

Judges Foster Feminism

ABORTION LAW had traditionally been in the domain of the states, as was nearly all criminal law. Beginning in 1967, seventeen states weakened their anti-abortion laws in various ways. The tide turned against abortion in 1970, as pro-abortion bills were introduced and defeated in thirty-three states. Even the New York legislature repealed its two-year-old abortion-on-demand law (only to have the repeal vetoed by Governor Nelson Rockefeller). On November 7, 1972, pro-abortion referenda were defeated in North Dakota by 78 percent and in Michigan by 61 percent.

Then, on January 22, 1973, the U.S. Supreme Court—in the preeminent act of judicial supremacy of our time—struck down the abortion laws of all fifty states.

The core holding of *Roe v. Wade* is widely misunderstood. It is commonly described in terms of viability or trimesters, or as allowing state regulation under some circumstances.

On the contrary, *Roe v. Wade* held that a woman has an unrestricted right to abortion at any time during the entire nine months of her pregnancy, provided it is deemed medically necessary to preserve her life or health. The term “medically necessary” was defined to mean that a doctor has agreed to perform the abortion—and this decision need not be justified. The term “health” was defined in the companion case decided the same day, *Doe v. Bolton*, to include “all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well-being of the patient.” The practical consequence is that any doctor can perform an abortion at any time.

Roe v. Wade was an outrageous creation of the judicial supremacists. This decision grabbed a legislative function away from the state legislatures and imposed a judicial fiat without any textual basis in the U.S. Constitution. As Justice Byron White said in dissent, *Roe v. Wade* was “an exercise of raw judicial power.” He wrote, “I find nothing in the language or history of the Constitution to support the Court’s judgment. The Court simply fashions and announces a new constitutional right”

Justice Rehnquist explained further that the decision “partakes more of judicial legislation than it does of a determination of the intent of the drafters of the Fourteenth Amendment To reach its result the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment.”

Justice William O. Douglas’s confidential papers, which were made available by the Library of Congress in 1988,

revealed that the justices were shamelessly plotting with each other to achieve the predetermined result of legalized abortion.

Roe v. Wade was an extraordinary exercise of judicial supremacy and was the godmother to a whole series of subsequent decisions on many subjects for which no basis exists in the Constitution. *Roe v. Wade* is a prime example of the judicial supremacists playing the wildcard of substantive due process.

Supreme Court arrogance reached new heights in *Planned Parenthood v. Casey* (1992), when the Court linked its own legitimacy with abortion in a circular argument. Although *Roe v. Wade* had no basis in the Constitution, the Court in *Casey* urged that *Roe* be cast in stone lest “the Court’s legitimacy be undermined.” In other words, in order to maintain the Court’s legitimacy, we must not criticize an illegitimate decision. Neither *Roe* nor *Casey* was based on any plausible reading of the U.S. Constitution.

The feminists now try to make all federal court nominees promise they will never overturn *Roe v. Wade*, usually demanding that they proclaim their fidelity to “settled law” and to *stare decisis* (stand by the decision).

But how about asking nominees these questions: Do you believe juvenile capital punishment was “settled law” in *Stanford v. Kentucky* (1989)? Do you think the Supreme Court made a mistake in overturning it in *Roper v. Simmons* only sixteen years later? Do you believe state anti-sodomy laws were settled law in *Bowers v. Hardwick* (1986)—so do you think the Supreme Court made a mistake in overturning

it in *Lawrence v. Texas* only seventeen years later? Would you have recommended *stare decisis* for the *Dred Scott v. Sanford* and the *Plessy v. Ferguson* decisions—or would you have repudiated *stare decisis*? The Supreme Court has overturned dozens of its own decisions, illustrating how silly it is to demand that nominees pledge fidelity to a controversial ruling.

From 1995 to 2000, laws prohibiting partial-birth abortion were passed by thirty states, usually by overwhelming margins. Within days of each new state law becoming effective, abortion advocates rushed to find an activist federal judge to slap an injunction against enforcement. The Supreme Court knocked out all these laws in *Stenberg v. Carhart* (2000), to the surprise of those who had not realized the full scope of *Roe v. Wade*. In his dissent in *Stenberg*, Justice Thomas wrote: “From reading the majority’s sanitized description, one would think that this case involves state regulation of a widely accepted routine medical procedure. Nothing could be further from the truth. The most widely used method of abortion during this stage of pregnancy is so gruesome that its use can be traumatic even for the physicians and medical staff who perform it.”

In 2003, Congress concluded that the Supreme Court had acted on faulty premises, and Congress passed a federal partial-birth abortion ban that attempted to conform to the Court’s twisted logic. Abortion advocates again persuaded activist judges to overturn the legislation, claiming that this gruesome procedure is medically necessary, but refusing to provide the medical records necessary to test their claim.

PUSHING FOR A GENDER-NEUTRAL SOCIETY

Roe v. Wade is the centerpiece of the feminization of the judiciary. This process was accelerated by the elevation to the Supreme Court of two women, neither of whom was questioned during her confirmation hearing about her extensive paper trail of feminist extremism.

Ruth Bader Ginsburg won early acclaim from the feminists because of her role as the attorney who wrote the amicus curiae brief which the ACLU filed in the 1973 Supreme Court case of *Frontiero v. Richardson*, one of the first attempts to get activist judges to rewrite U.S. laws in conformity with feminist ideology. Justice William Brennan's majority opinion articulated the feminist nonsense that American men, "in practical effect, put women, not on a pedestal, but in a cage," and "throughout much of the 19th century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes."

Anyone who thinks that free American women were ever treated like slaves or kept in a cage has a worldview that is a dangerous basis for Supreme Court decisions. Brennan is no longer on the Court, but we do have his soulmate, Ginsburg, who subscribes to the same fantasies and praised *Frontiero* as an "activist" decision.

Before Ruth Bader Ginsburg was nominated for the Supreme Court by President Clinton, she authored a book, *Sex Bias in the U.S. Code*, supporting the proposed federal Equal Rights Amendment. In that book, she advocated

not only assigning women to military combat duty, but affirmative action for women in the military, sex-integrating everything from prisons to the Boy Scouts, and even changing 750 federal laws to censor all male nouns and pronouns because they allegedly discriminate against women.

Justice Ginsburg has long been on record as wanting cases to be decided on what she calls “the equality principle” (rather than on the Constitution). In her 1980 book, *Constitutional Government in America*, she endorsed taxpayer funding of abortions as a constitutional right (something that even the pro-*Roe v. Wade* Supreme Court rejected in *Harris v. McRae* in 1980).

When Ginsburg stood beside President Clinton in the Rose Garden the day he nominated her for the Supreme Court, she said she wished that her mother had “lived in an age when daughters are cherished as much as sons.” Where did her mother live—in China? Her statement was an insult to all American parents who do, indeed, cherish their daughters as much as their sons.

After she joined the Supreme Court, Ginsburg’s major effort to aid the feminists’ campaign to plunge us into a gender-neutral society was her sudden discovery in 1996 of a new entitlement for women to enroll at the Virginia Military Institute, a privilege nobody else had detected during VMI’s previous 157 years. She wrote the Court’s opinion in *United States v. Virginia* ordering women to be admitted to Virginia Military Institute, and even smeared as “close-minded” those who believe there are inherent differences between men and women. Without any authority from the

Constitution, Ginsburg led the Court into pandering to the feminist prejudice against the type of masculinity that was typical of VMI.

Ginsburg's feminist influence on other justices is seen in a 2003 decision that shocked observers, *Nevada Department of Human Resources v. Hibbs*. She didn't write the decision, but the feminist phraseology is unmistakably hers. The Court's tirade against "stereotypes" (a word used eighteen times), which supposedly "forced women to continue to assume the role of primary family caregiver," echoes Ginsburg's prejudice against the concept of "breadwinning husband" and "dependent, homemaking wife," which she had expressed in *Sex Bias in the U.S. Code*. "Stereotyping" is a favorite *bête noire* of the feminists and often refers to the traditional view that children are best raised by a mother and father who are married to each other.

Ginsburg makes no secret of her continued close ties with the pro-abortion feminists. She lends her name and presence to a lecture series sponsored by the now Legal Defense and Education Fund, a feminist advocacy group that often files amicus briefs in support of feminist causes. Thirteen members of Congress have asked her to withdraw from cases having to do with abortion because of these ties, but she has refused.

The feminization of the judiciary led the federal courts to micromanage the athletic teams at Brown, a private university. A national leader in offering athletic opportunities to women, Brown made a budgetary decision to recast two men's and two women's sports teams as "intercollegiate"

rather than “varsity,” a change that affected more men than women.

But the feminists filed a class action lawsuit claiming sex discrimination under Title IX. Litigation spanned ten years and cost Brown over one million dollars in compelled payment of plaintiffs’ attorney’s fees. The courts ordered Brown to restore full funding for the two women’s teams, though not the men’s teams (*Cohen v. Brown University*, 1992 through 2003).

THE STEREOTYPICAL WOMAN

The other woman on the Supreme Court, Sandra Day O’Connor, had a record of feminist extremism similar to Ginsburg’s, and both women got a free pass in their confirmation hearings from the chivalrous men on the Senate Judiciary Committee.

O’Connor had served on a tax-funded feminist commission called the Defense Advisory Committee On Women In The Services (DACOWITS). The minutes of this group show that O’Connor “initiated” the discussion and made the motion in the Utilization Subcommittee in April 1975 urging Congress to repeal the laws that exempt women from military combat duty. Her motion was passed in the full DACOWITS year after year and resulted in a House hearing in 1979 where, fortunately, wiser men killed the proposed legislation. Assigning women to military combat duty is a priority item on the feminist agenda to propel us into a gender-neutral society.

With her feminist background, it was no surprise that O'Connor twice voted to keep abortion legal (in *Planned Parenthood v. Casey* and *Stenberg v. Carhart*) and twice voted for gay rights (in *Romer v. Evans* and *Lawrence v. Texas*). As a member of the Arizona Legislature, she voted repeatedly for pro-abortion bills, and she co-sponsored ratification of the federal Equal Rights Amendment (which Arizona refused to ratify).

The feminization of the Court has played a major factor in creating the problem of judicial supremacy. Numerous decisions for which O'Connor has been the swing vote have had an insidious effect. She is the judicial personification of the stereotype that a woman will change her mind, be unpredictable, and make decisions that are inconsistent and unfathomable to rational men.

Elevated to the Court by President Reagan, she positioned herself as the ultimate centrist whose opinions cannot be predicted because they blow with the wind and follow no logical pattern. Since the Supreme Court is split between liberals and conservatives, O'Connor became the deciding vote in many important cases, allowing the liberal media to call her the most powerful woman in America. She is credited with being the deciding vote in many 5 to 4 decisions on major issues of public policy, including abortion (*Planned Parenthood v. Casey*, 1992), partial-birth abortion (*Stenberg v. Carhart*, 2000), vouchers to religious schools (*Zelman v. Simmons-Harris*, 2002), racial preferences in university admissions (*Grutter v. Bollinger*, 2003), and campaign finance reform (*McConnell v. FEC*, 2003).

Justice O'Connor provided the decisive fifth vote in 2005 to force county courthouses to tear down displays of the Ten Commandments (*McCreary County v. ACLU of Kentucky*). O'Connor supposedly supports state power and opposes federal interference, but on the important issues of religion and abortion she repeatedly favored federal intervention to advance her unpopular views.

Lacking any consistent ideology or respect for the separation of powers, O'Connor claims to base her rulings on such nebulous and equivocal "tests" as "undue burden," "an appearance of endorsement," or "a reasonable observer."

The problem with these 5 to 4 decisions is not that they are close calls, but that under the current regime of judicial supremacy, in which the legal community accepts a 5 to 4 decision as the law of the land, all these issues will be constantly re-litigated because no one can predict how similar cases will be decided. Nobody knows what the law is; it depends on the whim of the swing justice.

The legal community continues to propagate the unconstitutional notion that the Constitution is whatever the Supreme Court says it is, but are less and less confident of what the Supreme Court will say. The result is that Justice O'Connor is responsible for concentrating more and more power in the Supreme Court to resolve intricate matters of public policy.

O'Connor's devotion to judicial supremacy was made clear by her opinion in *Planned Parenthood v. Casey*: "So, indeed, must be the character of a Nation of people who aspire to live according to the rule of law. Their belief in

themselves as such a people is not readily separable from their understanding of the Court invested with the authority to decide their constitutional cases and speak before all others for their constitutional ideals.”

She claims our “belief” in “the rule of law” requires us to accept a Court “invested with the authority” above “all others” to decide what are our “constitutional ideals.” She wants the rule of law to require Americans to allow the Supreme Court to be the sole interpreter of the Constitution even if that means upholding an obviously wrong decision.

The truth is just the opposite. We are not living under the rule of law so long as unaccountable judges are allowed to exercise the sole authority to invent new and contrary interpretations of the Constitution and of laws passed by our elected representatives. That is rule by an oligarchy of judges, not the rule of law.

We hope some day we will have a woman on the Supreme Court who is a real judge, not a feminist or a politician. Republican presidents cannot afford another O'Connor.

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- Ruth Bader Ginsburg co-authored the book called *Sex Bias in the U.S. Code* in 1977 with another feminist, Brenda Feigen-Fasteau, for which they were paid with federal funds under Contract No. CR3AKO10. The 230-page book was published by the U.S. Commission on Civil Rights. It was written to identify the federal laws that allegedly discriminate on account of sex and to promote ratification of the then-pending federal Equal Rights Amendment (ERA), for which Ginsburg was a fervent advocate. Here are some of Ginsburg's radical feminist recommendations set forth in her book *Sex Bias in the U.S. Code*.

Ginsburg called for the sex-integration of prisons and reformatories so that conditions of imprisonment, security and housing could be equal. She explained, "If the grand design of such institutions is to prepare inmates for return to the community as persons equipped to benefit from and contribute to civil society, then perpetuation of single-sex institutions should be rejected." (101) She called for the sex-integration of Boy Scouts and Girl Scouts because they "perpetuate stereotyped sex roles." (145) She insisted on sex-integrating "college fraternity and sorority chapters" and replacing them with "college social societies." (169) She even cast constitutional doubt on the legality of "Mother's Day and Father's Day as separate holidays." (146)

Ginsburg called for reducing the age of consent for sexual acts to persons who are "less than 12 years old." (102) She asserted that laws against "bigamists, persons cohabiting with more than one woman, and women cohabiting with a bigamist" are unconstitutional. (195) She objected to laws against prostitution because "prostitution, as a consensual act between adults, is arguably within the zone of privacy protected by recent constitutional decisions." (97) Ginsburg wrote that the Mann Act (which punishes those who engage in interstate sex

traffic of women and girls) is “offensive.” Such acts should be considered “within the zone of privacy.” (98)

Ginsburg’s view of the traditional family was radical feminist. She said that the concept of husband-breadwinner and wife-homemaker “must be eliminated from the code if it is to reflect the equality principle,” (206) and she called for “a comprehensive program of government supported child care.” (214)

She demanded that we “firmly reject draft or combat exemption for women,” stating that “women must be subject to the draft if men are.” But, she added, “the need for affirmative action and for transition measures is particularly strong in the uniformed services.” (218)

An indefatigable censor, Ginsburg listed hundreds of “sexist” words that must be eliminated from all statutes. Among words she found offensive were: man, woman, manmade, mankind, husband, wife, mother, father, sister, brother, son, daughter, serviceman, longshoreman, postmaster, watchman, seamanship, and “to man” (a vessel). (15-16) She even wanted he, she, him, her, his, and hers to be dropped down the Memory Hole. They must be replaced by he/she, her/him, and hers/his, and federal statutes must use the bad grammar of “plural constructions to avoid third person singular pronouns.” (52-53)

It’s too bad that Americans were denied the entertainment of a C-SPAN broadcast of a Senate Judiciary Committee interrogation of Ginsburg about her out-of-the-mainstream views. But the Republicans rolled over and Ginsburg was confirmed as a Supreme Court justice 96 to 3.

- Sandra Day O’Connor’s voting record in the Arizona State Senate includes the following: On April 29, 1970, she voted Yes on H.B. 20, an abortion-on-demand bill, in the Senate Judiciary Committee. On April 30, 1970, she voted Yes on the same bill in the Republican Majority Caucus (where the bill was defeated). On April 23, 1974, she voted No in the Senate Judiciary Committee on a Right to Life Memorial asking Congress to extend constitutional protections to the unborn. On Feb. 8, 1973, she co-sponsored the Family Planning Act

(S.B. 1190) to provide “family planning,” including abortions, to minors without parental consent. In May 1974, she voted No on an amendment to prohibit abortions at the taxpayer-supported University of Arizona Hospital. On March 23, 1972, she co-sponsored the Equal Rights Amendment (which Arizona consistently rejected). On April 15, 1971, she succeeded in amending anti-pornography bills (H.B. 301 & 302) so that porn shops (“adult bookstores”) could be 4,000 feet from schools and parks instead of at least a mile away. In 1973, she sponsored Arizona’s no-fault divorce bill (H.B. 1007).

LESSON SEVEN

JUDGES FOSTER FEMINISM

QUESTIONS FOR DISCUSSION:

- ★ How did the Supreme Court invent a new right in the Fourteenth Amendment that no one else had seen there for a hundred years?
- ★ Why do we say that *Roe v. Wade* is the godmother of judicial activism?
- ★ How did ACLU attorney Ruth Bader Ginsburg carry out her judicial strategy to override our laws, schools, armed services, and customs, and make everything gender neutral?
- ★ What do you think the judges would have done for radical feminists if the Equal Rights Amendment had been ratified?
- ★ Why do you think President Reagan appointed a woman to the Supreme Court who then voted twice for abortion, twice for gay rights, and twice against the Ten Commandments?
- ★ Can Senators give female court nominees the same sustained, aggressive interrogation that they inflicted on Robert Bork, Clarence Thomas, John Roberts, and Samuel Alito?
- ★ Why didn't senators examine Ginsburg about her paper trail proving her offbeat notions about feminism and the law, and what were some of her weird ideas?