Transparency and Compliance: The Costa Rican Supreme Court’s Monitoring System

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Abstract
In the summer of 2009, the Constitutional Chamber of the Supreme Court of Costa Rica began monitoring compliance with its direct orders in amparo and habeas corpus cases. The Court announced the early results from its analysis at a well-attended March 2010 press conference. The president of the court promised to continue monitoring and publicizing the results for the foreseeable future. We use a unique dataset on compliance derived from this monitoring system to examine the determinants of compliance with court orders. Vague orders and orders issued without definite time frames for compliance resulted in delayed implementation. We also find that orders issued just after press conference were implemented roughly two months sooner than orders issued just prior to the press conference. The findings suggest that judges can promote rule of law values from the bench, in part by increasing the transparency of their work. The findings raise more general questions about the role of the constitutional judge in rule of law reform and in the enforcement of rights.
Introduction

The construction and maintenance of a judiciary capable of holding government officials accountable for their behavior is critical for both democracy and development (Rodriguez, McCubbins and Weingast, 2009). Although judges value their capacity to hold governments to account (e.g. Huneeus, 2010; Widner, 2001), many of the processes thought to support judicial power are largely outside their control. Most obviously, judges are unlikely to have a strong influence, at least in the short-run, on the degree to which political power is fragmented (Ríos-Figueroa, 2007; Chávez, Ferejohn and Weingast, 2011), on the drafting of formal rules that insulate themselves from external pressure (Pozas-Loyo and Ríos-Figueroa, 2010), or on public support for the judiciary (Bumin, Randazzo and Walker, 2009; Carrubba, 2009; Clark, 2010). Yet there are features of judicial power that may be within judges’ reach. For public support to matter, people must be aware of, or at least capable of being made aware of, the conflicts courts resolve (Yadav and Mukherjee, 2014; Vanberg, 2005; Staton, 2010). Public support is far more likely to matter when judges operate in a context of transparency. And transparency, it turns out, may be something judges can influence.

In October, 2009, the Constitutional Chamber of the Supreme Court of Costa Rica (colloquially, the “Sala Cuarta” or “Sala IV”) quietly began to monitor compliance with direct orders to public officials in its amparo and habeas corpus jurisdictions. Six months later, on March 2, 2010, the Sala IV held a press conference announcing its preliminary results. The event, advertised one week in advance, was well-attended and received careful coverage in the media.¹ At the event, the Sala IV promised to continue monitoring cases and announced a plan to post compliance rates on its website.

The Sala’s compliance system and its decision to go public with early results present unique research opportunities: The system provides a view into an element of the constitutional review process - enforcement - that is often either assumed or overlooked. Although there are numerous studies of judicial behavior in comparative politics, studies of the compliance process are largely limited to case studies (Rodríguez-Garavito, 2011; Gauri and Brinks, 2008; Vanberg, 2005). The Sala’s surprise press conference provides an opportunity to evaluate the consequences of a one-time increase in transparency. To preview our results, we find that orders issued after the press conference were implemented roughly two months sooner than orders issued prior to the press conference. Although we center our discussion on that result, we also use the monitoring system to assess the impact of features of the Sala’s opinions that might also be related to transparency. We find that vaguely written orders and orders without clear deadlines suffered significant compliance delays.

Our study raises a number of questions about the manner in which the judiciary might itself advance rule of law values. What kinds of political contexts are favorable for judge-led efforts to improve the rule of law? What constraints do judges face and what risks do they take? They also raise more general questions about the provisions of rights. What are the effects of enhancing compliance with court orders on the welfare of citizens who did not litigate? We divide the remainder of our paper as follows. The next section of our paper develops the theoretical structure of the study. We develop an argument suggesting that the Sala IV’s press conference ought to have influenced compliance outcomes by increasing expectations about the likelihood that non-compliance would become public knowledge. We then present the results of a model designed to evaluate that claim, and consider the robustness of the findings to alternative hypotheses. We conclude our paper by discussing more the general rule of law questions that the study raises.
Public Support and Transparency in Costa Rica

Our point of departure is a simple theoretical claim – given the judiciary’s lack of coercive powers, its ability to induce compliance depends on the incentives of public officials to comply voluntarily. A rich tradition in political science suggests that these incentives are strong when courts enjoy considerable public support or legitimacy (For recent expressions of this idea, see Rodríguez-Garavito, 2011; Carrubba, 2009; Clark, 2010; Gibson, Caldeira and Baird, 1998). In such environments, officials believe that there are consequences for non-compliance, whether in terms of ballots, public protests, or reputation risk. For this to work, however, the public must be aware of the cases judges resolve, or at the very least, information must be available such that the public could be made aware of them. Absent such information, public opinion will not motivate public officials to comply voluntarily. For this reason, transparency is thought to promote compliance (Vanberg, 2005).

But transparency may not be sufficient to induce compliance. In highly salient policy areas, officials might be willing to accept the costs of non-compliance. Highly salient contexts are precisely the contexts where positive political models of judicial politics predict judicial deference. These are contexts in which judges are most likely to be careful about the orders they write. And so, either because judges are careful or because officials are willing to bear the costs of defiance, transparency is less likely to matter in highly salient contexts. As salience decreases, however, judges are predicted to be less deferential, and officials may be more concerned with the costs of defiance. For these reasons, we should be most likely

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2By transparency, we mean the extent to which actors immediately involved in the case believe that impartial third parties are both likely to learn about the case and understand what is required by the decision.
to observe a positive effect of transparency on compliance when salience is relatively low (Staton, 2010).³

The Costa Rican context presents a favorable setting for evaluating this implication. The Sala IV’s monitoring system, and the press conference announcing it, should have created stronger beliefs among public officials in Costa Rica that instances of non-compliance would be made public. The monitoring system itself created the infrastructure necessary to track the outcomes of constitutional cases and identify problem areas. The press conference publicized its existence. And the jurisdiction that was largely covered, *amparo*, does not commonly involve the resolution of cases that are salient enough to trigger either strategic deference or outright disregard on the part of public officials. If transparency is critical to compliance in this kind of context, then we should observe better compliance outcomes in the wake of the press conference. The plausibility of this claim depends on a series of assumptions. Relevant actors must have believed that the Sala IV had increased transparency through its system and the public announcement. They must have believed that the Sala’s intention to continue reporting on compliance behavior was credible. Public officials must have believed that there were consequences for non-compliance with judicial orders. The *amparo* context ought generally to involve the kinds of political conflicts that generate more or less sincere judicial behavior and a willingness among officials to avoid publicity regarding overt forms of non-compliance. We discuss these assumptions in turn.

**Information and Transparency** The Sala IV’s monitoring system collects the data necessary to report meaningfully on patterns of non-compliance. The process begins with a compliance team working in the Centro de Jurisprudencia Constitucional (CJC), an admin-

³We understand policy areas to be salient if they are the object of significant political controversy.
The CJC identifies rulings issued by the Justices (*magistrados*) in which a direct order is granted. The team records the time frame or deadline for compliance (*plazo*) attached to each sentence. When the plazo comes due, lawyers on the compliance team call the claimant on behalf of the Sala IV to inquire into the status of the claim. If the claimant is satisfied that the order has been implemented, lawyers certify the answer and register it, including date and time of calling. On the other hand, if the claimant reports an instance of non-compliance, the team calls the responsible authority for an explanation. Calls are repeated until the CJC has a specific answer about the case’s status or until five calls are made, after which the case is registered as an instance of non-compliance. All calls and answers are recorded in the system in order to have a detailed track record for each case. The final step in the process involves CJC lawyers grading the status of compliance based on the specifics of the court’s order and the information collected. The CJC sends a detailed monthly report to the Sala’s Presidency and, in instances of non-compliance, to each of the Justices for follow-up.

We have already noted that the Sala IV’s press conference was well attended and that various media outlets reported on it. The Sala is a constant source of news in Costa Rica and that there is considerable media freedom.\(^5\) It is not controversial that a serious, continuing non-compliance problem would have been newsworthy, and that, therefore, a public announcement about this system would have increased agencies’ beliefs that court orders were transparent. We have also conducted in depth interviews, based on a standard protocol, with legal staff from a variety of public entities, including the Caja Constarricense del Seguro Social, the Municipalidad de Alajuelita, the Dirección General del Servicio Civil, del Seguro Social, the Municipalidad de Alajuelita, the Dirección General del Servicio Civil,

\(^4\)Information about the system can be found at [http://sitios.poder-judicial.go.cr/salaconstitucional/seguimiento.htm](http://sitios.poder-judicial.go.cr/salaconstitucional/seguimiento.htm). Details of the protocol for tracking compliance can be requested from the authors.

\(^5\)Freedom House ([http://www.freedomhouse.org/](http://www.freedomhouse.org/)) has considered Costa Rica to have a free press in every year it has conducted its rating, since 1980.
and the Ministerio de Educación Pública. All but one interviewee reporting being aware of the Sala’s monitoring system. (The exception was aware that the Sala was actively tracking compliance but did not realize that there was a particular group in charge of the effort.)

**The Credibility of the Sala’s Promise**  
To increase beliefs in transparency, relevant parties also must have believed that the Sala’s commitment to monitor and publicize compliance rates in the future was credible. In retrospect, we can judge credibility clearly, as the Sala has indeed followed through. But what we need to evaluate is whether the promise would have been perceived to have been credible at the time. An important consideration, one consistent with the models of judicial politics that animate our study, concerns the independence of the court we are considering. A court that can be easily cowed may lose its nerve or otherwise be convinced to take down unfavorable information about powerful officials. The credibility of a promise like the one the Sala IV made is more likely to affect relevant parties in environments in which judicial independence is relatively high. Costa Rica is such an environment (Wilson and Rodríguez Cordero, 2006). Figure 1 displays Linzer and Staton’s (2012) *de facto* judicial independence estimates for the Americas, where judicial independence is scaled from zero (low) to one (high). The Costa Rica series is highlighted by a red box. Reflecting regional expert knowledge, these estimates suggest that the Costa Rican judiciary has much more in common with the judiciaries of the North American states (upper left) than with many other Latin American systems, especially those of Central America.

Public officials could have held somewhat more sophisticated expectations regarding the Sala. For example, they could have believed that although the Sala could not have been cowed into hiding information, it would be embarrassed by what it found as monitoring continued; and to avoid public embarrassment, it would hide instances of non-compliance. Of course, if officials believed this, then we would not see a change in compliance outcomes.

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6Interviews conducted by team member Nancy Marín Espinoza, July-August 2013.

7See [http://sitios.poder-judicial.go.cr/salaconstitucional/seguimiento.htm](http://sitios.poder-judicial.go.cr/salaconstitucional/seguimiento.htm)
Figure 1: Linzer and Staton Measure of Latent Judicial Independence for the Americas, 1960-2010.
associated with the press conference, given that officials would not then have expected a
change in transparency.

The Sala’s own presentation at the press conference suggests that this more sophisticated
belief on the part of officials was unlikely. Figure 2 shows a PowerPoint slide from that press
conference.\(^8\) Consider the final column, which displays the percentage of cases being tracked
in which the CJC could assure that there had been compliance. The numbers are fairly
low in many cases. The actual, overall compliance rate was actually close to 94% in the
period captured in the slide, but at the time of the press conference, tracking had not been
completed. This can be seen from the column labeled “Ignorado,” which shows the cases for
which information was still unknown. Nevertheless, the final column at least suggests that
there might have been a serious non-compliance problem, particularly in certain agencies.
The presentation would have suggested that the Sala was not afraid of a higher than expected
non-compliance rate.\(^9\)

**Consequences of Non-compliance** For transparency to work as we propose, officials
have must believed that there were consequences for non-compliance. We assume that, at

\(^8\)It is important to stress that this is a screen shot of Sala’s own slide - quite literally
what they presented. Sala Constitucional, “Sistema de seguimiento de sentencias de la Sala
Constitucional,” 2 March 2010.

\(^9\)Another concern is that the Sala would not track cases honestly. We find this deeply
implausible. The only conceivable rationale for the argument is that the Sala has been
managing its legitimacy, which depends on promoting an image of a high compliance rate.
But if this is about legitimacy, the downside risk of being caught faking data seems far
more serious that the prospect of presenting higher than expected non-compliance rates.
Dishonest reporting would be fundamentally inconsistent with the Sala IV’s international
reputation as an innovator of human rights jurisprudence and a rule of law leader. Tracking
information is publicly available, and there are real litigants whose cases are being tracked.
The probability of getting caught would seem high.
Sala IV: Sentencias por certeza de cumplimiento según institución:
Octubre – Noviembre 2009

<table>
<thead>
<tr>
<th>INSTITUCION</th>
<th>Cumplimiento</th>
<th>Cumplimiento parcial</th>
<th>Incumplimiento</th>
<th>Ignorado</th>
<th>Total</th>
<th>% certeza cumplimiento</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministerio de Educación Pública</td>
<td>24</td>
<td>2</td>
<td>115</td>
<td>141</td>
<td></td>
<td>17%</td>
</tr>
<tr>
<td><strong>Caja Costarricense del Seguro Social</strong></td>
<td><strong>70</strong></td>
<td><strong>2</strong></td>
<td>3</td>
<td>27</td>
<td>104</td>
<td>67%</td>
</tr>
<tr>
<td>Ministerio de Gobernación, Policía y Seguridad Pública</td>
<td>7</td>
<td>6</td>
<td>13</td>
<td></td>
<td></td>
<td>54%</td>
</tr>
<tr>
<td>Ministerio de Justicia</td>
<td>6</td>
<td>7</td>
<td>13</td>
<td></td>
<td></td>
<td>46%</td>
</tr>
<tr>
<td><strong>Poder Judicial</strong></td>
<td><strong>9</strong></td>
<td>1</td>
<td>10</td>
<td></td>
<td></td>
<td>90%</td>
</tr>
<tr>
<td>Ministerio de Obras Públicas y Transportes</td>
<td>1</td>
<td>7</td>
<td>8</td>
<td></td>
<td></td>
<td>13%</td>
</tr>
<tr>
<td>Autoridad Reguladora de los Servicios Públicos</td>
<td>2</td>
<td>4</td>
<td>6</td>
<td></td>
<td></td>
<td>33%</td>
</tr>
<tr>
<td>Ministerio de Ambiente, Energía y Telecomunicaciones</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td></td>
<td></td>
<td>17%</td>
</tr>
<tr>
<td>Ministerio de Trabajo y Seguridad Social</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>6</td>
<td></td>
<td>17%</td>
</tr>
<tr>
<td>Resto</td>
<td>20</td>
<td>0</td>
<td>3</td>
<td>93</td>
<td>117</td>
<td>17%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>141</strong></td>
<td>4</td>
<td>7</td>
<td>269</td>
<td><strong>424</strong></td>
<td><strong>33%</strong></td>
</tr>
<tr>
<td></td>
<td><strong>33%</strong></td>
<td><strong>1%</strong></td>
<td><strong>2%</strong></td>
<td><strong>63%</strong></td>
<td><strong>100%</strong></td>
<td></td>
</tr>
</tbody>
</table>

Figure 2: *Screen Shot of Sala IV’s PowerPoint Presentation, March 2, 2010*
a minimum, senior public officials care about their reputations. For political appointees, reputations likely affect the chances of being reelected and/or impact upon their ability to enact important policies and programs while in office. For senior civil servants, reputations often affect career prospects, and sometimes affect their bargaining power in negotiations over agency budgets and policy outcomes. Finally, we assume that street level bureaucrats, who ultimately issue the directives to comply with court orders (e.g., to provide a particular person with medical treatment, a pension, or a bail hearing), are responsive to pressures from their superiors. All of the officials we interviewed reported a concern with compliance. Some entities, e.g., the Caja Costarricense del Seguro Social, have explicit processes designed for ensuring that orders are carried out.\textsuperscript{10}

Another way to ask the question is this. Would relevant parties have perceived that the public would attach significance to and be dissatisfied with non-compliant patterns? Costa Rica is characterized by a high commitment to the rule of law, by which we mean the notion that people should and do abide by the law (Raz, 1997). On multiple cross-national indicators of the rule of law, Costa Rica receives consistently high marks.\textsuperscript{11} A critical component of the rule of law is that public officials are subject to the same core legal obligations as ordinary individuals.\textsuperscript{12} Simply ignoring court orders is not acceptable behavior in a rule of law state. While non-compliance in any particular case might be excusable due to circumstances beyond the control of public officials, the demonstration of repeated and routine non-compliance is a violation of core rule of law values.

A second consideration is that the Costa Rican judiciary is a highly respected institution (Walker, 2009). Further, the Sala IV is generally understood as a major force in Costa Rican politics and essentially revolutionized rights protections (Wilson, 2011). The Sala’s

\begin{itemize}
\item \textsuperscript{10}Interview with Nancy Marín Espinoza, 17 Julio 2013.
\item \textsuperscript{11}For a simple example, consider the results described in the BTI Transformation Index (http://www.bti-project.org/country-reports/lac/).
\item \textsuperscript{12}For a general review, see (Rodriguez, McCubbins and Weingast, 2009)
\end{itemize}
Importance and popularity is evident in the use of the colloquial term for a legal proceeding designed to vindicate a right – a “salacuartazo!” Indeed, a simple search on Twitter under #salacuartazo reveals multiple uses across many tweets, linked to news articles and blogs about amparo actions, both real and comical. The term “salacuartazo” is even used comically in Costa Rican Spanish, as in “I’m going to file a salacuartazo against mosquitos for physical and moral damages!” The Sala IV has been used to solve major social rights issues. It also has been used to solve myriad, relatively small, bureaucratic problems that impinge upon rights enjoyment, some of which are perceived to be trivial. Either way, the Sala has done so authoritatively. Officials who disobey would find themselves pitted against the prestige of the Sala.

Political-Legal Context How did the Sala achieve its position in Costa Rican society? We provide a brief summary here. Although the practice of constitutional review in Costa Rica goes back to the late 19th century, a series of changes in 1989 dramatically increased its utilization and scope. A constitutional amendment that year created the Sala IV, a new chamber of the court with the power of nationally centralized judicial review. At the same time, the enabling law for the newly created Sala IV eased the barriers to access so that anyone in the country, even a foreign national, could file a writ petition twenty-four hours a day, without the need for legal representation, and without charge (Wilson, 2011). Finally, reformers with ties to the Inter-American Court of Human Rights influenced the early decision making of the newly created Sala IV, encouraging the enforcement of social and economic rights that, while incorporated into the 1949 Constitution, had previously...
been understood to be non-justiciable and merely aspirational.\textsuperscript{14} As a consequence of these changes, the caseload of the Sala IV increased sharply, and nearly linearly with time, from about 1,600 amparo filings in 1989 to about 20,000 in 2010. In a typical year, the Sala IV rejects a bit more than half of all amparo filings, and then supports about two-thirds of the cases that go on to receive a vote on the merits.

While there is no doubt that the Sala’s caseload has grown massively since the 1989 reform, the vast majority of the increase is in its amparo jurisdiction. Amparo cases involve individual claims against the state for resources, information, or action. The popularity of Sala derives at least in part from its inexpensive filing procedures and the corresponding ability of petitioners to lodge constitutional claims directly and quickly. These are not typically cases of high politics, but instead the sort of high volume, lower salience constitutional review in which judges have the strongest incentives to resolve cases autonomously and officials have room to delay or ignore because no one is paying attention. These are the cases in which an increase in transparency could matter the most (Staton, 2010).

\textbf{Data Analysis}

Our analysis makes use of the CJC monitoring data, beginning in October, 2009, and ending in December, 2011. Given enough time, the vast majority of amparos are implemented per the Sala IV’s requirements;\textsuperscript{15} however, there is considerable variation in the time it takes to implement an order. In so far as delayed implementation is a form of non-compliance (Staton, 2010), we focus our analysis on estimating the duration of non-compliance via an event history approach.

\textsuperscript{14}Julio Jurado, personal communication, 2011.

\textsuperscript{15}As of May 2, 2013, the CJC had tracked 11,052 of the 11,363 orders issued by the Sala IV between October, 2009, and March 25, 2013. Among the orders that were tracked, the CJC was able to verify compliance in 9,391 instances (85%).
The CJC compliance team indicates, for each order, whether there has been compliance, probable compliance, partial compliance, or non-compliance. Our decision to focus on durational data, instead of these categorical assessments of compliance, is appropriate in light of an unfortunate feature of the CJC's early data collection strategy, which makes it easier to interpret time until compliance than compliance itself. The critical problem is that the CJC erased from the spreadsheet they were using a mark indicating non-compliance, once an agency had implemented the order. Consider Table 1, which summarizes the compliance record for the Caja in October and November of 2009. The second column reviews the frequencies of compliance outcomes as reported in March 2010 (compare to the second row of the table in Figure 2). The third column shows the same information as reported by the CJC compliance team in their cleaned data set published in November 2011. Critically, whereas the Sala IV reported a 67% certain compliance record in March 2010, by November 2011, their cleaned dataset suggested that it was 100%. The consequence is that although we know very well when a case has been fully implemented, there is some uncertainty about whether there was ever a form of non-compliance prior to implementation. Although we know that the Caja implemented all orders voted on in October and November of 2009, we do not know when they did so or how many cases involved significant delay.

<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Compliance</td>
<td>70</td>
<td>106</td>
</tr>
<tr>
<td>Partial Compliance</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Non-Compliance</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Unknown</td>
<td>27</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>104</td>
<td>106</td>
</tr>
<tr>
<td>Percentage certain</td>
<td>67</td>
<td>100</td>
</tr>
</tbody>
</table>

Table 1: Two Pictures of the Caja’s Compliance Record for October-November, 2009.

Table 2 reinforces the problem. As is clear, the percentage of cases in which there was an incident of overt non-compliance increases over time – indeed, it jumped 117% between 2009 and 2011. The reason is that, as we saw with the Caja example, there were many cases in 2009 and 2010 that were once coded as non-compliant but have since been changed. An
insufficient amount of time had passed in 2011 to reduce these instances of non-compliance via over-writing data.

<table>
<thead>
<tr>
<th>Year</th>
<th>Non-Compliance %</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>6</td>
</tr>
<tr>
<td>2010</td>
<td>8</td>
</tr>
<tr>
<td>2011</td>
<td>13</td>
</tr>
</tbody>
</table>

Table 2: *Percentage of orders that resulted in non-compliance, by year.*

Critically for the duration analysis, on the other hand, the CJC compliance team recorded the month and year of the Sala IVs vote in each case and the date of compliance. Figure 3 displays a histogram of the number of months orders spent in the CJC system prior to a registration of certain compliance. The minimum number of months is 1 (when compliance is documented within a month of the Sala IVs decision) and the maximum is 25. The median duration is 7 months. Our data are right-censored in all cases of unresolved partial or complete noncompliance. There are no cases that are left-censored, as we know the date of the vote for every case in the sample. Because we are only able to measure the month and year of compliance, the data set gives rise to a number of tied events, i.e., there are a number of months in which multiple orders were resolved, which present their own challenges in an event history context.

**The Press Conference**

We estimate Cox proportional hazards models of the months to compliance (denoted $t$), accounting for ties with the Efron method. The hazard function for the $i^{th}$ amparo or habeas order in the Cox model is given by:

$$h_i(t) = h_0(t) \exp(\beta' x_i),$$
where $h_0$ is the baseline hazard function, permitted to take any form, and then scaled by a linear combination of covariates. Coefficients are estimated via the partial likelihood method and standard errors are clustered at the level of the case.

The key independent variable for us is a dummy variable coded 1 if the Sala IV vote was held on or after April 1, 2010 and 0 otherwise. The logic of this design is that claimants who bring an amparo order to a responsible authority will get more favorable treatment in the wake of the press conference than they would have prior to the event. The press conference was held at the beginning of March, but since we do not know the exact date of the each decision (only that they were decided in March), it was not clear how to code cases in March. Clearly, all votes in April happened after the press conference, thus we can be sure that all orders in cases voted upon in April will have been issued after the Sala IV’s attempt to increase the transparency of the amparo and habeas process. Of course, all orders, except
those resolved prior to March 2, 2010, will have been exposed to the press conference.\footnote{16} If all orders were influenced by the press conference in the same way, independent of when the Sala IV’s vote occurred, the result is an attenuation of the April vote date estimate. Thus the design is biased toward a null finding.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{fig4}
\caption{Cox Proportional Hazard Models: Panels display estimated hazard ratios with 95\% confidence intervals. From the northwest to the southeast, panels show results for increasingly restricted samples, closing the window around the votes taken in the months immediately before and after the press conference.}
\end{figure}

Figure 4 shows hazard ratios for the April month threshold for four samples of orders. Every hazard ratio is above one, with the largest at nearly two, indicating a doubling in the

\footnote{16}The immediate implication of this point is that we cannot treat the date as an assignment variable in a regression discontinuity design. Thus, causal inference will not be as clean as it would be in a stronger design.
odds of an order coming into compliance after the press conference than before. The upper left panel shows the results for all votes in the database. Moving from west to east and then south, the figure shows the results for smaller and smaller windows of data, closing in on the period directly surrounding the press conference. A key concern is that there might have been some unrelated change in the bureaucracy that took place during 2010, which makes it look as though something changed in response to the press conference even if the conference was irrelevant. We make a number of efforts to address this issue, the first of which involves limiting the sample to those cases that were resolved essentially during the same period. For this reason, we believe that the most conservative estimate of the press conference effect lies in the lower right corner of the figure.

**Alternative Explanations**

The results in Figure 4 are suggestive, but there are alternative explanations for the findings. A critical concern involves a variety of potential sources of endogeneity bias. Unfortunately, there is no way to instrument for the press conference. In a sense, we (the authors) were the instrument. Although we did not control the system that the Sala IV built, we did inquire about the possibility of investigating compliance patterns in amparo cases via some kind of monitoring system. The Sala IV liked the idea so much that it built the monitoring system. Absent the ability to travel backward in time and convince the Sala IV to randomize the agencies whose records were reported, and without a way to instrument for the event itself, we must rely on weaker designs that focus on observable indicators.

There are two very plausible threats to the assumption that the press conference can be treated as if it were randomly assigned to the stream of case files the Sala IV resolves. The first is that litigants brought distinct kinds of cases before and after the press conference. A simple argument is that prior to the press conference, individuals were less likely to bring cases for which they perceived the likelihood of compliance was low; after the press conference, on the other hand, anticipating the transparency effect discussed above, they
brought more cases of that type. Such a process would mean that the Sala IV confronted more difficult cases to resolve after the press conference, attenuating the effect we find. The second threat is that the Sala IV itself started issuing different kinds of orders following the press conference. If the Sala IV anticipated more transparency after the press conference, it might have been more willing to express clearly what it wanted after the press conference; and, if clarity produces more compliance (e.g. Spriggs, 1997), this would explain the results in Figure 4.

Before describing how we address these effects, it is worth noting that a full assessment of a public strategy for compliance would include them, rather than identifying only the effects of the press conference on the bureaucracy through public pressure. Over the medium to long-term, it is to be expected that transparency will change the composition of cases that litigants bring to courts, and will change how judges write their opinions (and perhaps how they vote, as well). These should not be understood as collateral, surprising consequences of transparency but rather as anticipated and intended effects of a public strategy for compliance. If judges write clearer orders in response to transparency, and if that makes it easier for agencies to comply, that is as much a benefit of transparency as pressure being brought to bear on street level bureaucrats. These effects would likely take time to crystallize, however, because both litigants and judges will not change their expectations and ingrained habits quickly. For that reason, in the short run (in the months immediately following the press conference) the effects of transparency are more plausibly attributed to the effect of transparency on the bureaucracy than on litigant behavior or judicial practice. Still, to identify the effect on the bureaucracy, we attempt to control for observables that measure case composition of cases (the outcome of litigant behavior) and the clarity of the orders (the result of judicial practice).

The ease or difficulty of implementing cases can be measured by two kinds of features of the orders. First, we include a series of dummy variables for salient plazo categories. Orders that give public entities considerable time to work out how to rectify a constitutional
violation may reflect policy challenges, e.g. the fixing of a drainage system, that are simply
difficult to resolve. We develop indicators for the following plazos: One week, One Week to
Two Weeks, Two Weeks to One Month, One Month to Six Months, More than Six Months,
and Sin Plazo. The “immediate” plazo reflects our base category. The primary rationale for
cutting the plazo variable into categories is that roughly 38% of the sample is without a plazo,
terms that afford great flexibility in implementation but raise questions about how to code
them relative to other plazos, especially relatively long ones. Second, we also include dummy
variables indicating particular agencies that typically confront relatively easily implemented
orders or relatively difficult ones, or which have reputations for responding quickly (or slowly)
to judicial orders. Specifically, we include dummy variables for the Department of Social
Security (the “Caja”), the Ministry of Health, and the Ministry of Public Works, entities
that the CJC itself had suggested were particularly likely to either resolve cases faster (the
Caja) or slower (Ministries of Health and Public Works).17

To measure the clarity of the order, we make use of a binary scale where 1 indicates that
the action required of the target of the order was “clear and definite” and 0 otherwise. We
assigned the orders randomly to two research assistants, with the exception of 200 orders,
which they coded together. The coders agreed on 85% of the commonly coded orders. For
the commonly coded orders, we randomly chose the codes of one of the two coders.

To illustrate, the following order, Order No. 16059 of 2009, was not considered clear and
definite: “It is ordered that Alberto [last name withheld] and Maria [last name withheld],
in their respective capacity as Director of Human Resources and Chief of the Department of
Accounting, both of the Ministry of Public Education, or whosoever is acting their offices,
do the necessary so to pay the claimant, Teresita [last name withheld], identity number

17In addition, we fit models with controls for whether the defendant was a municipality,
as well as a number of other agencies. Only the three we include influenced the estimated
baseline hazard function. Finally, we have fit models with only the April 1 2010 threshold.
Results of those models are only stronger than those reported, suggesting that correcting for
the mix of cases by plazo and agency was important.
[withheld], the necessary salary adjustments arising from disability, in installments, taking reasonable account of her own needs and those of her family.” The last clauses of the sentence introduce elements of vagueness with regard to whether compliance has occurred.

By contrast the following order, Order No. 13941 of 2011, was coded as clear: "It is ordered that Hilda [last name withheld], in her capacity as Director General, and Jaime [last name withheld], in his capacity as Chief of Urology, both of the hospital San Juan de Dios, or whosoever is acting in their offices, take the necessary steps and execute the relevant actions, within their respective powers and competencies, so that the claimant Juan [last name withheld] receives the transurethral resection of the prostate that he needs, within two months of the date of this communication.”

Overall, the coders were able to identify the clarity of 72% of the orders in our dataset. The remaining 28% could not be coded for clarity because they required actions whose complete characterization relied on other legal proceedings not in the database (e.g., orders to respond to previous right to information orders that were not themselves described in the amparo orders in our database). Of the 3121 orders that were coded for clarity, 2556 (82%) entailed actions that were “clear and definite”; and 565 (18%) were not clear.

Models with Control Variables

Figure 5 displays the results for the Cox models with the agency, plazo and clarity control variables. The baseline plazo is an order where the term is immediate. Thus, observing hazard ratios below 1 in these models suggests that every plazo longer than an immediate plazo is likely to decrease the hazard of compliance. The strongest effect is for plazos that are longer than six months, which have a hazard rate estimated to be 40% lower than the baseline. The hazard ratios for the Caja are consistently greater than 1, suggesting increasing hazards of compliance for that agency, whereas the Ministries of Public Works and Health both seem to have decreasing hazards of compliance. The only radically different finding is for the Public Works Ministry in the sample centered on the press conference date. The
clarity measure also suggests an increasing hazard of compliance. Finally, across all samples, the April 2010 threshold variable has a hazard ratio between 1 and 2, as would be true if orders voted on after April 1, 2010 have hazard rates that are higher than those voted on prior to April 1, 2010.

Figure 5: Cox Proportional Hazard Models: Panels display estimated hazard ratios with 95% confidence intervals. From the northwest to the southeast, panels show results for increasingly restricted samples, closing the window around the votes taken in the months immediately before and after the press conference.

Figure 6 plots the estimated survivor functions for the 2010 models with all other variables set at their modal values. The median survival time for such orders is 11 months. As the northwest panel suggests, it is 9 for the orders in cases voted on after the press conference (consider the number of months when the survivor function equals .5 for the median estimated survival time). A similar effect is estimated for the Ministry of Health, though
the survival time increases. The Caja seems to have had a very strong effect. Indeed, the median survival time for an order being responded to by the Caja is only 6 months. And unsurprisingly, the plazos themselves have strong estimated effects. Indeed, there is a 5 month difference in estimated survival times for a case where the Sala IV has ordered immediate compliance and a case in which the plazo is greater than 6 months.

![Graphs showing estimated survivor function](image)

Figure 6: Estimated Survivor Function: Panels plot the estimated survivor function with respect to the vote threshold variable, indicators for the Caja and Ministry of Health, and for three types of plazos, with all other variables held at their modal values.

**Fake Dates**

Our study suggests that something likely changed in the Costa Rican constitutional compliance process during March 2010. This is consistent with an effect of increased transparency caused by the Sala IV’s press conference and associated publicity. Of course, it is possible
that the change, in so far as there was one, occurred much earlier or much later, and had nothing to do with the press conference. Figure 7 shows estimated hazard ratios for four models. The first column shows models for a January and May 2010 thresholds. The second column shows models for August and November thresholds. There is no evidence that there was a change at the beginning of the 2010, well before the press conference, nor at the end of 2010, well after it.

Figure 7: Cox Models for Fake Press Conference Dates: Panels display estimated hazard ratios with 95% confidence intervals.
Discussion

We find evidence that the Sala IV’s decision to develop a compliance monitoring system and to publicize the preliminary results had demonstrable effects on the timing of compliance under its amparo and habeas corpus jurisdictions. Specifically, orders issued after the press conference were estimated to be implemented roughly two months earlier than orders issued before the press conference. These findings are consistent with models that propose a public enforcement mechanism for judicial orders. They also raise a number of questions about the way that rule of law values might be promoted.

Judge Effects The Costa Rican experience suggests that judges can have a direct effect on rule of law outcomes, but it is worth considering the potential risks that the Sala IV’s strategy involved. It is helpful to refer back to Figure 2, and consider the potential political risks involved in a strategy of raising media attention. The PowerPoint presentation clearly raised questions about a possible massive non-compliance problem in the judicial sector. As the final column on the slide indicates, the CJC could only claim a 17% certain compliance rate for the Ministry of Public Education. The Ministry of Public Works stood at 13%. Even the judiciary itself could only boast a 90% certain compliance rate. We know that the actual rates were higher than the figure suggested, but at the time, the Sala’s president risked extremely bad media coverage about its actions. It is far from clear that courts in all political contexts will be willing to take such a risk. The Sala could have just waited until it had completed its tracking; however, not all courts will have this luxury. Some will actually confront serious non-compliance problems. The question is whether they will be willing to highlight it.

The theoretical models suggest that a transparency should be strongest in rule of law states. We are thus led to wonder if the strategy the Sala IV used is fundamentally limited to judges with relatively secure tenure, in contexts where the rates of compliance, media freedom and public support are relatively high. Seemingly, the strategy would be wasted in
a highly autocratic setting. But if it is limited to only the contexts in which the rule of law is already extremely strong, it is hard to conclude that going public could ever be a general approach to building the rule of law. Although we are far from having the information we need to evaluate this claim carefully, it is not entirely clear that a judge-led strategy of increasing transparency must only be limited to high rule of law contexts. Simply requiring a government to account for its actions can change the way that the state conceives of or supports practices that bear on rule of law values (e.g. Risse and Sikkink, 1999). By highlighting compliance problems, judges can invite a dialogue, both about the challenges of implementing orders in particular cases and about public policy challenges more generally (e.g. Rodríguez-Garavito, 2011; Gauri and Brinks, 2012). Empirically, it is simply not true that judges only call attention to cases in which patterns of public official responses reflect a strong commitment to compliance. The Inter American Court of Human Rights consistently reports on non-compliance even in areas where states routinely ignore it. It does so in part to generate a conversation. The Colombian Constitutional Court has similarly tracked outcomes in the context of its structural decision regarding internally displaced people, even though there remain significant problems of non-compliance. Although transparency may not work in the short run in every context, judges may have long run incentives to ensure that lights are shined on the activities of the state.

Beyond the press conference itself, it is also important to note that features of the Sala’s orders, features it controls, are powerfully related to compliance times. Most notably, clear orders are more likely to be implemented quickly, a finding that is consistent with theoretical and empirical findings on the effects of judicial language (Spriggs, 1997; Staton and Vanberg, 2008). Likewise, when the Sala issues indefinite time frames for compliance, agencies respond with delay. These features of judicial writing are easily addressed. Whether a particular court in a particular case will wish to be more clear or leave requirements vague is another matter. The key point is that there are several simple ways in which judges might influence transparency.
Processes  The great majority of courts worldwide rely on indirect monitoring of compliance in areas of administrative law and constitutional rights violations. That is, once a ruling supporting a litigant's claim has been issued, judges assume that the litigant will return if the executive branch fails to provide relief. If the litigant does not return, courts assume that she is satisfied. Indeed, this process is a special case of a broader fire alarms approach to monitoring the implementation of public policy (McCubbins and Schwartz, 1984). The assumption that aggrieved parties will return to court if they are not satisfied may be justified for cases in which litigants enjoy privileged access to the legal system (as in constitutional clashes among government actors), cases in which litigants are well-resourced or well-organized (such as corporations, certain NGOs, unions, and class action cases), or cases in which the cost of non-compliance is, for the litigant, much higher than the cost of more litigation (such as claims for protection against torture). But the assumption may not hold for a class of cases, typically claims against the state for resources, information, or action, whose expected net value may not justify further litigation, and for certain classes of litigants, including those who are resource-constrained. These take the form of administrative law claims in many jurisdictions and constitutional actions in others.

A more direct or “police patrol” approach to monitoring compliance with court rulings might take a variety of forms, arising on the initiative of various actors. Executive branch agencies could assess the extent to which their own frontline bureaucrats comply with administrative law judgments. External organizations, such as the ombudsmen of northern Europe or the Ministério Público in Brazil, could audit executive agencies for compliance with court orders. The courts themselves could systematically review compliance with their orders and initiate *suo moto* proceedings (or referrals to prosecuting authorities) in cases of non-compliance, maintain cases in their dockets even after verdicts are rendered so that evidence can be collected during the implementation phase (as in the South African “structural interdict” or Indian public interest litigation), or conduct informal meetings with execu-
tive agencies who are the frequent targets of administrative law or constitutional law claims. Finally, courts could review compliance rates of various agencies and publicize their findings.

The Costa Rican Sala IV’s approach to compliance monitoring has included several of these elements, but a key element has involved the express interest in drawing attention to its process. That effort was not limited only to the press conference event alone. During the period immediately following the event, the President of the Constitutional Chamber discussed the Sala’s initial findings with agency heads and gave interviews on the subject more broadly. Clearly, this makes it difficult to concluded definitively that the March 2, 2010 press conference is solely responsible for a change in compliance times. We prefer to view the press conference date as the most visible manifestation of the period in which, and the general strategy through which, the Sala IV went public with its findings.

This kind of public strategy is likely to interact with existing institutions that create legal consequences for non-compliance. Although the Costa Rican constitution is silent on the matter, Article 53 of the Constitutional Jurisdiction Law creates a legal obligation to comply with amparo orders and Article 71 provides that non-compliance be punished by a prison term between three months and two years. Unfortunately, it is quite difficult to establish that a particular bureaucrat purposefully denied a benefit to someone when defense claims of bureaucratic capacity and accidental oversight are widely thought to be credible. In such a context, public mechanisms of shaming may be particularly relevant. But they might also work in contexts, like Mexico, where the legal architecture for pursuing non-compliance claims is highly rigorous and used.

**Social Welfare** Our paper has considered the impact of the Sala IV’s program with respect to compliance in amparo cases. The Sala seems to have changed bureaucratic practices. A natural, broader question deals with the problem of providing social and economic rights through a bureaucratic framework. Latin American laws and constitutions typically pro-

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18 Julio Jurado, personal communication, 2011.
vide access to goods and services, as a matter of right, through the bureaucracy. Litigants commonly seek amparo protection or assistance when bureaucracies are slow or broken. An amparo order essentially bumps a person up in a bureaucratic queue. What does this mean for the remaining members of the queue? A careful model of queuing and ordering is essential to identify precise expectations (e.g. Lui, 1985), but it is possible to sketch out the contours of the problem. From the perspective of members of the queue, one possibility is that we learn that amparo is our ticket to the front of the line. If we all draw the same conclusion, then we do little to the queue. We simply change the path to a good outcome. Indeed, if the bureaucracy does not increase the speed with which it handles claims, the social move to amparo may slow the entire process down. If instead, only a small group of people use the amparo route, then there may be important distributional consequences associated with solving a bureaucratic failure through the constitutional review system (Brinks and Gauri, forthcoming, 2014).

An alternative is that the amparo process changes the way that bureaucracies resolve particular cases. Suppose that potential litigants file amparos randomly and that less than the entire population of possible litigants file. Further assume that the agencies reorder the queue, moving successful amparo litigants to the front. This means that unsuccessful litigants and all others keep their place, and thus see longer wait times. How would a bureaucracy that wishes to limit complaint (Cleary, 2010), either directly from clients or indirectly from political principles, handle the reshuffle? Would they increase the rate at which they handle claims? Can this be done without a decrease in quality? Answering these kinds of questions should be an essential component of an analysis about the aggregate effects of the Latin American amparo system generally, and a judicial-led program of promoting more rapid compliance.
References


