



Journal of International Women's Studies

Volume 18 | Issue 4

Article 27

Aug-2017

Book Review: The Case of Rose Bird: Gender, Politics, and the California Courts

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Recommended Citation

Connerly, Megan M. (2017). Book Review: The Case of Rose Bird: Gender, Politics, and the California Courts. *Journal of International Women's Studies*, 18(4), 337-338.
Available at: <http://vc.bridgew.edu/jiws/vol18/iss4/27>

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***The Case of Rose Bird: Gender, Politics, and the California Courts.* Cairns, Kathleen A., 2016. University of Nebraska Press: Lincoln. 328 pages. Photographs, appendix, index included.**

Reviewed by Megan M. Connerly¹

From the pages of California's court case history, author Kathleen Cairns brings us a story on certain political aspects of the judicial system both in California and in the larger United States. *The Case of Rose Bird* is at once an engaging and informative story about the increasing role of politics in our judicial system. It should be noted, however, that readers expecting a chronical of the challenges of gender discrimination that one woman faced in California's judiciary, as evoked by the book's title, may be left disappointed. While Rose Bird certainly struggled during her legal career for various reasons, the author uses her situation as a means through which to discuss not only the dangerous implications of court elections but especially of the influence of campaign contributions in the judicial system in California and across country. However, the author does a superlative job detailing Rose Bird's legal career and how her nomination and tenure as California's first female state Supreme Court chief justice incited widespread opposition and outrage. Cairns goes on to effectively utilizes Bird's story to convey an important message on judicial impence and the negative influence associated with campaign finance in judicial elections.

While Cairns includes chapters detailing Bird's early years in secondary school, college, and as a trial attorney, she concentrates the large part of her study on Bird's experience in the upper echelons of the judicial system, mainly her nomination as state Supreme Court chief justice, her time holding that office, her reconfirmation, and her political demise. She offers several reasons for Bird's downfall including conservative opposition to her appointment, her lack of experience coupled with her demeanor, and her gender – though the author admits that the word “woman” was never offered by her opponents as a reason for her incompetence.

Cairns uses California's judicial ruling history from the years prior to Bird's tenure to demonstrate that decisions made by its state Supreme Court supported a liberal agenda angering conservatives and causing backlash. Once elected to the state Supreme Court, Bird's rulings on certain issues concerning the death penalty, tort cases involving big businesses, and her decision to open an investigation on the efficiency of the court, only indicated to conservative parties, and to some moderate ones, that Bird would continue to push the court in a similar direction. This lead to a contentious, expensive campaign to remove her from office in which opponents of Bird were ultimately successful. Cairns highlights Bird's California reconfirmation campaign as what she argues is “the state that started it all” to discuss the influence of money into judicial elections. In fact, during the campaign against her, the author notes that Bird, and others, “warned of the dangerous precedent-setting potential in targeting a sitting Supreme Court justice”.² Cairns cites other campaigns in more recent history to show how Bird's warning became prophetic. She discusses the details of elections in other states which feature even more expensive campaigns in

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² Kathleen Cairns, *The Case of Rose Bird: Gender, Politics, and the California Courts* (Lincoln, the University of Nebraska Press, 2016), 6.

order to get the applicable judicial appointment either into or out of the court system. In her argument, she includes campaigns in Mississippi, Illinois, Florida, Tennessee, Kansas, and perhaps the most memorable, in Iowa, where after Judge Marsha Ternus authored a unanimous decision overturning the law that barred gay marriage in Iowa, she was defeated in a ruthless campaign to remove her from office. Through her argument Cairns engages readers in a discussion on the ramifications and potential dangers of big money donors contributing to judicial campaigns. Her book contributes to the intense discussion and debate about the serious implications on the phenomenon of judicial retention elections and whether the high costs of such elections have a place in state judicial systems. Using a quote from Judge Marsha Ternus, “if the day comes that judges make decisions as politicians or theologians, this society and our democracy are in serious trouble”, the author illuminates the seriousness of this issue and brings to light the importance with which it should be treated.³

While Cairns makes significant points concerning judicial campaigns, the author’s conclusions regarding the role gender played in Bird’s demise, seem underdeveloped. While Bird’s nomination to the coveted position was a first for women in California’s history, her difficulty in accomplishing the tasks of that office with greater success seemed to be a symptom of her demeanor and personality rather than the fact that she was a woman in a male dominated profession. Cairns argues that “gender enhanced her vulnerability” but is vague in explaining exactly how or why this is the case. Additionally, interwoven in the chapters detailing Bird’s career are examples of her abrasive personality and a demeanor which triggered frustration and disgust among her colleagues and other legal constituents. The author even notes that Bird’s opponents denied the role gender played in their opinion of her and cited her abrasive demeanor and lack of experience as the reason behind their criticisms of her job performance. Cairns writes that Bird “possessed a personality that gave her opponents extra ammunition” because of her insistence on working on her own terms, her refusal to make friends with individuals, and her discomfort and unwillingness to be open with journalists and the press.⁴ Cairns even admits that though Bird was member of a generation of women that experienced much difficulty and alienation in climbing the ladder of success, other women “seemed more adept at avoiding the pitfalls – by using humor or embracing collegiality”.⁵ In Cairns’ narrative, Bird’s personality seemed to be more of a pitfall than issues relating to her gender. Moreover, while gender may have played a role in the difficulty that Bird experienced over the course of her career, the author’s larger point on the growing influence of money in the judicial system overshadows points made on issues relating to gender.

Even though the author’s argument concerning gender is subtle, it is still an engaging story about one woman’s experience as a state Supreme Court chief justice and the harsh reality of the role that money can play in judicial elections; and, the independence of the judicial system. This book engages readers in a thought provoking discussion, and debate, about what can (or should) be done to stop “the juggernaut of money and destructive influence” in our judicial system. *The Case of Rose Bird* demonstrates the reality of the problem and provides readers with a sense of the potential destructive nature money can play in influencing judicial elections.

³ Cairns, *The Case of Rose Bird*, 7.

⁴ Cairns, *The Case of Rose Bird*, 253.

⁵ Ibid.