

Film Review

On the Basis of Sex

**A Focus Features Film
Written by Daniel Stiepleman;
Directed by Mimi Leder;
Produced by Robert W. Cort.
(2018)**

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Author Note

The insights or views expressed in this review are those of the author. They do not reflect official policy of the institutions the author serves. The author has no conflicts of interest.

Introduction

There is a transcendent call within all of us if we would only hear and heed it. It is a call to who we are as human beings. It defines and affirms our right *to be*—our right *to be* as all others have this same right *to be*. Spiritually, it beckons us to ascend to the highest of heights to honor this right for ourselves and for others. None of us can genuinely or legitimately obtain the highest state of existence unless we recognize and promote the beloved community to which we all rightfully belong.

The future Chief Justice Ruth Bader Ginsburg not only responded to this call but was passionately consumed and driven to answer it. She staked all of whom she was then and is now to engage in the age-old battle to dismantle discriminatory laws and to change systemic and cultural mindsets and practices that denied rights, opportunities and freedoms to women merely on the basis of gender. She went forward with moral justice on her side, while simultaneously standing upon the shoulders of many sisters and brothers who fought and sacrificed to affirm and live that truth. The Fourteenth Amendment was her weapon of choice:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (Section 1).

Film Summary

On the Basis of Sex is a two-hour biographical legal drama that depicts the launching of the law career of Supreme Court Justice Ruth Bader Ginsburg, a career that formally began with her being one of nine white women in a class of approximately 500 admitted to Harvard Law School in the fall of 1956. Ruth began law school as a wife and mother of a one-year-old daughter, Jane. Felicity Jones is cast as Ginsburg and Armand Douglas Hammer plays her beloved husband, Martin Ginsburg, best known as Marty.

From the film's outset, Ruth's strength, courage and intelligence become apparent as she enters Harvard with a fierce determination to excel despite the very blatant, insensitive and condescending white male culture and environment in which she found herself. This "patriarchal (and racial) reality" is clearly reinforced when the then Dean of Harvard's Law School, Erin Brisbane, asks the incoming law class the question: "What does it mean to be a Harvard man?" In a subsequent scene in which he and his wife are hosting a dinner at their home for nine women law students, Brisbane adds yet another patriarchal insult to his continuing female injury. He pompously mentions that it has been six years since Harvard began accepting women to its Law School. He then requests the female law students to stand up, introduce themselves and tell those gathered why they are at Harvard "occupying a seat that could have otherwise gone to a man"—a white man, undoubtedly. Ruth quickly and satirically shares that she is there to learn how to best help her husband, Marty, who is a second-year law student at Harvard. Fortunately, neither her quickness nor her satire is lost on Dean Brisbane or others in the room keen enough to note her fighter spirit and wisdom.

Shortly after Ruth's enrollment at Harvard, Marty is diagnosed with testicular cancer. In a tender and intimate scene in which Ruth gets in the hospital bed with him and affirms that they are fighting his cancer together, we next see her attending classes for him as well as for herself. It is because of her meticulous notes and assistance typing his papers that Marty, while in cancer recovery and healing, is still able to graduate from Harvard Law School. Ruth also carries the majority of the parental responsibilities for daughter Jane as well.

After Marty gains employment with a prestigious New York law firm, Ruth is adamant that they will remain together as a family. Thus, she meets with Dean Brisbane and requests an academic transfer to Columbia University in order to finish her law degree as well as remain with her family. Dean Brisbane does not support her desire to transfer despite Ruth pointing out that she, after two years at Harvard, is number one in her class. She also reminds him that he has allowed male students to do the same. Despite telling the dean that Marty could potentially relapse without her close by, Brisbane heartlessly remains adamant. The answer is still no. Ruth's decision to withdraw from Harvard and complete her degree at Columbia is unequivocal. In 1959, she graduated, tying with another student for first in the class.

After obtaining her law degree, Ruth met with "the good 'ole white boy" network of resistance to her being hired to practice law. She faced rejection after rejection not only for

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discriminatory and sexist reasons but by potential employers who were ignorant and arrogant as well: “Women are too emotional.” “We hired a woman last year, . . . what would we want with another one?” “When will you have another baby?” “Other wives will get jealous.”

After facing the humiliation, pain and anger of repeatedly being denied the opportunity to practice law despite being well qualified to do so, Ruth is offered a teaching position at Rutgers School of Law in 1963. This occurs after a black man, Clyde Ferguson, leaves the position, and it is decided that a woman should succeed him. Eight years later (1971), Marty presents to her a case that catapults his wife onto the national, and eventually the international stage. Ruth becomes a master litigator for the equal rights of women and men under the law.

In the case of *Charles Moritz vs. Commissioner of Internal Revenue*, Ruth and Marty co-represented Mr. Moritz, a bachelor in Denver, Colorado who was denied the caregiver’s tax break, although he was caring for his elderly sick mother and had to hire assistance to do so. The law, as it was written and interpreted, made the assumption that only women were nurses and caregivers, as well the fact that it was never fathomed that bachelors (or men in general) would choose to be caregivers. Consequently, the prosecution, in what it thinks is a strategic defense on their behalf, brought forth 178 laws that, at the time, clearly and intentionally discriminated against women and, inadvertently, men as well. The counselors do so to send the message to the Judges deciding the case that although discriminatory, the social norms and cultural traditions (or rather conditionings) should be maintained and, thereby, Mr. Moritz should unequivocally be denied the right to be audacious enough and loving enough to care for his ailing mother by deviating from the prescribed male/female gender roles these laws and social and cultural practices imposed.

While the preparation for this case challenges and stretches Ruth’s potential, she, in partnership with Marty and her family, and with the support of the American Civil Liberties Union (ACLU), argues the case. It is a zeitgeist moment of her career. Utilizing the very words inscribed on the walls of Denver’s Tenth Circuit Court--“Reason is the soul of all law”--Ruth Ginsburg strategically cites 178 laws the prosecution meant for harm and instead employs them in her client’s favor. She appeals to the judges’ sense of reason and pursuit of justice. Why maintain the status quo? Why not create a new history by ruling in Mr. Moritz’s favor? Reverse the tax law that unfairly discriminates against and penalizes him for providing care to his mother?

The outcome of this landmark case launches Ruth Bader Ginsberg’s stellar half-century career as a champion for the rights of women (and men)—a career that culminates in her much-celebrated appointment in 1993 by President Bill Clinton to become the second woman Associate Justice on the United States Supreme Court.

Reflection

As I viewed this film, I realized that I had to process my thoughts and feelings through the ethnic and cultural lens of being an African American woman born two years after the point of departure for *On the Basis of Sex*, the year Justice Ginsburg entered Harvard Law School. I reflected on the long history of egregious acts of racial discrimination and evils against us as a people. As the first scene rolled before me with just “1956” written on the screen, I saw and heard the buzzing and excitement of the new and returning students moving about in in Harvard’s halls. I could not help but scan the sea of faces, hoping that some would look like me.

Not surprisingly, there were none. Given the racist realities of those times—and sadly now-- I had to engage with the film and with Justice Ginsburg from a loftier place. That is a place within me this society with its centuries old pervasive and pathological divisions, isms and schisms would not otherwise allow. Hence, I too had to hear the transcendent call that recognizes the equality inherent in all humanity. I watched the film knowing that as Chief Justice Ginsburg engaged in fighting for gender equality, the universal principle that justified all her actions, assured that the fight was also for racial equality and all other equalities necessary to affirm our right and innate need to be.

The film clearly portrays Justice Ginsburg's courage and clarity of purpose. She stood not alone in her quest for gender equality for there were many before her who helped paved the way. Many women gave their voices, bodies, blood, and their very lives over the centuries to the cause of equality. Their resounding cry can be summed up in the unrelenting appeal of womanist Sojourner Truth who asked the poignant question at a Women's Rights Convention in 1851, "Ain't I a woman?" A woman, indeed! A woman worthy of being viewed equally and treated with dignity and respect as all our brothers should as well be treated with dignity and respect.

As an African American woman witnessing this docudrama about the law career of Chief Justice Ginsburg, I was reminded that the human spirit never ceases to champion the cause for that which it knows is right. Despite our long and arduous history of failing to realize the tenets of the lofty worded Declaration of Independence, there is still something within us that will not succumb to injustice and inequality without a fight. It is a fight we take on no matter the odds. This spirited push for justice and equality is exactly what *On the Basis of Sex* conveys about Chief Justice Ruth Bader Ginsburg. As we watch this cinematic presentation about her legal career and life, may we, too, heed the message. She masterfully and sincerely appealed to the soul of the justices in the Denver Tenth Circuit Court to create a history that acknowledges and celebrates our equality rather than continuing a bankrupt tradition and ill-conceived social conditioning that perpetuates a history of injustice to us all. May we follow her example and, in the spirit of Woodstock, make beautiful music together as we join forces to advocate freedom for us all. Justice Ginsburg did!



Justice Ruth Bader Ginsburg (center), with Justices Sonia Sotomayor (l) and Elena Kagan (r).