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## Health Care Arena

An ongoing discussion on the health care debate

May. 10, 2010

### Driving the Conversation:

Arena Ref: [Fred Barbash](#)

## Hardly a Supreme shocker

How hard will Senate Republicans fight the Kagan Supreme Court nomination? Will legal lefties vent their anger at the White House for not picking a full-throated liberal progressives to battle Scalia and Alito?

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### Roger Pilon

Vice President for Legal Affairs, Cato Institute :

After Justice Stevens announced his retirement from the Supreme Court, President Obama spoke of wanting to nominate someone with a "keen understanding of how the law affects the daily lives of the American people." If Solicitor General Elena Kagan has that understanding, she probably got it from books.

We get a glimpse of that in this morning's [New York Times](#). Drowning her sorrow in vodka and tonic after Ronald Reagan took the White House in 1980 – during that summer she'd worked on the losing Senate campaign of liberal Democrat Liz Holtzman – the young Kagan would write in the Princetonian, "Where I grew up – on Manhattan's Upper West Side – nobody ever admitted to voting for Republicans." She described "the Manhattan of her childhood," the Times adds, as a place "where those who won office were 'real Democrats – not the closet Republicans that one sees so often these days but men and women committed to liberal principles and motivated by the ideal of an affirmative and compassionate government.'"

Kagan would go on from Princeton to Oxford, Harvard Law, clerkships with Judge Abner Mikva

and Justice Thurgood Marshall, a stint in private practice in Washington, a professorship at the University of Chicago Law School, then back to Washington for service in the Clinton White House, and finally a return to Harvard Law as professor, then as dean, before being tapped by Obama as solicitor general.

That's an impressive rise, to be sure. Whether it has acquainted Kagan with the lives of ordinary Americans is open to question. But it surely has acquainted her with the modern conception of the Constitution, which is at some remove from the document itself. Whereas the Constitution as written creates a government of limited powers, modern "constitutional law" has allowed an all but unlimited federal government – nowhere more evident than in Kagan's sponsor's cardinal achievement to date, ObamaCare.

In this time of the tea party movement (witness this weekend's developments in Utah), when the cry is "Give us back our Constitution," the question, "Are there any longer any limits on federal power?" will doubtless be prominent during the upcoming Senate confirmation hearings. Kagan has a slim publishing record for someone with her background, so the hearings will be especially important for answering that question. One hopes that at least the Republicans on the Senate Judiciary Committee will be resourceful and diligent in pressing the question.

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