

Q.&A.: Albert P. Blaustein

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Constitutions, the Good and the Bad

Special to The New York Times

WASHINGTON, Sept. 13 — The

writing of constitutions is one of the —

world's growth industries. Of the 160 existing national constitutions, 101 have been established since 1970. This week, the American Enterprise Insti-

tute, a Washington-based think tank, '

has brought together the drafters of many of the non-Communist world's constitutions for a weeklong conference on the art of constitution writing.

The 39 participants include repre-

sentatives of 20 foreign countries plus

American constitutional scholars. Among the American experts is Prof. Albert P. Blaustein of Rutgers University School of Law, who collects constitutions the way some other people collect stamps. He is co-editor, with Gisbert Flanz, of a 17-volume series, "Constitutions of the Countries of the World." In an interview, he shared some thoughts from a lifetime of constitution watching.

good? :

A: Virtually every successful con-

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Q: What makes a good constitution —

the other Indians to come in, and they'd swamp the country.  
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— Q: Is there such a thing as an objectively bad constitution?

A: You might say that some of the British colonial constitutions are bad because they try to take care of everything. A constitution can't work if it tries to spell everything out. Here's a beauty. The Yugoslav constitution guarantees the human right of family planning. The Chilean constitution guarantees the right of the unborn. I just think this is an area the government ought to stay out of. The constitution doesn't have to go into

everything. As soon as you go into too much detail, you open up a hornet's nest. On the other hand, some of the French-style constitutions in Africa fail because they don't say enough. They say, 'We ascribe to the principles of the U.N.' Well, what does that mean?

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-Q: Do you have a personal list of all-time favorite constitutions ?

A: Oh, there are some wonderful

constitution-is -a-constitution of compromise - constitutions. The Mexican Constitution. It aims at achieving equilibrium.. Remember, a constitution is more than a structure and framework for government. It is in many senses

a nation's frontispiece. It should be -

used as a rallying point for the people's ideals and aspirations, as well as a message to the outside world as to what the country stands for.

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Q: But isn't there a problem of form over substance? Some of the most totalitarian countries in the world have nice looking constitutions.

A: Fair enough, but without constitutions, those countries might be even worse. The constitutional process is

worth trying. 5

Q: Is a constitution that's good for one country necessarily good for another? -

A: No. All constitutions have to be autochthonous. That's a key word meaning 'arise from the self.' It must spring from the soil. It must be the constitution to represent the needs of these people. We cannot put constitutions together like prefabricated henhouses.

For example, it may be all right for the U.S. constitution to say no slavery is allowed. But you have a problem in parts of Africa and Asia where you have a responsibility in a certain community to build a road. Each community is obliged to build a part of the road, but they have no money to go out and hire a road builder, so everyone is required to get out on Sunday and chop rocks and build a part of the road. Under our 13th Amendment, that could well be construed as slavery.

We talk glibly about one man, one vote. But the majority of the population of Fiji are settlers from India. What about all the Fijians? You have a dual voting system, so that it's guaranteed that the Fijians will win elections. Otherwise, the Indians would just open the door and invite all

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Albert P. Blaustein

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tion of 1917, such a far-reaching constitution on the role of the clergy, on

the government ownership of land, on -

the social values. A tremendously influential constitution. And the Irish Constitution of 1937 has a lot of good ideas. The new Spanish and Portuguese Constitutions are favorites. There's a lot of thinking in the Indian Constitution. It can't be ignored. The

{ Nigerian Constitution of 1979 is worth

looking at too.

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Q: If you were hired to draft a new constitution for the United States, what changes would you make? :

A: No one drawing up a constitution for America today would fail to include a right of privacy. I would also include the right to leave and to re-

turn. We have these rights now, but

they're not set forth in the Constitution.

The American method of selecting the President of the United States if nobody has a majority is not very

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good, you know, throwing it to the House of Representatives. I would adopt the French style and have another election the following week. Also, I wouldn't have elections on the first Tuesday after the first Monday. I'd have them on a Sunday.

I would want to clarify the relative difference between individual rights

and group rights. Thereâ\200\231s a famous Supreme Court case in which John Marshall leaned across to the lawyer and said: â\200\230â\200\230But arenâ\200\231t all group rights individual rights?â\200\235â\200\231 Well, theyâ\200\231re not, but this was a melting-pot country concerned with individual rights. Today we have to worry about the rights of groups, about the Spanish-speaking people. Weâ\200\231ve ignored the Indian people. L

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Q: If you had a chance to get the framers in a room, say for five minutes, and ask them to clear up some of the enduring mysteries, what would your questions be? :

â\200\230A: I'd like to know what they meant by the free exercise and establishment clauses. Thatâ\200\231s one thing that obviously needs clarification. Then I would ask them if they meant to have the provisions of--the: first eight amendments apply to the states. And then, of course, judicial review, the scope of the judicial power.

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Q: Do you think the framers meant judicial review to play such an important role?

A. I have no idea, but I would say no, I donâ\200\231t think they ever envisioned

such power in the judiciary.

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Q: Could the framers possibly have envisioned the sort of unproductive stalemate that exists today between the executive and legislative branches?

A: Probably not. They tried to come up with a compromise, on the basis of everything they knew, between the absolute executive and the absolute parliament. The French writers of the time thought in terms of an absolute parliament, because they had a king, who was much worse by the way than the English king. But then there was a question that if you had an assembly, you had a rabble, and you had to protect against the rabble. I know that war powers is the question of the day, but you didnâ\200\231t think then about the U.S., this little dinky country over in a corner of the world, going out with police actions, peacekeeping missions. That wasnâ\200\231t part of the concept.

But the point is, the constitutions must meet changing needs, and we meet it judicially. -

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Q: How closely do you think our system today approximates the vision of the framers?

A: I think they would be very proud of how we turned out, I really do. I think our Constitution has met the test of time. When Mr. Nixon left power, the only person with a gun was a policeman directing traffic.

Linda Greenhouse