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Sotomayor Displays a Lack of Deep Thinking

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Guest post from [Ilya Shapiro](#)

It strikes me that Sotomayor has been fairly forthright in her responses to questioning, not hiding too much behind the tired cliché that she can't answer a question because it could lead to prejudging a case—certainly far less than Ruth Bader Ginsburg and even John Roberts. Still, on several important issues, such as property rights, national security law, abortion, and even her overall judicial philosophy, she has appeared disingenuous in saying that she has no firm views on the subject—hiding behind precedent again and again as if first principles didn't exist. In other words, she says a lot—displaying a broad knowledge of cases and legal doctrine—without answering larger questions. She answers questions about what the law *should be* with what the law *is*, questions about what the Constitution says with what the Supreme Court has said about the Constitution.

This would be barely appropriate for a nominee to a lower court, who is, of course, bound by precedent. But senators rightly want to know a Supreme Court nominee's preferred legal theories, what her view of the Constitution is unencumbered by others' attempts to interpret that document.

The more Sotomayor speaks, the more it becomes clear that these types of nonanswers, this inability to see (or lack of desire to express) a big picture view, is her own essence. It continues a pattern that is evident from her judicial opinions, which are mostly unremarkable and, in the neutral sense of that term, unimpressive. For all her career success and a personal story we should all celebrate, she is an average judge who apparently gives little thought to the broad swath of law and where her rulings fit into that.

That is, Sonia Sotomayor is not a Cass Sunstein or Larry Tribe or Elena Kagan or (fellow circuit judge) Diane Wood. She is not a scholar or an ideologue. Her liberality is reflexive and warmed-over, a product of the post-modern educational environment that formed her in the 1970s—complete with ethnic activism—but not an intellectual edifice. This does not mean she isn't a danger to liberty and the rule of law, or that her votes and opinions won't harm the Constitution. But it does indicate that, for all her bluster about being a "wise Latina," she is little more than a left-leaning empty robe.

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