

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 vary 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 enacted during the military dictatorship 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 their decision. 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 in human rights literature 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 (Lessa, 2011). 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, but it is ultimately up to individual leaders whether or not to comply.

Previous scholarship has addressed various ways in which domestic politics can affect compliance. Notably, the proposed mechanisms – persuasion, naming and shaming, coercion – assume that voters always want 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,

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

²See, e.g., Keck and Sikkink (1998); Risse, Ropp and Sikkink (1999); Checkel (2001); and Goodman and Jinks (2004) on persuasion; Keck and Sikkink (1999); Drinan (2002); Hafner-Burton (2008); and Cole (2012) on shaming; and Dai (2005); Hafner-Burton (2005); Lebovic and Voeten (2009); Smith-Cannoy (2012); Conant (2014); Follesdal (2016); and Hong and Uzonyi (2018) on coercion.

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 dilemma 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; 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 military is the implicated actor in nearly 40% of judgments.

Despite the abuses committed by the military, the military as an institution still retains popularity in many states. As such, voters may not want to see the crimes re-litigated.⁵ Some overs are even nostalgic for the days when the military was in charge, as evidenced by the 2018 Brazilian presidential election. Even if voters do not wish for the military to govern, they may still recognize the important security functions played by the armed forces, and not want the military punished for past abuses.

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. Because leaders can be voted out of office, they must be accountable to the public. This ac-

³Trinidad and Tobago and Venezuela denounced the Convention in 1998 and 2012, 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 *Iucher 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.

⁵Many 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.

countability increases around the time of elections, as the punishment for non-responsiveness is more proximate. Thus, closer to the election, the leader becomes more responsive to the public's — as opposed to her own — preferences.

I test this argument using an original dataset of all judgments against the military from the Inter-American Court of Human Rights. As most members are presidential democracies, election timing is fixed.⁶ 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 proximity to election 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 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 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. This is not to say that non-compliance is a normatively good outcome — democracies often make decisions that are unfair or unjust — but that it is one supported by the majority. Non-compliance is thus not necessarily a failure of the institution, but a failure of preferences for compliance in a democratic public.

⁶The exceptions are Barbados and Suriname, which are both parliamentary systems.

My second contribution is to address compliance in a previously understudied region – Latin America – where leaders are often asked to directly confront the abuses of the past regime.⁷ 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 the individual remedies within cases as the unit of analysis, rather than the case itself.⁸ 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

⁷The 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.

⁸An 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.

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.⁹

This paper proceeds as follows. In the next section, I 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: Domestic Political Incentives for Non-Compliance

Previous accounts of non-compliance presume a particular model of international law violations in which (1) the state violates international law and (2) the state and citizens within the state have opposite preferences on compliance. In this conceptual model, the state's underlying preference is for non-compliance, voters prefer compliance, and international courts are necessary to force leaders to meet the voters' demands. As such, extant human rights scholarship that considers the role of voters in leaders' compliance decisions generally focuses on voters pressuring leaders toward *more* compliance, rather than less (e.g. Tomz, 2008; Simmons, 2009; Putnam and Shapiro, 2013; Chilton, 2014; Dai, 2014). While scholarship focusing on compliance with international trade law has paid more attention to coalitions of voters who may prefer non-compliance (e.g. Downs and Rocke, 1995; Dai, 2006; Grieco, Gelpi and Warren, 2009), the presumption has been that no voter prefers non-compliance when it comes to human rights commitments.

Suppose that the Inter-American Court issues a judgment against the state, in which it finds that the state has committed several human rights violations. Although the judgment finds the state (as a unitary actor) responsible for violations of the American Convention on Human Rights, the ruling implicates a particular domestic actor that committed the violation. As seen in Table 1, this implicated actor is most likely the military. Along with

⁹These are the judgments of the Inter-American Court issued between 1989 and 2014.

finding the state responsible, the Court’s judgment also includes a list of remedies the state must undertake to rectify the violation.

Table 1: Distribution of implicated actors in cases before the Inter-American Court of Human Rights

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.

The Court then transmits the judgment to the state. The leader of the state receives the judgment and decides whether and to what extent she will comply and fulfill the Court’s orders.¹⁰ Although leaders may 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. The public observes the leader’s choice of compliance and subsequently chooses a level of support for the leader. Whether the public’s support is necessary for the leader to stay in office varies over time; in other words, she is sometimes more accountable to the public, and other times less. The leader’s need for accountability to maintain power dictates her responsiveness to the public’s preferences. Thus, the leader decides whether to comply based on her need for accountability and the public’s preferences for compliance.

The leader’s need for accountability varies over time, and is directly related to the level

¹⁰For 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.

of threat to her power or, alternatively, her fear of losing office. As mass threats to her power increase, the leader becomes more responsive to the public's preferences.¹¹ However, because the public does not always support compliance, increased responsiveness does not always imply an increased probability of compliance. Thus, an accountable leader is not one who necessarily always chooses compliance, but one who chooses a level of compliance that matches the public's preferences.

Because leaders can be voted out of office, their 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 public supports the leader by voting for the incumbent (or incumbent's party).

The public's preferences for compliance, *per se*, are not observable, but its level of support for the military can be observed.¹² Public support for the military proxies for support for compliance through two possible mechanisms, one direct and one indirect. As a direct mechanism, one could imagine that because the public supports the military, voters do not want to see the military as an institution punished. Alternatively, and more indirectly, support for the military could mean that the public supports whatever the military's preferences are toward compliance. Because compliance implicates the military, the military would prefer that leaders do not comply, so public support for the military thus correlates with public support for non-compliance.

¹¹One could imagine a similar scenario for elite threats in which as elite threats to the leader's power increase, the leader becomes more responsive to the preferences of the elites, rather than the masses.

¹²One could imagine making the public's preferences for compliance directly observable using survey methods. However, the leader may also use the public's attitude toward the military as a rough proxy for compliance preferences, so I am comfortable doing so here.

The military holds a unique position in Latin America, not only because of its preeminence in the past, but also because of the way the institution is revered today. Confronting the military's past abuses is a polarizing issue in Latin America (de Brito, 2001; Achugar, 2007; Isaacs, 2010; D'Orsi, 2015). In a 2006 survey conducted in Guatemala, Isaacs (2010) found that 34% of victims also believed that forgetting was a key ingredient of reconciliation. This was a greater percentage than the 21.4% of civil society organizations supported forgetting, suggesting that even if human rights activists believe that remembering the past and confronting past abuses is necessary, the victims they represent do not always share this view. Some opinion polls have also shown that "the past is not a political or policy priority" (de Brito, 2001, pg. 157). All of this suggests that the public's preferences are not uniformly for compliance.

Moreover, even if voters are willing to confront past abuses, they may still prefer non-compliance when the military is implicated because of the military's importance today. Domestic institutions are often perceived as weak or ineffective, so the public generally places more faith in the armed forces' ability to protect human rights than the police's (Pion-Berlin and Carreras, 2017). The military is also frequently used for domestic security purposes, including quelling crime and gang violence and providing security for major sports events like the World Cup and Olympics, hosted by Brazil in 2014 and 2016, respectively. Most recently, the Brazilian military took over security operations in Rio de Janeiro, the first time such intervention took place since the military dictatorship ended.¹³ Thus, given the importance of the military in Latin American society today, citizens can prefer non-compliance with orders that implicate the military, even if they are not nostalgic for the military regimes of the past.

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.

¹³Ernesto Londoño and Shasta Darlington, "Brazil's Military is Put in Charge of Security in Rio de Janeiro," *New York Times*, February 16, 2018.

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 2.

Table 2: 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.¹⁴ 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 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;

¹⁴As such, the Commission functions both as a court of first instance and also as a petitioner.

if the state concedes the violation, the case moves to the reparations stage.¹⁵ 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.¹⁶

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.¹⁷ 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.

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).

¹⁵Although 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.

¹⁶If 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 Martin 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.

¹⁷The 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.

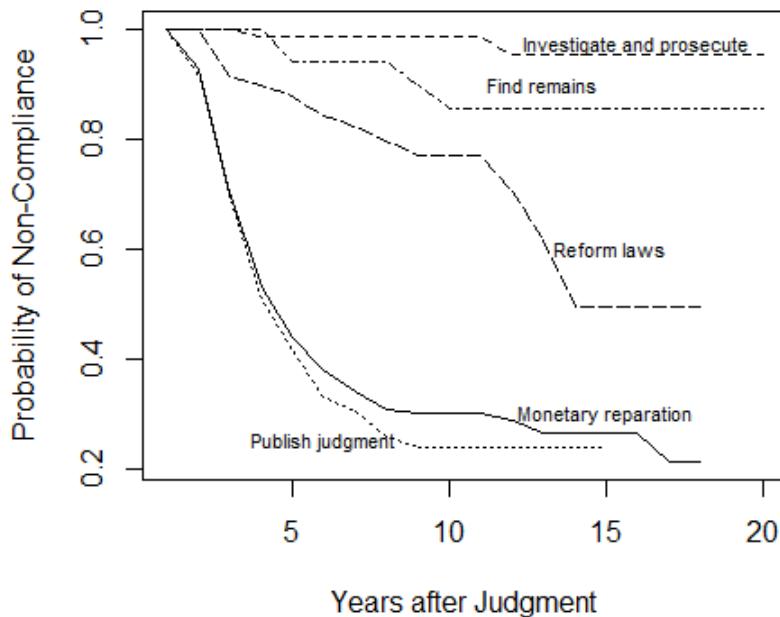
In recent years, the Court has allowed states to participate in “compliance hearings” where state officials can testify about what measures have been taken. Because of the high burden states must meet in order to have a case closed, the Inter-American Court has closed fewer than 15% of its cases that 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.

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)

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



to generate a dataset containing about 540 unique compliance orders.¹⁸ Table 3 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 that have never been monitored, the average number of compliance reports per case is 2.47.¹⁹ The unit of analysis is a compliance-order-year; the outcome (compliance) is coded as 1 if

¹⁸This represents roughly 36% of all judgments through 2014 and 40% of all compliance orders.

¹⁹Even 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).

the state complied with the order in that year and 0 otherwise.

Table 3: 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 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. A complete balance check is

available in the Appendix.²⁰

Crucially, there is no significant difference in monitoring based on election year. If the Court were more likely to monitor cases closer to elections, then any observed relationship might be due to the leader responding to the Court's impending monitoring report, rather than the public's preferences close to an election. To check for this source of bias, I ran a simple logistic regression of a binary variable indicating whether a monitoring report was issued in that year on a second binary variable indicating whether it was an election year. There is no relationship: the coefficient on election year is positive but insignificant ($p=0.68$).²¹ I also checked whether reports were more likely closer to an election; the coefficient was negative, but also insignificant ($p=0.50$). Thus, timing of monitoring reports is not related to timing of elections, so any observed compliance closer to elections is not due to the Court simply being more likely to monitor cases closer to elections.

Second, some might be concerned that the orders themselves are endogenous to the probability of compliance because the Court might take into account what orders states are likely to or have the capacity to fulfill. However, there is no evidence that the Court takes into account either of these factors when issuing orders. While lawyers on both sides can recommend particular remedies, the Court does not need to follow either side's recommendations and can (and does) recommend remedies that were not requested by either party. Moreover, the Court does not order remedies based on the probability of compliance. 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.

²⁰See Table A1.

²¹The p-values for logistic regression are based on corrected standard errors, where errors are clustered by case.

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.²² 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 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.²³ 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.

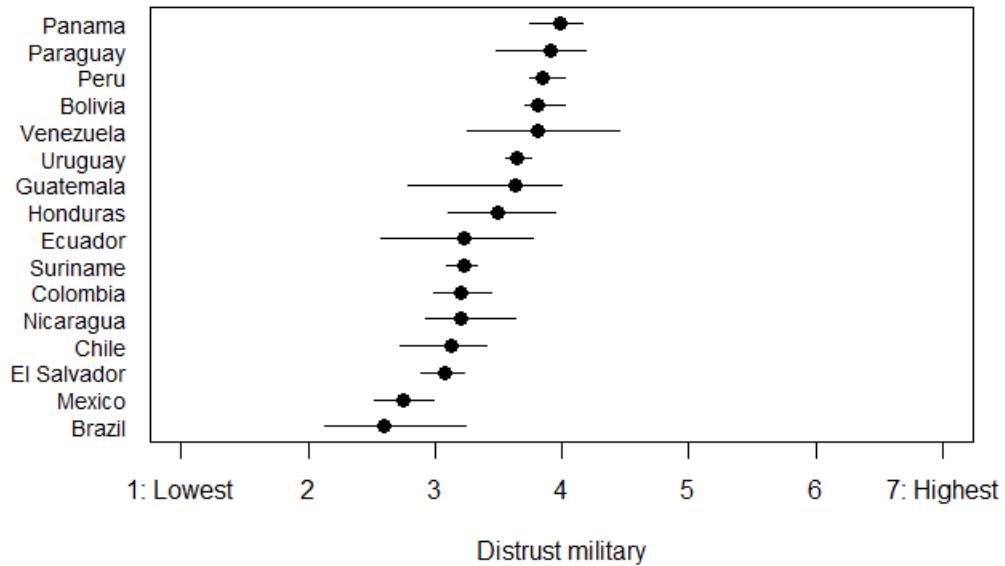
To measure threat of losing office, I create a variable to measure the proximity to the next executive election.²⁴ Presidential elections occur every four, five, or six years,

²²This 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.

²³This is survey question B12.

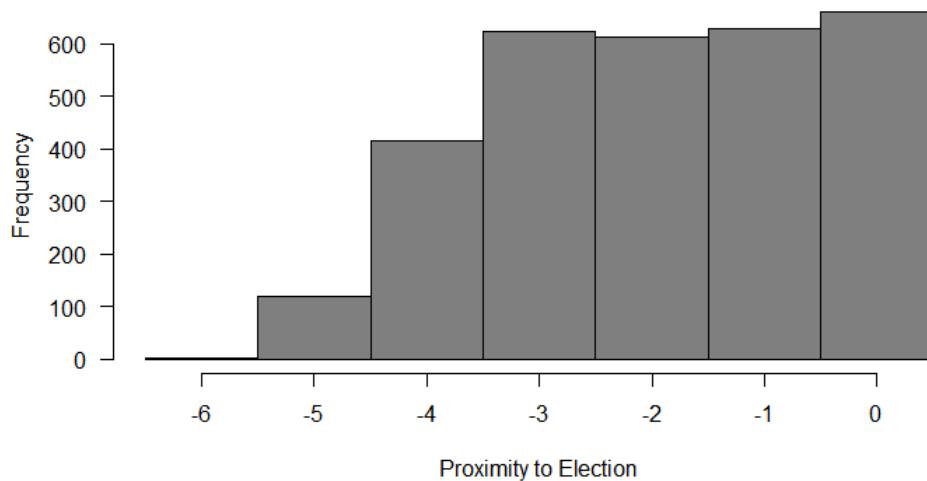
²⁴As most states in Latin America are presidential democracies, election timing is fixed and exogenous. Barbados and Suriname, as parliamentary systems, are excluded from this analysis, although this only eliminates three cases (all from Suriname; Barbados does not have any cases that implicate the military).

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



depending on the state.²⁵ 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



Note: 0 indicates that the election is this year; -1 indicates that the election is next year; and so forth.

²⁵See Table A2 for the election years that appear in the data for each state.

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.²⁶ 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 (Baetschmann and Winkelmann, 2013; Hardin and Hilbe, 2014). Coefficients can be interpreted as the probability of compliance in the current period, conditional on survival (non-compliance) in 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.²⁷ 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.

I include several controls for possible alternative explanations. First, I include controls that are meant to proxy whether compliance is about poor states being bullied by richer and more powerful states. As one lawyer arguing before the Court has told me, Ecuador is his [favorite state] because “they’re poor and they sign everything.”²⁸ States that are vulnerable to outside pressure because they are reliant on foreign aid may be more likely to comply. To capture this vulnerability, I use three measures: *DAC aid* (the logged amount of aid in constant USD that a country receives from all Development Assistance Countries donors

²⁶I use full compliance as the event because the Court continues monitoring orders that are in partial compliance.

²⁷Although 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.

²⁸Personal interview with author, October 27, 2015. “Favorite state” is a euphemism for what he actually said.

each year),²⁹ *Multilateral debt* (the percentage of total external debt owed to multilateral lenders each year), and *GDP/capita*. Second, in another set of models, I include controls that capture aspects about the state’s inclination toward compliance and capacity to fulfill the Court’s orders. These include *Left government* (coded 1 if the government is classified as Left by the Database of Political Institutions), which is meant to capture the government’s underlying inclination toward human rights; and *GDP/capita* and *Unemployment*, both of which proxy the state’s capacity for compliance.

Finally, in all models, I include indicator variables for the most commonly ordered remedies, as well as fixed effects for state and issue area. Given that states have different underlying probabilities of compliance, it is important to account for this source of variation in the statistical models. Additionally, there are different probabilities of compliance associated with ordered remedies, based on the degree of difficulty. The 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”. This is meant to capture any differences that might exist based on the type of case.³⁰ Standard errors are clustered by case because all orders within a given case are monitored at the same time.

3.5. Results

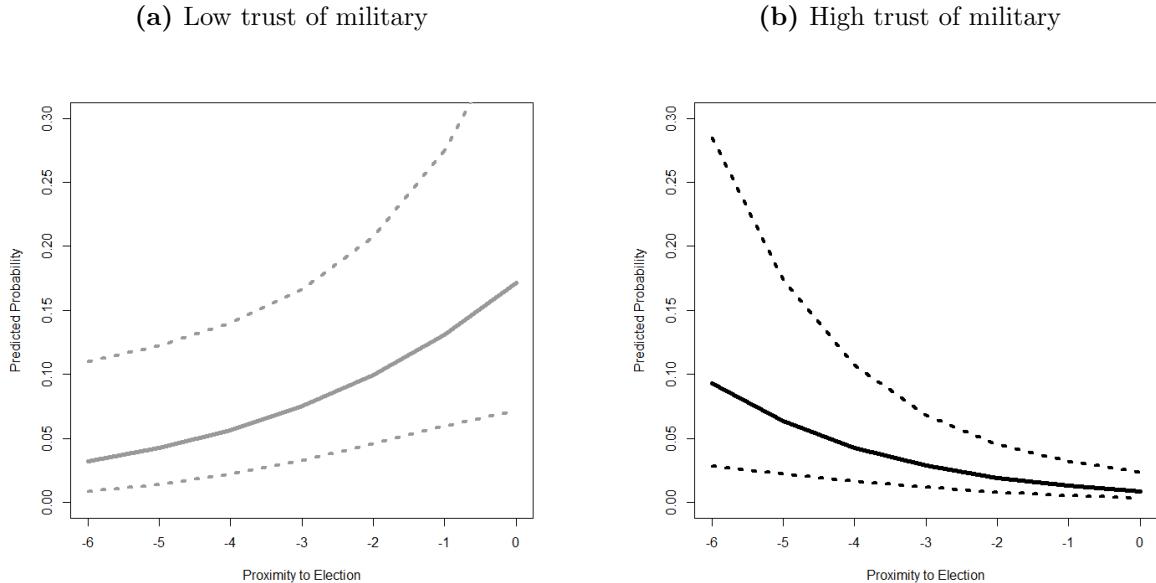
The results in Table 4 illustrate how distrust of the military moderates the effect of proximity to election on compliance. For ease of interpretation, distrust of the military is mean-

²⁹This is Official Development Assistance (ODA) aid only.

³⁰One can also think of this as a more precise way of getting at whether a crime took place during the dictatorship. Certain offenses – like forced disappearance – are associated with dictatorial regimes, whereas others, like torture in detention, might not be. Thus, if there is a difference between military dictatorship-era crimes committed by the military and democratic-era crimes committed by the military, it will be captured by the issue area fixed effects.

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 interaction effect using predicted probabilities generated from Model (1). As proximity to the election increases, the leader grows more responsive to the public's preferences; 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 2.

Figure 4: As proximity to the election increases, the leader becomes more responsive to the public's preferences



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.

Two of the control variables are significant as well. The first is left government, which

Table 4: 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)	(4)
Distrust of military	1.34*** (0.39)	1.18*** (0.41)	1.17*** (0.40)	1.17*** (0.40)
Proximity to election	-0.02 (0.08)	-0.00 (0.08)	-0.02 (0.09)	0.04 (0.09)
Distrust of military × Proximity to election	0.39*** (0.13)	0.38*** (0.13)	0.38*** (0.13)	0.38*** (0.13)
Multilateral debt		0.00 (0.02)		-0.01 (0.02)
DAC aid (log)		0.37 (0.35)		0.35 (0.33)
GDP/capita (log)		-2.33* (1.29)	-2.82** (1.41)	-2.97* (1.55)
Left government			-0.59* (0.35)	-0.57* (0.34)
Unemployment			-0.01 (0.11)	-0.02 (0.12)
Num. obs.	3149	3149	3149	3149
Num. events	201	201	201	201
State FE	Yes	Yes	Yes	Yes
Issue FE	Yes	Yes	Yes	Yes
Order indicators	Yes	Yes	Yes	Yes
Clustered SE	Case	Case	Case	Case

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

Note: Result also holds when standardizing the measure of distrust. Full table available in the appendix (Table A3).

is negative and significant. It is difficult to know what to make of the direction of this effect because while the left has been historically associated with human rights, this connection may have more to do with the right's connection to military dictatorship and human rights abuses than it does any pro-human rights policies the left has implemented (Bowen, 2011; Castañeda, 2006). More interesting is the statistically significant coefficient on GDP per capita. A positive coefficient would have implied, perhaps, that states with greater capacity are more likely to comply. However, this coefficient is negative. This suggests that GDP

per capita may here be capturing some element of international pressure that states feel to comply. Poorer states may be susceptible to carrots dangled by richer and powerful states, which might lend some support to a story about coercion as an explanation for compliance. However, including this control variable barely changes the size of the interaction effect.

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 5. 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 5: 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%	[11%, 30%]
Publish judgment	15%	[9%, 22%]
Monetary reparation	15%	[10%, 21%]
Provide training in human rights	4%	[1%, 9%]
Reform legislation	2%	[1%, 5%]
Provide medical care	1%	[1%, 4%]
Recover victims' remains	1%	[0%, 3%]
Investigate; prosecute; punish	0%	[0%, 1%]

Note: Predictions were generated using fixed effects from Model (1) in Table 4, 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.

Next, to illustrate the interaction between distrust of the military and proximity to election, I generated predicted probabilities of compliance in three different judgments, one each

from Brazil, El Salvador, and Guatemala (Table 6).³¹ Brazilians have a high level of trust, on average, 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 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.³² Finally, in El Salvador, 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.

Table 6: 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%

Note: Predictions were generated using Model (1) in Table 4 setting issue to forced disappearance and order to publicly accept responsibility. Distrust of military is set at the 75th percentile for each state. The probabilities can be interpreted as the probability of compliance four years after judgment for each of these states, for a given proximity to the election.

Does this result hold for other implicated actors? The police and domestic courts are the next most frequent violators (responsible for 33 and 27 judgments against the state, respectively). To assess whether the result is unique to the military, I run models on the subsets of the data in which the police and courts are implicated. The models are identical

³¹These cases are *Gomes Lund v. Brazil*, *Serrano Cruz Sisters v. El Salvador*, and *Bamaca Velasquez v. Guatemala*.

³²Note 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 minimum or maximum for each state.

Table 7: The military is a unique institution – the result does not hold when the military is not implicated

	Dependent variable: probability of compliance							
Implicated actor	(5) Police	(6) Police	(7) Police	(8) Police	(9) Courts	(10) Courts	(11) Courts	(12) Courts
Distrust of police	0.86 (0.77)	0.83 (0.79)	0.74 (0.79)	0.65 (0.78)				
Distrust of courts					1.65 (1.21)	1.30 (1.12)	1.31 (1.27)	1.09 (1.42)
Proximity to election	0.08 (0.16)	0.05 (0.17)	0.11 (0.17)	0.07 (0.18)	0.22 (0.26)	0.26 (0.23)	0.28 (0.22)	0.28 (0.21)
Distrust of police × Proximity to election	-0.47 (0.31)	-0.52* (0.31)	-0.48 (0.29)	-0.51* (0.31)				
Distrust of courts × Proximity to election					0.16 (0.52)	-0.07 (0.45)	-0.06 (0.52)	-0.14 (0.57)
Multilateral debt		0.05 (0.05)		0.05 (0.05)		0.04 (0.05)		0.04 (0.07)
DAC aid (log)		-0.05 (0.06)		-0.06 (0.06)		-0.00 (0.07)		-0.01 (0.07)
GDP/capita (log)		0.38 (3.64)	1.73 (4.33)	1.91 (4.12)		-0.42 (1.05)	-1.71 (1.74)	-0.95 (1.90)
Left government			-1.02* (0.54)	-0.92 (0.57)		-0.16 (1.01)	-0.46 (1.21)	-0.46
Unemployment			0.05 (0.23)	0.10 (0.21)			0.14 (0.32)	0.08 (0.34)
Num. obs.	1119	1119	1119	1119	488	488	488	488
Num. events	99	99	99	99	59	59	59	59
State FE	Yes	Yes	Yes	Yes	No	No	No	No
Issue FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Order indicators	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clustered SE	Case	Case	Case	Case	Case	Case	Case	Case

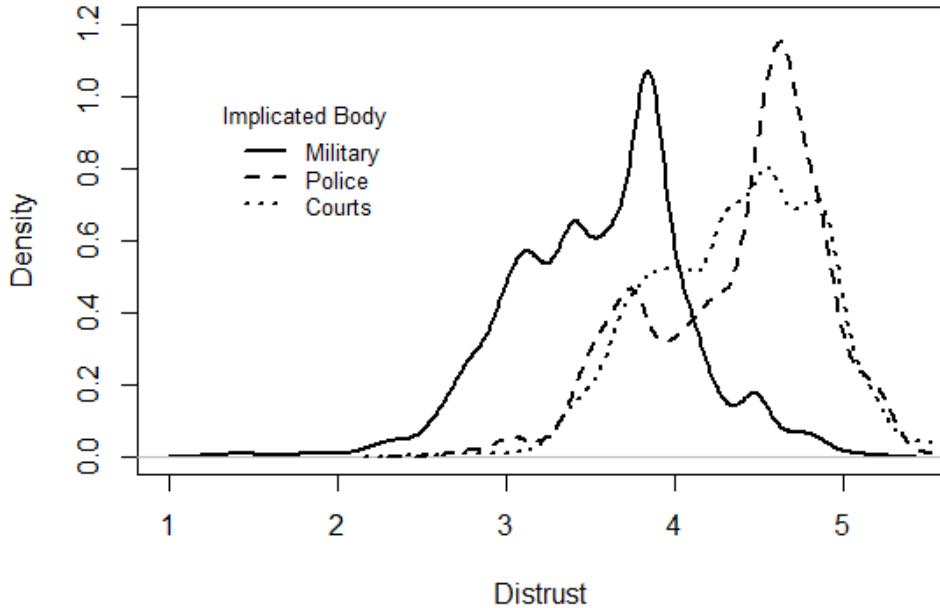
*** $p < 0.01$, ** $p < 0.05$, * $p < 0.1$

to those in Table 4, with two exceptions. First, instead of distrust in the military, which I do not expect to be relevant in cases in which the military is not implicated, I use distrust in the police and distrust in the highest domestic court.³³ Second, owing to the small number of observations, Models (9)–(12) do not include state fixed effects.

As shown in Table 7, the interaction effect generally does not hold when the police or courts are implicated. The interaction term is only significant in two of the eight models, and barely ($p=0.09$). This is because there is insufficient variation in citizens' support for

³³These correspond to questions B18 and B31 in AmericasBarometer, respectively.

Figure 5: Citizens are more ambivalent about the military compared to police and courts



Note: 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.

the police and courts. Citizens almost always dislike the police and courts, but are much more ambivalent about the military. As evidenced by Figure 5, some citizens really like the military (i.e., they report low levels of distrust), but no citizens really like the police or courts. The mean level of distrust in the military is 3.56 on a seven-point scale; conversely, the mean levels of distrust for the police and courts are 4.37 and 4.39, respectively. Additionally, the distribution of distrust is concentrated between 3 and 4 for the military, rather than 4 and 5 for the other two institutions.

4. Conclusion

The extant literature on enforcement with international human rights law assumes that inducements or punishments change a state's cost-benefit calculation such that rational actors would choose compliance. I have shown, however, that the same inducements and punishments can lead to non-compliance. This occurs when voters would prefer non-compliance

and the leader must follow the voters' – as opposed to her own – preferences in order to remain in power. Thus, the leaders' decision is based on her level of accountability – here measured as the proximity to presidential election – and the public's level of support for compliance. I show that leader becomes more responsive to the public's preferences closer to an election; however, whether this results in compliance depends on what the public's preferences are. When the public prefers compliance, the probability of compliance increases closer to an election, but when the public prefers non-compliance, the probability of compliance decreases.

In the case of the Inter-American Court, I have argued that voters may prefer non-compliance when the judgment implicates the military and their trust in the military is high. However, there is nothing unique about the military *per se*; it just so happens that in Latin America, the military holds a high position in society and was in power in the previous regime. In other regions, a different actor might hold this privileged position. In Poland, for example, “the public has expressed a nostalgia for the communist past” through public opinion surveys and in voting for former communist party members in presidential elections (Curry, 2007, pg. 69); one could imagine the Polish government facing domestic opposition to compliance if the European Court of Human Rights asked Poland to confront abuses committed by the Communist regime. The uniqueness of the military as implicated actor in Inter-American Court judgments has less to do with the military as such, and more to do with the role the military plays as the present-day manifestation of a previous regime.

While commitment to human rights norms may help consolidate liberal democratic reforms (Moravcsik, 2000; Zschirnt and Menaldo, 2014; Hafner-Burton, Mansfield and Pevehouse, 2015), it is less clear what to make of the relationship between democracy and remedying human rights violations. The transitional justice literature itself is ambivalent on whether accountability for past violations, amnesty, both, or neither are necessary for democratic consolidation (Olsen, Payne and Reiter, 2010). Nevertheless, human rights institutions in general, and the Inter-American Court in particular, have come down on the side of ac-

countability. In doing so, the Court has taken a position on an issue that has not been definitively settled by scholars, activists, or – most importantly – victims of human rights abuses.

But the Court's position in favor of accountability may not be sustainable, given the constraints placed by a voting public on its democratically elected leaders. Even if it was known that accountability for past human rights abuses was the best way to consolidate democracy, international courts would still face the additional challenge of contending with voters who do not believe accountability is the necessary or even desirable way to move forward. Mature democracies might prioritize the rule of law and compliance over the public's preferences, particularly when they can shift blame to an international court (Allee and Huth, 2006). However, in less mature democracies, like those of the Inter-American Court, leaders may simply opt for non-compliance instead of justifying an unpopular decision as one mandated from an outside institution. When the public's preferences are aligned with the international court's, there is no issue. But when the preferences are not aligned – that is, when a court is on the side of compliance, but the public is not – it is not clear why a democratically-elected leader should choose to follow the international court's recommendation over the demands of her own citizens. International human rights courts can help facilitate leaders' accountability to citizens by consolidating information and legitimizing demands for reform, but only when the aims of the human rights court and public are the same. Moving forward, we have to allow for the possibility that the public's preferences can shift. In other words, voters may no longer demand human rights, or may not demand compliance with rulings in every instance.

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Appendix

Table A1: Logistic regression of covariates on monitoring status

Variable	Coefficient	Clustered SE	p-value
Time-invariant covariates			
Judgment year	-0.05	0.01	0.00
Provide medical care	-0.10	0.03	0.00
Publish judgment	-0.04	0.02	0.07
Provide training in human rights	-0.06	0.06	0.28
Investigate, prosecute & punish	0.01	0.01	0.36
Recover victims' remains	0.02	0.05	0.73
Publicly accept responsibility	-0.01	0.04	0.78
Reform legislation	0.01	0.05	0.82
Monetary reparation	0.00	0.02	0.96
Time-varying covariates			
DAC aid (log)	0.01	0.00	0.00
Years post-judgment	0.01	0.00	0.20
Unemployment	-0.01	0.01	0.33
Left government	0.01	0.04	0.82
GDP per capita (log)	0.01	0.04	0.89
Multilateral debt	0.00	0.00	0.98

Note: Standard errors are clustered by case.

Table A2: 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 A3: Robustness: results for proximity to election hold when standardizing distrust of military

	<i>Dependent variable: probability of compliance</i>			
	(C1)	(C2)	(C3)	(C4)
Distrust of military	0.66*** (0.19)	0.59*** (0.20)	0.58*** (0.20)	0.58*** (0.20)
Proximity to election	0.19* (0.11)	0.20* (0.11)	0.22** (0.11)	0.24** (0.11)
Distrust of military × Proximity to election	0.19*** (0.07)	0.19*** (0.07)	0.19*** (0.06)	0.19*** (0.06)
Multilateral debt		0.00 (0.02)		-0.01 (0.02)
DAC aid (log)		0.37 (0.35)		0.35 (0.33)
GDP/capita (log)		-2.33* (1.29)	-2.82** (1.41)	-2.97* (1.55)
Left government			-0.59* (0.35)	-0.57* (0.34)
Unemployment			-0.01 (0.11)	-0.02 (0.12)
Num. obs.	3149	3149	3149	3149
Num. events	201	201	201	201
State FE	Yes	Yes	Yes	Yes
Issue FE	Yes	Yes	Yes	Yes
Order indicators	Yes	Yes	Yes	Yes
Clustered SE	Case	Case	Case	Case

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