

- Tomer-Fishman, Tamara (2010) "Cultural Defense", "Cultural Offense" or No Culture at All?: An Empirical Examination of Israeli Judicial Decision in Cultural Conflict Criminal Cases and of the Factors Affecting Them," 100 *J. Criminal Law and Criminology* 475–521.
- Wong, Charmaine M. (1999) "Good Intentions, Troublesome Applications: The Cultural Defence and Other Uses of Cultural Evidence in Canada," 42 *The Criminal Law Q.* 367–96.

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The Legacy of Ruth Bader Ginsburg. By Scott Dodson, ed. New York: Cambridge University Press, 2015. 314 pp. \$29.99 cloth.

Reviewed by Susan Burgess, Department of Political Science, Ohio University

Associate Justice on the U.S. Supreme Court. Law professor. General Counsel for the ACLU's Women's Rights Project. Pop culture icon. As Scott Dodson puts it, Ruth Bader Ginsburg's "impact on the law over the last half-century cannot be overstated" (p. ix). While her successful challenges to gender norms and her fiery dissents on behalf of voting rights and equal pay are the source of much of her popular acclaim, this fine collection of essays also explores her contributions to the fields of federal procedure, jurisdiction, federalism, international law, criminal procedure, and tax law. The collection is divided into four parts: Shaping a Legacy, Rights and Remedies, Structuralism, and The Jurist. As is perhaps befitting a collection devoted to detailing her wide-ranging legacy, contributors include law professors, media stars, a practitioner, a historian, a sitting judge and even a short previously published piece penned by Ginsburg herself.

As contributor and Legal Affairs Correspondent for National Public Radio Nina Totenberg succinctly suggests Ginsburg "changed the way the world is for American women" (p. 4). Slate Magazine Senior Editor Dahlia Lithwick notes that it has become somewhat cliché to refer to Ginsburg as "the Thurgood Marshall of Women's Rights" (p. 222). Many of the essays in this collection detail exactly how this shift took place, emphasizing the careful legal, professional, and personal strategies that Ginsburg employed, slowly but surely upending gender norms that had oppressed women for years. The collection includes several essays that show just how pervasive those sexist norms were in both private and public life, and how they were addressed by Ginsburg as a law professor,

attorney, judge and justice. Ginsburg herself was passed over for clerkships and otherwise professionally demeaned due to her gender despite having attended elite schools. Even after obtaining a position as a law professor Ginsburg felt compelled to conceal a pregnancy for fear of being denied tenure. An essay on pregnancy discrimination as sex discrimination by Neil S. Siegel and Reva B. Siegel suggests the connection between this experience and Ginsburg's advocacy in this area. As historian Linda Kerber's contribution shows, Ginsburg's work literally changed the rules about gender, using the law to question long-standing assumptions that men are preferable to women, before which, as Ginsburg herself has said, "the Supreme Court never saw a sex classification it didn't like" (p. 38).

Many of the essays in this collection explore the strategies and arguments that Ginsburg has used to affect these changes. As Dahlia Lithwick's essay notes, Ginsburg was not a product of the women's liberation movement. Rather her calling to law was a response to the injustices that resulted from McCarthyism. Although her professional disposition is that of a careful jurist Lithwick argues that she is "indeed a feminist firebrand" if one that is "by choice and necessity, a firebrand made of ice" (p. 222). Calling Ginsburg's approach to gender "reconstructive feminism," Joan C. Williams distinguishes it from Catherine MacKinnon's more radical "feminism unmodified." While Ginsburg's approach has been dismissed by some as merely reformist, Williams argues that Ginsburg's goal has been no less than "to reconstruct breadwinner and caregiver roles and, more generally, the relationship of market work and family work" (p. 59). As such, Ginsburg's approach has challenged the givenness of male masculinity, the very core of patriarchal power.

Cary Franklin's essay on the VMI case suggests that Ginsburg's rejection of gender neutrality and attention to the specific contexts in which gender discrimination plays out could serve as a model for equal protection more generally in affirmative action, voting rights, and school desegregation cases where race neutral analyses have prevailed in recent years. Ginsburg's alternative approach has been prominently on display in several important dissents which Lani Guinier has termed "demosprudence," a form of "people-driven" argument that "emphasizes the role of informal democratic mobilizations and wide-ranging social movements that serve to make formal institutions, including those that regulate legal culture, more democratic" (p. 206).

Several essays demonstrate that Ginsburg's work has also significantly affected the shape of areas other than gender. Scott Dodson argues that Ginsburg has revolutionized federal subject-matter jurisdiction, while Stephen B. Cohen shows that her influence

extends even into tax law. Paul Schiff Berman suggests that Ginsburg's commitment to legal pluralism has led her to maximize federal, state and international interactions among legal systems while Deborah Jones Merritt details Ginsburg's principled approach to federalism, including a careful discussion of a number of her strong dissents from cases that have limited national and state power.

Contributions by Aziz Z. Huq and Lisa Kern Griffin suggest that Ginsburg has undertaken a more cautious, restrained strategy in criminal justice, due to political and social resistance of others on and off the bench. While the connections that many men have to women due to intimate partnerships have arguably made the law of gender more pliable over time, many elites, including federal judges, seem less personally connected to the criminal justice system. Huq concludes that such restraints limit "the avenues a liberal justice has for reformist change," in this area (p. 119).

The volume also includes Judge Robert A. Katzmann's reflections on Ginsburg's confirmation hearings as a leading member of the team that prepared her. As one who has argued over thirty cases before the U.S. Supreme Court Tom Goldstein also offers an insider's account of the way that Ginsburg uses oral argument to test opposing justice's views and to raise issues she thinks will assist in writing a better opinion.

This edited collection is the first scholarly treatment to address Justice Ginsburg's considerable legacy. It is a terrific compilation of essays that traverses a great deal of ground, covering areas of Ginsburg's work that are often overlooked. Taken together these essays support editor Scott Dodson's conclusion that Ginsburg is an optimist who believes that notwithstanding many restraints, "law can lead to a better life . . . enabling a progressive society to flourish" (p. 235). The essays in this volume are a celebration of Ginsburg's devotion to that faith.

Although Dodson's volume is the first scholarly collection to explore Ginsburg's legacy, it is not the only book to do so. Published in the same year, Irin Carmon and Shana Knizhnik's *Notorious RBG: The Life and Times of Ruth Bader Ginsburg*, is a best-selling rendering of Ginsburg's enormous influence that is both accessible and entertaining. Like the Dodson volume it includes her life story, relating her personal experience of discrimination to her understanding of the law, alongside detailed analyses of several of Ginsburg's more prominent arguments as an attorney as well as a Justice. It also offers photographs of devoted fans sporting tattoos of Ginsburg herself and t-shirts with slogans like "You Can't Spell Truth Without Ruth," in addition to several sections that appropriately confound gender norms detailing Ginsburg's strenuous work-out schedule, her husband's favorite recipe, and a copy of a very moving love letter he wrote to her before succumbing to cancer in

2010. Perhaps the similarities and differences between these two books are a testament to the remarkably esteemed status that Ginsburg has attained in both the rarefied world of elite law, as well as among the populus that is subject to it.

Reference

Carmon, Irin, & Shana Knizhnik (2015) *Notorious RBG: The Life and Times of Ruth Bader Ginsburg*. New York: Harper Collins.

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Opposing the Rule of Law: How Myanmar's Courts Make Law and Order. By Nick Cheesman. Cambridge: Cambridge University Press, 2015. 338 pp. \$99.00 hardback.

Reviewed by Jothie Rajah, American Bar Foundation

Opposing the Rule of Law enters the complexities of law, politics, and the social in Myanmar through a study of criminal courts. Drawing on Nonet and Selznick (1978), Cheesman explains this point of entry, "In a politically repressive setting, criminal cases are the representative mode of legal authority. In the exercise of control over the body of the accused we find the basic elements for the exercise of control over the body politic" (p. 11).

Cheesman explores Myanmar's criminal courts, not as contained and simplistic arenas of adjudication, but as sites of "interaction . . . tell[ing] a story of policemen, prosecutors, lawyers, complainants, and defendants . . . a study of courts' personae, of courts' representations of a larger political order, and of courts as spaces for political language and practice" (p. 10). The meanings, actors, and institutions relating to two opposing concepts – law and order, and rule of law – are carefully traced. From British colonial rule (Chapter 2), through the subsequent postcolonial regimes (Chapters 3–8), the book details both repressive modes of legal authority, and the remarkable human resistance and resilience that inform the story of how Myanmar's courts make law and order.

Opposing the Rule of Law makes a significant twofold contribution to scholarship. This book "constitutes the first serious attempt for half a century to situate Myanmar's courts in its politics" (p. 12). In the process, Cheesman documents much that has previously not been documented, and often, much that has not even been *known* beyond small circles, even within Myanmar. The value of rendering