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THE CONSTITUTION OF THE REPUBLIC OF HAWAII.

Monarchy in Hawaii was abrogated on the 17th January, 1893, and a Provisional Government was established by a Proclamation which, in its closing Article, provided that "All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils." These Councils were granted by the Proclamation general legislative authority, which function they exercised. When, after the lapse of nearly a year, the final answer of the President of the United States was made that he would not again submit to the United States Senate the Treaty of Political Union with Hawaii which had been negotiated between President Harrison and the Hawaiian Commissioners, the way seemed clear for the establishment of a more permanent form of government and one in which the people would have more of a voice. The term "Provisional," as applied to the Government, was objectionable, as implying that it was temporary in its character, and indicating to some minds that if the securing of stable government for these islands by means of political union with the United States was not immediately accomplished, it should dissolve and surrender the reins of government to the late Monarchy. No such view was entertained for a moment by the promoters of the movement. The establishment of a Republic was therefore the only alternative. How should this be done? Two methods were suggested. The first, that of promulgating a constitution by the Executive of the Provisional Government, found a good many supporters.

The second course suggested, of submitting to a Convention the framing of a constitution, was followed. An act was passed by the Legislature of the Provisional Government (the Executive and Advisory Councils) on the 15th March last, calling for an Election by the people, which included native Hawaiians, of Eighteen Delegates to sit in Convention with the members of the Councils. The election was held; the Convention was convened on the 30th of May last and concluded its labors on the 4th July when the Constitution was proclaimed. No express power was given to the Convention to *enact* the Constitution when framed, and the interesting question arose as to what authority the Constitution should proceed from. The idea prevailed that since the Proclamation of the 17th January, 1893, continued Hawaiian Laws and its Constitution in force, so far as they were consistent with the abrogation of the Monarchy, *until otherwise ordered by* the Councils, this body as the Legislative body of these islands should *enact* the Constitution as the fundamental law and thus displace the Constitution of 1887. This was accordingly done; an Act was passed which enacted the Constitution as law.

Ever since the overthrow of Monarchy the form of government and the particulars of a Constitution best suited to the needs of this community of mixed races and diverse education and interests had received the anxious thought of many men. A few had attempted rough drafts of parts of a Constitution.

The Convention was soon to assemble and the question was asked, Should nothing be done in the way of preparation of a draft of a Constitution. If no draft was prepared in advance, the obvious course would be to appoint a Committee at the opening of the Convention to prepare a draft to be submitted to the Convention for discussion. This would consume much valuable time, and it was liable that this responsible duty would fall into the hands of persons unfitted for it. It was finally decided that President Dole and his Cabinet should call in to their assistance a small number of gentlemen and prepare a draft of a Constitution which at the opening of the Convention was to be placed at its disposal, as a scheme to be followed or not as it was advised. The President presented the matter so gracefully to the Convention at its opening that it readily asked for the result of his labors and the Constitution as prepared was the text upon which the Convention worked. Accordingly, in the latter part of April last, the President brought together in the "Gold-room" of the ex-palace some fifteen gentlemen, and sessions were held almost daily until

within a day or two of the 30th May, when the Convention was opened. Of these sixteen persons, including the President and four Ministers, ten were lawyers; ten were Hawaiian born, and the others were men of long residence in these islands. Of the sixteen, four were graduates of Yale; three Academic and one of the Law School. It should not surprise any one familiar with these facts that the Constitution revealed, as the New York *Nation* of August 2d, says, "several interesting features which show that the framers had followed current discussion with intelligence," and that "not a few articles are incorporated providing for what many reformers in this country [the U. S.] have contended would be highly desirable for us."

The framers of the Constitution had access not only to all the Constitutions of the several States of the American Union but to those of many of the nations of Europe. Besides these they had, through correspondence, the advice of several well-known jurists and constitutional writers in the United States upon many important questions. It would hardly be proper to name these gentlemen in this article. Many of their suggestions were valuable but the object of the framers of the Constitution for the Republic of Hawaii was not to construct an instrument ideally perfect, but to frame one that would fit the conditions of the people of these islands so as to ensure peace, security for life and property, and justice, and, generally speaking, "good government."

And the crucial question was often asked, How will such a thing work?—What will its effect be? For instance,—that women should have the suffrage, was believed by many to be theoretically right, but the majority felt that it would be unsafe in our heterogeneous commuuity and so the suffrage was confined to males.

The Constitution as finally promulgated may receive the criticism that it contains too much of merely statutory matter. A constitution should be comprised of statements of general principles not liable to require frequent change and for this reason constitutions are not easily amendable. But it must be remembered that our case differed widely from other States that are called upon to revise their constitutions or prepare new ones. Here the task was to provide for a complete change of the form of government from a limited Monarchy to a Republic; the bridge between the two being a Provisional Government of a Revolutionary character. In our case the constitution of the Executive and Legislative branches of the government and the particulars of the franchise, of the registration of voters, etc., had to be carefully set

out in detail, in the Constitution, subjects more legitimately within the scope of statutory regulation.

I shall comment briefly upon some of the peculiar features of our Constitution and especially those that differ from that of the United States.

In preparing the draft of the Constitution the first question to be settled was, shall the Legislative authority be vested in one Chamber or in two? Those who remembered President Woolsey's lectures on "Lieber's Civil Liberty," would unhesitatingly, on theory alone, pronounce in favor of the bicameral system. But we had had in Hawaii a House of Nobles and a House of Representatives from 1852 to 1864,—sitting separately. And from 1864 to 1892 a legislature of one body, consisting of Nobles and Representatives sitting together. The experience of forty years made it certain that for this country the Legislature should be of two Houses and it was so determined.

The term of the office of President received much discussion by the framers, also in the Convention and out of it. Following the best line of thought upon this subject, and having in view the temptations to political wire-pulling on the part of office holders under a President to secure his election for a second term and thus retain the offices for themselves and their friends, the decision was arrived at that the term of office of the President should be six years and he not be eligible to re-election for the term immediately following. Many members of the Convention preferred that the term should be eight years and a vote to that effect passed the Convention—but it was, after further discussion, reconsidered, and the Constitution (Art. 24, Secs. 1 and 4) established the term at six years.

We have no Vice-President. This office was considered unnecessary. The Senate could elect its own presiding officer, and thus save the salary of a Vice-President. But careful provision is made in the Constitution (Art. 36), in case of the death, resignation, removal by impeachment or permanent disability of the President, that a Minister (pending an election for President) shall succeed to this office and act as President, in regular order—that is to say, the Minister of Foreign Affairs first, and in case of his disability or absence from the country, then the Minister of the Interior, and in like event the Minister of Finance, and the Attorney General.

It might sound strange to republican ears to hear the Cabinet officers in a Republic called "Ministers" and not "Secretaries."

This was most earnestly considered, and the more dignified title of "Minister" was adopted because the Hawaiian people were familiar with this term, and to call them "Secretaries" would mean, in the vernacular, a mere "writer," the primitive meaning of the word "Secretary." Then, too, the Cabinet officers as responsible heads of Departments, with seats in the Legislature and only removable by the President with the consent of the Senate, are in fact "Ministers" and not mere "Secretaries" of the President.

It will be seen that in the Republic of Hawaii the President is not a mere figure-head, as in France, where the Ministry wield the executive power, responsible alone to the Legislature. Nor is he the sole repository of Executive Authority as in the United States. It was thought that a medium between the two extremes was better adapted to our conditions. Complete "Parliamentary government" will do very well for a highly civilized and enlightened constituency, but only in a limited degree would it suit our polyglot communities.

In the United States the Secretaries of the Departments have no voice in the Legislature. The President is therefore obliged to secure the coöperation of some leading member of each branch of the Legislature as exponents of his policy, and he supplements this by occasional letters to individuals on important political questions, which are published. By the Constitution of Hawaii (Art. 37) the members of the Cabinet are ex-officio members of both Houses of the Legislature, with all the rights, powers and privileges of elected members, except the right to vote.

Article 48 of our Constitution, on the subject of "Quorum," is so wise in its provisions, in the light of the proceedings of the Congress of the United States during the past few years, that I copy it here entire without comment.

"Article 48, Section 1. A majority of the number of elective members to which each house is entitled, shall constitute a quorum of such House for the conduct of ordinary business, of which quorum a majority vote shall suffice. But the final passage of a law in each House shall require the vote of a majority of all the members to which such House is entitled.

"Section 2. A smaller number than a quorum may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each House may provide.

"Section 3. For the purpose of ascertaining whether there is a quorum present, the chairman shall count the number of members

present." This last section will meet with the hearty approval of Hon. T. B. Reed of Maine.

A peculiar feature of the Constitution is that no bill shall be introduced into either House by any member of such House unless it shall have first received thereon the written endorsement of three members of such House (Art. 62). This provision was borrowed from one of the German States, and it is believed will prevent the introduction, expense of printing and waste of time upon bills that have no merit, and which might be introduced and kept alive for the purpose of extorting blackmail from individuals or corporations supposed to be injuriously affected by such legislation. Proceedings in Legislatures of several of the States of the United States furnish Hawaii with object lessons on this topic.

All previous Constitutions of Hawaii contained the provision that the right of trial by jury in all cases where it had been heretofore used, "shall be held inviolable forever." We found that persons convicted of misdemeanors in the lower courts so constantly appealed to a jury that frequently the calendars of the Circuit Courts (where jury trials are held), were swamped by trifling cases, and as the duration of the terms of these Courts are limited, important cases, both civil and criminal, were postponed from one term to another, to the discredit of the course of justice. To allow legislation abridging the right of trial by jury in such cases, Section 3 of Article 6 was passed. This section probably received as much study as any other part of the Constitution. I reproduce it here: "Section 3. Subject to such changes as the Legislature may from time to time make in the number of jurors for the trial of any case, and concerning the number required to agree to a verdict and the manner in which the jury may be selected and drawn, and the composition and qualifications thereof, the right of trial by jury, in all cases in which it has been heretofore used, shall remain inviolable except in actions for debt or assumpsit in which the amount claimed does not exceed one hundred dollars, and such offenses less than felonies as may be designated by law. And provided that no capital case shall be tried by a jury of less than twelve men.

"The jury may be waived in all civil cases under such conditions as may be prescribed by law, and by defendants in all criminal cases except capital."

It will be seen that this section also allows changes to be made in the "composition and qualifications" of jurors. This is intended to prepare the way for legislation on one of the burning

questions of the day in Hawaii. Ever since the establishment of regular government on these islands a Hawaiian could only be tried by a Hawaiian jury, and a foreigner by a foreign jury. ("Hawaiian" means an aboriginal of whole or mixed blood, and a "foreigner" means what is commonly known as a "white man"). In civil cases between a foreigner and a native the jury is composed of six foreigners and six natives—called a "Mixed jury." These are apt to be biased in favor of parties of their respective races. The increasing prominence of foreigners here and to avoid race prejudices, many think that the time is near at hand when these distinctions should be abrogated.

Our laws have never required unanimity in a jury in order to a verdict. Nine of a jury of twelve may bring in a verdict in any criminal or civil case. The experience of over forty years of this exceptional provision is so happy that no one would think of giving it up. It is even contemplated that in certain lower grades of offenses a jury of say six men would be wise, and that in certain cases a verdict by agreement of less than nine out of the twelve should be allowed. I do not say that there is any certainty that such radical legislation will soon be accomplished,—but the Constitution has paved the way for it.

Section 4 of Article 60, which limits the duration of the Legislature to ninety days unless extended by the President, with the approval of the Cabinet, for a further period of thirty days, is considered a most wholesome provision for us. The Legislature of 1892 lasted from May 28, 1892, to January 14, 1893—and was most disastrous to the country and to the reputations of many of its members.

The President is given, by Article 67, the right to veto any specific item or items in any bill which appropriates money for specific purposes. Other provisions respecting the President's veto are similar to those of the Constitution of the United States. A two-thirds vote may override the veto.

The right to take private property upon due process of law and just compensation is extended by Article 12 to private ways across the lands of others for "railways, drains, flumes, water-pipes and ditches for agricultural, milling, manufacturing, mining, domestic or sanitary purposes."

I think the wisdom of Article 40 will not be questioned by any intelligent and right minded person. It takes from the domain of partisanship in the Legislature all contests over elections to either House, and confers the exclusive jurisdiction in such matters on the Supreme Court.

The peril which menaced this country in the closing days of the Legislature of 1892 of having the octopus of a "Louisiana Lottery" fasten its tentacles upon us, is not likely to visit us again, as by Article 98, "No lotteries shall be authorized by this Republic, nor shall the sale of lottery tickets be allowed."

My subject is not exhausted. Undoubtedly this newest of Constitutions of this latest born Republic of the world will receive criticism and even condemnation from many sources. It may be stigmatized as the perpetuation of an oligarchy by those who, unfamiliar with our circumstances, find no justification for preserving the ultimate power in the hands of those whose character, intelligence and real interests in the country make it reasonably certain that good government will be secured thereby, and that no irremediable injustice will be done to any of the races living in this archipelago.

All we can say, is "*Finis opus coronat.*"

A. F. Judd.

HONOLULU, Sept. 7, 1894.