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Ruth Bader Ginsburg on International Law

Wednesday, April 27, 2005

Associate Justice Ruth Bader Ginsburg of the U.S. Supreme Court delivered an [address](#) to The American Society of International Law earlier this month, and it shows just how she, and some of her colleagues, are now willing to use selected foreign court decisions and laws in determining deciding issues of constitutional interpretation in the U.S. She said, “Before taking up the diversity of opinions on this matter, I will state and endeavor to explain my view, which is simply this: If U. S. experience and decisions can be instructive to systems that have more recently instituted or invigorated judicial review for constitutionality, so we can learn from others now engaged in measuring ordinary laws and executive actions against charters securing basic rights.” Her wording is both instructive and scary. She argues that the U.S. Supreme Court, assigned the task of interpreting the U.S. Constitution, should take into account the decisions and interpretations of foreign courts “engaged in measuring ordinary laws and executive actions against charters securing basic rights.” Her language means that she will give deference to courts in liberal Europe, where “the measuring [of] ordinary laws” has been influenced by treaties, charters, and cultural factors that have nothing to do with the U.S. Constitution. Just consider her argument that, since judges can consult any authorities they may choose, they can consult foreign courts. In her words: “If we can consult those writings, why not the analysis of a question similar to the one we confront contained in an opinion of the Supreme Court of Canada, the Constitutional Court of South Africa, the German Constitutional Court, or the European Court of Human Rights?” We are in big, big trouble. A good [response](#) to Justice Ginsburg’s speech is offered by M. Edward Whelan III of the Ethics and Public Policy Center.

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