



***Newsweek***  
**May 29, 2009**

**Her Middle Way**  
**Obama's Supreme Court pick knows what it is to transcend barriers.**  
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Listening to the story of Sonia Sotomayor's climb from a housing project in the South Bronx to the gateway of the Supreme Court triggered something in me I hadn't expected, feelings of pride along with memories of my own early life in Queens. Before West Side Story romanticized teenage gangs fighting for control, the influx of immigration from Puerto Rico threatened the established ethnic order in New York neighborhoods. In the hierarchy of rough justice that prevailed, I remember the derogatory names used to describe these newest Americans, and how they must have stung.

Sotomayor gained strength and insight from her beginnings. How sweet it is to hear President Obama celebrate her as someone who is "not from the cloistered ivory tower, who understands what it means to break barriers." He could have been talking about himself, or me, or millions of Americans who have transcended beginnings that didn't automatically make them candidates for where they eventually found themselves. I too am the daughter of immigrants. I can identify with Sotomayor's story and cheer at her success. And as the Senate weighs her confirmation, it will become apparent that she is also a careful jurist, not the "reverse racist" Newt Gingrich calls her and not the liberal firebrand that activists on the left would have wished, but a safe, mainstream liberal almost certain to win confirmation.

In short, she's the best that Republicans can hope for from Obama, and that's why GOP senators who will have to vote on her are being so quiet and noncommittal. Texas Sen. John Cornyn is a good barometer. He's from a border state with a substantial Hispanic population, and he's also heading up the Republican senatorial committee, which means he doesn't want to alienate potential voters any more than his party already has. He hasn't said one way or the other, but he's a likely vote for Sotomayor. Her confirmation is yet another skirmish in the battle for the heart and soul of the Republican Party. There's a real disconnect between the people who run for office and win, and those who sit on the sidelines and demand ideological purity. Gingrich and all the others on the right who claim they have the recipe to fix the party are out there on one wing and flying blind. The debate on cable television and talk radio is a confection of the right, a way to raise money, rally the base and deepen distrust of Obama and the diversity he has thrust on the country.

While conservatives try to whip up discontent about Sotomayor's liberalism, activists on the left aren't sure where she stands on the one issue that they thought they could take for granted, and that's abortion rights. She's Roman Catholic, and would be the sixth Catholic on the nine-person court. And while that's not at all determinative, pro-choicers are alarmed that in 2002 she passed on an opportunity to overturn the Bush-era Mexico City "gag rule" that banned federal money to overseas groups that counsel abortion. She ruled against a reproductive-rights group, saying the issue had been decided against them in another case. "She doesn't see it as her job to fix every social ill in the world," says Kevin K. Russell, a law partner at Howe & Russell who writes for [SCOTUSblog](#), the official blog for Supreme Court news. Russell was one of several legal experts the White House made available on a conference call to reporters. He praised Sotomayor's

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"judicial modesty" and her respect for precedence. Others on the call echoed his analysis of her as a careful, cautious lawyer who rules narrowly and isn't out writing op-eds or developing Big Theories.

Conservatives are centering their attacks around the claim of Frank Ricci, a New Haven, Conn., firefighter, who was denied a promotion when city officials threw out the exam he had passed, saying the results had a discriminatory impact because no African-Americans qualified for advancement. The three-judge panel that included Sotomayor upheld the city's decision to scrap the test under Title VII of the Civil Rights Act of 1964, which says officials should be suspicious of tests that perpetuate disparities in promotions. When the ruling caused uproar, the panel explained its decision, saying it was "not unsympathetic" to Ricci, who is dyslexic and had worked very hard to pass the test, but that the actions of the city officials were protected under Title VII. The case is now before the Supreme Court, which in oral arguments sounded hostile to the lower court's ruling. Harvard lawyer Charles Ogletree, who was on the call with reporters, said there is a lot of disagreement on the court about these issues and the ruling, even if it goes against Sotomayor, is likely to be 5-4.

Ricci's story of the effort he made to get ahead, quitting a second job so he could spend all day studying, is as clear and compelling in its own way as Sotomayor's. It's the law that's ambiguous, and people interpret those ambiguities differently, which is why the divisions in public life are rarely settled with certainty.