

Bloomberg Opinion

The Supreme Credentials of Ketanji Brown Jackson

Her race and gender get the attention, but Jackson's professional experience is the diversity you should focus on.

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Today, the Senate Judiciary Committee begins hearings on the nomination of Judge Ketanji Brown Jackson to the Supreme Court. Her selection fulfills a campaign pledge made by President Joe Biden to name the first Black woman to the high court. Yet it's because of Jackson's professional experience and judicial temperament — not her race or gender — that she deserves swift confirmation.

Jackson's legal credentials are clear. A graduate of Harvard University and Harvard Law School, where she served as an editor of the law review, Jackson has spent time as a corporate lawyer and a member of the U.S. Sentencing Commission. Her near decade-long service on the federal bench, most recently on the U.S. Court of Appeals for the District of Columbia Circuit, has produced some 600 carefully reasoned decisions that are well within the legal mainstream. Jackson also brings diversity to the court in ways that go beyond race and gender. Not only would she be the first former public defender to sit on the Supreme Court, she'd be the first justice since Thurgood Marshall with a criminal-defense background. That background distinguishes her not just from other members of the top court but the federal judiciary as a whole. As the Cato Institute points out, the current bench is heavily weighted toward former prosecutors. Over time, this imbalance could well undermine the fairness of the courts toward the accused.

Such experience has given Jackson an understanding of the challenges facing the legal system. For instance, she has long been critical of “coercive plea bargaining,” the practice of pushing defendants (many with limited means) to take guilty pleas rather than endure time-consuming trials with the risk of a more severe sentence, an unseemly consequence of overburdened and underfunded courts. As a federal public defender, Brown represented plenty of unpopular clients, including terrorism suspects. In doing so she upheld a bedrock principle of the U.S. justice system: the right to a vigorous defense. At the same time, she's been praised by the Fraternal Order of Police and the International Association of Chiefs of Police, which speaks well of her record of maintaining balance.

In replacing the retiring justice Stephen Breyer (for whom she once clerked), Jackson won't alter the court's current 6-3 conservative majority, which hopefully means these hearings will prove less contentious than other recent confirmation fights. Even so, it's fair for senators of both parties to probe how Jackson's past rulings will inform her approach to issues before the court.

In the broadest sense, for example, how would she describe her judicial philosophy? Does she support Chief Justice John Roberts's view that a judge's role should be simply to “call balls and

strikes”? Where does she see the line on strict laws governing gun possession? In 2019, Jackson ruled in favor of a challenge to Washington’s Panhandling Control Act, on First Amendment grounds; how should claims of public order and public expression be balanced?

A substantive hearing focused on Jackson’s record, rather than her identity, should allow the country to learn more about a distinguished jurist. Hopefully, it will also reveal a fresh perspective that the Supreme Court sorely needs.