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POLICY CONTROL: INSTITUTIONALIZED CENTRALIZATION IN THE FIFTIETH STATE

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Hawai'i's formal government is the most centralized and its administration the most integrated of all fifty states in the union, a distinction with long historical antecedents.¹ It is within this constricted institutional frame that all public policy in Hawai'i takes shape and then is carried out. The passage of time normally sees some reformulation of both policy and implementation; less frequently this is accompanied by modifications in the matrix of governmental institutions within which it occurs, but there has been only minimal change in the characteristic concentration that has distinguished constitutional government in Hawai'i.

History

Although only admitted into the Union in 1959, Hawai'i had known constitutional government since 1840. Before that, Kamehameha the Great (1782–1819) governed as an absolute monarch, but his successors—even Kalakaua (1874–1891) at the height of monarchical resurgence—never succeeded in reestablishing kingly powers to the extent that they were not subject to curtailment by constitutional institutions within the executive branch of the government. During the days of the Hawaiian Republic (1894–1898), the executive power was vested not in the president but in a council composed of the president and heads of four executive departments. The commission which drafted Hawai'i's Organic Act, the federal law establishing Hawai'i's territorial government in 1900, disagreed over placing the executive power of the territory in the hands of one individual, and the majority's recommendation favoring this pre-

vailed. Nevertheless, the act did delineate the powers of some executive officers, and in these areas the scope of the governor's authority was correspondingly curtailed.

A half century later, the state constitution continued the trend of history by further strengthening the chief executive. By vesting the executive power in the governor, but failing to incorporate constitutional checks in the executive branch requiring the sharing of that power (for example, requiring gubernatorial consultation or approval by executive officials to gubernatorial acts) and by failing to make self-executing grants of authority to designated executive agencies, statehood returned a high degree of integration to the central government. Structurally, this recalled the days of Kamehameha the Great. The chief executive possessed the ability to exercise direction over the full gamut of state administration, but now was aided by modern staff agencies that facilitate control.²

Hawai'i first became known to the Western world as a very isolated group of petty kingdoms. By 1810, a single monarchy with archipelagic jurisdiction resulted from Kamehameha's conquest of all the islands but Kauai and Niihau, and their king's acknowledgment of him as suzerain. Kamehameha and his successors ruled directly, with the kings' appointed governors serving as their representatives in island-wide administrative districts, some spanning clusters of adjacent islands. Although attempted during the period of the Hawaiian monarchy, little success was achieved in establishing local self-government through New England-type town meetings, school districts, and road districts. At the time of annexation of the islands by the United States in 1898, the short-lived republic was the sole governmental unit in the islands. The United States Congress permitted perpetuation of this by phrasing the Organic Act, the legislation delineating the territory's structures, so as to authorize—but not mandate—the creation of "counties and town and city municipalities within the territory."³ It took five years and some congressional prodding before territorial statute established Hawai'i's counties, whose boundaries mirrored Kamehameha's administrative groupings of Hawai'i's major islands.⁴ With minor exceptions, such as the creation of soil conservation districts and replacement of the county of Oahu by the city and county of Honolulu in 1907, these counties continue to constitute the sum total of local government in Hawai'i.

The plantation system that evolved during the monarchy remained a dominant factor in Hawai'i's political life until after World War II, and this system in good part provides the explanation for

Hawai'i's limited local government and the centralization of governmental affairs. Until the decline of the plantation system, around a third to half of the islands' nonurban civilian population dwelt on Hawai'i's sugar and pineapple plantations. There was little need to erect local government for them, as the plantations attended to most of their municipal-type requirements. Only such functions as schools, supplemental roads and their policing, and judicial enforcement of the law through the lower courts, traditionally identified with local government, were not furnished by the plantations themselves. These public services could readily be rendered by the field offices of the central government. For those people not on plantations—and a good many of them resided in urban Honolulu—Hawai'i's government could directly serve their requirements. Consequently, a pattern of centralization had become institutionalized in the islands by the time the county government statute was enacted in 1905.

Governmental Functions

In setting up local governments, the territory hesitantly allocated some functions of municipal character to them, and the central government continued to administer the remainder as well as all those concerning the islands as a group. With growth in the scope of government, and with new activities undertaken, the same tilt toward centralization persisted; indeed, rather than implementing the counties' fiscal powers when their limited resources became overtaxed, the territorial government assumed direct performance of some responsibilities previously assigned to the counties. That the same general approach to governance continues is well evidenced by the fact that today's expanded functions in health, education, and welfare fall almost totally within the purview of state administration. The state government has preempted the judicial function. Other areas wholly within its jurisdiction are these: agriculture, forestry, and fish and game conservation; banks, commerce, and consumer protection; labor and industrial relations; prisons and corrections; and the public service enterprises encompassing airports and harbors. The state and the counties divide responsibility for the remaining functions of government, but, with the exception of those that are inherently local, such as garbage collection, state administration accounts for the major share: public housing, parks and recreation, and roads and highways serve as illustrations of central predominance.

Centralization in Hawai'i has always been distinguished more by the assumption of direct performance by the central government than the assignment of functions to the counties to be performed under territorial, and later state, administrative oversight. However, there has been no reluctance to apply the entire gamut of techniques potentially available for assuring central supervision of local performance. These range from the seemingly innocuous requirement that county officials submit periodic reports, to the extremes of removal of a county official and authorization of central government personnel to assume jurisdiction over what is normally a county activity. Hawai'i's attorney general in the past has replaced county attorneys in conducting criminal prosecutions, state monies have been withheld from local governments until they complied with specific state criteria, and the central audit of county expenditures is no novelty. Rather, given Hawai'i's limited size and with the bulk of its population residing on Oahu, the easiest course for assuring the execution of policy in the manner desired by policy makers of the state has been to continue the historic practice of placing implementation of that policy in the central bureaucracy.

Executive

While attempting to become a state, Hawai'i faced a repetitive stalemate in Congress. Hawai'i adopted the alternative of "force action," rather than waiting for the passage of congressional legislation authorizing the drafting of a state constitution.⁵ The convention delegates who assembled in Honolulu in 1950 consequently undertook a dual task, proposing an executive structure appropriate for the new state and producing a model constitution which would further Hawai'i's case for statehood. What could cloak the constitution with greater respectability than to incorporate the then-prevailing canons for state administrative reorganization? Their concentration of authority in the governor, through eliminating other elective executive officials, and reduction of the breadth of his span of control closely coincided with current practice in Hawai'i and were fully consonant with prevailing island attitudes. No matter whether this was a Machiavellian solution or a happy coincidence, the delegates applied themselves to their work buttressed with the current public administration literature and the counsel of private citizens interested in achieving "efficiency and economy" in government.⁶

Prior to statehood, Hawai'i knew no elected officer serving in the executive branch of the Hawaiian government.⁷ As a territory, Hawai'i had not been allowed to name its own governor, consistent with then-existing federal policy applicable to American possessions. This the state constitution proceeded to rectify, and, in addition to a provision for popularly choosing the governor, the constitution also substituted an elected lieutenant governor for the Washington-designated territorial secretary. But there innovation stopped until later constitutional amendments tacked on an elected Board of Education and the anomalous Office of Hawaiian Affairs. At the time of drafting the state constitution, Hawai'i's short ballot was surpassed by only one state, New Jersey, and today its limited provisions for elected executive officials is still exceptional. Even the impact of electing the lieutenant governor was narrowed by failure of the constitution to confer any powers upon the office other than these: succession to the governorship, and the duty of placing on the ballot the question of whether or not to call a constitutional convention should Hawai'i's legislature neglect to put the issue on the ballot periodically. Nor has the lieutenant governor been endowed with statutory responsibilities significantly different than those of the former territorial secretary. Consequently Hawai'i's governor, like his predecessors, remains the dominant executive officer in the islands,⁸ but now that power is buttressed by a range of modern staff services and an executive budget that affords him direction over state agency expenditures.⁹

At the time of statehood, the territorial administration included some twenty-eight major and thirty-five minor agencies, commissions, and advisory boards, as well as twenty-three regulatory boards. A constitutional ceiling—following the precedents of Massachusetts, New Jersey, and New York, and reinforced by the recommendations of the model state constitution—directed that all executive agencies be compressed into not more than twenty principal departments, grouped, as far as practicable, according to common purpose and related function. Only temporary commissions or special purpose agencies were to be excepted. Consolidation rapidly followed, and Hawai'i's first state legislature compacted all agencies into eighteen principal executive departments, excluding the offices of governor and lieutenant governor. Despite readjustments that have occurred subsequently, the number of eighteen departments persists when the University of Hawai'i is classed as a department.¹⁰ To keep within this small compass, the governor's office has been used as a catch-all; today it incorporates some eight

disparate programs, including the Executive Office on Aging, the Office of State Planning, and an Agriculture Coordinating Committee.

Hawai'i's constitution did not merely repeat the usual phraseology vesting the executive power of the state in the governor; it also declared that each of the principal departments is under his supervision. The governor appoints all department heads with the consent of the senate, except for the state's two educational boards; the elected school board chooses the superintendent of education for the public schools and the board of regents selects the University of Hawai'i's president. The departmental heads hold office for terms expiring with that of the governor and except for the attorney general, he may remove them at his pleasure; only in the case of the state's chief legal officer must the senate consent to the removal. Cumulatively, these powers equip the governor with capacity to play a dominant administrative role throughout his term.

The approved tenets of the administrative reorganization movement fitted like a template over all of these provisions incorporated in the state constitution. Authority and responsibility are concentrated in the governor, provision is made for a small number of integrated departments, and the use of boards and commissions for purely administrative work is disapproved.¹¹ (However, while Hawai'i's constitution frowns upon the use of collegial bodies as administrators, it does direct that the public management of natural resources be vested in one or more executive boards.) For full measure, the state constitution empowers the governor with an item veto, avoids the earmarking of funds, which otherwise might restrict the inclusive scope of the executive budget, and makes express provision for the postaudit function. Constitutional sequestering of funds for specific purposes would have correspondingly reduced the ability of the governor to budget them for other state functions, and accompanying the provision for postaudit is an internal audit system under gubernatorial control that keeps the governor apprised of ongoing state activities. Except that it fails to authorize executive formulation of reorganization plans (at the time of statehood this had only recently been elevated to the importance of constitutional status) Hawai'i's constitution incorporates all of the "tools of management" championed by the administrative reorganization movement. With a constitutional framework designed to facilitate the integration of state administration, Hawai'i became a state with potential for having "one of the most powerful executive officers in the United States."¹²

Legislative

Prior to Hawai'i being admitted as a state, the legitimacy of the territorial legislature was challenged in the federal courts for disproportionately underrepresenting the people on Oahu. The fifteen-member territorial senate and thirty-member house of representatives had not been reapportioned since the passage of the Organic Act, despite the express direction of Congress to re-adjust membership with the 1910 census "and from time to time thereafter."

The delegates who drafted Hawai'i's "hope chest" constitution proposed a compromise bicameral legislature of expanded size (senate—25 members, house—51 members), with house of representatives district lines that reflected the distribution of Hawai'i's registered voters and in which Oahu would gain a clear majority of membership. To turn the thrust of judicial inquiry, the U.S. Congress hurriedly amended the Organic Act to adopt the relevant portions of the proposed constitution, replete with enlarged chambers, revised districts, and the new apportionment formulas, deleting the old. The effect was multifold. (1) Seven years before the impact of the landmark case of *Baker v. Carr* swept through the mainland like a whirlwind, reapportioning state legislatures Hawai'i had experienced the threat of a federal court-directed redistricting. (2) Even before statehood, voters in Hawai'i enjoyed implementation of part of their proposed constitution. (3) Further court action based on the denial of equal protection was still very much in the offing, both due to the use of the registered-voter formula for apportioning legislatures and because the convention compromises in effect had preserved perpetual neighbor island control of the senate.¹³ A number of later judicial decisions on Hawai'i's malapportionment, including one rendered by the United States Supreme Court, resulted in a materially restructured state legislature.¹⁴ While maintaining the size of each house, representation is now allocated on an adjusted population base, numerical dominance by the neighbor islands has been broken, and the constitutional confinement of legislative districts within county boundaries need no longer be observed. Today some members are elected from "canoe" districts comprised of parts of several counties separated by miles of open ocean.

At the time of statehood, the median number of legislators from a single district was five senators and three representatives. Multi-membered legislative districts in Hawai'i date back to the initiation

of legislative government under the monarchy. This practice, too, was eventually changed by judicial redistricting. After the Federal District Court of Hawai'i ordered temporary use of single-membered districts in both houses, the state's constitutional reapportionment commission found it politically too difficult to revert back to multi-membered districts without physically displacing incumbents. It is claimed that multimembered districts encourage the holding of a broader perspective by affording political parties and individual candidates a degree of maneuverability not possible with the single-membered district. This is held particularly true in view of the long familiarity of Hawai'i's people with "plunking," where, by failing to vote for the allotted number of candidates in a multimembered district, voters give their favorite candidate both their cast vote and the indirect benefit of his fellow candidates' failure to have their tallies increased. To that extent, the legislative frame for policy formulation has been narrowed as a consequence of Hawai'i's lengthy experience with court-ordered reapportionment.

Voters in about half of the states in the union may directly propose and review legislation through initiative and referendum. Hawai'i has never permitted direct voter participation in state lawmaking other than for adoption of constitutional amendments, whether proposed by convention or legislature. Nor do state bond issues require voter consent, as in some states on the mainland. A concerted effort was launched at the last constitutional convention, in 1978, to incorporate some form of voter initiative in Hawai'i's constituent document, but this was strongly opposed. Overtly, the objection was that popular participation in lawmaking would give undue weight to organized minorities; underlying this was the fear that the initiative would threaten entrenched positions in Hawai'i. Provisions for the initiative and referendum process are included in the charters of the City and County of Honolulu and Hawai'i's counties.¹⁵ Indignation over a recent Hawai'i Supreme Court decision which upheld a state statute on zoning controls over action taken under charter-sanctioned initiative, promises the whole subject will be reviewed in Hawai'i; for the moment, at least local initiative is assured.¹⁶ Meanwhile the case stands as but another illustration of Hawai'i's extreme centralization.

Judiciary

Volume 1 of the Hawai'i Reports commences with a case decided in January 1847,¹⁷ and the same, unbroken series of cases

extends to the present, spanning monarchy, republic, territory, and now state. On annexation "the courts of Hawai'i were reported to be already established and functioning in the American mode: [T]he organization and procedure of the Hawaiian courts had been patterned after courts found on the mainland [particularly the courts of Massachusetts]."¹⁸ For the most part, the Organic Act merely extended the court system as it was, incorporating such minor changes as necessitated by territorial status, and created a federal district court mainly to enforce United States laws.¹⁹ The territorial courts fitted into the same relative position as that occupied by the state courts on the mainland, except that both federal and territorial judges in Hawai'i owed their appointment to the president, with U.S. Senate consent. Upon statehood, federal designation of territorial judges ceased, and the former territorial supreme court was enlarged.

The metamorphosis of the judiciary did not end with statehood. The inferior district courts and, to a minor extent, the circuit courts had occupied a somewhat anomalous position during the territorial period, as the counties paid part of their cost and received some of the revenues derived from their process. Now, three decades later, there is no question but that the judicial function is solely lodged in the state government, with a single judicial system under the supervision of the chief justice aided by a constitutionally created administrative director, and funded by the state treasury. Of even greater import, by virtue of constitutional amendment, the court system has been expanded by the addition of an intermediate appellate court to relieve the state supreme court of part of its review burden, judicial tenure has been lengthened, and the political component previously inherent in the naming of justices and judges for Hawai'i's courts has been reduced.

The Jacksonian movement of the early 1800s in the United States which sought to make all public officials—including judges—democratically responsible through elections, never took root in Hawai'i. Although some attention was given to an elected judiciary when drafting Hawai'i's constitution, the majority of the delegates considered this too radical an innovation. Instead, they opted for the course of gubernatorial nomination followed by state senate confirmation. At the time, the somewhat median position of the Missouri Plan (election after a probationary period on a yes/no ballot of judges appointed by the governor from lists of nominees selected on merit) was just gaining attention. However, with the spread of the merit selection concept to the judiciary of other states, a highly pub-

licized effort reminiscent of orchestrated legislative lobbying unsuccessfully sought to convince the 1968 constitutional convention to adopt a nonpartisan means for selecting Hawai'i's judges.²⁰ A decade and another convention later, after a more subtle campaign and buoyed by the range of merit selection and merit retention plans found on the mainland, the 1978 convention agreed on a compromise for choosing justices and judges. It created the Judicial Selection Commission, composed of executive, legislative, and judicial nominees as well as some chosen from the Hawai'i bar. The commission prepares a list of recommended persons for each judicial vacancy. For all but district courts, the governor designates one individual from the list submitted, and submits the appointment to the senate for consent. The chief justice similarly fills vacancies in the district courts, but without need for senatorial confirmation.²¹ Once appointed, a judge's term may be renewed, upon commission review and approval, without any involvement of governor or senate. The tendency for the law profession to regard the court system as its private preserve is partially countered by the requirement that a majority of nonlawyers comprise the commission. However, possession of a license to practice law in the state remains an essential requisite to sit on the Hawai'i bench. The result of the constitutional creation of the Judicial Selection Commission has been to introduce both a nonpartisan means for scrutinizing candidates' qualifications and capabilities for judicial office and a unique merit retention system, but not to banish partisan politics from the entire appointment and confirmation process.

State Agencies on the Brink of Semiautonomy

Various state programs rely upon the receipt of federal monies for at least partial funding, a situation which normally entails state compliance with federally imposed standards and conditions. One of the effects is to narrow the parameters within which Hawai'i's executive and legislators may shape the formulation and implementation of policy. The degree of autonomy available to four agencies within the state government similarly constricts the scope of gubernatorial and legislative management. Two of them—the University of Hawai'i as a body corporate, and the Department of Education, run by an elected school board—are considered in chapter 13 which is on education. To the extent that all four agencies actually operate outside the normal constraints raised by the governor and legisla-

ture, this introduces an element of decentralization not familiar to the islands, with potential for significant impact on governmental policy in Hawai'i.

Hawaiian Homestead Commission

At the end of the territory's second decade, the U.S. Congress created the Hawaiian Homes Commission (HHC) for the purpose of improving the welfare of native Hawaiians through homesteading, financial aids, and other assistance related to their rehabilitation. The HHC is funded in part by income realized from lands assigned to the commission for that purpose. With the admission to statehood, Hawai'i incorporated into its constitution a compact with the federal government to further HHC activities. While the governor appoints the members of the commission who exercise direction over the operations of the Department of Hawaiian Home Lands, including its chairperson who sits in his cabinet, some of the activities of the department are beyond his or the legislature's control. As illustration, by virtue of the delimitation contained in the HHC act, specified benefits may be made available only to native Hawaiians. A "native Hawaiian" is defined as one who is at least fifty percent descended from the islands' indigenous inhabitants.

Office of Hawaiian Affairs

Mainly as a result of dissatisfaction with the limited accomplishments of the HHC, a decade ago Hawai'i established by constitutional amendment what may become an independent branch of government—the Office of Hawaiian Affairs (OHA). Voters of Hawaiian ancestry choose a board of trustees, also of Hawaiian ancestry, at elections held simultaneously for other state officers. The trustees are charged to work for the betterment of the condition of ethnic Hawaiians, with OHA being "the principal public agency of the state responsible for the performance, development, and coordination of all programs and activities impacting on Hawaiians, with the exception of programs administered by the Hawaiian Homes Commission."²² At the time OHA was created, a direction was also added to the state constitution that federal lands returned to Hawai'i upon statehood be held in trust "for native Hawaiians and the general public."²³ State statute determines the power to be exercised by the trustees, and also presently allots twenty percent of the income from this trust fund to OHA, limited to "native Hawaiians."²⁴ In addition, operating funds to benefit all Hawaiians

are appropriated to OHA out of the state treasury. The political dynamics of the trustees' elective character and OHA's distinctive ethnic base portend OHA's gradual disengagement from effective state policy control other than that exerted by the nature and amount of resources made available under the state's legislative process. Some see OHA as ultimately possessing limited sovereignty analogous to Indian tribal government on the mainland.

Post-Statehood Decentralization

Conventional wisdom in the islands attributes centralization during the territorial period to the near-monopoly of organized politics exercised by the Republican Party. This constitutes but an abridged way of referring to a combination of forces that found their collective expression in the symbolism of the Republican Party, its program and leaders. Included is the *haole* (Caucasian) oligopoly centered in Honolulu that exerted its influence on the course of governmental policy through the Republican Party, which it strongly supported with both work and money. Also encompassed is the defensive strategy followed by the neighbor islands to counter the colossus that was Honolulu: through continuing a malapportioned territorial legislature in Republican control they succeeded in obtaining a greater share of governmental funds than warranted by their proportion of the citizen population. And after the threat of the Home Rule Party was turned,²⁵ territorial government policy remained safely in the hands of the Republicans; even when a Democratic administration in Washington filled Hawai'i's gubernatorial seat with a Democratic nominee, this failed to make much change due to Republican dominance of the territorial legislature and government on the neighbor islands.

Although the Democratic Party in Hawai'i remained eclipsed, some candidates running at least nominally under its banner did succeed. This was particularly true in the City and County of Honolulu.²⁶ It was only to be expected, then, that such local government as did exist would remain anemic and be kept internally decentralized, since the counties were but creatures of the territory and subject to plenary territorial government control. To change this would require reversal of political dominance and capture of both legislative and executive branches of the central government by the Democratic Party. Meanwhile the platform of the

Democratic Party perennially pledged it to the strengthening of local government.

The signs of reversal in political party dominance began appearing after World War II, and by statehood the Democratic Party had become politically ascendant. Thereafter, the Republican Party went into near eclipse and since then has been playing a minority role in the islands, in many ways comparable to that of the Democrats previously. Despite the turnabout in political fortunes, the centralization of Hawaii's government continues almost unmodified.

In the first flush of victory, the Democrats transferred police and liquor-control functions to the counties by eliminating gubernatorial appointment of their local boards. Instead of the legislature establishing county government by statute, constitutional provision now empowered each of the political subdivisions to draft its own self-government charter. This they quickly proceeded to act upon, and in the process began adopting highly centralized administrative systems, reflecting on the local level the form found in state government. However, the state constitution did not throw all caution to the winds, and it still allows state statute to prescribe limits and procedures on such local action, although subsequent amendment did narrow this by prohibiting any requirement for a local charter to run the gauntlet of approval by a legislative body. In addition, charter provisions regarding "executive, legislative, and administrative structure and organization" of local government are declared to take precedence over state statute.²⁷ But as each political subdivision may only exercise those powers that are conferred under general law, and the legislature still retains ability to allocate governmental functions, the final authority over what local governments in the islands can and cannot do resides in the state government.

Until 1978, the counties possessed no taxing powers other than those delegated to them by the legislature. Now the state constitution grants the revenues from the real property tax and exclusive control over its administration to the counties. Nevertheless, they are still dependent upon state grants to supplement property tax collections and the smaller revenues derived from license charges and user fees. By denying local government access to tax bases premised upon income or selected transactions, the state government continues to set effective boundaries beyond which the counties do not have the fiscal capacity to act. Somewhat ironically, perhaps as demonstration that turnabout is fair play, the state constitution now prohibits the legislature from transferring any new program to

the counties, or mandating them to increase the level of services under any existing program, without also sharing in its cost.²⁸

Belying the past, when the administration of nearly everything governmental appeared to gravitate inexorably toward the central government at the capital in Honolulu, today there is also a tendency to weigh local governments' capacity to undertake new functions. Contributing to this has been a reversal of the population movement to Oahu and a gradual shifting of the tourist income base outward from Waikiki to the neighbor islands, so these islands' seeking of protection in the state government against the City and County of Honolulu no longer seems so imperative. However, this has not yet stopped the long-term flow of functions to the state government. An example is the new State Water Management Commission, which is gradually stripping powers from local water authorities. Notwithstanding the Democratic Party's championing of home rule in Hawai'i, a Democratic state administration has, since statehood, repeatedly enacted laws and created authorities overriding the City and County of Honolulu. Abstract principle easily becomes subordinated to the political reality of partisan conflict—whether interparty or internecine—so that the centralization of Hawai'i's government continues.

Notes

1. See Norman Meller, "Centralization in Hawai'i: Retrospect and Prospect," *American Political Science Review* 52 (1) (March 1958), p. 98.

2. Except for the unusual constitutional provision made for the Hawaiian Homes Commission, when the state constitution became effective no state executive could successfully challenge the governor's direction, as was possible under the Organic Act.

3. Hawaiian Organic Act, sec. 56, U.S., *Statutes at Large*, XXXI, 141.

4. Besides Hawai'i, Kauai, Maui, and Oahu counties, another county consisting of the Hansen's disease settlement on Molokai was later created and placed under the administrative direction of the Department of Health.

5. Seventeen states, including Alaska and Hawai'i, have joined the union without prior authorization of Congress to set up their constitutional governments. Roger Bell, *Last Among Equals* (Honolulu: University of Hawai'i Press, 1984), p. 325, n. 2. Also see Daniel W. Tuttle, "'State' Elections prior to Admittance into the Union," report no. 1, 1951, Legislative Reference Bureau, University of Hawai'i.

6. For the mechanics of drafting Hawai'i's state constitution see Henry Wells, "Constitutional Conventions in Hawai'i, Puerto Rico, and Alaska," in W. Brooke Graves, ed., *Major Problems in State Constitutional Revision* (Chicago: Public Administration Service, 1960), p. 52. Also see Norman Meller, "With an Understanding Heart"—*Constitution Making in Hawai'i* (New York: National Municipal League, 1971).

7. Interestingly, the closest Hawai'i came to a popularly chosen chief executive was during the monarchy when it became necessary for the legislature to choose a successor to Kamehameha V after his death without an heir. A plebiscite voiced the wishes of the populace to guide the legislature. See Ralph S. Kuykendall, *The Hawaiian Kingdom, 1854-1874* (Honolulu: University of Hawai'i Press, 1953), pp. 242-44.

8. Election by statewide vote of course furnishes the lieutenant governor with a potential base for becoming a political rival of the governor.

9. Not only does the governor have an executive budget including the proposed expenditures of all state agencies, but after legislative approval he or she may withhold monies appropriated.

10. The attorney general has ruled that, as the constitution declares the regents of the university to be a body corporate, it is not one of the twenty principal departments contemplated by the constitution, and its president need not sit on the governor's cabinet.

11. See Ferrel Heady, *State Constitutions: The Structure of Administration*, no. 4 of State Constitutional Studies Project (New York: National Municipal League, 1961), pp. 16, 17; Rowland Egger, "Power is not Enough," *State Government* 13 (8) (August 1940) p. 149; A. E. Buck, *The Reorganization of State Governments in the United States* (New York: Columbia University Press, 1938), pp. 14, 15.

12. Gale Lowrie, "A Constitution for Hawai'i," *American Political Science Review* 45 (3) (September 1951), p. 771.

13. See Norman Meller and Harold S. Roberts, "Hawai'i" in Eleanore Bushnell, ed., *Impact of Reapportionment on the Thirteen Western States* (Salt Lake City: University of Utah Press, 1970), p. 117.

14. *Ibid.*, pp. 118-27; Anne F. Lee and Peter J. Herman, "Ensuring the Right to Equal Representation: How to Prepare or Challenge Legislative Reapportionment Plans," *University of Hawai'i Law Review* 5 (1) (1983), p. 1.

15. Initiative and referendum in Hawai'i and Kauai; only initiative in Maui and the City and County of Honolulu. Matters excluded from consideration under initiative and referendum vary, as do the specified procedures to be followed.

16. *Kaiser Hawai'i-Kai Development Co. v. C & C of Honolulu*, vol. 70, Hawai'i Reports, 480 (1989).

17. *Wood v. Stark, Jr.*, vol. 1 Hawai'i Reports, 9, (1847).

18. Samuel P. King, "The Federal Courts and the Annexation of Hawai'i," *Western Legal History* 2 (1) (winter/spring 1989), p. 8.

19. The addition of a separate federal district court in Hawai'i was viewed as an aberration, as practice in other American territories was for the territorial courts also to exercise federal jurisdiction. *Ibid.*, pp. 15, 16.

20. Meller, "*With an Understanding Heart*," pp. 107, 108.

21. Subjecting the appointment of district court judges to senatorial consent is now being advocated.

22. Legislative Reference Bureau, "Guide to Government in Hawai'i," 9th ed. (Honolulu: 1989).

23. Hawai'i Constitution, art. 12, sec. 4.

24. *Ibid.*, sec. 6.

25. The Home Rule Party succeeded in electing Hawai'i's first delegate to Congress and gaining a majority in each chamber of the Territorial Legislature. At the next election a Republican delegate was sent to Washington; the Home Rulers comprised only a minority in the Territorial Senate and held but half the seats in the House of Representatives. Thereafter they virtually disappeared from the political scene.

26. In the period 1905-1945, Democratic mayors outnumbered Republicans in the City and County (10-7). During the same period, elected Democrats holding the comparable post (chairman) in the neighbor islands were almost nonexistent (Hawai'i had one). Republicans predominated in the other elected positions: C & C: R-51, D-66; Hawai'i: R-152, D-37; Kauai: R-169, D-12; Maui: R-191, D-7.

27. Hawai'i Constitution, art. 8, sec. 2. Note that there is no reference to judicial structure and organization being within the scope of local government control.

28. *Ibid.*, sec. 3.