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Democracy in the Court

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Kathleen Rutkowski · 4 days ago 🔒

What I found enlightening in listening to Justice Sotomayor is how she embodies democracy in a way that the Founders had perhaps sought to structure in their unique system of judicial selection. The early jurists were people who had considerable professional leadership experiences and were also for the most part prominent federalists, patriots and revolutionaries. Justice Sotomayer's selection and confirmation was based on her experiences as a jurist and also her life experiences as a Puerto Rican American woman. She was not elected by the people to serve on the court but rather was appointed by President Obama and confirmed by the Senate; nonetheless, she is very much of the people and a product and person of her times. So democracy in the court is interestingly achieved by selection rather than election. The decision to create a Supreme Court that would be made up of people nominated by the President and confirmed by the Senate recognized that the candidates by and large selected and confirmed would be people that had a significant profile in terms of their judicial experience as well as their life experiences. In a sense, they embody the democratic spirit of their times and serve as a bridge between the past and the future. They enjoy a freedom in their selection and in their tenure that allows them to interpret law with a perspective that best protects and promotes the interest of democracy itself. Legislators are tuned into the present voices of the people who elect them, the President is tuned to the current times and current electorate as well, but the justices and judges in the federal system are part of the "continuing conversation" that Sotomayer talked about. And perhaps this "continuing conversation" is really what makes the constitution a living document and democracy a dynamic process.

↑ 5 ↓ · flag

Anonymous · 4 days ago 🔒

The only way "true democracy" would reach the US Supreme Court is if this proposal, or something similar, were to be adopted <http://www.npr.org/templates/story/story.php?storyId=128168260> (I see it unlikely because both sides like the fact that they can put "their judges" for life in the SCOTUS). At this point, to pretend that US Supreme Court judges are not an extension of the partisanship that affects American society at large is utterly naive.

↑ -2 ↓ · flag



Benjamin L Somberg · 4 days ago

Very nicely said, Kathleen.

↑ 0 ↓ · flag

Doug Karo · 2 days ago

I believe there is a consensus that electing other judges is not a good idea (buying elections, making promises, ...) even if some localities continue the practice. Why would it be better to have direct election of justices unless you don't think the role of the Supreme Court is to decide matters of law in accordance with the Constitution and you prefer to decide cases in accordance with popularity with the citizens? Why would a direct election be any less partisan than current appointment and confirmation processes? At least, with the current process all but a very small number of Justices in recent history appear competent (even if they disagree with each other).

↑ 1 ↓ · flag

Anonymous · 2 days ago

The proposal that federal judges be elected to limited terms would be an acknowledgement that whatever the framers' intentions were, the US Supreme Court has become a partisan body in which its individual members (more the "living constitution crowd") see their duty as US Supreme Court justices to impose their particular view of the constitution, sourced in their own political ideology, on 300 million of Americans. Since that is what US Supreme Court justices do these days, we might as well acknowledge that role and codify it. The constitution has been amended several times on matters like this, with amendments like 20th, 22nd and 25th. I see an amendment that sets the record straight with respect to the US Supreme Court relevant. Said amendment would probably need to set an upper bound on the number of members to prevent grabs of power like the one FDR attempted, but failed, to do.

This amendment would probably have wide support from the people but, in all likelihood, be fiercely opposed by both political parties, which see appointing their guys for life in the SCOTUS as something desirable.

↑ -2 ↓ · flag



Kathleen Rutkowski · 2 days ago

I agree with Doug's comments and would be interested in learning what Anonymous means when he uses the words "true democracy." I lived in a small New England town and under that town form of government every citizen was entitled to come and speak at town hall meetings about issues relevant to the operation of government. Every one, including even teenagers not yet able to vote, were able to speak and share their views. I also lived in

Switzerland in Canton Vaud and have witnessed how the Swiss version of democracy works. Both the town hall system and the Swiss Canton Systems are very close to "pure" democracy. People are vested with more opportunity to articulate personal views. But the populations are limited and the matters discussed are limited. Elected leaders make most of the decisions and more weighty matters of government are kicked to higher levels. And even at the lower level, it would be hard to argue that ideology and political orientation are somehow less significant. Majority rule is majority rule and perhaps these lower level systems allow minorities to vocalize and be heard better but that doesn't mean that their interests are any more or better served than they would be in a more republican form of democracy. One might also argue that the Red Guards in China or the Khmer Rouge in Cambodia are examples of "pure democracy" in action. In these cases, minorities were empowered to terrorize a majority of the population. So be careful what you ask for.

Hamilton in In Federalist Number 78, Alexander Hamilton argues for selection and permanent tenure:

"According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices during good behavior; which is conformable to the most approved of the State constitutions and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan, is no light symptom of the rage for objection, which disorders their imaginations and judgments. The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments. "

The Founders understood that political and ideological factors would weigh in the selection of any given justice but a candidate cannot be nominated without a majority in the Senate. Moreover, given the permanent nature of appointments, it is highly unlikely that a majority of the court will vacate in any given period in which the President and the majority in the Senate share the same ideological views and nominate and confirm judges that share and act on the same ideological orientations in their court findings. Finally, many Presidents and Senators

and citizens have been surprised over the years as court justices did not cast votes as ideologically expected. Once a justice is on the court they are free to vote as they desire and not oblige to vote as the President or Senators might hope they would. The Judiciary-- of all the branches, seem to be less paralyzed by partisanism.

And judicial reviews are not the end all. The Constitution can be amended and the Supreme Court can overrule itself.

The verdict is still out when it comes to Locke vs Hobbes.

↑ 1 ↓ · flag

Doug Karo · 2 days ago

Perhaps 'Anonymous' would accept a simple congressional action to end the partisan arguments in the Court. The Constitution only requires that there be a Chief Justice, the congress determines if there will be any more justices. The Congress could reduce the size of the Supreme Court to one and the elections for congress and president would be proxies for an election for the Chief Justice (the appointment would reflect the majority). The single (Chief) Justice could rule efficiently without competing arguments. Limiting the term of the appointment would require amending the Constitution. This seems like a big step backwards;

↑ 0 ↓ · flag

[+ Comment](#)

Patricia B Alexander · 3 days ago

Justice Sotomayer is a wonderful example of perseverance and optimism. Her example of how she learned to write a paper is something every school child should hear: If you don't know how to do it, teach yourself and don't just give up.

I really do want to read her book after hearing her talk.

↑ 0 ↓ · flag



Benjamin L Somberg · 3 days ago

I totally agree, Patricia. I told that story to my family at dinner last night, hoping some of it would rub off on my kids. (Unlikely as that may be.) Also about how she edited the journal (I forget the name of it) because she felt that was a weakness of hers. Remarkable.

↑ 0 ↓ · flag

Jennifer · 3 hours ago

I relate completely to Sonia Sotomayor as I am self taught in many areas. I have this need to learn and further my education, the reason I am here. I never really paid attention to the

political end of my education and want to learn about it now and with this wonderful opportunity I can form my own opinions and not just those of who I am learning it from.

↑ 0 ↓ · flag

[+ Comment](#)

[Doug Karo](#) · 2 days ago 

Justice Sotomayer was confirmed by the U.S. Senate by a vote of 68-31 (all Democrat Senators voted for her nomination and all but nine Republican Senators voted against her nomination). I suspect this shows that the congress considers ideology to be a determining factor in a Court appointment because the congress believes ideology directs case decisions.

I think one of the very interesting remarks the Justice made in the video was that entering the Court is like joining a continuing conversation and that there is no final word on many issues (precedent is not absolute). I wonder if the quality of the conversation is diminished because most of the participants were selected as a result of a brutally partisan congressional battle.

↑ 0 ↓ · flag



[Albert Strong](#) · 2 days ago 

Doug,

Can I just chime in here to suggest that the idea of partisans on the bench is not new. Isn't this like the same battle between Adams and Jefferson on Adams defeat when he was accused of making so many partisan or ideological appointments. Events that lead the the **Marbury vs Madison** decision?

Just a thought and thanks for listening.

↑ 0 ↓ · flag

[clinton mathews](#) · 2 days ago 

The bench has always been filled with humans and they have always had political beliefs. Those political beliefs have always played a part in their decision making. However, as long as they are interpreting laws rather than creating laws, I'm ok with it.

↑ 0 ↓ · flag

[Doug Karo](#) · 2 days ago 

I suppose one piece of evidence for partisanship or for similar legal beliefs or ... is the high correlation that certain pairs or groups of justices have with each other when their voting records are compared. I also expect that if the more difficult questions reach the Supreme Court, it should not be surprising that decisions are often not unanimous.

↑ 0 ↓ · flag

[+ Comment](#)



Riczy Dávila · 12 hours ago

The bonus material, at least for me, was a huge inspiration. After seeing this, all the things that I have been learning in this course make more sense.

And it makes me feel that it was worth all the effort, all the energy, all the sweat blood and tears that the founders had gave to the Independence and the US Constitution. (even with all the mistakes that had been amended)

And that right now, I keep knowing that still worth the effort and the chance of taking challenges, just for make justice in any country.

Although I'm don't live in US and I'm not a US citizen, I don't agree with the proposal of ANONYMUOS, because the justice can't be politicized, and I know that anyhow the politics is involved. But however making a proyect like the one it have been supported by ANONYMUOS and WATKINS, it is (IMHO) a blatantly and unabashed way to make justice a matter of politics, and the justice have to be an imparcial body not subject to politics parties, it's just an hypocrite proyect that dosen't eliminate the real problem in the system, it dosen't attacks the root of a problem that it's not only un US.

Anyhow, don't are the people the ones who choose by democratic elections their representatives? in the House of Representatives, in the Senate? and even don't are the people the ones who choose the representation of the executive power in the personification of the President?

Again IMHO.

↑ 1 ↓ · flag

Anonymous · 12 hours ago

You are not a US citizen and you don't live in the US so then, I submit, you are unqualified to opine about this issue. Not "unqualified" in the "academic sense" but unqualified in the sense that you have no stake one way or another. I do.

I could also say that the de facto dictatorship that you guys have in Venezuela should be abolished, but it is up to you guys to do it.

↑ -1 ↓ · flag



Riczy Dávila · 11 hours ago

Sorry pal, in US and in Venezuela, justice and fairness, means the same. I wasn't talking about the application of it, in your country or in mine.

I can't stop mention that your comment it's little rude for a discussion forum of this level.

But thanks for your participation.

Regards from Venezuela.

↑ 0 ↓ · flag

Anonymous · 11 hours ago 🔒

You are the one who said that you don't live in the US and you are not a US citizen.

In case you missed the title of the course, it is about US Constitutional Law not "UN human rights justice".

So, as a US citizen, I have a stake in the future of the US that you don't have.

↑ -2 ↓ · flag



Alec D. Rogers · 2 hours ago 🔒

At least Mr Davilla is willing to stand by his words. The "anonymous" flaming is really getting annoying.

↑ 1 ↓ · flag

Joel Kovarsky · 2 hours ago 🔒

Another point is that lawyers should not be the only ones to comment on the law, historians on history, physicians on medicine, and so forth. There is a long intellectual history of learned and amateur scholars commenting about the political and judicial systems outside their own. There is no reason to impose a citizenship requirement concerning intellectual discussion of our Constitution. And I agree with Alec about the annoyances of anonymous flaming.

↑ 0 ↓ · flag



Kathleen Rutkowski · 22 minutes ago 🔒

Thank you Riczy for your heartfelt and insightful words. Any American who might suggest that your opinion and your insight doesn't matter is an American who is truly out of touch with the builders of this country, which includes not just those who crafted the constitution but also as if not more importantly the legions of people who immigrated to this country from all around the world, from every conceivable political system bringing with them their strength, their hopes, their dreams, their observations, their experiences, and above all their insights and wisdom. Democracy is all about the sharing of ideas.

↑ 0 ↓ · flag

[+ Comment](#)

Patricia B Alexander · 3 hours ago 🔒

Riczy - I am an American citizen whose ancestors fought and died in the American Revolution and

voted for the original Constitution. I agree wholeheartedly with you! What we need is less politics not more and making the Court an elective body defeats the purpose the framers had in mind. They wanted one body who's members did not have to stand for re-election. Elections would make them beholden to the electorate and thus open to bribery. I believe the real genius of the system was letting the President choose justices. The President is the only office with a time limit built in; a finite number of terms. Thus, justices are also not eternally beholden to the man who chose them for their job. All people, all over the world have a stake in the American Constitution. It has been the frame work for many other constitutions and like it or not, what happens in this country does affect people everywhere.

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