Abstract

This dissertation aims to understand how the domestic high courts in Latin America rely on the jurisprudence of the Inter-American Court of Human Rights. The “relationship between courts” is a phenomenon that happens in domestic and international politics when domestic high courts start to resist or follow international jurisprudence. This study utilizes citation and content analysis, combined with interviews with domestic agents, to understand patterns of behavior of domestic courts towards the international jurisprudence of the Inter-American Court.

The results obtained in this research allows for broader lessons on how domestic high courts related to international courts more generally. The first lesson entails that domestic courts have agency in the domestic and international scenario, deciding when to follow or resist international jurisprudence. The second lesson from the relationship between courts in Argentina and Brazil determines that judges are utilizing the Inter-American Court’s jurisprudence either instrumentally or incidentally. I observed that domestic judges in Argentina are using the Inter-American Court’s jurisprudence with the intention to validate their own opinion and goals, which I describe as an instrumental type of behavior. In contrast, Brazilian judges are unsystematic while utilizing the Inter-American Court’s jurisprudence. In some cases, domestic judges in Brazil completely ignore the Inter-American Court, behaving instrumentally by deciding not to cite the Inter-American Court when they disagree with it. In other cases, they cite the Inter-American Court incidentally, without attributing ultimate or hierarchical value to the Inter-American Court’s jurisprudence, which is a behavior identifiable by tracing different votes of judges in different issue-areas of human rights.

Part of the explanation that I offer to understand the case of Argentina and Brazil includes the analysis on how the circulation of domestic judges shapes the relationship between courts. The interviews contained several examples on how systematic domestic judges were when applying the jurisprudence of the Inter-American and how the change in the composition of domestic courts interfered with the process of accepting or resisting the Inter-American Court. My theory on the circulation of judges traces individual and group behavior of domestic judges, classifying these judges as innovators – those who utilized the Inter-American Court’s jurisprudence systematically – and consolidators – those who want to maintain the status quo and rebel against the Inter-American Court’s jurisprudence. By going beyond judicial culture and exploring empirically how domestic judges incorporate or not the Inter-American’s jurisprudence to their decisions, I intend to offer a novel approach in the study of judicial behavior particularly framed towards the use of the Inter-American Court’s jurisprudence.

My study does not contradict current theories that foresee international courts as agents of change of the international and domestic politics but rather brings together inputs from several disciplines to create another perspective to the relationship between courts demonstrating that domestic courts are also agents of change. Moreover, it establishes a research design that is expandable not only to the relationship between domestic courts and international courts, but also to domestic institutions and to how they react to international institutions in the international and domestic arenas.