

Constitutions and Constitutional Conventions of Hawaii

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I. INTRODUCTION

The State of Hawaii on July 5, 1978,¹ convened its third constitutional convention since 1950. While Hawaii is a young state, she is not unfamiliar with constitutions and constitutional conventions.

Constitutions first appeared in the Kingdom of Hawaii in 1840. The listing below indicates the effective dates of constitutions which have governed the citizens of the Hawaiian Islands since the days of the monarchy.

Constitutions of Hawaii

Kingdom of Hawaii

Constitution of 1840	October 8, 1840
Constitution of 1852	June 14, 1852
Constitution of 1864	August 20, 1864
Constitution of 1887	July 6, 1887

Republic of Hawaii

Constitution of 1894	July 4, 1894
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Territory of Hawaii

Organic Act of 1900	June 14, 1900
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State of Hawaii

Constitution of 1950	Effective with statehood August 21, 1959
Constitution of 1968	Amendments ratified November 5, 1968

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II. CONSTITUTIONS OF THE MONARCHY AND REPUBLIC

Historian Ralph S. Kuykendall notes that: "The idea of a written constitution was a natural result of the operation of foreign influences."²

The first constitution of Hawaii was granted by Kamehameha III on October 8, 1840. But it is recorded that a written Bill of Rights, "aptly called Hawaii's Magna Charta [sic.]" was promulgated on June 7, 1839, and can be considered the forerunner of the first constitution.³

The role of written constitutions is often exaggerated in political analyses and histories. But constitutions do serve as symbols and benchmarks around which meaningful political histories can be written, and interpretations of major political trends can be associated with constitutional changes. For example, one version of a constitutional history of the Kingdom of Hawaii is succinctly provided by these lines:

Absolute monarchy had come to an end in 1840. Since that time the kingdom had been governed under no less than four constitutions: the original one freely granted by Kamehameha III in 1840; one adopted by the legislature with the concurrence of the same King in 1852; one promulgated by Kamehameha V in 1864 on his own authority; and one granted in 1887 by Kalakaua as the result of a popular uprising. . . .⁴

That the Constitution played an important role in the Kingdom of Hawaii can dramatically be seen in the following account of the demise of the monarchy: "The last act was the one played out during the fateful four days, January 14, 15, 16, and 17, 1893. The attempt made by Queen Liliuokalani, on the first of these days, to do away with the Constitution of 1887 and proclaim a new one cost her the throne and led to the downfall of the monarchy on January 17."⁵

After the overthrow of Queen Liliuokalani, a provisional government was established with a "committee of safety" in power. On May 30, 1894, a constitutional convention was called, "consisting of nineteen members of the councils who exercised legislative and executive authority under this government, and of eighteen delegates chosen by popular election."⁶ The dominant theme of the convention of 1894 is described as follows:

. . . Indeed, the general principles to be embodied in it were clear to everyone from the first. The new government was to be a republic, and in view of the long and close connection of Hawaii with the United States it must inevitably be a republic of the American type. But the convention was not framing a plan of government for a newly-created state; Hawaii already had a considerable constitutional history, whose lessons the convention took to heart and whose influence manifests itself throughout the constitution of the republic.⁷

On July 7, 1898, President McKinley approved of the Joint Resolution (commonly referred to as the "Newlands Resolution") "To Provide for Annexing the Hawaiian Islands to the United States." This resolution

authorized the President to appoint, by and with the advice and consent of the Senate, "five commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as soon as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper."

The composition of the commission is described as follows:

President McKinley appointed five men of marked ability. He chose two representatives of the Islands. One was Sanford B. Dole, leader of the revolution, President of the Republic, and first governor of the islands, and the other was Walter F. Frear, subsequently governor of the territory and chief justice of its supreme court. From the Senate came S. M. Cullom, of Illinois, who had become famous for his report in 1886 on national regulation of railroads, and J. T. Morgan, the only Democrat on the Commission, who was for many years on the Foreign Relations Committee and who had been a student of insular affairs and a prominent advocate of independence for Cuba. The fifth member of the committee was Representative R. R. Hitt, who had served a number of terms in Congress after a distinguished career in the diplomatic service.⁸

The commission recommended to Congress an organic act which provided for territorial government. The Hawaii Organic Act, approved on April 30, 1900, took effect on June 14, 1900, and served as Hawaii's "constitution", with amendments, until Hawaii gained statehood in 1959.

The Organic Act conferred U.S. citizenship to "all persons who were citizens of the Republic of Hawaii," and provided that the U.S. Constitution "shall have the same force and effect within the said Territory as elsewhere in the United States." While the Act established a popularly elected bicameral legislature, it called for the appointment of the Governor, Secretary, and the justices of the Supreme Court and Circuit Courts of the Territory of Hawaii by the President of the United States.

III. CONSTITUTIONS OF THE STATE OF HAWAII

Constitution making, like other acts of lawmaking, embodies as well as reflects the play of the formative forces which contribute to shaping the final product. History plays an important role in the canalizing of those forces, even if no more than to proffer a too easy precedent to follow. Hawaii's refurbished 1968 constitution is an amended version of that adopted in 1950. The drafting of the latter was in good part conditioned by the Islands' experiences with the workings of the territory's Organic Act, just as each of the earlier documents relied somewhat on those that preceded it. Notwithstanding this heritage, which helps to relate the substantive nuances and variations of the Islands' constitutions with the long history of development under a succession of South Seas political regimes, as well as with unique geography, demography and an island economy, the process of preparing Hawaii's state constitutions falls squarely within the central stream of constitution making in the United States, and can be studied as such.⁹

A. 1950 Constitution

On August 21, 1959, President Eisenhower proclaimed that "the procedural requirements imposed by the Congress on the State of

Hawaii to entitle that state to admission into the Union have been complied with in all respects and that admission of the state of Hawaii into the Union on an equal footing with other states of the Union is now accomplished."

Hawaii's quest for statehood has a long history.¹⁰ Although statehood was not attained until 1959, the citizens of Hawaii had engaged in a number of organized activities in support and anticipation of statehood. Perhaps the most dramatic of these was the meeting of a "state" constitutional convention in 1950 to draft a "hope chest" state constitution for Hawaii.

But even before the duly elected delegates convened on April 4, 1950, the preliminaries for this convention had been handled by the Territory of Hawaii's Statehood Commission which had, in 1947, appointed a 24-member "state constitution committee" to lay the necessary groundwork for the convention.¹¹

In 1949, the Territorial Legislature passed an act "to provide for a constitutional convention, the adoption of a State Constitution, and the forwarding of the same to the Congress of the United States." (Act 334, Session Laws of Hawaii 1949) Section 1 spelled out the purpose of the Act:

In order that Hawaii may be admitted in the Union on an equal footing with the original states, a convention for the purpose of forming a constitution and state government and otherwise preparing for such admission as a state shall be held, and the act of said convention shall be submitted for ratification by the people, as provided in this Act.

The 1949 law called for a constitutional convention of 63 delegates, chosen on a non-partisan ballot at a primary election on February 11, 1950, and a general election on March 21, 1950. The convention met in a spacious barn-like structure which was the Honolulu Armory (where now stands the new State Capitol) from April 4 to July 22, 1950.

The product of the 1950 convention was overwhelmingly ratified by the citizens of Hawaii in the general election held on November 7, 1950, by a vote of 82,788 to 27,109. A visiting political scientist on the scene at that time notes:

The majority by which the Constitution was ratified was not fully indicative of the pro-statehood sentiment. Some opposed the Constitution in the hope that a more liberal document might result. The only organized opposition came from the International Longshoremen's and Warehousemen's Union, and this union, on May 1, 1950, reiterated it was on record in favor of "speedy enactment of statehood." The features objectionable to the union in the Constitution as submitted were, lack of initiative, referendum and recall provisions, lack of provisions for free school books and supplies, the appointment of judges and departmental heads, the apportionment section for selection of legislators, and an article dealing with the Hawaiian Homes Commission.¹²

The 1950 Constitution, with four amendments imposed upon it by the statehood enabling act, became the Constitution of the State of Hawaii when Hawaii became a state in 1959.

The Constitution of 1950 is a relatively short document of approximately 14,000 words.¹³ It has generally been praised as a modern document incorporating many of the features favored by political scientists and constitutional experts.

The 1950 Constitution stayed with fundamentals and provided the following for the government of the new State of Hawaii: a bicameral legislature with a Senate of 25 members and a House of Representatives of 51 members; a short ballot which calls for the election of only two statewide officers, the Governor and Lieutenant Governor; a centralized administration consisting of no more than twenty principal departments whose executives are to be appointed by the governor with the advice and consent of the senate; supreme court and circuit court justices likewise to be appointed by the governor with the advice and consent of the senate; and local governments under the control of the state legislature. The statewide system of public education was retained as were the provisions of the Hawaiian Homes Commission Act.

The 1950 Constitution, according to Meller, "showed and was meant to demonstrate how thoroughly the people of the Islands were imbued with American political and cultural traditions."¹⁴

B. 1968 Constitution

If the 1950 constitutional convention was motivated by the desire for statehood, the 1968 convention may be said to have been called for the purpose of handling the problem of legislative reapportionment. When the U.S. Supreme Court, in *Reynolds v. Sims* in 1964 and in subsequent cases, announced a "one man, one vote" doctrine, Hawaii, along with the other states, found her legislative apportionment to be in violation of the equal protection clause of the federal constitution.

In early 1965, the federal district court specifically ruled that the apportionment of Hawaii's Senate was invalid. When the Legislature could not agree on an acceptable reapportionment plan, the only route appeared to be what the federal court had directed in the first place: a constitutional convention to amend the provisions for legislative apportionment.

Thus, in the 1966 general election, the following question was on the ballot: "Shall there be a Convention to propose a revision of or amendments to the Constitution." Well aware of the problem which was being addressed by the question, the electorate voted 119,097 (66%) to 62,120 in favor of a constitutional convention.

The Legislature responded by passing Act 222 during the 1967 session. The Act provided for a constitutional convention of 82 delegates, elected on a non-partisan basis at a special election on June 1, 1968. The convention convened on July 15, 1968, using the facilities of the adjoining campuses of McKinley High School and Kapiolani Community College.

A number of factors conspired to discourage the 1968 convention from considering fundamental changes in the Constitution. To begin with, the Convention received less than enthusiastic support from the elected officials and was viewed as being called for the primary, if not sole, purpose of correcting the problem of legislative reapportionment. But it was also significant that of 82 delegates, 42 or 51 percent were incumbent or ex-legislators (37 incumbents and 5 with previous legislative experience). Also the selection of school campuses as a convention site suggested to some a limited convention with a built-in deadline, for the delegates who first officially met on July 15 were well aware that the schools opened their fall terms during the first week of September. Thus, "the product which emerged from the 1968 deliberations consequently could be expected to be more confirmatory than novel, more amendatory than revolutionary, and more concerned with the details of implementation than the broad sweep of philosophic formulation."¹⁵

The 1968 Convention handled the problem of legislative apportionment and also did discuss, albeit not often extensively, a wide range of issues. And it presented its product to the voters in a novel and ingenious way. Unlike the 1950 ballot which asked for a "yes" or "no" vote in ratifying the constitution as a whole, the 1968 convention presented its amendments as 23 discrete proposals and presented the electorate with a three-part ballot: "yes" on all 23 proposals, "no" on all 23 proposals, and "yes except that I vote no on one or more" of the 23 proposals. In this manner, all but one of the amendments were accepted by the voters. The one amendment which was defeated proposed that the voting age be lowered from 20 to 18 years of age; ironically, the adoption of the 26th amendment to the U.S. Constitution in 1971 lowered the voting age to 18.

Besides legislative apportionment, other amendments which were ratified in 1968 which may be noteworthy accomplished the following: strengthened certain aspects of the Bill of Rights, liberalized voter qualifications, authorized a presidential preferential primary (not yet implemented by the Legislature), made changes in legislative procedures, lengthened the terms of justices of the supreme and circuit courts, changed the state and county debt limits, gave local governments more control over their internal organization through their charters, required

each jurisdiction to adopt a code of ethics, and provided for collective bargaining for public employees.

C. *Prelude to the 1978 Constitutional Convention*

The Hawaii Constitution contains this provision on constitutional conventions:

The legislature may submit to the electorate at any general or special election the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period. (Article XV, Sec. 2.)

Since that question had been asked in 1966 and answered in the affirmative, resulting in the 1968 convention, the query in 1975 was: should not the question be placed on the 1976 general election ballot as a "ten-year period" would have elapsed.

The Lieutenant Governor requested an opinion on the matter from the Attorney General. The Attorney General responded that "since the ten-year period which began after November 8, 1966, the last time the question was submitted to the electorate, would not expire until November 8, 1976,"¹⁶ the question should not be put until the general election of 1978. (The general election of 1976 was scheduled for November 2.) This opinion was subjected to a court challenge and public sentiment seemed to favor a 1976 determination of the question. The legislature bowed to public sentiment and to "common sense" in calculating ten years, and decided to place the question before the voters in 1976.

The question, "Shall there be a convention", appeared on the ballot at the general election on November 2, 1976, and the vote was 199,831 (74%) in favor and 69,264 against.

This rather large affirmative vote may have surprised some political observers as, unlike the period before the 1950 and 1968 conventions, there appeared to be no single overriding or pressing issue. Perhaps Hawaii shared with the rest of the nation a general dissatisfaction with government following Watergate. Public interest groups such as Common Cause and the League of Women Voters not surprisingly pushed for a constitutional convention as a healthy and democratic device to review basic government organization and procedures. Special interest groups saw yet another opportunity to write their platforms into the Constitution. The Honolulu dailies, particularly *The Honolulu Star-Bulletin*, editorialized in favor of a constitutional convention. Few political leaders, despite their private reservations as to the "need" for a convention, would publicly oppose the holding of another constitu-

tional convention. As election time approached, most of Hawaii's political leaders said that they favored the holding of a constitutional convention although there seemed to be little agreement as to what major issues should be addressed.¹⁷

The Hawaii Legislative Reference Bureau, pursuant to a House Resolution, prepared and widely distributed before the election an informational brochure, "The Constitutional Convention: Yes or No." While it obviously did not urge a "yes" vote (and did explain "what will happen if the voters reject the calling of a constitutional convention"), the brochure contained a helpful listing of "kinds of subjects" which the constitutional convention could consider. Among the twenty questions listed under nine general subject headings were the following:

- Whether there should be initiative, referendum, or recall.
- Whether the terms of elected officials should be limited.
- Whether the Legislature should be other than bicameral. (Even the possibility of a "parliamentary form" was mentioned.)
- Whether any executive officer (other than governor and lieutenant governor) should be elected.
- Whether there should be a change in the manner of selecting judges.
- Whether counties should have the authority for taxation.
- Whether the debt limit should be abolished or changed.
- Whether changes should be made in the Board of Education.
- Whether the Constitution should be more specific about the conservation of natural resources.
- Whether the right to strike of public employees should be limited.

That there were citizen groups, some large in number and/or vocal, who favored constitutional changes on many of the above questions there was no doubt. As *The Honolulu Star-Bulletin* editorialized, "The list of major questions that such a convention should address is substantial."¹⁸

But there was general agreement that there was little or no consensus as to the specific major issues the convention should address.

Against this background and with a mandate from the electorate that a constitutional convention be held, the Legislature passed Act 17 during the Special Session of 1977. The law called for the selection of 102 delegates at a non-partisan special election on May 20, 1978. The convention was scheduled to "meet at Honolulu on the 5th day of July, 1978, at a suitable place designated by the governor."

As this article was being written in late June, the convention was not yet in official session, and little can be said about its product. But some comparisons of the 1950, 1968, and 1978 constitutional conventions may be useful, and most of the remainder of this article will attempt to describe some similarities and differences and discuss some of their implications.

IV. CONSTITUTIONAL CONVENTIONS: 1950, 1968, AND 1978

A. *Population, Voters, and Elections*

That Hawaii has undergone rapid changes during the period of its three constitutional conventions from 1950 to 1978 can be seen in some of the following statistics.

From 1950 to 1977, the *population* of the islands increased 79 percent:¹⁹

<i>Year</i>	<i>Population</i>	<i>Percent Increase</i>
1950	499,794	
1960	632,772	26.6
1970	769,913	21.7
1977	894,700	16.2

The *distribution of the state's population* is of political significance, and 80 percent of Hawaii's people reside on the island of Oahu (the City and County of Honolulu). What may be significant in the following set of data is that, since 1970, the neighbor islands have been growing at a faster rate.²⁰

<i>Year</i>	<i>Oahu</i>		<i>Neighbor Islands</i>		<i>Total</i>
	<i>Population</i>	<i>Percent</i>	<i>Population</i>	<i>Percent</i>	
1950	353,020	70.6	146,774	29.4	499,794
1960	500,409	79.1	132,363	20.9	632,772
1970	630,528	81.9	139,385	18.1	769,913
1977	721,800	80.7	172,900	19.3	894,700

The general population rose 79 percent from 1950 to 1977. Even more dramatic was the 181 percent increase in the number of *registered voters who were eligible to participate* in the 1950, 1968, and 1978 elections for constitutional convention delegates.²¹

<i>Election Date</i>	<i>Registered Voters</i>	<i>Percent Increase (1950)</i>
March 21, 1950	122,849	
June 1, 1968	242,827	97.7
May 20, 1978	344,952	180.8

But as the eligible electorate grew, the *voting turn-outs at the elections* for constitutional convention delegates decreased.²²

<i>Election Date</i>	<i>Registered Voters</i>	<i>Votes Cast</i>	<i>Percent Voting</i>
1950	122,849	97,361	79.3
1968	242,827	110,370	45.5
1978	344,952	119,250	34.6

The voting turn-out of 35 percent in the 1978 special election is the lowest ever recorded for elections in Hawaii. Although a low turn-out is predictable for any special election, most observers were somewhat surprised inasmuch as the electorate had voted in favor of *holding a constitutional convention* by an overwhelming 3-to-1 margin—a margin greater than the 2-to-1 recorded ten years earlier, as shown below:²³

<i>Election Date</i>	<i>In Favor of Convention</i>	<i>Against Convention</i>
November 8, 1966	119,097 (65.7%)	62,120 (34.3%)
November 2, 1976	199,831 (74.3%)	69,264 (25.7%)

As the number of delegates to each succeeding convention increased (from 63 to 82 to 102), so did the number of candidates running for those positions. *Ratios of delegates to candidates and to registered voters* are given below:

<i>Year</i>	<i>Delegate Posts</i>	<i>Candidates</i>	<i>Ratio : Delegates to Candidates</i>	<i>Ratio : Delegates to Registered Voters</i>
1950	63	243	1:3.9	1:1,950
1968	82	378	1:4.6	1:2,961
1978	102	697	1:6.8	1:3,382

The large number of candidates in 1978 may partly be attributed to a desire for "grass roots" or participatory democracy. The media, particularly the newspapers, and public interest groups extolled the virtues of other than incumbent legislators serving as convention delegates. How well this campaign may have succeeded²⁴ can be seen in the fact that only two incumbent legislators chose to run as convention delegates, and both were elected. By contrast, in the 1968 elections, 45 incumbent legislators were candidates and 37 were elected delegates.

In 1978, the election districts were smaller than for the previous delegate elections. This coupled with the fact that two were to be elected from each district in a single special election seemed to have increased, in the eyes of some candidates, the possibilities of winning since only a small plurality could mean victory.

At any rate, a record number of candidates filed for election for the two seats in each district. The smallest number of candidates in each district was 6 (4 districts); one district had as many as 30 candidates and 7 districts had more than 20 candidates. The Oahu districts averaged more candidates (1:7.5) than the neighbor island districts (1:4.7).

With each district averaging over 3,000 registered voters, the highest vote getter in the 1978 elections garnered 1,982 votes (76.7 percent of those voting in his district). The delegate elected with the fewest votes had 363 (19.8 percent of those voting in his district). With the large number of candidates in each district, it is not surprising that the great majority (89) of the elected delegates received less than 50 percent of the votes cast in their districts.

After a constitution is drafted or amended, such changes need the ratification of the voters. These *ratification elections* are held in conjunction with general elections and voter turn-outs are therefore generally good. In the general elections of 1950 and 1968, the electorate approved the work of the conventions by wide margins:

November 7, 1950	YES	82,788 (75.3%)
	NO	27,109 (24.7%)
November 5, 1968 ²⁵	YES (ALL)	49,546 (31.7%)
	YES, BUT . . .	81,313 (52.1%)
	NO (ALL)	25,287 (16.2%)

B. *Conventions and Delegates*

As in the past, no specified time limits have been imposed on the 1978 constitutional convention. However, a limit to each delegate's pay at \$4,000, most delegates' commitments to their regular occupations or to running for political office in the general election of '78, and the expectation (though not a requirement) that the product of the convention would be voted upon during the general election of November 7, 1978, all conspire to restrict the duration of the convention. Past conventions met as follows:

<i>Conventions</i>	<i>Convened</i>	<i>Adjourned</i>	<i>Length in Days</i>	
			<i>Working</i>	<i>Calendar</i>
1950	April 4, 1950	July 22, 1950	79	101
1968	July 15, 1968	October 21, 1968	57	72

A suitable *site* for constitutional conventions always seems to present problems, and all conventions have met in temporary quarters:

- 1950 Honolulu Armory (since demolished and State Capitol erected on site)
- 1968 McKinley High School and Kapiolani Community College
- 1978 Old Federal Building (Queen and Richards Streets)

One of the striking features of the 1978 convention is its *delegate composition*. Unlike the conventions of 1950 and 1968, the 1978 convention does not contain familiar political faces. Mention has already been

made of the fact that only two *incumbent legislators* chose to run and were elected to the 1978 convention. In tabular form, this rather unique feature of the 1978 convention can readily be seen.²⁶

	1950		1968		1978	
	No.	Percent of Delegates	No.	Percent of Delegates	No.	Percent of Delegates
Incumbent legislators	12	(19%)	37	(45%)	2	(2%)
Previous legislative experience	6	(10%)	5	(6%)	2	(2%)
Total	18	(29%)	42	(51%)	4	(4%)

While incumbent and ex-legislators constituted 51 percent of the 1968 convention, they were down to only four (4 percent) in 1978. This sparsity of experienced elected officials also applied to county councilmen. Whereas in 1950 there were six and in 1968 five incumbent or ex-councilmen, in the 1978 convention there was a lone incumbent councilman. The 1978 convention did have two ex-county chairpersons as delegates. Six delegates served in the 1968 constitutional convention, and one delegate served in the 1950 convention.

The new faces of 1978 were also, on the average, younger than their predecessors. The median age in 1968 was 42; in 1978 the median was 35. The *age distribution* of the 1968 and 1978 convention delegates follows:²⁷

Age Group	1968 Delegates		1978 Delegates	
	No.	Percent	No.	Percent
50+	18	(22.0%)	24	(23.5%)
31-50	55	(67.1%)	45	(44.1%)
20-30	7	(8.5%)	33	(32.4%)
Unknown	2	(2.4%)	0	
Total	82		102	

While those over 50 years of age did not decrease (there were six retirees in 1978 compared to two in 1968), there was a marked increase (from 9 to 32 percent) in delegates below the age of 30 in 1978. The range in ages ran from 22 to 73 in 1950, 20 to 63 in 1968, and 20 to 67 in 1978.

Another obvious change in delegate composition in 1978 was the significantly larger number of *women delegates* who were elected:

1950	5 of 63 delegates	(7.9%)
1968	8 of 82 delegates	(9.8%)
1978	30 of 102 delegates	(29.4%)

Some are sensitive to whether delegates are island-born or, if not, how long they have been resident in the islands. The data below show the drop in proportions of island-born delegates:²⁸

	1968		1978	
	No.	Percent	No.	Percent
Island-born	69	(84.2%)	71	(69.6%)
Others: Years of Residence				
over 20	7	(8.5%)	9	(8.8%)
11-20	0		11	(10.8%)
6-10	2	(2.4%)	4	(3.9%)
5 or fewer	4	(4.9%)	7	(6.9%)
Total	82		102	

Among the 1978 delegates are a larger number, than in previous conventions, of those who have more recently become residents of the Islands. This reflects the recent migration trends from the mainland to Hawaii and today's easy and high mobility. This mobility also accounts for the fact that a few "natives" are not listed as island-born since they were born in other areas of the world where their parents, well-established island residents, were then in temporary residence.

Meller offers a classification of the 1950 and 1968 delegates by "occupation." A preliminary attempt is made below to place the 1978 delegates into those occupational categories.²⁹

Occupation	1950		1968		1978	
	No.	Percent	No.	Percent	No.	Percent
Lawyers	19	(30%)	25	(30%)	20	(19.6%)
Business	25	(40%)	35	(43%)	26	(25.5%)
Educators	7	(11%)	6	(7%)	14	(13.7%)
Doctors, etc.	5	(8%)	2	(2%)	0	
Housewives	3	(5%)	2	(2%)	3	(2.9%)
Union Organizers	2	(3%)	2	(2%)	1	(1.0%)
Full-Time Public Officers	1	(2%)	2	(2%)	1	(1.0%)
Retired	1	(2%)	2	(2%)	6	(5.9%)
Student	0		1	(1%)	7	(6.9%)
Civil Service Employees	0		5	(6%)	13	(12.7%)
Unemployed	0		0		6	(5.9%)
Others or Unknown	0		0		5	(4.9%)
Total	63		82		102	

What is noteworthy on the "occupation" table is the decrease in 1978 of lawyers, businessmen, and doctors, and the increase in educators, retirees, students, and civil service employees. Also interesting is the fact that six delegates just before the convention described themselves as "unemployed;" the majority of these worked as legal researchers in the recently adjourned legislature.³⁰

C. *The Politics of Constitutional Conventions*

Constitutions are political documents. The fact that they help determine the rules of politics would in itself make them the object of manipulation by the various interests of society. Their content is constantly a matter of concern to groups and individuals, and the very fact that constitutions are more difficult to change than are statute laws causes groups to protect their special interests by incorporating them whenever possible into the fundamental law of the state.³¹

In drawing the important distinction between constitutional conventions and legislative sessions, there is a tendency to attribute to the former an apolitical or "above politics" nature. But it is impossible to avoid politics in a convention which is dealing with the basic political document of the state. However, it is often the case that the politics of constitutional conventions will differ somewhat from the partisan politics which is associated with legislatures.

Some key observations about past constitutional convention politics in other states may help in the understanding of Hawaii's convention. At any rate, it would be interesting to see if these findings are applicable to Hawaii. For example, it has been noted that the basic division within most conventions is not between the political parties but between *reformers* and *preservers of the status quo*. "This line of division is often more pronounced than the division between Republicans versus Democrats, urban versus rural, a governor's supporters versus his opponents, legislators versus nonlegislators, and so forth."³² This division seemed evident in the pre-convention organizational efforts which split the Hawaii delegates into two camps—a more conservative majority group versus a more reform-minded minority that is referred to in the press as "independents." And it is interesting to note that the elected chairman of the majority group, predominantly made up of Democrats, is a Republican.

To understand further the behavior of convention delegates, a six-category delegate typology has been developed. This typology is based on the "two interrelated dimensions of (1) motivation for entering the convention and (2) attitude toward innovation. The types, which may be ranged on a continuum between the status quo and reform poles, include:"³³

Standpatters — are office holders who enter the convention to protect a present position in the governmental structure.

Standins — are selected to the convention as a reward for various kinds of political loyalty by local political magnates or office holders who find it inadvisable to seek the office themselves.

Statesmen — have held positions in high public office and enter the convention for public prestige.

Chieftains — are individuals with a large existing power base in state politics, and they enter the convention for career advancement.

Aspirants — are young professionals, often lawyers, on the political make; the convention is a stepping-off point to further political activity.

Reformers — are likely to be highly educated professionals who enter the convention to change the established order.

Some of the delegates may not fall neatly into any of these categories but the typology may be of assistance in fathoming convention behavior and politics. Certainly, the major battles will be between standpatters and reformers, and every convention seems to provide a launching pad for aspiring politicians.³⁴ Hawaii's 1978 convention, with young and inexperienced delegates, may have more than its share of "aspirants."

V. ISSUES

The issue for the 1950 convention was statehood; the issue for the 1968 convention was reapportionment. As the 1978 Convention approached its opening day, there was little consensus among the delegates as to what the major issues were. A concern, according to some, as politicking went on to determine leadership and organizational patterns, was to keep the convention open so all issues could be thoroughly and publicly aired.

The 1978 Convention has been characterized as "grass roots." Right after the election, *The Honolulu Star-Bulletin* editorialized:

We like what we see in the results of Saturday's Con Con voting.

As expected, the voter turnout was disappointing, but the winners appear to be a serious and dedicated lot.

Nothing has happened since the candidate filing deadline to change our judgment that this will be very much a "grass roots" Con Con.³⁵

The editorial went on to predict that: "Nevertheless, this will be a conservative convention. The delegates have said in overwhelming numbers that they want to make only a few changes in the existing constitution."

The front page headline of the *Sunday Star-Bulletin and Advertiser* (May 21, 1978) announcing the delegate election results read: "Meager Con Con voting puts moderate reform on agenda." In the same edition, an article analyzing the election concluded: "No single issue emerges as the dominant concern of the newly elected Constitutional Convention delegates. . . . This does not mean that the convention will not eventu-

ally center its attention on a few issues, but rather that the delegates hold a range of ideas on what should be the highest priority in their review of the state constitution."³⁶ A news analysis which appeared the following morning echoed this sentiment: "On the whole, the public can expect to see only a few changes proposed by this summer's Hawaii Constitutional Convention."³⁷

Numerous polls were conducted to determine the priority issues for the constitutional convention. The editor of *The Honolulu Star-Bulletin* requested his readers to "speak up" and nominate, through a printed ballot, "the matters you think are most important for the 1978 Con Con to consider." (September 12, 1977) The results were published in the September 23, 1977, edition, and the list began:

1. A one-house legislature (184 votes)
2. Provide initiative so citizens can petition for law changes (151)
3. Provide referendum—direct popular voting on initiatives (148)
4. Provide recall—public petition for removal of elected officers by special election (146)
5. Limit the right of public employees to strike (107)
6. Provide for restraints on population growth (106)

The editor sent out another invitation to his readers to "speak up" right after the delegate elections (on May 22, 1978) and published the results on June 12. He summarized the results as follows:

Initiative and referendum was the issue that drew the most votes for top priority consideration . . .

However, the proposal receiving the most affirmative votes was stronger ethics and public disclosure requirements. The most negative votes went to the proposal to ban abortion.³⁸

Two University of Hawaii political science professors conducted an extensive telephone poll and the results were published in *The Honolulu Advertiser* (November 20, 21, and 22, 1977). In their survey, they "uncovered a vast reservoir of dissatisfaction with state governmental performance in general, and great unhappiness with certain agencies and branches in particular." Their listing of issues "extremely important to discuss at Con Con" read:

- | | |
|---------------------------|----------------------------|
| 1. Crime | 6. Political corruption |
| 2. Public education | 7. Environmental pollution |
| 3. Conservation of energy | 8. Criminal justice system |
| 4. Welfare system | 9. Housing |
| 5. Unemployment | 10. Population growth |

A more extensive poll of "Hawaii public opinion concerning the 1978 Hawaii Constitutional Convention" was prepared for The First Hawaiian Bank by the Public Affairs Advisory Services, Inc., during the periods January 28 to February 1, 1978, and April 15 to 18, 1978.³⁹

Some of the "summary highlights" of the February 24, 1978, report are:

- A plurality (38.7 percent) believe that the major purpose of the 1978 Constitutional Convention is to make necessary changes in the basic structure of State government. The others believe that the Convention's major purpose is to solve current issues or problems.
- A plurality (45.6 percent) feel "somewhat informed" about major issues which may confront the 1978 Constitutional Convention. However, 38.7 percent feel that they are "not very well-informed."
- A majority (52.0 percent) anticipate that the 1978 Constitutional Convention should "make a few changes" in the document whereas 31.0 percent believe that "a lot of changes" should be made.

On "general substantive issues," it was reported that majorities favored: limits on government salaries, the death penalty for major crimes, limits to population growth, keeping public employee collective bargaining, and not prohibiting abortions.⁴⁰

Among the results of the second poll were the following: "A majority (50.1 percent) of the public indicate that they don't really know about any of the people running in their district for the Con Con," and that majorities favored initiative, referendum, and "the Hawaii equivalent of the E.R.A."⁴¹

All of these polls seem to confirm the fact that there was no overriding issue to be faced by the 1978 Convention. Indeed, the polls, as they differ in their procedures and techniques, do not agree on the identification of priority issues to be discussed by the convention.

As the convention progresses, major issues may emerge. But writing on the eve of the opening day of the convention, one is tempted to ask: Is the constitutional convention the most effective way of stimulating public discussion on and formulating solutions for state and local problems? Will not a constitutional commission,⁴² perhaps followed by a constitutional convention if necessary, serve better such purposes? Need a constitutional convention be called every ten years?

NOTES

- ¹ This article was written in late June before the 1978 Constitutional Convention officially convened.
- ² Ralph S. Kuykendall, *Constitutions of the Hawaiian Kingdom; A Brief History and Analysis* (Honolulu: Hawaiian Historical Society, Papers, No. 21, October 8, 1840), p. 7. For copies of constitutions, see Robert C. Lydecker, *Roster: Legislatures of Hawaii, 1841-1918; Constitutions of Monarchy and Republic; Speeches of Sovereigns and President* (Honolulu: The Hawaiian Gazette Co., 1918); also Henry Edward Chambers, *Constitutional History of Hawaii* (Baltimore: Johns Hopkins Press, 1896).
- ³ Lydecker, *op.cit.*, p. 4.
- ⁴ Thomas Marshall Spaulding, *The Constitution of the Hawaiian Republic* (Honolulu: University of Hawaii, Occasional Paper No. 12, April, 1931), p. 3.
- ⁵ Kuykendall, *op.cit.*, p. 56. See also Gavan Daws, *Shoal of Time; A History of the Hawaiian Islands* (New York: Macmillan, 1968), pp. 268-70, 280-83.
- ⁶ Spaulding, *op.cit.*, p. 3.
- ⁷ *Ibid.* For a contemporary explanation of the Constitution of the Republic of Hawaii, see also Albert Francis Judd, "The Constitution of the Republic of Hawaii," *Yale Law Journal*, Vol. 4, No. 2 (December, 1894), pp. 53-60.
- ⁸ Robert M. C. Littler, *The Governance of Hawaii; A Study in Territorial Administration* (Stanford University, California: Stanford University Press, 1929), p. 54.
- ⁹ Norman Meller, *With an Understanding Heart; Constitution Making in Hawaii* (New York: National Municipal League, State Constitutional Convention Studies Number Five, 1971), pp. 1-2. The rest of the article relies heavily on this comprehensive report of the 1950 and 1968 constitutional conventions by Professor Meller.
- ¹⁰ For a summary of statehood efforts, see Daws, *op.cit.*, pp. 381-91. Also Lawrence H. Fuchs, *Hawaii Pono: A Social History* (New York: Harcourt, Brace & World Inc., 1961), pp. 406-14; Ralph S. Kuykendall and A. Grove Day, *Hawaii: A History; From Polynesian Kingdom to American State* (Englewood Cliffs, New Jersey: Prentice-Hall, Rev. ed., 1961), pp. 287-303.
- ¹¹ George H. McLane, "Hawaii Plans Its First State Constitution" (Honolulu: Hawaii Statehood Commission, 1947, Mimeo), p. 3. It should be noted that drafting state constitutions before attaining statehood is not without precedent; fifteen states before Hawaii had followed this practice. It should also be noted that in 1948 the students at the University of Hawaii held a mock constitutional convention and drafted their version of a constitution for the State of Hawaii.
- ¹² S. Gale Lowrie, "Hawaii Drafts A Constitution," *University of Cincinnati Law Review*, Vol. XX, No. 2 (March, 1951), p. 217.
- ¹³ The median length of state constitutions is estimated at 21,350 words; the longest in 1950 was that of California with 72,000 words. See *The Book of the States* for biennial compilations and comparisons of state constitutional data.
- ¹⁴ Meller, *op.cit.*, p. 84. For a discussion of the 1950 Constitution, see also Lowrie, *op.cit.*, and Harold S. Roberts, "Making Hawaii's Constitution," *State Government*, Vol. 23, No. 12 (December, 1950), pp. 276-80, also "Sound Prelude to Statehood," *National Municipal Review*, Vol. 39, No. 11 (September, 1950), pp. 377-82.
- ¹⁵ Meller, *op.cit.*, p. 86.
- ¹⁶ State of Hawaii, Department of the Attorney General, Opinion No. 75-6, dated May 27, 1975.
- ¹⁷ See, for example, comments by political leaders in *The Honolulu Star-Bulletin* of October 26, 1976, p. A-19.
- ¹⁸ *The Honolulu Star-Bulletin*, Editorial, November 13, 1975, p. A-20.
- ¹⁹ U.S. Department of Commerce, Bureau of the Census, *U.S. Census Of Population, 1950, 1960, 1970*; State of Hawaii, Department of Planning and Economic Development, for provisional estimate of the population of Hawaii as of July 1, 1977.

²⁰ *Ibid.*

²¹ State of Hawaii, Office of the Lieutenant Governor, *Reports on Results of Votes Cast*. For a summary of election statistics, see Robert C. Schmitt, *Historical Statistics of Hawaii* (Honolulu: University Press of Hawaii, 1977).

²² State of Hawaii, Office of the Lieutenant Governor, *op.cit.* (Note that the voting percentages are in terms of "registered voters," a more meaningful percentage would be in terms of "eligible voters.")

²³ *Ibid.*

²⁴ That the campaign to discourage legislators from running as constitutional convention delegates succeeded too well may be reflected in the editorials in *The Honolulu Advertiser*, April 22, 1978, and *The Honolulu Star-Bulletin*, May 19, 1978.

²⁵ For explanation of 1968 voting, see Meller, *op.cit.*, pp. 118-134.

²⁶ 1950 and 1968 tabulations from Meller, *op.cit.*, p. 45. See *The Honolulu Advertiser*, "Political pros are scarce in '78 Con Con," May 22, 1978.

²⁷ 1968 from Meller, *op.cit.*, p. 41; 1978 from *The Honolulu Star-Bulletin* and City and County of Honolulu, *Roster of Registered Voters*.

²⁸ 1968 from Meller, *op.cit.*, p. 40; 1978 from *The Honolulu Star-Bulletin*.

²⁹ Meller, *op.cit.*, p. 42; 1978 data courtesy of *The Honolulu Star-Bulletin*. For 1978, the categories of "unemployed" and "others or unknown" have been added. Complete information is expected after the delegates assemble in Honolulu for the convention.

³⁰ See *The Honolulu Star-Bulletin*, "Legislative Aides Run for Con Con," April 22, 1978.

³¹ Charles R. Adrian, *State and Local Governments* (New York: McGraw-Hill, 4th ed., 1976), p. 84.

³² Thomas R. Dye, *Politics in States and Communities* (Englewood Cliffs, N.J.: Prentice-Hall, 3rd ed., 1977), p. 28.

³³ Elmer E. Cornwell, Jr., Jay S. Goodman, and Wayne R. Swanson, "State Constitutional Conventions: Delegates, Roll Calls, and Issues," *Midwest Journal of Political Science*, 14 (February, 1970), esp. pp. 107-112.

³⁴ The 1968 Convention was the springboard for nine elected officials. See *The Honolulu Star-Bulletin*, "Con Con Has Been Political Springboard," May 22, 1978.

³⁵ *The Honolulu Star-Bulletin*, May 22, 1978.

³⁶ *The Sunday Star-Bulletin and Advertiser*, May 21, 1978.

³⁷ *The Honolulu Advertiser*, May 22, 1978.

³⁸ *The Honolulu Star-Bulletin*, "'Speak Up' Results," June 12, 1978.

³⁹ Poll results were published by the Public Affairs Advisory Services, Inc., in reports dated February 24, 1978, and May 10, 1978. The results were also published in *The Honolulu Advertiser*, February 19 to 26, 1978, and May 7 to 10, 1978.

⁴⁰ Public Affairs Advisory Services, Inc., "Final Report of a Poll of Hawaii Public Opinion concerning the 1978 Hawaii Constitutional Convention, prepared for The First Hawaiian Bank and conducted on January 28-February 1, 1978" (Honolulu: February 24, 1978), p. iii.

⁴¹ Public Affairs Advisory Services, Inc., "Final Report of a Poll of Hawaii Public Opinion concerning the 1978 Hawaii Constitutional Convention prepared for The First Hawaiian Bank and conducted on April 15-18, 1978" (Honolulu: May 10, 1978), pp. 1-3.

⁴² A constitutional commission is an appointed group of citizens who will do research and hold public hearings on selected public issues; recommendations can be submitted to the legislature or to a constitutional convention. Several states now have constitutional commissions; see the biennial reviews of state constitutional developments in *The Book of the States*. Some local discussion of constitutional commissions appeared in *The Honolulu Advertiser*: an editorial on January 29, 1976, and a rebuttal on February 16, 1976.