INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

Edited by **Beth A. Simmons**
and **Richard H. Steinberg**

deviation of individual GDP shares from their sample mean. One disadvantage is that the upper bound (MAX) of *P*, which is equivalent to $1 - 1/N$, varies with the number of signatories. To control for differences in the maximum value of *P*, I use the ratio of the proportional asymmetry index to its range (*P*/MAX).

To estimate the level of asymmetry within each accord, I use aggregate GDP figures denominated in U.S. dollars at current exchange rates. Where possible the index uses data from the year in which the treaty was signed.[39] For all cases, the index incorporates only countries that signed the accord at the time of its creation or reinvigoration; it excludes member states that later acceded and includes any that later withdrew. [EFTA] is the only pact to have duplicate entries. *** Other agreements that underwent various changes over time *** hardly shifted in terms of asymmetry and thus have one entry from the year of their establishment. *

Using these guidelines, Table 14.4 ranks and organizes the sixty-three data points into two categories, low and high, based on the level of economic asymmetry within each pact. The rank order of the pacts derives from their *P*/MAX scores, which are listed from low to high. To facilitate comparisons, Table 14.4 reports the underlying GDP shares of signatories to each agreement in descending order ***. These GDP shares make evident the intuitive appeal of this ordering, but with a small sample size and categorical dependent variable it is also necessary to draw a line between low and high asymmetry. Although this *P*/MAX index captures the level of asymmetry across all signatories, my theoretical approach suggests that the relative size of the largest members may be more important than the distribution of shares among smaller economies. The reason is that two or three symmetrically positioned regional powers that depend heavily on access to each others' markets may endorse a legalistic system even if the gap in size between them and their neighbors is substantial.[40] By focusing on the relative size of the largest signatories, one can define a threshold between high and low asymmetry that conforms to the rank order in Table 14.4. For bilateral pacts, if the larger country's share of GDP exceeds 70 percent, asymmetry is high, as it is in

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[39] The two exceptions are the 1973 CARICOM and the 1969 SACU, both of which reflect GDP data from 1970.

[40] For an argument along these lines regarding the critical role of the United States and the European Union in the legalistic dispute settlement reforms of the Uruguay Round of GATT, see Smith 1998.

multilateral pacts where the GDP share of the largest signatory is more than twice that of the next largest. ***

Like asymmetry, the proposed level of integration is a key variable that requires a metric. An adapted version of the traditional concept of stages of integration seems best able to capture the basic differences between shallow and deep initiatives. In a study of regional trade pacts, the International Monetary Fund labeled agreements as belonging to one of four categories.[41] At the shallow end of integration arrangements are free trade areas, which remove tariff and certain nontariff barriers ***. More ambitious are customs unions, which in addition to free trade aim to establish harmonized external tariffs ***. Common markets aim to guarantee freedom of movement not only for goods and services but also for factors of production such as capital and labor. And at the deepest level of liberalization are economic unions, which are common markets whose member states harmonize certain macroeconomic and regulatory policies.

Along the continuum of these four stages of integration, there is a fundamental break between customs unions and common markets. Free trade areas and customs unions focus on removing barriers to the cross-border movement of goods (and, at times, services), with an emphasis on tariffs and quantitative restrictions. Common markets and economic unions aim for a much higher level of integration, including the free movement of labor and capital and the harmonization of economic policies. *** Free trade areas and customs unions indicate low integration, whereas common markets and economic unions signify high integration. This typology reflects the proposed level of integration in each agreement, not the extent of actual policy implementation.

With indicators for both asymmetry and integration, it is possible to generate a third independent variable that represents their interaction. This interaction term, of course, reflects my principal hypothesis – which is that legalism is most likely where asymmetry is low and proposed integration is high. *** Table 14.5 below summarizes all three variables for each agreement.

ASYMMETRY, PROPOSED INTEGRATION, AND LEGALISM

Tables 14.6, 14.7, and 14.8 summarize the relationship between legalism and each of the three independent variables in turn: asymmetry, proposed

[41] IMF 1994, 90.

TABLE 14.5. *Legalism, Asymmetry, and Proposed Level of Integration*

Legalism	Pact	Asymmetry	Integration	Interaction
None or low	SACU	High	High – common market	High
	UDEAC	High	High – economic union	High
	ANZCERTA	High	High – common market[a]	High
	EEA	High	High – common market	High
	CARICOM	High	High – common market	High
	GCC	High	High – common market	High
	EFTA–Israel	High	Low – free trade area	Zero
	EFTA–Bulgaria	High	Low – free trade area	Zero
	EFTA–Estonia	High	Low – free trade area	Zero
	EFTA–Latvia	High	Low – free trade area	Zero
	EFTA–Lithuania	High	Low – free trade area	Zero
	EFTA–Slovenia	High	Low – free trade area	Zero
	Hungary–Slovenia	High	Low – free trade area	Zero
	Bulgaria–Czech Republic	High	Low – free trade area	Zero
	U.S.–Israel	High	Low – free trade area	Zero
	EFTA 1960	High	Low – free trade area	Zero
	Baltic FTA	Low	Low – free trade area	Zero
	CEFTA	Low	Low – free trade area	Zero
	Romania–Czech Republic	Low	Low – free trade area	Zero
	Bulgaria–Slovak Republic	Low	Low – free trade area	Zero
	Romania–Slovak Republic	Low	Low – free trade area	Zero
	Mano River Union	Low	Low – customs union	Zero
	AFTA	Low	Low – free trade area	Zero
Medium	MERCOSUR	High	High – common market	High
	EC–Israel	High	Low – free trade area	Zero
	EC Associations (12)	High	Low – free trade areas[b]	Zero
	EFTA–Czech Republic	High	Low – free trade area	Zero

Legalism	Pact	Asymmetry	Integration	Interaction
	EFTA–Poland	High	Low – free trade area	Zero
	EFTA–Hungary	High	Low – free trade area	Zero
	EFTA–Romania	High	Low – free trade area	Zero
	EFTA–Slovak Republic	High	Low – free trade area	Zero
	EFTA–Turkey	High	Low – free trade area	Zero
	NAFTA	High	Low – free trade area	Zero
	Chile–Ecuador	High	Low – free trade area	Zero
	Group of Three	High	Low – free trade area	Zero
	Mexico–Chile	High	Low – free trade area	Zero
	Chile–Canada	High	Low – free trade area	Zero
	Chile–Bolivia	High	Low – free trade area	Zero
	Mexico–Costa Rica	High	Low – free trade area	Zero
	Mexico–Bolivia	High	Low – free trade area	Zero
	OECS	Low	Low – customs union	Zero
	Chile–Colombia	Low	Low – free trade area	Zero
	Chile–Venezuela	Low	Low – free trade area	Zero
High or very high	CIS	High	High – economic union	High
	ECOWAS	High	High – common market	High
	CEAO	Low	High – economic union	Low
	COMESA	Low	High – common market	Low
	EAC	Low	High – common market	Low
	CACM	Low	High – common market[c]	Low
	Andean Pact	Low	High – common market	Low
	EC	Low	High – economic union	Low
	EFTA 1992	Low	High – common market	Low

[a] IMF (1994) codes ANZCERTA as a free trade area, but because it has achieved labor mobility, full coverage of services, and a competition policy, it is much more like a common market or, given the extent of legal harmonization, an economic union. See Kahler 1995, 109–11.

[b] The EC–Turkey agreement is a customs union.

[c] IMF (1994) codes the CACM as a customs union. The members had accomplished little more than a customs union at that point, but the aim of the treaty – as the name implies – is clearly to establish a common market.

Sources: For treaty type, see IMF 1994, app. I; and WTO 1995.

TABLE 14.6. *Legalism and Asymmetry*[a]

| | Level of economic asymmetry | | |
Level of legalism	Low	High	Total
High or very high			9
	CACM	*CIS*	
	Andean Pact	*ECOWAS*	
	EC		
	EFTA 1992		
	COMESA		
	CEAO		
	EAC		
Medium			31
	OECS	MERCOSUR	
	Chile–Colombia	Mexico Pacts (4)	
	Chile–Venezuela	Chile–Bolivia	
		Chile–Canada	
		Chile–Ecuador	
		NAFTA	
		EC–Israel	
		EC Associations (12)	
		EFTA–Czech Republic	
		EFTA–Poland	
		EFTA–Hungary	
		EFTA–Romania	
		EFTA–Slovak Republic	
		EFTA–Turkey	
Low or none			23
	Baltic FTA	CARICOM	
	Romania–Czech Republic	U.S.–Israel	
	Bulgaria–Slovak Republic	EFTA 1960	
	Romania–Slovak Republic	EFTA–Israel	
	AFTA	EFTA–Bulgaria	
	Mono River Union	EFTA–Estonia	
		EFTA–Latvia	
		EFTA–Lithuania	
		EFTA–Slovenia	

Level of legalism	Level of economic asymmetry		Total
	Low	High	
		EEA	
		CEFTA	
		Hungary–Slovenia	
		Bulgaria–Czech Republic	
		SACU	
		UDEAC	
		ANZCERTA	
		GCC	
Total	16	47	63

Note: $P\,(\chi^2\{2\} > 17.08) = 0.000$.
Fisher's exact = 0.000.
Cramer's $V = 0.52$.
[a] Cases that lie off the predicted diagonal at high and low levels of legalism are shown in italics.

integration, and their interaction. To facilitate analysis of the small sample in this study, I collapse the five levels of legalism into three rows. ***

With a simplified dependent variable, it is possible to use chi-squared tests of statistical significance. For all three independent variables, the null hypothesis of independence can be rejected with very high levels of confidence ($p < .01$), suggesting a significant relationship to legalism.[42] To estimate the strength of that relationship, I also report Cramer's V, which for all three tables is relatively large ($V > .5$). The direction of each variable's effect on legalism is as expected: negative for asymmetry, positive for proposed integration, and negative for their interaction, reflecting the impact of asymmetry where proposed integration is high. ***

The first hypothesis to evaluate is whether levels of asymmetry and legalism are inversely related, given the preferences and negotiating leverage of regional hegemons. In its strongest form, the implication is that highly legalistic forms of dispute settlement should not occur in highly asymmetric settings. The evidence supports this claim, as shown in Table 14.6. Among the forty-seven cases of high asymmetry, there are only two examples of highly legalistic dispute settlement. All five pacts

[42] Given a sample size of sixty-three cases, the low expected frequencies of certain cells imply that the use of Pearson's chi-squared may be inappropriate. The reduced sample in Table 14.8 is especially problematic. For this reason I also report Fisher's exact, a more conservative test designed for small samples.

TABLE 14.7. *Legalism and Integration*

	Level of proposed integration		
Level of legalism	**Low**	**High**	**Total**
High or very high			9
	None	CACM	
		Andean Pact	
		EC	
		EFTA 1992	
		CIS	
		COMESA	
		CEAO	
		EAC	
		ECOWAS	
Medium			31
	OECS	MERCOSUR	
	Chile and Mexico Pacts (9)		
	NAFTA		
	EC–Israel		
	EC Associations (12)		
	EFTA–Czech Republic		
	EFTA–Poland		
	EFTA–Hungary		
	EFTA–Romania		
	EFTA–Slovak Republic		
	EFTA–Turkey		
Low or none			23
	U.S.–Israel	*CARICOM*	
	AFTA	*EEA*	
	Mano River Union	*SACU*	
	Romania–Czech Republic	*ANZCERTA*	
	Bulgaria–Czech Republic	*GCC*	
	Romania–Slovak Republic	*UDEAC*	
	Bulgaria–Slovak Republic		
	Hungary–Slovenia		
	EFTA 1960		
	EFTA–Israel		
	EFTA–Bulgaria		

Level of legalism	Level of proposed integration		Total
	Low	High	
	EFTA–Estonia		
	EFTA–Latvia		
	EFTA–Lithuania		
	EFTA–Slovenia		
	CEFTA		
	Baltic FTA		
Total	47	16	63

Note: $P (\chi^2\{2\} > 34.49) = 0.000$.
   Fisher's exact $= 0.000$.
   Cramer's $V = 0.74$.
[a] Cases that lie off the predicted diagonal at high and low levels of legalism are shown in italics.

with very high legalism are also cases of low asymmetry. And both anomalies with high legalism, the CIS and ECOWAS *** [– within which Russia and Nigeria, respectively, are dominant – at this point remain far from effective implementation, suggesting potential tension between the structure of political power in these accords and their institutional design.[43]]

   Where asymmetry is low, high levels of legalism are expected only where the proposed level of integration is high. The evidence supports this claim as well. Six potentially anomalous cases italicized in Table 14.6 combine low asymmetry with low or no legalism, but all six treaties – four of which are among formerly socialist countries in Europe – aim to establish no more than a free trade area or customs union. Despite conditions of symmetry that might permit the adoption of rule-oriented dispute settlement, in these pacts governments have opted for relatively diplomatic systems. If they commit to deeper liberalization in the future, member states might endorse more legalistic dispute settlement. ***

   A second test is for a positive relationship between the level of proposed integration and legalism, which the evidence generally confirms, as shown in Table 14.7. The majority of cases with low or high legalism fall on the

[43] The CIS Economic Court, for example, has yet to be given effective powers. President Lukashenka of Belarus has proposed reforming the CIS tribunal on the model of the European Court of Justice. See *BBC Summary of World Broadcasts* SU/D3168/D, 6 March 1998. In ECOWAS, very little progress has been made on liberalization. See "Ecobank Boss Deplores Rivalry in ECOWAS," *Panafrican News Agency*, 6 March 1999.

TABLE 14.8. *Legalism and the Interaction of Asymmetry and Integration[a]*

Level of legalism	Interaction of economic asymmetry and proposed integration		Total
	Low	High	
High or very high			9
	CACM	*CIS*	
	Andean Pact	*ECOWAS*	
	EC		
	EFTA 1992		
	COMESA		
	CEAO		
	EAC		
Medium	None	MERCOSUR	1
Low or none	None		6
		CARICOM	
		EEA	
		SACU	
		UDEAC	
		ANZCERTA	
		GCC	
Total	7	9	16

Note: $P (\chi^2\{2\} > 9.68) = 0.008$.
     Fisher's exact $= 0.004$.
     Cramer's $V = 0.78$.
[a] Cases where the interaction term is zero have been omitted to capture the impact of asymmetry where proposed integration is high. Cases that lie off the predicted diagonal at high and low levels of legalism are shown in italics.

predicted diagonal. No mere free trade agreements or customs unions have embraced the concept of binding rulings by a standing tribunal of justices. Only where the level of proposed integration is high, in the form of a common market or economic union, have highly legalistic mechanisms been endorsed. Nevertheless, no fewer than six cases lie at the intersection of ambitious integration and low or no legalism. In all six agreements, the signatories have embraced the prospect of deep integration but rejected binding third-party review. In the EEA, Southern African Customs Union (SACU), Australia–New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), and Gulf Cooperation Council (GCC), member states have even managed to achieve considerable market

TABLE 14.9. *Ordered Probit Regression of Legalism*

Variable	Coefficient	Standard error
Proposed integration	3.203**	0.682
Economic asymmetry	1.067*	0.484
Interaction	−5.604**	1.483
Number of observations	63	
Log likelihood	−49.59	
Chi-squared	26.16	
Significance	0.000	

** $p < .01$, two-tailed test.
* $p < .05$, two-tailed test.

integration in the absence of highly legalistic institutions – in three of these cases without any system of third-party review at all.

These anomalous combinations of high integration and low legalism share one telling attribute: all six treaties shown in italics in Table 14.6 are cases of high asymmetry. This structural attribute – through its impact on the domestic political economy of trade – appears to be one of the principal reasons these deep integration initiatives have not adopted correspondingly legalistic dispute settlement mechanisms.[44] ***

The most robust predictor of dispute settlement design seems to be the interaction of asymmetry and proposed integration. Where the level of proposed integration is relatively low – implying a value of zero for the interaction term – not a single treaty has approved a permanent court, as noted in Table 14.7. By excluding those cases, Table 14.8 highlights the impact of asymmetry where proposed integration is high. In this subset of sixteen common markets and economic unions, the multiplicative interaction term assumes the value of the asymmetry index. Where asymmetry is high, legalism is unlikely to be high even in cases where the proposed integration is deep. At high values of the interaction term, as Table 14.8 indicates, very few treaties endorse binding third-party review. The CIS and ECOWAS again stand out as exceptions. Among cases with low asymmetry, legalism is likely to be high only where policy goals are ambitious and the potential value of liberalization is considerable. As

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44 *** Predictably, the main obstacle to institutional reform in MERCOSUR is Brazil, by far the largest signatory. During negotiations for a permanent dispute settlement mechanism, Brazil rejected proposals by Uruguay and Argentina for a more legalistic system. See Pastori 1994, 4–7; and O'Neal Taylor 1996, 874–75.

Table 14.8 reveals, where the interaction term is low – the most favorable conditions for legalism, according to this framework – all seven treaties have endorsed standing tribunals.

The dramatic impact of this interaction appears also in an ordered probit regression of legalism. Table 14.9 summarizes the results of this statistical test, which uses asymmetry and the interaction term as continuous variables that range from zero to 1, capturing more variation than the preceding tabular analysis. Proposed integration (low = 0; high = 1) and legalism (none or low = 0; medium = 1; high or very high = 2) remain categorical variables. Despite the small sample size, which is not ideal for maximum likelihood estimation, * both integration and the multiplicative interaction term exhibit highly significant and strong effects on legalism.[45] These effects, moreover, are in the predicted direction. The coefficient of the interaction term is the largest in magnitude, indicating the decisively negative relationship of asymmetry to legalism where the level of proposed integration is high. *

This simple analytical framework, tested with basic indicators of GDP concentration and treaty type, successfully accounts for thirty of the thirty-two cases at the more extreme levels of legalism, where the implications of the theory are clearest. * * *

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CONCLUSION

In this article I offer a political theory of dispute settlement design in international trade. My aim is to demonstrate and account for significant variation in the level of legalism across different regional accords. With a dual emphasis on economic asymmetry and the proposed depth of integration, I predict the extent to which trading states will delegate judicial review authority to impartial third parties. My central assertion is that in drafting governance structures for international trade, political leaders weigh the benefits of improved treaty compliance against the costs of diminished policy discretion. To make this judgment, they assess their

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[45] In maximum likelihood analysis of small samples, positive findings of significance may be more reliable than negative results. Hart and Clark report that in probit models of binary dependent variables, the risk of false positive findings does not change appreciably as sample size decreases. Hart and Clark 1999. They conclude that "the likelihood that small samples will induce Type I errors is small," in contrast to the substantial risk of false negative findings.