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West Virginia's Constitution and
The Governor

Hulett C. Smith*

I want you to imagine yourself as the Chairman and Chief Executive Officer of a business corporation which has thousands of stockholders and employees looking to you for leadership—leadership in the field of net profits and dividends; leadership in providing better wages and working conditions—retirement benefits—educational opportunities for the children of employees—and continuing education for the workers themselves. All of these people and all of these benefits depend upon improvements in your plants and on your ability and your willingness to make long-range commitments that will ultimately bring benefits back to your home base.

Do you think these people would not want you to grow with the modern times?

I would suggest that even if it meant a change in the charter of the corporation and meaningful amendments to the by-laws, these stockholders and employees would insist that the most modern business practices be employed so the corporation could grow, and adapt to changing times.

What does this have to do with the role of a Governor of a State in relation to his State government's operation? It is very similar to that of a corporation executive—but in West Virginia, unfortunately, he is still handicapped by the restrictive nature of his corporate charter—the Constitution of West Virginia—and by its provisions for amendment and, thus, for modernization. And the stockholders themselves have been somewhat unwilling to insist on change.

As I prepared these remarks for this Symposium on Constitutional Revision, I couldn't help but see a parallel situation. After four years as Governor, I have returned to the field of business. Immediately, I could see the need for change in my own business affairs—which have been out of my control for only four short years—and see the need for modernization.

The stockholders in the businesses with which I am associated are not apathetic. They want change, and they expect me to provide it.

* Former Governor of the State of West Virginia.

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In regard to our State Constitution, I find it difficult to believe that the people of West Virginia are apathetic about improvements for their State—although many say we have apathy throughout West Virginia. I think that West Virginians are waiting for their leaders—whom they consider to be the "experts"—to clearly point out to them the need for constitutional improvement. They have entrusted their State leaders with the responsibility to see that government is run as efficiently as possible.

This meeting here should—and I believe it will—renew the program for substantial constitutional revision begun so many months ago. Hopefully, it will serve as a catalyst in aiding our citizens to recognize in greater detail, and with full understanding, the problems facing their State government; State government's relationship to their towns and counties—the problems inherent in constitutional limitations. The ultimate hope, of course, is that they will want to remove the constitutional limitations that continue to plague government leaders, and they will want to go further than half-way in doing it.

I still believe in the need to make our Constitution an alive, workable, and truly responsive document. It can be done.

I still plead for West Virginians to jar themselves loose from tradition and habit ... to pay as much attention to our State Constitution as we pay to our business charters and our business by-laws.

And I still remain unshaken in my conviction that the State of West Virginia needs a Constitutional Convention. We are only going half-way in meeting our needs if we continue to make our Constitution a patch-work quilt.

In 1960, I ran in the Democratic Primary on a platform containing a call for constitutional revision—and was defeated by Governor Barron.

In 1964 I ran on the same platform—with the same goals—and was elected. It was, I hoped, a sign of the times—a sign that the people wanted constitutional revision. Each time I addressed the Legislature, and in public speech after public speech, I pointed out the need, as I saw it. Each time there were small groups of individuals who saw, with me, the need for the West Virginia Constitution to be revised, clarified, and made more suitable to the needs of a State wanting to move into the mainstream of American
life—a State meeting new problems of growth. And we felt that, since it had become a topic of conversation by the man on the street, there was a movement for constitutional revision.

We were not entirely wrong. It was, if not a new proposal, a proposal that had not come around in some time, and it had behind it the weight of a new administration, fresh in power. So we went to the Legislature, and we won approval of the Legislature to hold a Constitutional Convention—it was a major victory for the cause of modern government. But in drafting the legislation, the Legislature had so apportioned the delegates to the proposed convention that it violated the one-man, one-vote rule of the West Virginia—not the United States, but the West Virginia Constitution. The Supreme Court declared it illegal. The battle had to start all over again. The Legislature and the administration had become involved in other matters of priority attention. And from there, the cause seemed to lose its spark, and become a fizzle—even though there were those few of us who kept fighting for it. It seemed a lot of people just weren’t interested.

But the Legislature was interested enough that it proposed five Constitutional Amendments in 1966. All five were on the November ballot. All five, billed as non-partisan issues, went down to defeat in a fierce partisan election battle in the 1966 elections.


By 1968, we had regained some of what we lost. We were successful in getting the Executive Budget Amendment passed, something which I have favored for nearly a decade. And the Roads Improvement Amendment passed with it. But these, while worthy and much-needed, are still only more patches for the quilt. I still believe we need the Convention—to look at the entire document as a whole; to see the inter-relationship of article to article within the Constitution.

So what it all boils down to is this: We West Virginians, in 1969, are not much better off today as regards constitutional revision than we were nine years ago, when I began campaigning for a constitutional convention. It is something I regret having to say.

But our experience may have had a side effect that may yet
save the cause. The people now are more aware of the need for constitutional revision than they were before the fight. And had we not had the battles we would be starting all over again today. I still have faith that the people of West Virginia really want to make our Constitution a truly responsive document—so that we can govern ourselves well.

There has been a great deal of study of our Constitution, and I have been asked to center in on those areas that deal with the Executive.

The questions usually asked in the study of constitutional reform regarding the Governor were raised in "Issues of Constitutional Revision in West Virginia," which was published by the Bureau of Government Research of West Virginia University in 1966. These are the prominent ones:

A. What executive officers should be elected by the voters?
B. Who should have the authority to prepare the State’s budget?
C. Should the Constitution limit the number of administrative agencies and provide for administrative reorganization?
D. Should the Governor be permitted to succeed himself in office?

One of these recommendations was adopted this last year, as I mentioned—that part dealing with the budget. But there still remains the need for further changes in the Executive Department Article—Article VII.

To truly aid in the effectiveness to have a strong executive in State government, the Short Ballot that was recommended by Constitutional Study Commissions in 1929 and 1957, should be adopted.

I might add that the call for constitutional revision is not a new one—Governors White, Dawson, Glasscock, Patteson, Holt, Neely, Underwood, Barron, Smith—all have seen the need for revision—and our present Governor Moore supported the Governor’s Succession Amendment in 1966.

Perhaps even today—now that he is in Charleston—he is reflecting upon his remarks of 1966: "A governor loses much of his power to lead in his last two years in office because of the knowledge that he is going out. He is, in effect, a lame duck. Interest centers on the scramble among those who hope to succeed him. The State loses as a result. . . ." I would hope that Governor Moore would speak out forcefully today for meaningful constitutional revision.

I can speak, and I know, from experience, that this one four-year term weakens the power of the Governor—particularly when
the budget operated under the multi-headed Board of Public Works—all of whose elected members have no restriction placed on the number of terms they may serve. It makes no sense that a Governor should be limited to one term, while his colleagues can hold office indefinitely. Every public official in West Virginia except the Governor and the Sheriff can succeed himself in office.

The budget-making system has been changed—but we await the final step toward true constitutional revision for a strong Governor, with the adoption of a short ballot or with the provisions that have enabled our Federal Constitution to work so effectively for over 182 years through the election of only a President and Vice President, allowing the Chief Executive to appoint his cabinet and heads of departments. With several key department heads being elected, gubernatorial effectiveness is weakened.

Thus, you can see that I support gubernatorial succession. The model Constitution provides for gubernatorial succession for as many terms as the voters choose. However, because of our relationship with the Federal government, a limitation of two terms certainly would be more effective, in my judgment.

So I hope that we will revise our Constitution to allow the Governor to succeed himself; to strengthen the Modern Budget Amendment of 1968; and to provide a short ballot. With these revisions, we would truly be on our way toward a strong Chief Executive system.

Other changes in Executive Articles are needed besides the short ballot and gubernatorial succession to aid the Governor in meeting the problems of government—and the ever-growing areas of Federal-State relationships that have developed from the action of Congress in recent years.

First—a small one, but one that can be important—your Governor needs more time to either approve or disapprove the acts of the Legislature. The five-day limitation becomes very, very short when you are handed 200 bills in proper form for approval after two of these five days have already passed. I would recommend that this veto or approval period be increased to at least 15 days.

I do not believe the Constitution should limit the number of administrative agencies, but should provide for administrative reorganization by the Governor. I believe the Governor should be permitted to offer reorganization of governmental duties of State subdivisions, as well as executive offices, similar to the provisions
that are now in effect in the Federal government for governmental reorganization. This could be done by providing for statutory reorganization so that we might consolidate and streamline our county governmental system and, perhaps, look forward to the day of forming regional organizations of the State or to combining the 55 counties into nine economic regions for governmental administration as well as economic development.

A great advantage to an incoming Governor would be the adoption of a proposal which is now under consideration for the change in the convening date of the Legislature in the year following the General Election.

It is not only changes in the Executive Article that are important because the other articles compound the problems of effective and efficient gubernatorial action.

The articles of limitations in the tax structure deny to the Governor the opportunity to present modern and equitable tax adjustments. Therefore, today we have insurmountable financial problems for our cities and counties, problems in the support of our public schools and in their administration, again because of constitutional limitation.

We have made considerable educational progress in West Virginia despite the constitutional limitation on aid to counties. But I wonder what we could have done had we not had these barriers.

I have seen our State, as well as many others, because of constitutional limitations, unable to face up to the responsibilities of a growing urban society and, thus, pass the problems on to a growing federal government.

Past history has been that of "passing the buck"—with the Federal government having to step in because the states failed to act.

One way that we can return government closer to the people and better use our resources to meet the needs we recognize that can best be met by local leadership, is through constitutional revision, so that our State and our Governor can have the latitude and the flexibility and the authority to act quickly and decisively on the matters that affect us and our children.

The problems of air and water pollution—the problems of channeling grants-in-aid to our counties—the means of functional program planning, a centralized accounting system for all branches of State Government—if we were not limited by constitutional requirements, such action could be proposed to the Legislature and
by statutory action we could move more rapidly to become more efficient in State government.

I have often been asked who should be the leader in the moves for constitutional change. Of course, the Governor. I can recall being chastised by a few newspapers, and by many more political leaders, for vigorously pursuing the adoption of the constitutional amendments and working for constitutional reform.

In 1966, one contained a provision to allow the Governor to succeed himself, and this caused all kinds of controversy. But nevertheless, Governors are elected to lead, and if the Governor doesn’t provide and push for the adoption of programs that he honestly believes are necessary for effective and efficient government, who will? The full weight and influence of a Governor’s office, despite his constitutional limitations, can be very effective in such cases.

The relationship of the Governor to the Constitution is not confined to these issues of constitutional revision that I have raised today. It covers all the Articles of the Constitution, because of the inter-relationship of the articles on taxation and finance, county government and local government, grants-in-aid—all of these have a direct effect on the ability of a Governor to provide long-range planning. I must admit that I have supported change of amendment as a matter of practical politics when the alternatives failed, but in order to really have a Constitution that will enable our people to meet the changing conditions of our times and the times of tomorrow, I again recommend that we call a Constitutional Convention—and that we let our people decide these issues outside the heat of the partisan general elections that so often allow our emotions, rather than reason, to make the change.

The day has arrived when West Virginians must begin to take constitutional revision seriously. We have already experienced what former Governor Terry Sanford describes in his book, “Storm Over the States”:

“State Constitutions, or most of them drafted in the late 19th century (as was ours), have stifled the vitality of state government.”

West Virginia cannot afford, in these years ahead, to be stifled by a worn-out Constitution that is full of dead wood and out of step with the times. To correct this situation is our responsibility. To encourage and foster the atmosphere for change is a responsibility that can begin to be met on the campus of West Virginia University.