

Q & A: Mark Silk

Michael Sean Winters | Jul. 14, 2010 | Distinctly Catholic

This week we are asking about the nomination of Elena Kagan. Having already heard from Ben Wittes of the Brookings Institution and Rick Garnett from Notre Dame Law School, today we hear from Mark Silk, Professor at Trinity College in Hartford, Connecticut and editor of the wonderful blog [Spiritual Politics](#) [1].

The question: What is the best reason to vote to confirm, or to vote not to confirm, Elena Kagan?

Mark Silk:

In a world where the Supreme Court was not the central front in the culture wars, it would be enough to say that the best reason to vote to confirm Elena Kagan is that she's eminently qualified—a fine legal mind, a star in academic legal circles, and an experienced Washington hand at dealing with the interplay of law, policy, and politics as these relate to Supreme Court decision making. Never been a judge? There have been justices in the past who never warmed a bench. Prepared to represent her employer's point of view, be it Thurgood Marshall or Bill Clinton or Harvard University? What else do we expect of lawyers? In that hypothetical world, there would be no need for better reasons to vote for her.

Meanwhile, in the actual world we live in, most senators are looking not for reasons, but just for rationales to vote the way they knew they were going to vote before the president sent up a name. Still, I'll go along and give my own best reason to vote for Elena Kagan. It's that, in addition to her more manifest qualifications, she appears to be one of those rare individuals with the intellectual creativity and personal charm to get people to come to agreement. On today's Supreme Court, that is as desirable an attribute as one could wish for—particularly in a justice who, let's say it, is going to be lining up most of the time with the Court's Ginsburg-Breyer-Sotomayor wing.

The area of constitutional jurisprudence I know something about—the one that relates to the First Amendment's religion clauses—has become worse than embarrassing. The Establishment clause is thoroughly confused by lack of consensus over which legal standard to apply and who has standing to bring cases. The Free Exercise clause lies in a shadow land created by Justice Scalia in the *Smith* case, thanks to which the free exercise of religion can be prohibited by any law that applies neutrally to everyone. As the confirmation hearings showed, Kagan knows her religion stuff, and seems prepared to think about it dispassionately. So far as I can see, she stands a better chance of putting the Court back on track in this area than any of the eight current justices—and that's reason enough for Republicans as well as Democrats to vote for her.

Tomorrow's Interviewee: Washington Post columnist E. J. Dionne

Source URL (retrieved on 01/31/2015 - 01:32): <http://ncronline.org/blogs/distinctly-catholic/q-mark-silk>

Links:

[1] <http://www.spiritual-politics.org/>