

What South Africa needs

In an article for Clarion Call, Professor Albert P Blaustein, co-editor of the 19-volume Constitutions of the Countries of the World, writes on "South Africa's current needs" and emphasises the country's immediate priority: a new constitution. Professor Blaustein is a member of the Rutgers University Law School faculty where he teaches Constitution Writing and Analysis. He has served as counsel, consultant and sometime draftsmen of the constitutions of Liberia, Bangladesh, Peru and Zimbabwe. He is vice-president and chairman of the foreign advisory committee of the Athens-based International Centre for Constitutional Studies. Professor Blaustein has made eight trips to South Africa during which he has lectured at six SA universities.

South Africa needs a new constitution. It needs a formalized codification of political arrangements delineating power-sharing with the Black majority population. The survival of the South African nation so requires. On that there is agreement.

But agreement is absent on the specifics of that constitution and the methods to achieve it.

Of course there is no one simple solution which will resolve such disagreements. But there are many avenues of approach, gleaned from the two hundred years of constitutional history that began with the world's first national constitution, the 1787 Constitution of the United States.

These then are the immutable truths of constitution-making:

- A constitution must be autochthonous. It must be home-grown; it must spring from the soil. It must be bespoke, custom-made to meet the needs, wants and aspirations of the peoples for whom it is written. It cannot be assembled like some prefabricated hen house from standardized excerpts taken from portions of the other 162 national constitutions of the world: a chapter here, an article there, a section or clause from someplace else.

- The Government does not create the constitution; the constitution creates the government. The autochthonous constitution must be the product of its beneficiaries. Just as it cannot be dictated from abroad, so it cannot be dictated by any one population group. It cannot be handed down as the beneficiaries of the rulers that be; it cannot be imposed by an opposition clique or faction. All of the successful constitutions of the past have resulted from shared participation in the constitution-making process. That is the defect (and failure) of the current South African constitution, initiated unilaterally by the government.

- The constitution-making process is as important as the constitution which results. The procedures and methods for reaching constitutional solutions may be even more significant than the mechanics of the constitutional solutions which emerge.

The South African constitution must be discussed, analyzed, written and promulgated by South Africans for South Africans to meet the unique/peculiar circumstances of South Africa. This means:

1. The South African constitution cannot be imposed from outside — neither by well-meaning foreign liberals in America and Europe, properly opposed to apartheid, nor by the Marxist ideologues of refugee liberation groups.

2. The South African constitution must be the product of all South Africans, not just those in the white, dominant community nor Blacks who are in opposition to the present power structure.

3. South Africa must become (as soon as possible) a land of constitutional ferment — like today's Brazil. The constitution-making process must involve everyone. This is the time for surveys, studies, seminars, conferences, etc., etc., by government, universities, foundations, business and unions to promote and foster total participation.

4. South Africa must make a special effort to encourage the talents and the participation of the of the total legal community. The Rev. Martin Luther Kings of the world — including South Africa — have been heard on the moral issues and the philosophical issues. It is now the time for the lawyers to draft the constitution and legislation and (like lawyer Thurgood Marshall in 1954) plead the power-sharing cause in the courts and to the Black community.

For it is even the lawyer's task to translate theories and philosophies into practical, working legal instru-

ments. Constitution-making is lawyer business. It is lawyer business of the highest order and has been so since the days of Jefferson and Madison. South Africa has an excellent bar which includes an active Black Lawyers Association. But these lawyers need more support, more resources, more available time to pursue constitutional studies and prepare constitutional proposals.

5. South Africa must have the help of the international community. But it must be the kind of aid that South Africa needs and wants — and can use. Of course South Africa needs new ideas, suggestions and recommendations — and it needs information — but it certainly doesn't need officious intermeddlers.

South Africa needs and wants exchanges of constitutional information. Its scholars, particularly its legal scholars, black and white, need freedom now denied to them to travel to international conferences.

The participation of foreign scholars within South Africa is desired, not to tell South Africans what to do but to furnish background information and objective, impartial ideas — and to help frame the issues that must be decided by South African policy makers and South African policy makers alone. Some of these foreign scholars must come from such countries as Nigeria, which presently deny its citizens permission to travel to South Africa.

South Africa needs more constitutional law books. It needs more funding for seminars and studies. It needs more scholarships, especially for the graduate training of South Africa's Black lawyers, both in South Africa and abroad. It also needs consultations with sociologists trained in survey methods, and public information specialists who can help raise both Black and White consciousness about constitution-making.

