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THE LEGACY OF RUTH BADER GINSBURG**

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1. Introductory Remarks

In some interviews and in the inspiring documentary “RBG”¹, witnessing the myth that was created around her, Ruth Bader Ginsburg wondered why there was so much interest, especially from the younger generations, in an 80-year-old woman.

“Notorious” Ruth Bader Ginsburg in the last 15 years², at the end of her career, became a “pop” myth, famous even for the initials of her name: so much celebrity has been conquered only by very few people. So far the most famous initials, in the entire history of the United States, are that of JFK.

In these reflections, I would like to focus on some among the most important features of the life and professional history of the missing judge, but also on the specific reasons, related more to the Italian reality than to the United States one, which I know less and on which I do not feel like venturing Judgments.

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¹ The reference is to the 2018 Documentary produced by Netflix.

² On this, please refer to I. CARMON, S. KNIZHNIK, *Notorious RBG: The Life and Times of Ruth Bader Ginsburg*, Dey Street Books, 2015.

The premise of the following reasoning might rely on at least two questions. What could be for us the legacy³, for the women, and for the Italian society as a whole? What is the deep-rooted reason for so much interest, even academic, for the role of Ruth Bader Ginsburg?

It is not usual, in Italy, for the academia to celebrate women who have just passed away. However, since October 2020, in Italy, as well as in other parts of the world, Ruth Bader Ginsburg and her important conquests for women's rights have been at the very center of several official and unofficial gatherings, seminars, events.

To start reflecting on the deepest legacy of Ruth Bader Ginsburg, it is not without significance that just right after her death another woman, Kamala Harris, became, for the first time in history, Vice-President of the United States of America⁴. As soon as she was elected, Kamala Harris, in a highly moving speech, strongly affirmed that she was proud to be the first woman sitting as Vice-President, but that she did not want to be the last. And, what's more, she appeals to the younger generations of women, for whom such a conquest would have opened up space, horizons, and new dreams, sending them a strong message: «[d]ream with ambition, lead with conviction, and see yourselves in a way that others may not, simply because they've never seen it before, but know that we will applaud you every step of the way»⁵.

Ruth Bader Ginsburg has rightly become an icon, because she was not just “the first”, to make her way in a male world, proving her expertise. Ruth Bader Ginsburg fought for the rights of all women, first in college classrooms, then before Courts, finally as member of the United States Supreme Court, in a long series of Judgments where she was part of the majority and also in others, perhaps even more significant and groundbreaking, where she argued her “dissent”.

Across her rich and fascinating life, some “personal” traits are striking: the ostentation of female symbols, such as her famous “collars” and, even more so, the extravagant brooches. Unlike many powerful women, Ruth Bader Ginsburg finds her style, a very effective one, a style that does not deny the extent to which dresses do represent an expression of women, unlike men. She makes use of the “disadvantage” of being a woman and of being considered for her appearance as a tool of strength. She doesn't go out of her way to blend in with men, in features and costumes, but she wishes to adapt some accessories to her taste, claiming personal use. Ruth Bader Ginsburg's collars and pins become important symbols for the younger generations. They contributed to create the character of Ruth Bader Ginsburg and, even, to convey legal messages: there is, for Ruth Bader Ginsburg, the pin for majority decisions, those for dissent. There are collars for happy days and collars for sad ones: famous and

³ O this, refer to S. PASETTO, *La scomparsa della giudice Ruth Bader Ginsburg*, in *Servizio Studi Area di Diritto Comparato*, September, 12st, 2020, who fully describes Ruth Bader Ginsburg's figure, link: https://www.cortecostituzionale.it/documenti/segnalazioni_corrente/Segnalazioni_1600689845203.pdf.

⁴ See T. GROPPi, *Kamala Harris, Ruth Bader Ginsburg e le altre. Quel che le donne (al potere) ci possono dire*, in *Giustizialinsieme*, 2020.

⁵ The full version of the oral speech might be read here: http://www.astrid-online.it/static/upload/harr/harris_07_11_20.pdf.

remarkable was her outfit on the prophetically and very sad day for United States' democracy of the 2016 inauguration of Donald Trump as President of the United States⁶.

Another personal aspect of great interest deals with her positive relationship with men.

Above all, I refer to her husband, her beloved Marty, who becomes the main supporter in her professional history, providing her with all the crucial support for being later appointed to the US Supreme Court⁷. Marty never considered her as a competitor, the two of them acted as a well-balanced team, and, from the words of their children, we can feel that it was Ruth Bader Ginsburg's husband who also took on a role of balance as a stable presence with their children when Ruth was busy.

This personal aspect represents another precious legacy for future generations, for those women who many, too many times, in their family or professional context experience themselves as limited and threatened by the possibility to "reconcile". This example is a remarkable and clear demonstration of how reconciliation is not the business of women but, instead, something that has to be shared between both sexes: in Ruth Bader Ginsburg's case, this scenario worked very well.

The other relationship that stands out in Ruth Bader Ginsburg's life is that entertained with her fellow Supreme Court arch-conservative judge, Antonin Scalia⁸. Ruth Bader Ginsburg's memorial speech clearly captured the reasons for this deep friendship: «we are different, we are one [...] different in our interpretation of written texts, one in our reverence for the Constitution and the institution we serve»⁹.

Two individuals who had different ideas, but, at the same time, shared the same passion for the institution and the law. The description of the most important moments when the two justices found themselves with opposite opinions is astonishing: Scalia's dissent in the *United States v. Virginia* case¹⁰, where Ruth Bader Ginsburg admits that thanks to the evaluation of the dissent, she has been able to write down a more convincing text; and, also, the *Gore v. Bush* case, where Ruth Bader Ginsburg wrote a dissent¹¹. In a nutshell, recalling Scalia's words: «I attack ideas. I don't attack people. Some very good people have some very

⁶ For an insight on R. BADER GINSBURG's habit of wearing her collars, see, among others, the interview published on the Washington Post in 2009, *Justices Have Differing Views of Order in the Court*, and the exclusive interview with A. K. COURIC in 2014 for Yahoo Global News. Following her death, several newspaper articles were dedicated to the history of R. BADER GINSBURG's collars, as that published on the New York Times on September, 20th 2021, *The Meaning of Ruth Bader Ginsburg's Lace Collar* by V. FRIEDMAN.

⁷ On this, see R. BADER GINSBURG, *My own words*, (with M. HARTNETT and W. W. WILLIAMS), Simon & Schuster, NY, 2016, 182.

⁸ See, on this, A. SCALIA, *Scalia Speaks. Reflections on Law, Faith, and Life Well Lived*, The Crown Publishing Group, 2017.

⁹ R. BADER GINSBURG, *My Own Words*, 37.

¹⁰ US Supreme Court, *United States v. Virginia*, 7 – 1 decision, 518 U.S. 515, decided on June, 26th, 1996. Majority op. (Ginsburg) Concurring op. (Rehnquist) and Dissenting op. (Scalia). On this, see B. LONG, *United States v. Virginia: Virginia Military Institute Accepts Women*, Enslow Publishers, Berkeley, 2001.

¹¹ US Supreme Court, *Bush v. Gore*, 5 – 4 decision, 531 U.S. 98, decided on December, 12th, 2000. Concurring op. (Rehnquist, joined by Scalia and Thomas) and Dissenting op. (Stevens, Ginsburg), Dissenting in Part op. (Brayer and Souter). For a comment, see J.M. BALKIN, *Bush v. Gore and the Boundary between Law and Politics*, in *The Yale Law Journal*, Vol. 110, No. 8, June 2001, 1407 ff.; E. CHERMERINSKY, *Bush v. Gore Was Not Justiciable*, in *Notre Dame Law Review*, Vol. 76, Issue 4, 2001, 1093 ff.; H. M. KRITZER, *The Impact of Bush v. Gore on Public Perceptions and Knowledge of Supreme Court*, in *Judicature*, Vol. 85, p. 35 ff.

bad ideas – and if you can't separate the two, you gotta get another day job. You don't want to be a judge. At least not a judge on a multi-member panel»¹².

In the following reflections, I intend to focus on three main profiles, which reflects three phases of Ruth Bader Ginsburg's professional life and which Ruth Bader Ginsburg deliver to us as a legacy.

First of all, I will examine the relationship between Ruth Bader Ginsburg and the teaching of gender studies to university classrooms and, in particular, to the law. Ruth Bader Ginsburg was actually one of the very first scholar who courageously launched and favored the study of gender and women's rights as a field worth of academic reflection¹³.

Second of all, I intend to investigate the way in which Ruth Bader Ginsburg managed to defend women's human rights before Courts with a specific reference to her conception of equality. I will, therefore, explore Ruth Bader Ginsburg's role as a Supreme Court Justice by looking at the opinions, majority and dissent, where she expressed important principles for all civil rights, contributing to their advancement for the society as a whole.

Finally, as a third point, I will linger on Ruth Bader Ginsburg's contribution to the development of the dissent in the United States Supreme Court.

2. Ruth Bader Ginsburg and the Teaching of “Women and the Law”

From the very beginning of her university career, Ruth Bader Ginsburg was concerned with gender discrimination¹⁴. In particular, in May 1970, she organized her first students panel on “*Women's Liberation*” at Rutgers School, and many others followed, especially those organized within the annual meeting of the Association of America Law Schools, held in Chicago.

In the spring of the following year, Ruth Bader Ginsburg held the first Seminar on “Sex Discrimination and the Law”. The course was characterized not only by a case-law analysis approach on discrimination related issues, but, also, by a very peculiar involvement of the students.

In 1972, Ruth Bader Ginsburg went back to Columbia University Law School, where she graduated 13 years before. Here, she was Professor of Law, and, to be more precise, Ruth Bader Ginsburg was actually the very first woman in Columbia University's 114-year

¹² Lastly, R. BADER GINSBURG recalled this famous statement of Justice Scalia in *Remembrance of Antonin Scalia*, in *Journal of Supreme Court History*, Vol. 41, No. 3, 2016, 250.

¹³ R. BADER GINSBURG, *My Own Words*, 41. The United States' literature and academia largely benefit from Ginsburg's insight and dedication to gender studies. Among many other, some of the most significant monographic works include: S. DELLER ROSS, *Women's Human Rights. The International and Comparative Law Casebook*, University of Pennsylvania Press, 2008; L. ADLER, L. CROOMS-ROBINSON, J. GREENBERG, M. MINOW, D. ROBERTS, *Women and the Law*, Foundation Press, 2007; K.T. BARTLETT, D.L. RHODE, J.L. GROSSMAN, D.L. BRAKE, *Gender and Law: Theory, Doctrine, Commentary*, Wolters Kluwer, 2020 (Eight Edition).

¹⁴ Among her first essays, R. BADER. GINSBURG, *Treatment of Women by the Law: Awakening Consciousness in the Law Schools*, in *Valparaiso University Law Review*, Vol. 5, Issue 2, 1971, 480 ff.; ID, *Gender and the Constitution*, in *University of Cincinnati Law Review*, 1975, Vol. 44, No. 1, 1 ff.; ID, *Women at the Bar - A Generation of Change*, in *University of Puget Sound Law Review*, Vol. 2, Issue 1 1978, 1 ff.; ID, *Equal Rights Amendment Is the Way*, in *Harvard Women's Law Journal*, Vol. 1, 1978, 19 ff.; ID, *Sexual Equality under the Fourteenth and Equal Rights Amendments*, in *Washington University Law Quarterly*, Vol. 1979, Issue 1, 1979, 161 ff.

history to hold that position. Not surprisingly, that year was dubbed by her as: “The year of the woman” in legal academia¹⁵.

In those years, Ruth Bader Ginsburg closely collaborated with P. Herma Hill Kay of the University of California in the publication of the Casebook “Sex-based discrimination”¹⁶, where Ruth Bader Ginsburg wrote three Chapters. The casebook was very successful in the United States and became an important point of reference for law students approaching the subject during that time¹⁷. To note that, as a professor, she taught traditional subjects and discrimination against women, through the case-law and the analysis of laws.

There are important aspects that need underlining, such as: women’s rights, women’s condition must be studied because real change can only start from the awareness of women’s situation for a society that aims at challenging its reference model. For this reason, the so-called “Gender Studies”, which cannot be limited to the law area¹⁸, are fundamental and cannot be relegated to a frill or be deprived of any scientific dignity. Ruth Bader Ginsburg succeeded in demonstrating that a social model based on effective gender equality can be positive and brings benefits to the society as a whole through an in-depth and scientific analysis of the Swedish model: reasoning on the different taxation system, Ruth Bader Ginsburg showed how, in Sweden, citizens were pushed to allow greater freedom of choice for women. This is certainly an extraordinary interesting aspect for Italian women.

Only in recent years, the study of women’s discrimination has begun to gain dignity in academia from a scientific and academic perspective. Public debates on women’s rights, seminars, and clinics linked to specific topics, such as violence against women, started flourishing across the Country¹⁹.

¹⁵ On the role of Gender Studies in Law Schools, please refer to R. BADER GINSBURG, *Treatment of Women by the Law: Awakening Consciousness in the Law Schools*, *Val. U. L. Rev.*, 1971, 480 ff.

¹⁶ K. M. DAVIDSON, R. BADER. GINSBURG, H. H. KAY, *Sex-Based Discrimination: Text, Cases and Materials*, West Publishing Co., St. Paul, 1974.

¹⁷ Reference is made to K.M. DAVIDSON, R. BADER GINSBURG, H. HILL KAY, *Sex-Based Discrimination: Text, Cases and Materials*, West Publishing Company, 1974.

¹⁸ On the need to expand the study of gender to disciplines other than the law, the literature has reached a *consensus* over the years. Among others, see J. MARCHBANK, G. LETHERBY, *Introduction to Gender: Social Science Perspectives*, Routledge, 2014 (2nd edition); E. DEMÉNY, C. HEMMINGS, V. VASTERLING, *Practising Interdisciplinarity in Gender Studies*, Raw Nerve Books, York, 2006; T.S. PAVLIDOU, *Open forum: The challenge of interdisciplinarity: From theoretical claims to interdisciplinary practices in Gender Studies*, in *European Journal of Women’s Studies*, 2011, 310 ff.

¹⁹ For a more general insight into the way in which the Italian legal system regulates and contrasts violence against women, please refer to M. D’AMICO, C. NARDOCCI (Eds.), *Gender-based violence between national and supranational perspective. The way forward*, Editoriale Scientifica, Naples, 2021; M. D’AMICO, *Una parità ambigua. Costituzione e diritti delle donne*, Raffaello Cortina Editore, Milan, 2020 and, of the same A., see the parliamentary hearing, *Audizione dinanzi alla “Commissione parlamentare di inchiesta sul femminicidio, nonché su ogni forma di violenza di genere”*, published on <https://ovd.unimi.it/commento/audizione-dinanzi-alla-commissione-parlamentare-di-inchiesta-sul-femminicidio-nonche-su-ogni-forma-di-violenza-di-generale/>, 2021; I. PELLIZZONE, *Violenza di genere e Covid/19: impatto sulle donne e sui minori delle misure restrittive in una prospettiva di diritto costituzionale*, E. CATELANI, M. D’AMICO (Eds.), *Genere e COVID*, Il Mulino, Bologna, upcoming, 2021 and, also, M. D’AMICO, *I diritti fondamentali alla prova dell’emergenza sanitaria da Coronavirus: profili costituzionali*, in *BioLaw Journal*, 2020, III, 31 ff.

In the year of the Covid-19 Pandemic²⁰, the impact on the condition of women has been deeply scrutinized among scholars, and in the so-called “Recovery Plan”²¹, with its positive note and downsides, there is also an attempt to take gender equality into proper account. Within this framework, it is significant to recall how a discipline such as Constitutional Law, which until then has always been resistant towards the study of gender, is slightly opening its doors to completely new horizons thanks to the initiative of a group of women, scholars in the constitutional law area, that recently launched the network “*Le costituzionaliste*”, which undertook the initiative to integrate gender studies into their disciplines²².

At the same time, especially when looking at the phenomenon of violence against women, there is a growing awareness among judges and lawyers, that specific expertise in the field of gender studies and women’s rights is necessary²³.

There is no formal request for academic recognition of gender studies, but thanks to the European context, a step should not be delayed.

I very recently had the privilege to be nominated Jean Monnet Chair which leads me to launch, in October 2020, the first Italian university course on “Women’s rights in the Constitutional State”, at the University of Milan, School of Law. It is certainly of key relevance that all disciplines, including the scientific ones, recognize the importance of the gender perspective. Just think, in particular, to medicine or pharmacology, where until some time ago, diagnoses, treatments, and drugs were imagined and tested on male patients only, with sometimes considerable damages for women²⁴.

However, I do believe that Ruth Bader Ginsburg’s own experience demonstrates the essential role of the gender perspective for the law. Ruth Bader Ginsburg used to explain to her students the existing laws and realized that so many laws and Judgments, in short, the entire legal world, considered “normal” or, even, took for granted that women were perceived as being inferior to men. From this angle, it is precisely the discriminatory dimension that makes us understand and fight the stereotype that we have inherited from the classics and that still affects any attempt to overcome the so-called “natural inferiority of women”²⁵. Conversely if, as Ruth Bader Ginsburg did, we understand that discrimination is a human product, due to history and expressed in legal norms that can and must be challenged when they do

²⁰ On this, see E. CATELANI, M. D’AMICO (Eds.), *Genere e COVID*, Il Mulino, Bologna, upcoming, 2021.

²¹ The so-called “Recovery Plan” (in Italian: “PNRR – Piano Nazionale di Ripresa e Resilienza”) was approved on January, 12th 2021, by the Italian Government with the aim of detailing areas of intervention to foster the recovery of Italy following the outbreak of the Covid-19 Pandemic.

²² On this, see the Report *Equilibri di genere e procedure di nomina. Terzo report intermedio*, published on *Federalismi.it*, 2020, Link: <https://www.federalismi.it/ApiOpenFilePDF.cfm?artid=43780&dpath=document&dfile=08072020155808.pdf&content=Equilibri%2Bdi%2Bgenere%2Be%2Bprocedure%2Bdi%2Bnomina%2E%2BTerzo%2Breport%2Bintermedio%2B%28luglio%2B2020%29%2B%2D%2Bstato%2B%2D%2Bpa-per%2B%2D%2B>.

²³ P. DI NICOLA, *La mia parola contro la sua. Quando il pregiudizio è più importante del giudizio*, Harper Collins Italia, 2018; F. ROIA, *Crimini contro le donne*, FrancoAngeli, Milan, 2017.

²⁴ On this, see S. OERTELT-PRIGIONE, V. REGITZ-ZAGROSEK (Eds.), *Sex and gender aspects in clinical medicine*, Springer Science & Business Media, 2011; G. BAGGIO et al., *Gender medicine: a task for the third millennium. Clinical Chemistry and Laboratory Medicine*, Clin Chem Lab Med, 2013, 713 ff.

²⁵ On this, extensively, E. CANTARELLA, *L’ambiguo malanno. Condizione e immagine della donna nell’antichità greca e romana*, Feltrinelli, Milan, 2010 and *Passato prossimo, Donne romane da Tacita a Sulpicia*, Feltrinelli, Milan, 2012.

no longer reflect the reality, then, finally, the road to emancipation and recognition of equal rights becomes achievable. I was very struck by this very moment of the passage in Ruth's professional life. In teaching and her responses to students, Ruth Bader Ginsburg found the way to take the flight and to make women's rights take the flight before the Courts. But it impressed me even more, and I would like us to keep it as a firm point, that Ruth Bader Ginsburg never felt inferior to anyone; conversely, acknowledging the existence of "social" injustice, she discovered the right way to obtain rights for all, through the same legal instruments that cause themselves discrimination.

Before analyzing her successes before Courts, another aspect that emerges very clearly is the circumstance that Ruth Bader Ginsburg has never been a political activist, but, rather, that she became the expression of a society transformed by the struggles of the sixties and the seventies in the United States and the world, and that, with refined legal instruments, she inaugurated, for women, the precious road called "judicial" activism.

In comparison with the United States and as a civil law Country, Italy as well has known this particular and important strategy to favor the recognition and the advancement of women's rights. It was thanks to the battle of a woman, Rosa Oliva, and her determination, that for the very first time the Italian Constitutional Court recognized the principle of equality between the sexes, enshrined under Article 3 of the Italian Constitution, declaring that was not in conformity with the Constitution the rule that barred women from many public positions, including the judiciary²⁶. Following that Judgment, Italian women, therefore, began sitting as judges thanks to a decision of the Constitutional Court. Through other battles brought before Courts in the last 10 years, the principle that requires that all executive organs (the so-called Regional Councils) of the national Regions and Municipalities cannot be composed by men only has progressively been enforced. Before that moment, it seemed, once again, "natural" that it would happen like that, with no women nominated in the executive organs²⁷.

²⁶ See the Italian Constitutional Court, Judgement No. 33 of 1960. On this Judgment, see, within the Italian literature, the comments of: V. CRISAFULLI, *Eguaglianza dei sessi, requisiti e sindacato della Corte*, in *Giurisprudenza costituzionale*, 1958, 564 ff.; C. ESPOSITO, *Il sesso e i pubblici uffici*, in *Giurisprudenza Costituzionale*, 1960, 568 ff.; C. MORTATI, *L'accesso delle donne ai pubblici uffici*, in *Democrazia e diritto*, 1960, 147 ff.

²⁷ Women's political representation in the Italian legal system and the way in which increase the numbers of women sitting in the elected bodies have been at the center of the debate for decades. Reference might be made here to the most significant judgements held by the Italian Constitutional Court with this respect: Constitutional Court Judgment No. 422 of 1995; Constitutional Court Judgment No. 49 of 2003; Constitutional Court Judgment No. 4 of 2010. For a scientific and theoretical reflection on this topic, see B. BECCALLI, *Donne in quota. È giusto riservare posti alle donne nel lavoro e nella politica?*, Feltrinelli, Milan, 1999; G. BRUNELLI, *Donne e politica. Quote rosa? Perché le donne in politica sono ancora così poche*, Il Mulino, Bologna, 2006; and my study in *Il difficile cammino della democrazia paritaria*, Giappichelli, Turin, 2011 and in *La rappresentanza di genere nelle Istituzioni. Strumenti di riequilibrio*, in M. D'AMICO, S. LEONE (Eds.), *La donna dalla fragilità alla pienezza dei diritti? Un percorso non ancora concluso*, Giuffrè, Milano, 2017, 41 ff.; S. LEONE, *Sulla conformazione delle Giunte degli Enti locali al canone delle pari opportunità: alcune riflessioni alla luce delle innovazioni legislative e della giurisprudenza più recente*, in *Forum quaderni costituzionali*, 2015, 1 ff.

3. Ruth Bader Ginsburg as a Lawyer

As an attorney, Ruth Bader Ginsburg succeeded in having sex discrimination recognized before Courts. It is, therefore, of great relevance here to hinge on the features and the most significant aspects of the path she pioneered. From my perspective, first of all, it stands the awareness that in those judges' eyes gender differences, understood as the inherent or "natural" inferiority of women compared to men, was ordinary and that, therefore, there was no need to call into question the concept of discrimination as such. Conversely, Ruth Bader Ginsburg was well aware that she had to challenge the judges' mindset and to do so, she tried to build very specific actions, where the leap in the recognition of gender discrimination was almost imperceptible.

A very interesting example of her effort to push forward in the recognition and safeguard of gender equality might be offered by the landmark *Frontiero v. Richardson* case²⁸ held by the United States Supreme Court on gender-based discrimination within the United States military, where Ruth Bader Ginsburg was actively involved as a lawyer²⁹.

Ruth Bader Ginsburg submitted a seventy-page *amicus brief* on behalf of the American Civil Liberties Unions in support of Sharon Frontiero's claim. Ruth Bader Ginsburg supported the applicant's complaint, arguing that Sharon Frontiero had been the victim of a discrimination based on gender because she was treated differently compared to male servicemembers for the enjoyment of the benefits afforded by federal laws to the members of the United States Air Force. In her *amicus brief*, Ruth Bader Ginsburg strongly endorsed the thesis of the urge to apply a strict scrutiny – the same one that the United States Supreme Court was already used to applying to discrimination grounded on race – even when the difference in treatment was based on gender. Her argument relied, therefore, on the fact that gender, as race, should be included among the so-called "suspect grounds", therefore, requiring the Supreme Court to undertake a thorough and profound investigation every time the legislator allows a difference in treatments based on sex.

Thanks to Ruth Bader Ginsburg, for the very first time, sex was depicted as a "suspect" ground of discrimination before the United States Supreme Court³⁰.

²⁸ US Supreme Court, *Frontiero v. Richardson*, 8 – 1 decision, 411 U.S. 667, decided on May, 14th, 1973. Majority op. (Brennan), Concurring op. (Powell) and Dissenting opinion (Rehnquist). Above all, see R.B. GINSBURG, *Comment: Frontiero v. Richardson*, in *Women's Rights Law Reporter*, Vol. 1, Issue 5, 1973, 2 ff.; B.B. MCKENNY, *Frontiero v. Richardson: Characterization of Sex-Based Classifications*, in *Colum. Hum. Rts. L. Rev.*, Vol. 6, 1974, 239 ff.

²⁹ Alongside the *Frontiero* case, Ruth Bader Ginsburg was also actively involved in defending gender differences before domestic Courts. See, for example, the 1972 *Charles E. Moritz v. Commissioner of Internal Revenue* on tax law and gender discrimination. On this, more recently, A.C. INFANTI, B.J. CRAWFORD, *A taxing feminism*, in D.L. BRAKE, M. CHAMALLA, V. WILLIAMS (Eds.) *The Oxford Handbook Of Feminism And Law In The United States*, Oxford University Press, forthcoming, 2021. In the Italian literature, explicitly refer to the *Moritz* case F. FELICE, *Ruth Bader Ginsburg, una vita giuridica contro la discriminazione e la violenza di genere*, in *Questione giustizia*, 2020, link: <https://www.questionegiustizia.it/articolo/ruth-bader-ginsburg-una-vita-giuridica-contro-la-discriminazione-e-la-violenza-di-genere>.

³⁰ On the role of the *amicus brief* or *amici curiae* in bringing new arguments before Courts see M. D'AMICO, *Gli amici curiae*, in *Questione giustizia*, 2020, 122 ff. and, of the same A., also, *Le incertezze dell'istruttoria nel giudizio costituzionale*, in *Diritto e Società*, 2019, 321 ff.; T. GROPPI, *Interventi di terzi e amici curiae: dalla prospettiva*

Moreover, she contributed to advance the idea that sex is nothing less compared to race and that a full and real equality demands for a society where inequality, regardless of the discrimination factor involved, must be rejected. In sustaining her claims, Ruth Bader Ginsburg highlighted that, although women are a majority, they nevertheless «face all of the prejudice and hostility encountered by members of a minority group»³¹ and, what's more, that «[w]orse than being 'discrete and insular', [...], women are separated from each other and therefore remain far distant from the political potential appellees ascribe to them»³².

In her view, therefore, the argument that wanted sex not interpreted as “suspect” before Courts, because women are a majority and should not be compared and treated as a minority group, had to be fully rejected. Conversely, in her *amicus brief*, she was very straightforward in stating that: «[f]or women who want to exercise options that do not fit within stereotypical notions of what is proper for a female, women do not want to be 'protected' but do want to develop their potential without artificial constraints, classifications reinforcing traditional male-female roles are hardly 'benign'»³³.

The United States Supreme Court, in the highly famous Justice Brennan's majority opinion, ruled 8 to 1 in favor of Sharon Frontiero, holding that federal law discriminated between male and female, but it did not go too far in ascertaining that sex should be regarded as “suspect”. There were only four justices who agreed with Ruth Bader Ginsburg's interpretation that sex should be considered as a suspect ground of discrimination. A number that was, nevertheless, not enough to win the case on this additional and essential point. Had Ruth Bader Ginsburg failed in having the Supreme Court recognized sex as a suspect ground of discrimination, she nevertheless won the case before the Supreme Court, paving the way to following cases and to the awareness that gender differences do count and have to count before Courts.

4. Ruth Bader Ginsburg's View of Justice

Another perspective to investigate Ruth Bader Ginsburg's contribution and legacy is bound to her view and conception of justice. On this, some insight might very well be captured in the astonishing speech Ruth Bader Ginsburg gave right after her appointment as Justice of the US Supreme Court in the White House Rose Garden as well as after the Hearing before the Committee on the Judiciary United State Senate. In the first speech in particular, she evokes three remarks of Justice Holmes that a modern constitutional judge has to keep in mind when he/she is confronted with a “hard” case. These remarks are described as follow: first «intellectual honesty about the available policy choice; – second – disciplined self-restraint in

comparata uno sguardo sulla giustizia costituzionale in Italia, in *Giurcost.*, 2019, 123 ff. Worth mentioning is the recent initiative undertaken in 2020 by the Italian Constitutional Court to amend its rules of proceeding in order to boost the admissibility of briefs submitted by the so-called *amici curiae*. For a series of comments on this new development, refer to AA.VV., *Liber amicorum per Pasquale Costanzo. Nuovi scenari per la giustizia costituzionale nazionale e sovranazionale*, in *Giurcost.*, 2020, 1 ff., link: <https://www.giurcost.org/COLLANA/3.pdf>.

³¹ R. BADER GINSBURG, *My Own Words*, 136.

³² *Ibidem*.

³³ *Ibidem*.

respecting the majority's policy choice; – third – principled commitment to defense of individual autonomy, even in the face of majority action»³⁴.

Other significant statements, where it can be traced signs of Ruth Bader Ginsburg's conception of justice, are, as mentioned above, very clearly expressed in the speech she gave after the United States Senate, where she emphasizes the role of the Supreme Court Justices under several and different perspectives.

First off, Ruth Bader Ginsburg described the Supreme Court Justices as «guardians of the Constitution» and of the other State's powers. In this regard, she highlights that: «the Justices do not guard constitutional rights alone. [Supreme Court] share[s] that profound responsibility with Congress, the president, the states, and the people. Constant realization of a more perfect Union, the Constitution's aspiration, requires the widest, broadest, deepest participation on matters of government and governmental policy»³⁵. This idea of separation of powers is also reflected in her view on the work of judging. Focusing, therefore, on the activity itself and leaving behind the institutional role played by the Justice, she observes: «[m]y approach, I believe, is neither liberal nor conservative, rather, it is rooted in the place of the judiciary, of judges in our democratic society. The Constitution's preamble speaks first of 'We, the People', and then of their elected representatives. The judiciary is third in line and it is placed apart from the political fray so that its member can judge fairly, impartially, in accordance with the law and without fear about the animosity of any pressure group' [...] in a few words as Justice Benjamin Nathan Cardozo said "Justice is not to be taken by storm. She is to be wooed by slow advances"»³⁶.

A second element she hinges upon deals with her conception of the impartiality of the Justices during the office. On this point, she was in fact of the view that, using her words, «[j]udges [...] are bound to decide concrete case, not abstract issues. Each case comes to court based on particular facts and its decision should turn on those facts and the governing law [...]»³⁷. Indeed, she continued, «a judge sworn to decide impartially can offer no forecast, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process»³⁸. In a nutshell, recalling Justice Holmes' own words, «one of the most sacred duties of a judge is not to read [her] convictions into [the Constitution]»³⁹.

Her view of justice and of the role of judges in the constitutional State is certainly of relevance in a context where the issues brought before Courts are progressively more and more complicated. Be it for the impact of scientific and technological progress and their ethical-related challenges, be it for the features of a society that is increasingly complex in its demands and diverse and fragmented in its composition, judges are nevertheless asked to give responses and their deference to the Constitution represents at the same time our defense

³⁴ R. BADER GINSBURG, *My own words*, 176.

³⁵ *Ivi*, 183.

³⁶ *Ivi*, 184.

³⁷ *Ivi*, 186.

³⁸ *Ibidem*.

³⁹ *Ibidem*.

against the violation of fundamental principles and our chance to foster their successful safeguard.

5. Ruth Bader Ginsburg's Conception of Equality

Ruth Bader Ginsburg's legacy is also strongly intertwined with the history of the principle of equality, and of gender equality more specifically, as well as with the ways in which to favor its effectiveness.

Before looking at the ways in which Ruth Bader Ginsburg applied and boosted the full realization of the principle of gender equality in her activity as Justice of the Supreme Court, it is worth recalling that Justice Ginsburg had always endorsed a conception of gender equality that was connected with a peculiar reading of feminist theories. Ruth Bader Ginsburg opted, in fact, for a feminism that did not look at women as individuals deserving special protection or demanding separate and differentiated treatment, but, rather, for a feminism that entails and requires a true formal equality for women. Women, from this perspective, need to be placed on an equal footing to men and not to be relegated to differential or special treatments⁴⁰.

With regard instead to her commitment to the full realization of the principle of gender equality as Justice of the Supreme Court, this clearly emerges when she confronted with the notion of affirmative actions.

Since the 1971 United States' Supreme Court decision in the *Griggs v. Duke Power Company* case⁴¹, affirmative actions, as it is very well-known, made their way into the United States' constitutional history primary with respect to race-based discrimination against African-American and, only later, they were also translated into the sex discrimination discourse.

Ruth Bader Ginsburg was a huge supporter of affirmative actions, as a tool to promote equal opportunities and to restore past discriminations. Her conception of equality is

⁴⁰ On this, within the Italian literature, hinges on the specifics of the conception of equality and feminism endorsed by R. BADER GINSBURG throughout her career, G. ROMEO, in her recent paper *Femminismo ed eguaglianza dentro la comunità politica: un ritratto di Ruth Bader Ginsburg*, in *DPCE Online*, 2020, 5300 ff., who highlights how Ginsburg's conception of feminism was much more linked to the notion of equality than of differences stating that: "[i]l femminismo dell'eguaglianza è lontano tanto dalla corrente del 'femminismo delle differenze', che invece punta al riconoscimento della specificità della condizione femminile, tanto dalla critica femminista radicale di Catharine MacKinnon o di Carole Pateman. Per la giudice Ginsburg, insomma, il femminismo è una rivendicazione di eguaglianza non diversa, metodologicamente e sostanzialmente, da altre pretese di accesso al riconoscimento della piena appartenenza alla comunità politica", 5303. It is interesting to underline that RUTH BADER GINSBURG never endorsed, neither sided with feminists theories such as those proposed by I.M. YOUNG in her well-known work *Justice and the politics of difference*, Princeton University Press, 1990. On this, see, also, B. LIBERALI, *Contraceptive mandate e obiezione di coscienza "aziendale": l'opinione dissenziente di Ruth Bader Ginsburg e la costruzione di un innovativo paradigma di parità di genere*, *ivi*, who underscores the the peculiar reading which emerges from the reading offered in the dissenting opinion in the case *Burwell v. Hobby Lobby Stores*, 573 U.S. 682 (2014), where the A. highlights that RUTH BADER GINSBURG "ha messo in stretta correlazione la fornitura di determinati metodi contraccettivi rispetto non solo alla complessiva tutela della salute, ma anche – e forse soprattutto – alla possibilità di garantire una piena e paritaria partecipazione delle donne alla vita economica e sociale della collettività".

⁴¹ US Supreme Court, *Griggs v. Duke Power Co.*, unanimous decision, 401 U.S. 424, decided on March, 8th, 1971. Majority op. (Burger). On this case D.J. GARROW, *Toward a Definitive History of Griggs c. Duke Power Co.*, in *Vanderbilt Law Review*, 2014, Vol. 67, Issue 1, 197 ff.

remarkably depicted in the already mentioned *United States v. Virginia et al.*⁴² case about school admission. The case was about the prohibition for female students to have access to a public institution because, being a single-sex school, it was composed of men only. Interestingly, in that case where Ruth Bader Ginsburg wrote the majority opinion⁴³, she did not believe that equality between sexes could be guaranteed by merely establishing another single-sex school accessible for female only. Rather, she claimed that *Virginia's* exclusion of women from the educational opportunities denied equal protection to women and that to create a separate program for women would «not cure the constitutional violation»⁴⁴.

Another interesting case that contributes to describe Ruth Bader Ginsburg's reading of the principle of equality and the nature of affirmative actions is *Parents Involved in Community Schools v. Seattle School District No. 1*⁴⁵. The case was about the constitutionality of lower school programs designed to keep kindergarten students racially integrated by taking race into account. In that case, the Supreme Court declared the non-conformity with the Constitution of those school programs, whereas Ruth Bader Ginsburg and other three dissenters held that to take race into account to structure school programs to keep schools racially diverse would not amount to a discrimination. The dissenters argued, in fact, that there was a need to rely on «the use of race-conscious criteria [...] to bring the races together», therefore denying the existence of the adverse effects of affirmative actions.

Moreover, Ruth Bader Ginsburg has always been well-aware of the controversial nature of affirmative actions. As she used to say: «[a]ffirmative action and the disparate-impact concept have potential to lessen substantive inequality, foster diversity, and promote the economic and social well-being of people raised in unprivileged communities. But they also generate opposition, charges that they unfairly discriminate against individuals not personally responsible for society's transgression»⁴⁶. Despite the pros and cons, she was nevertheless a huge believer in the need to build a diverse society and to pursue this goal by making use of affirmative actions. This is certainly part of the legacy she left to us. Not surprisingly, she fundamentally noted that: «[w]e will all profit from a more diverse, inclusive society, understanding,

⁴² US Supreme Court, *United States v. Virginia et al.*, decision 518 U.S. 515, decided on January 17th, 1996. For a comment, *inter alia*, see A. DEVAN WILLIAM, *Toward a New Standard in Gender Discrimination: the Case of Virginia Military Institute*, in 33 *Wm. & Mary L. Rev.*, 489 ff.; J.M. AMSTEIN, *United States v. Virginia: The Case of Coeducation at Virginia Military Institute*, in *The American University Journal of Gender, Social Policy & the Law* 3, 1994, 84 ff.; On the aftermath of the US Supreme Court's Judgment, see D.C. MORGAN, *Anti-subordination analysis after United States v. Virginia: Evaluating the constitutionality of K-12 single-sex public schools*, in *University of Chicago Legal Forum*, 1999, 381 ss.

⁴³ For a comment on the R. BADER GINSBURG's majority opinion, see M. SMILER, *Justice Ruth Bader Ginsburg and The Virginia Military Institute: A Culmination of Strategic Success*, in 4 *Cardozo Women's L.J.* 541, 1998, 544 ff. For the investigation into the impact of the Judgment in the following years, please see K.N. ROLANDO, *A Decade Later: United States v. Virginia and the Rise and Fall of 'Skeptical Scrutiny'*, in *Roger Williams University Law Review*, 2006, 182 ff.

⁴⁴ US Supreme Court, *United States v. Virginia et al.*

⁴⁵ US Supreme Court, *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 5 – 4 decision, 551 U.S. 70, decided on June, 28th, 2007. Majority op. (Roberts), Concurring op. (Kennedy and Thomas) and Dissenting op. (Breyer, Stevens). For a comment see, N. LOVE, *Parents Involved in Community Schools v. Seattle School District No. 1: The Application of Strict Scrutiny to Race-Conscious Student Assignment Policies in K-12 Public Schools*, in *Boston College Third World Law Journal*, 29, 2009, 115 ff.

⁴⁶ R. BADER GINSBURG, *My own words*, 275.

accommodating, even celebrating our difference, while pulling together for the common good»⁴⁷.

6. The Dissent in Ruth Bader Ginsburg's Perspective

Ruth Bader Ginsburg is also very well-known because of her “dissenting” opinions. Her dissenting opinions depict her original conceptualization of equality and civil liberties and contributed to highlight their importance within the context of contemporary democracies for the role of Constitutional Courts' Justices.

Before examining the *rationale* behind Ruth Bader Ginsburg's interpretation of the role of the dissent, it might be interesting to recall that Ruth Bader Ginsburg was the one who took the unprecedented initiative to read her dissenting opinion directly from the bench, expressing her deep disagreement with the view taken by the majority. By 2014, she read twelve dissenting opinions by the bench, including the one delivered in the *Ledbetter v. Goodyear* case⁴⁸ in 2007. As she noted recalling that case, «[a] dissent announced orally [...] garners immediate attention. It signals that, in the dissenters' view, the Court's opinion is not just wrong, but, – citing Justice Steven – ‘profoundly misguided’»⁴⁹. In that case, not only did Justice Ginsburg disagree with the majority as to the correct interpretation of the legal provisions at stake, but also on the role of the United States Supreme Court when asked to review the interpretation of rules to strengthen fundamental rights' protection.

Ruth Bader Ginsburg was a firm supporter of dissenting opinions and of their necessity in the constitutional legal system. She precisely speaks about the “utility” of the dissent and distinguishes their “in-house impact” from their “external impact”. On the “in-house impact”, she hinges on their utility because, as she stated, «there is nothing better than an impressive dissent to lead the author of the majority opinion to refine and clarify her initial circulation»⁵⁰. In other words, the dissent positively impacts on the quality of the majority opinion. Interestingly, Ruth Bader Ginsburg recalls the 1996 *Virginia Military* case about sex-based discrimination in university admission to highlight that «the final draft, released to the public, was ever so much better than my first, second, and at least a dozen drafts more, thanks to Justice Scalia's attention-grabbing dissent, which he adjusted to meet each of my responsive circulations. In the Term's waning days, we agreed it was time to say Basta!»⁵¹.

Beyond their “in-house impact”, Ruth Bader Ginsburg underlines and values the dissent's “external impact”. Endorsing Chief Justice Hughes' reading of the dissent as «an appeal [...] to the intelligence of a future day»⁵², Ruth Bader Ginsburg underlines that, when a Court's decision does not meet the evolution of the society but the dissenter does, the Court might be

⁴⁷ *Ibidem*.

⁴⁸ US Supreme Court, *Ledbetter v. Goodyear Tire and Rubber Company*, 5 – 4 decision, 550 U.S. 618, decided on May, 29th, 2007. Majority op. (Alito) and Dissenting op. (Ginsburg).

⁴⁹ R. BADER GINSBURG, *My own words*, 279.

⁵⁰ *Ivi*, 281.

⁵¹ *Ibidem*.

⁵² *Ivi*, 283.

able to overrule its precedent, therefore better reflecting and responding to the society's demands.

As an additional sign of the close relationship between Ruth Bader Ginsburg and Justice Scalia, she uses his words to describe this peculiar effect of the dissent. In Scalia's word, in fact, dissents «augment rather than diminish the prestige of the Court»⁵³. The dissent, therefore, calls for the «intelligence of a future day» and invites to take action. The “who” will then take the initiative is another element to take into consideration when discussing the role of the dissent. Will it be the Supreme Court in a following Judgment? The legislator only? The role of Constitutional Courts and Supreme Courts *vis-à-vis* to the legislator is, in fact, at the center of public and academic debate in Italy⁵⁴ as in the United States.

A first example of a fruitful dialogue between the dissenter and the legislator is offered by the *Ledbetter v. Goodyear* case⁵⁵. In that case, after two years following the Supreme Court's Judgment, the Congress decided to amend the *Title VII* of the 1964 *Civil Rights Act* in compliance with the dissenting opinion released by Ruth Bader Ginsburg who, not surprisingly, had called the Congress to intervene.

Another significant example might be offered by Justice Scalia's dissenting opinion in the 2015 Supreme Court's ruling on same-sex marriage in the *Obergefell et al. v. Hodges* case⁵⁶, where he strongly affirmed that: «[t]oday's decree says that my Ruler, and the Ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court. The opinion in these cases is the furthest extension in fact – and the furthest extension one can even imagine – of the Court's claimed power to create 'liberties' that the Constitution and its Amendments neglect to mention. This practice of constitutional revision by an unelected committee of nine, always accompanied (as it is today) by extravagant praise of liberty, robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves»⁵⁷.

⁵³ *Ibidem*.

⁵⁴ On this, within the Italian constitutional debate, for a more recent insight, please refer to N. ZANON, G. RAGONE (Eds.), *Dissenting Opinion - Selected Essays*, Giuffrè, Milan, 2019, to my analysis, *The Italian Constitutional Court and the Absence of Dissent: Criticisms & Perspectives*, *ivi* and, also, to S. CASSESE, *Lezione sulla cosiddetta opinione dissenziente*, in *L'opinione dissenziente, Seminario di Studi svoltosi presso la Corte costituzionale il 22 giugno 2009*, in <http://www.cortecostituzionale.it>. The Italian debate has nevertheless developed across the years. Within this context, some investigation might be found in S. PANIZZA, *L'introduzione dell'opinione dissenziente nel sistema italiano di giustizia Costituzionale*, Giappichelli, Turin, 1998; A. ANZON (Ed.), *L'opinione dissenziente. atti del seminario svoltosi in Roma, Palazzo Della Consulta, nei giorni 5 e 6 novembre 1993*, Giuffrè, Milan, 1995; C. MORTATI (Ed.), *Le opinioni dissenzienti dei giudici costituzionali ed internazionali*, Giuffrè, Milan, 1964 with a specific reference to G. AMATO, *Osservazioni sulla 'dissenting opinion'*, *ivi*, 21 ss., who spoke highly in favor of the introduction of the dissenting opinion within the Italian constitutional system.

⁵⁵ For a comment on the case, please see C. NARDOCCI, *US Supreme Court Ledbetter v. Goodyear Tyre & Rubber co., Inc. La discriminazione come condotta individuale invocabile (solo) a tempo debito?*, *ivi*.

⁵⁶ US Supreme Court, *Obergefell v. Hodges*, 5 – 4 decision, 576 U.S. ___, decided on June, 26th, 2015. Majority op. (Kennedy) and Dissenting op. (Scalia, Roberts, Thomas, Alito). See, for a comment, S.B. GOLDBERG, *Obergefell at the Intersection of Civil Rights and Social Movements*, in *California Law Review Circuit, Berkeley*, vol. 6, 2015, 157 ff.; A. SPERTI, *La sentenza Obergefell v. Hodges e lo storico riconoscimento del diritto al matrimonio per le coppie same-sex negli Stati Uniti. Introduzione al Focus*, in *GenIUS*, Vol. II, December 2015, 7 ff.; R. ROBSON, *Justice Ginsburg's Obergefell v. Hodges*, in *UKMK Law Review*, Vol. 84, Issue 3, 2016, 837 ff. The A. reconsiders the majority opinion in Justice Ginsburg's perspective; M. MURRAY, *Obergefell v. Hodges and Non-marriage Inequality*, in *California Law Review*, Vol. 104, 2016, 1207 ff.

⁵⁷ A. SCALIA, dissenting opinion, 2.

Beyond her friend Scalia's criticisms on the relationship between the Supreme Court and the legislator and going back to the comprehensive role of the dissent in Ruth Bader Ginsburg's reading, it is of key relevance to highlight that for her the dissent are almost more valuable than unanimous opinion. Not surprisingly, she argued, in fact, that: «although I appreciate the value of unanimous opinions, I will continue to speak in dissent when important matters are at stake»⁵⁸. Her remarkable commitment to the «intelligence of a future day»⁵⁹ and to the dissent as a tool to shed light on unsolved problems and dilemmas is certainly one of her most significant legacy.

A legacy that is especially valuable from the Italian constitutional perspective, where the debate on the feasibility of the introduction of the dissent within the constitutional process is still under debate although it would with no doubt enrich both the quality of the Judgments, their arguments and, hopefully, the ability of the Constitutional Court to engage in a dialogue with the legislator.

7. Concluding Remarks

Wanting to draw some conclusions in the light of the above, it is significant to highlight that, eventually, the path to fundamental rights and justice that Ruth Bader Ginsburg leaves behind her as a legacy to us and to the future generations is certainly innovative. It is a legacy which is permeated by the idea that the principle of gender equality requires to play as a qualifying aspect for the fulfilment of a true democracy and a more fair society⁶⁰.

The principle of gender equality in Ruth Bader Ginsburg's view might, therefore, be depicted as the key for a balanced and diverse society and requires to be safeguarded as much as the principle of racial equality: with tireless effort and dedication.

We are not, therefore, merely celebrating one of the many women who managed to break the glass ceiling. What we are emphasizing here, is the history of a woman who broke that roof to allow many others like her and different from her to emancipation. The fact that her appointment as a Supreme Court Justice was a step forward for all women and that it was made it possible by the developments of the society and the efforts of other women before her is something that Ruth Bader Ginsburg is entirely aware of. This is, in fact, the first aspect she hinged on in her beautiful speech in the White Rose Garden, following her nomination, even before her description of what justice and the profession of a judge were for her⁶¹.

And, in fact, it is by quoting some significant passages from that speech that I would like to close my speech. The first one deals with the so-called crystal roof broken following her appointment as Justice of the United States Supreme Court. On this, Ruth Bader Ginsburg highlighted that: «[t]he announcement the President just made is significant, I believe, because

⁵⁸ R. BADER GINSBURG, *My own words*, 286.

⁵⁹ On this, see, also, C. L'HEUREUX-DUB, *The dissenting opinion: the voice of the future?*, in *Osgoode Hall Law Journal*, 2000, 495 ss.

⁶⁰ On this, refer to my study *Il difficile cammino della democrazia paritaria*, Giappichelli, Turin, 2011.

⁶¹ The nomination acceptance speech was given on June, the 14th, 1993. The speech might be read in R. BADER GINSBURG, *My own words*, 174 ff.

it contributes to the end of the days when women, at least half the talent pool in our society, appear in high places only as one-at-a-time performers»⁶².

Ruth Bader Ginsburg goes on by remembering some significant episode of her personal life: «[m]y law school class in the late 1950s numbered over 500; that class included less than 10 women. [...] Today, few law schools have a female enrollment under 40 percent, and several have reached or passed the 50 percent mark. And, thanks to Title VII, no entry doors are barred»⁶³.

The message here is crystal clear. Cultural barriers are the highest and most resilient. But, as we learn from the second and final passage of her speech at the White House, only with their strength and courage women will succeed (we will succeed!) in breaking down these barriers. The words she dedicated to her mom to thank her are particularly moving. She wrote: «[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»⁶⁴. From these words, it appears that Ruth Bader Ginsburg's awareness towards the outside reality is the same awareness that we found in Kamala Harris' powerful words following her election. This awareness, I do believe, is the one that should guide us, each of us, especially in academia, and in our daily work, as women.

⁶² *Ivi*, 175.

⁶³ *Ibidem*.

⁶⁴ *Ivi*, 177. See also *Ruth Bader Ginsburg's Advice for Living*, published on October, 1st, 2016 by the *New York Times*.