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# Peaslee: Constitutions of Nations

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diction, duties, rights and powers of the bankrupt and the trustee, liquidation and distribution of the estate, and the bankrupt's exemptions and discharge. The work is completed by a brief study of the major aspects of reorganizations under the Bankruptcy Act's Chapter X for corporations and Section 77 for railroads and under the new Section 20b of the Interstate Commerce Act for "wet-wash" rehabilitation of railroads.

There are of course omissions, some apparently purposeful to keep the amount of material offered within the reasonable limits of available law school time, and others perhaps inadvertent. An example of the former appears the lack of attention given to the matter of allowances to attorneys, accountants, and others rendering services to the bankruptcy court—a highly important subject to practitioners but surely one with which they will become familiar after graduation.<sup>2</sup> Exemplary of the latter may be omission of any reference to *Young v. Higbee Co.*,<sup>3</sup> which, while arising on individual facts, has had an expanding influence on other situations.<sup>4</sup>

This work will be an invaluable teaching tool. Its simplicity makes its broad coverage effective.

Professor Moore and Professor Countryman have given their fellow teachers outstanding aid in a complex field of the law.

JOHN GERDES†

CONSTITUTIONS OF NATIONS. By Amos J. Peaslee. Concord: The Rumford Press, 1952. 3 vols. Pp. 2469. \$22.50.

If the 19th century were the century of constitution making (and constitution breaking), the 20th century bids fair to surpass it in the profusion and prolixity of its constitutions expressed so frequently to be immutable and intended to endure for ages to come. Americans may be surprised to learn from Mr. Peaslee that the United States Constitution is the oldest of all written national constitutions. Indeed, the impressively detailed statistics with which Mr. Peaslee's three volumes abound, proclaim that 29 (or 40 per cent) of all the written national constitutions, are less than five years old; 33 (or 45 per cent) are less than ten years old; and 51 (or 70 per cent) are less than twenty-five years old.

Mr. Peaslee has collected from sources as diverse in authority as "the Foreign Offices and Washington Embassies of many of the nations" on the one hand, and Harold Stassen on the other, the "first compilation ever published in the English language of all the national constitutions of the world," specifically, the basic constitutional instruments of 83 "political entities which claim, and are accorded internationally for most purposes, sovereign national status." He publishes in full these constitutional instruments, arranged in

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2. See *Leiman v. Guttman*, 336 U.S. 1 (1949).

3. 324 U.S. 204 (1945).

4. *Berner v. Equitable Office Bldg. Corp.*, 175 F.2d 218 (2d Cir. 1949); *Silbiger v. Prudence Bonds Corp.*, 180 F.2d 917 (2d Cir. 1950).

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alphabetical order by country. Each constitution is preceded by a very brief descriptive note. An interesting, and certainly eye-pleasing, addition is the inclusion of the appropriate national coat-of-arms alongside each constitution. Is there any poetic significance in the fact that for Yugoslavia, the storm center of the present, the coat-of-arms is now "a design with somewhat the same general wreath as the USSR, the star above and flames in the central part"; while for unhappy Austria, "the orb and sceptre of the old arms have been replaced by the hammer and sickle, and chains hang from the eagle's legs?"

If Mr. Peaslee had ended his labors there, we would have nothing more to add, beyond commending his three volumes as a most valuable collection of the basic constitutions of many countries, and indeed, to our knowledge, the only such collection that can be described as comprehensive and up-to-date.

But Mr. Peaslee has more to contribute. He goes on, in an 18-page General Summary in Volume I, and in a further 54-page survey in Volume III, to essay an analysis of the constitutions of all 83 selected countries and a classification according to what he considers their key characteristics. Mr. Peaslee offers many lessons for students and teachers of this developing branch of Comparative Constitutional Law. He is a pigeon-holer par excellence, in the sense that he has a highly developed fondness for categories, particularly of the Either Or type.

Mr. Peaslee is also something of an arm-chair statistician. With the assistance of his slide rule and computer, he is able to tell us that 63 per cent of his 83 selected countries commonly refer to their form of government as a "republic"; the combined populations of these countries is about 1,350,000,000 persons, constituting 60 per cent of the world's total of approximately 2,250,000,000 human beings. Twenty-nine per cent of the total number of nations are Monarchies, Kingdoms, Empires, or Principalities, containing about 218,000,000 persons, less than 10 per cent of the total. And there are seven dominions or commonwealths, constituting 8 per cent of the number of nations and containing about 451,000,000 people, or 20 per cent of the total.

His statistics roll on. In 71 per cent of the total number of nations, comprehending about 80 per cent of the world's total population, "the concept that sovereignty rests in the people" appears in existing constitutional provisions. But if we also consider those nations where the constitution, in process of formation, or the prior constitution, gives the same indication; and if we consider still other nations in which the concept of sovereign power is that it rests more or less jointly in a sovereign and the people, the percentage of nations becomes 90 per cent, and the percentage of the world's total population who consider the people to be a source of sovereign power becomes over 97 per cent. His computer has even more to disclose. The average area of a nation is approximately 442,000 square miles and the average population is 25,850,000. Sixty-five of 83 nations (about 78 per cent) have an area less than the area of the State of Texas (not specified by Mr. Peaslee); 58 of 83 nations (about 70 per cent) have populations less than the population of the State of New York (again not specified by Mr. Peaslee).

I do not wish to belittle Mr. Peaslee's labors. But I do question, first of all, the utility, in the mid-twentieth century, of such a classification as the republican-monarchical dichotomy, especially if it is the only classification attempted according to structure of authority within a country. And when he sets up a two-way classification according to whether sovereign power "rests in the people," or whether it is "vested in a monarch or other supreme person and stems downward as a grant to the people," I am curious as to the criteria he employs to lump together the United Kingdom, Monaco, and Saudi Arabia, in the latter category; while in the opposing camp we find such strange bedfellows as the United States, the Soviet Union, Greece (in Mr. Peaslee's words "actually a monarchy"), Iran, ("conferred on the monarch by the people"), Iraq ("as a trust confided to the King by the people"), and Japan ("although an empire"). Such a selection may appear a little arbitrary on first sight, but Mr. Peaslee is a good dialectician. In explaining his classification for the United Kingdom he contends that whilst, in that country, "there are strong concepts that sovereign power rests in the people,—however there are frequent official references to the Crown as the source of sovereign power." Historically grants of civil and constitutional rights in those countries have stemmed from the monarch or parliament to the people. The inhabitants of the United Kingdom are currently and officially described as "British subjects."

Let us not accuse Mr. Peaslee too quickly of being a diehard in his classifications. By Volume III he has unbent somewhat, or perhaps profited by second thoughts, and the Source of Sovereign Power in the United Kingdom has become "the crown and the people"; while the Source of Sovereign Power in the Union of South Africa stands revealed as "Almighty God." Possibly the two facts are not unconnected.

Indeed, Mr. Peaslee's ventures into Comparative Constitutional Law reveal a number of basic weaknesses. First and most obvious, is the loose and slipshod characterization in which facts appear too frequently to be bent to arrive at Quiz Kid-type statistics. Second, he employs overly rigid modes of categorization—black and white are colors all too rarely seen in the Governmental spectrum—and his categories themselves simply mirror the forms of the plethora of 19th century constitutions. The Republican/Monarchical dichotomy, for example, might with advantage yield today to a survey of the arenas of power within the selected communities. The Federal/Unitary dichotomy simply impedes a fundamental approach to area distributions of authority within those communities.

The overwhelming weakness of Mr. Peaslee's attempt at comparative study is the seeming failure to distinguish formal authority and effective power. The constitutional instrument is certainly the best evidence of the location of formal authority within a particular community. But there may be little or no relationship between the constitutional instrument and the substantial facts of power in that community at any given time. Constitutional instruments are no more than tinkling cymbals, except insofar as they have roots in the 'living law' of the community for which they are proclaimed.

Constitutions have been one of the most popular of Anglo-American exports. The continuous demand for new Constitutions, as evidenced by the high mortality figures for such instruments, points to their high degree of perishability. I am reminded of the story (surely apocryphal) of those 19th century Hungarian liberals whose admiration for English constitutional government was so great that they sought not merely to copy English forms but to build a replica of the Houses at Westminster on the banks of the Danube. How have those high ideals borne fruit today?

If the United States is increasingly to become the center of World legal studies, its Law Schools must direct attention not merely to the institutional forms of many countries, but to the working practices of government underlying the constitutional instruments. And our judgments as to whether a particular community is or is not democratic must not be based solely on a correspondence or non-correspondence to Anglo-American governmental forms. That is the worst type of academic imperialism! We need to penetrate the surface layer of doctrine, in order to determine to what extent there is, in fact, in that community a sharing of power, wealth, respect, and other values.

As a painstaking collection of source materials—the basic constitutional instruments of many countries—Mr. Peaslee's volumes are indeed worth a place in law libraries. Yet when he seeks to transcend these more modest confines and launch into detailed analysis and comparison of his 83 countries, and when Dr. Ivan Kerno (Assistant Secretary-General in charge of the Legal Department, United Nations), in an inspired introduction, hails Mr. Peaslee's volumes as "a scholarly work, . . . a real contribution to this essential understanding of fundamental principles of government of the various countries," I am forced to say that in this respect at least, Mr. Peaslee, and for that matter, Dr. Kerno, have not yet begun to fight.

EDWARD McWHINNEY†

THE BOOK OF ACQUISITION—BOOK 12 OF THE CODE OF MAIMONIDES. Translated from the Hebrew by Isaac Klein. New Haven: Yale University Press, 1951. Pp. xv, 335. \$5.00.

HISTORIANS of political and legal theory have only recently abandoned the Hegelian view that early non-European peoples had no aptitude for legal and political thought while peoples of the West were lavishly endowed with such talents.<sup>1</sup> That this view prevailed as long as it did was due principally to the dearth of non-European legal and political literatures and the unfamiliarity of scholars with the languages of the scanty materials available. Furthermore even where there was some familiarity with the languages involved, their technical manner of discourse was not easily mastered. Yet,

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1. MAXEY, *POLITICAL PHILOSOPHIES* 7 (rev. ed. 1949).