

# Public Reactions to Non-Compliance with Judicial Orders\*

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## Abstract

Constitutions empower people to ask judges for binding orders directing state agents to remedy rights violations, but state agents do not always comply. Scholars propose that by making it easier to observe non-compliance, courts can leverage public pressure for compliance when it exists. Yet, exposure to information about non-compliance might lead individuals to accept high levels of non-compliance and reduce support for judicial remedies. We estimate the rate of non-compliance with judges' orders via a rigorous tracking study of the Colombian *tutela*. We then embed this rate in three survey experiments fielded with online national quota samples. We show that people find the non-compliance rate in the *tutela* highly unacceptable regardless of a variety of mitigating factors. We also show that public reactions to this information depends on prior expectations, a finding that stresses the importance of scholarship in cognitive psychology for studies of compliance in law and politics.

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# 1 Introduction

Over the last century, constitutions worldwide have massively expanded formal protections for individual rights (Law and Versteeg, 2011; Brinks and Gauri, 2014; Melton et al., 2013). Yet significant gaps between state promises to protect rights and rights respecting behavior remain (Law and Versteeg, 2013). Scholars attribute this gap, in part, to constitutions failing to make rights promises justiciable and, thus, enforceable in courts of law (Jung, Hirschl and Rosevear, 2014). State officials inevitably fail to respect rights in some instances, even in states with strong rule of law traditions. Legal mechanisms for remedying these violations are therefore essential to effective rights regimes.

This argument depends on a number of conditions, including a sufficiently independent judiciary willing to exercise meaningful oversight and a well-resourced legal support structure capable of helping individuals pursue their rights (Epp, 1998). It also envisions state officials fully complying with judicial orders designed to remedy rights violations. This is not always the case. Some officials in some cases implement judicial orders incorrectly or not at all (Kapiszewski and Taylor, 2013; Trochev, 2008). If universal compliance with court orders cannot be assumed, then even promises to respect justiciable rights may be limited to parchments. Non-compliance with judicial orders directing the state to remedy individual rights violations, thus, hampers the proper functioning of rights regimes.

Drawing on models of judicial politics in which judges' power derives from public support for compliance (Krehbiel, 2016; Gibson, Caldeira and Baird, 1998; Vanberg, 2005), one potential solution is to make information about non-compliance publicly available so that pro-compliance coalitions, including non-governmental organizations, litigants, the media, and elected officials, can mobilize public pressure to address it (Rodríguez-Garavito, 2010; Dancy and Montal, 2017). This "public enforcement" solution is effective to the extent that citizens value judicial compliance, reject common excuses for non-compliance, and are willing to sanction non-complying entities. And finally, informing the public about non-compliance must not undermine support for the very legal institutions used to defend rights.

Furthermore, this solution's effectiveness, we posit, depends on a psychological issue extant models overlook. Scholars from diverse traditions find individuals evaluate information relative to expectations (Kahneman and Tversky, 1979; Shepperd and McNulty, 2002; Damore, 1997). That is, people commonly perceive the same outcome to be worse (better) when it fails to meet (exceeds) their expectations. The effects of informing people about compliance rates may well turn on their expectations of compliance.

Perhaps the tallest hurdle to evaluating these claims empirically is that rates of non-compliance with judicial orders are, generally, unknown. And studies that estimate them (e.g. Spriggs, 1997; Staton, Gauri and Cullell, 2015) examine neither how citizens view non-compliance nor how they react to information about a given rate. We address this problem with a nested research design surrounding a specific rights-protection mechanism: Colombia’s *tutela* action. Our initial step is a rigorous tracking study to estimate the hitherto unknown rate of non-compliance with *tutela* orders. We then embed this estimate in three survey experiments to test a series of behavioral claims.

Our study proceeds as follows. First, we describe Colombia’s *tutela* and the analytic leverage it grants us. We then discuss known advantages and pitfalls of making non-compliance publicly visible before deriving novel predictions based on individuals’ expectations. We then describe our designs, report findings, and explore the implications of the results.

## 2 The Colombian *Tutela*

Colombia’s *tutela* is an individual constitutional complaint (ICC) designed to protect “fundamental rights,” as enumerated in the Constitution’s Title II, Chapter I, against the action or omission of any public authority (Brewer-Carías, 2009). It was adopted in the 1991 constitutional reform sparked by a national student movement (*Movimiento de la Séptima Papeleta*) amidst violent conflict and widespread concerns with corruption and the state’s inability to ensure justice. Using state-of-siege powers, President Virgilio Barco Vargas declared a national referendum in 1990 on whether to hold a Constituent Assembly. Despite the move’s questionable legality, 88% of voters approved it (Schor, 2011, p.185). A highly fractionalized Assembly converted this mandate into radical constitutional change (Fox and Stetson, 1992). As Schor (2011) notes, the new charter “addressed Colombia’s democratic deficits: a system of representation that had done a poor job of aggregating voter preferences; an overly powerful president; and a broad failure to effectuate individual rights” [emphasis added]. Former Constitutional Court judge, Manuel José Cepeda Espinosa, sheds light on the *tutela* centrality’s to fulfilling the 1991

Constitution’s formal rights commitments, calling the *tutela* “a bridge between the Constitution and reality that goes beyond a juridical procedure to become a material source of the enjoyment of rights.”<sup>1</sup>

The role of the Constitutional Court in *tutela* decisions and interpretation links this case to a broader class of institutional mechanisms at the judiciary’s disposal to effect social change by promoting rights in Colombia (Cano Blandón 2017), in Latin America (Botero, 2018), and across the developing world (Rodríguez-Garavito and Rodríguez-Franco, 2015). We stress that since its creation three decades ago, the *tutela* has become a first stop – and perhaps the only stop (Taylor, 2018) – for rights protection and integral to Colombia’s socio-legal culture. These twin elements grant us significant leverage vis-à-vis the conditions undergirding the public enforcement mechanism thesis.

## 2.1 *Tutela* as a Rights-Protection Mechanism

A *tutela* may be moved by any individual or on behalf of any individual, before any judge in Colombia, at any time. It seeks swift justice: formally, *tutelas* filed should be resolved in no more than 10 days.<sup>2</sup> Because the Constitutional Court of Colombia enjoys discretionary jurisdiction over all *tutelas* filed,<sup>3</sup> following any appeal, all *tutela* actions are sent to Bogotá for review. The Constitutional Court has, over time, interpreted its powers to include defining what constitutes a “fundamental right.” This approach, coupled with the Constitutional Court’s out-sized role in shaping Colombian politics (Landau, 2005; Dixon and Issacharoff, 2016), have endowed the writ with a wide range of protections for social and economic rights. Merhof (2015) writes “Suddenly, people could file a *tutela* because their pensions or their salaries were not paid properly – but only in exceptional cases where without those payments their minimum subsistence could no longer be guaranteed.” The flexible and widely applicable *tutela* thus offers Colombians a powerful legal tool for remedying the state’s failure to deliver on its promises to protect individual rights and liberties.

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<sup>1</sup>Gabriel Bustamante Peña, “El origen y desarrollo de la acción de tutela en Colombia. *La Semana* 6 Septiembre 2011. <https://www.semana.com/nacion/articulo/el-origen-desarrollo-accion-tutela-colombia/241093-3> Also quoted in Merhof (2015).

<sup>2</sup>Constitución Política de Colombia, Artículo 86, §3.

<sup>3</sup>Constitución Política de Colombia, Artículo 86, §2.

## 2.2 *Tutela* and Colombia’s Socio-Legal Culture

Beyond empowering citizens and courts to protect rights via the *tutela*, Colombia’s overall socio-legal culture is compatible with citizens exerting pressure on non-complying agents in *tutela* cases. Colombians are strikingly aware and supportive of the *tutela* and demand probity from public officials.

Hilbink et al. (2019) provide a window into Colombia’s socio-legal culture, contrasting citizens’ understanding of their rights and familiarity with legal provisions to protect them across a series of focus groups in Medellín, Colombia and Santiago, Chile. Although Colombians and Chileans express similar levels of confidence in the judiciary, the authors conclude that “Colombians across social categories have a deeper knowledge of their rights and of the nuances of the justice system” than Chileans.

More broadly, a 2017 nationally representative poll conducted by the National Administration of Statistics Department (*Departamento Administrativo Nacional de Estadística*) reveals more Colombians know of the *tutela* (87.4%) than any other rights-protection instrument, including the right of petition (81.7%). Near universal awareness suggests public opinion surveys about the *tutela* will tap real attitudes, not non-attitudes delivered for the sake of completing a questionnaire.

Our 2021 survey experiment on a national sample (detailed below) gauged Colombians’ general views on *tutela*.<sup>4</sup> Respondents indicated their likelihood of using the *tutela* if they felt their constitutional rights were being violated; their likelihood of recommending a friend to file a *tutela* if their constitutional rights were being violated; and how important they felt it was for Colombians to file a *tutela* action if their rights were being violated.<sup>5</sup> Responses in our control group, scored weakly (1) to highly supportive (7) of *tutela* use, tap a single latent dimension and reliably scale ( $\alpha = 0.85$ ). Figure 1’s northwest quadrant shows exceedingly positive orientations across the board. Sample means for each item hover around 6 (s.d.’s 1.4 - 1.6). Colombians clearly value the *tutela* as a mechanism for enforcing rights.

On the flip side of our theoretical coin, Colombians also appear sensitive to agents who fail to comply with judicial orders: they vehemently disagree with the notion that sometimes it is necessary for public officials to disobey the law. The northeast quadrant displays the distribution of responses (1-7), where higher values signify disagreement. Roughly 70% of respondents register disagreement

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<sup>4</sup>Replication materials for all analyses described in the paper can be found in the APSR Dataverse (Carlin et al., 2021).

<sup>5</sup>See Appendix for full text of items in English and Spanish.

above the midpoint (5-7), including 50% at the scale’s maximum (7). Sample mean is 5.3 (s.d. = 2.1). By comparison, Colombians are less dismissive of the idea that citizens sometimes need to disobey the law (mean = 4.4, s.d. = 2.2). These statistics point to a socio-legal culture that pairs almost universal support for the *tutela* with a conviction that state agents should be held accountable.

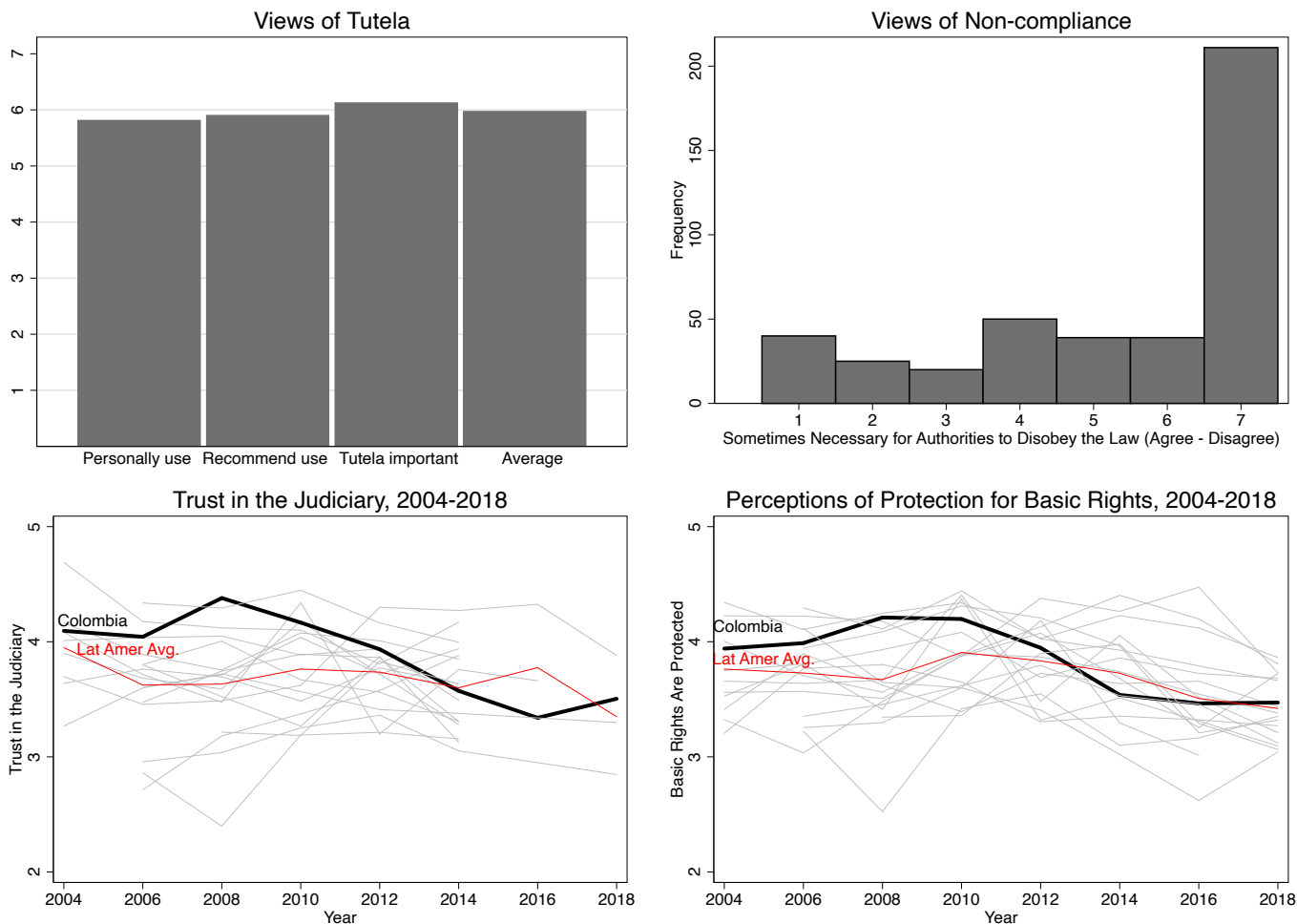


Figure 1: *Colombians’ views on the usage of tutela and acceptability of public authorities sometimes disobeying the law collected in 2021 Netquest survey described in Study 3. Temporal series for trust in the judiciary and perceptions that basic rights are protected gathered from the AmericasBarometer. Each gray line represents a distinct Latin American country. Colombia is shown in black. Red line represents an equally weighted average by country for each country available in a given AmericasBarometer round.*

AmericasBarometer<sup>6</sup> trends in the bottom panels of Figure 1 place Colombia near the regional average for trust in the judiciary and belief that basic rights are protected. But the *tutela* itself holds a special significance to Colombians. Taylor’s (2018) study of legal consciousness in Colombia suggests that Colombians are committed to the *tutela* not because they believe in the “majesty of the law” or in the state’s ability to ensure the enjoyment of rights but, rather, because when it comes to claiming their rights, “every other option is less promising; there is no other alternative to the *tutela*” (364). This dependence on the *tutela*, coupled with some concern over non-compliance (356), means it is reasonable to expect Colombians to reject non-compliance with judicial orders in *tutela* cases and to mobilize in support of this rights empowerment mechanism.

In sum, the *tutela*’s existence and Colombia’s rights-centric socio-legal culture suggest that tracking and publishing non-compliance could grant pro-compliance coalitions a useful tool for mobilizing public sentiment to raise pressure on state agents to comply. It may, simultaneously, be a hard test case to evaluate the predictions of this approach because experimentally altering Colombians’ perceptions of judicial processes, in general, and the *tutela*, in particular, could prove difficult. Our findings’ generalizability can and should be probed among the broader class of ICCs and judiciaries that wield institutional mechanisms to promote rights. We return to this point in our conclusion.

### 3 Theoretical Background

What do we mean by compliance? Scholars from diverse traditions have studied multiple aspects of the concept (Kapiszewski and Taylor, 2013). Researchers in the law and psychology tradition have developed a robust literature about why individuals comply with the law and come to accept the decisions of legal authorities. Some highlight the importance of perceptions of procedural fairness (e.g. Nagin and Telep, 2017; Murphy and Tyler, 2008; Tyler, 1988) and the legitimacy of judicial institutions (Gibson, Lodge and Woodson, 2014; Gibson, 2015). Others have studied how faithfully United States lower courts implement legal rules developed by courts above them in the judicial hierarchy. This literature underscore the import of carefully managing the process of “whistleblowing” by the lower court allies

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<sup>6</sup>We thank the Latin American Public Opinion Project (LAPOP) and its major supporters (the United States Agency for International Development, the Inter-American Development Bank, and Vanderbilt University) for making the data available.

of higher courts (Kastellec, 2007; Beim, Hirsch and Kastellec, 2014). Research in international law often focuses on how closely states align their domestic practices with international commitments. This scholarship prioritizes understanding non-random selection into treaty commitments which makes it appear as though international law is binding when states that intend to comply are those that opt into international regimes (e.g. Downs, Rocke and Barsoom, 1996). This literature also suggests that the bureaucratic capacity powerfully influences states' compliance (e.g. Chayes and Chayes, 1993).

Our study speaks most directly to the scholarship on compliance with court rulings developed in American politics, international relations, and comparative politics (Carrubba, 2005; Hillebrecht, 2014; Huneus, 2011; Spriggs, 1997; Vanberg, 2005). We adopt Kapiszewski and Taylor's (2013) definition of compliance as the "full execution of the action (or complete avoidance of the action) called for (or prohibited) in one or more court rulings (806)." We study how individuals react when they learn about non-compliance with judicial orders. To the best of our knowledge our study is the first of its kind, though it is related to a growing set of studies of public reactions to forms of "court curbing" (e.g. Driscoll and Nelson, 2019; Svolik, 2020).

To clarify the importance of understanding these reactions, it is useful to situate our study in the literature on why state officials comply with court orders. We adopt an instrumental approach, which envisions what we will refer to as a "public enforcement mechanism" for judicial orders. Elites' decisions to comply in this approach are sensitive to the political consequences of mass evaluations of their behavior (e.g. Vanberg, 2005; Trochev, 2008). Obvious challenges of coordination and collective action make it unlikely that the mass public would pressure for compliance in particular cases. But the public nevertheless plays key roles in supporting and responding to pro-compliance coalitions. Such coalitions often include rights-oriented non-governmental organizations, rights-promoting lawyers, and the media. They play critical roles in linking elite decisions and mass reactions, namely, by confronting government officials with information about non-compliance, supporting litigants in their search for effective remedies, and informing the public generally as a way of pressuring the state (Rodríguez-Garavito, 2010; Dancy and Montal, 2017). A court's power over state officials ultimately derives from public commitments to the normative propositions that state officials ought to be subject to legal limits on their authority (Raz, 1997) and that courts are the appropriate arbiters of disagreements over whether officials have violated these limits (Spriggs, 1997; Vanberg, 2005; Gibson and Nelson, 2014).



The key idea is that pro-compliance coalitions can mobilize public pressure for compliance when it exists. Thus, courts can depend on significant pressure for compliance in contexts where individuals are strongly committed to the rule of law, where particular courts enjoy significant levels of legitimacy, or when the masses are strongly committed to a particular judicial mechanism for remedying rights violations. For this mechanism to work, however, compliance must be visible, or at least it must be possible for non-compliance to be made visible by pro-compliance organizations (Vanberg, 2005; Cavallaro and Brewer, 2008). The mass public must also believe that non-compliance is inappropriate. In Colombia, where support for *tutela* is extremely high, we should expect that informing people about non-compliance could offer organizations considerable leverage in their efforts to pressure for compliance.

All extant accounts suggest that making non-compliance visible should promote compliance by making it possible to leverage public pressure when it exists. Yet, even instrumental models that point to the role of the mass public do not suggest that informing the public will always translate into greater pressure for compliance. The public might excuse non-compliance for a number reasons. Informing a public about non-compliance may undermine beliefs in the value of the legal institutions that are being defied. And finally, judicial scholars have not incorporated research from multiple fields suggesting that responses to information will depend on how the outcomes reported compare to prior expectations. Thus, it is not obvious that a strategy of making non-compliance visible would, in fact, generate additional pressure for compliance. It might not change anything and it could even backfire.

This is a particularly crucial concern in so far as tracking compliance with judicial orders requires a nontrivial state investment. Information about the litigants who file complaints, the nature of their complaints, and the outcome of judicial processes are readily available in almost all legal systems. Information on compliance outcomes is different. Although the institutional framework for the individual constitutional complaint includes mechanisms to remedy non-compliance (e.g., the *incidente de desacato* in the Colombian *tutela* or the *incidente de inejecución* in the Mexican *amparo*), these must be initiated by the complainant herself. If she does not realize that a form of non-compliance has occurred, or if she lacks the resources to continue, no concern will be raised. We cannot, therefore, rely on self-reported incidents of non-compliance. Instead, we must seek information from complainants, and if possible, check with defendant agencies. This is time-consuming and costly work. Creating and supporting a reliable, rigorous tracking methodology entails real investments in technological, data infrastructure,

and labor. Given the costs of implementing a tracking system, the potential blind spots of the public enforcement mechanism should not be ignored.

**How Information Could Promote Excusing Non-Compliance** In informing the public about non-compliance, individuals will not only learn simple facts like the rate of compliance. They will likely learn about patterns of non-compliance; and, prior scholarship suggests that several features of rights litigation could present reasons to excuse the failure of the state to comply. Research suggests that judges sometimes craft judicial orders that are vague or hard to interpret (Spriggs, 1997). This is problematic on several fronts. Most obviously, vague orders make it difficult to determine whether an order has been defied (Staton and Vanberg, 2008), hindering the reliable tracking of judicial compliance. More crucially, it forestalls justice. Vague orders may simply not be actionable on the part of state agencies. Alternatively, state agents may misdiagnose the resolution to a vague order. If the public learns that judicial orders are often unclear, they may, ultimately, infer that non-compliance is the natural consequence of judges' failure to clearly articulate their orders. From a practical standpoint, vague orders can leave litigants in the lurch. From a theoretical standpoint, issuing vague orders may undercut the public enforcement mechanism.

Making good on constitutional rights can also require significant budget outlays. For example, Costa Rica's constitutional right to health obliges the state to provide universal access to the drugs and therapies needed to treat HIV/AIDS. Costa Ricans with HIV/AIDS denied such treatments can file an *amparo* which judges can, in turn, use to enforce this right. Guaranteeing this right required a massive hike in public expenditures (Wilson and Cordero, 2006; Wilson, 2011). If judicial enforcement is made visible, citizens may recognize that high costs of compliance imply potential tradeoffs in the provision of public services. Hence, individuals may be more (less) willing to forgive non-compliance in cases where the real costs of compliance are high (low). In short, if people learn that judges often ask for outcomes that would bust public budgets, especially if done at scale, pressure for compliance may be reduced.

Scholars of social and economic rights enforcement have voiced skepticism as to whether justice is blind to social class (e.g. Brinks and Gauri, 2014). Instead, the legal system's output appear biased toward people with higher socioeconomic status. If the social system that structures the law is organized around class, individuals may perceive non-compliance with judicial orders as less problematic when it harms the poor and the poorly educated than when it harms middle class or wealthy, educated

individuals. The opposite is of course true as well. The mass public may expect constitutional actions like the *tutela* to protect society's most vulnerable. Below we consider one aspect of social class, focusing on the effect of informing respondents that users of *tutela* frequently have low levels of education.

**How Information about Non-Compliance Might Backfire** Informing the public about non-compliance rates could have negative attitudinal externalities. Namely, reporting relatively high rates of non-compliance could undermine support for the rule of law or specifically for the legal institution that is being defied. The reason is that the information may communicate that compliance is not a norm but rather a behavior that might reasonably respond to a variety of forces. Sarsfield (2012) frames the issue in terms of rationality. Highlighting how poorly and frequently institutions can bind social actors to legal limits makes following the law less rational. Informing the public of any – and particularly high – rates of judicial non-compliance could, therefore, fail to generate appreciable pressure for compliance. Citizen tolerance of non-compliance should rise as respect for the law and the justice system falls. Visibility, in short, could reduce pressure for compliance by normalizing non-compliance. If so, it would gut the public enforcement mechanism.

**The Role of Expectations** It is plausible to assume that a very large majority of Colombians want compliance with *tutela* orders; however, it may be that particular individuals respond to the information about non-compliance differently. We consider the role of expectations. Differences between what we expect from a political process – our reference point – and what we observe can have powerful effects on how we interpret information about that process. Cognitive psychologists have long contended that individuals evaluate outcomes with respect to a variable reference point (Kahneman and Tversky, 1979; Medvec, Madey and Gilovich, 1995). Consumers, for example, are less (more) satisfied with products that perform below (above) expectations than with products that perform as expected (Erevelles and Leavitt, 1992; Spreng, MacKenzie and Olshavsky, 1996). Stock prices are highly sensitive to earnings reports that exceed or fall below expectations (Shepperd and McNulty, 2002). Public approval of political figures is anchored in prior expectations (Damore, 1997; Van Ryzin, 2004).

The public's reaction to rates of non-compliance with judicial orders may well conform to a similar "expectation-outcomes" dynamic. If so, any expectation citizens hold about bureaucratic responses to *tutela* orders would serve as a reference point. Individuals would, then, likely process reported rates of

compliance against this reference point. Reports of non-compliance that are lower than expectations may fuel apathy and, in turn, reduce the public’s ability to mobilize in support of the judiciary at crucial junctures. By the same token, reports of relatively high rates of non-compliance might be perceived as acceptable to people who believed that non-compliance was more common. In sum, individuals’ reactions to the actual non-compliance rate will depend heavily upon their prior beliefs about it.

## 4 Empirical Goals and Expectations

We now introduce our nested research design carried out in the context of the Colombian *tutela*. First we describe the compliance tracking process we carried out Colombia. Our approach resembles the system employed by the Constitutional Bench of the Costa Rican Supreme Court, and highlights the costs of tracking compliance, especially in a busy legal system. Crucially, it renders a plausible – and significant – estimate of the overall non-compliance rate with *tutela* decisions in Colombia. We then embed this estimate of the non-compliance rate into three experimental surveys to test a series of propositions related to the effectiveness of the public enforcement mechanism framework.

Study 1 permits causal tests of two simple expectations vis-à-vis informing citizens about non-compliance based on Colombia’s rights-conscious legal culture and the *tutela*’s place in it:

*Informing Colombians about the non-compliance rate in tutela will make them: (1) less accepting of non-compliance and (2) more willing to take a costly remedial actions.*

Study 1 also allows causal examinations of the following claims, suggested by the literature, that certain case features provide compelling rationales that alter how citizens react to non-compliance:

*Colombians will be more accepting of non-compliance and less willing to take costly remedial actions when they are informed that: (1) judicial orders in tutela actions are expressed vaguely, (2) compliance with judicial orders in tutela actions would require considerable public expenditure, and (3) complainants in tutela actions have relatively low education levels.*

As such, Study 1 will examine key extant arguments about the public enforcement mechanism’s micro-foundations.

Study 2 probes the implications of expectations-outcomes differentials, or reference points, in the context of informing citizens about non-compliance:

*Colombians will be less (more) accepting of non-compliance and more (less) willing to take a costly remedial action when they are informed about a non-compliance rate in tutela that is higher (lower) than their prior expectations.*

Thus, Study 2 will shed light on a hitherto unexplored cognitive-psychological dimension of the public enforcement mechanism.

Finally, Study 3 considers the potential negative externality that informing the public about the rate of judicial non-compliance in the *tutela* undermines support for the *tutela* itself. Accounting for prior expectations, per research on expectations-outcomes differentials, we test the following expectation:

*Colombians will be less (more) supportive of the tutela if they learn that non-compliance with judicial orders in tutela cases is higher (lower) than they expected.*

Study 3's results will inform normative and practical debates surrounding making non-compliance publicly visible. Altogether, these three studies will advance our theoretical understanding of how to bolster rights regimes.

## 5 Non-Compliance Tracking Study

Tracking non-compliance with court orders in the Colombian *tutela* is a critical first step for two reasons. First, we cannot validly gauge public reactions to the rate of non-compliance in *tutela* case without estimating it. Second, the intricacies of the methodologies and the lengthy time commitment hint at the costs of estimating just a single, overall indicator of non-compliance. By documenting our approach to tracking non-compliance, and flagging the practical difficulties encountered, we allow readers to consider how the public might compare the benefits of making non-compliance visible against its real costs.

Logistical challenges begin with the fact that all *tutela* decisions in Colombia must be sent for potential review to the Constitutional Court, massive 9-floor building in downtown Bogotá whose security windows let in very little sunlight. The roughly 2,000 case files that arrive daily are quickly registered, bundled in packages of 20, and stored for 2-3 weeks to allow representatives of the chambers to select cases for review. One floor of this building hosts the *tutela* files that the Court has to summarily study to decide whether it to select for revision (or not) (photograph in Figure 2 displays part of the archive).

After this brief period, all *tutela* files are returned to the originating court for permanent archiving. In sum, the bundles of case files are in constant motion during this period – moving from a registration area, to a review area, to a staging area for departure.

Our research team was embedded in the archive working closely with Court’s staff. Reviewing case files involved disturbing a massive temporary archiving operation. Case files were only available for our review in one location for a short period of time. To avoid fundamentally disturbing their work, the Court limited the team to 45 cases per day, for four of five work days. Additionally, our team committed to reviewing only decisions that the Court declined to review – over 99% of the total cases resolved in Colombia. Thus our sample includes decisions of lower courts throughout the Colombian system.



Figure 2: *Constitutional Court Archive*. This photograph displays on the right an image of the Constitutional Court’s archive. Depicted are stacks of *tutela* case files organized in groups of twenty.

Figure 3 summarizes the study’s workflow. After a pilot study in the Spring of 2013, the team began compliance tracking on October 1, 2014. The study terminated July 31, 2014. The work was divided

into two phases and carried about two separate teams in partnership with the Court’s Registry led by Martha Sáchica Moncaleano, Secretary General of the Constitutional Court. <sup>7</sup>

**Phase 1: Case Sampling and Coding** Cases are registered upon arrival. The Court sent our team a weekly sampling frame, which included four pieces of information: case number, name of defendant agency, and two decision codes, which indicated whether the complainant had prevailed in her claim in the first and/or second instance. We selected a random sample of 180 cases per week, dividing their selection across the four days per week we were permitted to work. Our first team retrieved the sampled case files from the stacks and recorded information pertaining to the case including: (1) features of courts that had heard it, (2) case facts, (3) features of the legal argument including the rights claims made and requests for remedy, (4) features of the decision, including the full text of the direct orders and the deadline for compliance, and (5) features of the complainant and her representatives, if applicable.

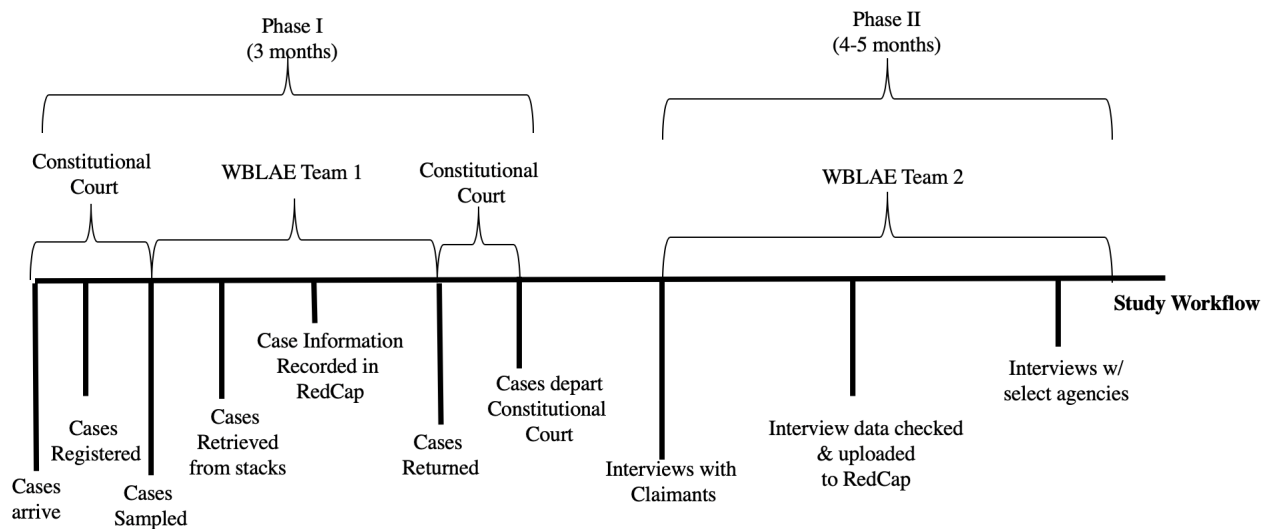


Figure 3: *Compliance Monitoring Study Workflow*. The study was carried out in two phases. In Phase 1, we sampled case files from the Constitutional Court’s archives and recorded case information. In Phase 2 we interviewed complainants to measure compliance.

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<sup>7</sup>The compliance tracking study was reviewed by the Institutional Review Board of Emory University (IRB00057134) and the Research Ethics Committee of the Universidad de los Andes (Acta 203-2013).

**Phase 2: Interviews to Measure Compliance** A second team was responsible for conducting phone interviews with complainants *after the deadline for compliance*.<sup>8</sup> To measure compliance we first reminded each complainant what the formal order required. We then asked the complainants if the action that the authority had been required to take had been taken in fact. Our team listened to their story and recorded whether, in our judgment, in light of the complainant’s story, that the authority had complied by the deadline.

The compliance monitoring study produced a number of descriptive inferences. Key to this study was an overall non-compliance rate. We found evidence of non-compliance in 28% (95% c.i. 26%, 30%) of the 1,741 cases we tracked. For the experimental study below we round this to 30%. In addition, a review of the court orders revealed that Colombian judges were extremely clear in their instructions to agencies in 30.3% of cases; they were extremely vague in 12% of cases. Another kind of vagueness concerns the deadline. By law, the default deadline for compliance is 48 hours; however, judges do extend the timeframe depending on the circumstances. We found that in nearly 15% of cases, judges’ orders gave an indefinite deadline, raising the question of whether it would be possible to fail to comply.<sup>9</sup> Speaking to the education levels of the complainants, 77% had secondary education or lower. The bureaucratic effort implied by the orders varied greatly. Compliance with some actions required almost no effort at all – simply informing a person about her status. Other actions involved significant state resources, e.g. providing long-term medical care to a permanently disabled person.

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<sup>8</sup>Our team obtained voluntary consent consistent with the plan reviewed by our respective universities’ human subjects processes. Given that we contacted individuals via phone, consent was obtained verbally. All individuals were instructed about the study’s goals, its risks, and benefits. All individuals were assured that they could withdraw consent at any time.

<sup>9</sup>In these cases our team’s compliance statement reflects simply whether the order had been implemented by the time of the call, the indefinite deadline notwithstanding.



To gauge the public’s reaction to the level of non-compliance we found in the tracking study, we conducted three experiments embedded in two surveys.<sup>10</sup> Each design examines the specific expectations laid out in section 4. Let us consider them in turn.

## 6 Study 1

Study 1 was conducted in September 2017 with a sample ( $n=3200$ ) of Colombians in Netquest’s online panel.<sup>11</sup> Using quotas, the sample is designed to be nationally representative of the Colombian public based on sex, age groups, and region. NetQuest panelists receive points (called “caracoles”) for participation, which are exchangeable for goods. None of our studies employed deception; all information we provided respondents was factual.

### 6.1 Experimental Design

Respondents in Study 1 were randomly assigned to one of six groups. Those in the first five groups answer a series of pre-treatment items listed in the Appendix, to which we refer as “covariates” in our discussion. All respondents, however, read the following description of the *tutela* action, which we refer to as the “Main Text.”

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<sup>10</sup>Studies 1 and 2 were reviewed and approved by the Institutional Review Boards of Emory University (IRB00089440) and Georgia State University (H17522); Study 3 was reviewed and approved by Institutional Review Board of Emory University under the same study number (IRB00089440).

<sup>11</sup>Netquest maintains a panel of over 36,000 respondents in Colombia. See details at <http://www.netquest.com/en/home/online-panel-survey.html>. The firm is certified with ISO Standard specific to Access Panels (see <http://www.panelwithiso.com/> and [http://www.iso.org/iso/catalogue\\_detail.htm?csnumber=43521](http://www.iso.org/iso/catalogue_detail.htm?csnumber=43521)). Netquest complies not only with the norms of ISO 26362 (<http://www.panelwithiso.com/#>) but also Spain’s Federal Organic Law on the Protection of Personal Data of 13 December 1999 ([http://noticias.juridicas.com/base\\_datos/Admin/lo15-1999.html](http://noticias.juridicas.com/base_datos/Admin/lo15-1999.html)). Importantly, all participants may opt out of their relationship with Netquest at any time, including while participating in our study.

**Main Text:** *When Colombians feel that their fundamental rights (for example, rights to health, due process, information, etc.) are threatened or violated, they can present a tutela claim before a judge to demand protection of those rights. When the judges order an authority to protect the fundamental rights of a citizen, the authority is obligated to obey by law.*

Respondents in the sixth group only read this main text and, thus, represent a pure Control group. Since our compliance study on the Colombian *tutela* was the first of its kind, it was unclear what rate of non-compliance Colombians might expect. The Control group permits us to test whether informing respondents (in a variety of ways) about the study and its core findings changes beliefs and behavior.

Respondents assigned to all other groups learn the additional information that the overall non-compliance rate in our tracking study was 30% by reading the “Study Text” below.

**Study Text:** *[MAIN TEXT] . . . An academic study in 2014 found much variation in compliance with judges’ orders in these cases. For example, requested authorities failed to comply with the judge’s order to fulfill fundamental rights in almost 30% of the total cases reviewed.*

Respondents assigned to Study 1’s second arm read only “Main Text” and “Study Text.” Those assigned to the third, fourth and fifth arms read “Main Text,” “Study Text,” and information about one of three findings in our compliance study related to factors that could mitigate support for compliance – the vagueness of the judicial order, the high costs of complying with some judicial orders, and the proportion of citizens of low education levels that received protection via the *tutela* process. Specifically, respondents in the third arm read the following:

**Vague Orders:** *[MAIN TEXT] . . . [STUDY TEXT] . . . The study also found that a significant percentage of the judges’ orders to the defendant authorities were vague, for example they did not include a definite time frame.*

Respondents in the fourth arm read the following:

**High Cost of Compliance:** *[MAIN TEXT] . . . [STUDY TEXT] . . . The study also found that a significant percentage of the judicial orders required a significant monetary cost on the part of the defendant authorities.*

Respondents in the fifth arm read the following:

**Low Education of Claimant:** *[MAIN TEXT] ... [STUDY TEXT] ... The study also found that a significant percentage of the individuals that received protection through tutela claims only had a primary education.*

Respondents in the sixth group read the same texts about the *tutela* and the compliance study as the Study group (second arm); however, as mentioned, these respondents do not answer the series of questions administered pre-treatment. Hence this sixth arm allows us to gauge whether these pre-treatment items prime particular kinds of answers and behavior in ways that might overstate treatment effects. Table 1 provides a visual summary of the design. A full description of the flow of questions for each arm can be found in the Appendix.

Text respondents see	Study Arm					
	Control	Study	Vague Orders	High Cost	Low Education	No Covariates
Covariates	✓	✓	✓	✓	✓	
Main	✓	✓	✓	✓	✓	✓
Study		✓	✓	✓	✓	✓
Vague Orders			✓			
High Costs				✓		
Low Education					✓	
Outcomes						
Acceptability	✓	✓	✓	✓	✓	✓
Donation	✓	✓	✓	✓	✓	✓

Table 1: *Study 1 Design Summary.* A Control group is exposed only to the main text summarizing the tutela process. In addition to the main text, groups in the Study arm learn the overall non-compliance rate from the tracking study. Treatment groups Vague Orders, High Cost and Low Education read the main text, the study text, as well as text related, respectively, to vagueness, the cost of compliance, the education level of beneficiaries. The No Covariates group receives the same information as the Study group but answers no pre-treatment items.

## 6.2 Outcomes Related to Public Enforcement Mechanism

Before describing our experimental designs, we outline two outcome measures linked to our theoretical expectations (see Appendix for Spanish wordings).<sup>12</sup> The first is an attitudinal measure of how accept-

<sup>12</sup>The pre-registered design included an outcome which asked respondents which three policy interventions they would prefer in order to reduce non-compliance: (1) informing the public, training judges or increasing criminal sanctions for non-compliant public officials. We did not have strong theoretical

able respondents find the 30% rate of non-compliance that resulted from our tracking study. Specifically, we ask “To what extent would you say that the rate of non-compliance with judges’ orders in *tutela* cases is acceptable or unacceptable?” Our measure, *Acceptability*, captures responses to this question on a seven-point scale from “not at all acceptable” to “totally acceptable.”

A second, behavioral, outcome taps Colombians’ willingness to take a costly action in order to reduce the non-compliance rate we reported. Leveraging the fact that NetQuest panelists earn points redeemable for items of value for participating in our survey, the item asks “The authors of the study would like to inform the Colombian public about the level of non-compliance with *tutela* claims. How many of your caracoles would you be willing to donate to contribute to fund the diffusion of the results?” Our measure, *Donation*, provided respondents a donation range from 0 to 7 points but allowed them to enter larger amounts. Donations ranged from 0 to 17 points. We cannot infer from this measure how willing an individual is to complain to a public official or to join a protest campaign about non-compliance. Yet the donation decision does reflect actions very much related to the public enforcement mechanism itself – citizens aggregating their resources via civil society groups and/or public shaming campaigns to achieve a multiplier effect strong enough to hold state agents accountable. As such, by approximating individuals’ willingness to promote the dissemination of non-compliance information to the public at personal cost, *Donation* is a reasonable indicator of the range of actions implied by the public enforcement mechanism approach.

Covariate balance tests and manipulation checks suggest, respectively, that randomization produced excellent balance and our treatments stimulated respondents as expected. See details in the Appendix.

### **6.3 Distribution and Association of Acceptance and Donation Outcomes**

We begin with a summary of the outcome measures, focusing on respondents who we informed about the non-compliance rate. Histograms of the acceptance and donation measures in Figure 4 reveal two key findings. First, a very large proportion of the sample did not find the rate we reported acceptable. On the 7-point scale, the mean response was 2.51 and the median was 2. If we collapse the scale into expectations. All results from the analysis we pre-registered are available. The findings reflect what we report here. A very large proportion of the sample suggested enhancing criminal sanctions and no treatments affected this.

three categories (1-3 - unacceptable; 4 - neutral; 5-7 - acceptable), we find that 71.5% of the sample found the rate unacceptable; only 12.75% of the sample found it acceptable. Concerning the donation question, the modal response was 0 points; however, the mean was nearly 5 points and the median was 3. Overall, 73% of respondents made a positive donation.

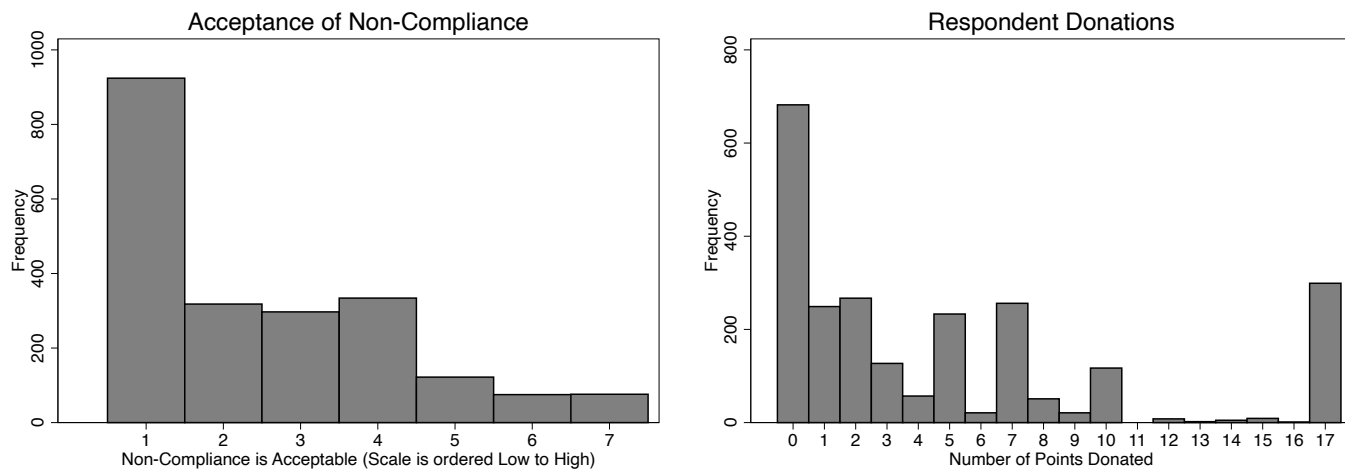


Figure 4: *Distributions of Acceptability and Donation Outcome Measures.* The mean acceptability response was 2.51; the median was 2. The mean donation was 4.98 caracoles; the median was 2.

The public enforcement mechanism for judicial orders requires that citizens find state agents’ actions unacceptable *and* do something about it. Our study cannot observe citizens’ actual willingness to mobilize in the form of a public protest. Rather our donation measure taps into willingness to take costly actions when confronted with judicial non-compliance. As expected, respondent acceptability of non-compliance and donation choices are negatively associated in bivariate regression ( $\beta=-0.31$ ,  $s.e.=0.07$ ) and a linear regression ( $\beta=-0.28$ ,  $s.e.=0.08$ ) with controls (age, SES, region, judicial legitimacy, social trust, and rule of law preferences). In sum, Colombians who do not accept the non-compliance rate are more likely to contribute to an effort to make it publicly visible.

#### 6.4 Learning the Non-Compliance Rate, Acceptability and Costly Remedial Action

We now consider whether Colombians who learn about our tracking study’s estimate of the compliance rate in the *tutela* alters their perceptions of the acceptability of non-compliance and their willingness to take costly actions aimed at remedying the problem. Let  $Y_i^D$  and  $Y_i^A$  denote the values of the donation and acceptability outcome measures for respondent  $i$ . We regress these measures on four

dummy variables ( $D_i^s$ ,  $D_i^v$ ,  $D_i^c$ ,  $D_i^{led}$ ) marking the Study, Vague Orders, High Cost, and Low level of education of litigants treatments. We include an additional dummy variable,  $D_i^{noc}$  marking the arm of the study in which respondents did not answer pre-treatment covariates. We then fit the following models, where  $Y_i^b$  for  $b \in \{D, A\}$ :

$$Y_i^b = \beta_0 + \beta_1 D_i^s + \beta_2 D_i^v + \beta_3 D_i^c + \beta_4 D_i^{led} + \beta_5 D_i^{noc} + \epsilon_i, \quad (1)$$

Table 2 summarizes the results. As is clear, there are no significant treatment effects. Relative to the control group, which received no information about the actual non-compliance rate (or any other information from the study for that matter), the average acceptability ratings and donation amounts are the same across our treatment arms. Indeed, the estimates very close to 0; the largest is the acceptability effect for the Vague Orders treatment (-0.18 on a 1-7 scale).<sup>13</sup>

## 6.5 Rationales for Non-Compliance, Acceptability and Costly Remedial Action

Do some features of *tutela* cases provide convincing rationales that make non-compliance more acceptable and undermine public reactions to compel state agents to comply? To focus on the effects of providing information about judicial order vagueness, cost of compliance, and the social status of beneficiaries, an appropriate baseline for comparison are the mean outcomes in the Study group. Hence we regress  $Y_i^b$  on  $D_i^v$ ,  $D_i^c$ , and  $D_i^{ses}$ .

Table 3 summarizes our model results. Column 1 shows results for the acceptability outcome; column 3 shows the results for the donation outcome. Since the base category in this model is the “Study” group, we label the constant “Study Group Outcome.” As these specifications imply, we exclude from this analysis respondents who did not learn about the non-compliance rate so that we can highlight comparisons among individuals who *only* learned the rate and individuals who learned the rate *as well as* other information about the cases. Results are separated by experimental effects.

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<sup>13</sup>We also fit the same model controlling for gender, age, region, and commitment to the rule of law. The results, located in the Appendix, do not change.

	Acceptability	Donation
Control Group Outcome	2.61	4.95
Study	-0.13 (0.13)	-0.02 (0.42)
Vague Orders	-0.19 (0.13)	-0.17 (0.42)
High Costs	-0.09 (0.13)	-0.12 (0.42)
Low Education	0.04 (0.13)	0.13 (0.42)
No covariates	-0.09 (0.13)	0.25 (0.42)
N	2145	2145
$R^2$	0.002	0.0007

Table 2: *Effects of Learning about the Non-Compliance Rate*: The comparison category in all models is the study's pure control group. \* $p < .10$ ; \*\* $p < .05$ ; \*\*\* $p < .01$

None of the effects in the Acceptability model approach conventional levels of statistical significance. Put another way, receiving information about the mitigating circumstances that bureaucratic agents face in complying with judges' orders in *tutela* cases – orders are vaguely and very costly – did not alter how acceptable respondents rated the reported level of non-compliance. Nor did learning that the *tutela* disproportionately helps Colombians of lower social strata.

Results of the Donation model suggest similarly that varying information about the vagueness, the costs of compliance or litigant education had virtually no effect on their willingness to donate to publish the study's results. Thus, our treatments did not reliably alter attitudes or behaviors beyond the average rate of acceptability or donating among the Study group. We find no support for propositions in the literature that pressure for non-compliance might be lowered by the order, case, and complainant features we varied.

	Acceptability	Donation
Study Group Outcome	2.49	4.92
Vague Orders	-0.06 (0.13)	-0.15 (0.41)
High Costs	0.04 (0.13)	-0.11 (0.41)
Low Education	0.17 (0.13)	0.15 (0.42)
No Covariates	0.03 (0.13)	0.27 (0.41)
N	1801	1801
$R^2$	0.001	0.0008

Table 3: *Effects of Case and Litigant Characteristics*: The comparison category in all models is the group that learned about the study and the rate of non-compliance but learning nothing else about the cases or litigants. \* $p < .10$ ; \*\* $p < .05$ ; \*\*\* $p < .01$

To lend greater confidence to these null results, we probed the possibility that respondents' reactions to our treatments hinged on their pre-existing levels of judicial legitimacy, preferences for the rule of law, and trust in the judiciary. We discuss our (fairly standard) measurement of these concepts in the Appendix. This effort was largely fruitless, and we only summarize it here. For Acceptability, we



fit 12 models and 36 interactions across them. In all, we found a statistically significant interaction term six times, but not consistently for the same treatment and not always in the same direction.<sup>14</sup> For Donations, the same numbers of models and interactions produced zero statistically significant interactions. Given that this strategy creates so many comparisons and such little systematic evidence, we doubt our results are masking reliable heterogeneous treatment effects on these factors.

That said, rule of law values and perceptions of judicial legitimacy are not wholly irrelevant to opinions about non-compliance. Rule of law values are negatively associated with accepting non-compliance and positively associated with donations.<sup>15</sup> Perceptions of judicial legitimacy are associated negatively with accepting non-compliance as well. Future efforts to predict opinions about non-compliance would do well to include them. Crucially, treatment effects do not depend on these factors.

## 7 Study 2

Study 2 incorporates a new arm from the same survey described in Study 1 to test the “expectations-outcomes differentials” or “disconfirmation” hypothesis: respondents’ *expected rate* of non-compliance with judicial orders in the *tutela* conditions whether learning of the *actual rate* elicits an attitudinal and/or behavioral response. If respondents expect non-compliance is fairly rare, then 30% might appear problematic and, in turn, stimulate the sorts of attitudes and actions theorized in the public enforcement mechanism; if they expect rampant non-compliance, the comparatively good news of 30% non-compliance is unlikely to alter such behaviors.

### 7.1 Experimental Design

Our design includes a control group and the Study treatment. Before respondents read the Study text, informing them about the 30% non-compliance rate, we elicited prior beliefs about compliance in the *tutela*. Specifically, we asked respondents to provide an estimate of the non-compliance rate. To observe whether the “Study” treatment confirmed or disconfirmed respondents’ beliefs about the non-compliance rate, our measure places respondents’ beliefs on the percentage scale. However, we suspected some

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<sup>14</sup>This analysis begins on line 186 of our replication code.

<sup>15</sup>See lines 309–313 of our replication file.

individuals might have very uncertain beliefs about compliance in the *tutela*. In principle, this presents no problem, as uncertain individuals can report a best guess (say, the mean level of non-compliance). That said, we were concerned that respondents with relatively high uncertainty, who nevertheless did have a guess, might be particularly likely to respond “don’t know” if immediately pressed to provide a percentage. Our approach mitigates these issues in two steps.

We first ask respondents which statement best reflects their existing beliefs: (1) Authorities never fail to comply with judicial orders in *tutela* cases, (2) Authorities rarely fail to comply with judicial orders in *tutela* cases, (3) Authorities frequently fail to comply with judicial orders in *tutela* cases, (4) Authorities always defy judicial orders in *tutela* cases, and (5) I do not have an assessment of the frequency of compliance with judicial orders. Respondents who give a substantive answer (1-4) are asked to estimate the non-compliance rate on a sliding scale. Respondents who respond do not know (5) are prompted to give an estimate, even though the study administrator recognizes their uncertainty.

## 7.2 Acceptability of Non-Compliance and Remedial Action, Conditional on Priors

Individuals’ reliance on reference point heuristics to make decisions gives us reason to believe that Colombians’ reaction to information about non-compliance will depend on their expectations. To consider the effects of learning about our study and its outcomes, conditional on prior expectations, we must track respondents’ priors vis-à-vis compliance in the *tutela*. Thus, we define a dummy variable  $D_i^{above}$  which indicates that the  $i^{th}$  person reported an expected compliance above what we report in the “Study” text. Recall that we are comparing individuals in Control to those in the Study arm.<sup>16</sup> We then fit the following model:

$$Y_i^b = \beta_0 + \beta_1 D_i^s + \beta_2 D_i^{above} + \beta_3 (D_i^s * D_i^{above}) + \epsilon_i \quad (2)$$

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<sup>16</sup>Our approach differs from our pre-analysis plan in two ways. First, no respondent in Study 1 or 2 chose a non-compliance rate equal to 30%. Second, no respondent failed to give a rate. Twenty-five percent of respondents said they did not know, but when given a chance to assign a percentage they did, in fact.

Given the interactions, we provide a brief interpretation of the coefficients reflecting the model’s main effects. Consider  $Y_i^A$ . The constant term,  $\beta_0$ , reflects the mean level of acceptability for members of the control group who reported a prior expectation below the rate we informed them;  $\beta_1$  gives the effect of learning the non-compliance rate for individuals who expected a lower rate than we reported;  $\beta_2$  gives the change in the mean response for control group respondents who had prior expectations of a higher non-compliance rate than we reported; and,  $\beta_1 + \beta_3$  is the effect of the information treatment for individuals who expected a higher non-compliance rate. Similar interpretations apply for  $Y_i^D$ , the donation outcome.

Table 4 summarizes the results. We find no effects of information related to the acceptability outcome, regardless of whether respondents expected a higher or lower non-compliance rate. Given the very low baseline levels of acceptability, it is unsurprising that we find no additional effect of information.

	Acceptability	Donation
Control Group Outcome	2.56	4.19
Study	-0.15 (0.12)	0.94** (0.43)
Prior Above 30%	-0.40 (0.32)	-0.12 (1.12)
Study $\times$ Prior Above 30%	0.58 (0.44)	-0.68 (1.53)
N	687	687
$R^2$	0.004	0.01

Table 4: *Effects of Learning the Non-Compliance Rate Conditional on Prior Beliefs* The baseline category in these models in the pure control group in the study who had prior beliefs about the non-compliance rate below 30%. \* $p < .10$ ; \*\* $p < .05$ ; \*\*\* $p < .01$

We nevertheless find a fairly strong effect of information in the donation model among those expecting a lower non-compliance rate. The average treatment effect of providing information for respondents who expected a non-compliance rate below what we reported (i.e., 30%) is 0.94 caracole points with a 95% confidence interval of (0.10, 1.78). Yet the effects are asymmetric. For respondents who expected a

non-compliance rate above what we reported, the average treatment effect is estimated to be 0.28 with a very wide 95% confidence interval of (-2.62, 3.14).<sup>17</sup>

In sum, learning that non-compliance is more widespread than one believed does not make Colombians more accepting of it. Such information does, however, lead them to donate earned resources to publicize the rate of non-compliance. We do not find evidence suggesting that informing a respondent about the true rate would reduce their willingness to donate points when the rate is lower than they expected.<sup>18</sup>

## 8 Study 3

Findings from Studies 1 and 2 suggest that Colombians roundly reject non-compliance with judicial orders in *tutela* actions, a fact unchanged under a host of theoretically plausible conditions. And when they learn of a non-compliance rate that disconfirms their overly rosy prior beliefs, they are willing to take costly actions to help publicize non-compliance rates, a crucial first step towards pressuring state agents to comply. It is, nonetheless, conceivable that learning the rate of non-compliance could have ill effects on the *tutela*. Namely, it may erode citizens' reliance on this powerful rights-enforcement mechanism when their rights are subverted. Informing citizens of the extent of non-compliance might alter citizen perceptions of the *tutela* as an effective way to redress constitutional grievances. Such consequences could be particularly acute among those who believed non-compliance to be lower than it actually is. Exploring these questions is critical for how we interpret and communicate our findings.

### 8.1 Experimental Design

We addressed these questions by conducting a survey experiment in March 2021 with another sample ( $n=430$ ) of Colombians from Netquest's online panel. As with the survey used in Studies 1 and 2, quotas

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<sup>17</sup>Beliefs in the rule of law, judicial legitimacy, and judicial trust are negatively associated with holding a prior belief above 30%. Results are robust to controlling for measures of these concepts (see replication code lines 345 and 346).

<sup>18</sup>Model results controlling for the same variables as in Study 1 are reported in the Appendix.

for sex, age groups, and region were used to achieve representation on these population parameters. Human subjects protocols were also replicated.

We followed the same design as described in Study 2, which includes a control group and the Study treatment. As before, our instrument began with a battery of covariates. Again we elicited expectations about the rate of judicial non-compliance in *tutela* cases using the same approach as in Study 2. Respondents were then randomly assigned to the Study group, informing them of the rate of non-compliance from our tracking study, or to control, in which case they remained uninformed about the non-compliance rate.

## 8.2 Outcomes Related to Supporting the *Tutela*

In Section 2.2, which introduced three indicators of citizens' willingness to employ the *tutela* as a rights-enforcement mechanism and footnoted the items in Spanish. To recap, respondents indicated (1) their likelihood of using the *tutela* if they feel their own constitutional rights are being violated; (2) their likelihood of recommending a friend to file a *tutela* if their friend's constitutional rights were being violated; and (3) how important it is for Colombians to file a *tutela* action if their rights were being violated. These items form a reliable scale (1-7,  $\alpha = 0.85$ ) increasing in support for the *tutela*, as noted. The average of the scores represent the outcome in this experiment.

## 8.3 Learning the Non-Compliance Rate and *Tutela* Support, Conditional on Priors

We fit two models in which our index of *Tutela* Support is the dependent variable and the base category represents individuals in the control group who expected a non-compliance rate below 30%. The first model estimates the effect of learning the non-compliance rate via "Study" text, without taking account of prior expectations about non-compliance. The second model considers whether the effect of learning the non-compliance rate depends on prior expectations (see equation 2).

There is balance in prior expectations across the treatment conditions. In the control group, the proportion of individuals with beliefs above 30% was .70; it was .73 in the treatment group. The first column of Table 5 suggests that learning the rate of non-compliance alone has no discernible effect on Colombians' support for using the *tutela*. Reflecting the findings of Study 2, the second column suggests that the effect of learning the non-compliance rate depends on prior expectations. Specifically, learning that the non-compliance rate is 30% boosts support for the *tutela* among respondents whose

	<i>Tutela</i> Support	<i>Tutela</i> Support
Control Group Outcome	5.97	6.39
Study	0.10 (0.12)	-0.33 (0.23)
Prior Above 30%		-0.58*** (0.19)
Study × Prior Above 30%		0.61** (0.44)
N	416	416
$R^2$	0.001	0.02

Table 5: *Effects of Learning the Non-Compliance Rate on Support for Tutela* The baseline category are control group respondents who had prior beliefs about the non-compliance rate below 30%. \* $p < .10$ ; \*\* $p < .05$ ; \*\*\* $p < .01$

priors placed the rate above 30%. To be sure, the effect size is modest: roughly a quarter of point (0.28) on the 7-point scale. This is less than one-third of the index’s standard deviation. To summarize, informing Colombians about the true non-compliance rate will cause increase in support, albeit small, for the legal device among people who expect a higher rate of non-compliance than the rate we obtained via tracking.<sup>19</sup>

A more significant concern is that informing Colombians about the non-compliance rate could reduce their support for the *tutela*. The results in column 2 of Table 5 indicate that among those individuals with priors below 30%, information about the true rate had a negative effect on support for the *tutela*; however, this effect is not statistically distinguishable from 0 ( $p = 0.15$ ). More importantly, the effect is extremely small. The expected level of support for *tutela* in the control group is 6.39 on a 7-point

<sup>19</sup>We find a weak but significant relationship between the probability of having a prior above 30% and judicial trust. Results are robust to controlling for judicial trust (see replication file, line 381)

scale. A reduction of -0.33 points would still result in a level of support above 6, a sign of very high support for the institution.<sup>20</sup>

## 9 Discussion and Conclusions

This study considers the reactions of individuals to becoming informed about the rate of non-compliance with judicial orders, using the Colombian *tutela* as a case study. We carried out an unprecedented tracking study to estimate the non-compliance rate and embedded that rate into three online studies in national samples to gauge how Colombians reacted to it. To standard accounts of the public enforcement mechanism, we incorporated theoretical insights from cognitive psychology on expectations-outcomes differentials which turn out to be key to understanding public reactions to non-compliance. Our main findings are as follows.

By our estimate, Colombian state agents failed to comply with judges' orders in roughly 30% of randomly selected *tutela* cases we tracked. Colombians overwhelmingly consider this level of non-compliance unacceptable. Particularities of *tutela* cases – their vagueness, costs, and educational attainment of beneficiaries – that might, theoretically, compel citizens to excuse this non-compliance rate do not. A potential explanation for these results is that support for compliance with orders in *tutela* cases is so high among the Colombian public such that learning information about non-compliance could not reasonably be expected to increase support; and support is so strong that learning information that could decrease support for compliance is largely ignored. Although we believe that the deep connection and support we have demonstrated among the Colombian public to the *tutela* is an important part of the story, it is also important to stress that reactions to information about the outcomes of *tutela*

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<sup>20</sup>The Appendix reports models that also control for female, age, region, and indexes for rule of law values, and perceptions of judicial legitimacy. We estimate a statistically significant negative effect in this model for individuals whose priors were below 30%. The effect size is again fairly modest: roughly half a point (-0.55), which still results in a very high level of support for *tutela* (see replication file, lines 356–370). Caution is in order when interpreting this finding. By adding this control, we lose about 12% of our observations. And the missingness is non-random: 65% of respondents dropped due to missingness on the rule of law index had priors above 30% whereas 72% of respondents who were not dropped had priors above 30%. The reverse pattern emerges for judicial legitimacy.

actions depend on prior expectations. Colombians presented with non-compliance rates that are higher than they expected are more likely to donate to efforts to inform the public and do not systematically withdraw support for the *tutela*. Learning rates are lower than expected does not affect Colombians' donation behavior but it does slightly increase their support for using the *tutela*. The null findings we report in Study 1 can also be understood as the result of failing to take account of prior expectations.

Given this evidence, should the Colombian judiciary make non-compliance visible to the public? First and foremost, our tracking study certainly demonstrated that accurately learning about compliance with judicial orders is costly. Any evaluation of a process that will make non-compliance visible will have to wrestle with this fact. Disclosing information about non-compliance would allow NGOs to pressure for and promote judicial compliance. We cannot say whether releasing the information will reduce non-compliance, as this was not the goal of our studies. We can say that Colombians value the *tutela* mechanism and in overwhelming numbers expect compliance. We can also say that the effect of learning this information will depend on their expectations. Specifically, among those for whom the information is upsetting, we may see an increase in willingness to do something about it that is not offset by a meaningful decrease in support for *tutela* itself.<sup>21</sup>

Regarding the generalizability of our findings, we make the following observations. Compliance tracking takes place in several courts around the world. The most well-known cases include the processes used by the European Court of Human Rights and the Inter-American Court of Human Rights (Hawkins and Jacoby, 2010; Huneus, 2011; Hillebrecht, 2014). Compliance tracking is not, generally, used to directly inform the public; information that arises in these processes, however, aids the efforts of litigants and NGOs to promote state compliance with human rights norms (Cavallaro and Brewer, 2008). Among other strategies, these groups leverage the transparency that the tracking systems offer in order to take advantage of latent public pressure for adherence to the rule of law. The Supreme Court of Costa Rica, for example, directly informed the Costa Rican public of the early results of its compliance tracking mechanism. Staton, Gauri and Cullell (2015) find observational evidence that this information resulted in more timely compliance. The Supreme Court of India occasionally undertakes efforts to monitor compliance with its own orders, particularly with respect to its structural orders, such as in a series of

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<sup>21</sup>In the Appendix, we show that Colombians are also likely blame the bureaucracy – not the judges – for non-compliance.



orders on the right to food cases, but also in relation to individualized demands for fundamental rights redress (Chitalkar and Gauri, 2017). While our findings will speak directly to the Colombian experience, we propose some guidelines for thinking about where efforts to make compliance visible might produce similarly positive effects.

Assessing whether our conclusions can be expected to hold beyond Colombia’s *tutela* requires consideration of the constitutional complaint itself as well as the broad legal-cultural context. Crucially, individuals in 18 Latin American countries enjoy recourse to some form of an ICC. As Table 6 shows, Colombia was a regional latecomer to this innovation, as many other states adopted an ICC more than a century before. As we discuss above, the *tutela* was a key part of a constitutional reform designed to genuinely bring constitutional promises to the public. The *tutela*’s relative success has created a source of considerable support for its enforcement. This is not true of the region generally. The Mexican *amparo*, for example, developed over a far longer period of time and under very different political and sociolegal contexts. It is understood to be far less accessible than *tutela* and far less useful as a means of promoting individual rights (Baker, 1971; Ríos-Figueroa, 2016; Rubio, Magaloni and Jaime, 1994). We might reasonably expect the Mexican public to respond quite differently to information about compliance with the *amparo* than we observed in Colombia. More broadly, our study points to the importance of context. Public reactions are likely to vary considerably across contexts, because histories of rights protection and judicial-government interactions will set different expectations, which in turn will influence how information about compliance is interpreted.

State	Year of Adoption	State	Year of Adoption
Mexico	1857	Paraguay	1967
El Salvador	1886	Brazil	1967
Nicaragua	1894	Bolivia	1967
Honduras	1894	Ecuador	1967
Guatemala	1921	Peru	1979
Panama	1941	Chile	1980
Costa Rica	1949	Uruguay	1988
Argentina	1957	Colombia	1991
Venezuela	1961	Dominican Republic	1999

Table 6: *Latin American states with a form of individual constitutional complaint and year of adoption.*

Beyond Latin America, examples of ICCs can be found in Europe (Albania, Austria, Belgium, Croatia, Czech Republic, Estonia, Georgia, Germany, Hungary, Latvia, Macedonia, Montenegro, Poland,

Serbia, Spain, and Switzerland), Asia (Armenia, Azerbaijan, India, Mongolia, the Philippines, Russia, Taiwan, Turkey, and Ukraine). ICCs are less prevalent Africa: the South African constitution establishes an ICC, but court rules restrict access, with the result that there is about one ICC case per year (Dugard, 2015). Even in countries without ICCs, the findings we report may be useful for supporting compliance with high-volume decisions rendered by social security administrative law judges, immigration judges, and other agency adjudicators (Gelbach and Marcus, 2017).

We do not mean to downplay differences in the nature of ICC among these jurisdictions — they vary in whether citizens can directly reach the supreme or constitutional court, criteria for and effective cost of access, and other legal and institutional variables (Gentili, 2010). However, largely because our findings underscore the importance of understanding local context and individual-level variation in perceptions, we believe our conclusions in the Colombia case have the potential to inform our understanding of ICCs in a wide array of contexts.

Our study has implications for theories of compliance that rely on public enforcement mechanisms (Vanberg, 2005; Carrubba, 2009; Carrubba and Gabel, 2015; Trochev, 2008). Models that invoke the public do so in general terms. These accounts purport that mass publics will always influence the ability of courts to induce compliance with their orders. When public support for courts is significant, the public’s ability to learn about instances of non-compliance will shape the behavior of officials subject to the court’s jurisdiction. When public support is low, this ability will not matter.

Accounts like these are useful for highlighting a general mechanism but do not offer sufficient detail to guide a policy reform aimed at promoting compliance. Our study’s most important finding is that the effect of learning information about non-compliance differs among individuals who learn that the non-compliance rate is higher than expected as compared to individuals who learn that the non-compliance rate is lower than expected. The theoretical implication is that scholars of compliance should incorporate expectations into their accounts. Critically, this means more than simply building models in which uncertainty about features of the world are described via prior beliefs about key parameters, as is commonly done in game theoretic models of judicial-government interaction (e.g. Vanberg, 2005; Staton, 2010). That approach offers a way of incorporating uncertainty about the world. The point of the expectations-outcomes differential literature is that the actual value individuals attach to outcomes depends on expectations.

## **Data Availability Statement**

Research documentation and data that support the findings of this study are openly available in the APSR Dataverse at <https://doi.org/10.7910/DVN/LCC0H6>.

## **Ethical Standards**

The authors declare the human subjects research in this article was reviewed and approved by Emory University, Georgia State University, and the Universidad de los Andes and certificate numbers are provided in the text. The authors affirm that this article adheres to the APSA's Principles and Guidance on Human Subject Research.

## **Conflicts of Interest**

The authors declare no ethical issues or conflicts of interest in this research.

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