

Exporting Capital, Importing Law*

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Abstract

How do economic elites protect their wealth from state predation (or regulation)? By routing ownership of their domestic assets through offshore shell companies, individuals can become *de jure* foreign investors in their home markets. Engaging in such “round-tripping” of investments not only reduces elites’ tax burdens but also provides access to international investment treaties that were created for foreign investors. Round-tripping then allows elites to sue their own sovereigns in neutral venues; remarkably, these extraterritorial disputes constitute 8% of the cases filed under the international investment regime and account for 41% of the total damages claimed. Analyzing nearly 300,000 shell company incorporations, we find evidence of strategic offshore structuring: elites are more likely to round-trip through offshore jurisdictions that give them access to the multilateral Energy Charter Treaty (ECT), but the opposite is true for Bilateral Investment Treaties. In mechanism tests, we find that this is most likely due to the relatively high salience of the ECT among elites. The results have implications for the study of inequality, energy transitions, and the globalization of the individual.

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1 Introduction

What determines how economic elites hide and protect their wealth from state predation (or regulation)? While we generally think of offshore finance as a mechanism to avoid paying taxes, recent scholarship highlights that moving money abroad also has political benefits. Setting up companies in places like Malta or the Seychelles makes it harder for the state to track down and seize an individual’s wealth and gives individuals access to legal institutions that are stronger than those in the average emerging market (Sharman, 2012; Pistor, 2019). In this research note, we focus on the interplay of two underappreciated structuring features of offshore finance: how the “round-tripping” of investments interacts with international investment law.

First, elites exploit tax havens to become foreign investors in their own country. When making an investment, individuals can choose how to route the transaction. The most straightforward way would be to move money directly from their home location to where they intend to produce or sell goods. But the superwealthy frequently route even their *domestic* investments through offshore shell or holding companies, sending the money abroad before sending it straight back to their home jurisdiction (Kalotay, 2012). This changes the *de jure* nature of their investments as it will now show up in national accounts as foreign investment (Linsi and Mügge, 2019; Zucman, 2015). Second, such “round-tripping” of investments can change the sites of conventionally domestic political contestation. If an individual has structured their business empire through offshore companies, and more specifically using entities in jurisdictions that have an investment treaty with their home state, the losers from a political clash can argue they are foreign investors and then attempt to use international arbitration venues to compensate for their losses. They can use the neutral venues designed for multinational corporations in order to extend a political conflict through international means.

We label this phenomenon - the use of the Investor-State Dispute Settlement (ISDS) to resolve a *domestic* conflict - an “extraterritorial arbitration” (EA). While scholars recognize EA as a recurrent exploitation of the international investment regime, we are the first to systematically document its rise. EAs constitute roughly 8% of the ISDS cases filed between 1987 and 2015, including *de facto* domestic elite-state conflicts from Russia, Turkey, Egypt, and Kazakhstan. Yet they constitute an astounding 41% of the total damages claimed under the regime. The commitment devices meant to spur foreign direct investment have almost overwhelmingly been used as a source of insurance for domestic economic elites.

We assess how the potential for extraterritorial arbitration influences the way economic elites structure their wealth and minimize predation from their home state. We do so at different levels of analysis that balance out some of the standard non-transparency issues with studying offshore finance. We first analyze the incorporation of 275,000 entities in 44 offshore jurisdictions based on the series of leaks compiled by the International Consortium of Investigative Journalists (ICIJ), examining whether a tax haven having an investment agreement with an individual’s home country affects the number of incorporations in the tax haven. While the ICIJ data gives us unprecedented access to what is considered a nominally

hidden world, it lacks data on the full-ownership chain and does not include data on the industry or amounts of money at stake. As a complement, we then analyze over 10,000 entities from 41 European home states and 65 offshore jurisdictions using qualitative and quantitative information on the entire wealth chain via corporate services provider Bureau Van Dijk. To the best of our knowledge, both datasets are the most comprehensive versions of their kind.

Contra the expectation of conventional political economy theories of property protection, we find that increased potential for extraterritorial arbitration *reduces* the likelihood of elites utilizing a given tax haven. This negative effect holds for all the legal avenues an elite could use to initiate an extraterritorial arbitration with one exception. Signing up to the The Energy Charter Treaty (ECT) - a multilateral investment treaty signed by more than 50 jurisdictions that gives energy investors access to Investor-State Dispute Settlement mechanisms - spurs elites to round-trip through an ECT covered haven. The effect does not appear to be driven by the legal protections or the asset specific nature of the treaty, but instead is a function of inter-elite learning. The more the ECT is exploited via an extraterritorial arbitration, the more popular ECT signatories become as a place to guard one's wealth.

The paper then identifies a new set of distributional consequences associated with the international investment regime (Wellhausen, 2016). Research on the regime has generally focused on whether or not its treaties live up to their aims by increasing foreign direct investment. Moreover, they tend to focus primarily on Bilateral Investment Treaties (BITs) rather than incorporating the whole swath of treaties that can influence business-government relations. Here, we expand the legal focus while shifting the analysis toward understanding how the regime not only impacts economic flows, but also alters political flows. In line with how other international institutions are often manipulated, strategic, *de facto* domestic actors can leverage international investment tools for their own domestic ends. And yet not all elites seek easy access to such protections. The findings indicate a need for scholars to better understand the costs generated by transnational non-market strategy and the consequences of exploiting international institutions for private ends more generally.

Moreover, our results call for further work bridging the gaps between international regimes. While regime complexity is now a focal agenda for IR scholars, issue arenas are frequently theorized and assessed in isolation (Clark, 2021). Far less attention is paid to how decisions intended to benefit actors in one regime can spillover, and even change the purpose, of an alternate regime. The way elites are able to exploit rules in the tax arena to access the resources of another regime indicates that regimes are more dynamic than our theories expect (Thrall, 2021). Moreover, it suggests that when a regime relies on nationality as a key access criteria, it will create loopholes that generate inequalities in institutional access.

Finally, the paper illustrates one way that the rules of the global economy can create both benefits and liabilities for transnational economic elites (Cooley and Sharman, 2017). While the institutionalization of international trade and finance has no doubt improved living standards, the gains have not been distributed equally. A wave of recent scholarship across subfields examines the apparent backlash to globalization's imbalanced outcomes. But to

comprehensively understand the populist wave we need to fully theorize the winners from the status quo. Emerging market elites is a class of winners that are rarely discussed in such scholarship, but we hope that the paper continues building momentum around a research agenda focused on the IPE of Oligarchy (Cooley and Heathershaw, 2017).

The article begins by documenting the rise of extraterritorial arbitration. Next, we draw on relevant comparative and international political economy theories to illustrate that we should generally expect elites to structure their wealth to ensure access to ISDS against their home government. The third section begins our analysis of our offshore datasets, where we use a series of difference-in-differences estimators to examine how signing investment treaties influences an elites use of a tax haven. Our fourth section ex-post explains why we likely find a negative relationship between increased property protections and the use of a given offshore site. In the conclusion, we summarize our findings and delineate a broader agenda on the determinants of global property rights.

2 Extraterritorial Arbitration

2.1 The Investment Regime and the (Potential) Internationalization of Intra-Elite Conflict

Since its inception in the late 1950s, the modern international investment regime has grown to be comprised of 3,000 investment agreements. When two states sign a Bilateral Investment Treaty (BIT), they make a commitment to apply a certain set of protections to each other's foreign investors; for example, they promise not to expropriate assets without compensation or pass domestic regulations that discriminate against their partner state's investors. Further, if a BIT-protected foreign investor believes that the host government has violated one of these protections, they are able to sue for damages in international arbitration courts through a process called investor-state dispute settlement (ISDS). ISDS is specifically considered the bedrock of the regime; it has also been incorporated into major trade agreements like the North American Free Trade Agreement (NAFTA) and it is a core feature of the Energy Charter Treaty (ECT), a multilateral, energy sector-specific investment agreement with more than 50 signatories including the European Union. ISDS awards are binding; if governments fail to pay, investors may lawfully seize state-owned assets to recoup damages.

By giving foreign investors the ability to sue their host governments, the general aim of these treaties was to spur foreign direct investment in emerging markets (Wellhausen, 2016). However, existing evidence suggests that BITs have failed to meaningfully affect firms' investment decisions, and the regime has come under increasing scrutiny from mainstream political parties and civil society groups (Brada, Drabek and Iwasaki, 2020). Most cases in the past decade have not dealt with outright expropriation claims that the regime was designed to deter, but instead focus on indirect situations where governments attempt to pass new (often democratically supported) regulations (Pelc, 2017).

Under the regime states have limited recourse against infringements by multinational corporations, and seminal work on the regime suggests that states did not fully understand what they were signing up for (Poulsen, 2015). The playing field is made even more asymmetric because of offshore finance. As scholars like Gray (2020) and Thrall (2021) have documented, MNCs exploit their multi-jurisdictional structure to treaty shop—they can use their subsidiaries to file cases against a host government even if their main home government does not have an investment treaty with its host state. Even if firms who adopted their multi-jurisdictional structures primarily to lower their tax burdens, they can still benefit from third-party investment treaties. Thrall (2021) gives the example of an American firm, Columbia Capital LLC, that routed its Indian assets through a Mauritian subsidiary (CC/Devas). Adopting this structure allowed the parent firm to lower its withholding tax rate from 20% to 10%, and—when a dispute arose with the Indian government—Columbia Capital used its Mauritian subsidiary to file an ISDS case against India.

Such “shopping” is possible because of 2 interacting features. The key governing principal of the investment regime is discrete nationality (van Os and Knottnerus, 2012); if you are registered in a jurisdiction, you gain access to its investment treaty provisions independent of how the rest of your business may be structured. Second, MNCs by definition have a portfolio of nationalities, which are already set up for normal business or tax purposes, which they can then choose to file cases with. Individuals have realized they can take advantage of this same blind-spot.

2.2 The Rise of Extraterritorial Arbitration

In 2003, Mikhail Khodorkovsky was the richest man in Russia with a \$16 billion war chest. Arguably the biggest winner of the infamous “loans for shares” privatization process, he was the largest shareholder of the oil giant Yukos. That wealth, and how he was using it, turned into a source of conflict between the company and the Russian state. Despite repeated attempts by the Putin regime to bring the oligarchs in line, Khodorkovsky continued to challenge the changing nature of business-government relations, funding political parties across the aisle and building up his own independent power base (Sakwa, 2014; Sixsmith, 2010). With major elections on the horizon, Yukos found itself under investigation for tax avoidance. Khodorkovsky was forced behind bars, and Yukos was eventually found guilty of illegally exploiting domestic onshore shell companies (Stephan, 2013). That would come with a \$28 billion bill. Although the major shareholders of the company repeatedly tried to settle the claim, the pursuit by the Russian state was incessant (Sixsmith, 2010). The general journalistic and academic consensus is that Khodorkovsky and his cadre were never going to be able to keep the company (Judah, 2014; Sixsmith, 2010; Sakwa, 2014); this was a political battle to remove the revenue streams of the Kremlin’s biggest challenger. It is broadly considered the fundamental turning point in Putin’s control over the Russian economic elite.

While Khodorkovsky was imprisoned in Russia for a decade, most of his inner circle was able to leave Russia with some of their wealth intact. Although they were nominally

in trouble for the exploitation of domestic tax havens, they had long been using offshore structures for both their business and personal protections. As per a number of lawyers who have worked on Russian legal disputes, the “magnificent seven” shareholders that controlled Yukos had planned for such a political fallout by structuring parts of their business through offshore vehicles.¹ And it appears they chose these locations strategically as it eventually led to the most notorious ISDS case, an extraterritorial arbitration between the main Yukos shareholders and Russia, which was filed under the Energy Charter Treaty using their holding companies registered in British territories. The end result was a a \$50 billion victory in favor of Yukos in 2014 after a tribunal spent roughly 5 years deciding the outcome (Nougayrede, 2015).²

The case is still the largest monetary victory given out under the investment regime, making it well-known amongst participants and observers. The political stakes and sums of money are easy to write off as an aberration, but our contention is that it largely symbolizes a broader pattern of extraterritorial arbitrations that turns ISDS into an intra-elite battleground. We find that 58 of the 723 ISDS cases filed between 1987 and 2015 are extraterritorial arbitrations. This means that, in 8% of all known cases, the nominally foreign investor is actually a domestic plutocrat who has routed ownership of their investments through a foreign company. Further, due in large part to the behemoth Yukos cases,³ extraterritorial arbitrations compose 41% of the total damages claimed despite making up only 8% of cases.⁴

These figures are based on newly collected data from Thrall (2021) that identifies and examines all cases of extraterritorial arbitration between 1987 and 2015. For each firm that was listed as a claimant in every ISDS case filed through 2015, Thrall searched business databases, corporate registries, case documents, specialized news outlets, and other sources in order to identify whether the firm was owned by another firm or individual; if so, Thrall coded the nationality of the ultimate owner. For example, if a case was filed by a Dutch firm, but the Dutch firm was in turn a subsidiary of a US multinational, the ultimate owner would be coded as American. Using this data, we identify extraterritorial arbitrations as cases in which the nationality of the ultimate owner is the same as the nationality of the host government.⁵

Beyond the fact that these cases are not meant to even exist under the regime, extraterritorial arbitrations are qualitatively different from standard ISDS cases in which a (de facto) foreign investor files a dispute against a host government. The companies that elites use to file extraterritorial arbitration are incorporated in tax havens at a substantially higher rate

¹Author Interviews with London-based Lawyers, February 2018

²2 years later a Dutch district court ruled that the tribunal should not have taken up the case because of conflicts with Russian constitutional law. That ruling was in turn reversed 4 years later by a Dutch appeals court.

³In *Hulley Enterprises v. Russia*, the claimants sought \$91B USD in damages—the largest sum ever sought in an ISDS case.

⁴Note that damages claimed do not reflect damages received.

⁵These cases are a subset of what Thrall (2021) calls proxy arbitration, in which the ultimate owner’s nationality is different from that of the firm that is filing the case.

Table 1: **Top 10 nationalities of firms filing ISDS: extraterritorial arbitration vs. all others**

Extraterritorial	Other
Cyprus (15)	United States (153)
Netherlands (14)	Netherlands (80)
United States (7)	Germany (66)
Luxembourg (6)	Spain (56)
Spain (4)	Canada (50)
United Kingdom (4)	France (48)
Barbados (3)	United Kingdom (48)
Poland (3)	Italy (37)
Italy (2)	Luxembourg (36)
Panama (2)	Ukraine (26)

Table 2: **Top 10 recipients of ISDS claims: extraterritorial arbitration vs. all others**

Extraterritorial	Other
Russia (7)	Argentina (58)
Czechia (6)	Venezuela (35)
Egypt (6)	Spain (28)
Turkey (6)	Czechia (27)
Spain (5)	Canada (25)
Venezuela (4)	Mexico (23)
Kazakhstan (3)	Poland (23)
Ukraine (3)	Ecuador (21)
Panama (2)	Egypt (20)
Albania (1)	India (16)

than companies involved in other ISDS cases (because EA is function of round-tripping). This is illustrated in Table 1, which ranks the top 10 claimant nationalities for extraterritorial vs. non-extraterritorial cases. While claimants in non-EA cases tend to come from the world’s largest economies, as we might expect, firms that file EA cases tend to be incorporated in low-tax and high-secrecy jurisdictions such as Cyprus, Luxembourg, Barbados, and Panama. This indicates that elites use their offshore shell companies both to avoid taxation and to gain access to investment treaty protection.

Moreover, the targets of the cases vary substantially between conventional ISDS and EAs. Table 2 shows that Argentina and Venezuela are among the most common recipients of non-EA claims, due largely in part to the frequency with which they expropriate foreign investors, default on sovereign debt, and impose capital controls. On the other hand, EA cases—in which a state is sued by its own nationals—are dominated by post-communist states (Russia, Czechia, Kazakhstan, Ukraine, Albania) and other countries with relatively powerful oligarchies such as Egypt and Turkey. While governments like Saudi Arabia can

be characterized as having control over their elites, and those in places in like Indonesia are generally considered captured by oligarchs, states that face EA claims are jurisdictions where domestic politics are characterized by frequent power struggles among competing political factions. These competitions can be internationalized via extraterritorial arbitration.

Although the Yukos Affair gets the most headlines, Table 2 indicates this is not a solely Russian phenomenon. Mukhtar Ablyazov was the primary challenger to Kazakhstan’s multi-decade ruler Nursultan Nazarbayev. After being imprisoned in the early 2000s, he struck a bargain with the state, leaving the country to re-build his wealth. He returned a handful of years later as the chairman of BTA Bank. The latter was eventually nationalized in the midst of the great financial crisis, which Ablyazov claims was a veneer for the regime to dispose of its clearest threat (Cooley and Heathershaw, 2017; Burgis, 2020). Ablyazov used thousands of offshore vehicles to protect his wealth (Nougayrede, 2015), and settled on using a shell company in the Netherlands to make an ISDS claim worth \$1.5 billion (*KT Asia v. Kazakhstan*).

Similarly, after clashing with Erdogan in the early years of his tenure, the Turkish Uzan family may have inspired Khodorkovsky. They used the Energy Charter Treaty to strike back against their home government, seeking 3.5 billion for the cancellation of electricity concessions and the seizure of their conglomerates assets (*Uzan v. Turkey*) (?). These additional examples highlight how political clashes become extended through ISDS. They further illustrate that EA is not a silver bullet to a fleeing elite’s woes - the Uzans lost out on jurisdictional grounds while Ablyazov’s case was resolved in favor of the state.

To more systematically assess the variation between conventional ISDS and EAs, we conduct a series of basic difference-in-means tests on a range of factors. The results are plotted in Figure 1. First, EA cases are much less likely to end in a negotiated settlement when compared to non-EA cases. Not only will governments be less inclined to pay a settlement to their political rivals, as they could use the money to continue posing a threat, but elites themselves may want to prolong the arbitration in order to maximize the costs inflicted on the government. Elites can punish antagonistic governments by filing a number of lawsuits that cost the state significant time, money and legal resources, even if their probability of winning the case is low.⁶ The longer the cases run, the longer they could garner attention from international audiences, putting pressure on governments to retrench the efforts they use to suppress the economically powerful.

Second, in line with our earlier results, the companies that are used to file EA cases are substantially more likely to be incorporated in a tax haven than companies that file non-EA cases. This provides further indication that individuals use their offshore shell companies to gain both tax benefits and initial suggestive evidence that they are after BIT protection. EA cases are more likely to end in a state victory than non-EA cases, but this difference is

⁶In response to Russia’s expropriation of Yukos Oil Company, the leader of Yukos’ largest shareholder group vowed to pursue a “lifetime of litigation” against the government. See “A lifetime of litigation—the fall of Yukos”, *Law.com*, 09 July 2010. This is also related to work by Moehlecke (2019) and Pelc (2017) on regulatory chill in ISDS.

Figure 1: **Difference in means tests: EA vs. Non-EA ISDS cases**

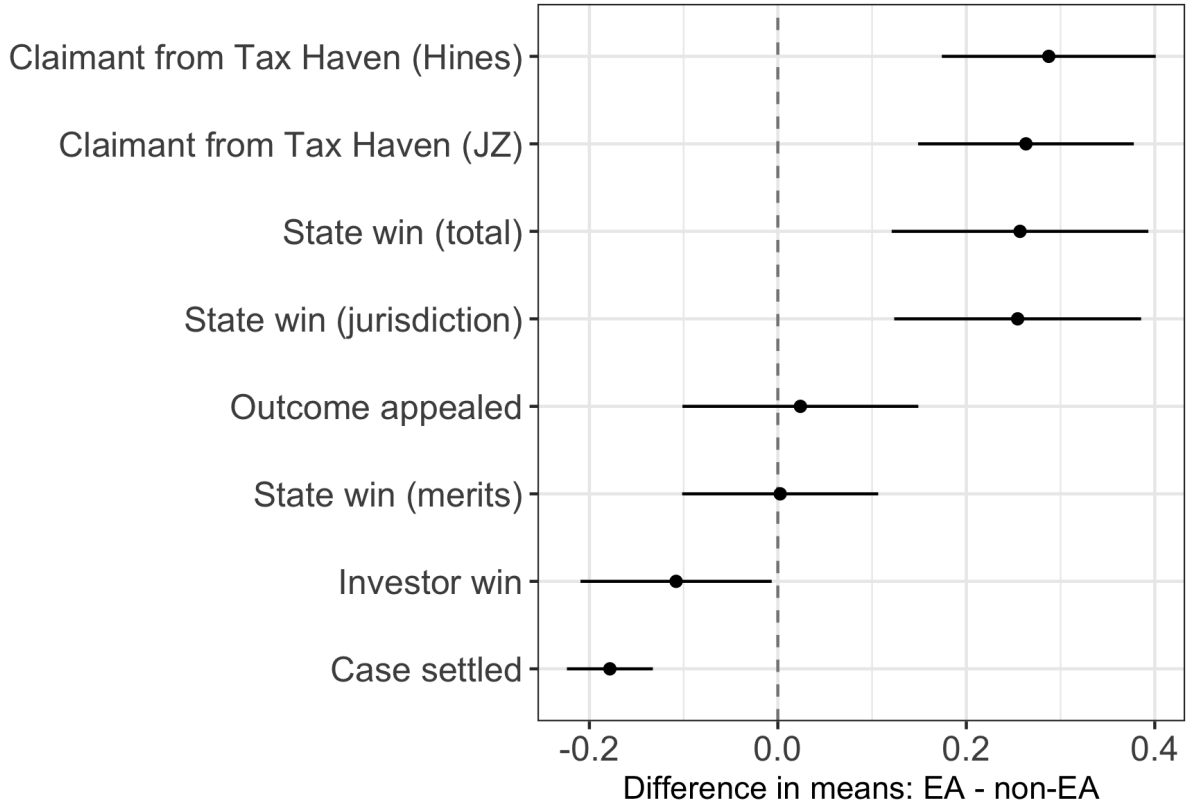


Table 3: **Treaties invoked as grounds for ISDS: extraterritorial arbitration vs. all others.**

Treaty type	Extraterritorial	Other	Diff (EA–Non-EA)
BIT	0.69	0.80	–0.11*
ECT	0.34	0.11	0.23**
Other IIA	0.03	0.12	–0.09**

Columns two and three present the proportions of extraterritorial and non-extraterritorial ISDS cases that invoked each type of treaty. Columns do not sum to one due to the fact that some cases invoke multiple types of treaty. * $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$.

driven almost completely by the fact that EA cases are much more likely to be thrown out due to lack of jurisdiction. Third, conditional on the case being ruled on the merits, EA claimants are no more likely to appeal the verdict than non-EA claimants.⁷ Finally, as seen in Table 3, the Energy Charter Treaty occupies a unique space for EAs - the ECT is used far

⁷We note that this null result may be driven by the fact that individuals often prefer to file new cases, using different offshore companies, rather than appeal old rulings. The lack of binding precedent in investment arbitration means that different tribunals can reach completely different conclusions when ruling the same exact case; for the example of *Lauder v. Czech Republic* and *CME v. Czech Republic*, see [Kerner \(2009\)](#).

more frequently to file cases against one home country rather than by MNCs against their hosts. These cases are not meant to exist. How actively are elites planning for them?

3 The Political Economy of Extraterritorial Arbitration

The previous section documents the considerable yet largely unexamined exploitation of the international investment regime. Do economic elites then factor the investment treaties and the potential for extraterritorial arbitration as part of their wealth protection strategies? Conventional theories of elite-state conflict would expect as much, at least for individuals in weakly institutionalized settings.

Two core features distinguish business-government relations in emerging markets compared to their developed peers. First, ownership in large firms tends to be substantially more concentrated in emerging markets where single individuals or families have controlling ownership stakes in the majority of a country's most lucrative companies (Freund, 2016). Rather than a purely profit motivated firm being the key player in the economy, individuals with large amounts of wealth are frequently part of the economic and political elite and directly impact both nominally independent systems. The second distinction is the relative weakness of the institutional environment. Emerging markets, beyond simple definitions of GDP per capita, usually have fewer checks and balances, weaker property rights, and weaker courts. The lack of institutional order can put elites in a position to more effectively wield their wealth to attain political power, creating a class of oligarchs or plutocrats (Winters, 2011).

But the weaker institutions cut both ways, as they imply that the state is often in a position to expropriate, directly through seizure or indirectly through cumbersome taxation or regulation, the wealth of elite business people (Haber and Razo, 2003; North et al., 2013; Arel-Bundock, 2017). How elites resolve this threat is one of the main research agendas for comparative political economy scholars who have found individuals, and their firms, can leverage a variety of non-market strategies. We frequently see elites try to directly align themselves with state actors, substituting formal institutional protections with informal political connections (Haber and Razo, 2003). In major economic powers like China and Russia, we even see businesspeople run for office themselves, with substantial economic returns for the firms they control (Szakonyi, 2020). The bulk of scholarship has focused on the domestic tools that elites use to protect their property but recent work has turned to the transnational tools at a plutocrat's disposal. Domestic entities can try to team up with foreign firms to gain additional political allies, and they can list their companies abroad to garner more attention and alter corporate governance rules (Betz and Pond, 2019; Markus, 2016; Logvinenko, 2019).

3.1 Offshore Finance and Property Protection

The move toward studying the transnational sources of property protection is an important step forward but has generally developed independent of debates on the role of offshore finance in global politics. This is unsurprising given that much of the political economy scholarship on offshore finance is fundamentally focused on economic arbitrage. The biggest winners from offshore havens are generally regarded as multinational corporations (MNCs) who, with the aid of the major accounting firms, are able to efficiently route their investments and claim their profits in low tax jurisdictions like Ireland, Luxembourg, and the Cayman Islands (Arel-Bundock, 2017; Hearson, 2018). But a variety of recent work documents that emerging markets tend to see the most amount of money moved to offshore sites. Countries like Russia, Venezuela, and Saudi Arabia have seen the largest proportion of domestic wealth moved into tax havens despite many emerging markets already operating with low corporate taxes (Tørsløv, Wier and Zucman, 2022; Zucman, 2014).

Part of this pattern can certainly be explained by economic arbitrage. Consider the choice set of an Indian businessperson when deciding to build a new factory at home. They could simply pay money to domestic construction companies and materials suppliers through their onshore balance sheets. Or they could move the money to Mauritius that has a highly favorable tax treaty with their home government, and then move the money back to India. Because of how it is routed offshore the money will show up in India as foreign investment and lock in a lower tax rate for the construction project. This “round-tripping” is rampant across emerging markets and helps explain why Mauritius is one of the top sources of FDI for India and why Cyprus takes an even higher spot for investments into Russia (Aykut, Sanghi and Kosmidou, 2017; Xiao, 2004; Ledyeva, Karhunen and Whalley, 2013). round-tripping illustrates that the consequences of capital are a result of how it is legally constructed Pistor (2019). By changing their *de jure* location, elites can reap substantial economic returns even when only *de facto* investing in their home market. Elite individuals, much like multinational corporations, can create a portfolio of nationalities by choosing how to route their investments and where they place their wealth (Cooley and Sharman, 2017).

But a number of researchers have called attention to the political gains from placing money abroad, and in particular how it facilitates institutional arbitrage (Sharman, 2012). By moving money into tax havens, investments become *de jure* governed by the laws of the foreign jurisdiction. Plutocrats may gain access to the domestic courts in these jurisdictions and if a rival, be it a private or public threat, wants to seize one’s wealth that is placed abroad, they would need to go through the domestic legal system of the tax haven. Not only does that add greater transaction costs, and generally ensure more liberal treatment compared to the home legal system, the opacity of these jurisdictions often mean that rivals may not even know the money has been placed there. It is often “hidden” wealth. Most importantly, for our purposes, systematic quantitative work has confirmed the insights of a number of early offshore finance scholars. Bayer et al. (2020) show that more offshore companies are registered in tax havens when the threat of expropriation rises in an emerging market. Using a variety of micro data, Earle et al. (2019) find that Ukrainian oligarchs with the weakest political connections are most likely to obfuscate their wealth through tax

havens. As one lawyer told us, “[Offshore structures] are an instrument of survival.”⁸

These two schools of thought on offshore finance can be linked to help us better understand how elites can protect their wealth in weakly institutionalized settings. Tax havens all generally offer zero tax rates and strong institutions, but they are not created equally. They vary in terms of their international engagement, and that has important consequences for the *international* property protections they can provide. More specifically, they have different degrees of integration into the international investment regime, which we may condition the strategic toolkit of elites.

To reiterate, the key governing principal of the investment regime is discrete nationality (van Os and Knottnerus, 2012); if you are registered in a jurisdiction, you gain access to its investment treaty provisions independent of how the rest of your business may be structured. Second, emerging market elites also frequently create such portfolios and they even take advantage of offshore structures for de facto domestic investments. When doing so, elites, and their legal teams, are likely to recognize the potential for international institutional arbitrage that MNCs exercise when they treaty shop. Routing investments through offshore vehicles can give them access to international treaty provisions that their home states lack. More importantly, round-tripping investments puts individuals in a position to challenge their home state. Because of the investment regime’s nationality principal, disputes that are *de facto* domestic can then be adjudicated via international venues as described in the previous section.

The gains from choosing an offshore haven that has an investment treaty with an individual’s home government go above and beyond those from simply placing money offshore. A person’s wealth would likely still be hidden regardless of the location choice, and they are going to have access to stronger domestic institutions. But when a conflict arises with the home state—the primary threat to most elites’ wealth—many offshore sites would leave them with limited recourse. A case filed against a sovereign state in places like the British Virgin Islands or Singapore courts would almost certainly fail on jurisdictional grounds because of sovereign immunity. But by claiming to (legally) be a foreign actor, and using the provisions in virtually all BITs, elites can sidestep those issues through international arbitration venues.

The state is likely to be aware of this option - and unlike with much off the offshore world, round-tripped investment is relatively observable as it shows up when firms pay taxes - but since these legal battles can take years and have no guarantee of turning out in a claimant’s favor, the international protections are unlikely to serve as a sufficient deterrent against state predation. But EA could still serve a political insurance mechanism. In line with variety of work in comparative politics, the power of economic elites coupled with the weak institutionalized environment creates a commitment problems between the state and the economic elite. The lack of institutional safeguards can lead to political clashes, the end result of which is frequently expropriation by the state. While historically many of these intra-elite battles would end at this stage, the combination of offshore finance and the in-

⁸Author interview with London-based lawyer February 2018

vestment regime may extend the conflict. Given these institutional gains, we should then expect economic elites to generally structure their wealth through offshore sites that provide international recourse against their sovereigns, setting the stage for the disputes like those involving Khodorkovsky and Ablyazov.

In sum, we are experiencing a perversion of the international property protection regime. MNCs have led the charge, taking advantage of their multi-jurisdictional structures to treaty shop. But the necessary nationality portfolios are also a common part of the individual's toolkit. Round-tripping investments, which are generally viewed as a source of economic arbitrage, creates political gains by allowing elites to protect themselves against their own sovereigns through treaties designed for foreign investors. When conflicts emerge between elites and their home state, we are seeing political clashes extend beyond their borders into the tribunals and arbitration venues of the international investment regime. The question is then how strategic are individuals with regard to ensuring they have such institutional access.

4 IIA Coverage and Strategic Corporate Structures

In order to determine whether elites structure their assets to gain International Investment Agreement (IIA) protection, we draw on two complementary data sources. First, we use data on over 275,000 secretly-created offshore entities and their owners that was compiled by the International Consortium of Investigative Journalists (ICIJ) from four separate data leaks. Second, we use a smaller (but more richly detailed) sample of round-tripped investments that analytics firm Bureau van Dijk compiled from publicly available sources such as corporate registries. For both public and private samples, we use the staggered adoption of new IIAs over time to identify the effect of IIA coverage on new offshore incorporations at the bilateral level.

4.1 Evidence from Offshore Leaks

Nontransparency is an obvious barrier to the systematic study of offshore wealth. For economic elites, anonymity is a primary benefit of the foreign shell company. ISDS cases offer us a window into the offshore vehicles maintained by certain individuals, though it is a small and selected sample: extraterritorial arbitrations necessarily occur only once a dispute between investor and host government has already begun. In order to make more general inferences about why (and where) elites choose to hold their capital abroad, we make use of formerly secret data from offshore service providers and national registries that was leaked to the ICIJ.

4.1.1 ICIJ Leaks: Background

The ICIJ, an organization composed of journalists who collaborate on large investigations, was made famous in 2016 when it published the Panama Papers—a massive data leak from law firm and offshore service provider Mossack Fonseca which named thousands

of secret shell companies and linked them to their owners. The leak made headline news due to its exposure of the scope of global tax avoidance as well as the exposure of Mossack Fonseca’s high profile clients (which included, among others, Saudi Arabia’s King Salman and former Ukrainian President Petro Poroshenko).⁹ While the Panama Papers attracted the most media attention, it was not the only major offshore data leak published by ICIJ; the organization also broke the “Offshore Leaks” leak (2013), the Paradise Papers (2017), and the Pandora Papers (2021), containing a combined total of over 600,000 offshore entities.¹⁰

The ICIJ leaks offer an unprecedented opportunity to study the offshore political economy: hundreds of thousands of offshore entities are linked with their beneficial owners, allowing for the study of both the destinations and the origins of offshore capital. Further, the leaked documents include the date of incorporation for each entity, allowing for longitudinal analysis. A number of past studies have used data from the Panama Papers to study the origins of the wealth held in tax havens (Alstadsæter, Johannesen and Zucman, 2018), the effects of expropriation on future offshoring (Bayer et al., 2020), and the effect of being implicated in the leaks on public firms’ value (O’Donovan, Wagner and Zeume, 2019).

4.1.2 ICIJ Leaks: Data and Research Design

Our goal is to study whether individuals from state i incorporate more (or fewer) entities in offshore jurisdiction j after states i and j form an IIA together. To do so, we begin by taking several steps to process the data provided by ICIJ. The ICIJ offshore leaks data contain one entry for each unique entity-owner pairing, as well as information on the jurisdiction in which the entity was incorporated and the nationalities of the owner(s). We first remove owners that are listed as having more than three nationalities; this is usually a sign that ICIJ cannot accurately determine an individual’s true nationality, and including these observations would likely add measurement error. We then remove owners who are associated with over 1,000 entities, as these owners are typically offshore service providers themselves rather than true beneficial owners.

⁹Michael S. Schmidt and Steven Lee Myers, “Panama Law Firm’s Leaked Files Detail Offshore Accounts Tied to World Leaders”, *New York Times*, 03 April 2016.

¹⁰The ICIJ also published the Bahamas Leaks, in 2016. However, since the incorporation dates for the entities in this leak are unknown, it is not possible to perform longitudinal analyses with this data.

Figure 2: **Aggregating the Offshore Leaks data.**

1. Entity-Owner format (original)				2. Entity-Nationality format		
Firm	Year	Jurisdiction	Owner (Nat)	Year	Jurisdiction	Owner Nat
Firm A	2007	Panama	Mx. X (Turkey)	2007	Panama	Turkey
Firm A	2007	Panama	Mr. Y (Russia)	2007	Panama	Russia
Firm A	2007	Panama	Ms. Z (Russia)	2007	Panama	Russia
Firm B	2007	Panama	Mr. J (Russia)			

3. Dyad-Year format (final)			
Year	Jurisdiction	Home state	# Incorps
2007	Panama	Turkey	1
2007	Panama	Russia	2

Next, we aggregate the data up from the entity-owner level to the entity-nationality level. For example, Firm A (as depicted in Figure 2), a Panama-incorporated entity with two Russian owners and one Turkish owner, would be aggregated to one observation for Panama-Russia and one for Panama-Turkey. We take this simplifying step under the assumption that the number of entities incorporated, rather than the number of owners per entity, is a better measure of the strength of the bilateral linkage between home states and offshore jurisdictions. Finally, we aggregate the data again to the dyad-year level by counting the number of entities incorporated in offshore jurisdiction j that are linked to an owner from state i in year t . The resulting variable—the number of entities incorporated in jurisdiction j , in year t , with at least one owner from state i —is our primary dependent variable.

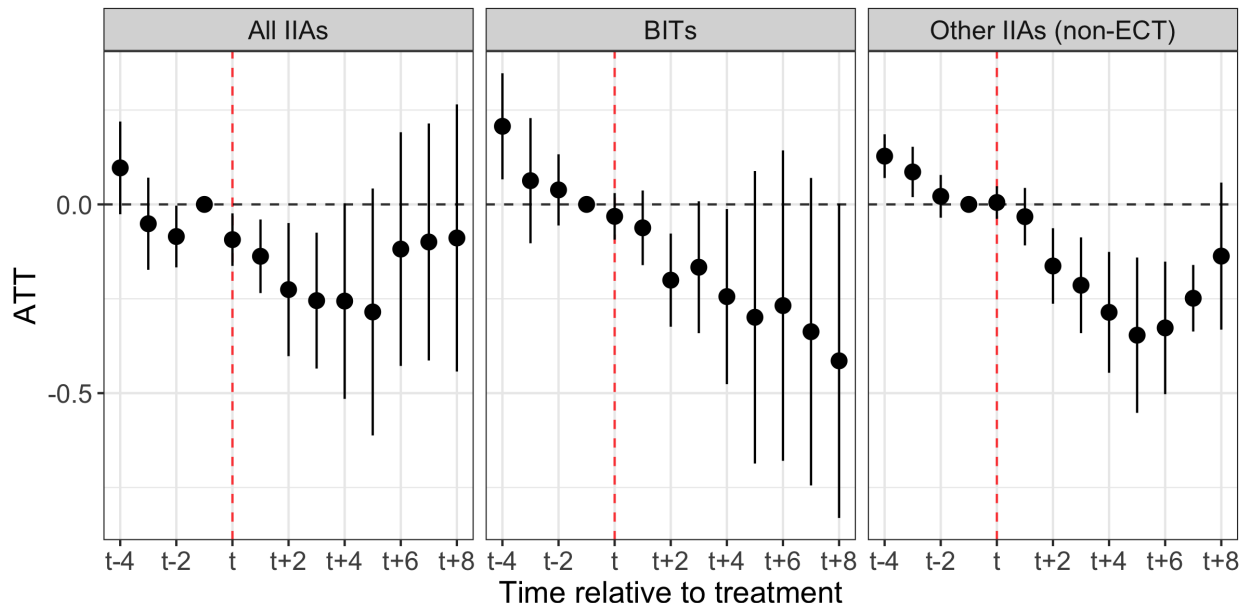
The resulting sample consists of 196 home states and 44 offshore jurisdictions, resulting in roughly 8,500 dyads observed annually from 1980 to 2017. A full list of jurisdictions can be found in Appendix Table A.1. Note that, as most of the offshore jurisdictions also serve as home states, some dyads are directed (e.g., B.V.I. → Netherlands and Netherlands → B.V.I are treated as two separate dyads).

Our goal is to estimate the effect of treatment (gaining access to an IIA) on offshore incorporations at the bilateral level. Since the treatment is applied to different dyads in different years, the standard two-way fixed effects regression approach is unlikely to produce unbiased estimates (Goodman-Bacon, 2019). For this reason, we instead use Imai, Kim and Wang (2020)’s PanelMatch estimator, which extends the difference-in-differences framework to cases in which different units are treated at different times.

The PanelMatch estimator requires two pre-processing steps prior to estimation: first, each treated observation it is matched with a set of other observations M_{it} that had the same treatment status as it for the previous L time periods but were *not* treated at time t .¹¹ Next,

¹¹ L is a researcher-determined parameter.

Figure 3: On average, new IIAs *reduce* offshore incorporations between signatories.

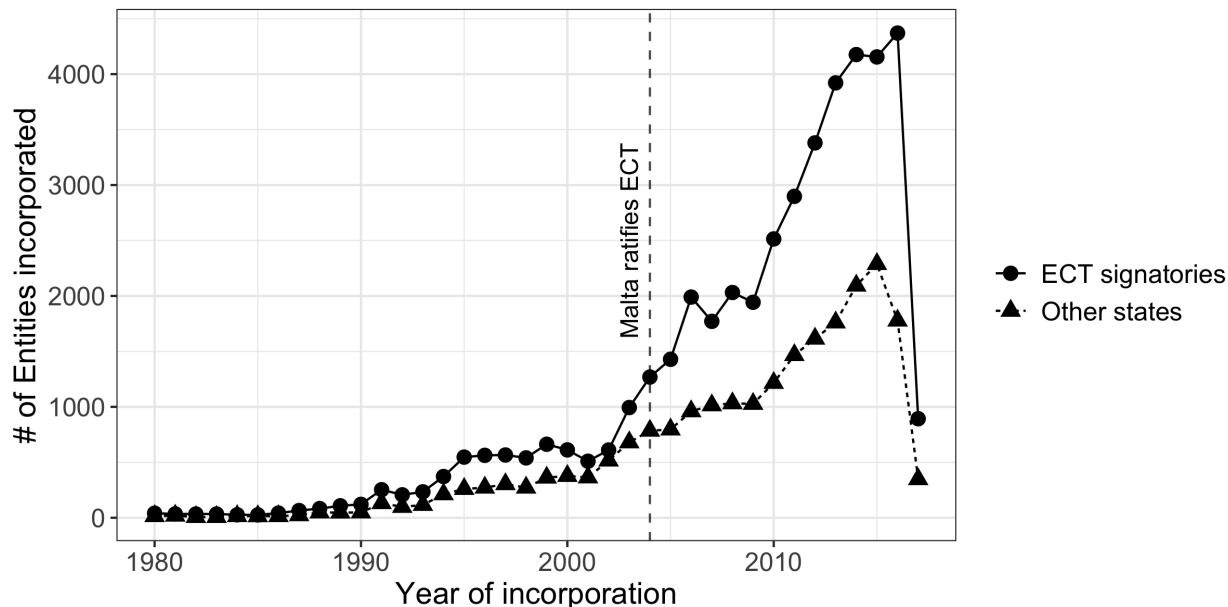


to ensure that the observations in the matched sets can serve as a plausible counterfactual for the corresponding treated observations, the matched sets are pruned (or “refined”) to remove or downweight observations that have covariate or outcome histories that are too different from those of the treated observations. Once the matched sets have been refined, the following estimator is applied to recover the average treatment effect on the treated (ATT):

$$\hat{\delta}(F, L) = \underbrace{\frac{1}{\sum_{i=1}^N \sum_{t=L+1}^{T-F} D_{it}}}_{\text{Average over all treated observations}} \sum_{i=1}^N \sum_{t=L+1}^{T-F} D_{it} \underbrace{\left\{ (Y_{i,t+F} - Y_{i,t-1}) - \sum_{i' \in M_{it}} w_{it}^{i'} (Y_{i',t+F} - Y_{i',t-1}) \right\}}_{\text{Treated observation-specific diff-in-diff estimate}}$$

Each matched set serves as counterfactual group for the corresponding treated observation, allowing for the calculation of treated observation-specific difference-in-difference estimates. The IKW estimate is simply the average of these treated observation-specific estimates. We set $L = 4$ and report estimates for each value of F between -4 and 8 . We also use propensity score weighting to refine our matched sets, allowing us to select counterfactual units that are similar on several relevant covariates. Specifically, we adjust for the regime type and political risk level of the home state; the corporate income tax rate (logged), GDP per capita (logged), and legal system of the offshore jurisdiction; and the presence of a bilateral tax treaty between the home state and the offshore jurisdiction.

Figure 4: **After Malta ratified the ECT, it became a more popular offshore jurisdiction for ECT signatories.** This graph plots the number of new incorporations in Malta, over time, by ECT signatory status of the owners' home states.



4.1.3 ICIJ Leaks: Results

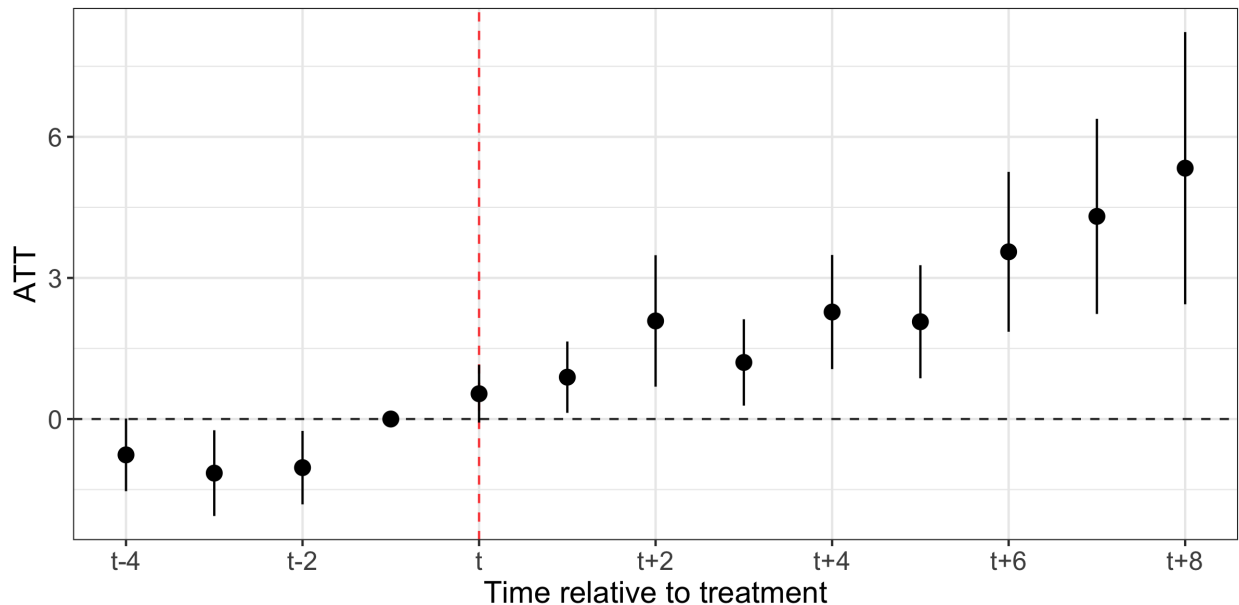
Figure 3 presents the results for three different treatment definitions: first, all IIAs (BITs, the ECT, and other IIAs); second, BITs only; third, IIAs other than BITs or the ECT. Across all three definitions, new IIAs appear to have a *negative* short-term effect on offshore incorporations between signatories. The average number of incorporations per dyad-year in the sample is 0.85, meaning that the effect size of approximately -0.25 is modest but non-negligible—particularly given that it persists for several years.

Next, we turn to estimating the effect of the ECT on offshore incorporations. The ECT accounts for the majority of the IIA coverage in the sample beginning in 2004; this is primarily because Malta, an offshore jurisdiction that had its secret corporate registry leaked to the ICIJ in 2017, joined the ECT in that year.¹² As Figure 4 demonstrates, Malta became an increasingly popular offshore jurisdiction among owners from other ECT signatory states after ratifying the agreement, while the difference between signatories and non-signatories had previously been negligible. The raw trends suggest that, unlike BITs or other non-BIT IIAs (such as PTAs with investment chapters), elites may be strategically structuring their assets to gain access to the ECT.

Figure 5 presents the PanelMatch estimates for the ECT. In contrast to the results presented in Figure 3, states who join the ECT are significantly more likely to host offshore

¹²Malta also joined the EU in 2004; to avoid potential confounding, we adjust for joint EU membership when estimating the effect of the ECT.

Figure 5: The Energy Charter Treaty *increased* offshore incorporations between signatories.



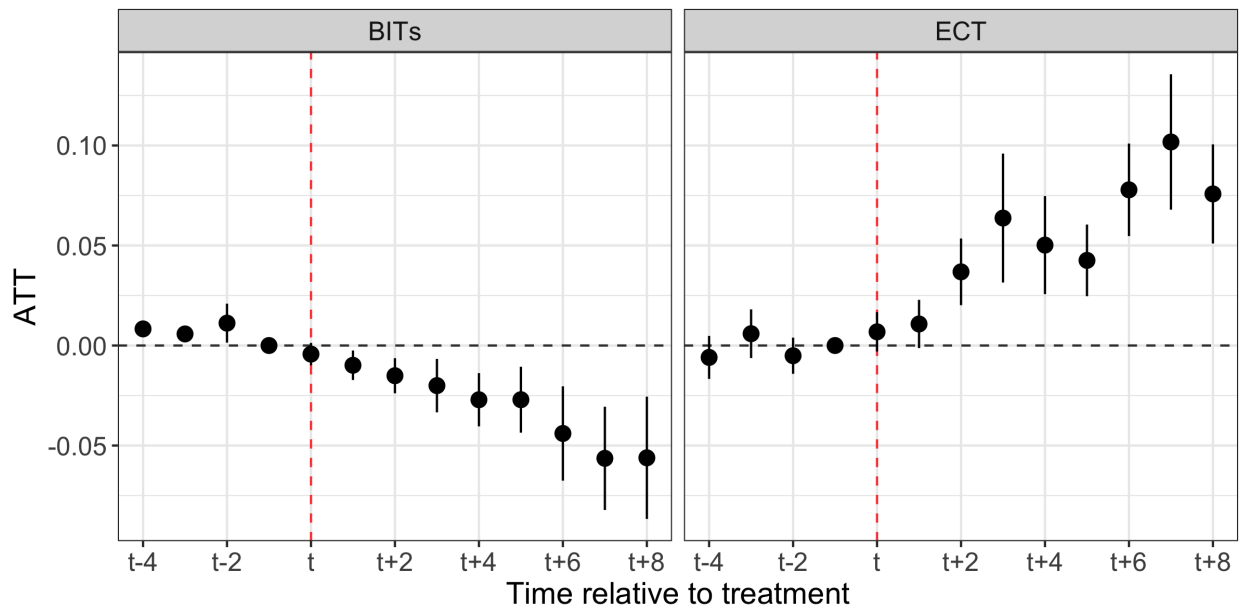
entities created by owners from other ECT signatory states. The effect is not only consistent but appears to grow larger in magnitude over time, reaching over one-third of a standard deviation at eight years after treatment. These results strongly suggest that individuals value ECT access when choosing where to incorporate their offshore vehicles. Even after controlling for tax factors, as well as other potential confounders such as EU membership, owners from ECT member states increase their offshore holdings in jurisdictions that join the ECT.

Using formerly secret data on offshore shell companies, we document a weak and transitory negative effect of IIA coverage on new incorporations. However, this pooled effect masks substantial heterogeneity: while BITs and other non-ECT IIAs have negative effects, the ECT has large and sustained positive effects. Next, we apply the same empirical approach to a smaller but more detailed sample of public (e.g., non-secret) offshore corporate structures.

4.2 Evidence from Round-Tripped Investments

The offshore leaks data provide a large sample with high external validity, and the fact that they were made public by a whistleblower reduces the likelihood of bias from sample selection. However, while the leaks data allow us to link offshore entities to their owners, they do not inform us about the holdings of the entities themselves. This is important, because an individual who simply holds assets in an IIA partner state does not gain the ability to file an ISDS case against his own home state; rather, the *investment* must be located in the home state, and the *investor* must be located in the IIA partner state. To achieve this, elites

Figure 6: New BITs decrease round-tripping between partner states, while investors from new ECT signatories increase round-tripping with other signatories.



engage in round-tripping: creating an offshore entity in an IIA partner state, and giving that entity ownership of some of the elite’s assets in the home state (Kerner, 2014). While it is highly likely that many (if not most) of the offshore entities in the leaks data were created for this purpose, we cannot directly observe their holdings.

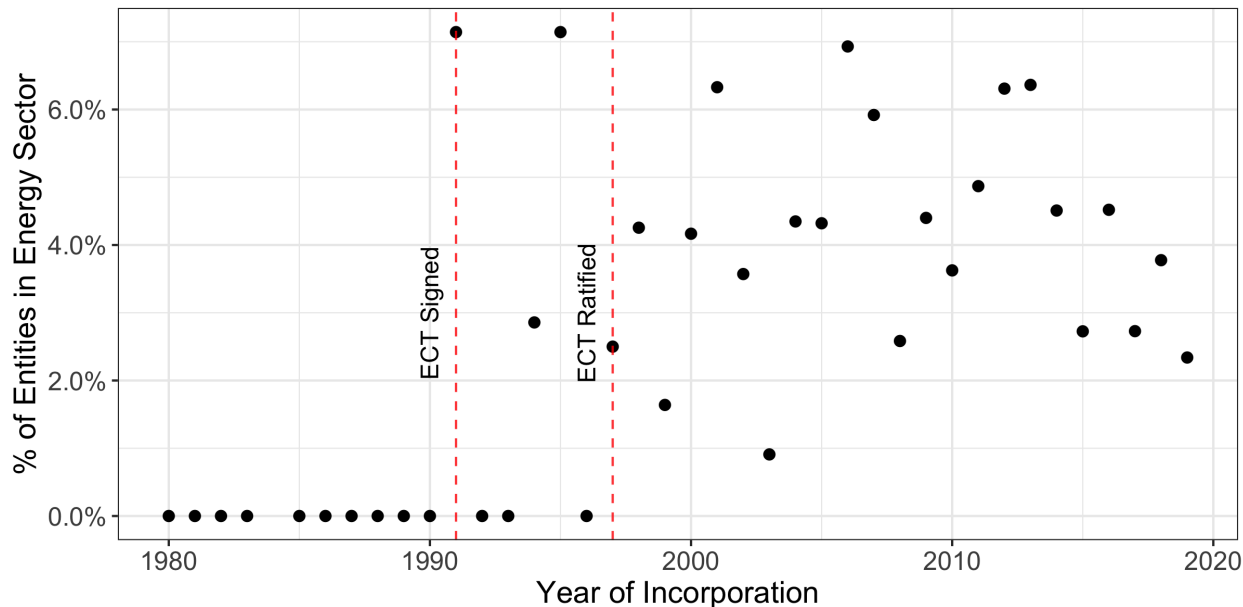
To complement the offshore leaks data and overcome this shortcoming, we therefore test for strategic corporate structuring in an additional sample of verified round-trip investments. To construct this sample, we draw on Bureau van Dijk (BvD)’s Amadeus dataset, which contains financial and ownership information about millions of European public and private firms. The Amadeus dataset, compiled from public sources such as corporate registries, tax filings, and investor reports, is useful in that it also contains information about the firms’ intermediate and ultimate owners.¹³ We identify round-tripped investments by filtering this data to include all subsidiaries (assets) with the same nationality as their ultimate owner (the individual) but with a different nationality from their intermediate owner (the offshore shell company). This exercise produces a sample of roughly 10,300 round-tripped investments made between the years of 1980-2019.

We take the same steps to aggregate the data as we did with the offshore leaks sample, creating a dyad-year structure. We also apply the PanelMatch estimator with the same parameter values, and adjust for the same covariates.¹⁴ Figure 6 plots the results for BITs

¹³Note that, while all subsidiaries are European firms, the intermediate and ultimate owners have a wide range of national origins (U.S., U.K., China, Japan, etc).

¹⁴The only exception is that, since we know the full ownership chain for these investments, we can control

Figure 7: Round-tripping of firms in the energy sector increased after the ECT was signed and ratified.



(left panel) and the ECT (right panel). The results are highly similar to those in Figures 3 and 5: elites are *less* likely to round-trip their assets through their home state’s new BIT partners, and *more* likely to route their assets through states that join the ECT (if their own home state is also an ECT signatory). While the nominal effect sizes are much smaller than those in the offshore leaks sample, this is primarily due to the fact that the Amadeus sample contains far more dyads and far fewer incorporations; the standardized effect sizes are highly comparable, though slightly smaller for the ECT.

Unlike the offshore leaks data, the Amadeus data contains industry codes for the round-tripped investments, allowing us to see what types of assets elites are holding using offshore structures. This allows us to perform a descriptive robustness test for the ECT results: since the ECT only applies to investments in energy-related sectors,¹⁵ we should see an uptick in round-tripping in these sectors following the creation and ratification of the ECT. Figure 7 shows that this is the case: zero energy-related assets appear in the Amadeus data prior to the ECT’s signing in 1991, but regularly make up approximately 3-7% of the sample in the years following the treaty’s ratification in 1997.

5 What Explains Elites’ Preference for the ECT?

In two complementary samples of offshore investments, we find strong evidence that elites engage in strategic corporate structuring in order to gain protection against their own home

for effective withholding tax rates as well (see Arel-Bundock (2017)).

¹⁵For a more detailed explanation of the ECT’s sectoral coverage, see Appendix Section A.2.

states under the ECT; however, we find that the *opposite* is true for BITs.

In this section, we assess mechanisms that prior work on the investment regime have found to be central factors influencing how MNCs weight the value of different treaties. Our hope is that such *post-hoc* exploration can help unravel why the divergence in exploiting the ECT over other treaties and thereby generate new insights that can be tested by other scholars in future work. Due to the richness of the data and the fact that we observe the entire ownership chain, all analyses in this section are conducted with the smaller sample of verified round-tripped investments from Bureau van Dijk.

5.1 Home State Attributes

Our baseline results reflect average effects of new IIAs on elites' choice of offshore jurisdiction for round-tripped investments. However, it is possible that elites in certain types of regimes—regimes characterized by greater political risk, greater state ownership of the economy (Kalyanpur, 2020), or more autocratic institutions, for example—may respond differently in important ways that are masked by the average effects. For example, if it were to be the case that elites in more autocratic home states were more likely to seek BIT access and less likely to seek ECT access, it might suggest that the baseline results are not capturing the type of strategic corporate structuring that we seek to estimate.

To investigate this possibility, we use Hainmueller, Mummolo and Xu (2019)'s binning estimator to estimate how the effects of BITs and the ECT on round-tripping vary according to three home state attributes: political risk, state ownership of the economy, and regime type.¹⁶ Regressions are estimated with the same set of control variables as the PanelMatch models, as well as dyad and incorporation year fixed effects.¹⁷

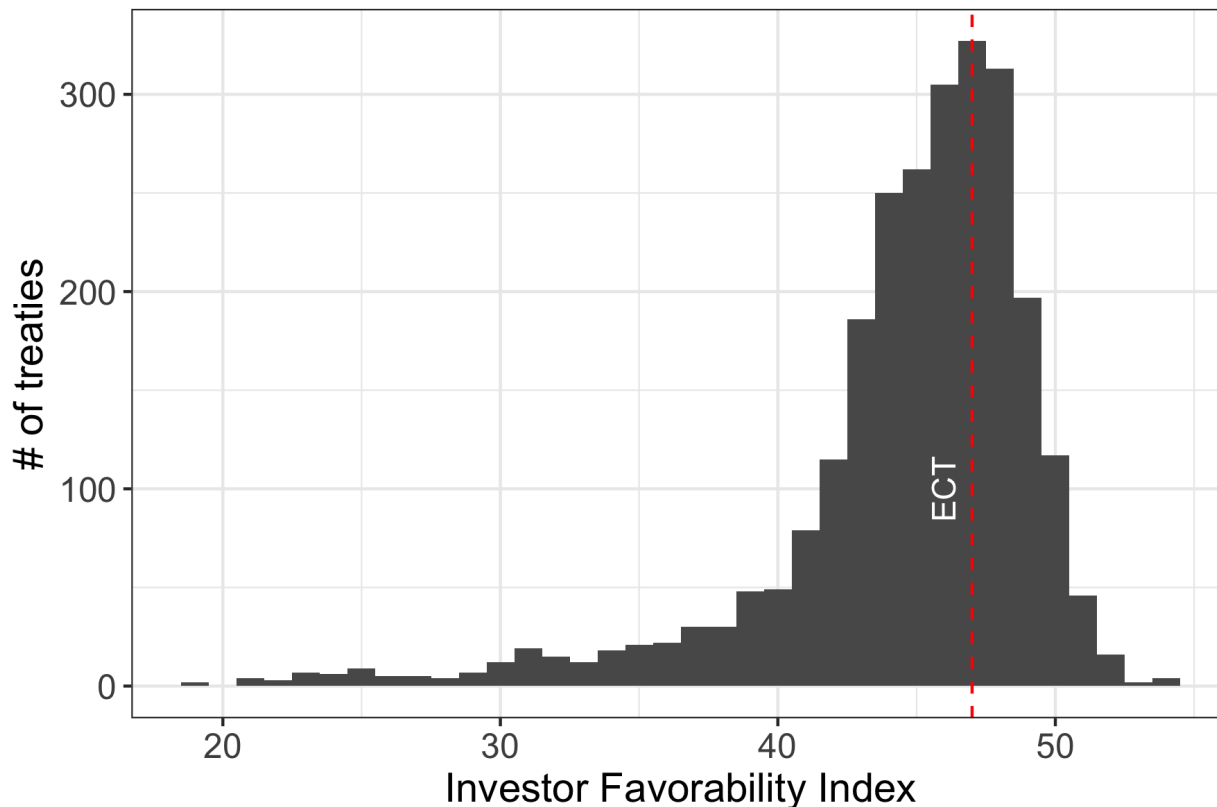
Appendix Figure B.3 presents the results of six sets of models; each facet presents both the linear marginal effect as well as the binning estimates (in red), which allow for nonlinearity and address potential issues of overprojection. Note that there is very little effect heterogeneity for either treaty type with regard to political risk or regime type. While the latter may be driven in part by the fact that most European states are developed democracies, the former is quite interesting; it suggests that strategic offshore structuring may be less of a response to outright state predation, and potentially more of a response to the threat of costly regulation (Moehlecke, 2019; Pelc, 2017). There is some indication that investors from states characterized by high levels of state ownership of the economy are more likely to adopt strategic offshore structures; however, this holds true for both BITs and the ECT, and thus it cannot explain the divergence in elite preferences towards the two.

¹⁶All three variables are drawn from the V-Dem dataset.

¹⁷To ensure that the use of two-way fixed effects does not introduce bias due to staggered treatment timing, we first validate that the baseline OLS estimates are similar to those produced by PanelMatch; see Appendix Section B.1.

5.2 Treaty Design

Figure 8: The ECT is slightly more favorable to investors than the average BIT.



Functional legal logics could explain round-tripping investors’ preference for the ECT over BITs. Not all IIAs are created equal, and the strength of investor protections and especially differences in ISDS access appear to influence investor behavior [Frenkel and Walter \(2019\)](#); [Haftel \(2010\)](#). The ECT may simply have more pro-corporate provisions than most BITs. To assess this possible mechanism, we use data on detailed treaty-level design features from the UN Conference on Trade and Development (UNCTAD)’s IIA Mapping Project. The data records nearly 100 distinct design features—for example, whether the treaty applies to dual nationals, or whether it provides its own definition of “investor”—for over 2,500 BITs. To enable comparison, we use the IIA Mapping Project’s codebook to record the corresponding features of the ECT.

We begin by constructing an investor favorability index for each treaty, drawing on 56 of the coded design features that meaningfully affect the protection that the treaty offers to investors, either at the extensive or intensive margins.¹⁸ Figure 8 plots the distribution of the favorability index for all mapped BITs, with the dashed line indicating the position of the ECT. Interestingly, the ECT’s index of 47 puts it above the BIT-wide average, but only

¹⁸The full list of index components can be found in Appendix Table [A.2](#).

Table 4: **BIT-level design factors do not meaningfully affect round-tripping.**

	DV: Number of offshore incorporations		
	Model 1	Model 2	Model 3
ECT		0.161*** (0.029)	0.247*** (0.056)
BIT (high favorability)	-0.042*** (0.010)	-0.059*** (0.013)	-0.052*** (0.011)
BIT (low favorability)	-0.018 (0.015)	-0.041** (0.017)	-0.032** (0.014)
BIT (unmapped)	-0.006 (0.017)	-0.055** (0.022)	-0.056*** (0.016)
Dyad FE:	Y	Y	Y
Year FE:	Y	Y	Y
Controls:	N	N	Y
Num.Obs.	253,736	253,736	150,339
R2	0.144	0.147	0.156

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

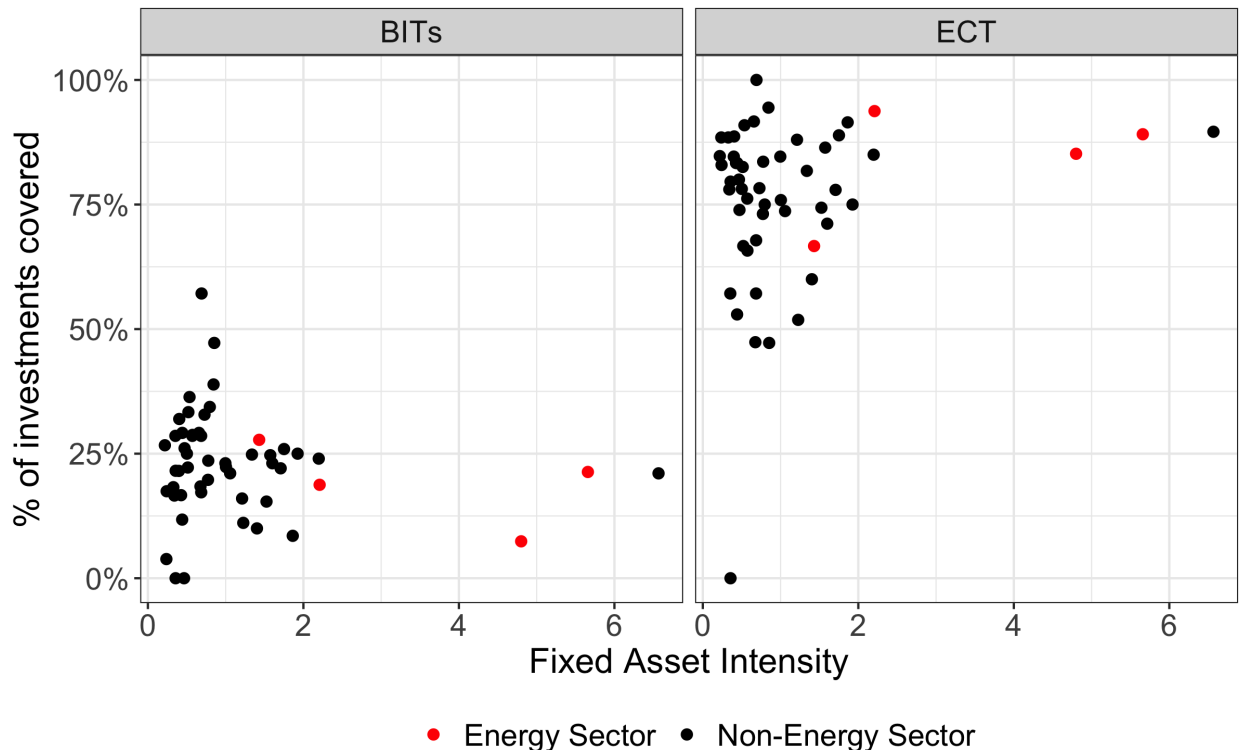
slightly so; the median BIT has an index of 46.

To determine whether the ECT’s favorability among round-trippers may be a function of its investor-friendly design features, we replicate our models of offshore incorporations after disaggregating BITs by whether their investor favorability is above or below average. The results, which can be seen in Table 4, suggest that treaty design alone cannot explain differences between BITs and the ECT; neither high- nor low-favorability BITs are associated with increased levels of round-tripping. Still, individual design features may still play a role for investors choosing between various jurisdictions; for example, the ECT explicitly allows investors with permanent residency status in a state to qualify as nationals of that state, a feature that substantially expands the potential coverage of the treaty and which is only present in 11% of BITs.

5.3 Fixed Asset Intensity

An alternate functionalist perspective would explain the ECT’s popularity as a result of the nature of the assets covered by the treaty. As the name implies, the Energy Charter Treaty only extends to energy related investments. A large body of scholarship in political economy and management argues that highly fixed assets tend to be the ones most at risk of expropriation (Kerner and Lawrence, 2014), and these sectors tend to see the highest FDI inflows into a country following BIT ratification Bauerle Danzman (2016). Energy investments rank in the highest echelon of risk as per these theories and thereby make the projects most

Figure 9: Fixed asset intensity is not correlated with strategic offshore structuring at the industry level.

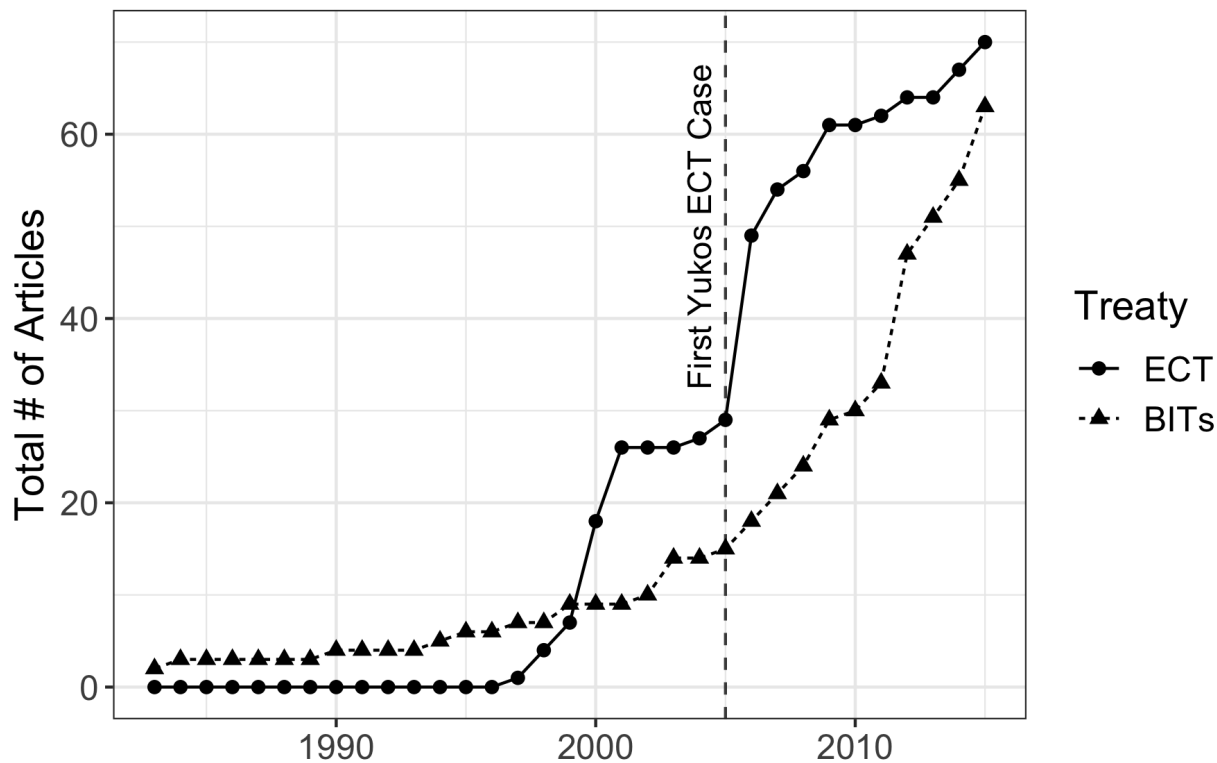


in need of international institutional coverage. The positive effect of the ECT on offshore incorporations could then be driven by the intensity of assets under an individual’s control rather than by any particular feature of the ECT itself.

To assess the plausibility of this mechanism, we make use of the more fine-grained information included in the Amadeus dataset. While we do not have data on the fixed asset intensity of individual investments, we can measure industry-level fixed asset intensity (defined as fixed asset stock as a proportion of annual output) using publicly available data from the U.S. Bureau of Economic Analysis. We plot, in Figure 9, industry-level fixed asset intensity against the proportion of round-tripped investments that give an elite access to a BIT (left panel) or the ECT (right panel). We find no correlation between fixed asset intensity and treaty coverage for either BITs or the ECT, though we do find that energy-related sectors have some of the highest levels of ECT (but not BIT) coverage. In sum, it is unlikely that elites’ preference for the ECT over other investment agreements is driven by the high fixed asset intensity of energy-related sectors.

5.4 Salience and Learning

Figure 10: Coverage of BITs and the ECT in the *Financial Times*, 1983-2015. The Yukos affair raised the ECT’s public profile.



Another possible explanation for the relative popularity of the ECT among round-tripping investors is simply that it is more salient—and has been used as the basis for arbitration more often—than any given BIT. Salience and bounded rationality related arguments have been used to explain both the rise of BITs as a foreign policy tool and a mechanism behind why we see mixed effects on FDI - historical and survey evidence indicate that both states and private actors did not fully understand the value of investment agreements [Poulsen \(2010, 2015\)](#). We have, however, witnessed high-profile ECT cases such as the Yukos-related suits, which may demonstrate to other investors the potential benefits of strategic offshore structuring. Figure 10 demonstrates the effect of the Yukos affair on coverage of the ECT in the *Financial Times*, one of the leading periodicals among the world’s economic elite.

Further, while there are more BIT-based than ECT-based extraterritorial cases, the ECT is by far the most common single treaty under which such cases are filed. This may provide reassurance to investors in the protection that the ECT may offer relative to BITs, regardless of whether such differences actually exist as a matter of legal interpretation. If such (asymmetric) learning dynamics are occurring, we should see round-tripping investors seeking out ECT jurisdictions more frequently as more extraterritorial cases are filed under

Table 5: **Round-tripping through ECT jurisdictions increases as more extraterritorial arbitrations are filed under the ECT.**

	DV: Number of offshore incorporations			
	Model 1	Model 2	Model 3	Model 4
ECT	0.161*** (0.029)	0.040*** (0.012)	0.081*** (0.018)	0.132*** (0.036)
BIT	-0.054*** (0.014)	-0.029*** (0.010)	-0.001 (0.017)	-0.006 (0.016)
total ECT cases _{t-1}		0.007*** (0.002)	0.009*** (0.002)	0.010*** (0.003)
total EA ECT cases _{t-1}		-0.011*** (0.004)	-0.015*** (0.005)	-0.018*** (0.006)
total BIT cases _{t-1}		-0.000 (0.000)	-0.001 (0.000)	-0.001 (0.001)
total EA BIT cases _{t-1}		0.004 (0.004)	0.008 (0.005)	0.011* (0.006)
ECT × total ECT cases _{t-1}		0.001 (0.001)	0.001 (0.001)	0.001 (0.001)
ECT × total EA ECT cases _{t-1}		0.009*** (0.004)	0.010** (0.004)	0.012*** (0.004)
BIT × total BIT cases _{t-1}		0.000** (0.000)	0.000 (0.000)	0.000 (0.000)
BIT × total EA BIT cases _{t-1}		-0.006*** (0.002)	-0.004* (0.002)	-0.005** (0.003)
Incorp. Year FE:	Y	Y	Y	Y
Dyad FE:	Y	Y	Y	Y
Tax/econ controls:	N	N	Y	Y
Political controls:	N	N	N	Y
Num.Obs.	252,560	252,519	163,885	149,420
R2	0.147	0.149	0.157	0.158

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

the ECT; we should see no comparable relationship with BITs.

To test the learning mechanism empirically, we examine whether or not round-tripping investors are more likely to seek ECT and/or BIT protection as other investors continue to file (non-)extraterritorial claims under each respective instrument. More specifically, we again model offshore incorporations at the dyad-year level, interacting the ECT variable with both (1) a count of all total cases filed under the ECT to date (as of the previous year); (2) a count of all total extraterritorial cases filed under the ECT to date (as of the previous year). We do the same for BITs, using the total count of BIT cases. A positive and significant sign

on an interaction term would indicate that round-tripping investors become more likely to seek access to a given treaty type the more that other investors make use of it, suggesting that the learning mechanism may be at play.

The results, presented in Table 5, provide support for the asymmetric learning mechanism. Of all four interaction terms, by far the strongest and most robust is the interaction between ECT coverage (a dummy indicating that both home and offshore jurisdictions are ECT signatories) and the count of total extraterritorial arbitration cases filed under the ECT as of the previous year. By contrast, investors are actually *less* likely to round-trip through jurisdictions that offer BIT access as more extraterritorial cases are filed under BITs. Further, the near-zero and non-significant interactions between the treaty variables and the count of *total* cases suggest that round-tripping investors are indeed responding to extraterritorial arbitrations, rather than all investor-state disputes filed under the ECT/BITs.

These results indicate that round-tripping intended to gain protection under the ECT has grown more popular as other investors have used the treaty to sue their own governments; the same is not true, and indeed the opposite may be true, in the case of BITs. Potentially propelled by the salience of the Yukos cases, investors have become aware that the ECT may offer them additional legal protection within their own home states and have updated their corporate structures accordingly. As a result, even large investors now openly discuss their use of round-tripping in order to chill government seizures and regulatory actions. For example, in response to the Labour Party’s threat to (re)nationalize UK utility firms in 2019, energy firms National Grid and SSE changed their corporate structures in order to ensure that they would have access to arbitration against the UK under the ECT.¹⁹ A member of SSE’s PR team is quoted as follows: “Switzerland is a party to the energy charter treaty, and the incorporation of a Swiss company is also an additional safeguard... should SSE’s electricity networks businesses and interests in SGN become the subject of proposed legislation for nationalisation.”

6 Conclusions

Economic elites can and have taken advantage of tax havens to exploit the international investment regime. Setting up offshore entities and then routing the money back home de jure turns a domestic elite into a foreign investor. When those tax havens have an investment treaty with an individual’s home country, they can then sue their own governments using provisions intended for foreign corporations. These extraterritorial arbitrations constitute roughly 8% of the cases filed in the international investment regime. They’ve involved some of the most important economic actors in a range of emerging markets from Egypt to Russia, accounting for roughly 41% of the damages claimed under the regime.

Beyond documenting the rise of extraterritorial arbitration, we set out to understand whether elites strategically structure their wealth to ensure access to international legal re-

¹⁹See Thomas, Natalie, “National Grid and SSE shift some UK operations into offshore groups”, *Financial Times*, 24 November 2019.

course against their home state. Analyzing close to 300,000 company incorporations in tax havens, we find that individuals generally avoid seeking out such protections. Once a haven signs a bilateral investment treaty with a partner state, elites from the partner state are *less* likely to round-trip through the haven. The robust negative effect is surprising given existing literature on firm-level treaty shopping (Betz and Pond, 2019; Betz, Pond and Yin, 2021) and merits further study. One possible explanation is that signing new bilateral treaties with offshore jurisdictions heightens their domestic salience, and the increased governmental scrutiny outweighs the benefits of investment protection for would-be round-trippers.

However, we find strong evidence that elites strategically select offshore jurisdictions that will give them access to the Energy Charter Treaty. The effect is not driven by the legal protections of the treaty or the high asset intensity of the industries covered. Instead, we find evidence consistent with other scholars that point to the importance of salience and learning driving the outcomes of the investment regime. As more extraterritorial arbitrations are filed through the ECT, we see more offshore incorporations in havens that sign-up to the ECT, setting the stage for the treaty to become the most popular mechanism for elites to file arbitrations against their de facto home state. This is normatively concerning; the ECT has frequently been used to sue governments in response to their implementation of climate change mitigation policies,²⁰ and extraterritorial arbitration dramatically expands the universe of potential litigation.

We hope that the manuscript pushes other scholars to continue developing and testing theories that factor the international institutional environment into models of domestic elite conflict (Farrell and Newman, 2014). A number of theories of political development expect plutocrats to be the driving force behind political development, be it liberalization or democratization (North and Weingast, 1989; North et al., 2013; Albertus and Menaldo, 2014). The general logic is that the development of the rule of law and competitive elections will bind the state from expropriating the wealth of the plutocracy. But we illustrate the conditions under which globalization allows elites to arbitrage the institutions that they traditionally pressured the state to provide. This should plausibly reduce their incentives to fight for reform in their home jurisdictions. We are not the first to indicate a potentially deleterious effect between capital mobility and political development (Pistor, 2019; Sharafutdinova and Dawisha, 2017). But prior work has not incorporated the role of global (investment) institutions in this process. That is critical when plutocrats can access property protections as a spillover of "normal" business practices like minimizing their taxes or seeking safeguard for their foreign investments as our findings suggest.

Finally, the analysis points toward a need to better understand the globalization of the individual (Cooley and Sharman, 2017). One of the starting points of our model is that economic elites in emerging markets are able to build nationality portfolios in a fashion that mimics MNCs. Their ability to build such portfolios are supported by a host of "enablers" - lawyers, accountants, wealth managers, estate agents - whose economic and political incentives merit

²⁰See for example Jorge Liboreiro, "What is the Energy Charter Treaty and Why is it So Controversial?" *euronews*, 26 October 2022.

further research ([Harrington et al., 2017](#)). But incorporation is only one path in nationality diversification and thereby legal arbitrage; individuals can buy “golden visas” and passports in the burgeoning mobility market. The elite toolkit continues to expand even as we see the growth of populist movements. In short, the findings call for more academic work on when and why economic interdependence empowers the superwealthy by fostering institutional inequalities.

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Appendix

A Additional Descriptives

A.1 Offshore jurisdictions represented in the offshore leaks data

Table A.1: Offshore jurisdictions represented in the offshore leaks data.

Anguilla	Luxembourg
Antigua & Barbuda	Malaysia
Aruba	Malta
Bahamas	Marshall Islands
Barbados	Mauritius
Belize	Monaco
Bermuda	Netherlands
British Virgin Islands	Netherlands Antilles
Brunei	New Zealand
Cayman Islands	Niue
Cook Islands	Panama
Costa Rica	Ras Al Khaimah
Cyprus	Samoa
Grenada	Seychelles
Guernsey	Singapore
Hong Kong SAR China	St. Kitts & Nevis
Ireland	St. Lucia
Isle of Man	Turks & Caicos Islands
Jersey	United Arab Emirates
Labuan	United Kingdom
Liberia	United States
Liechtenstein	Vanuatu

A.2 More detail on the ECT’s sectoral coverage

Article 1(5)(b) of the Energy Charter Treaty defines the “Energy Sector” as economic activity that falls into the following seven categories:

1. “prospecting and exploration for, and extraction of, e.g., oil, gas, coal and uranium;”
2. “construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;”
3. “land transportation, distribution, storage and supply of Energy Materials and Products, e.g., by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;”
4. “removal and disposal of wastes from energy related facilities such as power stations, including radioactive wastes from nuclear power stations;”
5. “decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;”
6. “marketing and sale of, and trade in Energy Materials and Products, e.g., retail sales of gasoline; and”
7. “research, consulting, planning, management and design activities related to the activities mentioned above, including those aimed at Improving Energy Efficiency.”

We map these seven categories as closely as possible to the 4-digit NAICS industry codes provided in the Amadeus data, erring on the conservative side when the 4-digit codes are not precise enough to separate energy from non-energy related activities. We consider the following NAICS industries to be in the energy sector:

1. 21**: Mining, Quarrying, and Oil and Gas Extraction
2. 22**: Utilities
3. 324*: Petroleum and Coal Products Manufacturing
4. 4235: Metal and Mineral (except Petroleum) Merchant Wholesalers
5. 4247: Petroleum and Petroleum Products Merchant Wholesalers
6. 447*: Gasoline Stations
7. 486*: Pipeline Transportation

A.3 Investor Favorability Index: Components

Note: all components and categories drawn from the IIA Mapping Project, and described in depth in the associated codebook.²¹

Table A.2: **Investor Favorability Index Components**

Design Item	Value	Index weight
<i>Definition of investment</i>		
Definition of investment	Asset-based	+1
Excludes portfolio investment?	No	+1
Excludes other assets?	No	+1
Lists req'd characteristics?	No	+1
Requires "accordance w/host laws?"	No	+1
Lists all covered assets?	No	+1
<i>Definition of investor</i>		
Includes perm. residents?	Yes	+1
Includes dual nationals?	Yes	+1
Reqs substantial biz activity?	No	+1
Defines ownership of entities?	No	+1
<i>Denial of benefits (DoB) clause</i>		
DoB clause included?	No	+1
Substantive biz criterion?	No	+1
Applies to investors from states without diplomatic relations w/host?	No	+1
Unilaterally discretionary?	No	+1
<i>Substantive scope of treaty</i>		
Excludes taxation?	No	+1
Excludes grants/subsidies?	No	+1
Excludes gov. procurement?	No	+1
Excludes other?	No	+1
Investments covered?	Pre- and post-treaty	+1
Disputes covered?	Not stipulated	+1
ISDS included?	Yes	+1
Scope of claims?	Any investment-related dispute	+1
Limits on provisions subject to ISDS?	No	+1
ISDS: excludes policy areas?	No	+1
Type of consent to ISDS?	Express/implied	+1
Fora: domestic courts?	Yes	+1
Fora: ICSID?	Yes	+1
Fora: UNCITRAL?	Yes	+1
Fora: others?	Yes	+1

Continued on next page. . .

²¹See <https://investmentpolicy.unctad.org...Mapping%20Project%20Description%20and%20Methodology.pdf>

Table A.3: **Investor Favorability Index Components (cont)**

Design Item	Value	Index weight
Fora: fork in the road? ^a	No	+1
Limitation period for claims?	No	+1
Provisional measures?	Yes	+1
Limited remedies?	No	+1
Case documents transparency?	No	+1
<i>Substantive protections</i>		
National treatment (NT) clause:	Pre- and post-establishment	+2
	Post-establishment	+1
“Like circumstances?”	No	+1
MFN clause:	Pre- and post-establishment	+2
	Post-establishment	+1
MFN: econ integration agreements?	Yes	+1
MFN: tax treaties?	Yes	+1
MFN: ISDS procedures?	Yes	+1
FET ^b clause:	Unqualified	+2
	Qualified	+1
FET: limit by int’l law?	No	+1
FET: list protections?	No	+1
Full protection clause:	Standard	+2
	Reference domestic law	+1
Arbitrary measures clause?	Yes	+1
Umbrella clause?	Yes	+1
Entry of personnel?	Yes	+1
Nationality of personnel?	Yes	+1
<i>Expropriation</i>		
Includes indirect exp?	Yes	+1
Carve-out regulations?	No	+1
Carve-out comp. licensing?	No	+1
Relative right to comp:	MFN and NT	+2
	MFN <i>or</i> NT	+1
Absolute right to comp, ever?	Yes	+1
<i>Transfer of funds</i>		
Includes transfer of funds?	Yes	+1
BoP exception?	No	+1
Other exceptions?	No	+1
Total:		/62

^aThe “fork in the road” clause means that, after an investor chooses one forum for arbitration, they lose access to the others.

^bFair and Equitable Treatment.

B Additional Analysis

B.1 OLS estimates of Figure 6

Figure B.1: Coefficients on ECT and BIT variables, iteratively dropping each home state.

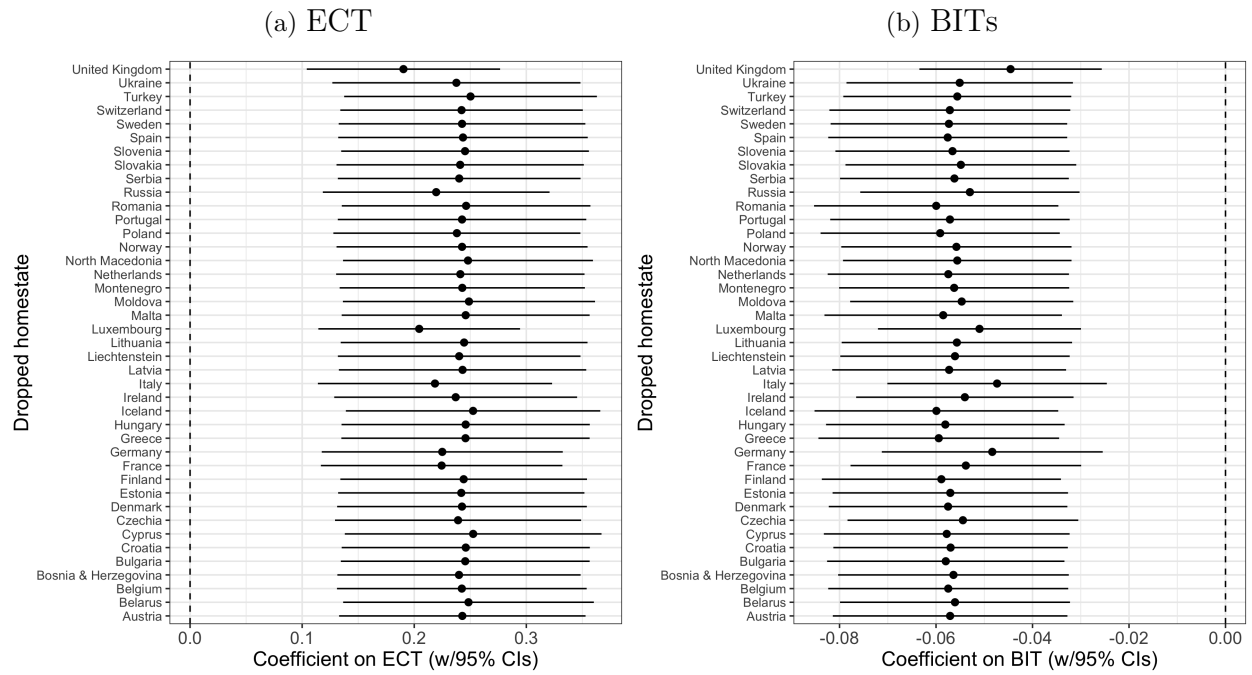
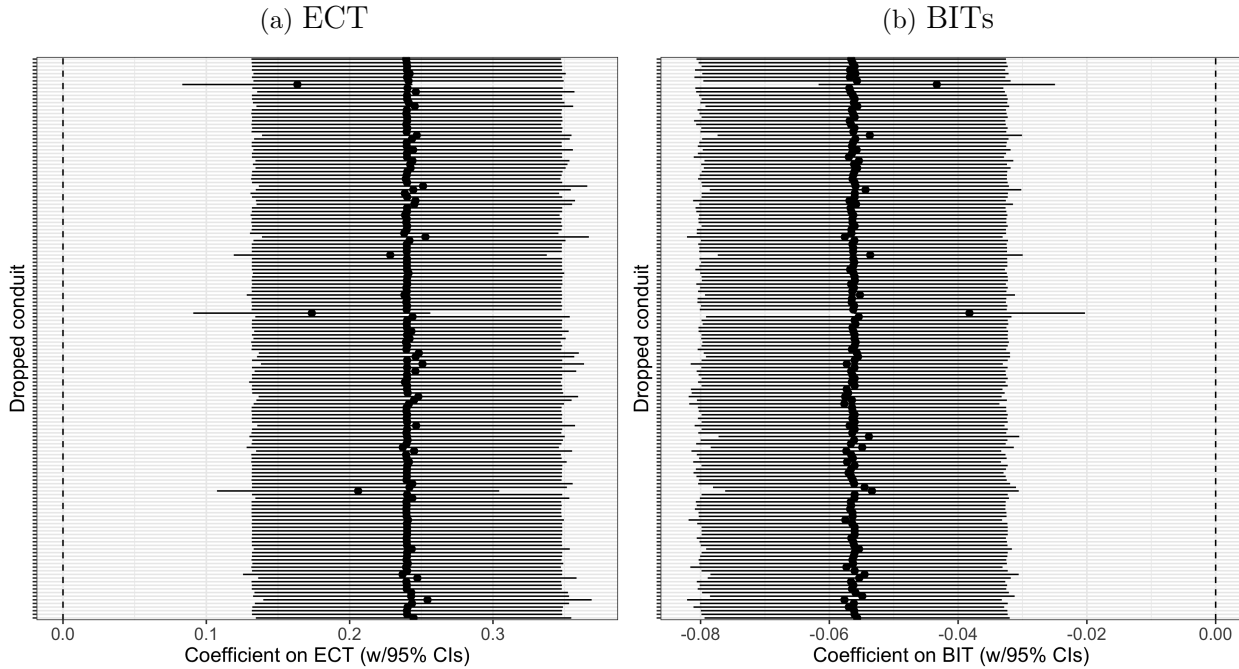


Figure B.2: Coefficients on ECT and BIT variables, iteratively dropping each offshore jurisdiction.



B.2 Heterogeneity by home state attributes

Figure B.3: Home state attributes and strategic round-tripping.

