

Between Merit and Politics

The selection of Federal Judges in Argentina

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By
Demián Zayat
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ABSTRACT. In 1998, Argentina established a Judicial Council to select lower federal Courts Judges. The Judicial Council administers examinations to applicants to determine their ranking based upon professional merit. A short list of the top three candidates is sent to the President who then nominates one candidate and asks for the consent of the Senate for his appointment to the bench. The establishment of the Judicial Council resulted from reforms promoted by International Development agencies, such as the World Bank, the Inter-American Development Bank and USAID. It was meant to depoliticize judicial nominations, according to a meritocratic model used mainly by European countries. However, Argentina did not adopt a purely meritocratic system: the membership of the Judicial Council includes politicians (Senators and Representatives), the process permits the modification of merit-based rankings, and the ultimate selection of judges relies upon political decisions by the President and the Senate. In this study, I examine empirically the decisions of the Judicial Council over the last ten years, including all the short-lists and nominations for lower federal Court Judges, to analyze to what extent merit was a determinative factor in the process. Among other findings, the results show that around 70% of the candidates were included in the short-list because of merit, but in the remaining 30% of cases, politics also played a role. At the same time, 70% of the short-lists included at least one candidate chosen because of political factors. These results give an accurate description of how the system works, and illustrate that politics are an important factor in selecting judges in Argentina. Consequently, I argue, the institutional design of the process should be modified to permit an open and public discussion of ideology or moral values of the candidates.