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## Address to the Rhode Island Constitutional Convention by Charles W. Joiner

Charles W. Joiner

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ADDRESS TO THE RHODE ISLAND CONSTITUTIONAL CONVENTION

APRIL 12, 1965

by

CHARLES W. JOINER

ASSOCIATE DEAN - UNIVERSITY OF MICHIGAN LAW SCHOOL

The experience with a constitutional convention in my state leads me to predict that your convention will produce two major achievements for your state:

1. The machinery of government will be improved and will be brought, to a degree at least, up to the needs and expectations of your citizens.
2. A dialogue about government will occur among your delegates and with your citizens and in the press and on radio and t.v. that will prove to have lasting good regardless of whether your document is ratified.

Please let me speak to each of these briefly. If I use examples or make suggestions it is merely to illustrate this thesis in light of your experience. I am not a carpetbagger.

To put these matters in perspective let's review, what I am sure we agree on, the basic reasons for a state constitution. I emphasize state as distinguished from National, for the state has the residual powers of government and does not obtain power from a constitution, whereas the national government's power comes from its constitution. So they must be different.

- A. A State Constitution provides for the distribution of state power among the agencies created by the constitution to exercise that power.
- B. A State Constitution puts limitations of various sorts on the exercise of state power for the protection of the people who live in the state and others.

These two ideas embrace what is a state constitution. It need not grant power - it distributes and limits its use. Sometimes the limitations are on the government itself as in the "Rights" section of the constitution. Sometimes the limitations are upon the various agencies of government as to how they are to exercise their powers.

It stands to reason that the existence of a number of factors will influence the intelligent judgment of how this state power should be distributed among what agencies and what kind of limitations are needed. As these factors change, so will change the distribution of power, so will change the agencies needed to exercise the state power, and so will change the limitations on the exercise of power.

The kind of factors I am talking about are these, most of which are constantly changing.

The number of people in the state.  
How close people live together.  
The economic background of the state.  
The heritage of a state's people.  
Their education.  
Their wisdom.  
Their courage.  
The kinds of economic activity and institutions that produce the state's wealth.  
The wealth of the state.  
The size of the state.

All of these factors and more should influence the judgment of thoughtful intelligent men in deciding on how the state power should be distributed and what limitations should be placed on its use.

What I am really saying at this point is that a constitution must be written in light of current conditions and conditions that are likely to arise in the future. It must be a document of principle but it must be a working document that fits the particular state and its people. As good as is our constitution in Michigan, I would not urge you to adopt it. You, as delegates to the Rhode Island and Providence Plantations constitutional convention must truly face up to your problems and make decisions in light of them.

Again, what I am really saying is that just as those delegates in 1843 faced the problems of the state at that point in history and gave you a good document to govern you under those conditions; so a group challenged to write a constitution for a state today must face up to the problems of the state today.

I stress this perhaps unduly because the Michigan experience leads me to the conclusion that it is very easy to run away from problems, even in a constitutional convention. The delegates to an unlimited convention are not sent to that convention to run away or ignore, but to analyze and decide. Our delegates on some matters took the easy way out. Our people in these areas were disappointed.

What the problems are in your state, you surely know. I haven't studied them and would be presumptuous to try to give a detailed catalogue. But surely they include

1. Apportionment - perhaps on several levels of government.
2. The problem of the governmental needs of more and more people living closer and closer together yet becoming more and more individually mobile and having greater and greater ability to communicate with one

another as well as to be reached instantaneously through the mass media.

3. The problem of how government can effectively provide quality education for your children and young adults.

4. The cost of government.

Of course there are many more, but whatever they are, a group of Constitution writers will fail if they don't keep their sights high and focused on basic government structure that will permit the solution of the problems facing the citizens. Decision of such a group, if it is to carry out its mandate, and if it is to be received with favor by the public, must be based on the facts of today and tomorrow and not of yesterday. This is a lesson of the Michigan experience.

Such a group fails if the decisions are not bold. Timidity brings scorn. The authorization for a Constitutional Convention is a mandate, not necessarily to change the constitution, but a mandate to carefully examine the basic governmental structure that affects the solution to any problems now facing the citizens or which can be foreseen. Where would we be today if Adams and Jefferson had not been bold, had improvised instead of created?

Sample questions that were raised in my state, the answers to which helped develop answers to problems of government were these:

Compared to 1908 - with you it should be compared to 1843.

Is the state largely agricultural, industrial, or both? Is there a shift? Will it likely continue? Are their problems of government connected with this? Are new institutions needed? Are some existing institutions now archaic? Could we get along without some of the government institutions? Are there limitations on power and its use that should be changed in light of the answers? Or,

What is the level of education among our citizens today compared with 1908 - or with your 1843?

Has the system of public schools and colleges, radio, television and the press brought more understanding to people - developed more wisdom - provided more sophistication? What implications on government structure will this have? Or,

What are the implications, the full implication, that could be felt on government structure as a result of being able to drive across my state in three hours and being able to talk to anybody instantaneously?

Those who elected the delegates to our convention wanted them to ponder all these wonders and to create constructive changes in the constitutional law as it relates to government structure and the limitations on power that

may affect the ability to solve today's problems. You have the same great opportunity to provide for government that will be able to govern more wisely, more responsively and at lesser cost. We did not completely succeed but we made some progress.

You especially have a challenge in this respect because of your size. How fortunate you are to be 1200 square miles instead of 56,000; to be 900,000 instead of 9,000,000 - a family in a cottage instead of an assembly in the Michigan Stadium.

Just because you are what you are, you could well choose to demonstrate, that in light of changes in transportation, communication and education, much of government could be eliminated.

Duplication of governmental functions today is one of the great economic wastes of our time. Much of it has come about because government structure has been frozen by constitutional restrictions or provisions when changing conditions called for new devices and agencies. So we add but we cannot subtract. Because of your size and the nature of your community, your leadership in eliminating all sorts of duplication might prove to be as important as was the idea of initiative and referendum or home rule 65 years ago.

The pressures are great on a constitutional convention to be mediocre and it takes courage and strength to overcome. The delegates to our convention achieved greatness in this respect, only in limited areas. Our citizens were disappointed that they did not achieve more. To achieve more means bucking powerful groups. It means saying "We are the delegates and We must decide." In our convention when our delegates took this attitude and did not yield to pressure from the legislature, the governor, the political parties and other pressure groups, they overcame and the product was good. The disappointment in our document usually can be traced to yielding.

If your people are anything like ours, they expect you to look forward and up. They may not say so till the convention is over, but if you don't provide, for example, for the machinery to permit great bodies of people such as you have in the Providence complex, and which could well embrace your whole state, to move forward with services economically, getting rid of excess and useless government as new agencies are created, your voter will want to know why, and you'd better have some good answers.

A constitutional convention itself, however, is an invitation to greatness. It is a one shot affair. It has sex appeal. It attracts as delegates thoughtful significant people. Being a one shot meeting, it is not necessary to straddle fences to get re-elected. All in all, it provides machinery to produce great and bold results, if the machinery is used by the delegates. Ours was only partially so used and the product produced, tho an improvement, was not what had been hoped for.

Let me talk to you now about the other great result of our convention which probably will be a result of yours.

The convention is and should be an educational experience in government for the whole state. Constitutional convention delegates are teachers of government to the state. The newspapers, television and the radio are the text books.

As delegates you are conducting a serious seminar in government. This will have long lasting affirmative affects, lasting long beyond the period of your convention.

1. Our people were made more conscious of the problems of state and local government.

2. Our people became to have a better understanding of the difficulties involved in responsible decision making, and of course such an understanding is a prerequisite of a republican form of government.

3. Many more non-politicians became interested in government and politics, and the government of the state now is sprinkled with outstanding people who became interested through Con-Con. Our governor is a good example.

This dialogue or seminar in government must be more than a sterile exercise or you will look foolish. At the risk of being accused of injecting my nose where it doesn't belong, let me again allude to the problem of urbanization, to use that as an example of how this dialogue could work.

Suppose that one of your committees, prodded by one or two articulate and effective delegates, decides that the cost of state and local government is excessive because of duplication and overlapping, and also that in many parts of the state services are poor. In light of this it proposes that there should be a radical redistribution of state powers in light of growing population and the need for expanding services and the development of rapid transportation and communication. But what radical change? It might be suggested that one way of cutting out duplication and providing services throughout the state would be to combine all state and local government. It could be argued that an area of 1200 sq. miles and 900,000 people really needs only one level of government and that much money could be saved and that services could be provided more effectively throughout the state.

Such a proposal would probably immediately be attacked by the mayors and councilmen and the members of the legislature and it would be easy to yield to such pressure. But whether or not the proposal should be adopted should not turn on the vested rights of various groups but on decisions that are made by you based on facts.

If you were to get the facts and conduct a good discussion I am sure you would be surprised at the favorable reaction you would receive by non-

politicians. The dialogue will help marshal support for far seeing programs that may step on a few toes. Your very size and locations leads me to believe that, of all states, a break through in this area might be accomplished. Remember - A Constitutional Convention is called by the people because they believe that there are problems needing attention. The discussion will crystallize these thoughts and the results, if like ours, should be good.

Before I leave you let me caution you about one thing. If your citizens are like ours, you will be criticized if you do or if you don't, on a given proposition. It's no answer to a proposition that there will be criticism. You will be judged however you respond. And your product will not be perfect. Ours was not. And people will make snide remarks about it. Ours did.

But you will be able to live with yourself without apologies if you argue principles in light of today and the future. And if you don't underestimate the knowledge of needs and the wisdom of the ordinary citizen - the very people who called this convention. I am sure the citizens of this great state of Rhode Island and Providence Plantations are as bright as the citizens of my state. Our convention did not go as far or deal as boldly with the problems as our citizens would have preferred.

We had a great experience, however.

1. Our constitution is better than before. Our government is improved because of the debates in the convention and the educational process of the convention.

2. Citizens of significance, who were not politically motivated before the convention, are now participating in government more than ever before, largely as a result of the dialogue on government that was the convention.

I wish you well.

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