

Out-of-the-Box Approaches Advance Women's Rights

By Janet Benshoof

I have been fighting for women's rights for over four decades, a time of revolutionary advances for women. My legal career has been shaped by a strong sense of personal agency going back to my childhood.

Growing up in a small town in Minnesota, reading opened up new worlds. Following my girl guide Nancy Drew, I was determined to be the heroine of my own life. At age 10, an article on the Holocaust changed my life. My vow to *always* speak up against evil has segued into using law as a tool for justice. While I celebrate victories, I view losing as a step in the process, understanding that most changes will happen after my lifetime. And, bad precedents trigger my most creative legal thinking!

Entering Harvard Law School in 1969 was a lesson in feminism. I cofounded the Women's Law Association, and we got Rutgers Law Professor Ruth Bader Ginsburg to teach a course on women and the law. When I asked the dean to invite her for a visiting professorship, he said, "We can't do that, Janet; understand that she [now a Supreme Court justice] will *never* get anywhere in the profession."

The most singular lesson of my career is that advocating for radical legal approaches is lonely. The theories behind my most precedential legal victories have all been initially opposed by colleagues: "Don't make the judge mad," "You will lose and set us all back," "If you argue gender equality includes abortion rights, we will lose equality," and "Drop your idea in a footnote."

At the American Civil Liberties Union and later as founder of the Center for Reproductive Rights, I litigated precedential constitutional cases on abortion, equality, and free speech before the Supreme Court. In 2005, I founded the Global Justice Center, a

nonprofit using international law as a tool for radical change. As part of our strategy to squeeze "new rights out of old laws," I am leading a campaign to establish that women raped in armed conflict must be provided abortions under the Geneva Conventions.

The skimpy U.S. protections against sex discrimination stand in sharp contrast to the protections under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) increasingly being recognized elsewhere in the world. Under CEDAW, all laws that adversely impact women's ability to enjoy other rights, including restrictions on abortion, are sex discriminatory and presumptively unlawful.

Starting with proponents of the Equal Rights Amendment (ERA) in the 1970s who stressed that the ERA has "nothing to do with the right to abortion," the U.S. movement to end sex discrimination has been undermined by political compromises. The absurdity of arguing for "equality lite" was brought home to me in 1988 when I was sanctioned by a district court for making the "frivolous" argument that outlawing abortion violates women's constitutional rights to equality. With glee, I argued successfully in the Eleventh Circuit that if Justice Ginsburg could make this equality argument in her confirmation hearings, why couldn't I?

Supreme Court decisions demonstrate the paucity of the rights of American women and are a clarion call for pushing the United States to ratify and, most importantly, implement CEDAW as domestic law. Then there would be no questions about a pregnant postal worker's right to temporary work accommodations, and such decisions as *Hobby Lobby* and *Gonzales v. Carhart* (where the Supreme Court upheld states'

rights to harass and deter women seeking abortions) would be reversible anachronisms.

The high point of my career started with a 2004 request from Iraqi women leaders and judges for training on rape under international law in anticipation of the Iraq war crimes trials. Having no such expertise (then), I sought support from law schools, only to be told that such training "is support for the U.S. invasion," "those judges are not ready to give up Sharia law," and "it would be neo-colonialism to tell [them] how to try rape crimes." So, imploring women lawyers with war crimes expertise for pro bono help, I conducted the training in 2006 and 2007. The outcome? The judges, using International Criminal Court definitions, found rape as torture and an element of genocide, extended joint criminal liability law for rape, and held ratified human rights treaties were binding on all Iraqi domestic courts. Best of all, they treated the Kurdish women rape victims with dignity: protecting their privacy and security and according them reparations.

In 2009, Justice Ginsburg, responding to my request, gave the Iraqi judges a private Supreme Court tour and praised their decisions on rape crimes. This shining moment continued as I took the judges to the Holocaust museum. Standing next to a Kurdish woman judge as we lit candles in remembrance of the genocide of the Jews and the Kurds, I recalled my childhood pledge about the Holocaust and felt overwhelming gratitude. 🙏



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