

ADDRESS  
OF  
Governor Alfred E. Driscoll

BEFORE THE OPENING SESSION OF

The New Jersey  
Constitutional Convention

CONVENED IN NEW BRUNSWICK

AT

RUTGERS UNIVERSITY

THE STATE UNIVERSITY OF NEW JERSEY

JUNE TWELFTH,

ONE THOUSAND NINE HUNDRED FORTY-SEVEN

*Ladies and Gentlemen of the Convention:*

We meet today upon an historic occasion under favorable auspices with the encouraging approval and confidence of our fellow citizens, as evidenced by their vote on June 3rd.

We begin the task of Constitution-making at a time when the world is beset with doubts, misunderstandings, and pre-occupied with a clash of apparently conflicting interests. There is real kinship between the development of an international charter now in the early stages of development and the writing of a State Constitution. The strength of our nation and the part it is to play in the development of the international charter is largely dependent upon the virility of its component parts—the 48 sovereign States.

It is hardly necessary to emphasize the far-reaching importance of the work you are about to undertake. The American people, foremost among the world's populations in their veneration of a written constitution, look upon a constituent assembly, chosen for the specific purpose of making a constitution, as an expression of basic sovereignty. The making of a modern constitution is a difficult process, the more so when we seek agreement upon the complex issues of modern society in a popularly elected assembly of 81 individuals. The course of your work during the next three summer months will undoubtedly be trying, and the responsibility you have undertaken will test your capacity for statesmanship. It is part of our tradition, and a valuable tradition it is, that when we revert to fundamentals in government we look for the highest form of representative democracy, as well as the ultimate consent of the governed expressed through the process of free elections.

It is only fair to say that a great work is expected of you. While this State has lived under the same Constitution, with but little change, for over a century, its people, their life and work have undergone the effects of a Civil War, of two world wars and of industrial and social revolutions since our present Constitution was adopted in 1844. It is your task to appraise these great forces in terms of present constitutional standards,

to test what we have against what we need, to retain what has withstood the test of time and to re-examine and discard what is no longer acceptable, to build in new fields which were unknown a century ago.

One characteristic of our modern life, more than any other, makes your task more difficult than that confronting your predecessors in 1844. I refer to the intricate interdependence of individuals and groups in our modern society as compared with the relative independence of the individual prior to the Civil War. Not only has government become inestimably larger and more significant in the daily lives of our people, but the industrial revolution has brought great aggregations of capital and labor, well described as "private government," in the form of business corporations and trade unions. Government has become so large that responsibility is difficult to identify. Other social forces, as well, have come to have a commanding effect upon every citizen, with responsibility also difficult if not impossible to define. The result is that from the viewpoint of any law-making body, whether it be a legislature or a constitutional convention, it becomes necessary to recognize the significance of highly organized group interests, the intense conflicts and pressures which such organization brings in its wake, and the confusion of political values which it creates.

This kind of environment makes it all the more important that the organic law under which our State may live for the next century be restricted to the establishment of a sound structure, to the definition of official responsibility and authority, to the assurance of the fundamental rights and liberties of all the people. To do less is to fail in your trust. To seek to do more is to impose upon the future.

We can best insure against the pressures of our age and the vicissitudes of the future by limiting our State Constitution to a statement of basic fundamental principles. Our Federal Constitution has the ageless virtue of simplicity. Its authors stated their fundamental concepts of government without compromise or complication. By way of contrast, our 1844 document imposes oppressive restrictions upon each branch of the government entirely apart from the historic philosophy of checks and

balances between the legislative, executive and judicial branches. These cross-checks and restrictions within the basic divisions of government are the cause of many of our present-day difficulties. They account for the cumbrous size of our court of last resort and the presence of so-called lay members on the court to check the activities of men trained in the law—to give but one illustration.

In the course of your debates you will, on many occasions, be tempted to adopt legislative enactments. You will be wise to guard against this natural temptation by the judicious and conscientious exercise of statesmanship and will power. The State Constitution is an organic document—a basis for government. It should not be a series of legislative enactments. Our search for a modern government in this State has all too frequently been frustrated by legislation enacted by our ancestors over a century ago and embalmed in our Constitution. When legislation is permitted to infiltrate a constitution, it shackles the hands of the men and women elected by the people to exercise public authority. The longer a constitution, the more quickly it fails to meet the requirements of a society that is never static. To quote one authority: "The more precise and elaborate" the provisions of a constitution, "the greater are the obstacles to the reform of abuses. Litigation thrives on constitutional verbosity."

Accordingly, I earnestly recommend that all proposals of a legislative character be rejected. If you deem it desirable, these may be incorporated in a supplemental report addressed to the Governor in the nature of a presentment. This report will be forwarded by me to the Legislature for consideration at either a special or general session. By this device, the Convention may confine its draftsmanship to the creation of a document restricted to principles, while permitting a natural outlet and expression for related legislative proposals either for the purpose of implementing or supplementing the proposed Constitution.

Over a century ago, your predecessors forged the handcuffs that today prevent your Government from freely meeting the challenge of an industrialized society. Unhappily, the key to the handcuffs was thrown away by the framers of the 1844

document by the adoption of a time-consuming and costly amendment process which has proved to be substantially unworkable.

It may well be said that the history of constitutional government everywhere has seen a constant advancement of the balance between the liberty of the individual and the interests of society. To serve this process, a written constitution must be flexible, must not impose excessively rigid conditions of government, must be open to reasonable amendment and adaptation to changing conditions and ways of life which none of us can foresee. It is this very characteristic of the Federal Constitution which has given it enduring quality.

The highest trust in a constitutional government is imposed on the men who comprise the judiciary. It is in the judiciary that we find the balance-wheel of our whole constitutional system. Our unique institution of judicial review of the acts of the Legislature and Executive, giving power to courts to set aside laws and executive actions where the judges determine that they violate the written Constitution, has come to make the quality of our justice synonymous with the values of democracy held by the average citizen.

It is for this reason that we think of our courts not so much as a forum for the settlement of differences between private litigants, or as the peculiar working arena of professional adversaries and legal technicians, but rather as our principal instrument of individual liberty and political security. It is only in our courts that an individual of the lowliest estate can set himself up against his Government by appealing to the kind of fundamental law which this Convention is about to formulate. Moreover, it is through the courts that the prerogatives of government may be asserted against the individual in an orderly and systematic manner. Accordingly, it is particularly important that our judicial system, by its performance and ability to speedily adjust itself to new requirements, merit the confidence and respect of our citizens.

We may look upon the Constitution as the vehicle of our life as a State. In your work of designing and building it you will have the advantage of many other minds and hands that have

labored, particularly over the past five years. The report of the Commission on Revision of the New Jersey Constitution in 1942, the record of the public hearings on that report, the record of the hearings conducted by the legislative committees in 1944, and the proposed Constitution drafted by the Legislature in 1944, are documents entitled to your thoughtful consideration.

The Convention opens with every advantage of a promising prelude. Following the recommendation contained in my inaugural address of January 21st, the enabling legislation to provide for this Convention was adopted by a unanimous vote in both Houses of the Legislature. In your nomination and election as delegates, petty partisanship was largely laid aside. You have the mandate of the people of New Jersey to dedicate yourselves to a period of constructive service to our State, without regard to partisan advantage or distracting personalities.

The duty confronting you today is not unlike that confronting the authors of the Declaration of Independence, as explained by Thomas Jefferson in a letter to Henry Lee. "The important task," Jefferson wrote, was "not to find out new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject (in) terms so plain and firm as to command their assent \* \* \*."

I am confident that you will so conduct yourselves that it will be said of your work, as James Madison said of the work of the Convention in Philadelphia in 1787: "Whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction, derived from my intimate opportunity of observing and appreciating the views of the Convention, collectively and individually, that there never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives or more exclusively or anxiously devoted to the object committed to them to \* \* \* best secure the permanent liberty and happiness of their country."

The rights that you exercise in this Convention were won in 1776 and protected in memorable struggles through the years.

The fight for liberty, however, must be won anew each day, and the contest for good government waged during the days of peace is no less important than the battle waged in the heat of armed conflict. May your service in the drafting of a new Constitution be one of dedication to the memory of the men and women who fought in the wars to make and keep us a free people. May you be blessed with clearness of vision, soundness of purpose, and successful accomplishment, to the end that citizens of this State a hundred years hence will repeat your names with pride and call you devout, wise and just. Yours, ladies and gentlemen, is the opportunity of a Century.