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More Than Words

My Own Words

Ruth Bader Ginsburg with Mary Hartnett and Wendy W. Williams
(Simon & Schuster 2016), 370 pages

Rachel H. Smith, rev'r*

What a delight it is to spend time with Justice Ginsburg's singular voice. She is the best kind of teacher and writer: humane, principled, funny, gracious, openhearted, and direct. I felt deeply glad to have this chance to know her a little better—to study the rhythm of her words, the quirks of her personality, the motifs of her life story. As I read *My Own Words*, I couldn't help but think over and over, Thank goodness for this remarkable person.

The Preface explains that this collection of Justice Ginsburg's writings was originally intended to follow after the publication of a biography that Justice Ginsburg is preparing with Hartnett and Williams, two Georgetown Law professors. "But as my years on the Court mounted," she explains in a droll acknowledgement of her decidedly ongoing Supreme Court tenure, the authors "thought it best to defer final composition of the biography until my Court years neared completion."¹ Accordingly, the authors published this collection first, likely in response to the public's increased interest in Justice Ginsburg's life and work.

The book introduces and collects Justice Ginsburg's own words in five parts: Early Years and Lighter Side; Tributes to Waypavers and Pathmarkers; On Gender Equality: Women and the Law; A Judge Becomes a Justice; and The Justice on Judging and Justice. The authors avoid Justice Ginsburg's traditional legal writing; her judicial opinions, legal briefs, and law-review articles are largely omitted.

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Instead, most of the “words” are in the form of prepared remarks that Justice Ginsburg has given before groups of judges, lawyers, and law students. The book also provides, among other works, her speech on the announcement of her nomination to the Supreme Court, her opening statement before the Senate’s confirmation hearing, and an article for the ABA Journal advocating for the Equal Rights Amendment. The book includes her bench announcement in the *Virginia Military Institute* case² and quite a few of her bench dissent announcements in high-profile cases like *Ledbetter*,³ *Shelby County*,⁴ and *Hobby Lobby*,⁵ among others. Some of the most charming pieces are from her early life: the editorial she wrote for her school paper as an eighth grader at a Brooklyn public school in 1946,⁶ the editorial she wrote for the East Midwood Jewish Center Bulletin that same year,⁷ and a letter to the editor she wrote to the *Cornell Daily Sun* in 1953.⁸

The collection also includes a few selections written about, but not by, Justice Ginsburg. These include excerpts from the comic opera *Scalia/Ginsburg* by Derrick Wang⁹ (which I would have liked a little less of¹⁰) and two sets of remarks by Justice Ginsburg’s beloved husband Martin.¹¹ It also includes photographs, including one of Justices Ginsburg and Scalia riding an elephant.¹² All together, it is a terrific collection of short and readable pieces that provide a holistic vision of Justice Ginsburg’s life and philosophy.

By the authors’ careful curating and editing, the themes of Justice Ginsburg’s worldview resonate throughout the book: the influence of her mother; the inspiration she finds in history and religion; the joy of her companionate marriage and role as mother and grandmother, but not home cook; the responsibility to civil society and social justice; the importance of norms, customs, and procedures—some of which she calls “workways”;¹³ the position of the judiciary as political check and protector

2 *Id.* at 150 (announcing the decision in *United States v. Virginia*, 518 U.S. 515 (1996)).

3 *Id.* at 287 (announcing dissent in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007)).

4 *Id.* at 292 (announcing dissent in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013)).

5 *Id.* at 307 (announcing dissent in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014)).

6 *Id.* at 10.

7 *Id.* at 16.

8 *Id.* at 22.

9 *Id.* at 45.

10 The opera offers an interesting contrast between the personalities and judicial philosophies of the two Justices. But it feels like too long an interruption from the voice of Justice Ginsburg, which is so strongly felt throughout the rest of the book.

11 *Id.* at 27, 126.

12 *Id.* at 42.

13 *Id.* at 201.

of the least powerful; the need for a sense of humor and to sometimes be “a little deaf”;¹⁴ the promise of equality and opportunity that can be found in our living Constitution; and the right of every person to strive for and achieve a life of her own design without limitations imposed by ancient notions of what men or women can or should do.

As a writer, Justice Ginsburg was precocious, and her style remains remarkably consistent from her teenage years to the present. She frequently uses alliteration, witty quotations, long symmetrical sentences, and unexpected modifiers. For example, an alliterative sentence she wrote when she was thirteen, “We children of public school age can do much to aid in the promotion of peace,”¹⁵ echoes in her comment after the death of Justice Scalia in 2016 that, “The Court is a paler place without him.”¹⁶ Her rhetorical symmetry and eye for the apt quote is evident in a passage she wrote in 1946: “We must never forget the horrors which our brethren were subjected to in Bergen-Belsen and other Nazi concentration camps. Then, too, we must try hard to understand that for righteous people hate and prejudice are neither good occupations nor fit companions. Rabbi Alfred Bettleheim once said: ‘Prejudice saves us a painful trouble, the trouble of thinking.’”¹⁷ Similarly, in 2013, she wrote in her bench announcement in *Shelby County v. Holder*, “The great man who led the march from Selma to Montgomery and there called for the passage of the Voting Rights Act foresaw progress, even in Alabama. ‘The arc of the moral universe is long,’ he said, but ‘it bends toward justice,’ if there is a steadfast commitment to see the task through to completion. That commitment has been disserved by today’s decision.”¹⁸

Two moments in the book are especially poignant. The first is in her talk, “Three Brave Jewish Women,” in which Justice Ginsburg quotes from a section of *The Diary of Anne Frank* where Anne marvels at the “great injustice” that women are thought to be inferior to men.¹⁹ The idea of Ruth Bader and Anne Frank as contemporaries (Anne being just four years older) brought me to tears.

I cried a second time, when then-Judge Ginsburg said the following in her remarks in the Rose Garden, accepting President Clinton’s nomination

¹⁴ *Id.* at xv (“Another often-asked question when I speak in public: ‘Do you have some good advice you might share with us?’ Yes, I do. It comes from my savvy mother-in-law, advice she gave me on my wedding day. ‘In every good marriage,’ she counseled, ‘it helps sometimes to be a little deaf.’”).

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 324.

¹⁷ *Id.* at 16.

¹⁸ *Id.* at 296.

¹⁹ *Id.* at 87.

to the Supreme Court: “I have a last thank-you. It is to my mother, Celia Amster Bader, the bravest, strongest person I have known, who was taken from me much too soon. I pray that I may be all that she would have been, had she lived in an age when women could aspire and achieve, and daughters are cherished as much as sons.”²⁰

The book offers plenty of wisdom germane to our current moment. Justice Ginsburg criticizes politically motivated delays in filling judicial vacancies and she stresses the importance and vulnerability of a “swordless,”²¹ but independent judicial branch. Moreover, her remarks on the value of civility, diversity, and international comity seem especially incisive during these uncertain times. Hillary Clinton also makes a few brief appearances, most notably when Judge Ginsburg states in her Rose Garden acceptance speech, “I know Hillary Rodham Clinton has encouraged and supported the president’s decision to utilize the skills and talents of all the people of the United States.”²²

My criticisms of the book are minor. I wish it had included some of Justice Ginsburg’s most compelling legal writing. The bench dissents are concise and helpful summaries, but including them rather than excerpts of her opinions deprives the book of some of her sharpest and most important prose. And the same is true of her briefs for the ACLU Women’s Rights Project. The book includes only an excerpt from the Reply brief in *Frontiero v. Richardson*,²³ which is one of the clunkier and less inspiring iterations of the arguments she made to the Court. How nice it would have been to see a section of the “grandmother”²⁴ or “mother”²⁵ briefs from her early cases or other powerful moments of persuasive advocacy, as in the ACLU’s Amicus Brief in *Craig v. Boren*, where she wrote, “Upon deeper inspection, the gender line drawn by Oklahoma is revealed as a manifestation of traditional attitudes about the expected behavior of males and females, part of the myriad signals and messages that daily underscore the notion of men as society’s active members, women as men’s quiescent companions.”²⁶

The choice to put most of the endnotes online, rather than in the printed book, was a mistake. It likely speaks to Justice Ginsburg’s current status as a pop-culture phenomenon, which makes the audience for this

20 *Id.* at 177.

21 *Id.* at 99.

22 *Id.* at 176.

23 *Id.* at 133.

24 See *id.* at 114 (referring to the ACLU’s brief in *Moritz v. Comm’r of Internal Revenue*, 469 F.2d 466 (10th Cir. 1972)).

25 See *id.* (referring to the ACLU’s brief in *Reed v. Reed*, 404 U.S. 71 (1971)).

26 Brief for Amicus ACLU at 6, *Craig v. Boren*, 429 U.S. 190 (1976), <http://www.legalwritingpro.com/briefs/craig-boren.pdf>.

book much wider than readers accustomed to densely referenced legal texts. But it would better serve even the most casual reader if she could follow the endnotes in the book itself as a resource to learn more.

Justice Ginsburg is fond of ending her remarks with a quotation. Then she says something like, “to that, I would add only ‘Amen’” or “I concur.”²⁷ When President Clinton nominated her to the High Court, he said, “Throughout her life, she has repeatedly stood for the individual, the person less well-off, the outsider in society, and has given those people greater hope by telling them that they have a place in our legal system, by giving them a sense that the Constitution and the laws protect all the American people, not simply the powerful.”²⁸

As Justice Ginsburg does so often, to that I would add only “Amen.”

²⁷ GINSBURG, HARTNETT & WILLIAMS, *supra* note 1, at xix, 60, 214, 221, 258.

²⁸ *Id.* at 173.