Speeches on the Constitution of New Jersey

by

Governor Charles Edison

FROM THE
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The most important problem before the State of New Jersey is an old one. It is a problem that almost every governor since the Civil War has recognized. As the years have passed, the problem has grown steadily worse, and new aspects of it have cropped up to plague each succeeding generation of citizens. The problem is how to obtain modern, effective, responsible, and economical state government under the constitution of 1844. That constitution was perhaps satisfactory for a rural, thinly settled state, such as New Jersey was a hundred years ago. There is absolutely no question that the constitution is unequal to the tasks of our present complex, urban, industrial society.

Both political parties in New Jersey have recognized the necessity for constitutional reform. In the last gubernatorial election, both candidates favored a constitutional convention. I urged a convention in my inaugural address. The Legislature, however, set up a Commission on the Revision of the New Jersey Constitution. That commission did an excellent job, and its unanimous report is the high point in the history of the long struggle for constitutional reform in New Jersey.

Some citizens thought the proposed constitution did not go far enough. Others objected to this provision or to that omission. But the prevailing judgment of all fair-minded students was that the proposed constitution would have gone a long way toward providing a more workable and less expensive state government.

The Legislature, however, set up a joint committee to examine the matter further. They held hearings throughout last summer. The overwhelming majority of those persons and organizations who appeared before the committee favored constitutional reform, and along the lines of the report of the commission. I heard of no one who defended our constitution as it stands. The record of the hearings, soon to be printed, will, I am sure, be the most complete and comprehensive statement in existence of what is wrong with the constitution of 1844.

The committee, in spite of the testimony it had heard, recommended that nothing be done about the constitution and gave the very specious reason that many citizens of New Jersey are now in the armed forces. That is to say, the committee felt that we should do nothing to improve democracy at home while our soldiers are fighting for it abroad. Or else the committee felt that the mothers and fathers of the men who are fighting for us could not be trusted far enough to allow them to vote on the question whether a new constitution should be submitted to them in 1943.

Many people deplore the concentration of power in Washington and profess to see in the increasing federal authority a threat to popular government. I do myself. But I realize that the growth of federal power dates back beyond the Civil War, and that it is constantly accelerated by the failures of the states themselves. When they insist upon attempting to operate under constitutions that are unequal to present-day needs, and when there is a national government aware of those needs and able to act, power is sure to flow to that government which will exercise it.

When the war ends, the states and the nation will be faced with tremendous and complex problems. If we are honest with ourselves, we cannot expect that the haphazard, inefficient, and irresponsible state government that we have under the constitution of 1844 will be half-way competent to deal with the new problems it will have to face. Washington will once more be compelled to act. Those who object to having all sovereignty gathered into Washington; those who believe that the states must be the base of representative democracy if it is to be maintained over such vast distances and over so many millions of people as there are in America; and those who fear that the national government has approached the point of growth where sheer size makes it inefficient and dangerous—all these people are under a moral obligation to do something about it.

Name calling is not enough. Deploring is not enough. Blaming some one man or some group of men, living or dead, is both absurd and ineffectual. The decline in the relative position of the states is due to causes, not to persons. We must remove the causes. Our responsibility here in New Jersey is to produce, under a reformed and modernized constitution, a state government able to meet the needs of our times. When we have done that, then—and only then—can we consistently say that there is no need to go to Washington, that our representative government in New Jersey can solve our problems.

The campaign, now more than fifty years old, to revise and modernize the constitution of New Jersey was not ended by the failure of the last Legislature to act. I have been much heartened by the expressions of confidence I have received in the last few months. I know that the campaign will continue, will increase in intensity. But I dread the possibility that a sudden crisis may find the government of New Jersey under its 1844 constitution unequal to its tasks before the inevitable reform is accomplished.

In these times when crisis follows crisis, you members of the one hundred and sixty-seventh Legislature of New Jersey have a great responsibility. It is in your hands to determine if our commonwealth is to stand still, or if it is to meet the post-war emergencies with a state constitution equal to any emergency.

TO THE BOARD OF REALTORS (WOMEN'S DIVISION) OF THE ORANGES AND MAPLEWOOD

Wednesday, June 9, 1943

Madam Chairman, Ladies and Gentlemen:

The long campaign to modernize the New Jersey constitution won a preliminary victory on Monday, May 10th. The state Senate was then forced to pass, 12 to 5, the Feller Bill to refer to the people at the coming general election the question whether the voters want the next Legislature to submit to them in 1944 a new and revised constitution. The campaign that has been going on ever since Civil War days to get New Jersey a better state constitution seems to be making new progress. Almost every organization in the state that seeks to improve our democracy is behind this movement. Except that Mayor Hague does not want the constitution modernized, the movement is non-partisan. Political leaders in both parties favor constitutional revision.

But that is not enough. The reasons why New Jersey needs a new constitution must be brought home to the people in the months that lie ahead. That requires hard, persistent work. I intend to do my part. During and ever since the campaign of 1940, I have seized every favorable opportunity to point out to the people and to the Legislature why we cannot expect to get fundamental improvements in our state government until we bring our fundamental law up to date.

The question has recently been asked, "Exactly what is wrong with the present constitution, and exactly what needs to be done to correct its faults?" The answer to that short question cannot, unfortunately, be equally short; and yet the people who are going to vote on the referendum are entitled to a complete and specific answer. I cannot hope to give the whole answer tonight. The joint legislative committee held hearings almost all of last summer. Hundreds of witnesses presented in great detail the defects of the constitution. I cannot go over all the ground they covered, but as opportunities during the summer come to me to address various audiences, I propose to take up the constitution point by point and to show specifically the defects which make revision necessary.

The New Jersey Constitution Foundation, with headquarters at 790 Broad Street, Newark, is a non-partisan organization established for the express purpose of acquainting the people of New Jersey with the need for constitutional reform. They have done considerable research, and they have prepared a number of pamphlets on the constitution. They stand ready to provide any interested citizen with full information about our constitution and about current proposals to improve and correct it. Any one of my hearers who may wish a more complete analysis than I can give might would do well to write to them for information.

A century of experience with the constitution of 1844 has proved that, in general, it is too rigid, too inflexible. It does not allow our democracy to grow, or to adapt its government to new needs and new times. Every

suggestion for changing the constitution must be viewed with this in mind. We are in a sort of governmental straight jacket. In getting out of that straight jacket, which has bound us and our fathers, we do not want to bind our successors. We want liberty for them as we want it for ourselves. I should like to see a new constitution contain a provision, such as New York and many other states have, for the automatic assembling of a constitutional convention at stated intervals—say every twenty years. Such a provision will prevent a government from ossifying.

The constitution of 1844, under which we attempt today to govern ourselves, has ten articles. The first article sets up the rights and privileges of citizens. It is the bill of rights article, and it incorporates the ideas in the first ten amendments to the Constitution of the United States. It adds some not in the federal Constitution, such as that the truth shall be a defense in libel actions. As compared with the criticisms of other parts of the constitution, there have been relatively few criticisms of the first article. Under the terms of the referendum, moreover, the Legislature will not undertake any revision of it. If the framers of our state constitution had followed the federal model in other respects as they followed it in drafting the state bill of rights, we would not have had all the troubles that have plagued us, especially in the last fifty years. And we would not have now to undertake this campaign for constitutional revision.

I should like, however, to call your attention to the second paragraph of the first article of the constitution, because it is under that provision that we now proceed to adjust our government to a new day:

> All political power is inherent in the people. Government is institute for the protection, security, and benefit of the people, and they have the rig at all times to alter or reform the same, whenever the public good ma require it.

The public good does now require these alterations and reforms. A constitutions are made for men and not men for constitutions, we propos to make ours fit our needs—not the needs of a rural state such as Ne Jersey was a hundred years ago.

The second article of the constitution concerns the right to vote. It co fers the suffrage upon every male citizen of the age of twenty-one, wi certain exceptions, such as persons confined in institutions. The Nineteen Amendment to the Constitution of the United States, of course, extende the suffrage to women, any state provisions to the contrary notwithstandin A revision of the New Jersey constitution shoul take out the word *ma* as excess verbiage.

In addition to this change in the article on the suffrage, there is a goo deal to be said for extending the vote to citizens of eighteen years and ove We are asking young men under twenty-one to fight for their country. W intrust them with very valuable public property, such as airplanes. The are supposed to make the best soldiers; why would they not make goo voters? There is something a little absurd in telling a young citizen th he is old enough to fight—if need be, to die—for his country and then te

ng him in the next breath that he is not old enough to vote for a village onstable.

The age of twenty-one is just an arbitrary figure. It is chiefly the eight of tradition that has preserved it for voting purposes. A citizen may ake very important and binding legal decisions before he is twenty-one—uch as to get married. At eighteen, most people have as much education s they are ever going to get. Three more years will, in most cases, make o substantial contribution to their education or experience.

Every year since I have been governor, we have had assemble in Tren- on what is called the Boy Legislature. It is composed of boys of high-school ge, brought together under the auspices of the Y. M. C. A. Just look over e records of those Boy Legislatures—the way they have conducted them- lves, the bills they have passed, the bills they have defeated—and compare eir records with the records of the real Legislature. I believe you will ve to admit that New Jersey would have been better off if it had actually en governed by these boys. I conclude that we would be fully justified in rmitting citizens of eighteen to vote.

The states have often been called the laboratories of democracy, though recent years they have fallen down on that job. They have left the perimenting to Washington. I could never see the objection to political perimenting as such, any more than I could see any objection to scien- ic experimenting. I don't see how we can progress without trying new ings and new ways of doing old things. We might well try the extension the suffrage to persons of eighteen and see how it works. If it does not ork, we can return to twenty-one, or to some other age.

The third article of the New Jersey constitution is very short. It divides e powers of government "into three distinct departments—the Legislative, xecutive, and Judicial; and no person or persons belonging to, or consti- ting one of these departments, shall exercise any of the powers properly longing to either of the others. . . ."

This division of powers is good American constitutional doctrine—it s in nicely with the actual functioning of government—and our statement it is all right as far as it goes. It is not, however, the Court says, self- ecuting—whatever that means. It needs to be amplified to prevent one partment from encroaching upon another, as when legislators have been ade counsel for boards and commissions. The courts have recently held at legislators cannot be paid for such services, but courts have often versed themselves. Justice Brandeis once pointed out that the Supreme ourt of the United States had reversed itself more often than it had versed Congress by declaring acts of Congress unconstitutional. So we ould be justified, I believe, in implementing this constitutional division powers with more specific prohibitions against encroachments than are ntained in the 1844 constitution.

The growth of our country has inevitably produced a more complex ciety than we had in 1844. It has produced powerful corporations, such public utilities, which have had to be regulated in the public interest. ws such as workmen's compensation acts have been passed. We have

set up over the years a multitude of quasi-judicial boards and commission
Examples are the Public Utility Commission, the State Board of Ta
Appeals, the State Board of Education. The establishment of these agenci
—partly executive in character, partly legislative, partly judicial—is n
unique to New Jersey. Other states and the federal government have al
had to establish them. Under them, a body of regulations and judici
decisions has grown up that is now called administrative law. There wa
no such thing in 1844, just as there were then no automobiles, no powe
plants, no airplanes. But we have to meet the problems of administrati
law, just as we have to meet the problems growing out of the widespre
use of the automobile.

In the very nature of things, legislative bodies have had to set up the
quasi-judicial bodies, or they have had to intrust an executive officer wi
quasi-judicial powers, such as those now possessed by the New Jersey Co
missioners of Labor, Motor Vehicles, and Alcoholic Beverage Contro
There is a natural and human tendency for each man in office to make h
own rules, and, indeed, to change his mind and his rules. Since importa
private rights are established or terminated by regulations, it is importa
that some unity, some regularity, be imparted to the body of administrati
practice.

The constitutional commission that was appointed by the Legislatu
and the governor in 1941, when it drafted a new proposed constitutio
undertook to do something about this problem. It drafted an addition
paragraph for Article III which limited administrative agencies "to the effe
tuation of declared general standards or principles set forth by law. . .
Such a provision would do much to prevent bureaucratic law making.
supported by proper legislation it would go far toward preventing offici
from establishing or terminating important private rights at their whim,
at the whim of some political boss.

The new paragraph proposed by the commission further required th
regulations by administrative agencies "shall conform to established a
published practices and procedures which, so far as practicable, shall be
uniform character." Such a provision would prevent a board or comm
sion from changing its rules without notice, or from applying its rules
an arbitrary or discriminatory fashion.

So that the public might more readily than at present learn what t
rules and regulations are, the commission proposed, further, that a n
constitution require that no rule or regulation should "be effective until
is filed with the Secretary of State." They proposed also to require t
Legislature to "provide by law for the speedy publication of such rules a
regulations." Under these new requirements upon boards and agenci
any interested citizen could at any time find out what rules and regulatio
exist. He would know what he could do and what he could not do. Mu
as we might like to get away from government by administration, it is he
and it is here to stay. The best that we can do is to attempt to keep adm
istrative justice as clear, as steady, and as uniform as possible.

I said earlier that I could not possibly cover in one evening all that I
nted to say about the state constitution. It has lagged behind the times
much—there are so many changes that need to be made in it—that no
ck and simple answer is possible to the question "What is the matter
h our constitution and what needs to be done to improve it?"
I have talked all this time, and I have got only through the first three
cles. There is a lot I have to say, I can assure you, about the legislative
cle. There is more about the executive, the judicial, the military, and
amending process. The changes that need to be made in these parts of
constitution are more extensive than the changes required in the first
e articles. If I cannot undertake to discuss all of these points tonight,
an, however, undertake to answer questions about them that you may
e in mind.

In concluding these remarks, I want to say with all the emphasis I can
t we, the present citizens of New Jersey, have this year a great oppor-
ity. We can do something for democracy here while thousands of our
ow citizens are fighting for it abroad. We can establish a better state
ernment, so that when they return they will find a government better
e to cope with their needs and the inevitable problems of post-war recon-
ction. This is little enough for them to ask us to do. The next step is
vote "yes" on the referendum on the ballot in November.

AT THE RALLY OF CITIZENS OF LODI

June 12, 1943

. Chairman, Ladies and Gentlemen:

Wednesday night of this week in East Orange I discussed Article I of
New Jersey constitution, which sets up the bill of rights; Article II,
ich grants the right of suffrage; and Article III, which distributes the
vers of government into three distinct departments, legislative, execu-
, and judicial. Tonight I wish to take up Article IV, the legislative article.

It might be well to begin by pointing out that New Jersey is the only
e in the Union in which state elections are held every year. It is the
y state in which any legislators are elected for one-year terms. Forty-
r of the 48 states elect members of the lower house for two-year terms;
ee states elect them for four-year terms. New Jersey alone elects its
emblymen one year at a time.

Our system of annual elections for assemblymen has shown itself to
ve so many disadvantages that no other state has imitated it. And every
of proposals to revise our constitution has recommended a longer term
assemblymen. Annual elections mix politics and legislation inextricably.
r every assemblyman the next election is just around the corner. He
not learn his job before he has to campaign again. He cannot learn about
forces and pressures that guide the legislative process before he is out
office. He is called upon to pass upon long and complicated appropriation

bills before he has had an opportunity to learn the details of the state gov
ernment. We should give an assemblyman a term of two years, so that h
can catch his breath and learn something about the State House and wha
goes on there. We should relieve him of the necessity of conducting a con
tinuous campaign. The most effective assemblymen are those serving se
ond, third, and later terms. They have learned what the state governme
is like and how it works. We can improve the quality of all our legislatio
by giving all of our assemblymen more opportunity for experience.

New Jersey is also the only state that elects its senators for the od
term of three years. In 31 of the 48 states, they are elected for terms
four years; in the remainder of the states for terms of two years. Th
Commission on the Revision of the New Jersey Constitution that reporte
in 1942 recommended that New Jersey senators should be elected for ter
of four years, as is done in the majority of the states. The four-year ter
seems to have proved most generally satisfactory, and it seems to me th
we should adopt it.

When we are changing the terms of legislators, we ought also to
something about their salaries. Our constitution provides that the legi
lators shall each "receive annually the sum of five hundred dollars . .
and no other allowance or emolument, directly or indirectly, for any pu
pose whatever." This compensation is utterly inadequate for the respons
bility imposed upon the legislators, and insufficient for the amount of tim
they ought to be expected to put in on their jobs. It requires too great
sacrifice from men of the ability we need. If we pay our legislators fiv
hundred dollars a year, it is reasonable to expect that we will get legislato
who are worth no more than that. We are likely to get—and often we
get—legislators whose chief interest is in working out deals to get them
selves into better-paying public jobs. In a way they cannot be blamed f
that, because no member of the New Jersey Legislature wants to make
career of a five-hundred-dollar job, as members of Congress often make
career of legislation and become experts on it. Probably we ought to fe
fortunate that our Legislature has been no worse than it has, in view of t
low salary we pay. By and large, the public, like the individual citizen, ge
what it pays for—and no more.

The five-hundred-dollar limitation and the prohibition on expense mon
were imposed by a constitutional amendment in 1875 when the people we
angry about some legislative abuses of the time. A constitution is intend
to last for an indefinite future time, and it seems to me that it is very dubio
public policy to put any dollars-and-cents limitations in a constitution. T
value of money inevitably changes over the years, and indeed it is not inco
ceivable that sometime the United States might change to a currency u
other than the dollar. Although we cannot foresee that time, and althou
we cannot predict the value of money ten, twenty, or a hundred years fr
now, we can be certain that a 1943 dollar will not be the same as a 1953
a 1993 dollar.

The Commission on the Revision of the New Jersey Constitution re
ommended that the salaries of our legislators be increased to $1,500 by

new constitutional provision. That sum would be better than the five-
hundred-dollar honorarium we now allow, but once in the constitution,
only an amendment could change it. As compared with the salaries paid
by some of our neighboring states, $1,500 is still low. Massachusetts pays
$2,000, plus mileage; New York, $2,500, plus actual expenses; and Penn-
sylvania, $3,000, plus mileage. Considering the amount of time required of
a legislator, and considering the responsibility imposed upon him, these
salaries seem to me reasonable.

The very low salaries we pay to legislators have probably been con-
tributing factors to two practices by means of which the Legislature has
encroached upon the Executive: the election of administrative officers by
joint meeting of the two houses, and, second, the pressure put upon gov-
ernors to appoint legislators to administrative offices. I should like to
discuss first the elections by joint meeting.

We have at present a considerable number of very important officials
elected by the Legislature in joint meeting. I cannot find any other state
that has so many. The Commissioner of Alcoholic Beverage Control, the
State Auditor, and the Director of Municipal Aid are examples. These
men and others, whose duties make them clearly part of the executive
branch, are not responsible to the governor—the so-called chief executive
—at all. Every few years the normal appointing power of the governor is
further whittled away by a bill to provide for the election of some official
by a joint meeting of the two houses. The scheme generally leads to the
grossest kind of logrolling and to the election of a legislator. You will all
recall the months and months when no deal could be worked out to fill the
vacancy created in the office of Commissioner of Alcoholic Beverage Con-
trol when D. Frederick Burnett died. As might have been expected, a
senator was at length elected to the position.

One of the reasons, or abuses, that led to the calling of the Constitu-
tional Convention of 1844 was the election of officials in joint meeting under
the constitution of 1776. The delegates may have thought that they were
correcting the abuse in 1844, but they failed. I believe that the revision
commission found the answer. They suggested the following new provision
for the constitution:

> The heads of all administrative departments shall comprise a single executive, unless otherwise provided by law. All such department heads and the members of all boards, councils, and commissions, except the State Comptroller and the State Treasurer, shall be nominated and appointed by the Governor, by and with the advice and consent of the Senate.

This clause, I believe, would end the logrolling evils that are inevitable
in the election of administrative officers by joint meeting. It would go far
to keep the legislative and executive branches separate and distinct.

The pressure that has been put upon governors to appoint legislators—
and especially senators—to office has been possible, because, under the con-
stitution of 1844, legislators are eligible to offices in the administration, and
they have been willing to hold up a governor's program or his appointments

of judges, prosecutors, and other officers until they were satisfied. The constitution of 1844 only forbids legislators from being appointed by a governor or elected in joint meeting to positions they have created or the emoluments of which they have increased during their terms. The language of the constitution is:

> No member of the Senate or General Assembly shall, during the time for which he was elected, be nominated or appointed by the Governor or by the legislature in joint meeting, to any civil office under the authority of this state, which shall have been created, or the emoluments whereof shall have been increased, during such time.

The only way that has been discovered to date to get around this constitutional prohibition is for the Legislature to create a board or commission, which in turn hires a legislator. Ex-senator Foran's position as director of the State Milk Control Board is an example. The framers of the 1844 constitution probably did not foresee this device for the creation of jobs for legislators; so their work needs to be tightened up. The reasons of public policy that led them to forbid legislators to create jobs for themselves are just as valid now as they were in 1844. Legislative ethics are still apparently too weak to resist such temptations.

The revision commission proposed to take away the eligibility of legislators entirely, so that they could not be appointed, regardless of whether or not a job had been created or its salary increased. They suggested this clause:

> No member of the Senate or General Assembly shall, during the time for which he or she was elected and for one year thereafter, be eligible to hold any appointive office under the authority of this State, including the offices of State Treasurer and State Comptroller.

If we could get the two new provisions I have mentioned, I believe we would end both the logrolling of joint meetings and the pressure upon governors to appoint legislators. As a result, we could expect the Legislature to legislate, free from the temptations to make jobs for legislators and free from the temptation to compel the governor to appoint them. We could also expect that the chief executive would be one in fact as well as in name, having real control over the administration for which he is publicly responsible. We would restore the three distinct departments of government that the constitution expressly requires.

Our Legislature, which annually meets on the second Tuesday in January, commonly stays in session all the rest of the year. The members are not, of course, actually in Trenton the year around; rather, the Legislature is technically in session, recessing from day to day according to the minutes. It does not adjourn, because the legislators want to be able to prevent the governor from making *ad interim* appointments. Even when the Legislature is actually in session, it commonly meets only one or two days a week.

Here again, the New Jersey constitution is unique. No other legislature, to my knowledge, has this custom of one-day-a-week sessions that

drag along throughout the entire year. American state constitutions commonly set some limit on sessions—usually sixty calendar days—during which period the legislature attends to its public business, and after which it goes home. The citizens of the state cannot follow intelligently the scattered sessions we have—a meeting today, another meeting next week or next month.

The Commission on the Revision of the New Jersey Constitution recommended that sessions be limited to ninety calendar days. That seems reasonable enough, even though it is thirty days more than needed by most state legislatures. If anything of importance comes up, the governor can always call the Legislature into special session.

The revision commission offered a new provision for the constitution concerning special sessions. They proposed that the governor must call a special session, which could not exceed fifteen calendar days in length, upon the petition of two-thirds of the members of each house.

The same new suggested provision would require that the call for a special session, whether initiated by the governor or upon the petition of two-thirds of the Legislature, must "specify the matter or matters to be considered, and no other matter shall be considered at such session." Such a clause would make special sessions really special and would prevent their being used merely to extend the regular session.

What I have said tonight does not exhaust the subject. More changes even than these are needed in the legislative article of the constitution. Perhaps you may regard these as illustrative, however, and perhaps they will serve as a basis for discussion.

BEFORE THE LIONS AND ROTARY CLUBS OF RED BANK

June 29, 1943

Mr. Chairman, Lions and Rotarians:

I should like to begin tonight by pointing out one important direction in which I believe the powers of the Legislature should be strengthened. In the famous case entitled *In re Hague,* our courts very substantially reduced the power of the Legislature to investigate. In that case, Mayor Hague was upheld in his refusal to answer certain very embarrassing questions put to him by a legislative committee on the grounds that the questions went to show a criminal conspiracy, and that the Legislature in making such an investigation encroached upon the judicial function.

Such a decision was and is out of line with the trend of decisions in the courts of other states and in the federal courts. In most states, the Legislature can investigate anything. Congress can investigate anything. Though the power to investigate may occasionally have been abused, its results have been, on the whole, good. For examples, investigations under the United States Senate turned up Star Route scandals in Grant's administration, the Teapot Dome scandal in the Harding administration. The

power to investigate may not prevent evil doing, but its existence has a deterrent effect. The proof of criminal conduct may be a prerequisite to the passage of corrective legislation. The Legislature cannot be expected to forbid what it is not allowed to prove exists. We should not have our state Legislature limited to the investigation of legal acts merely; it is the *illegal* acts we wish to have exposed and prevented.

The Commission on the Revision of the New Jersey Constitution sought to restore to the New Jersey Legislature the full power to investigate. The suggested a new paragraph for the constitution, one that reads in part:

> The Legislature or either house thereof may by resolution constitute and empower a committee thereof or any public officer or agency to investigate any and all phases of State and local government, or any part thereof, the fidelity of any public officer or employee, or the performance of any public office, employment or trust. . . . Any public officer or employee who shall refuse or willfully fail to obey any subpœna lawfully issued by such investigating committee, officer, or agency, or who shall refuse to testify . . . shall thereby become disqualified to continue in his office, position, or employment, which shall forthwith be deemed vacant. Any such person shall not thereafter be eligible for any public office, position, or employment.

This proposed provision would restore to the Legislature the powers had before the decision in the *Hague* case, the powers that other legislative bodies have. It seems to me, moreover, reasonable to require that an official whose acts are questioned should be compelled either to testify or to lose the office he holds. If democracy is to survive, there must be public confidence both in the efficiency and in the integrity of public officials. They must not be permitted to hide behind a statutory or constitutional technicality such as that the investigation of illegal acts is a judicial function.

I am sure, however, that the proposed provision for the constitution will be unpopular with local bosses, both urban and rural. They have shown that they do not like the spotlight of investigations thrown into their domains. Even where they have control of the courts and the prosecutor, they do not care for publicity about their activities. They are happiest in the dark. It may be that one of their real (and private) reasons for opposing constitutional revision—while they say (in public) that nothing must be done for democracy while the boys are away fighting for it—is that they do not want the Legislature empowered to conduct real investigations of them and their doings.

If the Legislature needs to have its power of investigation strengthened it needs to have constitutional direction to require it to do some phases of its work better than it does. Take, for instance, the matter of hearings on bills. The present constitution does not require them, and they are held or not at the whim of the committees that have the bills in charge. Opponents or proponents may or may not get a chance to be heard before a bill is brought out on the floor for passage. The process of legislation, in Woodrow Wilson's phrase, is conducted in a corner. And often it is conducted in a corner at the very last minute before the Legislature quits.

Legislators are naturally and understandably reluctant to hold hearings that require their frequent or continued attendance, when for their services they receive only $500 a year. But if in revising the constitution that inadequate amount is increased, it should be reasonable to require that hearings be held. If not upon all bills, hearings at least should be held upon bills that impose taxes, appropriate money, set up state or local agencies, or establish rights as between individuals.

Another part of the Legislature's work that could be improved by constitutional mandate is its handling of financial matters. Of course it could be done by statute, but since over the years the Legislature has not passed the necessary laws nor shown any tendency to do so, it seems desirable to have the matter settled by constitutional provision. We have at present different fiscal years for different state departments. The result is that it is very difficult for the fiscal officers to find out exactly how at any given time the state stands financially. Of course the ordinary citizen is kept entirely in the dark. We have also separate funds arising from various taxes or set up for different purposes. It has often happened that there has been a deficit in one fund while there was a surplus in another. Our peculiar financial practices have been criticized by thoughtful students of public finance.

The revision commission sought to correct the evils I have mentioned by a new provision which reads in part as follows:

> All revenues of the State government from whatever source derived, including revenues of all departments, agencies, and offices, except the income of the fund for the support of free schools, shall be paid into a single fund, to be known as the General State Fund, subject to appropriation. . . .

The revision commission further suggested that all appropriations be brought together:

> All appropriations for the support of the State government, and for the several public purposes for which appropriations are made, shall be contained in one general appropriation bill enacted for each biennium and indicating the amounts appropriated for each fiscal period in the biennium. No other bill appropriating public money for any purpose shall be enacted unless it shall (1) provide for some single object or purpose, (2) receive the affirmative votes of two-thirds of the membership of each house of the Legislature, and (3) together with all prior appropriations for the same fiscal period, shall not exceed the total amount of revenue available therefor.

These two reforms of the fiscal processes of the New Jersey government would go a long way to present to the citizens of the state a complete picture of the costs of the state government. They ought to have this picture; they ought to know what they are paying for, and how much.

Still another part of the legislative process that might have been—but never has been—improved by statute is the control of the activities of lobbyists. You may have seen the pictures that have been published from time to time showing the lobbyists swarming over the floors of the two houses while they were in session, buttonholing legislators, pressing upon

them their special and private demands. Some Speakers of the Assem in recent years—John Boswell and the present Speaker, Manfield Amli for examples—have succeeded pretty well in making the lobbyists keep the floor; other Speakers have been less successful.

Lobbying may be good or bad, depending upon its purpose or obj But at least the process of lobbying should be carried on elsewhere tha the legislative chambers; at least the lobbyists should be willing to m themselves known to the public and reveal what they are after. The revi commission understood these needs and proposed the following new pr sion for the constitution:

> Lobbying in the legislative chambers of either house shall be prohib Persons or associations who engage to influence legislative action shall ister with the Secretary of State disclosing the names and interest of t for whom they may act, the compensation received or agreed, the meas which they may be engaged in promoting or opposing and all expendit made or incurred in connection therewith. All such information shall co tute a public record. The Legislature shall impose suitable penalties violations of these provisions.

It seems to me that only representatives of interests that have so thing to conceal would object to this provision. Lobbyists whose activi are not reprehensible should welcome this constitutional provision, bec it would improve the public status of all representatives before the L islature.

I want to turn now to a defect of the constitution of 1844 that aff only one house, the Senate. The constitution provides that the gover shall appoint public officials whose appointments are not otherwise p vided for by law "with the advice and consent of the Senate." This pr sion is all right as far as it goes. The great difficulty, however, is that Senate will often neither advise nor consent. They just take a nomina and keep it. Sometimes they will not even allow a governor to withdra

Take, for instance, the nomination of Dr. John W. Studebaker as example of how advice and consent works. Dr. Studebaker was rec mended by practically all divisions of education in the state. Whe obtained his consent to accept the nomination as commissioner of ed tion, I asked for the advice of the Senate. Senator Eastwood, chairma the Senate Judiciary Committee, said that he was instructed to tell me the caucus did not care to commit itself before receiving the name. In o words, the Senate refused to advise. When, however, educators repo to me that fourteen or fifteen senators had stated to them that they w vote for Dr. Studebaker, I put in his nomination. The Senate, neverthe having refused to advise, failed to consent or reject. The committee ha the nomination in charge kept it buried, and the rest of the senators w not demand to have it taken out of committee. Last Thursday Dr. St baker's name was withdrawn, and New Jersey educators and school chil lost a golden opportunity.

The revision commission recognized that the phrase "advice and sent" needs clarification. No one—at least not I—would take away f

he Senate its constitutional right to confirm or reject. But they ought to o one or the other within a reasonable period. The commission, therefore, ecommended two new sentences for the constitution which would solve he problem:

> The Senate shall either confirm or reject the Governor's nominations for appointive offices within thirty days after they are submitted. If the Senate fails to act upon a nomination, the nominee shall be deemed confirmed at the expiration of thirty days from the date of submission of his name by the Governor.

If such a provision as this were adopted, I believe that the possibilities f deadlock between the governor and the Senate over nominations would e greatly diminished. At least the Senate could not take a long list of ominations and hold them indefinitely.

AT THE KIWANIS CLUB OF PLEASANTVILLE

September 14, 1943

Mr. Chairman and Gentlemen:

I should like to take up tonight Article V of the present constitution of New Jersey and to discuss some of the things that, in my judgment, need o be done to improve it. This article is the executive article of the consti- ution, the one that grants the powers exercised by the governor of the State.

The first thing to be noticed about the governorship in New Jersey is hat our governor is the only one among the 48 who is elected for the odd erm of three years. This unique term coincides with no other term in our tate except the election of one-third of the state Senate. But every twelve ears the election of a governor coincides with the election of a President, o that state and national issues are inevitably confused. I have never heard ny defense for our three-year arrangement.

Half of the governors of the 48 states are elected for terms of four ears. Four years is the term of the President. It is a reasonable length f time, a term sufficient for a governor to initiate a program, to appoint he men to administer it, and to see that it is carried out. The Commission n the Revision of the New Jersey Constitution, which met in 1941 and ggested very extensive changes in the constitution, proposed that the overnor's term be extended to four years. I believe that such a change ould be desirable, provided that the governor is elected in the even num- ered years between presidential elections. There would then be a minimum f confusion of state and national issues. New York has such a provision.

Under the present constitution, the governor of New Jersey is ineligible o succeed himself. This provision is, in my judgment, an indefensible prin- iple of administration or of public law. The voters of the state may have ound a man whose abilities and whose integrity they thoroughly approve. But regardless of how satisfactory their governor's record has been, they

are compelled by the dead hands of the framers of the constitution of 1844 to turn him out. The best they can say is, "You did a good job. Come around in three years. We may want you again." This is not the practice of business. The stockholders of a corporation do not turn out a satisfactory president or general manager after three years. They would regard as insane any suggestion that they do so. Semi-public institutions, such as universities and educational foundations, do not limit themselves in any such way as the constitution of New Jersey limits our electorate. On the contrary, they retain the services of a good man when they get one.

The voters of a great majority of the states are under no such restraint as are the voters of New Jersey. In most states when they get a governor whom they like, they can reelect him. Of course, if they get one they don't like, they can turn him out—and they do. I want the people of this state to have the same right to decide the matter for themselves. Our neighboring commonwealth of New York has in its constitution no such self-denying clause as the one in ours, and it is noticeable that New York has consistently had great governors. Probably one of the reasons why New York has the modern government it has is that, if a governor of New York has had a program satisfactory to the people, they were free from any constitutional prohibition against reelecting him to carry it out. The great governors of other states have not generally been one-term governors. They have been elected and reelected as long as the people had confidence in them and as long as the people approved their conduct of their offices. That is the logical, the intelligent, the democratic way.

Our 1844 constitution, in referring to the governor, generally uses this language, "The Governor or person administering the government." The reason is that, unlike two-thirds of the states, we have no lieutenant governor. In the event of the death, resignation, removal, or absence of the governor from the state, the powers and duties of the office devolve first upon the President of the Senate, and then upon the Speaker of the Assembly.

The omission in our constitution of the office of lieutenant governor seems to me very important. It is one of the defects we need most to correct. The people of the whole state, from Sussex to Cape May, elect the governor; and they would elect the lieutenant governor, too, if we had one. But the President of the Senate is elected as a senator from one of the twenty-one counties, and he is elected president by the majority caucus. Any senator is therefore a potential governor. That point should be kept in mind by every voter in choosing his county senator. Each voter should pick his senator as carefully as he picks his governor. The people of the whole state, moreover, have never passed upon any individual county senator or upon his program, if he has one. His personality and his policies may be obnoxious to 99% of the voters of the state. All this is also true of the Speaker of the Assembly. No one knows who he will be until the majority caucus has met and selected him. That is no democratic system; that is not the democratic means of choosing a chief executive.

We need a lieutenant governor elected by all the people, just as the ernor is elected; to serve for the same term as the governor; and in the nt of the death, resignation, removal, or absence of the governor, to ome not merely an acting governor, but *the* governor. He would repre- t *all* of the people of the state, not just those of one county.

I shall now turn to the governor's power over legislation. The governor n this state, the only state official elected at large—that is, by a majority he whole number of voters. For that reason, if for no other, he should e a veto power over legislation that means more than a mere gesture of pproval. At present a bill may be passed over a governor's veto by a ple majority in each house—just what was required to pass it in the t place. For all practical purposes, the governor of New Jersey under constitution of 1844 has no power of veto.

The members of the Legislature, unlike the governor, represent counties. e governor represents the whole state. The legislators, therefore, are ject to local pressures and to combinations of interests which a governor resist but legislators cannot. This point was forcefully called to the ntion of the members of the constitutional convention of 1844 by one he delegates, P. D. Vroom of Somerset County, who said:

> Who is the . . . representative of the whole people? Surely the Governor . . .
>
> In our legislature the members represent counties and sectional interests. They are sectional representatives . . . and not of the whole mass of the people. In legislating, various interests enter. Laws may be passed by sectional interests.
>
> One end of the State may exert its influence against the other end; and both may unite against the middle. Private and personal influences may be brought to bear to accomplish particular objects. How many laws have been passed, of the very worst species of legislation, by such influences, I will put to this convention. . . . This shows the need of the veto power as the great preservative of the interests of the whole.

What Mr. Vroom said nearly a hundred years ago is equally true today, the convention failed to follow his advice. They did not give the gover- a veto that amounts to anything.

A contemporary example of how legislation gets passed over the gover- 's veto to satisfy sectional interests was the Milk Control Bill of 1941. e Legislature felt that it had to find a job for a senator who was able to d up everything until he was provided for. So the legislators in their dom passed a bill to provide for a board to be elected by the Legislature, ich was in turn to hire the senator at a salary of $10,000. Without enter- into any discussion now of the public policy of milk control, it does seem me that this administrative arrangement provided by the Legislature is defensible. The election by legislative bodies of administrative boards vio- es every principle of executive responsibility. Some legislators, indeed, ve since apologized for what they did. But if the governor had had a real o, we should not have this weird administrative set-up today.

A legislative body is also subject to the political deals that have recei
the name "logrolling." A delegate from Camden County to the consti
tional convention of 1844, Mr. Abraham Browning, told his fellow memb
how it worked. "Some member of the Legislature," Browning said, "desi
an office—another has charge of a divorce bill. . . . The bargain is if y
will go for my office, I'll interest myself for your law, and the evil which
resulted and must result from such inevitable combinations . . . is
easily estimated."

It is not easily estimated today, but it can be observed. In the last
sion of the Legislature, for example, a bill was passed for Senator Far
of Atlantic County to exempt Atlantic City from the operations of N
Jersey's Cash Basis Act. Under the operation of this excellent law—
Cash Basis Act—the credit of our municipalities—not long ago at such l
ebb that investors did not want our bonds—had been reestablished. But
do a favor for a fellow legislator, our statesmen cut the heart out of
Cash Basis Act, because the general terms necessary to exempt Atlan
City from the operation of the act exempt almost any city. It was veto
But, of course, if there were enough votes to pass the bill in the first pla
there were enough to pass it in the second. Only a strong veto power co
have sufficed to preserve the credit of our municipalities.

The great majority of our American state constitutions provide tha
veto by the governor cannot be overcome except by a two-thirds vote
each house. A few require a three-fifths vote; but the two-thirds vote
most general. This is also the vote required in each house of Congress
override a presidential veto. It seems to me that to prevent logrolling a
to compensate for the sectional characteristics of a Legislature, which li
ours, is elected by counties, the governor of the state should have a ve
that can be overcome only by an extraordinary vote—at least by two-thi
of the members of each house.

AT THE FAIR LAWN LEAGUE OF WOMEN VOTERS

September 17, 1943

Madam Chairman, Ladies of the Fair Lawn League of Women Voters:

From the fact that a governor of New Jersey has no real veto—for
bill may be passed over his veto by the same simple majority that passed
in the first place—many evils flow.

The governor ought also to have more time than the constitution
1844 allows him to consider whether he will sign or veto bills. He is no
allowed only five days (Sundays excepted) from the day a bill is deliver
to him. If he fails to sign or to veto, the bill becomes law notwithstandi

Because public hearings on bills by the New Jersey Legislature are t
exception rather than the rule, bills affecting the interests of thousands
people may be—and are—put through without notice, without giving c
izens an opportunity to be heard. It may be several days after pas

e the people whose property or whose rights are affected by the leg-
on hear about what the statesmen have done to them. Meanwhile the
as come to the governor's desk, and he has had to act upon it without
to inquire or to hold a hearing of his own.

ills are often long and complex, forty or fifty printed pages each.
d somewhere in one of them may be what is known in legislative par-
as a joker; that is, an objectionable clause or provision that appears
innocent. Only the most careful study of bills by men who are experts
in bill drafting and in the field of the law covered by the bill will turn
ese jokers. The five days allowed by the constitution of 1844 is not
g enough period to permit the governor and his staff to give the bills
minary study, to get in touch with experts, to have them study the
to have them give opinions, and then finally to allow the governor to
e whether or not to veto a bill, perhaps because of some one provision.
has been our experience over many years that the legislative mills
very slowly for months, and then, usually in June, they grind very
ly indeed. Just before the Legislature quits, bills pass by the dozen
hour. It is in the final hours that the lobbyists get in their best (or
) work. Bills get passed that ordinarily would produce such a public
y that no legislator would dare vote for them. In these last-minute
which often are passed without being printed, so that no one has been
to study them, the possibility for the introduction of jokers is even
er than usual. After the legislators go home, the whole mass of bills
mped on the governor's desk—often a hundred at a time, each contain-
undreds, or often thousands, of words. They may set up news agencies,
ite whole bodies of the law, involve millions of dollars—but the gov-
r has to sign or veto all of them in five days. He cannot possibly get
r expression of public opinion; he cannot hold hearings; he cannot
y them adequately.

To make the governor's task even more difficult, the legislative officers
times delay their signing of the bills until a vast mass has accumulated.
they sign a hundred or more at a time and have them all delivered to
overnor, so that his five days will begin to run on all of them at once.

The number of bills passed in 1844 was so small that a governor could
y them all. Ours was then an agricultural state, and we did not have
complicated problems reflected in modern legislation. The five days set
he governor's consideration probably were sufficient in 1844; they are
today. He ought to be allowed at least fifteen days, and at the end of
sion at least thirty days, as the governors of New York and Pennsyl-
a are allowed.

The governor of New Jersey is often called, with unintentional humor,
chief executive. He is in fact no such thing. He has the most inade-
e control over the massive state administration for which he is publicly
onsible. The New Jersey constitution, unique in so many other unde-
ble features, is again unique in that it is the only constitution under
ch the incoming governor finds that all but one of the important offices
filled by appointees of his predecessor or by the election of the Legisla-

ture. That single exception is the office of commissioner of finance, and t
Senate this year passed a bill to abolish that office. A governor of Ne
Jersey cannot appoint his own chief legal adviser, the attorney genera
he cannot even appoint his own budget commissioner.

The governor has no cabinet, as the President of the United States ha
and as many governors have. Rather, the men who head the various depa
ments and who would normally make up his cabinet are persons appoint
by earlier governors, elected by the Legislature, elected by commissions
boards, or even elected by non-governmental societies or associations. Th
are not responsible to the governor, and he can discover only at their ple
ure what is going on in their departments. They are often political opp
nents of his. Some of them count that day lost when they cannot find so
way to use the powers of their offices to embarrass him and to bring
administration into disrepute.

The Commission on the Revision of the New Jersey Constitution th
was appointed in 1941 recommended that our whole hodge-podge admi
istration be swept away. They recommended that in its stead nine admin
trative departments be established, each headed by a single commissione
appointed by and responsible to the governor. These men would form
governor's cabinet. With them, a governor could plan and carry out
coordinated program. Whether the cabinet should have nine members,
ten, or fifteen is not so important as the principle that a cabinet, responsi
to the governor, should be established.

The revision commission made another excellent recommendation:

> Executive and administrative functions . . . shall from time to time
> allocated by the governor, by executive order, among and within the depa
> ments and offices prescribed by this constitution in such manner as to prom
> efficiency and economy in the operation of the State government, and to gro
> co-ordinate and consolidate the offices, agencies and instrumentalities ther
> according to major purposes, as nearly as may be.

There is no way of estimating how many millions and millions of doll
such a provision would save the taxpayers of today and the taxpayers s
unborn. The sum would, whatever its exact size, be immense. Usel
offices could, under such a provision, be abolished and political drones
separated from the state payroll. The improvement in the service perform
for the taxpayers would be equally important. The administration would
sufficiently simplified, so that any citizen could find his way about in it
find out what he wanted. It would be unified, so that the citizen wo
not be caught between hostile or overlapping agencies. That kind of adm
istration ought to bring renewed confidence that democracy can be made
work, and work efficiently.

I said earlier that the governor has no real control over most of
nominal subordinates. He cannot, except at the pleasure of the Legislatu
even investigate their conduct in office, no matter how obnoxious it may
Even where the Legislature lets him investigate, it does not generally all
him to remove an offending officer. The governor is a chief executive w
cannot be one.

The Revision Commission of 1941 proposed to correct this condition.
hey suggested a new provision for the constitution, as follows:

> The Governor may, upon complaint submitted to him by at least twenty
> reputable citizens, cause an investigation to be made of the conduct in office
> of any State officer, except a member of the Legislature, an officer appointed
> or elected by the Legislature or a judicial officer. The Governor may remove
> any such officer after notice and an opportunity to be heard, whenever, in his
> opinion, such investigation discloses misfeasance or malfeasance in office.

This provision, if adopted, would go far to make the governor the chief
ecutive in fact as well as in title. With these powers, he could really and
stly be held responsible for the executive branch of the state government.
t the same time, sufficient safeguards are provided so that his powers could
t be abused. There must be a charge submitted by twenty or more repu-
ble citizens; there must be an investigation; there must be notice and
aring. The result of such a provision should be an immense improve-
ent in the operation of the state administration. As one of the witnesses
fore the legislative committee that held hearings on the constitution said:

> Many thoughtful citizens think that we are already at the threshold of
> one-party government, with all that that would bring in its train. If demo-
> cratic government is to survive, it will do so only because of its efficiency and
> integrity, and therefore anything which tends to promote the efficiency and
> integrity of the democratic system is desirable.

AT THE NEW BRUNSWICK REGIONAL LEAGUE OF WOMEN VOTERS, NEW BRUNSWICK

September 30, 1943

rs. Hopkins and Ladies:

I cannot discuss tonight the whole constitution of New Jersey, but I
ould like to take up one article, the sixth, which covers the judiciary.

I am not a lawyer, but I think that non-lawyers, whose lives, proper-
es, and rights are subject to the courts, ought to have something to say
bout the machinery for providing justice. There is a suspicion abroad in
ur commonwealth that certain lawyers are not enthusiastic about consti-
tional revision, because they feel that they have a vested interest in the
bscurities and complexities of our court structure, which they think that
ey alone understand. And what they think they understand they approve,
ke the Lord Chancellor in Gilbert and Sullivan's Iolanthe, who said:

> The Law's the true embodiment
> Of everything that's excellent.
> It has no kind of fault or flaw,
> And I, my Lords, embody the Law.

The State Bar Association has been on both sides of the issue of constitutional reform. Why is this? Let me quote from an editorial in the "New Jersey Law Journal" of May 28, 1942, entitled "Lower and Lower":

> The action of the State Bar Association in urging rejection of the proposed revised constitution before its membership had any sort of an opportunity to study its merits constitutes a new low in the already sorry record of that organization.
>
> Consider the following chronology:
>
> November 5, 1940, Governor Edison elected, stressed need for revision of state constitution and pledged to work for a constitutional convention.
>
> January 11, 1941, at mid-winter meeting, State Bar Association approves in principle convocation of a constitutional convention and authorizes appointment of a committee to offer assistance to the Governor in this effort.
>
> May 31, 1941, Governor Edison, guest of honor of the New Jersey State Bar Association at its annual meeting, spoke on constitutional revision, enthusiastically applauded.
>
> June, 1941, Governor Edison breaks with Mayor Hague.
>
> May 14, 1942, Legislative Commission presents proposed revised constitution to Governor and Legislature.
>
> May 20, 1942, Mayor Hague announces opposition to proposed revision.
>
> May 23rd, 1942, State Bar Association urges rejection of the revised constitution accompanied by some excoriating vituperation against Governor Edison.
>
> No charges of the association being "controlled" or being used as a political football can be more persuasive than this record in cold print. As a result of this action a valiant few members must have been chagrined but they can walk with heads high. Many who should have known better will feel ashamed at their lack of courage. The shameless cynics, and their sycophants will chortle with glee: "The boys did it again!" There was no discussion of the merits of the revision; no comparison between the old and new; no discussion of text; no reasoned, logical or lawyer-like consideration of a most important document; nothing but a blitzkrieg with misrepresentations, half-truths and political skull-duggery.

Mr. Russell Watson, who is present here tonight, is not one of those lawyers who is satisfied with our court system. I hope he will not mind my quoting from his testimony in July, 1942, before the Joint Legislative Committee on the Revision of the Constitution. I want to use this quotation because it shows what a well known New Jersey lawyer thinks of the system of courts established by our 1844 constitution. Mr. Watson said:

> Our present court system is an anachronism. It is unnecessarily complex; it has overlapping and concurrent jurisdiction; it is cumbersome and unwieldy. These overlapping and concurrent jurisdictions give rise to questions that are solely jurisdictional—questions of procedure, questions which have nothing to do with substantive justice, nothing to do with the merits of the controversy. . . . Our court system is a complicated, archaic, and creaking machine. It is beyond the power of any group of judges to make it work efficiently and expeditiously. It is to be marveled that they have made it work so well [as it has.]

If a layman like myself should say something like that, some lawyer might assert that the non-lawyer did not know what he was talking about. But other lawyers as well as Mr. Watson have said that our system of

urts is "a patchwork," "unwieldy," "confusing," "slow," "expensive"—fact, they have applied to it almost every derogatory adjective you can nk of.

Our system of courts is apparently so confused and confusing that it nnot be successfully clarified, even for students in schools of law. On this int we have the testimony of Mr. Theodore M. Marsh before the legis-ive committee on constitutional revision. He said:

> I . . . want to add what weight I may [to the case for constitutional revision of the court system] as a person who has been practicing law before the courts of New Jersey for some thirty years or more, and who also has been endeavoring for fifteen years or more to teach students in the Mercer Beasley Law School in the University of Newark what the jurisdiction of our courts may be and how to practice before them, and it is difficult to make clear to them just what all this is about and why we have so many and such varied courts with such overlapping jurisdiction, and when they come out perhaps they are even more confused. . . .

When a professor of law in a New Jersey law school admits that his dents come out of the study of our court system more confused than en they went in, I am sure you will not expect a mere governor to explain system clearly. If the professors can't, I can't either. Without attempt- to say where one court leaves off and another begins—and apparently y overlap and run into one another a great deal—I may say that the con-tution of 1844 establishes or mentions the following courts: A court of rors and appeals; a court for the trial of impeachments; a court of chan-y; a court of pardons; a prerogative court; a supreme court; circuit urts; and orphans court; common pleas courts, courts of quarter ses-ns, and courts of justices of the peace. We have also courts of oyer and rminer, courts of special sessions, county traffic courts, juvenile courts, strict courts, criminal judicial district courts, and recorders courts. You ll pardon me, I know, if my list should turn out to be incomplete. A few urts more or less should, in such a list, make little difference. Just to ntemplate such a list will tend to make any one agree with Mr. Watson at our court system is "complicated, archaic, and creaking."

Only two other states beside New Jersey have preserved a system of ancery courts separate from the courts of law. The division was an acci-nt of English judicial history to begin with, and we have merely preserved The framers of the United States Constitution did away with the two s of courts, and so far as I can find out, there has never been any move-ent to split the federal courts into courts of law and courts of equity. The perience of New Jersey litigants has not been happy under the divided stem that we have. In many cases not even the best lawyers can tell their ents whether their cases belong in law or equity. They often face the ance that they may have to bring two actions, with two sets of fees and o sets of costs. Cases shuttle back and forth from law to equity, delaying d therefore denying justice.

Our court system has often been called "the most antiquated and intri-te judicial system in the world." At its top is the Court of Errors and

Appeals, composed of sixteen judges—the largest court of last resort in th world. Lawyers are fond of saying that this court is bigger than a jury an not quite as big as a mob.

Our whole judicial system is indefensibly slow. A case may start in United States district court and be decided by the United States Suprem Court before a similar case would be half way through our judicial labyrinth

The courts of our neighboring State of New York have been reforme by constitutional change, and delays comparable to ours are no longer nece sary. For a recent example, the lieutenant governor of New York, Thom W. Wallace, died on July 17, 1943. On August 14th (a Saturday) Suprem Court Justice Foster ruled that an election was necessary to fill the offic On Tuesday the 17th his decision was upheld by the Appellate Divisio and on Friday the 19th the Court of Appeals reviewed the case and hande down a final decision. Five days from the first decision through the last Clearly, the law's traditional delay is not necessary; clearly, delay is n inherent in the law, but in the courts.

At least a year would have been necessary to have the *Wallace* ca decided in New Jersey. When, for instance, the right of Senator Georg Stanger to hold two state jobs was challenged, a case was started in Apri 1942, but it was not finally decided until March, 1943. The railroad ta compromise laws were passed in July, 1941; the last one was signed Ju 22, 1941. Litigation on them began immediately, but it has not been co cluded even now, more than two years later, and it may not be finally settle for still another year.

The world of the twentieth century moves too fast for such a pedestria judicial system as this. Other states and the national government can pr vide justice with dispatch. We have plenty of judges, and they are pai adequate salaries. Only our archaic constitution prevents New Jersey fro giving its citizens twentieth-century service.

The Commission on the Revision of the New Jersey Constitution pr posed in 1941 that our whole heterogeneous system of courts be swept awa and in its place the commission suggested a modernized structure. At th top they wished to have a supreme court consisting of a chief justice and si associate justices, and below them, a system of superior courts. That is al

The proposed judicial system would combine law and chancery, as the are combined almost everywhere except in New Jersey. It would aboli circuit courts, courts of common pleas, oyer and terminer, quarter session special sessions, and orphans courts, and would transfer all their function powers, and duties to the new superior courts.

Our present court system is virtually headless. The proposed pla would make the Chief Justice the administrative head of all the courts wit power to supervise their work. He could assign justices to counties an transfer them as need appeared.

In many other respects which I need not take time to discuss here, th proposed reorganization of the judicial branch of the state governmen would provide us a modern, efficient judicial system. It is sadly needed It is long overdue. Democracy will only live if citizens have confidence i

system of justice—confidence that the courts will function fairly, surely, quickly. That confidence does not now exist in New Jersey. I do not how it can be restored until we have constitutional changes that will duce an up-to-date judicial system. Our present constitution is so anti- ted that there is grave danger that in a post-war crisis it will break down gether. If some new legislation is necessary to meet some post-war need, people ought to be able to get it passed upon in their courts in less than or three years.

AT THE EAST ORANGE HIGH SCHOOL

October 12, 1943

Chairman and Students of East Orange High School:

The New Jersey constitution is like the attics of some houses—it is full urious and broken down articles. There is in it some governmental fur- re that was appropriate and useful a hundred years ago, but that is rely out-of-date today. In fact, its very existence in cluttering up the se is a menace to our safety.

A good example of this cluttering is the military part of our constitu- . In wartime this part of the constitution ought to have particular rest to us.

Section I of Article VII of the constitution of 1844 states that "The gislature shall provide by law for enrolling, organizing, and arming the itia." That clause would have been all right if the framers had stopped re. Unhappily the men of 1844 went on to provide in the constitution w the militia shall be organized. In the clauses that follow the one I oted, they provided that

> Captains, subalterns, and non-commissioned officers shall be elected by the members of their respective companies. Field officers of regiments, independent battalions, and squadrons shall be elected by the commissioned officers of their respective regiments, battalions, or squadrons. The Brigadier Generals shall be elected by the field officers of their respective brigades. . . . The Legislature shall provide by law the time and manner of electing militia officers. . . .

There is no longer any military authority who would recommend this thod of selecting officers by the ranks just below them. Elections for offi- rs might not have been too bad in the days of the Black Hawk War, or War of 1812, but they are certainly inadequate today.

Politics has its place in a democracy, but not in an army. Not only can u find in the old yellowed newspapers in the State Library accounts of political maneuvering of certain officers seeking the votes of their men, t the maneuvering goes on today. The usual result of this system is that best politician or the best hail-fellow-well-met, and not the best soldier, comes the officer. It is impossible to imagine that officers who owe their

commissions to their men can maintain any kind of discipline. How absu
it would be to have the Constitution of the United States provide th
Admiral King or Admiral Halsey had to be elected by the Navy, or th
General Marshall or General MacArthur had to be elected by the Arm
Yet our State constitution has a parallel provision.

Under the constitution of 1844, the head of our state military establis
ment is the adjutant-general. His office is not exactly parallel either to th
of the Secretary of War in the President's Cabinet or to that of the Ch
of Staff, because the adjutant-general is not removable by the governo
In other words, there is no direct civilian control over our military depa
ment. President Lincoln, you remember from your history, had to remo
one general after another until he finally found a good one, Grant. Remov
is sometimes necessary to efficiency.

The Commission on the Revision of the New Jersey Constitution pr
posed that all the business about the election of officers be swept away, a
that in its place a very simple and modern provision should be incorporat
in the constitution. The governor was to be made commander-in-chief, a
under him would come the adjutant-general, who would be responsible
him, as the Secretary of War is responsible to the President.

In place of the election of officers, the commission proposed that th
be "appointed according to merit and fitness." This is obviously the way
should be done.

There is another piece of outmoded furniture in our constitutional at
that I wish to discuss with you today. That is the amending clause.

A constitution as a fundamental document is, of course, to be adopt
only by an extraordinary act of the people, who are sovereign; and a co
stitution is not lightly to be changed. But a constitution should also
adaptable—it should be susceptible to change when new conditions aris
No democracy is a real democracy if the people cannot change their cons
tution. Instead of being ruled, perhaps, by the hand of some living despo
they are ruled by what may be worse: the hands of men long dead. It
conceivable that his subjects might reason with a despot and point out he
conditions had changed since he issued some decree; but it is impossible
reason with dead men and to point out to them how conditions have change
since they adopted a constitution.

No man and no body of men can predict what laws may be necessar
fifty or a hundred years from now. So any constitution, to be intelligen
to be useful, to be democratic, must be amendable. We must not assum
that we know it all; or that we can freeze for future generations the kin
of government they will have.

The framers of the constitution of 1844 must have felt that they had s
up a government once and for all time, one not to be changed or modifie
They either did not trust their descendants, or they did not expect the
descendants to have as much intelligence as they thought that *they* had.

They made their constitution almost impossible to amend. They pro
vided that any proposed amendment has to receive a majority vote in eac
house of two successive Legislatures, and then has to receive a majorit

of the people at a special election. A special election costs these days
nd $700,000. Why should taxpayers be burdened with a cost of
0,000 when an amendment could just as well be voted on at a regular
ion?

Now look for a moment at some other defects of the process.
Suppose an amendment passes both houses this year. No matter how
nt it is, it has to lie over a whole year. Then suppose the next Legis-
e does not like some word in the amendment—perhaps they want an
instead of a *but*. If they change the wording one bit, the process must
e gone through again. Or an amendment may pass both houses one
, and only one house the following year. Then the whole process must
over again.

Our State Senate has 21 members. Eleven of them constitute a majority.
last census gave New Jersey a population of 4,160,165; but if those
n men in the Senate do not want to have the constitution amended, and
e rest of the people do, the remaining 4,160,154 can do nothing about
ding their constitution. Such a situation does not seem to me to be
cracy, call it what you will.

would be my view that a constitution should be amendable in two
. First, a majority vote in each house of the Legislature in any one
should be sufficient to place an amendment on the ballot at the next
al election. If the amendment receives then a majority vote of those
g on it, it should become part of the constitution. This method permits
Legislature to take the initiative and to present an amendment to the
e, who are, after all, the only ones to decide.

ut suppose eleven senators stand in the way? Then another way
d be open to the people who want to amend their constitution. Many
constitutions provide that when a stated number—such as 25,000
s—or a percentage of the voters—such as 5% or 10%—sign a petition
n amendment and file that petition with the secretary of state, then the
dment automatically goes on the ballot at the next election notwith-
ling anything the Legislature may do or may refuse to do. This method,
times called the initiative, is true democracy. Under it the people can
heir way, and no one can keep them from getting their way.

Many state constitutions have in addition a provision for the automatic
mbling of a constitutional convention at stated intervals. New York,
example, has one every twenty years. I need hardly say, I suppose, that
1844 constitution has no such clause. But a convention can look over
ntire constitution and either revise it all, if conditions have greatly
ged, or the convention can offer amendments directly to the voters.
democracy in New Jersey would be made more democratic if we could
such a provision in our constitution.

END

24:1