**The myth of judicial neutrality: the case for a truly diverse supreme court** [Yolanda Young](https://www.theguardian.com/profile/yolanda-young) Friday 26 February 2016

While most of the attention is currently focused on the fight between Republican senators and the president over whether he should appoint a supreme court justice to replace Antonin Scalia, a debate is raging within the Democratic party regarding the president’s obligation, after twice bypassing us, to appoint one of the many qualified black woman to the job.

When Roland Martin posed this question to me on TVOne’s NewsOneNow Show, I initially agreed with fellow guest Dr Avis Jones-DeWeever, former executive director of the National Council of Negro Women, that such an appointment was due – on general principle but also in recognition of our loyal voting bloc.

I now am compelled to break rank.

While I believe a black woman would serve the court well – and would personally love to see my face reflected in the demographics of the court – I recognize that much of the perspective she would bring is already a part of the court’s consciousness due to the liberal female justices’ demonstrated advocacy for civil rights.

And then there is also the presence of Justice Sonia Sotomayor, who while not black, openly asserts how her life experiences – that of a minority woman coming from an underprivileged background – adds value to the court.

She demonstrated this most dramatically during oral arguments in [Foster v Chatman](http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs_2015_2016/14-8349_pet.authcheckdam.pdf), a case currently awaiting decision involving [racial discrimination in jury selection](http://www.motherjones.com/mojo/2015/11/timothy-foster-supreme-court-smoking-gun-black-jurors).

While the supreme court had previously banned racial discrimination in jury selection, all-white juries have persisted because prosecutors have found ways to dismiss black potential jurors on supposedly “race-neutral” grounds. In a challenge to this, Sotomayor questioned why the Georgia prosecutor had dismissed a black woman on the grounds her cousin had been arrested, then added: “I have cousins who I know have been arrested, but I have no idea where they’re in jail. I hardly – I don’t know them ... Doesn’t that show pretext?”

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As a Latina woman, she was aware that circumstances, including poverty and racial profiling, make it unlikely that a black person would not have a relative who had been arrested, so with such a question, prosecutors are effectively able to keep black people off juries.

Racially marginalized groups aren’t the only ones that need to be represented on the court. India-born Sri Srinivasan, widely believed to be one of the strongest candidates to replace Scalia, took his oath to the US court of appeals for the District of Columbia circuit with his hand on the Hindu holy book, the [Bhagavad Gita](http://www.bhagavad-gita.org/Articles/faq.html). He represents diversity in origin and religion, both of which are needed on the court.

Only [six justices](http://www.supremecourt.gov/faq_justices.aspx#faqjustice12) have been born outside the US. Three were founders, one had American parents, and another was from England. Only Justice Felix Frankfurter, a Jewish man born in Vienna, could be considered “other”. David Davis is the only justice to have no recorded religion. The other 111 justices have all been affiliated with a Judeo-Christian tradition.

A recent poll found that [57% of Americans](http://publicreligion.org/research/2015/06/survey-americans-believe-protests-make-country-better-support-decreases-dramatically-protesters-identified-black/#.Vs70jlsrJww) think the US was founded as a Christian nation, and 35% believe it still is. Not only are both assumptions false, but moreover upwards of 20% of the country does not identify as either Christian or Jewish. The framers of the US constitution would undoubtedly be disappointed to see the outsized role that religion – particularly Christianity – has come to play in our government. Religion is mentioned in the constitution only once, to proclaim “no religious test shall ever be required as a qualification to any office or public trust under the United States”.

It is a remarkable fact, considering that at the time of the nation’s founding most state constitutions contained such a requirement. For example, in Delaware, Georgia and Maryland, state officers were respectively required to acknowledge Trinitarian, Protestant and Christian faiths.

Why did the white, fervently religious men of 18th-century America draft and ratify a constitution and, shortly thereafter, the first amendment, providing total religious freedom and tolerance?

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It was likely for the same reason it allowed slaves to be counted not as full citizens but as three-fifths of a person. African Americans point to this provision as proof that the founders were racist and didn’t view them as humans. In fact, those that were most racist – the slave-state delegates – wanted slaves represented equally with whites. Northern delegates objected, not because slaves didn’t deserve to be counted, but because they wanted to weaken the slaveholding power in Congress, an example of how something could look like one thing and be the opposite.

The founding fathers’ decision was about strategy and compromise, and together with a great number of other factors it worked.

We have inherited a constitutional document that provided we have one president, two senators per state, and the supreme court to serve as referee. At varying times Congress has provided that six, seven and now nine justices serve.

Why so many? Differing perspectives is the only conclusion. Our constitution, which purposely didn’t recognize women or the enslaved, contained the bones of justice that over America’s lifetime has allowed lawyers and justices to chip away at the contradictions in its implementation. The result can be seen in the evolution of female slave descendants who became voting citizens, officeholders and first lady of the United States.

I don’t know who among my ancestral mothers was whipped, raped and otherwise traumatized, but knowing they all rose up from cotton and sugarcane fields, I am fully aware that America can never give the black wom**a**n all she is due.

But I, like every black woman I know, love America. I want her to grow stronger, larger and more loving. To achieve this end, I believe it necessary for us to look to our white, male oppressors’ example and make a compromise for a greater good.