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## Justice Ginsburg, Civil Procedure Professor and Champion of Judicial Federalism

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## JUSTICE GINSBURG, CIVIL PROCEDURE PROFESSOR AND CHAMPION OF JUDICIAL FEDERALISM

*Rodger D. Citron\**

Before she was “Notorious RBG” – even before she was Judge Ginsburg on the United States Court of Appeals for the D.C. Circuit – she was Professor Ginsburg. Before Ruth Bader Ginsburg became a federal judge, she was a professor at Rutgers University Law School then at Columbia Law School. She taught, among other things, Civil Procedure.<sup>1</sup>

While Justice Ginsburg generally was an excellent writer, her Civil Procedure decisions were especially superb. In the casebook we use at Touro, she is the author of critical decisions on general personal jurisdiction,<sup>2</sup> removal,<sup>3</sup> claim preclusion<sup>4</sup> and settlement of class actions.<sup>5</sup> Her dissent in *J. McIntyre Machinery, Ltd. v. Nicastro*<sup>6</sup> illustrates the challenge posed by the Roberts Court, with its emphasis on the primacy of state boundary lines, to the Court’s approach to specific personal jurisdiction set out in *International Shoe Co v. Washington*.<sup>7</sup> Similarly, her dissent in *Wal-Mart Stores, Inc. v. Dukes*<sup>8</sup> must be taught along with the Court’s majority opinion in that case to

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<sup>1</sup> See *In Memoriam: Ruth Bader Ginsburg ’59*, COLUMBIA LAW SCHOOL (Sept. 18, 2020), <https://www.law.columbia.edu/news/archive/memoriam-ruth-bader-ginsburg-59>; *Stanford Law Faculty on Justice Ruth Bader; Ginsburg’s Legacy*, STANFORD LAW SCHOOL (Sept. 18, 2020), <https://law.stanford.edu/2020/09/18/stanford-law-faculty-on-justice-ruth-bader-ginsburgs-legacy>.

<sup>2</sup> *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Goodyear Dunlop Tires Operations, S.A., v. Brown*, 564 U.S. 915 (2011).

<sup>3</sup> *Caterpillar v. Lewis*, 519 U.S. 61 (1996).

<sup>4</sup> *Taylor v. Sturgell*, 553 U.S. 880 (2008).

<sup>5</sup> *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997).

<sup>6</sup> 564 U.S. 873, 893-910 (2011) (Ginsburg, J., dissenting).

<sup>7</sup> 326 U.S. 310 (1945).

<sup>8</sup> 564 U.S. 338 (2011) (Ginsburg, J., dissenting).

properly teach the Court's approach for certifying a class action under Rule 23.<sup>9</sup>

To elaborate on just one example: Removal is a challenging subject, one that strikes fear in litigators who practice in state rather than federal court because of the statutory deadlines that limit the availability of removal. A professor must review the relevant statutes – in particular 28 U.S.C. sections 1441, 1446, and 1447 – when covering the material. Justice Ginsburg's decision in *Caterpillar*<sup>10</sup> makes everyone's job easier because she provides such a clear explanation of the statutes as she walks the reader through the procedural history of the case. And while she acknowledges the argument in favor of a different conclusion, Justice Ginsburg makes such a persuasive case for her view that it's hard to disagree with her judgment. None of the justices disagreed with her – the Court's decision in *Caterpillar* was unanimous.

Over the years teaching Civil Procedure, I have come to appreciate another aspect of Justice Ginsburg's jurisprudence: her respect for the competence and integrity of state judicial systems. This is evident in her dissents in the Court's decisions authorizing judicial review of punitive damages awards made by juries in cases litigated in state courts.<sup>11</sup> It also is evident in her dissent in a case involving the Erie doctrine in *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*<sup>12</sup> Even her powerful dissent in *Nicastro*<sup>13</sup> can be read as an endorsement of a state court forum compared to its federal counterpart.

During Justice Ginsburg's tenure on the Supreme Court, the process for the President nominating and the Senate confirming a justice for the Court became increasingly contentious, even frenzied at times. Almost certainly, the next time there is a vacancy there will be a political furor. Before the uproar begins, may I suggest that we not lose sight of the need for a Civil Procedure justice on the Court?

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<sup>9</sup> *Id.* at 367-78 (Ginsburg, J., dissenting).

<sup>10</sup> *Caterpillar v. Lewis*, 519 U.S. 61 (1996).

<sup>11</sup> *See, e.g., State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 430-39 (2003) (Ginsburg, J., dissenting).

<sup>12</sup> 559 U.S. 393, 436-59 (2010) (Ginsburg, J., dissenting).

<sup>13</sup> *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 893-910 (2011) (Ginsburg, J., dissenting).