

Law, Courts, and Government Compliance: Protecting Human Rights

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University of Notre Dame
Fall 2019

Seminar: Mondays and Wednesdays, 3:30 - 4:45 pm

📍 DeBartolo 335

Office Hours: Mon. and Wed., 2:00 - 3:00 pm, and by appointment.

📍 2029 JNH

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Under what conditions do governments comply with, or breach the law? This seminar will focus on the problem of legal compliance. Because national and international courts lack effective means of enforcement, governments often defy or ignore court rulings. We will analyze why governments comply with court orders or fail to do so, and how courts can become more effective. We will also introduce methodological tools to analyze and predict government compliance. Students in the seminar will have the opportunity to participate in a collective research project to analyze decisions of the Inter-American Court of Human Rights. Those interested in other courts, domestic or international, will be able to use the tools acquired in the seminar to analyze compliance with their rulings. The seminar is designed with three audiences in mind: undergraduate students interested in law and human rights in Latin America; LLM students interested in empirical legal research; and MGA students interested in assessing the role and effectiveness of international organizations.

Course Objectives

Upon successful completion of this course, you will be able to:

1. Write a research paper employing social science instruments.
2. Prepare a report on compliance with court cases.
3. Collect and analyze empirical data, using qualitative and quantitative methods.
4. Use basic commands in statistical software, such as R or Stata.
5. Engage with a broader Notre Dame project to assess government compliance with human rights.

Note that this is a writing seminar: 70% of your grade will reflect writing assignments.

Materials

Books: Hall, Matthew E. K. 2013. *The Nature of Supreme Court Power*. New York: Cambridge University Press

Articles: Available through Hesburgh Library or Sakai (see course schedule)

Statistical Software: We will use statistical software to analyze legal data. Do not worry if you have no prior experience, we will cover this in class. For the software, you have two options. You can install R and R-Studio free. (I will post instructions in Sakai.) Alternatively, if you are familiar with Stata already, you can use Stata in the labs or obtain a student license.

Additional Resources

In addition, the following links may be useful:

Inter-American Court of Human Rights

- Main page: <http://www.corteidh.or.cr/>
- Annual Reports: <http://www.corteidh.or.cr/informe-anual-en.html>
- Records of compliance: cases under supervision:
http://www.corteidh.or.cr/cf/jurisprudencia2/casos_en_etapa_de_supervision.cfm
- Case search:
http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_supervision_cumplimiento.cfm?lang=en
- Case summaries (Loyola Law School): <https://iachr.lls.edu/database>

World Bank Inspection Panel

- Main: <https://www.inspectionpanel.org/>
- Panel cases: <https://www.inspectionpanel.org/panel-cases>

State Court Compliance with U.S. Supreme Court Precedent

- Fix, Michael P.; Kingsland, Justin T.; Montgomery, Matthew D., 2018, "Replication Data for: The Complexities of State Court Compliance with U.S. Supreme Court Precedent",
<https://doi.org/10.7910/DVN/TBV1KU>

For questions about research sources, you can contact **Mark Robison**, Political Science and Peace Studies Librarian at librarianmark@nd.edu

Course Evaluation

Written Assignments:*

1. Introduce the court that you would like to study (5%). Identify its jurisdiction, its legal process, and the structure of the court's decisions. Identify potential problems of compliance that deserve study. For example, if you plan to work on the Inter-American Court of Human Rights, describe the Inter-American System (the role of the Commission and the Court), the nature of IACtHR rulings mandating reparation measures for victims, and potential issues of non-compliance by Latin American states. Think of this document as the "Background" section for your final paper. **(3-6 pages, due on 9/18).**

2. Present a legal case decided by the court (10%). Introduce the facts of the case, the decision of the court, and any subsequent issues of compliance. Discuss how this case illustrates the broader problems of compliance you intend to analyze. This text will provide an example to motivate your data analysis in the paper. **(3-6 pages, due on 10/2).**

3. Present the research question and the research design for your study (10%).**

Part 1: The research question (2-3 pages) should ask about causes of compliance in the context of the court you are studying. Motivate this research question by discussing its social relevance (how this problem affects human rights) and its theoretical relevance (how it relates to the existing literature) in two paragraphs. Outline a possible answer to your question (i.e., a hypothesis).

Part 2: The research design (2-3 pages) should discuss how you plan to validate your hypotheses. Describe data you intend to use (units of analysis, number of cases), the method (comparative, statistical), and the most relevant variables. **(Due on 10/16).**

4. Data (15%). Upload a data matrix with the information for your study (in Excel format). Upload also a one-page description of the dataset. **(Due on 11/4; revisions due on 11/18).****

5. Final paper (30%). Your final paper will advance an explanation of government compliance with the rulings of the court. The paper should include:

- (1) an explicit research question (based on Assignment 3);
- (2) a brief introduction to the court (Assignment 1);
- (3) an illustrative legal case (Assignment 2);
- (4) a hypothesis and a discussion of the method employed (Assignment 3);
- (5) a summary of the data (Assignment 4);
- (6) the results of your analysis and an interpretation of these results;**
- (7) a concluding section, extracting lessons from your findings. **(Due on 12/11).**

* Instructions for all assignments assume 12-point font and double-line spacing (not including bibliographical references). Be thorough but concise in your writing, target the minimum number of pages rather than the maximum. Cite your sources using the [APSR citation format](#).

** Assignments are individual, but students can work in pairs to produce the analysis.

Oral Assignments:

6. Class discussion (10%). Every week, one or two students will lead our discussion of the readings for the first 20 minutes of the class. Two questions should always initiate the discussion: (1) What is the main argument advanced by this article? (2) How does this argument connect with arguments about human rights compliance discussed in previous weeks? Students in charge of the discussion should pose additional questions to highlight central ideas in the readings. Remember that the role of the seminar's leader each week is to guide the conversation, not to make a presentation of the article.

7. Class participation (10%). The seminar will be interesting only to the extent that you are engaged in the conversation. We have no tests about the readings. I will assess your understanding of the readings based on our discussions in class.

8. Presentation of your findings (10%). Towards the end of the term (**12/4 and 12/9**), students will make an oral presentation of their analyses and discuss the implication of their findings for our knowledge of compliance in human rights cases. This presentation essentially involves a preview of sections (6) and (7) of your paper (see assignment 5 above).

All presentations are subject to the following rules:

- Presentations should be brief: 10 minutes maximum, unless two students co-author the analysis (then they can take 15 minutes together). Rehearse the timing, because I will cut the presentation when the time runs out.
- Visual presentations (Powerpoint, Prezi, etc., cannot have more than 6 slides)
- Text in the slides should be kept at a minimum, that is:
 - Use visuals more than text
 - No more than four bullet points per slide
 - Text for bullet points cannot extend for more than one line (avoid verbs if possible)
- Deliver your presentation facing the audience. You should not use slides as class notes.
- Frontload the main conclusion early in the talk, then present your evidence.

Course Schedule

Wednesday, August 28 – NO CLASS (American Political Science Association Conference)

Monday, September 2 – Compliance with court decisions: Why is it a problem?

Giorgetti, Chiara. 2018. "What Happens after a Judgment is Given? Judgment Compliance and the Performance of International Courts and Tribunals." In *The Performance of International Courts and Tribunals*, Ed. Theresa Squatrito, Oran R. Young, Andreas Follesdal, Geir Ulfstein. Cambridge: Cambridge University Press, 324-350

Wednesday, September 4 – Location: 244 DeBartolo Hall

**** Lecture by Professor Diane Desierto on the World Bank Inspection Panel. ****

Desierto, Diane. 2018. "Enforcement Options and Paths to Compliance: Disputants and Global Stakeholders in Philippines v. China." *Asian Journal of International Law*, 8 (1): 64–75.

Monday, September 9 – Defining and measuring compliance

Kapiszewski, Diana and Matthew M. Taylor. 2013. "Compliance: Conceptualizing, Measuring, and Explaining Adherence to Judicial Rulings." *Law & Social Inquiry*, 38 (4): 803–835.

Wednesday, September 11 – The Inter-American Court of Human Rights

Annual Report 2018. Available at: <http://www.corteidh.or.cr/tablas/informe2018/ingles.pdf>
Read Chapters II (pp. 7-19) and V (pp. 65-92), skim the rest of the report.

Monday, September 16 – Compliance with the US Supreme Court

Hall, Matthew E. K. 2013. *The Nature of Supreme Court Power*. New York: Cambridge University Press, Chapters 1-4.

Wednesday, September 18 – Compliance with the US Supreme Court

**** First assignment due at 5:00 pm (upload through Sakai) ****

Hall, Matthew E. K. 2013. *The Nature of Supreme Court Power*, Chapter 5.

Monday, September 23 – Compliance with the US Supreme Court

Hall, Matthew E. K. 2013. *The Nature of Supreme Court Power*, Chapters 6-8.

Wednesday, September 25 - Hesburgh Library, room 264

**** Presentation by Mark Robison, Political Science and Peace Studies Librarian ****

Llamzon, Aloysius P. 2008. "Jurisdiction and Compliance in Recent Decisions of the International Court of Justice." *The European Journal of International Law*, 18 (5): 815-852.

Monday, September 30 – Assessing compliance from a quantitative perspective

**** Download the statistical software: R and R-Studio ****

González-Salzburg, Damián A. 2010. "The Effectiveness of The Inter-American Human Rights System: A Study of the American States' Compliance with the Judgments of the Inter-American Court Of Human Rights." *International Law* (16), 115-142. Available at <http://www.scielo.org.co/pdf/ilrdi/n16/n16a05.pdf>

Wednesday, October 2 – Regression analysis

**** Second assignment due at 5:00 pm (upload through Sakai) ****

Von Staden, Andreas. 2018. *Strategies of Compliance with the European Court of Human Rights*. Philadelphia: University of Pennsylvania Press, Introduction (pages 1-27)

Monday, October 7 – Compliance by US State Supreme Courts

Gruhl, John. 1982. "Patterns of Compliance with U.S. Supreme Court Rulings: The Case of Libel in Federal Courts of Appeals and State Supreme Courts." *Publius* 12(3): 109-126

Songer, Donald R., and Reginald S. Sheehan. 1990. "Supreme Court Impact on Compliance and Outcomes: Miranda and New York Times in the United States Courts of Appeals." *The Western Political Quarterly* 43(2): 297–316.

Wednesday, October 9 – Modeling the probability of compliance

Fix, Michael P., Justin T. Kingsland, and Matthew D. Montgomery. 2017. "The Complexities of State Court Compliance with U.S. Supreme Court Precedent," *Justice System Journal* 38(2): 149-163

Monday, October 14 – Advanced topics: legal clarity

Staton, Jeffrey K, and Alexia Romero. 2019. "Rational Remedies: The Role of Opinion Clarity in the Inter-American Human Rights System," *International Studies Quarterly* (forthcoming): <https://bit.ly/31MrWMd>

Wednesday, October 16 – Advanced topics: discrete time

**** Third assignment due at 5:00 pm (upload through Sakai) ****

Parente, Francesca. 2019. "Fix for the Future, Not for the Past: Democratic Accountability and Non-Compliance with International Law." Unpublished manuscript, University of California Los Angeles. <https://www.francescaparente.com/uploads/5/3/7/5/53758123/parente-isa-draft.pdf>

Monday, October 21 **No class – Fall Break**

Wednesday, October 23 **No class – Fall Break**

Monday, October 28 – Monitoring compliance: The Costa Rican Case

Gauri, Varun, Jeffrey K. Staton, and Jorge Vargas Cullell. 2015. "The Costa Rican Supreme Court's Compliance Monitoring System." *The Journal of Politics* 77(3): 774-86.

Wednesday, October 30 – **Location: 244 DeBartolo Hall**

**** Special presentation: Compliance with the Inter-American Court ****

Pérez-Liñán, Aníbal, Luis Schenoni, and Kelly Morrison. 2019. "Time and Compliance with International Rulings: The Case of the Inter-American Court of Human Rights." Unpublished manuscript, University of Notre Dame.

Monday, November 4 – Actors and incentives

**** Fourth assignment due at 5:00 pm (upload through Sakai) ****

Brinks, Daniel M. 2017. "Solving the Problem of (Non)Compliance in Social and Economic Rights Litigation." In *Social Rights Judgments and the Politics of Compliance: Making It Stick*, eds. Malcolm Langford, César Rodríguez-Garavito, and Julieta Rossi. Cambridge: Cambridge University Press. Chapter 14, 475–508

Wednesday, November 6 – Political will

Hillebrecht, Courtney. 2012. "The Domestic Mechanisms of Compliance with International Human Rights Law: Case Studies from the Inter American Human Rights System." *Human Rights Quarterly* 34 (4): 959-985.

Monday, November 11 – Domestic courts I

Bailliet, Cecilia M. 2013. “Measuring Compliance with the Inter-American Court of Human Rights: The Ongoing Challenge of Judicial Independence in Latin America.” *Nordic Journal of Human Rights* 31(4): 477–495.

Wednesday, November 13 – Domestic courts II

Torelly, Marcelo. 2019. “From Compliance to Engagement: Assessing the Impact of the Inter-American Court of Human Rights on Constitutional Law in Latin America.” In Par Engstrom, ed. *The Inter-American Human Rights System: Impact Beyond Compliance*. London: Palgrave Macmillan, 115-141

Monday, November 18 – The backlash against international courts

**** Any revisions of research design and data due at 5:00 pm (upload through Sakai) ****

Sandholtz, Wayne, Yining Bei, and Kayla Caldwell. 2018. “Backlash and International Human Rights Courts.” In Alison Brysk and Michael Stohl, eds. *Contracting Human Rights: Crisis, Accountability, and Opportunity*. Northampton, MA: Edward Elgar, 159–178.

Wednesday, November 20 – The backlash against international courts

Voeten, Erik. 2019. “Populism and Backlashes against International Courts.” *Perspectives on Politics*: forthcoming. 1–16. doi: 10.1017/S1537592719000975

Monday, November 25 – Impact v. compliance

Von Bogdandy, Armin, Eduardo Ferrer Mac Gregor, Mariela Morales Antoniazzi, Flavia Piovesan, and Ximena Soley. 2016. “Ius Constitutionale Commune en América Latina: A Regional Approach to Transformative Constitutionalism.” Max Planck Institute for Comparative Public Law & International Law (MPIL), Research Paper No. 2016-21. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2859583

Wednesday, November 27 No class - Thanksgiving

Monday, December 2 – Empirical legal studies

Shaffer, Gregory, and Tom Ginsburg. 2012. “The Empirical Turn in International Legal Scholarship.” *American Journal of International Law*, 106(1): 1–46.

Wednesday, December 4 – Class presentations I

** Send me your slides by the end of the day on Tuesday **

Monday, December 9 – Class presentations II

** Send me your slides by the end of the day on Sunday **

Wednesday, December 11 - Conclusions

**** Final papers due at 5:00 pm (upload through Sakai) ****