



To The Bag



Decent Respect

To the *Bag*:

In his informative article in the Spring 2005 issue of *The Green Bag* (“Disrespecting the ‘Opinions of Mankind’: International Law in Constitutional Interpretation”), Eugene Kontorovich asserts that contemporary writings by judges and international law scholars “lif[t] ... from their context” the Declaration of Independence’s words “a decent respect to the opinions of mankind.” Kontorovich cites Justice Ruth Bader Ginsburg’s April 1, 2005, speech to the American Society of International Law as illustrative of his assertion. Kontorovich contends that “in the Founding Era, the Justices understood that [‘decent respect’] was about informing others,” as opposed to (and here he quotes Justice Ginsburg’s speech) “learning from others.”

A reader could come away from Kontorovich’s article with the impression that Justice Ginsburg believed the signers of the Declaration of Independence cared only about “learning from others” as opposed to informing others of the reasons that led to the Declaration. That would be a misimpression. Here’s what Justice Ginsburg said about the Declaration:

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In the value I place on comparative dialogue – on sharing with and learning from others – I am inspired by counsel from the founders of the United States. The drafters and signers of the Declaration of Independence cared about the opinions of other peoples; they placed before the world the reasons why the States, joining together to become the United States of America, were impelled to separate from Great Britain. The Declarants stated their reasons out of “a decent Respect to the Opinions of Mankind.” To that end, they presented a long list of grievances, submitting the “Facts” – the “long Train of [the British Crown’s] Abuses and Usurpations” – to the scrutiny of “a candid World.”

The Supreme Court, early on, expressed a complementary view: The judicial power of the United States, the Court said in 1816, was intended to include cases “in the correct adjudication of which foreign nations are deeply interested . . . [and in] which the principles of the law and comity of nations often form an essential inquiry.”

“Far from [exhibiting hostility] to foreign countries’ views and laws,” Professor Vicki Jackson of the Georgetown law faculty told a congressional committee last year, “the founding generation showed concern for how adjudication in our courts would affect other countries’ regard for the United States.” Even more so today, the United States is subject to the scrutiny of “a candid World.” What the United States does, for good or for ill, continues to be watched by the international community, in particular, by organizations concerned with the advancement of the “rule of law” and respect for human dignity.

Later in her speech, Justice Ginsburg had this to say:

Exposing laws and official acts to judicial review for constitutionality was once uncommon outside the United States. In the United Kingdom, not distant from France, Spain, Germany and other civil law countries in this regard, court review of legislation for compatibility with a fundamental charter was considered off limits, irreconcilable with the doctrine of parliamentary supremacy. But particularly in the years following World War II, many nations installed constitutional

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review by courts as one safeguard against oppressive government and stirred-up majorities. National, multinational and international human rights charters and courts today play a prominent part in our world. The U. S. judicial system will be the poorer, I believe, if we do not both share our experience with, and learn from, legal systems with values and a commitment to democracy similar to our own.

(Justice Ginsburg's complete speech is available at www.asil.org/events/AM05/ginsburg050401.html and will be published in the Fall 2005 *Proceedings of the 99th Annual Meeting of the American Society of International Law*).

I tend to agree with Justice Ginsburg (full disclosure: I served as one of her law clerks in 1999–2000) that foreign judicial opinions, prudently used, can serve as a valuable resource for American judges deciding constitutional cases, as can (shudder!) articles by law professors. Kontorovich's opposing view is a respectable one; he might have advanced it without "lifting ... from their context" the words of Justice Ginsburg's speech.

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GB Meets BB

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Much has been written about the role of *The Bluebook: A Uniform System of Citation* in the field of legal citation. It has even been claimed that "one legal publication actually may have failed because The Bluebook provided no abbreviation" for its name. For this reason, it has been worrisome that *The Bluebook* has heretofore omitted the *Green Bag, 2d Series* from its table of periodical abbreviations, skipping arbitrarily in the Seventeenth Edition (2000) from *Great Plains National Resources Journal* to *Guild Practitioner* without even an ellipsis to mark the glaring omission.

The Eighteenth Edition (2005) of *The Bluebook* is