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SCOTUSblog Briefing Paper

Elena Kagan – Ideology

June 28, 2010

I. Summary and our take

Elena Kagan’s limited track record leaves her susceptible to conflicting ideological characterizations. Conservative opponents have attempted to frame her as an extreme leftist, while liberal opponents have painted her as too moderate (and on some questions even conservative) and compromising.

Kagan’s few public remarks on political issues are uniformly on the left or center left. That is true of her opposition to the military’s “don’t ask, don’t tell” policy, and of a letter to Senator Leahy she signed opposing stripping courts of the authority to review detentions at Guantanamo Bay. It also accords with her more informal remarks, such as her statement to the Federalist Society that “[y]ou are not my people.”

Her life and career choices permit the inference that she is left of center. As a Princeton undergraduate in 1980, she worked for the New York Senate campaign of a liberal Democratic candidate, Elizabeth Holtzman. After law school, she clerked for liberal Judge Abner Mikva (had previously served in Congress as a Democrat), and very liberal Supreme Court Justice Thurgood Marshall, the former director-counsel of the National Association for the Advancement of Colored People. She twice put her academic career on hold to join Democratic presidential administrations, in 1996 and 2009.

In the Clinton Administration, Kagan worked on legislation and proposals, among many others, to expand gun control, allow research on human embryos, and regulate tobacco sales. She recommended that President Clinton sign the stricter of two proposals to ban partial-birth abortions, partly to justify a veto of a broader ban on late-term abortion.

It is nonetheless difficult to read Kagan’s personal views into any particular policy recommendation in the Administration because Kagan’s job as a policy advisor to Clinton was to advance *his* broader policy goals. In an email to a senior White House staff member, however, she reveals that she was at the very least passionate about issues related to affirmative action and campaign finance.

Yet Kagan’s approach to law and policy does not strike us as that of an ideologue. She has spoken out relatively rarely on ideological questions. And she is well known for having a personal demeanor that welcomes competing views.

In the White House, she often recommended narrowing a policy on legal grounds, or compromising for pragmatic political reasons. Editing a report that would have banned new semiautomatic assault rifle models, Kagan pushed back against what she deemed poor legal reasoning. She was not sure that advertising limits on tobacco companies

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would hold up in court, and therefore argued that they should be voluntary. She once labeled herself one of the “biggest fans” of a bill to protect religious freedom, but warned that an endorsement by Vice President Gore would produce a “gay/lesbian firestorm,” while also cautioning that if the bill was modified to appease gays and lesbians, “you’ll have a religious groups firestorm on your hands.”

Kagan also acknowledges that the Constitution is not the bedrock of certain liberal public policies: during her Solicitor General confirmation, she said that the Constitution does not protect a right to gay marriage, and that there is today no doubt that individuals have the constitutional right to keep and bear arms.

The right cites as evidence that Kagan is extreme her description of former Israeli Supreme Court Justice Aharon Barak as “the judge who has best advanced democracy, human rights, the rule of law, and justice” while introducing him as a speaker at Harvard Law School in 2006. Barak is a prominent liberal and a champion of a proactive judiciary. As Dean and host, Kagan was wont to introduce speakers in glowing terms. In 2008, she introduced Justice Antonin Scalia, one of the most conservative members of the Court, as “a giant in the Law,” saying his jurisprudence will be known to history as “one of the most significant products ever in American Law.” But in Kagan’s words about Barak, there is no hint that she seeks to emulate his judicial philosophy. Moreover, Barak was a judge of Israeli law, which is fundamentally different than American law – not least because Israel has no written constitution.

Whether or not she agrees with the right on the issues, Kagan has not alienated them. At Harvard, she supported several Bush judicial nominees. As we mentioned in an [earlier issue briefing](#), she developed rapport with conservatives and libertarians as dean of Harvard Law School, partly by being receptive to their views. Prominent conservatives including Miguel Estrada and Charles Fried have stepped forward to endorse her nomination. While acknowledging that “I do not doubt that her heart beats on the left,” Fried wrote in the *New Republic* that Kagan made “students with every point of view feel as if they were part of an intellectual and professional enterprise.”

On the other side, the left accuses Kagan of actually aligning with the right on two issues based on her academic writings: executive power and free speech. We have addressed both of these claims in other issue briefings, [here](#) and [here](#). Briefly, her 2001 law review article on executive power, “Presidential Administration,” describes how the president’s power can be used to advance a progressive regulatory agenda, and her letter to Senator Leahy illustrates that she believes in limits on that power. Her papers on the First Amendment suggest that she disfavors certain content-based restrictions on speech, but her narrow arguments seem to permit campaign finance regulation and other restrictions.

We think a fair inference from our limited knowledge of Kagan is that she is certainly on the left, but is also cautious, pragmatic, and politically savvy.

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II. The relevant source materials

A. Materials suggesting Kagan is liberal

- Kagan’s editorial in the *Daily Princetonian* after the 1980 congressional elections
 - Democrat Elizabeth Holtzman [for whom Kagan campaigned] lost her New York Senate race to “an ultraconservative machine politician.”
 - Democrats who won office in Manhattan during her childhood 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.” ([New York Times](#), May 10, 2010)
- Kagan’s 1981 Princeton undergraduate [thesis](#), “To the Final Conflict: Socialism in New York City, 1900-1933,” about why socialism did not take root in the United States as it did in Europe. She takes a loosely sympathetic tone to socialism.
 - “The story is a sad but also a chastening one for those who, more than half a century after socialism's decline, still wish to change America. . . . American radicals cannot afford to become their own worst enemies. In unity lies their only hope.” (PDF p. 134)
- Law clerk [memo](#) Kagan wrote for Justice Thurgood Marshall in 1987
 - “I’m not sympathetic” to a claim by someone convicted on gun possession charges under a District of Columbia law that the law violated his “constitutional right to ‘keep and bear arms.’”
- The presidential directive Kagan helped to [draft](#) that suspended licenses to import semiautomatic weapons for 120 days. The directive compares the suspension to a similar one enacted by the first Bush Administration. (Nov. 23, 1997)
 - “The number of weapons at issue underscores the potential threat to the public health and safety that necessitates immediate action. Firearms importers have obtained permits to import nearly 600,000 modified assault-type rifles.” (PDF p. 3)
- Kagan’s scholarly article “[Presidential Administration](#),” *Harvard Law Review* (2001)
 - “Where once presidential supervision had tended to favor politically conservative positions, it generally operated during the Clinton Presidency as a mechanism to achieve progressive goals. Or expressed in the terms most sympathetic to all these Presidents (and therefore most contestable),

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if Reagan and Bush showed that presidential supervision could thwart regulators intent on regulating no matter what the cost, Clinton showed that presidential supervision could jolt into action bureaucrats suffering from bureaucratic inertia in the face of unmet needs and challenges.” (PDF p. 6)

- “If presidential administration - in the form, to the extent, and with the limits I have noted - represents a salutary development in administrative process, then courts should attempt, through their articulation of administrative law, to recognize and promote this kind of control over agency policymaking.” (PDF p.120)
 - “[P]residential administration furthers regulatory effectiveness by providing not only the centralization necessary to achieve a range of technocratic goals but also the dynamic charge so largely missing today from both the administrative sphere and the surrounding political system.” (PDF p.141)
 - “None of this is to say that the President either does or should have a free hand in controlling the administrative state, exclusive of other actors.” (PDF p.141)
- [Letter to Senator Patrick Leahy](#), which Kagan signed with other law school deans, opposing legislation that would strip courts of jurisdiction to hear the cases of Guantanamo Bay detainees (Nov. 14, 2005)
- “[I]mmunizing the executive branch from review of its treatment of persons held at the U.S. Naval Base at Guantánamo strikes at the heart of the idea of the rule of law and establishes a precedent we would not want other nations to emulate.”
 - “The American form of government was established precisely to prevent this kind of unreviewable exercise of power over the lives of individuals.”
 - “When dictatorships have passed laws stripping their courts of power to review executive detention or punishment of prisoners, our government has rightly challenged such acts as fundamentally standard should apply to our own government.”
- Kagan lightheartedly commented to the Federalist Society in 2005 that “You are not my people.” (We cannot find a transcript of this speech, but it appears in multiple news stories. *See, e.g.*, [National Public Radio](#), May 10, 2010; Charles Fried opinion piece, [The New Republic](#), Apr. 19, 2010)
- [Remarks introducing former Israeli Supreme Court Justice Aharon Barak](#) at Harvard Law School (Sept. 21, 2006):
- “[Barak] is my judicial hero. He is the judge who has best advanced democracy, human rights, the rule of law, and justice.” (PDF p. 2)

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- [Remarks introducing Justice Antonin Scalia](#) before his speech at Harvard Law School (Oct. 9, 2008):
 - [Scalia’s jurisprudence is] “one of the most significant products ever in American Law.” (The Harvard Record)

B. Materials suggesting that Kagan is moderate or even conservative

- In a [memo](#) addressing a partial-birth abortion ban before Congress, Kagan urged President Bill Clinton to endorse the weaker of two proposed exceptions for the health of the mother (May 13, 1997). [Clinton ultimately vetoed the bill that was passed.]
 - The amendment she recommended provided that an abortion may be performed when the physician “certifies that continuation of the pregnancy would . . . risk grievous injury to [the mother’s] physical health,” with “grievous injury” defined as “a severely debilitating disease or impairment specifically caused by the pregnancy, or an inability to provide necessary treatment for a life-threatening condition.”
 - “We recommend that you endorse the . . . amendment in order to sustain your credibility . . . and prevent Congress from overriding your veto. You have spent many months calling on Congress to pass a bill that contains a sufficiently protective but also appropriately confined health exception — as you said in a letter to the cardinals, not a health exception that ‘could be stretched to cover most anything’ but a health exception that ‘takes effect only where a woman faces real, serious adverse health consequences.’”
- In a [memo](#) to Clinton, she recommends against certain racial programs (Mar. 20, 1997).
 - “[The program] is subject to characterization as a ‘do-good,’ ‘touchy-feely,’ essentially unrigorous and unserious response to the most intractable of America’s social problems...it would not in fact deal with the broadscale policy issues of welfare, criminal justice, education, and so forth that are central to achieving progress in this area.” (PDF pp. 1-2)
 - The memo proposes an alternative to the race panel: “A major multi-day conference on racial issue” to which many major racial justice figures like Jesse Jackson would be invited; a series of town-halls led by the president on race-related issues; and policy announcements: “We would put into place a broad policy development process, led by the White House, involving all the agencies, and reaching out to public policy experts outside the government. This process . . . would produce a wide range of actions and proposals--both large and small, executive and legislative.” (PDF p. 2)
 - “It should be noted that this proposal [the alternative] easily can accommodate some attention to issues of intolerance generally, involving

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not only racial minorities, but also women, religious minorities, and gays and lesbians.” (PDF p. 2)

- Kagan’s exchange during her Solicitor General confirmation with Senator Lindsay Graham (*see* [hearing video](#) at 1:37:35, Feb. 9, 2009)
 - Graham asserted that, under military law, a member of an enemy force can be detained without trial. When he explained that Attorney General Holder had agreed with that statement in his hearing and asked Kagan whether she agreed, she replied “I think that makes sense, and I think you’re correct that that is the law.”
- For her Solicitor General confirmation, Kagan was supported publicly by conservatives (*see* [letters](#) received in connection with the nomination on the Senate Judiciary Committee website) and Solicitors General from Republican Administrations (*see* their collective letter in support [here](#)):
 - Highlights:
 - (a) Jack Goldsmith
 - (b) Miguel Estrada (who has also publicly endorsed her [here](#))
 - (c) Charles Fried
 - (d) Ted Olson
 - (e) Kenneth Starr
 - (f) Gregory Garre
 - See also the summary article by Mark Sherman at the [AP](#)
- [Letter from eight former Solicitors General](#) (all but one of those living) endorsing Kagan for her nomination to the Supreme Court (June 22, 2010)
 - “We support the Kagan nomination in the same spirit of fairness and bipartisanship, and deference to presidential appointments of well-qualified individuals to serve on the Supreme Court, that was also due the nominations of then-Judges John G. Roberts, Jr. and Samuel A. Alito, Jr. to serve on the Supreme Court.”

III. Commentary

A. Opponents and those who claim she is conservative

- Glen Greenwald in “The Case Against Elena Kagan” on [Salon](#) (Apr. 13, 2010, with updates since)
 - [On executive power](#):
 - (a) “Among the most disturbing aspects [of her record] is her testimony during her Solicitor General confirmation hearing, where she agreed wholeheartedly with Lindsey Graham about the rightness of the core Bush/Cheney Terrorism template: namely, that the entire world is a

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'battlefield,' that 'war' is the proper legal framework for analyzing all matters relating to Terrorism, and the Government can therefore indefinitely detain anyone captured on that 'battlefield' (*i.e.*, anywhere in the world without geographical limits) who is accused (but not proven) to be an 'enemy combatant.'"

- (b) "Those views, along with her steadfast work as Solicitor General defending the Bush/Cheney approach to executive power, have caused even the farthest Right elements -- from Bill Kristol to former Bush OLC lawyer Ed Whelan -- to praise her rather lavishly. Contrast all of that with Justice Stevens' unbroken record of opposing Bush's sweeping claims of executive power every chance he got, at times even more vigorously than the rest of the Court's "liberal wing," and the risks of a Kagan nomination are self-evident."
- (c) "[V]ery revealingly -- even the moderate Neal Katyal, now Kagan's Deputy, emphatically criticized Kagan's theories in that law review article as executive overreach and even linked them to the Bush/Cheney executive power seizures."
- On the military "don't ask, don't tell" policy: "After preening around for years justifying her ban on military recruiters by decrying the military's ban on gays as 'a profound wrong -- a moral injustice of the first order,' she quickly reversed that policy and allowed military recruiters onto campus after the Federal Government threatened to withhold several hundred million dollars in funds to Harvard (out of a \$60 billion endowment)."
- On the opportunity cost of nominating someone more liberal: "What makes the prospect of a Kagan nomination so disappointing is that there are so many superior alternatives -- from the moderately liberal and brilliant 7th Circuit Judge Diane Wood and former Georgia Supreme Court Chief Justice Leah Ward Sears to the genuinely liberal Harold Koh (former Yale Law School Dean and current State Department counselor) and Stanford Law Professor Pam Karlan."
- Stuart Taylor at [The Atlantic](#) (May 10, 2010):
 - "Kagan's record suggests that she probably falls to the right of Stevens -- arguably the most liberal current justice -- at least on the presidential-power and war-on-terror issues that may be more important than any others that come before the justices in our times."
 - "Kagan has had no occasion to revisit those precise issues as solicitor general. But on somewhat analogous issues -- both in her 2009 confirmation [testimony](#) and in defending Obama's continuation of some Bush policies that left-liberals reviled -- she has sought to limit the reach of the 2008 decision [*Boumediene*] and has firmly rejected the stance of the left."

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- Stuart Taylor at [Newsweek](#) (May 25, 2010)
 - “[A]n intriguing clue that is riling up conservative blogs—so far unmentioned in the mainstream media—should somewhat allay liberal fears that Kagan will be a tepid moderate reluctant to advance liberal causes through expansive use of judicial power. The clue is Kagan’s glowing praise in 2006 for Aharon Barak, a world-renowned, retired Israeli Supreme Court justice whose creativity in advancing liberal causes by overturning elected officials’ policies makes Marshall look almost like a champion of judicial restraint.”

- [Jonathan Turley](#) (May 10, 2010):
 - “For many liberals and civil libertarians, the Kagan nomination is a terrible act of betrayal after the President campaigned so heavily on the issue of the Supreme Court during his campaign. He is now replacing a liberal icon with someone who has testified that she does not believe in core protections for accused individuals in the war on terror. During her confirmation hearing Kagan testified that she believed that anyone suspected of helping finance Al Qaeda should be stripped of protections and held under indefinite detention without a trial — agreeing with the Bush Administration.”
 - “Kagan’s writings (as little as there is) is[sic] highly problematic for liberals. Her writings on hate speech indicate a willingness to compromise on free speech issues. This is a similar view as expressed and criticized with Justice Sotomayor. Kagan’s 1996 article “*Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment Doctrine*” in the University of Chicago Law Review should make any free speech advocate feel uncomfortable.”

- Scott Lemieux on [American Prospect](#) in “The Case for a Real Liberal on the Court” (Apr. 12, 2010):
 - “Elena Kagan, while an attractive candidate in some respects, has a record on civil liberties and executive power that strongly suggests she would not be a liberal in this mold either.”

- University of Chicago professor Geoffrey Stone criticized the argument made by the United States (in a brief signed by Kagan) in *United States v. Stevens* as limiting free speech above and beyond what was necessary to defend the statute at issue (transcript of live appearance [here](#)) (Apr. 23, 2010):
 - “GEOFFREY STONE: There are a very few areas, such as false statements of fact or threats where the court has recognized that certain narrowly defined categories of speech do have only low value to the purposes of the First Amendment and can be restricted. But it has engaged in that analysis largely with a concern with the historical recognition of

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these categories, not with an open-ended, anything goes, we can decide on a case-by-case basis whether we think this particular speech is valuable or not.

- And what Kagan’s argument invited was casting aside this very rigid, contained analysis of value and instead opened the door to a much more freewheeling approach. And it was a really dangerous – that’s Chief Justice Roberts’ words – it really was a dangerous argument for the Solicitor General to make. It would have, if accepted, completely revolutionized a large part of First Amendment doctrine, losing the gains we’ve made throughout the 20th century.”
- Ellen Ratner on [FOXNews](#) (May 12, 2010)
 - “Her other opinions include a declaration that gay marriage is not a constitutional right.”
- Ed Whelan recites “issues to be concerned about” Kagan for liberals at [The Corner](#) (May 18, 2010)
 - “As solicitor general since mid-March, Kagan has taken the lead in invoking the “state secrets” doctrine in litigation challenging the NSA’s surveillance program — “ObamaAdministration Embraces Bush Position on Warrantless Wiretapping and Secrecy,” reads the title of the Electronic Frontier Foundation’s [press release](#). Kagan has surely been a major player in the administration’s [decision](#) to continue to use military commissions to try detainees and in its [about-face](#) on releasing photos of alleged prisonerabuse. She’s [fought](#) a court ruling that would extend habeas rights to detainees being held by the U.S. military at Bagram air base in Afghanistan. Kagan also recently [filed](#) a brief urging the Supreme Court to overrule a 1986 precedent that expanded the rights of suspects in criminal custody. Kagan’s leading law-review article, “Presidential Administration” (114 Harv. L. Rev. 2245 (2001)), offers a broad defense of presidential authority and explores ways that courts might promote that authority. So there’s ample reason for folks on the Left on national-security issues to be concerned about her possible nomination.”
- Peter Baker in the [New York Times](#) (May 10, 2010):
 - “Ms. Kagan is certainly too liberal for conservatives, who quickly criticized her nomination on Monday as a radical threat. But much like every other Democratic nominee since the 1960s, she does not fit the profile sought by the left, which hungers for a full-throated counterweight to the court’s conservative leader, Justice [Antonin Scalia](#).”
- [CBS News](#), Harry Smith (May 11, 2010)

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- “Liberals feel let down because she would be filling a seat left by John Paul Stevens, they don’t feel like she’s enough – has enough gravitas to fill his shoes.”
- [CBS News](#), Jan Crawford (June 3, 2010)
 - “[I]n documents obtained by CBS News, Kagan--while working as a law clerk to the late Justice Thurgood Marshall - made her positions clear on some of the nation’s most contentious social issues.”
 - The documents, buried in Marshall’s papers in the Library of Congress, show Kagan standing shoulder-to-shoulder with the liberal left, at a time when the Rehnquist Supreme Court was moving to the conservative right.”

B. Supporters and those who claim she is liberal

- Vice President Biden’s chief of staff Ron Klain bolstered Kagan’s “progressive credentials”:
 - “[T]he nominee is ‘clearly a legal progressive’ whose ‘pragmatic perspective’ will be an important addition to the Court. . . . She clerked for appeals judge Abner Mikva and Justice Thurgood Marshall and for Presidents Clinton and Obama . . . so ‘I don’t think there’s any mystery’ to the fact that she is a progressive.” (Reported at the [BLT](#) and [Politico](#), May 10, 2010)
- Lawrence Lessig on Kagan and executive power in the [Huffington Post](#) (May 11, 2010):
 - “Glenn has referred repeatedly to this article [‘Presidential Administration’] in his criticisms of Kagan. Sometimes he is careful to make clear that it expresses a theory of executive power that is radically different from the theories of Bush-Cheney. In his original ‘[Case Against Kagan](#),’ he admitted that Kagan’s theory is ‘many universes away from what Bush/Cheney ended up doing.’ I’d quibble with the characterization. It isn’t ‘many universes away.’ It is the same universe, just the opposite view. Bush/Cheney-ites believe Congress is irrelevant. Kagan believes Congress ultimately controls.”
- [Power Line](#) blog (May 13, 2010):
 - “There is also no good reason to doubt that Kagan is a hard-core liberal (whether she’s radical enough for some on the far left is another matter -- she may not be out there with Goodwin Liu). Kagan was raised in a left-wing household. At Princeton, she wrote her thesis about the American Socialist movement during the first third of the 20th century, lamenting (if I understand correctly) its failure to make major inroads.”

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- “Kagan clerked for a knee-jerk liberal Justice -- Thurgood Marshall -- whom she appears to have idolized. Previously, she clerked for the deeply liberal appeals court judge Abner Mikva. A memo has already come to light from Kagan’s days as a Supreme Court clerk that showed her to be a dedicated liberal on the issue of Second Amendment rights. There almost certainly are more where that came from.”
- “In the past two decades, Kagan has served in two Democratic administrations (similarly, Roberts had served in two Republican ones). She is a reliable contributor to Democratic campaigns and was a heavy contributor to Obama’s.”
- Senator Barbara Boxer, quoted on [Politico](#) (May 11, 2010):
 - “I have no reason to think anything else except that she would be a very strong supporter of privacy rights because everyone she worked for held that view.”
 - “Sen. Sherrod Brown (D-Ohio), a liberal who does not sit on the committee, said he’s been reassured ‘by people I trust’ that she won’t move the court to the right.”
- Ilya Somin at [Forbes](#) (May 11, 2010):
 - “Kagan has prominent critics on the left who believe she is almost a closet conservative who would tilt the law significantly to the right. I highly doubt that is the case. Kagan has a long record of liberal views and involvement with liberal causes. There aren’t any noteworthy conservative or libertarian legal scholars or activists who believe that Kagan is somehow one of them, or even believe that she is a centrist. As conservative Harvard Law professor Charles Fried puts it, Kagan’s heart ‘beats on the left.’”
- James Doty at [Salon](#) (May 10, 2010) says that Kagan “would fit comfortably on the left-hand side of the judicial spectrum.”
 - “There are, for example, indications that Kagan would join Anthony Kennedy and the court’s left-leaning members in stringently reviewing the president’s terrorism-related actions. In 2005, for example, she and three other law school deans (including Harold Koh) sent a sweeping letter to the Senate Judiciary Committee repeatedly and forcefully denouncing unreviewable executive power.
Kagan’s professional biography reveals that she has spent the last several decades working closely with some of the country’s best known left and center-left figures. After graduating from Princeton, where she wrote an article hoping that a ‘more leftist left’ would emerge in American politics, Kagan enrolled at Harvard Law School, where she served as a research assistant for the famed liberal law professor Larry Tribe. After her

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graduation from Harvard, she clerked first for Abner Mikva, a legendary figure of the American political and judicial left (and an Obama advisor). She next clerked for Thurgood Marshall, another liberal icon, whom Kagan has called her legal hero and the greatest lawyer of the 20th Century. Following her clerkship with Marshall, Kagan worked on Michael Dukakis' presidential campaign, helped shepherd Ruth Bader Ginsburg's nomination through the Senate Judiciary Committee, and served two separate stints in the Clinton administration before assuming her current role as Obama's solicitor general. None of this speaks directly to Kagan's personal beliefs, of course. But it does suggest that **she feels most at home in the company of those who are ideologically left-of-center.**"

- John Yoo in the [Philadelphia Inquirer](#) (May 16, 2010)
 - "[H]er gay-rights stance shows her adopting the lazy conventional liberalism of the faculty lounge over the common sense of real people (allegedly prized by this administration) and innovative or inspired thinking - hence the thinness of her published scholarship."
 - "Take, for example, the claim that Kagan supports broad presidential powers. A closer reading of her 2001 article, "Presidential Administration," shows she supports a president's authority over the administrative agencies only because Congress hasn't prohibited him."
 - "In a 1995 book review, she claims that Clarence Thomas' 'substantive testimony' in his confirmation hearings was 'a national laughingstock.' The 'weakness of Justice Thomas' objective qualifications and the later charges of sexual harassment' deprived him of a solid confirmation (and rightly so, she suggests). Elsewhere, Kagan praises Justice Antonin Scalia for his brainpower, and she considers Justice Thurgood Marshall, the liberal black justice for whom she clerked, her hero. She adopts the lazy but standard liberal prejudice that conservative minorities are stupid, while liberal ones are heroic."
- Aaron Zelinsky at the [Huffington Post](#) (June 24, 2010)
 - "It is true that some of Barak's decisions and parts of his judicial philosophy appear odd to an American. This is unsurprising: American law and government have a different text, history, and structure than does Israel. Our decisions and laws appear, at times, equally odd to them. . . . Thus, Kagan wasn't saying that she would decide every U.S. issue the same way Barak would decide the same matter in Israel. Rather, she respected what he stood for and had accomplished, in particular, the furtherance of "democracy, human rights, the rule of law, and justice."

IV. News sources

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- A. CNN, [*Will she be a reliable liberal on the bench?*](#) (June 27, 2010)
- B. Businessweek, [*Kagan Demonstrates Political Approach in Clinton Policy Issues*](#) (June 19, 2010)
- C. Associated Press, [*Kagan unscathed after revelations from past*](#) (June 19, 2010)
- D. CBS News, [*Kagan Docs Show Support for Affirmative Action*](#) (June 4, 2010)
- E. CBS News, [*Documents Show Kagan's Liberal Opinion on Social Issues*](#) (Jun 3, 2010)
- F. New York Times, [*Kagan Nomination Leaves Longing on the Left*](#) (May 10, 2010)