

## THE 1947 CONSTITUTION : A RETROSPECTIVE<sup>†</sup>

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I was one of the eighty-one delegates to the 1947 convention. Considering the fact that this event occurred fifty years ago and I was the fourth youngest delegate at the convention, obviously, most of the delegates have gone to their Great Reward. I propose to keep my remarks to fifteen minutes, as I understand we have an all-star panel following my presentation.

I propose to discuss as the following topics, in this order, time permitting:

1. The forces favoring the constitutional convention in the 1940s.
2. The forces opposing a constitutional convention at that time.
3. How Governor Driscoll prevailed in obtaining a constitutional convention, whereas his two predecessors, Governors Edison and Edge, failed in getting a convention.
4. Whether the constitutional convention was good or bad, fifty years later.
5. Whether there will be another constitutional convention.
6. Today's major issues becoming tomorrow's forgotten items.

### 1. WHAT WERE THE FORCES FAVORING A CONSTITUTIONAL CONVENTION?

There was the desire for a better court system. There were people who

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thought the governor's power was too limited. In fact, we had probably one of the weakest governors of the United States in power at that time. For example, the legislature could override a governor's veto by merely casting a majority vote of the members in each house. There was also a desire to consolidate the large number of independent boards and bodies into twenty state departments. There were also two separate budgets, one for the highway and one for the general fund, and many thought they ought to be consolidated. There were individuals who opposed the fact that each of the twenty-one counties, regardless of population, was entitled to one state senator. Then, of course, there were certain academics who thought it would be a good show and they ought to have one anyway. The League of Women Voters was very much in favor of the convention, as was Arthur Vanderbilt, who later became Chief Justice of the new New Jersey Supreme Court in 1948.

## **2. WHAT WERE THE FORCES OPPOSING A CONSTITUTIONAL CONVENTION?**

One powerful force was the Republican New Jersey State Senate, and the Republicans. I represented Hunterdon County in 1941-43, with 40,000 people. Hunterdon County had one senator, me. Essex had 800,000 people, they had one senator. So the disparity was twenty to one. Many people thought that was not quite fair. Of course, I thought it was a good idea.

There was no provision in the 1844 constitution calling for a constitutional convention. If a governor had tried to call a convention on his own, he probably would have been subject to immediate court action. So, if you wanted a constitutional convention, two houses of the legislature had to do it. Do you think that bill was going to pass the state senate? Of course not. The state senators were in no mood to commit political suicide. So, who was opposing the constitutional convention? It was the state senate.

Now, there was another strong force in the state that opposed a state constitutional convention, and that was Frank Hague and the Hague Organization in Hudson County. For you young folks in the audience, Frank Hague was the mayor of Jersey City, the political boss of Hudson County, and was a state-wide force in both the Democratic primaries and also the general election due to his power to provide a tremendous Hudson County vote.

Now, what was Hague interested in? Many of the great railroads in the country on their way from the south and the west that went to New York City came to the Jersey shore in Hudson County, then crossed the Hudson River in some fashion. These railroads included the Central Railroad of New Jersey, the Lehigh Valley, the D, L and W, the Erie, the Pennsylvania, and others. These railroads had piers, wharves, stations, terminals, and other real estate situated in various Hudson County municipalities such as Jersey City, Weehawken, and Hoboken.

These municipalities assessed the railroads for local real estate taxes, which helped keep the tax rate down for homeowners in Hudson County. Hague feared that a new constitution might have an unfavorable tax clause which would permit railroads to be assessed in a fashion unfavorable to Hudson County. You cannot blame him for that. So we had the Republican State Senate and Frank Hague against the convention—two powerful forces.

### **3. WHY DID GOVERNOR DRISCOLL PREVAIL IN CALLING A CONSTITUTIONAL CONVENTION AND THESE OTHER FELLOWS - GOVERNORS EDISON AND EDGE - FAIL?**

Let's take Governor Edison. Governor Edison was the son of inventor Thomas Edison and Secretary of the Navy under Franklin D. Roosevelt. Edison came to New Jersey and was elected governor, thanks to Frank Hague. No sooner than he was elected governor, he got into a fight with Hague. Some people think he had glimmers of Woodrow Wilson in his head, I don't know. He said, "I want a constitutional convention." Well, Hague wasn't going to break his neck for him, and neither was the Republican State Senate. So, there was no convention under Charlie Edison's reign.

The next governor was Walter E. Edge, who was governor as a young man in World War I and as a little older man in World War II. Edge made his peace with the Republican State Senate by providing that each county would continue to have a senator. He, however, didn't make his peace with Hague, and Hague opposed the November referendum, which was defeated state-wide.

The next governor was Alfred P. Driscoll. Driscoll made his peace with Hague on the tax clause and also signed legislation which provided that a constitutional convention would be precluded from changing the system where each county had one state senator. So Driscoll prevailed, being a statesman and a politician, where Edison and Edge had failed.

### **4. WAS THE CONVENTION GOOD OR BAD?**

Well, we created the strongest governor in the United States, no doubt about that. Some people think that's good, some think it's bad. At the convention, I moved an amendment to restrict the governor to one term due to the great powers given to the governor. I, however, was defeated by a vote of fifty-two to twenty-one. Incidentally, many of my votes came from the big counties, not the cow counties.

### **5. DO WE NEED ANOTHER CONSTITUTIONAL CONVENTION?**

I do not think a another constitutional convention is necessary, but sooner or later it will come up. I think the present amendment process, now that we

have a legislature reapportioned on the basis of population in both houses, suffices. I'll tell you a little story. At the constitutional convention of 1947, we were under a statute that did not permit change in the state senate. However, a delegate from Bergen, David Van Alstyne, Jr., who would have liked to be governor, like a lot of other people, put in a proposal to satisfy the League of Women Voters. It involved holding a constitutional convention every twenty-five years. Query - was that legal, or is that a reapportionment by the back door? So, I went to Charlie Besori, who was the bill drafter at the time, and I said, "Charlie, make me a little amendment to this, stating there shall be a constitutional convention every twenty-five years, providing the legislature so provides." Charlie said, "What did you say?" I said, "providing the legislature so provides." He said, "That does not make sense." I said, "Damn it, do as you're told, Charlie." Another delegate attacked the proposal in a different way. David Van Alstyne slammed down all his papers on the desk and said, "I withdraw the proposal." But you see what could have happened if we had a constitutional convention every twenty-five years.

## 6. ARE TODAY'S ISSUES TOMORROW'S FORGOTTEN ITEMS?

Let's take the counties, each one having a senator. The Supreme Court of the United States, in *Reynolds v. Simms*,<sup>1</sup> *Baker v. Carr*,<sup>2</sup> etcetera, held that each state senator in any particular state must represent approximately the same number of people. The New Jersey Supreme Court in *Jackman v. Bodine*<sup>3</sup> struck down the composition of the New Jersey State Senate in 1964. I had the fame, or the infamy, depending upon how you look upon it, of representing the State Senate before the Supreme Court of New Jersey, which case, incidentally, I lost. That's why I say the fame or the infamy. All the battle about "one senator for each county" is now forgotten, ancient history.

Now, whatever happened to the railroad taxes? I phoned yesterday the Chairman, I guess you would call it the Administrator, of the Hudson County Board of Taxation. I asked, "Do your municipalities collect any railroad taxes today?" I don't think he knew what I was talking about. He said, "Railroad taxes? No. Why would we collect railroad taxes?" So these two big deals, the state senate preservation in 1947 and also the railroad taxes, demonstrate how yesterday's issues are today's forgotten items.

Finally, what about Bingo? The 1947 delegates went to great lengths to

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<sup>1</sup>377 U.S. 533 (1964).

<sup>2</sup>376 U.S. 254 (1964).

<sup>3</sup>43 N.J. 491, 205 A.2d 735 (1964).

discuss whether all religious organizations and volunteer fire companies have the right to operate Bingo games. When running for delegate in 1947, my running mate, a Catholic, went to all the rectories in Hunterdon County expressing his support for legalizing Bingo. I'm a Lutheran. I went to all the volunteer fire companies, found that their presidents were mostly Presbyterians, and expressed my support for legalizing Bingo.

I had lunch with a Catholic priest recently and I said, "Padre, who is playing Bingo in New Jersey today?" And you would think I was from a strange planet. He said, "I don't know anybody who plays Bingo." Thus, just as human life is fleeting, so are political issues. Today's big deal is tomorrow's forgotten, ancient history.

