



HAWAII'S PROPOSED 1893 CONSTITUTION

BY

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*Lili`u We are singing a requiem for our mother, Our voices a shroud
across this land, Wrenched we were, from Kamaka`eha's soft bosom,
Wretched, our grief inconsolable, We are feeble scratchings against
cold granite vaults, Grasping, tremulous as moondark trees, Our fire-
spirits burned black as cinders— Our mouths filled with ash. Our
mother's spirit was incandescent color, Green Ocean of emerald stars,
mosses, living grass: Know you our sweet-voiced mother? Know you
her children's sorrow? Cloudless azure, blue-veined petal: Her blood
was a firebrand night, Her bones iridescent light; She sang the sunlit
bird. Fire-spirits burned black as cinders, Mouths filled with ash, We
search the empty garden, Uluhaimālama, Papery flowers on
melancholy earth. Now Our song is for our mother, Our nation, Our
rebirth. (Mahealani Wendt)*

THE LOST KINGDOM OF HAWAII

Queen Liliuokalani was well aware of why she and her beloved native Hawaiian people had lost the Kingdom of Hawaii in 1893. As far as she was concerned, a committee of thirteen, mostly American white traitors associated with the sugar industry, some of them hypocritical members of the so-called missionary party who had sold out their beloved god to mammon, had stolen her sovereignty over the Hawaiian Islands on the pretext that she had committed high crimes and misdemeanors.

The deposed Queen recounted the gravest charge laid out against her: “First, - That I proposed to promulgate a new constitution. I have already shown that two-thirds of my people declared their dissatisfaction with the old one; as well they might, for it was a document originally designed for a republic, hastily altered

when the conspirators found that they had not the courage to assassinate the king.”

That king was of course David Kalakaua, the “Merrie Monarch” who had allegedly sailed to America for his health; it was suspected that his health was a pretext, and he actually intended to make a secret trade deal to save sugar from duties hence forestall the annexation desired by some but not all sugar magnates. He had died with nephritis in San Francisco, aged 54, on 20 January 1891, or of a broken heart, said Liliuokalani, because of the severe limitations put on the monarchy by ungrateful whites who coerced him into signing the 1887 Constitution, rendering her brother a figurehead of a king, as if he were an English king, after the exercise of his prerogatives had instituted a golden age of prosperity for the islands in which the haoles gotten lots more than their fair share.

“For years the ‘missionary party’ had, by means of controlling the cabinets appointed by the king,” Liliuokalani complained, “kept itself in power. Its leaders were constantly intriguing to make the ministry their tool, or to have in its organization a power for carrying out their own special plans, and securing their own personal benefit. And now, without any provocation on the part of the king, having matured their plans in secret, the men of foreign birth rose one day en masse, called a public meeting, and forced the king, without any appeal to the suffrages of the people, to sign a constitution of their own preparation, a document which deprived the sovereign of all power, made him a mere tool in their hands, and practically took away the franchise from the Hawaiian race. This constitution was never in any way ratified, either by the people, or by their representatives, even after violence had procured the king's signature to it. Contrary entirely to the intent of the prior constitution drawn by a Hawaiian monarch (under which for twenty three years the nation had been conducted to prosperity), this draft of 1887 took all power from the ruler, and meant that from that day the ‘missionary party’ took the law into its own hands.”

The Opposition’s side of the *Story* is well told by her haole contemporary, William Richards Castle, in ‘Sketch of Constitutional History in Hawaii’ in *The Twenty-First Annual Report of the Hawaiian Historical Society* (1915):

“There is no question that when Kalakaua took the throne, the respect felt by all of the people for the authority of a constitution had been very much shaken. Kalakaua’s own course was not calculated to restore confidence....The adjournment of the legislature of 1876 was soon followed by the dismissal of the cabinet by the King and this method of making and unmaking cabinets, depending on the whim of the monarch, soon became the rule. A struggle was made against it in favor of the principle that the cabinet was to some extent responsible to the legislature and that it could not be broken up by the King, at his unrestrained will but should remain in existence until it had been defeated by a vote of ‘want of confidence’ in the legislature.

“The latent powers which the constitution of 1864 contained, by which an almost absolutely autocratic power could be assumed by the King, were speedily developed by Kalakaua and it became evident before many years that constitutional government in Hawaii was becoming a name and not a reality. For the legislature of 1886 a long and bitter campaign was entered upon, the King openly attempting to secure a legislature subservient to his wishes. Very few of the native Hawaiians opposed this action of the King in any way whatsoever....”

Wherefore Article 48 of the “republican” 1887 Constitution provided for “overcoming the King’s veto of bills passed by the legislature, by a two-thirds majority of the elective members. This meant that the cabinet, who held seats ex officio and voted in the legislature, could not vote on questions of over-riding a veto which might have been from their advice.”

“The fears of those who insisted on retaining a Hawaiian Kingdom with Kalakaua at its head were soon realized. As soon as he got over his terror, he began a systematic plotting to nullify the provisions of this new constitution and during that period a number of conspiracies to overturn the government, abrogate this constitution and restore the former order, were nipped in the bud, or met and suppressed with loss of life.... Liliuokalani succeeded to the throne in January, 1891, and continued the activities of her brother, in making a bold attempt in January, 1893, to overturn the constitution of 1887 and substitute one of her own, which contained provisions’ absolutely subversive of the principles of constitutional government, as understood in enlightened countries. This time the friends of Hawaii gave up any further attempt to continue an independence which

was not wanted, and in opposing and defeating this last attempt, openly sought annexation to the United States....”

In her own side of the *Story*, the Queen recounted that “the (1892) legislature was opened, and began its daily sessions. The usual measures were brought in, one after another, for consideration by the representatives of the people. But all other matters were persistently thrust aside in order to give time for the repeated dismissals of cabinets. By the account given by me of the revolution of 1887, it will be noticed that the constitution forced upon my brother at that date made the sovereign inferior to the cabinet. The ministry must be appointed by the monarch, but, once appointed, had absolute control over every measure, nor could the monarch dismiss them, and only a vote of the legislature could deprive them of their portfolios. That provision made the cabinet, as I have shown in previous pages, a perpetual football in the hands of political parties....

“It is alleged that my proposed constitution was to make such changes as to give to the sovereign more power, and to the cabinet or legislature less, and that only subjects, in distinction from temporary residents, could exercise suffrage. In other words, that I was to restore some of the ancient rights of my people. Is there another country where a man would be allowed to vote, to seek for office, to hold the most responsible of positions, without becoming naturalized, and reserving to himself the privilege of protection under the guns of a foreign man-of-war at any moment when he should quarrel with the government under which he lived? Yet this is exactly what the quasi-Americans, who call themselves Hawaiians now and Americans when it suits them, claimed the right to do at Honolulu.”

In fine, the Queen’s highest crime was an intent to commit treason by threatening to arbitrarily proclaim an 1893 Constitution that would abrogate and replace the current constitution, the 1887 “Bayonet” Constitution arbitrarily forced at bayonet point by the white interlopers upon her brother, the late King David Kalakaua, a constitution that undid the reactionary or nativist reform embodied in the 1864 Constitution, arbitrarily proclaimed by King Kamehameha V to overcome the measures of the 1852 Constitution, which was drafted by whites and promulgated by King Kamehameha III to liberalize the 1840 Constitution, the first written constitution, also drafted by whites and granted by him.

Prior to 1840, from its violent foundation in 1810 by King Kamehameha the Great Warrior King, the Kingdom of Hawaii was governed by kings in council with their chiefs. Since 1840 there had been a constitutional tug of war between king and legislature for power over his cabinet, dominated by white advisors familiar with parliaments, with the legislature itself becoming increasingly dominated by white subjects and foreign residents.

The 1893 Constitution the Queen proposed is actually revision of the 1887 Constitution with minor yet crucial changes, but there is no way she could have obtained it by from the legislative assembly via a constitutional amendment process because the few amendments would be scoffed at by all but the nativist minority.

As far as she was concerned, abrogating constitutions and granting new ones instead of constitutionally revising the same old one according to its amendment provision was well within her ancient prerogative, for what the sovereign gives, the sovereign can take away. In fine, she would fain restore absolute power to herself for the good of her kind, native Hawaiians and naturalized subjects, as she saw fit.

Not only had whites managed to take almost all the valuable land for themselves along with power over the legislature, they had encroached on the royal prerogative by rendering the cabinet a creature of the legislature. Therefore, first of all, she wanted to regain control of the cabinet. The constitutions normally provided that “the ministers are responsible.” But to whom were they responsible, to the king or to the legislature? That depends.

AMERICAN AND ENGLISH CABINETS

The Constitution of the United States does not expressly provide for a cabinet, so the word has no formal meaning. Members at the Constitutional Convention, during their discussion of the election of a president, observed that they had not settled the cabinet issue, and recommended that the president have the power to require opinions from his department heads, assuming that there would be departments although not including them in the constitution, nor would a cabinet be explicitly referred to. Washington and Jefferson would call their department heads to council, but the cabinet was not responsible to the legislature.

As Henry Barrett Learned explained in *The President's Cabinet* (1912), "The American President's Cabinet Council was in no sense a conscious imitation of any organization in existence at the epoch of its creation." And "The English Cabinet Committee had developed in the course of a complicated evolution of party practices and peculiar circumstances into a parliamentary committee which was largely responsible even at that time to the House of Commons." And "Its spokesman and director was already customarily known as the Prime Minister. The President's Cabinet, in contrast to the English institution was essentially and simply an advisory council quite independent of the Legislature. The President summoned it if he wished to do so. To the President alone its members were responsible. It had at the start no pivotal place in the structure of the American government, certainly no place that was so recognized outside of its immediate membership."

The unelected department heads are subject to the will of the president yet influence the making of his policies. He appoints the cabinet members subject to congressional approval; they are responsible to him for the performance of their duties; congress may not remove them except in cases of impeachment, for they serve at his pleasure. He retains office for a certain number calendar years despite his performance unless he is impeached by the House and convicted by the Senate of high crimes and misdemeanors. So the president, a temporary king, may appear to be more majestic in his power than Her Majesty in England, in which case his tenure is referred to as an imperial presidency. Here it is said there exists a jealously guarded separation of the powers of government into three branches, executive, legislative, and judicial, although the functions overlap in several respects.

The ministers of the cabinet of the prime minister of Great Britain are also appointed by him as chief executive although his position is customary instead of formally provided for. He is usually the winning party's leader, virtually elected by parliament and formally recognized by the Queen. Wherefore the cabinet is directly responsible to parliament, not to the Queen, and is only indirectly responsible to the people who elect its members. The cabinet ministers serve at the prime minister's pleasure, and he and his cabinet may be replaced by an election called for lack of confidence in them, a step that is preferably avoided by working out a compromise. So the cabinet performs legislative as well as

executive functions, and there is no clear separation of those so-called branches and the judiciary except in the minds of some theorists.

It should be said discursively that the natural tendency that orders a population evolves into overlapping institutions: the king remains as executive; part of his court spins off as a legislative house of nobles and his judicial courts; some of his court are retained as a privy or private court, from which an administrative cabinet is spun off, as well as royal law courts. The people who are to pay and fight for all this become problematic; they are represented by landed gentry in a house of commons; and it is not long before everyone wants the right to hold office and vote. All that creates a conflict of powers that becomes increasingly difficult to balance when a theoretical separation of branches is ideologically insisted upon. The powers are only ideally separate; the conflict is really internal; the attempts to rationalize the branches as independent parts of the whole may result in the trinitarian absurdity, that three is equal to one. What we have is not a trinity but a family with members striving for independence, or branches of a tree that will die without their trunk.

The English cabinet was a long time evolving from the private or Privy Council of kings. Albert Venn Dicey informs us in his 1860 essay 'Privy Council,' that "There existed, as has been seen, from a period certainly as early and probably earlier than Richard II.'s reign, a body consisting of regularly paid and sworn Counselors... Originally those Counselors who regularly attended were perhaps scarcely distinguished from those advisers whom, like the judges, the King at times summoned.... under Henry VI a select Council was gradually arising from the midst of the general Council, that a change was taking place precisely analogous to the process by which, in a later age, the Privy Council itself gave birth to the Cabinet. Hence, from the concurrence of various causes, it resulted that the Council's authority had reached an extremely high pitch. The King was weak and incapable. The Council had long wielded the powers of the state, it had drawn close the bonds connecting its members together, and it thus stood, about the year 1444, prepared under cover of the regulations...gradually to seize, one by one, the prerogatives of the King...."

THE REVOLUTIONARY DIFFERENCE

The reason that there is a difference in cabinet responsibility between the United States of America and its mother country may be said to be the reason the United States of America exists. Imperial presidents have been problematic in the U.S., and, in Great Britain, the prime ministers of have lately become increasingly imperial. When that happened on a previous occasion, the American colonists revolted; therefore, we have the United States to this day.

George III like Queen Liliuokalani had issues with his ministerial cabinet, but he was cleverer in managing it. He managed for awhile to fill the cabinet with ministers who had conflicting interests, each one more beholden to him than to their party. Dividing in order to conquer with an incoherent cabinet, he was virtually his own prime minister for several years, consulting privately with his appointed ministers, establishing and executing policy outside of the normal parliamentary cabinet system. And then his juggling was made unnecessary by Lord Frederick North, a prime minister (1770-1782) subject to his will, and a compliant cabinet. However, as every schoolboy knows, Great Britain was defeated by the American revolutionaries, and parliament's vote of no confidence brought down Lord North's ministry. The Marquess of Rockingham reestablished Parliament's control over the cabinet, insisting that the prime minister and cabinet work together or be replaced. The cabinet demanded that King George consent to their measures. He resisted, threatening even to abdicate, saying he would rather lose his crown than wear it in disgrace, but in the end he needed a government and he had one.

The Marquess of Rockingham (1782-1782) was succeeded by the Marquess of Lansdowne (1782-1783), the Duke of Portland (1783-1783), and William Pitt the Younger (1783-1801).

George Burton Adams, who began to teach history at Yale University in 1888, a year after the 1887 Constitution was forced on King Kalakaua, addressed the same subject in *The Origin of the English Constitution*:

"With the accession of George III there came to the throne a king who, if he did not understand the cabinet system as we do, understood at least what its growth had cost the crown. It is significant of the great change which had come about in a century that George III.'s attempt to recover power was not an attack upon the [Restoration] Settlement of 1660, it was no attempt to raise again the issue of the

fundamental interpretation of the Constitution, but it was an attack upon the results achieved since the death of William III. Neither king nor cabinet understood, however, during the first period of the reign the full meaning of the new institution. Had it been understood, *had ministerial responsibility of the modern type existed then, it is no exaggeration to say that the American Revolution would not have occurred.* But the ministry of Lord North was the real accomplishment of the king's purpose, and a real return to the situation under William III., when the king determined the policy of the government and the business of the cabinet was to carry out his policy under a direct responsibility to him and only a secondary responsibility to Parliament. The failure of the attempt to bring the colonies back to their allegiance was also the failure of this last attempt of all to interfere with the natural development of the Constitution.”

“It is my belief that the event which had the greatest influence in bringing the public mind of Britain to an understanding of the cabinet system and the modern principle of ministerial responsibility was the struggle of the younger Pitt to maintain himself against a hostile House of Commons. He succeeded but his success rendered another like it impossible.... Three years after Pitt's triumph the Constitution of the United States was framed by a large assembly of the most experienced public men and students of politics in America, who considered with care the problem of setting up a government to operate in the best way. One great problem before them, set by the situation of the time, was to secure a really effective executive while leaving ultimate authority in the legislature as representing the people, exactly the problem which ministerial responsibility solves. In their Constitution, however, not merely did they entirely separate the executive and legislative departments, but they gave little attention to the cabinet, and they seem to have had no idea whatever of ministerial responsibility. It seems altogether probable that they thought that in this respect they were following the English model, as beyond question they did when they adopted impeachment, and certainly, had there existed in England any such definite idea of ministerial responsibility as fifty years later, there would have been some discussion of it in the Convention.”

“(Another) incident is even more indicative of English understanding. In 1791 Parliament under the leadership of Pitt's ministry framed a new government for Canada. The debate on the bill shows conclusively that the desire was to give to Canada the same kind of government which England had, and I think there can be

no question but that this was honestly intended. And yet no responsible ministry was granted, or even proposed, and the foundation was laid for the later Canadian rebellion which opened a new era in British colonial government.”

LILIUOKALANI FAVORS SALISBURY OVER GLADSTONE

Queen Liliuokalani might have retained her crown for awhile longer if she had considered the history of Great Britain, and resigned herself to graciously bobbing along as another cork on top of the current to the end of history i.e. global liberal democracy.

In fact, she had been in England in 1887 for Queen Victoria’s Diamond Jubilee. Hindsight is better than foresight. It would have been in her best interest to have consulted Victoria, and Lord Salisbury and William Gladstone, two great prime ministers, on the virtues and vices of cabinet government in contrast to absolute monarchy. And then she would have realized, after witnessing the pomp and circumstance of the Victoria’s Jubilee and the lifestyle of English royalty, that it would not be such a bad thing at all to concede a great deal of her ancient power to her own kingdom’s legislative assembly. Perhaps her brother had realized that after he assigned his absolutist powers to the legislature. Yes, the English monarchs may be referred to by communists as expensive figureheads that should be dumped in the dustbin of history, but they, serve a grand social purpose as figures for national unity. They live a royal life for the sake of the nation, and they do have a few significant prerogatives left, including a great prerogative held in “reserve” to protect the democracy in case of emergency.

Queen Liliuokalani had met Victoria and the prime ministers named. She naturally preferred Salisbury, the conservative, to Gladstone, the liberal, and was flattered by Victoria’s perhaps condescending attention to her.

Ironically, despite Robert Arthur Talbot Gascoyne, Lord Salisbury’s early reputation as a reactionary, arch-conservative isolationist, he was a pragmatic opportunist who became popular for his support of socialist or welfare-state measures in the 1890s, and he was applauded for his blatantly imperialistic support of the Naval Defense Act of 1889 that expanded the Navy to defend the British Empire. He would say that British rule was necessary to govern “backward” peoples until they learned to govern themselves. Calling him a “Socialist” did the

Opposition little good, for the term, as far as he was concerned, was a shibboleth. He was a great man in several respects, including but not limited to his great fortune, in terms of material wealth and a loving wife, not to mention the great weight that took his breath away and killed him.

"Our first greeting came from the Premier, Lord Salisbury," Liliuokalani recounted in her *Story*. "Mr. Gladstone has been called 'The Grand Old Man,' yet this thought was strongly emphasized to me also in the presence of Lord Salisbury. He has always appeared to me to be the greater man of the two. If his rule has been less popular and more conservative, it has required no less devoted patriotism and lofty abilities. I attribute the present prosperity of the British Empire very largely to the consummate wisdom and stanch (sic) loyalty of Lord Salisbury."

She had words with Gladstone, and we wish that she had asked him for his thoughts on cabinet government. "On one of the days when we were free of other engagements, the party of Queen Kapiolani took carriages, and drove out to the residence of Lady Aberdeen, where Mr. Gladstone was staying for a few days. We were received most cordially by himself and his good wife out under the trees on the ground. When he spoke, there was serious thoughtfulness in his remarks, and words of world-wide significance seemed as ready with him as those of common import are with any other. There were a number of visitors claiming the honor of an interview; he listened patiently to any one's questions, but directed his replies to all those by whom he was surrounded."

At the time of her visit, monarchs were destined to being carved into figureheads if not thrown onto the rubbish heap in Europe. There remained a few royal anachronisms during the Victorian Age, but the personal rule of one individual was rapidly going out of fashion and was downright embarrassing. The royal prerogatives, simply defined as the extent of a sovereign's arbitrary powers, had been enormously reduced. The legislature was supreme, and its cabinet of ministers, chosen by the winning party's head, designated as the premier or prime minister, actually ruled. All that is a matter of custom evolved from the struggle of aristocratic and democratic forces against the tyranny of kings who reigned against the highest good, deemed to be the common good. The British monarch has a few significant prerogatives left today, including some said to be sufficient in an emergency to protect liberal democracy from overthrow if need be, which could, theoretically, provoke a constitutional crisis or revolution if

exercised. Nevertheless, a minority of Brits would be rid of vestigial monarchs and nobles alike.

WOODROW WILSON WEIGHS IN

Liliuokalani might have been even further persuaded of the virtues of having cabinets responsible to the legislature, instead of the executive, as in the United States, if she had consulted with Professor Woodrow Wilson at Bryn Mawr College for liberal women, or had read the essay, 'Committee or Cabinet Government?' Wilson penned in 1884 suggesting how the struggle between executive and legislature should be resolved in favor of a legislative cabinet:

"While Congress remains the supreme power of the state, it is idle to talk of steadying or cleansing our politics without in some way linking together the interests of the executive and the legislature. So long as these two great branches are isolated, they must be ineffective just to the extent of the isolation. Congress will always be master, and will always enforce its commands on the administration. The only wise plan, therefore, is to facilitate its direction of the government and to make it at the same time responsible, in the persons of its leaders, for its acts of control, and for the manner in which its plans and commands are executed. The only hope of wrecking the present clumsy misrule of Congress lies in the establishment of responsible cabinet government....

"The Constitution would have to be altered. For instance, four words would have to be added to Section 6, Article I, of the Constitution so that it would read: 'No Senator or Representative shall, during the term for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any OTHER THAN A CABINET office under the United States shall be a member of either House during his continuance in office. "The way will have been cleared, in great part at least, for the development of a constitutional practice, which, founded upon the great charter we already possess might grow into a governmental system at once strong, stable, and flexible."

And in *Congressional Government* (1885), Wilson, the future president of Princeton University and the United States, explained the superior efficiency of parliamentary cabinets:

“(The British system) brings the representatives of the people and the ministers of the Crown face to face. The principal measures of each session originate with the ministers, and embody the policy of the administration.... The bills introduced into the House of Commons by the cabinet embody the definite schemes of the government ; and the fact that the Ministry is made up of the leaders of the majority and represents always the principles of its party, makes the minority only the more anxious to have a chance to criticize its proposals.... Cabinet government is a device for bringing the executive and legislative branches into harmony and cooperation without uniting or confusing their functions. It is as if the majority in the Commons deputized its leaders to act as the advisers of the Crown and the superintendents of the public business, in order that they might have the advantage of administrative knowledge and training in advising legislation and drafting laws to be submitted to parliament.... This arrangement enlists the majority in behalf of successful administration without giving the ministers any power to coerce or arbitrarily influence legislative action. Each session of the Lords and Commons becomes a grand inquest into the affairs of the empire. The two estates sit as it were in committee on the management of the public business — sit with open doors, and spare themselves no fatigue in securing for every interest represented a full, fair, and impartial hearing.... The Ministry's tenure of office depends upon the success of the legislation they urge. If any of their proposals are negatived by parliament, they are bound to accept their defeat as an intimation that their administration is no longer acceptable to the party they represent, and are expected to resign, or to appeal, if they prefer, to the country for its verdict, by exercising their privilege of advising the sovereign to dissolve parliament and issue writs for a new election. It is, consequently, inevitable that the Ministry should be subjected to the most determined attacks and the keenest criticisms of the Opposition, and should be every day of the session put to the task of vindicating their course and establishing anew their claim to the confidence of their party.... the Ministry seldom find the task of leading the House an easy one. Their plans are kept under an unceasing fire of criticism from both sides of the House.... Time is generally found for a very fair and full consideration of a large number of private members' bills, and no member is denied a chance to air his favorite opinions in the House or to try the patience of his fellow members by annual repetitions of the same proposition.... On the front benches nearest the Speaker and to his right sit the cabinet ministers, the leaders of the Government; opposite, on the front benches to the

Speaker's left, sit the leaders of the Opposition. Behind and to the right of the ministers gather the majority; behind and to the left of their leaders, the minority. Above the rear benches and over the outer aisles of the House, beyond "the bar," hang deep galleries from which the outside world may look down upon the eager contests of the two parties which thus sit face to face with only the aisle between them...."

Woodrow Wilson was influenced by the opinions of British author Walter Bagehot, who concluded, from his comparison of the English cabinet system and the American presidential system, in *The English Constitution* (1867), that British cabinet rule is the "secret" efficiency of the English Constitution; secret because it is not formally declared, and academics theorize a nonexistent balance of powers.

Even in quiet times," Bagehot said, the American system is "inferior to government by a cabinet; but the difficulty of quiet times is nothing as compared with the difficulty of unquiet times. The comparative deficiencies of the regular, common operation of a presidential government are far less than the comparative deficiencies in time of sudden trouble, the want of elasticity, the impossibility of a dictatorship, the total absence of a *revolutionary reserve*." "(A) strong cabinet can obtain the concurrence of the legislature in all acts which facilitate its administration; it is itself, so to say, the legislature. But a president may be hampered by the parliament, and is likely to be hampered. The natural tendency of the members of every legislature is to make themselves conspicuous. They wish to gratify an ambition laudable or blamable; they wish to promote the measures they think best for the public welfare; they wish to make their will felt in great affairs. All these mixed motives urge them to oppose the executive. They are embodying the purposes of others if they aid; they are advancing their own opinions if they defeat: they are first if they vanquish; they are auxiliaries if they support. The weakness of the American executive used to be the great theme of all critics before the Confederate rebellion. Congress and committees of Congress of course impeded the executive when there was no coercive public sentiment to check and rule them."

"It has been said that England invented the phrase, 'Her Majesty's Opposition'; that it was the first government which made a criticism of administration as much a part of the polity as administration itself." "There are doubtless debates in the legislature, but they are prologues without a play. There is nothing of a

catastrophe about them; you cannot turn out the government. The prize of power is not in the gift of the legislature, and no one cares for the legislature. The executive, the great centre of power and place, sticks irremovable; you cannot change it in any event." "(A) parliamentary or cabinet constitution possesses an additional and special advantage in very dangerous times...." "Under a cabinet constitution at a sudden emergency this people can choose a ruler for the occasion. It is quite possible and even likely that he would not be ruler before the occasion...." "By the structure of the world we often want, at the sudden occurrence of a grave tempest, to change the helmsman, to replace the pilot of the calm by the pilot of the storm...But under a presidential government you can do nothing of the kind." "There is no elastic element, everything is rigid, specified, dated."

THE QUEEN'S ARTICULATIONS

Now it does seem that the American presidency with its temporary king has a royalist tendency that Queen Liliuokalani, given her absolutist tendency, should have found more desirable than the English-style cabinet forced on her brother and inherited by her. Her brother had been pained by the assembly's dismissal of his cabinets, sometimes no sooner than he had appointed them, interfering with his grand schemes for prosperity and international recognition without submitting the nation to annexation by the United States. Annexation was much desired by the more or less puritan missionary party and many merchants involved in the sugar industry; they simply could not tolerate the free-wheeling or American-style corruption of this consummate native politician and his cabinet of conmen, wherefore the shakeup in cabinets and the 1887 Constitution.

The *Hawaiian Gazette*, a republican propaganda organ rejoiced on 5 July 1887, after the king was obliged to dismiss his alleged partners in corruption and appoint a new cabinet. It was sincerely believed that the solution to corruption is in the right kind of constitution, wherefore the conservative 1864 Constitution had to go and the liberal 1887 Constitution promulgated:

"Victory! After a struggle of years and in spite of what at one time seemed overwhelming odds the good fight against corruption and uncleanness in the Government has been won.... With a new Constitution and Ministers responsible for their acts to the people, an end will be put to the fraud system which has

obtained in the past and which can never regain its foothold in the future.... Under the existing Constitution it was superabundantly proved that the Crown can influence elections, control Representatives pass bad laws and veto wise ones. Therefore said they, "The Constitution must be changed." We all know how the King and his Ministers have of late years been guilty of almost every evil which could be inflicted on a patient people, by a despotic monarch. We know too, how the King or his Minister for him, has always appealed to the Constitution. That he has never traversed the Constitution. That the bribery corruption, waste, partiality, folly, vanities of the last six years are all strictly within the limits of the Constitution Therefore mild mannered peaceable right-loving citizens have pronounced the word that this Constitution must go."

Nothing is perfect or pure. If the truth be told, a moderate degree of corruption is good for the economy; the Queen's claim in her *Story* that her dearly departed, beloved David, rather than the hypocritical missionary party, should be credited for prosperity is somewhat persuasive. In any case, we would extol the virtues and not the vices of a great man after his death for fear of being haunted or to serve our cause. She did cast him as a hero while talking *Story*, although hearsay has it that she had called him a coward for signing the republican constitution of 1887. He would have been less pained if he had wisely decided to concede to the inevitable course of the spirit of world history. He had circled the globe, knew well how monarchs had been stripped of prerogatives, yet he saw that the British monarch remained as a glorious example of the grandeur of kingdom and empire; he certainly had a penchant for the grandiose.

However that may be, Article 31 of the revolutionary 1887 Constitution of the Kingdom of Hawaii provided that, "The person of the King is inviolable and sacred. His Ministers are responsible. *To the King and the Cabinet belongs the Executive power....*" Article 31 of the Liliuokalani's proposed restorative 1893 Constitution provided that, "The person of the Queen is inviolable and sacred. Her ministers are responsible. *To the Queen belongs the executive power....*"

Article 41 of the progressive 1887 Constitution provided that, "The Cabinet.... 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...."

That is, the King was stuck with a cabinet to the majority's liking, a feature similar to the British system of cabinet government.

But Article 42 of the Queen's regressive 1893 Constitution fixed that with, "The Queen's cabinet shall be appointed and commissioned by the Queen, and hold office during the Queen's pleasure, subject to impeachment, or upon a vote of want of confidence passed by a majority of all the members of the legislative assembly...."

Furthermore, Liliuokalani, who had no desire to be a figurehead with truncated prerogatives, was concerned with the assembly's power to make laws not to her liking.

Article 31 of the abhorred 1887 Constitution stated that, "All laws that have passed the Legislature, shall require His Majesty's signature in order to their validity, except as provided in Article 48. That article provides, "Every Bill which shall have passed the Legislature, shall, before it becomes law, be presented to the King. If he approve he shall sign it and it shall thereby become a law, but, if not, he shall return it, with his objections, to the Legislature, which shall enter the objections at large on their journal and proceed to reconsider it. *If after such reconsideration it shall be approved by a two-thirds vote of all the elective members of the Legislature it shall become a law....*"

Her *Story* explains, ".... there was some friction in the cabinet. That body was now the absolute monarch of the kingdom of the Hawaiian Islands. Its members, Messrs Austin, Damon, C. W. Ashford, with L. A. Thurston as its chief, defied the king to his face, and openly insulted him in his own palace. In one of their official documents they use to him the following language:- "The government in all its departments must be conducted by the cabinet. Your Majesty shall, in future, sign all documents and do all acts which, under the laws of the constitution, require the signature or act of the sovereign, when advised so to do by the cabinet, the cabinet being solely and absolutely responsible for any signature of any document or act so done or performed by their advice."

On the other hand, Article 31 of Liliuokalani's backsliding 1893 Constitution stated that, "All laws that have passed the Legislative Assembly, shall require Her Majesty's signature in order to their validity." Article 49 provides that "The Queen

shall signify her approval of any bill or resolution which shall have passed the legislative assembly by signing the same. If she approve not, she shall return it with her objections to the legislative assembly, which shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, it shall be approved by a two-thirds vote of all the members of the legislative assembly, it shall be presented again to the Queen, and *she shall sign it, and it shall therefore be a law....*

So the bill would no longer automatically become law if overrode; the queen would have to approve of the overridden bill, and, if she declines to sign, it shall not be law, and there might be a constitutional crisis if a party dares to force one upon the Kingdom.

By the way, the article numbers of the slightly but crucially revised constitution changed with the insertion of Article 39: "The Queen's private lands and other property are inviolable."

The 1887 legislature was unicameral and sat 24 nobles and 24 representatives, whereas before many of the representatives in the house that outnumbered nobles were natives or mixed-breeds, while the majority of nobles were white.

The Queen, like her deceased brother and his predecessors on the throne, believed that the nobles of upper legislative house should be appointed by the sovereign, but Article 44 of the 1887 Constitution forced on King Kalakaua read:

"The Legislative power of the Kingdom is *vested in the King and the Legislature*, which shall consist of the Nobles and Representatives sitting together," and Article 48 provides that "Twenty-four *Nobles shall be elected....* at the same time and places as the Representatives...."

Article 45 of the proposed 1893 Constitution restored the appointment of nobles: "The legislative power of the three estates of this Kingdom is *vested in the Queen*, and the legislative assembly, which assembly shall consist of *nobles appointed* by the Queen, and the representatives of the people, sitting together...." And Article 57 provided that, "The Queen appointments, shall hold their appointments during life...,"

As for the electors of nobles and representatives, Article 59 of the usurpatory 1887 Constitution provided that American and European residents whether or not naturalized subjects were allowed to vote for nobles, and the voters must have considerable property or income.

“Every male resident 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.... 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 actually received an income of not less than six hundred dollars during the year next preceding his registration for such election....”

Article 56 of the 1887 Constitution provided that the noble candidates must also be of considerable substance:

“A Noble shall be a subject of the Kingdom, who shall have attained the age of twenty-five years and resided in the Kingdom three years, and shall be the owner of taxable property in this Kingdom of the value of three thousand dollars over and above all encumbrances, or in receipt of an income of not less than six hundred dollars per annum.”

As for representatives under the 1887 Constitution, Article 62 provided that:

“Every male 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.

Article 61 specified the qualifications for representatives:

“No person shall be eligible as a Representative of the people, unless he be a male *subject* of the Kingdom, who shall have arrived at the full age of twenty-one years; who shall know how to read and write either the Hawaiian, English or some European language; who shall understand accounts; who shall have been domiciled in the Kingdom for at least three years, the last of which shall be the year immediately preceding his election; and who shall own real estate within the Kingdom of a clear value, over and above all encumbrances, of at least *five hundred dollars*; or who shall have an annual income of at least *two hundred and fifty dollars*, derived from any property or some lawful employment.”

As we have seen, the Queen’s 1893 Constitution would have the nobles appointed by her for life. As for representatives, Article 62 provided that only subjects, that is, native born or naturalized with at least modest property or income could vote for representatives:

“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 be possessed of real property in the Kingdom, to the value over and above all encumbrances of *one hundred and fifty dollars*, or a leasehold property on which the rent is *twenty-five dollars* per year, or of an income of not less than seventy-five dollars per year, derived from any property or some lawful employment and 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 of his district as may be provided by the law, shall be entitled to one *vote for the representative* of representatives of that district....”

The candidates themselves would be subjects with considerable property or income as per Article 61:

“No person shall be eligible as a Representative of the people, unless he be a male *subject* of the Kingdom, who shall have arrived at the full age of twenty-one years; who shall know how to read and write either the Hawaiian, English or some European language; who shall understand accounts; who shall have been domiciled in the Kingdom for at least three years, the last of which shall be the year immediately preceding his election; and who shall own real estate within the Kingdom of a clear value, over and above all encumbrances, of at least *five*

hundred dollars; or who shall have an annual income of at least two hundred and fifty dollars, derived from any property or some lawful employment.

There were other constitutional modifications desired by the Queen besides these aiming at the monarch's control of the cabinet and the limitation of suffrage to her subjects, which were crucial to her objective.

While Article 20 of the 1887 Constitution held that The Supreme Power of the Kingdom in its exercise, is divided into the Executive, Legislative, and Judicial; these shall always be preserved distinct, and 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," Article 20 of the Queen's threatening 1893 Constitution allowed members of her staff to be elected to the legislature: "The supreme power of the Kingdom in its exercises is divided into the executive, legislative, and judicial; these shall always be preserved district, and no executive or judicial officer or any contractor or employee of the Government or any person in the receipt of salary or emoluments from the Government shall be eligible to election to the Legislature of the Hawaiian Kingdom, or to hold the position of than elective member of the same, *except members of the privy council, notary public, attorney at law, and agent to take acknowledgement.* And no member of the legislative assembly shall, during the time for which he is a member, be appointed to any civil office under the Government, except that of a member of the cabinet," thus giving her more representative votes to her sponsored candidates if they were elected.

Whereas Article 45 of the existing 1887 Constitution provided that "The Legislative Body shall be styled the Legislature of the Hawaiian Kingdom, and *shall assemble, biennially, in the month of May.* The first regular session shall be held in the year of our Lord Eighteen Hundred and Eighty-eight," Article 46 of her desired 1893 Constitution allowed her to convene the assembly at will: "The legislative body shall assemble biennially, in the month of April, *and at such other time as the Queen may judge necessary,* for the purpose of seeking the welfare of the nation. This body shall be styled the Legislature of the Hawaiian Kingdom."

Finally, we forgot to say, in our discussion of the problematic cabinet, that the Queen deigned to completely omit this Article 78 appearing in the hindering 1887 Constitution: "Wherever by this Constitution any Act is to be done or performed by the King or the 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."

THE QUEEN'S FATE UNSIGNED

Liliuokalani backed down from her "unconstitutional" or "treasonous" demand, but the "traitorous" plot aiming ultimately at annexation by the United States was carried out by the Committee of Safety, nevertheless, because the time appeared ripe for the revolution desired. American troops were landed to protect American the interests of American residents, the majority of whom were allegedly in favor of annexation. A goodly number of native Hawaiians agreed that annexation was a good idea, but at least two-thirds were opposed, at least according to the Queen.

To avert bloodshed and inevitable defeat by a well armed and trained military force, the Queen entrusted her sovereignty to President Grover Cleveland, an avowed anti-imperialist, pending investigation of the illegal seizure. He was sympathetic, but in the end political exigencies including strategic military concerns in the Pacific trumped her claim for its return.

She was arrested on 16 January 1895 and imprisoned for suspected complicity in a counter-revolution; weapons had been found planted on the palace grounds. She said she could not reveal secrets entrusted to her, but could say that there was talk of a counter-revolution.

"If, goaded by their wrongs, I could no longer hold them in check with reason; if they were now, by one accord, determined to break away, and endeavor, by a bold stroke, to win back their nationality, why should I prohibit the outburst of patriotism? I told them that if the mass of the native people chose to rise, and try to throw off the yoke, I would say nothing against it, but I could not approve of mere rioting." Furthermore, "I never saw a single pistol or rifle by day or by night. I remember that I had occasion to scold my gardener for the disturbed condition

in which I often found my plants. It seemed as though some persons had been digging up the ground, and replacing the disturbed soil, but no arms were secreted by me or by my orders....”

The tyrannical republicans were willing to pardon her if she abdicated. That was accomplished in due time, although she claimed it was of no effect because she had signed it with her married name, and, besides, the document was not countersigned by a minister!

Article 42 of the previously existing constitution, the conservative 1864 Constitution, stated that “No act of the King shall have any effect unless it be countersigned by a Minister, who by that signature makes himself responsible.” So does Article 42 of the Queen’s proposed 1893 Constitution, but was that not contrary to her desire not to be hindered by ministers?

And here is the rub: the provisions of the very constitution she abhorred yet seems to rely on, the 1887 Constitution, did not require that a minister validate the acts of kings with signatures. That subject had come up in the famous case of *Everett vs. Baker*, decided by the Supreme Court of the Kingdom in the February 1888 Special Term, where, after a party asserted that a veto of a bill was invalid because there was no minister’s signature on a document explaining the veto, the court held, opined that no signature was required because “The act of His Majesty, in pursuance of the power given him by the Constitution of approving and of disapproving of bills passed by the Legislature, is a personal one and does not require the advice and consent of the Cabinet.”

Abdication would certainly seem to be an even more personal act than signing a bill into law or vetoing it. After all, the constitutions said the Kingdom belongs to the king or queen, that the Kingdom is His or Hers. Be carefully, however, because there was dissent in that case, and one never knows what some judge is going to say, and that ensures the prosperity of the profession.

At least the Queen and her attorney general had long precedent for requiring her acts to be countersigned by a minister. The 1852 Constitution required it. The first written constitution, the 1840 Constitution, provides for the appointment of a high ranking chief as a peculiar kind of premier, a virtual co-regent called a *Kuhina*

Nui (prime minister), who must approve of the king's acts, and whose acts as evidenced by executed documents may be considered as his.

We may recall by way of example the 1701 Act of Settlement in England excluding Catholics from the throne. One provision required that all council resolutions were to be signed by councilors who advised and consented to them. Signatures usually attached to resolutions were often missing, and the members of parliament wanted to know who was making policy. That provision was repealed during Queen Anne's reign; a number of councilors stopped offering advice and attending meetings altogether lest they be held responsible.

THE QUEEN DID NO WRONG

In reality no person can really rule effectively alone, and the less so the greater the population and the larger the domain. To that end authority must be delegated. To the extent that a chief is tolerated, it may be said that he has been elected or consented to. If he behaves contrary to the received mores of a culture, someone, perhaps someone within his own council or court, can be recruited to lead the opposition and kill him and his guards, or the people may revolt; since the immediate danger is within, he tends to woo the people to protect his sovereignty. The members of his court or his council of delegates serve to mediate between him and the people at large as his government. In this instance, the revolutionaries would overthrow the government and the state governed at once.

President Cleveland, a somewhat ambiguous anti-imperialist, was initially more than sympathetic to Liliuokalani's plight, and he tried to get her sovereignty and the Kingdom restored, but the matter eventually wound up out of his hands. She had ventured to Washington and stayed the winter of 1897 to lobby him and other notables against annexation, but to no avail in the end. An investigative report to Congress indicating that her nation was illegally seized, the Blount Report, was superseded with a seemingly more weighty report to the contrary, the Morgan Report. Hostilities in the Pacific afforded the opportunity the imperialists needed to secure a firm harbor for their agenda in the East and a shield to protect the nation in the West.

Now we have seen that Queen Liliuokalani had good reason, rooted in a long history of absolutism, to believe that she could do no wrong at all, including tearing up a republican constitution extorted from her brother and promulgating her very own. The republicans had done the very thing they accused her of when they arbitrarily promulgated the 1887 “Bayonet” Constitution, except they did not have the royal prerogative she felt belonged to her as the legitimate sovereign.

After all, the sovereign, not something written down, is the ground of the law, as demonstrated by precedents such as the arbitrary promulgation preceding the 1887 travesty, that of the 1864 Constitution by promulgated by King Kamehameha V for the good of everyone, especially the native Hawaiians.

Why, the doctrine of the sovereign immunity of government officials professed by government lawyers in the United States to this very day is based on the archaic notion that the king can do no wrong that he can be held liable for, because the king, at least, if not his cabinet of principle ministers as well, is the font of the law, and as such is therefore above the law, presiding as the ungoverned governor of his domain.

But government officials are not kings today, and officials who act outside the scope of their authority, say, to make arbitrary policies that violate constitutional rights, may indeed be held personally liable. As for the governments, the legislators have found it convenient to theoretically waive immunity for the negligent and wrongful deeds and failures to act of government employees.

A queen in theory can do no wrong; at least she is supposed to get away with any she does do. Liliuokalani saw the writing on the wall. She did her level best to revise it by promulgating a rewritten constitution to save her throne and kingdom, and she failed. Words may inspire a people to take up arms, but all the words in the world cannot defeat destiny well armed. If she had gone along as we previously suggested, as a cork on top of the current, we do not think, on second thought, that she would have gotten very far, or that Hawaii would be independent to this day. Yet, try as they may, no one can take Hawaii out of Hawaii, no matter what people say in constitutions, as long as the principle of aloha at its beginning and end runs throughout.