senior Legal Officer at UNCITRAL writes, there is a "high degree of substantive uniformity in the implementation of the [Model Law]" (Faria, 2005, 22). An independent analysis of all Model Law countries in 2010 found a remarkably high degree of harmony between jurisdictions (Binder, 2010).

Estimation Strategy. I estimate the effect of enacting strong protections for ICA on the

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[3]Due to some inconsistencies in the yearly reports, I verified all dates of entry into force by examining the implementing legislation in all Model Law countries.

quality of local legal institutions using a difference-in-differences (DiD) estimator with weighted matched sets (Imai, Kim and Wang, 2021).[4] I adopt this approach because of recent work on the standard two-way fixed effects estimator (TWFE) that has identified the potential for bias when treatment assignment is staggered (e.g., Imai and Kim, 2021; Goodman-Bacon, 2021; Borusyak, Jaravel and Spiess, 2022; Strezhnev, 2018). The estimator used below helps resolve these issues with TWFE as it accommodates treatment effects that are heterogeneous across units and time and prevents mismatched comparisons between already-treated and newly-treated units. To assess the robustness of the findings to alternative specifications, I re-run the analysis using the unbiased, linear estimator proposed by Borusyak, Jaravel and Spiess (2022).

The goal of the procedure is to estimate change in the trajectory of the quality of a country's legal institutions caused by enacting the Model Law. The problem is that we cannot observe what a country that did enact the Model Law would have looked like if it had not enacted the Model Law. To estimate that counterfactual, I construct a unique "control group" for each Model Law country made up of non-enacting countries. To improve the comparability between each Model Law country and its matched set, I weight the observations within every matched set based on how similar (based on observables) each country is to its matched Model Law country. Countries that did not enact the Model Law but are just as likely to have enacted the Model Law (compared to the country the *did* enact it) are given a greater weight than countries that are more or less likely to have done so. I then calculate the change in the weighted control group's rule-of-law score from the year prior to the Model Law entering into force and subtract this from the change in the Model Law country's rule-of-law score over the same duration. I average the difference-in-differences across all of the Model Law countries for each time period to yield an average effect of the Model Law on legal development for the year it enters into force and each of the following five (or ten) years. Importantly, this estimator relies on the

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[4]I use the authors' `PanelMatch` R package for the estimation below.

common trends assumption that the difference between the trajectories of the treated and control units would have remained stable in the absence of treatment, conditional on a set of time varying covariates (Imai, Kim and Wang, 2021, 10-11). I first outline the estimation procedure in greater detail before presenting the results.

First, I set a time-window for the analysis, F. I then construct a matched set for each treated unit i, denoted $\mathcal{M}_i$, which includes all countries that have not yet enacted legislation based on the Model Law. Any unit that enacts the Model Law between the time country i enacts the Model Law and five years thereafter is dropped from i's matched set. The next step is to refine each matched set to improve the comparability between the Model Law countries and their matched sets through propensity-score weighting. The weights used in the results reported below are calculated from either propensity scores (PS) or the covariate-balancing propensity score (CBPS) developed by Imai and Ratkovic (2014).

The propensity scores are estimated by regressing the treatment variable, enactment of the Model Law, on a set of covariates. I include two institutional covariates. First, I include a count of BITs currently in force. BITs provide access for foreign investors to international arbitration through ISDS. ISDS and ICA are highly interdependent systems with similar relationships to local courts, so it is possible that the effect of the Model Law might be amplified when a country is also integrated into the ISDS regime (Rogers and Drahozal, 2022). Second, I include the dependent variable of the second stage of the analysis, the V-Dem Rule of Law Index.

I also include a set of economic covariates. Countries that are more integrated into the global economy face greater pressure to provide neutral dispute resolution services and therefore may be more likely to invest in both capacity-enhancing legal reforms and transnational contract enforcement regimes like ICA. I therefore include economic variables that could influence both pressure for reform and access to legal development assistance. I include measures of logged GDP, GDP per capital, GDP growth to help adjust

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for any confounding effects of market size and economic development trajectory. These data were obtained from the World Bank's World Development Indicators. To measure a country's dependence on foreign direct investment (FDI), I obtained data on the total inward FDI stock as a percentage of GDP from UNCTADstat. Finally, I include a measure of total trade (imports + exports) as a percentage of GDP, which I obtained from the Penn World Tables. I lag all explanatory variables by one year.

The final step of the procedure is to estimate the average effect of treatment on the treated (ATT) in the year of enactment of the Model Law (t_i) and for each of the five years thereafter (F). I apply the following DiD estimator for each time period F:

$$\widehat{ATT_F} = 1/N \times \sum_{i=1}^{N} \left((Y_{i,t_i+F} - Y_{i,t_i-1}) - \sum_{i' \in \mathcal{M}_i} \omega_i^{i'} (Y_{i',t_i+F} - Y_{i',t_i-1}) \right)$$

N is the number of countries within the sample that have enacted the Model Law. t_i is the year in which the Model Law enters into force for each country i. $Y_{i,t}$ and $Y_{i',t}$ are the rule of law scores for Model Law and matched non-Model Law countries. The term $\omega_i^{i'}$ denotes the normalized weight applied to the rule of law score for each unit i' in the matched set of Model Law-enacting state i. This equation yields an estimate of the change in the rule of law score from one year before the Model Law enters into force to years $t_i + F$ for Model Law countries minus the weighted average of the change within each Model Law country's matched set over the same duration. I calculate this for each Model Law country then average the results for each time period. The $\widehat{ATT_F}$ is therefore the estimated average effect of the Model Law entering into force for each year beginning from the year of enactment through each of the following five years.
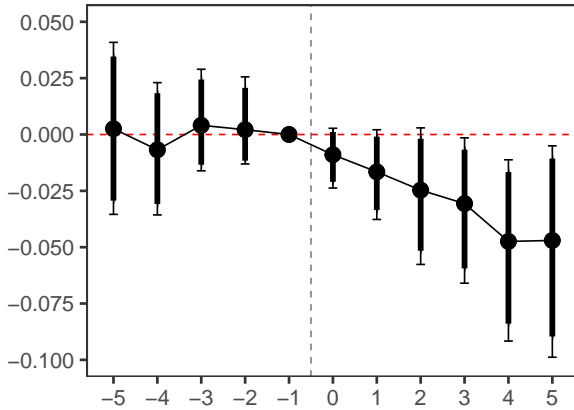
6   Results

The main results are presented in Figure 2. Figure 2a reports the results when estimating the model using data from the full sample. While the Model Law and control groups are indistinguishable in the year of enactment, we see a increasingly large relative decrease in the Rule of Law score for Model Law countries, consistent with the framework presented above. The difference becomes statistically significant at the 95% level three to four years post-enactment. It takes time for the legal and behavioral changes brought on by the Model Law to influence broader legal development in the country. Parties must opt-out of national judicial institutions by negotiating arbitration clauses into their contracts. Therefore, there should be some lag as firms shift their attention away from the judiciary and local rules and onto transnational arbitration centers. Exit by commercial parties from the local legal institutions lowers outside pressure on the state to invest in the progressive reforms like reforming archaic procedures, improving judicial training, increasing salaries, funding domestic law schools and legal training, and so on. Moreover, the economic costs for having a low-capacity or politically-motivated judiciary are lower in countries that promote the use of arbitration. This process leads to the gradual reduction in political pressure for investment in progressive rule-of-law reforms, which allows for problems in the legal system to persist and accumulate.

Figure 2 also presents the results of a "placebo" test to assess the common trends assumption: that Model Law countries and their matched sets would not differ in the absence of Model Law enactment. A common test for this assumption is to see if there is any observable difference between the trajectories of the treatment and control groups before the treatment comes into effect. I therefore estimate the "effect" of the Model Law on legal development *prior* to enactment of the Model Law. The flat line prior to enactment (i.e., years −5 through −2 in the figures) in all three figures does not suggest any evidence that the results are driven by pre-existing differences in the trajectories between the two
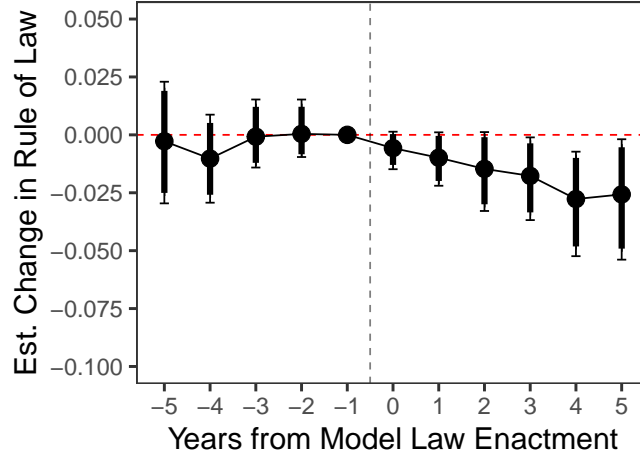
(a) Full Sample

(b) Low Rule-of-Law Sample
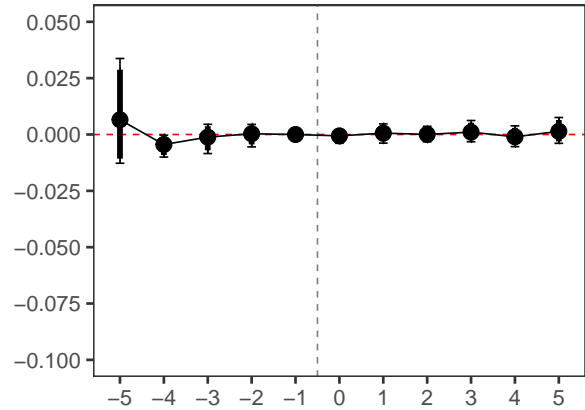
(c) High Rule-of-Law Sample

Figure 2: Main Results

Note: These figures plot the yearly estimates of the average treatment effect on the treated using the difference-in-differences estimator recommended by Imai, Kim and Wang (2021). 90% and 95% confidence intervals are estimated via blocked bootstrap with 5,000 iterations. Matched sets are weighted using the method proposed by Imai and Ratkovic (2014). Table C1 also summarizes these results as well as analyses using an alternative weighting algorithm as well as the alternative diff-in-diff estimator proposed by Borusyak, Jaravel and Spiess (2022).

groups in the years leading up to enactment.

We are most interested, however, in the effect of ICA on institutions in counties that do not already enjoy a high quality, consolidated legal regime. Unpacking how ICA influences domestic legal institutions in weak rule-of-law countries is important because the Model Law is embedded within broader development efforts to promote the rule of law in developing countries. As Rogers and Drahozal (2022, 1) put it, there is "an implicit promise of investment arbitration...that it will not only provide protection of foreign investors, but also foster good governance in developing and emerging economies." The sample in Figure 2a includes all enacting countries, which may be biasing the results downward for a couple of reasons. First, countries that enjoy robust legal systems may not be actively engaged in legal reform, so a reduction in pressure for reform would have little effect on institutional outcomes. Second, weak rule-of-law countries tend to have fewer resources, so they face higher opportunity costs when investing in different reform projects. Minimizing pressure for legal reform may have a larger negative impact in those countries than in better-resourced countries.

To examine the effect of the Model Law on countries with weaker legal infrastructure, I re-run the analysis but exclude all cases of countries that have enacted the Model Law with pre-existed strong rule-of-law institutions. I classify as "low rule-of-law" any country with a Rule of Law Index less than .8 at the time of enactment of the Model Law.[5] As a frame of reference, Bulgaria, a Model Law country, has hovered around .75 for the last decade. Another Model Law country, Mexico, has fluctuated between .5 and .65 over the same period. Just above the cut point is Greece, which had a score of .82 in 2017. The results for this subsample are reported in Figure 2b.

Comparing Figures 2a and 2b we see that the ATT for Low Rule of Law countries is roughly double that of the full sample. We also see the same pattern of gradual institutional degradation relative to the control group. The model estimates that, on average, five years

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[5]This is roughly the 73 percentile. A full list and categorization of the Model Law countries included in the analysis can be found in Appendix A.
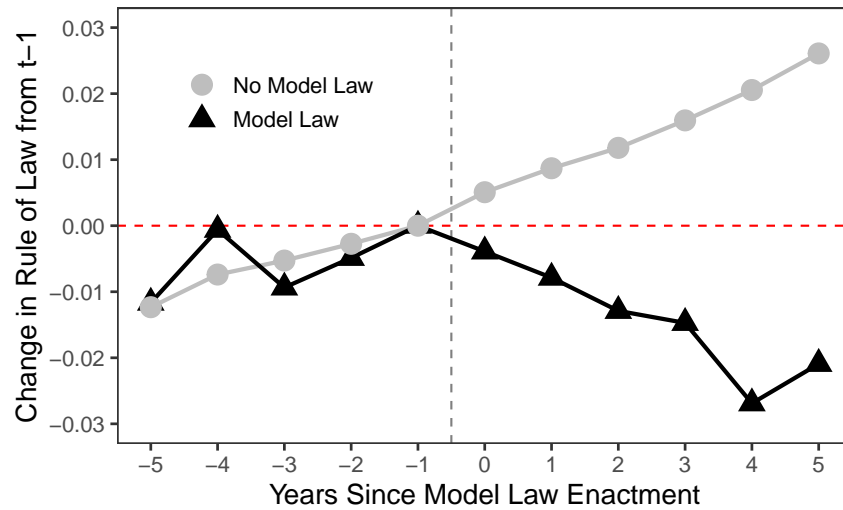
Note: This graph plots the average changes in Rule of Law Index from year $t-1$ for Model Law and non-Model Law countries separately based on estimates from Figure 2b (see also Table C1, Column 2).

Figure 3: First Differences

after enacting the Model Law a country is around .047 points below where it would otherwise have been.[6] This comes out to a cumulative effect over five years of a decrease of roughly 15% of a standard deviation of the Rule of Law score in the sample. This finding is robust to alternative specifications. The difference between weighting by propensity scores or covariate balancing propensity scores is negligible (compare Columns 2 and 3 of Table C1). The unbiased, linear estimator proposed by Borusyak, Jaravel and Spiess (2022) yields estimates that are very similar in magnitude (Column 5 of Table C1).

Does the Model Law exert a similar effect on countries with already consolidated legal regimes? It appears not. Figure 2c plots the results for the high rule-of-law sample. Unlike with weak rule-of-law regimes, there appears to be no effect of the promotion of ICA on legal development in already consolidated legal regimes. The estimated effect is very small and jumps above and below 0. I estimate the effect of Model Law enactment to be a highly insignificant increase of about .002 points (~0.5% of a standard deviation) after five years.

[6]Point estimates and standard errors are reported in Table C1.

Are legal institutions within recent Model Law countries weakening or are they simply not improving at the rate they otherwise would have? We can examine the first differences to see what is driving the growing divergence between Model Law and non-Model Law countries.

Figure 3 plots the estimated trajectories of the Model Law and non-Model Law groups separately. Corroborating the placebo tests visualized above, Model Law and non-Model Law countries experience similar pre-enactment trajectories, with both groups exhibiting gradual improvement prior to enactment. The grey line reveals that the non-Model Law group continues to experience steady improvement over time. By contrast, the black line, representing the trajectory of the Model Law group, shows an absolute and relative decline in the quality of local legal institutions post-enactment. This figure suggests that the effect is driven partly by institutional erosion within Model Law countries, but also partly by sustained improvement in legal infrastructure in the non-Model Law comparison groups that the Model Law group does not enjoy. This is consistent with the theory presented above in which the exit of international and domestic commercial actors from the domestic legal system is expected to lower pressure on governments to invest in the costly reforms to improve the neutrality, competence and efficiency of national legal institutions, while at the same time reducing the opportunity costs (in terms of foreign investment and trade) faced by weaker legal systems.

In Figure 4, I re-estimate the model on the low rule-of-law sample but over a 10-year window.[7] As was the case with the 5-year sample, the non-Model Law and Model Law groups are statistically indistinguishable for the first 3 years after enactment. While the estimates lose statistical significance from years 6 and 7, there is a clear, increasingly negative trend in the Model Law group. After a decade, I estimate a decline of roughly 25% of a SD.

As noted above, the V-Dem Rule of Law Index is a composite indicator. Some of

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[7]This reduces the number of Model Law countries included in the sample to 37 and reduces the average size of their matched sets.
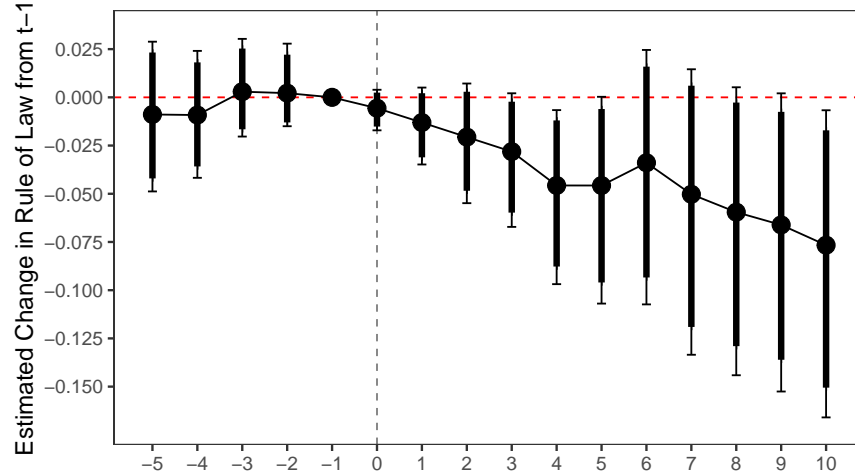
Note: Plots yearly estimated change in Rule of Law Index over a decade from the year prior to Model Law enactment for the low rule of law sample (where year 0 is the year the Model Law was implemented). 90% and 95% confidence intervals are estimated via blocked bootstrap with 5,000 iterations.

Figure 4: Estimated change in Rule of Law Index after Model Law enactment

the Index's sub-components are of direct theoretical relevance but others are less so.[8] Which of the sub-components is driving the results found above? To assess this question I conducted a series of static DiD analyses using the robust estimator proposed by Borusyak, Jaravel and Spiess (2022) in which I replace the composite Index with each of its sub-components.[9] The results are presented in Figure 5. For ease of interpretation, I categorize each sub-component based on its theoretical relevance. The primary drivers are almost exclusively theoretically relevant. While the Model Law is found to have a null effect on judicial independence, it is associated with worse judicial outcomes: Compliance with the judiciary as a whole (and, to a slightly lesser extent, the high court alone) declines post-enactment, as does the availability of judicial remedies for men and women. Similarly, by facilitating the importation of foreign law, the Model Law diminishes the relevance of domestic law and thereby reduces the need for the state to commit resources to improving the quality of domestic legislation (Cutler, 2014; Cutler and Lark, 2022). Accordingly, we also see a reduction in the transparency and predictability of domestic laws. Alternatively,

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[8]For more, see Appendix B.

[9]I also control for ratification of the NYC, # of BITs in force, log GDP, log GDP per capita, log of total trade / GDP, log of inward FDI stock / GDP, and GDP growth.
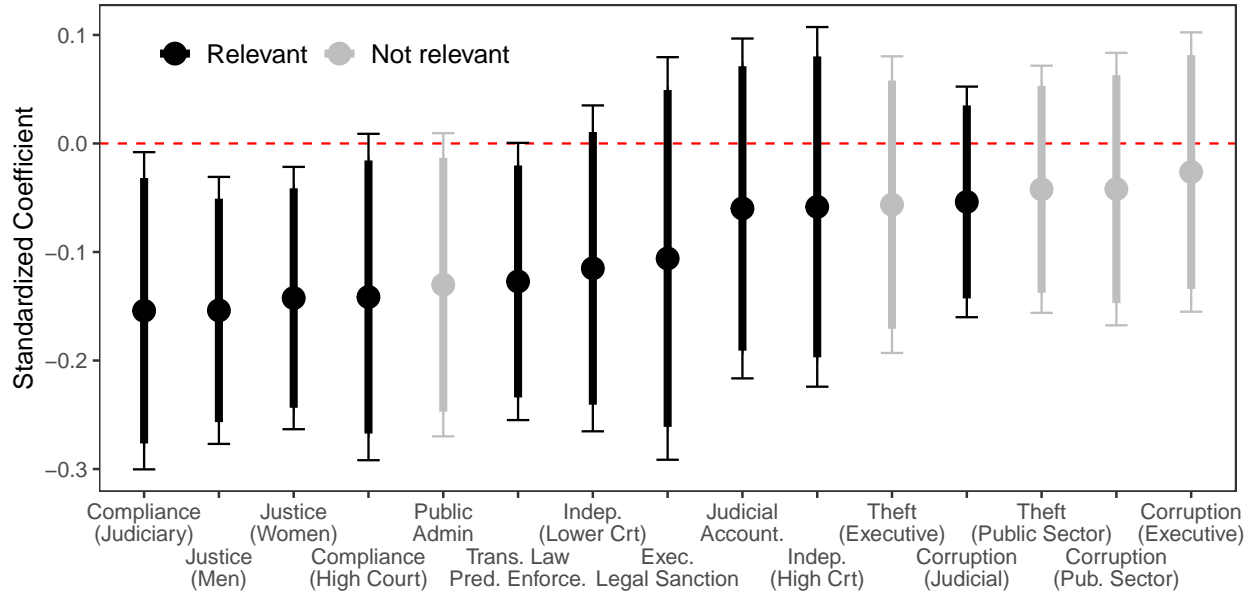
Note: This figure plots the standardized coefficient on the Model Law in a series of static DiD analyses using the unbiased estimator proposed by Borusyak, Jaravel and Spiess (2022). See Appendix B for more on the definitions and categorization of theoretically-relevant sub-components.

Figure 5: Effect of the Model Law on Individual Sub-components of the V-Dem Rule of Law Index

the sub-components with the weakest (and null) effects are all related to matters unrelated to the Model Law: public corruption and embezzlement.

6.1 Robustness Checks

Alternative low rule-of-law cut-offs. To ensure these results are not driven by how I categorize "high" and "low" Rule of Law countries, I re-run the low-rule-of-law analysis using other cut points. The results for 0, 2 and 5 years after enactment are presented in Figure 6. These plots show that estimates presented in Figure 2b are largely consistent across a range of other plausible cut points (between .5 and .9). As in the main results, we see a gradual reduction in Rule of Law scores after Model Law enactment across all analyses. Interestingly, the upward slope in each plot indicates that the effect size decreases as the mean rule-of-law score in the "low" rule-of-law group increases, suggesting further that countries with weaker legal systems are more susceptible to institutional erosion.

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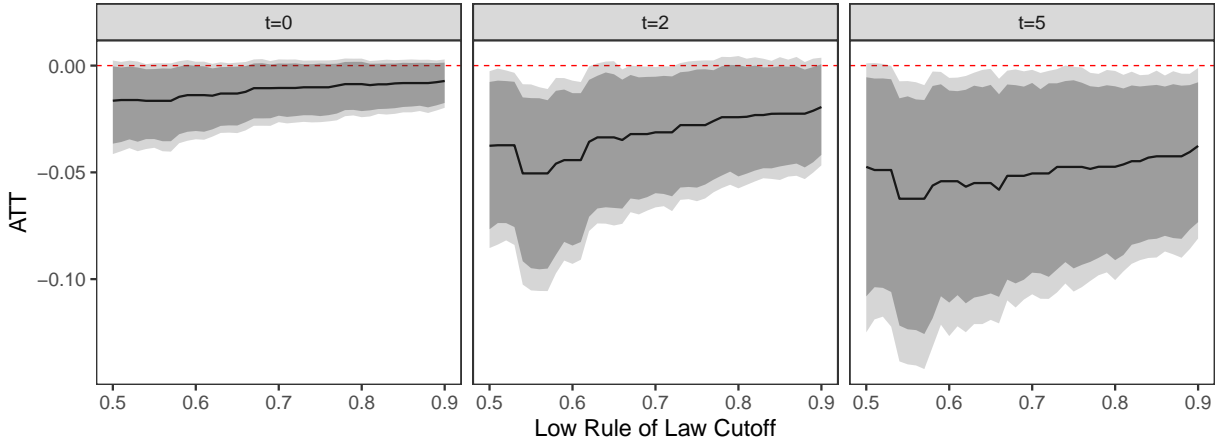
Note: Figures plot estimates for $F = [0, 2, 5]$ from analyses that implement various cut points to define "low rule-of-law" countries. As above, 90% (dark shaded region) and 95% (light shade) confidence intervals are estimated via blocked bootstrap with 5,000 iterations. For the complete results see Figure C1 in the Appendix.

Figure 6: Alternative cutoffs

Alternative rule-of-law data. I also re-run the main analysis on weak rule-of-law countries using two alternative data sources. I first examine various rule-of-law indices created by the Fraser Institute.[10] I find that Model Law enactment is associated with a statistically significant decline in judicial independence (Figure E1a). Enactment is also negatively associated with the overall integrity of the legal system, though this indicator only achieves significance at the 90% level (Figure E1b). And as further evidence of the Model Law's impact on domestic contract enforcement, I also find that, despite its negative effect on broader legal institutions, Model Law enactment *increases* the quality of contract enforcement within a country (Figure E1c).

The second measure I use is a latent indicator of *de facto* judicial independence developed by Linzer and Staton (2015). While this measure is far more narrow than both the Fraser Institute's indices and V-Dem's Rule of Law Index, it has wide geographic scope and covers most of the period under analysis here (through 2015).[11] The results using these data are directionally consistent to the main results, though they do not reach con-

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[10]Accessible at https://www.fraserinstitute.org/economic-freedom/dataset
[11]This drops the number of Model Law countries in the analysis to 32.

ventional levels of statistical significance (see Figure E2). It should be noted that juducial independence does not appear to be driving the main results as I find V-Dem's measure of judicial independence to be null as well (see Figure 5).

Sensitivity to ommitted variable bias. Given the observational nature of the data I use, another concern is the potential for the estimates to be driven by some unobserved confounding variable. This problem is particularly acute in the study of the effects of international law and institutions (Chaudoin, Hays and Hicks, 2018). One way to address this concern is to estimate how "bad" a hypothetical omitted variable would have to be in order for its inclusion to drive the coefficient of interest down to zero. To do this, I first estimate the following equation using OLS to get a baseline estimate of the effect of Model Law enactment on the Rule of Law Index on the low rule-of-law sample:

$$\text{Rule of Law}_{i,t} = \beta \text{Model Law}_{i,t-1} + \delta \mathbf{X}_{i,t-1} + \gamma_i + \omega_t + \varepsilon_{i,t}$$

$\mathbf{X}_{i,t-1}$ denotes a vector of covariates[12] and γ_i and ω_t denote unit- and year-fixed effects. And following the diagnostic recommendations of Cinelli and Hazlett (2020), I find that an unobserved confounder would have to explain about 10.3% of the residual variance in both Model Law enactment and the Rule of Law Index to drive the estimate on β to 0.

Figure 7 reports adjusted estimates of β (i.e. the numbers to the right of each line) if a hypothetical confounder were added to the model with a partial R^2 on the treatment and outcome at various levels (depicted by the contour lines). First, note that the unadjusted TWFE estimate presented in the bottom left of the graph, -0.046, is roughly equal to the 5-year cumulative estimate given in main specification (that is, -0.047, see Table C1, Column 2). To visualize the potential bias more concretely, we can also estimate how problematic a hypothetical omitted variable might be against a benchmark that we *do* observe. To do that, I simulate how the estimate for β would change if the strongest predictor in the TWFE

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[12]These are: # of BITs in force, log GDP, log GDP per capita, log of total trade / GDP, log of inward FDI stock / GDP, and GDP growth.
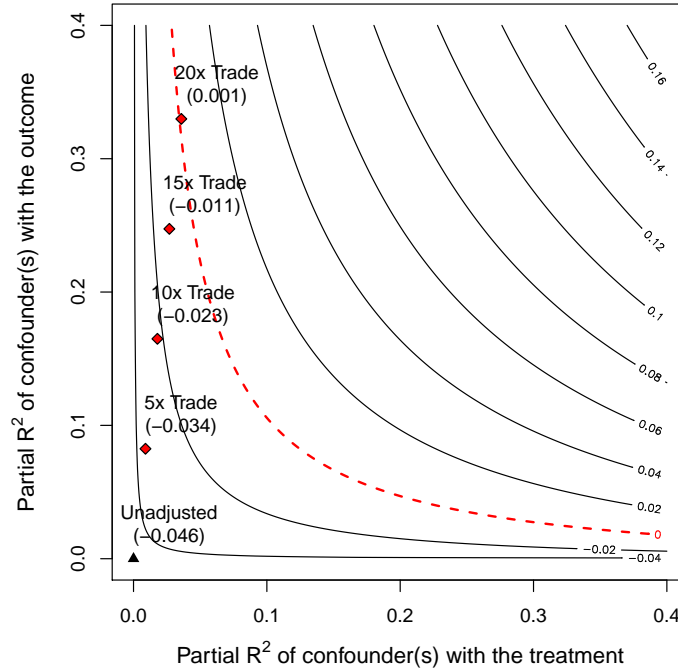
Figure 7: Sensitivity of estimated effect to omitted variable bias

model (i.e. total trade / GDP) explained an even greater share of the residual variance than it currently does (by factors of 5, 10, 15 or 20 times). These estimates are plotted using the red diamonds, with each adjusted estimate of β given in the parentheses. The graph reveals that an omitted variable would have to account for the residual variation of both the outcome and treatment by a factor of roughly twenty times greater than that of trade dependence in order to eliminate the estimated effect.

7   Testing the Dependency Mechanism

ICA carries important political and legal implications in large part because of the structural factors discussed in Section 4, such as the absence of any system of appeal. But the lack of appeal and so on should not be confused with the absence of any system of control or supervision. There remains a limited set of tools available to national courts for overseeing arbitration (such as setting aside awards that contravene public policy), so long as the arbitration is seated in that court's jurisdiction. Importantly, the decision on

where to seat an arbitration is made by the parties. The effect of the Model Law on the authority of local courts is therefore partly a function of the behavior of private (and public) actors negotiating where to seat their arbitration. This means dependency is not only a *legal* question, but also an *empirical* one, as dependence on national courts for contract enforcement is influenced by where the parties decide to have their arbitration. While in Section 4 I argue that the structure of modern ICA reduces its dependence on public institutions, in this section I examine the behavioral implications of enactment. I find that Model Law enactment weakens dependence on local courts: enactment increases the use of arbitration by nationals in an enacting jurisdiction, but it does not increase the rate by which that jurisdiction is selected as the seat of arbitration. This suggests that, beyond the structure of ICA, party behavior is further reducing dependence on local institutions and thereby decreasing pressure on states for capacity-enhancing reform.

To test the dependency mechanism, I gathered yearly data on both the location of the seat of arbitration as well as the nationality of parties to cases managed by the International Chamber of Commerce (ICC) from 1992 to 2020.[13] The ICC is an especially useful case study here because it is both highly prestigious and active as well as a distinctly *international* ICA center.[14] In fact, the range of arbitral seats in the ICC's caseload is uniquely diverse compared to its closest competitors such as the London Court of Arbitration, American Arbitration Association and the China International Economic and Trade Arbitration Commission, which tend to manage cases seated in their home jurisdictions.[15] Given the stature of the ICC within the field of global economic governance, patterns within the ICC are legally and politically important in their own right. Due to both its prominence as an institution within the field of ICA as well as its unique international character, we can

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[13]These data are obtained from the ICC's annual "Statistical Report" of each yearly volume of the *ICC International Court of Arbitration Bulletin* from 1993-2021. Copies are available upon request from the author.

[14]The 2018 International Arbitration Survey conducted by White & Case and Queen Mary, University of London, asked respondents to list their 4 most preferred international arbitral institutions. The ICC was the most listed institution by a very wide margin: 77% of respondents picked the ICC while the next most-preferred institution was the London Chamber of International Arbitration at 51%.

[15]Of the cases managed by the LCIA, for example, 94% were seated within the UK in 2017. It has only gradually fallen since then, reaching 84% in 2020.

interpret trends seen within it as broadly representative of shifts in global ICA practice.

I control for a variety of economic and institutional factors that may increase the probability that commercial disputes arise, including the size of the country's economy, its inbound FDI stock and its dependence on trade. I control for the level of development with GDP per capita. And because disputes tend to arise more often during periods of economic downturn, I add a measure for GDP growth.[16] I also control for membership in the New York Convention and the strength of domestic legal institutions using the V-Dem Rule of Law Index. I estimate the following equation using the Poisson pseudo-maximum likelihood estimator:

$$Y_{it} = \exp(\beta \text{Model Law}_{it} + \delta \mathbf{X}_{it} + \gamma_i + \omega_t)$$

Y_{it} represents the outcome; $\mathbf{X}_{it}$ is a vector of controls; and γ_i and ω_t are country- and year-fixed effects. As above, I also present results using the unbiased, linear estimator proposed by Borusyak, Jaravel and Spiess (2022).[17]

The results are presented in Table 3.[18] Panel A presents the results for the yearly counts of ICC-managed arbitrations seated in a given country. The Model Law exhibits a positive but inconsistent (and model-dependent) effect on the number of cases seated in a given jurisdiction. In the full sample (Columns 1-3), we see that the effect is strong in the bivariate specification, loses significance after adding economic controls, and becomes significant only at the 90% level with the addition of institutional controls (and fails at the 90% level in the BJS estimates). Columns 4 and 5 subset the outcome based on how the seat was determined. In Column 5, the outcome is the number of cases in which the

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[16]GDP, GDP per capita, and trade dependence data are obtained from the World Bank's World Development Indicators. FDI stock data are taken from UNCTAD.

[17]I transform the outcome variable with the inverse hyperbolic sine in the analyses using the linear estimator.

[18]To assess the parallel trends assumption, I rerun all models with dummy variables representing each of the three years prior to enactment of the Model Law. I then report the p-value of a hypothesis test that all of the indicators are equal to 0. Plots of the estimated coefficients on the leading dummies for Model 3 in Panels A and B of Table 3 are presented in Figure F1.

Panel A: Seat of ICC arbitration

	Total			Court	Parties
	(1)	(2)	(3)	(4)	(5)
		Poisson PML Estimates			
Model Law	0.437**	0.209	0.230*	0.430*	0.202*
	(0.190)	(0.129)	(0.126)	(0.224)	(0.116)
Pretrend p-value	[.115]	[.539]	[.514]	[.015]	[.664]
		Borusyak, Jaravel and Spiess (2022) Estimates			
Model Law	0.233**	0.153	0.152	0.061**	0.114*
	(0.091)	(0.095)	(0.095)	(0.027)	(0.068)
Pretrend p-value	[.278]	[.630]	[.630]	[.400]	[.528]
Start Year	1992	1992	1992	1994	1994
Economic Controls		✓	✓	✓	✓
Institutional Controls			✓	✓	✓
Country & Year FE	✓	✓	✓	✓	✓

Panel B: Nationality of parties to ICC arbitrations

	Total			Complain.	Defendant
	(1)	(2)	(3)	(4)	(5)
		Poisson PML Estimates			
Model Law	0.263**	0.202***	0.223***	0.295***	0.166**
	(0.107)	(0.075)	(0.069)	(0.082)	(0.072)
Pretrend p-value	[.619]	[.956]	[.975]	[.679]	[.721]
		Borusyak, Jaravel and Spiess (2022) Estimates			
Model Law	0.229***	0.164*	0.169**	0.170***	0.084
	(0.084)	(0.086)	(0.086)	(0.064)	(0.067)
Pretrend p-value	[.335]	[.554]	[.542]	[.197]	[.863]
Start Year	1993	1993	1993	1994	1994
Economic Controls		✓	✓	✓	✓
Institutional Controls			✓	✓	✓
Country & Year FE	✓	✓	✓	✓	✓

Note: * $p < .1$, ** $p < .05$, *** $p < .01$. Regression coefficients using either Poisson PML or the estimator proposed by Borusyak, Jaravel and Spiess (2022). Standard errors in parentheses are clustered by country. Values in brackets denote the p-value that 3 yearly leading treatment indicators jointly equal 0. Full tables can be found in Appendix F.

Table 3: Difference-in-Differences estimates of the effect of Model Law enactment on various caseload outcomes at the ICC

location of the seat was chosen by the parties themselves. Here again we see a small and weak effect. Column 4 presents results using the count of cases in which the seat was determined not by the parties, but instead by the ICC itself (because the parties either could not agree or for whatever reason choose to have the ICC determine the location of the arbitration). While we see a stronger effect of Model Law enactment, it is statistically significant only at the 90% level and the pre-trends are both significant and in the same direction as the estimated effect in the Poisson regressions. But this may suggest that the Model Law has some effect on the reputation of the jurisdiction in the eyes of the ICC.

We now turn to Panel B of Table 3, in which I shift the outcome from the seat of arbitration to a yearly count of the nationality of parties to arbitration at the ICC. Here we see a much stronger and stable effect of the Model Law on arbitral behavior. The estimates on the Model Law are highly significant and consistent across all specifications of the pooled sample (Panel B, Columns 1-3). The substantive effect is significant as well. The model with a full set of controls (Column 3) estimates that enactment of the Model Law leads to an increase in a country's nationals represented at ICC proceedings by roughly 25%. I subset this analysis based on the party's role in the arbitration as either the complainant or the defendant. The models estimate a larger effect on the complainant side than the defendant side: a 34% increase in the number of cases with nationals as complainants versus an 18% increase for defendants. This suggests that the Model Law is exerting a greater influence on the behavior of local firms that choose to submit disputes to arbitration. The findings are replicated when using the BJS estimator, as well.

8 Conclusion

The findings presented here suggest that the growth of transnational substitutes for domestic institutions may carry costs for the very countries they are often purported to assist. Particularly in light of the competing findings within the literature across ISDS and now

ICA, extensions of the findings presented above should include greater empirical attention to the mechanisms of interaction between transnational and domestic institutions. I have attempted to set parameters around such an investigation by synthesizing the debate in a broader context of the growth of transnational private authority. The theoretical framework presented in this paper calls attention to two related phenomena: dependence and professional integration. The former asks the extent to which local institutions retain rulemaking or oversight authority. The second mechanism, professional integration, demands a closer, cross-national examination of how ICA influences local professional incentives. The work of Dezalay and Garth (1996) and, more recently, by Grisel (2017) provide a foundation for such an investigation.

More broadly, the findings presented here lend support to the emerging body of scholarship in global economic governance that considers not just first-order effects but potential unexpected second-order effects of global governance as well. The findings reported here resonate, for example, with Bodea and Ye (2020), who find that—beyond its effects on FDI—the international investment regime may be harming human rights practices abroad by limiting states' abilities to implement rights-enhancing reforms that an arbitrator might deem harmful to the rights of foreign investors. Before declaring international arbitration a success for the rule of law (because of the incredible ease by which firms can enforce international contracts), we need to evaluate potential downstream effects that are likely to hit emerging markets hardest.

Much work remains to be done to better understand not just the effectiveness of transnational authorities themselves, but how the interaction between transnational and national authorities influences domestic governance outcomes outside of the narrow domain of any given transnational governance scheme. This requires increased focus on mechanisms for promoting complementarity between transnational institutions and their domestic counterparts. Progressive rule-of-law reform is most likely to succeed when foreign commercial actors and local civil rights groups have a joint interest in pressuring

the state to invest in such reforms. The growth of substitutive international institutions risks undermining efforts in developing countries to invest in broad-based legal reforms by giving commercial actors an exit option unavailable to others.

This trend is especially important given the complexity of political accountability in global governance regimes. Simple lines of accountability channeled through visible, bundled domestic institutions facilitate coalitions for reform by clarifying the causal connections between governing institutions, tasks and outcomes. But the decentralized world of transnational authority diffuses accountability across an ever-growing array of overlapping institutions and shrouds political decision-making behind the veil of expertise. The theory and empirical findings presented here suggest that the design of transnational institutions is key and that we should focus on both the institutional and socio-political dimensions of global governance. My results suggest that global governance institutions that are not designed to lock-in both interdependence between transnational and national authorities and the flow of professionals between them may have the unintended consequence of causing local institutions to atrophy.

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Appendix

Table of Contents

A List of Included Model Law Countries

Country	t_i	Rule of Law	Country	t_i	Rule of Law
Armenia	2006	0.25	Mexico	1993	0.36
Azerbaijan	1999	0.04	Nicaragua	2005	0.39
Bahrain	1994	0.21	Oman	1997	0.57
Bangladesh	2001	0.29	Paraguay	2002	0.35
Belarus	1999	0.30	Peru	1996	0.14
Cambodia	2006	0.09	Philippines	2004	0.48
Croatia	2001	0.77	Russia	1993	0.31
Domin. Rep.	2008	0.31	Rwanda	2008	0.66
Egypt	1994	0.25	Saudi Arabia	2012	0.27
Guatemala	1995	0.29	Serbia	2006	0.58
Honduras	2000	0.31	Sri Lanka	1995	0.62
India	1996	0.70	Thailand	2002	0.51
Iran	1997	0.37	Tunisia	1993	0.22
Jordan	2001	0.61	Turkey	2001	0.73
Kenya	1995	0.21	Uganda	2000	0.41
Macedonia	2006	0.65	Ukraine	1994	0.27
Madagascar	1998	0.26	Venezuela	1998	0.54
Malaysia	2005	0.40	Zambia	2000	0.62
Maldives	2013	0.27	Zimbabwe	1996	0.62
Mauritius	2009	0.77			

Table A1: List of Low Rule of Law Countries

Country	t_i	Rule of Law	Country	t_i	Rule of Law
Australia	2010	0.99	Hungary	1994	0.90
Austria	2006	0.96	Ireland	1998	0.96
Belgium	2013	0.98	Japan	2004	0.97
Bhutan	2013	0.92	Lithuania	2012	0.95
Bulgaria	2002	0.82	Malta	1996	0.89
Chile	2004	0.97	New Zealand	1997	0.99
Costa Rica	2011	0.96	Norway	2004	0.99
Denmark	2005	1.00	Poland	2005	0.95
Estonia	2006	0.97	Singapore	1995	0.97
Georgia	2010	0.81	Slovakia	2014	0.83
Germany	1998	0.99	Slovenia	2008	0.90
Greece	1999	0.85	Spain	2003	0.99
Hong Kong	2010	0.94			

Table A2: List of High Rule of Law Countries

B V-Dem Rule of Law Index Sub-components

Table B1 lists all of the sub-components that make up the V-Dem Rule of Law Index that I use as the outcome variable in the results presented in the main text. I also indicate which indicators I believe are theoretically relevant to the quality of domestic legal institutions for the purpose of the analysis presented in Figure 5. I include *v2exrescon* as a theoretically-relevant indicator because the component's question-wording (see p.114 of the V-Dem codebook, v12) is directly related to the strength of legal sanction against an executive that violates the constitution and is therefore of relevance to the independence and standing of the judiciary.

Indicator	Theory Relevant?	Est. Effect	Description
v2juhccomp	✓	−	Compliance with high court rulings
v2jucomp	✓	−	Compliance with the judiciary
v2juhcind	✓		High court independence
v2juncind	✓		Lower court independence
v2exrescon	✓		Exec. respects the constitution without legal sanction?
v2clrspct		−	Rigorous and impartial public administration
v2cltrnslw	✓	−	Transparency and predictability of the laws of the land
v2clacjstm	✓	−	Access to judicial justice — Men
v2clacjstw	✓	−	Access to judicial justice — Women
v2juaccnt	✓		Judicial accountability
v2jucorrdc	✓		Judicial corruption
v2excrptps			Public sector corrupt exchanges
v2exthftps			Public sector theft
v2exbribe			Executive bribery and corrupt exchanges
v2exembez			Executive embezzlement and theft

Note: The "Est. Effect" column indicates the sign of the coefficient found in the Figure 5 only if it is significant at the 90% level. An empty cell means the estimated coefficient is null.

Table B1: Overview of V-Dem Rule of Law Index Sub-components

C Alternative Specifications

C.1 Point Estimates for Figure 2 & Additional Results

Years in Force (F)	PanelMatch				BJS
	(1)	(2)	(3)	(4)	(5)
0	−0.006	−0.009	−0.009	−0.001	−0.014
	(0.004)	(0.007)	(0.007)	(0.002)	(0.011)
1	−0.010*	−0.017*	−0.017*	0.001	−0.017
	(0.006)	(0.010)	(0.010)	(0.002)	(0.013)
2	−0.015*	−0.025*	−0.025*	0.000	−0.026*
	(0.009)	(0.015)	(0.015)	(0.002)	(0.015)
3	−0.018**	−0.031**	−0.031**	0.001	−0.030**
	(0.009)	(0.016)	(0.016)	(0.002)	(0.016)
4	−0.028***	−0.047***	−0.047***	−0.001	−0.050***
	(0.012)	(0.021)	(0.021)	(0.002)	(0.018)
5	−0.026**	−0.047**	−0.047**	0.002	−0.047**
	(0.013)	(0.024)	(0.024)	(0.003)	(0.020)
Refinement	CBPS	CBPS	PS	CBPS	N/A
Sample	Full	Low RoL	Low RoL	High RoL	Low RoL
ML Countries	64	39	39	25	39

Note: $^{*}\ p < .1$, $^{**}\ p < .05$, $^{***}\ p < .01$. Table reports yearly estimates of the average treatment effect on the treated using the difference-in-differences methods recommended by Imai, Kim and Wang (2021) and Borusyak, Jaravel and Spiess (2022). See Figure D1 for plot of improvement in covariate balance. PanelMatch standard errors in parentheses are estimated via blocked bootstrap with 5,000 iterations. BJS SEs are clustered by country and averaged over 5-year groupings of treated units, see Section 4.3 of Borusyak, Jaravel and Spiess (2022).

Table C1: Main Results

C.2   Alternative Rule of Law cut-offs

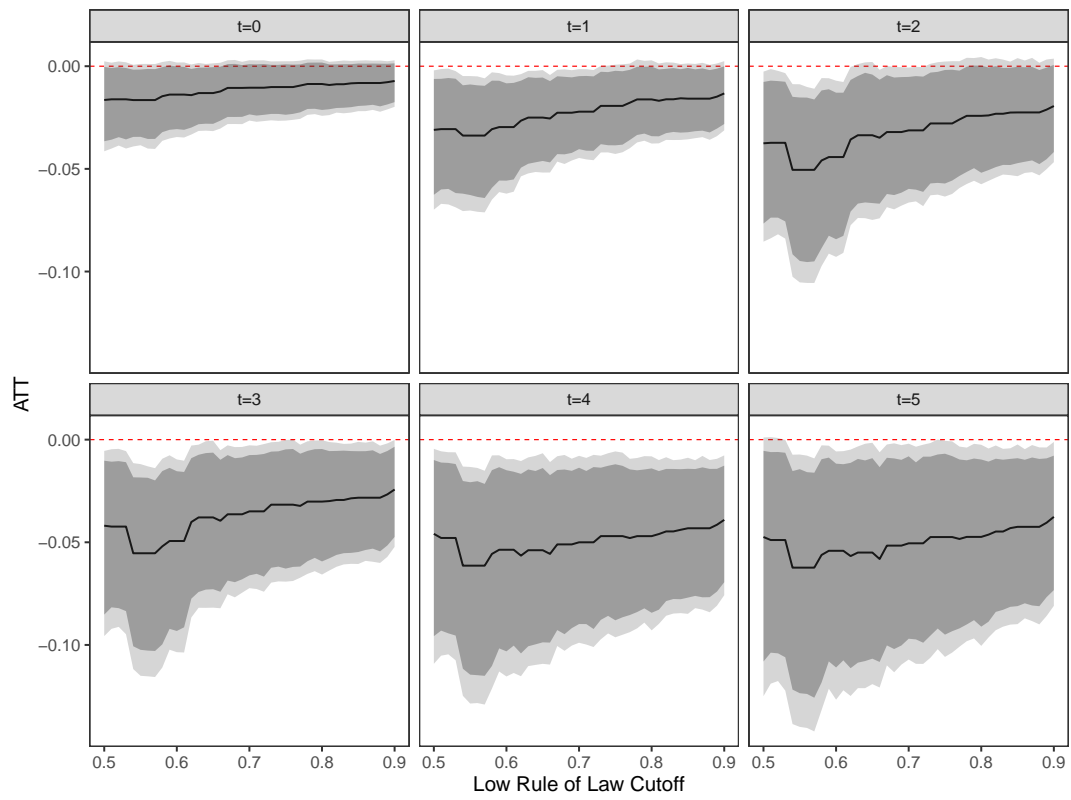**Figure C1:** Alternative Low Rule of Law Cut Points

D   Covariate Balance Pre- and Post-Refinement

This figure presents the standardized mean difference between treated and control countries for all covariates each year prior to enactment of the Model Law. This graph is based on the analysis summarized in Table C1, Column 2 (see Imai, Kim and Wang, 2021, 10-1).
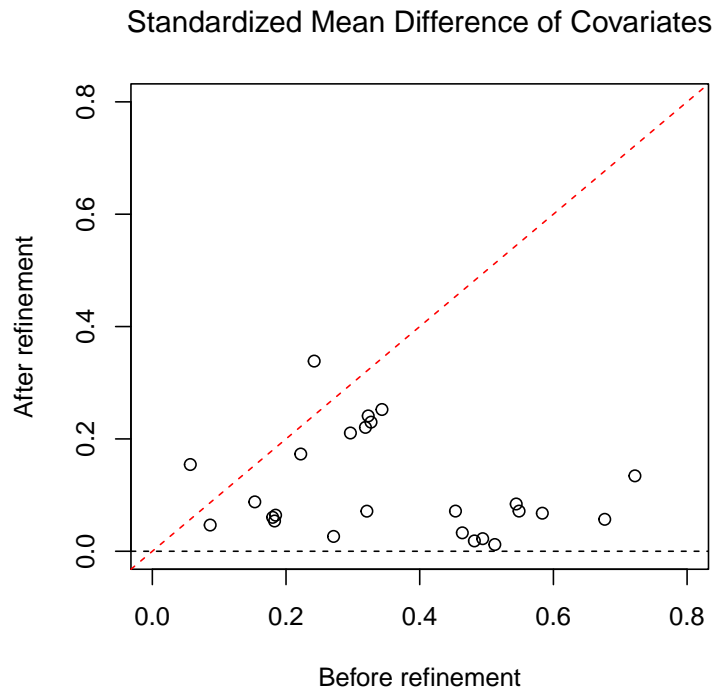
Figure D1: Covariate Balance

E   Alternative Measures of the Rule of Law

E.1   Fraser Institute's Rule of Law Indices

The primary concern in interpretting these data is missingness, because the dataset is only updated every five years prior to 2000. Requiring complete pre-enactment data, limits the number of cases of enactment I can analyze to 6. Therefore, I relax this constraint and include countries with missing pre-treatment data. This increases my sample size to 18 instances of Model Law enactment. This discrepancy in pre- and post-missingingness explains the shrinkage of the estimated confidence intervals after enactment of the Model Law, as seen in Figure E1.
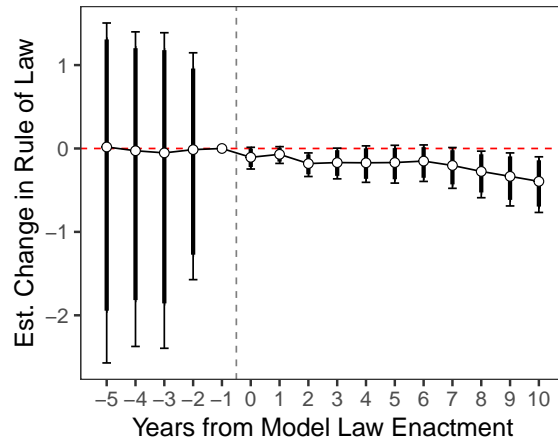
(a) Judicial Independence
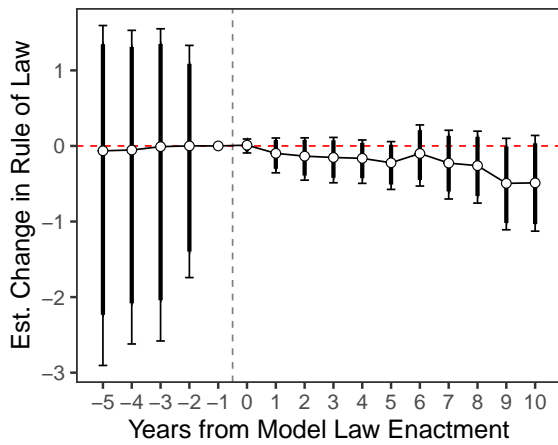
(b) Integrity of the Legal System
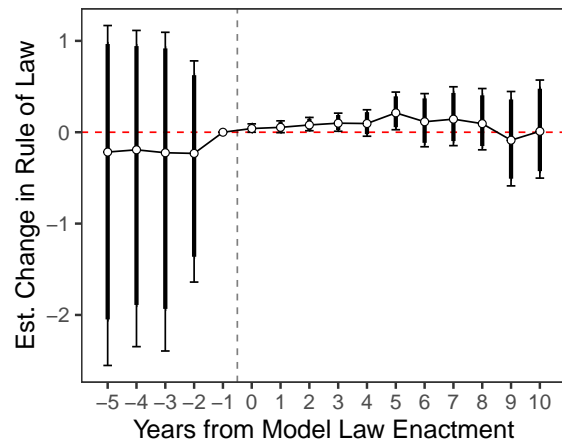
(c) Contract Enforcement

Figure E1: Results, Fraser Institute's Rule of Law Indices

E.2 Latent Judicial Independence

Finally, I also report the results using the latent measure of judicial independence developed by Linzer and Staton (2015).[19] This latent measure is designed to measure the *de facto* level of independence enjoyed by a country's judiciary. While the measure is far narrower than V-Dem's it nevertheless. Unlike the Fraser Institute's dataset, this measure has fairly wide coverage (though I do lose late-adopters because the data only extend through 2015). As seen in Figure E2, the results are directionaly equivalent though they do not reach conventional levels of statistical significance. While the pre-enactment periods are statistically insignificant, I do find an upwards trend in enacting countries that appears to be reversed by Model Law enactment.
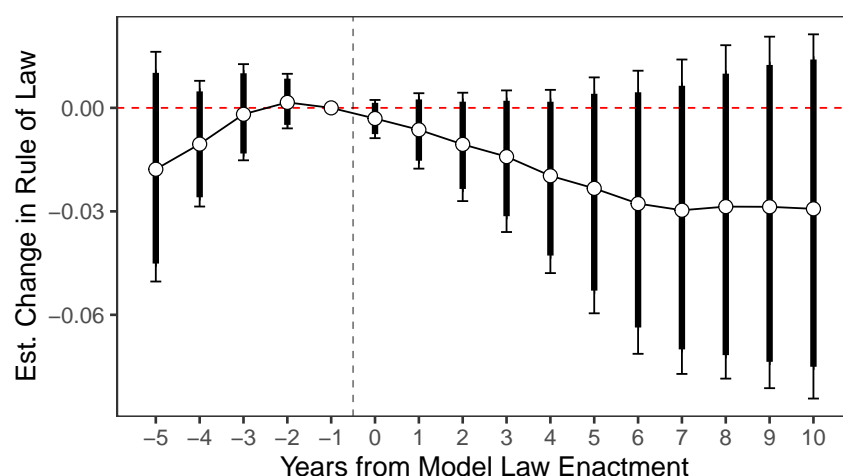

Figure E2: LJI Index

F Full Tables for ICC Case Analyses

F.1 Panel A: Seat of ICC arbitrations

	Total			Court	Parties
	(1)	(2)	(3)	(4)	(5)
Model Law	0.437**	0.209	0.230*	0.430*	0.202*
	(0.190)	(0.129)	(0.126)	(0.224)	(0.116)
ln Trade Openness		0.467	0.353	0.510	0.319
		(0.382)	(0.357)	(0.557)	(0.340)
ln FDI stock		0.288***	0.276***	0.252*	0.267***
		(0.081)	(0.080)	(0.145)	(0.079)
ln GDP		2.020***	1.706***	1.599*	1.734***
		(0.488)	(0.475)	(0.889)	(0.475)
ln GDP per cap.		-1.648***	-1.363**	-1.076	-1.412***
		(0.545)	(0.543)	(0.997)	(0.532)
Growth		-0.013	-0.014	-0.000	-0.016*
		(0.009)	(0.009)	(0.017)	(0.009)
NYC			1.477**	0.431	1.641***
			(0.629)	(0.706)	(0.603)
Rule of Law			0.024	0.247	0.022
			(0.522)	(1.080)	(0.644)
Start Year	1992	1992	1992	1994	1994
Year FE?	✓	✓	✓	✓	✓
Country FE?	✓	✓	✓	✓	✓
Pre-trends p-value	.115	.539	.514	.015	.664
Observations	3,186	2,764	2,764	1,951	2,611

Note: $^{*}\ p < .1$, $^{**}\ p < .05$, $^{***}\ p < .01$. Regression coefficients using either Poisson PML estimator. Standard errors in parentheses are clustered by country.

Table F1: ICC Seats, PPML estimator

	Total			Court	Party
	(1)	(2)	(3)	(4)	(5)
Model Law	0.227**	0.140	0.139	0.060**	0.106
	(0.091)	(0.096)	(0.096)	(0.027)	(0.069)
ln Trade Openness		0.123	0.124*	0.014	0.066
		(0.077)	(0.073)	(0.018)	(0.060)
ln FDI stock		-0.002	0.001	0.007	0.012
		(0.030)	(0.032)	(0.009)	(0.025)
ln GDP		-0.368	-0.359	0.129	0.014
		(0.515)	(0.513)	(0.119)	(0.485)
ln GDP per cap.		0.401	0.396	-0.017	0.039
		(0.500)	(0.494)	(0.106)	(0.470)
Growth		-0.004**	-0.004**	-0.001*	-0.003*
		(0.002)	(0.002)	(0.000)	(0.002)
NYC			-0.048	-0.010	0.086
			(0.127)	(0.026)	(0.131)
Rule of Law			-0.045	0.042	-0.073
			(0.280)	(0.048)	(0.305)
Pretrends					
Model Law$_{t+1}$	0.207**	0.152	0.153	0.047	0.155
	(0.087)	(0.099)	(0.099)	(0.049)	(0.096)
Model Law$_{t+2}$	0.166*	0.123	0.124	0.073*	0.127
	(0.088)	(0.097)	(0.097)	(0.042)	(0.094)
Model Law$_{t+3}$	0.099	0.065	0.065	0.061	0.063
	(0.078)	(0.085)	(0.084)	(0.042)	(0.076)
Joint p-value	.117	.460	.453	.289	.408
Economic Controls		✓	✓	✓	✓
Political Controls			✓	✓	✓
Observations	✓	✓	✓	✓	✓
N	5,056	4,054	4,054	3,662	3,662

Standard errors in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

Table F2: ICC Seats, BJS estimator

F.2 Panel B: Nationality of parties to ICC arbitration

	Total			Complain.	Defendant
	(1)	(2)	(3)	(4)	(5)
Model Law	0.263**	0.202***	0.223***	0.295***	0.166**
	(0.107)	(0.075)	(0.069)	(0.082)	(0.072)
ln Trade Openness		0.299*	0.266*	0.059	0.381**
		(0.175)	(0.162)	(0.204)	(0.155)
ln FDI stock		0.071	0.062	0.089*	0.036
		(0.060)	(0.056)	(0.048)	(0.056)
ln GDP		1.836***	1.619***	1.279***	1.825***
		(0.229)	(0.219)	(0.237)	(0.261)
ln GDP per cap.		-1.430***	-1.228***	-0.942***	-1.419***
		(0.198)	(0.212)	(0.214)	(0.274)
Growth		-0.015***	-0.016***	-0.009**	-0.018***
		(0.004)	(0.004)	(0.004)	(0.006)
NYC			0.653**	0.830**	0.562**
			(0.316)	(0.390)	(0.252)
Rule of Law			0.295	0.019	0.460*
			(0.204)	(0.263)	(0.242)
Start Year	1993	1993	1993	1994	1994
Year FE?	✓	✓	✓	✓	✓
Country FE?	✓	✓	✓	✓	✓
Pretrends p-value	.619	.955	.975	.679	.721
Observations	4,811	3,992	3,992	3,763	3,854

Note: * $p < .1$, ** $p < .05$, *** $p < .01$. Regression coefficients using either Poisson PML estimator. Standard errors in parentheses are clustered by country.

Table F3: Full party analysis, PPML estimator

	Total			Complain.	Defendant
	(1)	(2)	(3)	(4)	(5)
Model Law	0.245***	0.169*	0.174**	0.156**	0.080
	(0.086)	(0.087)	(0.086)	(0.066)	(0.068)
ln Trade Openness		0.058	0.051	0.046	0.064
		(0.071)	(0.075)	(0.063)	(0.081)
ln FDI stock		0.083**	0.077*	0.053	0.060
		(0.042)	(0.042)	(0.034)	(0.039)
ln GDP		0.737**	0.715**	0.431	0.702**
		(0.302)	(0.299)	(0.286)	(0.344)
ln GDP per cap.		-0.450	-0.442	-0.215	-0.537
		(0.299)	(0.294)	(0.287)	(0.337)
Growth		-0.008***	-0.008***	-0.006***	-0.008**
		(0.003)	(0.003)	(0.002)	(0.003)
NYC			0.114	0.079	0.138
			(0.125)	(0.120)	(0.120)
Rule of Law			0.181	-0.004	0.274
			(0.219)	(0.175)	(0.220)
Pretrends					
Model Law$_{t+1}$	0.128	0.060	0.058	0.112	-0.015
	(0.090)	(0.091)	(0.092)	(0.083)	(0.102)
Model Law$_{t+2}$	-0.013	-0.056	-0.060	0.041	-0.056
	(0.105)	(0.107)	(0.107)	(0.106)	(0.094)
Model Law$_{t+3}$	0.092	0.059	0.058	0.153**	0.036
	(0.084)	(0.085)	(0.087)	(0.074)	(0.092)
Joint p-value	.306	.587	.582	.171	.819
Economic Controls		✓	✓	✓	✓
Political Controls			✓	✓	✓
Country & Year FE	✓	✓	✓	✓	✓
Observations	4,801	3,885	3,885	3,662	3,662

Standard errors in parentheses

* $p < .1$, ** $p < .05$, *** $p < .01$

Table F4: ICC Party, BJS estimator

(a) Seat of Arbitration   **(b)** Nationality of Party
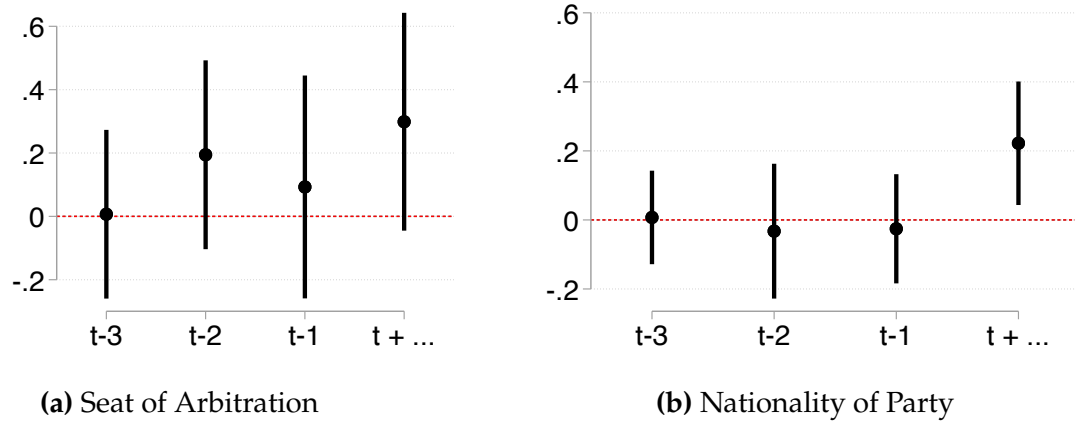
Note: Coefficient plots with 95% confidence intervals for dummy variables indicating the number of years from enactment of the Model Law. These are based on the models presented in Column 3 of Panels A and B of Table 3.

Figure F1: Effect of Model Law on Seat Selection and Nationality of Parties to ICC arbitrations