

Confirmed: Sonia Sotomayor and the Limits of Latino Political Incorporation

FRANCES NEGRÓN-MUNTANER

In 1987, the US Senate witnessed the longest and most contentious Supreme Court confirmation hearings in recent memory: that of federal appellate judge Robert Bork. After two weeks of arduous debate, the Senate committee voted 9 to 5 against recommending Bork for arguably saying too much about his judicial views, which some deemed so extremely conservative as to be politically dangerous. The effects of Bork's rejection, however, changed more than the candidate's future. Not only did the outcome add a new verb to the English language—"to be borked," which means to "obstruct (someone, esp. a candidate for public office) through systematic defamation or vilification—it also changed the process itself. For future associate justice Elena Kagan, the post-Bork hearings of Supreme Court nominees became practically worthless as the procedure shifted from one that focused on the candidates' "constitutional views and commitments" to one in which they did their best to avoid such questions.¹

Twenty-three years later, it is undeniable that Bork's ghost still haunts all parties. Presidents exercise extreme caution in selecting nominees, senators push only so hard, and a nominee's performance is often favorably gauged according to how many questions he or she dodged. Yet, the 2009 confirmation hearings of Sonia Sotomayor again changed the nature of the process as new political fault lines reached the nation's highest court. This time, pre-Bork style met Obama-age realities.

Unconfirmable Subjects

At first, the difference was not self-evident: Like all of her immediate predecessors, Sotomayor attempted to elude addressing specific legal issues and other compromising questions. But while post-Bork Senate committees have tended to allow nominees to keep their intellectual privacy, Sotomayor's insisted that she

explicitly spell out her judicial philosophy. Significantly, these inquiries were only marginally aimed at understanding the nominee's views regarding the role of the courts or the practice of judging. Instead, what one journalist called a "barrage" of questioning mainly served to test whether the candidate, a Latina whose ethnic identification was at the center of her discourse of self, constituted a confirmable subject for the Supreme Court.² In other words, the Sotomayor hearings were primarily concerned with the questions of how and under what conditions Latino subjects can be safely included in the nation's governing institutions.

As a result, Sotomayor's confirmation process clearly revealed the specific ways in which a Supreme Court nominee must be confirmable in excess of juridical and professional qualifications. Fittingly, in English, the word "confirmed" has various meanings, at least three of which are implied in the judicial confirmation process.³ While in the context of the US Supreme Court, the word "confirmed" is usually understood in the sense of "support[ing] a person for a position," Justices are also confirmed in at least two other senses. The first is "having received the rite of confirmation," which has religious roots as a sacrament admitting a baptized person to full participation in the Church and finds a secular analogy in state rituals of citizenship. The second is "making something valid by formally ratifying or confirming it." That is, through the ritual of confirmation, a social institution, such as the Senate, certifies that the candidate can be legitimately admitted into the High Court.

The fact that only some are judged as confirmable in these last two senses can be illustrated by taking stock of those whom the Senate has supported over the two hundred and twenty-one year history of the Supreme Court. During this period, only five people who are not white, male and presumably heterosexual have been confirmed to the court, and all of them in the last four decades. Until Sotomayor's nomination, no person identified as Latino in the contemporary sense of the term had even been considered to become a Supreme Court justice. Given the substantial presence of Mexicans, Cubans and Puerto Ricans in the US since the late nineteenth century, one could say that the main reason for this absence is that these candidates were fundamentally "unconfirmable." Cast as racially inferior, culturally threatening and/or politically irrelevant, Latinos had not been regarded as an integral part of the nation. And even when tenuously included as a foreign element, Latinos still lacked the social capital to enter sacred ground as equals.

In this sense, while the majority of political supporters emphasized Sotomayor's individual and professional qualifications as the crucial factors that made her confirmable, what ultimately became confirmed through her appointment was the increasing, if uncomfortable, weight of Latino identity as a relevant category of social difference in contemporary American politics. This process of confirmation, which began nearly two hundred years ago with US expansion to the American southwest and the Caribbean, and greatly accelerated in the post-World War II period, finally entered the political mainstream in 2000, when the US Census proclaimed that Latinos were now the nation's largest minority.

By 2009, when President-elect Barack Obama faced the question of making cabinet and Supreme Court appointments, entirely disregarding Latinos had become a political impossibility. Not only had Latinos become 16% of the US population, they also constituted over 50% of those living in the most settled cities of Florida, Texas, and California, all swing states in national elections. Moreover, even though media attention to Latino demographic growth often focuses on the number of illegal immigrants, the vast majority of US Latinos are citizens or legal residents. In addition, Latinos were an important part of Obama's constituency as nearly 70% of Latino voters supported him. Within this context, the convergence of growing numbers and perceived voting power as an ethnoracial bloc consolidated "Latinoness" as a category through which political actors demanded recognition, and the state increasingly was inclined to grant it. Or in the words of Ramona Romero, president of the National Hispanic Bar Association, "the Supreme Court should reflect our country, including its 47 million Hispanics."⁴

Significantly, this claim by racialized ethnic groups as well as its acknowledgment by the state is a relatively new phenomenon when it comes to the Supreme Court. Before the multiple civil rights movements of the 1960s and 1970s, religion and geographic location were considered more important factors of inclusion than gender, race or ethnicity. In this regard, Sotomayor's confirmation is part of an on-going struggle over what social difference matters in the US body politic, what groups can properly embody it, and under what circumstances. As journalist Adam Liptak accurately noted, "society seems to demand that the court carry a certain demographic mix. It is hard to imagine the court without a black justice, for instance, and it may well turn out that Judge Sonia Sotomayor is sitting in a new 'Hispanic seat.'"⁵

At the same time, not just any Hispanic would do. For nearly two decades, many believed that José Cabranes, a Puerto Rico-born judge of middle-class origins who sits on the United States Court of Appeals for the Second Circuit, would one day occupy the first Hispanic seat. But he seemed to have been passed over twice. According to former Bill Clinton political adviser George Stephanopoulos, in 1993, President Clinton considered Cabranes for the Supreme Court seat that ultimately went to Ruth Bader Ginsburg.⁶ Newspaper accounts also reported that Cabranes was considered again in 1994 for the vacancy created by the retirement of Justice Harry Blackmun, which was filled by Stephen Breyer. Ironically, several Washington observers claim that it was high level Latino Democrats who were responsible for nixing Cabranes's nomination. They considered that he was "not enough of an activist, too assimilationist and too conservative."⁷

It may well be that Cabranes was the wrong Hispanic at the wrong time. Yet given how not a few advocates eventually came to defend Sotomayor by making her sound much like Cabranes, it begs the question of what made Sotomayor's successful nomination possible. Arguably, in tandem with more favorable political and historical circumstances, Sotomayor offered a greater assortment of elements to construct a

confirmable story in the aftermath of Obama's election: migrant origins, female gender identity, and an Ivy League education. These elements, however, had to be carefully arranged to render her specific colonial, gender, and ethnoracial difference manageable and assimilable to American national mythologies and liberal conceptions of law. This was achieved by an array of displacements, omissions and retractions to already circulated discursive elements by a wide range of political actors, including Sotomayor herself. By engaging with the process's discarded and expanded plotlines, I aim to consider Sotomayor's appointment not simply as the culmination of Latino achievement or collective empowerment but as a way to assess the current price of the ticket for Latino political incorporation.

Supreme Omissions

Most of the United States first heard of Sonia Sotomayor on August 9, 2009, when President Obama introduced her as his Supreme Court nominee at a packed White House press conference. Admittedly excited and to the point, Obama represented the Bronx-born Sotomayor as the living essence of "the American Dream" and of the idea that "with a good education here in America, all things are possible."⁸ This account appeared to resonate with a significant number of people, who reiterated and embellished the details through multiple media. A striking example of this citational process is the Blue Water comic book *Female Force: Sonia Sotomayor*, drawn by Puerto Rican artist César Feliciano.

In this 2010 comic book, Sotomayor is inked as a quasi superhero, her strength being her perseverance in overcoming obstacles to the American Dream.⁹ Sotomayor's tale involves being "born in a public hospital"—that is, being poor from birth—and having a father with only a third grade education and no command of English. Her mother Celina, however, had a secret weapon: *The Encyclopedia Britannica*, which made the young Sonia excel at Catholic school. Yet, despite the *Encyclopedia's* extraordinary power, petty criminals, gang members, and junkies surrounded the young Sonia and threatened to pull her into a life of crime. Thankfully, she managed to thrive through industriousness and a "tough-as-nails" personality to become the youngest judge for the Southern District of New York, the first Hispanic federal judge in New York State, and the first Puerto Rican judge to serve in US federal court.

Although this is a generally conservative discourse which, in the words of anthropologist Arlene Dávila, has "long been used to frame the trajectory by which minority groups can claim to belong to the nation, turning some groups into living proof of the ideals of individualism and meritocracy at the core of U.S. national ideology," Sotomayor did not reject its general outline.¹⁰ On the contrary, in most of her public statements, including those offered on the first day of her hearings on June 13, 2009, she presented herself by validating what her audience seemed to believe in and were open to embracing: that through hard work, family values, and a

top-notch education even the children of poor colonial migrants from Puerto Rico can make it in America.

The mythic structure of Sotomayor's tale is evident in that, whereas at first glance her remarks seemed to offer a number of intimate details, there was little that was unfamiliar about her narrative. Tellingly, if one were to change the references to Puerto Rico and the Bronx, the story could be that of any other upwardly mobile immigrant in the United States: "The progression of my life has been uniquely American. My parents left Puerto Rico during World War II. I grew up in modest circumstances in a Bronx housing project. My father, a factory worker with a third-grade education passed away when I was 9 years old. On her own, my mother raised my brother and me. She taught us that the key to success in America is a good education. And she set the example, studying alongside my brother and me at our kitchen table so she could become a registered nurse. We worked hard."¹¹

Showcasing Sotomayor as an inspiring example of the American Dream myth served both the nominee's and the President's objectives, as well as exemplified a shared discourse of upward mobility through elite education. It may also have been the most effective way to elicit the kind of sympathy necessary to confirm a Latina candidate. But although immediately expedient, the American Dream framework served to obscure both the relative exceptionality of Sotomayor's professional path as well as the particularity of her "Americanness."

For instance, in contrast to Sotomayor, the majority of Latinos (among other groups) face formidable challenges to accessing education. A number of recent studies indicate that a meager 54% of Latinos graduate from high school and only 16% of Latino high school graduates earn a bachelor's degree by age 29.¹² And unlike Sotomayor, most students who do go to college attend non-elite universities.

The immigrant iteration of the American Dream discourse also glosses over the fact that Sotomayor was born in New York and that even island-born Puerto Ricans are not immigrants since all born after 1917 are US citizens by birth and Puerto Rico is a US territory, not a separate nation-state. Even though Puerto Ricans often face many of the same forms of discrimination around cultural and linguistic difference as immigrants from Latin America do, and are frequently treated as both racialized and foreign others in the US, they are closer to what sociologist Ramón Grosfoguel calls "colonial migrants" than immigrants¹³—that is, a racialized and politically subordinated group that nonetheless shares a common legal citizenship with US nationals.

Equally important, the telling of Sotomayor's life through the American Dream myth makes it impossible to grasp the remarkable historical rupture of appointing not a generic Latina but a specifically Puerto Rican judge to the Supreme Court. For it was the Supreme Court that elaborated the idea that the US citizens of Puerto Rico would not have the same rights as citizens living in the states and that the US Constitution does not apply in full to Puerto Rico—or to the other so-called unincorporated territories of Guam, the Virgin Islands, and American Samoa. In

effect, it would not be an exaggeration to say that the Supreme Court is the US institution that has had the deepest impact in formally curbing Puerto Rican political agency.

Through a series of decisions known as the Insular Cases (1901–1922), the Supreme Court responded to the US acquisition of Puerto Rico and other territories after the Spanish-American War by devising the “unincorporated territory” doctrine. According to this legal reasoning, the territories “belong to the United States, but [are] not part of the United States,” and are to be considered “foreign . . . in the domestic sense.”¹⁴ Unlike the prior notion of territorial status through which the western territories of New Mexico, Arizona, and Utah, among others, were considered a part of the US and the constitution applied in full, this novel doctrine was never meant to fully integrate the new territories with the nation. Instead, it was intended to enact a compromise between American imperialists and anti-imperialists that offered a flexible way to rule the new territories as possessions in perpetuity. In the midst of a process of overseas expansion, this was a discursive and legal solution that reconciled the US elite’s desire to own densely populated territories while excluding their inhabitants—millions of people deemed “unfit” to become Americans due to their religion, culture, and/or race—from self-governance.

For over a century, this has been, and continues to be, the law of the land. As suggested by the concept of colonial migrant, the everyday implication of the doctrine is that the people who live in the territories are US citizens primarily for purposes of migration, limited federal expenditure and/or military service. Like Sotomayor’s mother herself when she first joined the army, US citizens of American territories can serve in the military but cannot vote for the commander-in-chief. They are also subject to US Congressional sovereignty but have no voting representation in Congress. They are, in sum, an ever-growing reminder of the United States’ history of denying citizenship rights on the basis of race and ethnicity.

This is why of all the positions that a Puerto Rican can have in the US government, becoming a judge of the Supreme Court is the most dramatic. In addition to the Supreme Court’s role as apologists for legal inequality, there is the reality that generations of Supreme Court justices, who believed that Puerto Ricans and other territorial subjects were inherently unsuitable to be Americans, could never have imagined that a Puerto Rican woman—the daughter of colonial migrants to New York—could ever be one of them. In fact, such an outcome was to be avoided at all costs. Fear of being ruled by “alien races” was one of the main reasons that drove the Supreme Court to curtail territorial political rights and devise a way to prevent the newly acquired territories from becoming states.

In this regard, and similar to how Obama’s election signaled for many the beginning of the end of a long historical era that started with the enslavement of millions and continued with the systematic discrimination against their descendants, Sotomayor’s appointment offered an exceptional opportunity to publicly examine the indefensible unincorporated territory doctrine and to engage with the specificity

of Puerto Rican colonial migration. This way of making sense of Sotomayor's narrative, however, was not part of the story.

Earlier in her career, nevertheless, Sotomayor had been explicitly concerned with the US–Puerto Rico colonial relationship. One of her most sustained engagements was an innovative law review article titled “Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights,” published in 1979 when she was still a law student. Here, Sotomayor argues that if Puerto Rico were to become a state, an outcome that she considered to be almost inevitable given the political limitations of territorial status and the lack of support for independence, the island should be able to negotiate rights to exploit its territorial waters as compensation for decades of being part of “the American experience with colonialism.”¹⁵ But although legal bloggers like Roger Alford called attention to this work during the confirmation process and misleadingly described Sotomayor's analysis as an “affirmative action plan for Puerto Rico,” no journalist included the specific inequalities produced by colonialism as part of their account, and no senator inquired about her thoughts concerning the territories.¹⁶ The word “colony,” and any analogous term, was rarely (if ever) used to describe Puerto Rico or its relationship to the United States in the mainstream press.

Instead, the colonial context of her family's trajectory—military service without voting rights, mass migration promoted by the need of cheap labor in the US, and racial discrimination as non-white colonial others in New York—emerges as naturalized and inconsequential to public debate. This suggests that under the current conditions of Latino identity formation, Puerto Rican political specificity is no longer confirmable. Regardless of whether people are born in the US, migrate from a US colonial territory, or immigrate from another nation-state, Latinos are generally imagined as foreign-born immigrants whose difference from Americans is essentially cultural and ethnoracial, not colonial or geopolitical. Likewise, the push by the state, capital, and a wide range of social actors to reproduce Latino identity as an economically profitable and politically productive category renders Puerto Rican colonial particularity a remnant from the past with little value in negotiating contemporary inclusion in the US as Latinos. As a result, in Sotomayor's narrative, “Puerto Rico” simply stands as one of various ways to signify *Latinidad*, migration and humble beginnings, not colonial subjection or political inequality.

Furthermore, the displacement of Puerto Rican identity facilitated the omission of another important part of the story: Sotomayor belonged to a generation that dramatically changed the terms of engagement for Puerto Ricans in New York by literally taking to the streets. Even though, as journalist Mike Melia wrote, a significant number of Puerto Ricans in New York saw “the rise of the self-described ‘Nuyorican’ as symbolic of islanders' achievements on the U.S. mainland,”¹⁷ only one article in *The New York Times* by David Gonzalez partly—and timidly—contextualized her professional accomplishments as a result of the 1970s period.¹⁸ So, while the opportunities that Sotomayor enjoyed were intimately related to the

varying success of Puerto Rican and other social movements at the time she attended college, her public account, generated by herself and others, locates them in the sole context of individual hard work.

Sotomayor then became a viable candidate only when her specificity as a daughter of colonial migrants, a “Nuyorican,” and a member of a generation that organized to challenge ethnoracial and political hierarchies became individualized within the mythical immigrant, American Dream narrative. As a teacher at Sotomayor’s high school alma mater, Cardinal Spellman, put it: “there is much joy in the way that Sotomayor improved herself [and the students] were excited because they felt that the message was that one can become anything that one wants to be.”¹⁹ While witnessing Sotomayor’s success can indeed have an impact on young people’s sense of possibility, the downplaying of Puerto Rican or Nuyorican identifications as sites of critique to colonial and geopolitical hierarchies, and the representation of Sotomayor as an exceptional Latina had the effect of ruling out more complex and challenging mappings of her trajectory.

Retractions: Wise Latina

Once confirmed by public discourse as a Latina (not a Puerto Rican) and the child of hard-working immigrants (not colonial migrants), Sotomayor seemed to be on her way. Yet, even before the confirmation hearings began, twenty-eight Republicans declared their opposition to Sotomayor’s appointment. The senators claimed that their objections were “a principled stand based on the belief that Sotomayor’s public speeches reveal a personal bias in her judicial philosophy.”²⁰ Significantly, the Republican senators decided to put up a fight even if it technically did not matter; Sotomayor had the votes of three quarters of the senate, including all Democrats and nine Republicans. What was at issue then was not the actual outcome of the confirmation process. Instead, what the opposing senators sought to show was that even the entry of exceptional Latinos into the highest court would neither disrupt nor upset the existing social order. Or in political scientist Melissa Harris-Lacewell’s terms, the idea was “to degrade and humiliate as a warning: if you attempt to assert your equality within a system still dominated by white male racial privilege you may get a place at the table, but not without public punishment.”²¹

To accomplish this normalizing operation, the senators took a page from Bork’s confirmation hearing to a different end and focused on a few observations made by Sotomayor concerning the constitutive tensions of liberal legal systems and re-branded them as her “judicial philosophy.” One of these was Sotomayor’s assertion that “personal experiences affect the facts that judges choose to see,” which prompted reprimands from several Republican senators.²² Most of the attention, however, went to a small part of Sotomayor’s 2001 Judge Mario G. Olmos Memorial Lecture presentation at the University of California-Berkeley School of Law: “Justice [Sandra Day] O’Connor has often been cited as saying that a wise old man

and wise old woman will reach the same conclusion in deciding cases . . . I am . . . not so sure that I agree with the statement. First . . . there can never be a universal definition of wise. Second, I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life."²³

Although Sotomayor's observations rested on the problematic notion that "experience" informs what one sees—rather than that discursive formations produce what we call experience—a debate of gargantuan proportions hinged on the possible meanings of the term "wise Latina." "Never had two words had such repercussions on a judicial nomination," wrote the editorial staff of *El Diario/La Prensa*.²⁴ Even more radically, some Republican and conservative commentators like Rush Limbaugh and former House speaker Newt Gingrich labeled Sotomayor's assertion as "racist" and demanded that the nominee withdraw.²⁵

In response, Sotomayor's supporters went on the offensive. Yet, underscoring their own uneasiness with Sotomayor's remarks, they did so by avoiding or disengaging from "wise Latina" and other related ideas. For instance, in the midst of the storm, White House press secretary Robert Gibbs flatly stated that: "her word choice in 2001 was poor."²⁶ To distance Sotomayor as much as possible from her comments, Democratic senator Charles Schumer went considerably further: "Judge Sotomayor puts rule of law above everything else. . . . her record shows that she is in the mainstream. . . . She has agreed with your Republican colleagues 95 percent of the time; She has ruled for the government in 83 percent of immigration cases; She has ruled for the government in 92 percent of criminal cases; She has denied race claims in 83 percent of cases; She has split evenly in a variety of employment cases."²⁷ Remarkably, Schumer argued that Sotomayor was a good (Democratic) nominee precisely because she was actually a conservative.

Lost in translation was that Sotomayor did not say that a Latina would make a better decision than a white male; she said that a "wise Latina" would. In other words, a racialized woman who, as Sotomayor explicitly wrote, has taken the "time and effort" to understand that Latinas are socially re-produced differently than white men, and who has employed this knowledge to critically engage with the world.²⁸ Unlike those who portrayed her position as purely allowing experience to dictate judgment or suggesting that one ethnic group is superior to another, an examination of all of Sotomayor's writings on the matter reveals not an investment in identity politics per se but an ongoing concern with the contradictions of being a judge within liberal legal regimes—a particular subject who must uphold a presumably universal law. Moreover, it calls attention to the desirability of working through rather than ignoring this tension when applying the law. Or in Sotomayor's words: "We are a nation that takes pride in our ethnic diversity, recognizing its importance in shaping our society and in adding richness to its existence. Yet, we simultaneously insist that we can and must function and live in a race and color-blind way that ignores these very differences that in other contexts we laud."²⁹

In arguing along these lines, however, Sotomayor was not alone. Former Justice Sandra O'Connor famously wrote in 1994 that, "to say that gender makes no difference as a matter of law is not to say that gender makes no difference as a matter of fact."³⁰ In addition, the tensions between subject formation and legal discourse in relation to race have long been a focus of Supreme Court opinions and dissents. The "scandal" of Sotomayor's views then had less to do with thematic or ideological novelty than the fact that these were at the heart of a confirmation battle that concentrated not only on the racialized and gendered nature of American national identity but also on the presumed universality of law. What's more, this critique had been articulated by a nominee who self-identified as part of a group that is currently perceived by some as a rising political and demographic threat to white male hegemony. As journalist Randy Shaw observed, "this [wise Latina] statement . . . raised the troubling notion—for the white-dominated media world—that Latinos may bring a set of experiences and perspectives as otherwise lacking."³¹ Ultimately, it was the possibility that Latino "otherwiseness" could successfully challenge or recast the nation's core myths and arrangements of power that generated such discursive fury.

Judiciously, after attempting to "explain" her position, Sotomayor gave up. On the second day of her hearings, she repudiated the idea "that any ethnic, racial, or gender group has an advantage in sound judging" and accepted that the wise Latina turn of phrase was a "rhetorical flourish that fell flat . . . [it] was bad."³² Overtly rejecting the "empathy standard" made earlier by President Obama when he nominated her, Sotomayor further stated that: "many senators have asked me about my judicial philosophy. Simple: fidelity to the law . . . I believe, that my record in two courts reflects my rigorous commitment to interpreting the Constitution according to its terms and Congress's intent, and hewing faithfully to precedents established by the Supreme Court and by my circuit court."³³ Not coincidentally, this was the same judicial philosophy espoused by Chief Justice John G. Roberts in his own hearing, underscoring that Sotomayor's confirmation—in all senses—depended on her acceptance of previously upheld knowledge by white (mostly) male judges.

Retracting her literal remarks, however, was only part of what Sotomayor had to do to become confirmable. Although most criticism explicitly centered on the "wise Latina" term and how it corrupted legal reasoning, others considered that Sotomayor's biggest threat to the nation was that she "would substitute her feelings for the law."³⁴ Indeed, the constant allusion to "feelings" getting in the way of rationality had a crucial supporting role in challenging Sotomayor's assertions. Even further, the hearings themselves appeared to be partly geared toward provoking an emotional overflow that would end up wrecking her nomination. As Senator Lindsey Graham prophesied to Sotomayor, "Unless you have a complete meltdown, you're going to be confirmed."³⁵

Perhaps assuming that Sotomayor's ethnic and gender identifications made her an easy candidate for a nervous breakdown, several senators did their best to

bring about such an outcome. This approach to her questioning prompted more than one commentator to note that among Sotomayor's achievements during the confirmation process was that she had stayed a "model of coolness and restraint."³⁶ In the words of Harris-Lacewell: "She managed to laugh off sexist jokes. She didn't flinch when she was repeatedly interrupted. The rules of the game were set: the Senators could mischaracterize her record, accuse her of racial bias, and mispronounce her name but she could not respond in kind. She could not be hurt or offended or angry. She had to remain a pillar of rationality and neutrality and control."³⁷

In this regard, Sotomayor did not only have to retract the "wise Latina" notion, she had to properly "affect" the retraction as well. If earlier in the process Sotomayor had argued that her "remarks about prejudices and points of view show only that judges are human—not robots," at this point, she gave a masterful robotic demonstration of how one becomes an automaton. In a "deep" and monotone voice that aimed to strip her of any emotion as well as refute those who also portrayed her as "temperamental," "overly aggressive," and a "bully," she surrendered to the sole confirmable position for a Latina to be on the court; being subject to the law.³⁸

To assure confirmation Sotomayor had to morph into a universal subject of reason and unconditionally accept the notion of liberal equality, one that, as political theorist Wendy Brown has summed, "guarantees . . . that the state regards us all as equally abstracted from the social powers constituting our existence, equally decontextualized from the unequal conditions of our existence."³⁹ Within this context, what could finally not be confirmed was the way that Sotomayor called attention to the paradox of legal rights in contemporary liberal societies; a paradox that cannot be seriously acknowledged without political consequences.

In the end, the irony is that Sotomayor was allowed to fill the "Hispanic" seat only if she swore not to be a Hispanic judge. While many Latinos like New York assemblyman Adriano Espaillat still understood her confirmation as "a Jackie Robinson moment," that is, a momentous turning point of Latino inclusion that also transformed society at large, the process aimed to convey that the entry of Latinos into the Supreme Court should not be understood as a game-changer in any substantial way.⁴⁰ For only upon admitting that being a Latina does not make her any different from a white Republican male was Sonia Sotomayor confirmed as Supreme Court Justice on August 6, 2009.

Reconstitutions

The narrative arc that begins with Sotomayor's retraction as a "wise Latina" to her admission as a universal subject of reason is perhaps synthesized in the presidential commission note that described Sotomayor as possessing "wisdom, uprightness and learning"—leaving the Latina out. But despite the fact that even Sotomayor came to distance herself from her own words, countless others attached themselves to the

denigrated concept, seeing in the idea that a wise Latina could come to a better conclusion than a white man, a powerful notion that unsettled representations of Latinas and other groups in public culture.

Fittingly, these interventions were often produced and disseminated by assorted media outlets. Although most viewed Sotomayor's confirmation hearings strictly as a political appointment to the nation's highest court of law, the process leading to her confirmation was also a notable media event. The hearings were televised in their entirety by three major television networks (MSNBC, CNN, and Fox News), and Sotomayor's new found status as a celebrity was partly fashioned by continuously comparing her not to other lawyers or judges but to entertainers like Jennifer Lopez. As one New York-based Puerto Rican businessman put it, Sotomayor was "the real Jenny from the block."⁴¹

The comparison to Lopez further underscores to what extent Sotomayor's visibility could only be imagined through familiar stereotypes. As it has been well established, since at least the birth of cinema in the late 1880s, Latin American women and US Latinas have consistently been represented almost exclusively through two binaries—as labor/maids, spectacles/sexy mammas—neither set characterized by their intelligence. Conservative blogger Debbie Schlusel was perhaps the most direct in depicting Sotomayor in stereotypical ways: "Our President chose this chick because like, J-Lo, she's a Puerto Ricana from South Bronx who went from rags to semi-riches . . . [and] neither J-Lo or So-So have set any remarkable legal precedent in their lives."⁴²

At the same time, many understood the "wise Latina" utterance to be the unconfirmable excess of a previously unrepresentable subjectivity. To the extent that the only public figure to precede Sotomayor as a widely recognizable "wise Latina" is a six-year-old cartoon character called Dora the Explorer, the controversy brought about by Sotomayor's comments created a new site of identification for adult Latinas: a woman who despite being racialized is valued for her intellect and not her available sexuality or cheap labor power. In the words of attorney Margarita Rosa, Sotomayor's confirmation allowed Latinas to be seen under "a light rarely shined on us, as an intellectual."⁴³

Claiming the dismissed term and putting what *The New York Times* called "the Sotomayor Mambo"⁴⁴ in motion, Latinas, particularly middle-class and/or middle-aged women, spontaneously organized themselves to mass-produce T-shirts, mugs, and bumper stickers featuring the label. In Los Angeles, friends considered creating the "The Wise Latina Society," an organization that would "engage in intellectual discussion on politics, health and other issues."⁴⁵ Bloggers created sites in honor of the term and new ventures were born, including Wise Latina Publishing and Wise Latina Entertainment. This collective enthusiasm was summed up by *New York Daily News* columnist Dolores Prida in the following terms, "we thank her for the term 'Wise Latina' . . . for the first time, Latinas who, for close to a century, have been stereotyped . . . have a label they want to hold onto."⁴⁶

As suggested above, the “wise Latina” phrase specifically resonated with many women (and men) for its allusion to intelligence. Since Latinos tend to be less educated than whites and their cultural knowledge often references disregarded or disdained traditions, they are often represented and treated as ignorant. Even if considered an oxymoron before the Sotomayor moment, Latina “wiseness” had a far-reaching history of deployment by Latinos to combat stereotypes and validate the knowledge produced by Latino intellectual traditions and im/migrant cultures. A classic example is Nuyorican poet Pedro Pietri’s short text “Tata.” Although Pietri does not explicitly use the word “wise” and offers a quite different notion of wisdom than that of the confirmed Justice, he is nevertheless operating on the same discursive terrain as Sotomayor:

Mi abuela
has been
in this dept store
called america
for the past twenty-five years
She is eighty-five years old
and does not speak
a word of English

That is intelligence.⁴⁷

In strands of Mexican American literary production, the figure of the curandera/healer is also explicitly claimed as a wise woman, the repository of a people’s knowledge of survival and caring. Ambiguously situated between intuition and rationality, the curandera is often imagined as having the ability to fight evil, take revenge, heal spiritual trauma, and practice a form of alchemy that can transform herbs into medicine and poisoned identities into healthy selves. In these various ways, wiseness is closely associated with the cultural and social survival of Latinos against great odds.

At the same time, one of the most historically significant aspects of this debate was that Latinos were not the only ones to find in the term “wise Latina” a resource to critique dominant hierarchies and discourses about ethnicity, race and gender. In scores of political cartoons, “wise Latina” was drawn upon to underline what some described as the “spectacle” of senators with “racist pasts” like Jeff Sessions from Alabama lecturing Sotomayor on race relations as well as the “cluelessness” of the senators; their unexamined acting out of their racial and gender privilege. A particularly clear example was a syndicated cartoon by Mike Thompson in which two senators confer about how unacceptable it would be to “confirm nominees so driven by empathy with their own kind.”⁴⁸ Thompson heightens the irony of such a position by visualizing the fact that all senate

committee members were white middle-aged men deliberating in a room decorated with portraits of other middle-aged white men. In a second cartoon by R.J. Matson, seven senators sing a *West Side Story*-inspired tune—“When you’re a white you’re a white all the way from your first class birthright to your country club days”—while a disbelieving Sotomayor looks toward the imagined reader.⁴⁹

Notably, the analytical uses of “wise Latina” were not restricted to white/Latino conversations or debates. Some African-American bloggers like Francis L. Holland, for instance, embraced “wise Latina” to highlight the court’s long history of exclusion of all racialized groups, suggesting that Latinos can also signify this history. As Holland wrote in a formal petition:

To: Members of the US Senate

I strongly support and urge immediate Senate confirmation of President Barack Obama’s nominee for the US Supreme Court: “wise Latina woman”, Judge Sonia Sotomayor. . . . The US Supreme Court cannot function wisely, justly, and fairly without the full participation of wise women and wise members of the nation’s minority groups, including the nation’s largest minority—Latinos.⁵⁰

In this and other ways, Sotomayor’s hearings presented an unprecedented opportunity to critique the nation’s racial and gendered hierarchies.

Yet, the politics of Sotomayor’s success are more complex than has generally been acknowledged. As noted earlier, falling for the “American Dream” made it practically impossible to examine specific colonial histories or engage with the fact that the majority of Latinos face formidable obstacles to upward mobility through education. Equally unsettling, many saw in Sotomayor’s success proof that there are no remaining barriers to Latino political participation or access to resources, a conceptualization that at times resulted in what Wendy Brown calls a “loss of a language to describe the character of domination, violation, or exploitation”⁵¹ of Latinos in the US.

The process also showcased how Latinos continue to be produced through stereotypes and contained by normative frameworks, perhaps most strongly at the very moment when Latinos appear to “make it.” A telling example was when Bronx Borough President Rubén Díaz, Jr., introduced Judge Sotomayor during the ceremony renaming the Bronxdale Houses in her honor as (again) the “new ‘JLo’ . . . the justice for law and order.”⁵² In this context, while it is now possible for Latinos to be imagined on the “right” side of the law, Latino public identity is still tied to what side of the law you are on. Furthermore, specifically Latina subjectivity can solely be imagined in relation to sexuality. But whereas public discourse by and around Sotomayor did not succeed in incorporating a different understanding of law or blunt the force of racial hierarchies in American life, the debates it made possible and the

ways that Sotomayor has become a dynamic dissenter of business as usual on the court,⁵³ invites us to, as playwright Samuel Beckett once wrote, “fail again, fail better.” Or as the early Sotomayor would have it, think unlike, think otherwise.

Notes

The author is grateful to Professors Christina Burnett and Adela Ramos for their careful readings and excellent recommendations on earlier drafts. My thanks also go to editor Hsuan Hsu for his intellectual generosity and tremendous patience.

¹ Adam Liptak, “Kagan’s View of the Court Confirmation Process, Before She Was a Part of It,” *The New York Times*, May 12, 2010, A 16.

² Sonia Sotomayor, “Lecture: ‘A Latina Judge’s Voice,’” *The New York Times*, May 14, 2009, last accessed December 26, 2010, <http://www.nytimes.com/2009/05/15/us/politics/15judge.text.html?pagewanted=5>.

³ Princeton WordNet Project, last accessed December 26, 2010, <http://wordnetweb.princeton.edu/perl/webwn?s=confirm&sub=Search+WordNet&o2=&o0=1&o7=&o5=&o1=1&o6=&o4=&o3=&h=>.

⁴ My translation. Mario Szichman, *Sonia Sotomayor: Una sabia decisión* (New York: Vintage, 2010), 5.

⁵ Adam Liptak, “Stevens, The One And Only . . .,” *The New York Times*, April 11, 2010, 1, 5.

⁶ George Stephanopoulos, *All Too Human: A Political Education* (New York: Little, Brown and Company, 1999), 169.

⁷ Personal communication (anonymous), December 14, 2010.

⁸ The White House, “Remarks by the President in Nominating Judge Sonia Sotomayor to the United States Supreme Court,” May 26, 2009, last accessed December 26, 2010, http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-in-Nominating-Judge-Sonia-Sotomayor-to-the-United-States-Supreme-Court/.

⁹ Jeremy Nisen, “Artist Cesar Feliciano Honors Justice Sotomayor’s Legacy in Upcoming Comic Book,” *Hispanic Business*, January 18, 2010, last accessed December 26, 2010, http://63.149.249.152/news/2010/1/18/artist_cesar_feliciano_honors_justice_sotomayors.htm.

¹⁰ Arlene Dávila, *Latino Spin* (New York: NYU Press, 2008), 7.

¹¹ Sonia Sotomayor, “Opening Remarks to the Senate Judiciary Committee,” July 14, 2009, last accessed December 26, 2010, http://www.democracynow.org/2009/7/14/confirmation_hearings_begin_for_judge_sonia.

- ¹² Jacques Steinberg, “Barriers Found to College Degrees for Hispanics,” *The New York Times*, March 18, 2010, last accessed December 26, 2010, <http://www.nytimes.com/2010/03/18/education/18hispanic.html>.
- ¹³ Ramón Grosfoguel, “‘Cultural Racism’ and Colonial Caribbean Migrants in Core Zones of the Capitalist World-Economy,” *Ìrìnkèrindò: A Journal of African Migration*, last accessed December 26, 2010, http://www.africamigration.com/archive_02/r_grosfoguel.htm.
- ¹⁴ For further discussion on this debate, please see Christina Duffy Burnett and Burke Marshall, *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution* (Durham: Duke University Press, 2001).
- ¹⁵ Sonia Sotomayor, “Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights,” *Yale Law Review* 88, No. 825 (1978–1979): 825–49, 849.
- ¹⁶ Roger Alford, “Sonia Sotomayor’s Affirmative Action Plan for Puerto Rico,” *Opinio Juris*, accessed June 3, 2009, <http://opiniojuris.org/2009/06/03/sonia-sotomayor-affirmative-a>.
- ¹⁷ Mike Melia, “Sotomayor makes first Puerto Rico visit as justice,” *Puerto Rico Daily Sun*, December 16, 2009, last accessed December 26, 2010, <http://www.prdailysun.com/index.php?page=news.article&id=1260934090>.
- ¹⁸ David Gonzalez, “For Puerto Ricans, Sotomayor’s Success Stirs Pride,” *The New York Times*, August 6, 2009, last accessed December 26, 2010, <http://www.nytimes.com/2009/08/07/nyregion/07puerto.html>.
- ¹⁹ My translation. *Una sabia decisión: La biografía de la primera latina en la corte suprema* (New York: Vintage, 2010): 18–20, 19.
- ²⁰ Paul Kane and Perry Bacon, Jr., “GOP Senators Seem Unconcerned About Hispanic Backlash: 28 Say They Will Vote Against First Latina Supreme Court Nominee,” *The Washington Post*, August 5, 2009, last accessed December 26, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2009/08/04/AR2009098401691_pf.html.
- ²¹ Melissa Harris-Lacewell, “Sotomayor and the Politics of Public Humiliation,” *The Nation*, July 17, 2009, last accessed December 26, 2010, <http://www.thenation.com/blog/sotomayor-and-politics-public-humiliation>.
- ²² Sheryl Gay Stolberg, “Obama Chooses Hispanic Judge for Supreme Court Seat,” *The New York Times*, May 27, 2009, 1, A18.
- ²³ Sonia Sotomayor, “Lecture: ‘A Latina Judge’s Voice,’” *The New York Times*, May 14, 2009, last accessed December 26, 2010, <http://www.nytimes.com/2009/05/15/us/politics/15judge.text.html?pagewanted=5>.
- ²⁴ *Sonia Sotomayor: Una sabia decisión*, 5.

- ²⁵ Sheryl Gay Stolberg, "Two Sides Plotting Confirmation Strategies," *The New York Times*, May 28, 2009, A18.
- ²⁶ "White House: Sotomayor Used 'Poor' Choice of Words," *The New York Times*, May 29, 2009, last accessed December 23, 2010, <http://thecaucus.blogs.nytimes.com/2009/05/29/white-house-judge-sotomayor-acknowledges-poor-word-choice/>.
- ²⁷ Charles Schumer, "Opening Statement by U.S. Senator Charles E. Schumer, Senate Judiciary Committee Confirmation Hearing for Judge Sonia Sotomayor," July 13, 2009, last accessed December 26, 2010, http://schumer.senate.gov/new_website/record.cfm?id=315721.
- ²⁸ Sotomayor, http://www.nytimes.com/2009/05/15/us/politics/15judge.text.html?_r=1&pagewanted=2.
- ²⁹ Sotomayor, http://www.nytimes.com/2009/05/15/us/politics/15judge.text.html?_r=1&pagewanted=2.
- ³⁰ "U.S. Supreme Court, J.E.B., PETITIONER v. ALABAMA EX REL. T.B. CERTIORARI TO THE COURT OF CIVIL APPEALS OF ALABAMA No. 92-1239" (Argued November 2, 1993, Decided April 19, 1994), last accessed December 26, 2010, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/000/u10411.html>.
- ³¹ Randy Shaw, "Hispanic Heritage Month: Watching Latino Politics Disappear," *Beyond Chron: The Voice of the Rest*, September 28, 2009, last accessed December 26, 2010, <http://www.beyondchron.org/news/index.php?itemid=7391>.
- ³² Robert Barnes and Paul Kane, "Sotomayor repudiates 'wise Latina' comment: Cool amid barrage by GOP senators," *The Washington Post*, July 15, 2009, last accessed December 26, 2010, <http://www.com/news/nation/washington/articles/2009/0>.
- ³³ Sonia Sotomayor, "Opening Remarks to the Senate Judiciary Committee," July 14, 2009, last accessed, December 26, 2010, http://www.democracynow.org/2009/7/14/confirmation_hearings_begin_for_judge_sonia.
- ³⁴ Maurice Ferré, "Judge Sonia Sotomayor and Judicial Construction," June 4, 2009, (unpublished manuscript).
- ³⁵ Sam Stein, "Graham to Sotomayor: Absent 'Complete Meltdown, You'll be Confirmed,'" *The Huffington Post*, July 13, 2009, last accessed December 26, 2010, http://www.huffingtonpost.com/2009/07/13/graham-to-sotomayor-absen_n_230665.html.

³⁶ Dolores Prida, "Puerto Rican Hysteria' is back!," *New York Daily News*, June 9, 2009, last accessed, December 26, 2010 http://www.nydailynews.com/latino/2009/06/10/2009-06-10_puerto_rican_hysteria_is_back.html.

³⁷ Harris-Lacewell, "Sotomayor and the Politics of Public Humiliation," <http://www.thenation.com/blog/sotomayor-and-politics-public-humiliation>.

³⁸ Nina Totenberg, "Is Sonia Sotomayor Mean?" National Public Radio, August 29, 2009, last accessed December 26, 2010, <http://www.npr.org/templates/story/story.php?storyId=105343155>.

³⁹ Wendy Brown, *State of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995), 110.

⁴⁰ Damien Cave, "A Puff of Pride, and Some Concerns, Among Hispanics," *The New York Times*, May 27, 2010: A16.

⁴¹ David Gonzalez, "For Puerto Ricans, Sotomayor's Success Stirs Pride," *The New York Times*, August 6, 2009, last accessed, December 26, 2010, <http://www.nytimes.com/2009/08/07/nyregion/07puerto.html>.

⁴² Debbie Schlusel, "'So-So': Sonia from the Block a/k/a Justice J-Lo," May 29, 2009, last accessed December 22, 2010, <http://mediamatters.org/blog/200906010007>.

⁴³ Margarita Rosa, "Remarks offered at El Diario/La Prensa's Annual Mujeres Destacadas Award Ceremony," New York, April 19, 2010.

⁴⁴ Mireya Navarro, "Claiming a Loaded Phrase," *The New York Times*, August 9, 2009, 1, 8, 1.

⁴⁵ Navarro, 1, 8.

⁴⁶ Dolores Prida, "Wise Latinas 4Ever," *New York Daily News*, August 5, 2009, last accessed December 26, 2010, <http://www.nydailynews.com/fdcp?1271026695630>.

⁴⁷ Pedro Pietri, *Puerto Rican Obituary* (New York: Monthly Review Press), 1973.

⁴⁸ Mike Thompson, *Detroit Free Press*, 2009.

⁴⁹ R.J. Matson, "West Side Story," *New York Observer*, 2009, last accessed December 26, 2010, <http://www.dailykos.com/story/2009/7/20/753091/-The-Week-in-Editorial-CartoonsWhite-Men-Cant-Judge>.

⁵⁰ The Democratic Afrosphere, "Afrosphere Petition Says, 'Confirm Wise Latina Woman Judge Sonia Sotomayor Now,'" Friday, June 5, 2009, last accessed December 26, 2010, http://images.google.com/imgres?imgurl=http://i242.photobucket.com/albums/ff131/francislholland2/WiseLatinaWomanWidgetImage500-1.png&imgrefurl=http://democratic-afrosphere.blogspot.com/2009/06/afrosphere-petition-says-confirm-wise.html&usg=__wkAMTePoTz79LO2CRr3W5Vh7ick=&h=424&w=498&sz=228&hl=en&s

tart=13&um=1&itbs=1&tbnid=tQu8AfNy_fQGjM:&tbnh=111&tbnw=130&prev=/images%3Fq%3Dwise%2Blatina%26um%3D1%26hl%3Den%26sa%3DN%26tbs%3Disch:1.

⁵¹ Brown, *State of Injury: Power and Freedom in Late Modernity*, 126.

⁵² Grace Rauh, "Bronxdale Houses Renamed in Honor of Sotomayor," *New York 1*, June 4, 2010, last accessed December 26, 2010, http://www.ny1.com/content/top_stories/119803/bronxdale-houses-renamed-in-honor-of-sotomayor.

⁵³ Joan Biskupic, "Sotomayor protests court's refusal of appeals," *USA Today*, December 27, 2010, accessed December 27, 2010, <http://content.usatoday.com/dist/custom/gci/InsidePage.aspx?cId=thetimesherald&sParam=41988658.story>.