Past Regret and Future Fear: Compliance with International Law

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November 7, 2018

Abstract

International law has increasingly recognized individuals as rights-holders to whom states owe obligations. The courts created and empowered to protect human rights victims are unable to enforce their judgments, but leaders voluntarily comply with their rulings at least some of the time. What explains this variation? I examine this question in the context of the Inter-American Court of Human Rights, which operates in Latin America. The recent history of military dictatorship in most member-states – in which human rights abuses were widespread – informs much of the Court's present caseload, as nearly half of the rulings implicate military officials. In this context, I argue that the leader's decision to comply is a function of her underlying preference for human rights; the extent to which the public poses a threat to the leader's power; and whether the public supports compliance. Although human rights scholars argue that voters generally do support compliance, I find that attitudes toward compliance are not so uniform when the military is implicated. In these cases, the effect of threat to the leader on compliance is moderated by the public's support for the military. 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 as threat to the leader increases; 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.

1. Introduction

International law has increasingly recognized individuals as rights-holders to whom states owe obligations. Today there are dozens of courts and quasi-judicial bodies that are empowered to hear claims of rights violations, find states responsible for those violations, and order remedies, but these courts are considered relatively toothless since they lack enforcement powers. Nevertheless, leaders voluntarily comply with their rulings at least some of the time. What explains this variation? In other words, why do leaders sometimes comply with rulings from international human rights courts, but other times ignore them altogether?

Previous scholarship has addressed various ways in which domestic politics can affect compliance with international courts' rulings. Allee and Huth (2006) argue that international court rulings may facilitate compliance by providing the leader an opportunity to shift blame away from herself when implementing unpopular domestic reforms. The public might also pressure leaders to comply; for example, Dai (2005) argues that compliance may be politically advantageous for the leader, who relies on electoral support from the pro-compliance constituency. Alternatively, domestic veto players might block compliance efforts, making implementation more difficult (Peritz, 2014). Thus, the nature of domestic politics within states is an important source of variation in explaining compliance outcomes at any international institution.

I consider the ways in which the public can pressure leaders on compliance in weak and transitioning democracies. 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 supranational human rights institutions that require more delegation of authority. Just as these states join

international courts for different reasons than mature democracies and autocracies do, one might expect them to comply with subsequent court rulings for different reasons as well.

Specifically, I consider why states comply with rulings 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.[1] All but two of the Court's current members are weak democracies.[2] As noted by Carozza (2015), only states with a history of authoritarianism joined the Court; states without this history, like the United States and Canada, did not. Moreover, most member states ratified the American Convention on Human Rights and accepted the contentious jurisdiction of the Court upon transitioning from military dictatorship to democracy in the early and mid-1980s. Thus, 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. It is unsurprising that the attitude of member states toward the Court has been described as "ambivalent...at best and hostile at worst" (Steiner and Alston, 2000, pg. 869).

Despite the perceived unwillingness of leaders to comply, they nevertheless sometimes do. I argue that the leader's decision is a function of her true underlying preference for human rights and two additional variables: the extent to which the public poses a threat to the leader's power; and whether the public supports compliance.[3] When the public poses little threat to the leader, there is separating behavior: leaders decide whether to comply

[1]Trinidad 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.

[2]Here 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.

[3]In 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.

based on their true preferences. However, when the public poses a greater threat to the leader, there is pooling behavior that reflects the public's preference for compliance. That is, when the public supports compliance, leaders pool on compliance; and when the public opposes compliance, leaders pool on non-compliance.

I test this argument using an original dataset of compliance orders from the Inter-American Court of Human Rights in judgments that implicate the military. I measure threat to the leader as the proximity to the next executive election.[4] I measure support for compliance based on the public's attitudes toward the actor implicated in the judgment – in this case, the military. 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 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. My first contribution is to examine incentives for compliance in a regional human rights court outside of Europe.[5] The compliance conditions differ between the European and Inter-American Courts of Human Rights in several ways. For one, most current members of the European Court, especially those that are members of the European Union, are mature, not transitioning, democracies. For another, many European states are monist, which means international court judgments will

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

[5]The 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.

take direct effect. In other words, once the European Court issues a judgment, members need only disseminate the judgment to their domestic courts for it to be implemented, which greatly simplifies the process of compliance (Nollkaemper, 2014). Most members of the Inter-American Court, conversely, do not give direct effect to judgments, which increases the burden of implementation. Additionally, the availability of material benefits may change the state's decision calculus when weighing costs and benefits of compliance. There may be greater benefits to compliance in the European context because of the European Court's relationship to the European Union.[6] While there may be indirect linkages in the Inter-American system, the potential material benefit is not immediately obvious, as there is no clearly connected economic institution.

My second contribution is to challenge 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. 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 model these preferences directly using public opinion data.

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.[7] 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 closer to 40%, with a high degree of

[6]Membership in the European Court of Human Rights is a necessary but insufficient condition for EU membership.

[7]An 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.

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 61 judgments that implicate the military generate nearly 500 unique compliance orders.[8]

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 several statistical analyses. The final section concludes.

2. Theory: Why Comply?

Scholars have distinguished between two forms of compliance: first-order compliance and second-order compliance (Fisher, 1981; Simmons, 1998). First-order compliance addresses the extent to which states adhere to legal obligations as identified in treaty texts; for example, does the state respect all of the substantive rights in a human rights treaty? Second-order compliance, on the other hand, is the extent to which states follow the judgments of international institutions, after a violation of the treaty has taken place. Second-order compliance, then, necessarily comes after a state has failed to comply with its original substantive obligations, as failure to comply with the treaty often triggers judgments from international institutions. In the case of the Inter-American Court, the institution judges whether states have violated their obligations under the American Convention on Human Rights. States achieve second-order compliance when they follow the Inter-American Court's rulings.

First-order and second-order compliance vary significantly in terms of costs. First-order compliance is not necessarily costly because states select into the treaty regimes (Downs, Rocke and Barsoom, 1996; Von Stein, 2005). In other words, states have already considered

[8]These are the judgments of the Inter-American Court issued between 1989 and 2014.

whether they will subsequently comply (or not) with the provisions in the treaty when they choose to join.[9] Therefore, compliance may be relatively easy or costless.

Conversely, second-order compliance is costly *because* of selection effects. By the time a state receives an adverse court judgment, it has already had several opportunities to resolve the matter through settlement or compliance. This is especially true in the case of the Inter-American Court because the Court is the second of two institutions to hear the case within the Inter-American system. If compliance were costless, the case should have been resolved at the Inter-American Commission, which is the gate-keeper institution to the Court. The fact that the case has reached this stage of the process implies that there is some domestic opposition to compliance, so implementation of the rulings may be politically costly for the leader. Human rights cases in particular may incur high levels of opposition "because the defendant in the case will almost always be a state actor, and the legal review will involve asking whether legislative actors violated the law or exceeded their authority" (Alter, 2008, pg. 40).

Suppose that the Inter-American Court decides that military within a particular state has committed a human rights violation.[10] 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. Thus, the leader's decision is a function of her underlying preference for human rights; whether the public supports compliance; and the extent to which the public poses a threat to the leader's power.

When considering the role of the public in the leader's compliance decision, it is im-

[9] In particular, human rights treaties are most likely to be ratified by mature democracies that already respect most or all of the provisions in the treaty, and autocracies would not change behavior under any circumstance (Hathaway, 2007; Vreeland, 2008; Hollyer and Rosendorff, 2011).

[10] For 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.

portant to recall the domestic context in which judgments of the Inter-American Court are received. On a continuum from autocracy — where leaders are powerful but not accountable — to mature, fully consolidated democracy — where leaders are accountable but not very powerful — most members of the Inter-American Court are weak democracies that fall somewhere in the middle. The substantive importance of this classification is two-fold. First, Latin American executives generally have the capacity to comply.[11] 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). As such, while some scholars have argued that non-compliance results when leaders lack the capacity to comply (Chayes and Chayes, 1993; Tsebelis, 1995; Peritz, 2014), these concerns are not as prevalent in this particular context. Second, because the leader is only somewhat accountable to the public, she is not always responsive to the public's preferences. Unless the leader fears losing office, she does not necessarily need to do what the public wants, as there are few consequences for going against the public's demands. Thus, the level of threat currently posed by the public to the leader determines how responsive the leader is to the public's — as opposed to her own — preferences on compliance.

Does the public always support compliance? Previous scholarship has presumed the answer is yes: the government is the guilty party responsible for the human rights violation; the public demands justice; and an international court is necessary to facilitate the leader meeting this demand.[12] 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

[11] Except for two exceptions, all members of the Inter-American Court are presidential democracies.

[12] For example, scholars have argued that non-compliant states must be persuaded (Keck and Sikkink, 1998; Risse, Ropp and Sikkink, 1999; Checkel, 2001), shamed (Keck and Sikkink, 1999; Drinan, 2002; Hafner-Burton, 2008), or coerced (Dai, 2005; Hafner-Burton, 2005; Lebovic and Voeten, 2009; Conant, 2014; Follesdal, 2016) into compliance — all of which presume that the public wants compliance.

oppression is an essential characteristic of democracy.[13] 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).

However, it is *not* necessarily the case that the public always supports compliance. Because different cases implicate different government bodies, compliance does not affect all constituencies equally.[14] When states are told to investigate, punish, and prosecute crimes, for example, compliance will result in specific actors, usually members of the police or military, being put on trial and possibly going to prison. Even if the public generally cares about human rights and the rule of law, it does not necessarily follow that they are pro-compliance, particularly if compliance would implicate a trusted institution.

The possibility of support for non-compliance is particularly salient in the case of judgments that implicate the military. The military still plays an important role in Latin American society. 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). As such, when the Court asks a leader to remove a popular law, like the amnesty laws that were implemented in many states after the transition to democracy, the public might prefer non-compliance. Brazilian government officials were reportedly relieved that the Supreme Court declared the government's attempt to abolish popular amnesty laws as ordered by the Inter-American Court in *Gomes Lund*, despite the president at the time being herself a victim of torture and human rights abuses during the military dictatorship.[15]

[13]Data 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.

[14]See Figure A1 for a distribution of implicated actors by case.

[15]Personal interview with the author, May 2018. Although at first glance this looks like an example of veto players blocking a compliance effort, the Supreme Court's judgment was endogenous to the outcome. The government specifically asked the Supreme Court's opinion on the constitutionality of overturning the

Public support for compliance may determine the direction of the leader's response (compliance or non-compliance), but leaders are not always responsive to the public's demands. Leaders will become more responsive as threats to their power increase. In weak democracies, these threats can come from democratic sources, like elections, or undemocratic sources, like coups. Thus, the leader is most likely to respond to the public's demands for (non)-compliance when public support for the leader matters most, like during an election. When the leader does not fear losing office, she decides to comply based on her own preference. When the leader does fear losing office, however, she becomes responsive to the public's preferences, and chooses a level of compliance that matches the public's. When the public poses little threat to the leader, there is separating behavior: leaders decide whether to comply based on their true preferences. However, when the public poses a greater threat to the leader, there is pooling behavior that reflects the public's preference for compliance. That is, when the public supports compliance, leaders pool on compliance; and when the public opposes compliance, leaders pool on non-compliance. 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.

[Insert Table 1 about here.]

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

amnesty law, knowing that the court would say this effort was unconstitutional, perhaps as a way of shifting blame for non-compliance to another institution.

before the Court.[16] 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; if the state concedes the violation, the case moves to the reparations stage.[17] 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 not found any violations against the state.[18]

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; the average number of compliance orders generated by each case is seven. The Court believes it is part of its mandate to monitor compliance with its orders and to ensure full implementation with the judgment. As such, the institution continues monitoring all orders until they are fulfilled, and cases remain

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

[17] Although 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.

[18] If 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.

open until all orders in the 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). 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.

[Insert Figure 1 about here.]

3.2. *Measuring Compliance*

To measure the dependent variable, I begin by identifying all compliance orders issued by the Inter-American Court. I distill these orders from the operative paragraphs of all judgments against the state issued through 2014 (178) to generate a dataset containing about 1,250 unique compliance orders. 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 327 compliance reports. The average number of compliance reports per case is 1.83, although this number is biased downward, since about 20% 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 2.37.[19] The unit of analysis is a compliance-order-year with the outcome (compliance) coded as 1 if the state complied with the order in that year and 0 otherwise. Because I am interested in cases that implicate the military, I then subset the data to cases in which the military committed the human rights violation. This leaves me with 494 orders from 61 cases, or about 40% of all possible orders.

[Insert Table 2 about here.]

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 the unmonitored orders (which are excluded from the analysis)

[19]Even when the Court does not issue reports, it still considers itself to be monitoring compliance in those cases. For example, in 2007, the Court determined that Chile had complied with six of the nine orders in *Palamara Iribarne*, with orders to guarantee due process, reform legislation, and restrict military jurisdiction outstanding. The case was monitored again in 2009 and 2011, but at that time, Chile had not complied with any of the three outstanding orders. The Court continues to list *Palamara Iribarne v. Chile* as a case in the state of monitoring compliance, even though it has not reported on the case since 2011.

would bias the results. In other words, the Inter-American Court is not more likely to call up cases with high or low levels of compliance. Moreover, the timing of monitoring reports appears to be as if random.

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. Level of distrust is computed from AmericasBarometer surveys, which ask how respondents feel about several institutions. 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.[20] To illustrate the variation between states and over time, I plot the average level of distrust for each state and a line graph of the time trend over the period in Figure 2.

[Insert Figure 2 about here.]

To measure threat of losing office, I create a variable to measure the proximity to the next executive election.[21] Presidential elections occur every four, five, or six years, depending

[20] This is survey question B12.

[21] As 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).

on the state. Figure 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.

[Insert Figure 3 about here.]

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.[22] 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 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.[23] 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 account for the potential selection bias in 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 433 unique compliance orders.[24]

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

[23] Although 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.

[24] Because there is no 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 missing 61 compliance orders as missing completely at random.

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),[25] *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.[26] Standard errors are clustered by case.

3.5. *Results*

[Insert Table 3 about here.]

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 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; 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

[25] This is Official Development Assistance (ODA) aid only.

[26] The most commonly ordered remedies in the 61 cases that implicate the military are: monetary reparations (n=61), investigate, prosecute, and punish (n=50), publish the judgment (n=47), provide medical care (n=34), publicly accept responsibility (n=33), reform laws (n=25), pay for the victim's burial and/or find and locate remains (n=23), and provide training in human rights (n=21). 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".

closer the leader gets to the election. This result aligns with the theoretical expectation presented in Table 1.

[Insert Figure 4 about here.]

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 18%, 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.

[Insert Table 4 about here.]

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.[27] 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

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

34% three years prior to the election to 38% in an election year.[28]

[Insert Table 5 about here.]

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 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 Commission and 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).[29]

I argue that compliance outcomes are determined by three factors: the leader's latent preference for compliance; whether the public supports compliance; and whether the public

[28]Note 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.

[29]Translation by author.

currently poses a threat to the leader's power. 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 next 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 nothing 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 weak and transitioning 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.[30] 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

[30]See Figure A2 for the distribution of the distrust measure for the police and courts relative to the level of distrust of the military.

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 court has been created to serve.

Figures and Tables

Table 1: Summary of Theoretical Expectations

		Leader Replacement: Facing Election? Yes	Leader Replacement: Facing Election? No
Public Opinion: Trust Military?	No	Comply	Leader preference
	Yes	Not comply	Leader preference

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

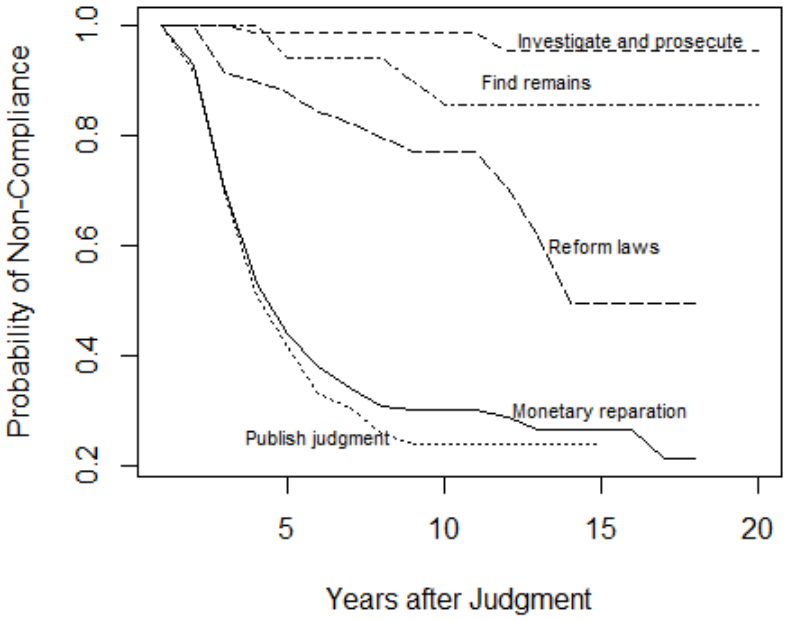
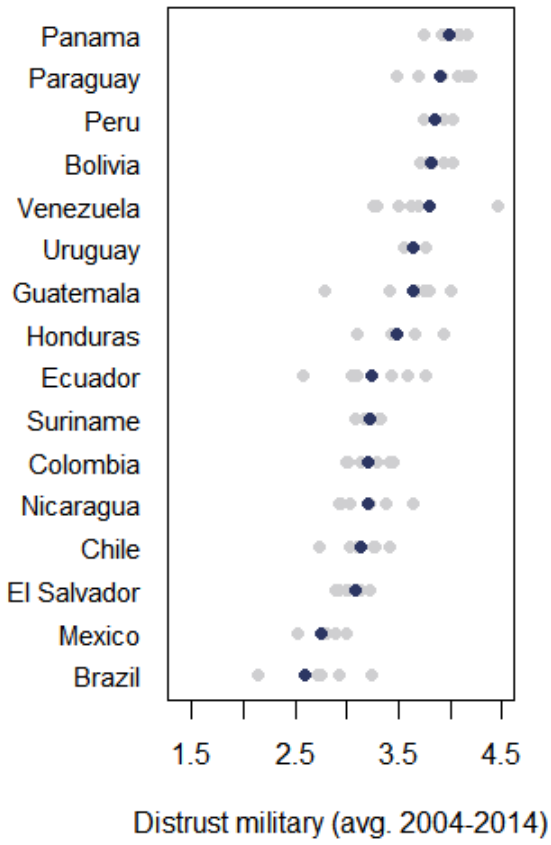


Table 2: Compliance Orders in *Palamara Iribarne v. Chile*

Order	Corresponding Text
Allow publication of previously censored material	The State must **allow Mr. Humberto Antonio Palamara Iribarne to publish his book**, as well as return all the material that was taken from him, in the terms of paragraphs 250 and 251 of the [. . .] Judgment.
Publish the judgment	The State must **publish the entire [. . .] Judgment on the official website**, within a six month term, in the terms of paragraph 252 of the same.
Ensure that the judgment against the victim has no legal effect	The State must, within a six-month term, **leave without effect, in all its points, the convictions issued against Mr. Humberto Antonio Palamara Iribarne**: [. . .]
Reform legislation	The State must a**adopt all the measures necessary to annul and modify, within a reasonable term, any domestic norms that are not compatible with international standards in matters of freedom of thought and expression**, in the terms of the paragraphs 254 and 255 of the [. . .] Judgment.
Restrict or allow the contestation of military jurisdiction	The State must adjust, within a reasonable period of time, the domestic juridical ordinance to international standards on military criminal jurisdiction, in such a way that in the case that it considers the existence of a military criminal jurisdiction necessary, the same must be limited only to the hearing of cases of crimes of duty committed by soldiers in active service. Therefore, **the State must establish, through its legislation, limits to the material and personal competence of the military courts, ensuring that in no circumstance will a civilian be submitted to the jurisdiction of military criminal courts**, in the terms of paragraphs 256 and 257 of the [. . .] Judgment.
Guarantee due process	The State must **guarantee the due process in the military criminal jurisdiction and the judicial protection regarding the actions of the military authorities**, in the terms of paragraph 257 of the [. . .] Judgment.
Pay pecuniary damages to the victim	The State must **pay Mr. Humberto Antonio Palamara Iribarne, within a one-year term, the amounts set as compensation for pecuniary damages** in paragraphs 239, 242, and 243 of the [. . .] Judgment, in the terms of paragraphs 261 through 267 of the same.
Pay non-pecuniary damages to the victim	The State must **pay Mr. Humberto Antonio Palamara Iribarne, within a one-year term, the amount set as compensation for non-pecuniary damage** in paragraph 248 of the [. . .] Judgment, in the terms of paragraphs 261 through 267 of the same.
Pay court costs and expenses	The State must **pay Mr. Humberto Antonio Palamara Iribarne, within a one-year term, the amount set for costs and expenses** in paragraph 260 of the [. . .] Judgment, in the terms of said paragraph.

Figure 2: Variation in distrust of the military varies across states and over time within states.

(a) Dot plot showing the average level of distrust of the military (black) from AmericasBarometer. Grey dots are the averages for each survey period.



(b) Line graph illustrating the time trend for distrust of the military for each state between 2004 and 2014.

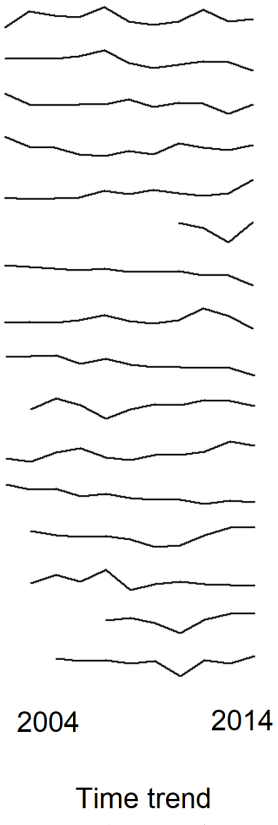


Figure 3: Distribution of the proximity to election variable, where 0 indicates that the election is this year; −1 indicates that the election is next year.

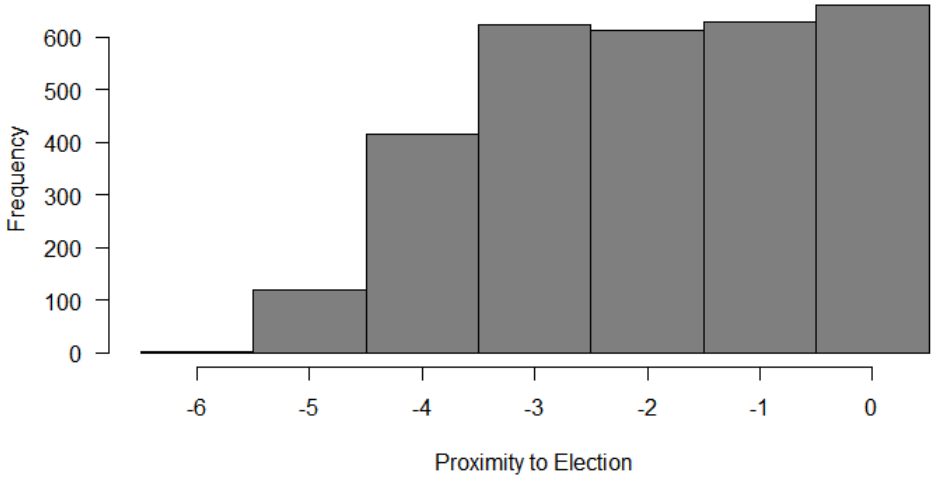


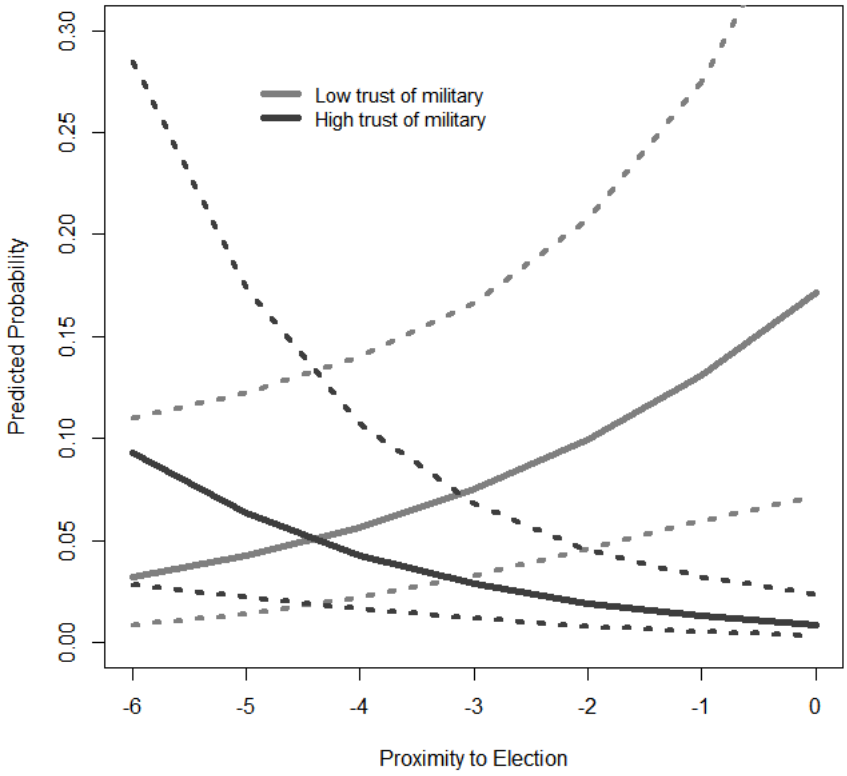
Table 3: Distrust of military moderates the effect of proximity to election on the probability of compliance

Dependent variable: probability of compliance

	(1)	(2)	(3)
Distrust of military	1.27***	1.16***	1.14***
	(0.41)	(0.43)	(0.42)
Proximity to election	−0.05	−0.03	−0.01
	(0.09)	(0.09)	(0.09)
Distrust of military ×	0.36***	0.36***	0.36***
Proximity to election	(0.13)	(0.13)	(0.13)
Multilateral debt		−0.00	
		(0.03)	
DAC aid (log)		0.39	
		(0.37)	
GDP/capita (log)		−2.26*	−2.85*
		(1.32)	(1.55)
Left government			−0.57
			(0.35)
Unemployment			−0.02
			(0.11)
Num. obs.	3057	3057	3057
Num. events	189	189	189
State FE	Yes	Yes	Yes
Order FE	Yes	Yes	Yes
Order indicators	Yes	Yes	Yes
Clustered SE	Case	Case	Case

$^{***}p < 0.01$, $^{**}p < 0.05$, $^{*}p < 0.1$

Figure 4: As threat to the leader — measured 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.

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	18%	[17%, 26%]
Monetary reparation	14%	[10%, 16%]
Publish judgment	13%	[10%, 16%]
Provide training in human rights	4%	[3%, 9%]
Reform legislation	2%	[1%, 4%]
Provide medical care	1%	[1%, 3%]
Recover victims' remains	1%	[1%, 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%	38%	34%
2 years	15%	34%	35%
1 year	12%	31%	37%
Election year	9%	28%	38%

Note: Predictions were generated using Model (1) in Table 3 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.

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Appendix

Table A1: Compliance Rate by State (Monitored Orders Only*)

State	Total Orders	Full Compliance	Partial Compliance	Percentage (Full)	Percentage (Full+Partial)
Costa Rica	5	5	0	100%	100%
Chile	29	22	0	76%	76%
Ecuador	73	54	4	74%	79%
Bolivia	31	20	2	65%	71%
Panama	24	15	3	63%	75%
Honduras	48	30	1	63%	65%
Argentina	45	27	8	60%	78%
Uruguay	11	6	0	55%	55%
Guatemala	127	68	8	54%	60%
Mexico	77	41	0	53%	53%
Nicaragua	12	6	10	50%	83%
Brazil	28	14	19	50%	68%
Suriname	22	11	2	50%	59%
Dominican Republic	4	2	0	50%	50%
Peru	186	88	23	47%	60%
Colombia	111	42	21	38%	57%
Barbados	9	3	2	33%	55%
El Salvador	31	10	4	32%	45%
Paraguay	73	19	10	26%	40%
Venezuela	93	8	1	9%	10%
Haiti	4	0	0	0%	0%
Trinidad and Tobago	13	0	0	0%	0%

* As no information is available about orders that have not been monitored, only orders with at least one monitoring report are included.

Figure A1: Cases by Implicated Actor, 1989–2014

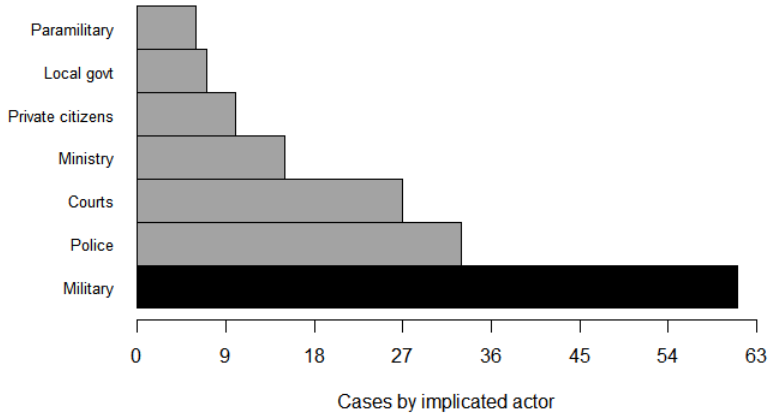


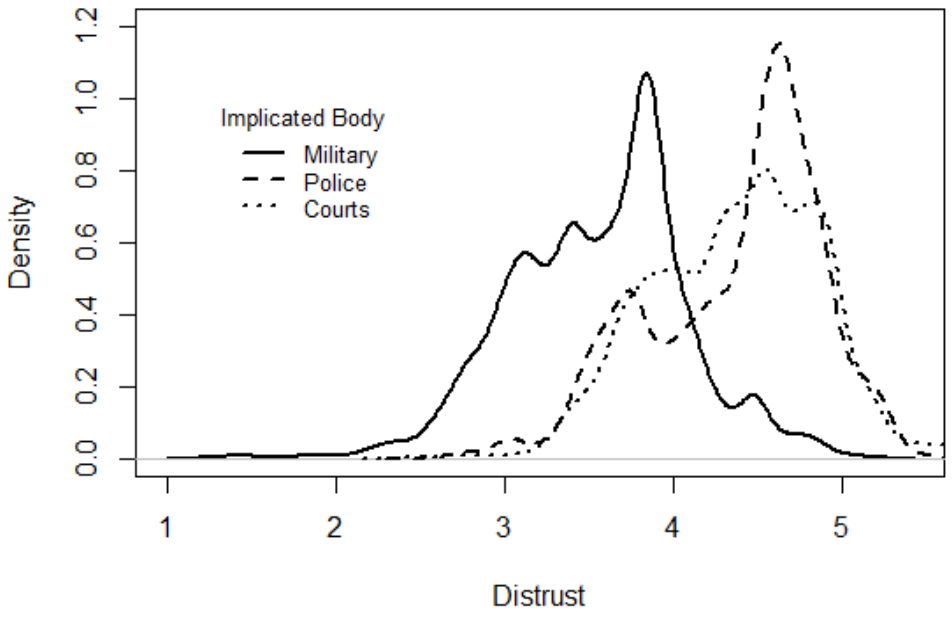
Table A2: Balance Check on Monitored v. Unmonitored Orders

Variable	Mean (monitored)	Mean (unmonitored)	p-value (t-test)
Investigate, prosecute & punish	0.07	0.10	0.28
Accept responsibility	0.05	0.02	0.01
Publish judgment	0.12	0.18	0.05
Monetary reparation	0.35	0.28	0.05
GDP/capita (log)	8.22	8.39	0.00
Left government	0.24	0.16	0.01
Unemployment	6.26	7.69	0.00
Years post-judgment	5.95	2.25	0.00

Balance check was done using the Matching package in R.

Figure A2: 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.