

*A Conversation with Ruth Bader Ginsburg,  
Associate Justice of the United States  
Supreme Court*

*JUSTICE RUTH BADER GINSBURG*

THE TANNER LECTURES IN HUMAN VALUES

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RUTH BADER GINSBURG was nominated by President Clinton as associate justice of the United States Supreme Court in June 1993 and took the oath of office on August 10, 1993. Prior to her appointment to the Supreme Court, she served from 1980 to 1993 on the bench of the United States Court of Appeals for the District of Columbia Circuit. From 1972 to 1980, Justice Ginsburg was a professor at Columbia University School of Law; from 1963 to 1972, she served on the law faculty of Rutgers, the State University of New Jersey. She has served on the faculties of the Salzborg Seminar in American Studies and the Aspen Institute for Humanistic Studies, and as a visiting professor at many universities in the United States and abroad. In 1978, she was a fellow at the Center for Advanced Study in the Behavioral Sciences in Stanford, California.

Justice 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 many universities, including Michigan, Yale, Princeton, and Harvard.

In 1972, then-Professor Ginsburg was instrumental in launching the Women's Rights Project of the American Civil Liberties Union. Throughout the 1970s she litigated a series of cases solidifying a constitutional principle against gender-based discrimination. Justice Ginsburg is a member of the Council on Foreign Relations, the American Academy of Arts and Sciences, and the American Philosophical Society. She has written widely in the areas of civil procedure, conflict of laws, constitutional law, and comparative law.

Editor's Note: Justice Ginsburg chose to present her Tanner Lecture in the form of a conversation about her personal history, her work as an attorney, and her judicial opinions. She was joined in this discussion by professors Kate Andrias and Scott Hershovitz of the University of Michigan Law School. Andrias and Hershovitz both served as law clerks for Justice Ginsburg, and their questions reflect their knowledge of her life experience and her history on the Supreme Court. The conversation took place before a lively audience of 3,500 at the University of Michigan's Hill Auditorium.

Justice Ginsburg (JG): Thank you! Please be seated so we can get started.

Kate Andrias (KA): Justice, thank you so much for joining us this morning. We have combined questions that were submitted online with some of our own. And to start, we want to talk about how you became a lawyer. As President Schlissel mentioned, when you enrolled at Harvard Law School in 1956 you were one of nine women in a class of about five hundred. What made you decide to go to law school when so few women did?

JG: I will answer the question in two parts. First part, I was an undergraduate at Cornell University in the early 1950s. It was not the best of times for our country. Senator Joseph McCarthy from Wisconsin held sway. He was a man who saw a communist in every corner. People were hauled before the House Un-American Activities Committee and the Senate Internal Security Committee. They were asked questions about their affiliations with socialist organizations in the thirties. The professor for whom I worked as a research assistant, Professor Robert Cushman, taught Constitutional Law. He wanted me to understand that our country was straying from its most basic values. But there were lawyers standing up for people in the entertainment industry who were blacklisted, and for writers and academics. Those lawyers were reminding our Congress that we have a First Amendment that secures our right to think for ourselves and not as "Big Brother" thinks we should. And we have a Fifth Amendment that protects us against self-incrimination. The idea was that law is a profession, but it also arms you with the skill to help make things a little better for other people. So that was one tug.

The other part was played by my dear spouse. Both of you knew Marty. We decided that whatever we would do in our post-college years, we would do it together.

Fortunately for me, medicine was eliminated because golf practice (Marty was on Cornell's varsity team) interfered with afternoon science labs. Our choice then became business school or law school. In those ancient days, the Harvard Business School did not admit women. The Law School first admitted women in '50-'51. So business school was scratched, and that left law school.

Now, I should add that my family had some reservations about my career choice because most law firms in the 1950s and 1960s wanted no "lady lawyers." Marty and I married a week after I graduated from Cornell. My family's reservations vanished. Their view became, "If she wants to be a lawyer, let her try. If she doesn't succeed, she'll have a man to support her."

Scott Hershovitz (SH): Justice, let's talk a little bit about your early career as a lawyer. Everyone knows that you are an advocate for gender equality, but before that, you were a professor of procedure. What got you interested in procedure?

JG: Procedure was the first class I attended at the Harvard Law School, I had a great teacher, Benjamin Kaplan. He was skilled in the Socratic Method, but he never used it to embarrass or humiliate students. He would sometimes take a less than coherent answer a student gave and rephrase it so it sounded brilliant. There was a young man in that class, his name was Tony Lewis. He was a well-known journalist enrolled at Harvard as a Nieman Fellow. For many years, he was the Supreme Court reporter for the *New York Times*. The first day in class, he answered the professor's questions just right. I aimed to speak in class as often as Tony Lewis. I attribute my fondness for procedure to my teacher, Benjamin Kaplan, and fellow student, Tony Lewis.

In 1963, I started teaching at Rutgers Law School in Newark. Rutgers had lost its principal procedure person, Clyde Ferguson. Clyde left to become dean of the Howard Law School. Rutgers searched for an African American male to replace him. Failing in that quest, the next best thing was a woman. For me, it proved to be more than a little bit of luck.

KA: How did you transition to work on gender equality issues?

JG: From civil procedure? There were two magnets. One, my students. In 1970, the students wanted Rutgers to offer a course on women and the law. Such a course had been started at NYU and at Georgetown. I repaired to the library. In the space of a month, I read every federal decision published up to that time about women's status under the law. Now, that was no mean feat. Precious little appeared in print on that topic, less than would be generated today in a couple of months. I put together some materials and taught a course on women and the law. The other magnet: new complainants were coming to the ACLU. I had signed up as a volunteer lawyer for the ACLU's New Jersey affiliate. Among the new complainants were pregnant schoolteachers made to take what was euphemistically called "maternity leave" rather early in their pregnancy. It was a euphemism because the leave was unpaid and there was no guaranteed right to return. If the school district wanted the teacher back, the superintendent would call.

One of the explanations for that practice: "We don't want the children to think their teacher has swallowed a watermelon." From the women's perspective: "We are ready, willing, and able to work. There's no reason why we should not be allowed to continue."

Another category of complainants, blue-collar women who sought health insurance for their families through their place of employment. A common practice, employers offered family coverage only to male workers. Women were considered secondary wage earners, "pin money earners." The man was the worker who counted. As head of the family, he alone qualified for family coverage.

On the Rutgers campus itself, the undergraduate college was all male. There was a smaller, very fine women's college, but the state was providing education to many more boys than girls.

Those are typical of the new complaints coming into the ACLU around 1970, and the legal director in Newark asked if I could handle them. I wasn't the initiator. My students and the new complainants tugged my occupations in a new direction. Until then, most women simply accepted the way things were. In the 1970s, the Women's Movement experienced a revival all over the world. In its wake, women in the USA, in increasing numbers, decided they shouldn't simply submit to

the way things were, they should be part of making things the way they should be.

SH: I am wondering if you could tell us more about your work with ACLU Women's Rights Project—what your legal strategy was. Sometimes people compare you to Thurgood Marshall; they say that you were the Thurgood Marshall of the Women's Rights Movement. I am wondering what you make of the comparison and whether the legal strategies were similar or different.

JG: Thurgood Marshall inspired partisans of social change. People know about *Brown v. Board of Education*, but many do not know about all the building blocks Marshall had in place before he took on legally enforced separation of the races in public schools. Before *Brown*, there was a law school case, a couple of university cases. By the time *Brown v. Board* reached the Supreme Court, it seemed inevitable that the court would move in the direction it did. Marshall didn't ask the court to take a giant stride. A step-by-step approach was his successful strategy. I copied that strategy, but I am uneasy when people compare me to Thurgood Marshall. His life was on the line when he went to a small town in the South to represent someone charged with a capital crime he probably didn't commit. My life was never in danger.

KA: Can you tell us more about some of the cases you brought and whether there is one case in particular that you think of as your most important victory?

JG: Perhaps I should first describe the turning-point case, *Reed v. Reed*. As a preface, I should explain that until 1971, the Supreme Court never saw a gender classification it didn't like, or at least, that it regarded as unconstitutional. Consider a case decided in 1948, *Goesaert v. Cleary*. The plaintiff was a woman who owned a tavern. Her daughter was her bartender. But the State of Michigan had recently passed a law prohibiting women from working as bartenders unless the woman was the wife or the daughter of the bar owner.

Mother Goesaert was put out of business by that law. The Supreme Court observed that bars can be dangerous places, and held that

Michigan's law was legitimate because it protected women against the sometimes foul atmosphere in taverns. No law precluded women from being barmaids, bringing drinks to tables. Those women were not sheltered by a bar from dangerous men. Without recognizing that irony, the Supreme Court declared it constitutional to exclude women from bartending.

Fast forward from Goesaert's case in 1948 to Sally Reed's case in 1971. Sally was a woman from Boise, Idaho. She and her husband had a son. The couple divorced. When the child was of "tender years," Sally was given custody. When the boy reached his teens and needed to be prepared for a man's world, the father applied for custody and Sally opposed his application. She thought the father would not be a good influence on the son. Sadly, she turned out to be right. This boy became severely depressed and one day used one of his father's many guns to kill himself.

Sally wanted to be appointed administrator of his estate, not for any monetary reason. There was very little in the estate; a small bank account, a guitar, a record collection, that was about it. Her former husband applied some weeks later. Sally assumed she would get the appointment because she applied first. The probate court judge told her, "I'm very sorry about this, but the law settles the matter for me." It reads, "As between persons equally entitled to administer a decedent's estate, males must be preferred to females."

It was the perfect turning-point case. Sally Reed was excluded arbitrarily, simply because she was a woman. Her case was in no sense made-up. Sally Reed was an everyday woman.

In the seventies, we never had to look for plaintiffs, they were all out there. After *Goesaert v. Cleary*, the Michigan bartender's case in 1948, the next gender discrimination case was heard in 1961, during the tenure of the "Liberal Warren Court." A woman, Gwendolyn Hoyt, was charged with murdering her philandering, abusive husband. It was a freak accident. He had humiliated her to the breaking point. She saw her young son's baseball bat in the corner of the room, took it, and with all her might, hit her husband over the head. He fell to the ground. End of their altercation, beginning of the murder prosecution.

Gwendolyn Hoyt had the idea that if women were on her jury, they might better understand her state of mind. Not that they would acquit her, but they might find her guilty of the lesser offense of manslaughter rather than murder.

But Hillsborough County, Florida, where Gwendolyn Hoyt lived, did not put women on the jury rolls. Florida had a system some regarded as pure favor to women. Women were not on the jury roster to begin with, but any woman who wanted to serve could go down to the clerk's office and sign up.

You can imagine how many people, male or female, would sign up voluntarily if they were not compelled to serve.

Anyway, Gwendolyn Hoyt was convicted of murder by an all-male jury. The Warren Court found that Florida's exclusion of women from the jury rolls made sense, for after all, women are "the center of home and family life," and should not be distracted from their homecare responsibilities.

Ten years later, the court displayed a different understanding. Warren Burger was then the chief justice. He did not have the liberal reputation that Earl Warren did, and yet the court ruled unanimously in Sally Reed's favor. We knew from that unanimous decision that the court was ready to catch up with the change that had already occurred in society. By 1971, women were not content to be pigeonholed or placed on a single track. They wanted to have opportunities to do whatever their God-given talents enabled them to do.

In the course of the seventies, laws, both state laws, like the Michigan Bartender Law, and federal laws drawn on gender lines, were removed from the statute books. The first effort of the ACLU's Women's Rights Project was to make sure that public opinion was on our side. Next, we urged legislative change, and if that failed, constitutional challenges could be mounted in court.

I have described Sally Reed's case. Let me tell you about Stephen Wiesenfeld's. It is probably the best illustration of what is wrong with sex-role stereotyping. Stephen Wiesenfeld's wife was a public school teacher. She had a healthy pregnancy, teaching into the ninth month. When Steven and Paula went to the hospital for the birth of their child, the doctor came out and told Steven, "You have a healthy baby boy, but your wife died of an embolism."

Steven vowed that he would not work full-time until his child was in school full-time. He could just about make it with the Social Security benefits provided for a child left with a sole-surviving parent, plus the earnings limit—the amount he could make on top of the Social Security benefits.

He went to the Social Security office, asked for an application for child-in-care benefits, and was told, "the benefits are for mothers, they're

not available to fathers.” A sole-surviving parent who was female would get the benefits enabling her to care for a child, but the sole-surviving male parent did not qualify.

Wiesenfeld’s case was argued, first of all, as discrimination against the woman as worker. Paula Wiesenfeld paid the same Social Security taxes as her male coworker, but when she died, her family did not get the same protection. Stephen Wiesenfeld was disadvantaged as a parent because he would not have the opportunity to work only part-time. He would have to work full-time and could not be his child’s personal caretaker.

The court’s majority recognized that the discrimination started with the woman as worker. Others thought the law discriminated against the male as parent. And one, who later became my chief—he was then Justice Rehnquist—said that the scheme was totally arbitrary from the point of view of the baby.

Why should the baby have the care of a parent, a sole-surviving parent, only if the parent is female? I think it was the lone case in which the chief voted to hold a gender-based law unconstitutional. We did not ask to “strike down” the law. We certainly did not want to take away mothers’ benefits. Instead, we urged, this law is imperfect. Congress wanted mothers to get the benefits. The last thing in the world Congress would want is to remove the benefits from women.

So to perfect the law, to make it constitutional, the court had to “equalize up,” to convert “surviving mother” to “sole-surviving parent, male or female.” Many law teachers told me, “You can’t do that.” The court can strike down the law and then leave it to the legislature to reenact the measure shorn of gender bias. The court eventually accepted the position that if there is an unconstitutional omission in a statute, then the court should ask, “Suppose the legislature knew that what it had passed was not permissible, what would it prefer? Would it rather have the law stricken or would it prefer to extend the law to cover the class unconstitutionally left out?”

After Stephen Wiesenfeld’s cases, a series of other Social Security cases were brought on behalf of husbands and widowers, cases I called “Wiesenfeld without the baby.”

The final case in that series involved unemployment compensation, in particular, a social welfare benefit available when the parent was unemployed. When Congress learned that some women were signing up as the unemployed parent, it changed the law to cover only unemployed fathers. In a 1979 decision, the court considered the constitutionality of the law.

“Congress had changed unemployed parent to unemployed fathers,” the court noted, but Congress got it right the first time. So the court restored “unemployed parent.” In that case, the majority acknowledged what I just explained. If the law is imperfect, sometimes the appropriate cure is not to strike it down but to extend it to the left-out people.

SH: Let’s talk a little bit about your time at the court. The opinion that you may be best-known for is *United States v. Virginia*. Can you tell us a little about the Virginia Military Institute (VMI) case and how it relates to the cases that you have just been telling us about?

JG: The Virginia Military Institute is a state school. It offers an advantageous educational opportunity. VMI graduates do not necessarily become soldiers; only about 15 percent of VMI graduates go into the military. But the institute fostered an old boy’s network. Graduates who had positions in business and commerce would help younger graduates along their way. Virginia did not offer anything comparable for women. One interesting facet of the VMI case is that the plaintiff was the United States of America. Not too many years before, there had been litigation against the United States for excluding women from West Point, from Annapolis, from the Air Force Academy. Those cases were litigated on behalf of women who wanted to go to those schools.

In the course of the litigation, the government decided it would rather switch than fight, and it opened up the military academies to women. By the time we got to VMI, the United States was arguing on behalf of women ready, willing, and able to go to VMI.

Sometimes people ask me, “Why would a woman want to go to VMI and undergo that kind of rigorous military training?” I reply, “I wouldn’t want to. Perhaps you wouldn’t want to. Perhaps the gentlemen over there wouldn’t want to, but there are some women who want to and have everything it takes, all the qualifications necessary to succeed. Why shouldn’t they have that opportunity?” The VMI case yielded a seven to one judgment. Justice Scalia was the lone dissenter.

My husband commented, “Ruth, it took you twenty years to win the Vorchheimer’s case.” What was the Vorchheimer’s case? Philadelphia had two public high schools for gifted children; their names told the story.

One was called Central—it was all boys. The other was called Girls’ High. A girl, Susan Vorchheimer, wanted to go to Central because it had better math and science facilities, and incomparably better athletic facilities. She won in the District Court, the federal trial court. She lost in the Court of Appeals 2–1. So the federal judges stood 2–2 at that point. In the Supreme Court, one justice was recused, the rest divided evenly 4–4. When that happens, the court is unable to make a decision. Instead, it automatically affirms the decision of the Court of Appeals.

That meant that the Third Circuit judgment—that Central High could remain all male—stood. Years later, a Pennsylvania court, under Pennsylvania’s Equal Rights Amendment, held that Central could not remain all male.

KA: In recent years, you have gotten more attention for your dissents than for your majority opinions. Which of your dissents do you think is the most important?

JG: The most important . . . I can’t pick just one. But Shelby County is high on my list. Some of you have seen the film *Selma*, and you know the background of the Voting Rights Act of 1965, a very important law that Congress renewed periodically. States and certain localities in the bad old days had barred African Americans from voting, and the federal law said to those prior offenders, “If you want to change any of your voting laws, you have to preclear the change either with the Justice Department or with a three-judge federal court in the District of Columbia. The formula was challenged as outdated. Congress, by an overwhelming majority, both sides of the aisle, had renewed the Voting Rights Act with the same formula. The court agreed with the challengers that the formula was outdated. Everyone knew it was impossible for the Congress then sitting to change it. So a major civil rights protection was effectively rendered unconstitutional.

I viewed Shelby County as a “who decides” case. The legislature had overwhelmingly voted to extend the Voting Rights Act. Should nine unelected judges trump that decision of the legislative branch? My answer was “no.” The members of the political branches probably know more about voting and elections than the unelected Supreme Court justices do. So I would have preserved the Voting Rights Act. The problem with

changing the formula was simply this: What senator, what representative was going to stand up and say, “My state is still discriminating. It should still be on the list.”

Sometimes, a dissent can have an immediate impact. My favorite example is the Lilly Ledbetter case. Lilly worked for a Goodyear Tire plant. She was an area manager. She was hired in the 1970s, the first woman to hold such a job. Many years later, she found a slip of paper in her mailbox at the plant. It had a series of numbers. They showed the pay received by other area managers. Lilly’s name, although she worked there for well over a decade, was at the very bottom. The most junior person, someone she had helped train, earned more than she did. So she decided she had a good Title VII lawsuit. Title VII is the principal antidiscrimination in employment federal statute. It says employers cannot discriminate because of race, religion, national origin, or sex.

Lilly won in the trial court. She got a substantial verdict, but the Supreme Court said she sued too late. Title VII says, “You have to complain within 180 days of the discriminatory incident.” Lilly complained about discrimination that began at the end of the seventies, so she was way out of time, the court held. What I tried to explain in my dissent was that women who take a job that, up to then, had been done mostly by men, do not want to be seen as complainers. They don’t want to rock the boat. Besides, suppose she had complained early on—well, first, she would have to know, because salary figures were not given out. Second, the employer would almost certainly defend by saying, “It has nothing to do with Lilly being a woman. She just doesn’t do the job as well as the guys.” But now she has been working there over a decade, and she has gotten good performance ratings through the years. So the defense that she does not do the job as well is no longer available. Now, she has a winnable case.

Her view was that the discrimination she encountered is repeated every month. Every paycheck reflects that differential so she should—if you interpret Title VII properly—have 180 days from each paycheck to complain. Congress with amazing rapidity amended Title VII to adopt that paycheck theory—that the clock started to run anew with every paycheck that reflected the discriminatory differential.

The Lilly Ledbetter dissent had an immediate impact. Most of my dissents, I hope, will be the law someday.

SH: Justice, two of your colleagues have given Tanner Lectures before. Justice Scalia took the opportunity to defend originalism, and Justice Breyer defended his view of active liberty and said that the Constitution should be interpreted to promote democratic engagement. What is your approach to the Constitution? Do you think of yourself as having an -ism?

JG: My approach to the Constitution is influenced by the first three words, “We the people.” If we go back to 1787, who were “we the people”? A very select group. They were white, property-owning men. I think the genius of our Constitution is that, over the span of more than two centuries, the notion of who counts among “we the people” has grown. At the start, Native Americans were left out, people held in human bondage, women, until 1920, were not part of the political community, and newcomers to our shores. We the people, today, is a much more embracing concept than it was in 1787. The founders probably expected that that’s the way it would be and should be—that these grand ideas they planted, like due process of law, would be adjusted to govern the society that exists at a particular time. To take a simple example: the Eighth Amendment, cruel and unusual punishment. Many people visit Historic Williamsburg, Virginia. They visit the jail and see various devices designed to punish people, like putting them in a stock. We do not allow that kind of public humiliation today. We don’t allow twenty lashes. So cruel and unusual punishment means something different today than it meant originally.

The difference between my approach and Justice Scalia’s is illustrated in a comic opera that will have its world premiere on July 11 in Castleton, Virginia. The opera is called *Scalia/Ginsburg*. It opens with Scalia’s rage aria. It is, for those who know music, a Handelian aria. Handel is long, long dead so there are no copyright problems. The composer and librettist is a young man, Derrick Wang, and he has created a marvelously inventive piece. Scalia’s rage aria goes like this.

“The Justices are blind. How can they possibly spout this? The Constitution says absolutely nothing about this.” I answer that he is “searching for bright line solutions to problems that don’t have easy answers, but the great thing about our Constitution is, like our society, it can evolve.” And then the singer launches into a spirited refrain, “Let it grow. Let it grow.”

There is a scene I like better than my colleague does. Justice Scalia is locked up in a dark room. He is being punished for excessive dissenting. I enter to rescue him. I make my entrance through a glass ceiling.

KA: Justice, the court obviously plays an important role in interpreting the Constitution. You have said that the Supreme Court went too far and too fast in *Roe v. Wade*. What do you mean by that?

JG: *Roe v. Wade* is a 1973 decision. At the time of *Roe*, abortion law was in a state of flux all over the country. Some states, including my home state, New York, also California, Alaska, and Hawaii, allowed a woman access to an abortion in the first trimester, if that was her choice. A number of states had moved to a middle ground, recognizing grounds for abortion: rape, incest, danger to the woman's health. Texas had the most extreme law in the nation, no abortion unless it was necessary to save the woman's life; impairment of her health was not good enough, only her life counted. I thought the Supreme Court would strike down that most extreme law, and then there would be a continuing dialogue in the country. State legislatures would react to the court's decision. Instead, the court wrote an opinion that made every law in the nation, even the most liberal, unconstitutional in one fell swoop. I spoke earlier about *Brown v. Board* and Thurgood Marshall putting the building blocks in place. The Women's Rights Project started with cases like Sally Reed's and it built up from there.

*Roe* was a stunning opinion, although it was not really controversial at the time it was released. *Roe v. Wade* is a 7–2 decision. There were only two dissenters, Justice Rehnquist and Justice White. My thought was that if the court had been more modest, then the change would continue to move in the direction in which it was already moving. Instead, there was a single target for those who opposed a woman's free choice, and that one target was *Roe v. Wade*, a decision by unelected justices. It was much easier to target that decision than to be fighting in the trenches, state legislature by state legislature.

Unquestionably the right judgment was reached in *Roe*. I criticized not the judgment, but the opinion, on two grounds. One, a criticism best expressed by a great constitutional law scholar, Paul Freund. He said, "The problem with *Roe v. Wade* is like that of the little boy who gets trotted out at his parents' dinner party and to impress the guests, he's asked

to spell ‘banana.’” He replies, “Well, I know how to start spelling banana. I just don’t know where to stop.” That’s what I saw as the problem with the decision in *Roe v. Wade*.

SH: Justice, after Justice Stevens left the bench, he published a book in which he proposed six amendments to our Constitution. Do you have amendments you would like to see added?

JG: I have one, beyond all others and that is the Equal Rights Amendment. I am sometimes asked, “Well, isn’t the Equal Protection Clause good enough?” My answer is “no.” Think of this historically. There was a woman, Virginia Minor. After the Fourteenth Amendment was adopted, she wanted to vote. The amendment says, she urged, “nor shall any state deny to any person the equal protection of the laws.” “I am a person and I am a citizen,” so I must have the right to vote. The Supreme Court answered her plea by saying, “Of course you’re a person and you are a citizen, but so too are children. And who would suggest that children should have the right to vote?” That was back in the 1870s.

The post–Civil War amendments had one purpose: to end the legacy of slavery. At the time the Fourteenth Amendment was adopted, many states placed restrictions on married women. The woman who married lost her right to contract, to sue and be sued in her own name, to hold property in her own right. The Congress that put out the Thirteenth, Fourteenth, and Fifteenth Amendments for ratification had no intention of changing any of that.

As I said a while ago, the idea of equality is much broader than the initial impact of it. So perhaps today, under the Equal Protection Clause, the rights that the Equal Rights Amendment would have secured—most of them—the same result might be achieved under the Equal Protection Clause. But every constitution in the world written after World War II has a statement to the effect that women and men are persons of equal citizenship stature.

I would like to take my pocket Constitution out, show it to my three granddaughters, and say, “This is a prime value of our society, just like free speech and freedom of religion. The equality of men and women, their equal citizenship stature, is a basic tenet of our society.” And for that reason, I would like to see that statement in our Constitution, just as it is in every post–World War II constitution.

KA: Could you tell us what the Supreme Court decision is that you would most like to see overruled?

JG: I mentioned the Voting Rights Act decision, but I would have to say, first, if I had any decision I could change, it would be *Citizens United*. I am very glad, very proud to be a citizen of the USA, but when I go abroad and people ask, “How can it be that you allow unlimited campaign contributions? Certainly, the office holder is going to be beholden to the big money person who finances his or her campaign.” Other democratic nations have very severe limits on private financing of candidates for public office. And people abroad say of the current situation in the United States, “You have all the democracy money can buy.”

I think there will come a time, maybe not too far down the road, when the people are disgusted with this, and then the pendulum will swing the other way.

SH: Supreme Court justices are the only senior officials in our government who decide for themselves when to retire, and some people think that instead of having that system, we should have a system of fixed terms. Which system do you think is better?

JG: The most important thing is that you preserve the independence of the judges. Some systems, like Germany, have a long—I think the term for their Constitutional Court is either twelve or fourteen years, non-renewable. Nonrenewable, so the judge won’t worry about a reappointment, how a vote on a particular issue would affect reappointment. That’s the way they guarantee the independence of the judges. In our system, Article III of the Constitution says that judges, all federal judges, not just Supreme Court justices, shall hold their office during good behavior. I might speculate about other systems, but the truth is, our Constitution is powerfully hard to amend. I know that as a citizen of the District of Columbia. District dwellers would like to end taxation without representation. The failed effort to ratify the Equal Rights Amendment is another example.

So we have a Constitution that is very difficult to amend, and I do not think life tenure for federal judges is going to be something that really exercises the public. Of course, I am terribly biased and

prejudiced on this subject. But think of Justice Stevens, who stepped down when he was ninety. Scott has already mentioned that since his retirement, he has written a couple of books. In his last year on the court, the year he turned ninety, he was no slower than he was when I was a new justice. He was still the fastest justice responding to an opinion another justice circulated.

So it is a decision an individual has to make. I have said that as long I can do the job full steam, I will stay in it. But when I begin to slip, as inevitably I will, when that happens, that will be the time for me to go.

KA: As we have talked about, you focused a lot of your career on the rights of women. Your dissent in *Hobby Lobby* points out one way in which women are still disfavored by the law. Could you talk a little bit about that dissent and other areas of the law where women are still at disadvantage?

JG: Hobby Lobby was decided under a law called the Religious Freedom Restoration Act, and from the majority's point of view, they were championing the right of the owners of the Hobby Lobby to practice their religion. And I had no doubt about the genuineness of their religious belief and their right to practice their own religion. But what they did not have the right to do, in my judgment, was to force their religious belief on a workforce that did not share that view. I used in my dissenting opinion an expression by a great law teacher, Zechariah Chafee. Speaking of freedom of expression, he said, "I have a right to swing my arm, until it touches the other fellow's nose, and that's when I have to stop."

KA: As we have talked about, there has been lots of positive change for women, for people of color, for gays and lesbians over the course of your career, and we hope perhaps more change is coming. But lower-income women still face a host of challenges, and the situation for lower-income Americans, in general, is getting worse. We were wondering if you think there's a role for a law and judges in addressing economic inequality, or are those issues better handled through politics?

JG: A court does not have the power of the purse. So if you want a spending program, that cannot be created by a court. The major problems, I think, must be solved legislatively, to raise the money through taxes for

social programs, and to create those programs. We were, until very recently, the only democratic industrialized nation that did not have universal health care. That is not a program the court can adopt. A court can say yes or no, or it can extend the law in the way I described. But it cannot create the kind of programs that would be needed if we are seriously to have a handle on the economic inequality that exists in the country. There are modern constitutions that guarantee economic and social rights, as well as political rights, but rights of that nature are aspirational. And ever since *Marbury v. Madison*, we have treated our Constitution not as an aspirational document, but as law on the ground, the highest law we have, a law that trumps other laws.

So we do not have economic and social rights in our Constitution. If we did, there is no way a court could provide a decent shelter for every person, enough to eat. Those programs have to be adopted by the legislature.

KA: We wanted to switch to talk a little bit about family life. You have two new female colleagues, Justice Kagan and Justice Sotomayor, and many people are struck by the fact that neither one is married or has had children. Do you think that having a family makes it harder for women to reach the highest levels of government, or the legal profession? And what could we do about that?

JG: Whenever the comment is made—that the woman has to give up her family life if she is going to rise to the top of the tree in her profession—I think about Justice O’Connor, who raised three sons, or my colleague on the D.C. Circuit, Pat Wald, who has five children. I attribute my success largely to my partner in life, my husband, but also to my children. I succeeded as a law student because law school was not the only thing in my life. That is, I worked hard, I attended all of my classes and studied in the library in the afternoon. But four o’clock was children’s hour.

My days were concentrated on studies, but then I had this respite, this time with my daughter until she went to sleep, and then I went back to the books. Each part of my life was a respite from the other, and I was not so overwhelmed about law, law school, or study as the only thing in life that mattered.

I remember how nervous I was about taking practice exams my first year. Harvard had a cruel system. There were no exams until the very end of the year, but there were practice exams in January or February.

In one of those unforgettable moments in life, I was at the kitchen table studying, when my daughter crawled in. She had a mouth full of moth balls she came upon in a drawer containing my sweaters. We rushed her to the Cambridge City Hospital. I listened to her scream when her stomach was pumped. Thank goodness she hadn't actually ingested anything, but at that moment, I realized, "These practice exams really aren't all that important." After that I had a more relaxed attitude about them.

SH: Justice, one of your law clerks recently wrote an article in the *Atlantic* about the advice you gave him about being a stay-at-home dad. I think a lot of people find it natural to look to you for advice because you and Marty had such a wonderful relationship. You both had extraordinary careers and you raised two successful children. So we are wondering: what advice do you have for the rest of us?

JG: More than a little bit of luck is involved in raising a child who has a happy, satisfying adulthood, as my children do. My children are ten years apart. With my daughter, I overcompensated, dreadfully. On weekends, I took her to museums and children's shows. I took her to the Amato Opera when she was four years old. That was pushing things a bit. She stood up as the soprano was singing, and shouted at the top of her lungs, because that's how the soprano sounded to her. I quickly ushered her out. We waited four more years, and then went to the Met, choosing the opera carefully. It was *Così fan tutte* in an English translation. Jane loved it. By the time my son James came along, my husband and I were both busy with our careers, so he didn't have the same intense education every weekend. Jane never had a meal without beautiful long-playing records loaded on the Victrola. My son, who has a passion for music, just came by it naturally.

SH: In the years since Kate and I worked for you, I think it's safe to say you've achieved a new level of notoriety. Can you tell us a little bit about what it's like to be the Notorious R. B. G.?

JG: When all this started, my law clerks had to tell me about Notorious B. I. G. He's no longer alive, but we do have something in common.

We both grew up in Brooklyn. Notorious R. B. G. was started by a student at NYU Law School. I think it's wonderfully amusing. Early on, there were T-shirts, and the latest is a tattoo, fake, I hope. The creators of Notorious R. B. G. came to court and they sat in at a session. They have posted some serious stuff. As the Clinton Library released papers, they picked up items leading to my nomination by the president. Some of the items were revelations. Notorious R. B. G. is going to be a book. These are very speedy people. Recently, they interviewed my personal trainer, and they anticipate a fall release.

They asked my trainer, "What does she do?" He responded, "Well, I'll tell you and then you try it." They were intimidated.

SH: Justice, we are just about out of time, but there are a lot of young people on the audience and we would be interested to give you an opportunity to give them advice—advice for young women, advice for young men, advice for everybody.

JG: I've loved the law. I've loved everything I've done in it. But one thing I know is that if I had regarded the law as just a business . . . Oh, let me, first, tell you about beginnings that Justice O'Connor and I shared. She was at the top of her class in Stanford, but as in my case, there were no job offers. She volunteered to work free for a county attorney for four months, and said, "If you think I'm worth it after four months, you can put me on the payroll." That's how she got her first job. I was tremendously fortunate to have been alive and a lawyer when the Women's Movement came alive, and I had a talent that could help move that social change along. I have gotten tremendous satisfaction from things I have done that I wasn't paid to do. And if you think of yourself as a professional, you are not going to be content working just to turn over a buck. If you do only that, then you will have an occupation, much like a plumber, your skill will enable you to earn a living. But if you think of yourself as a true professional armed with a skill that can help others less fortunate—whatever it is that's your passion, whether it's the environment, helping newcomers to our shores, whatever it is—if you can work to help repair tears in your communities, to make things a little better for people in need, you will gain satisfaction no paycheck could give you.

Lawyers have an obligation to serve the public in that way. After all, lawyers have a monopoly on certain services, and at least in exchange for that privilege, they ought to conceive of themselves as servants of the people. That would be my advice to you. Pursue whatever is your passion, in addition to the job for which you get paid.

SH: Justice, thanks so much for coming today. It was such a special privilege for all of us, and we are glad you trekked out to Michigan in the dead of winter to share your wisdom with us this morning. Thank you.

JG: Thank you for being such sympathique interviewers. Thank you to all in the audience for listening so patiently.

#### NOTE

The original transcript of this lecture has been edited here for clarity and to aid reader comprehension.

