

Supreme Court likely to have no Protestants: A historic turning point

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If Solicitor General Elena Kagan, preparing for confirmation hearings to make her the newest member of the U.S. Supreme Court, is installed, it would change the religious makeup of the nation's highest court. But does it really matter that the bench would include six Catholics and, with her confirmation, three Jews and no Protestants?

It's a historic turning point for a court once comprised of Protestant elites to have no Protestants following the retirement of Justice John Paul Stevens. But the shift may say more about how the country—rather than the court—has changed.

"I think that this means that this is an extraordinarily tolerant country religiously, and I think we should stop for a moment and appreciate that," said Boston University professor Stephen Prothero. "It wasn't long ago that Protestants were burning down Catholic monasteries, and it wasn't long ago that the Holocaust happened."

As times changed, presidents used the nomination process to determine who should fill a "Catholic seat" or a "Jewish seat" or even a "woman's seat" on the court. Now, even those limitations are archaic, Prothero said. "The glass ceilings are gradually getting shattered."

If Kagan is confirmed as expected, she will join fellow Jews Ruth Bader Ginsburg and Stephen Breyer on the court. Chief Justice John Roberts and Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas, Samuel Alito and Sonia Sotomayor are all Catholics.

Religious affiliation has become, in recent weeks, the newest wrinkle in the long-running Washington parlor game of sketching the profile of top-level nominees that often starts with race, ethnicity, gender and ideology.

The Constitution specifically forbids a "religious test" for government office, and that's the way it should stay, said Barry Lynn, executive director of Americans

United for Separation of Church and State. “Religious affiliation,” he said, “is immaterial.”

First Amendment Center scholar Charles Haynes said Kagan’s nomination —and the rather ho-hum consideration of the court’s religious makeup—is an indication of the country’s maturity. “I think we have grown up,” he said. “And I think we now realize that first, we are a very diverse country and, second, that there are core principles that we need to look to when selecting a justice, and religious affiliation has really little relevance.”

The loss of a “Protestant seat” on the Supreme Court shows how traditional religious labels no longer apply, Haynes said. For example, religious conservatives—from evangelicals to Roman Catholics to Orthodox Jews—are more likely to forge alliances based on ideology rather than church attendance. “They’re less concerned now about the religious affiliation and more concerned about those social and political values,” he said.

Even so, the dearth of Protestants on the court has not gone unnoticed. Author and scholar Diana Butler Bass, who has written about the importance of mainline Protestants in the country’s history and culture, said the shift on the court is one more indicator of America’s statistical slide from a majority Protestant country. According to the Pew Forum on Religion & Public Life, the percentage of self-identified Protestants in the U.S. is a bare majority of 51 percent.

Bass said there is a “Protestant empathy” for individual conscience, the power of symbols and the separation of church and state. “It doesn’t mean that Jews and Catholics can’t interpret these things,” she said. “It just means that they’re going to interpret them rather differently than a Protestant.” Bass said the change should be marked—but with sadness, not anger.

Still others said it was perhaps too much to expect a Protestant judge—of evangelical, mainline or African-American persuasion— to fully represent the diverse range of American Protestant churches.

“It’s difficult to think of a sort of monolithic Protestant worldview and to think that any one justice from any one denomination could be representative of Protestantism in America,” said Barbra Barnett, a lawyer and adjunct professor in the religion department of Elmhurst College in Illinois. *-Religion News Service*