

A Purely Political Appoinment: Elena Kagan and the Supreme Court

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President Obama has nominated Elena Kagan for Justice of the United States Supreme Court on the basis of an academic publication record, which might give her a fighting chance for tenure at a first rate correspondence law school in the Texas Panhandle.

A review of her published scholarship after almost two decades in and out of academia turns up four law review articles, two brief pieces and several book reviews and in memoriam. There is nothing even remotely resembling a major legal text or research publication.

Her lack-luster academic publication record is only surpassed by her total lack of any practical experience as a judge: zero years in adjudication, unless one accepts the line of her exuberant advocates, who point to Kagan's superb ability in adjudicating among the squabbling faculty at Harvard Law School when she served as Dean. No doubt Kagan had been very busy as the greatest fundraising Law School Dean in Harvard's history (\$400 million), which may account for the fact that she never found time to write a single academic article during her nine year tenure (2001-2009).

The criteria for her appointment to the Supreme Court have little to do with academic performance as it is understood today in all major universities. Nor does her total inexperience as a judicial advocate compensate for academic mediocrity.

The evidence points to a purely political appointment based, in part, on social networks and certainly not on her lack of affinity for the agenda of the liberal wing of the Democratic Party. Kagan's approval of indefinite detention of suspects squares with the extremist restrictions on constitutional freedoms first articulated during the Bush Administration and subsequently upheld by President Obama's Attorney General Eric Holder. It is no coincidence that Kagan appointed a notorious Bush torture advocate, the genial Jack Goldsmith, to the Harvard Law faculty.

Elena Kagan's appointment certainly was not based on "diversity". She will be the third Jew on the Supreme Court and, together with the six Roman Catholics, will decide the most critical cases with far-reaching and profound impact on citizens' rights and protections. For the first time in US history the nation's largest demographic group, the Protestants (of any hue or gender), will have no representative on the Court, thereby excluding the descendents, like retiring Justice Stevens, of the brilliant, strongly secular judicial heritage that formulated the US Constitution, the Bill of Rights and its amendments.

Kagan's nomination to the US Supreme Court is not exceptional if we consider many of Bush and now Obama's choices of advisers and officials in top policymaking posts. Many of these

officials combined their diplomas from Ivy League universities with their absolutely disastrous performances in public office, which no amount of mass media puff pieces could obscure. These Ivy League mediocrities include the foreign policy advocates for the destructive and unending wars in the Middle East and Afghanistan and the leading economic advisers and officials responsible for the current financial debacles. The names are familiar enough: Wolfowitz, Feith, Abrams, Levey, Greenspan, Axelrod, Emmanuel, Indyk, Ross, Summers, Rubin, et al: Prestigious credentials with mediocre, or worse, performances. What is the basis of their rise? What explains their ascent to the most influential positions in the US power structure?

One hypothesis is nepotism . . . of a certain kind. Elena Kagan got tenure at the august halls of the University of Chicago in 1995 on the basis of one substantive article and one brief piece, neither outstanding. With this underwhelming record of legal scholarship, she became visiting professorship at the Harvard Law School, published only two more articles (one in Harvard Law Review) and received tenure. Prima facie evidence strongly suggests that Kagan's ties to the staunchly Zionist faculty at both Chicago and Harvard Law Schools (and not her intellectual prowess) account for her meteoric promotions to tenure, deanship and now the US Supreme Court, over the heads of hundreds of other highly qualified candidates with far superior academic publication records and broader practical judicial experience.

The public utterances and political writings of innumerable Harvard, Princeton, Chicago, Yale, John Hopkins professors, whether it be on the speculative economy, Israel's Middle East wars, preventative detention, broad presidential powers and constitutional freedoms are marked by a singular mediocrity, mendacity and an excess of hot air reeking of the barnyard.

If you do not qualify on the basis of excellent scholarship or broad-based practical experience, your ethnic tribesman will wax ecstatic over you as a "wonder colleague", a "superb teacher", a "brilliant consensus builder" and a "world champion fund raiser". In other words, if you have the right connections and political ambitions, they can adjust the criteria for tenure at the University of Chicago, the deanship at Harvard Law School and a lifetime appointment to the US Supreme Court.

Elena Kagan joins a long list of key Obama appointees who have long-standing ties to the pro-Israel power configuration. Like Barack Obama, Elena Kagan started her legal apprenticeship with the Chicago Judge Abner Mitva, an ardent Zionist, who hailed the newly elected President Obama as "America's first Jewish President", probably his soundest judgment.

The issue of the composition of the US Supreme Court is increasingly crucial for all Americans, who are horrified by Israel's devastation of Gaza, its threats to launch a nuclear attack on Iran and its Fifth Column's efforts to drag us into a third war in ten years. With the Presidents of the Major American Jewish Organizations pressing the compliant US Congress to declare "anti-Zionism" as a form of "anti-Semitism" and "opposition to Israel's policies" as amounting to "support for terrorism", thus criminalizing Americans critical of Israel, another active pro-Zionist advocate on the Court will provide a legal cover for the advance of Zionist-dictated authoritarianism over the American people.

Yes, Kagan would be another woman on the Supreme Court. Yes, she would probably adjudicate conflicts among the judges and strengthen Obama's police powers. And yes, she

would likely favor your indefinite detention if you support the right of Palestinians to struggle (“terrorism”) against the Israeli occupation . . . especially if you defend America against Israel’s Fifth Column.

But remember when you apply for Ivy League law school appointment or a top judicial post and your CV lacks the requisite publications or work experience, just ask Judge Abner Mikva or Larry Summers or Rahm Emmanuel for a recommendation. With such support you will shoot ahead of the competition. . . because you have the right ethnic connections.

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