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The Supreme Court Needs Diversity in More Ways Than One

No current justice is a public-college alum, and only one was a trial judge.

By Benjamin H. Barton

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Ketanji Brown Jackson testifies before the Senate Judiciary Committee in Washington, April 28, 2021.

PHOTO: TOM WILLIAMS/ASSOCIATED PRESS

If President Biden makes good on his promise to nominate a black female justice, the Supreme Court will be more diverse than ever in terms of race and sex. But in another sense, the court has become increasingly homogeneous. Recent justices have come from remarkably similar backgrounds—and the president's reported front-runner, Judge Ketanji Brown Jackson, would fit right in.

Judge Jackson grew up in a major metropolitan area, and her father was a lawyer. She would be the fifth sitting justice to fit that profile. She earned both her bachelor's and law degrees at Harvard and would be the seventh justice with an Ivy League undergraduate degree and the eighth graduate of Harvard or Yale law school.

She clerked for Justice Stephen Breyer and would be the sixth justice to have served as a Supreme Court clerk. Two of her prospective colleagues, Chief Justice John Roberts and Justice Brett Kavanaugh, likewise succeeded the justices for whom they clerked. After clerking, Judge Jackson worked at an elite Washington law firm focusing on appellate litigation, as did five other current justices. She has served as a federal appellate judge, like every other justice but Elena Kagan, and would be the fourth justice from the District of Columbia Circuit.

She did serve as a federal district judge (Sonia Sotomayor is the only current justice with that experience), on the U.S. Sentencing Commission and as a public defender. Yet on the whole, her experiences from Harvard on greatly resemble those of the justices already on the bench. She's extremely well qualified in the conventional terms—achievement in elite academic and legal competitions, But is that all that matters?

Studies consistently establish that more experientially diverse decision-making bodies tend to avoid groupthink, consider different and more innovative approaches, and then reach better decisions. Given that every justice is already a lawyer, it makes sense to try to diversify across other educational, geographic and experiential axes. This was the case historically, as Harvard graduates shared the bench with former politicians, law professors and even autodidacts with no formal education.

Mr. Biden may want to look closely at another name reportedly on his short list: Judge J. Michelle Childs. She's a product of the Columbia, S.C., public school system who earned a scholarship to the University of South Florida and got her law degree at the University of South Carolina—both public institutions. She made partner at a Columbia law firm practicing labor and employment law and has worked in state government and served as a state and federal trial judge.



Judge J. Michelle Childs of the U.S. District Court, District of South Carolina is seen in an undated photo. PHOTO: U.S. DISTRICT COURT, DISTRICT OF/VIA REUTERS

Both she and Judge Jackson are highly qualified to serve on the court, but in terms of sheer diversity, Judge Childs has an advantage.

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