


# Why does Ruth Bader Ginsburg like the South African constitution so much?

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Supreme Court Justice Ruth Bader Ginsburg is taking some heat from **conservative blogs** for this recent interview with Egypt's Al-Hayat TV, (skip to 9:30) in which she suggests that the U.S. constitution might not be the best model for post-revolutionary Egypt. Here's a **summary from ABC**:

Asked by the English-speaking interviewer whether she thought Egypt should use the Constitutions of other countries as a model, Ginsburg said Egyptians should be "aided by all Constitution-writing that has gone on since the end of World War II."

"I would not look to the U.S. Constitution, if I were drafting a Constitution in the year 2012. I might look at the Constitution of South Africa," says Ginsburg, whom President Clinton nominated to the court in 1993. "That was a deliberate attempt to have a fundamental instrument of government that embraced basic human rights, had an independent judiciary. ... It really is, I think, a great piece of work that was done. Much more recent than the U.S. Constitution."

Ginsburg, who spent her career before taking the bench advocating for gender equality, praised the U.S. Constitution and the founders, saying, "we were just tremendously fortunate in the U.S. that the men that met in Philadelphia were very wise." But "it's true that they were lacking one thing, that is there were no women as part of the Constitutional Convention, but there were women around who sparked the idea."

Ginsburg said "we are still forming the more perfect union" and noted that "when the Constitution was new in the 1780s, we still had slavery in the U.S."

But, she added, "The genius of the Constitution, I think, is that it has this notion of who composes 'We the people'. It has expanded and expanded over the years so now it includes people who were left out in the beginning. Native Americans were left out, certainly people held in human bondage, women, and people that were new comers to our shores."

The backlash is pretty predictable, (Hot Air's Allahpundit **quips** that "I'm actually sort of charmed that a left-wing jurist thinks it matters much what's written in a nation's constitution.") and falls into a larger debate on the court's about whether it's appropriate for American jurists to look to other countries' laws for precedent. Ginsburg's job security is pretty solid, so the fallout of this incident is likely to be pretty minimal, though I could see it as a future applause line on the campaign trail. But Ginsburg's comments also raise the question of what exactly is so great about South Africa's constitution.

What makes the post-apartheid document, which came into effect in 1997, so unique, is its inclusion of *positive* rights. In addition to freedom from discrimination -- including on the basis of sexual orientation, disability or religion -- and freedom of speech, under **chapter two of the constitution**, South Africans have the right to "make decisions concerning reproduction," "form a political party," or "form and join a trade union."

Even more notable, the constitution requires the state to enact policies that minimize inequality:

The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

It also stipulates that citizens have the right to housing and adequate healthcare.

Needless to say, the South African state is often in violation of many of these goals, but the argument for the constitution is that it gives citizens legal recourse to demand government action on economic matters. It's also the case that a constitution that essentially includes an explicit guarantee of abortion rights, mandates government-provided healthcare, and encourages income redistribution, is something of a Tea Party dystopia.

Ginsburg is not alone in her admiration of the South African model. Cass Sunstein, the legal scholar who currently runs the White House's Office of Information and Regulatory Affairs, has **called it** "the most admirable constitution in the history of the world." Though given Sunstein's **own reputation** among Tea Partiers, I'm guessing we won't hear him speaking up on Ginsburg's behalf during an election year.

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