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## Pillars of Justice: Lawyers and the Liberal Tradition, by Owen Fiss

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Book Review



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## Pillars of Justice: Lawyers and the Liberal Tradition, by Owen Fiss

### Abstract

AT TIMES, IT IS POSSIBLE TO UNDERESTIMATE, or perhaps momentarily forget, the individuals who have been instrumental in shaping the evolution of the justice system. Thankfully, Pillars of Justice by Owen Fiss serves as a reminder of the resilience and the triumph of such individuals. Each chapter of the book is dedicated to someone who he considers to have made a significant contribution to justice, and, as such, has become a personal hero.

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## Book Review

***Pillars of Justice: Lawyers and the Liberal Tradition*, by Owen Fiss<sup>1</sup>**SABA SAMANIAN<sup>2</sup>

AT TIMES, IT IS POSSIBLE TO UNDERESTIMATE, or perhaps momentarily forget, the individuals who have been instrumental in shaping the evolution of the justice system. Thankfully, *Pillars of Justice* by Owen Fiss serves as a reminder of the resilience and the triumph of such individuals. Each chapter of the book is dedicated to someone who he considers to have made a significant contribution to justice, and, as such, has become a personal hero.

While Fiss focuses throughout the book on the case of *Brown v Board of Education*<sup>3</sup> and the timely topic of civil rights, his primary purpose is to illustrate his admiration for the accomplishments of those he writes about. Fiss successfully details the contributions these individuals made to civil rights while simultaneously making each chapter riveting. His personal friendship with each individual enables Fiss to write from a unique perspective. His words form a blend of concrete facts with detailed anecdotes that allow the reader to live through Fiss' words and become a part of each interaction. Furthermore, the timeliness of Fiss's contribution—considering current issues regarding racism and female empowerment in the news—make this book compelling. It deserves a thorough read; more than that, it is worth returning to again and again when one needs a push of inspiration.

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1. (Cambridge, Mass: Harvard University Press, 2017) [*Pillars of Justice*].
  2. JD (2019), Osgoode Hall Law School, Toronto, Canada.
  3. 347 US 483 (1954) [*Brown*].

Fiss's book is nothing if not unique. *Pillars of Justice* can be best characterized as an autobiography, as all thirteen individuals we are introduced to crossed paths with Fiss. In this way, his recount is tightly linked to his career trajectory, told through his perspective as a Yale Law School professor<sup>4</sup>—a position of privilege few have access to. Nevertheless, Fiss is generous in sharing these stories; each chapter shines a spotlight on the person to whom it is dedicated.

Given its autobiographical nature, the book has a singular viewpoint with the twist of offering a spotlight on the work of others. Therefore, this book can be neatly categorized with other stories of great legends, such as Margaret Thatcher,<sup>5</sup> George Washington,<sup>6</sup> and Antonin Scalia.<sup>7</sup> Fiss, however, differentiates his book by setting out a trajectory in which the focus is not on one person and his or her contributions, but that of several. Given Fiss's personal connection to these individuals, it is inevitable that biases seep in, but the reader should be aware of this as Fiss readily identifies his own biases in the Introduction. Indeed, this book tells the stories of the individuals from Fiss's perspective, not from a purely biographical one. This recount is deeply personal, but provides a specific lens. It is not simply the greatest hits, as is the book about Antonin Scalia, for example. Rather, it is the path that led to making a mark.

Fiss writes beautifully about thirteen humble people who made substantive contributions to justice. They were the type of people who were simply happy if they made some positive change within the justice system. The glory was unnecessary, and perhaps even a distraction from the work that needed to be done. While each chapter deserves the reader's full attention, this review will focus on two that carried a profound magnetism: Thurgood Marshall and Catharine MacKinnon. It is in these chapters where Fiss's own perspectives comes alive in the most vivid way, yet he manages to continue to shine the spotlight on the two individuals about whom he writes. At no point does Fiss wish to cast a shadow over their work. The chapter on Thurgood Marshall is the first one in the book. While the reader feels as though Fiss will be unable to continue the stories in a

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4. Dorothy Wolpert, "Lawyers as Pillars of Justice," Book Review of *Pillars of Justice: Lawyers and the Liberal Tradition* by Owen Fiss, online: <lareviewofbooks.org/article/lawyers-as-pillars-of-justice> [perma.cc/7ACH-4YQS]. Wolpert shares the same perspective regarding Fiss' somewhat naïve view.
  5. David Cannadine, *Margaret Thatcher: A Life and Legacy* (New York: Oxford University Press, 2017).
  6. John Rhodehamel, *George Washington: The Wonder of the Age* (New Haven: Yale University Press, 2017).
  7. Antonin Scalia, *Scalia Speaks: Reflections of Law, Faith, and Life Well Lived*, ed by Christopher J. Scalia & Edward Whelan (New York: Penguin Random House, 2017).

way that will keep one's attention after reading the strength of the first one, he, in fact, manages to do so. The book begins strongly and keeps its momentum.

The chapter on Thurgood Marshall is compelling and personal. It begins with Fiss's own experience of how he came to know the man who played such a pivotal role on the struggle for civil rights. It depicts Fiss's vulnerabilities as a student of the law at a young age<sup>8</sup> and how Marshall filled those gaps with compassion and mentorship. This human element, which is a constant backdrop to Fiss's writing, is what makes this book unique. There is no doubt that Marshall's substantial contributions are unparalleled. In fact, this is the primary reason for why this book deserves widespread attention. Students and others interested in law and justice need to know about the people whose tireless work brought about the changes that are seen today; however, Marshall's personal sacrifices and the hardships he faced while making those contributions<sup>9</sup> provide the reader with inspiration and a profound understating of the power of drive and tenacity.

Throughout the book, Fiss makes his devotion and commitment to female empowerment abundantly clear. He acknowledges that we live in a time in which women are still struggling to have their voices heard in comparison to their male counterparts.<sup>10</sup> He also points out the wide disparities that existed when Fiss was a student himself—an inequality that was even harder to fathom than the one that is apparent today. In 1961, for example, when Fiss first entered Harvard Law School as a student, there was “a near total absence of women in the profession.”<sup>11</sup> Furthermore, out of the thirteen chapters that are devoted to “pillars of justice,” only one is devoted to a woman; however, Fiss should not be blamed for this imbalance. In fact, it is perhaps an apt representation of the lack of opportunities that women had in this field. He also states that the “shameful willingness to tolerate discrimination of women in the early 1960s was not confined to the halls of Harvard Law School, or for that matter, any law school.”<sup>12</sup> Regardless of the societal inequality, however, Fiss devotes a chapter to Catharine MacKinnon—a woman who has been instrumental in the move for women's rights—and truly gives her credit for her accomplishments.

MacKinnon was Fiss's student, as well as someone who had a deep impact on the way he viewed women's rights. She helped Fiss “find a path”<sup>13</sup> to help

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8. Fiss, *supra* note 1 at 21.

9. *Ibid* at 27. Fiss writes about the death of Marshall's first wife and the fact that he made time to drive his sons to school despite his crushing workload as a judge on the Second Circuit.

10. *Ibid* at 127.

11. *Ibid* at 117.

12. *Ibid* at 118.

13. *Ibid* at 117.

make the legal profession more welcoming to women, which was a long way from his own experience of witnessing gender inequality as a student. That is just one of the ways in which he represents MacKinnon's contributions. After detailing MacKinnon's accomplishments, which, frankly, must be read to fully comprehend, Fiss makes his view on the rights of women more clear. He states that the feminist movement has the capacity to transform the field of law into a profession that is "worthy of respect and admiration."<sup>14</sup> It is words like these that make Fiss's perspective an admirable one, especially in light of the strength that the feminist movement has gained in recent years.

While Fiss makes a notable effort to detail the many impressive accomplishments of the individuals featured in this book, his recount of MacKinnon's are particularly inspiring. This is, of course, in large part to the credit of MacKinnon and her remarkable contributions. Nevertheless, Fiss carefully chooses his words in detailing her several groundbreaking projects in order to provide her with the spotlight she deserves.<sup>15</sup> Fiss gives deserving credit to MacKinnon's heroic efforts and, as a result, makes the reader wonder how she could have done so much in so little time. Furthermore, Fiss follows this up by cautioning the way in which MacKinnon's work should be perceived. He states that it would be a disservice to MacKinnon's work if society believed that the "feminist project had been completed."<sup>16</sup> These words are important because they reflect the state in not just the legal community, but that of the larger public. MacKinnon devoted her time to persistently analyzing and evaluating feminine practices; this is not a project that has a completion date. Rather, it is an on-going, critical endeavour that demands attention and commitment.

The most powerful part of this chapter is the point at which Fiss provides an uncensored account of an instance in which he was accused of discriminating against the women in his class. His students took him to lunch and personally voiced their concerns that he presented a favoritism towards male participation in the classroom.<sup>17</sup> There are two key points about this instance: The first is Fiss's

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14. *Ibid* at 125.

15. *Ibid* at 126. Fiss writes about MacKinnon's ability to become a professor at the University of Michigan and a visiting professor at Harvard. She writes, teaches, and works on her own projects in parallel. These projects are taxing and require time and effort. For example, one such project required MacKinnon to represent women who were raped by Serbian soldiers in the midst of Serbia's invasion of Bosnia. MacKinnon managed to get these clients \$745 million in damages and have the federal court condemn rape as an instrument of war. At the same time as this case, MacKinnon also published a casebook entitled *Sex Equality*.

16. *Ibid* at 126.

17. *Ibid*.

commendable admission of his mistake and the second is that his students felt comfortable enough to bring this to his attention despite feeling silenced in the classroom. This indirect message gives credibility to the claims that Fiss makes in support of women's rights throughout the book; it forms a relationship of trust between the reader and the author.

It has been almost thirty-one years since the day Fiss's students voiced their concerns; however, it would be a mistake to conclude that the marginalization of women in certain contexts has completely disappeared, and Fiss agrees. While one can hope, based on evidence of recent movements and support,<sup>18</sup> that the empowerment of women has gained strength, Fiss's expression of doubt on this matter is honest and accurate. In fact, there may be problematic issues that are beyond the reach of law schools and education.<sup>19</sup> Fiss's willingness to make this admission does not diminish his stance on feminism, but, in fact, demonstrates the critical nature in which he looks at the cause. That is something that MacKinnon would be proud of.

The work of Owen Fiss in *Pillars of Justice* is compelling. It is reasonable to think that it would be more likely for the individuals showcased in his book to have gone unrecognized for their contributions. Their work was their primary focus, not the spotlight. Nevertheless, the eloquent way in which Fiss characterizes these individuals is what is so unique about this book. Fiss gently walks the line between the professional and personal lives of those featured and finds an articulate way to bring their intricate lives to the forefront. Their sacrifices, hardships, and victories are set out in a trajectory that is inspiring for a reader from any discipline. Furthermore, Fiss' own experiences and beliefs form the background for the stories that he shares. His strong commitment to feminism and human rights seeps through the pages of the book and is tied to his lived experiences among those who have shaped the legal community. Despite Fiss's privileged viewpoint, he is able to create a relationship of trust with the reader. Finally, the eloquent writing aside, Fiss's book is extremely relevant to recent happenings. Many have sacrificed and worked tirelessly to bring our justice system to where it is today, and while it is important to reflect upon their influences, it would be a disservice to believe that the work now ends.

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18. Amy G Mazur, Dorothy E McBride & Season Hoard, "Comparative Strength of Women's Movements Over Time: Conceptual, Empirical, and Theoretical Innovations" (2016) 4 *Politics, Groups, and Identities* 652 at 667; Holly J McCammon & Lee Ann Banaszak, *Women's Activism from Electoral Campaigns to Protest Action: Into the Next 100 Years* (New York: Oxford University Press, 2018) at 356.

19. Fiss, *supra* note 1 at 127.