

YALE LAW JOURNAL

Vol. IX.

DECEMBER, 1899.

No. 3

THE ORGANIZATION OF A TERRITORIAL GOVERNMENT FOR HAWAII.

There is every reason why Hawaii should receive without delay a form of Government adapted to its conditions and needs. It is beyond question that at some future time this will be done also with Puerto Rico, Cuba, the Philippines and Guam, but their conditions and needs are widely different from those of Hawaii, and in regard to them there is no express treaty obligation as in the case of Hawaii. In legislating for their government Congress will naturally leave to the President—at any rate for a considerable time—large discretionary powers, with the intention ultimately of establishing some kind of a colonial administration of their affairs which will permit as large a degree of local self-government as they may show that they are fitted for, with opportunities for gradual development on that line. Important committees of each House of Congress are to have charge of the affairs of those island possessions. Those committees will probably have as strong and able a membership as can be furnished by each political party. They will recommend, after careful investigation, the form of colonial government which, while conforming to the requirements of the United States Constitution, shall be in harmony with the policy, foreign and domestic, of the United States. All this will require time and careful work, for it is an untried field.

But there is no occasion for classifying Hawaii as one of our “insular possessions,” or for deferring legislation for organizing its government until its needs and conditions shall be further investigated, and until a definite colonial policy shall be determined upon. In fact, Hawaii is no more a possession in the sense of being a dependency than are the territories of Arizona, New Mexico, Oklahoma and Alaska. American citizens living in those territories,

while knowing the absolute right of Congress to legislate concerning them, do not consider themselves, and are not considered, as colonists or dependents in any sense. Hawaii, unlike the other insular acquisitions, was a sovereign state when it came into the American Union—not, to be sure, as a state, but, as expressed in the treaty negotiated between the two countries and ratified by the Senate of Hawaii, “under the name of the territory of Hawaii.” There are certain rights secured to Hawaii by that treaty or by the joint resolution of Congress known as the Newlands Resolution, which was substituted for the treaty, which cannot be ignored without violating moral obligations which are all the more sacred and binding in the form of conscience, because they can no longer be enforced by the state which has voluntarily ceded its sovereignty to the United States. The very authority for the joint resolution is contained in its preamble, which is thus worded :

“WHEREAS, The Government of the Republic of Hawaii, having in due form signified its consent, in the manner provided by its Constitution, to cede absolutely and without reserve to the United States of America, all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining:”

Thereupon it was :

“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That said cession is accepted, ratified and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby annexed as a part of the territory of the United States, and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.”

The “consent” of the Republic of Hawaii to cede its sovereignty to the United States, referred to in the preamble above mentioned, is expressed in the treaty, and in no other way, as follows :

“The Republic of Hawaii and the United States of America, in view of the natural dependence of the Hawaiian Islands upon the United States, of their geographical proximity thereto, of the preponderant share acquired by the United States and its citizens in the industries and trade of said Islands, and of the expressed desire of the Government of the Republic of Hawaii that those Islands should be incorporated into the United States as an integral part thereof, and under its sovereignty, have determined to accomplish by treaty an object so important to their mutual and permanent welfare.”

It must be inferred that the resolution was intended to accomplish the objects so defined, and to express the stipulations for the cession which were consented to by Hawaii in the treaty, which are as follows:

"The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiian Islands, but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, that all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

"Until Congress shall provide for the government of such Islands all the civil, judicial and military powers exercised by the officers of the existing government in said Islands, shall be vested in such person or persons, and shall be exercised in such manner as the President of the United States shall direct, and the President shall have power to remove said officers and fill the vacancies so occasioned.

"The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations.

"The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States, nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine.

"Until legislation shall be enacted extending the United States custom laws and regulations to the Hawaiian Islands, the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

"The public debt of the Republic of Hawaii lawfully existing at the date of the passage of this joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by the Government of the United States, but the liability of the United States in this regard shall in no case exceed four million dollars.

"So long, however, as the existing government and the present commercial relations of the Hawaiian Islands are continued, as hereinbefore provided, said government shall continue to pay the interest on said debt.

"There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

"The President shall appoint five Commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as

soon as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper."

Now whatever disposition Congress may make of the public lands in the Philippines or in any other places,—and it is understood that questions of great difficulty will present themselves on this subject—the revenue from and proceeds of the public lands of Hawaii must by the treaty and resolution be used solely for the benefit of Hawaii for educational and other public purposes, excepting that which shall be used for national purposes.

The public debt of Hawaii, not to exceed \$4,000,000, is assumed by the United States. Chinese immigration into Hawaii is restricted, as it is elsewhere in the United States. It is thought by some persons that the clause in the resolution retaining the existing customs regulations of the Hawaiian Islands with the United States and other countries, "until Congress shall extend to Hawaii the benefit of the United States customs laws," implies that Congress may, if it choose, never give to Hawaii the benefit of the United States customs laws, and "uniform taxes." And those who maintain this view contend that those customs laws ought not to be extended to Hawaii, and thereby, as they think, bring "cheap labor products" into competition with American labor.

Undoubtedly both political parties will endeavor to shape legislation for the insular possessions with the professed object of benefiting and not injuring American labor. Here, probably, will be one of the main points of controversy concerning legislation for Hawaii. If the assisted immigration laws shall be applied to Hawaii,—and it is difficult to see how Hawaii can be excepted from their application—the result will be that cheap labor will be obtainable there no further than it is in California, or Louisiana, or any state in the Union. Since the date of the treaty, June 16, 1897, and for a considerable time prior to that date, Chinese immigration has been rigidly restricted in Hawaii, and the statistics show that the number of Chinese there to-day is less than two years ago. Japanese have continued to be introduced in Hawaii, to meet the industrial needs of the large number of new sugar and coffee plantations established since annexation. An attempt was made by the Hawaiian Government over a year ago to exclude Japanese by deporting a large number for failure to comply with the restricted immigration laws made by the Republic of Hawaii. This proved to be a costly thing for Hawaii. The Japanese Government finally compromised for the sum of \$75,000, a claim against the Hawaiian Government for this deportation. Hawaii can to a certain extent

restrict, but is powerless to prevent Japanese from going to that country whether as laborers, merchants, or "students;" but then there is nothing to prevent Japanese from entering the United States without restriction and whenever they like. If they shall cease to go to Hawaii, it will not be because of assisted immigration laws enforced there. They will continue to go voluntarily because they like the Hawaiian climate and conditions. The Japanese Government encourages them to go, expecting them to return as they usually do after a term of years, to enrich Japan with their newly acquired experiences. Their wages will go up considerably when the United States immigration laws shall be in force in Hawaii, but they will continue to do a large portion of the field labor required in the cultivation of sugar cane and coffee.

Still another subject of discussion in respect of Hawaii, as well as the insular possessions generally, will be whether to extend to them the laws of the United States relating to commerce and merchant seamen in regard to vessels built and owned by citizens in those places as entitled to American legislation and to enact that the trade between those Islands and any portion of the main land shall be regarded as coasting trade and regulated by the United States laws requiring coast trade to be carried on only by American vessels. Do the conditions exist in respect of those countries far removed from the coast line of the United States, which called into being the coasting trade laws? Can a great trade with the Orient and between those Islands and the main land be carried on with advantage at the present time, or be so easily developed by confining it to American bottoms? These are considerations which all public spirited and statesmenslike men in the National Capital will have to ask each other and themselves, and answer as best they may.

But of all the countries which are here mentioned, Hawaii is the only one which is now entitled to any high degree of local self-government, and which is capable of immediate assimilation with American institutions. This can easily be seen by looking over the report made by the Hawaiian Commission, of which Senator Cullom is Chairman, and which included Senator Morgan and Representative Hitt on the part of the United States, and President Dole and Justice Frear on the part of Hawaii. This Commission, which was appointed in accordance with the stipulations of the treaty of annexation, prepared a bill which was introduced in the Senate last December by Senator Cullom, and in the House by Representative Hitt, entitled: "A bill to provide a government for the territory of Hawaii." The same bill in substance is again introduced at the present session and referred as before to the Committee on Foreign

Relations in the Senate, and the Committee on Territories in the House.

The report of the Commissioners is a voluminous document, showing in considerable detail, and with great thoroughness, the conditions and institutions of the Hawaiian community. In considering what kind of government is fitted for the Hawaiian group, a knowledge of its history, its present status, and its reasonable needs, is requisite, and examination of that report will satisfy any candid mind that the provisions of the proposed bill are appropriate and wise.

The elaborate public school system of Hawaii is not inferior in theory or practice, or in the personnel of its administrators, to that of any state of the American Union. Hawaiian law has for its basis the common law of England, with statutes which simplify the practice, codify most of the rules of evidence, define all criminal offenses, and provide for a large portion of the practice of criminal law. Hawaiian admiralty law is substantially that of the United States. Equity jurisdiction and practice are based on legislation almost literally copied from that of the Commonwealth of Massachusetts, and the same is true of probate practice. The lawyer's brief for a Hawaiian court is the same kind of a brief which would be presented to the courts of any of the older states of the Union, which are not under code law.

Public highways, bridges, harbors and buildings, are cared for in a manner which would do credit to any American state.

The legislative, executive and judicial departments of the government work independently of each other, except in the power exercised by the Supreme Court of determining the constitutionality of legislative enactments. The practice has been more common in Hawaii than elsewhere of obtaining for the executive and legislative departments the opinions of the justices of the Supreme Court on questions of law upon proposed, as well as enacted, statutes.

The cosmopolitan and refined social life of Hawaii is the delight of visitors and tourists. The aboriginal Hawaiian race, while not as yet well qualified for the work of making constitutions, or enacting fundamental law, are otherwise well-fitted for the duties of American citizenship. In Senator Cullom's bill it is provided "that all persons who were citizens of the Republic of Hawaii on August 12, 1898, are to be citizens of the United States." This leaves out nearly all of the Asiatics, who form a large part of the population. The bill further provides for the continuance of the laws of Hawaii not inconsistent with the Constitution or laws of the United States; and abolishes those Hawaiian offices which were used only for the

Republic of Hawaii. Contested elections are decided by the Territorial Supreme Court. The Senate is to be composed of fifteen members, with a tenure of office of four years, and the House of Representatives of thirty members, elected every second year. The bill preserves many useful features of the constitution of the Republic of Hawaii; as, for instance, it allows the governor to "veto any specific item or items in any bill which appropriates money for specific purposes."

Hawaii at present has no municipal governments. The proposed bill allows the legislature to "create counties, and town and city municipalities within the territory of Hawaii, and provide for the government thereof." Voters for senators are required to own property of the value of not less than one thousand dollars, or to have received an income of not less than six hundred dollars during the year preceding registration. The bill keeps in force in the main the laws of Hawaii relating to agriculture and forestry, and also concerning the public lands, requiring all the proceeds of such lands to be applied by the laws of the government of the territory of Hawaii for the benefit of the inhabitants of that territory. The judges of the territory are to be appointed; those of the Supreme Court with life tenure; the judges of the Circuit Courts for six years; and magistrates for two years, in conformity with the laws of Hawaii heretofore in force, relative to the judicial department, civil and criminal procedure which in substance are to be reënacted for the territory. The importance of avoiding an elected judiciary in Hawaii is evident. It is to be hoped that this feature of the proposed bill will be strictly adhered to, whatever action shall be taken about the life tenure of judges.

The bill in all its features will bear the closest scrutiny, and will, I hope, be passed without any radical amendments with as little delay as possible.

It is unfortunate that the Fifty-fifth Congress did not provide legislation for Hawaii other than in the very scant provision made in the Newlands Resolution. Nothing but the exercise of good judgment and tact on the part of Hawaiian officials and courts, as well as of the Administration in Washington, has prevented serious difficulties and loss, for practically there has been something very like an interregnum in Hawaiian affairs.

Whatever may come, or may not come, from expansion in other directions, I am confident that no better or truer citizens of the United States will be found than in beautiful Hawaii.

ALFRED S. HARTWELL.