

Book Review: Strum, Philippa. *On Account of Sex: Ruth Bader Ginsburg and the Making of Gender Equality Law*. Lawrence: University Press of Kansas, 2022. xii + 193 pages. Paperback, \$24.99.

Was Ruth Bader Ginsburg really the Thurgood Marshall of gender equality, as admirers, including Bill Clinton and Antonin Scalia, said? Marshall's death-defying, yearslong legal campaign to destroy racial segregation, culminating in *Brown v. Board of Education* and followed by his elevation to the Supreme Court as its first Black justice, remains singularly astonishing. Ginsburg's parallel campaign on behalf of women—recounted in a recent book by civil rights historian and ACLU honoree Philippa Strum—was inspired by and modeled on Marshall's achievements, but was not their equivalent. In part this is because, as Strum demonstrates through a series of cases Ginsburg pursued during the 1970s, gender-based legal categories often purported to favor and protect women. So, the task before Ginsburg was not to break down a clearly immoral, calcified bulwark of outright discrimination, as Marshall had done. It was rather to solve a much subtler intellectual puzzle: convincing courts that laws meant to “help” women could actually hurt them.

Ginsburg spent the 1970s targeting such laws, often on behalf of male plaintiffs. In *Craig v. Boren*, she aimed at an Idaho law that allowed women to buy beer at age 18 but required men to be at least 21. In *Moritz v. Commissioner*, she challenged a federal tax deduction available to women, but not men, who paid someone to take care of a disabled relative while they were working. The law assumed that, among unmarried taxpayers, a woman would be needier than a man in the same situation. In *Weinberger v. Wiesenfeld*, she represented a man whose breadwinner wife had died in childbirth, attacking the Social Security Act's provision of survivor benefits to widows that it did not provide widowers. Ginsburg argued that to deny men the support that had been earned by their deceased wives was to deny those women the ability to

provide the same level of protection to their families as men could in the same circumstances. In other words, women actually received lesser benefits than men for their work and their contributions to Social Security. Ginsburg argued a similar case, *Frontiero v. Richardson*, on behalf of a U.S. Air Force lieutenant. The woman sought to receive benefits for her dependent husband that were automatically granted to men in the military for their wives.

Taken together, these gender-classification cases of the 1970s successfully invoked Constitutional rights to equal protection and due process and raised the court's standard of review for when state and federal governments could lawfully draw distinctions between men and women. But even that standard did not meet hers; Ginsburg had fought for gender classifications to receive the higher level of scrutiny that civil rights lawyers such as Marshall had attained for race-based distinctions under the 14th Amendment. She also pursued employment cases under the Civil Rights Act's Title VII which, unlike the Constitution, explicitly forbade sex-based discrimination. Strum covers the victories and setbacks of these efforts too, in organized and accessible prose. The well-presented catalog of cases that make up most of the book are foregrounded with personal and historical context suggesting why Ginsburg became an advocate for women's rights, as well as a succinct review of the relevant precedents she faced at the start of her journey. Free of jargon and over-analysis, with helpful reference features such as a timeline and bibliographic essay, the book would make a superb introduction to the constitutional history of civil rights for women.

The bulk of the book's legal "action" takes place in the turbulent Seventies, as women are entering the workforce and claiming expanded liberty. In 1980, Ginsburg became a federal judge. Named to the U.S. Supreme Court in 1993, she would relish the opportunity to create what she had always wanted: a higher standard of review for legal gender distinctions. Writing

the majority opinion in the 1996 case *U.S. v. Virginia*, which struck down the male-only admissions policy of an elite public military institute, she brought together two potent lineages of anti-discrimination rationale: those of her own gender equality cases and those Thurgood Marshall had brought to bear in the 1940s and 1950s against school segregation. The result has outlasted them both, so far.

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