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Elena Kagan: Would she turn Supreme Court into We the People?

Elena Kagan, if confirmed as the next Supreme Court justice, would shift the balance dramatically – with three women and a Jewish-Catholic bloc. So would the high court look like We the People?

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But while NAPABA has taken no stand on whether diversity's value is aesthetic or experiential, Billy Chan, the Asian-American Bar Association president, has sided with Sotomayor's now-disavowed speech. "[Liu] brings more than his superior qualifications as a lawyer and a teacher. He brings his perspective as a person of color raised and working in the United States," wrote Mr. Chan in an April letter to the editor in the San Francisco Chronicle.

This article is the cover story of the June 28 issue of The Christian Science Monitor weekly magazine.

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Graphic
Chart: Majority of Supreme Court justices hail from east of the Mississippi

He chided conservatives for assuming "judges can magically remove themselves from life experience and make decisions purely on the facts and the law ... [they] are affected by their background and life experience as well as their intellectual analysis, and it is unrealistic to pretend otherwise."

But upon this sentiment, Dinh, Chan's fellow Asian-American, disagrees. "Justice O'Connor loved saying that a wise old woman thinks the same as a wise old man," says Dinh, voicing the very sentiment Sotomayor contested in her 2001 speech. "I think it is a profound mistake to assume that a person will think a certain way or approach the law from a certain perspective because of their backgrounds, be it race, gender, religion, or even political affiliation."

• • •

In the beginning, long before religion, race, and Roe v. Wade, there was geography. Starting with George Washington's first batch of Supreme Court justices, "the

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need for geographic diversity was a matter of practicality," says David Yalof, author of the book "Pursuit of Justices: Presidential Politics and the Selection of Supreme Court Nominees." Until Congress created the courts of appeal in 1891, the justices "rode circuit," traveling to their home regions to hear appeals arising out of federal courts.

And geography played a role in President Lincoln's appointment of Justice Stephen J. Field, who came to the court to represent the country's newly admitted Pacific Coast states. His formative experiences in California's unregulated gold rush boomtowns led him to become the architect of the Supreme Court's turn-of-the-century laissez-faire, pro-property rights jurisprudence.

Political loyalty also mattered to the early presidents. Chief Justice John Marshall's Federalist Party affiliation animated perhaps the most important case in Supreme Court history: 1803's Marbury v. Madison. President Adams appointed Marshall in 1801 so as to entrench the Federalists' political philosophy in a national government about to be taken over by their ideological antagonists, Jefferson and his Democratic-Republican Party. By establishing judicial review – or the court's power to strike down an act of Congress – Marshall's Marbury opinion sent a warning to the Jefferson administration and Congressional allies to tread lightly in setting national policy that may be at odds with the Federalists on the court.

Loyalty and geography governed even the nomination of the court's first Catholic, Roger B. Taney. "There is no evidence that [President] Jackson meant to appeal to a Catholic constituency [with Taney]," Mr. Yalof notes.

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SUPREME FACTS

Of **111** justices since 1789:

* **53** was the average age at appointment

* **36** served in the military

* **11** had no children

* **6** never married

* **4** were divorced

* **3** did not have a private law practice

* **39** were not judges before appointment

* **39** were Episcopalian

*__18__ attended and 14 graduated from Harvard Law School

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* **26** were from judicial families

* **41** had fathers who held public office

* **39** grew up in urban or small-city settings

* **40** grew up on family farms, family plantations, or rural settings

* **31** grew up in small towns

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