

Hawaiian Kingdom Constitution of 1864

Promulgated by His Majesty Kamehameha V., by the Grace of God, King of the Hawaiian Islands, on the Twentieth Day of August, A.D. 1864, with amendments by the Legislative Assembly.

ARTICLE 1. God hath endowed all men with certain inalienable rights; among which are life, liberty, and the right of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

ARTICLE 2. All men are free to worship God according to the dictates of their own consciences; but this sacred privilege hereby secured, shall not be so construed as to justify acts of licentiousness, or practices inconsistent with the peace or safety of the Kingdom.

ARTICLE 3. All men may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of that right, and no law shall be enacted to restrain the liberty of speech, or of the press, except such laws as may be necessary for the protection of His Majesty the King and the Royal Family.

ARTICLE 4. All men shall have the right, in an orderly and peaceable manner, to assemble, without arms, to consult upon the common good, and to petition the King or Legislative Assembly for redress of grievances.

ARTICLE 5. The privilege of the writ of Habeas Corpus belongs to all men, and shall not be suspended, unless by the King, when in cases of rebellion or invasion, the public safety shall require its suspension.

ARTICLE 6. No person shall be subject to punishment for any offense, except on due and legal conviction thereof, in a Court having jurisdiction of the case.

ARTICLE 7. No person shall be held to answer for any crime in which the right of trial by Jury has been heretofore used, it shall be held inviolable forever, except in actions of debt or assumpsit in which the amount claimed is less than Fifty Dollars.

ARTICLE 8. No person shall be required to answer again for an offense, of which he has been duly convicted, or of which he has been duly acquitted upon a good and sufficient indictment.

ARTICLE 9. No person shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law.

ARTICLE 10. No person shall sit as a judge or juror, in any case in which his relative is interested, either as plaintiff or defendant, or in the issue of which the said judge or juror, may have, either directly or through a relative, any pecuniary interest.

ARTICLE 11. Involuntary servitude, except for crime, is forever prohibited in this Kingdom; whenever a slave shall enter Hawaiian Territory, he shall be free.

ARTICLE 12. Every person has the right to be secure from all unreasonable searches and seizures of his person, his house, his papers, and effects; and no warrants shall issue, but on probable cause, supported by oath or affirmation, and describing the place to be searched, and the persons or things to be seized.

ARTICLE 13. The King conducts His Government for the common good; and not for the profit, honor, or private interest of any one man, family, or class of men among His subjects.

ARTICLE 14. Each member of society has a right to be protected by it, in the enjoyment of his life, liberty, and property, according to law; and, therefore, he shall be obliged to contribute his proportional share to the expense of this protection, and to give his personal services, or an equivalent when necessary; but no part of the property of any individual shall be taken from him, or applied to public uses, without his own consent, or the enactment of the Legislative Assembly, except the same shall be necessary for the military operation of the Kingdom in time of war or insurrection; and whenever the public exigencies may require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

ARTICLE 15. No subsidy, duty or tax of any description shall be established or levied, without the consent of the Legislative Assembly; nor shall any money be drawn from the Public Treasury without such consent, except when between the session of the Legislative Assembly the emergencies of war, invasion, rebellion, pestilence, or other public disaster shall arise, and then not without the concurrence of all the Cabinet, and of a majority of the whole Privy Council; and the Minister of Finance shall render a detailed account of such expenditure to the Legislative Assembly.

ARTICLE 16. No Retrospective Laws shall ever be enacted.

ARTICLE 17. The Military shall always be subject to the laws of the land; and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by the Legislature.

ARTICLE 18. Every Elector shall be privileged from arrest on election days during his attendance at election, and in going to and returning therefrom, except in cases of treason, felony, or breach of the peace.

ARTICLE 19. No Elector shall be so obliged to perform military duty, on the day of election, as to prevent his voting; except in time of war, or public danger.

ARTICLE 20. 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 Judge of a Court of Record shall ever be a member of the Legislative Assembly.

ARTICLE 21. The Government of this Kingdom is that of a Constitutional Monarchy, under His Majesty Kamehameha V, His Heirs and Successors.

ARTICLE 22. The Crown is hereby permanently confirmed to _____, and to the Heirs of His/Her body lawfully begotten, and to their lawful Descendants in a direct line; failing whom, the Crown shall descend to _____, and the heirs of his/her body, lawfully begotten, and their lawful descendants in a direct line. The Succession shall be to the senior male child, and to the heirs of his body; failing a male child, the succession shall be to the senior female child, and to the heirs of her body. In case there is no heir as above provided, then the successor shall be the person whom the Sovereign shall appoint with the consent of the Nobles, and publicly proclaim as such during the King's life; but should there be no such appointment and proclamation, and the Throne should become vacant, then the Cabinet Council, immediately after the occurring of such vacancy, shall cause a meeting of the Legislative Assembly, who shall elect by ballot some native Alii of the Kingdom as Successor to the Throne; and the Successor so elected shall become a new *Stirps* for a Royal Family; and the succession from the Sovereign thus elected, shall be regulated by the same as the present Royal Family of Hawaii. (Affected by the death of Her Majesty Queen Lili'uokalani on November 17, 1917, who failed to receive confirmation from the Nobles of the Legislative Assembly for Her Majesty's nomination in accordance with this Article of the Constitution due to the civil unrest in the Country and the American occupation)

ARTICLE 23. It shall not be lawful for any member of the Royal Family of Hawaii who may by Law succeed to the Throne, to contract Marriage without the consent of the Reigning Sovereign. Every Marriage so contracted shall be void, and the person so contracting a Marriage, may, by the Proclamation of the Reigning Sovereign, be declared to have forfeited His or Her right to the Throne, and after such Proclamation, the Right of Succession shall vest in the next Heir as though such offender were *Dead*.

ARTICLE 24. His Majesty Kamehameha V, will, and His Successors upon coming to the Throne, shall take the following oath: I solemnly swear in the presence of Almighty God, to maintain the Constitution of the Kingdom whole and inviolate, and to govern in conformity therewith.

ARTICLE 25. No person shall ever sit upon the Throne, who has been convicted of any infamous crime, or who is insane, or an idiot.

ARTICLE 26. The King is the Commander-in-Chief of the Army and Navy, and of all other Military Forces of the Kingdom, by sea and land; and has full power by Himself, or by any officer or officers He may appoint, to train and govern such forces, as He may judge best for the defense and safety of the Kingdom. But he shall never proclaim war without the consent of the Legislative Assembly.

ARTICLE 27. The King, by and with the advice of His Privy Council, has the power to grant reprieves and pardons, after conviction, for all offenses, except in cases of impeachment.

ARTICLE 28. The King, by and with the advice of His Privy Council, convenes the Legislative Assembly at the seat of Government, or at a different place, if that should become dangerous from an enemy or any dangerous disorder; and in case of disagreement between His Majesty and the Legislative Assembly, he adjourns, prorogues, or dissolves it, but not beyond the next ordinary Session; under any great emergency, he may convene the Legislative Assembly to extraordinary Sessions.

ARTICLE 29. The King has the power to make Treaties. Treaties involving changes in the Tariff or in any law of the Kingdom shall be referred for approval to the Legislative Assembly. The King appoints Public Ministers, who shall be commissioned, accredited, and instructed agreeably to the usage and law of Nations.

ARTICLE 30. It is the King's Prerogative to receive and acknowledge Public Ministers; to inform the Legislative Assembly by Royal Message, from time to time, of the state of the Kingdom, and to recommend to its consideration such measures as he shall judge necessary and expedient.

ARTICLE 31. The person of the King is inviolable and sacred. His Ministers are responsible. To the King belongs the Executive power. All laws that have passed the Legislative Assembly, shall require His Majesty's signature in order to their validity.

ARTICLE 32. Whenever, upon the decease of the Reigning Sovereign, the Heir shall be less than eighteen years of age, the Royal Power shall be exercised by a Regent or Council of Regency, as hereafter provided.

ARTICLE 33. It shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne: and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign.

ARTICLE 34. The King is Sovereign of all the Chiefs and of the People; the Kingdom is His.

ARTICLE 35. All Titles of Honor, Orders, and other distinctions, emanate from the King.

ARTICLE 36. The King coins money, and regulates the currency by law.

ARTICLE 37. The King, in case of invasion or rebellion, can place the whole Kingdom or any part of it under martial law

ARTICLE 38. The National Ensign shall not be changed, except by Act of the Legislature.

ARTICLE 39. The King's private lands and other property are inviolable.

ARTICLE 40. The King cannot be sued or held to account in any Court or Tribunal of the Realm.

ARTICLE 41. There shall continue to be a Council of State, for advising the King in all matters for the good of the State, wherein He may require its advice, and for assisting him in administering the Executive affairs of the Government, in such manner as he may direct; which Council shall be called the King's Privy Council of State, and the members thereof shall be appointed by the King, to hold office during His Majesty's pleasure.

ARTICLE 42. The King's Cabinet shall consist of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance, and the Attorney General of the Kingdom, and these shall be His Majesty's Special Advisers in the Executive affairs of the Kingdom; and they shall be *ex officio* Members of His Majesty's Privy Council of State. They shall be appointed and commissioned by the King, and hold office during His Majesty's pleasure, subject to impeachment. No act of the King shall have any effect unless it be countersigned by a Minister, who by that signature makes himself responsible.

ARTICLE 43. Each member of the King's Cabinet shall keep an office at the seat of Government, and shall be accountable for the conduct of his deputies and clerks. The Ministry hold seats *ex officio*, as Nobles, in the Legislative Assembly.

ARTICLE 44. The Minister of Finance shall present to the Legislative Assembly in the name of the Government, on the first day of the meeting of the Legislature, the Financial Budget, in the Hawaiian and English languages.

ARTICLE 45. The Legislative power of the Three Estates of this Kingdom is vested in the King, and the Legislative Assembly; which Assembly shall consist of the Nobles appointed by the King, and of the Representatives of the People, sitting together.

ARTICLE 46. The Legislative Body shall assemble biennially, in the month of April, and at such other time as the King may judge necessary, for the purpose of seeking the welfare of the Nation. This Body shall be styled the Legislature of the Hawaiian Kingdom.

ARTICLE 47. Every member of the Legislative Assembly shall take the following oath: I most solemnly swear, in the presence of Almighty God, that I will faithfully support the Constitution of the Hawaiian Kingdom, and conscientiously and impartially discharge my duties as a member of this Assembly.

ARTICLE 48. The Legislature has full power and authority to amend the Constitution as hereinafter provided; and from time to time to make all manner of wholesome laws, not repugnant to the provisions of the Constitution.

ARTICLE 49. The King shall signify His approval of any Bill or Resolution, which shall have passed the Legislative Assembly, by signing the same previous to the final rising of the Legislature. But if he shall object to the passing of such Bill or Resolution, He will return it to the Legislative Assembly, who shall enter the fact of such return on its journal, and such Bill or Resolution shall not be brought forward thereafter during the same session.

ARTICLE 50. The Legislative Assembly shall be the judge of the qualifications of its own members, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as the Assembly may provide.

ARTICLE 51. The Legislative Assembly shall choose its own officers and determine the Rules of its own proceedings.

ARTICLE 52. The Legislative Assembly shall have authority to punish by imprisonment, not exceeding thirty days, every person, not a member, who shall be guilty of disrespect to the Assembly, by any disorderly or contemptuous behavior in its presence; or who, during the time of its sitting, shall publish any false report of its proceedings, or insulting comments upon the same; or who shall threaten harm to the body or estate of any of its members, for anything said or done in the Assembly; or who shall assault any of them therefor, or who shall assault or arrest any witness, or other person ordered to attend the Assembly, in his way going or returning; or who shall rescue any person arrested by order of the Assembly.

ARTICLE 53. The Legislative Assembly may punish its own members for disorderly behavior.

ARTICLE 54. The Legislative Assembly shall keep a journal of its proceedings; and the yeas and nays of the members, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

ARTICLE 55. The Members of the Legislative Assembly shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the Sessions of the Legislature, and in going to and returning from the same; and they shall not be held to answer for any speech or debate made in the Assembly, in any other Court or place whatsoever.

ARTICLE 56. The Representatives shall receive for their services, a compensation to be ascertained by law, and paid out of the public treasury, but no increase of compensation shall take effect during the year in which it shall have been made; and no law shall be passed, increasing the compensation of said Representatives beyond the sum of five hundred dollars for each session. (Amended by Act of 1882)

ARTICLE 57. The King appoints the Nobles, who shall hold their appointments during life, subject to the provisions of Article 53; but their number shall not exceed twenty.

ARTICLE 58. No person shall be appointed a Noble who shall not have attained the age of twenty-one years and resided in the Kingdom five years.

ARTICLE 59. The Nobles shall be a Court, with full and sole authority to hear and determine all impeachments made by the Representatives, as the Grand Inquest of the Kingdom, against any officers of the Kingdom, for misconduct or maladministration in their offices; but previous to the trial of every impeachment the Nobles shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence and the law. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Government; but the party so convicted shall be, nevertheless, liable to indictment, trial, judgment and punishment according to the laws of the land. No Minister shall sit as a Noble on the trial of any impeachment.

ARTICLE 60. The Representation of the People shall be based upon the principle of equality, and shall be regulated and apportioned by the Legislature according to the population, to be ascertained by the Legislature according to the population, to be ascertained, from time to time, by the official census. The Representatives shall not be less in number than twenty-four, nor more than forty, who shall be elected biennially.

ARTICLE 61. The following persons shall be eligible for representatives of the people, namely: Every male subject, or denizen of the Kingdom, who shall have arrived at the full age of twenty-five years, who shall know how to read and write; who shall understand accounts, and who shall have resided in the Kingdom for at least one year immediately preceding his election; provided always, that no person who is insane, or an idiot, or who shall at any time have been convicted of theft, bribery, perjury, forgery, embezzlement, polygamy, or other high crime or misdemeanor, shall ever hold seat as Representative of the people.

ARTICLE 62. Every male subject of the Kingdom, who shall have paid his taxes, who shall have attained the age of twenty years, and shall have been domiciled in the Kingdom for one year immediately preceding the election and 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 provided by law, shall be entitled to one vote for the Representative or Representatives of that District. *Provided, however,* that no insane or idiotic person, or any person who shall have been convicted of any infamous crime within this Kingdom, unless he shall have been pardoned by the King, and by the terms of such pardon have been restored to all the rights of a subject, shall be allowed to vote. (Amended by Act of 1874)

ARTICLE 63. The property qualification of the Representative of the People may be changed by law. (Amended by Act of 1874)

ARTICLE 64. The Judicial Power of the Kingdom shall be vested in one Supreme Court, and in such Inferior Courts as the Legislature may, from time to time, establish.

ARTICLE 65. The Supreme Court shall consist of a Chief Justice, and not less than two Associate Justices, any of whom may hold the Court. The Justices of the Supreme Court shall hold their offices during good behavior, subject to removal upon impeachment, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office. *Provided, however,* that any Judge of the Supreme Court or any other Court of Record may be removed from office, on a resolution passed by two-thirds of the Legislative Assembly, for good cause shown to the satisfaction of the King. The Judge against whom the Legislative Assembly may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least ten days before the day on which the Legislative Assembly shall act thereon. He shall be heard before the Legislative Assembly.

ARTICLE 66. The Judicial Power shall be divided among the Supreme Court and the several Inferior Courts of the Kingdom, in such manner as the Legislature may, from time to time, prescribe, and the tenure of office in the Inferior Courts of the Kingdom shall be such as may be defined by the law creating them.

ARTICLE 67. The Judicial Power shall extend to all cases in law and equity, arising under the Constitution and laws, of this Kingdom, and Treaties made, or which shall be made under their authority, to all cases affecting Public Ministers and Consuls, and to all cases of Admiralty and Maritime jurisdiction.

ARTICLE 68. The Chief Justice of the Supreme Court shall be the Chancellor of the Kingdom; he shall be *ex officio* President of the Nobles in all cases of impeachment, unless when impeached himself; and exercise such jurisdiction in equity or other cases as the law may confer upon him; his decisions being subject, however, to the revision of the Supreme Court on appeal. Should the Chief Justice ever be impeached, some person specially commissioned by the King shall be President of the Court of Impeachment during such trial.

ARTICLE 69. The decisions of the Supreme Court, when made by a majority of the Justices thereof, shall be final and conclusive upon all parties.

ARTICLE 70. The King, His Cabinet, and the Legislative Assembly, shall have authority to require the opinions of the Justices of the Supreme Court, upon important questions of law, and upon solemn occasions.

ARTICLE 71. The King appoints the Justices of the Supreme Court, and all other Judges of Courts of Record; their salaries are fixed by law.

ARTICLE 72. No judge or Magistrate can sit alone on an appeal or new trial, in any case on which he may have given a previous judgment.

ARTICLE 73. No person shall ever hold any office of Honor, Trust, or Profit under the Government of the Hawaiian Islands, who shall, in due course of law, have been convicted of Theft, Bribery, Perjury, Forgery, Embezzlement, or other high crime or misdemeanor, unless he shall have been pardoned by the King, and restored to his Civil Rights, and by the express terms of his pardon, declared to be appointable to offices of Trust, Honor, and Profit.

ARTICLE 74. No officer of this Government shall hold any office, or receive any salary from any other Government or Power whatever.

ARTICLE 75. The Legislature votes the Appropriations biennially, after due consideration of the revenue and expenditure for the two preceding years, and the estimates of the revenue and expenditure of the two succeeding years, which shall be submitted to them by the Minister of Finance.

ARTICLE 76. The enacting style in making and passing all Acts and Laws shall be, "Be it enacted by the King, and the Legislative Assembly of the Hawaiian Islands, in the Legislature of the Kingdom assembled."

ARTICLE 77. To avoid improper influences which may result from intermixing in one and the same Act, such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in its title.

ARTICLE 78. All laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted, or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void.

ARTICLE 79. This Constitution shall be in force from the Twentieth day of August in the year One Thousand Eight Hundred and Sixty-Four, but that there may be no failure of justice, or inconvenience to the Kingdom, from any change, all officers of this Kingdom, at the time this Constitution shall take effect, shall have, hold, and exercise all the power to them granted, until other persons shall be appointed in their stead.

ARTICLE 80. Any amendment or amendments to this Constitution may be proposed in the Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its journal, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or the next election of Representatives; and if in the next Legislature such proposed amendment or amendments shall be agreed to by two-thirds of all members of the Legislative Assembly, and be approved by the King, such amendment or amendments shall become part of the Constitution of this country.