

DOCUMENTARY



RBG (2018)

Much like its subject, this documentary on the personal life and professional career of US Supreme Court Associate Justice Ruth Bader Ginsburg is, in short, terrific.

From her birth in Brooklyn in 1933, to her college education (at Harvard Law school where she was one of nine female students in a class of 560), her academic appointments as law professor at Rutgers Law School and Columbia Law School, and her judicial appointments to the US Court of Appeals for the District of Columbia Circuit and the US Supreme Court, Ginsburg AJ is best described as a trailblazer.

The film traces her successes in the US Supreme Court where she advocated for both men and women in landmark gender discrimination cases. Among the plaintiffs she successfully represented was a male single parent who had been denied social security benefits normally paid only to single mothers and a woman facing housing discrimination in the US Air Force. Ginsburg AJ argued these cases in the 1960s and '70s, when gender discrimination was rampant in US society and an all-male Supreme Court bench was generally sceptical of claims of bias, particularly - but not always - against women.

While tracing these professional successes, the film also pays tribute to her personal achievements, in particular, to her marriage to Martin Ginsburg, an international tax lawyer whose unfailing support, according to Ginsburg AJ, made her professional achievements possible. We learn that it was he who, almost on a daily basis, had to force her to stop working to eat and sleep and that, but for his supervision, she would probably have done neither. We also learn that it was his gregarious, light-hearted nature which offset her inherently serious, stoic one and brought laughter and fun into their family life.

If that all sounds a bit like every other biopic you have seen, think again. Because woven throughout this film is evidence of Ginsburg AJ's status as a pop culture icon, which began in around 2006 when, on the retirement of US Supreme Court Associate Justice Sandra O'Connor, she became the only serving female justice. Her increasingly strident dissents at the time led to a following which grew over time, culminating in a biography (a *New York Times* bestseller in 2015) and spawning everything from RBG emblazoned t-shirts, coffee mugs

and tattoos to internet memes.

This energetic documentary will appeal to both men and women of all political leanings, whether legally trained or not – anyone, in fact, who appreciates passion, intellect and purpose. See it if you can.

Reviewed by Sarah Woodland

MOVIE



The Insult (2018)

The Dalai Lama once said: 'Just as ripples spread out when a single pebble is dropped into water, the actions of individuals can have far-reaching effects'. In the case of *The Insult*, a gripping, socio-political, courtroom drama from Lebanese director Ziad Doueiri (who, incidentally, was Quentin Tarantino's camera operator in *Pulp Fiction*), that single pebble is a minor, personal insult between two men which escalates into an explosive jury trial that divides two communities.

Set in contemporary Beirut, the film opens with an urban scene which could take place anywhere in the world. Tony (Adel Karam), a brawny motor mechanic in his 40s is watering his plants on his apartment balcony when he inadvertently splashes a construction crew working on the street below. Yasser (Kamel El Basha), the foreman of the construction crew, is a stoic-looking Palestinian refugee in his 60s. Looking up to find the source of the water, Yasser notices an illegal drain pipe on Tony's balcony and offers to fix it free of charge. Tony, hearing the man's Palestinian accent, refuses the offer and slams the door in Yasser's face. Yasser has his team fix the pipe regardless. Tony is incensed by this and smashes the newly installed pipe, prompting an insult from Yasser, the effects of which reverberate throughout their families and their communities.

The film culminates in a highly publicised courtroom trial which exposes – in a plausible way - deep historical and personal wounds on both sides.

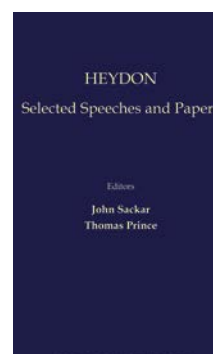
While *The Insult* undoubtedly delivers a crash course in the tension between two different ethnic and religious groups in Lebanon, it is captivating whether or not you have any

prior understanding of - or indeed any particular interest in - these things. This is because the conflict at the centre of it is so personal and its triggers are universally recognisable.

Winner of the Grand Jury Prize at the Venice Film Festival last year and Academy Award nominee for Best Foreign Language Film earlier this year, this tension-filled moral fable will stay with you long after the credits stop rolling.

Reviewed by Sarah Woodland

BOOK

Heydon:
Selected Speeches
and Papers

This is a genuinely important book. Any real barrister – one with an interest in the history, the philosophy and the development of the law – must acquire a copy of this book. This book will stand alongside Dyson Heydon's judicial work, textbook writing and other academic work, as a lasting tribute to a true Australian intellectual.

The breadth of issues dealt with is astonishing. The selected speeches and papers of Heydon touch upon the philosophy of the law, the foundations of common law and equity, methods of judicial decision-making, and substantive law. These are interspersed with poignant observations on the rule of law, the independence of the judiciary, and on the preservation of social and political freedoms.

It has been said of Sir Owen Dixon that, while his learning was deep, his field of intellectual endeavour was narrow. Not so Heydon. For those interested in history there is a close analysis of the juridical validity of the Tokyo War Trials; *Kulturkampf* – the struggles over religious freedoms in Germany under Bismarck and the Nazis; the creation of the European Union; a major piece of the life and work of Sir Samuel Griffith; related pieces on James Fitzjames Stephen and the origins and development of the Indian Evidence Act. For those interested in judicial theory and methods there are several important articles – of which the paper on the limits of the powers of ultimate appellate courts

will surely stand for a long time as the leading work on that area. For the *aficionados*, there is an important paper on competing theories of constitutional interpretation, and (returning to a lifelong love) two papers by Heydon providing close analysis of tricky aspects of the law of evidence. And while you might have come for the law, why not stay for the guilty pleasure of re-reading two cracking speeches – *Judicial Activism and the Death of the Rule of Law* and *Four Great Australian Legal Disasters*. For those interested in the life of the bench and bar there are some excellent judicial biographies, some delivered in eulogy, others (occasionally cheesy) delivered as tributes to retiring judges. There is even an irreverent 15 Bobber speech given upon the elevation of Bill Gummow to the High Court.

OK, it would be wrong to overstate it and say there is something here for everyone – but there is plenty here to attract the thoughtful lawyer, practitioners, academics and gossips alike.

One of the best features of extra-judicial writing is that it allows the reader to discern some of the political and social views of the otherwise inscrutable judge. A full reading confirms that which was already known – Heydon is naturally and irredeemably conservative. This is not a conservatism in a nasty or reactionary sense; rather, conservatism in a careful sense. His mind is one which automatically respects the status quo, but he will also (occasionally) question it. I confess that there are some (maybe quite a few) opinions with which I cannot agree – but Heydon's views always cause one to think. I read this book, cover to cover, and not one minute of my time was wasted.

This book will stand as a testament to Heydon's writing style. This is more important than it sounds. Reading the book in full immerses one in the Heydon groove. Yet even at the end I still have a difficulty putting a finger on why it works so well: his writing is solemn, yet constantly engaging; it is literary and learned, yet unpretentious. It took me some time to recognise the strength of the rhetoric – while individual propositions are understated, the cumulative force is compelling. I would suggest that Heydon is the best legal writer to have served on our High Court; only Sir Victor Windeyer could challenge him. This book proves that.

Digesting all of the works also reveals another side to Heydon. Despite his dour mien, each chapter is littered with genuinely funny anecdotes. That is right: a lawyer telling jokes – re-tellable jokes – in a successful fashion. A unique achievement.

It is telling that there is a dearth of comparable collections of extra-judicial writings of the great Australian judges. I can think of only four of value – Jordan's *Select Legal Papers*, Dixon's *Jesting Pilate*, Spigelman's *Speeches 1998 – 2008*, and now we have Heydon's *Selected Speeches and Papers*. The absence of books in this genre is not due to a want of demand, it is because of a lack of supply. Heydon's book

will be a point of reference for legal thinkers, and this will continue for many, many years. I repeat – this is an important book.

I praise the work of the editors – Justice John Sackar and Thomas Prince. It is through their industry that this book exists. Theirs was a labour of love, not inspired by money. I hope they retain sufficient vigour to consider a second volume. Finally, the support for the publication of this book cements the position of The Federation Press as one of the leading Australian publishers of legal texts.

Reviewed by Geoffrey Watson SC

 BOOK

 PODCAST

Summer reading and listening

A review of Philippe Sands QC's book *East West Street* and podcast *Intrigue: The ratline*, plus the podcast *Capital*

By Anthony Cheshire

My wife tells me that the British have an unhealthy obsession with the Second World War and she raises her eyebrows when my parents tell us (again) that rationing continued for some years after the war and that you couldn't get bananas.

Whether she is right or not, it does cause me to question my interest in the War. Is it a fascination with what I would do (or, more accurately now, would have done) in a war situation; or is it some sort of macho blood-lust? Can reality TV be seen through the same lens? One of those questions surrounds capital punishment: is my opposition based more on the need for absolute certainty in the verdict, which can so rarely be guaranteed; or is there some moral, religious or humanist instinct against taking a life? Could I justify an exception for Hitler, especially if his death would have saved many lives? What then of the Nuremberg trials and the subsequent executions of many Nazis?

Timothy Spall gave a wonderful performance in the title role of the film *Pierrepont: The Last Hangman*. Pierrepont prided himself on not adding to the suffering of the condemned by ensuring that the length of rope was just the right length to ensure immediate death without decapitation; and by reducing the time from his arrival in the cell to execution to less than ten seconds. He executed about 200 Nazis as a result of the Nuremberg trials, often several at a time on specially constructed gallows, but it was this experience of turning the process into a production line that led him

finally to question himself and to the conclusion that capital punishment was driven only by an antiquated desire for revenge and solved nothing.

Philippe Sands QC is a practising barrister at Matrix Chambers in London, specialising in international and human rights law. His book *East West Street* is ostensibly a tracing of the history and survival of his family back to his Jewish grandparents. Sands examines how, following their wedding in Vienna in 1937 and his mother's birth the following year, his grandfather moved to Paris in 1939. For reasons that he seeks to identify, his grandmother and mother managed to survive, but did not follow until 1941.

The real story of the book, however, interwoven with the family history, concerns the attempts by two Polish lawyers to have crimes against humanity and genocide recognised and prosecuted at the Nuremberg trials. Hersch Lauterpacht, who found refuge in England, believed that 'the individual human... is the ultimate unit of all law', which was best recognised by the focus of crimes against humanity on the killing of individuals on a large scale; whereas Rafael Lemkin, who found refuge in America, believed that 'attacks upon national, religious and ethnic groups should be made international crimes', which also had the advantage that it could extend to acts that occurred before the war began.

Many Nazis were convicted at Nuremberg of crimes against humanity, but the judges rejected attempts to pursue charges of genocide. Both crimes were, however, recognised and adopted by the United Nations General Assembly in late 1946, a few weeks after the end of the Nuremberg trials. They have continued to develop side by side, reflecting the impact of many actions upon both the individual and the group.

Sands concludes with a brief discussion in which he expresses concern that a hierarchy has developed in which genocide is regarded as the 'crime of crimes'; and that a focus on the group may do more to reinforce the conditions that it sought to address and thus make reconciliation less likely.

This is most definitely not a dry legal treatise or history: it is much more a tale of individuals, brilliantly brought to life by Sands. Thus he starts in the court room at Nuremberg with the son of Hans Frank, who as governor-general of Polish territories was responsible for the extermination of the local Jewish population, and who was convicted in that room of crimes against humanity and executed; and finishes with the son declaring: 'I am opposed to the death penalty, except for my father'.

Sands is not only an intelligent and extraordinary story-teller, but rather than adopting a cross-examiner's tone, he is able to put his subjects at ease and tease out revealing statements and admissions from them.

He also clearly has an interest in the children of Nazis. Thus in the podcast *Intrigue: The*