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The New Supreme Court: A Meritocracy of the East

By Denis Binder

Dr. James B. Conant, a young chemistry professor, was the surprise appointment in 1933 as Harvard's new president. He and Clark Kerr at University of California, Berkeley became the leading figures in transforming American higher education in the 20th century from social class-based elitism to merit-based education open to all classes of Americans.

Conant recognized that Harvard could not survive as a great university by relying upon its traditional source of students, the old meritocracy of male New England WASPS and prep schools. He marveled at the success of the great public universities in the Midwest and West. Both Harvard and Yale were fairly insular institutions at the time. He wanted to attract more students from public high schools, the Catholics from Boston and Jews from New York. He wanted the brightest professors and students for Harvard to be a world-class research university. He would build the new Harvard based on a meritocracy of the intelligent.

His initial steps were small in his 20-year tenure as Harvard's president; he was careful not to offend the Harvard establishment, including alumni, by being too open. Thus, the profiles of his early classes did not vary much from the past. He started by offering a small number of Harvard National Scholarships to applicants from outside the east.

But he needed a key to open the gates of Harvard to a new meritocracy, the new elite. His chosen instrument was the SAT. The Ivies went along, and then the SAT and the competing ACT received national acceptance. Grades would be a surrogate for achievement, but the standardized test would become the proxy for intelligence to open the gates of Harvard. Smart students with drive and achievement would become the new meritocracy, regardless of ethnicity, race, religion, or gender. Ironically, of course, the SAT has increasingly been attacked in recent years for closing the doors of academia, especially to underrepresented minorities.

The seeds of his Harvard policies blossomed after his presidency ended. The Ivies dropped their restrictive admissions practices and admitted women in the 1960s. Berkeley was ranked "the best balanced distinguished university in the country" in 1966 by the American Council on Education, but the Ivies with their new profiles and fundraising abilities soon soared past the public Ivies in prestige. The true Ivies graduate and professional schools admitted the most successful undergrads and they recruited star faculty from less prestigious private and public universities at salaries that could not be matched by their existing institutions.

The Ivies, along with their West Coast rival, Stanford, were back on top. Their primacy is reinforced by the subjective objective rating system of *U.S. News & World Report*. Most global rankings rate Harvard as the best university in the world.

The appointment of Solicitor General Elena Kagan to the Supreme Court marks the triumph of the new meritocracy. All nine of the justices attended Harvard or Yale Law School. (Justice Ruth Bader Ginsburg transferred from Harvard Law to Columbia.)

Not one of the justices attended a public university, either for undergrad or law school. The last three appointees, Samuel A. Alito Jr. and Sonia Sotomayor, along with Kagan, are graduates of Princeton. Chief Justice John G. Roberts Jr. graduated from Harvard and Harvard Law School. The two Justices from the West, Stephen G. Breyer and Anthony M. Kennedy, attended Stanford and then Harvard Law School. Justice Ginsburg was an undergrad at Cornell, Clarence Thomas at Holy Cross, and Antonin Scalia at Georgetown, after being rejected by Princeton.

This new Court represents a narrow elite of America - an elite that is unrepresentative of America. The Court has gone from nine Protestants to six Catholics and three Jews, but still represents the eastern elite, the new eastern establishment.

Four boroughs from New York City are on the Court, with one justice from New Jersey. Two justices hail from the West, Kennedy from Sacramento and Breyer from San Francisco, but Breyer quickly became a fixture at Harvard Law School, and Kennedy sojourns in Europe during the summer. Thomas is from rural Georgia, but his adult life was on the eastern beltway. Scalia and Kagan escaped from the east for awhile to teach at the University of Chicago, but both remained easterners.

None of the nine justices were politicians, and eight proved their credentials by serving on federal Courts of Appeals, with many having initially been vetted in the Justice Department and the Executive Office of the President. Only a few had substantial legal experience in the private sector. None have served in the military. They have experienced little of the kaleidoscope that is America.

By way of contrast, the fabled Warren Court represented the educational and geographic diversity of America. Chief Justice Earl Warren was a graduate of Berkeley and Boalt Hall (now Berkeley Law). He also served as Governor of California. The great civil libertarian, Hugo Black, a senator, attended the University of Alabama Law School, while Tom Clark graduated from the University of Texas School of Law. John Marshall Harlan went to New York Law School and Charles Whitaker the University of Missouri Kansas City. Thurgood Marshall, because of racial discrimination, graduated from Howard. Stanley Reed did not even graduate from law school, although he studied at the University of Virginia and Columbia. Several justices graduated from Columbia Law School (William O. Douglas), Harvard Law School (William J. Brennan, Harold Burton, and Felix Frankfurter) and Yale (Abe Fortas, Sherman Minton, Potter Stewart and Byron White), but Minton went to Indiana University for undergrad and White was a star football player at Colorado.

America's population has shifted to the south and the west, but the Supreme Court has become the meritocracy of the east - the "Northeast Corridor." Today's Supreme Court meritocracy is Conant's vision fulfilled. He would be proud.

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