

Speeches on the Constitution of New Jersey

by

Governor Charles Edison



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FROM THE
SECOND ANNUAL MESSAGE TO THE LEGISLATURE

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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. Deploping 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 tonight 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 instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

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

The second article of the constitution concerns the right to vote. It confers the suffrage upon every male citizen of the age of twenty-one, with certain exceptions, such as persons confined in institutions. The Nineteenth Amendment to the Constitution of the United States, of course, extended the suffrage to women, any state provisions to the contrary notwithstanding. A revision of the New Jersey constitution should take out the word *male* as excess verbiage.

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

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

The age of twenty-one is just an arbitrary figure. It is chiefly the weight of tradition that has preserved it for voting purposes. A citizen may make very important and binding legal decisions before he is twenty-one—such as to get married. At eighteen, most people have as much education as they are ever going to get. Three more years will, in most cases, make no substantial contribution to their education or experience.

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

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

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

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

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

set up over the years a multitude of quasi-judicial boards and commissions. Examples are the Public Utility Commission, the State Board of Tax Appeals, the State Board of Education. The establishment of these agencies—partly executive in character, partly legislative, partly judicial—is not unique to New Jersey. Other states and the federal government have also had to establish them. Under them, a body of regulations and judicial decisions has grown up that is now called administrative law. There was no such thing in 1844, just as there were then no automobiles, no power plants, no airplanes. But we have to meet the problems of administrative law, just as we have to meet the problems growing out of the widespread use of the automobile.

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

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

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

So that the public might more readily than at present learn what the rules and regulations are, the commission proposed, further, that a new constitution require that no rule or regulation should "be effective until it is filed with the Secretary of State." They proposed also to require the Legislature to "provide by law for the speedy publication of such rules and regulations." Under these new requirements upon boards and agencies, any interested citizen could at any time find out what rules and regulations exist. He would know what he could do and what he could not do. Much as we might like to get away from government by administration, it is here, and it is here to stay. The best that we can do is to attempt to keep administrative 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 wanted to say about the state constitution. It has lagged behind the times so much—there are so many changes that need to be made in it—that no quick and simple answer is possible to the question “What is the matter with 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 articles. There is a lot I have to say, I can assure you, about the legislative article. There is more about the executive, the judicial, the military, and the amending process. The changes that need to be made in these parts of our constitution are more extensive than the changes required in the first three articles. If I cannot undertake to discuss all of these points tonight, I can, however, undertake to answer questions about them that you may have in mind.

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

AT THE RALLY OF CITIZENS OF LODI

June 12, 1943

Mr. Chairman, Ladies and Gentlemen:

Wednesday night of this week in East Orange I discussed Article I of the New Jersey constitution, which sets up the bill of rights; Article II, which grants the right of suffrage; and Article III, which distributes the powers of government into three distinct departments, legislative, executive, 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 state in the Union in which state elections are held every year. It is the only state in which any legislators are elected for one-year terms. Forty-four of the 48 states elect members of the lower house for two-year terms; three states elect them for four-year terms. New Jersey alone elects its assemblymen one year at a time.

Our system of annual elections for assemblymen has shown itself to have so many disadvantages that no other state has imitated it. And every set of proposals to revise our constitution has recommended a longer term for assemblymen. Annual elections mix politics and legislation inextricably. For every assemblyman the next election is just around the corner. He cannot learn his job before he has to campaign again. He cannot learn about the forces and pressures that guide the legislative process before he is out of 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 government. We should give an assemblyman a term of two years, so that he can catch his breath and learn something about the State House and what goes on there. We should relieve him of the necessity of conducting a continuous campaign. The most effective assemblymen are those serving second, third, and later terms. They have learned what the state government is like and how it works. We can improve the quality of all our legislation by giving all of our assemblymen more opportunity for experience.

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

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

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

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

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 Pennsylvania, \$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 contributing 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 governors 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 Control 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 Constitutional 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 constitution 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. They 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 subpoena 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 it 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 prosecutors, 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 Assembly in recent years—John Boswell and the present Speaker, Manfield Amlicke, for examples—have succeeded pretty well in making the lobbyists keep off the floor; other Speakers have been less successful.

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

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

It seems to me that only representatives of interests that have something to conceal would object to this provision. Lobbyists whose activities are not reprehensible should welcome this constitutional provision, because it would improve the public status of all representatives before the Legislature.

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

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

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

the Senate its constitutional right to confirm or reject. But they ought to do one or the other within a reasonable period. The commission, therefore, recommended two new sentences for the constitution which would solve the 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 of deadlock between the governor and the Senate over nominations would be greatly diminished. At least the Senate could not take a long list of nominations 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 to be done to improve it. This article is the executive article of the constitution, 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 that our governor is the only one among the 48 who is elected for the odd term of three years. This unique term coincides with no other term in our state except the election of one-third of the state Senate. But every twelve years the election of a governor coincides with the election of a President, so that state and national issues are inevitably confused. I have never heard any defense for our three-year arrangement.

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

Under the present constitution, the governor of New Jersey is ineligible to succeed himself. This provision is, in my judgment, an indefensible principle of administration or of public law. The voters of the state may have found 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 governor is elected; to serve for the same term as the governor; and in the event of the death, resignation, removal, or absence of the governor, to become not merely an acting governor, but *the* governor. He would represent *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 is in this state, the only state official elected at large—that is, by a majority of the whole number of voters. For that reason, if for no other, he should have a veto power over legislation that means more than a mere gesture of disapproval. At present a bill may be passed over a governor's veto by a simple majority in each house—just what was required to pass it in the first place. For all practical purposes, the governor of New Jersey under the constitution of 1844 has no power of veto.

The members of the Legislature, unlike the governor, represent counties. The governor represents the whole state. The legislators, therefore, are subject to local pressures and to combinations of interests which a governor can resist but legislators cannot. This point was forcefully called to the attention of the members of the constitutional convention of 1844 by one of the 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, for the convention failed to follow his advice. They did not give the governor a veto that amounts to anything.

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

A legislative body is also subject to the political deals that have received the name "logrolling." A delegate from Camden County to the constitutional convention of 1844, Mr. Abraham Browning, told his fellow members how it worked. "Some member of the Legislature," Browning said, "desires an office—another has charge of a divorce bill. . . . The bargain is if you will go for my office, I'll interest myself for your law, and the evil which has resulted and must result from such inevitable combinations . . . is not easily estimated."

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

The great majority of our American state constitutions provide that a veto by the governor cannot be overcome except by a two-thirds vote in each house. A few require a three-fifths vote; but the two-thirds vote is most general. This is also the vote required in each house of Congress to override a presidential veto. It seems to me that to prevent logrolling and to compensate for the sectional characteristics of a Legislature, which like ours, is elected by counties, the governor of the state should have a veto that can be overcome only by an extraordinary vote—at least by two-thirds 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 a bill may be passed over his veto by the same simple majority that passed it in the first place—many evils flow.

The governor ought also to have more time than the constitution of 1844 allows him to consider whether he will sign or veto bills. He is now allowed only five days (Sundays excepted) from the day a bill is delivered to him. If he fails to sign or to veto, the bill becomes law notwithstanding.

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

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

Bills are often long and complex, forty or fifty printed pages each. Buried somewhere in one of them may be what is known in legislative parlance as a joker; that is, an objectionable clause or provision that appears to be innocent. Only the most careful study of bills by men who are experts both in bill drafting and in the field of the law covered by the bill will turn up these jokers. The five days allowed by the constitution of 1844 is not a long enough period to permit the governor and his staff to give the bills preliminary study, to get in touch with experts, to have them study the bills, to have them give opinions, and then finally to allow the governor to decide whether or not to veto a bill, perhaps because of some one provision.

It has been our experience over many years that the legislative mills grind very slowly for months, and then, usually in June, they grind very rapidly indeed. Just before the Legislature quits, bills pass by the dozen every hour. It is in the final hours that the lobbyists get in their best (or worst) work. Bills get passed that ordinarily would produce such a public outcry that no legislator would dare vote for them. In these last-minute bills, which often are passed without being printed, so that no one has been able to study them, the possibility for the introduction of jokers is even greater than usual. After the legislators go home, the whole mass of bills is dumped on the governor's desk—often a hundred at a time, each containing hundreds, or often thousands, of words. They may set up news agencies, rewrite whole bodies of the law, involve millions of dollars—but the governor has to sign or veto all of them in five days. He cannot possibly get a fair expression of public opinion; he cannot hold hearings; he cannot study them adequately.

To make the governor's task even more difficult, the legislative officers sometimes delay their signing of the bills until a vast mass has accumulated. Then they sign a hundred or more at a time and have them all delivered to the governor, 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 study them all. Ours was then an agricultural state, and we did not have the complicated problems reflected in modern legislation. The five days set for the governor's consideration probably were sufficient in 1844; they are not today. He ought to be allowed at least fifteen days, and at the end of a session at least thirty days, as the governors of New York and Pennsylvania are allowed.

The governor of New Jersey is often called, with unintentional humor, the chief executive. He is in fact no such thing. He has the most inadequate control over the massive state administration for which he is publicly responsible. The New Jersey constitution, unique in so many other undesirable features, is again unique in that it is the only constitution under which the incoming governor finds that all but one of the important offices are 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 the Senate this year passed a bill to abolish that office. A governor of New Jersey cannot appoint his own chief legal adviser, the attorney general; he cannot even appoint his own budget commissioner.

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

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

The revision commission made another excellent recommendation:

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

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

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

The Revision Commission of 1941 proposed to correct this condition. They 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 executive in fact as well as in title. With these powers, he could really and justly be held responsible for the executive branch of the state government. At the same time, sufficient safeguards are provided so that his powers could not be abused. There must be a charge submitted by twenty or more reputable citizens; there must be an investigation; there must be notice and hearing. The result of such a provision should be an immense improvement in the operation of the state administration. As one of the witnesses before 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 democratic 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

Mrs. Hopkins and Ladies:

I cannot discuss tonight the whole constitution of New Jersey, but I should 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, properties, and rights are subject to the courts, ought to have something to say about the machinery for providing justice. There is a suspicion abroad in our commonwealth that certain lawyers are not enthusiastic about constitutional revision, because they feel that they have a vested interest in the obscurities and complexities of our court structure, which they think that they alone understand. And what they think they understand they approve, like 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

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

Our system of courts is apparently so confused and confusing that it cannot be successfully clarified, even for students in schools of law. On this point we have the testimony of Mr. Theodore M. Marsh before the legislative 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 students come out of the study of our court system more confused than when they went in, I am sure you will not expect a mere governor to explain the system clearly. If the professors can't, I can't either. Without attempting to say where one court leaves off and another begins—and apparently they overlap and run into one another a great deal—I may say that the constitution of 1844 establishes or mentions the following courts: A court of errors and appeals; a court for the trial of impeachments; a court of chancery; a court of pardons; a prerogative court; a supreme court; circuit courts; and orphans court; common pleas courts, courts of quarter sessions, and courts of justices of the peace. We have also courts of oyer and terminer, courts of special sessions, county traffic courts, juvenile courts, district courts, criminal judicial district courts, and recorders courts. You will pardon me, I know, if my list should turn out to be incomplete. A few courts more or less should, in such a list, make little difference. Just to contemplate such a list will tend to make any one agree with Mr. Watson that our court system is "complicated, archaic, and creaking."

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

Our court system has often been called "the most antiquated and intricate 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 the world. Lawyers are fond of saying that this court is bigger than a jury and not quite as big as a mob.

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

The courts of our neighboring State of New York have been reformed by constitutional change, and delays comparable to ours are no longer necessary. For a recent example, the lieutenant governor of New York, Thomas W. Wallace, died on July 17, 1943. On August 14th (a Saturday) Supreme Court Justice Foster ruled that an election was necessary to fill the office. On Tuesday the 17th his decision was upheld by the Appellate Division, and on Friday the 19th the Court of Appeals reviewed the case and handed 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 not inherent in the law, but in the courts.

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

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

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

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

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

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

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

AT THE EAST ORANGE HIGH SCHOOL

October 12, 1943

Mr. Chairman and Students of East Orange High School:

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

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

Section I of Article VII of the constitution of 1844 states that "The Legislature shall provide by law for enrolling, organizing, and arming the militia." That clause would have been all right if the framers had stopped there. Unhappily the men of 1844 went on to provide in the constitution how the militia shall be organized. In the clauses that follow the one I quoted, 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 method of selecting officers by the ranks just below them. Elections for officers might not have been too bad in the days of the Black Hawk War, or the War of 1812, but they are certainly inadequate today.

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

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

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

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

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

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

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

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

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

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

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

Now look for a moment at some other defects of the process.

Suppose an amendment passes both houses this year. No matter how urgent it is, it has to lie over a whole year. Then suppose the next Legislature does not like some word in the amendment—perhaps they want an *and* instead of a *but*. If they change the wording one bit, the process must all be gone through again. Or an amendment may pass both houses one year, and only one house the following year. Then the whole process must start over again.

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

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

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

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

