

LETTER FROM THE EDITORS: HONORING THE LIFE AND LEGACY OF JUSTICE RUTH BADER GINSBURG

Dear Readers,

As we publish Volume 40 of the *Columbia Journal of Gender and Law*, we also mourn the tremendous loss of Justice Ruth Bader Ginsburg '59—an academic titan, zealous advocate, and powerful force in the legal profession. There is little doubt that her career changed the trajectory of American jurisprudence; her impact on the rule of law is lasting and meaningful.

Justice Ginsburg's legacy is particularly special to us. As a member of our Board of Advisors and alumna of Columbia Law School, Justice Ginsburg has been a guiding light for students serving on our staff since the *Journal's* inception thirty years ago.

In her introduction to our first issue, Justice Ginsburg described our mission to “portray today’s feminist movement, not as unitary, rigid or doctrinaire, but as a spacious home, with rooms enough to accommodate all who have the imagination and determination to work for the full realization of human potential.”¹

With each piece of new scholarship published, the *Columbia Journal of Gender and Law* strives to maintain that spacious home for today’s movement for gender equality—especially as it expands, improves, and evolves. It is with respect and gratitude that we continue our work in her spirit.

Though our hearts are heavy, the most fitting way to honor her is to forge onward with reverence, working toward a society that is more just, fair, and equitable. Before we set our sights to the future, we would like to pay homage to the past by remembering her rich story and contributions to the legal profession.

The following account of Justice Ginsburg’s life and career was inspired by the time she sat down with Professors Gillian Metzger and Abbe Gluck to discuss her robust legal career for the *Journal's* 2012 Symposium, “Honoring Justice Ruth Bader Ginsburg.”²

¹ Ruth Bader Ginsburg, *Introduction*, 1 COLUM. J. GENDER & L. 1 (1991).

² Ruth Bader Ginsburg, Gillian E. Metzger & Abbe Gluck, *A Conversation with Justice Ruth Bader Ginsburg*, 25 COLUM. J. GENDER & L. 6 (2013).

Pursuit of Legal Education

Ruth Bader Ginsburg attended law school at a time when women were routinely excluded from pursuing a legal education. She was influenced, in part, by the troubling grip of McCarthyism on the United States in the 1950s. Attending college during this period, Ginsburg worked as a research assistant for Professor Robert Cushman, a constitutional law scholar who pushed her to consider the country's relationship to its fundamental values.

Ginsburg felt inspired by the work of the “brave lawyers, standing up for the people who were called before the Senate Internal Security Committee, [and] the House Un-American Activities Committee.” This lawyering prompted her to pursue her own career in legal advocacy. Though her father was concerned about her interest in law—as, “realistically, there wasn't much of a demand for women lawyers”—Ginsburg continued onward.

Her path did not prove easy. Ginsburg was one of nine women in a class of more than five-hundred students at Harvard Law School, and later one of just twelve women in her class at Columbia. The landscape of the legal profession she entered upon graduation was also challenging. Despite her outstanding performance as a student, law firms declined to bring Ginsburg on due to her gender.

True to the Justice Ginsburg we came to know, she was not dissuaded, and she carved out a space for herself in legal academia. After spending time teaching at Rutgers Law School, she went on to become not the first woman—as she carefully corrected—but the first *tenured* woman professor on the Columbia Law faculty.

Foundations of Feminist Theory

Ginsburg's anti-discrimination work was inspired, in part, by time she spent in Sweden in the early 1960s. While engaging in comparative research, she noticed the ways in which Swedish gender dynamics deviated from those in America. Ginsburg was particularly influenced by two women, one a Swedish columnist and one a visitor from Arizona.

A piece by Eva Moberg in the *Stockholm Daily* headlined “Why Should the Woman Have Two Jobs and the Man Only One?” captured an idea that Ginsburg would later incorporate into her legal strategy. “The notion that [a husband] should do more than take

out the garbage sparked debates that were very interesting to me,” she recalled.

Sherri Finkbine’s trip to Sweden also caught Ginsburg’s attention. Finkbine was pregnant, and there was a grave risk that her fetus, if it survived, would be terribly deformed at birth. She came to Sweden to have an abortion because the procedure was not accessible legally in her home state of Arizona. Ginsburg was moved by her story.

Ginsburg “put it all on a back burner until the late ’60s when the women’s movement came alive in the United States,” but these experiences in Sweden helped shape her teachings in sex discrimination, her lawyering with the American Civil Liberties Union, and, later, her litigation strategies in the fight toward gender equality.

***Roe v. Wade* and Judicial Restraint**

Justice Ginsburg believed that judging, at times, requires restraint in order to create lasting change. This outlook on the judicial role prompted controversy, particularly with regard to her outlook on *Roe v. Wade*³ and abortion jurisprudence. *Roe*, Ginsburg believed, could have been decided on narrower grounds and was too much, too soon. Instead of invalidating nearly every abortion regulation throughout the country, the Court could have struck down only the extreme law at issue and allowed states to expand abortion access in their own time. This, she thought, might have provided greater momentum to the reproductive rights movement, which would have been more constructive than issuing a bold opinion and then “reversing course, and chopping away at *Roe v. Wade* as they did.”

She contrasted *Roe* with the decision in *Brown v. Board of Education*.⁴ Unlike in *Roe*, she believed the Court in *Brown* had no choice. “The political process was not capable of ending apartheid in America because the Southern states were adamant in their view,” she said. “So the Court had to take the step that it did.”

Ultimately, Ginsburg admitted we will never know if she was right. “I appreciate that others hold different views,” she said, and she wondered whether things really would have played out differently if the Court had been more restrained.

³ 410 U.S. 113 (1973).

⁴ 347 U.S. 483 (1954).

Bricks in the Wall of American Jurisprudence

Before leaving the interview, Justice Ginsburg remarked that she was delighted to see a door at Columbia Law labeled “Lactation Room,” which she took as a sign of progress. She recalled that when she started law school, only one of the two classroom buildings had a women’s bathroom. It was situated deep in a basement—a particularly difficult reality during exams. She never thought to complain, she noted, because “that was just the way it was.”

Though Ginsburg did not complain about the lack of women’s bathrooms at the time, she spent the rest of her life questioning “the ways things were.” Through her legal career, she carefully dismantled laws that were believed to do nothing more than reflect the natural order of things, yet actually served to reinforce stereotypical gender roles.

Justice Ginsburg recounted complaints that poured in while she worked as a volunteer lawyer with the ACLU of New Jersey. The complaints told stories of schoolteachers pushed out of the classroom the minute their pregnancies began to show, women with blue-collar jobs denied health insurance that had been awarded to similarly situated men, and young girls unilaterally excluded from math programs and varsity sports. Though Justice Ginsburg never shied away from advocating for men, her lawyering achieved equal opportunity for scores of women and girls where they had previously been overlooked or excluded.

Ginsburg’s first oral argument before the United States Supreme Court was for *Frontiero v. Richardson*⁵ in early 1973. There, she advocated for Air Force Lieutenant Sharron Frontiero, who had been denied a housing allowance that was available to married male officers and access to medical and dental care for her husband. In her twelve-minute-long argument, the Justices did not ask Ginsburg a single question—a truly extraordinary event.

“I was puzzled,” she said. “Were the Justices just indulging me or were they listening?” The plurality opinion issued a few months later by Justice Brennan closely resembled Ginsburg’s argument that gender classification should trigger heightened scrutiny. The Justices had indeed been listening.

⁵ 411 U.S. 677 (1973).

In the fall of 1978, Ginsburg argued her last case before the Court. In *Duren v. Missouri*,⁶ the Court considered whether Missouri’s opt-out system for women jurors—one that assumed abstention from silence—was constitutional. During her argument, Chief Justice Rehnquist poked fun at Ginsburg’s aspirations for gender equality: “And so Mrs. Ginsburg, you won’t be satisfied with Susan B. Anthony’s face on the new dollar?”

It was not until her cab ride home that she thought of the perfect comeback: “No, Mr. Justice Rehnquist, tokens won’t do.”

But of all the cases she has argued or opined, Justice Ginsburg noted one as particularly special to her: *United States v. Virginia*.⁷ There, the Justice’s years advocating against discriminatory laws came full circle when she authored the majority opinion in the 7-1 decision striking down the Virginia Military Institute’s policy of excluding women. For her, the case was “a bright sign of the changing times” not simply because of the sweeping majority vote for her position, but because the United States was now the proponent—no longer the opponent—of women’s equality.

Pushing Our Movement Forward

Justice Ginsburg’s passing is an incalculable loss. But in these times of sadness and uncertainty, it is especially important to embody her indomitable spirit and press on with resolve. Following Justice Ginsburg’s example, we now strive to move our feminist legal community forward, and continue her mission of fairness and equality. Importantly, our feminism has evolved—centering intersectionality, racial justice, and queer, trans, and nonbinary voices. Though the landscape has changed, our goals remain constant: Make room, work tirelessly, and do not simply accept things the way they are.

Thank you for making us a spacious home, Justice Ginsburg—at Columbia Law School, in the courtroom, on the bench, and in the law.

With hope and in solidarity,
The Editors of Volume 40 of the *Columbia Journal of Gender and Law*

⁶ 439 U.S. 357 (1979).

⁷ 518 U.S. 515 (1996).