

THE CONFIRMATION OF JUDGE KETANJI ONYIKA BROWN JACKSON

BY JUDGE LAUREN C. MOORE

Many people were thrilled when Ketanji Onyika Brown Jackson was confirmed to the Supreme Court of the United States. Widely considered one of the most prepared and erudite nominees ever, Jackson has Ivy League credentials, a SCOTUS clerkship with her predecessor Justice Breyer, both trial and appellate experience and almost 600 written opinions. She was a public defender - refreshing because the judiciary has always been a bastion for whites, males and former prosecutors. There hasn't been a defense attorney on SCOTUS since Thurgood Marshall. Jackson was also Vice-chair of the U. S. Sentencing Commission which reduced the racialized crack and powder cocaine disparity during her tenure. Her breadth of experience exceeds the current justices'. The American Bar Association gave her its highest rating. Ketanji rocks! So why the hate?

Jackson's addition won't change the ideological balance of the court. But as a black woman with a family tree that has roots in slavery, she brings unique insight and a fresh voice which that some find threatening. She seems born for the role. Who knew that when she met Barack Obama at a friend's wedding in 1996, that he would become President and nominate her to the D. C. District Court in 2013 and help launch her trajectory to the Supreme Court? Perhaps it was her daughter Leila who, at 11, sent a handwritten letter to President Obama saying her mom would be an "excellent" replacement for Scalia who had just died. Perhaps it was her BFF, Antoinette Coakley, who predicted Jackson would be the first black woman justice back when they were undergrads at Harvard.

When Biden announced his intention to nominate the first black woman, many expressed disingenuous outrage at "reverse racism" and "identity politics." When Reagan and Trump signaled their decision to fill

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vacancies with women, there was no alarm. Yet when it came to a *black* woman, some who demanded Obama show his birth certificate now said Jackson needed to reveal her LSAT scores. Unlike white male nominees, Jackson's qualifications were automatically suspect and not merely taken for granted. Some of the disrespectful chatter about Jackson might have been avoided if Biden just said he'd select the best **person** for the job and then nominated the stellar, overachieving Jackson.

There was similar uproar from conservatives regarding the confirmation of the first Jewish nominee, Louis Brandeis, and the first Hispanic nominee, Justice Sonia Sotomayor, who were both assumed to be "radical." In response to an assertion that Jackson is part of some radical cabal, during the hearings she felt compelled to reject the progressive idea of a "living Constitution" and used the language of originalists like Scalia and all her soon-to-be colleagues of the Court's right flank to describe her approach to constitutional interpretation. She professed this despite the irony that the founding fathers most assuredly did not contemplate blacks or women ever being part of the judiciary or any branch of government. It is unfortunate that the confirmation process often requires nominees to twist logic to win votes. However, several Trump appointees refused to say *Brown v. Board* was correctly decided and the last three SCOTUS justices to be confirmed conceded that *Roe v. Wade* was settled precedent, then began dismantling it the first chance they got, just as the former President promised they would.

But it is evident that Jackson demonstrates the kind of thoughtfulness, evenhandedness and restraint that led her to write "Presidents are not kings" in her opinion requiring Trump's White House counsel to obey a congressional subpoena and also to rule that Hillary Clinton's emails had to be handed over to the Republican National Committee. She has ruled that qualified immunity did not shield a police officer who violated a protester's First Amendment rights by arresting him for using profanity and released an accused January 6th insurrectionist after requiring a GPS and an order to stay out of Washington D.C.

As a student she complained about the flying of a Confederate flag on Harvard's campus, but also cautioned her peers to not get distracted and neglect their studies as it would be counterproductive. She campaigned to diversify the college faculty and currently

serves on the Board of Overseers and has already promised to recuse herself from an affirmative action lawsuit against Harvard that's pending on the SCOTUS docket. Jackson has family and friends in law enforcement as well as an uncle who was serving a life sentence for a nonviolent drug offense until he became one of 1,700 convicts whose sentence was commuted by President Obama. And as perfect as she seems, she admittedly fell short trying to strike the perfect balance between ambitious career woman and dutiful mother of two precocious daughters.

Throughout the confirmation hearings, Jackson maintained her composure even as she was questioned whether babies were racist or if she had a hidden agenda to utilize Critical Race Theory. Although many cases have issues that are inextricable from race, Jackson had to state she would not use a racial lens in her legal analysis to dispel the notion that she was radical. From Dred Scott, Plessy, Loving, Bakke, Batson, or Korematsu which allowed Japanese-Americans to be interred in concentration camps during World War II, the SCOTUS has always pondered racial issues — often with a jaundiced, less than critical eye. Criminal justice cases involving such issues as policing, sentencing and wrongful convictions overwhelmingly have a racial component and it seems intellectually dishonest to expect judges to not use the clearest eye possible to consider historical and social context in their reasoning.

During the hearings, Jackson was asked to define “woman” and rate her religious faith on a scale of 1 – 10. She had to disprove the notion that she had a soft spot for defendants in child pornography cases because some of her sentences were below federal guidelines although those same “concerned” senators had no problem supporting Trump nominees who routinely sentenced below guidelines. They assumed this black woman had an agenda, would expand rather than constrict rights, and questioned her impartiality. This misogynoir was apparently predicated on the same “logic” the former President used to discredit a Mexican-American judge who couldn't possibly be fair in the Trump University lawsuit because “he was building a wall.”

During the interrogation, Jackson remained dignified and regal in her brown skin and wavy locs, exemplifying the West African meaning of her name — “lovely one.” She did not declare the proceedings to be a “high-tech lynching” as Clarence Thomas did; nor did she cry, scream

and declare the hearings a “circus” like Brett Kavanaugh. It takes a certain privilege that Jackson does not possess to raise the volume and tone of her voice and make those kinds of claims. Despite her perfectly curated career path and decisions, she was treated like the polar opposite of Robert Bork whose right-wing views were considered so extreme that he received bipartisan rejection. She didn't unleash her inner “Angry Black Woman” so they could stand on the idea she lacked proper temperament or decorum when they objected to her confirmation. She could only sigh, drawing strength from surrounding family members who radiated love and support. Kudos to Senator Booker for his joyful acknowledgment of the occasion's historic significance and that she was the glorious manifestation of our ancestors' wildest dreams.

Forty-seven senators, including past supporters and Tim Scott, one of only three African-American senators, conceded Jackson was a nice, accomplished lady before rejecting her for some bad-faith reason. They praised her with tea-party gentility because they knew they were on the wrong side of history and wanted to appear “not racist” for denying the first black woman a seat on SCOTUS. Jackson was good enough as one of the 237 blacks to have ever served as a federal judge, but not worthy of the land's highest court. They rejected her just as they are likely to reject the impending Crown Act legislation which prohibits race-based discrimination against natural hairstyles like the one sported by Jackson.

Despite the disparaging, hyperpartisan nature of the confirmation process, the senate, including three members who defied party loyalty, embraced the idea that a diversified bench inspires public confidence in an institution that

once found “separate but equal” to be a noble concept. This made it unnecessary for the first woman and first black Vice-President Kamala Harris, who presided over the historic vote with honor and pride, to have to break a tie.

In addition to her legal mega-talent, Jackson is the nucleus of a powerful sister circle of four wonderful friends, rock-solid since their freshman year at Harvard. All graduated from Harvard undergrad, attended Harvard Law together, and were there to keep Jackson buoyed through her ordeal. Such a bond is a rare blessing and as phenomenal as their respective accomplishments. Two are law professors, one - the prophesying Coakley, is a senior partner at a firm and Jackson will be the 116th Associate Justice of SCOTUS. They are all Harvard-trained, black and gifted, but to quote the intellectual W. E. B. DuBois, the first black to receive a doctorate degree from Harvard, “the honor, I assure you, was Harvard's.”

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