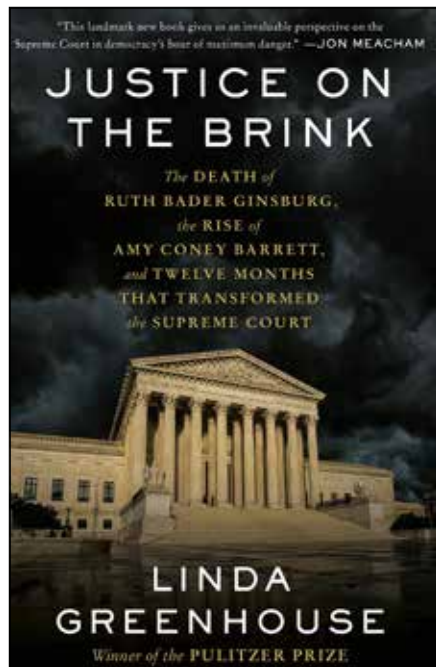


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Justice on the Brink: The Death of Ruth Bader Ginsburg, The Rise of Amy Coney Barrett, and Twelve Months That Transformed the Supreme Court

By Linda Greenhouse

Random House

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Reviewed by Elizabeth Kelley

In the Author's Note and Acknowledgments at the end of *Justice on the Brink: The Death of Ruth Bader Ginsburg, The Rise of Amy Coney Barrett, and Twelve Months that Transformed the Supreme Court*, Linda Greenhouse describes how both her agent and editor at Random House contacted her during the dawn of the pandemic and proposed a book about the Supreme Court's 2020-2021 term. Thus, while quarantining at her home in the Berkshires, Greenhouse began writing.

Greenhouse earned her law degree from Yale and covered the Supreme Court for the *New York Times* for approximately 30 years. For this, she received the Pulitzer Prize in 1998. *Justice on the Brink* focuses on the time period between July 2020 and July 2021. But to focus on that discrete period necessarily requires historical context, which Greenhouse expertly provides.

The book opens like a legal thriller, with an almost surreal description of then-President Trump's introduction of Justice Amy Coney Barrett to the world from the Truman Balcony following her whirlwind approval by the Senate, shepherded by Majority Leader Mitch McConnell. But after this, *Justice on the Brink* reflects the tight, penetrating reporting for which Greenhouse was known during her tenure at the *Times*. There are a few zingers, like the following description of Justice Thomas:

While surprises from Justice Thomas were nothing new, they almost invariably came from the opposite direction: not from his agreement with others, but from staking out a fringe position that no one had thought of, or at least no one had thought to articulate, for many decades. (p. 207).

In other words, anyone looking for a light read or something that is tastefully gossipy *a la* Jeffrey Toobin's *The Nine* or *The Oath* will be disappointed. *Justice on the Brink* is a serious work that reflects the gravity of the time through which Greenhouse believes we are living.

There's a lot going on in *Justice on the Brink*, as the three subtitles indicate: the death of Justice Ginsburg, the appointment of Justice Barrett to the Court, and the working of the Court during the year of pandemic. But Greenhouse ably weaves two other themes throughout the book: what some point to as the growing politicization of the Court and the role the justices' personal beliefs play in rendering decisions.

Chief Justice John Roberts, who appears as a beleaguered figure, had insisted in November 2018 that "We do not have Obama judges or Trump judges, Bush judges or Clinton judges." His colleagues have echoed a similar theme. In April 2021, Justice Stephen Breyer cautioned against the danger of judges appearing "as politicians in robes." And in September 2021, Justice Barrett tried to assure Americans that the Court is "not

comprised of a bunch of partisan hacks." But as far back as 2007, Greenhouse cites a dissent from Justice Ginsburg—"truth teller that she was" (p. 232)—that describes "the broken fourth wall," the title of the book's epilogue, which refers to the role of *stare decisis* in Supreme Court jurisprudence:

[T]he Court, differently composed than it was when we last considered a restrictive abortion regulation, is hardly faithful to our earlier invocations of "the rule of law" and "the principles of *stare decisis*." (p. 232).

In the context of these statements, Greenhouse describes the pleas for Justice Ginsburg to retire so that Obama can appoint her successor, similar pleas for Justice Breyer so that Biden can appoint his successor, and the formation in April 2021 of a 36-member commission to study the formation and workings of the Court—a commission formed on the heels of Justice Barrett's breathtakingly swift confirmation and Trump's public statements that he expected his judges to perform for him following the 2020 election.

Greenhouse traces the role of social conservatives in shaping the Court and specifically, the influence of the conservative branch of the Catholic Church. Although the power of the Federalist Society and the Catholic roots of at least five of the justices are well known, Greenhouse points to recent decisions, such as upholding the Trump Justice Department's wave of executions in late 2020 and scaling back of the Voting Rights Act. Supreme Court nominees have long been questioned about their views on *Roe v. Wade*, all doing their best to dispel the notion that they have any views while satisfying their supporters. But the new composition of the Court and more restrictive abortion laws in states such as Texas and Mississippi will call to question the future of *Roe*, sooner rather than later. Greenhouse notes the irony of vaccine opponents who cite "bodily integrity and autonomy" who also oppose a woman's right to choose. "This truly was a world turned upside down." (p. 237). Greenhouse does not criticize social conservatism or religious views per se, but rather, points to the danger of those views impacting judicial independence and objectivity, which ultimately endangers the tradition of *stare decisis*.

Notwithstanding a new composition of justices and a global pandemic, does it make sense to devote an entire book to a 12-month period, a relatively brief moment in time of an institution almost 250 years old? Greenspan acknowledges the limitation of her enterprise:


It's tempting to think of a single term as a snapshot of a fixed period in the Supreme Court's life. A more accurate image is that of a series of frames in a moving picture in which members of the court continually navigate among

past, present, and future, deciding cases they accepted during the previous term and adding new cases for decision in the next. The end of a term is in no real sense an ending just a pause in a steady flow. (p. 239).

If, then, the 2020-2021 term was just "a pause in a steady flow," was justice truly on the brink as the title suggests? Greenhouse concludes that "it was not quite the term conservatives had hoped for, not the term that liberals had most feared." (p. 239).

We await the 2021-2022 term. ☉

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