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HUMAN RIGHTS & RULE OF LAW

Rosalie Silberman Abella

Justice of the Supreme Court of Canada (2004-2021)



Rosalie Silberman Abella is a distinguished Canadian jurist born in 1946 in a displaced persons camp in Germany to Holocaust survivor parents. She overcame early challenges and pursued a career in law, receiving her legal education at the University of Toronto. In 2004, she became the first Jewish woman to sit on the Supreme Court of Canada, serving until her retirement in 2021. Abella is renowned for her expertise in constitutional and human rights law, with her opinions referencing international law and

influencing judges worldwide. Throughout her career, she received numerous honors and awards, including honorary degrees and recognition as the Global Jurist of the Year for her commitment to human rights and international criminal justice. Her contributions have left an enduring legacy in Canada's legal system and the field of human rights. In 2023 she received the Ruth Bader Ginsburg Medal of Honor from the World Jurist Association, for her outstanding contributions to human rights and gender equality.

Speech upon receiving the 2023 Ruth Bader Ginsburg Medal of Honor from the World Jurist Association

The incandescent Ruth Bader Ginsburg was a jurist, a woman, and a Jew. It was a defining combination that shaped her vision and her passions, transforming her from distinguished Supreme Court Justice to iconic global metaphor.

When she pursued justice on the Supreme Court, she was a judicial juggernaut who was catapulted into international orbit by two forces – enthusiastic gratitude for her ever bolder judgments, but also, as time went on, by the vituperative reaction of an increasingly regressive climate in which those progressive judgments were anathema.

Regrettably, that regressive climate is where we find ourselves today, especially about the judiciary. The critics call the good news of an independent judiciary the bad news of judicial autocracy. They call women and minorities seeking the right to be free from discrimination, special interest groups seeking to jump the queue. They call efforts to reverse discrimination, “reverse discrimination.” They say courts should only interpret, not make law, thereby ignoring the entire history of common law. They call the advocates for diversity “biased” and defenders of social stagnation “impartial.” They claim a monopoly on truth, use invectives to assert it, then accuse their detractors of personalizing the debate. They prefer ideology to ideas, replacing the exquisite democratic choreography of checks and balances with the myopic march of majoritarianism.

All of this has put us at the edge of a global future unlike any I’ve seen in my lifetime. We’re in a mean-spirited moral free-for-all, a climate polluted by bombastic insensitivity, antisemitism, racism, sexism, islamophobia, homophobia, and discrimination generally. Too often law and justice are in a dysfunctional relationship, too often hate kills, truth is homeless, and lives don’t matter. Too many governments have interfered with the independence of their judges and media, too many people have died, too many people are hungry, too many people have lost hope, and too many children will not get to grow up period, let alone grow up in a moral universe that bends towards justice.

We need to put justice back in charge, and to do that we need to put compassion back in the service of law and law in the service of humanity. We need the rule of justice, not just the rule of law. Otherwise, what's the point of law? Or lawyers? Or a legal system? What good is the rule of law if there's no justice? And to make justice happen, we can never forget how the world looks to those who are vulnerable. It's what I consider to be the law's majestic purpose and the legal profession's noble mandate. In 1948, having seen the horrendous cost of discrimination in World War II, the United Nations made a commitment through the Universal Declaration of Human Rights that it would protect the world from inhumanity, yet more and more the arc of the moral universe is bending away from, not towards justice.

For me, this is not just theory. I was born in a Displaced Persons Camp in Germany on July 1, 1946. My parents, who got married in Poland on September 3, 1939, spent most of the war in concentration camps. Their 2 year-old son and my father's whole family were murdered at Treblinka. Miraculously, my parents survived and after the war ended up in Stuttgart, where my father, who was a lawyer, taught himself English and was hired by the Americans as counsel for Displaced Persons in Southwest Germany. When we came to Canada in 1950 as Jewish refugees, he was told he couldn't practice law because he wasn't a citizen.

He died a month before I finished law school and never lived to see his inspiration take flight in his daughter or the two grandsons he never met who also became lawyers, but he knew it would turn out alright because he was confident in Canada's generosity. And how right he was.

A few years ago, my mother gave me some of my father's papers from Germany. One of the most powerful documents I found was written by my father when he was head of the Displaced Persons Camp in Stuttgart where we lived. It was his introduction of Eleanor Roosevelt when she came to visit our D. P. Camp in 1948. He said:

"We welcome you, Mrs. Roosevelt, as the representative of a great nation, whose victorious army liberated the remnants of European Jewry from death and so highly contributed to their moral and physical rehabilitation. We shall never forget that aid rendered by the American people and army. We are not in a position of showing you many assets. The best we are able to produce are these few children. They alone are our fortune and our sole hope for the future.'

As one of those children, I am here to tell you that the gift of hope is the gift that keeps right on giving, propelling me from a Displaced Persons Camp in Germany all the way to the Supreme Court of Canada.

My life started in a country where there had been no democracy, no rights, no justice. No one with this history does not feel lucky to be alive and free. No one with this history takes anything for granted. And no one with this history does not feel that we have a particular duty to wear our identities with pride and to promise our children that we will do everything humanly possible to keep the world safer for them than it was for their grandparents, a world where all children regardless of race, color, religion or gender, can wear their identity with dignity, with pride, and in peace.

I am very proud to be a member of the legal profession, but I'll never forget why I joined it.