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Past Regret, Future Fear:
Compliance with International Law

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by

Francesca Keiko Teraoka Parente

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ABSTRACT OF THE DISSERTATION

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Doctor of Philosophy in Political Science
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Why do democratic governments that support human rights sometimes defy the rulings of international human rights courts? In my dissertation, I examine this question in the context of the Inter-American Court of Human Rights, a regional court that operates in Latin America. I argue that non-compliance results from (1) high capacity constraints that limit leaders' ability to comply; and from (2) democratic leaders responding to voter preferences against compliance. Although human rights scholars generally assume that voters support compliance, I find that attitudes toward compliance are not so uniform when the military is implicated. Justice for human rights violations often necessitates confronting the abuses of the past, which some voters would prefer to leave alone. Despite the abuses committed by military officials in recent dictatorships, the military is still a trusted institution in many Latin American states. Leaders thus face a dilemma when they receive judgments from the Inter-American 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 public's preferences on compliance and the leader's need to be accountable to the public.

I test my theory using an original dataset of all rulings from the Inter-American Court of Human Rights through 2014, measuring compliance using Court-issued monitoring reports. I first show that compliance outcomes at the Inter-American Court are not nearly as bad as critics fear: on the level of an individual order, full compliance is the most likely outcome,

occurring 47% of the time. Further, compliance varies by the degree of difficulty of fulfilling the Court's order; states are much more likely to comply with orders of financial reparation and just satisfaction than they are to provide rehabilitative services to victims or guarantee non-repetition of violations. Second, I show that the public's attitudes toward the military moderate the effect of increased need for accountability on the probability of compliance. I measure the leader's need for accountability using two sources of threat to the leader's power: elections and military coups. As the leader's need for accountability increases (i.e., closer to an election or when a military coup is more likely), the leader becomes more responsive to the public's – as opposed to her own – preferences. Whether this results in an increased probability of compliance, however, depends on what the public wants. If the public supports compliance, the leader is more likely to comply as the need for accountability increases; however, if the public does not support compliance, the leader is less likely to comply. I further supplement my statistical results with a case-study illustrating variation in amnesty law outcomes in El Salvador and Uruguay. My findings suggest that non-compliance with international law is not necessarily the result of a failure on the part of an international court, but sometimes the result of a failure of preferences for compliance in a democratic public.

The dissertation of Francesca Keiko Teraoka Parente is approved.

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To my parents, who have always valued education,
and who supported mine in every way they could

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CHAPTER 1

Introduction

1.1 An Ineffective Tribunal?

In 2017, the Inter-American Court of Human Rights closed its 29th case, having certified that the implicated state had fulfilled all components of the judgment. Between 1989 and 2017, the Inter-American Court issued 218 judgments that found states responsible for violating international human rights law.[1] Closing its 29th case brought the closure rate to 13%; in other words, states had only complied with 13% of the Inter-American Court's 218 judgments. Around the same time, the European Court of Human Rights announced that 9,944 of its nearly 19,000 judgments issued between 1999 and 2017 were still pending, giving it a compliance rate of 47%.[2] Observers noted that "the most sophisticated system in the world for defending human rights is facing a test" that, given the rate of non-compliance at the European Court, "so far, it's failing."[3] If 47% compliance is failing, what does that mean for the Inter-American Court's 13%?

Since World War II, international law has expanded from state-to-state only interactions to include rights and responsibilities for individuals. International human rights law creates obligations on the part of states toward individuals within their sovereign borders.[4] Sev-

[1]Inter-American Court of Human Rights, 2018, *2017 Annual Report*.

[2]For a tally of judgments issued by the European Court of Human Rights, see European Court of Human Rights, 2019, *Overview 1959–2018*, at pg. 4.

[3]Ginger Heavey, "Europe's Human Rights Court Struggles to Lay Down the Law," *Politico*, September 20, 2017.

[4]Meanwhile, international criminal law creates personal accountability for violations of international law. Thus, certain international courts can now find individual actors, as opposed to just states, personally responsible for violations of international law.

eral human rights tribunals were created to ensure that states upheld their obligations to individuals under international human rights law. These institutions include United Nations Human Rights Treaty Bodies, as well as regional human rights courts like the Inter-American and European Courts of Human Rights. If individuals feel their rights under international law have been violated, they can seek relief by petitioning these institutions. International human rights institutions have the power to find states responsible for violations of international law and to order remedies to rectify the violations. However, they lack enforcement powers to ensure their rulings are fully carried out.

Does non-compliance with a court's rulings mean the institution is failing? Many scholars have tried to identify the effect of international human rights law on state behavior. Most have examined whether signing a specific human rights treaty actually improves human rights (Keith, 1999; Hathaway, 2002; Hafner-Burton and Tsutsui, 2005, 2007; Neumayer, 2005; Hill Jr., 2010; Cole, 2012*a*; Fariss, 2018).[5] However, without strong modeling assumptions, it is difficult to assess the impact of a treaty on first-order compliance – whether the state has fulfilled the obligations of the treaty (Fisher, 1981; Simmons, 1998) – because states' decisions to change their behavior after joining the treaty are related to their decisions to sign the agreement in the first place (Downs, Rocke and Barsoom, 1996; von Stein, 2005).[6] In contrast, second-order compliance – whether a state complies with rulings of international courts to remedy the original legal breach – may be a better indication of the effect of human rights law on state behavior. As international litigation is time-consuming and expensive, "compliance [with a court's ruling] is very unlikely to be the result of chance" (Hawkins and Jacoby, 2010, pg. 40). Consequently, compliance may proxy as a measure of a court's effectiveness because it is clearer what the state would have done in the absence of the institution's ruling.[7] This being the case, by raw numbers alone, the European Court of

[5]See von Stein (2017) for a recent review of the various arguments and paradigms that have been used to explain first-order compliance.

[6]Some might say that why states join institutions and whether institutions change behavior are two sides of the same coin: states make commitments because they either do not plan to change their behavior or plan to change it for the worse (Goodliffe and Hawkins, 2006; Hathaway, 2007; Vreeland, 2008; Hollyer and Rosendorff, 2011).

[7]Note that this reflects what Helfer (2014) calls case-specific effectiveness – whether states change behavior

Human Rights outpaces its Inter-American counterpart almost four-fold in its effectiveness.

This brings me to the central puzzle of my dissertation. The European and Inter-American Courts of Human Rights are similar in their design and purpose: they are both regional human rights courts established to protect and promote the rights enshrined in the European and American Conventions on Human Rights, respectively. The two treaties require states to protect similar rights, including the right to life, freedom from arbitrary detention, and right to a fair trial. They establish commissions that act as gate-keeper institutions to the courts that can issue binding legal rulings.[8] Both allow for individual petitions, granting citizens of member-states access to justice at an international institution. Despite all of these similarities, the compliance patterns of the two courts have diverged. Thus, the central puzzle: *Why has the Inter-American Court of Human Rights seemingly failed to live up to its promise of "defending and promoting the human rights of all the inhabitants of the Americas"?*[9]

1.2 Explaining (Non)-Compliance

1.2.1 Existing Theories

Scholars think of non-compliance in one of two ways. For some, non-compliance is the outcome of interest. This sentiment is best summarized by Louis Henkin's observation that "*almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time*" (Henkin, 1979, pg. 47).[10] The managerialist school

in response to a specific ruling. There are other types of effectiveness that one might also consider, like *erga omnes* effectiveness (whether other treaty parties implement a ruling, even when the judgment is only binding *inter partes*) and embedded effectiveness (whether states change domestic laws to prevent future violations) that are beyond the scope of this dissertation. See Helfer (2014).

[8] Although the two systems developed the same way, the European system has since changed; the European Commission on Human Rights was merged into the European Court in 1998. Some critics of the Inter-American system have also suggested that it adopt this model as well, transferring all adjudicatory powers to the Court. See Shelton (2015).

[9] Inter-American Court of Human Rights, 2017, *2016 Annual Report*, at pg. 8.

[10] Emphasis in original.

presumes that states want to comply, and only deviate from this behavior if they have a principled reason to do so. Chayes and Chayes (1993) offer three such reasons: states may not understand what is necessary to fulfill the obligation; they may not have enough time to comply; or they may not have the capacity to comply. For example, treaty obligations can be imprecise ("strengthen the protection of human rights") which makes it difficult to determine if a state has met the burden of compliance or not. Moreover, it is unclear how long it would take for sufficient strengthening to be achieved; one could observe non-compliance today, but full compliance a year from now because the state simply needs more time to implement reforms.

The first two managerial arguments – insufficient clarity and insufficient time – might explain non-compliance outcomes when it comes to first-order compliance, but are not convincing as explanations for second-order compliance. Treaty texts may be open to interpretation, but the orders of international courts are not. Moreover, if a court's decision is unclear, states can ask for an interpretation of the judgment, which further clarifies the legal obligation and appropriate remedies the state must undertake. The problem of time is also less pronounced when it comes to second-order compliance. Whereas treaties "are, characteristically, legal instruments of a regime for managing a major international problem over time" (Chayes and Chayes, 1993, pg. 195), the same cannot be said for orders meant to remedy particular treaty violations. Additionally, as I will show, the Inter-American Court periodically assesses (and, if necessary, reassesses) compliance outcomes, so there are many time points at which compliance may be measured. Given the irrelevance of the first two managerial arguments to non-compliance with orders of the Inter-American Court, throughout this dissertation when I refer to the managerial account of non-compliance, I mean the third managerial argument; namely, non-compliance because of insufficient capacity to comply.

The capacity argument is multi-faceted since there are many kinds of capacity a state may lack. If a state lacks the appropriate structure (bureaucracy) or resources (money) to comply, compliance will take longer, if it happens at all: the state cannot pay reparations

with money it does not have, nor delegate reforms to agencies that do not exist.[11] States' capacity may also be limited by domestic veto players – "individual or collective actor[s] whose agreement (by majority rule for collective actors) is required for a change in policy" – can block compliance efforts altogether (Tsebelis, 1995, pg. 301). In states with veto players, securing the approval of all relevant actors is a necessary precondition of compliance. For example, it is much simpler to implement the rulings of international courts if they take direct effect, i.e. if "international law can be applied without being translating into national law," (Nollkaemper, 2014, pg. 110), which avoids legislative (Peritz, 2014) or judicial veto players (Huneeus, 2011).

For other scholars, non-compliance is the state's default behavior. That is, we should observe non-compliance unless and until the state has been persuaded or coerced to change its behavior; this is sometimes referred to as the "enforcement" school of thought (Raustiala and Slaughter, 2002). For these scholars, states need to be socialized (Checkel, 2001; Goodman and Jinks, 2004), shamed (Drinan, 2002; Hafner-Burton, 2008; Cole, 2012*b*), or coerced (Hafner-Burton, 2005; Lebovic and Voeten, 2009; Smith-Cannoy, 2012; Conant, 2014) into compliance.

These 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 and the public's underlying preference is for compliance. As such, shaming, persuading, and coercing all increase – as opposed to decrease – the state's probability of compliance. In other words, when international and domestic actors pressure a state to follow an international court's ruling, they always pressure the state in a pro-compliance direction.

What this literature has failed to explicitly address, however, is what happens when compliance is not in demand by these actors. In particular, I am concerned with what happens when non-compliance is demanded by voters in a democracy, in which elected

[11]For example, Cole (2015) finds that bureaucratic efficacy predicts whether states will implement provisions of the International Covenant on Civil and Political Rights.

officials were expressly chosen to carry out the will of people. How should we think about pressures on the state to comply when the state's and citizens' preferences for non-compliance are aligned?

1.2.2 My Argument

My answer to this dissertation's central puzzle relates to both the managerial and enforcement arguments about non-compliance. First, a significant amount of non-compliance at the Inter-American Court of Human Rights reflects managerial concerns about lack of capacity to comply. In particular, there are three managerial challenges that affect states' capacity for compliance: the members are all recently transitioned democracies; only difficult cases make it to the Court; and states are asked to undertake hard tasks to remedy any violations. In this case, non-compliance is not necessarily the result of states lacking the will or motivation to comply, but of them truly lacking the capacity to do so. As I show in Chapter 2, not only is the compliance rate not as bad as critics would suggest, but a fair bit of non-compliance with the Inter-American Court's rulings is related to managerial concerns. However, managerialism is an incomplete explanation for all non-compliance outcomes at the Court. States sometimes comply quickly with rulings that seem difficult to implement, or fail to comply with rulings that are the easiest to implement. What explains the remaining variation?

Second, I argue that non-compliance with rulings of the Inter-American Court may sometimes result from leaders responding to voter preferences *against* compliance. Leaders do face pressure from voters to change their behavior, but this change is not always in a pro-compliance direction. Instead of presuming that the public always wants compliance, I allow voter preferences to vary across implicated actors. Although Court judgments are against a state (in that they establish state responsibility for violations of international law), remedying these violations may affect some domestic institutions more than others. The crimes that gave rise to international law violations were ultimately committed by particular domestic actors about whom voters have various opinions. I contend that these opinions also influence voters' levels of support for compliance, which vary depending on their attitudes toward the

actor(s) implicated by compliance. Thus, leaders sometimes engage in non-compliance when they are responding to the non-compliance preferences of a public to whom they are held accountable. This argument is the basis of Chapters 3, 4, and 5.

1.3 Contributions

My dissertation makes two key contributions to the literature on human rights and compliance with international law. The first is to challenge a two-fold implicit assumption in the extant literature about the nature of the public and the role of international courts. This presumption is that first, the public always wants justice; and second, that courts are necessary to force leaders to meet this demand. Previous 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. Simmons, 2009; 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.

Relatedly, the extant literature also implicitly views one role of international courts as facilitating leaders in meeting these demands for justice and compliance. Although international courts themselves cannot force states to change their behavior, their judgments create information that pro-compliance groups can use to lobby for compliance (Mansfield, Milner and Rosendorff, 2002; Johns and Rosendorff, 2009). If one thinks of an international court's effectiveness as its ability to change states' behavior, then observed non-compliance is taken as evidence of the court's failure. But how should we evaluate the court's compliance record when justice is sometimes *not* in demand? I show that although the crimes adjudicated by the Inter-American Court of Human Rights were committed by government actors, the public does not necessarily want these actors punished. Instead of presuming that the voters always support compliance, I model these preferences directly using the best-available public opinion data. This suggests that we ought to incorporate the public's preferences more

directly into models of compliance with international law.

My second contribution is to examine the issue of compliance in a difficult region – Latin America – where leaders are often asked to directly confront the abuses of the past regime.[12] All but two of the Inter-American Court's current members are newly transitioned – as opposed to mature – democracies and 80% of them were under military rule at the time of the Court's creation in 1979.[13] The recent history of military dictatorship, in which human rights abuses were widespread, not only informs much of the Court's present caseload, but also defines the political environment in which the Court must operate, as the institution attempts to secure justice for victims of past abuses.

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. The difficulty of compliance in Latin America is related not just to the nature of the crime, but also to the nature of the implicated actor – and that actor's enduring popularity. The military is responsible for nearly 40% of judgments against the state at the Inter-American Court, but remains a powerful and popular institution. Many citizens do not want to reopen or re-litigate the abuses of the military regime. For example, in El Salvador, there has been a "pronounced lack of appetite for accountability not just in the public as a whole but even, it would seem, among relatives and survivors" (Collins, 2008, pg. 29). The states that have had the appetite for accountability and prosecutions (like Argentina and Chile) have not usually ended up with cases involving the military before the Inter-American Court.[14] Because petitioners must exhaust domestic remedies before pursuing cases at the Inter-American Court of Human Rights, the Court

[12]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).

[13]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.

[14]Argentina and Chile are each recipients of just one of the 64 judgments against the military between 1989 and 2014.

is more likely to receive cases from states whose domestic institutions are either unable, unwilling, or both to confront the abuses of the past.

In this context, non-compliance does not necessarily mean (only) that the institution is ineffective. It could in fact mean that democracy is working. This is not to say that non-compliance is a normatively good outcome – democratic populaces can arrive at many outcomes that others consider unjust or unfair – but that it may sometimes be one that reflects the will of the majority in these nascent democracies. Non-compliance is thus not necessarily the result of a failure on the part of the Inter-American Court, but sometimes the result of a failure of preferences for compliance in a democratic public.

1.4 Overview of the Dissertation

The next chapter introduces the Inter-American Court of Human Rights in greater detail, with particular focus on why compliance with the Court's rulings is so difficult. I take as my point of departure the past criticism about the Court's perceived ineffectiveness, as evidenced by the low number of cases it has closed. However, I argue that this criticism is misplaced because it fails to account for both the compliance challenges that members of the Inter-American Court face as well as the amount of compliance that actually exists. The three managerial challenges to compliance in the Inter-American system – the nature of the members, the institution's design, and the difficulty of the ordered remedies – all constrain the capacity of states to comply, making any observed compliance all the more significant.

To more accurately account for compliance outcomes at the Inter-American Court, I create an original dataset of over 1,300 "compliance orders" – specific tasks the Court has asked states to undertake to remedy violations. I distilled these orders from the operative paragraphs of 178 judgments against the state issued by the Court between 1989 and 2014. Using this dataset, I find that the compliance record is mixed: states have fulfilled 47% of the Court's orders, compared to a non-compliance rate of 44% and partial compliance rate of 9%. However, these rates vary, as one might expect, by the type of compliance order. States have a strong record of complying with measures of financial reparation and satisfaction,

but a much sparser record of complying with measures that guarantee non-repetition or provide rehabilitative services to the victims. However, even under circumstances in which compliance seems least likely, the compliance rate is not zero. Despite the perception that the Inter-American Court has failed as an institution, full compliance with individual compliance orders is still the most frequently observed outcome, which should be encouraging news to scholars and practitioners alike.

Having recognized that the underlying probability of compliance with rulings of the Inter-American Court may, as a baseline, be low, the remaining chapters hold capacity and its limitations fixed. I thus turn to the non-managerial explanations for non-compliance – the leader has the capacity to comply, but does not implement the ruling for some other reason. In Chapter 3, I introduce my theory, which focuses on the domestic political incentives for non-compliance that arise when voters do not favor compliance and the leader faces a high level of accountability to the public. I argue that, contrary to the presumption in much of the extant literature, compliance is not always demanded by the public. Although the Court issues judgments against the state, its compliance orders implicate particular domestic actors. Here, I focus on judgments that implicate the military, an actor about whom Latin American voters have strong and divergent preferences. 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 her need to be accountable to voters and whether the public supports compliance. The leader's need for accountability is directly related to the level of threat to her power or, alternatively, her fear of losing office. For Latin American leaders, there are two sources of this fear: elections and military coups. As the leader fears losing office, her need for accountability increases, and she becomes more responsive to the public's preferences. However, because the public does not always support compliance, increased responsiveness does not always imply an increased probability of

compliance. The testable empirical implication is that as the leader's need for accountability increases, the probability of compliance increases if the public supports compliance, but decreases if the public does not support compliance.

The next two chapters test this implication using different sources of threat. In Chapter 4, I consider the threats that come from military coups. I measure coup risk in two ways: (1) years since transition to democracy; and (2) the public's belief that the military ought to intervene in domestic affairs if the government is incompetent. I measure the public's attitude toward compliance based on their level of trust in the military, as many voters remember what life was like under the military regime and may be nostalgic for that past, making them less likely to support compliance when it would implicate the military. The explanatory variable is the interaction between each measure of coup risk and the public's level of distrust in the military. I show that as coup risk increases, the probability of compliance changes, and the direction of this change is determined by the public's preferences. Thus, public distrust of the military moderates the effect of coup risk on compliance. I illustrate the substantive effects of these results by generating predicted probabilities of compliance for three real-life cases in which distrust of the military varied.

In Chapter 5, I test my theory using presidential elections as the source of threat to the leader's power. Because all except for two Inter-American Court members are presidential democracies, election timing is fixed and unrelated to judgments. I model the duration of non-compliance and again show that the probability of compliance changes depending on the leader's need for accountability, where direction is moderated by the public's attitudes toward compliance. I then illustrate how the theory can help explain variation in overturning amnesty laws in Uruguay and El Salvador. Both states held presidential elections in 2014, and both also announced changes to the legal status of their amnesty laws in 2013. However, in Uruguay, where the public had twice voted to keep amnesty laws, the leader went in a pro-amnesty direction, while in El Salvador, where voters expressed support for overturning amnesty laws in surveys, the leader went in an anti-amnesty direction. In both cases, the leader grew more responsive to the public's preferences the year before an election, but the direction of that response diverged depending on citizens' attitudes toward the amnesty law.

In the last chapter, I return to the original puzzle by summarizing the arguments and findings in the theory and empirical chapters. I then reiterate the significance and novelty of these findings and suggest possible avenues for future research, including application to other regions and domestic institutions. Although focused on Latin America, this theory may travel to other regions and human rights courts where still-consolidating democracies are asked to confront the abuses of the past, and where nostalgia for the past might suggest reverence for an actor other than the military. I conclude by considering the broader implications of my dissertation, focusing in particular on implications for international adjudication and how democracies interact with supranational institutions.

CHAPTER 2

The Inter-American Court of Human Rights

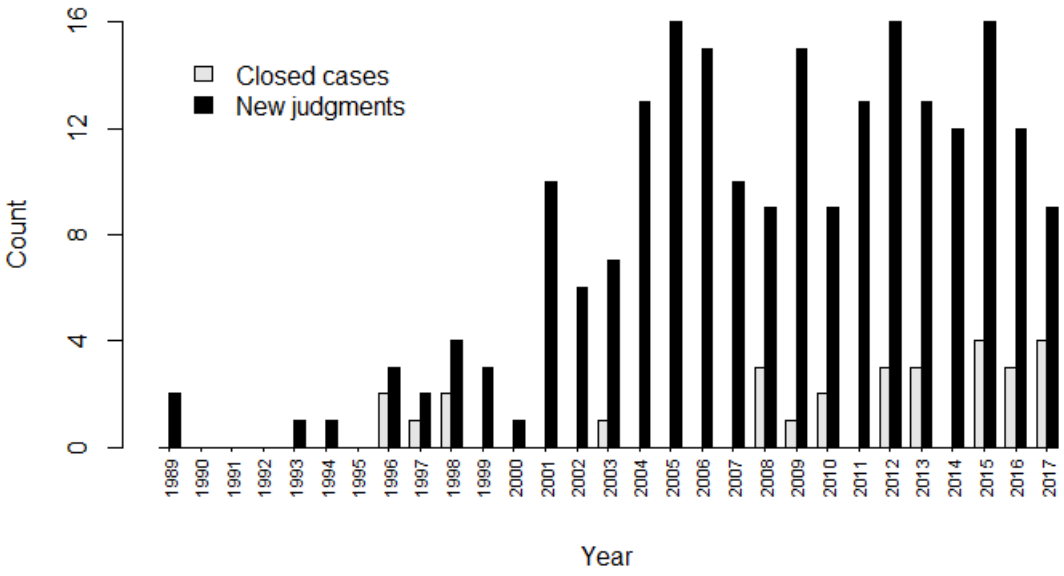
2.1 Introduction

On November 14, 2017, the Inter-American Court of Human Rights verified full compliance in *Cantos v. Argentina*, a case involving the arbitrary prosecution of a successful businessman, which resulted in significant losses. Argentina had been ordered to undertake five remedies: (1) stop charging Cantos with court fees; (2) set a reasonable fee for the remaining litigation in domestic courts; (3) pay the fees of experts and attorneys used by the state in its proceedings; (4) remove the encumbrances placed on Cantos' businesses; and (5) reimburse Cantos' lawyers for their expenses.[1] Although implementing any of these remedies does not seem particularly difficult – mostly a matter of paying money or not requiring the victim to pay money – it still took Argentina fifteen years from the time of the Inter-American Court's judgment to fully comply with the ruling.

Argentina's delay in compliance is not unusual (see Figure 2.1). Of the 218 judgments issued against the state since 1989, *Cantos* was only the 29th judgment with which a state has fully complied. Since 2001, the Inter-American Court has issued about 12 new judgments each year. However, at best, the Court manages to close four cases in a year; in other words, there are over twice as many new judgments as there are closed cases per year. The poor track record of closing cases has been one reason why some have challenged whether the Inter-American Court actually works. As human rights advocates have long maintained, full compliance is "key for strengthening the Inter-American system" and states' "failure to im-

[1]Inter-American Court of Human Rights, 2002, *Case of Cantos v. Argentina*, para. 77.

Figure 2.1: Closed cases versus new judgments at the Inter-American Court of Human Rights



plement the decisions makes protection ineffective."[2] Likewise, the Court itself acknowledges that compliance is necessary "to prevent inter-American justice becoming illusory."[3] In an article published in 2005, Posner and Yoo argued that "given the low usage and compliance rates, we can be reasonably confident in concluding that the [Inter-American Court] has not been an effective tribunal" (Posner and Yoo, 2005, pg. 44).[4] Although they made this statement in 2005, one could argue that the situation has not much improved. At the time, Posner and Yoo calculated the compliance rate to be 5%; today it is up to 13%.

But closing cases is not the only way to capture an institution's accomplishments. Indeed, most of the cases at the Inter-American Court are in a stage of "partial compliance" (Hawkins and Jacoby, 2010) where states have fulfilled some, but not all, of the Court's ordered

[2]Center for Justice and International Law, 2012, "Proposal to Improve the Inter-American System of Human Rights: CEJIL's response to the Permanent Council's document," Position Paper 6.

[3]Inter-American Court of Human Rights, 2018, *2017 Annual Report*, at pg. 98.

[4]The question of usage is beyond the scope of this dissertation. However, strictly by the numbers, the Inter-American Court has not been the most active tribunal. Through 2017, the Inter-American Court had adjudicated just over 200 cases, whereas the European Court had adjudicated nearly 19,000 cases over roughly the same time period. See also Shaver (2010).

remedies. The Court has made a deliberate decision to wait for full compliance with every element of its ruling before closing a case. As such, "despite the fact that, in many cases, numerous measures have been fulfilled, the Court keeps [the monitoring] stage open until it considers that a judgment has been complied with fully and completely."[5] In *Cantos*, for example, although the Court did not close the case until 2017, only two of the five remedies were still pending after 2009.[6] Thus, one prominent activist's astute comment: "States comply more than academics think that they comply."[7]

The purpose of this chapter is two-fold. The first is to introduce the Inter-American Court of Human Rights in greater detail, with particular focus on why compliance with the Court's rulings is so difficult. Although similar in structure and purpose to the European Court of Human Rights, several differences within the Inter-American system suggest that the compliance outcomes at the two institutions should not be the same. In this chapter, I take the managerial account of compliance as my point of departure. That is, I assume that states have sufficient motivation to implement the rulings and focus instead of how various aspects of the Inter-American system limit states' capacity to comply.

The second purpose is to set the record straight on how much compliance actually exists with Inter-American Court rulings. I introduce a novel dataset of compliance orders – specific tasks contained within operative paragraphs of Court judgments – that precisely measure what remedies each state was asked to undertake. Then, instead of measuring compliance on the level of the case, I consider compliance with individual orders within each case. I use Court-issued monitoring reports to measure compliance with these orders. My findings illustrate that states have a mixed record when it comes to compliance: although they do not do everything the Court asks them to, and they tend to fulfill the easiest compliance orders, the overall record is better than casual observers would expect. Not only is full compliance, on the level of an individual order, more frequent than non-compliance, but the

[5]Inter-American Court of Human Rights, 2018, *2017 Annual Report*, at pg. 65.

[6]Order of the Inter-American Court of Human Rights, July 6, 2009, *Cantos v. Argentina: Monitoring Compliance with Judgment*, at pg. 9.

[7]Personal interview with author, March 15, 2018.

rate of compliance with certain orders, like paying pecuniary and non-pecuniary damages to the victim, rivals levels of compliance in the European Court of Human Rights.

In the next section, I introduce the design and functions of the Inter-American Court of Human Rights in more detail. In doing so, I elucidate three reasons why compliance with orders of this court is so difficult. With these capacity constraints in mind, in Section 3, I describe compliance outcomes at the Inter-American Court, focusing on the level of compliance with individual orders. I offer several descriptive statistics that illustrate both the overall level of compliance with Court orders and also the levels of compliance with particular types of compliance orders. The final section concludes.

2.2 Why is Compliance So Hard?

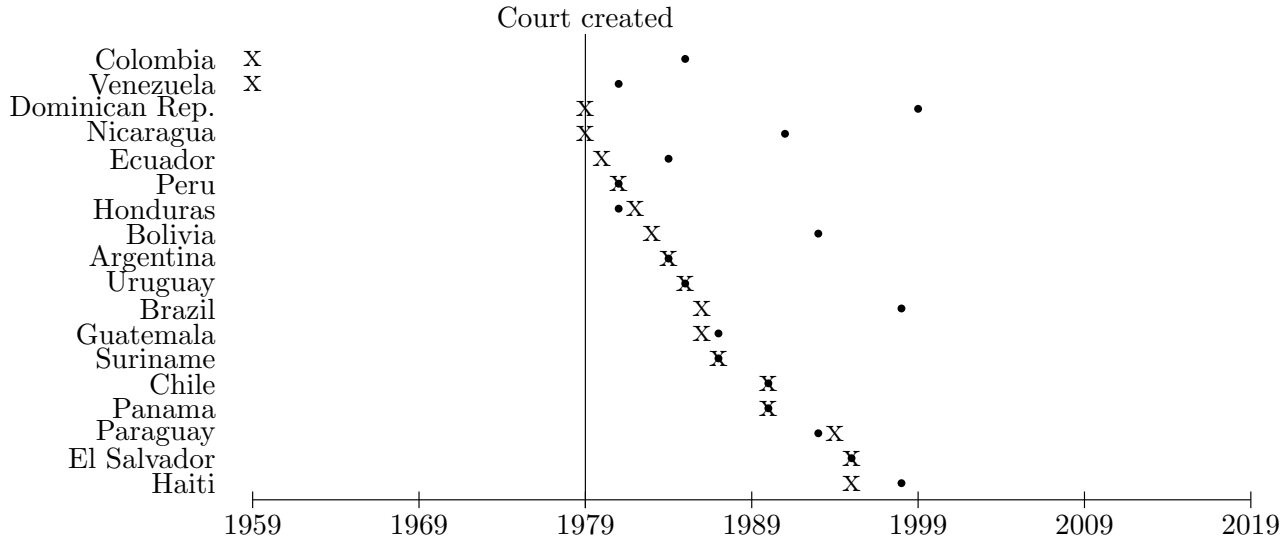
As implied by the managerial account of (non)-compliance, states sometimes fail to fulfill their legal obligations not because they lack the motivation to do so, but because they lack the capacity to comply. There are three reasons why compliance in the Inter-American case is so difficult. First, recently transitioned democracies make up the Court's membership, implying both lower institutional capacity to comply and increased domestic constraints on compliance. Second, because of the institution's design, only "hard" cases make it to the Court, as states have numerous opportunities to deal with easier cases before the Court issues its judgment. Finally, the Inter-American Court's orders are burdensome to states, not only because of the inherent difficulty of some of the tasks, but also because the Court waits for states to achieve full compliance with all orders before declaring a case closed.

2.2.1 Membership

Currently, the Court has jurisdiction over the 20 members of the Organization of American States (OAS) that have ratified the American Convention of Human Rights and accepted the Court's contentious jurisdiction.[8] Although any member of the OAS can join, all of the states

[8]Information on recognition of the Court's competence (acceptance of jurisdiction) comes from the Organization of American States. See `http://www.oas.org/dil/treaties_B-32_American_Convention_on_`

Figure 2.2: Commitment to Inter-American Court of Human Rights corresponds to transition from military dictatorship to democracy



Note: Each "x" refers to the year of transition from military dictatorship to democracy, using coding by Geddes, Wright and Frantz (2014). The dot corresponds to the year the state accepted the jurisdiction of the Inter-American Court.

that have chosen to do so happen to be in Latin America (Carozza, 2015). Moreover, many states ratified the Convention upon transitioning from military dictatorship to democracy in the early and mid-1980s (see Figure 2.2).[9] As a result, the Court's early caseload – and many cases that it still monitors today – consisted of crimes that occurred during the military dictatorship. To date, the Court has issued 218 judgments against states, and all states have been defendants in at least one case.

However, the characteristics of the non-joiners are as important as those of the joiners. Table 2.1 illustrates the regime type variation among members of the Organization of American States and whether the state joined the Inter-American Court. The vast majority of joiners are states that transitioned from military dictatorships to democracy in 1979 or later,

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`Human_Rights_sign.htm`.

[9]Trinidad 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 *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.

Table 2.1: Joining the Inter-American Court of Human Rights is related to regime type

	Always democratic	Never military dictatorship	Military regime until 1959–1978	Military regime until 1979 or later
Joined IACHR	Barbados Costa Rica Trinidad & Tobago*	Mexico	Colombia Venezuela*	Argentina Bolivia Brazil Chile Dominican Republic Ecuador El Salvador Guatemala Haiti Honduras Nicaragua Panama Paraguay Peru Suriname Uruguay
Has not joined	Antigua & Barbuda Bahamas Belize Canada Dominica Jamaica St. Lucia St. Kitts & Nevis St. Vincent & the Grenadines United States	Guyana		Grenada†

* Venezuela and Trinidad & Tobago have since denounced the American Convention on Human Rights.
† Grenada had a brief spell of military rule between 1979 and 1983.

Note: "Always democratic" states are those that have been democracies since gaining independence. States in the "Never military dictatorship" category are ones that transitioned to democracy from single-party regimes, as opposed to military regimes. Regime classifications taken from Geddes, Wright and Frantz (2014) and Cheibub, Gandhi and Vreeland (2010).

while the majority of non-joiners are states that have always been democratic. Of the 20 current members of the Court, 80% did not transition from military regimes to democracy until after 1979. Moreover, of the 17 states that were most recently military regimes, only one – Grenada – did not join the Court. Grenada is also a somewhat unusual case because its spell of military rule was comparatively brief and actually began (and therefore ended) after 1979. Of the 13 states that have been democratic since independence, only two are currently members of the Inter-American Court. The states with arguably the greatest ca-

pacity for compliance, on average, given strong institutions and rule of law, are outside of the institution, while the states with the least capacity for compliance, on average, have nearly all opted into the Court's jurisdiction.

The pattern of Inter-American Court membership reflects Moravcsik's theory of democratic "lock-in" in which newly established democracies are most willing to join binding international institutions (Moravcsik, 2000). They do this to credibly commit to future democratic reform, as membership in an international human rights regime raises the cost of backsliding. It is not just a matter of *which* states joined – those that were previously military dictatorships – but also *when* they joined. As shown in Figure 2.2, all except two states that joined the Court after its creation did so within five years of transitioning to democracy, and ten of those states did so within one year. Thus, most states that joined did so at or around the time of democratic transition, and states that did not transition did not join at all.

The nature of the Court's membership affects both the types of violations that petitioners bring to the Court and the remedies that are ordered in judgments against the state. Although the European Court of Human Rights is similar in structure and purpose, the regime types of members within each institution are quite different. As noted by Steiner and Alston, "Within the Council of Europe, military and other authoritarian governments have been rare and short-lived, while in Latin America they were close to being the norm until the changes that started in the 1980s" (Steiner and Alston, 2000, pg. 869).[10] Consequently, the rights violations heard by the Inter-American Court are quite different than those heard in its European counterpart. Steiner and Alston (2000) continue on pg. 869:

> The major challenges confronting the European system are epitomized by issues such as the length of pre-trial detention and the implications of the right to privacy. Cases involving states of emergency have been relatively few. ... By contrast, states of emergency have been common in Latin America, the domestic

[10]Granted, there is a fair amount of democratic backsliding nowadays in the European Court of Human Rights, given developments in Turkey, Russia, and Eastern Europe.

> judiciary has often been extremely weak or corrupt, and large-scale practices involving torture, disappearances and executions have not been uncommon.

Steiner and Alston's sentiment is also reflected in the distribution of issues in cases before the Inter-American Court. Table 2.2 illustrates the most common issues the Court has heard. An "issue" in this context is best described as what the case is fundamentally about. Issues generally encompass multiple rights violations; for example, forced disappearance, by far the most common issue, involves violations of the right to life (Article 4), freedom from torture (Article 5), and freedom from arbitrary detention (Article 7). Multiple issues reflect physical integrity violations, particularly loss of life and torture. Even violations of due process are more visceral than the problem of lengthy pre-trial detention in the European Court of Human Rights; in Latin America, these violations range from closed court proceedings (faceless tribunals) to torture in detention, starvation in prisons, and the death penalty.

Moreover, the fact that the Inter-American Court's membership consists of young and transitioning democracies affects the nature of the Court's ordered remedies. Some lawyers arguing before the Inter-American Court feel that the specificity of court rulings is done, in part, to teach transitioning democracies what is "supposed" to be done to remedy human rights abuses.[11] In contrast, the sense is that the European Court can tell its members to guarantee non-repetition of violations without specifying the nature of the guarantee because mature democracies do not need as much instruction about what this would entail.[12] Although specific instructions about how to guarantee non-repetition may help socialize member-states to improve human rights practices, the degree of difficulty of implementing these guarantees also increases the time to compliance. As the Inter-American Court explains:

> Owing to the type of structural change entailed by the implementation of these

[11] Personal interview with author. October 27, 2015.

[12] Of course, this perception may change as the share of the European Court of Human Rights' caseload that comes from Russia and Turkey increases. In fact, the Committee of Ministers often orders more detailed remedies when dealing with weaker democracies in a way that looks more like a judgment from the Inter-American Court of Human Rights than it does a judgment against a Western European member of the European Court of Human Rights.

Table 2.2: Distribution of issues in Inter-American Court cases

Issue	Count	Percentage
Death		
Forced disappearance	34	19.1%
Murder of civilians	23	12.9%
Extrajudicial executions	16	9%
Murder of officials	5	2.8%
Justice system		
Abuses in detention	19	10.7%
Due process rights violations	12	6.7%
Faceless tribunals	5	2.8%
Death penalty & corporal punishment	4	2.2%
Indigenous rights		
Indigenous lands	7	3.9%
Employment		
Removal of judges	6	3.4%
Freedom of expression		
Censorship	5	2.8%

Note: This is not an exhaustive list of all issues. Issues must appear in at least four cases (2% of judgments) to appear. Some issues that only appear in a few cases include medical malpractice (3 cases), exclusion from political candidacy (3 cases), business losses (1 case), and custody of children (1 case). Percentages are based on the 178 judgments against the state issued between 1989 and 2014.

> measures, they benefit both the victims of a case and society as a whole. Complying with such measures requires actions that involve legislative reforms, changes in jurisprudence, the design and implementation of public policies, changes in administrative practices, and other extremely complex actions.[13]

Additionally, because many European states recognize the doctrine of direct effect, changing jurisprudence to be consistent with the European Court's rulings is a much simpler process (Nollkaemper, 2014). It is possible for members to comply simply by disseminating the judgment to lower domestic courts. This is not the case in Latin America. Although

[13]Inter-American Court of Human Rights, 2018, *2017 Annual Report*, at pg. 85.

"the majority of countries in the region have adopted a monist approach with respect to the relationship between international and domestic law, many courts in the region still do not directly apply international law"(Courtis, 2009, pg. 60). In other words, states are *de jure* monist, but *de facto* dualist. Responding to judgments that require structural changes is more difficult when members are "ambivalent towards those institutions at best and hostile at worst" (Steiner and Alston, 2000, pg. 869), particularly when states' domestic legal structures require additional steps to ensure full compliance.

2.2.2 Institutional Design

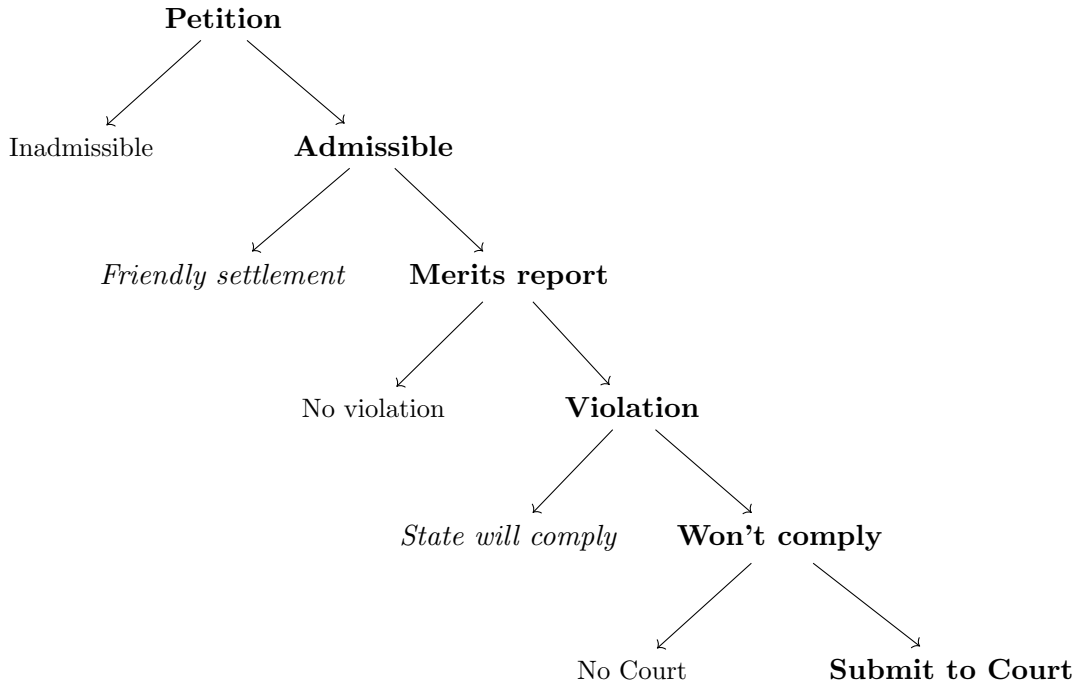
The second reason that compliance is so difficult is that only "hard" cases make it to the Court. The Court is actually the second of the two institutions in the Inter-American system, which resembles the European system of Commission and Court prior to the restructuring of the European Court of Human Rights in 1998. Cases reach the Inter-American Court after passing through the Inter-American Commission, which represents petitioners in all matters before the Court.[14] As illustrated by Figure 2.3, there are two opportunities for the state to resolve the case before it is taken to the Court. The first is the friendly settlement procedure. If the state accepts responsibility for the violation and negotiates a settlement with the petitioner, the case is resolved at the Commission. If the sides cannot agree on a settlement, the Commission hears the merits of the case. If the Commission finds the state has committed a violation, it provides several recommendations for the state to adopt. The state's second opportunity to resolve the case is to comply with the Commission's recommendations from the merits report.[15] Non-compliance with the recommendations results in a case being referred to the Court.[16]

[14]As such, the Commission functions both as a court of first instance and also as a petitioner. A detailed description of how proceedings work before the Commission is beyond the scope of this chapter.

[15]Note that this is all secondary to the compliance opportunity that existed in the state's domestic judicial system. Thus, as illustrated by Figure 2.3, the state has had three opportunities to resolve the issue (domestic system, settlement, comply with merits report) before the case reaches the Court.

[16]Since the Inter-American Commission's Rules of Procedure changed in 2001, "the Commission's default procedure has now become to submit cases to the Court" (Cavallaro and Brewer, 2008, pg. 780). Since 2001, there have been 39 cases from states that have accepted the Court's jurisdiction that have remained

Figure 2.3: The design of the Inter-American system ensures only difficult cases arrive at the Court



Note: *Italics* indicate a compliance opportunity for the state at the Commission, which would preclude the case from reaching the Court. **Bold** indicates the path the case must take in order for the Court to receive the case.

Because the state has multiple opportunities for compliance before a case reaches the Court, only the hardest cases, the ones with which the state is *least* likely to comply, will be heard. If the issue were easily resolved, the state would have opted for settlement; if compliance were simple, the state would have followed the Commission's recommendations. It is important to understand that although the Court's proceedings come chronologically after the Commission's, the Court is *not* an appellate body. Not only does the process of adjudication begin anew at the Court, but the Court rarely finds in favor of the state. Through 2017, only five judgments went in the state's favor. Moreover, when a judgment

at the Commission. In eight of these cases, the Commission found no violations of the American Convention on Human Rights. In an additional 14 cases, the state complied with the Commission's recommendations. In the remaining 17 cases, five involved petitioners that were unable or unwilling to pursue the case further, 11 fell outside the Court's jurisdiction, and in the last one, the commissioners felt there was insufficient evidence to get a judgment against the state at the Court. Examples of these outcomes are detailed in the appendix (see Table 2.9).

does go in favor of the state, it is generally because the Court has accepted one or more of the state's preliminary objections to exclude the case on jurisdictional grounds, rather than a lack of violation.[17] Thus, there can be no reasonable expectation of the Court ruling in favor of the state where the Commission has not, particularly since the Commission has stopped referring cases to the Court when the state has a realistic chance of getting the case excluded in preliminary stages.[18] Consequently, cases that reach the Inter-American Court are ones in which the state has already had and refused multiple compliance opportunities. This suggests that any observed compliance at the Court is even more significant, because the cases that reach the Court are ones in which the state is least likely to comply in the first place.

2.2.3 Difficult Tasks

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 to ensure full implementation of the judgment. These compliance orders detail the tasks that states must complete to rectify the violation. Thus, the final reason why compliance is difficult is because the Court's remedies are themselves difficult to implement: the state has no discretion in how to comply and the burden is of full compliance with each order.

To understand the nature of compliance orders, I created an original dataset of all compliance orders issued by the Inter-American Court through 2014. I distilled these compliance orders from the operative paragraphs of the 178 judgments issued against the state through 2014 to generate a dataset containing over 1,300 unique compliance orders. Table 2.3 illus-

[17]For example, in *Alfonso Martin del Campo Dodd v. Mexico* (2004) and *Grande v. Argentina* (2011), the Court could not determine if the state violated the American Convention because it lacked jurisdiction *ratione temporae* – 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.

[18]This is, for example, part of the rationale in the 12 cases that remained at the Commission because of insufficient evidence or because the crime took place outside of the Court's temporal jurisdiction.

trates the process of distilling compliance orders from the text of the Court's judgment in *Serrano Cruz Sisters v. El Salvador*, a case involving the forced disappearance of two sisters by Salvadoran soldiers during the civil war.

Table 2.3: 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 *de facto* and *de jure***, 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**...

Each judgment generates multiple compliance orders – on average, seven per case. Compliance orders provide both individual remedies – benefiting the victim and victim's family – and general remedies, which are meant to benefit society as a whole and prevent future violations. These orders include financial reparations, measures of rehabilitation for the victim and victim's family, satisfaction, and guarantees of non-repetition. Notably, in comparison to other international courts, these compliance orders are very specific. Thus, the state is not granted any discretion in how to provide satisfaction or guarantee non-repetition; rather,

the Court specifies exactly what those remedies would entail. The lack of discretion granted to the state makes compliance more difficult because the Court does not take into account any existing constraints on state capacity to implement its orders.[19]

Table 2.4 shows the most frequent compliance orders in Court judgments.[20] At least one measure of financial compensation is ordered in every case – if damages are not paid to the victim directly, they are paid to the next of kin. This is common in cases being brought by family members when, for example, the victim has been forcibly disappeared. The most common non-financial measures include publishing the judgment; publicly accepting responsibility; investigating, prosecuting, and punishing the perpetrators; reforming legislation; and providing ongoing medical treatment to the victim or family members.[21]

Once the Court orders remedies, the case moves into the monitoring phase. The Court has affirmed that compliance is an "integral part of the right of access to justice," which it is thus competent to monitor.[22] The Court fulfills this duty of ensuring implementation by requesting information from states and petitioners and 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 also allowed states to participate in "compliance hearings" where state officials can testify about what measures have been taken. 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."[23]

[19]This sentiment has also been expressed in multiple interviews with lawyers who represent victims before the Court.

[20]Examples of the text that generates each of these compliance orders can be found in the appendix (see Table 2.10).

[21]As many states have already formally acknowledged the violation of the American Convention by the time the Court issues its judgment, the Court does not order states to publicly accept responsibility as frequently as one might think.

[22]Inter-American Court of Human Rights, 2002, *Case of Baena Ricardo* et al. *(270 Workers v. Panama): Competence*, para. 128-138.

[23]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

Table 2.4: Most frequent compliance orders in Inter-American Court cases

Issue	Count	Percentage
Financial		
Pay court costs	157	88.2%
Non-pecuniary damages to victim	104	58.4%
Pecuniary damages to victim	102	57.3%
Pecuniary damages to next of kin	46	25.8%
Non-pecuniary damages to next of kin	42	23.6%
Satisfaction		
Publish the judgment	140	78.7%
Publicly accept responsibility	65	36.5%
Public memorial for the victim	17	9.6%
Memorial plaque	15	8.4%
Non-repetition		
Investigate, prosecute, and punish	103	57.9%
Reform legislation	72	40.4%
Train state officials in human rights	49	27.5%
Repeal or nullify existing law	19	10.7%
Reform prisons	13	7.3%
Rehabilitation		
Provide medical treatment	74	41.6%
Search for and/or recover victims' remains	37	20.8%
Provide access to education	16	9%

Note: This is not an exhaustive list of all compliance orders. Orders must be given in at least 13 cases (7%) to appear. Some remedies are very particular and do not generalize. These include the order to establish a course in human rights including the adjudicated case as a case study (2 cases); to allow for bonding between father and child (1 case); and to grant collective title of indigenous lands to a particular group (4 cases). Percentages are based on the 178 judgments against the state issued between 1989 and 2014. Multiple orders can be given in the same case, even within the same category, which is why percentages do not sum to 100.

Because of its extensive monitoring regime, the Court has a precise sense of how much compliance there is (not) in each case. Before declaring any case closed, however, the Court waits for full compliance with each individual compliance order. Given that the average number of orders per case is seven, and that these orders vary in degree of difficulty, it is perhaps unsurprising that the record of closed cases appears rather poor. But just because

for a few dozen cases (42 cases in 2017).

states are not fulfilling all orders in any one case does not mean that they are not fulfilling any of them. What a dichotomous interpretation of open/closed on the level of the case misses is the amount of compliance that exists. In order to more accurately measure behavioral changes on the parts of states in response to Inter-American Court judgments, one must consider compliance on the level of particular orders within each case, rather than the case as a whole.

2.3 How Much Compliance is There?

2.3.1 Measuring Compliance

To measure compliance outcomes, I coded 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.[24] Excluding cases that have never been monitored, the average number of compliance reports per case is 2.37. Because no information is available about orders that have not yet been monitored, for the purpose of the descriptive results below, I will only include orders that have been monitored at least once.

From these monitoring reports, I recorded the compliance outcome for each order in each monitoring period. For example, the first monitoring report in *Serrano Cruz Sisters v. El Salvador* was issued in 2006, one year after the original judgment. The Court noted full compliance with three of the twelve orders (publicly accept responsibility and pay pecuniary and non-pecuniary damages), partial compliance with two orders (reimbursement of court

[24]There does not appear to be a systematic reason why some cases get monitored frequently and others do not get monitored at all. As reported in the 2017 Annual Report, the Court requests information from states and petitioners on all cases for which it is currently monitoring compliance. However, only some cases receive monitoring reports. Interviews with lawyers reveal there does not appear to be any stated or given reason for the disparity in monitoring reports.

costs, publish the judgment, and create a webpage to find the missing), and non-compliance with the remaining six (see Table 2.5).[25] Substantively, partial compliance with an order means that the state did some, but not all, of what the Court's order entailed. For example, El Salvador published some parts of the Court's judgment, but not all parts deemed relevant by the Court; likewise, it reimbursed court costs to one group of lawyers, but not to the second one.

Table 2.5: Monitoring compliance in *Serrano Cruz Sisters v. El Salvador*

	Monitoring Year			
Compliance Order	2006	2007	2010	2016
Publicly accept responsibility	F			
Publish judgment	P	P	F	
Court costs	P	F		
Pecuniary damages	F			
Non-pecuniary damages	F			
Create public memorial	N	F		
Create webpage to find the missing	P	P	P	F
Establish national commission	N	N	N	N
Create DNA database	N	N	N	N
Provide medical care	N	N	N	N
Repeal amnesty law	N	N	N	F
Investigate; prosecute; punish	N	N	N	N

Note: Each year corresponds to a monitoring report issued in this case. "N" indicates that the Court noted non-compliance with the order; "P" indicates partial compliance; and "F" indicates full compliance. The Court stops monitoring orders with which states have fully complied.

The Court monitored the *Serrano Cruz Sisters* case for the second time in 2007. In the second monitoring report, the Court noted that El Salvador had fully complied with two orders, partially complied with another two orders, and that compliance of any kind was still pending for the remaining five. As many of the orders involve one-time actions that are non-revocable, the Court does not continue to monitor orders with which it has previously noted full compliance. Consequently, the third monitoring report (2010) monitors seven orders total (one full compliance, one partial compliance, and five non-compliance), and the last

[25]Order of the Inter-American Court of Human Rights, September 22, 2006, *Serrano Cruz Sisters v. El Salvador: Monitoring Compliance with Judgment*, pgs. 20-22.

monitoring report to date in this case (2016) monitors six orders (two full compliance, four non-compliance). In future monitoring reports for the *Serrano Cruz Sisters* case, the Court will report on at most four compliance orders (establish national commission, create DNA database, provide medical care, and investigate, prosecute, and punish the perpetrators), because El Salvador has already fulfilled the other eight.

Critics of the Inter-American Court's record for closing cases will note that the *Serrano Cruz Sisters* case is a "failure" in the sense that compliance remains pending almost fifteen years after the judgment. However, while full compliance with all 12 orders remains pending in this case, El Salvador's actual rate of compliance is 66%, as it has to date completed eight of the 12 remedies it was ordered to undertake. Across all monitored orders (1,055 orders total through 2015), full compliance is the most frequent outcome: states have fully complied with 47% of orders (493 orders), compared to a non-compliance rate of 44% (464 orders), and partial compliance rate of 9% (98 orders). Taking full and partial compliance together, states have made some efforts toward compliance in the majority of orders the Inter-American Court has handed down.

2.3.2 Variation in Compliance Outcomes

As one might expect, the actual rate of compliance varies considerably depending on the state. Table 2.6 illustrates the compliance rate and case closure rate across all states, for judgments issued between 1989 and 2014. States are grouped by the number of judgments that have gone against them. 30 cases – or nearly 17% of all judgments – have come from Peru. Although there is a lot of variation across the region in terms of number of judgments (and compliance orders) and compliance rates, a particular state's rate of compliance does not appear correlated with the number of judgments it has received. Peru's compliance rate (on the level of individual orders) is exactly the regional average at 47%. Moreover, the "best" and "worst" compliers (Costa Rica, and Trinidad & Tobago and Haiti, respectively) have had the same number of cases (two) and nearly the same number of orders.

State compliance outcomes also appear to be only somewhat correlated with GDP per

Table 2.6: Compliance rate by state

State	Judgments			Compliance Orders			
	Total Cases (2014)	Closed (2017)	Percentage	Total Orders (2014)	Monitored (2015)	Complied (2015)	Percentage
20+ cases							
Peru	30	3	10%	219	186	88	47%
15-19 cases							
Guatemala	18	0	0%	162	126	68	54%
Venezuela	16	0	0%	100	93	8	9%
Colombia	15	0	0%	143	111	42	38%
Argentina	15	4	27%	90	45	28	62%
10-14 cases							
Ecuador	14	6	26%	85	73	54	74%
5-9 cases							
Honduras	8	2	25%	57	48	30	63%
Mexico	7	1	14%	87	77	41	53%
Paraguay	7	1	14%	73	73	19	26%
Chile	7	2	29%	37	29	22	76%
El Salvador	5	0	0%	54	31	10	32%
Panama	5	1	20%	31	24	15	63%
Suriname	5	2	40%	25	22	11	50%
1-4 cases							
Dominican Rep.	4	0	0%	36	4	2	50%
Bolivia	4	1	25%	31	31	21	68%
Brazil	4	1	25%	28	28	14	50%
Nicaragua	3	2	66%	12	12	6	50%
Uruguay	2	0	0%	15	11	6	55%
Costa Rica	2	1	50%	13	5	5	100%
Trinidad & Tobago	2	0	0%	13	13	0	0%
Haiti	2	0	0%	12	4	0	0%
Barbados	2	0	0%	9	9	3	33%

Note: Years indicate the last year of observations. Only cases and orders issued between 1989 and 2014 are included. Percentage of compliance orders with which the state has fully complied is based on monitored orders only.

capita, a frequently used proxy for state capacity (Hendrix, 2010). As shown in Table 2.7, the probability of compliance does not uniformly decrease as one moves from the richest to the poorest state in the region. State capacity may be a necessary condition – it is quite possible that Haiti, the poorest member of the Court and one of the poorest states in the world, is simply below that threshold – but it is not a sufficient one. With the exception of Uruguay, the compliance rates of the richest states in the region are quite low; Trinidad &

Table 2.7: State capacity and compliance outcomes

State	GDP per capita	Compliance Rate
GDP per capita: $15,000+		**24%**
Trinidad & Tobago	$17,941	0%
Barbados	$16,129	33%
Venezuela	$15,629	9%
Uruguay	$15,525	55%
GDP per capita: $10,000–$14,999		**75%**
Chile	$13,737	76%
Argentina	$13,698	62%
Panama	$13,628	63%
Costa Rica	$11,393	100%
GDP per capita: $5,000–$9,999		**50%**
Mexico	$9,298	53%
Brazil	$8,750	50%
Suriname	$8,618	50%
Dominican Rep.	$8,535	50%
Ecuador	$6,150	74%
Peru	$6,053	47%
Paraguay	$5,447	26%
GDP per capita: $1,000–$4,999		**53%**
Guatemala	$3,924	54%
El Salvador	$3,670	32%
Bolivia	$3,077	68%
Honduras	$2,341	63%
Nicaragua	$2,074	50%
GDP per capita: <$999		**0%**
Haiti	$815	0%

Note: Both GDP per capita and compliance rate are from 2015. Percentage of compliance orders with which the state has fully complied is based on monitored orders only.

Tobago, which has the highest measured GDP per capita among Court members, also has a 0% compliance rate. The middle three income groups average 50% or better compliance rates, whereas the richest group is the second-worst at 24%. Granted, Trinidad & Tobago and Venezuela may be outliers as neither is a current member of the Court, having denounced the American Convention in 1998 and 2012, respectively. Setting those two states aside, GDP per

capita is moderately correlated with compliance rate (correlation coefficient of 0.35).[26] The correlation may appear lower than expected if the managerial argument is correct; however, this probably has more to do with the weakness of GDP per capita as a measure of state capacity than it does any weakness of the relationship between non-compliance and capacity constraints.

The compliance orders themselves might be a better indication of possible capacity constraints, as some orders are clearly easier to fulfill than others (Beristain, 2009; Basch et al., 2011; Bailliet, 2013). To illustrate this variation, in Table 2.8, I calculate the rate of compliance (full compliance, as well as full plus partial compliance) with the most frequently ordered remedies.[27] These rates should be interpreted as the percentage of orders fulfilled by the end of 2015. Recalling that the overall rate of full compliance is 47%, it becomes immediately apparent that compliance outcomes with financial reparations and measures of satisfaction are much better than average, and most outcomes with orders of non-repetition and measures of rehabilitation are far below average. In terms of compliance, the order to train state officials in human rights is the modal order (44% full compliance for the order, compared to 47% average). It is perhaps unsurprising that these compliance rates correspond to the costliness of implementation – financial reparations only entail money, and most measures of satisfaction are relatively easy to implement. Measures of non-repetition and rehabilitation, in contrast, are more time-consuming and take more state capacity to implement. While states like Peru have received a disproportionate number of compliance orders overall, they also have more opportunities to complete orders that are relatively easy to fulfill. The relevant managerial challenge to compliance is most likely not how many tasks a state must complete, but rather how difficult these tasks are to fulfill.

The lowest rate of compliance is for the order to investigate, prosecute, and punish the perpetrators. Of the 79 orders of this type that have been monitored, states have only

[26]Excluding Trinidad & Tobago and Venezuela, the average compliance rate for the richest group is 44%, which is at least close to the compliance rates of the moderately wealthy groups.

[27]These remedies are found in Table 2.4. Note that here I am only using the total number of monitored orders for each remedy, which is why the numbers in the "Total (Monitored)" column do not perfectly correspond to the numbers that were presented in Table 2.4.

Table 2.8: Compliance rate by order

Compliance Order	Total (Monitored)	Full Compliance	Partial Compliance	Percentage (Full)	Percentage (Full+Partial)
Financial					
Pay court costs	122	89	8	73%	80%
Pecuniary damages to next of kin	46	32	9	70%	89%
Non-pecuniary damages to victim	71	47	8	66%	74%
Non-pecuniary damages to next of kin	42	26	9	62%	83%
Pecuniary damages to victim	71	44	10	62%	76%
Satisfaction					
Publish the judgment	107	77	4	72%	76%
Public memorial for the victim	13	9	0	69%	69%
Publicly accept responsibility	50	34	0	68%	68%
Memorial plaque	13	8	2	62%	77%
Non-repetition					
Train state officials in human rights	34	15	3	44%	53%
Reform legislation	58	15	6	26%	36%
Repeal or nullify existing law	17	3	0	18%	18%
Reform prisons	11	1	2	9%	27%
Investigate, prosecute, and punish	79	2	7	3%	14%
Rehabilitation					
Provide access to education	11	3	3	27%	55%
Provide medical treatment	51	8	5	16%	25%
Search for and/or recover victims' remains	30	4	4	13%	27%

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

achieved full compliance twice, for a dismal compliance rate of 3%. Note, however, that this is one of the most difficult orders for states to implement, as states may need to reform legislation or repeal existing laws in order to facilitate investigation. The compliance rate on those two orders is likewise middling (26% and 18%, respectively). From a managerial perspective, it is unsurprising that compliance with these particular measures is low. How-

ever, with enough time, states may be able to implement these orders – and the Court will continue holding out for compliance until they do.[28]

These outcomes should also lead us to reconsider how we evaluate the Inter-American Court's compliance record. The Inter-American Court's track record is often (and occasionally unfairly) compared to that of the European Court of Human Rights. A true comparison is difficult because the two courts order remedies in very different fashion – the Inter-American Court specifies the remedies the state must undertake, while the European Court uses a "delegated" model in which states are only told an amount to pay in financial reparation and that they should take steps to ensure non-repetition, with the particular steps to be taken left up to the discretion of the state (Hawkins and Jacoby, 2010). States generally publish European Court judgments as a form of reparation, but publication serves a different purpose: because many European states are monist, European Court judgments take direct effect, so publication and dissemination to lower courts is essentially a guarantee of non-repetition, and no further actions are needed.[29] It is worth noting that for the remedies that are most immediately comparable to what European states are ordered to do – make financial reparations and publish the judgment – the compliance rate in the Inter-American system is quite high (60-70%), and is in fact comparable to compliance with orders for just satisfaction at the European Court of Human Rights.[30]

2.4 Conclusion

The Inter-American Court of Human Rights faces the daunting task of protecting and promoting human rights in a region that has experienced widespread abuses. When the Court was created in 1979, over two-thirds of its eventual members were still military dictatorships.

[28]Even when the Court has applied Article 65 of the American Convention, indicating extreme non-compliance, it still considers itself to be monitoring compliance with these cases. See Inter-American Court of Human Rights, 2018, *2017 Annual Report*, at pg. 98.

[29]While many states in the region are *de jure* monist, they are *de facto* dualist systems, so dissemination alone would be insufficient to ensure compliance. See Courtis (2009)

[30]See Council of Europe, 2018, *Supervision of Execution of Judgments and Decisions of the European Court of Human Rights, 11th Annual Report of the Committee of Ministers – 2017*, at pg. 14.

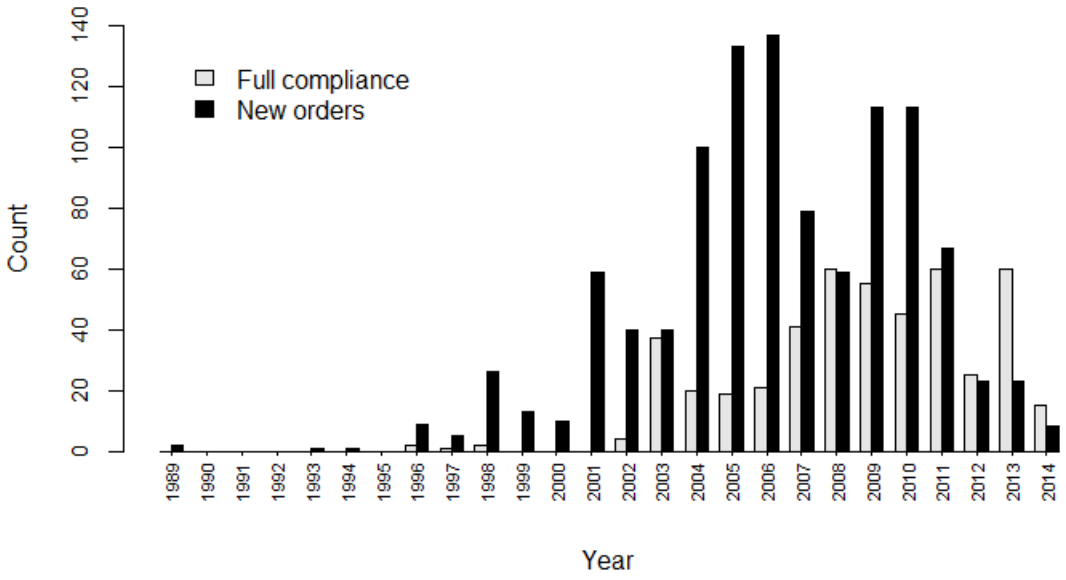
The vast majority of the Inter-American Court's work deals with abuses committed either during the military dictatorship or in nascent democracies still consolidating the rule of law. Against this backdrop, the Court's ordered remedies consist not only of individual reparations and measures of rehabilitation, but also of specific guarantees of non-repetition, often in the form of structural and institutional changes. Compliance is difficult and time-consuming; it should not be surprising that states have not fulfilled all of the Court's orders.

I began this chapter with a sobering picture of the Court's case closure rate (Figure 2.1). But a more accurate picture would have considered outcomes for specific compliance orders. Although states are clearly not doing everything that the Inter-American Court asks of them, they are not doing nothing. In fact, Figure 2.4 illustrates a more optimistic picture when evaluating compliance on the level of an individual order. The black bars indicate the number of new orders that have at least one monitoring report as of 2015; thus, there are very few new orders for 2013 and 2014, because the Court has not yet reported on compliance with orders from judgments in these years. While no inferences should be drawn about the ratio of full compliance to new orders in the most recent years, Figure 2.4 does show that the level of compliance with individual orders appears to be increasing over time. This should be encouraging news to those who believe that compliance is a measure of an institution's effectiveness.

Thus, we ought to give credit where credit is due: the compliance rate is not nearly as bad as critics fear. Although the case closure rate is poor (13%), states are complying with nearly half of the Court's specific orders within those cases (47%). The compliance rate varies significantly depending on the type of ordered remedy, and corresponds to the costliness of implementation. States have a strong record of complying with measures of financial reparation and satisfaction, but a much sparser record of complying with measures that guarantee non-repetition or provide rehabilitative services to the victims. However, even for the hardest remedies the Inter-American Court has ordered, the compliance rate is not zero. In other words, even under circumstances in which compliance seems *least* likely, most states have fulfilled some of the Court's orders.

While this is no doubt encouraging news, it also suggests that capacity constraints are not

Figure 2.4: Compliance with individual orders is increasing over time



Note: Only orders that have been monitored at least once are included.

the only reason why states fail to comply. Capacity constraints may affect which particular orders states choose to fulfill (i.e., why states would choose to pay financial reparations rather than investigate, prosecute, and punish the perpetrators), and they may explain why states like Haiti have not fulfilled any orders, but they do not explain why, for states that have the capacity to comply, some states comply more than others, or why states comply when they do. Having recognized that the underlying probability of compliance with rulings of the Inter-American Court may, as a baseline, be low, the remaining chapters hold capacity and its limitations fixed. What happens when states *do* have the capacity to comply? Why, nevertheless, might we sometimes still observe non-compliance? Only by addressing these questions can we hope to develop a greater understanding of compliance outcomes in the Inter-American system of human rights protection.

2.5 Appendix

Table 2.9: Reasons why cases have remained at the Inter-American Commission

Reason	Count	Example Text
Petitioners unwilling	3	"On the other side, the [Commissioners] have not submitted the case to the decision of the Court...the [Commissioners] decided by a vote of absolute majority not to send the case to the Court considering, fundamentally, that the original petitioner, The Lawyers Committee for Human Rights, expressed that they did not want to continue the case before the Court" –*Guy Malary v. Haiti*
Petitioners unable	2	"The Commission is not unaware of the fact that neither the victims nor their relatives can be located...the Commission has sent several messages to the address originally supplied by the petitioners, but they were returned by the Post Office because it could not discover their whereabouts. That factor was in fact the main reason why the [Commissioners] decided not to bring this case before the Inter-American Court of Human Rights..." –*Waldemar Gerónimo Pinheiro and José Víctor Dos Santos v. Paraguay*
Outside the Court's temporal jurisdiction	11	"The [Commission] wishes to note that, given the specific circumstances of this case, including the petitioners' position regarding the subject, the date on which the events took place, the dates when the police inquiry was initiated and archived, all of which occurred prior to December 10, 1998, the date when Brazil accepted the contentious jurisdiction of the Inter-American Court of Human Rights, the Inter-American Commission, in accordance with the provisions of its Rules of Procedure, decided not to submit this case to be heard by the Inter-American Court of Human Rights" –*Simone André Diniz v. Brazil*
Insufficient evidence	1	"Pursuant to Article 44(1)...the [Commission] decided by absolute majority of its members not to submit the instant case to the Inter-American Court...When adopting this decision the [Commission] took into account, among other things, the evidence available in the case file" –*Rafael Ignacio Cuesta Caputí v. Ecuador*

Table 2.10: Distribution of compliance orders in cases before the Inter-American Court of Human Rights

Compliance Order	Count	Example Text
Publish the judgment	140	"**publish once, within six months of notification of this Judgment, the official summary of the Judgment** prepared by the Court in the State's Official Gazette" –*Forneron and daughter v. Argentina*
Pay court costs	134	"pay the amounts established in paragraphs 191, 192, 197 and 204 to 206 of this Judgment...for **reimbursement of costs and expenses**...and also reimburse the Victims' Legal Assistance Fund the amount established in paragraph 210 of this Judgment" –*Forneron and daughter v. Argentina*
Pecuniary damages to victim	103	"**pay the persons indicated in Appendixes I and III of th[e] judgment, within one year, in compensation for pecuniary damage**, the amounts established in paragraph 379 and in Appendixes I and III of th[e] judgment" –*Ituango Massacre v. Colombia*
Investigate, prosecute, and punish	97	"open, promote, direct, continue and conclude, as applicable and with the greatest diligence, the pertinent criminal investigations and proceedings to **identify, prosecute and punish, as appropriate, those responsible for the severe harm to personal integrity**" –*Espinoza Gonzales v Peru*
Non-pecuniary damages to victim	82	"pay each of the 270 workers mentioned in paragraph 4 of this Judgment the amount of **US$3,000 (three thousand U.S. dollars) for moral damages**" –*Baena Ricardo v. Panama*
Reform legislation	70	"adopt, in a reasonable period of time, **the relevant legislative reforms to conform Article 57 of the Military Code of Justice with international standards on the matter** and the American Convention on Human Rights" –*Fernandez Ortega v. Mexico*
Provide medical treatment	69	"**provide free medical and psychological care to Wilson García-Asto through its health care services**, including the provision of medicines free of charge" –*García-Asto and Ramirez Rojas v. Peru*
Publicly accept responsibility	65	"**carry out a public act of acknowledgment of its international responsibility** in regard to the facts of the present case" –*Gomes Lund v. Brazil*

Table 2.10: Distribution of compliance orders in cases before the Inter-American Court of Human Rights

Compliance Order	Count	Example Text
Train state officials in human rights	47	"implement, within a reasonable time, a **permanent compulsory course or program on human rights for officials of all ranks of the Haitian National Police, and the judicial officials of Haiti**" *–Lysias Fleury v. Haiti*
Pecuniary damages to next of kin	46	"the Court decides to] set at US$111,000.00 or the equivalent in national currency the **sum that the Argentine State shall pay as reparations to the next of kin of Mr. Adolfo Garrido**, and US$64,000.00 or its equivalent in national currency as reparations to the next of kin of Raúl Baigorria" *–Garrido and Baigorria v. Argentina*
Non-pecuniary damages to next of kin	42	"**pay to the next of kin** of Messrs. Oscar José Blanco-Romero, Roberto Javier Hernández-Paz and José Francisco Rivas-Fernández the amounts set forth in paragraphs 88 and 89 of the instant Judgment, within a period of one year, as **compensation for non pecuniary damage**" *–Blanco Romero v. Venezuela*
Search for and/or recover victims' remains	31	"carry out all efforts to **determine the whereabouts of the disappeared persons, and where applicable, identify and return the bodily remains** to the next of kin" *–Gomes Lund v. Brazil*
Repeal or nullify existing law	18	"adopt immediately the necessary measures to **ensure that Decree No. 11,804, declaring part of the land claimed by the Community a protected wooded area, will not be an obstacle for the return of the traditional lands**" *–Xakmok Kasek Indigenous Community v. Paraguay*
Create a public memorial for the victim	14	"**designate three schools**: one with the name of Gregoria Herminia, Serapio Cristian and Julia Inés Contreras, another with the name of Ana Julia and Carmelina Mejía Ramírez, and a third with the name of José Rubén Rivera Rivera" *–Contreras v. El Salvador*
Provide access to education	13	"**award scholarships in Chilean public establishments** to the children of the eight victims in this case who request this" *–Norin Catriman v. Chile*
Memorial plaque	13	"in a public ceremony in the presence of the next of kin of the victims, [**the state**] **shall place a plaque with the names of the 19 tradesmen**" *–19 Tradesmen v. Colombia*

Table 2.10: Distribution of compliance orders in cases before the Inter-American Court of Human Rights

Compliance Order	Count	Example Text
Reform prisons	13	"adopt and implement, within a reasonable time from the date of notification of the present Judgment, such **measures necessary to ensure that the conditions of detention in which the victims in this case are held comply with the requirements of the American Convention** –*Boyce et al. v. Barbados*
Pay interest	11	"**pay Mr. Chaparro the bank interest on arrears in Ecuador** indicated in paragraph 245 of the judgment" – *Chaparro Alvarez v. Ecuador*

Note: This is not an exhaustive list of all compliance orders. Orders must be given in ten or more cases to be included.

CHAPTER 3

Theory

3.1 Introduction

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

The long-standing presumption has been that international courts provide a good – justice – that is demanded by the public. But what happens when justice is *not* in demand? Justice for human rights violations often necessitates confronting the abuses of the past, which some voters would prefer to leave alone. This sentiment is summed up by the idiom *"No hay que tener ojos en la nuca"* – you should not have eyes at the back of your head (Lessa, 2011). In other words, society should forget the abuses of the past and focus only on the future. Nevertheless, victims of human rights abuses often try to get justice by appealing to international courts. These courts may issue judgments and find the state responsible for violating international law, but remedying the violation – complying with the ruling – is ultimately up to an individual leader.

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

In the previous chapter, I considered the managerial constraints on states' capacity to implement rulings of the Inter-American Court of Human Rights. In this chapter, I turn to the non-managerial explanations for non-compliance – the leader has the capacity to comply, but does not implement the ruling for some other reason. In particular, I focus on the domestic political incentives for non-compliance that arise when voters do not favor compliance and the leader faces a high level of accountability to the public. Although human rights scholars generally assume that voters support compliance, I find that attitudes toward compliance are not uniform when the military is implicated. 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 her need to be responsive to the public's preferences and whether the public supports compliance.

In the next section, I review the existing literature on non-managerial accounts of non-compliance. I then present my theory, focusing on the unique circumstances that Latin American leaders face when asked to implement rulings that implicate the military, a divisive political actor whom some voters abhor and others support. The final section introduces the empirical implications that will be tested in Chapters 4 and 5.

3.2 Non-Managerial Accounts of (Non)-Compliance

Some scholars argue that states comply because they feel a normative commitment to follow the rules. This commitment is strengthened by the acts of ratifying a treaty and joining an institution, which legally bind the state to follow those rules. States may feel this commitment out of a belief in *pacta sunt servanda*, the international law principle that agreements ought to be carried out, or based on their "perception of a rule as legitimate" (Franck, 1988, pg. 706). It may also be the case that normative commitments to the law are part of a national or cultural identity, as states might project internal norms about law into their external behavior in the international system (Henkin, 1979). Thus, compliance with inter-

national law fulfills a certain "logic of appropriateness" that states find appealing (Finnemore and Sikkink, 1998).

Scholars have found evidence in favor of states' strong normative commitments to international law by showing that it can motivate states to comply even when doing so goes against their material self-interest. Affinity for the law may explain why states did not break their commitments to the International Criminal Court when the United States threatened to withhold aid (Kelley, 2007) and why states make and uphold commitments to the International Monetary Fund (Simmons, 2000). Non-compliant states may change their beliefs about international law if they are socialized or persuaded by other actors (Keck and Sikkink, 1998; Risse, Ropp and Sikkink, 1999; Checkel, 2001; Goodman and Jinks, 2004). Repeated exposure to human rights might help states to internalize their obligations to international law. Alternatively, states could be shamed into compliance. This "mobilization of shame" publicizes states' behavior, thus making readily apparent when and how states have failed to comply (Keck and Sikkink, 1999; Drinan, 2002; Hafner-Burton, 2008; Cole, 2012*b*).

Alternatively, non-compliant states may be coerced into changing their behavior. Scholars have found evidence that states only comply with international legal obligations when a material reward like foreign aid (Hafner-Burton, 2005), electoral victory (Dai, 2005), multilateral loans (Lebovic and Voeten, 2009), foreign direct investment (Hong and Uzonyi, 2018), or membership in an exclusive club like the European Union (Conant, 2014; Follesdal, 2016) is at stake. Thus, states need not change their beliefs about international law; rather, they simply need to be offered the right reward – or threatened with enough punishment – to comply.

Notably, however, the proposed mechanisms – persuasion, naming and shaming, coercion – all assume that the public always wants the leader to comply with rulings from human rights courts. Previous scholarship has presumed that the government is the guilty party responsible for human rights violations; the public demands justice; and an international court is necessary to facilitate the leader meeting this demand. This presumption is also supported by survey data; for example, among citizens in member-states of the Inter-American Court that were surveyed in the most recent wave of the World Values Survey, 53% believe that

civil rights and protection from oppression is an essential characteristic of democracy.[2] 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, this presumption is not warranted in all cases. In transitioning democracies in particular, compliance might implicate the previous regime, which is, in many cases, still quite popular. Newly democratic leaders who receive orders from an international court 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?

3.3 Argument

3.3.1 Compliance in Newly Transitioned Democracies

As shown in Chapter 2, the vast majority of states in the Inter-American Court are newly transitioned democracies. Several scholars have already identified these regimes' unique behavior when it comes to membership in international courts.[3] However, these states' status as newly transitioned democracies also has three important implications for compliance.

First, leaders in these states are not usually as constrained by veto players as those in mature, fully consolidated democracies. This means that they often have the capacity to implement rulings in a way that other democratic leaders do not. In Latin America in particular, executives are very powerful relative to other branches of government.[4] Except in a

[2]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.

[3]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.

[4]Note that except for two exceptions (Barbados and Suriname), all members of the Inter-American Court

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).

Second, these states are often asked to confront the human rights abuses of past dictatorships. Whether, when, and how to confront the past are all contentious issues in many Latin American states (de Brito, 2001; Achugar, 2007; Isaacs, 2010). In many cases, the institutions that committed the abuses still retain political power and/or popularity. This means that, contrary to the presumption in much of the extant literature on compliance, one ought to expect variation in the public's preferences for compliance, based on the popularity of the implicated actor.

Finally, leaders in newly transitioned democracies are only somewhat accountable to the public. By "somewhat accountable", I mean that they need not always be responsive to the public's preferences. In particular, 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 need for accountability determines the likelihood of the leader being responsive to the public's – as opposed to her own – preferences on compliance.

3.3.2 Why (Not) Comply?

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 3.1, this implicated actor is most likely the military. Along with finding the state responsible, the Court's judgment also includes a list of remedies the state

are presidential democracies.

must undertake to rectify the violation.

Table 3.1: 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.[5] Leaders enter office with underlying preferences for human rights, compliance, and the rule of law. Above all, however, they 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 accountable to the public, and other times not. The leader's need for accountability to maintain power dictates her responsiveness to the public's preferences. Thus, the leader decides whether to comply based on her need for accountability and the public's preferences for compliance.

[5]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.

3.3.2.1 Fear of Losing Office

The leader's need for accountability varies over time, and is directly related to the level of threat to her power or, alternatively, her fear of losing office. As threats to her power increase, the leader becomes more responsive to the public's preferences. 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.

In newly consolidated democracies, the leader's fear of losing office comes from two sources: elections (regular transitions) and coups (irregular transitions). Her level of fear of losing power in an election or coup changes over time, depending on how close the next election is (the leader's fear of losing power in an election should increase closer to the election and be close to zero otherwise), or the (perceived) risk of being overthrown in a coup.

First, consider the fear of losing office that comes from an upcoming election. 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 power in a regular transition – 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.[6] Public support for the military proxies for support for compliance through two possible mechanisms, one direct and one indirect. As a direct mech-

[6]One 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.

anism, 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.

Second, consider the fear of losing office in a military coup. According to Powell and Thyne (2013), there have been 141 attempted coups since 1950, of which 65 have been successful. Latin American presidencies are frequently described as precarious and unstable. Presidential systems are inherently less stable than parliamentary systems because leaders' terms in office are fixed; in other words, there are few constitutional mechanisms to remove ineffectual presidents before the next scheduled election, which makes unconstitutional overthrow more likely (Linz, 1990; Valenzuela, 2004). Cheibub (2007) added the military nexus: "what kills democracies is not presidentialism but rather their military legacy" (140).[7] Consequently, Latin American democracies have historically been subject to overthrow by irregular forces.

In addition to this history of coup – or perhaps because of it – voters in Latin America are fairly supportive of military coups under various circumstances. Following the recent upheaval in Brazil over corruption, generals talked openly about overthrowing the democratically-elected government if courts could not solve the problem of corrupt politicians. Surveys show nearly 45% of Brazilians favor at least temporary military intervention.[8] Across states surveyed in the 2014 edition of AmericasBarometer, nearly 30% of respondents, on average, think a military coup is justified if the crime rate is high (see Figure 3.1). This rate is nearly 40% in Brazil and is over 40% in Peru, Mexico, and Paraguay.

Additionally, a majority of respondents in all Latin American states support the use of

[7]This is not to say that the nexus is causal, only that there is a historical coincidence between military dictatorship and presidencies.

[8]Alex Cuadros, "Open Talk of a Military Coup Unsettles Brazil," *The New Yorker*, October 13, 2017. Accessed online at https://www.newyorker.com/news/news-desk/open-talk-of-a-military-coup-unsettles-brazil.

Figure 3.1: Distribution of civilian support for military coup when crime rate is high

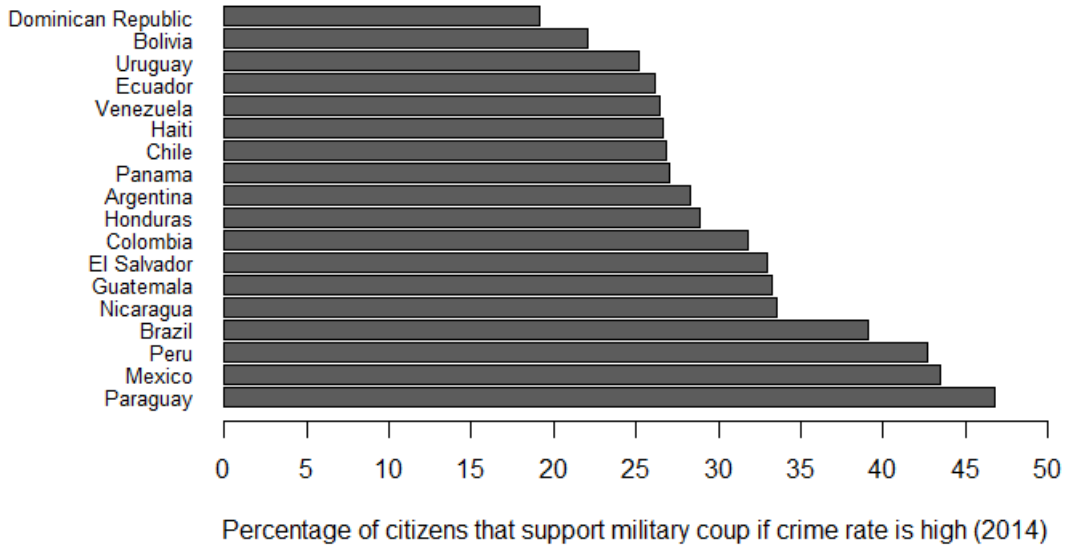
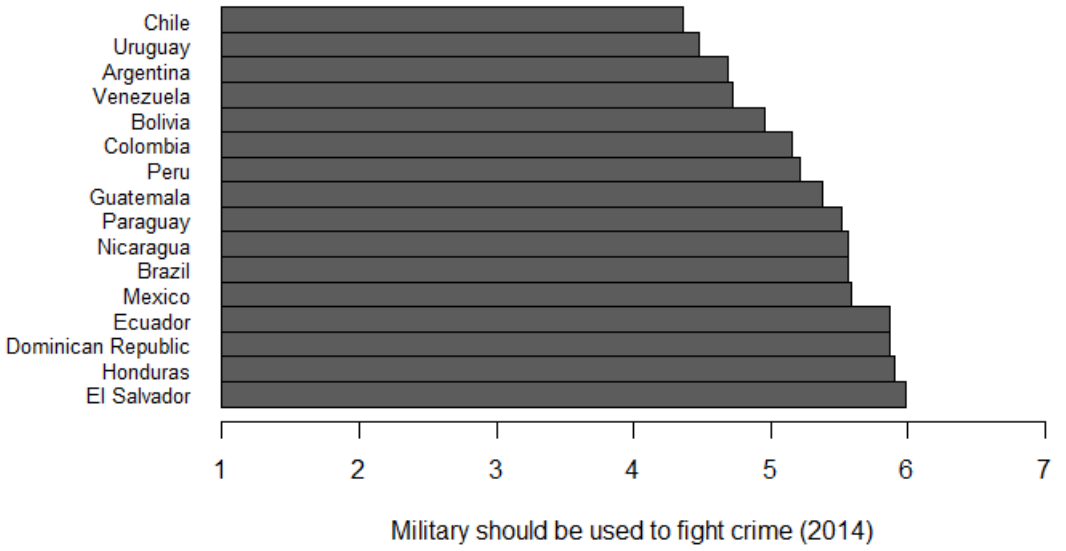


Figure 3.2: Distribution of civilian support for military intervention to fight crime



the military to fight crime (Figure 3.2).[9] Both of these survey results reflect the historical view on the part of the military and Latin American voters that political intervention by the military in domestic affairs is a "'normal' option" (Koonings and Krujit, 2002, pg. 18). The Uruguayan military, for example, believed its 1973 coup was justified because it "responded

[9]This question asks respondents the extent to which they agree with the statement "The military should be used to fight crime." A 7 indicates strong agreement and 1 indicates strong disagreement.

to the requests of the democratically established governments and to the constitution" to defend the fatherland against the Marxists and subversives (Achugar, 2007, pg. 522). Casting the military as the "representative of the people's will," as the Uruguayan military did, opens the door for intervention if the military feels the current civilian leadership is no longer responsive to the public's will.

The public supports the leader (or leader's party) by not supporting a military coup. Granted, one could also conceive this story as one in which the military and leader are the only relevant actors. Because compliance with the Inter-American Court's orders would implicate them, the military prefers non-compliance. The military is also capable of ousting the leader, so the leader responds to the military's preferences for non-compliance when the military is more likely to launch a coup, and responds to her own preferences on compliance otherwise. While the military could launch a coup on its own, it is worth noting that interventions today do not look like the military coups that brought dictatorships to power in the past. When the military has intervened to remove a democratically-elected leader, it subsequently transfer power back to civilian leadership, as was the case in Honduras in 2009 when President Zelaya was ousted. Moreover, the military has not intervened unless the public has asked it to – in Honduras, civilians asked the armed forces to remove the president from office.[10] Because the military is unlikely to launch a coup without the public's support, here I focus on the (civilian) voters' preferences for compliance, with the military as the force that can remove the leader from office if the public no longer supports the leader.

3.3.2.2 Voters' Preferences for Compliance

Voters do not have uniform preferences for compliance. Because different cases implicate different government bodies, compliance does not affect all constituencies equally. When states are told to investigate, punish, and prosecute crimes, for example, compliance will result in specific actors – per Table 3.1, usually members of the military – being put on trial and possibly going to prison. The public may generally care about human rights and the

[10]Elisabeth Malkin, "Honduran President is Ousted in Coup," *New York Times*, June 28, 2009. Accessed online at http://www.nytimes.com/2009/06/29/world/americas/29honduras.html.

rule of law, but it does not necessarily follow that they are pro-compliance, particularly if compliance would implicate a trusted institution. Even if only the military is punished, or if military officials are the only ones going to jail, the public as a whole still has to contend with trials, and thus society's confronting of the abuses of the past. 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.[11]

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. D'Orsi (2015, pg. 164)'s analysis of competing perspectives in Uruguay succinctly summarizes the debate:

> The recognition of what happened has become the site of a struggle in which memory is not the natural consequence of historical experience but a set of opposing cultural and political fields: on the one hand, the military and the traditional political parties claiming that forgetting was an indispensable condition for building the future and, on the other hand, the forces of the Frente Amplio (Broad Front) [leftist coalition] and the human rights associations postulating the necessity of remembrance and judgment of the perpetrators.

But military officials are not the only ones who prefer to forget the past. 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 the 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

[11] 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 (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 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 (Allee and Huth, 2006).

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 Janiero, the first time such intervention took place since the military dictatorship ended.[12] 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.

3.4 Empirical Implications

My main theoretical expectation is that *as accountability increases, leaders become more responsive to the public's preferences on compliance.* When the leader does not fear losing office, she does not need to be accountable, so she decides to comply based on her own preference. When the leader faces a threat to her power, she does need to be accountable; thus, 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 as her need for accountability increases; 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 3.2.

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

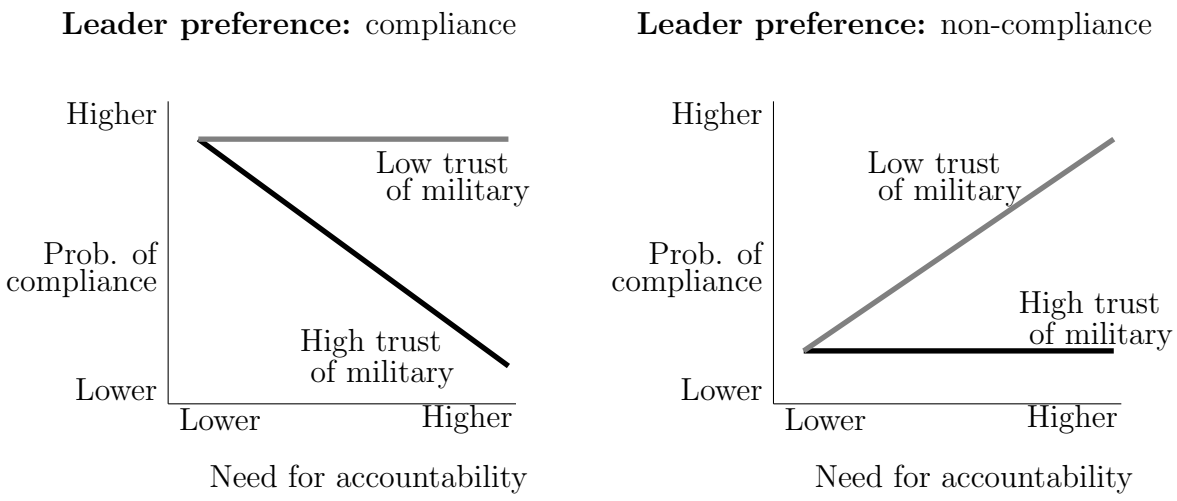
Table 3.2: Summary of theoretical expectations

	Need for accountability	No need for accountability
Low trust in military	Comply	Leader preference
High trust in military	Not comply	Leader preference

Note: Low trust in military proxies higher support for compliance; high trust in military proxies higher support for non-compliance.

Here, I focus just on what happens in the "Need for accountability" column. In particular, I am interested in what happens when leaders face high levels of accountability because this is when they are most responsive and therefore give divergent responses. Leaders of all types (i.e., those that prefer human rights and those that do not) will be more responsive when they face higher levels of accountability. Thus, even though I cannot observe the leader's exact preferences, I can test what happens as accountability increases.

Figure 3.3: Summary of observable implications



Note: Stylized representation of the observable implications. The leader preferences represent hypothetical "ideal types".

Figure 3.3 illustrates how I expect the probability of compliance to change given a leader's

ideal type, the public's level of trust in the military, and the leader's need for accountability. Consider first the left panel, in which the leader's preference is for compliance. When the need for accountability is lower, the probability of compliance is high, reflecting the leader's latent preference. As the need for accountability increases, the leader's probability of compliance follows the public's preference. When trust in the military is low (gray line), the probability of compliance remains high; when trust in the military is high (black line), however, the probability of compliance decreases as the need for accountability increases.

The right panel shows the opposite relationship, this time for a leader whose preference is for non-compliance. When the need for accountability is lower, the probability of compliance is low, regardless of the public's level of trust in the military. As the need for accountability increases, the leader's probability of compliance remains low if the public's level of trust in the military is high, but increases if the public's level of trust in the military is low.

The next two chapters test this empirical implication using two different measures of the leader's need for accountability: coups (Chapter 4) and elections (Chapter 5). In both cases, I expect the leader to become more responsive as the need for accountability increases, and for the public's level of trust in the military to dictate the direction of that response. Note that since I cannot observe the leader's latent preference for compliance, I am not able to produce a graph that exactly matches the stylized versions presented here. However, regardless of the leader's latent preference for compliance, these graphs suggest two empirical implications that I can observe even without knowing the leader's type. First, at higher levels of accountability, the probability of compliance should be higher when public trust in the military is low than when trust in the military is high (i.e., the gray line is above the black line). Second, the difference in probability of compliance between a low trust and high trust public (i.e., between the gray line and the black line), increases as the need for accountability increases. This reflects leaders' separating behavior as they become increasingly responsive to the public's demands.

CHAPTER 4

A Good Old Fashioned Military Coup: Accountability by Force

4.1 Introduction

In the early hours of June 28, 2009, soldiers entered the presidential palace, kidnapped Honduran President Manuel Zelaya, and forced him on a plane to Costa Rica.[1] The military's actions came in response to President Zelaya's insistence on holding a referendum to abolish the single four-year presidential term limit, despite the referendum being declared unconstitutional by the Honduran Supreme Court. President Zelaya's arrest was shocking because it was the first instance of a military coup in Latin America since the end of the Cold War.[2] Nevertheless, after removing President Zelaya from power, the military transferred the government back to civilian leadership, allowing the president of Congress, Roberto Micheletti, to take over.[3]

Two aspects of the Honduran coup are worth noting. First, although the coup was condemned by international actors, including the Organization of American States, popular sentiment in Honduras was on the side of the military.[4] In Latin America today, it is unlikely that the military would launch a coup without the support of the public. In Honduras, the military was seen as reaffirming the will of the people, eliminating a president from office who was defying the people's will by attempting to change the constitution and remain in

[1] "Honduran President Arrested in Military Coup," *The Guardian*, June 28, 2009.

[2] Elisabeth Malkin, "Honduran President is Ousted in Coup," *New York Times*, June 28, 2009.

[3] *Ibid.*

[4] "Defying the Outside World," *The Economist*, July 2, 2009.

office. While outside actors were "appalled" by the coup, the "only people who [didn't] seem to want the president back in his job are Hondurans" themselves.[5] Second, the military may have removed the president from office, but this did not result in a military dictatorship. The Honduran military subsequently transferred power back to civilians.

What the Honduran coup also reveals, however, is that military coups are still very much within the realm of possibility in Latin America. They may not be as common or as bloody as they once were, and the military may not install a dictatorship as a result, but the probability of their occurrence is not zero. As noted in the previous chapter, Latin American voters are supportive of coups under various circumstances. Thus, military coup is one source of the leader's fear of losing office, creating her need for accountability.

In this chapter, I test my theory using military coups as the source of threat to the leader's power. I have two different measures of coup threat: the number of years since transition to democracy and a survey measure of civilian support for coups to replace incompetent governments. I interact these levels of threat with a measure of support for compliance (distrust of the military). I use orders from the 64 cases in which the military is the implicated actor. I choose this subset of cases rather than cases from the military regime for two reasons. First, whether the crime took place during the military dictatorship is an underinclusive test. For example, the military committed many crimes during Fujimori's regime in Peru in the 1990s, but this was separate from Peru's military dictatorship that ended in 1980.[6] Second, using only cases from the military dictatorship would create a biased sample, as the majority of violations committed by the military during the dictatorship are excluded from the Inter-American Court's purview on jurisdictional grounds.[7]

My findings illustrate that public support for compliance moderates the effect of coup threat on the probability of compliance. As the threat of losing power in a military coup

[5] *Ibid.*

[6] Geddes, Wright and Frantz (2014) categorize Fujimori's regime as a personalist dictatorship.

[7] Because states in many cases joined the Court's jurisdiction after transitioning or around the time of transition to democracy, some crimes from the military dictatorship are excluded on the basis of temporal jurisdiction. The Court cannot hear cases involving crimes that took place before the member-state accepted its jurisdiction.

increases, leaders become more responsive to the public's preferences. Whether this results in compliance, however, depends on what the people want. If the public supports compliance, the leader is more likely to comply, but if the public does not support compliance, the leader is less likely to comply.

In the next section, I introduce the statistical model that I use in my two quantitative chapters and address several concerns to validity. In Section 3, I explain how I measure and code the variables. Section 4 shows the results of the model, using both measures of coup threat. The final section concludes.

4.2 Model and Estimation

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.[8] I construct a binary response model with dummy variables for each year post-judgment to capture duration dependence. Note that observations are right-censored because many states are still working on compliance with the orders.[9] I use the complementary log-log link function because of the zero-inflated data, making compliance a relatively rare event (Baetschmann and Winkelmann, 2013; Hardin and Hilbe, 2014). The exponentiated coefficients can be interpreted as the probability of compliance in the current period, conditional on survival (non-compliance) in all previous periods and covariates. 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.

There are two potential threats to validity that need to be addressed. First, as previously stated in Chapter 2, not all orders have monitoring reports associated with them. Through

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

[9]They are also interval-censored, an issue I address in Section 4.3.1.

December 2015, 13 of the 64 cases against the military had yet to be monitored. 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. Table 4.1 shows the results of a series of logistic regressions of covariates on a binary variable indicating whether the order was monitored. For time-invariant covariates, the outcome variable is whether the order has ever been monitored (through 2015), while the outcome variable for the time-varying covariates is whether the order was monitored in that particular year.

Three of the time-invariant covariates are statistically significant. The first is judgment year, indicating that more recent judgments are less likely to be monitored than older judgments, as 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 through 2015. The fact that recent judgments are less likely to be monitored also explains the two negative and statistically significant coefficients on the remedies to provide medical care and publish the judgment. Of the 11 orders to publish the judgment issued between 2012 and 2014, only one has been monitored; likewise, of the nine orders to provide medical care issued between 2012 and 2014, none have been monitored. In other words, it is not the case that the Court actively avoids monitoring these particular orders, but that it is less likely to monitor more recent judgments, which is where all of the unmonitored orders of this type are found.

In terms of the time-varying covariates, only DAC aid is significant. This proxies one possible alternative explanation to compliance – states that receive more foreign aid may be more likely to comply because they are under greater pressure to do so. The positive and statistically significant coefficient suggests that states that are more dependent on foreign aid are more likely to be monitored. This creates bias in favor of finding significant results for this alternative explanation, which is something I will need to take into account later on. However, because there is no other evidence to suggest that the timing of the monitoring reports is anything but random (given the qualitative evidence that representatives of the

Table 4.1: 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.

victims do not know why cases are monitored when they are monitored, or how the Court decides which cases to monitor each time), I treat the 89 unmonitored compliance orders as missing at random.

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.

4.3 Variables and Measurement

4.3.1 Dependent Variable

The dependent variable is time to compliance, measured in years post-judgment.[10] Observing compliance is an arduous task because the state could comply with any order any day after the Court issues its ruling. To the researcher, compliance outcomes are observed when the Court monitors a case. However, a monitoring report only tells me that compliance occurred between monitoring reports, not exactly when compliance occurred.

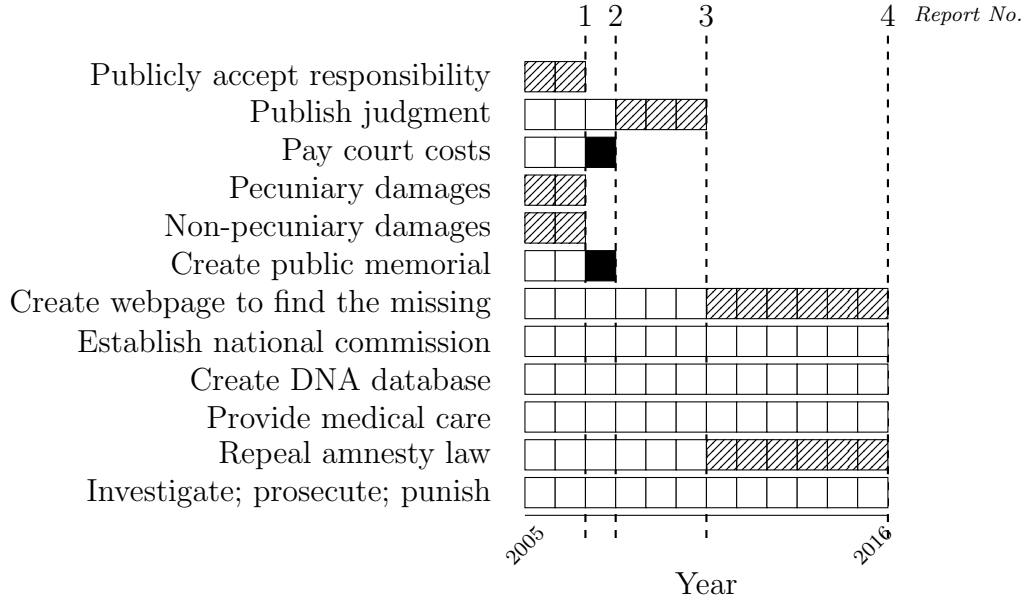
Figure 4.1 illustrates this interval-censoring problem. As an example, I use the twelve compliance orders from *Serrano Cruz Sisters v. El Salvador*, a case involving the disappearance of two young sisters during the Salvadoran Civil War. The twelve orders in the case appear on the left side, arranged by degree of difficulty. The horizontal axis shows the years in which compliance could have occurred: the Court issued the judgment in 2005 and the most recent monitoring report was in 2016. Monitoring reports are indicated by vertical dashed lines and indexed at the top. The first monitoring report was issued in 2006; the second in 2007; the third in 2010; and the fourth in 2016.

Panel (a) shows what I observe from the monitoring reports. White squares indicate non-compliance. If the Court notes non-compliance with an order in a monitoring report, I know that the state also did not comply with that order in any year prior to the monitoring report. Solid black squares indicate known full compliance, where "known" means I know

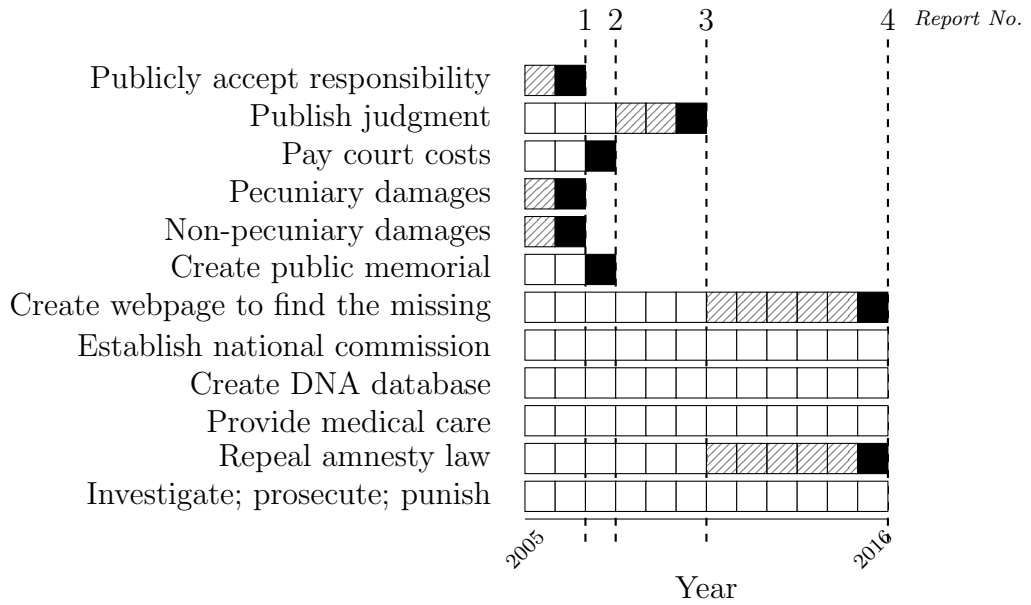
[10] Although I can count time to compliance in months, I ultimately group the observations of the main models into intervals of 12 months, since the time-varying covariates vary by year. This is necessary since compliance orders are entering the monitoring stage not only in different years, but also 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.

Figure 4.1: Observing and coding compliance in *Serrano Cruz Sisters v. El Salvador*

(a) Observed compliance, where each square indicates a compliance-order-year; white squares are non-compliance, black squares are known full compliance, and squares with diagonal black lines indicate years in which compliance could have occurred.



(b) Coded compliance outcomes, where each square indicates a compliance-order-year; black squares indicate coded compliance, while all other squares are coded as non-compliance.



in what year compliance took place. If the Court monitored every case every year, then the researcher would always know exactly when compliance took place. However, the length

of the interval between monitoring reports is not constant because compliance reports are not evenly spaced over time. Consider the two orders with known full compliance: pay court costs (third order) and create a public memorial (sixth order). At the time of the first monitoring report (2006), El Salvador had not paid the court costs or created a public memorial. The next year, in the second monitoring report, the Court found that El Salvador had complied with these two orders. Thus, El Salvador must have complied in the year between the monitoring reports (2007).

When monitoring reports are not in consecutive years, I have an interval-censoring problem: I know that compliance occurred in the years between monitoring reports, but not which year. I use diagonal black lines indicate years in which compliance could have occurred. For example, when El Salvador was monitored in 2006, the Court noted that the state had publicly accepted responsibility (first order). This means El Salvador publicly accepted responsibility either in 2005 or 2006. Likewise, at the time of the third monitoring report, the Court noted that El Salvador had published the judgment (second order). In the first two monitoring reports, the judgment had not been published (indicated by three white squares). The judgment was published sometime between monitoring reports two and three (indicated by three squares with diagonal black lines).[11]

The statistical model necessitates that I place the event somewhere. The most common solutions have been to place the event at the beginning, midpoint, or end of the interval (Lindsey and Ryan, 1998). Here I choose to place the event at the end of the interval. Note that this is the most pessimistic interpretation (from a human rights perspective) of compliance because it implies that the state complied at the last possible moment, namely, the year of the monitoring report. Panel (b) indicates how compliance outcomes in my dataset are coded. Solid black squares are coded as compliance, while all other squares are coded as non-compliance. I use gray diagonal lines to differentiate between known non-

[11]Partial compliance with an individual compliance order is also a possibility, as noted in Chapter 2. Here, however, I am only coding non-compliance and full compliance because the Court treats non-compliance and partial compliance the same for the purposes of monitoring: the Court continues monitoring orders until full compliance is achieved. Partial compliance with an individual order is also the rarest outcome, occurring in only 9% of compliance orders through 2015.

compliance (solid white) and coded non-compliance (gray diagonal lines). Gray diagonal lines appear in squares that had black diagonal lines in Panel (a), indicating they could be years in which compliance occurred, but since compliance can only occur in one year, they are coded as non-compliance for the purpose of the statistical tests.

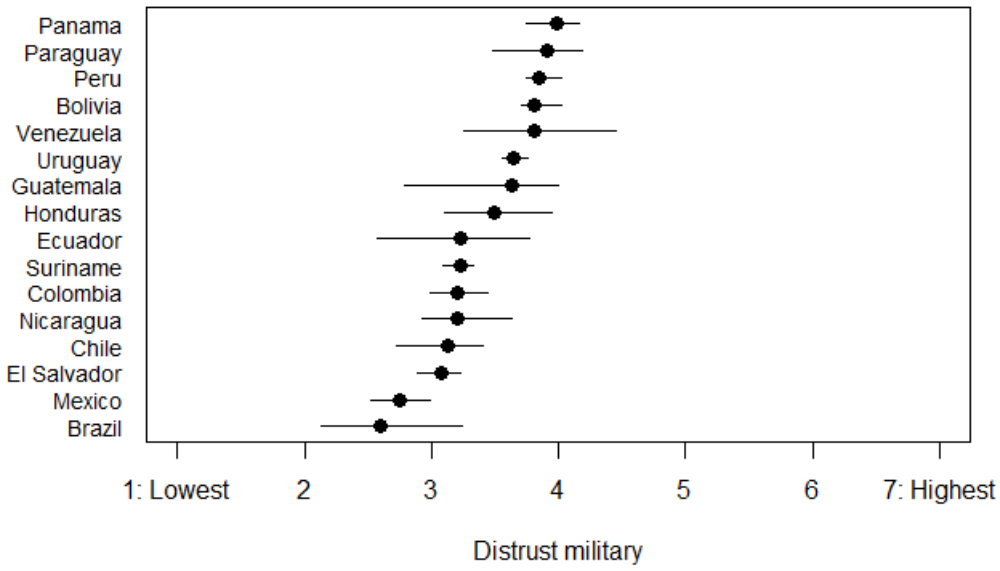
4.3.2 Explanatory Variables

The key explanatory variable is the interaction between the public's support for compliance and the threat of military coup. The latter determines how responsive the leader is to the public's preferences, while the former determines the direction of that response.

I measure the public's support for compliance based on survey respondents' level of distrust of the military. This 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. Thus, as the best-available proxy, I use the level of distrust in the military from AmericasBarometer surveys. Although an imperfect measure, I believe the survey response still captures something of the public's attitude toward the military. In particular, these are cases that implicate the military, thus requiring the state to revisit the past. Even though the military committed abuses of power during the dictatorship, the public may still be nostalgic for the days when the military was in charge.[12] Alternatively, they may recognize the horrible abuses committed by the military, but still prefer that the military go unpunished because the military is important for so many societal and security functions in Latin America today.

[12]In the 2018 Brazilian election, voters went even further and elected a former military official to the presidency.

Figure 4.2: Distribution of distrust in military measure, 2004–2014



I assume 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.[13] 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.[14] 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 4.2. The dot indicates the mean value, while the line segment shows the range from highest to lowest observed values of distrust.

I measure threat of military coup in two ways. The first is *Democratic instability*, measured as the number of years since transition to democracy.[15] One of the most robust indicators of future coups is past coups (Londregan and Poole, 1990; Belkin and Schofer, 2003; Collier and Hoeffler, 2005; Diskin, Diskin and Hazan, 2005); put another way, the greatest predictor of democracy next year is whether a state is a democracy this year (Cheibub et al.,

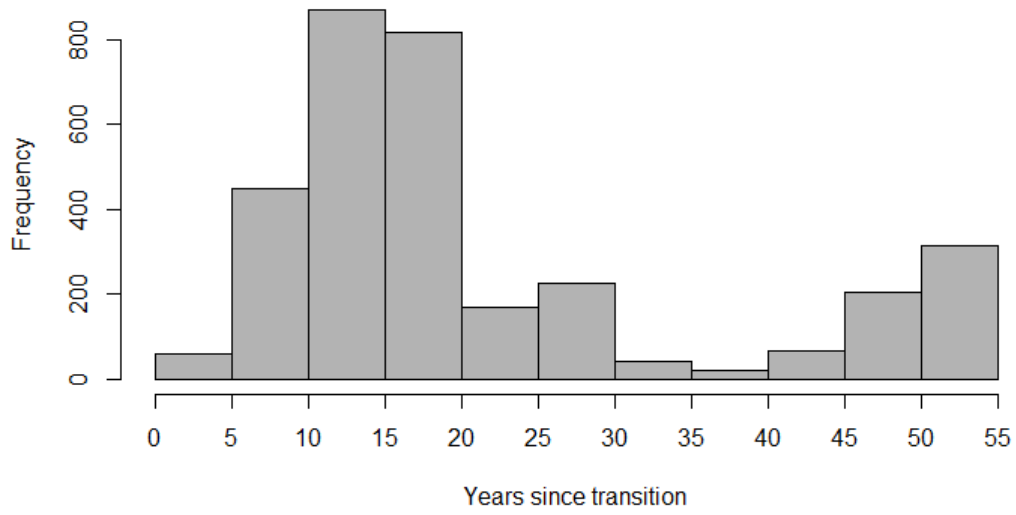
[13]Missing data are imputed using Amelia. See Honaker, King and Blackwell (2011) for details.

[14]This is survey question B12.

[15]I code the year of transition based on Geddes, Wright and Frantz (2014).

1996). As such, the risk of coup should decrease over time as the state moves further from the point of transition to democracy. Higher levels of *Democratic instability* indicate that the transition to democracy was more recent; in other words, a state that transitioned to democracy five years ago is more unstable than a state that transitioned to democracy ten or twenty years ago. Figure 4.3 shows the distribution of the measure across all compliance-order-years.

Figure 4.3: Distribution of the measure of democratic instability



Note: The x-axis shows the number of years since transition to democracy. Threat of military coup decreases as the number of years since transition increases.

The second measure is *Support for coup*, which comes from World Values Survey. This measures citizens' inclination toward military intervention in domestic affairs. As noted in the previous chapter, Latin American voters are generally supportive of military coup under various circumstances, and the military itself may view a coup as the result of responding to the democratic will (Achugar, 2007). The survey question asks respondents how essential they believe it is for democracy that the army take over when the government is incompetent. This is measured on a 10-point scale where (1) indicates the respondent believes the army taking over for an incompetent government is not at all an essential characteristic of democ-

racy and (10) indicates the respondent believes that it is.[16] As a measure of the leader's need for accountability, this survey question comes the closest to capturing whether military coup is a "normal" option – indeed, one that is even "essential" to democracy. As should be expected, this variable is negatively related to distrust of the military (at higher levels of distrust, citizens are less likely to say they believe an army takeover for an incompetent government is essential to democracy), with a correlation coefficient of -0.27. While this suggests that there is some overlap in what the two measure, it is not very strong, so there is also a good bit of variation in one that is not explained by the other.[17] Moreover, it is an empirical question as to whether these two variables contribute to explaining different proportions of the variation in probability of compliance that can only be answered by the regression coefficients themselves. Figure 4.4 plots the average response on the 10-point scale, pooled across states and survey waves.[18]

4.3.3 Controls

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."[19] 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

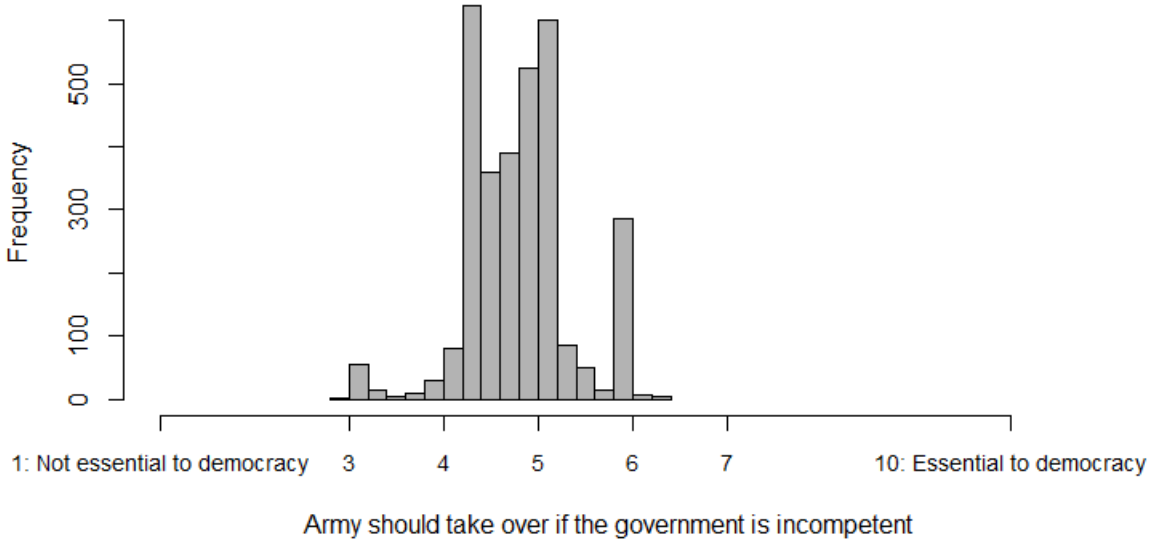
[16]The exact wording of the question is: "Many things are desirable, but not all of them are essential characteristics of democracy. Please tell me for each of the following things how essential you think it is as a characteristic of democracy. Use this scale where 1 means 'not at all an essential characteristic of democracy' and 10 means it definitely is 'an essential characteristic of democracy': The army takes over when government is incompetent."

[17]The R^2 would be $-0.27^2 = 7.3\%$, so 93% of the variation in one is not explained by the other.

[18]Because World Values Survey is not conducted every year or in all states in the sample, missing values are imputed using Amelia.

[19]Personal interview with author, October 27, 2015. "Favorite state" is a euphemism for what he actually said.

Figure 4.4: Distribution of public support for a military coup



Note: This is the mean score of citizens' responses to the question of how essential army takeover for incompetent government is to democracy. Data comes from the World Values Survey.

each year),[20] *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

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

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.[21] Standard errors are clustered by case because all orders within a given case are monitored at the same time.

4.4 Results

The results in Table 4.2 illustrate how distrust of the military moderates the effect of democratic instability on compliance.For ease of interpretation, distrust of the military is mean-centered. The coefficient on the interaction term is positive and significant in every model, as predicted. The constitutive terms of the interaction (distrust of the military and democratic instability) are included in the model to avoid misspecification, but because I am interested in conditional effects, it does not make sense to interpret the unconditional or average effects of constitutive terms (Brambor, Clark and Golder, 2006).

To better understand these conditional effects, Figure 4.5 illustrates the effect of the moderator using predicted probabilities of compliance generated by Model (1). As democratic instability 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 as democratic instability increases. If trust in the military is high (black line), however, citizens are less supportive of

[21]One 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.

Table 4.2: Distrust of military moderates the effect of democratic instability on the probability of compliance

Dependent variable: probability of compliance				
	(1)	(2)	(3)	(4)
Distrust of military	2.20**	2.08**	2.08**	1.97**
	(0.86)	(0.82)	(0.81)	(0.80)
Democratic instability	0.02	−0.01	0.01	0.02
	(0.04)	(0.07)	(0.07)	(0.07)
Distrust of military ×	0.07**	0.07**	0.07**	0.06**
Democratic instability	(0.03)	(0.03)	(0.03)	(0.03)
Multilateral debt		0.01		0.00
		(0.02)		(0.02)
DAC aid (log)		0.44		0.41
		(0.43)		(0.41)
GDP/capita (log)		−1.31	−1.40	−0.85
		(2.15)	(2.55)	(2.59)
Left government			−0.62**	−0.56*
			(0.30)	(0.29)
Unemployment			−0.00	−0.01
			(0.11)	(0.12)
Num. obs.	3232	3232	3232	3232
Num. events	208	208	208	208
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 4.6).

compliance, so the probability of compliance decreases as democratic instability increases. Dashed lines indicate the 95% confidence interval for the predicted probabilities. This result aligns with the theoretical expectations presented in Chapter 3.[22]

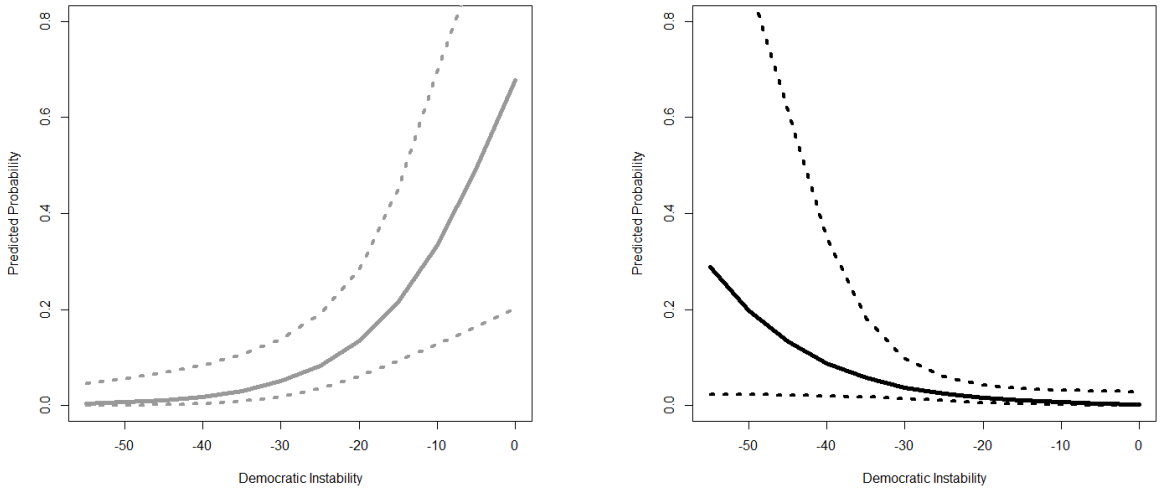
As seen in Table 4.2, only one of the control variables is statistically significant at conventional levels. My results indicate that compliance outcomes are not the result of powerful

[22]For ease of interpretation, Figure 4.5 separates out graphs for predicted probabilities of compliance at high and low levels of trust. For a version that more closely approximates what was presented in Chapter 3, see Figure 4.6 in the appendix.

Figure 4.5: As democratic instability increases, the leader becomes more responsive to the public's preferences

(a) Low trust of military

(b) High trust of military



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. Democratic instability is measured as years since transition multiplied by -1 so that higher values (closer to 0) indicate greater instability.

states pressuring poorer states to comply, as others have also found (Nielsen and Simmons, 2015); this is especially important given the potential bias in favor of finding significant results for DAC aid. Nor is compliance the result of greater capacity: GDP per capita and unemployment are not significant in any specification. The one control variable that is significant is left government, which at first appears to be somewhat surprising given the left's association with human rights in Latin America. However, the left's association with human rights may have more to do with its "foundational experiences [of] repression and exclusion...under authoritarian rule" (Bowen, 2011, pg. 115) than any policy promoted by left-leaning governments. Moreover, many leftist governments in Latin America arose from populist and nationalist roots, which may be more hostile to human rights than a traditional left government (Castañeda, 2006).[23]

[23]This reflects the divide between what Castañeda (2006) calls the "right" left and the "wrong" left. Such distinctions are not made in the coding of the Database of Political Institutions.

As suggested by my findings in Chapter 2, there is also a substantial amount of variation in compliance depending on the particular compliance order. To illustrate this variation, I generated predicted probabilities of compliance using the coefficients from Model (1) in Table 4.2 for different compliance orders (Table 4.3). These results should be interpreted as the probability of compliance four years after the judgment for a case involving forced disappearance, all else equal.[24] The orders to publicly accept responsibility, publish the judgment, and provide monetary reparation have the highest probabilities of compliance. This is consistent with the finding in Chapter 2 that states are more likely to comply with orders of financial reparation and just satisfaction than they are to provide rehabilitative services to victims, like medical care, or guarantee non-repetition of future offenses.[25]

Table 4.3: Predicted probabilities of compliance vary by compliance order

Compliance order	**Predicted probability**	**95% C.I.**
Publicly accept responsibility	19%	[12%, 30%]
Publish judgment	15%	[9%, 22%]
Monetary reparation	14%	[10%, 20%]
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 Model (1) in Table 4.2, for the average state four years after the judgment, all else equal, for each order. 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.

To illustrate the substantive effects of the interaction between distrust of military and democratic instability, I generated predicted probabilities of compliance in three different judgments, one each from Brazil, Colombia, and Peru (Table 4.4).[26] Brazilians have a high

[24]Here I hold the state fixed effect, distrust of the military, and democratic instability constant at their means.

[25]I repeat this same exercise to generate predicted probabilities by state (Table 4.7) and issue area (Table 4.8). These results are available in the appendix.

[26]These cases are *Gomes Lund v. Brazil*, *19 Tradesmen v. Colombia*, and *La Cantuta v. Peru*.

Table 4.4: Predicted probabilities of compliance for three different states, at hypothetical levels of democratic instability

Democratic transition was...	**Brazil**	**Colombia**	**Peru**
	High trust	Med trust	Low trust
40 years ago	18%	28%	4%
20 years ago	11%	29%	11%
10 years ago	9%	34%	18%
5 years ago	8%	35%	22%
1 year ago	7%	35%	26%

Note: Predictions were generated using Model (1) in Table 4.2 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 level of democratic instability.

level of trust, on average, in their military; Colombians have a medium level of trust; and Peruvians 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 varying levels of democratic instability, here proxied by hypothetical years of transition to democracy. For Brazil, where trust in the military is relatively high, the probability of compliance decreases from 18% if the transition to democracy was 40 years ago to 7% if Brazil transitioned to democracy one year ago. Peru (low trust) illustrates the opposite effect: the probability of compliance for a relatively stable democratic Peru (one that transitioned to democracy 40 years ago) is only 4%, but increases to 26% if the transition was last year. Finally, in Colombia, where citizens have a medium level of distrust in the military, the probability of compliance increases from 28% if the transition to democracy was 40 years ago to 35% if the transition was last year. Notice that even though the probability of compliance is higher in Colombia in every year, the effect of democratic instability is much larger in Peru: Peru has a 22 percentage point increase while Colombia's increase is only seven percentage points. At a baseline, Colombia is much more likely to comply with any order than Peru, which is reflected in the higher probabilities of compliance overall.[27]

[27]This is also evident from the coefficients on the state fixed effects. Colombia's coefficient is -1.28 while Peru's is -3.02. See also Table 4.7 in the appendix, which shows the baseline predicted probability of compliance for each state; Colombia's baseline is 34%, while Peru's is only 8%.

Table 4.5: Distrust of military moderates the effect of coup support on the probability of compliance

Dependent variable: probability of compliance				
	(5)	(6)	(7)	(8)
Distrust of military	0.30	0.35	0.26	0.32
	(0.42)	(0.47)	(0.43)	(0.47)
Support for coup	0.20	−0.04	0.23	0.13
	(0.44)	(0.49)	(0.47)	(0.52)
Distrust of military ×	1.35**	1.21**	1.14*	1.09*
Support for coup	(0.57)	(0.56)	(0.61)	(0.59)
Multilateral debt		−0.00		−0.01
		(0.02)		(0.02)
DAC aid (log)		0.42		0.37
		(0.37)		(0.34)
GDP/capita (log)		−1.14	−1.20	−1.42
		(1.32)	(1.43)	(1.54)
Left government			−0.61*	−0.54*
			(0.34)	(0.32)
Unemployment			0.01	−0.00
			(0.11)	(0.12)
Num. obs.	3232	3232	3232	3232
Num. events	208	208	208	208
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 4.9).

In Table 4.5, I show the results of the models using support for coup as my measure of threat to the leader. Both distrust of military and support for coup are mean-centered. Although neither of the constitutive terms are significant, the interaction term is again positive and significant in all four models.[28] Thus, as support for a coup (and the leader's need for accountability to the public) increases, the leader becomes more responsive to the public. When distrust of the military is high, leaders are more likely to comply as support for

[28]Again, the fact that the coefficients on distrust of military and support for coup are not significant on their own is not too concerning, as I am only interested in the conditional effects.

coup increases, and when distrust is low, leaders are less likely to comply. A plot illustrating the predicted probability of compliance at various levels of support for coup (Figure 4.7) and a table of substantive effects (Table 4.10) are available in the appendix. Once again, the only significant control variable is left government.

4.5 Conclusion

The military is an important institution in Latin America, albeit one that is the most frequently implicated actor in cases before the Inter-American Court of Human Rights. In this chapter, I have shown how the public's level of distrust in the military moderates the effect of the threat of military coup on compliance with the Inter-American Court's remedies. In line with the theoretical predictions in Chapter 3, as threat of military coup increases, leaders grow more responsive to the public's preferences. This results in either compliance (if the public has a high level of distrust in the military) or non-compliance (if the public has a low level of distrust in the military). These results hold across two different measures of threat of military coup: the number of years since transitioning to democracy and a survey-based measure of support for coups from World Values Survey.

One limitation of previous literature on human rights compliance has been the presumption that compliance is always in demand. Here, I have rectified this presumption by modeling the public's preferences directly, using the best-available public opinion data. Future work may improve upon this endeavor by more precisely capturing the public's level of support for compliance using a direct measure, perhaps through surveys, rather than a proxy. Nevertheless, this proxy measure still speaks to support for compliance in that it addresses how the public feels about the military. Even if voters themselves are not directly punished by compliance, dealing with trials of military officials still requires them to reopen old wounds and confront the abuses of the past. Voters may be more inclined to confront these abuses if they are less supportive of the actors responsible for them. Additionally, even if voters are not nostalgic for the past, they may still prefer non-compliance, given the important security and societal functions played by the military in Latin America today.

In the next chapter, I extend this analysis by considering the leader's fear of losing power in a regularly scheduled presidential election. I find that the same result holds when using proximity to next election as the source of the leader's fear of losing office. To supplement my statistical results, I also illustrate how the theory can explain variation in amnesty law outcomes in a case study on El Salvador and Uruguay. As a whole, these results demonstrate how the public's support for compliance moderates the effect of threats to the leader on the probability of compliance.

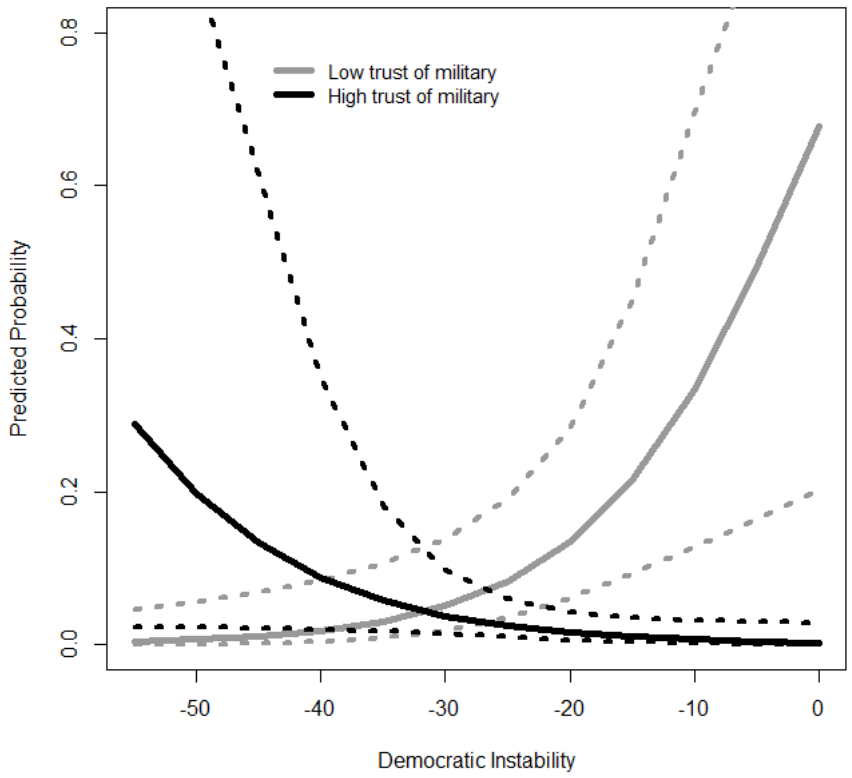
4.6 Appendix

Table 4.6: Robustness: results for democratic instability hold when standardizing distrust of military measure

Dependent variable: probability of compliance				
	(B1)	(B2)	(B3)	(B4)
Distrust of military	1.09**	1.03**	1.03**	0.98**
	(0.43)	(0.40)	(0.40)	(0.40)
Democratic instability	0.06*	0.03	0.04	0.05
	(0.03)	(0.06)	(0.07)	(0.07)
Distrust of military ×	0.04**	0.03**	0.03**	0.03**
Democratic instability	(0.02)	(0.01)	(0.01)	(0.01)
Multilateral debt		0.01		0.00
		(0.02)		(0.02)
DAC aid (log)		0.44		0.41
		(0.43)		(0.41)
GDP/capita (log)		−1.31	−1.40	−0.85
		(2.15)	(2.55)	(2.59)
Left government			−0.62**	−0.56*
			(0.30)	(0.29)
Unemployment			−0.00	−0.01
			(0.11)	(0.12)
Num. obs.	3232	3232	3232	3232
Num. events	208	208	208	208
State FE	Yes	Yes	Yes	Yes
Issue FE	Yes	Yes	Yes	Yes
Order indicators	Yes	Yes	Yes	Yes
Clustered SE	Case	Case	Case	Case

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

Figure 4.6: Overlaid version of interaction effect illustrated in Figure 4.5



Note: When trust in the military is low (grey line), the probability of compliance increases as democratic instability increases (i.e., if the state transitioned to democracy more recently); when trust in the military is high (black line), the probability of compliance decreases. 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. Democratic instability is measured as years since transition multiplied by -1 so that higher values (closer to 0) indicate greater instability.

Table 4.7: Predicted probabilities of compliance vary by state

State	**Predicted probability**	**95% C.I.**
Uruguay	75%	[54%, 88%]
Panama	73%	[48%, 88%]
Mexico	62%	[18%, 92%]
El Salvador	37%	[12%, 70%]
Ecuador	36%	[13%, 69%]
Colombia	34%	[9%, 72%]
Suriname	32%	[9%, 71%]
Chile	28%	[7%, 67%]
Guatemala	24%	[8%, 52%]
Honduras	24%	[9%, 48%]
Paraguay	22%	[8%, 44%]
Brazil	17%	[4%, 53%]
Peru	8%	[3%, 22%]
Venezuela	4%	[1%, 24%]

Note: Predictions were generated using Model (1) in Table 4.2, for a state complying with the order to publicly accept responsibility four years after the judgment in a case of forced disappearance. Distrust of the military and democratic instability are held constant at their respective means. Bolivia is the omitted reference category.

Table 4.8: Predicted probabilities of compliance vary by issue area

Issue area	**Predicted probability**	**95% C.I.**
Deaths at protest	88%	[30%, 99%]
Detention conditions	84%	[29%, 98%]
Illegal wiretapping	82%	[20%, 99%]
Murder of officials	66%	[12%, 96%]
Extrajudicial execution	51%	[9%, 91%]
Torture in detention	42%	[6%, 89%]
Faceless tribunal	26%	[3%, 81%]
Murder of civilians	25%	[3%, 77%]
Disappearance in detention	21%	[2%, 77%]
Forced disappearance	19%	[2%, 70%]
Rape	11%	[1%, 62%]

Note: Predictions were generated using Model (1) in Table 4.2, for the average state four years after the judgment, for an order to publicly accept responsibility. Distrust of the military and democratic instability are held constant at their respective means.

Table 4.9: Robustness: results for coup support hold when standardizing distrust of military

Dependent variable: probability of compliance

	(B5)	(B6)	(B7)	(B8)
Distrust of military	0.15	0.17	0.13	0.16
	(0.21)	(0.23)	(0.21)	(0.23)
Support for coup	0.93**	0.60	0.85**	0.71
	(0.40)	(0.45)	(0.42)	(0.46)
Distrust of military ×	0.67**	0.60**	0.57*	0.54*
Support for coup	(0.28)	(0.28)	(0.30)	(0.29)
Multilateral debt		−0.00		−0.01
		(0.02)		(0.02)
DAC aid (log)		0.42		0.37
		(0.37)		(0.34)
GDP/capita (log)		−1.14	−1.20	−1.42
		(1.32)	(1.43)	(1.54)
Left government			−0.61*	−0.54*
			(0.34)	(0.32)
Unemployment			0.01	−0.00
			(0.11)	(0.12)
Num. obs.	3232	3232	3232	3232
Num. events	208	208	208	208
State FE	Yes	Yes	Yes	Yes
Issue FE	Yes	Yes	Yes	Yes
Order indicators	Yes	Yes	Yes	Yes
Clustered SE	Case	Case	Case	Case

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

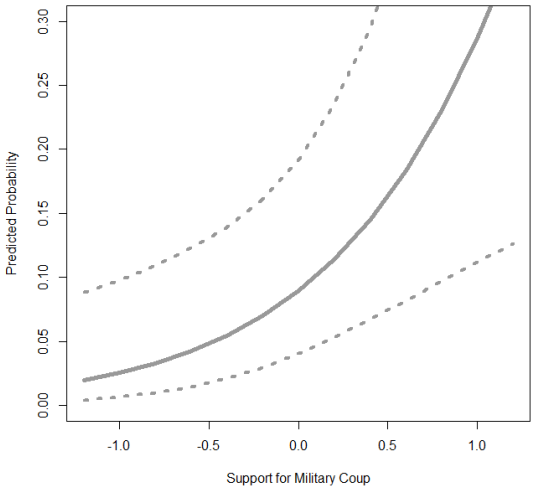
Table 4.10: Predicted probabilities of compliance for three different states, at hypothetical levels of support for military coup

Support for coup	**Brazil**	**Colombia**	**Peru**
	High trust	Med trust	Low trust
1 s.d. below mean	28%	37%	7%
0.5 s.d. below mean	21%	36%	10%
Mean	16%	36%	14%
0.5 s.d. above mean	12%	35%	19%
1 s.d. above mean	8%	34%	26%

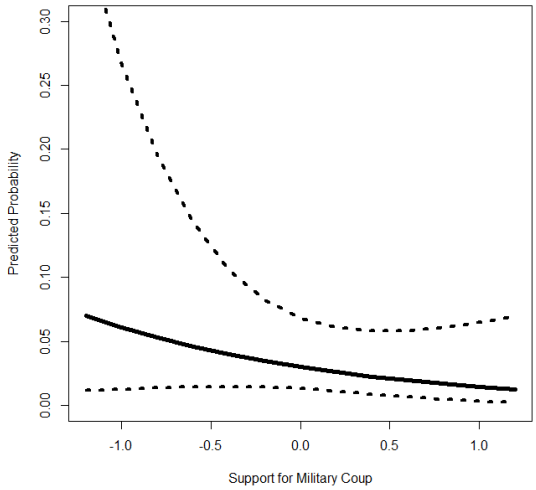
Note: Predictions were generated using Model (5) in Table 4.5 setting issue to forced disappearance and order to publicly accept responsibility. Distrust of military is set at the 75th percentile for each state. The probabilities can be interpreted as the probability of compliance four years after judgment for each of these states, for a given level of support for military coup.

Figure 4.7: As support for military coup increases, the leader becomes more responsive to the public's preferences

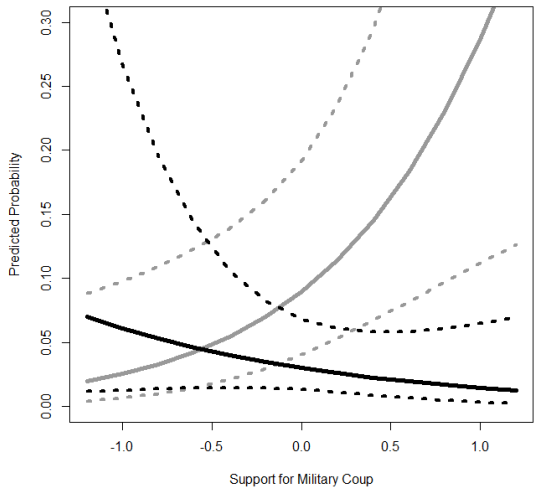
(a) Low trust of military



(b) High trust of military



(c) Overlaid version of interaction effect



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. When trust in the military is low (grey line), the probability of compliance increases as support for a coup increases; when trust in the military is high (black line), the probability of compliance decreases. 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.

CHAPTER 5

Vox Populi: Electoral Accountability

5.1 Introduction

In 1982, Ernestina and Erlinda Serrano Cruz, ages seven and three, were captured by soldiers and forcibly disappeared.[1] The sisters were just two of the hundreds of children who disappeared during El Salvador's civil war, which lasted from 1980 to 1992. At the end of the conflict, the Salvadoran National Assembly passed a law granting general amnesty for human rights abuses committed during the war, which precluded investigations into the abductions.[2] To date, the Serrano Cruz family does not know what happened to Ernestina and Erlinda.

Unable to pursue justice domestically, in 1999, the family filed a petition at the Inter-American Commission on Human Rights, which reached the Inter-American Court in 2003.[3] In 2005, the Inter-American Court found El Salvador responsible for several violations of the American Convention on Human Rights, including the rights to judicial guarantees, judicial protection, and the right to humane treatment. The Court ordered that El Salvador undertake several remedies, including the "eliminat[ion of] all the obstacles and mechanisms *de facto* and *de jure*, which prevent compliance with these obligations [to investigate, prosecute, and punish] in the instant case."[4] In other words, to comply with the Court's judgment, El

[1]Inter-American Court of Human Rights, 2005, *Case of Serrano Cruz Sisters v. El Salvador.*

[2]Howard W. French, "Rebuffing the U.N., El Salvador Grants Amnesty," *New York Times*, March 21, 1993.

[3]For a description of the relationship between the Inter-American Commission and Court of Human Rights, see Chapter 2.

[4]Inter-American Court of Human Rights, 2005, *Case of Serrano Cruz Sisters v. El Salvador*, para. 218.

Salvador had to repeal the amnesty law that had been in place for decades. Although the law had attracted opposition from various human rights organizations since its inception, the Salvadoran Supreme Court had thus far refused to initiate a review of the law's constitutionality (Sieder, 2001). Finally, in 2013, Vice President Salvador Sánchez Cerén pledged to seek a constitutional review and repeal of the amnesty. Why?

In the previous chapter, I showed that leaders become more responsive to the public's preferences on compliance when they are more vulnerable to losing power in a coup. In this chapter, I consider the threat of losing office that comes from presidential elections. This proximity to presidential election also explains Sánchez Cerén's pledge to repeal the amnesty law; as I elaborate later in the chapter, Sánchez Cerén promised to repeal the (by then, unpopular) law as a presidential candidate while campaigning for the 2014 election. I find that the moderating effect of public opinion on proximity to the election holds more broadly across all monitored compliance orders in cases that implicate the military, and that this effect is both substantively and statistically significant.

In the next section, I explain how I measure and code the variables. Section 3 shows the results of the model, along with graphs and tables of predicted probabilities of compliance to facilitate interpretation. In Section 4, I test the validity of the theory using a case study comparing amnesty law outcomes in El Salvador and Uruguay. The final section concludes.

5.2 Model, Variables, and Measurement

As in Chapter 4, I model the time to compliance using a panel logistic regression. I again use only monitored orders, to avoid over-estimating the amount of non-compliance by coding unmonitored orders as ones that the state has not fulfilled. Because I am concerned with the leader's fear of losing office in presidential election, I also drop any observations from Suriname, which is a parliamentary system.[5] This leaves me with 438 compliance orders, representing 61 judgments against the military.

[5]Barbados and Trinidad and Tobago are also parliamentary democracies, but neither has any cases that implicate the military.

Measuring threat in terms of proximity to presidential election raises an additional concern over whether the timing of the monitoring reports is random. If the Court is more likely to monitor cases closer to elections, then any observed relationship may 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).[6] 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.

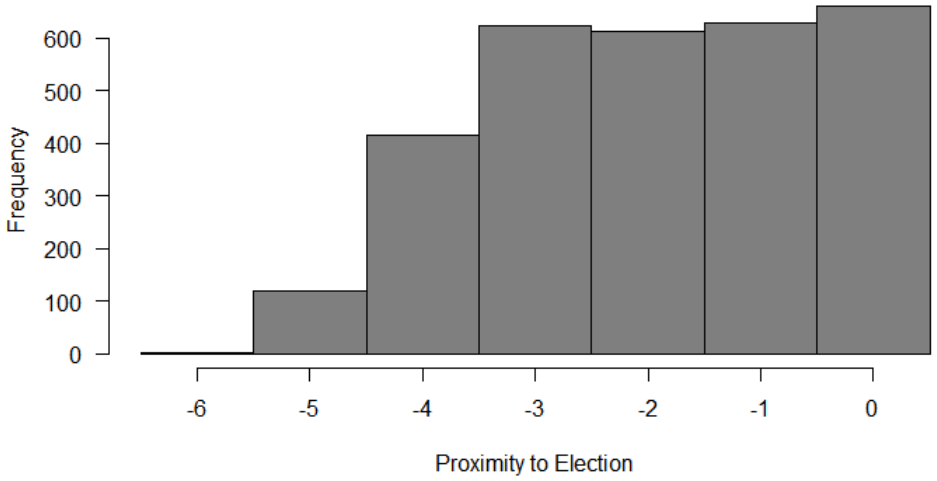
The dependent variable is the time to compliance measured in years post judgment, with compliance coded as the year of the monitoring report. The key explanatory variable is the interaction between the public's support for compliance and the proximity to executive election. The latter determines how responsive the leader is to the public's preferences, while the former determines the direction of that response. I measure the public's support for compliance as in Chapter 4: respondents' level of distrust of the military.

To measure the need for accountability, I create a variable to measure the proximity to the next executive election. As these are presidential elections, election timing is fixed and exogenous to judgments from the Inter-American Court. Presidential elections occur every four, five, or six years, depending on the state.[7] Figure 5.1 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.

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

[7]See Table 5.5 in the appendix for the set of election years that appear in the data for each state.

Figure 5.1: Distribution of the proximity to election variable



Note: 0 indicates that the election is this year; −1 indicates that the election is next year.

I again include controls for economic and domestic political variables that approximate potential alternative explanations. These include possible pressure on states to comply and variation in state capacity to comply. I also include indicator variables for the most commonly ordered remedies (to account for variation in the degree of difficulty of certain compliance orders) and fixed effects for state and issue area.[8] Issue area fixed effects again account for variation that might exist across "types" of cases, as certain crimes may indicate military dictatorship-era crimes, as opposed to crimes committed by the military in the democratic era. Standard errors are clustered by case as all orders within a case are monitored at the same time.

5.3 Results

Because coefficients in an interaction model can be difficult to interpret on their own, Figure 5.2 illustrates the effect of the moderator using predicted probabilities generated from

[8]Predicted probabilities of compliance by ordered remedy, state, and issue area are available in the appendix (Table 5.6).

Table 5.1: Distrust of military moderates the effect of proximity to election on the probability of compliance

Dependent variable: probability of compliance				
	(1)	(2)	(3)	(4)
Distrust of military	1.34***	1.18***	1.17***	1.17***
	(0.39)	(0.41)	(0.40)	(0.40)
Proximity to election	−0.02	−0.00	−0.02	0.04
	(0.08)	(0.08)	(0.09)	(0.09)
Distrust of military ×	0.39***	0.38***	0.38***	0.38***
Proximity to election	(0.13)	(0.13)	(0.13)	(0.13)
Multilateral debt		0.00		−0.01
		(0.02)		(0.02)
DAC aid (log)		0.37		0.35
		(0.35)		(0.33)
GDP/capita (log)		−2.33*	−2.82**	−2.97*
		(1.29)	(1.41)	(1.55)
Left government			−0.59*	−0.57*
			(0.35)	(0.34)
Unemployment			−0.01	−0.02
			(0.11)	(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 5.7).

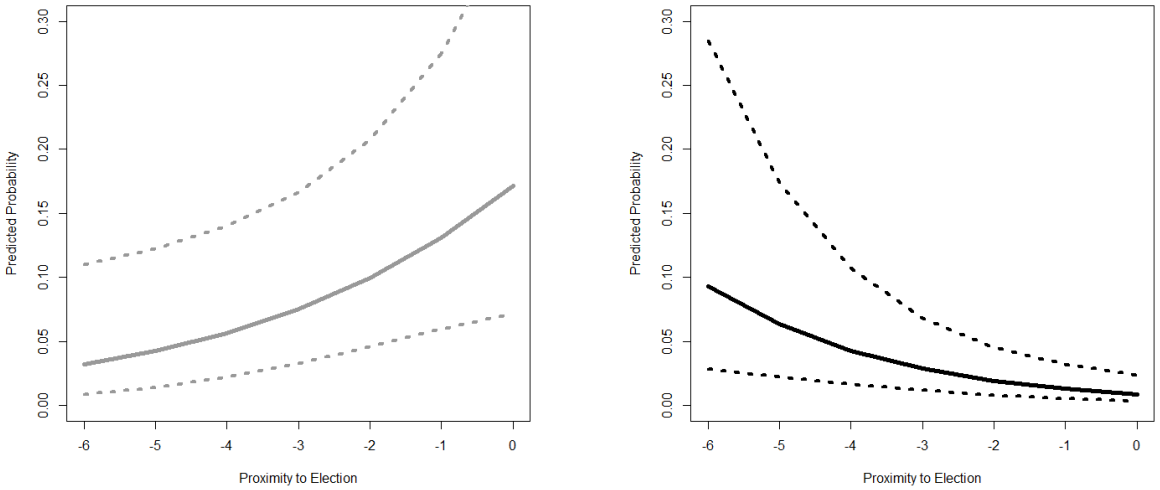
Model (1). As proximity to the election increases, the leader grows more responsive to the public's preferences; whether this increases the probability of compliance or non-compliance depends on the public's attitude toward the military. When trust in the military is low (grey line), citizens are more 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 again aligns with the theoretical

expectations presented in Chapter 3.[9]

Figure 5.2: As proximity to the election increases, the leader becomes more responsive to the public's preferences

(a) Low trust of military

(b) High trust of military



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 is again 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. 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

[9]For ease of interpretation, Figure 5.2 separates out graphs for predicted probabilities of compliance at high and low levels of trust. For a version that more closely approximates what was presented in Chapter 3, see Figure 5.4 in the appendix.

support to a story about coercion as an explanation for compliance. However, including this control variable barely changes the size of the interaction effect.

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 5.2).[10] 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.[11] 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 5.2: 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 5.1 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

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

[11]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.

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 to those in Table 5.1, 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.[12] Second, owing to the small number of observations, Models (9)–(12) do not include state fixed effects.

Table 5.3: The military is a unique institution – the result does not hold when the military is not implicated

Dependent variable: probability of compliance

	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Implicated actor	Police	Police	Police	Police	Courts	Courts	Courts	Courts
Distrust of police	0.86	0.83	0.74	0.65				
	(0.77)	(0.79)	(0.79)	(0.78)				
Distrust of courts					1.65	1.30	1.31	1.09
					(1.21)	(1.12)	(1.27)	(1.42)
Proximity to election	0.08	0.05	0.11	0.07	0.22	0.26	0.28	0.28
	(0.16)	(0.17)	(0.17)	(0.18)	(0.26)	(0.23)	(0.22)	(0.21)
Distrust of police ×	−0.47	−0.52*	−0.48	−0.51*				
Proximity to election	(0.31)	(0.31)	(0.29)	(0.31)				
Distrust of courts ×					0.16	−0.07	−0.06	−0.14
Proximity to election					(0.52)	(0.45)	(0.52)	(0.57)
Multilateral debt		0.05		0.05		0.04		0.04
		(0.05)		(0.05)		(0.05)		(0.07)
DAC aid (log)		−0.05		−0.06		−0.00		−0.01
		(0.06)		(0.06)		(0.07)		(0.07)
GDP/capita (log)		0.38	1.73	1.91		−0.42	−1.71	−0.95
		(3.64)	(4.33)	(4.12)		(1.05)	(1.74)	(1.90)
Left government			−1.02*	−0.92		−0.16	−0.46	−0.46
			(0.54)	(0.57)			(1.01)	(1.21)
Unemployment			0.05	0.10			0.14	0.08
			(0.23)	(0.21)			(0.32)	(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

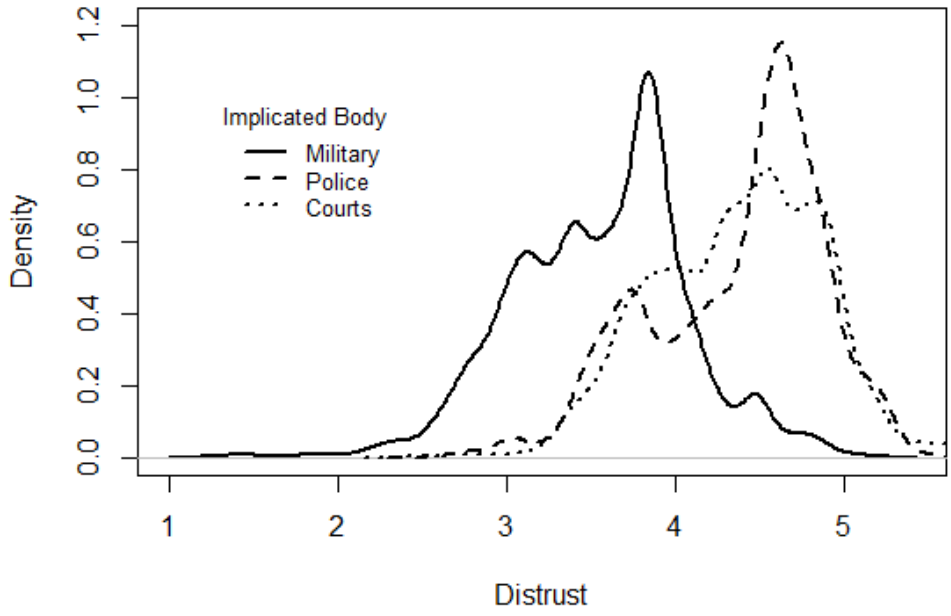
$^{***}p < 0.01$, $^{**}p < 0.05$, $^{*}p < 0.1$

As shown in Table 5.3, 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,

[12]These correspond to questions B18 and B31 in AmericasBarometer, respectively.

and barely (p=0.09). This is because there is insufficient variation in citizens' support for the police and courts. Citizens almost always dislike the police and courts, but are much more ambivalent about the military. As evidenced by Figure 5.3, 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.

Figure 5.3: 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.

Likewise, neither distrust of police nor of the courts are significant in any of the models. Substantively, this indicates that leaders are not responsive to citizens' attitudes toward these institutions when it comes to compliance. Voters do not feel the same nostalgia toward the police and courts, which have never governed in Latin America, as they do the military, which was the previous regime in most Latin American states. The police and courts are also not responsible for security functions; in fact, the military often replaces the police in

carrying out such functions. Moreover, as evidenced by Chapter 3, citizens still feel strongly about the military in government, even going so far as to support military intervention in domestic affairs. As such, compliance that implicates the police and courts does not evoke the same kind of reaction – or need for responsiveness – as does compliance that implicates the military.

5.4 Case Study: Overturning Amnesty Laws

To illustrate how electoral threat can affect leaders' responsiveness to public opinion, I compare the experiences of El Salvador and Uruguay in implementing the Inter-American Court's order to overturn amnesty laws. Although amnesty laws are not expressly prohibited by the American Convention on Human Rights, the Inter-American Court ruled in the 2001 *Barrios Altos* case that amnesty laws violated the American Convention:

> all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.[13]

Additionally, in its interpretation of the *Barrios Altos* ruling, the Court clarified that because "enactment of a law that is manifestly incompatible with the obligations undertaken by a State Party to the Convention is ***per se*** a violation of the Convention...the effects of the decision in the judgment on the merits of the Barrios Altos Cases are general in nature" and nullified all amnesty laws in the region.[14] However, because in most cases, Inter-American Court judgments do not take direct effect, declaring an amnesty law null does not impact

[13]Inter-American Court of Human Rights, 2001, *Case of Barrios Altos v. Peru: Merits*, para. 41.

[14]Inter-American Court of Human Rights, 2001, *Case of Barrios Altos v. Peru: Interpretation of the Judgment of the Merits*, para. 18. Emphasis in original.

domestic jurisprudence unless the Court's decision is incorporated into domestic law (Binder, 2011); Peru is one of the rare cases in which the ruling did take direct effect.[15] The Court has also ruled against amnesty laws in El Salvador (*Serrano Cruz Sisters*, 2005), Chile (*Almonacid Arellano*, 2006), Brazil (*Gomes Lund*, 2010), and Uruguay (*Gelman*, 2011), in each case ordering the state to investigate, prosecute, and punish the perpetrators, and to remove any and all legal barriers preventing investigations into past abuses.

To illustrate how public opinion and the need for accountability interact to dictate the leader's response, I compare outcomes in El Salvador and Uruguay. This case pair was chosen for two reasons. First, the need for accountability in both states was the same: both held presidential elections in 2009 and 2014. This means I can hold, to the extent possible, other factors that might affect presidential election outcomes (like global economic downturn) fixed because both states are electing presidents in the same year. Moreover, El Salvador and Uruguay have both limited presidents to one five-year term, so in both cases, the election is about keeping the incumbent party in power, rather than the incumbent himself. Second, there is sufficient temporal variation to capture meaningful differences in government policy toward amnesty laws. In El Salvador (a positive case, where the amnesty law was successfully repealed), there are well-measured public opinion polls showing the level of support for amnesty at two points in time (2011 and 2013-2014). In Uruguay (a negative case, where the amnesty law remains intact), the government had actually gone in an anti-amnesty direction, repealing amnesty in 2011 under Law 18.831, only to reverse course in 2013 by having the Supreme Court strike down the new law. Thus, the lack of repeal is not merely inertia on the government's part, but a tangible decision by the government to move back toward amnesty closer to the election. Both of these outcomes, I argue, can be attributed to leaders responding to the public's level of support for compliance in the year before a presidential election. Table 5.4 summarizes the attributes of the case study.

[15] As noted in Chapter 2, most states in the region are *de jure* monist, but *de facto* dualist. See Courtis (2009) and Mallinder (2016).

Table 5.4: Overturning amnesty laws in El Salvador and Uruguay

	El Salvador	**Uruguay**
Measurement of public opinion	Survey data	Referendum on amnesty law
Public support for amnesty	Minority	Majority
Presidential elections	2009, 2014	2009, 2014
Status of amnesty law prior to 2013	Intact	Overturned by Law 18.831
Leader response in 2013	Candidate pledges to overturn amnesty law	Supreme Court strikes down Law 18.831
Election result	Incumbent party reelected	Incumbent party reelected

5.4.1 El Salvador

El Salvador's civil war, which claimed the lives of around 50,000 people, lasted from 1980 to 1992 (Sieder, 2001). The settlement negotiated between the government and leftist guerilla organization Frente Farabundo Martí para la Liberación Nacional (FMLN) included a United Nations-led truth commission to investigate the human rights abuses that took place during the conflict. Upon the release of the truth commission's report, the Salvadoran National Assembly passed an amnesty law, preventing any investigations or prosecutions of the alleged abuses. The amnesty law had attracted opposition from various human rights organizations since its inception. However, even as late as 2011, a majority of Salvadorans did not want to see the amnesty law overturned; according to a survey by *Instituto Universitario de Opinión Pública*, only 43.1% supported nullification of the law.[16]

In 2013, then-Vice President Salvador Sánchez Cerén pledged to seek a constitutional review and repeal of the amnesty law if elected to the presidency.[17] His announcement reflected both an increased responsiveness to the public's preferences and need for account-

[16] *Instituto Universitario de Opinión Pública*, Encuesta de evaluación del año 2011. Accessed online at `http://www.uca.edu.sv/publica/iudop/archivos/informe128.pdf`.

[17] Council on Hemispheric Affairs, "Transitional Justice is Jumpstarted in El Salvador," August 5, 2016.

ability. First, Sánchez Cerén's pledge reflected a shift in public opinion. Although repeal was supported by less than half of Salvadorans surveyed in 2011, by the time of the pledge, 60% supported nullification of the amnesty law.[18] Thus, in order to be responsive to the public, the leader would need to come out against amnesty. Second, Sánchez Cerén made this announcement at a time when he needed the public's support to remain in office. Presidents in El Salvador are limited to one term, but both Sánchez Cerén and the president under whom he served, Mauricio Funes, were members of the same party (FMLN). Thus, this promise should be interpreted as a campaign pledge made to keep FMLN in office in the 2014 presidential elections. Note, however, that it was only a smart campaign decision because the public's opinion about overturning the amnesty law had changed.

Sánchez Cerén did win the 2014 election, and he did keep his promise to seek repeal of the law. In 2016, the Salvadoran Supreme Court overturned the amnesty law, opening the door for investigations and prosecutions of abuses that took place during the civil war, including the Serrano Cruz sisters case introduced at the beginning of this chapter. As such, Sánchez Cerén's promise illustrates the key theoretical insight from Chapter 3: public opinion on punishing the military moderates the effect of the leader's need for accountability on compliance.

5.4.2 Uruguay

Uruguay's military dictatorship lasted from 1973 to 1985 and was characterized by detention of political prisoners, forced disappearance, and torture. Although the extent of the state's repression was extensive, affecting tens of thousands of civilians, forced disappearance was, relatively speaking, rare (D'Orsi, 2015). These abuses were detailed by the Uruguay *Nunca Más* report, which was written by an NGO of lawyers, social scientists, and civilians (Rajca, 2018). The military was steadfast in its belief that the coup d'etat was necessary to protect the *patria* (fatherland); as such, "the scenario in which the violations of human rights occurs is presented as an 'internal state of war' which excludes any possibility of bringing these

[18]Linda Cooper and James Hodge, "El Salvador Struggles to Come to Terms with Violent Past," *National Catholic Reporter*, March 24, 2014.

crimes to justice" (Achugar, 2007, pg. 522). As part of its transition to democracy, in 1986, the Uruguayan legislature passed the *Ley de Caducidad* ("Expiry law"), which effectively ended all human rights prosecutions (Lessa, 2012).

Upset by the amnesty law, Uruguayans twice utilized a provision in their constitution which allowed them to call for a referendum on the law. The first referendum was carried out in 1989. Although the *Nunca Más* report was published "strategically" one month prior to the referendum (Rajca, 2018, pg. 41), 58% of citizens voted to retain amnesty for the military.[19] Not surprisingly, the pro-Expiry Law campaign "focused on the importance of consolidating and strengthening the recently restored democracy," heavily implying that prosecuting past human rights abuses would be detrimental to this goal (Lessa, 2011, pg. 197). The law was challenged again in 2009 in a second referendum. Although more citizens came out against the amnesty law, the referendum failed again, as 52% voted to maintain the restrictions on prosecution.[20]

In 2011, the Inter-American Court of Human Rights found Uruguay responsible for the 1976 forced disappearance of María Claudia García Iruretagoyena de Gelman, a university student. As part of the ordered remedies, the Court required Uruguay to "guarantee that the Expiry Law ... will never again be an impediment to the investigation of the facts [of the disappearance] and for the identification, and ... punishment of those responsible."[21] The Court did note that the amnesty law had been approved by the public in two separate referenda, but argued that "the exercise of direct democracy ... does not automatically or by itself grant legitimacy under international law."[22]

In response to the Court's ruling, the Uruguayan legislature drafted Law 18.831. This law revoked amnesty for dictatorship-era crimes and reclassified them as crimes against

[19]Shirley Christian, "Uruguay Votes to Retain Amnesty for the Military," *New York Times*, April 17, 1989.

[20]Ann Riley, "Uruguayan Voters Reject Referendum to End Amnesty for Dictatorship-Era Rights Abuses," *The Jurist*, October 26, 2009.

[21]Inter-American Court of Human Rights, *Case of Gelman v. Uruguay: Merits and Reparations*, February 24, 2011, at para. 312.

[22]*Ibid.*, at para. 238.

humanity, eliminating statute of limitations concerns that would otherwise limit prosecution (Soltman, 2013). The measure did eventually pass, but generated contentious and lengthy debate, as supporters of amnesty argued that overturning the law would subvert the will of the Uruguayan majority who had voted just two years prior to keep the amnesty intact.[23] The popular sentiment in 2011 was still in favor of the amnesty law; President Mujica's approval rating dropped precipitously (from 75% when he was elected to 44% in mid-2011) because of his support for overturning the amnesty law (Soltman, 2013).[24] Nevertheless, Uruguay was seemingly – at least in 2011 – in compliance with the *Gelman* ruling, even though it went against what the majority of Uruguayans supported.

In 2013, one year before the next presidential election, the Supreme Court of Uruguay (SCJ) invalidated Law 18.831. The SCJ found Law 18.831's reclassification of dictatorship-era crimes as crimes against humanity was unconstitutional, as Uruguay had not recognized crimes against humanity until after transitioning to democracy (Schallenmueller, 2014). As such, the dictatorship-era crimes were common crimes, subject to the statute of limitations, which meant prosecutions could not proceed.[25] The Supreme Court is nominally independent from the executive, but critics of the SCJ noted that the reversal was further evidence of the erosion of the separation of powers (Le Goff, 2013). Shortly before the SCJ's decision to declare Law 18.831 unconstitutional, the justices transferred a lower court judge responsible for investigating crimes against humanity, effectively halting those cases. Although Supreme Court justices have discretion over the posts of lower court judges, some have suggested that President Mujica was involved in the request (Le Goff, 2013). There has also been a long history of members of the executive branch pressuring the SCJ to transfer judges investigating atrocities, so the two branches of government are not always independent in practice, even though they are separate in theory.[26]

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[23] "Uruguay Overturns Amnesty for Military-Era Crimes," *BBC News*, October 27, 2011.

[24] Political analysts attribute the drop in popularity to Mujica's stance on repealing the amnesty law. See Soltman (2013), fn. 36.

[25] Activists have criticized the SCJ's decision as "glaringly obvious" in its inconsistency with international law in general and international human rights law in particular (Michelini, 2013, pg.7).

[26] Francesca Lessa and Pierre-Louis Le Goff, "Elusive Justice in Uruguay," *Al Jazeera*, February 13, 2014.

The Inter-American Court took note of the SCJ's decision to strike down Law 18.831 when it monitored compliance in the *Gelman* case one month later. The Court ruled that the SCJ's judgment "constitutes an obstacle to full compliance with the Judgment," so the order to repeal the amnesty law had not been complied with.[27] Despite initially complying with the Court's compliance order, Uruguay ultimately reversed course the year prior to the presidential election, by keeping the amnesty law intact and by transferring a lower court judge investigating human rights abuses to civil court (Skaar, 2015). Although Law 18.831's passage in 2011 initially did not align with the public's preferences toward non-compliance, the Supreme Court of Justice's actions in 2013 ultimately did. Human rights activists were upset about the SCJ's decision, but noted that with the upcoming election, political leaders would steer clear of criticizing the SCJ because the "issue of the past generates political controversy."[28] Given the contentious nature of trials in Uruguay, it is unsurprising that the executive would want to prevent cases from moving forward around a presidential election.

Uruguay's contradictory behavior toward the amnesty law reflects, I would argue, the Uruguayan public's own ambivalence toward the law and the president's lack of clarity over what the majority of Uruguayan voters wanted. For example, President Mujica was originally in favor of revoking amnesty until Uruguayans rejected the referendum. In spring 2011, he urged legislative members of his party not to overturn the amnesty law,[29] but when the bill came across his desk in October 2011, he did not veto it. He also did not ask the SCJ to intervene in removing the lower court judge until he realized no one protested critiques of her that appeared in the press.[30] Thus, President Mujica's behavior was driven, at least in part, by what he perceived voters wanted and his attempts to be responsive to what the majority would support.

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[27]Inter-American Court of Human Rights, *Gelman v. Uruguay: Monitoring Compliance with Judgment*, March 20, 2013, at para. 104.

[28]Francesca Lessa and Pierre-Louis Le Goff, "Elusive Justice in Uruguay," *Al Jazeera*, February 13, 2014.

[29]"Uruguay Congress Upholds Military Rule Amnesty Law," *BBC News*, May 20, 2011.

[30]In an interview, he stated explicitly that "I wanted to wait to see what happened, to see if there would be protests against these declarations that arose on their own, but there still haven't been any." Only after that did he ask the SCJ to remove the lower court judge. See Le Goff (2013).

5.5 Conclusion

In this chapter, I have shown how the public's support for compliance moderates the effect of the proximity to election on the leader's response. The result holds cross-nationally (using distrust of the military as my best-available proxy for support for compliance), and also in specific cases, as evidenced by the experiences of El Salvador and Uruguay in overturning amnesty laws. The public opinion and referenda data indicate the public's level of support for compliance (at least on the order to overturn the amnesty law) was in both cases. By mapping changes in public support for compliance (El Salvador) and the domestic legal status of the amnesty law (Uruguay) onto the timing of presidential elections in both states, I am able to illustrate how both support for compliance and proximity to elections dictate the leader's response.

Granted, the case study also illustrates the limits of distrust of the military as a proxy measure of support for compliance. In an ideal world, there would be cross-national measures of support for compliance asked as such, or at least measures of support for specific compliance orders (like overturning the amnesty law). However, these measures do not exist cross-nationally or longitudinally over time in most cases; the data available for El Salvador and Uruguay is the exception, not the rule. In order to say something more general, the statistical analyses use distrust of the military to proxy support for compliance. Admittedly, this measure does not map onto support for amnesty laws. Uruguay's level of distrust in the military is consistently higher than El Salvador's, which should suggest a more pro-compliance attitude. This is somewhat concerning for the validity of the proxy measure, but I believe there are two reasons to lessen the concern. First, overturning amnesty laws is perhaps the most extreme compliance order to fulfill because it involves direct confrontation with the military. It makes sense that higher levels of distrust might indicate lower willingness to eliminate amnesty laws, because distrustful voters might be more concerned about the military's reaction. Second, while the Inter-American Court does order states to overturn their amnesty laws, this is a relatively rare order: only seven of the 539 orders against the military ask states to overturn amnesty laws. Thus, there are many more, much less

confrontational ways of complying with the Court's orders (publicly accepting responsibility, publishing the judgment, etc.). Although the extreme case of overturning amnesty laws does not match up with the proxy measure, this does not mean that distrust of the military does not predict support for compliance on average, particularly for the 532 other orders that do not involve directly throwing military officials in jail.

Beyond the illustration of the moderating effect of public support for compliance on proximity to the election, Uruguay's experience also challenges the conventional view that confronting the past is necessary for democracy. Whereas in other states "finding the dead and putting the perpetrators on trial is contributing to deepening essential elements of democratic life" (de Brito, 2001, pg. 59), trials in Uruguay would be anti-majoritarian. In Uruguay, democracy – being responsive to the people – is served not by trials, but by amnesty, given the two referenda in which citizens voted to retain the amnesty law. Even as legislators overturned the Expiry Law, opponents of Law 18.831 noted that the law went directly against what the people wanted. Rather than limiting Uruguay's transition to democracy, the debate over the amnesty law is evidence of a functioning democracy in which the public is able to express its view, the government responds, and the process of contestation is peaceful (Skaar, 2015).

5.6 Appendix

Table 5.5: 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 5.6: Predicted probabilities of compliance by ordered remedy, state, and issue area

Compliance 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%]

State	**Predicted probability**	**95% C.I.**
Panama	71%	[48%, 87%]
Uruguay	69%	[47%, 85%]
Mexico	48%	[22%, 76%]
Colombia	40%	[21%, 62%]
El Salvador	38%	[18%, 63%]
Ecuador	32%	[12%, 65%]
Suriname	32%	[9%, 71%]
Guatemala	31%	[18%, 47%]
Honduras	27%	[13%, 47%]
Paraguay	25%	[13%, 43%]
Chile	23%	[6%, 56%]
Brazil	20%	[5%, 57%]
Peru	12%	[6%, 22%]
Venezuela	1%	[0%, 7%]

Issue area	**Predicted probability**	**95% C.I.**
Detention conditions	83%	[40%, 97%]
Illegal wiretapping	73%	[17%, 97%]
Extrajudicial execution	57%	[21%, 87%]
Murder of officials	52%	[12%, 89%]
Torture in detention	43%	[10%, 84%]
Faceless tribunal	33%	[7%, 76%]
Disappearance in detention	26%	[4%, 74%]
Murder of civilians	23%	[5%, 64%]
Forced disappearance	19%	[4%, 59%]
Rape	9%	[1%, 43%]

Note: Predictions were generated using Model (1) in Table 5.1, assuming a state is complying four years after the judgment. Ordered remedy is held fixed at publicly accept responsibility and issue area is held fixed at forced disappearance, except when predicted probabilities of compliance order and issue area are being estimated, respectively. I hold the state fixed effect at its mean, except when estimating the predicted probability of each state complying. Distrust of the military and proximity to next election are held fixed at their means for all predictions.

Table 5.7: Robustness: results for proximity to election hold when standardizing distrust of military

Dependent variable: probability of compliance				
	(C1)	(C2)	(C3)	(C4)
Distrust of military	0.66^{***}	0.59^{***}	0.58^{***}	0.58^{***}
	(0.19)	(0.20)	(0.20)	(0.20)
Proximity to election	0.19^{*}	0.20^{*}	0.22^{**}	0.24^{**}
	(0.11)	(0.11)	(0.11)	(0.11)
Distrust of military ×	0.19^{***}	0.19^{***}	0.19^{***}	0.19^{***}
Proximity to election	(0.07)	(0.07)	(0.06)	(0.06)
Multilateral debt		0.00		−0.01
		(0.02)		(0.02)
DAC aid (log)		0.37		0.35
		(0.35)		(0.33)
GDP/capita (log)		-2.33^{*}	-2.82^{**}	-2.97^{*}
		(1.29)	(1.41)	(1.55)
Left government			-0.59^{*}	-0.57^{*}
			(0.35)	(0.34)
Unemployment			−0.01	−0.02
			(0.11)	(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

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

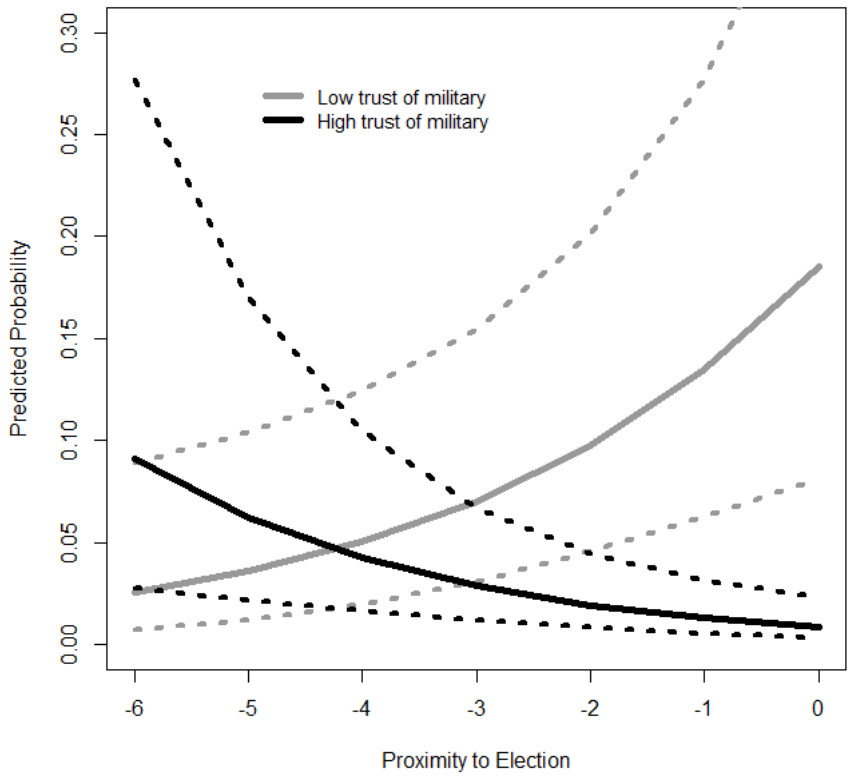
Table 5.8: Robustness: results for proximity to election hold when subsetting data to 2004 and later

Dependent variable: probability of compliance

	(C5)	(C6)	(C7)	(C8)
Distrust of military	1.43***	1.29***	1.30***	1.25***
	(0.41)	(0.43)	(0.44)	(0.45)
Proximity to election	0.03	0.06	0.03	0.06
	(0.09)	(0.09)	(0.09)	(0.10)
Distrust of military ×	0.49***	0.49***	0.49***	0.49***
Proximity to election	(0.14)	(0.14)	(0.15)	(0.15)
Multilateral debt		−0.03		−0.04
		(0.03)		(0.03)
DAC aid (log)		0.29		0.29
		(0.29)		(0.29)
GDP/capita (log)		−4.28***	−3.34*	−4.87*
		(1.66)	(1.98)	(2.51)
Left government			−0.06	−0.15
			(0.41)	(0.42)
Unemployment			0.01	−0.05
			(0.15)	(0.17)
Num. obs.	2827	2827	2827	2827
Num. events	184	184	184	184
State FE	Yes	Yes	Yes	Yes
Issue FE	Yes	Yes	Yes	Yes
Order indicators	Yes	Yes	Yes	Yes
Clustered SE	Case	Case	Case	Case

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

Figure 5.4: Overlaid version of interaction effect illustrated in Figure 5.2



Note: 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. 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.

CHAPTER 6

Conclusion

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. My dissertation focuses on compliance with these remedies at the Inter-American Court of Human Rights, a previously understudied institution relative to other international courts. In this chapter, I will address what my research tells us about the Inter-American Court of Human Rights in particular, and what it suggests about international courts more generally.

6.1 (Non)-Compliance at the Inter-American Court of Human Rights

I have argued that both managerial and enforcement perspectives on compliance explain outcomes at the Inter-American Court. First, a fair amount of non-compliance reflects managerial concerns about states' lack of capacity to comply. I have shown there are three managerial challenges to compliance: the nature of the Court's membership; the Inter-American system's design; and the difficulty of the compliance orders. The Court's membership consists mostly of newly transitioned democracies; of the 20 current members of the Court, 80% did not transition from military regimes to democracy until after the Court's founding in 1979. The Inter-American system's design, wherein cases must first pass through the gatekeeper Inter-American Commission before ascending to the Court, ensures that only the most difficult cases – the ones in which the baseline probability of compliance is lowest –

are observed. Finally, many of the compliance orders themselves are difficult to fulfill. The Court does not grant states any discretion in how they implement the compliance orders; for example, instead of allowing the state to decide how to guarantee non-repetition, the Court orders specific measures like "reform prisons" and "repeal or nullify existing laws." These challenges constrain member-states' ability to fulfill the Court's orders. In other words, even if states have the motivation to comply, they may still lack the ability to do so, which results in non-compliance.

Using an original dataset of over 1,300 compliance orders, I show that states' compliance records are mixed. Contrary to popular belief, full compliance (on the level of an individual order) is the most frequent outcome: states have fulfilled 47% of the Court's orders, compared to a non-compliance rate of 44% and partial compliance rate of 9%. However, these rates vary, as managerialist scholars would predict, by the type of compliance order. States have a strong record of complying with measures of financial reparation and satisfaction, but a much sparser record of complying with measures that guarantee non-repetition or provide rehabilitative services to the victims. However, even under circumstances in which compliance seems least likely, the compliance rate is not zero.

Of course, states may not always have the motivation to comply; in fact, they may be motivated specifically to choose non-compliance. 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 needs to be accountable to the voters' – as opposed to her own – preferences in order to remain in power. 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. Thus, the leaders' decision is based on her need for accountability and the public's level of support for compliance. As the need for accountability increases, the leader's responsiveness to the public's preferences increases. Whether this results in compliance depends on what the public's preferences are. When the public prefers compliance, the probability of compliance

increases when the leader's need for accountability is high; however, when the public prefers non-compliance, the probability of compliance decreases.

I have tested this empirical implication using two different sources of the leader's need for accountability: military coup and presidential elections. Using either reason for the leader to be accountable, the statistical models show that the public's level of support for compliance moderates the effect of the leader's need for accountability on the probability of compliance. To further illustrate the interaction between public support for compliance and presidential election timing, I show how compliance outcomes diverged in El Salvador and Uruguay in the year before the presidential election, and how the direction of the leader's response was determined by the public's level of support for a specific compliance order (repealing existing amnesty laws). Both states held presidential elections in 2014, and both also announced changes to the legal status of their amnesty laws in 2013. However, in Uruguay, where the public had twice voted to keep amnesty laws, the leader went in a pro-amnesty direction, while in El Salvador, where voters expressed support for overturning amnesty laws in surveys, the leader went in an anti-amnesty direction. Thus, the timing of the election may have pressured the leader to be responsive to the public's preferences, but the nature of those preferences ultimately determined whether the leader chose compliance or not.

6.2 Further Applications: Other Regions and Institutions

While my dissertation is focused on outcomes in the Inter-American Court, the theory has implications for regions other than Latin America and for institutions other than the military. The relevant scope condition is that the state is a newly transitioned democracy; the theory is not meant to explain outcomes in mature democracies or autocracies. This is because mature democracies do not face the same internal threat to their domestic power and autocracies do not need to respond to civilian policy preferences to remain in power. The scope condition is met in the Inter-American case because the region's mature democracies have nearly universally chosen not to join the Court, and the region's autocracies have either not joined

or have since denounced. In terms of regions, the theory may travel to both the European Court of Human Rights and the African Court on Human and Peoples' Rights.

Although many of its members are mature democracies, the European Court of Human Rights today is now faced with members that are newly transitioned democracies (Albania, Estonia), backsliding democracies (Russia, Turkey), or both (Poland, Hungary). These states may face similar capacity constraints to newly transitioned democracies in Latin America, although the nature of those constraints may differ. For example, there is no longer any gatekeeper institution at the European Court of Human Rights, so it is not necessarily true that the European Court only gets cases with which the state is least likely to comply. Additionally, there is still some discretion granted to states in how guarantees of non-repetition are implemented, which the Inter-American Court does not do.[1] Nevertheless, newly transitioned and backsliding democracies may have limited bureaucratic capacity to implement European Court rulings, so managerial concerns may explain some non-compliance outcomes in the European context.

It is also possible that leaders in newly transitioned democracies face and respond to the same domestic pressures for non-compliance. These pressures for non-compliance may arise when leaders are asked by the European Court to confront the abuses of the previous regime. In Latin America, this regime is the military; in many of the newly transitioned European democracies, this regime is the Communist party. 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). 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.

My theory may also have implications for the African Court on Human and Peoples' Rights. In terms of member-states' regime type, the members of the African Court look

[1]It is also the case, however, that the Committee of Ministers will limit this discretion if it feels the state has not fully complied with the judgment. In that case, the Committee does ask the state to undertake specific remedies. However, these are secondary to the state undertaking whatever remedies it deems appropriate, and thus somewhat endogenous.

more like Latin America when the Inter-American Court was created in 1979 than they do Europe when the European Court of Human Rights was created in 1959. That is to say, none of the nine states that have recognized the competence of the African Court to receive petitions from individuals and NGOs are mature democracies and most are authoritarian regimes.[2] The limited caseload of the African Court makes it difficult to say anything about how comparable outcomes in the two systems might be. I will, however, suggest three possible points of comparison.

First, the managerial argument will likely apply to compliance with rulings of the African Court. In Chapter 2, I showed that the poorest state in the Inter-American Court – Haiti – was unable to comply with any of the Court's orders. All nine members of the African Court are below the global average in terms of GDP per capita, and Malawi is one of the poorest states in the world, even poorer than Haiti. The African Court also orders states to undertake specific compliance measures, which limits state discretion; most of these remedies appear to be financial in nature. While European and Latin American states generally comply with financial remedies, members of the African Court may lack the capacity to implement even this measure of reparation. With time, these states may establish government bodies that make reparations to victims, as many Latin American states have done. This suggests that one way to improve compliance outcomes is to improve states' institutional capacity to implement the African Court's rulings.

Second, it is not clear whether or how the domestic incentives for non-compliance argument would apply in the African context. The African Court only started operating in 2006. For states that have transitioned to democracy (Benin, Ghana), crimes that took place under the previous regime are not under the African Court's temporal jurisdiction. For states that have not yet transitioned, there is no previous regime to adjudicate. In time, we may see cases involving previous regimes, but it is too early to say when that may be. The one exception to this may be Tunisia, which underwent a revolution and transitioned to

[2]Although 30 states have ratified the appropriate protocol, only nine states as of 2019 have made the necessary declaration granting individuals and NGOs access to the African Court. Without this declaration, cases are dismissed for lack of jurisdiction.

democracy in 2011 during the Arab Spring. Since then, citizens have grown less supportive of democracy with competitive elections. According to Afrobarometer surveys, support for single-party rule increased from 28% in 2014–2015 to 41% in 2016–2018.[3] However, Tunisia did not recognize the African Court's competence to hear cases from individuals and NGOs until 2017, so it is possible even these cases would not be heard by the African Court.

Finally, the most appropriate comparison between the Inter-American and African systems of human rights protection would be between the Commissions of the two systems, rather than the Courts. The African continent has many judicial and quasi-judicial bodies empowered to hear human rights cases, and the African Commission on Human and Peoples' Rights is by far the most frequently utilized (Abebe, 2016). Most adjudication thus takes place outside of the African Court. Although states are supposed to implement the recommendations of the quasi-judicial Commissions, the normative force that comes from a legal obligation is absent. Nevertheless, given that both the Inter-American and African Commissions see more cases than their counterparts, comparing the two systems may be a fruitful avenue for future research.

6.3 Broader Implications

Beyond the application to regional courts, my argument also has two implications for international adjudication more broadly. The first is about what factors, if any, an international court ought to take into account besides the law when adjudicating international human rights cases. In particular, my work implies there might be two additional factors a court could take into account: state capacity to fulfill the ordered remedies and anticipated public reception of the ruling. The second major implication of my work is on the relationship between democracy, international institutions, and human rights. These variables are often

[3]These numbers correspond to the sixth and seventh rounds of Afrobarometer, respectively. The exact wording of the question is: "There are many ways to govern a country. Would you disapprove or approve of the following alternativ[e]: Only one political party is allowed to stand for election and hold office." Respondents are asked to rate their level of approval on a scale from 1 to 5, where (1) indicates strong disapproval and (5) indicates strong approval.

connected in existing scholarship, particularly when it comes to human rights as a way of promoting or locking in democracy, but my work suggests the need for a more nuanced consideration of these factors.

6.3.1 Factors Beyond the Law

As I have shown, the compliance record with the Inter-American Court's ordered remedies is mixed. At least some of this non-compliance can be attributed to states' lack of capacity to fulfill these orders. To what extent should the Court take capacity constraints into account when ordering remedies? Even some advocates and victims' representatives believe that the Court orders remedies that cannot possibly be fulfilled. One activist told me that she only counts the "main remedies" – financial reparations and publication of the judgment – when it comes to compliance, and disregards measures of rehabilitation and guarantees of non-repetition.[4]

The Inter-American Court may very well recognize that states are unable or unwilling to fulfill some of its more difficult remedies. However, it has chosen to continue ordering these remedies anyway. Some might say that the Court is an entirely un-strategic actor because it seemingly fails to take into account the compliance constraints of member-states. But the Court's decision is only un-strategic if its goal is to achieve compliance. In ordering remedies, the Court seems more focused on establishing broader norms for the region than compliance *per se*.

Reasonable people may disagree about what the Court ought to do when ordering remedies. Although I have argued that part of what explains non-compliance at the Inter-American Court is the difficulty of compliance itself, I do not want to suggest that the solution is to simply lower the bar for compliance. There are at least two reasons why this would be the wrong solution. First, the Court's compliance orders have played an important role in establishing a standard for justice in Latin America. Even when the orders are not being fulfilled by the state to which they are given, compliance orders may still establish

[4]Personal interview with author, March 15, 2018.

broader norms in the region. For example, even though Brazil and Uruguay have yet to overturn (permanently) their amnesty laws, the Court's jurisprudence on amnesty laws has still had an impact: in 2005, Argentina's Supreme Court struck down the Argentinian amnesty law, citing the Inter-American Court's *Barrios Altos* judgment, even though the Court had never adjudicated a case involving the (il)legality of Argentina's amnesty law.[5] Second, the difficulty of compliance may be a temporal phenomenon based on the preferences of the population. Compliance is difficult, in part, because the Court is ordering states to undertake remedies that the people do not want; however, if the public supported the Court's remedies, compliance would not be as difficult. The Court should not change its standards just because voters in member-states do not support compliance at the current moment.

Given that the Court is most likely going to continue ordering these remedies, scholars and activists should shift focus from pressuring leaders to comply to persuading voters to accept the Court's remedies. Leaders' decisions on compliance are driven, at least in part, by the public's preferences on compliance. If my argument is correct, then compliance will not improve until voters change their preferences about compliance. Thus, one solution to the Inter-American Court's compliance problem is to have NGOs and other pro-compliance actors concentrate efforts on persuading voters to change their minds, rather than attempting to name and shame – or even persuade – leaders into compliance. Non-compliance is the result of a failure of preferences on the part of the public, not on the part of the leader.

Relatedly, to what extent should the Inter-American Court take into account anticipated public reception of its rulings? Even domestic courts may sometimes be constrained by public opinion; for example, Hall (2014) finds that the U.S. Supreme Court is more constrained when it fears non-implementation of its rulings, which may occur when trying to alter policy. In the international context, alignment of international court rulings with public opinion may be an even more salient concern because states expressly consent to be bound by a court's rulings, anticipating the court's decisions to be predictable. If courts start making decisions that go beyond what the expectation was when states consented to be bound,

[5]This reflects what Helfer (2014) calls *erga omnes* effectiveness.

the entire consent-based model of international law may be called into question. Neuman (2008) suggests that the Inter-American Court ought to pay more attention to regional consensus when judging cases because its departure "from the consensual aspect of a regional human rights convention in its interpretive practices...is not compensated for by compelling normative analysis or strategic institutional design" (pg. 123). Amnesty laws, for example, are not explicitly prohibited in the text of the American Convention on Human Rights; their illegality is something the Court read into the treaty. States did not know that the Inter-American Court would deem these laws incompatible with the American Convention when signing onto the treaty. Moreover, the Court was aware in *Gelman v. Uruguay* (2011) that Uruguayans did not support repealing the amnesty law, as they had decided against doing so in a 2009 referendum. Nevertheless, the Court included repeal of the amnesty law as one of its remedies. Most recently, the Court engaged in activist decision-making in its 2018 advisory opinion declaring that the legalization of same-sex marriage was required by the American Convention. Although some states in Latin America do recognize same-sex unions and marriages, the decision was contentious, given the region's strong Catholic tradition.[6]

6.3.2 Democracy and Human Rights

The Inter-American Court of Human Rights came into existence during a tumultuous time for democracy in the region. Most states that would join the Court were dictatorships at the time of the Court's creation. The ratification pattern reflects one that other scholars have identified for the European Court of Human Rights (Moravcsik, 2000), the International Criminal Court (Zschirnt and Menaldo, 2014), and human rights institutions (Hafner-Burton, Mansfield and Pevehouse, 2015) more generally: transitioning democracies are more likely than mature democracies or autocracies to join. These institutions play an important role in locking in liberal democratic reforms because they raise the costs of backsliding. This observed relationship between democratic transition and human rights commitments helps

[6]In Costa Rica, the home of the Court and the member with by far the best compliance record, the Court's advisory opinion angered the conservative electorate, and the presidential candidate promising non-compliance surged in the polls. See "The Mouse that Ruled: Latin America's Human-Rights Court Moves into Touchy Territory," *The Economist*, February 1, 2018.

perpetuate the idea that these institutions exist to promote democracy and human rights together.

However, while commitment to human rights norms may help consolidate liberal democratic reforms, 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 accountability. 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. 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.

Is it possible for an institution to exist in an environment in which the public wants the leader to respect human rights (i.e., not violate them) but may also sometimes want non-compliance with rulings that remedy any violation? Over time, this tension may strain the institution's effectiveness and legitimacy. If leaders continually ignore a court's rulings,

voters may eventually believe that the promise of human rights is futile or that the institution no longer works. Even so, the institution may still serve a net-positive, as there may be fewer new violations of human rights. In Latin American specifically, forced disappearance and extrajudicial executions have declined since the creation of the Inter-American Court (Lutz and Sikkink, 2000). However, because the Court's creation also coincided with transitions to democracy and the ousting of repressive governments that engaged in these practices, it is difficult to say what role the Court – as opposed to other factors – has played in the improvement of regional human rights practices. Nevertheless, given the rise of populism and militarism in Latin America today, as the Inter-American Court enters its fourth decade of international adjudication, we may soon find out.

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