INTRODUCTION

*Ruth Bader Ginsburg**

As a 1959 graduate of Columbia Law School, and a member of its faculty from 1972 until 1980, I applaud the appearance of the *Columbia Journal of Gender and Law*, and I am pleased to provide this introductory comment. To appreciate the currently evolving participation of women in the study and shaping of law, it is fitting to recall "the way it was," at Columbia and elsewhere, in not yet ancient days. I will therefore present some samples of things and thinking past.

A bright 1922 Barnard graduate, who that year applied for admission to law school, recalled this encounter:

> I wanted very much to go to Columbia, but I couldn't get in. I went over to see Harlan Stone, Dean Stone, who was later Chief Justice

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* Ruth Bader Ginsburg has served on the bench of the United States Court of Appeals for the District of Columbia Circuit since her appointment on June 18, 1980. From 1972 to 1980, Judge Ginsburg was a professor at Columbia Law School, and, from 1963 to 1972, she served on the law faculty of Rutgers—The State University of New Jersey. She has taught at University of Amsterdam, Harvard Law School, New York University Law School, University of Strasbourg, the Salzburg Seminar in American Studies, and the Aspen Institute for Humanistic Studies. In 1978, she was a Fellow at the Center for Advanced Study in the Behavioral Sciences (Stanford, California).

Judge Ginsburg has a Bachelor of Arts degree from Cornell University, attended Harvard Law School, and received her LL.B. (J.D.) from Columbia Law School. She holds honorary degrees from Lund University (Sweden), American University, Vermont Law School, Georgetown University, De Paul University, Brooklyn Law School, Hebrew Union College, Rutgers University, and Amherst College.

In 1971, then Professor Ginsburg was instrumental in launching the Women's Rights Project of the American Civil Liberties Union, and, throughout the 1970s, she litigated a series of cases solidifying a constitutional principle against gender-based discrimination. Her bar association activities include service on the Board of Editors of the American Bar Association Journal, and as Secretary, Board and Executive Committee member of the American Bar Foundation. Judge Ginsburg serves on the Council of the American Law Institute, and is a member of the Council on Foreign Relations and the American Academy of Arts and Sciences. She has written widely about civil procedure, conflict of laws, constitutional law, and comparative law.

Judge Ginsburg's husband, Martin D. Ginsburg, is a professor at Georgetown University Law Center; her daughter, Jane C. Ginsburg, is a professor at Columbia Law School; and her son, James S. Ginsburg, is a producer of classical CDs and a second year student at University of Chicago Law School.

> [of the United States], and [I] asked him to open the law school [to women] and he said no. . . . I asked why . . . and he said, "We don't because we don't." That was final . . . .[1]

What accounted for the resistance by jurists known for their ability to reason why? A February 1925 issue of *The Nation* offered this explanation:

> The faculty . . . has never maintained that women could not master legal learning or that they should not be made to endure the frank and shocking language of the law. No, its argument has been lower and more practical. If women were admitted to the Columbia Law School, it said, then the choicer, more manly and red-blooded graduates of our great universities would go to the Harvard Law School![2]

Not long after, better sense prevailed, and in 1928, the faculty resolved to admit, without restriction, female applicants who met the entrance standards. (Harvard Law School delayed that momentous decision until 1950. Washington & Lee in Virginia, the last of the all-male law schools, opened its doors to women in 1972.)

In 1972, under some pressure from the Office for Civil Rights, then located in the Department of Health, Education and Welfare, law schools began to take seriously the prospect of women as law teachers. It was my good fortune to be invited that year to join the Columbia faculty. There was some speculation that women appointed to law faculties at that time were chosen because of "affirmative action." Considering that only fourteen women up to 1960 had ever received tenure-track appointments to accredited law faculties,[3] others were of the view that, at last, the days of "negative action" were over.

The 1970s, Carin Clauss commented at the 1990 Myra Bradwell Day celebration, were "the glory days."[4] And they were, in the sense that explicitly sex-based lines, once indelible, were erased—by courts applying Title VII of the Civil Rights Act of 1964,[5] or the Constitution's equal protection guarantee; by legislatures prompted by a burgeoning women's movement

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[1] Interview with Frances Marlatt, set out in C. Epstein, Women in Law 51 (1981).

[2] 120 The Nation 173 (1925).

[3] Professor Herma Hill Kay is currently at work on a book that will discuss the careers of these women.

[4] Taken from the transcript of the oral presentation by Professor Carin Clauss of Wisconsin Law School, participant in "Feminist Jurisprudence"—The Myra Bradwell Day Panel, Columbia Law School (Apr. 5, 1990), published infra at 5–46.

[5] 42 U.S.C. § 2000e–2000e-17 (1972).

and the Equal Rights Amendment drive; and by private actors, encouraged by feminists to rethink traditional categories.[6]

Columbia's experiences were typical of the times. My first month on the job, in late summer 1972, the University sought to cut maintenance costs; it did so, faithful to its contract with the union, by giving layoff notices to twenty-five maids, but not a single janitor. That same academic year, the University Senate was debating a resolution, advanced by the campus Commission on the Status of Women, calling for a comprehensive equal-pay salary review. In the following years, women employed by the University organized to press for health-benefits coverage of pregnant employees[7] and elimination of the pension differential under which women received lower monthly retirement benefits.[8]

On each of these issues, the position of feminists—people seeking to improve the status of women—prevailed. I participated in these and similar episodes and was told that Central Administration listened when I spoke, because law faculty backing made me appear invulnerable. Several of my colleagues would have cast a ballot against mine on the merits, particularly on the pension issue. But law teachers relish a good argument and will stand up for its right to be heard.

Throughout the 1970s, Columbia students, enrolled in my clinical seminar, assisted me in constitutional challenges to sex-discriminatory legislation.[9]

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[6] See generally Williams, Sex Discrimination: Closing the Law's Gender Gap, in The Burger Years: Rights and Wrongs in the Supreme Court 1969—1986, at 109 (H. Schwartz ed. 1987). As summarized in recent commentary: "The women's movement was not quite able to marshal the votes needed to pass the Equal Rights Amendment . . . but its voice was heard in adjudication. To some extent at least, its perspectives became part of the conventions of the profession that argues, decides, and evaluates law for a living." H. Wellington, Interpreting the Constitution: The Supreme Court and the Process of Adjudication 18 (1990).

[7] Congress amended Title VII in 1978 to clarify that the prohibition of discrimination "because of sex" or "on the basis of sex" included a ban on discrimination "because of or on the basis of pregnancy." Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, § 1, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k)).

[8] See City of Los Angeles Dep't of Water & Power v. Manhart, 435 U.S. 702 (1978).

[9] The challenges were pursued under the auspices of the American Civil Liberties Union's Women's Rights Project. Cases on the Project's docket that reached the Supreme Court in this period included Struck v. Secretary of Defense, cert. granted, 409 U.S. 947, judgment vacated, 409 U.S. 1071 (1972); Frontiero v. Richardson, 411 U.S. 677 (1973); Kahn v. Shevin, 416 U.S. 351 (1974); Weinberger v. Wiesenfeld, 420 U.S. 636 (1975); Edwards v. Healy, 421 U.S. 772 (1975); Turner v. Department of Employment Sec., 423 U.S. 44 (1975); Califano v. Goldfarb, 430 U.S. 199 (1977); Duren

Before Supreme Court arguments, we staged moot court dress rehearsals with faculty colleagues as interrogators. Those sessions armed me for the day in Court. After the spirited colloquies with my colleagues, no Supreme Court Justice ever asked a question for which I was not prepared. Again, my collegial moot court judges might have reached a judgment other than the one I advocated. But they recognized the value of having the issues adequately aired.

Perhaps the most notable change at law schools across the country in the 1970s was the steep increase in women's enrollment, up from 3.6% in 1963 to just under 20% in 1974, and continuing in the same direction to reach about 43% in 1990.[10] Women students no longer suffer the discomfort of being curiosities in the classroom, or persons listed at the Placement Office as unwanted by law firm interviewers.

True, there was an occasional lament, some longing for the good old days. One Columbia colleague put it this way: Until the 1970s, when the class was moving slowly, and his questions were greeted by a series of "unpareds," the solution was ever at hand. Call on the woman. She was always prepared. She could be relied upon for a crisp right answer nine times out of ten. In the 1980s, that colleague observed, there's no difference. The women are as numerous and as unprepared as the men.

Today, with no formally closed doors and with women at the bar in numbers, is there in fact "no difference"? Does women's participation affect the way law business is conducted, and the shape and direction of legal development? Contemporary thinking on that large question will be stated and explored in the pages of the *Columbia Journal of Gender and Law.* I anticipate that the *Journal* will 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. With compliments to the launchers of this enterprise, I look forward to the *Journal*'s contributions to the full flowering of feminist thought.

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v. Missouri, 439 U.S. 357 (1979). See generally Ginsburg, Employment of the Constitution to Advance the Equal Status of Men and Women, in The Constitutional Bases of Political and Social Change in the United States 185 (S. Slonim ed. 1990).

[10] Percentages are based on figures obtained from the Association of American Law Schools.