

# *On the Basis of Sex* and Ruth Bader Ginsburg: The manufacturing of a “living legend”

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*Directed by Mimi Leder, written by Daniel Stiepleman*

The second feature-length film about US Supreme Court justice Ruth Bader Ginsburg in less than a year came to theaters on Christmas day, titled *On the Basis of Sex*, a reference to gender-based discrimination. Mimi Leder’s two-hour biopic—a tedious cinematic effort—seeks to rally a core constituency of the Democratic Party: upper-middle-class women.

Last April, Ginsburg featured in the documentary *RBG*—her initials and a reference to her nickname in liberal circles, Notorious RBG—itself a reference to the prominent 1990s rapper Biggie Smalls (the Notorious B.I.G.).

The moniker “Notorious RBG” comes from a liberal blogger who commented on Ginsburg’s defense of the Voting Rights Act in *Shelby County v. Holder* in 2013. Offered in the spirit of respect and enthusiasm for the aging spokesperson for the high court’s ostensibly liberal bloc, the name found its way to a “Saturday Night Live” sketch. In the latter, a glib and defiant Ginsburg (played by Kate McKinnon) insists that, in the face of impending right-wing appointments to the Supreme Court by Donald Trump, she will never retire.

*On the Basis of Sex* follows this adulating path. It is a thoroughly artificial undertaking, whose screenplay—edited by Ginsburg herself no less than three times—was written by her own nephew, Daniel Stiepleman. It depicts Ginsburg’s legal education, early career as a professor and civil rights attorney, and her family life.

As a legal drama, *On the Basis of Sex* has some limited merit. One can sympathize with then (1972) civil rights attorney Ginsburg (Felicity Jones) eagerly representing Charles Moritz (Chris Mulkey), who was not allowed to claim a tax deduction for nursing

expenses for his elderly mother. Under the tax code at the time, the deduction was available for women or for men whose wives were deceased or incapacitated, but not for men who simply had never been married. Even though the tax exemption ostensibly favored women—making it easier for them to join the workforce by hiring in-home care for an aging parent—Ginsburg and her colleagues took the case to the US Court of Appeals for the Tenth Circuit and earned a noteworthy victory.

Dramatization of the *Moritz* appeal, from preparing the legal brief to hosting a moot court at the Ginsburgs’ home, to the oral arguments, forms the strongest part of the film. The viewer can enjoy the fast-paced, back-and-forth of the courtroom, close collaboration with like-minded colleagues—including a spouse (Armie Hammer)—the intersection of personal ambition and belief in a just cause, the sweetness of victory, and so on.

Outside of this, however, *On the Basis of Sex* falls flat. Early scenes of Ginsburg at Harvard suffering gender discrimination from her professors and the dean—legitimate material for drama—do not stir much sympathy, or further the plot. Interaction between Ginsburg the law professor and her students at Rutgers feels corny and false, with female students almost universally “getting it” and the male students appearing oafish and insensitive.

Ginsburg’s relationship with her daughter, Jane (Cailee Spaeny)—who is pitched as the main reason for Ginsburg’s pursuit of gender equality—feels like something out of a moralizing lecture. In one scene, when the pair have left the office of a veteran civil rights attorney, a construction worker catcalls at them. The daughter shames him, quipping, “Do you kiss your mother with that mouth?” Then she turns to Ginsburg

and says, “Mom, you can’t let guys talk to you like that,” a lesson which leaves the worried mother speechless with pride, so much so that the pair almost miss their cab.

The fact that none of this—the meeting with her daughter and the older attorney, the rebuke of a flirtatious worker—actually happened comes as no surprise, nor does its inclusion in what amounts to a propaganda film.

In a similar scene, Ginsburg scolds the daughter for skipping school to see a Gloria Steinem lecture. Later, the daughter berates Ginsburg for dressing up to attend her husband’s office party, for being his display object. While not expressly a political film, *On the Basis of Sex* panders to a definite audience in scenes like this. It is so much dramatic fish bait for the deeply reactionary #MeToo crowd.

*On the Basis of Sex* is also notable for what it papers over or leaves out altogether. A protest against the imperialist slaughter in Vietnam—a defining feature of life in the late 1960s and early 1970s—appears as the literal background in one scene. The film ends early, as if it were, with the *Moritz* victory. Ginsburg’s subsequent founding of the American Civil Liberties Union’s Women’s Rights Project in 1971, her appointment to the US Supreme Court in 1993 and the advancement of her daughter to a professorship at Columbia University are all left to the text preceding the credits.

While an extended review of Ginsburg’s political role and jurisprudence lies outside the scope of this film review, suffice it to say her career dovetails with the decline of liberal reformism and its virtual liquidation into the politics of personal identity. While her legal efforts commendably shifted American law toward equality for women, Ginsburg never ventured to the left of this type of formal egalitarian viewpoint. Millions of Ginsburg’s generation challenged the legitimacy of capitalism as the end of the postwar economic boom ushered in a period of steadily increasing political instability worldwide; not the Notorious RBG, though.

A more honest and historically informed film about her life would have included Ginsburg’s uncritical support for the reactionary #MeToo movement last year, placing a semi-official imprimatur on this destructive campaign whose methods—innuendo, trial by media blitz, inversion of the presumption of innocence to name a few—directly undermine

constitutional guarantees, including the right to trial by jury, to face one’s accuser and to have an attorney assist in one’s defense.

It is precisely because this supposed paragon of liberal values has turned her back on constitutional norms that she has become a living legend for upper-middle-class layers around the Democratic Party. This layer approves Ginsburg’s rulings in favor of legal immunities for murderous police, *Plumhoff v. Rickard*. They view her cordial relationship with the late Antonin Scalia without concern, if not more favorably, perhaps as an example of civility.

This writer suggests that the film should have ended with a scene of one of Ginsburg and Scalia’s many visits to the opera. But then, showing this icon as one who could comfortably cavort with an authoritarian bigot would make for a different film.

*This author also recommends:*

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