

Fix for the Future, Not for the Past: Democratic Accountability and Non-Compliance with International Law

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Abstract

Why do democratic governments that support human rights sometimes defy the rulings of international human rights courts? The long-standing presumption has been that international courts provide a good – justice – that is demanded by the public. But what happens when justice is *not* in demand? I examine this question in the context of the Inter-American Court of Human Rights. I argue that non-compliance results from democratic leaders responding to voter preferences against compliance. Although human rights scholars generally assume that voters support compliance, I find that attitudes toward compliance are not so uniform when the military is implicated. Justice for human rights violations often necessitates confronting the abuses of the past, which some voters would prefer to leave alone. Despite the abuses committed by military officials in recent dictatorships, the military is still a trusted institution in many Latin American states. Leaders thus face a dilemma when they receive judgments from the Court: do they follow international law, or do they choose the policies that voters want? I show that the leader’s decision to comply is a function of the chance of being ousted in an election, therefore necessitating responsiveness to the public’s demands, and whether the public supports compliance. I test my theory on an original dataset of all court rulings that implicate the military issued by the Inter-American Court from 1989 to 2014. I show that if the public does not support the military, the probability of compliance increases closer to an election; but if the public does support the military, the probability of compliance decreases. This suggests the importance of incorporating the public’s preferences into existing models of compliance with international law.

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1. Introduction

In 2010, the Inter-American Court of Human Rights ordered Brazil to overturn an amnesty law that the military dictatorship had enacted in 1979. The amnesty law prevented cases against military officials, which limited victims' access to justice, but some feared that repealing the amnesty law would reopen wounds of the past. Ministers of the Brazilian Supreme Court, which had already ruled on the validity of the amnesty law, were divided over whether to reconsider overturning it. One Minister was adamantly opposed, arguing: "We need to put in our heads that amnesty is forgetting; turning the page; forgiveness in its largest sense for both sides. ... Let's fix Brazil for the future, not the past."¹

The long-standing presumption has been that international courts provide a good – justice – that is demanded by the public. But what happens when justice is *not* in demand? Justice for human rights violations often necessitates confronting the abuses of the past, which some voters would prefer to leave alone. This sentiment is summed up by the idiom "*No hay que tener ojos en la nuca*" – you should not have eyes at the back of your head. Nevertheless, victims of human rights abuses often try to get justice by appealing to international courts. These courts can find states responsible for violations of international human rights law and order remedies. However, it is ultimately up to leaders in these recently transitioned democracies as to whether or not the state will comply.

I consider the ways in which voters' preferences for compliance in weak and transitioning democracies affect compliance outcomes. Several scholars have already identified these regimes' unique behavior when it comes to membership in international courts. For example, Moravcsik (2000) and Zschirnt and Menaldo (2014) argue that weak democracies at risk of backsliding to autocracy are more likely to support a strong European Court of Human Rights and International Criminal Court, respectively. Furthermore, Hafner-Burton, Mansfield and Pevehouse (2015) find that transitioning democracies are more likely to join

¹"Brazilian Supreme Court Judges Disagree on Amnesty Law Validity," *BBC Monitoring Latin America*, 12 December 2014, accessed on LexisNexis.

supranational human rights institutions that require more delegation of authority. If leaders join institutions specifically to cede some authority, it is even more puzzling why they would subsequently choose to ignore the court's rulings.

Previous scholarship has addressed various ways in which domestic politics can affect compliance with international courts' rulings. Notably, the proposed mechanisms – persuasion, naming and shaming, coercion – all assume that the public always wants the leader to comply with rulings from human rights courts.² However, this presumption is not warranted in all cases. In transitioning democracies in particular, compliance might implicate the previous regime, which is, in many cases, still quite popular. Newly democratic leaders who receive orders to punish a popular previous regime thus face a dilemma: do they comply with international law, or do they respond to the public's preferences for non-compliance?

I address this puzzle in the context of the Inter-American Court of Human Rights, a regional human rights court in Latin America with jurisdiction over 20 members of the Organization of American States.³ All but two of the Court's current members are newly transitioned democracies and 80% of them were under military rule at the time of the Court's creation in 1979.⁴ The recent history of military dictatorship, in which human rights abuses were widespread, not only informs much of the Court's present caseload, but also defines the political environment in which the Court must operate, as the institution attempts to secure justice for victims of past abuses.

The military is the implicated actor in nearly 40% of all judgments from the Inter-

²See, e.g., Keck and Sikkink (1998); Risse, Ropp and Sikkink (1999); and Checkel (2001) on persuasion; Keck and Sikkink (1999); Drinan (2002); and Hafner-Burton (2008) on shaming; and Dai (2005); Hafner-Burton (2005); Lebovic and Voeten (2009); Conant (2014); and Follesdal (2016) on coercion.

³Trinidad and Tobago and Venezuela denounced the Convention in 1996 and 2013, respectively. Although the Dominican Republic's constitutional court announced in 2014 that the government's acceptance of jurisdiction was unconstitutional because the legislature did not approve, they are still under the Court's jurisdiction. The Court decided in *Ivcher Bronstein v. Peru* after then-President Fujimori tried something similar that the only way to withdraw from the Court was to denounce the American Convention on Human Rights, which the Dominican Republic has not done.

⁴Here I use Moravcsik (2000)'s definition of mature democracy, which is democratic (Polity score above 6) for at least 30 years. Only Barbados and Costa Rica meet the definition of mature democracy using this metric. Under alternative definitions—for example, Grewal and Voeten (2015), who define mature democracy as democratic (at or above Polity 6) for at least ten years and currently at a 10—Chile and Uruguay would also qualify, but not for the entire time they were in the institution.

American Court.⁵ Nevertheless, the military as an institution still retains popularity in many states. Despite the abuses committed by the military, voters may not want to see the crimes re-litigated. Many of these crimes are in fact covered by popular amnesty laws that shield offenders. Uruguay, for example, voted to maintain its amnesty law again in 2009, affirming the will of the majority against prosecuting crimes that took place during the military dictatorship. More recently, the re-militarization of Latin America has allowed military parties to gain in popularity, as evidenced by the 2018 Brazilian presidential election.

I argue that leaders choose non-compliance strategically based on two key explanatory variables: the proximity to the next election; and whether the public supports compliance.⁶ These leaders can be voted out of office, and so are accountable to the public. This accountability increases around the time of elections, as the punishment for non-responsiveness is more proximate. Thus, the leader is more likely to follow the public's preferences as the election draws nearer. However, whether this results in an increased probability of compliance depends the public's attitude toward the military.

I test this argument using an original dataset of all judgments against the military from the Inter-American Court of Human Rights. I measure proximity to executive election as a count, in years, to the next election year.⁷ To capture the public's attitudes toward the military, I use the level of distrust of the military, as reported in AmericasBarometer surveys, under the assumption that as public distrust of the military increases, support for compliance goes up. I find that public support for compliance moderates the effect of threat to the leader on compliance. In other words, as a presidential election nears, the leader becomes more responsive to the public's preferences on compliance, but this does not mean that the leader will be more likely to comply. In particular, if the public distrusts the military (thus, supports compliance), the probability of compliance increases as the

⁵See Table A1 in the Appendix for a distribution of implicated actors across all judgments.

⁶In weak democracies, these threats could be democratic (elections) or undemocratic (coups). Here I focus on the threat that comes from being voted out of office in an election.

⁷All members of the Inter-American Court of Human Rights except Barbados and Suriname are presidential democracies, so election-timing is fixed.

presidential election nears. However, if the public trusts the military (and thus, does not support compliance), the probability of compliance decreases.

This paper aims to make three contributions. The first is to challenge head-on the assumption that the public always wants the leader to comply with rulings from human rights courts. I show that although the crimes were committed by government actors, the public does not necessarily want these actors punished. Instead of presuming that the voters always support compliance, I model these preferences directly using the best-available public opinion data. This suggests that we ought to rethink the notion that non-compliance means only that the institution is ineffective; non-compliance may also imply that democracy is working, as newly democratic leaders adhere to the will of a public that favors non-compliance.

My second contribution is to take seriously the issue of compliance in a difficult region – Latin America – where leaders are often asked to directly confront the abuses of the past regime.⁸ Although the European Court of Human Rights is similar in structure and purpose, the regime types of members within each institution are quite different: the history of military regime is much more recent in Latin America. Consequently, the rights violations heard by the Inter-American Court are quite different than those heard in its European counterpart. The European Court hears many more cases about violations of civil and political rights, such as freedom of religion and access to education, as opposed to violations of physical integrity rights, such as forced disappearance and extrajudicial execution. Rather than dismiss non-compliance outcomes as evidence that the Inter-American Court has failed in some way, I instead consider the particular political conditions and incentives that democratic leaders have for non-compliance. Note that the difficulty of compliance in Latin America is related not just in the nature of the crime, but also to the nature of the implicated actor – and that actor’s enduring popularity.

My third contribution is to identify a novel way of thinking about compliance by using

⁸The work that has been done on the Inter-American Court tends to focus on qualitative process-tracing in a few select cases (e.g. Hillebrecht, 2012). While this is useful for understanding why the state complied in a particular instance, it does not necessarily help us understand variation in compliance across all member-states.

the individual remedies within cases as the unit of analysis, rather than the case itself.⁹ The vast majority of cases at the Inter-American Court are in a state of partial compliance (Hawkins and Jacoby, 2010), as only 13% of all judgments against the state have been closed. However, this gives a false sense of the Inter-American Court’s (in)effectiveness: on the level of individual remedies, the compliance rate is nearly 50%, with a high degree of variance based on the type of remedy ordered. Moreover, my approach allows me to control directly for capacity constraints on compliance because I can account for variation in the degree of difficulty involved in implementing any one type of remedy. Finally, because the Inter-American Court orders so many remedies in each case, my dataset has eight times as many orders as it does cases: the 64 judgments that implicate the military generate nearly 540 unique compliance orders.¹⁰

This paper proceeds as follows. In the next section, I review arguments for compliance and advance my theory to explain compliance in the Inter-American context. In the third section, I introduce the Inter-American Court in more detail and present the results from my statistical analyses. The final section concludes.

2. Theory: Why Comply?

2.1. *Capacity and Motivation*

Compliance requires capacity and motivation. Previous scholarship has generally focused on these factors separately, while holding the other constant. The managerial perspective on compliance offers three explanations for non-compliance: the law is insufficiently clear; the state has had insufficient time to comply; and the state lacks the capacity to comply (Chayes and Chayes, 1993). Although some of the Inter-American Court’s remedies are extremely difficult to fulfill (like the order to find and recover the remains of victims of forced

⁹An individual remedy is a specific task that the Court has ordered the state to undertake. For example, in a single case, the state may be asked to pay monetary reparations, publish the judgment, and issue a public apology. The process of distilling remedies from judgments is described in Section 3.2.

¹⁰These are the judgments of the Inter-American Court issued between 1989 and 2014.

disappearance), in general, capacity constraints are not as pronounced in this context. These are leaders in newly transitioned democracies who are usually less constrained as those in mature, fully consolidated democracies with veto players (Tsebelis, 1995). This means that they often have the capacity to implement rulings in a way that other democratic leaders do not. In Latin America in particular, executives are very powerful. Except in a few cases where legislative cooperation is required for compliance (when, for example, the court orders a state to change its laws), compliance is under the president's control. Moreover, even in cases requiring legislative change, the president can still facilitate compliance because she has legislative agenda-setting power (Mainwaring, 1990; Cheibub, Elkins and Ginsburg, 2011).

Assuming the leader has the capacity to comply, she nevertheless might opt for non-compliance because she lacks the motivation to fulfill an international court's orders. In that case, non-compliant states may change their beliefs about international law if they are socialized or persuaded by other actors (Keck and Sikkink, 1998; Risse, Ropp and Sikkink, 1999; Checkel, 2001). Repeated exposure to human rights might help states to internalize their obligations to international law. Alternatively, states could be shamed into compliance. This "mobilization of shame" publicizes states' behavior, thus making readily apparent when and how states have failed to comply (Keck and Sikkink, 1999; Drinan, 2002; Hafner-Burton, 2008).

If persuasion fails, non-compliant states may be coerced into changing their behavior. Scholars have found evidence that states only comply with international legal obligations when a material reward like foreign aid (Hafner-Burton, 2005), electoral victory (Dai, 2005), or membership in an exclusive club like the European Union (Conant, 2014; Follesdal, 2016) is at stake. Moreover, Lebovic and Voeten (2009) have found that multilateral loans from the World Bank are negatively correlated with a state being condemned by the UN for its human rights practices. Thus, states need not change their beliefs about international law; rather, they simply need to be offered the right reward – or threatened with enough punishment – to comply.

These proposed mechanisms – persuasion, naming and shaming, coercion – all assume that the public always wants the leader to comply with rulings from human rights courts. Previous scholarship has presumed that the government is the guilty party responsible for human rights violations; the public demands justice; and an international court is necessary to facilitate the leader meeting this demand. This presumption is also supported by survey data; for example, among citizens in member-states of the Inter-American Court that were surveyed in the most recent wave of the World Values Survey, 53% believe that civil rights and protection from oppression is an essential characteristic of democracy.¹¹ Additionally, survey experiments give preliminary support to the presumption that the public wants compliance and responds positively to leaders who follow international law (Tomz, 2008; Putnam and Shapiro, 2013; Chilton, 2014). But what happens if compliance is not in demand?

2.2. Domestic Political Incentives for Non-Compliance

Suppose that the Inter-American Court decides that military within a particular state has committed a human rights violation.¹² The Court’s ruling identifies the actor responsible for the violation and orders the leader to implement various remedies. The leader receives the judgment and decides whether and to what extent she will comply and fulfill the Court’s orders. Although leaders enter office with underlying preferences for human rights and the rule of law, the leader above all wants to maintain power, as political office provides benefits in the form of prestige and salary. Whether the public’s support is necessary for the leader to stay in office varies over time; in other words, she is sometimes accountable to the public, and other times not. The leader’s need for accountability to maintain power dictates her responsiveness to the public’s preferences. Thus, the leader decides whether to comply

¹¹Data taken from the World Values Survey Wave 6, covering 2010 to 2014. I counted as “essential” any respondent grading civil rights and protection from oppression as 7 or higher on a 10-point scale. Argentina, Brazil, Chile, Colombia, Ecuador, Haiti, Mexico, Peru, Trinidad and Tobago, and Uruguay were the member-states included in the survey. Even though Trinidad and Tobago is not currently a member of the Inter-American Court, the Court still monitors two cases from Trinidad and Tobago that were decided prior to its denunciation.

¹²For most leaders, the decision to join the institution was made before their term began in office. As such, I take as given that the leader’s state is a member of the institution.

based on her need for accountability; her own preferences for compliance; and the public's preferences for compliance.

The public observes the leader's choice of compliance and subsequently chooses a level of support for the leader. Voter preferences over compliance are not uniform. Because different cases implicate different government bodies, compliance does not affect all constituencies equally. When states are told to investigate, punish, and prosecute crimes, for example, compliance will result in specific actors – usually members of the military – being put on trial and possibly going to prison. The public may generally care about human rights and the rule of law, but it does not necessarily follow that they are pro-compliance, particularly if compliance would implicate a trusted institution. Because domestic institutions are often perceived as weak or ineffective, the public generally places more faith in the armed forces' ability to protect human rights than the police's (Pion-Berlin and Carreras, 2017). Even if only the military is punished, or if military officials are the only ones going to jail, the public as a whole still has to contend with trials, and thus society's confronting of the abuses of the past. Whether, when, and how to confront the past are all contentious issues in many Latin American states (de Brito, 2001; Achugar, 2007; Isaacs, 2010). As such, voters may sometimes prefer non-compliance.

The leader's need for accountability is directly related to the level of threat to her power or, alternatively, her fear of losing office. The leader's fear of losing power increases closer to elections. Except for Barbados and Suriname, all members of the Inter-American Court of Human Rights are presidential democracies. This means that election timing – and thus, the risk of losing office – is fixed and unrelated to the Court's judgments. The length of a presidential term varies across the region, but is between four and six years. Due in part to their history of dictatorship, most Latin American states have presidential term limits (Corrales and Penfold, 2014). In this case, one should think of fear of losing office as the political party's fear of losing power, rather than the individual president's fear of not being reelected.

The main theoretical expectation is that *as accountability increases, leaders become more responsive to the public’s preferences*. When the leader does not fear losing office, she does not need to be accountable, and she decides to comply based on her own preference. When the leader fears losing office, she does need to be accountable. Close to an election, she becomes responsive to the public’s preferences and chooses a level of compliance that matches the public’s. That is, when the public supports compliance, the leader is *more likely* to comply closer to an election; and when the public opposes compliance, the leader is *less likely* to comply. In this way, the public’s support for compliance moderates the effect of threats to the leader on the probability of compliance. These expectations are summarized in Table 1.

Table 1: Summary of Theoretical Expectations

| | Close to election | Far from election |
|------------------------|-------------------|-------------------|
| Low trust in military | Comply | Leader preference |
| High trust in military | Not comply | Leader preference |

3. Empirical Analysis

3.1. *The Inter-American Court of Human Rights*

The Inter-American Court of Human Rights was founded in 1979 and began hearing contentious cases in the 1980s. Through 2017, it has issued around 220 judgments, and each member has been a defendant at least once. Cases reach the Inter-American Court after passing through the Inter-American Commission, which represents petitioners in all matters before the Court.¹³ Although the Court’s proceedings come chronologically after the Commission’s, it is important to understand the Court is *not* an appellate body. Rather, the

¹³As such, the Commission functions both as a court of first instance and also as a petitioner.

process of adjudication begins anew in the Court. Unless the state fully accepts responsibility for the violation, the Court issues its own, separate ruling on the merits of the case; if the state concedes the violation, the case moves to the reparations stage.¹⁴ Given that the case has already been reviewed by the Commission, it is not surprising that the Court rarely finds in favor of the state: of the 223 judgments since 1989, only five have found no violations committed by the state.¹⁵

Once the Court rules against the state, the case moves to the reparations and monitoring phase. The operative paragraphs of all Court judgments provide a list of specific remedies the state must undertake (“compliance orders”) and reaffirm the Court’s mandate to monitor the case until the orders have been fulfilled. On average, the Court issues seven compliance orders in each case. The Court believes it is part of its mandate to monitor compliance with its orders and to ensure full implementation with the judgment.¹⁶ As such, the institution continues monitoring all orders until they are fulfilled, and cases remain open until all orders within that case have been fulfilled.

¹⁴Although the set of cases that reaches the Court is different than the set that remain at the Commission, this does not raise concerns about the analysis for three reasons. First, the sorting process that separates out cases with judgments at the Commission and cases with judgments at the Court is not driven by the same processes that explain compliance. The cases that remain at the Commission are all either outside of the Court’s temporal jurisdiction, have petitioners that were absent or unwilling to continue litigation, or feature an agreement between the petitioner and the state. Second, although the Court’s decision comes chronologically after the Commission’s, the Court is not an appellate body. The Court rarely finds in favor of the state, and does not make easier demands; if anything, the demands are harder. To the extent that the Court does rule in the state’s favor, it is not because the state did nothing wrong, but because the Court decided it did not have jurisdiction to hear the case. Thus, it is not a reasonable expectation for the Court to find no violation where the Commission found one, unless the state can make a strong case that the Court lacks jurisdiction. Even then, it has become harder to make these arguments, because the Commission has already altered its behavior to avoid referring cases to the Court that could fall outside of its temporal jurisdiction. Third, to the extent that the selection process does generate bias, the bias should be against finding an effect on any variables of interest. Since the state had and passed on the option to comply at the Commission, by the time the case reaches the Court, the state has already demonstrated its unwillingness to follow orders. Thus, the prior belief on compliance is that it should be less likely at the Court.

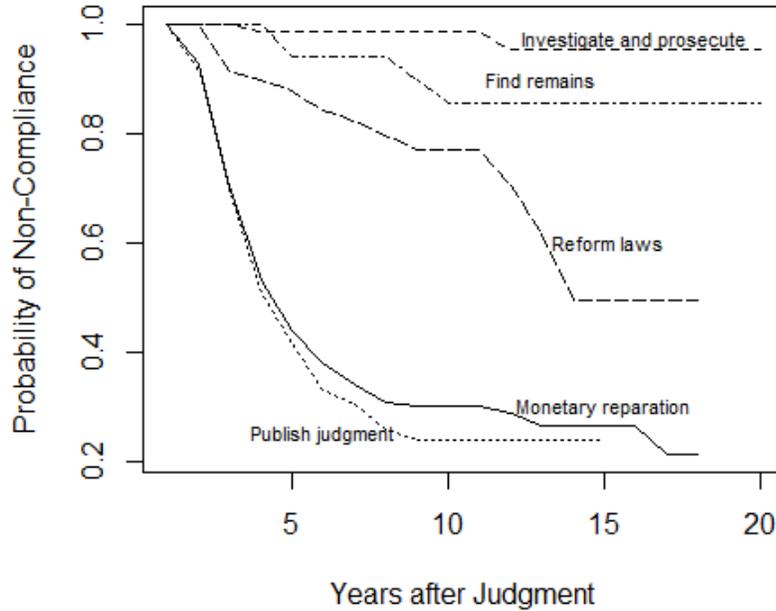
¹⁵If the decision goes in favor of the state, it tends to be because the Court accepted one or more of the state’s preliminary objections. In *Alfonso Martín del Campo Dodd v. Mexico* (2004) and *Grande v. Argentina* (2011), for example, the Court could not determine if the state violated the American Convention because it lacked jurisdiction *ratione temporis*, as the crimes took place before the state’s ratification of the American Convention on Human Rights and/or the state’s acceptance of the Court’s jurisdiction.

¹⁶The Court has affirmed that compliance is an “integral part of the right of access to justice,” which it is thus competent to monitor. See Inter-American Court of Human Rights, 2002, *Case of Baena Ricardo et al. (270 Workers v. Panama): Competence*, para. 128-138.

The Court fulfills its duty to monitor cases by issuing periodic monitoring reports, in which state officials and the petitioners submit evidence on compliance (or lack thereof). In recent years, the Court has allowed states to participate in “compliance hearings” where state officials can testify about what measures have been taken. Because of the high burden states must meet in order to have a case closed, the Inter-American Court has closed fewer than 15% of its cases that resulted in judgment against the state. The remaining cases remain in the monitoring stage, even though states have complied with some of the orders within those cases.

Previous scholarship on the Inter-American Court has shown that compliance varies by the degree of difficulty of the order. For example, it is relatively costless to provide monetary reparations but relatively costly to change domestic legislation (Beristain, 2009; Hawkins and Jacoby, 2010; Basch et al., 2011; Bailliet, 2013). As seen in Figure 1, time to compliance varies greatly depending on the nature of the order. Five years after the judgment, states have fulfilled nearly 60% of the orders to publish the judgment and pay monetary reparations (non-compliance rate of 40%), but have fulfilled only 10% of orders to reform laws, and none of the orders to investigate, prosecute, and punish offenders or to find the remains of victims. After 15 years, states have fulfilled around 80% of orders to publish the judgment and pay monetary reparations, around 50% of orders to reform laws, and 15% of orders to find remains. For political and practical reasons, orders to investigate, prosecute, and punish offenders are the hardest with which to comply, and that difficulty is reflected in the fact that after 20 years, less than 5% of these orders have been fulfilled. Because time to compliance varies so much by the particular order, any quantitative analysis must take this variation into account, in addition to time-varying covariates.

Figure 1: Duration of Non-Compliance Depends on the Difficulty of the Order



3.2. *Measuring Compliance*

To measure the dependent variable, I begin by identifying all compliance orders issued by the Inter-American Court in judgments that implicate the military. I distill these orders from the operative paragraphs of all judgments implicating the military through 2014 (64) to generate a dataset containing about 540 unique compliance orders.¹⁷ Table 2 illustrates the process of distilling compliance orders from the text of a Court judgment. Next, I code all Court-issued monitoring reports, in which the Court reviews each order given to the state and decides whether the state has fully complied, partially complied, or not complied based on information obtained from the victim and the state party. Through December 31, 2015, the Court has issued 131 compliance reports on judgments implicating the military. The average number of compliance reports per case is 2.04, although this number is biased downward, since about 17% of cases have had no monitoring report at all. Excluding cases

¹⁷This represents roughly 36% of all judgments through 2014 and 40% of all compliance orders.

that have never been monitored, the average number of compliance reports per case is 2.47.¹⁸ The unit of analysis is a compliance-order-year; the outcome (compliance) is coded as 1 if the state complied with the order in that year and 0 otherwise.

Table 2: Selected Compliance Orders in *Serrano Cruz Sisters v. El Salvador*

| Compliance Order | Corresponding Text |
|------------------------------------|--|
| Investigate, prosecute, and punish | The State shall, within a reasonable time, carry out an effective investigation into the reported facts in this case, identify and punish those responsible... |
| Repeal amnesty law | The State shall... eliminate all the obstacles and mechanisms <i>de facto</i> and <i>de jure</i> , which prevent compliance with these obligations in the instant case... |
| Publicly accept responsibility | The State shall, within one year, organize a public act acknowledging its responsibility for the violations... in the presence of senior State authorities and members of the Serrano Cruz family... |
| Publish the judgment | The State shall publish, within six months, at least once in the official gazette and in another national newspaper... [the judgment sections] “Introduction of the case,” ... “Jurisdiction” and... “Proven facts,” as well as the operative paragraphs of this judgment... |
| Create public memorial | The State shall designate, within six months, a day dedicated to the children who disappeared during the internal armed conflict for different reasons... |
| Provide medical care | The State shall provide free of charge, through its specialized health institutions, the medical and psychological treatment required by the next of kin of the victims , including the medicines they require, taking into consideration the health problems of each one, after making an individual evaluation... |
| Pay pecuniary damages | The State shall pay Suyapa Serrano Cruz the amount established in paragraph 152 of this judgment in reparation for the pecuniary damage suffered by the next of kin of the victims... |

There are two potential sources of error for this method of measuring compliance. First, as previously stated, not all orders have monitoring reports associated with them. Qualitative interviews with attorneys who have argued before the Court have revealed that no one is

¹⁸Even when the Court does not issue reports, it still considers itself to be monitoring compliance in those cases. In its 2017 Annual Report, the Court reported that it had monitored compliance in 100% of cases through “requesting reports in the judgment, orders, hearings, on-site procedures in the State found responsible, requests for information or observations in notes of the Court’s Secretariat, and the respective receipt of reports and observations” (Inter-American Court of Human Rights, 2018, *2017 Annual Report*, at pg. 68). Although the Court fulfills its mandate to monitor compliance by requesting information, it only publishes monitoring reports for a few dozen cases (42 cases in 2017).

quite sure why some cases are monitored more often than others. However, I have no reason to believe that excluding the unmonitored orders would systematically bias the results. The main difference between monitored and unmonitored orders is the judgment year; the Court tends to give states more time to implement rulings before the first monitoring report. All of the unmonitored orders came in judgments from 2012, 2013, and 2014. Only one case in that same period had been monitored by the end of 2015. Crucially, there is no significant difference in monitoring based on election year, and while there is a significant difference in terms of proximity to the election, the bias goes against finding any significant results. A complete balance check is available in the Appendix.¹⁹

Second, some might be concerned that the orders are endogenous to each case. There is no evidence that the court takes into account what the state is able to do when making orders. My interviews revealed that, if anything, attorneys are skeptical about the burden the Court places on states with its compliance orders, and they themselves are not optimistic that the state will be able to fulfill all orders, particularly those involving crimes that took place decades ago. In fact, the particular orders that are associated with the case have much more to do with the case characteristics — namely, violations alleged and proven — than they do the state involved.

3.3. *Measuring Support for Compliance and Threats to the Leader*

I measure support for compliance based on respondents' level of distrust of the military, under the assumption that support for compliance is higher when the military is less popular.²⁰ Public distrust of the military proxies for support for compliance through two possible mechanisms, one direct and one indirect. As a direct mechanism, one could imagine that

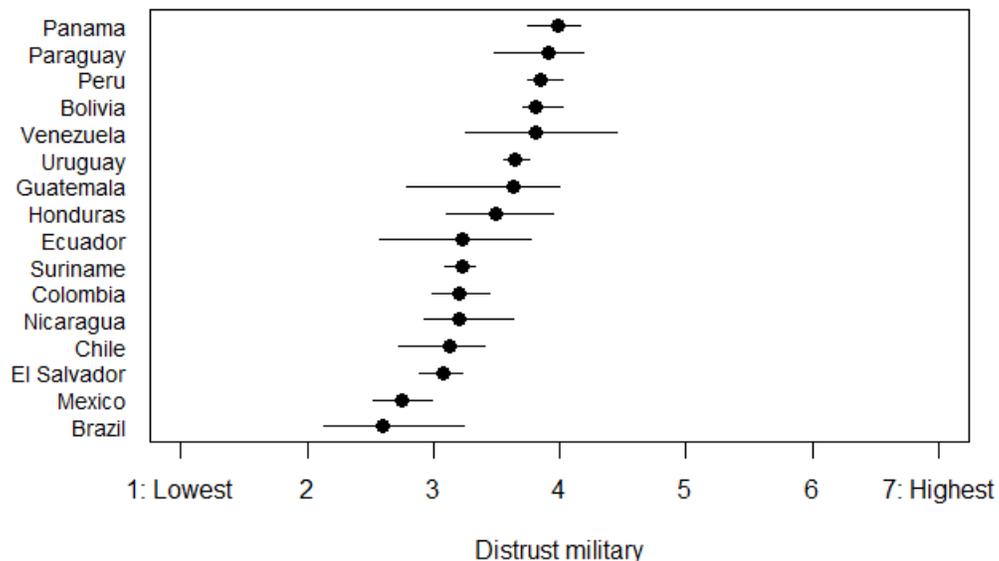
¹⁹See Table A2.

²⁰This is, of course, not a perfect measure of support for compliance. An ideal measure would explicitly ask respondents whether they wanted the leader to comply with the Court's rulings. Alternatively, a closer proxy might ask about respondents' support for implementing various remedies; for example, a survey might ask whether citizens supported overturning the amnesty law protecting the military from prosecution. However, this evidence is not available cross-nationally, and in the few surveys where respondents were asked about amnesty laws, the question was not asked frequently enough to use in regression analyses.

because the public distrusts the military, voters want to see the military as an institution punished (and thus, support compliance). Alternatively, and more indirectly, distrust of the military could mean that the public does not support whatever the military’s preferences are toward compliance; because compliance implicates the military, the military would prefer that leaders do not comply. If public distrust of the military is high, the public would want not want to adopt the military’s preference for non-compliance; and if distrust is low, the public would adopt the military’s preference. As such, public distrust of the military correlates with public support for compliance.

Thus, as the best-available proxy, I use the level of distrust in the military from AmericasBarometer surveys. Distrust is measured on a seven-point scale where (7) indicates the respondent strongly distrusts the government body and (1) indicates the respondent strongly trusts the government body.²¹ To illustrate the variation between states and over time, I plot the average level of distrust for each state and the distribution of values over the entire period in Figure 2.

Figure 2: Mean and distribution of distrust measures from AmericasBarometer, 2004–2014

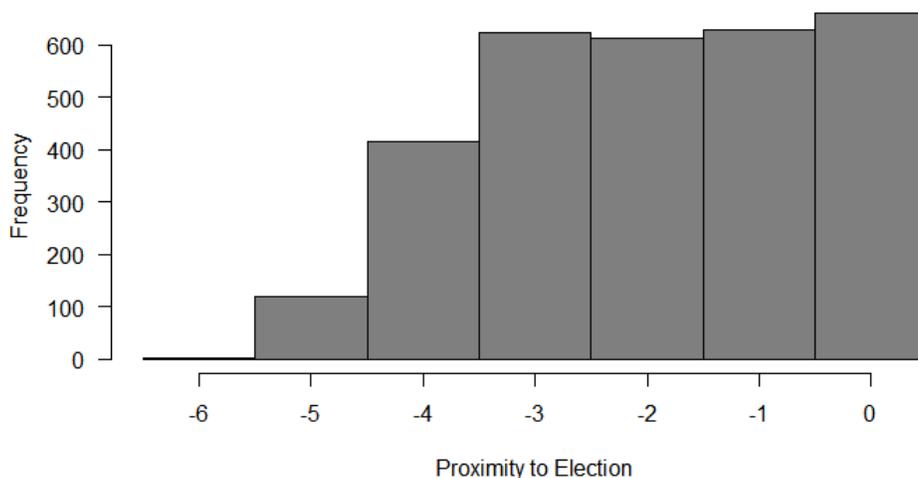


To measure threat of losing office, I create a variable to measure the proximity to

²¹This is survey question B12.

the next executive election.²² Presidential elections occur every four, five, or six years, depending on the state.²³ Figure 3 shows the distribution of the proximity to election variable. Proximity is coded so that 0 indicates an election year; -1 indicates that the election is next year; and -2 indicates the election is in two years. The distribution is roughly uniform from -3 to 0 , with only a few states having a five or six year election cycle.

Figure 3: Distribution of the proximity to election variable, where 0 indicates that the election is this year; -1 indicates that the election is next year.



3.4. Models and Controls

Because there is one observation per year for each order, I conduct a discrete time event history analysis that models the time until full compliance with an order.²⁴ I construct a binary response model with dummy variables for each year post-judgment to capture duration dependence. I use the complementary log-log function because of the zero-inflated data, making compliance a relatively rare event. Coefficients can be interpreted as the probability of compliance in the current period, conditional on survival (non-compliance) in

²²As most states in Latin America are presidential democracies, election timing is fixed and exogenous. Barbados and Suriname, as parliamentary systems, are excluded from this analysis, although this only eliminates three cases (all from Suriname; Barbados does not have any cases that implicate the military).

²³See Table A3 for the election years that appear in the data for each state.

²⁴I use full compliance as the event because the Court continues monitoring orders that are in partial compliance.

all previous periods and covariates. Observations are right-censored because many states are still working on compliance with the orders. The dependent variable is time to compliance, measured in years post-judgment.²⁵ I compare the date of compliance, as measured by the monitoring reports, to the date that the Court issued its judgment and ordered remedies. To avoid overinflating the data with zeroes by coding unmonitored orders as ones with which the state has not complied, I only include orders in the model that have been monitored at least once. This leaves me with 450 unique compliance orders.²⁶

I include controls for economic and domestic political conditions. As economic controls, I use *DAC aid* (the logged amount of aid in constant USD that a country receives from all Development Assistance Countries donors each year),²⁷ *Multilateral debt* (the percentage of total external debt owed to multilateral lenders each year), and *GDP/capita* to account for both state capacity to comply as well as external pressure. As political controls, I use *GDP/capita*, *Left government* (coded 1 if the government is classified as Left by the Database of Political Institutions) and *Unemployment*. Finally, in all models, I include indicator variables for the most commonly ordered remedies, as well as fixed effects for state and issue area.²⁸ Standard errors are clustered by case.

²⁵Although I can count time to compliance in months, I ultimately group the observations of the main models into intervals of 12 months, since the time-varying covariates vary by year. This is necessary since compliance orders are entering the monitoring stage not only in different years, but also different months within the calendar year. Thus I observe how long, in months, it takes a country to comply with an order, and then break up those months into intervals of 12 to find the corresponding year with which to match the time-varying covariates.

²⁶As Table A2 shows, the only significant difference between monitored and unmonitored orders is the year of the judgment. The Court appears to monitor older cases before newer ones. Because there is no other evidence to suggest that the timing of the monitoring reports is anything but random (given the qualitative evidence that representatives of the victims do not know why cases are monitored when they are monitored, or how the Court decides which cases to monitor each time), I treat the 89 unmonitored compliance orders as missing at random.

²⁷This is Official Development Assistance (ODA) aid only.

²⁸The most commonly ordered remedies in the 64 cases that implicate the military are: monetary reparations (n=64), investigate, prosecute, and punish (n=52), publish the judgment (n=50), provide medical care (n=35), publicly accept responsibility (n=34), pay for the victim’s burial and/or find and locate remains (n=27), reform laws (n=25), and provide training in human rights (n=22). Issue area is a description of the crime that led to a human rights violation; for example, “forced disappearance”, “prison conditions”, or “murder of civilians”.

3.5. *Results*

The results in Table 3 illustrate how distrust of the military moderates the effect of proximity to election on compliance. For ease of interpretation, distrust of the military is mean-centered. The coefficients for distrust of the military and the interaction term are positive and significant in every model, as predicted. Because coefficients in an interaction model can be difficult to interpret on their own, Figure 4 illustrates the effect of the moderator. As proximity to the election increases, the leader grows more responsive to the public's preferences; however, whether this increases the probability of compliance or non-compliance depends on the public's attitude toward the military. When trust in the military is low (grey line), citizens are more supportive of compliance, so the probability of compliance increases the closer the leader gets to the election. If trust in the military is high (black line), however, citizens are less supportive of compliance, so the probability of compliance decreases the closer the leader gets to the election. This result aligns with the theoretical expectations presented in Table 1.

To illustrate the substantive importance of these results, I used the model to generate predicted probabilities of compliance under various conditions. First, consider the predicted probabilities of compliance for various ordered remedies in Table 4. As anticipated, there is a great deal of variation in the underlying probability of compliance that varies by compliance order. The probability that the average state has complied with the order to publicly accept responsibility four years after the judgment is 19%, while the probability of complying with the order to provide training in human rights is 4%, and the probability of complying with the order to recover victims' remains is only 1%. These results correspond to what previous scholarship has found about prolonged duration of non-compliance in the case of more difficult orders.

Table 3: Distrust of military moderates the effect of proximity to election on the probability of compliance

| <i>Dependent variable: probability of compliance</i> | | | |
|--|-------------------|-------------------|-------------------|
| | (1) | (2) | (3) |
| Distrust of military | 1.34*** (0.39) | 1.18*** (0.41) | 1.17*** (0.40) |
| Proximity to election | -0.02 (0.08) | -0.00 (0.08) | -0.02 (0.09) |
| Distrust of military × Proximity to election | 0.39*** (0.13) | 0.38*** (0.13) | 0.38*** (0.13) |
| Multilateral debt | | 0.00 (0.02) | |
| DAC aid (log) | | 0.37 (0.35) | |
| GDP/capita (log) | | -2.33* (1.29) | -2.82** (1.41) |
| Left government | | | -0.59* (0.35) |
| Unemployment | | | -0.01 (0.11) |
| Num. obs. | 3149 | 3149 | 3149 |
| Num. events | 201 | 201 | 201 |
| State FE | Yes | Yes | Yes |
| Issue FE | Yes | Yes | Yes |
| Order indicators | Yes | Yes | Yes |
| Clustered SE | Case | Case | Case |

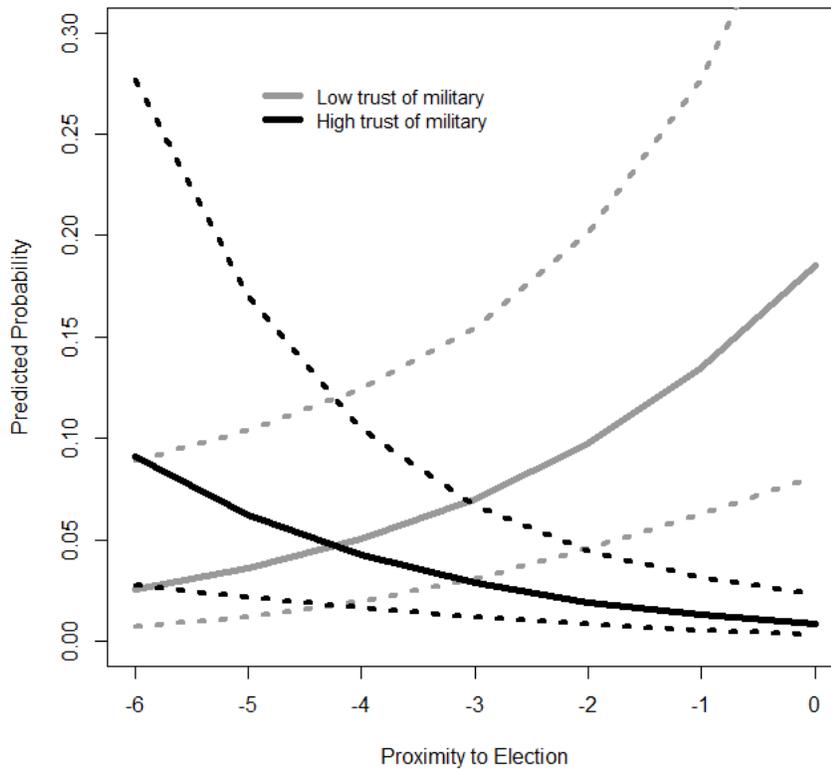
*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

Note: Result also holds when standardizing the measure of distrust. See Table A4.

Next, to illustrate the interaction between distrust of military and proximity to election, I generated predicted probabilities of compliance in three different judgments, one each from Brazil, El Salvador, and Guatemala.²⁹ On average, Brazilians have a high level of trust in their military; Salvadorans have a medium level of trust; and Guatemalans have a low level of trust. Holding constant the level of distrust of the military, I used the model to

²⁹These cases are *Gomes Lund v. Brazil*, *Serrano Cruz Sisters v. El Salvador*, and *Bamaca Velasquez v. Guatemala*.

Figure 4: As proximity to the election increases, the leader becomes more responsive to the public’s preferences. When trust in the military is low (grey line), the probability of compliance increases as the election draws nearer; when trust in the military is high (black line), the probability of compliance decreases.



Note: Distrust of military proxies support for compliance. I posit that citizens are more supportive of compliance in cases that implicate the military when trust in the military is low. Predicted probability is the probability of compliance in the fourth year post-judgment, for a case involving murder of civilians (issue fixed effect), for the average state and average compliance order.

generate predicted probabilities of compliance for each year while increasing the proximity to election. For Brazil, where trust in the military is relatively high, the probability of compliance decreases from 19% three years before the election to 9% in an election year. In Guatemala, where trust in the military is lower, the probability of compliance increases from 32% three years prior to the election to 39% in an election year.³⁰ Finally, in El Salvador,

³⁰Note that these probabilities and the rate at which they change are affected by the level of distrust of the military that I set. To get a larger shift in predicted probability, one could set the level of distrust at its

Table 4: Predicted probabilities of compliance for the eight most commonly ordered remedies in cases that implicate the military.

| Order | Predicted probability | 95% C.I. |
|----------------------------------|------------------------------|-----------------|
| Publicly accept responsibility | 19% | [12%, 20%] |
| Monetary reparation | 15% | [15%, 20%] |
| Publish judgment | 15% | [8%, 19%] |
| Provide training in human rights | 4% | [3%, 6%] |
| Reform legislation | 2% | [1%, 2%] |
| Provide medical care | 1% | [1%, 2%] |
| Recover victims' remains | 1% | [0%, 2%] |
| Investigate; prosecute; punish | 0% | [0%, 0%] |

Note: Predictions were generated using Model (1) in Table 3, for the average state four years after the judgment, all else equal, for each of the following orders. Here I use the issue of forced disappearance, because all of the following remedies have been ordered at least once in a case of forced disappearance.

Table 5: Predicted probabilities of compliance for three different states, at hypothetical proximity to the next election.

| Proximity to election | Brazil | El Salvador | Guatemala |
|------------------------------|---------------|--------------------|------------------|
| | High trust | Med trust | Low trust |
| 3 years | 19% | 37% | 32% |
| 2 years | 15% | 34% | 35% |
| 1 year | 11% | 32% | 37% |
| Election year | 9% | 29% | 39% |

where citizens have a medium level of distrust in the military, the probability of compliance declines from 37% three years prior to the election to 29% in an election year.

4. Conclusion

International human rights courts are the courts of last resort for many victims. If the case has reached an international court, the victim has already been denied justice, usually multiple times, at the domestic level. For the victims of human rights violations and their families, winning a case in the Inter-American system does not just mean monetary reparations: it may also mean that a loved one's remains are returned, that a scholarship is established

minimum or maximum for each state.

in the victim's name, or that displaced people receive a new home. If their judgments are followed, international human rights courts have the potential to create tangible changes in victims' lives.

Human rights attorneys and the institutions themselves recognize that compliance with rulings of the Inter-American Court is necessary to fulfill the principle of *restitutio in integrum* — to make the victim whole. Although the Court often orders that “[t]he judgment constitutes, *per se*, a form of reparation,” many victims know that their rights are not restored at the moment of judgment, but when the orders are fulfilled. For them, in other words, the institution's effect is not felt until the state complies. As the relative of a victim puts it, “[Compliance] would change my life, because I would feel some satisfaction that the state at least complied and will possibly look for a way to ensure these things don't happen in the future...If the state in your case does not comply, you would feel totally helpless and without any relief” (Beristain 2009).³¹

I argue that compliance outcomes are determined by three factors: the leader's underlying preference for compliance; the proximity to an executive election; and the public's preferences for compliance. I model this relationship using an original dataset of all compliance orders from the Inter-American Court of Human Rights in judgments that implicate the military. I find that the level of distrust in the military moderates the effect of proximity to election on the leader's probability of compliance. When trust in the military is low, the probability of compliance increases as the leader's fear of losing office increases. However, when trust in the military is high, the probability of compliance decreases.

Does the theory travel to other regions? This is a policy-relevant question, because the latest region to develop a human rights court (the African Court of Human's and People's Rights) looks more like Latin America in the early 1980s than it does Europe in the 1950s. It is worth noting that this is not a theory that explains why mature democracies or autocracies follow international human rights law. The scope of the theory is for newly

³¹Translation by author.

transitioned democracies only: mature democracies do not face the same internal threat to their domestic power and autocracies do not need to respond to civilian policy preferences. Depending on the composition of African member-states when the African Court of Human’s and People’s Rights finally gets off the ground, the theory very well may explain compliance outcomes in that system as well. It may also explain outcomes in the European Court of Human Rights in cases that come from weaker democracies like Turkey and states in the former Soviet bloc. This is a potential avenue for future research.

The theory may also apply to other institutions as well. In the case of Latin America, there is insufficient variation on trust in other actors; for example, the police and courts are the next most frequent violators of human rights, and those two institutions are near universally distrusted.³² However, in other regions of the world, the military may not hold such a high position in society, nor might it be the case that the military was in power in the previous regime. The specific nostalgia that many people in Latin America have for the military regimes of the past may not be replicated in other regions of the world, but one could imagine other institutions — for example, the Communist party in former Soviet states — holding that same position in the minds of the public.

More broadly, my theory suggests the importance of incorporating the public’s preferences into existing models of compliance with international law. The presumption in much of the previous literature on international human rights law and compliance has been that the public demands justice and international courts are necessary to compel leaders to meet that demand. While this may be true in the aggregate, this presumption belies the possibility that the public as a whole does *not* always demand justice. Under certain conditions, then, non-compliance may not be a failure on the part of the institution, but a failure of preferences among the public that the international court has been created to serve.

³²See Figure A1 for the distribution of the distrust measure for the police and courts relative to the level of distrust of the military.

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Appendix

Table A1: Distribution of Implicated Actors in IACHR Cases

| Implicated Actor | Count | Percentage |
|------------------|-------|------------|
| Military | 64 | 36% |
| Police | 33 | 18.5% |
| Courts | 27 | 15.2% |
| Ministry | 12 | 6.7% |
| Private citizens | 10 | 5.6% |
| Paramilitary | 6 | 3.4% |
| Commission | 6 | 3.4% |
| Cabinet members | 5 | 2.8% |
| Other | 15 | 8.4% |

Note: “Other” includes actors implicated in fewer than five cases, including hospital doctors (3 cases), Congress (3 cases), and prison guards (2 cases). Percentage is of the 178 judgments issued against the state between 1989 and 2014.

Table A2: Balance Check on Unmonitored v. Monitored Orders

| Variable | Mean (unmonitored) | Mean (monitored) | p-value (t-test) |
|---|--------------------|------------------|------------------|
| <u>Time invariant covariates</u> | | | |
| Judgment year | 2012 | 2006 | 0.00 |
| Provide medical care | 0.10 | 0.05 | 0.20 |
| Provide training in human rights | 0.06 | 0.04 | 0.48 |
| Publish judgment | 0.11 | 0.09 | 0.52 |
| Recover victims' remains | 0.04 | 0.05 | 0.80 |
| Investigate, prosecute & punish | 0.09 | 0.10 | 0.81 |
| Accept responsibility | 0.07 | 0.06 | 0.86 |
| Reform legislation | 0.04 | 0.05 | 0.87 |
| Monetary reparation | 0.30 | 0.30 | 0.98 |
| <u>Time-varying covariates</u> | | | |
| Years post-judgment | 3.75 | 4.13 | 0.00 |
| DAC aid (log) | 18.68 | 19.27 | 0.00 |
| Proximity to election | -1.87 | -1.99 | 0.04 |
| Unemployment | 6.39 | 6.19 | 0.04 |
| Election year | 0.20 | 0.23 | 0.16 |
| Left government | 0.24 | 0.25 | 0.62 |
| GDP per capita (log) | 8.20 | 8.21 | 0.70 |
| Multilateral debt | 19.37 | 19.40 | 0.97 |

This table shows the results of a series of t-tests to assess whether the difference between unmonitored and monitored orders is statistically significant on several variables. The t-tests for time-invariant covariates are based on whether the order has ever been monitored, while the t-tests for time-varying covariates are based on whether the order was monitored in that particular year.

Table A3: Presidential Election Years by State

| State* | Cycle | Observed Proximate Election Year(s) [†] |
|--------------------|---------|--|
| Argentina | 4 years | 2015 |
| Bolivia | 4 years | 2009, 2014, 2019 |
| Brazil | 4 years | 2010, 2014, 2018 |
| Chile | 4 years | 2009, 2013, 2017 |
| Colombia | 4 years | 1998, 2002, 2006, 2010, 2014, 2018 |
| Dominican Republic | 4 years | 2016 |
| Ecuador | 4 years | 2009, 2013, 2017 |
| El Salvador | 5 years | 2009, 2014, 2019 |
| Guatemala | 4 years | 2003, 2007, 2011, 2015 |
| Honduras | 4 years | 1989, 1993, 1997, 2005, 2009, 2013, 2017 |
| Mexico | 6 years | 2012, 2018 |
| Nicaragua | 5 years | 2001 |
| Panama | 5 years | 2014, 2019 |
| Paraguay | 5 years | 2008, 2013, 2018 |
| Peru | 5 years | 2006, 2011, 2016 |
| Uruguay | 5 years | 2014, 2019 |
| Venezuela | 6 years | 2006, 2012, 2018 |

* Barbados and Suriname have also had cases brought against the military, but are parliamentary democracies. As such, neither is included in these analyses.

† Only election years that appear in the dataset are included. If the state did not have a compliance order pending in a particular election cycle, that election year is excluded. For example, Argentina held presidential elections in 2007 and 2011, in addition to 2015. However, the only case in the dataset, *Arguelles v. Argentina*, was judged in 2014, so only 2015 appears as an observed election year.

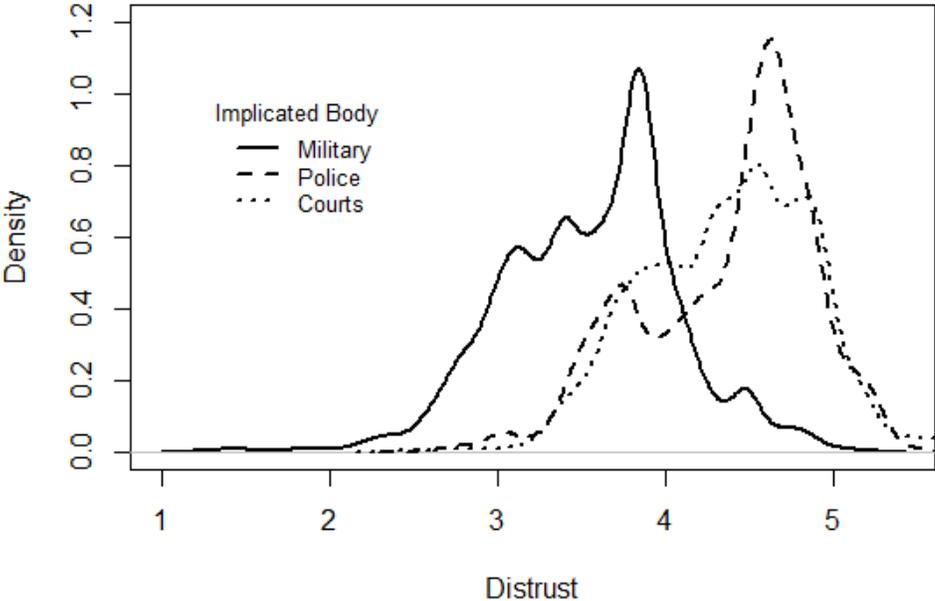
Table A4: Result also holds when standardizing distrust of military

| | <i>Dependent variable: probability of compliance</i> | | |
|---|--|-------------------|-------------------|
| | (4) | (5) | (6) |
| Distrust of military | 0.66*** (0.19) | 0.59*** (0.20) | 0.58*** (0.20) |
| Proximity to election | 0.19* (0.11) | 0.20* (0.11) | 0.22** (0.11) |
| Distrust of military × Proximity to election | 0.19*** (0.07) | 0.19*** (0.07) | 0.19*** (0.06) |
| Multilateral debt | | 0.00 (0.02) | |
| DAC aid (log) | | 0.37 (0.35) | |
| GDP/capita (log) | | -2.33* (1.29) | -2.82** (1.41) |
| Left government | | | -0.59* (0.35) |
| Unemployment | | | -0.01 (0.11) |
| Num. obs. | 3149 | 3149 | 3149 |
| Num. events | 201 | 201 | 201 |
| State FE | Yes | Yes | Yes |
| Issue FE | Yes | Yes | Yes |
| Order indicators | Yes | Yes | Yes |
| Clustered SE | Case | Case | Case |

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

Figure A1: Citizens are more ambivalent about the military compared to police and courts.

(a) Density plot of distrust of military, police, and courts. The mean level of distrust of the military is about one point lower than the mean level of distrust of the police and courts.



(b) Rug plot of distrust showing distribution of the data.

