Papers of the Hawaiian Historical Society
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of the
HAWAIIAN KINGDOM

A Brief History and Analysis

By
RALPH S. KUYKENDALL

Associate Professor of History, University of Hawaii
President, Hawaiian Historical Society

To Commemorate the Signing of Hawaii's
First Written Constitution, October 8, 1840

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PRÉFACÉ

This study is not a constitutional history of the Hawaiian Kingdom. Its purpose is more limited—to commemorate the signing of Hawaii’s first written Constitution just one hundred years ago (October 8, 1840), by giving a brief history and analysis of the four monarchical Constitutions under which Hawaii was governed from 1840 to 1893. The reigns of Kamehameha IV and Kamehameha V being a comparatively obscure and somewhat neglected period of Hawaiian history, I have felt justified in giving relatively more attention to developments of that period affecting the Constitution than to those which occurred earlier and later.

The account is based upon the Constitutions themselves, the records of the legislature and other original materials preserved in the Archives of Hawaii, and contemporary newspaper reports. In an Appendix is given the text of all the constitutional amendments that were adopted during the period covered by this study.

I wish to make grateful acknowledgment to the archive staff and especially to Miss Maude Jones, Librarian, Mrs. Henrietta D. Holt, Assistant Librarian, and Mr. Paul Kaelemakule, in charge of legislative records, for their very valuable assistance in finding much of the material used in the preparation of this paper.

R. S. K.
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Constitutions of the Hawaiian Kingdom

Background of First Written Constitution

The idea of a written constitution was a natural result of the operation of foreign influences. By 1840 Hawaii had been in increasingly intimate contact with the outside world for more than half a century. There were many foreigners living in the islands. There were many foreigners living in other parts of the world who had important interests in Hawaii. Several foreign governments had established official relations with the Hawaiian government. The eyes of these foreign nations were being turned more and more towards the Pacific area, within which Hawaii occupied a position of great strategic value.

Hawaiian ideas of government were so different from those of foreigners that the foreigners, in many cases, did not understand them; in some cases foreigners refused to admit the validity of the Hawaiian mode of government and refused to submit to it. Through this circumstance and the controversy over the Catholic religion, the government of the islands became involved in rather serious difficulties with two great foreign powers, France and England, and its independence was thereby endangered. In order to safeguard the independence of the country it appeared to be necessary to give the government a measure of fixity and tangibility, and to assimilate it more or less to the forms and practices of the governments of Europe and America.

Of the foreigners living in Hawaii, the greater number, and the ones having the most influence with rulers and people alike, were Americans, who looked upon a written constitution as an essential foundation of government, and who were ardent believers in the principle of democracy. Such views as these were communicated to the Hawaiians and found lodgment in the minds of many of them. Foreign contacts in general, and especially the work of the American missionaries over a period of twenty years led to the development of liberal ideas, if not an actual liberal movement, among the Hawaiian people; and this was viewed rather sympathetically by the Kings and several of the influential chiefs.
As early as 1836 the chiefs made an unsuccessful effort to obtain from the United States a qualified economic and political adviser; and in 1838, in default of someone specially trained along these lines, they employed William Richards, one of the American missionaries, as teacher, translator, and chaplain for the King. The employment of Richards can be accepted as evidence of the earnest purpose of Kamehameha III and his advisers to govern justly and to put their political house in order.

Aided by Richards and several graduates of the high school at Lahainaluna, the King and chiefs gave diligent attention to the question of governmental policy and law. First important product of their deliberations was the Declaration of Rights, published, together with a little code of laws, on June 7, 1839. This Declaration is frequently referred to as the Hawaiian Magna Charta. It is somewhat similar to the bills of rights found in most modern constitutions. There may indeed be some reason for thinking that the Declaration was from the beginning designed to be the introductory part of a projected constitution, whose completion was interrupted by the French troubles of 1839 and delayed by the difficulty of agreeing on its terms; under the circumstances, it may have been thought best to promulgate the Declaration at once rather than to wait for the completion of the constitution. On the other hand, it may have been intended simply as a kind of preamble to the laws of 1839.

In the Declaration itself (English version), it is referred to as “this constitution”; and Judge W. F. Frear has pointed out that not only the Declaration of Rights but also the laws accompanying it contain matter that is properly constitutional or organic in character. However, although the Declaration be thought of in that way, as constitutional in character, it is, certainly, not a complete constitution, but at most only a fragment of one.

A Honolulu newspaper, the Polynesian, in its fourth issue, July 4, 1840, gives the information that for two weeks past the King and “most of the chiefs of the islands have spent considerable time [in Honolulu] in consultation for the purpose of forming new laws”, and adds:

“If we are correctly informed, the government is about to adopt some rules in the form of a Constitution which will in some degree limit the power, and define the duties of the king, governors and other chiefs.”
From news notes in the Polynesian it appears that, during the summer and fall of 1840, the King divided his time about equally between Honolulu and Lahaina. Although the newspaper mentions the King’s arrival in Honolulu on September 29 and his departure for Lahaina on October 9, it says nothing about an occurrence of much more importance—the signing of the Constitution by King Kamehameha III and Kekauluohi, the Kuhina-nui—which took place on October 8, 1840, in Honolulu. In fact the Polynesian says nothing further about the Constitution until January 2, 1841, when it notes that an edition of 11,000 copies of the new Constitution and laws had been printed at the Mission Press, with the further information that a translation had been promised for publication in the Polynesian. In accordance with this promise, the translation of the Constitution was printed in the Polynesian of February 6, and publication of the laws was begun a month later. In a letter by the translator (probably William Richards), printed along with the Constitution, some remarks are made about the manner in which the laws were enacted, and the following statement is made about the Constitution:

"The Constitution, after it had been approved by the other chiefs was sent by a messenger appointed for that object, to Gov. Adams, of Hawaii. He approved of the whole except that part which limits the power of the Governors. The King and Chiefs who have been together, have been unanimous in the acts which they have passed."

From the little information that we have about the way in which the Constitution of 1840 was drawn up, it seems probable that it was first drafted by some graduate of the high school at Lahainaluna, then subjected to amendment and revision while going through several readings by the King and chiefs before reaching its final form.

**Constitution of 1840**

An amended version of the Declaration of Rights of 1839 forms a preamble to the Constitution. This is followed by a statement of certain principles to be observed in the making and enforcement of laws. These two sections together correspond to the bills of rights found in most constitutions. The Constitution as a whole, though not very extensive, is too long to reproduce in its entirety; but the bill of rights portion, quoted here from the Polynesian, will give a good idea of the spirit in which it was conceived.
Declaration of Rights, both of the People and Chiefs

"'God hath made of one blood all nations of men to dwell on the earth,' in unity and blessedness. God has also bestowed certain rights alike on all men and all chiefs, and all people of all lands.

"These are some of the rights which He has given alike to every man and every chief of correct deportment; life, limb, liberty, freedom from oppression, the earnings of his hands and the productions of his mind, not however to those who act in violation of the laws.

"God also established governments, and rule, for the purpose of peace; but in making laws for the nations it is by no means proper to enact laws for the protection of the rulers only, without also providing protection for their subjects; neither is it proper to enact laws to enrich the chiefs only, without regard to enriching their subjects also, and hereafter there shall by no means be any laws enacted which are at variance with what is above expressed, neither shall any tax be assessed, nor any service or labor required of any man, in a manner which is at variance with the above sentiments.

Protection for the People Declared

"The above sentiments are hereby published for the purpose of protecting alike, both the people and the chiefs of all these islands, while they maintain a correct deportment, that no chief may be able to oppress any subject, but that chiefs and people may enjoy the same protection, under one and the same law.

"Protection is hereby secured to the persons of all the people, together with their lands, their building lots, and all their property, while they conform to the laws of the kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws. Whatever chief shall act perseveringly in violation of this constitution, shall no longer remain a chief of the Hawaiian Islands, and the same shall be true of the Governors, officers, and all land agents.

"But if anyone who is deposed should change his course, and regulate his conduct by law, it shall then be in the power of the chiefs to reinstate him in the place he occupied, previous to his being deposed.

Constitution

"It is our design to regulate our kingdom according to the above principles, and thus seek the greatest prosperity both of all the chiefs and all the people of these Hawaiian Islands. But we are aware that we cannot ourselves alone accomplish such an object—God must be our aid, for it is His province alone to give perfect protection and prosperity.—Wherefore we first present our supplication to HIM, that he will guide us to right measures, and sustain us in our work.
"It is therefore our fixed decree,

"I. That no law shall be enacted which is at variance with the word of the Lord Jehovah, or at variance with the general spirit of His word. All laws of the Islands shall be in consistency with the general spirit of God's law.

"II. All men of every religion shall be protected in worshipping Jehovah, and serving Him, according to their own understanding, but no man shall ever be punished for neglect of God unless he injures his neighbor, or bring evil on the kingdom.

"III. The law shall give redress to every man who is injured by another without a fault of his own, and shall protect all men while they conduct properly, and shall punish all men who commit crime against the kingdom, or against individuals, and no unequal law shall be passed, for the benefit of one to the injury of another.

"IV. No man shall be punished unless his crime be first made manifest, neither shall he be punished unless he be first brought to trial in the presence of his accusers, and they have met face to face, and the trial having been conducted according to law, and the crime made manifest in their presence, then punishment may be inflicted.

"V. No man or chief shall be permitted to sit as judge or act on a jury to try his particular friend (or enemy), or one who is especially connected with him. Wherefore if any man be condemned or acquitted, and it shall afterwards be made to appear, that some one who tried him acted with partiality for the purpose of favoring his friend (or injuring his enemy), or for the purpose of enriching himself, then there shall be a new trial allowed before those who are impartial."

Following the bill of rights portion of the Constitution is an "exposition of the principles on which the present dynasty is founded" and a paragraph providing for the succession to the throne: the heir was to be the person whom the King "and the chiefs shall appoint, during his life time, but should there be no appointment, then the decision shall rest with the chiefs and house of Representatives." Substantially the same provision is contained in all later Constitutions under the monarchy.

The next division deals with the prerogatives of the King, who was declared to be the sovereign and chief executive officer of the kingdom. He had the direction of the army and of all government property, "though in conformity with the laws." He was chief judge of the Supreme Court, had the right to make treaties, and the right to make war in time of emergency.
The powers of the King were limited by those of the Kuhina-nui, who was appointed by the King. The relationship between these two is best explained by quoting from the Constitution:

"The following are the duties of the Premier [Kuhina-nui]: All business connected with the special interests of the kingdom, which the King wishes to transact, shall be done by the Premier under the authority of the King. All documents and business of the kingdom executed by the Premier, shall be considered as executed by the King’s authority. All government property shall be reported to him (or her) and he (or she) shall make it over to the King.

"The Premier shall be the King’s special counsellor in the great business of the kingdom.

"The King shall not act without the knowledge of the Premier, nor shall the Premier act without the knowledge of the King, and the veto of the King on the acts of the Premier shall arrest the business. All important business of the kingdom which the King chooses to transact in person, he may do it but not without the approbation of the Premier."

(It may be noted parenthetically that the office of Kuhina-nui was not a new one; it had been created by Kamehameha I before his death. The first two holders of the office were the powerful chiefesses Kaahumanu, 1819-1832, and Kinau, 1832-1839.)

The Governors were four in number—one for each of the major islands—appointed by the King upon nomination of the chiefs, and subject to and responsible to the King and Kuhina-nui for all government property and all government business within their islands not specially assigned to others; they had general direction of the tax officers, and appointed the subordinate judges.

"He also shall preside over all the judges of his island, and shall see their sentences executed . . ."

Under this Constitution the legislative power was vested in the King, the Council of Chiefs (Nobles), and a House of Representatives. To be valid, a law had to be passed by a majority of each house and be signed by the King and Kuhina-nui. The King’s veto was absolute. The legislature was to meet annually in the month of April. The two houses sat separately, but could meet in joint session if they wished to consult together.

The composition of the Council of Chiefs was specified in the Constitution. It consisted of Kamehameha III, Kekauluohi (the
Kuhina-nui), and fourteen other chiefs whose names are given. "Should any other person be received into the council, it shall be made known by law." It was also provided, somewhat vaguely, that the same body should be the King's privy council, although that specific name was not applied to it.

Regarding the House of Representatives the Constitution simply provided that there should be such a body, the number of Representatives and the mode of their election to be determined by law. (The law subsequently enacted fixed their number at seven, increased to twenty-four by an act of 1850).

One eighth of the entire Constitution is devoted to the tax officers. They were appointed by the King and Kuhina-nui for an indefinite period, though a definite term of years might be prescribed by law. The tax officers were both assessors and collectors; and they were judges in all cases arising under the tax law, "in all cases where land agents or landlords are charged with oppressing the lower classes, and also in cases of difficulty between land agents and tenants."

Taxes collected were to be delivered by them to the Governor, by the Governor to the Kuhina-nui, and by the Kuhina-nui to the King. The tax officers were directly subject to the Governor, and from their decisions as judges an appeal might be made to the Governor; from the decision of the Governor an appeal might be made to the Supreme Court.

In regard to the judiciary, the Constitution provided that the Governors should appoint the inferior judges, two or more for each island, their appointments to be for an indefinite term, subject to impeachment; but a definite term of office might be fixed by law. "They shall be the judges in cases arising under all the laws excepting those which regard taxation, or difficulties between land agents, or landlords and their tenants." From their decisions an appeal might be made to the Supreme Court.

The Supreme Court was to consist of the King and Kuhina-nui and four other persons appointed by the House of Representatives. This was strictly an appellate court and its decisions were final.

(Although the Constitution says nothing about the island, or Governors', courts, corresponding to the present circuit courts, these courts continued to exist as they had before, occupying a position intermediate between the inferior courts mentioned above and the Supreme Court.)
It was provided that if it should be thought desirable to change the Constitution, "notice shall be previously given, that all the people may understand the nature of the proposed change, and the succeeding year, at the meeting of the Nobles and the representative body, if they shall agree as to the addition proposed or as to the alteration, then they may make it." On the face of it, this does not seem to require the King's approval of constitutional amendments; undoubtedly, however, it should be construed with the general provision that acts of the legislature required the signature of the King and Kuhina-nui in order to make them valid.

The Constitution of 1840 introduced only a few innovations into the government of the Hawaiian kingdom. By far the most important of these was the provision for a House of Representatives in the legislature, which for the first time gave the common people a share in the making of the laws. The other important innovation was the creation of a Supreme Court, in particular the provision that four associate justices of the court were to be elected by the House of Representatives.

**Background of Constitution of 1852**

The Constitution of 1840 remained in force for twelve years without any specific amendments. There was perhaps little need for such amendments because of the vagueness of some of the provisions of the Constitution, the weak hold which the idea of constitutional limitations had upon the minds of the ruling chiefs at that early period, and the fact that the Constitution was given a very loose construction in the well known report of Attorney General Ricord in 1845 on the inferences of the Constitution. Under shelter of that construction and in accordance with the recommendations of the report, three organic acts were passed in 1845-1847, which effected a complete and elaborate reorganization of the government with five executive departments and a carefully integrated judicial system. In regard to the significance of these acts, Judge W. F. Frear has made the following comment:

"These three acts have been the basis of Hawaiian organic law ever since, as well as of much law not strictly organic. They went far towards completing the separation of legislative, executive and judicial functions, and, in many respects, though ingeniously justified
as declarations of powers implied in the constitution, were in reality amendments of that instrument. Indeed, the constitution had already been extensively amended by natural growth."

The decade 1840-1850 was marked in Hawaiian history not alone by the governmental reorganization just mentioned, but also by a radical change in the land system, by important economic developments, a considerable increase in the number of foreign residents, and by the acceptance of Hawaii as a member of the family of nations and a consequent improvement of her international position. The rather crude Constitution of 1840 came to be looked upon as out-of-date and inadequate—a flimsy and outworn garment that needed to be replaced by one more ample and more in keeping with the spirit of the age.

In 1851 the Legislature adopted a resolution "respecting a review of the Constitution": "That three commissioners be appointed, one to be chosen by the king, one by the house of nobles, and one by the house of representatives, whose duty it shall be to revise the constitution of the kingdom, and on or before December next to issue public notice of the change which they recommend, and submit the same to the consideration of the next legislature that it may pass upon the changes proposed, agreeably with the constitution as it now exists." The King appointed Dr. Gerrit P. Judd as his member of the Commission, the Nobles appointed Judge John Ii, and the Representatives appointed their Speaker, Judge William L. Lee.

The revision made by the Commissioners amounted to the preparation of an entire new Constitution. The draft agreed upon by them, written mainly by Judge Lee, was published in the Polynesian of November 29, 1851. It came regularly before the legislature of 1852, where it was debated and adopted after a good many changes and additions had been made, and was then signed by the King on June 14, 1852. In the Archives of Hawaii is a document by R. C. Wyllie having upon it the following note about the signing of the Constitution:

"The New Constitution signed by the King at 10 ms before 7 PM & attested by the Premier, in presence of Kapaakea holding the candle, Mr Armstrong & Mr Wyllie, & the whole P[rivy] Council"

Chief critic of the draft prepared by the Commission—and of the Constitution as finally adopted—was R. C. Wyllie, Minister of
Foreign Affairs from 1845 to 1865. Wyllie’s views are on record in many documents filed away in the public archives. He was an ardent admirer of the British constitution, as it then existed, and thought it should be the model for the Hawaiian constitution. He was thoroughly convinced that monarchy was essential to the preservation of the Hawaiian people and the maintenance of their independence. He believed that the kingship ought to be strengthened and dignified; and he was strongly opposed to the idea of universal suffrage. In later years, opposition to universal suffrage became a kind of obsession with him; he spoke and wrote against it with the utmost vehemence and in scathing terms. Wyllie had expected to be the King’s representative on the Commission to revise the Constitution, and there is considerable evidence to indicate that he felt sore about the appointment of Dr. Judd to that position, and thought that in the work of the Commission Dr. Judd failed to safeguard the position of the King as head of the government.

The draft prepared by Judge Lee reflected his American and democratic point of view and the fact that he was the people’s representative on the Commission. Lee, however, respected Wyllie’s opinions and invited him to read and to comment on the draft. Wyllie did so, concluding his criticisms with the remark, “I think the Constitution as drafted is too Republican. It can be less so, & equally free.” When the proposed Constitution came before the legislature in April, 1852, the King is reported to have said in the House of Nobles, “that as he gave a Constitution in 1840, so he was ready now to grant a new one; he wished, however, one in accordance with that of Great Britain, as respects the prerogatives of the Crown, but would willingly refer it to the House to decide what would be best for the good of the nation.” (Polynesian, April 24, 1852.)

Following the King, Wyllie made a long speech setting forth his objections to various features of the draft proposed by the Commission. Among other things he said, “I entertain much doubt of the wisdom of having an entirely new Legislature every year, or of giving the right of suffrage to all men, irrespective of any property qualification, or of any proof that they have paid their taxes, or hold any stake in the country.” He also prepared a complete draft (“projêt”) embodying his ideas of a constitution adapted to the condition and needs of the kingdom. This draft was not made public at the time, but Wyllie afterwards asserted that King Kamehameha III...
expressed a preference for it rather than the Constitution finally adopted. This may well have been true.

In the House of Nobles, Wyllie strove valiantly to get the constitution altered to conform to his ideas. In this effort he was aided by Prince Alexander Liholiho, heir to the throne, and Prince Lot Kamehameha; Dr. Judd also gave Wyllie considerable support, and even offered some amendments of his own along similar lines. Most of the amendments proposed by Wyllie were accepted, but the Constitution as finally adopted still differed widely from his views of what it should be, although he signed a conference report strongly recommending its adoption.

Wyllie is authority for the statement that Kamehameha III signed the Constitution with reluctance; he quotes the King as saying that "if it [should] work badly for me & my people, remember what I gave, I will take away." It is difficult to test the truth of this assertion by Wyllie. The statement is not contained in the official records of the Privy Council and legislature; and Wyllie's own papers, on which the claim is based, have been altered from their original form, written with ink, by additions made with a pencil. It is in these pencil additions that Wyllie records the alleged reservation by the King; and there is some reason to believe that the pencil additions were made at a later time after Wyllie's ideas had had an opportunity to work on his recollections. I do not mean by this to imply any doubt of Wyllie's good faith. The essential fact is that Kamehameha III signed the Constitution voluntarily, after making one small amendment, and there is nothing in the official records or in the contemporary published reports to indicate that the King made any such reservation as Wyllie attributes to him. It will be seen, however, that if the King had made officially such a reservation, it would be of very great importance in connection with later events, since it amounted to an assertion of the power of the King to change or abrogate the Constitution at will.
Constitution of 1852

Declaration of Rights: (21 articles, containing the usual safeguards)

Form of Government:

"Art. 22. The Government of the Kingdom is that of a Constitutional Monarchy, under His Majesty Kamehameha III, His Heirs, and successors."

Of Powers:

"Art. 23. The Supreme power of the Kingdom, in its exercise, is divided into the Executive, Legislative and Judicial; these are to be preserved distinct; the two last powers cannot be united in any one individual or body."

Of the Executive Power:

Sec. I. The King. His Prerogatives.

a. Is supreme executive magistrate.
b. Succession (provided for as in Constitution of 1840).
c. Is commander in chief of army and navy, but cannot declare war without consent of Privy Council.
d. Receives ambassadors; grants titles of honor, etc.
e. Has power, by and with consent of Privy Council, to
   1. Grant pardons and reprieves,
   2. Convene the legislature,
   3. Make treaties and appoint ambassadors.

f. "Art. 32. He has the power, by and with the advice of His Cabinet, and the approval of His Privy Council, to appoint and remove at His pleasure any of the several heads of the Executive Departments, . . ."

g. "Art. 35. The person of the King is inviolable and sacred; His Ministers are responsible; to the King belongs the Executive power; all laws that have passed both Houses of the Legislature, for their validity, shall be signed by His Majesty and the Kuhina Nui; all his other official acts shall be approved by the Privy Council, countersigned by the Kuhina Nui, and by the Minister to whose Department such act may belong."

Sec. II. Of the Kuhina Nui.

a. Position and powers (as in Constitution of 1840).
b. Regent during King’s minority or vacancy in throne.

Sec. III. Of the Privy Council.

a. To advise King in carrying on government.
b. Members appointed by King and hold office during his pleasure.
c. Cabinet Ministers and Governors are ex-officio members.

Sec. IV. Of the King's Ministers.
a. Appointed by King and hold office during his pleasure, subject to impeachment.
b. Hold seats in House of Nobles.

Sec. V. Of the Governors.
a. Appointed by King with advice of Privy Council.
b. Term of office four years, subject to impeachment.
c. Subject to King, have executive control of their islands.

Of the Legislative Power:
a. Vested in King, House of Nobles, and House of Representatives, each having a negative on the other.
b. Legislature meets annually in April.
c. Full power of legislation, subject to Constitution.
d. Acts of legislature require King's signature for validity; bills vetoed cannot be reconsidered in same session.
e. Each House has usual powers to regulate its procedure and control its members.
f. Representatives to receive compensation, to be regulated by law but not to exceed $3 per day.
g. Nobles serve without pay, but law may be enacted giving them compensation.

Of the House of Nobles:
a. Appointed by King, for life; number not to exceed 30.
b. A Noble must be 21 years old, and have been a resident of the kingdom for 5 years.
c. House of Nobles is court to try impeachments.

Of the House of Representatives:
a. Number not less than 24 nor more than 40, elected annually.
b. Representation regulated and apportioned according to population.
c. "Art. 77. No person shall be eligible for a Representative of the people, who is insane, or an idiot, or who shall at any time have been convicted of any infamous crime, nor unless he be a male subject or denizen of the Kingdom, who shall have arrived at the full age of twenty-five years, who shall know how to read and write, who shall understand accounts, and who shall
d. "Art. 78. Every male subject of His Majesty, whether native or naturalized, and every denizen of the Kingdom, who shall have paid his taxes, who shall have attained the full age of twenty years, and who shall have resided in the Kingdom for one year immediately preceding the time of election, shall be entitled to one vote for the representative or representatives, of the district in which he may have resided three months next preceding the day of election; provided that no insane person, nor any person who shall at any time have been convicted of any infamous crime, within this Kingdom, unless he shall have been pardoned by the King, and by the terms of such pardon been restored to all the rights of a subject, shall be allowed to vote."

e. Financial bills must originate in this House.
f. Has power of impeachment.

Of the Judiciary:

a. Judicial power vested in Supreme Court and such inferior courts as legislature may establish.
b. Supreme Court: to consist of Chief Justice and two associate Justices; Justices to hold office during good behavior, subject to impeachment; compensation not to be diminished during their continuance in office; any judge of Supreme Court, or of any other court of record, may be removed for mental or physical inability by two-thirds vote of both branches of legislature.
c. Circuit Courts: number to be fixed by law, not less than four nor exceeding eight; from one to three judges for each court, to hold office during good behavior, subject to impeachment.
d. King, with advice of Privy Council, appoints Justices of Supreme Court and all judges of courts of record.
e. Governors, with advice of Justices of Supreme Court, appoint the district justices.
f. District justices: term of office, two years; may be removed for cause by circuit courts of their respective islands.
g. Chief Justice of Supreme Court is Chancellor of the kingdom, and has equity jurisdiction, subject to appeal to Supreme Court.
Of Oaths: (form of oaths to be taken by King, Kuhina Nui, and members of legislature)

General Provisions: (not of special significance)

Mode of Amending the Constitution:

"Art. 105. Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of the members of each House, such proposed amendment or amendments shall be entered on their journals, with the ayes and nays taken thereon, and referred to the next Legislature; which proposed amendment or amendments shall be published for three months previous to the election of the next House of Representatives; and if, in the next legislature, such proposed amendment or amendments shall be agreed to by two-thirds of all the members of each house, and be approved by the King, such amendment or amendments shall become part of the Constitution of this Kingdom."

The Constitution during the Reign of Kamehameha IV

During the remaining two and a half years of the reign of Kamehameha III there was little or no discussion of the Constitution, outside of Wyllie's correspondence. The attention of all was fixed on other topics of great interest; and it was natural that the Constitution should be given an opportunity to show its merits and defects by its actual operation over a period of years.

With the advent of Kamehameha IV on the throne, the Constitution became an object of scrutiny and attack. The King and his advisers discovered many defects in that instrument, and this reign shows an almost continuous history of efforts to get the Constitution amended in accordance with their views. The features of the Constitution which proved most irksome to the King and his official family were: the existence of the office of Kuhina-nui, which detracted from the dignity and strength of the kingly office; the power of the Privy Council to restrain and control the action of the King and Cabinet; the frequent (annual) meetings of the legislature and the size of that body; the universal manhood suffrage guaranteed by the Constitution; the lack of any property qualification for members of the House of Representatives; the strong position of the House of
Representatives. The independent and vigorous course pursued (sometimes wrongly, it may be admitted) by the latter body made it obnoxious to the ministerial party. During the whole of this reign the House of Representatives was engaged in a nearly continuous tug-of-war with the House of Nobles; after 1858 the Representatives were frequently at loggerheads with the Minister of Finance, and finally, in 1862, forced his retirement from the government, thereby causing the entire Cabinet to resign. All were reappointed except the Minister of Finance. The constantly recurring contests with the House of Representatives had the effect of intensifying the desire of the King and his advisers to effect a thorough revision of the Constitution. From what was said at various times, one gets the impression that the King and his advisers felt that the House of Representatives needed to have some check or restraining influence brought to bear upon it and that the Cabinet ought to have some regular spokesman— one of the Ministers—in that House. At various times amendments were proposed to change most of the features mentioned above and to make many minor alterations in the Constitution.

After this introduction, we may review briefly the various efforts, successful and unsuccessful, to amend the Constitution during the reign of Kamehameha IV.

In April, 1855, Prince Lot Kamehameha introduced into the House of Nobles three proposed amendments, to articles 27, 39 and 43 of the Constitution. They were referred to a select committee, which after a few weeks deliberation reported back eight amendments as a substitute for those proposed by Prince Lot. These were all passed by the Nobles; the Representatives made some minor alterations and added one amendment to the list. The nine amendments were passed by the legislature of 1855, and all except one were finally adopted by the legislature of 1856 and became part of the Constitution. The text of these amendments is given in the Appendix. Their main object and effect was to change the sessions of the legislature from annual to biennial. They are the only amendments to the Constitution of 1852 that were ever finally adopted, in spite of the statement by H. E. Chambers in his Constitutional History of Hawaii (p. 19) that another amendment was adopted in 1862.

The legislative session of 1858, due to a prolonged adjournment, was extended far into 1859. On March 31 of the latter year the
King sent a special message to the legislature recommending certain amendments to the Constitution. He said:

"I am satisfied that it would result in great public advantage to allow to my Executive Ministers the privilege of election to the House of Representatives, except when constituted Members of the House of Nobles by Royal Patent. It would also, in my opinion be politic to permit additions to be made to the House of Nobles for a term of years as well as for life. . . .

"I further recommend that the House of Representatives be limited, as to its members, to a number not exceeding twenty; and that a suitable property qualification for eligibility be established. The compensation of such members ought also to be definitely fixed for the entire period of their service, so as to avoid all inducements to protracted sessions beyond the requirement of the public good."

In the House of Representatives a select committee introduced seven amendments along the lines suggested by the King, the limit on the membership of the House of Representatives being set at twenty-one instead of the twenty recommended in the message. The compensation of Representatives was set at $150. The property qualification for Representatives was phrased as follows: "who shall own real estate within the Kingdom, unincumbered, of the value of at least One Thousand Dollars, or who shall have an annual income of at least One Thousand Dollars." One amendment, not suggested by the King, added a reading test for voters. After some wrangling between the two Houses, all of these amendments except the one reducing the size of the House of Representatives were passed and referred for final action to the next legislature.

Kamehameha IV, in his message to the legislature of 1860, recommended the adoption of the above mentioned amendments; but the committee of the House of Representatives to which the amendments were referred found that they had not been published for three months prior to the election as the Constitution required and that consequently they could not be finally adopted by this legislature. The Representatives passed a resolution to that effect. When this was reported to the House of Nobles, Wyllie became excited, said the resolution was disrespectful to the King, and advocated taking up the whole Constitution for amendment, for he considered it "the worst one ever a monarch lived under." But cooler counsels prevailed and the two Houses sent an address to the King reporting the unfortunate
facts in regard to the amendments and saying that they would "loyally consider any further suggestions" he might wish to make.

In response to this invitation, and after consulting his Ministers, the King sent down a special message (August 14, 1860) submitting twelve proposed amendments. These included: the six amendments that had been passed in the 1858-59 session (but with the value of real estate or income required as a qualification for Representatives set at $250 instead of $1000); amendments to articles 25, 47, and 48, relating to the succession to the throne, a regency, and the mode of filling a vacancy in the office of Kuhina-nui when the throne was also vacant; an amendment to article 35, changing the last clause to read, "all his other official acts shall be approved in the mode prescribed by law, except as specially provided by this Constitution" (thus reducing the power of the Privy Council and Kuhina-nui); an amendment to article 83 removing the specific limitations on the number of circuit courts; and an amendment to article 91 providing that district justices might be removed by the Supreme Court as well as by the circuit courts.

Of these amendments, the ones making the King's Ministers eligible to the House of Representatives, limiting the compensation of Representatives to $150, providing for the appointment of Nobles for a term of years as well as for life, prescribing a property qualification for Representatives, and prescribing a reading test for voters, were promptly rejected by the House of Representatives (though all had been passed at the preceding session in 1859); the others were passed, with some alterations, and sent to the House of Nobles. In the latter House they were referred to a select committee; the committee reported, next day, that the amendments were unsatisfactory, and the Nobles voted to postpone them until the next session of the legislature. This action by the Nobles was undoubtedly taken because they were unwilling to endorse the action of the House of Representatives in throwing out five of the amendments, and it was too late in the session to thresh the matter out between the two Houses.

From the action of the House of Representatives in 1860 it may perhaps be inferred that such publication as had been made of the amendments passed in 1859 and such discussion as had taken place on the subject had created a public sentiment adverse to the proposed restrictions upon the electorate and the House of Representatives.

At the opening of the session of 1862, the King again commended
to the legislature the amendments which he had submitted in 1860. In the House of Representatives, this portion of the King’s message was referred to the judiciary committee.

During the interval between the legislative session of 1860 and the election in January, 1862, someone in the government conceived a bright idea, as a result of which the amendments that had been passed in the 1858-59 session, but which had not been properly published prior to the election for the legislature of 1860, were brought out and published in the Polynesian for the three months prior to the election for the legislature of 1862; obviously, the idea was that this would meet the constitutional requirement and enable the legislature of 1862 to take final action on these amendments.

The judiciary committee of the House of Representatives took notice of the publication just mentioned, but in its report on the subject pointed out that the idea back of the publication was entirely erroneous, since final action on amendments had to be taken by the legislature immediately following the one in which they were first passed. However, in order to get the subject before the legislature, the committee introduced a joint resolution embodying the amendments that had been printed, with a view to their being passed by this legislature and left for final action by the legislature of 1864. The resolution was referred to a select committee, which, after a delay of more than two months, reported back a series of ten amendments, either identical with or similar to ten of the twelve amendments submitted by the King with his special message of August 14, 1860. (The two omitted were the proposed amendments to articles 47 and 48.)

Of the ten amendments proposed by the select committee, three were rejected by the House of Representatives: one making the King’s Ministers eligible to the House of Representatives, one limiting the compensation of the Representatives to $150, and one prescribing a reading test for voters. The other amendments were passed and sent up to the House of Nobles.

In the meantime Wyllie busied himself with the subject. He resurrected his 1852 “projet” of a constitution, and the editor of the Polynesian, C. G. Hopkins, who was one of Wyllie’s intimate friends and frequently served as a kind of sounding board for him, published the “projet” in his newspaper, with some favorable comment, and published several editorials urging the importance of a thorough re-
vision of the Constitution. Wyllie also drew up and introduced in
the House of Nobles a long series of amendments, proposing alterations
in no less than forty-three articles of the Constitution. The more
important of these were designed to reduce the power of the Privy
Council and increase that of the Cabinet; to reduce the power of the
Kuhina-nui; to prescribe a property qualification for the Representa-
tives and a similar but smaller property qualification for voters; to
abolish the compensation of Representatives (but allowing them to
receive voluntary contributions from their constituents).

When the amendments passed by the House of Representatives
were received in the House of Nobles, they and the amendments pro-
posed by Wyllie were referred to a select committee consisting of
Wyllie, D. L. Gregg (Minister of Finance), C. R. Bishop, John II,
and Paul Nahaolelua (Governor of Maui). A few days later the
majority of the committee (Bishop, II, Nahaolelua) brought in a
report recommending that the amendments passed by the House of
Representatives be adopted, because they agreed with them as far as
they went, and it was now too late in the session to consider new ones.

Wyllie and Gregg submitted a minority report, in which they
said: "The present Constitution is a failure. It does not meet the
necessities of the people, or the wants of the country. . . . While it
professes to recognize the principles of a Constitutional Monarchy, it
attempts to sanction the most radical ideas of Democracy. . . ." They
went on to discuss the mode of amending the Constitution, and
argued that it might be amended or revised by other procedures than
the one laid down in the Constitution itself. Finally, they recom-
mended that a commission be established, as in 1851, to revise the
Constitution and submit the result of their deliberations for the con-
sideration of the King, Nobles, and People.

The House of Nobles adopted the report of the majority of the
committee and passed all but one of the amendments sent up by the
House of Representatives. The amendment rejected by the Nobles
was one relating to the appointment of members of the House of
Nobles; the official record and newspaper reports give no reason for
this rejection, and there seems to be no obvious reason for it.

Wyllie was not satisfied with the action taken by the House of
Nobles. On the very next day he introduced a joint resolution calling
for the appointment of three commissioners to revise the Constitution.
Amended to provide for six instead of three commissioners, the resolu-
tion was promptly adopted by the Nobles, but the Representatives refused to give it their approval.

The net result of the deliberations of the legislature of 1862 upon the Constitution was the passing of six proposed amendments, responding in part only to the expressed wishes of the King. The action taken looks somewhat like a compromise between the action of the legislature of 1858-59 and that of 1860. What would have been done with these proposed amendments in 1864, if matters had taken their normal course, it is impossible to know, since there was no session of the legislature in that year under the Constitution of 1852.

Kamehameha V and the Constitution

Kamehameha V (the former Prince Lot Kamehameha), who came to the throne on November 30, 1863, decided not to be bothered any longer with attempts to get the old Constitution amended by the constitutional process. But he was determined that important changes should be made, and, in order to leave himself free to effect those changes in whatever way might be necessary, he refused to take the oath to maintain the existing Constitution. The final outcome of his determination was the Constitution of 1864. In bringing that Constitution into existence, Kamehameha V took two extraordinary steps. One was the calling of a convention to enact a new Constitution; the other was the arbitrary abrogation of the Constitution of 1852 and its replacement by a Constitution of his own devising. Neither of these steps was taken suddenly or on the spur of the moment; each had been suggested before and arguments had been made to justify both of them. The course taken by Kamehameha V—whether or not we approve it—was a rather logical consequence of a long train of discussion, extending clear through the reign of his brother Kamehameha IV, coupled with the experience of that King in attempting to get the Constitution amended. Before going on with the narrative, it will be useful to state briefly some parts of this antecedent discussion.

The claim that the King had a right to abrogate the Constitution rests upon the reservation previously mentioned, which is said (by Wyllie) to have been made by Kamehameha III at the time he signed the Constitution of 1852. I have already pointed out that the evidence regarding that reservation is of somewhat dubious character. When
the claim was openly stated in the convention of 1864, Dr. Judd denied it, and he certainly had at least as good opportunity as Wyllie to know what was done in 1852.

The official record of the Privy Council meeting of June 18, 1855, contains the following statement:

"Prince Lot enquired whether the King had not the power to take the Constitution from the people. The Prince supposed that he had and gave some reasons. After considerable discussion it was voted to appoint a committee to revise the Constitution and report to this Council."

Wyllie's private minutes of this meeting give a fuller account of it and show that it was Kekuanaoa, father of the King and of Prince Lot, who raised the question about the King's right to recall the Constitution. Wyllie adds, however, that "Prince [Lot] Kamehameha strongly advocated it upon the ground that the people were not yet fit for Representative Institutions." One or two of the native chiefs took the same view; but Wyllie and Lorrin Andrews sounded a note of caution; and Elisha H. Allen (Minister of Finance) said he was not prepared to give an opinion on the question. In this discussion, so far as Wyllie's own minutes show, he did not mention or even remotely hint that Kamehameha III had reserved the right to abrogate the Constitution. As voted by the Council, a committee was appointed to revise the Constitution and it held at least one meeting, but nothing further seems to have been done at the time.

Beginning with 1860, Wyllie's correspondence contains several statements of his allegation that Kamehameha III had reserved the right to take away the Constitution. In July, 1862, the Pacific Commercial Advertiser published a long editorial on "Constitutional Rights", in which appears the following statement:

"Some have thought that the threats uttered recently in regard to the Constitution, point to a forced abrogation of that instrument. We have too much loyalty and faith in our Sovereign to believe that anything of the kind could be sanctioned by him, . . ."

The reference in this quotation is probably to editorial comment in the government organ, the Polynesian, and to discussion in the legislature. On May 21, 1863, Wyllie wrote, in a letter to C. G. Hopkins, that
“the time may arrive, when our present Sovereign . . . may exercise the right which He has inherited from His Predecessor, who before signing the new Constitution reserved to himself the right of freely withdrawing the Constitution, which His Foreign Advisers had recommended to Him & his people, if He found that it did not work for His own and their Benefit.

“That Prince [Lot] Kamehameha foresees that such a time will arrive, cannot be doubted; for He boldly avowed to the last Legislature, that the Constitution was so radically bad, that He considered it beyond all amendment, and desired its entire reconstruction.”

A few months later, just after Prince Lot ascended the throne, Wyllie wrote to him two letters on the subject of the Constitution; in one of them he said:

“As it was not considered a 'Revolution' in King Kamehameha III to supersede the imperfect Constitution of the 8th of October 1840, by the more perfect instrument of 1852—so it cannot be a 'Revolution' for Your Majesty to supersede the imperfect Constitution of 1852, by a more perfect instrument in 1863.”

It is true this does not necessarily point to abrogation of the existing Constitution, but it certainly could be given that construction by one inclined to do so.

Turning now to the convention idea, it was to be expected that discussion of it would not arise until after experience had shown the difficulty of getting desired amendments adopted in the manner prescribed by the Constitution. In his special message to the legislature on March 31, 1859, Kamehameha IV used the expression, “Without reference to a different manner of revision, clearly founded on the inherent rights of the different Estates of my Kingdom,” which undoubtedly refers either to a convention or to a commission such as was appointed in 1851.

The first clear exposition of the convention idea is contained in the report (previously mentioned) by Wyllie and Gregg to the House of Nobles, dated August 8, 1862. After referring to the mode of amendment prescribed by article 105 of the Constitution of 1852, they said:

“Fortunately we are not restricted altogether, either legally or politically, by the terms of that Article. Amendments may be adopted in the manner pointed out by it, but it does not follow that they must be so established.
"Almost all the American State Constitutions provide as ours does, for gradual revision through legislative and popular action, yet everybody knows that conventions are constantly called to change the fundamental laws. . . . Thus, in the United States, the people from whom all power is immediately derived, often change the details of their institutions.

"Here, popular rights and free institutions were the magnanimous grant of the Sovereign. . . .

"The inference to be drawn from these considerations is, that the Sovereign may, if in his opinion the good of the country requires it, initiate a revision of the Constitution without being fettered by the special forms of amendment prescribed by its terms. He can submit of his own will, a new fundamental law for the consideration of the different estates of his kingdom, or call a convetion of those estates to devise a modification of the existing mechanism of government. The authority of initiation is in his hands. But at the same time, either of the other estates are privileged to offer respectful suggestions."

Coming back once more to the opening of the reign of Kamehameha V, it is important to note the personnel of his administration. There were some shifts during the early months, but throughout the period when the Constitution was being changed the Cabinet consisted of R. C. Wyllie, Minister of Foreign Affairs, Charles de Varigny (a Frenchman), Minister of Finance, C. G. Hopkins, Minister of the Interior, and C. C. Harris (an American lawyer long resident in the kingdom), Attorney General. Elisha H. Allen (American) was Chancellor and Chief Justice, and his associates in the Supreme Court were G. M. Robertson (British) and Robert G. Davis (American-Hawaiian). Allen was in the United States during the greater part of 1864 and Robertson was acting head of the judiciary. All of these officials had taken an oath to support the Constitution of 1852.

Among the advisers of the King, and more especially in the Cabinet, there was considerable divergence of views, not only on points of detail but also in regard to some of the principles involved. It was the will and the mind of the King that fused the Cabinet into a unity. It can be said, however, that Harris was nearest to the King in his views on the specific problems that had to be solved, and when Harris’s opinion differed from that of his colleagues, the King generally followed his advice. Hopkins pursued a more independent course than any of the others but did not carry his independence to the point of retiring from the Cabinet.
During the early months of the reign the great problem was that of making changes in the Constitution. Closely related to it were two questions of lesser magnitude: (1) the question of the King's oath to maintain the existing Constitution; and (2) the question of calling the legislature (including the House of Representatives elected on January 4, 1864) into session. The two latter questions involved some rather nice points of constitutional interpretation as well as some practical considerations, which it is not necessary to discuss in this place. The entire Cabinet advised the King to take the oath, and all except Harris advised him to call the legislature into session, but he positively declined to do either until after the Constitution had been revised in accordance with his views.

On March 3, 1864, the King read to his Cabinet a paper setting forth in a general way his views on the subject of changes needed in the Constitution. He opposed universal suffrage very strongly and advocated a property qualification both for Representatives and for voters. He thought "the prerogatives of the Crown ought to be more carefully protected . . . and that the influence of the Crown ought to be seen pervading every function of the government." He suggested the advisability of a change in the status of the Privy Council, and expressed the opinion that the powers of the House of Representatives ought "to be subjected to the gravest consideration." One of his objections to the existing Constitution was that it went too much into detail.

After the reading of the King's paper, Wyllie and Harris were appointed a committee to report upon the same and to "make any additional suggestions which they may regard as essential, stating fully their views in relation to the mode in which changes should be made." Some discussion followed, in the course of which Attorney General Harris suggested that "the modification of the Constitution or the enactment of a new one be made by a Convention." Chief Justice Allen was present at this meeting and he and Varigny approved the suggestion made by Harris.

Wyllie and Harris presented their report at a meeting of the Cabinet on March 30; they agreed fully with the King. "The changes proposed to be introduced in the Constitution were next read without discussion, the same being postponed for mature consideration." At a meeting on April 4, "it pleased His Majesty to suggest that the articles of the Constitution, as amended, should be taken up one by
one and discussed separately.” The reading and discussion of the Constitution begun in this meeting was continued on the 5th, 7th, and 8th, and concluded on the 21st of April. It was decided to abolish the office of Kuhina-nui, and to leave out of the Constitution the articles relating to the Privy Council (later restored) and to the Governors. Approval was also given to the plan (first suggested by Judge Robertson) of having the two Houses of the legislature sit together, but Hopkins objected and the idea was abandoned for the time being. It appears that, after this first reading by the King and Cabinet, Attorney General Harris prepared a new draft of a Constitution embodying the points that had been agreed upon.

On April 28, the King informed the Cabinet of his intention to call a convention, and on May 5 a Royal Proclamation was issued requesting the Delegates of the People (to be elected) to meet with the Nobles and the King on the 7th of July in Honolulu. Said the King, “It is Our will to meet Our Nobles and the Delegates of Our people, for the purpose of consulting on the revision of the Constitution of Our Kingdom.”

The appearance of the Proclamation called forth a very extensive and acrimonious discussion in the newspapers, in public meetings, and in private conversations. The action of the King in calling a convention and his failure to take the oath to maintain the existing Constitution were sharply criticised, and the legality of a convention was denied. In May and June the King made tours to the other islands to meet the people and explain his purpose; he was well received. Wyllie accompanied him and made a number of speeches violently attacking the Constitution of 1852, thereby to a great degree destroying the good impression made by the King. In the public debate preceding the election of Delegates, the government was somewhat at a disadvantage because the administration had decided, early in the year, to allow the official journal, the Polynesian, to die rather than to carry it along as a financial liability. But the Pacific Commercial Advertiser published letters on both sides, including a series written by Harris, with the authority of his colleagues, explaining to some extent the changes proposed to be made in the Constitution.

The election was held on June 13. When the returns came in, it was apparent that a majority of the Delegates were either opposed to the King’s plan or at least very kanalua about it.

After the King’s return to Honolulu toward the end of June, he
and the members of the Cabinet went carefully through Harris's draft of a Constitution, giving it a final revision; and it was then printed in both languages. This work was not completed until more than ten days after the opening of the convention.

On June 30 the King put to his Cabinet three questions, "which, in His opinion, ought to be agreed upon before the meeting of the Convention." First, "Has the Sovereign a right to call a Convention?" This was answered in the affirmative. Second, "Has that Convention a right to enact a new Constitution?" On this question, "Messrs. Wyllie, Harris and de Varigny stated that: If the Convention chose to assume the power of enacting a new Constitution and if it was passed by the two Estates under the understanding that it was to be the organic Law of the Land, and, as such, signed by the King, then there could be no doubt that it would be the Constitution of the Kingdom." Hopkins declined to express an opinion. Third, "Is the draft agreed upon to be proposed as a new Constitution, or in the shape of amendments to the present Constitution?" Wyllie thought this question should be settled by the convention itself, but Varigny thought such a course impractical; he was of opinion that the draft should be submitted as amendments. Hopkins agreed with Varigny on the latter point, but Harris "was of opinion that this was altogether a new Constitution not to be treated as amendments to the present one."

After thinking the matter over, the King, on July 4, informed the Cabinet of his decision, which was "that the draft submitted to the Convention was not to be treated as amendments to the present Constitution but as a new Constitution to be agreed upon and enacted by the three Constituting powers of the Realm." Hopkins expressed strongly his disagreement, but continued in office.

The Convention met on July 7. It consisted of the King, the Nobles, and the 27 Delegates of the People. Considerable time was spent in organization, adoption of rules, etc. It was decided that the three Estates should sit together for the purpose of discussion, but that all votes on the Constitution should be taken by Estates, the Delegates first; if they voted affirmatively, the question would then go to the Nobles, and finally to the King. The latter presided except when illness kept him away; in his absence, Judge Robertson as vice president occupied the chair. The King designated Harris and Varigny to speak for him when he was not present and when he did not
choose to speak in person, and they carried the burden of debate on the ministerial side with skill and vigor.

Though the Cabinet had decided not to raise the question of the powers of the Convention, that question came up (July 13) during the consideration of the rules; and O. H. Gulick, Delegate for South Kona, introduced a resolution saying that the powers of the Convention were only advisory and that the legislature was the only constituting medium. This brought on a debate that continued for four days. In brief, the theory advanced by the King and his advisers was that the entire constituting power of the realm was concentrated in this Convention, all three Estates being present, the King and the Nobles in person and the People represented by their Delegates specially elected for that purpose. The argument against this theory was that it was not sanctioned by the Constitution and furthermore that the People, when they elected their Delegates, had had no definite knowledge as to the exact purpose for which they were being elected—the Proclamation had spoken only of "consulting on the revision of the Constitution," not of enacting a new Constitution.

The decision turned finally upon the opinion of the judges of the Supreme Court. The Convention was informed categorically that all three of the judges believed the Convention had the necessary power to enact a new Constitution. In view of this opinion, the Delegates voted against Gulick's resolution by a large majority.

This decision cleared the way for the real business of the Convention. On July 19 and 22 the draft of the proposed Constitution was read for the first time. The draft submitted was in the same form, of the same length (80 articles), and either the same as or very similar in the greater number of its provisions to the Constitution later granted by the King. On July 26 the second reading and discussion, article by article, was begun. We have not space here to give any detailed account of the proceedings. In general, it may be said that up to article 62, which was as far as the second reading went, all except about a dozen of the articles were passed as they were in the draft or with merely verbal or very minor alterations; six articles (3, 7, 15, 23, 42, and 56) were amended to substantially the form in which they appear in the Constitution of 1864; and a half dozen or so received rather important amendments that were not permanently retained. Although there were some sharp discussions, it seems clear
that the first 61 articles offered no insuperable obstacles to a final agreement.

Article 62, which came up on August 8, was the rock on which the constitutional barque was wrecked. It was the article defining the qualifications of voters and included a literacy test and a property qualification. The latter point was the subject of a long and heated debate. In support of a property qualification the main speakers were Judge Robertson, Harris, Varigny, Hopkins, and one of the native Delegates, J. W. H. Kauwahi. The opposition was led, very ably, by Dr. G. P. Judd, supported by D. H. Hitchcock, J. P. Green, V. Knudsen, and others. The debate continued for about five days, interspersed, toward the end, with votes on various proposed amendments and subsidiary motions.

The early test votes (August 11) having indicated that a property qualification in any form probably would not be approved by the Delegates, the King called a meeting of the Cabinet to consider what ought to be done. He asked the Cabinet to consider (as a possible alternative to a property qualification for voters) the plan, first suggested by Judge Robertson, of having the Nobles and Representatives sit together in one chamber. Robertson, who was present, doubted that the Convention would approve such a plan. The King intimated that if the Delegates rejected both these ideas, he would not have "any alternative left than to give as Sovereign a new Constitution to His People." A committee was appointed to frame an amendment embodying Robertson's idea, but the plan was not finally presented to the Convention.

The debate continued on the 12th and the 13th, and a number of plans were presented for consideration; but the Delegates would approve no plan calling for a property qualification for voters, and the King and Nobles would approve no plan that did not include such a qualification. The Convention having arrived at an absolute deadlock, the King dissolved it with a speech in which he said, in part:

"... I am very sorry that we do not agree on this important point. As I said the other day, this is not a right belonging to the people, as some here have said. I have told you, and my Ministers also have told you, that in all other monarchical countries suffrage is limited, and it is thought that the possession of property is proof of industry and thrift, therefore in those enlightened countries it is said that the class who possess property are the proper persons to
advise their Representatives in regard to the necessities of the Government, and the poor, lazy, and ignorant are debarred from this privilege.

"It is clear to me if universal suffrage is permitted, this Government will soon lose its Monarchical character; ..."

"As we do not agree it is useless to prolong the session, and as at the time His Majesty Kamehameha III gave the Constitution of the year 1832, He reserved to himself the power of taking it away if it was not for the interest of his Government and people, and as it is clear that that King left the revision of the Constitution to my predecessor and myself therefore as I sit in His seat, on the part of the Sovereignty of the Hawaiian Islands I make known today that the Constitution of 1852 is abrogated. I will give you a Constitution. ..."

For a week Hawaii was without a written Constitution; during that time the government was a simple autocracy.

Two days after the dissolution of the Convention, the King and Cabinet and Judge Robertson held a meeting "for the purpose of discussing and framing the new Constitution promised by His Majesty." The draft submitted to the Convention was taken as a basis. Three sessions (August 15, 16, 17) were spent in going over the draft and introducing such modifications as seemed desirable, including several of the amendments adopted by the Convention. The most important change made in the draft was in article 45, providing that the Nobles and the Representatives should sit together in one chamber and be called collectively the Legislative Assembly.

On August 20, 1864, the new Constitution was signed by Kamehameha V, and on the same day he took the oath to maintain it.

Naturally, these events called forth some angry comment. The advocates of a different policy looked upon the action of Kamehameha V as revolutionary, but they attributed the initiative more to the members of the Cabinet (Wyllie and Harris in particular) than to the King himself. In this opinion they were partially mistaken. Wyllie, by his continual harping on the alleged defects of the Constitution, his insistence on strengthening the royal prerogative, and his attacks on the House of Representatives, had no doubt done much to prepare the ground for the coup d'état of 1864; but it was characteristic of Wyllie to be timid and to advocate compromise or delay when the moment had arrived for decisive and vigorous action. In the Cabinet, Harris and Varigny were the real leaders in this period. Varigny, in his book Quatorze Ans aux Iles Sandwich, gives a long account of the Convention and related developments and confirms the impression
gained from the official records that the initiative really lay with the King. Varigny says that he and Harris approved completely the act of the King and believed that it would be accepted by the country without physical opposition. Wyllie and Hopkins were not so confident. Wyllie as usual wished to make a military display in order to overawe the opposition; on his suggestion the government took some military measures, but it is doubtful that they were necessary. The general feeling throughout the country seemed to be that the King intended to do right and that he could be depended on to deal justly with his people—and it is fairly certain that such was his purpose.

To our modern democratic way of thinking, the limitation placed on the electoral franchise may look like a retrograde step, but it should be judge in the light of the age and the condition of the country. It is interesting to note that the Pacific Commercial Advertiser, an independent journal which was very critical of the government, in its issue of April 23, 1864, about two weeks before the King issued his Proclamation for a Convention, expressed the following opinion:

"Every reasonable man must be convinced that a property qualification of some kind, applicable to representative candidates as well as to voters, has become a necessity, and is the only guard that can be established to prevent our Legislature from being filled with men totally unfit to represent at least the foreign population and its capital, or to enact laws for the Kingdom. Let us have a change in this organic law of the land, even if the Constitution itself has to be remodeled."

And it may not be out of place to quote the following from a recent review of Sherman Kent's Electoral Procedure under Louis Philippe:

"In the first half of the nineteenth century, and in the United States as well as in France, voting was not a right but a privilege. Men of that period believed that to vote intelligently a man must be educated. Since universal and free instruction was still a thing of the future, it is hard to avoid the conclusion that education did presuppose some kind of wealth. Moreover, sincere liberals such as Casimir Perier, Benjamin Constant, Royer Collard, and Alexis de Tocqueville believed that universal suffrage was incompatible with free institutions." (Edgar P. Dean, in American Historical Review, XLIV, 112.)
The Constitution of 1864 is shorter than that of 1852, having only 80 articles instead of 105. This results from the omission of some articles, notably those relating to the Kuhina-nui and the Governors, and the combination of others. There are no sub-headings in the Constitution of 1864, but a general analysis shows the following grand divisions:

a. Bill of rights
   Articles 1-19
b. Division of powers
   20
c. Of the Executive
   King and Royal Family
   Privy Council
   Cabinet
   21-44
   21-40
   41
   42-44
d. Of the Legislature
   45-63
e. Of the Judiciary
   64-72
f. Miscellaneous provisions
   73-79
g. Mode of amendment
   80

Instead of giving a full analysis of these divisions, it will be more useful simply to point out the important particulars in which this Constitution differs from that of 1852.

Bill of rights. The clause, "God hath created all men free and equal", was omitted from the first article, but the omission had no significance except as an ideological gesture. In article 3 the prohibition of laws in restraint of liberty of speech and the press was modified by the addition of the following clause, "except such laws as may be necessary for the protection of His Majesty the King and the Royal Family." In article 15 provision was made so that money could be drawn from the Treasury without legislative authority but with the concurrence of the whole Cabinet and a majority of the Privy Council, in cases of emergency. The article guaranteeing election by ballot was omitted.

Division of powers. The general statement that Executive, Legislative, and Judicial powers should be preserved distinct was retained, but the specific provision that Legislative and Judicial powers "cannot be united in any one individual or body" was replaced by the much more limited requirement that "no Judge of a Court of Record shall ever be a member of the Legislative Assembly" (article 20).
Of the Executive. Changes made in this division had the effect of strengthening the position of the King and freeing him from the control of the Privy Council and the Kuhina-nui. The power of the Privy Council was greatly reduced. The articles relating to the Kuhina-nui and the Governors were omitted. The office of Kuhina-nui was in fact abolished; the governorship was continued but left to be regulated by statute. By comparison with the Privy Council, the Cabinet was made more responsible for the policies and conduct of the government, but distinctly subject to the King's control. The Ministers were no longer required to make reports to the legislature, but the Minister of Finance was required to prepare the Budget and present it to the legislature.

Of the Legislature. The legislative power was now vested in the King and the Legislative Assembly, the latter body consisting of the Nobles, appointed by the King, and the Representatives of the People, sitting together; the Legislative Assembly to meet biennially. In article 52 (corresponding to article 66 of the old Constitution) a clause was inserted giving the Assembly power to punish any person "who, during the time of its sitting, shall publish any false report of its proceedings, or insulting comments upon the same." The maximum compensation of Representatives was changed from $3 per day to $150 per session. The number of Nobles was limited to 20 instead of 30, but this was of little significance since the number of Nobles had always been less than 20.

In article 61 (corresponding to article 77 of the old Constitution), relating to qualifications of Representatives, important changes were made. Denizens were no longer eligible to this office. The minimum age was raised to 25 years. The one year residence requirement was changed to three years domicile, the last year of which had to be immediately preceding his election. Most important was the addition of a property qualification, which could be satisfied by the ownership of real estate of an unencumbered value of at least $500 or by an annual income of at least $250.

The qualifications of voters (article 62, corresponding to article 78 of the Constitution of 1852) were also changed. The privilege was limited to male subjects of the kingdom, denizens being excluded. The clause requiring three months residence in the district was omitted, but a registration requirement was inserted. Those desiring to vote
were now required to be able to read and write, if born since 1840, and to be possessed of real estate of an unencumbered value of $150 or of leasehold property on which the rent was $25 per year or of an income not less than $75 per year.

Of the Judiciary. The articles relating specifically to circuit judges and district justices were omitted, those subjects being left to be regulated solely by statute. The appointment of all judges of courts of record was now made an exclusive prerogative of the King, the advice of the Privy Council no longer being required. Article 82 of the Constitution of 1852 contains the following proviso: "Provided, however, that any judge of the Supreme Court, or of any other Court of Record, may be removed from office for mental or physical inability by a concurrent resolution of two-thirds of both branches of the Legislature." In the corresponding article (65) of the Constitution of 1864 this proviso is changed to read: "Provided, however, that any Judge of the Supreme Court or any other Court of Record may be removed from office, on a resolution passed by two-thirds of the Legislative Assembly, for good cause shown to the satisfaction of the King."

In the miscellaneous provisions there were no significant changes; and the mode of amendment remained as before.

Amending the Constitution of 1864

The Constitution of 1864 remained in force for twenty-three years, longer than any other Hawaiian Constitution prior to annexation. Kamehameha V understood that by granting this Constitution he had put himself back into the category of constitutional monarchs, from which he had temporarily removed himself by abrogating the Constitution of 1852. By his coup d'état he accomplished his purpose to make "the influence of the Crown" pervade "every function of the government", which it continued to do throughout the nine years of his reign. There was, especially during the last half of the reign, considerable party strife and some bitter criticism of the Constitution and of the "despotism" and "political corruption" made possible by it, but while Kamehameha V lived efforts to change the Constitution in any fundamental way met with no success whatever. During his reign, the only amendment actually made was one (in article 56) increasing the maximum compensation of Representatives from $150
to $250 for each session, which was finally adopted in 1868 after having been passed in the preceding session of the Legislative Assembly. In 1868 and again in 1872 a proposal was made to amend the Constitution by dividing the Legislative Assembly into two chambers, but each time it was promptly rejected. In 1870 it was proposed to amend the clause in article 20 reading, "no Judge of a Court of Record shall ever be a member of the Legislative Assembly," by striking out the words "of a Court of Record", the object being to prevent the election of district justices to the legislature. The amendment was rejected, but was introduced again in later sessions only to meet the same fate.

In the Journal of the legislative session of 1872 appears the following curious note:

"Hon Mr Kaukaha introduced a Resolution that whereas we have heard that certain people are teaching their children the Constitution of the United States to the prejudice of the Constitution of this Kingdom, therefore be it resolved that His Ex the Attorney General and the Marshall of the Kingdom be requested to inquire into the matter and Report to this Assembly."

The resolution was indefinitely postponed.

That there was a good deal of dissatisfaction with the Constitution of 1864 is shown rather clearly by the political manifestoes issued by the rival candidates for the throne after the death of Kamehameha V. In Lunalilo's manifesto appear these words:

"The only pledge that I deem it necessary to offer to the people is that I will restore the Constitution of Kamehameha III. of happy memory, with only such changes as may be required to adapt it to present laws, and that I will govern the nation according to the principles of that Constitution and a liberal constitutional monarchy, which, while it preserves the proper prerogatives of the Crown, shall maintain the rights and liberties of the people."

Kalakaua had as one of the planks of his platform:

"5. The amending of the Constitution of 1864. The desires of the people will be obtained by a true agreement between the people and the occupant of the throne.

"Beware of the Constitution of 1852 and the false teachings of the foreigners who are now grasping to obtain the control of the government if W. C. Lunalilo ascends the throne. . . ."
Lunalilo was elected, and it is said that he thought seriously of abrogating the Constitution of 1864 and reinstating that of 1852, but yielded to conservative advice and decided to try the constitutional mode of amendment. He therefore submitted to the special session of the Legislative Assembly (the same that elected him King) a message recommending certain amendments to the Constitution. The changes suggested were: (1) Separation of the Legislative Assembly into two Houses, Nobles and Representatives; (2) That the Ministers, being ex-officio members of the House of Nobles, should have the privilege of being heard in the House of Representatives; (3) Removal of the property qualification for voters; (4) That the Attorney General should not be a member of the King’s Cabinet; (5) That when the King vetoed a bill, he should state his objections in writing to the House in which it originated. This certainly was a moderate program, but it promised to do away with the two features considered most objectionable in the Constitution of 1864.

The message was referred to the judiciary committee which reported back a series of amendments affecting a large number of articles of the Constitution, but designed to accomplish the following results: (1) To remove the property qualification for voters; (2) To divide the legislature once more into two Houses and change its title to Legislative Council; (3) To give the Cabinet Members, who were to be ex-officio members of the House of Nobles, the right to be heard in the House of Representatives on all financial questions, and to require them to give information to the House of Representatives when requested; (4) To remove the Attorney General from the King’s Cabinet. All of the amendments submitted by the committee were passed, with some slight alterations.

On motion of J. O. Carter, four other amendments were passed, as follows: (1) Amending article 20 to read, “The Supreme Power of the Kingdom in its exercise, is divided into the Executive, Legislative, and Judicial, and no officer of the Judicial Department shall ever be a member of the House of Representatives”; (2) Changing the proviso in article 65 to read, “Provided, however, that any Judge of the Supreme Court, or any other Court of Record, may be removed from office, for mental or physical inability, by a concurrent resolution of two-thirds of both branches of the Legislature and the approval of the King”; (3) Amending article 71 so as to require the King’s appointment of judges to be made “with the advice and
consent of His Privy Council"; (4) Amending article 75 so that it would require all revenue bills to originate in the House of Representatives. Altogether, thirty amendments were passed by the special session of 1873 and referred for final action to the regular legislative session of 1874. If adopted, they would go far toward nullifying the changes made in 1864.

Before the regular session of 1874 was convened, Lunalilo died and Kalakaua was elected to succeed him as King. In his speech at the opening of the session King Kalakaua referred to the amendments which were to be acted upon and spoke favorably of several of them, especially the one removing the property qualification of voters. But out of the thirty amendments proposed and passed in 1873, only two were adopted in 1874, these being the amendment to article 62 removing the property qualification of voters and an amendment to article 63 called for by the change in the preceding article. All the other amendments were rejected by the process of indefinite postponement. The action of the legislature on these amendments resembled the operation of a well oiled machine.

Between 1874 and 1887 only one other amendment was adopted, namely, an amendment to article 56, first passed in 1880 and finally adopted in 1882, increasing the maximum compensation of Representatives from $250 (at which figure it had been set in 1868) to $500 for each session.

During this period several proposed amendments were passed by one legislature only to fail of adoption in the next session. Such was the fate of three amendments proposed and passed in 1874, designed to make articles 21, 22, and 24 conform to the change in dynasty. In this case, the failure of adoption in 1876 was due to the fact that the amendments were not published for the three months prior to the election of members of the House of Representatives, as required by article 80 of the Constitution. If they had come to a vote in 1876, there is no reason to doubt that they would have been adopted. In 1876 two proposed amendments were passed. One of these was an amendment to article 20 similar to the one introduced in 1870; the other was an amendment to article 61 changing the property qualification of Representatives to the possession of real estate or personal property of an unencumbered value of $500, eliminating the income alternative. Both of these amendments were rejected in 1878. Again in 1880 two proposed amendments were passed. One was the amend-
ment to article 56, mentioned above, which was finally adopted in 1882; the other was an amendment to article 61 increasing the property qualification of Representatives by raising the real estate alternative to a value of $2000 and the income alternative to a value of $1000; this was rejected in 1882.

In addition to the seven proposed amendments just mentioned, which were passed by at least one legislature, many others were proposed in this period and failed to get over the first hurdle. In fact, only one session passed without any amendment being brought in for consideration; and in some sessions, notably in 1876, there were regular epidemics of proposed changes in the Constitution. Altogether, from 1874 to 1886, inclusive, 39 amendments were proposed, including the 7 noted above. The heaviest attack was concentrated on a comparatively small number of articles. While the 39 proposed amendments related to 21 articles, 26 of them applied to only 8 articles, and 6 were proposals to amend a single article (article 56, relating to the compensation of Representatives).

It is useless to mention all of these amendments in detail; some were attempts to restore certain features of the Constitution of 1852, or to correct abuses believed to exist; a few were repeaters (the best example of this was a proposed amendment to article 20, similar to the one proposed in 1870, which was introduced three times); while a few were little more than expressions of crack-pot ideas. In the latter class may be placed a proposal to reduce the King's Cabinet to two members, the Premier and the Attorney General; a plan to have Representatives elected every eight years instead of every two years (this was introduced twice, by different persons); an amendment to article 31 vesting the executive power in the King and the native aliis and requiring that every law, to be valid, must be signed by the King and a majority of the native aliis.

Background of Constitution of 1887

With the political developments of the reign of Kalakaua and the details of legislation and administration, we are not here concerned any further than to note that those developments and details, especially the ones linked with the names of Moreno, Spreckels, and Gibson, were the cause of the revolution of 1887. Evils arose which were believed to have their roots in the power reserved to the King by the
Constitution of 1864. In the opinion of a very large number of people, conditions had become intolerable when the movement for a radical reform came to a head in a mass meeting held on June 30, 1887. Speeches were made and resolutions adopted calling on the King to correct certain specified abuses, and to dismiss the Cabinet headed by Walter Murray Gibson and appoint a new one "which shall be committed to the policy of securing a new constitution." Several of the speakers discussed this subject and the question as to whether the new Constitution should be brought into existence by action of the legislature or by some shorter and more direct process. L. A. Thurston expounded a theory, new in Hawaii, regarding the nature of the Constitution; he said

"They must have a radical change in the constitution. How was it to be secured? We want it now. Some said it would be unconstitutional unless brought about by the Legislature. Now, the constitution was a contract between us representing the people, and the King representing the throne. A contract could always be changed with the consent of both parties. . . . If both agreed to change it there could be no violation of rights. . . . The only way was to change the constitution now. . . ."

It was evident from the temper of the mass meeting that a great majority of its members favored getting the new Constitution in the quickest way possible.

King Kalakaua promptly yielded to the demands made upon him, and a new Cabinet was appointed (July 1), of which W. L. Green was the head and Godfrey Brown, L. A. Thurston, and C. W. Ashford were the other members. The new Ministers understood that their first task was to provide a new Constitution. Ashford some years later wrote of the way in which the instrument was prepared:

"The new Cabinet, in conjunction with strong committees of its political friends, immediately entered upon the drafting of a new Constitution, and the work proceeded both day and night until the document was completed, in the afternoon of July 6th. I well recall the extremely long and laborious session of the main committee having the matter in charge, during the Sunday next following the change of government. The Committee met at the residence of the late John T. Waterhouse, the elder of that name, at his residence on Nuuanu avenue, and remained in session all day and into the evening. The document having been thus hurriedly whipped into shape, it was fully prepared for the signature of the King in the late afternoon of July 6th."
The same writer gives an account of the meeting between the Cabinet and King Kalakaua when the new Constitution was presented to the King for his signature. Of course the latter was not at all happy over the turn events had taken, and it was only after several hours of heated argument that he submitted to this new demand and signed the document stripping him of the power he had so long exercised.

In the article quoted above, Ashford says that "the new government and its friends had, after mature consideration and discussion, concluded to retain so much of the text of the former Constitution as was not clearly inconsistent with the reforms insisted upon and which were involved in this new departure." So that the Constitution of 1887 was a revision of the Constitution of 1864, just as the latter was a revision of the Constitution of 1852. In the revision, the main objects sought were: to take from the King the extensive and uncontrolled powers exercised by him under the Constitution of 1864 and reduce him to the status of a ceremonial figure somewhat like the sovereign of Great Britain; to place the executive power, as a practical matter, in the hands of a Cabinet appointed by the King but responsible to the legislature; to change the character of the legislature by making the Nobles as well as the Representatives elective; to re-define the qualifications of Nobles, Representatives, and electors.

It is rather interesting to reflect on the fact that, in general, the same elements in the population that objected most to the method by which the Constitution of 1864 was brought into being compelled King Kalakaua to follow the same method in promulgating the Constitution of 1887. Of course, the surrounding circumstances were different, but the method was certainly open to question in both cases. On this point, note the following statement by Chief Justice Albert Francis Judd:

"The justices of the Supreme Court were kept in ignorance of the league which resulted in obtaining from Kalakaua the constitution of 1887. Just before its promulgation Justice Preston and myself were invited to assist in its revision, which we consented to do under a written protest that we did not approve of the method of its promulgation as being unconstitutional. I think that both the coup d'etat of Kamehameha V and the revolution of 1887, though both were accomplished without bloodshed, lessened the respect of the Hawaiians for the constitution and encouraged the attempt of Robt. Wilcox, in June, 1889, to rebellion and the promulgation of a constitution that would restore the lost prerogatives of the King."
This Constitution is slightly longer than that of 1864, but corresponds to it very closely in form and arrangement. The significant changes are indicated below.

In the bill of rights portion (Arts. 1-19) the only important change was the omission from article 3 of the clause that was inserted in 1864, thus restoring the article to substantially the same form as in the Constitution of 1852.

Division of powers (Art. 20). The clause, "no Judge of a Court of Record shall ever be a member of the Legislative Assembly," was changed to read, "no Executive or Judicial officer, or any contractor, or employee of the Government, or any person in the receipt of salary or emolument from the Government, shall be eligible to election to the Legislature of the Hawaiian Kingdom, or to hold the position of an elective member of the same. And no member of the Legislature shall, during the time for which he is elected be appointed to any civil office under the Government, except that of a member of the Cabinet."

Of the Executive (Arts. 21-43). Though most of the articles in this division remained as they were in the Constitution of 1864, very important changes were made in a few articles. Article 26, relating to the King's authority as commander-in-chief of army and navy, was revised and the following clause added, "and no military or naval force shall be organized except by the authority of the Legislature." In article 31, the sentence, "To the King belongs the Executive power," was made to read, "To the King and the Cabinet belongs the Executive power." In article 41 (corresponding to article 42 of the Constitution of 1864), the sentence relating to appointment and removal of Cabinet Ministers was changed to read as follows: "They shall be appointed and commissioned by the King and shall be removed by him, only upon a vote of want of confidence passed by a majority of all the elective members of the Legislature, or upon conviction of felony, and shall be subject to impeachment." Article 78 logically belongs in this division; it is a new article and reads:

"Wherever by this Constitution any Act is to be done or performed by the King or Sovereign, it shall, unless otherwise expressed, mean that such Act shall be done and performed by the Sovereign by and with the advice and consent of the Cabinet."
Of the Legislature (Arts. 44-63). In this division the first important change was made in article 48, relating to the veto and the signing of bills passed by the legislature. Before this time the King's veto had been absolute; now it was provided that the veto might be overridden by a two-thirds vote of all the elective members of the legislature. A radical change was made in the composition of the legislature, especially in regard to the Nobles. It was provided that there should be twenty-four Nobles, whose term of office should be six years, and each of whom must be a subject of the kingdom at least twenty-five years of age, must have resided in the kingdom three years, and must own taxable property of an unencumbered value of $3000 or have an income of at least $600 per annum; they were no longer to be appointed by the King, but to be elected by a special electorate whose qualifications are set forth in article 59:

"Every male reside of the Hawaiian Islands, of Hawaiian, American or European birth or descent, who shall have attained the age of twenty years, and shall have paid his taxes, and shall have caused his name to be entered on the list of voters for Nobles for his District, shall be an elector of Nobles, and shall be entitled to vote at any election of Nobles, provided:

"First: That he shall have resided in the country not less than three years, and in the district in which he offers to vote, not less than three months immediately preceding the election at which he offers to vote;

"Second: That he shall own and be possessed, in his own right, of taxable property in this country of the value of not less than three thousand dollars over and above all encumbrances, or shall have received an income of not less than six hundred dollars during the year next preceding his registration for such election;

"Third: That he shall be able to read and comprehend an ordinary newspaper printed in either the Hawaiian, English or some European language;

"Fourth: That he shall have taken an oath to support the Constitution and laws, . . .

"Provided, however, that the requirements of a three years' residence and of ability to read and comprehend an ordinary newspaper, printed either in the Hawaiian, English or some European language, shall not apply to persons residing in the Kingdom at the time of the promulgation of this Constitution, if they shall register and vote at the first election which shall be held under this Constitution."
The number of Representatives was fixed at twenty-four; the requirement that a Representative "shall know how to read and write" was changed to read "shall know how to read and write either the Hawaiian, English or some European language". The maximum compensation of Representatives was reduced to $250 for the biennial period. The qualifications of voters for Representatives are set forth in article 62:

"Every made resident of the Kingdom, of Hawaiian, American, or European birth or descent, who shall have taken an oath to support the Constitution and laws in the manner provided for electors of Nobles; who shall have paid his taxes; who shall have attained the age of twenty years; and shall have been domiciled in the Kingdom for one year immediately preceding the election; and shall know how to read and write either the Hawaiian, English or some European language (if born since the year 1840), and shall have caused his name to be entered on the list of voters of his district as may be provided by law, shall be entitled to one vote for the Representative or Representatives of that district; provided, however, that the requirements of being domiciled in the Kingdom for one year immediately preceding the election, and of knowing how to read and write, either the Hawaiian, English, or some European language, shall not apply to persons residing in this Kingdom at the time of the promulgation of this Constitution, if they shall register and vote at the first election which shall be held under this Constitution."

In article 63 it is provided that "The property or income qualification of Representatives, of Nobles, and of Electors of Nobles, may be increased by law; and a property or income qualification of Electors of Representatives, may be created and altered by law."

Of the Judiciary (Arts. 64-72). No change of any importance was made in this part of the Constitution.

Miscellaneous provisions (Arts. 73-81). Article 73 was made more explicit and the list of disqualifying crimes was greatly extended. A new article (78, quoted above) was inserted.

Mode of amendment (Art. 82). This was changed by omitting the requirement that amendments must be signed by the King.
Struggle to Change the Constitution

The type of government created by the Constitution of 1887 has been called "Cabinet government"; it had no exact counterpart anywhere in the world, but in its general working was nearer to the government of Great Britain than to any other. It existed for only five and a half years. The reader who wishes to know more about it is referred to the valuable study of Thomas M. Spaulding, *Cabinet Government in Hawaii*.

It will be seen that under this Constitution, the privilege of voting was granted to an extensive group of foreigners residing in the kingdom (whether naturalized or not) who took an oath to support the Constitution and laws and who possessed the other qualifications, but excluding all Asiatics. It will also be noticed that there were two classes of voters: (1) those who could vote only for Representatives; and (2) those who could vote for both Representatives and Nobles. From the latter class many of the native Hawaiians were excluded by the high property qualification.

While these provisions did not actually take away from the native Hawaiians any right or privilege they had previously enjoyed (save the possibility, so far as a few of them were concerned, of appointment as Nobles), yet the privileges extended to haoles gave the latter a greatly increased power in the government and reduced the Hawaiians to a position of apparent and, for a few years, actual inferiority in the political life of the country. This was one of the principal grounds of attack on the Constitution of 1887. Another was the drastic reduction of the powers of the Sovereign, to whom were left only two important powers that he could exercise independently of the Cabinet: (1) the veto, which could be overridden only by a two-thirds vote of the legislature; and (2) the appointment of each member of the Cabinet (the right to remove the Cabinet was given to the legislature). A third ground of objection to the Constitution as a whole was the manner in which it was brought into existence.

Two other factors which entered into the struggle over the Constitution during this period were the labor question (anti-Chinese movement), and the attempt to secure a complete new Constitution. These two topics will be discussed separately.

While the Constitution of 1887 was in force there were four sessions of the legislature, a special session in 1887 and the regular
sessions of 1888, 1890, and 1892. Proposed amendments were introduced in each of these sessions, some of which were aimed at the features mentioned above as objected to and some of which were directed at other articles in which individual members thought desirable alterations might be made. Altogether, changes were proposed in about fifteen articles of the Constitution. In 1887 and 1888 the party responsible for the existing Constitution was firmly in control and all amendments proposed were rather promptly rejected. In 1890 opposition elements succeeded in electing a large number of candidates for the legislature, and during this session the "Reform Cabinet", which (with some changes) had been in office since July, 1887, failed to receive adequate support on some issues and therefore resigned (June 16, 1890). Discord within the Cabinet was an important factor. The political situation was somewhat chaotic, but there seemed to be a disposition on the part of many, even among the supporters of the Constitution, to liberalize the franchise in respect to voting for Nobles and to confine the privilege of voting to actual subjects of the kingdom, thus removing the main grievances of the native Hawaiians.

Toward the end of the long session of 1890, the consideration of proposed changes in the Constitution crystallized in the passage of seven amendments: (1) an amendment to article 48, which made no essential change but merely gave the King an opportunity to sign a bill after it had been passed over his veto; (2) an amendment to article 55, increasing the maximum compensation of Representatives from $250 to $500 for the biennial term; (3) an amendment to article 56 requiring that a Noble must be a male subject of the kingdom, excluding the possibility of a woman being elected to that office; (4) an amendment to article 59, in two parts, the first of which would make only subjects of the kingdom (instead of residents) eligible to vote for Nobles, and the second of which would reduce the property qualification of voters for Nobles from $3000 to $1000; (5) an amendment to article 62 which would limit to subjects (instead of residents) of the kingdom the privilege of voting for Representatives; (6) an amendment striking out of article 63 the part which is quoted above (page 49); (7) adding a new article, to be numbered 83, relating to persons introduced into the kingdom to perform agricultural labor. This will be discussed farther along.

In 1892 the Reform Party regained part of the ground lost two years before and in the session of that year the political scene was even
more complicated than in 1890. Queen Liliuokalani was now on the throne and a great deal of time was taken up by a struggle between her and certain groups in the legislature over the control of the Cabinet. The constitutional amendments brought over from 1890 were not given very adequate consideration. Only two of them were adopted, namely, (1) the amendment to article 55 increasing the compensation of Representatives; and (2) the additional article (83) relating to imported laborers. Three others were brought up but failed to receive sufficient votes for adoption. Two of the amendments died apparently without receiving any consideration.

The Labor Question and the Constitution

The industrial boom brought on by the Reciprocity Treaty had as one of its effects the introduction of a large number of laborers, mostly Chinese in the earlier years, to work on the sugar and rice plantations. After a time, it was found that some of the Chinese were leaving their original agricultural employment and entering the mechanical trades and mercantile occupations, thus coming into competition with haole and Hawaiian workmen and tradesmen. The latter took such steps as they could to protect themselves, by urging the enactment of suitable legislation, etc. Japanese immigration became a factor in the situation. In this place we cannot follow all the ramifications of the subject, which became exceedingly complex. We need to follow only one line of development, that which relates to the Constitution of the kingdom.

Laws were passed to regulate the flow of Chinese into and out of the kingdom, but it was felt by many that a complete solution of the problem required an amendment of the Constitution. In the legislature of 1888, W. A. Kinney introduced an amendment, in the form of an addition to article 47, the gist of which was that the legislature might restrict or prohibit the admission of Chinese into the kingdom, might name and limit the occupations or employments in which they could engage, the estate and interest in land which they could acquire and hold, and the number of years they could reside in the kingdom; no law, however, was to make it unlawful for any person to continue in any occupation or employment in which he was engaged when the law was passed, or compel anyone to depart who
was lawfully in the kingdom at the time the amendment became a part of the Constitution.

The consideration of this proposed amendment developed a number of controversial angles. Various alterations were suggested, and the subject was referred to three successive select committees, one of which brought in a long report strongly advocating a policy of stringent restriction. However, since some members of the legislature believed the problem could be solved without amending the Constitution, and it seemed impossible to agree on the terms of the amendment, it was finally postponed indefinitely.

The agitation for restriction continued and during the summer and fall of 1889 Kinney and others urged the Cabinet to call a special session of the legislature to pass a constitutional amendment. The Cabinet gave the matter serious consideration and even sounded out some members of the legislature on the subject, but nothing further was done at the time. In the general election for members of the legislature in 1890, the Reform Party had as one of the planks of its platform:

"2. To secure adequate legislation, by constitutional amendment or otherwise, whereby Asiatic immigration shall be restricted to the agricultural necessities of the country, and Chinese not now engaged in trade or the mechanical occupations, shall be prohibited from hereafter engaging therein."

In the legislative session of 1890, Noble John Phillips, an avowed champion of the workingmen, introduced a bill to amend article 47 of the Constitution by adding the following:

"Provided, however, that the Legislature may from time to time enact such laws as it may deem proper for the supervision and control of all persons of Chinese or Mongolian birth or parentage and may also by such laws restrict and limit their residence in the Kingdom and the business or employment in which they may engage; such laws may apply to such persons who are in the kingdom at the time of the adoption hereof and to such as may hereafter arrive."

This was referred to a select committee on bills relating to the Constitution. The committee revised the amendment so as to eliminate the specific reference to Chinese, and recommended that it be passed as an additional article to the Constitution to be numbered 83. In
that form and with the wording recommended by the committee, the amendment was passed by the legislature of 1890, and was adopted by the next legislature, as stated above, on November 29, 1892, thus becoming a part of the Constitution. Commenting on the adoption of this amendment, the Honolulu Daily Bulletin, December 1, 1892, said that it was "the first positive as well as tangible result of the movement for self-protection inaugurated by workingmen in the Reform period of 1887-90".

Movement for a New Constitution

Running through nearly the whole period from 1887 to 1893 was a movement, or a series of movements, aimed at securing not merely amendments to the Constitution but a complete new Constitution modeled more or less on that of 1864. This manifested itself in various ways and was a most important factor in the political history of the period.

It is stated by several authorities that a group of Hawaiians went to King Kalakaua soon after the promulgation of the Constitution of 1887 and begged him to abrogate that instrument and proclaim a new one. However willing the King might have been to grant what was asked, he knew that it could not safely be done. He is said to have put off the petitioners by pointing out that the Constitution of 1887 bore his signature—hence it was his own act.

The Wilcox rebellion of 1889, whoever was the real author of that émeute and whatever its other objects may have been, certainly had as one of its aims a new Constitution.

In the legislative session of 1890 and in that of 1892 strong efforts were made to pass a bill to provide for the holding of a constitutional convention. During each of these sessions a great many petitions were presented to the legislature asking for the enactment of such a bill. In 1890 the plan had the open endorsement of King Kalakaua. The history of the movement indicates that it was carefully organized and managed and had the support of a large part of the native population.

In the Legislative Assembly, June 30, 1890, Representative J. W. Kalua gave notice of his intention to introduce a bill to provide for calling a constitutional convention. (This was two weeks after the resignation of the "Reform Cabinet".) On July 2, Representative
J. Nawahi "moved a resolution that, whereas it is the universal wish of the people to have a constitution giving equal rights to all, the Ministers be requested to state if they intend to bring forward a new constitution this session." The president of the Assembly ruled that the resolution was entirely out of order; he said the honorable member "might as well ask the Ministers if they intended to hold a revolution."

On Saturday evening, July 19, a mass meeting was held in Palace Square to talk about a constitutional convention. A large crowd is said to have been present. Speeches were made by several speakers including Representatives J. E. Bush, R. W. Wilcox, and J. Nawahi; and a committee was appointed to further the object of the meeting.

On August 9 the committee met and drafted a resolution which, after a long preamble, declared the petition of his subjects would be good cause for the King to request the legislature to enact a law authorizing him to call a constitutional convention. The resolution was engrossed, signed by forty-three men who were said to be delegates from the various islands, and on August 14 was presented to the King in a very formal manner. A procession headed by the Royal Hawaiian Band, with the delegates attired in full dress suits, top hats, and white gloves, proceeded to the Palace, where it was received in audience by the King. The resolution was handed to the King and he promised to bring the subject to the attention of the legislature. That evening another mass meeting was held in Palace Square, at which speeches were made in support of the movement.

On the following day, August 15, King Kalakaua sent a special message to the legislature referring to the petition of the people and saying it was his "Royal Pleasure that the Legislative Assembly . . . take such measures as would carry out the intention of the people expressed in that Petition."

On the same day, Representative Kalua introduced the bill of which he had given notice on the 30th of June. It was referred to the select committee on bills relating to the Constitution. There were nine members on the committee. None of them gave full approval to the bill, and the majority (W. H. Cornwell, J. Marsden, A. P. Paehaole, G. N. Wilcox, H. P. Baldwin, and P. P. Kanoa) presented a report emphatically opposing its enactment. The report examined the various arguments for a constitutional convention and concluded that they were not sound and did not furnish justification for such an extraordinary measure as the holding of a convention.
Furthermore, the report asserted that holding a convention was an unconstitutional and illegal proceeding and cited authorities in support of this opinion. The report charged that the movement for a convention had been worked up by a few demagogues and chronic agitators.

The bill and the reports came up for consideration in the legislature on September 29 and the greater part of three days was taken up with a debate which touched upon every phase of the question. Supporters of the bill stressed the objections to the Constitution of 1887. Opponents argued along the lines of the committee report, and contended that the proposed amendments then pending in the legislature would correct all the really objectionable features of the Constitution, and that efforts should be concentrated on securing the adoption of those amendments instead of unsettling everything and adding to factional bitterness by holding a constitutional convention. The bill was defeated by a vote of 24 to 16.

There was some discussion of this question in the next political campaign; and during the early weeks of the legislative session of 1892 many petitions were sent in, praying for a new Constitution. There was evidently some kind of organization back of these petitions. About the end of June, Representative William White introduced a bill to provide for a constitutional convention, which was referred to a select committee. In this session of the legislature a great amount of time was used up in a bitter struggle between the Queen and certain groups in the legislature over the appointment of Cabinet Ministers. All other business was more or less interfered with and the session continued into the second week of January, 1893. In the middle of December two reports on Representative White's bill were presented to the Assembly. The minority report favored adoption of the bill, while the majority recommended that it be laid on the table. After a debate extending over about one day and a half, the bill came to a vote and was defeated, 24 to 17. But this was not the end of the matter.

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 those 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.
Appendix A

Amendments to Constitution of 1852

Amendments adopted by Legislature and approved by the King
April 18, 1856

Article 27
(amended in Hawaiian version only)

Article 29
(amended to read as follows:)

"Article 29. The King by and with the advice of His Privy Council, convenes both Houses of the Legislature at the seat of Government or any different place if that should become dangerous from an enemy or any dangerous disorder; and in case of disagreement between the two Houses, or between His Majesty and them, He adjourns, prorogues, or dissolves them, but not beyond the term of two years; under any great emergency He may convene both or either of them to extraordinary Sessions."

Article 32
(amended to read as follows:)

"Article 32. He has the power by and with the advice of his Cabinet and the approval of his Privy Council, to remove at his pleasure, any of the several heads of the Executive Departments and he may require information in writing from any of the Officers in the Executive Departments, upon any subject relating to the duties of their respective offices."

Article 43
(amended to read as follows:)

"Article 43. The King appoints some Chief of rank and ability to be his Kuhina Nui, who shall be styled the Kuhina Nui of the Hawaiian Islands, and shall be addressed by the birth title, or such title as may have been conferred by His Majesty."

57
Article 54
(amended to read as follows:)

"Article 54. Each of them shall make a report to the Legislature, made up to the first day of the fiscal year, of the transactions and business of his Department, within one week after the opening of the Legislature."

Article 61
(amended to read as follows:)

"Article 61. The Legislative Body shall assemble biennially, for the purpose of seeking the welfare of the Nation, at such time and in the place that the King may judge necessary. This Body shall be styled the Legislature of the Hawaiian Islands."

Article 72
(amended to read as follows:)

"Article 72. The King appoints the members of the House of Nobles who hold their seats during life, unless in case of resignation, subject to the provisions of Article 67 but their number shall not exceed thirty."

Article 100
(amended to read as follows:)

"Article 100. The Legislature votes the appropriations biennially, after due consideration of the revenue and expenditure for the two preceding years, and of the estimates of the revenue and expenditures of the two preceding years, which shall be submitted to them by the Minister of Finance."

Appendix B

Amendments to Constitution of 1864

Amendment adopted by Legislature and approved by the King
May 13, 1868

Article 56
(amended to read as follows:)

"Article 56. The Representatives shall receive for their services, a compensation, to be ascertained by law, and paid out of the public
Treasury, but no increase of compensation shall take effect during the year in which it shall have been made; and no law shall be passed, increasing the compensation of said Representatives beyond the sum of Two Hundred and Fifty Dollars for each session."

Amendments adopted by Legislature and approved by the King
July 13, 1874

Article 62
(amended to read as follows:)

"Article 62. Every male subject of the Kingdom, who shall have paid his taxes, who shall have attained the age of twenty years, and shall have been domiciled in the Kingdom for one year immediately preceding the election, and who shall know how to read and write, if born since the year 1840, and shall have caused his name to be entered on the list of Voters for his district as may be provided by law, shall be entitled to one vote for the Representative or Representatives of that district. Provided, however, that no insane or idiotic person, or any person who shall have been convicted of any infamous crime within this Kingdom, unless he shall have been pardoned by the King, and by the terms of such pardon have been restored to all the rights of a subject, shall be allowed to vote."

Article 63
(amended to read as follows:)

"Article 63. The Property qualification of the Representatives of the people may be changed by law."

Amendment adopted by Legislature and approved by the King
May 13, 1882

Article 56
(amended to read as follows:)

"Article 56. The Representatives shall receive for their services a compensation to be ascertained by law, and paid out of the Public Treasury, but no increase in compensation shall take effect during the year in which it shall have been made; and no law shall be passed increasing the compensation of said Representatives beyond the sum of Five Hundred Dollars for each Session."
Appendix C
Amendments to Constitution of 1887

Amendments adopted by Legislature, November 29, 1892
(approval by Sovereign not required)

Article 55
(amended to read as follows:)

"Article 55. The Representatives shall receive for their services a compensation to be determined by law, and paid out of the Public Treasury, but no increase of compensation shall take effect during the biennial term in which it shall have been made, and no law shall be passed increasing the compensation of Representatives beyond the sum of five hundred dollars for each biennial term."

Article 83
(a new article added to the Constitution)

"Article 83. The Legislature may from time to time enact such laws as it may deem proper for the supervision and control and identification of all persons or any one class or nationality who may be introduced into the Kingdom for the purpose of performing agricultural labor, and may also, by law, restrict and limit the term of residence in the Kingdom of such agricultural laborers and the business or employment in which they may engage."