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Justice Sotomayor hits the high court-what about empathy?

Abstract

In lieu of an abstract, below is the essay's first paragraph.

"The US Supreme Court return to work this week, Justice Sonia Sotomayor begins her first term, and the highly charged debate over "empathy" is, for the moment, dormant."

from the October 05, 2009 edition - <http://www.csmonitor.com/2009/1005/p09s01-coop.html>

Justice Sotomayor hits the high court – what about empathy?

The heated debate over the word is cool at the moment. But now is a great time to reconsider its value.



By Rick DeJesús-Rueff

Rochester, N.Y.

The US Supreme Court return to work this week, Justice Sonia Sotomayor begins her first term, and the highly charged debate over "empathy" is, for the moment, dormant.

But now – in this less heated environment – is a good time to reconsider the value of empathy as one qualification for nominees to the court.

President Obama cited empathy as a quality he sought in nominees, yet empathy suffered

criticism and derision from opponents of Justice Sotomayor. Listening to the critics, you might believe empathy renders a person incapable of rational and fair judgment.

"I'm afraid our system will only be further corrupted as a result of President Obama's views that, in tough cases, the critical ingredient for a judge is the 'depth and breadth of one's empathy,' as well as 'their broader vision of what America should be,' " claimed Sen. Jeff Sessions (R) of Alabama, a critic of Sotomayor and empathy injustices.

During her confirmation hearings, even Sotomayor discounted empathy as a desirable quality in a Supreme Court justice.

Think about this:

On the 50th anniversary of 1954 Brown v Board decision, a story by National Public Radio about this described a defining moment for Chief Justice Earl Warren in that case.

The justice was traveling with his African-American chauffeur to visit Civil War monuments in Virginia and stopped to spend the night at a hotel.

When the Chief Justice realized that while he slept in a nice hotel, his driver slept in the car because no hotel would accommodate African-Americans, he was able to understand the central issue of the Brown case in a personal way.

That was empathy at work.

This enabled him to understand how the law affected people in ways that violate the

fundamental principle of equal treatment under the law.

He expressed shame over his failure to recognize what segregation meant in personal terms, beyond the abstract legal arguments made in the court.

When he returned to Washington, he brought around his eight fellow justices for a unanimous decision to overturn *Plessy v Ferguson* (1896), which declared "separate but equal" constitutional in our nation's laws.

According to the American Heritage Dictionary of the English Language, this quality that is viewed with such concern is, "Identification with and understanding of another's situation, feelings, and motives." It enables us to go beyond the limits of our experience. In a society as diverse as ours, that is a valuable quality we should seek in those who serve on our courts.

Empathy can move us out of our narrow circles of self-interest; it can help us appreciate and understand others' perspectives and concerns. Weighing and balancing perspectives with empathy can go hand-in-hand with weighing and balancing evidence so that decisions are made equitably. That is a better recipe for justice than "blindness," which can cause us to miss glaring injustices embedded in our legal system.

It is wrong to equate empathy with the promotion of one group's interests with minimal regard for others, the definition of identity politics. Properly understood, empathy can be a bulwark against identity politics.

Sotomayor offered a fitting explanation of how empathy enhanced her judicial decisions:

"In every case where I have identified sympathy, I have articulated it and explained to the litigant why the law requires a different result." Our sympathies help us develop our empathy.

A justice with a well-developed sense of empathy can help litigants and fellow jurists understand why the court should decide one way rather than another by balancing basic legal principles with the perspectives, interests, and concerns of others.

Developing empathy is an excellent way to get beyond our limitations, whether we are "wise Latinas" or "wise white males" or wise persons of any other type. Empathy, as a natural complement to rational analysis, can help us develop a fuller and richer ability to form judgments that respect the facts and the diverse perspectives in any legal dispute.

Every Supreme Court case will not be as momentous as *Brown* or other cases involving human rights. But when such cases arrive (and they will), justices with a well-developed capacity for empathy will best serve the interests of justice and help our nation become a "more perfect union" in which the interests, perspectives, and concerns of all in our diverse society are brought into better balance. That is the wisdom that justices who possess empathy bring to the court.

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John Fisher College in New York. The opinions expressed here are his own.