THE INDEPENDENT.

VOL. XIX HONOLULU, T. H., THURSDAY, OCTOBER 27. 1904 No. 2954

KINNEY'S SPEECH AT THE ORPHEUM.

Grills The Governor And Furnishes Specifications For So Doing.

Fellow citizens: I wish to discuss with you at some length tonight, the theory of Territorial government as heretofore known in the United States, and to point out that the system under which the Territory of Hawaii is now being run is unique, has no precedent to support it, and nullifies the will of Congress as expressed in the Organic Act.

It may be said what is the use of such talk? What we want is a common sense discussion of practical things. If you can point out any unbusinesslike methods of the Territorial government, any malfeasance in office, any way the Territory can turn a dollar, we would like to hear you, but disquisitions on theories of government and the like don't interest us, and we see no practical good coming from them.

Our answer is that the communities that thrive best, develop the largest business interests, overcome the greatest difficulties and survive the most adversities, are the communities that are most careful in the theories and principles of government they adopt and preserve.

Communities, like individuals, have to think before they act, plan before they execute, and it is therefore manifestly important that as a community we think and plan with forethought and with regard to permanent results. It is all important that this young Territory should start right and adopt principles fit for lasting use and adapted to its ultimate welfare and development.

TEACHING OF HISTORY.

We have many striking illustrations of the wisdom of such a course in the history of our own Territory.

In the sixties after the whaling industry had declined, vessels engaged in the coolie traffic began to make Hawaii a way port between Asiatic and South American ports. It was virtually a slave trade, but it brought money to an indigent and despondent business community and was therefore welcomed. J. O. Carter, our fellow townsman, thought otherwise; believed the traffic an iniquity and a blot on the good name of Hawaii and ultimately a detriment to its business interests, and with writs of habeas corpus, public protest and otherwise made it so hot for the traffic that it was driven away, much to the disgust of many good business men of this town, now most of them passed away, who declaimed loudly against Carter as a menace to business and an allround nuisance. Some years later after great effort and many disappointments the Reciprocity Treaty with the United States was consummated, pouring millions into this country so that many of the very business men who did not like J. O. Carter's action about the coolie trade became millionaires. It then transpired, as given out from the highest official sources in the United States, including those directly concerned in giving us the treaty, that Hawaii never for one moment could have got that concession if she had still been a party to and engaged in the coolie traffic. Thus illustrating the wisdom, even from a purely selfish and business standpoint, of adopting methods that are permanently safe, even if they do not for the time being seem to pay or to be practical. It will not do to build upon the sand.

Nor is it true that our destiny is all in the hands of Congress, and therefore it is no use for us to consider these matters. That body can do much to make or mar this commonwealth, but after all we must in the main work out our own salvation. This is and has been true of our sister Territories on the Mainland, and it will prove true of us also.

THE GOVERNOR'S COURSE.

Governor Carter is running this Territory on the theory that all power should be centered in the Governor and he in turn should be responsible to the President for the welfare and proper administration of the Territory. We find no justification for this in the Organic Act, which, while vesting the executive power of the government of the Territory in the Governor holding him responsible for the execution of the laws, breaks up and subdivides this executive power into various departments, each independent of the other and all independent of the Governor.

The Organic Act provides that the Governor shall nominate and by and with the advice and consent of the Senate of the Territory of Hawaii, appoint the Attorney General, Treasurer, Commissioner of Public Lands, Commissioner of Agriculture and Forestry, Superintendent of Public Works, Superintendent of Public Instruction, Auditor, Deputy Auditor, Surveyor, High Sheriff, Members of the Board of Health, Commissioners of Public Instruction, Board of Prison Inspectors, Board of Registration and Inspectors of Election and any other boards of a public character that may be created by law. He may by and with the consent of the Senate remove from office any of such officers. All such officers shall hold office for four years and until their successors are appointed and qualified unless sooner removed, except certain boards whose terms of office shall be as provided by the laws of the Territory of Hawaii. The Organic Act then proceeds to provide that the manner of appointment and removal and the tenure of all other officers shall be as provided by law and that the Governor may appoint or remove any officer whose appointment or removal is not otherwise provided for. It will thus be noted that Congress carefully guards against allowing the Governor the sole say either as to the appointment or the removal of the heads of departments, and secures specifically to them a tenure of office for four years. As to certain other officers it provides that the Governor may appoint and remove at pleasure, thus clearly and conclusively showing by this distinction the positive legislative intention that the heads of departments should be independent of the Governor and of each other. The intention clearly was to break up and divide the executive power into various independent departments, but by taking undated resignations the foregoing legislative provision giving these officers a tenure of four years, and the foregoing legislative provision making them independent of the Governor by requiring the consent of the Senate to their removal, have been completely nullified and set aside as much so as if Congress had specifically repealed those important provisions of the Organic Act.

The law provides that these officers shall be removed by the Governor with the consent of the Senate. Under the Governor's methods of administration, they are now removable by the Governor alone even though such removal may be in direct opposition to the wishes of our Senate. Thus the security and the independence carefully vouchsafed to the heads of departments by the Congress of the United States has been directly set aside by the Executive of this Territory, who in taking office made oath to uphold and carry out the laws of the land as he found them.

By subdividing and cutting up the executive power of the Territory as provided in the Organic Act you undoubtedly do not secure as harmonious and aggressive an executive as you would by putting all control in the Governor and making the heads of departments his mere assistants and subject to his direct orders, but Congress undoubtedly felt that the plan adopted by it was safer and less liable to abuses, and having unquestionably adopted that policy for the Territorial government of Hawaii the question arises whether the Governor has the right to nullify the whole theory and groundwork of the Organic Act by the wholesale use of undated resignations, which please note the fact, are not in fact resignations as that word is universally understood and applied, but a subterfuge whereby the tenure of office of the heads of departments is changed from four years as provided in the Organic Act to a tenure at the will, pleasure and caprice of the Governor. Moreover, though the taking of undated resignations was originated, as the Governor claimed, to prevent bad men from holding on to their offices and to be used only for that purpose, yet the practical results from the system in one short year has been to make the Governor the actual practical head of every one of these departments, an entirely different result than the result which would have come if these undated resignations had been used solely for the purpose of reaching a contumacious or corrupt official where cause for removal actually existed. To use these undated resignations as a substitute for removal for cause has really no relation or connection with the use of these resignations to enable the Governor to slip into the chair and into the authority and the powers of every one of these heads of departments, yet such unquestionably is what has happened.

The Governor today orders, directs and reserves the action of the ostensible heads of each department at pleasure, thus assuming functions, deciding questions and exercising discretionary powers which are not conferred upon him but are conferred upon others and required by law to be performed by them.

SUBVERSION OF GOVERNMENT.

It is manifest therefore that we are not having the government by departments which was conferred upon us by the Organic Act, but instead have the English system whereby the head of the executive has direct control of every branch of the executive power and assumes to be responsible therefor; with this vital distinction, i. e., under the English system the government is directly responsible to the Legislature and directly removable upon a vote of want of confidence. Moreover, the heads of the executive under the English system have to be elected by some constituency to the House of Commons before they can serve as ministers. Whereas our Governor can not be removed by the Legislature or any other local authority but only by the President. If the Governor in subverting and nullifying the plan of executive control provided for in the Organic Act and substituting a part of the English system therefor, should also arrange so that the local Legislature could remove him by a vote of want of confidence whether the President desired to retain him or not, the arrangement might work, but the adopting of all of the powers of that system with none of its checks results clearly in despotic and practically irresponsible power against the clear intent and provisions of Congress as expressed in the Organic Act. It is a case of playing Hamlet with Hamlet left out.

Why is not the executive branch of the government under the American system also made amenable to the Legislature? What corresponding check is there in our system for the check existing under the English system of direct responsibility to the Legislature? The answer is that under the American system the executive power is split up and divided and subdivided into departments, branches and divisions independent more or less of each other an acting as checks and restraints upon each other, the very thing that found a place in our Organic Act and the very thing which has been wholly nullified and set aside by the Governor.

Under the American system we have first certain executive powers vested in the President and his cabinet, then other executive powers in the Governor of a State, still other executive powers in the mayors of cities and the supervisors of counties. Each of these are absolutely independent of each other. They in turn are generally checked in the selection and removal of sub-officers in the case of the President by requiring the concurrent action of the Senate, in the case of a mayor, that of the city council, etc.

In other Territories they have city and municipal government which absorbs probably seven-tenths of the executive power which in this Territory is centered in the hands of the Governor and the heads of departments, and it therefore would seem too plain for argument that with no city, municipal or county government to share in the executive power it is doubly necessary to preserve the independence of the various heads of departments now absolutely in the hands of the Governor.

The necessity of subdividing executive power under the American system is universally recognized by all authorities on such questions.

VIEWS OF WEBSTER.

Daniel Webster, the great authority on the genius and significance of our system of government has the following to say in this connection in his great speech against the abuse of executive power by Andrew Jackson delivered in the Senate of the United States on the 7th day of May, 1834.:

"The first object of a free people is the preservation of their liberty; and liberty is only to be preseved by maintaining constitutional restraints and just divisions of political power. Nothing is more deceptive or more dangerous than the pretence of a desire to simplify government. The simplest governments are despotisms; the next simplest, limited monarchies; but all republics, all governments of law, must impose numerous limitations and qualifications of authority, and give many positive and many qualified rights. In other words, they must be subject to rule and regulation. This is the very essence of free political institutions. The spirit of liberty is, indeed, a bold and fearless spirit; but it is also a sharp-sighted spirit; it is a cautious, sagacious, discriminating, far-seeing intelligence; it is jealous of encroachment, jealous of power, jealous of man. It demands checks; it seeks for guards; it insists on securities; it intrenches itself behind strong defences, and fortifies itself with all possible care against the assaults of ambition and passion. It does not trust the amiable weaknesses of human nature, and therefore it will not permit power to overstep its prescribed limits, though benevolence, good intent, and patriotic purpose come along with it. Neither does it satisfy itself with flashy and temporary resistance to illegal authority. Far otherwise. It seeks for duration and permanence. It looks before and after; and, building on the experience of ages to come. This is the nature of constitutional liberty; and this is our liberty, if we will rightly understand and preserve it. Every free government is necessarily complicated, because all such governments establish restraints, as well on the power of government itself as on that of individuals. If we will abolish the distinction of

(Continued to 4th page.)