Moʻolelo Ea O Nā Hawaiʻi
History of Native Hawaiian Governance in Hawaiʻi

Courtesy photo

Prepared for the **Office of Hawaiian Affairs** by
Davianna Pōmaikaʻi McGregor and
Melody Kapilialoha MacKenzie

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Empowering Hawaiians, Strengthening Hawaiʻi

Authors

Dr. Davianna Pōmaikaʻi McGregor is a Professor and founding member of the Ethnic Studies Department at the University of Hawaiʻi-Mānoa.

Melody Kapilialoha MacKenzie is a Professor at the William S. Richardson School of Law, University of Hawaiʻi–Mānoa, and Director of Ka Huli Ao Center for Excellence in Native Hawaiian Law.

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Preface

To assist the reader of this moʻolelo or history of Native Hawaiian governance in Hawaiʻi, the authors would like to share a discussion of some key terms that are used in the manuscript.

Hawaiian Language Terms

Hawaiian - Hawaiʻi

Hawaiʻi and **Kanaka Hawaiʻi** are the two terms that are translated as "Hawaiian" in the *Hawaiian Language Dictionary* by Mary Kawena Pukui and Samuel H. Elbert.[1]

Native Hawaiian - Kanaka Maoli and Kanaka ʻŌiwi

For "native," there are several terms provided in the Hawaiian dictionary - maoli, ʻōiwi, kamaʻāina, kupa, keiki papa, kulaiwi, keiki hānau o ka ʻāina, ewe hānau o ka ʻāina.

Over time, as discussed below, the terms **Kanaka Maoli** and **Kanaka ʻŌiwi** have evolved as the popular Hawaiian terms for Native Hawaiian.

Maoli means native, indigenous, genuine, true, and real according to the Hawaiian dictionary. **Kanaka maoli** has been popularized as the appropriate indigenous term for Native Hawaiian by advocates of Native Hawaiian sovereignty and independence and is the term for Native Hawaiian(s) used throughout this manuscript.

ʻŌiwi means native and native son can be literally translated as "of the ancestral bone." For Native Hawaiians, the bones of our ancestors and ourselves are sacred and hold the essence of the soul and spirit of our predecessors, our descendants and ourselves. Within our iwi resides our mana or spiritual power. The core of our ancestral memory and knowledge, that which has been transmitted to us through generations past and will pass to generations to come, resides within our iwi or our bones. It is this ancestral connection that makes the term ʻōiwi significant.

[1] Mary Kawena Pukui, Hawaiian Dictionary: Hawaiian-English, English-Hawaiian (Honolulu: University of Hawaii Press, 1986).

An ‘olelo no‘eau or Hawaiian proverb states, “Ku‘u ewe, ku‘u piko, ku‘u iwi, ku‘u koko” means “My afterbirth, my navel, my bones, my blood” and it refers to a very close relative.[2] Someone who is Native Hawaiian, Kanaka Maoli and Kanaka ‘Ōiwi can be said to be one who is of the ewe, piko, iwi and koko of an indigenous Hawaiian descended from the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i.

The initial distinction between Native Hawaiians and non-Native Hawaiians did not become important until the Kingdom of Hawai‘i allowed foreigners to become naturalized citizens and subjects of the Kingdom. In the 1859 Civil Code, the legislature of the Hawaiian Kingdom, used the term kanaka maoli to refer specifically to Native Hawaiians and the term kanaka kupa to refer to all subjects of the King, whether native or naturalized.[3] In the censuses of the Hawaiian Kingdom in 1878 and 1890 the term kanaka maoli referred to someone who was of full Native Hawaiian ancestry, while persons who were of mixed parentage were referred to as hapa-haole or half-caste. Therefore, it appears that the term kanaka maoli further evolved in the late nineteenth century to mean full Hawaiian. Meanwhile the term Kānaka ‘Ōiwi, not used in official laws, continued to refer inclusively to anyone who was “of the ancestral bone” or lineage, in other words, anyone who is Hawaiian by ancestry. Importantly the 1897 petitions in opposition to annexation of Hawai‘i to the U.S. used the term “Hawaii oiwi” for Native Hawaiians.

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[2] Mary Kawena Pukui, *‘Olelo Noe‘au: Hawaiian Proverbs and Poetical Sayings* (Honolulu: Bishop Museum Press, 1983), # 1932, p. 207.

[3] *See, for instance*, Section 480 of the 1859 Civil Code requiring a poll-tax for every male Hawaiian subject and alien between the ages of seventeen and sixty years. *1859 Civil Code of the Hawaiian Islands*, p. 105. The Hawaiian version uses the term “kanaka kupa Hawaii” for Hawaiian subject and “haole i hookupa oleia” for alien. *O Kanawai Kiwila O Ko Hawaii Pae Aina 1859*, p. 78. In contrast, see Section 142, forbidding foreign vessels or Hawaiian vessel engaged in foreign trade from taking any native out of Hawaii without obtaining permission. The term used for native in this section is “kanaka maoli.” *1859 Civil Code*, p. 75; *Kanawai Kiwila 1859*, p. 26.

Indigenous Peoples Within the United States

Within the United States of America, the rights of indigenous peoples arise from a unique legal relationship based upon the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the early formation of the United States, the courts have characterized Indian tribes as "domestic dependent nations" under the protection of the federal government.[4] Indigenous Native American nations, with whom the U.S. federal government has a government-to-government relationship because they were sovereign entities that existed before the formation of the United States, retain inherent powers of self-governance and self-determination.[5] Consequently, native nations today exercise certain fundamental and inherent powers of self-governance.[6] These include the power to establish a form of government, determine membership, exercise police powers, administer justice, and maintain immunity from suit.[7]

As of January 2014, the U.S. had acknowledged a government-to-government relationship with 556 American Indian and Alaska Native nations, tribes and peoples.[8] In 2012, there were more than 5 million Native Americans and Alaska Natives throughout the United States.[9] As of 2010 approximately 22 percent of the Native American and Alaska Native population lived in American Indian and Alaska Native areas, including 325 American Indian

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[4] Cherokee Nation v. Georgia, 30 U.S. 1 (1831).

[5] In *Cherokee Nation*, Chief Justice Marshall found that because of the nature of the federal-Indian relationship, the United States had assumed a protectorate status over Indian nations. This protectorate status did not extinguish Indian sovereignty but preserved it and insulated it from state interference. *Id.* at at 560–61.

[6] *See Felix S. Cohen's Handbook of Federal Indian Law*, Nell Jessup Newton, ed. (LexisNexis 2012), § 4.01.

[7] *See id.* § 4.01[2] (discussing the extent of tribal powers).

[8] *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 79 Fed. Reg. 4748–53 (Jan. 29, 2014), for a listing of the 566 American Indian and Alaska Native entities recognized and entitled to receive federal services.

[9] *See* American Indian and Alaska Native Heritage Month, U.S. Census Bureau, *available at* http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb13-ff26.html (last visited July 25, 2014).

reservations and Alaska Native villages as well as off-reservation trust lands, Oklahoma tribal areas, state American Indian reservations, and other areas near tribal lands.[10]

Native Hawaiians as an Indigenous People Under International Law

Internationally, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities undertook an eleven-year study, completed in 1987, of indigenous populations in 37 different countries.[11] The report provides important insights on the conditions and status of indigenous peoples throughout the world, which parallel that of Native Hawaiians. For example, Paragraph 376 states:

> It is clear that indigenous peoples consider themselves to be different from the other groups that form the society of present-day nation-States in which they now find themselves included. They consider themselves to be the historical successors of the peoples and nations that existed on their territories before the coming of the invaders of these territories, who eventually prevailed over them and imposed on them colonial or other forms of subjugation, and whose historical successors now form the predominant sectors of society. It is also abundantly clear that indigenous peoples consider themselves different from those other peoples and demand the right to be considered different by other sectors of society and by the international community.[12]

The definition of indigenous peoples provided in the U.N. report, Paragraphs 379 through 382, also corresponds with the status of Native Hawaiians under the U.S.:

> 379. Indigenous communities, peoples and nations are those which, having a historical continuity with the pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.
>
> 380. This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

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[10] *Id.*

[11] Jose R. Martinez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations Volume V. Conclusions, Proposals and Recommendations* (New York: United Nations, 1987)

[12] *Id.*, p. 29

(a) Occupation of ancestral lands, or at least of part of them;
(b) Common ancestry with the original occupants of these lands;
(c) Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, life-style, etc.)
(d) Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
(f) Other relevant factors.

381. On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group).

382. This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.[13]

The U.N. established a Working Group on Indigenous Populations, which worked over a ten-year period to develop and gain support for a Declaration on the Rights of Indigenous Peoples. The Declaration was finally adopted by the U.N. General Assembly on September 13, 2007.[14] At the core of these rights is the right to self-determination. Articles 3, 4, and 5 of the U.N. Declaration state:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

[13] *Id.*
[14] United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* (New York: 107th Plenary Meeting, September 13, 2007), *available at* http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (last viewed June 27, 2014).

> Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Moreover, in relation to claims to ancestral and national lands, Article 26 of the U.N. Declaration states:

> *Article 26*
>
> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
>
> 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
>
> 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Although the United States initially did not vote in favor of the declaration, on December 9, 2010, President Barrack Obama announced U.S. support for the Declaration. The Declaration informs the policy of the U.S. government with regard to indigenous peoples within the U.S., and as set out in the State Department's announcement of support, specifically includes the Native Hawaiian people.[15]

Native Hawaiians in 2010

At the beginning of the twenty-first century, the 2000 U.S. census recorded 401,162 Native Hawaiians in the United States. Of this number, 239,655 or 60 percent lived in the Hawaiian Islands. Native Hawaiians comprised 20 percent of the population of Hawai'i in 2000. In the

[15] Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples, Initiatives to Promote Government-to-Government Relationship & Improve the Lives of Indigenous Peoples, *available at* http://www.state.gov/documents/organization/153223.pdf (last visited June 27, 2014).

2010 U.S. Census, there were 527,077 Native Hawaiians in the U.S., with 289,970 or 55 percent living in the Hawai‘i and 237,107 or 45 percent living in the continental U.S. Native Hawaiians comprised 21.3 percent of Hawai‘i’s population in 2010.[16]

From 2006 to 2010, 6.7 percent of the households in Hawai‘i earned incomes below the poverty level, while a higher percentage of the Native Hawaiians households in Hawai‘i, 10.8 percent, earned incomes below the poverty status.[17] The median income for households in Hawai‘i from 2006 to 2010 was $66,420, however the median income for Native Hawaiian households during this period was $62,852.[18] In Hawai‘i, 90.4 percent of the population are high school graduates or higher, and slightly less, 89.8 percent, of the Native Hawaiian population have achieved that level of education. Of this amount 19.6 percent of Hawai‘i’s population have earned a bachelor’s degree, but only 10.4 percent of Native Hawaiians have earned this degree.[19]

In 2013, Native Hawaiians made up 28.9 percent of the homeless population in the Hawaiian Islands.[20] Among the unemployed in Hawai‘i from 2006 to 2010, 6.2 percent of the

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[16] Office of Hawaiian Affairs, *Native Hawaiian Data Book*, Table 1.19: Native Hawaiian Population by Region in the United States: 1990, 2000, 2010, *available at* http://www.ohadatabook.com/T01-19-13.pdf (last visited July 24, 2014).

[17] Office of Hawaiian Affairs, *Native Hawaiian Data Book*, Figure 2.59 Native Hawaiian families by Poverty Status and Family Type in Hawai‘i: 2006 - 2010, *available at* http://www.ohadatabook.com/T02-59-13.pdf (last visited July 24, 2014).

[18] Office of Hawaiian Affairs, *Native Hawaiian Data Book,* Figure 2.54 Distribution of Native Hawaiian Household Income in Hawai‘i: 2006 - 2010, *available at* http://www.ohadatabook.com/F02-54-13.pdf (last visited July 24, 2014).

[19] American Community Survey 1 Year SO201 State of Hawai‘i: Selected Population Profile for Native Hawaiians and the State of Hawai‘i 2012, *available at* http://www.ohadatabook.com/ACS_12_1YR_S0201_STATE_HI.pdf (last visited July 24, 2014).

[20] Office of Hawaiian Affairs, *Native Hawaiian Data Book*, Table 2.115 update: Homeless Outreach Program Participation by Ethnicity by County in Hawaii: 2013, *available at* http://www.ohadatabook.com/T02-115-13.pdf (last visited July 24, 2014).

Native Hawaiians were unemployed as compared to 3.6 percent for the State of Hawai‘i overall.[21]

In 2009, Native Hawaiians were overrepresented in the inmate population of Hawai‘i Correctional Facilities, comprising 36 percent of those admitted to prison. Native Hawaiian women represent 44 percent of the women incarcerated by the State of Hawai‘i.[22]

Native Hawaiians in Hawai‘i have high rates of risk factors for cardiovascular disease and cancer due to low incomes that hinder access to health care. Native Hawaiians suffer mortality rates that are higher than the other ethnic groups in Hawai‘i for heart disease (68 percent higher), cancer (34 percent higher), stroke (20 percent higher) and diabetes (130 percent higher).[23] The life expectancy of 74.3 years for Native Hawaiians is 6.2 years lower than the life expectancy for the State, at 80.9 years, even though Native Hawaiian life expectancy has increased by 11.8 years since 1950.[24]

Among the 45 percent of Native Hawaiians living outside of Hawai‘i, many are students attending American colleges and universities and those who secured jobs in their chosen profession upon graduation. A number serve in the U.S. armed forces or are dependents of those who do. Studies indicate that higher-paying, better quality jobs, and the lower cost of housing and living expenses on the continental U.S. contribute to the out-migration from the islands.

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[21] Office of Hawaiian Affairs, *Native Hawaiian Data Book*, Table 2.37 Unemployed Native Hawaiian Civilian Labor Force by County: 2006-2010, *available at* http://www.ohadatabook.com/T02-37-13.pdf (last visited July 24, 2014).

[22] Office of Hawaiian Affairs, *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, 2010, pp. 10 - 11.

[23] Department of Native Hawaiian Health, Center for Native and Pacific Health Disparities Research, John A. Burns School of Medicine, UH-Mānoa, *Assessment and Priorities for Health and Well-Being in Native Hawaiians & Other Pacific Peoples*, 2013, p.9. The report states, “Wai‘anae on O‘ahu, with one of the highest concentration of Native Hawaiians in the State, has the highest rates of death from heart disease and cancer, and a higher occurrence of obesity, diabetes, and high blood pressure.”

[24] *Id.*, p. 7

The socio-economic statistics of Native Hawaiians in 2010 reflected a disparity in the standard of living between Native Hawaiians and Caucasians, Japanese, and Chinese in Hawai‘i. These statistics reflect the individual and collective pain, bitterness and trauma of a people who are largely marginalized and dispossessed in their own homeland. They indicate the plight of a people whose sovereignty has been and remains suppressed.

Hawaiian Home Lands

Congress passed the Hawaiian Homes Commission Act (HHCA) in 1921, setting aside more than 200,000 acres of former Crown and Government lands of the Hawaiian Kingdom and Constitutional Monarchy for homesteading by Native Hawaiians of not less than fifty percent Hawaiian ancestry.[25] Pursuant to provisions of the HHCA, the Hawai‘i State Department of Hawaiian Home Lands provides direct benefits to Native Hawaiians in the form of 99-year homestead leases for residential, agricultural or pastoral purposes at an annual rental of $1.[26] Other benefits provided by the HHCA include financial assistance through direct loans or loan guarantees for home construction, replacement, or repair, and for the development of farms and ranches; technical assistance to farmers and ranchers; and the operation of water systems.[27] As of 2012, there were 9,849 leases to Native Hawaiians for residential, agricultural and pastoral lands of the HHCA. Moreover, there were 26,550 qualified Native Hawaiian applicants on the waiting list for an HHCA land award.[28]

Ka Pae ‘Āina Hawai‘i - The Hawaiian Archipelago

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[25] Hawaiian Homes Commission Act, Pub. L. No. 67-34, 42 Stat. 108 (1921).
[26] The Hawaiian Homes Commission Act was amended to allow a total lease period of 199 years. *See* HHCA, Sec. 208(2).
[27] Web site of the Department of Hawaiian Home Lands, *available at* http://dhhl.hawaii.gov/hhc/laws-and-rules/ (last visited July 24, 2014).
[28] Department of Hawaiian Home Lands, *‘Āina Ho‘opulapula Hō‘ike Makahiki, Annual Report 2012*, *available at* http://dhhl.hawaii.gov/wp-content/uploads/2011/11/DHHL-Annual-Report-2012-Web.pdf (last visited July 24, 2014), pp. 51, 57.

The Hawaiian Kingdom and Constitutional Monarchy ruled over the archipelgo, which, in addition to the eight major inhabited islands, includes 124 Northwestern Hawaiian Islands stretching to Kure Island. In addition to the 4,126,000 acres of the eight major Hawaiian Islands, there are an additional 254,418.10 acres of emerged and submerged lands that the comprise the Northwestern Hawaiian Islands and is managed as the Papahānaumokuākea Marine National Monument.

Use of Hawaiian Language and Diacritical Marks

Diacritical marks help to clarify for the reader the meaning of words in ʻŌlelo Hawaiʻi, the Hawaiian language. Thus, in this moʻolelo, to the greatest extent possible, diacritical marks are used in Hawaiian words, except in direct quotations where Hawaiian words appear as they did in the original texts. The sources for translations of ʻŌlelo Hawaiʻi text into English are either cited in a footnote or are the official translations of laws and documents, such as the statutes and laws of the Hawaiian Kingdom, utilized at the relevant period in Hawaiʻi's history.

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Chapter One: Introduction to Moʻolelo Ea O Nā Hawaiʻi, Native Hawaiian Governance in Hawaiʻi

He Pule Ola Hawaii

O ke au i kahuli wela ka honua,
O ke au i kahuli lole ka Lani,
E hoomalamalama i ka malama
O ke au ia Makalii ka po,
O ke au i Ku-kai-aku ka la,
O ka walewale hookumu honua ia,
O ke kumu o ka lipo i lipo ai,
O ke kumu o ka po i po ai,
O ka lipolipo, o ka lipolipo,
O ka lipo o ka la, o kalipo o ka po,
Po-wale-ho-i-e
Hanau ka po ia Hawaii
He Aupuni Moi

Prayer for the Life of Hawaiʻi

When space turned around, the earth heated
When space turned over, the sky reversed
To cause light to make bright the moon,
When the Pleiades are small eyes in the night,
When the sun appeared standing in shadows
From the source in the slime was the earth formed
From the source in the dark was darkness formed
From the source in the night was night formed
From the depths of the darkness, darkness so deep
Darkness of day, darkness of night
Of night alone
Night gave birth to Hawaiʻi
A Kingdom

Ke Aloha Aina, July 3, 1897, p. 5

Overview

This moʻolelo, a history, in the Hawaiian sense a succession of knowledge passed on orally from one generation to the next, is a story recounting the history of the governance in Hawaiʻi

from one generation to the next of Native Hawaiian leaders. It unfolds as a genealogy, tracing the governance of Native Hawaiians from the first generations of district chiefs through the current generation of national leaders of Hawaiian organizations of self-governance. We open this history with a "Prayer for the Life of Hawai'i" that was published in the nationalist newspaper, *Ke Aloha 'Āina* (Love for the Land and Nation) on July 3, 1897, when Native Hawaiians were organizing to preserve the life of their nation, Hawai'i, from annexation by the United States. Significantly, the composer begins the prayer with the first 11 lines of the Kumulipo, the chant that celebrates the creation of the universe and relates the genealogy of the last two reigning monarchs of the Hawaiian Kingdom and Constitutional Monarchy, King David Kalākaua and his sister Queen Lydia Kamaka'eha Lili'uokalani. In this prayer, the universe gives birth to Hawai'i and to its government, the Kingdom, reinforcing the underlying fundamental principle that Native Hawaiian governance is integrally linked with the genealogical succession of Native Hawaiian chiefs in general, and Queen Lili'uokalani in particular, who descend from the omnipotent life force of the universe. This story of Native Hawaiian governance provides a comprehensive history to elucidate three important facts that are integral to the recognition of the right of self-governance of Native Hawaiians.

The first important fact is that Nā Kānaka Hawai'i 'Ōiwi Maoli, Native Hawaiians, are the native, indigenous, aboriginal people of Ka Pae 'Āina Hawai'i (the Hawaiian Archipelago) and have a distinct language, culture, history and ancestral land base.[29]

[29] Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham: Duke Univ. Press, 2004), p. 161. Silva notes that in a Memorial to President William McKinley on August 6, 1898 through U.S. Minister Harold Sewall, sent by Native Hawaiian nationalists to protest the Newlands Joint Resolution of Annexation, four strong words were used in the Hawaiian version and translated as "native Hawaiians" in the English version - kanaka, Hawaii, oiwi, maoli.

The second important fact is that Native Hawaiians exercised sovereignty over the islands that now comprise the State of Hawai‘i for centuries prior to the formation of the United States government.

The third important fact is that for at least a thousand years, and likely quite longer, continuing until today, Native Hawaiians have continuously exercised forms of governance and self-governance in Hawai‘i that are rooted in inherent Native Hawaiian sovereignty.[30]

Native Hawaiians, are the aboriginal, indigenous people who settled the Hawaiian archipelago, founded the Hawaiian nation and exercised sovereignty over the islands that subsequently became the Hawaiian Kingdom and Constitutional Monarchy, the Republic of Hawai‘i, the Territory of Hawai‘i and the State of Hawai‘i. Every legitimate form of historical methodology, documentation and archaeological investigation, including Hawaiian oral histories, chants and genealogies, substantiates this fact.[31] Most recently, the findings of the Hawai‘i

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[30] Hawaiian historian and genealogist Lilikalā Kame‘eleihiwa's study of the Hawaiian genealogy chant of creation, The Kumulipo has led her to conclude that Native Hawaiian governance by ruling chiefs began 100 generations or 2,000 years Before Present (BP). Lilikalā Kame‘eleihiwa "Hawai‘i-nui-akea Cousins: Ancestral Gods and Bodies of Knowledge are Treasures for the Descendants," in *Te Kaharoa e-Journal*, Vol. 2 (2009), p. 45. *See also* Joseph Mokuohai Poepoe, "Moolelo Hawaii Kahiko" *in Ka Nai Aupuni*, April 21-30, 1906.

[31] *See generally,* Samuel Manaiakalani Kamakau, *Ruling Chiefs of Hawai‘i* (Honolulu: Kamehameha Schools Press, 1961); Samuel Manaiakalani Kamakau, *Ka Po‘e Kahiko: The People of Old* (Honolulu: Bernice Pauahi Bishop Museum Press, 1992); Samuel Manaiakalani Kamakau, *Na Hana A Ka Po‘e Kahiko: The Works of the People of Old* (Honolulu: Bernice Pauahi Bishop Museum Press, 1992); Davida Malo, *Hawaiian Antiquities* (Dr. Nathaniel B. Emerson trans., 1898) (Honolulu: Bernice Pauahi Bishop Museum Press, 1951); E.S. Craighill Handy, Elizabeth Green Handy & Mary Kawena Pukui, *Native Planters in Old Hawaii: Their Life, Lore, and Environment* (Honolulu: Bernice Pauahi Bishop Museum Press, 1991) Patrick V. Kirch, *Feathered Gods and Fishhooks: An Introduction to Hawaiian Archaeology and Prehistory* (Honolulu: Univ. of Hawaii Press, 1985); Abraham Fornander, *Fornander Collection of Hawaiian Antiquities and Folklore Vol. IV and VI* (Honolulu: Bernice Pauahi Bishop Museum Press, 1912); Abraham Fornander, *An Account of the Polynesian Race: Its Origins and Migrations, Ancient History of the Hawaiian People to the Times of Kamehameha I Vols. I - III* (Rutland: Charles E Tuttle, 1969); Martha Warren Beckwith, *The Kumulipo: A Hawaiian Creation Chant* (Honolulu: Univ. Press of Hawaii, 1972).

Legislature in Act 195 (2011) also affirmed that the Native Hawaiian people are the "only indigenous, aboriginal, maoli people" of Hawai'i.[32]

Therefore, like American Indian and Alaska Native peoples, Native Hawaiians are a distinct, indigenous, Native people that lived in and exercised sovereignty over territory within the asserted boundaries of the United States for centuries prior to European contact and the formation of the federal government. Moreover, Native Hawaiians continue to maintain their national identity as a distinct people with a unique language, history, culture and ancestral land base.

Originally, as this mo'olelo will recount, from the emergence of district chiefs by A.D. 1000 and through the overthrow of the Hawaiian Kingdom and Constitutional Government in 1893, the governance of Hawai'i and the self-governance of Nā Kānaka Maoli (Native Hawaiians) were one and the same.

However, when the Provisional Government and Republic of Hawai'i, supported by the U.S. military, usurped the democratic governance of Hawai'i by Queen Lili'uokalani, the lawful chief executive of the Hawaiian Kingdom and Constitutional Government, Native Hawaiians began to organize political organizations of self-governance that were independent of those self-proclaimed governments to prevent the annexation of Hawai'i by the U.S. government and to seek the reinstatement of the queen as the leader of Hawai'i's government. As of the 1890 census, Native Hawaiians comprised 85 percent of the citizens of the Kingdom of Hawai'i,[33] but

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[32] Act of July 6, 2011, No. 195, §§ 1-2, 2011 Hawai'i Session Laws (codified at Hawai'i Revised Statutes Chap. 10H).

[33] Robert Schmitt, *Demographic Statistics of Hawaii: 1778-1965* (Honolulu: Univ. of Hawaii Press, 1968), Table 16, p. 74. The 1890 census listed nationality and not citizenship. The calculation for the number of citizens includes the categories: Natives, Half castes and Hawaiian-born foreigners. In 1890, there were 34,436 Natives and 6,186 Half castes, totaling 40,622 Native Hawaiians. There were 7,495 Hawaiian-born foreigners. Therefore, the total number of citizens was 48,117 of which Native Hawaiians comprised 85 percent. There were 41,873 foreigners living in Hawai'i and the total

only 45 percent of the resident population. Moreover, Native Hawaiian men comprised seventy percent of the registered male voters.[34]

Throughout the period of governance of Hawai‘i as an incorporated territory of the U.S., from 1900 through 1959, Native Hawaiians continued to decline as a percentage of the resident population although, they still comprised the majority of the registered voters through 1930.[35] Native Hawaiians actively participated in territorial politics and contended for control over the governance of Hawai‘i with the oligarchy of American businessmen and planters who controlled the territorial government. At the same time, Native Hawaiians also recognized the need to organize new political, civic, and benevolent organizations in order to provide for the well-being of the Native Hawaiian people and to protect Native Hawaiian lands, rights and trust assets. These organizations eventually assumed the rudimentary functions of a government for the Native Hawaiian people, who were acknowledged to be an indigenous people of a U.S. insular territory.[36] Under the framework of U.S. law, the U.S. Executive and Congress developed one set of laws and policies for the governance of Hawai‘i and its multi-ethnic citizens as a territory and another set of laws and policies that recognized Native Hawaiians as an indigenous people with the right of self-governance and with whom the U.S. established a trust relationship. Through

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population was 89,990, with Native Hawaiians comprising forty-five percent of the total population.

[34] This is discussed below in Chapter 6. See *Census of the Hawaiian Islands*, 1890 regarding percentage of Native Hawaiians in the population. Regarding registered voters, U.S. House of Representatives, 53rd Congress, 3d Session, Ex. Doc. No. 1, Part 1, App. II, *Foreign Relations of the United States 1894, Affairs in Hawaii* (Washington, D.C.: Government Printing Office, 1895) (hereinafter *Affairs in Hawaii*), *available at* http://libweb.hawaii.edu/digicoll/annexation/blount.html (last viewed August 1, 2014), p. 598; "The Census of 1890 by Age and Nationality, Showing Number of Registered Voters," cited in Thos. G. Thrum, *Hawaiian Almanac and Annual for 1893*. A Handbook of Information (Honolulu: Press Publishing Co. 1892), p. 14.

[35] This is discussed in more detail below in Chapter 8. For percentage of the population see U.S. Bureau of the *Census 15th Census of the United States: 1930, Population Second Series, Hawai'i: Composition and Characteristics of the Population and Unemployment* (Washington: Government Printing Office, 1931), p. 48, Table 2 for Composition and Characteristics of Population. For Voter Registration data see Hawai'i (Territory) Governor of the Territory of Hawaii, *Report to Secretary of Interior, 1931* (Washington: Government Printing Office, 1931), p. 14.

[36] These dynamics and processes are discussed below in Chapters 8 and 9.

these processes and over the course of the territorial period and then statehood, the governance of Hawai‘i and the self-governance of Nā Kānaka Maoli (Native Hawaiians) have become distinct.[37]

The governance of Hawai‘i in the 21st century is exercised on behalf of the multi-ethnic people who are descendants of and are themselves born and raised in Hawai‘i, such as President Barack Obama. It has also become inclusive of persons who establish residency in the Hawaiian Islands. The self-governance of Nā Kānaka Maoli (Native Hawaiians) is exercised on behalf of individuals who are descendants "of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii."[38]

Ancestry and genealogy is at the core of Native Hawaiian national identity. Genealogy connects Native Hawaiians to each other as a People whose collective indigenous ancestors developed the first society to establish sovereignty over the Hawaiian Archipelago no less than six and perhaps as many as eight centuries prior to European contact in 1778. The Kumulipo Genealogy identifies 100 generations of Hawaiian rulers over 20 and perhaps as many as 23 centuries prior to 1778.[39] Genealogy is a cultural and political relationship that locates Native Hawaiians within their homeland at the first critical point of the establishment of a social and political system in the Hawaiian Islands. Given the centrality of genealogy to national identity, this mo‘olelo will trace the genealogy of Native Hawaiian governance over the Hawaiian Islands through generations of chiefly rulers and national leaders and organizations of self-governance.

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[37] These laws and policies are described below in Chapters 8 and 9.

[38] This is the definition of Native Hawaiian in the Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawai‘i, Pub. L. No. 103-150, 107 Stat. 1510 (1993)

[39] Martha Beckwith *The Kumulipo, A Hawaiian Creation Chant* (Honolulu: Univ. Press of Hawaii, 1951); Lilikalā Kame‘eleihiwa, "Kumulipo: A Cosmogonic Guide to Decolonization and Indigenization" in *International Indigenous Journal of Entrepeneurship, Advancement, Strategy & Education,* WIPCE 2005 Special Edition. (Hamilton: Te Wananga o Aotearoa, Vol. 1, Issue 1), pp. 119 - 130.

This chapter provides a brief overview of the longer moʻolelo of Native Hawaiian governance throughout the centuries, which is elaborated in much greater detail in the chapters that follow. The three central themes of the moʻolelo—the distinct language, culture, history and ancestral land base of the Native Hawaiian people; the exercise of indigenous sovereignty prior to European or American contact; and the continuing exercise of forms of self-governance, both formal and informal, rooted in inherent Native Hawaiian sovereignty—are emphasized throughout this moʻolelo. These themes are illustrated through a timeline, given both as the relevant years in Western (Gregorian) time and in the estimated number of generations beginning from the emergence and organization of Hawaiian society under district ruling aliʻi or chiefs.

Settlement and Early Hawaiian Social System: A.D. 300 - 1000 [600 B.C. – A.D. 300][40]

Hawaiʻi began to be settled during a colonization period of A.D. 300 - 600 [600 B.C. – A.D. 300] by Polynesians who probably came from the nearest occupied archipelago, the Marquesas.[41] This discovery and settlement of Hawaiʻi and subsequent development of a distinctively Native Hawaiian social system is believed to have unfolded over six to seven centuries prior to the emergence of a system of governance by district chiefs.[42] From A.D. 600 - 1000, a core ʻŌlelo Hawaiʻi (Native Hawaiian language) and Nā ʻIke a me Nā Hana Hawaiʻi (Native Hawaiian culture) emerged as unique and distinct from that of the Polynesian homeland. The social system was organized around communal subsistence production in which large ʻohana

[40] Lilikalā Kameʻeleihiwa "Hawaiʻi-nui-akea Cousins," p. 46–49; David Stannard, *Before the Horror* (Honolulu, Univ. of Hawaiʻi Press, 1989)

[41] This early and long chronology is best summarized and described in Kirch, *Feathered Gods and Fishhooks* and *Anahulu: The Anthropology of History in the Kingdom of Hawaii* (Chicago: Univ. of Chicago Press, 1994).

[42] The discovery, settlement and evolution of complex social and political social systems throughout the Pacific and Hawaiʻi, in particular, have engaged scholars for 150 years according to Anthropologist Dr. Patrick V. Kirch. *See* Patrick V. Kirch, "When Did the Polynesians Settle Hawaiʻi? A Review of 150 Years of Scholarly Inquiry and a Tentative Answer," 16 *Hawaiian Archaeology* 3-26 (2011).

(extended families) engaged in cooperative work and shared the fruits of their labor. Recent research by Hawaiian historian and genealogist Professor Lilikalā Kameʻeleihiwa, delving into the Kumulipo genealogy and the genealogies and moʻolelo or histories of other Polynesian peoples, has led her to place the development of the early Hawaiian social system between 600 B.C., the time of the ruling chief Palikū, and A.D. 300, the time of Wākea who is credited with the development of the kapu or restrictions relative to the heiau or temples, the state religion and the ʻAi Kapu or sacred eating restrictions. Her research and ancestral genealogies and moʻolelo and direct experience with the voyages of the Hōkūleʻa double-hulled canoe have led her to place the origin of the migrations of settlement in Tahiti, rather than the Marquesas.

Governance by District Chiefs: A.D. 1000- 1500 [A.D. 300 – 1200]

Native Hawaiian Governance through District Chiefs[43]

Generations 1–14

By A.D. 1000, according to Dr. Carolyn Kēhaunani Cachola Abad, ruling chiefs emerged in every district on each island and assumed stewardship over the land. They undertook the responsibility of organizing the makaʻāinana (common people) to develop an infrastructure of

[43] The estimate of the generations of Native Hawaiian rulers and the approximate years that they ruled is based on Dr. Carolyn Kēhaunani Cachola Abad's analysis of Hawaiʻi chiefs, from the last set who migrated from Tahiti to Hawaiʻi, forward to King Kamehameha I in "The Evolution of Hawaiian Socio-Political Complexity: An Analysis of Hawaiian Oral Traditions" (Univ of Hawaiʻi Unpublished Dissertation, 2000). Chiefly genealogies trace the origins of Hawaiian rulers deeper in time. For example, Fornander, in *An Account of the Polynesian Race* places the chief that Abad selected as generation One (1) in her study, as a descendant of 29 generations of ruling chiefs in the Ulu line who preceded him. The Kumulipo Genealogy, traces the Kalākaua Dynasty back to the origin of the universe itself. Professor Kameʻeleihiwa, using the Kumulipo as her main source of ancestral documentation identifies the first generation ruling chief as Palikū in 600 B.C. and does not distinguish a period of rule by district chiefs as distinct from the rule of the chiefs of each island, as does Abad. Out of respect for the Hawaiian ancestral genealogy, the generation of ruling chiefs and the years of their rule are identifed in brackets throughout the next sections. See Appendix 1. Genealogies of the Ruling Chiefs of the Four Hawaiian Chiefdoms: Hawaiʻi, Maui, Oʻahu, Kauaʻi.

irrigation networks, roads and fishponds to enable the intensification of the production of food and basic necessities to support a rapidly expanding population.

The landscapes of Hawai‘i bear the imprint of the historic development of a sophisticated social system organized around the cultivation of the land and the ocean. Cultivated fields, complex irrigation networks and large fishponds reflected the industry and skill of the common people working together as ‘ohana (extended families) and under the oversight of konohiki (chiefly stewards) on behalf of their ruling chiefs.

According to the Native Hawaiian genealogies and oral traditions, this era of rapid expansion of the population and the development of the infrastructure corresponded to a new wave of migration from Tahiti. These dynamic developments were further stimulated by religious and political innovations introduced by an emerging class of ruling chiefs, some of whom were indigenous to Hawai‘i and some of whom migrated to Hawai‘i from Tahiti during this period.[44]

Within this time frame the voyaging of chiefs and priests between Hawai‘i and Tahiti stopped in A.D. 1400 and the Native Hawaiian social system again developed in isolation from external influences over the next two centuries.[45]

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[44] *See generally*, Ross Cordy, *Exahalted Sits the Chief: Ancient History of Hawaii Islan*d (Honolulu: Mutual Publishing, 2000).

[45] The sources cited in footnote 3 place the end of transpacific voyaging to between 1250 and 1400. Personal communication with Professor Emeritus of cultural anthropology, Univ. of Hawai‘i, Mānoa Ben Finney affirmed this, April 6, 2003. According to Finney, once there was a critical mass of people and technology in Hawai‘i, there was no great need to commit the vast resources needed to support long range voyaging. The resources of the chiefs were instead used to oppose other chiefs and expand the territory under their control. The book*, Ancient Tahiti* by Teuira Henry (Honolulu: Bernice Pauahi Bishop Museum, 1928), pp. 119-128, provides an account of how the voyaging temple on the island of Taputapuatea, in Tahiti played a critical role in the transpacific voyages and that the murder of a priest from Aotearoa–New Zealand by a chief from Tahiti at that temple led to a kapu (prohibition) on the launching of the wayfinding voyages that were traditionally launched under the auspices of the priests of that temple. Finney’s book *Sailing on the Wake of our Ancestors: Reviving Polynesian Voyaging* (Honolulu: Bernice Pauahi Bishop Museum Press, 2003), documents a 1995 ceremony at the temple at Taputapuatea to lift the prohibition. It was conducted by members of the Polynesian Voyaging Society of

Four Island Chiefdoms: A.D. 1500 – 1810 [A.D. 1200 - 1810]

Native Hawaiian Governance through Ali‘i Nui (High Chiefs of Islands) and the ‘Aha Ali‘i (Councils of Chiefs)

Generations 14–23 [Generations 89 - 119]

The next period, A.D. 1500 - 1810, is referred to as the Proto-Historic Period. During this period, there were four distinct chiefdoms (Hawai‘i, Maui, O‘ahu, Kaua‘i) ruled by four ali‘i nui (high chiefs) who continued to compete for control over districts and islands through inter-island alliances and marriages, religious rituals and military conquest. The ali‘i nui and their ‘aha ali‘i (councils of chiefs) ruled the individual islands as distinct yet interrelated realms. They had organized these island societies to the point where it became possible in the late 18th century for one paramount chief to consolidate and govern the chiefdoms as a federated interisland kingdom.

By 1795, one Ali‘i Nui, Kamehameha I, had conquered and unified all of the islands under his central rule, except for Kaua‘i and Ni‘ihau. Subsequently, Kamehameha I gained the allegiance of Kaumuali‘i, Ali‘i Nui of Kaua‘i and Ni‘ihau, and thus the entire archipelago was united as the Kingdom of Hawai‘i, by 1810, under King Kamehameha I.

Federated Central Government Under a Monarchy: 1810 – 1839

Native Hawaiian Governance through a Monarch

Generation 23 [Generation 118] - King Kamehameha I 1810 - 1819

Generation 24 [Generation 119] - King Kamehameha II (Liholiho) 1819 - 1824

Generation 25 [Generation 120] - King Kamehameha III (Kauikeaouli) 1825 - 1839

Hawai‘i who revived transpacific wayfinding voyages in 1976 with the round trip voyage of the double-hulled canoe Hōkūle‘a from Hawai‘i to Tahiti. Navigators from other Polynesian islands joined in the ceremony.

Once King Kamehameha I gained control of the major Hawaiian Islands, he re-established the ancestral custom of the ‘aha ali‘i (council of chiefs), first to provide advice and ensure the proper governance of the islands without reliance on warfare. The council of chiefs supervised the division and management of land, the management of fisheries, the sandalwood trade and the annual collection of taxes. Kamehameha also appointed governors for each island, in recognition of the relative autonomy of each island in relation to local affairs and as an accommodation to the federated nature of the governance of the unified Kingdom.[46] The council provided a constraint on the power of the mō‘ī (head of state) and was an early indicator of the democratic direction in which governance of the nation was moving.[47]

Kamehameha I died in 1819 and his son, Liholiho, took on the responsibility of governance as Kamehameha II. At that point in time, the ‘Ai Kapu (sacred eating restrictions) that defined the roles and interrelationship of men and women and the various classes of people with each other, as well as the appropriate uses of the land, ocean and natural resources were formally abandoned by Kamehameha II in an act called the ‘Ai Noa (freedom from sacred eating restrictions).[48] Following the ‘Ai Noa, Calvinist missionaries from New England arrived in Hawai‘i and introduced a new religious belief system that focused upon the salvation of humans and taught that humans were superior to the land and other living creatures. Their teachings,

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[46] Ralph S. Kuykendall, *The Hawaiian Kingdom, Vol. I: 1778-1854 Foundation and Transformation* (Honolulu: Univ. of Hawaii Press, 1938), pp. 53-54.

[47] Kamakau, *Ruling Chiefs*, pp. 172-77; John Papa Ii, *Fragments of Hawaiian Histor*y (Honolulu: Bernice Pauahi Bishop Museum Press, 1973) p. 70; Stephen Desha, *Kamehameha and His Warrior Kekūhaupi‘o* (Frances Frazier trans.) (Honolulu: Kamehameha Schools Press, 2000), pp. 342, 451; Lilikalā Kame‘eleihiwa, *Native Lands and Foreign Desires: Pehea Lā E Pono Ai?* (Honolulu: Bernice Pauahi Bishop Museum Press, 1992), pp. 58, 111-112.

[48] Kamakau, *Ruling Chiefs*, pp. 219-228; Kame‘eleihiwa, *Native Land and Foreign Desires*, pp. 67-94; Marshall Sahlins, *Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom* (Ann Arbor: Univ. of Michigan, l981), pp. 55-64; David Kalakaua King of Hawai‘i, *Legends and Myths of Hawaii* (Rutland, VT: C.E. Tuttle Co., 1972), pp. 429-446; William Davenport, “The Hawaiian ‘Cultural Revolution’: Some Economic and Political Considerations,” *American Anthropologist*, LXXI, 1969, pp. 1-20.

laced with cultural condescension, were critical of the cultural practices and traditional nature-based spiritual belief system of the Native Hawaiians. Missionaries, together with the whalers and merchants, introduced commercial practices that commodified and degraded cultural landscapes, competed with subsistence uses of the land and resources and undermined the principled belief of the people in the sacred nature of ʻāina (land). These contradictory philosophies and practices continued to be an undercurrent influencing the competitive relations between the Native Hawaiian community and foreign residents.

Although Kauikeaouli officially became king as Kamehameha III in 1825, he was a young boy, so Kaʻahumanu, the Kuhina Nui (regent/premier), and Kalanimōkū, the Kālaimoku (minister/counselor) of the Kingdom under Kamehameha II, continued to rule. Kaʻahumanu and Kalanimōkū navigated through increasingly complex and sometimes hostile relationships with merchants, seaman and emissaries of the great powers. In fulfilling their traditional roles as aliʻi (chiefs), they sought to ensure the survival of the Kingdom and their people amid difficult and massive political and social changes. Kamehameha III assumed the full authority of his office in 1832, upon Kaʻahumanu's death.

Hawaiian Constitutional Monarchy: 1839 – 1893

Native Hawaiian Governance through a Constitutional Monarchy

Generation 25 [Generation 120] - King Kamehameha III (Kauikeaouli) 1839 - 1854

Generation 26 [Generation 121] - King Kamehameha IV (Alexander Liholiho) 1855 - 1863

Generation 27 [Generation 122] - King Kamehameha V (Lota Kapuaiwa) 1863 - 1872

Generation 28 [Generation 123] - King William Charles Lunalilo 1873 - 1874

Generation 29 [Generation 124] - King David Kalākaua 1874 - 1891

Generation 30 [Generation 125] - Queen Liliʻuokalani 1891 - 1893

Kamehameha III, along with his Council of Chiefs and foreign advisors, realized that in order to maintain its independence, the Kingdom's governance structure should be firmly established in a written form. Thus, on June 7, 1839, King Kamehameha III proclaimed the Declaration of Rights, imposing restraints on the government and recognizing individual and communal rights of the chiefs and the common people.[49] Within a year, the Declaration was incorporated and transformed into Hawai'i's first Constitution. The Constitution of 1840 established three branches of government: (1) The King as the chief executive, responsible for foreign affairs, with an appointed premier and four governors of the major islands; (2) A House of Nobles, appointed by the King, and a House of Representatives, chosen by the people from Hawai'i, Maui, O'ahu and Kaua'i; and (3) a Judiciary with a Supreme Court and island judges appointed by the island governors.[50]

Throughout the 19th century, the United States recognized the independence of the Hawaiian Kingdom and extended diplomatic recognition to the Hawaiian government. The U.S. entered into five agreements and treaties—in 1826, 1842, 1849, 1875 and 1887—with the Hawaiian government relating to friendship, commerce and navigation.[51] In 1842, U.S. President John Tyler officially recognized Hawai'i as an independent nation and declared a policy of maintaining Hawaiian independence.[52] The Hawaiian Kingdom also entered into treaties and

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[49] Kingdom of Hawaii Const. of 1840, *in Translation of the Constitution and Laws of the Hawaiian Islands Established in the Reign of Kamehameha III* (Lahainaluna, 1842), p. 9.

[50] *Id.*, pp. 11-20 ("Prerogatives of the King," "Respecting the Premier of the Kingdom," "House of Nobles," "Respecting the Legislative Body," "On the Judges").

[51] *See for example*, Treaty with Hawaii on Friendship, Commerce and Navigation, 9 Stat. 977 (1850); Convention Between the United States and His Majesty the King of the Hawaiian Islands, 19 Stat. 625 (1875); Supplementary Convention Between the United States of America and His Majesty the King of the Hawaiian Islands to Limit the Duration of the Convention Respecting Commercial Reciprocity Concluded January 30, 1875, 25 Stat. 1399 (1884).

[52] House Doc. No. 35, 27th Cong., 3d Sess., Sandwich Islands and China, Message from the President of the United States (December 31, 1842), p. 2. A year later, on November 28, 1843, the British and French governments jointly recognized Hawaiian independence.

received formal recognition as a sovereign, independent nation from nearly every major world power.[53]

The Hawaiian Kingdom and Constitutional Monarchy enjoyed its most prosperous and renowned era as an independent nation from the reign of King Kamehameha IV (Alexander Liholiho) (1854 - 1863) through that of Queen Lili‘uokalani (1891 - 1893). Hawai‘i fully exercised the status that it had attained within the international community of nations, a status embraced and celebrated by Native Hawaiians through active participation in the political life of the nation, as well as through civic and political organizations and the Hawaiian language newspapers.

Persistence of Cultural and Spiritual Beliefs and Practices

Despite the breaking of the Kapu (sacred religious restrictions) and official abandonment of the state religious system, Native Hawaiians in the rural areas of O‘ahu and the neighbor islands, distant from the centers of power, turned deeper into the preservation and practice of the essential elements of the Hawaiian culture. They persisted in perpetuating their ‘ohana (family) religious beliefs and spiritual values; language; fishing practices; cultivation and stewardship of their ancestral lands; medical and healing practices, stewardship of sacred sites and oral traditions, chants, music and dance. Men and women knowledgeable in these customs passed on their knowledge, orally and, later, through Hawaiian language newspapers, to succeeding generations. It was this form of cultural perpetuation, primarily in the rural areas of the islands, isolated from the onslaught of missionary teaching and actions that enabled the Native Hawaiian people to endure as a unique, distinct, dignified people throughout the Constitutional Monarchy

[53] The treaties entered into by the Hawaiian Kingdom included the following countries: Austria-Hungary (June 18, 1875), Belgium (Oct. 4, 1862), Denmark (Oct. 19, 1846), Japan (Aug. 19, 1870), Portugal (May 5, 1882), Italy (July 22, 1863), The Netherlands (Oct. 14, 1862), Russia (June 19, 1869), Switzerland (July 20, 1864), Spain (Oct. 29, 1863) and Sweden (July 1, 1852).

while resisting the influences of the missionary culture and its political progeny.[54]

Discernible threads in the evolution of the Native Hawaiian social and political culture distinct from the Hawaiian monarchy began to form during the 1840s. Those seeking to live their lives in customary fashion coalesced when necessary, through *ad hoc* or temporary organizations, with other Native Hawaiians to express their resistance to government conduct. For example, numerous Native Hawaiians signed petitions in 1845 against selling land to foreigners, the appointment of foreigners to government offices, and the imposition of new taxes.[55]

During this era, the King and the Council of Chiefs began to focus on protecting the integrity of the government and the nation from the increasing demands of foreign residents and threats to the independence of the nation from foreign governments. Protection of the natural resources for the subsistence of the people; perpetuation of Native Hawaiian cultural and spiritual beliefs, customs and practices; and holding the monarch and the council of chiefs accountable for the care and well-being of the people, evolved into the province of the broader classes of those descended from aliʻi (chiefly lines), the kāhuna (scholarly, skilled and artisan classes) and the makaʻāinana (common people). Their continued exercise of traditional and customary beliefs, customs and practices was recognized and incorporated into the land laws of the Kingdom and Constitutional Monarchy. These actions, combined, account for the endurance of the Native Hawaiian culture and national identity through the 20th century and its growth

[54] Davianna Pōmaikaʻi McGregor, *Nā Kuaʻāina: Living Hawaiian Culture* (Honolulu: Univ of Hawaiʻi Press, 2007).
[55] *Id*. pp. 3, 12-14, 55-59 (July petition to Kamehameha III by 1600 commoners concerning "the independence of the kingdom," and prohibiting foreigners to own land); *see also* Silva, *Aloha Betrayed*, pp. 38-9; E.S. Craighill Handy and Mary Kawena Pukui, *The Polynesian Family System in Ka-ʻu, Hawaiʻi* (Rutland, VT: Charles E. Tuttle, 1976), pp. 5-6.

entering the 21st century.[56]

Hawaiian Nationalist Opposition to American Colonization of Hawai‘i

During the reign of King Lunalilo in 1873, American planters proposed that the Hawaiian government turn over control of Pu‘uloa (Pearl Harbor) to the U.S. government in order to gain the support of the U.S. Congress for a reciprocal trade agreement. The threat of turning over Hawaiian lands to the U.S. gave rise to a nationalist tide against the growing influence of Americans, which would not recede.[57] The nationalist political movement intensified and continued to gain momentum throughout the reign of King Kalākaua.

When the U.S.-Hawai‘i Reciprocity Treaty of 1875 expired and King Kalākaua refused to turn over control of Pu‘uloa (Pearl Harbor) to the U.S. in order to renew the treaty, American planters and foreign business interests formed the Hawaiian League. In alliance with the all-Caucasian 500-man militia called the Honolulu Rifles, the Hawaiian League forced King Kalākaua to accept the Constitution of 1887, known as the "Bayonet Constitution."[58] The Bayonet Constitution took the executive power away from the King and placed it under a cabinet selected by the Hawaiian League. It also disenfranchised many Native Hawaiians.[59] The cabinet voted to turn over exclusive use of Pearl Habor (Pu‘uloa) to the U.S. government in return for

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[56] *See generally* McGregor, *Nā Kua‘āina*, documenting the perpetuation of customary and traditional practices in rural Hawaiian communities throughout the 19th and 20th centuries and the significance of these communities in the 21st century revitalization of the Native Hawaiian language and culture.

[57] Davianna McGregor-Alegado, *Hawaiian Resistance: 1887-1889* (Univ.of Hawai‘i, Mānoa: Unpublished M.A. Thesis, 1979), pp. 15-18.

[58] Jon Van Dyke, *Who Owns the Crown Lands of Hawai‘i?* (Honolulu: Univ.of Hawai‘i Press, 2008), pp. 120-124.

[59] For example, voting privileges were extended to American and European males *regardless* of citizenship. 1887 Constitution of the Hawaiian Kingdom, art. 59 and art. 62. Property qualifications for voting were so high that many Native Hawaiians were disenfranchised. Art. 59, provision 2 (setting property qualifications).

the renewal of the U.S.-Hawai‘i Reciprocity Treaty, and the King reluctantly signed the new treaty.[60] The reorganized government was called the Reform Government.

The 1887 “Bayonet Constitution” and the Reform Government became a rallying point for the Hawaiian nationalist movement, which immediately organized mass meetings, circulated petitions and sent delegations to the King asking him to abrogate the “Bayonet Constitution” and dismiss the cabinet. These efforts failed.[61]

The most militant confrontation between Native Hawaiians nationalists and the Reform Government over the “Bayonet Constitution” was the 1889 Wilcox Rebellion, which was suppressed within eighteen hours.[62] Following the failure of the rebellion, Native Hawaiians nationalists utilized the electoral arena to achieve their goals. On November 22, 1888, between 500 and 1,500 Native Hawaiians met in Honolulu to form the Hui Kālai‘āina (Hawaiian Political Association). The Hui Kālai‘āina persisted as the primary political organization of Native Hawaiians into the early 20th century.[63]

In 1892, when Lili‘uokalani succeeded her brother to the throne and took her position as Queen, the Hui Kālai‘āina launched a massive petition drive appealing to the Queen to promulgate a new constitution. They succeeded in getting 6,500 registered voters, two-thirds of all registered voters, to sign. The Queen felt both compelled and empowered to abrogate the 1887 Constitution in favor of a new constitution that would limit voting rights to Hawaiian born

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[60] Van Dyke, *Crown Lands*, pp. 124-128.

[61] Queen Lili‘uokalani Diary, January 16, 17, 18, 1888; Cabinet Meetings 1887-1890 entry for January 18, 1888; Lorrin Thurston, *Memoirs of the Hawaiian Revolution* (Honolulu: Advertiser Publishing Co., Ltd, 1936), pp. 180-183; "Reply of Hon. R.W. Wilcox to Statements of Minister Thurston Before the Hawaiian Legislative Assembly," June 10, 1890 (Honolulu: Hawaiian Gazette Steam Print, 1890.)

[62] Eight Native Hawaiians nationalists were killed, 12 wounded, and 70 arrested. Those nationalists charged with treason were subsequently acquitted by all-Native Hawaiian juries. McGregor-Alegado, *Hawaiian Resistance, 1887-1889*, pp. 76-107.

[63] David William Earle, *Coalition Politics in Hawai‘i - 1887 - 90: Hui Kālai‘āina and the Mechanics and Workingmen‘s Political Protective Union* (Unpublished Master‘s Thesis, University of Hawai‘i, Mānoa, December 1993.), p. 75.

and naturalized citizens and restore her power as the chief executive of the Hawaiian government.[64]

Provisional Government, Republic, Territory of Hawai‘i: 1893 – 1921

Native Hawaiian National Leaders Form Organizations of Self-Governance

Generation 30 [Generation 125] 1893 – 1917

Queen Lili‘uokalani

Hui Aloha ‘Āina (Hawaiian Patriotic League), Independent Homerule Party

Generation 31 [Generation 126] 1902 - 1921

Prince Jonah Kūhiō Kalaniana‘ole, ‘Ahahui Pu‘uhonua,

Hawaiian Civic Clubs, Hawaiian Royal Societies, Hawaiian Land Hui

From 1893 to 1900, non-native citizens and residents of the Hawaiian Kingdom, with the backing of the U.S. government, usurped Native Hawaiian governance of Hawai‘i. They sought the annexation of Hawai‘i to the United States. Lili‘uokalani, the lawful Queen of the Hawaiian Islands under the constitution of the Hawaiian Kingdom, led the opposition against the takeover of the Hawaiian government and annexation by the U.S. The Native Hawaiian people formed political organizations to vigorously protest annexation through meetings, rallies, and petitions and to assert their right of self-governance. There was an armed attempt to restore the Queen as ruler, as well as several diplomatic delegations to the U.S. opposing annexation. These efforts succeeded in defeating the ratification of any treaty to annex the Hawaiian Islands by the U.S. Congress.

[64] Queen Liliuokalani, *Hawaii's Story by Hawaii's Queen* (Honolulu: Mutual Publishing, 1990), p. 231.

Coup d'État

Using the Queen's proposal for a new constitution as an excuse, American and European sugar planters and businessmen, many of whom were descendants of American missionaries, plotted to overthrow the monarchy.[65] In their efforts, they sought and received the help of the U.S. Minister to Hawai'i, John L. Stevens, an advocate of annexation. On January 16, 1893, Stevens ordered U.S. marines to land in Honolulu under the pretext of protecting American lives and property. The next day, January 17, 1893, the leaders of this coup d'état declared the monarchy abolished and a provisional government established in its place.[66]

Queen Lili'uokalani made a historic decision. With United States troops within yards of the Palace assuring the coup d'état's success, she ordered her own forces to stand down in order to "avoid the loss of life" and sought the intercession of the President of the United States. Her statement opened this way:

> I, Lili'uokalani, by the grace of God and under the constitution of the Hawaiian kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom.

The Queen yielded her authority not to the provisional government, but to the "superior forces of the United States of America," which she fully expected would, "upon the facts being

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[65] Thurston, *Memoirs*, p. 249.

[66] U.S. House of Representatives, 53rd Congress, 2d Session, Exec. Doc. No. 47*, President's Message to the Hawaiian Islands, December 18, 1893. Accompanied by Commissioner Blount's Report, the Evidence Taken by Him at Honolulu, the Instructions Given to both Commissioner Blount and Minister Willis and Correspondence Connected with the Affair* (Washington: U.S. Government Printing Office, 1893) (hereinafter referred to as *Blount Report*), pp iii-xvi; or in *Affairs in Hawaii*, pp. 445 - 458 ("The [Naval] military demonstration upon the soil of Hawai'i was of itself an act of war" in a city that "was in its customary orderly and peaceful condition." *Blount Report*, p. ix; or in *Affairs in Hawaii*, p. 451); Proclamation of the Committee of Safety, January 17, 1893, reprinted in *Fundamental Law of Hawaii* (ed. Lorrin Thurston) (Honolulu: Hawaiian Gazette Co., Ltd., 1904), pp. 196-197; *see also* Neil Thomas Proto, *The Rights of My People, Lili'uokalani's Enduring Battle With the United States 1893 - 1917* (New York: Algora Publishing, 2009), pp. 22-23.

presented to it, undo the action of its representatives."[67] Although she moved out of 'Iolani Palace, she was still Hawai'i's legitimate chief executive, but no longer in control of the formal apparatus of government. For the Native Hawaiian people, Lili'uokalani remained the queen and ruler of the Native Hawaiian people and the embodiment of the Native Hawaiian government until her death in November 1917.

Hawaiian National Organizations Support the Constitutional Monarchy

Despite the fact that the coup d'état took place in Honolulu and news of the coup took days to reach the neighbor islands, Native Hawaiian resistance to the coup and the possibility of annexation to the United States formed immediately. Political organizations and groups already in existence on every island, such as the Hui Kālai'āina and the newly formed Hui Aloha 'Āina (Hawaiian Patriotic League), began to advocate support for the Queen and the constitutional monarchy. They joined together with other Hawaiian political clubs to form the Men's and Women's Hawaiian Patriotic Leagues whose primary objectives were to maintain the independent autonomy of Hawai'i and secure the civil rights of the Native Hawaiian people. The Men's Patriotic League represented 7,500 Native Hawaiian qualified voters and the Women's Patriotic League represented 11,000 women.[68]

In 1894, Emma and Joseph Nāwahī started to publish the newspaper, *Ke Aloha 'Āina* ("The Love of Our Nation"), continuing the Native Hawaiian newspaper tradition begun in the 1860s. For the next 26 years – until 1920 – *Ke Aloha 'Āina* remained a central vehicle for the

[67] Helen G. Allen, *The Betrayal of Liliuokalani: Last Queen of Hawaii, 1838 - 1917* (Honolulu: Mutual Publishing, 1998), p. 294; se*e also* Liliuokalani, *Hawaii's Story*, App. B., pp. 387-388; *President's Message Relating to the Hawaiian Islands*, p. XIX.
[68] Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham: Duke Univ. Press, 2004), pp. 131, 136-163.

publication of Native Hawaiian political positions, cultural histories, chants, and community, island and international news.[69]

The effort by American interests to annex Hawai‘i in 1893 failed when U.S. President Grover Cleveland, who had succeeded Benjamin Harrison as president, withdrew the annexation treaty from consideration by the U.S. Senate and dispatched former Georgia Congressman James Blount to Hawai‘i to investigate the events of January 1893.

The Hawaiian Patriotic Leagues and others organized rallies and meetings and an assembly in Honolulu. Native Hawaiian newspapers in Hawaiian and English throughout the islands, in existence since the 1860s, continued to express thoughtful, soundly based arguments in support of the constitutional changes that Lili‘uokalani embraced. They also strongly opposed annexation. The Hawaiian Patriotic Leagues in particular submitted testimonies and petitions to Commissioner James Blount, which had a significant impact on his findings, supporting the Queen. Through collective action, drawing on precisely the traditions of family and community and cultural perpetuation that characterized their history, Native Hawaiians continued to govern themselves.[70]

After receiving Blount's report, President Cleveland determined that the United States had been responsible for the overthrow of the monarchy. In a forceful and moving message to Congress, Cleveland recommended restoration of the monarchy and declared:

> [I]f a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.[71]

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[69] *Id.*, pp. 139-142; Ernest Andrade, Jr., *Unconquerable Rebel: Robert W. Wilcox and Hawaiian Politics, 1880 - 1903* (Niwot, CO: Univ. Press of Colorado, 1996), p. 194.
[70] *Id.*, pp. 130-134.
[71] *Blount Report*, p. XX; *Affairs in Hawaii*, p. 462.

Since annexation was not possible with Cleveland in office, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawai‘i with a constitution that named Sanford Dole as president.[72] It was clear, however, that Native Hawaiians did not support the Republic, evidenced by the fact that only 509 Native Hawaiians took the oath of allegiance to the Republic's constitution in 1894. This should be contrasted to the 9,554 Native Hawaiians who were registered to vote in 1890.[73] Even by 1897, only 1,126 Native Hawaiians actually voted in elections for representatives to the Republic's legislature.[74] The Republic could not rightfully claim to represent the Native Hawaiian people.

In January of 1895, those loyal to Queen Lili‘uokalani attempted to regain control of the government.[75] Nationalists organized an armed insurrection aimed at restoring the Queen to the throne. However, despite months of planning, the restoration effort was defeated just as it was about to be launched. In all, 220 nationalists were arrested and charged as prisoners of war for treason and concealment of treason. The Queen herself was arrested, tried and found guilty of misprision of or concealment of treason.[76]

On January 24, 1895, while imprisoned in ‘Iolani Palace, Queen Lili‘uokalani was forced to sign a statement of abdication in favor of the Republic.[77] The arrests, trials and imprisonment of the royalists effectively suppressed all armed efforts to restore the monarchy. Nevertheless,

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[72] William Adam Russ, Jr., *The Hawaiian Republic (1894-1898) And Its Struggle to Win Annexation* (Selinsgrove, Pennsylvania: Susquehanna Univ. Press, 1961), p. 36.

[73] See *Affairs in Hawaii*, p. 598; "The Census of 1890 by Age and Nationality, Showing Number of Registered Voters," cited in Thos. G. Thrum, *Hawaiian Almanac and Annual for 1893*. A Handbook of Information (Honolulu: Press Publishing Co. 1892), p. 14.

[74] *See* Van Dyke, *Crown Lands*, p. 185; 56th Cong., 1st Sess., House Rep. No. 305 to accompany H.R.2972, *Government for the Territory of Hawaii*, Comm. on Territories, 56th Cong., 1st Sess., Feb. 12, 1900, p. 9.

[75] *See* Russ, *The Hawaiian Republic*, pp. 55-57.

[76] Allen, *Betrayal of Queen Liliuokalani*, pp. 331-350.

[77] Subsequently, the Queen renounced the statement, explaining that she had been coerced into signing it in order to save her arrested supporters from execution. Liliuokalani, *Hawaii's Story*, p. 274.

Native Hawaiians persisted in their opposition to annexation through rallies, meetings, petitions, newspapers, songs and publications.[78]

Hawaiian National Organizations Defeat the McKinley Treaty of Annexation

The Queen's movement was restricted for almost two years, but once granted freedom to travel, the Queen immediately went to Washington, D.C. to lobby against the annexation of Hawai'i. She wrote a book, *Hawaii's Story by Hawaii's Queen*, as an appeal to the hearts and minds of the American people to oppose the annexation of Hawai'i and to support her restoration as Queen and the rightful leader of the Kingdom and Constitutional Monarchy of Hawai'i.

A Hawaiian delegation joined Queen Lili'uokalani in Washington, D.C. to represent the views of the Hawaiian people on McKinley's annexation treaty. They carried two sets of petitions, gathered by the Hui Aloha 'Āina and Hui Kālai'āina, with almost 38,000 signatures against annexation.[79] Although there appeared to be almost enough votes in the Senate to ratify the treaty, the delegation and the Queen, with the aid of sympathetic U.S. senators, successfully defeated the treaty.[80] No treaty for the annexation of Hawai'i has ever been ratified by the U.S. Senate or signed by a U.S. President.

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[78] For one example, see F.J. Testa, *Buke Mele Lahui—Book of National Songs* (Honolulu: Paiia ma ka Halepai Makaainana, 1895), (reprinted: Honolulu: Univ. of Hawai'i Press, Hawaiian Historical Society, Hawaiian Language Reprint Series, 2003), containing patriotic songs honoring the Queen and those who defended her. In September and October 1897, Senator John Morgan, Chairman of the Senate Foreign Relations Committee, and four Congressmen traveled to Hawai'i to rally support for a treaty of annexation that the Republic of Hawai'i had negotiated with President McKinley. They met mass opposition as thousands of Native Hawaiians rallied at Palace Square against the treaty.

[79] Silva, *Aloha Betrayed*, pp. 157-159. The four members of the delegation were John Richardson, William Auld, James Kaulia and David Kalauokalani. The Hawai'i delegation, in consultation with Queen Lili'uokalani, made the decision to submit only the Hui Aloha 'Āina's petitions because "they did not want to appear divided or as if they had different goals." David Kalauokalani, representing the 17,000 people who had signed the Hui Kālai'āina's petitions, formally endorsed the Hui Aloha 'Āina's petitions.

[80] *Id.*

The United States Extends Sovereign Domain Over Hawai‘i

On May 4, 1898, Representative Francis G. Newlands of Nevada introduced a joint resolution of annexation in the House of Representatives, which incorporated the language of the failed 1897 treaty of annexation. The constitutionality of annexing a territory by way of resolution rather than by treaty was hotly debated in the U.S. Congress.[81] Nevertheless, both the House and Senate approved the Newlands Resolution by a simple majority. On July 7, 1898, President McKinley signed the resolution.

The formal transfer of the sovereignty of the Republic of Hawai‘i occurred in ceremonies on August 12, 1898, at ‘Iolani Palace. The Newlands Resolution also transferred the title to Hawai‘i's public lands, as held by the Republic of Hawai‘i, to the United States.[82] These lands, which included both the Government and Crown Lands, were estimated to amount to almost 1.8 million acres, with a value of at least $5.5 million.[83]

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[81] The primary argument against the resolution was that the United States could gain territory only through the constitutional treaty-making power. To acquire Hawai‘i by a legislative act would usurp the power of the Senate and Executive and set a dangerous precedent. Annexationists pointed to the acquisition of Texas in 1845 by joint resolution as precedent, but Texas had been brought into the Union under Congressional power to admit new states. Statehood was not proposed for Hawai‘i. Moreover, the Texas joint resolution was approved by a plebiscite held in Texas, but no plebiscite was proposed for Hawai‘i. An amendment to the Newlands measure providing for such a vote by all adult males was defeated. Melody Kapililaloha MacKenzie, ed., *Native Hawaiian Rights Handbook* (Honolulu: Native Hawaiian Legal Corporation, 1991), p. 15, n. 100.

[82] Clauses 25, 28 and 29 of the Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawai‘i, Pub. L. No. 103-150, 107 Stat. 1510 (1993) (hereinafter referred to as Apology Resolution) are relevant to this transfer of sovereignty: "Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;" "Whereas the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government; Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite of referendum[.]"

[83] J. F. Brown, Agent of Public Lands, reported to the Hawaiian Commission, which had been appointed pursuant to the Joint Resolution of Annexation, a total of 1,772,640 acres of public land conservatively valued at $5,581,000, as of August 12, 1898. *The Report of the Hawaiian Commission* (Washington, D.C.: Government Printing Office, 1898), p. 45 app. 1.

Throughout the debates in the U.S. Congress over the Organic Act that would rule Hawai‘i as a territory, the Hui Kālai‘āina and Hui Aloha ‘Āina advocated for the restoration of Native Hawaiian voting rights, which had been denied by the Provisional Government and the Republic.[84]

Native Hawaiian National Organizations of Self-Governance

In 1900, the Hui Kālai‘āina and the Hui Aloha ‘Āina founded the Home Rula Kū‘oko‘a (Independent Home Rule Party). Importantly, the Independent Home Rule Party won the overwhelming majority of seats in the Territorial House of Representatives and Senate, as well as the coveted position of delegate to the U.S. Congress. The Native Hawaiian people had rallied on every island and demonstrated the strength of their political organization, despite the suppression of their voting rights throughout the previous seven years.[85]

Queen Lili‘uokalani continued to embody the Hawaiian Kingdom and Constitutional Monarchy and was considered to be the iconic leader of a parallel Native Hawaiian government of her people. When she passed away in 1917, Prince Jonah Kūhiō Kalaniana‘ole, who had been in line to succeed Queen Lili‘uokalani under the Hawaiian monarchy, assumed the mantle of national leader of the Native Hawaiian people and advocated for their national rights.[86]

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[84] Andrade *Unconquerable Rebel* pp. 182-83.

[85] Davianna Pōmaika‘i McGregor, “Kūpa‘a I Ka ‘Āina: Persistence on the Land” (University of Hawai‘i, Unpublished dissertation, 1989), pp. 201-224.

[86] Article 22 of the Bayonet Constitution of 1887 provided for the monarch to name his or her successor. The will of King Kalākaua lists the line of succession that he envisioned: first, his sister, Princess Lili‘uokalani; second, his niece, Princess Ka‘iulani; third, his wife, Queen Kapi‘olani; fourth, his sister-in-law, Princess Po‘omaikelani; fifth, the eldest son of his sister-in-law, Prince David Kawananākoa; sixth, the second son of his sister-in-law, Prince Kūhiō Kalaniana‘ole. The latter two were to assume the name and title of Kalākaua and to be numbered in order from him. *Hawaiian Gazette*, March 10, 1891. The *Hawaiian Gazette* of March 24, 1891, published a proclamation dated March 9, 1891, by Queen Lili‘uokalani naming Princess Ka‘iulani as her successor. There is no similar proclamation naming any other successor. The Queen’s Constitution, which she intended to promulgate in January 1893, shows the line of succession to be first, Princess Ka‘iulani; second, Prince David Kawananākoa; and third, Prince

Native Hawaiian national leaders who had been prominent in the government of Queen Lili‘uokalani were active in the organizing of the Independent Home Rule Party, to field Native Hawaiian candidates to assert their inherent sovereignty as a people and assume their rightful positions in the governance of the islands. These leaders found themselves in an uneasy but necessary allliance with missionary descendants, American business interests, and owners of plantations and ranches in the governance of Hawai‘i. However, the overarching framework of governance and the balance of power had shifted away from the Hawaiian Kingdom and Constitutional Monarchy to the oligarchy, which began to rule Hawai‘i as a Territory of the United States of America, under the Organic Act of 1900.[87]

As their predecessors had done under the Hawaiian Kingdom and Constitutional Monarchy, Native Hawaiian leaders—descendants of ali‘i (chiefs), nā koa (warriors), kāhuna (skilled craftspersons, engineers, scientists, artisans, healers) and maka‘āinana (commoners)–fully participated in the governance of Hawai‘i and sustained and formed new political, civic and benevolent organizations that provided for the well-being of the Native Hawaiian people inside and outside of the formal government. Those organizations, which existed outside of the formal government of the Territory of Hawai‘i, began to assume the rudimentary functions of a government of the Native Hawaiian people, who were now relegated to the position of an indigenous people of a territory within the United States of America.

The ‘Ahahui Pu‘uhonua O Nā Hawai‘i (Hawai‘i Protective Association), organized in November 1914 by 200 Native Hawaiian leaders, was one such organization. The ‘Ahahui

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Jonah Kūhiō Kalaniana‘ole. *Affairs in Hawaii*, p. 1049. By 1917, both Princess Ka‘iulani and Prince David Kawananākoa had passed away.

[87] An Act to Provide a Government for the Territory of Hawaii (Hawaiian Organic Act of 1900), Pub. L. No. 56–331, 31 Stat. 141 (1900).

Pu‘uhonua published its own newspaper, spoke through churches and civic groups, encouraged education in agricultural pursuits, and published articles in other newspapers.[88]

The health and social conditions of Native Hawaiians at the opening of the 20th century, especially in urban Honolulu, was alarming. Moreover, large ranches and plantations were displacing and marginalizing Native Hawaiian taro farmers and fishers to isolated rural communities. There was a widespread belief that the Native Hawaiian people were doomed to extinction. These conditions spurred Native Hawaiian leaders to undertake a systematic campaign to improve the living conditions of their people.[89]

In 1918, the ‘Ahahui Pu‘uhonua developed a plan to “rehabilitate” impoverished Native Hawaiians exposed to diseases, such as tuberculosis, who were crowded into the tenements and squatter camps of Honolulu. Led by Prince Kūhiō, Hawai‘i’s delegate to the U.S. Congress, they drafted legislation to have congress reserve the former Hawaiian Crown lands for exclusive homesteading by Native Hawaiians. In December 1918, Prince Kūhiō and leaders of the ‘Ahahui Pu‘uhonua formed a second organization of Native Hawaiians, the Hawaiian Civic Clubs, which included regional clubs on all the islands to help gain support for the rehabilitation plan. Both organizations campaigned vigorously and successfully to bring about the enactment of the Hawaiian Homes Commission Act.[90] In 1921, the U.S. Congress passed the Hawaiian Homes Commission Act, setting aside over 200,000 acres of former Crown and Government lands of the Hawaiian Kingdom for homesteading by Native Hawaiians of not less than one-half Hawaiian ancestry.

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[88] Davianna Pōmaika‘i McGregor, “‘Āina Ho‘opulapula: Hawaiian Homesteading,” *Hawaiian Journal of History*, Vol 24 (1990), pp. 1-4.
[89] *Id.*, p. 9.
[90] *Id.*; Hawaiian Homes Commission Act, Pub. L. No. 67-34, 42 Stat. 108 (1921).

Despite the general policy of assimilating the people of the Territory of Hawai‘i into American society, the U.S. President, U.S. Secretary of Interior and the U.S. Congress acknowledged Native Hawaiians as a distinct, indigenous people with whom the U.S. had a trust relationship. This was most evident in, but not limited to, the mandate of the U.S. Bureau of American Ethnology to research Native Hawaiians, the passage of the Hawaiian Homes Commission Act in 1921, the Kalapana Extension Act in 1938, and the 1959 Act admitting Hawai‘i as a state.[91]

Territory of Hawai‘i: 1921 – 1959

Native Hawaiian National Organizations of Self-Governance

Generation 32 [Generation 127]

Hawaiian Civic Clubs, Hawaiian Royal Societies, Hawaiian Homeland Associations, Hawaiian Land Hui

Despite obstacles, Native Hawaiian leaders were determined to fulfill the potential of the Hawaiian Home Lands program on Moloka‘i, Hawai‘i, Maui, O‘ahu and Kaua‘i. From the first generation to move on to these lands in 1922, to the present third generation, Native Hawaiian homesteaders established solid and hard-working communities and formed organizations of self-governance, political advocacy and economic advancement.[92]

Likewise, Hawaiian Civic Clubs on every island continued to function as distinct political and social entities for civic purposes, scholarship programs and cultural perpetuation. Hawaiian national leaders persisted in organizing the Hawaiian Civic Club organizations and associations

[91] *Id.* The Kalapana Extension Act and Admission Act are discussed in the next section.
[92] Every homestead community has its own association and more recently many of the organizations have confederated into what is now called The Sovereign Councils of the Hawaiian Homelands Assembly. See http://www.schha.com/about-schha-2/ (last visited June 1, 2014).

of Hawaiian homesteaders throughout the 20th century to the present, to advocate for Native Hawaiian rights, land claims and benefits and to promote the culture.

The Ali‘i Trusts, charitable land-based trusts formed by various Hawaiian rulers, continued with their mission to support and advance the health, education and welfare of the Native Hawaiian community.[93]

Other Hawaiian organizations also continued to keep alive uniquely Native Hawaiian perspectives in political, civic and social organizations. Among them are the four Royal Societies, each with a deep connection to an earlier period of the Hawaiian Kingdom - the Royal Order of Kamehameha I, the Ka‘ahumanu Society, the Daughters and Sons of Hawaiian Warriors–Māmakakaua, and the Hale O Nā Ali‘i O Hawai‘i.

These political and civic organizations were bolstered in the 1970s by a strong resurgence of Native Hawaiian political activism focused on the protection of ancestral lands and historic and cultural sites, access to subsistence resources and Native Hawaiian self-determination and self-governance. This was complemented by a renaissance of Hawaiian language, hula (dance), navigational science and the healing arts.

Hawaiian National and Cultural Identity During the Territorial Period

The 1930 census showed that, for the first time, the number of part-Hawaiians (28,224) exceeded the number of pure Hawaiians (22,636).[94] The communities established under the Hawaiian Home Lands program became significant centers of Native Hawaiian cultural, social and economic life and contributed to the persistence of Native Hawaiians as a distinct people within the Hawaiian Islands.

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[93] The Ali‘i Trusts are the William Charles Lunalilo Trust, the Queen Emma Trust, the Kamehameha Schools/Bernice Pauahi Bishop/Trust, and the Queen Lili‘uokalani Trust.
[94] U.S. Bureau of the Census, *15th Census of the United States: 1930*, p. 48, Table 2.

In addition to the Hawaiian Home Lands communities, small rural enclaves or cultural kīpuka with majority Native Hawaiian populations played a singularly critical role in the continuity of Native Hawaiians as a distinct people with a distinct culture, language and ancestral land base. These communities sustained a prolonged and uninterrupted continuity of settlement and tenure on the lands of their ancestors. Community members persisted in providing for their ʻohana (extended families) through subsistence fishing, farming and gathering which were conducted according to traditional and customary cultural practices and guided by spiritual and cultural beliefs. Such practices continued to be protected by laws established under the Kingdom of Hawaiʻi, laws that continued into the Territorial Period.[95]

The term kīpuka refers to an oasis of old growth forest in the volcanic rainforests that were bypassed by volcanic flows and which provide the seed pool for the regeneration of the forest in areas covered by lava. Key rural communities throughout the islands were bypassed by the mainstream of economic and political changes in the Hawaiian islands and remained strongholds of Native Hawaiian communities. Like the dynamic life forces in a natural kīpuka, cultural kīpuka are communities from which Native Hawaiian culture can be regenerated and revitalized in the contemporary settings in Hawaiʻi. Moreover, from the examination of the lives of those who lived in these isolated communities, those called kuaʻāina (back country folk) emerges a profile of the strongest and most resilient aspects of the Native Hawaiian culture and way of life. Such an examination provides insight into how the Native Hawaiian culture persisted despite dynamic forces of political and economic change throughout the 20th century. The 1930 census identified seventeen rural communities where Native Hawaiians comprised a majority of the population and the culture thrived. Noted sociologist and professor, Andrew Lind, wrote of the significance of these areas for the continuity of the Hawaiian culture:

[95] See generally McGregor, *Na Kuaʻāina*.

> [S]mall population islands still relatively secure from the strong currents which have swept the archipelago as a whole into the world-complex of trade - are strikingly similar to those which appear in the census of 1853. The dry and rocky portions of Kau, Puna and the Kona coast, the deep valley of Waipio, the wild sections of Hana, Maui, portions of lonely Lanai and Molokai where industrial methods of agriculture have not succeeded, the leper settlement, and Niihau, the island of mystery - these are the places of refuge for some 4,400 or nearly one-fifth, of the native Polynesians . . . .[96]

The diverse undeveloped natural resources in these areas provided an abundance of foods for the Native Hawaiians who lived there. Forested lands provided Hawaiians with fruits to eat; vines, plants and woods for making household implements and tools; and herbs to heal themselves. They provided a natural habitat for animals that were hunted for meat. Marine life flourished in the streams. The ocean provided an abundance of food. Subsistence activities continued to be the primary source of sustenance for the Native Hawaiians in these districts. Production in these districts was primarily oriented around home consumption. Importantly, Native Hawaiian cultural practices dictated a strong ethic of sustainable harvesting and protection of the natural resources. The quality and abundance of the natural resources of these rural Hawaiian communities can be attributed to the persistence of traditional Hawaiian values and practices in the conduct of their subsistence activities.[97]

Continuing Recognition of Native Hawaiians as a Distinct Native People

While the United States policy was to incorporate the Territory of Hawai‘i into the United States and to Americanize the multi-ethnic peoples of Hawai‘i, the U.S. Congress, nevertheless, instituted programs and adopted policies that recognized the Native Hawaiian people as the indigenous people of Hawai‘i. As noted earlier, Congress continued to appropriate funds for ethnological research among “the American Indians and the natives of Hawaii” until

[96] Andrew Lind, *An Island Community: Ecological Succession in Hawaii.* (Chicago: The Univ. of Chicago, 1938; reprint New York: Greenwood Press, 1968), pp. 102-103.
[97] McGregor, *Nā Kua‘āina*, pp. 15-17.

1949. As discussed above, the Hawaiian Homes Commission established a trust relationship with the Native Hawaiian people and established a land trust for Hawaiian homesteading. In 1938, Congress passed the Kalapana Extension Act, which extended the Hawaiian Volcanoes National Park in the Puna district of Hawai‘i island, and allows Kalapana Native Hawaiians and those accompanied by them to fish and gather in the Volcanoes National Park. It also had a provision for Kalapana Native Hawaiians to apply for homesteads in the Volcanoes National Park, although this latter provision was never implemented.[98]

In 1959, Hawai‘i became a state, and in the act admitting Hawai‘i to statehood, key provisions demonstrated the United States' continuing recognition of Native Hawaiians as a distinct population of indigenous people. The 1959 Admission Act mandated that the State of Hawai‘i, as a compact with the U.S., administer the Hawaiian Homes Commission Act and the approximately 200,000 acres of "ceded land" set aside for Native Hawaiian homesteading, with oversight by the U.S. Congress. Congress also turned over administration of another 1.2 million acres of "ceded lands," the former Crown and Government lands of the Hawaiian Kingdom, to the State to manage for five trust purposes. One trust purpose is "the betterment of the conditions" of Native Hawaiians, as defined by the Hawaiian Homes Commission Act. The other four purposes include education, farm and home ownership, public improvements and public uses.[99]

State of Hawai‘i: 1959 to Present

Native Hawaiian National Organizations of Self-Governance

Generations 33 [Generation 128] 1959 – 1993

[98] Kalapana Extension Act, Pub. L. No. 75-680, § 3, 55 Stat. 784, 784-85 (1938).
[99] *See* §§ 4 (HHCA) and 5 (public land trust), Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959).

A.L.O.H.A., Ali'i Trusts, Alu Like, Congress of Hawaiian People, Hawaiian Civic Clubs, Hawaiian Homestead Associations, Hawaiian Royal Societies, Hou Hawaiians, Hui Ala Loa, Ka Lāhui Hawai'i, Office of Hawaiian Affairs, Protect Kaho'olawe 'Ohana, Sovereign Council of Hawaiian Homelands Assembly, The Hawaiians

Generation 34 [Generation 129] *1993 – present*

Council for Native Hawaiian Advancement, Hā Hawai'i-'Aha'Ōiwi Hawai'i, Kana'iolowalu-Native Hawaiian Roll Commission, The Nation of Hawai'i

In the years following statehood, outside investors began to finance major housing and resort developments on O'ahu and throughout the islands. In 1969, farmers were evicted from Kalama Valley in east O'ahu in order to expand "Hawai'i Kai," a subdivision development. This eviction sparked a broad grassroots movement to challenge uncontrolled development on O'ahu. In the broader island society, communities began to organize against the eviction of working class and farming communities to make way for urban renewal and suburban subdivisions. In response to proposed developments in Hawaiian communities, Native Hawaiians asserted their inherent sovereignty by forming political organizations to hold the managers of the Native Hawaiian public and private land trusts accountable for the appropriate stewardship of Hawaiian lands. In rural communities, Native Hawaiians formed organizations to protect ancestral lands, cultural lifestyles, sacred sites and access to natural resources for subsistence.[100]

[100] Davianna McGregor-Alegado, "Hawaiians: Organizing in the 1970s," A*merasia* 7:2(1980), pp. 29-55; Haunani Kay Trask, *Ku'e: Thirty Years of Land Struggle in Hawai'i,* Ed Greevy, photographer (Honolulu: Mutual Publishing, 2004). These communities included Halawa Housing (1971); Ota Camp (1972; Censust Tract 57 People's Movement (1972); People Against Chinatown Eviction (1972); Waimanalo People's Organization (1973); Old Vineyard St. Residents' Association (1973); Young St. Residents' Assn (1973); Niumalu-Nawiliwili Residents (1973); Waiahole-Waikane Community Assn (1974); He'eia Kea (1975); Mokauea Fishermen's Assn (1975); Hale Mohalu (1978); Sand Island Residents (1979).

On Hawai‘i Island, Native Hawaiian communities in Ka‘ū and Puna organized to stop a spaceport and to protect the volcano deity Pele from geothermal development. On Moloka‘i, Native Hawaiians formed community organizations to open access across private lands, stop tourist developments that threated subsistence resources and start community-based economic development programs. On Maui, Native Hawaiian communities in Makena, Hāna and Kipahulu organized to keep their access and water rights and to develop community-based economic development projects. On Kaua‘i and O‘ahu, Native Hawaiian communities worked to protect their cultural and natural resources and initiated community-based economic development projects.[101]

The island of Kaho‘olawe, which was used as a live-fire bombing and firing range by the U.S. Navy, served as a catalyst to rally Native Hawaiians throughout the islands around a common cause of "Aloha ‘Āina" or "Love and respect the land, its resources and the life forces of the land that were honored and worshipped by Hawaiian ancestors as deities." This Hawaiian saying also evoked the nationalist spirit of Hawaiian ancestors who had organized the Hui Aloha ‘Āina or Hawaiian Patriotic League in 1893 to support the constitutional monarchy and oppose annexation.[102] Forming the Protect Kaho‘olawe ‘Ohana (Extended Family to Protect Kaho‘olawe), Native Hawaiians worked to stop the bombing and military use of the island until they succeeded in 1990. As the movement evolved, the organization revived traditional Hawaiian religious practices on the island, such as the annual Makahiki or Harvest Season ritual that

[101] Davianna Pōmaika‘i McGregor, "Recognizing Native Hawaiians: A Quest for Sovereignty," *Pacific Diaspora: Island Peoples in the United States and Across the Pacific* (eds. Paul Spickard, Joanne Rondilla, Debbie Hippolite Wright) (Honolulu: Univ. of Hawai‘i Press, 2002), pp. 336-337. Organizations on Hawai‘i - Ka ‘Ohana O KaLae and Pele Defense Fund; Moloka‘i - Hui Ala Loa, Ka Leo O Mana‘e, Hui Ho‘opakela ‘Āina; Maui - Hui Ala Nui O Makena, Hāna Pohaku, Ke‘anae Community Assn; Kaua‘i - Native Hawaiian Farmers of Hanalei; O‘ahu - Hui Malama ‘Āina O Ko‘olau, Ka‘ala Farms, Opelu Project, Nā Hoa‘āina O Makaha.

[102] One of the founders of the Protect Kaho‘olawe ‘Ohana, Noa Emmett Aluli, was a grand-nephew of Emma and Joseph Nawahī who founded the Hui Aloha ‘Āina and published the Aloha Āina newspaper.

honors the Hawaiian god of agricultural productivity, Lono. The ceremonies, which had ceased with the ʻAi Noa (freedom from sacred eating restrictions) in 1819, called Lono back into the lives of the Native Hawaiian people, asking him to bring the seasonal rains that nourish the land and make it fertile so that the cycle of planting and harvest can start again. From Kahoʻolawe, participants who had come from every island, began to conduct the ceremonies on their home islands of Hawaiʻi, Oʻahu and Molokaʻi. Through Kahoʻolawe, the Native Hawaiian people re-established their beliefs and customary practices which honored the ʻāīna (land and nature) as sacred life forces.

Native Hawaiian Organizations of Governance

Possibly the first Native Hawaiian political organization of the 1970s was called "The Hawaiians." The organization formed chapters on every island in 1970 to seek reforms in the management of the Department of Hawaiian Home Lands, which administers the land trust established by the U.S. Congress in 1921 for Native Hawaiians. One of their main goals was to enable qualified beneficiaries, many of whom had been on the application list for 15 to 20 years, to be placed on these trust lands.[103] In 1971, the Congress of Hawaiian people formed on Oʻahu. This organization monitored the land transactions of the trustees of the Bishop Estate and sought to expand educational opportunities for Native Hawaiians at the Kamehameha Schools and improve access to those opportunities.[104]

Aboriginal Lands of Hawaiian Ancestry (A.L.O.H.A.) was the first Native Hawaiian organization to focus on claims of Native Hawaiians arising out of the role of the U.S. government in the overthrow of the Hawaiian monarchy. A.L.O.H.A. worked with Hawaiʻi's

[103] Tom Coffman *The Island Edge of America: A Political History of Hawai'i* (Honolulu: Univ. of Hawai'i Press, 2003), pp. 294-95.
[104] Id. p. 44 - 45.

congressional delegation to introduce a bill, modeled after the 1972 Alaska Native Claims Settlement Act, to provide monetary reparations to Native Hawaiians. As a result of these efforts, a series of "reparations" bills was introduced in Congress.[105] In 1976, in order to draw the attention of the U.S. Congress to the injustices and cultural trauma borne by Native Hawaiians and stress the importance of the reparations bill, then A.L.O.H.A. president Charles Maxwell called for the occupation of the island of Kahoʻolawe. This was the inception of the movement to stop the bombing of Kahoʻolawe, which led to the formation of the Protect Kahoʻolawe ʻOhana. Although not immediately successful, A.L.O.H.A.'s efforts eventually led to 1980 congressional action establishing a Native Hawaiians Study Commission to investigate "the culture, needs, and concerns" of the Native Hawaiian community.[106] As discussed below, the Protect Kahoʻolawe ʻOhana developed into an islands-wide organization that ultimately stopped the bombing of the island and shared governance over the island with the U.S. Navy.

Like A.L.O.H.A., some Native Hawaiian organizations focused on the political status of Native Hawaiians at the federal level. In 1975, Alu Like, Inc. (Working Together) formed as a non-profit organization of Native Hawaiians on every island to qualify for funding from the Office of Native American Programs (now the Administration for Native Americans). The Hou Hawaiians have actively asserted status as a tribal government in litigation in the federal courts.[107] Self-governance on lands set aside under the Hawaiian Homes Commission Act has also served as a focal point for Hawaiian homesteaders.[108] In 1987, Ka Lāhui Hawaiʻi (The Hawaiian Nation) organized a constitutional convention with representatives from every island.

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[105] See, e.g., H.R. 15666, 93rd Cong., 2d Sess. (introduced June 27, 1974); H.R. 1944, 94th Cong., 1st Sess. (introduced January 23, 1975).
[106] Pub. L. No. 96-565, Title III, § 303(a) (December 22, 1980).
[107] *See* discussion of the Hou Hawaiians' claim of tribal status in *Price v. State*, 764 F.2d 623 (9th Cir. 1985).
[108] *See* Stu Glauberman, *Third Hawaiian group enters self-determination fight*, HONOLULU ADVERTISER, July 25, 1989, at A-3.

They adopted a governing structure with elected officials. At one point, more than 20,000 Native Hawaiians had enrolled in the organization. Their constitution laid the groundwork for a democratically elected nation of Hawaiʻi within the American federal and state system, contemplating a government-to-government relationship with the federal and state governments.[109]

In 1993, Dennis "Bumpy" Puʻuhonua Kanahele and a group of 300 people, formed the Nation of Hawaiʻi, and occupied an area at Makapuʻu beach on Oʻahu, in resistance to U.S. actions in Hawaiʻi and seeking the return of Hawaiian lands. After a 15-month occupation, the Nation of Hawaiʻi was allowed to move to a 45-acre parcel of state land in Waimānalo, which they have successfully maintained since that time as a place to live Hawaiian cultural values and agricultural practices, and as a puʻuhonua—a place of healing and refuge.[110]

In the late 1990s, Hā Hawaiʻi, a non-profit organization, helped to hold an election and convene an ʻAha ʻŌiwi Hawaiʻi (Native Hawaiian Convention) of 77 delegates to develop a constitution and create a government model for Native Hawaiian self-determination.[111] Two proposals emerged from the convention—one calling for independence and the other establishing a framework for a "nation within a nation" government.[112]

More recently, the Council for Native Hawaiian Advancement has taken on the kuleana (responsibility) of working with Native Hawaiian organizations and individuals to enhance the

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[109] *See* Mililani Trask, Ka Lāhui Hawaiʻi: A Native Initiative for Sovereignty, *available at* http://www.hawaii-nation.org/turningthetide-6-4.html; Ka Lāhui's constitution is available at http://kalahuihawaii.wordpress.com/ka-lahui-hawaii-constitution/ (last visited June 12, 2013).

[110] *See* Tomas Alex Tizon, "Rebuilding a Hawaiian Kingdom," *Los Angeles Times*, July 21, 2005; Dan Nakasao, "A Life of Resistance," *Honolulu Star-Advertiser*, July 6, 2014.

[111] The Department of the Interior and the Department of Justice, *From Mauka to Makai: The River of Justice Must Flow Freely*, Report on the Reconciliation Process Between the Federal Government and Native Hawaiians (October 23, 2000), p. 44.

[112] ʻAha Hawaiʻi ʻOiwi,*The Native Hawaiian Convention: A Consultation with the People,* http://hawaiianperspectives.org/CompleteBooklet.htm (last visited Feb. 8, 2014).

cultural, economic and community development of Native Hawaiians and serve as a forum for discussing the important policy issues—including sovereignty and the U.S.-Native Hawaiian relationship—facing the Hawaiian community.[113]

Recognition of Native Hawaiian Self-Determination and Governance

The first important response to the emergence of these Native Hawaiian organizations exercising varying degrees of sovereignty and self-governance was the 1974 inclusion of Native Hawaiians, by the U.S. Congress, in the definition of Native Americans who could qualify for the funding and programs set up under the Native American Programs Act.[114] As noted above, in 1975, Native Hawaiian leaders in Hawaiʻi formed the nonprofit organization Alu Like, Inc. in order to qualify for the Native American Programs Act and channel federal funds into the community for job training, small business development and overall social and economic development.[115] Shortly thereafter, the people of Hawaiʻi and the state government followed the federal government's lead in affirming the inherent rights of Native Hawaiians as an indigenous people.

The 1978 Constitutional Convention and the Office of Hawaiian Affairs

In 1978, Hawaiʻi held its second constitutional convention since becoming a state. As a result, far-reaching amendments that spoke to the long-standing claims of the Native Hawaiian community, particularly claims of self-determination and sovereignty, were adopted and approved by a majority of the Hawaiʻi electorate.

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[113] *See* Council for Native Hawaiian Advancement, available at http://www.hawaiiancouncil.org (last visited June 12, 2013).

[114] The Native Americans Programs Act was enacted as Title VIII of the Economic Opportunity Act of 1964, Pub. L. No. 88-452 (1964); Native Hawaiians were added to the definition of Native Americans by Pub. L. No. 93-644, § 801, 88 Stat. 2992, 2324 (1975).

[115] Coffman, *The Island Edge of America*, pp. 296-97.

One amendment established the Office of Hawaiian Affairs (OHA) with a nine-member board of trustees elected by all Native Hawaiian residents of the State of Hawai‘i.[116] As a result, Native Hawaiians were able to elect a governing body that truly represented their interests as a people distinct from the general population of Hawai‘i. In addition to establishing OHA, another amendment specifically designated Native Hawaiians and the general public as the beneficiaries of the "public land trust," which consists of Government and Crown lands of the Hawaiian Kingdom and Constitutional Monarchy.[117] These amendments also set a pro rata share of the revenue from the public land trust as a primary funding source for OHA and gave the trustees extensive independent authority.[118]

Kaho‘olawe - Recognition of Shared Governance

As described earlier, the Protect Kaho‘olawe ‘Ohana (‘Ohana) was founded to stop the U.S. Navy bombing of the island of Kaho‘olawe, heal the island and reclaim it for the Native Hawaiian people.[119] Along with continued landings on the Island, the ‘Ohana also filed a federal

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[116] Hawai‘i State Constitution, art. XII, § 5 (1978). In 2000, the U.S. Supreme Court struck down the state law limiting OHA voters to Hawaiians as violating the 15th Amendment to the U.S. Constitution. *Rice v. Cayetano*, 528 U.S. 495, 520 (2000). The State, the U.S. Solicitor General and many native rights organizations, had argued that the voting limitation was permissible based upon the political relationship between the U.S. and native peoples and the history of special protections for native peoples. The Court, however, viewed OHA elections as solely state elections, distinguishable from elections of Indian communities, the internal affairs of quasi-sovereign governments. Subsequently, the Ninth Circuit Court of Appeals also struck down the requirement that candidates for OHA trustees be of Hawaiian ancestry. *Arakaki v. State*, 314 F.3d 1091 (9th Cir. 2002). As a result, currently all Hawai‘i voters elect OHA trustees and any Hawai‘i resident can serve as an OHA trustee.

[117] Hawai‘i State Constituton, art. XII, § 4 (1978). The definition of the public land trust in art. XII, § 4, excludes the more than 200,000 acres of Hawaiian Homelands since those lands are impressed with a separate, distinct trust for Native Hawaiians. *See* Hawai‘i State Constitution, art. XII, § 2.

[118] Hawai‘i State Constitution, art. XII, §§ 5-6 (1978). Other amendments adopted in 1978 mandated that the Legislature provide the Hawaiian Home Lands program with sufficient funding (art. XII, § 1), reaffirmed the traditional and customary rights of ahupua‘a tenants (art. XII, § 7), required a Hawaiian education program in public schools (art. X, § 4) and designated the Hawaiian language as one of Hawai‘i's two official languages (art. XV, § 4).

[119] Noa Emmett Aluli, "*The Most "Shot-at" Island in the Pacific: The Struggle to Save Kaho‘olawe," in Islands in Captivity: The Record of the International Tribunal on the Rights of Indigenous Hawaiians* (eds. Ward Churchill & Sharon H. Venne) (Cambridge, MA: South End Press, 2005), p. 242.

lawsuit to enjoin the Navy from further bombing.[120] In October 1980, the parties entered into a Consent Decree and Order, which required that the United States "recognize that Plaintiffs' organization [the 'Ohana] seeks to act as stewards of the *moku* [island] Kaho'olawe," and gave the 'Ohana access to the island with the responsibility to evaluate and ensure that the Navy lived up to specific responsibilities set out in the order.[121] Thus both in practice and as a matter of law, a Native Hawaiian political organization exercised shared governance responsibility with the U.S. Navy over the Island of Kaho'olawe, from 1980 until 2003, while the United States Navy retained control of access to Kaho'olawe.[122] A United States District Court gave cognizance to a Native Hawaiian political organization "acting as stewards of the island" for a period of nearly 23 years (from December 1, 1980 to November 11, 2003 when control of access to Kaho'olawe was transferred to the State of Hawai'i). Moreover, under the Consent Decree, the Court accorded specific access to Kaho'olawe—not to the State or County officials—but to the 'Ohana, a Native Hawaiian political organization.

In 1993, Congress acknowledged the cultural significance of the island, required the Navy to return the island to the State of Hawai'i and directed the Navy to conduct an unexploded ordnance cleanup and environmental restoration in consultation with the state.[123] Hawai'i law guarantees that when a sovereign Native Hawaiian entity is established and recognized by the United States, the state will transfer management and control of Kaho'olawe to that entity.[124]

The 1993 Apology Resolution & Mauka to Makai Report—Reconciliation

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[120] *Aluli v. Brown*, 437 F. Supp. 602, 604 (D. Haw. 1977).
[121] Consent Decree and Order, December 1, 1980, filed in the United States District Court, Civil No. 76-0380 in *Aluli, et al., v Brown, Secretary of Defense, et al.* (signed by Hon. William Schwarzer, (D.C. N.D. Cal.)
[122] Title to Kaho'olawe was transferred to Hawai'i on May 7, 1994, but control of access and the Consent Decree remained in full force and effect until November 11, 2003.
[123] Department of Defense Appropriations Act of 1994, Pub. L. No. 103-139, tit. X, 107 Stat. 1418 (1993).
[124] Hawai'i Revised Statutes § 6K-9 (2012).

In 1993, the U.S. Congress passed, and President Clinton signed into law, a joint resolution apologizing to the Native Hawaiian people for U.S. participation in the overthrow of the Hawaiian Kingdom.[125] The Apology Resolution explicitly acknowledged the "special relationship" that exists between the United States and the Native Hawaiian people. Congress confirmed in the Apology Resolution that Native Hawaiians are an "indigenous people."[126] Congress also acknowledged that the Republic of Hawaiʻi ceded 1.8 million acres of Crown, Government and Public Lands of the Kingdom of Hawaiʻi to the United States without the consent of or compensation to the Native Hawaiian people or their sovereign government; that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty over their national lands to the United States; and that the overthrow was illegal.[127] Congress expressed its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaiʻi, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people, and urged the President of the United States to support reconciliation efforts between the United States and the Native Hawaiian people.[128]

In 1999, the U.S. Department of the Interior and the Department of Justice conducted meetings in Hawaiʻi to investigate progress on the reconciliation called for in the Apology Resolution and to solicit input from the Hawaiian community. Oral and written testimony from community members touched on topics ranging from sovereignty to community and economic development and from health and education to housing. The Departments issued recommendations in their report, *Mauka to Makai: The River of Justice Must Flow Freely* in

[125] *Apology Resolution*.
[126] *Id.* clause 8.
[127] *Id.*, clauses 26 & 29 and § 1.
[128] *Id.*, § 1.

2000.[129] The recommendation to establish an Office of Native Hawaiian Relations (ONR), in the Secretary of Interior's Office, has been implemented.[130]

Act 195 and the Native Hawaiian Roll Commission—Unrelinquished Sovereignty

The latest recognition of Native Hawaiians and their inherent right to self-governance came in 2011, when the State passed Act 195, which acknowledges Native Hawaiians as the "only indigenous, aboriginal, maoli population" of Hawai'i and identifies Native Hawaiians as a distinctly native community, reaffirming that since its inception, the State "has had a special political and legal relationship with the Native Hawaiian people and has continuously enacted legislation for the betterment of their condition." Act 195 also expresses the State's "desire to support the continuing development of a reorganized Native Hawaiian governing entity and, ultimately, the federal recognition of Native Hawaiians."[131] Substantively, Act 195 created a five-member Native Hawaiian Roll Commission responsible for preparing and maintaining a roll and certifying that the individuals on the roll meet the definition of a "qualified Native

[129] Department of Interior and Department of Justice, *Mauka to Makai: The River of Justice Must Flow Freely* (October 23, 2000).

[130] Consolidated Appropriations Act of 2004, Pub. L No. 108-199, 118 Stat. 3, div. H, sec. 148 (2004). ONR is tasked with implementing the "special legal relationship" between the Native Hawaiian people and the United States; continuing the process of reconciliation with the Native Hawaiian people; and fully integrating the principle and practice of meaningful, regular and appropriate consultation with the Native Hawaiian people by assuring timely notification and prior consultation before federal agencies take actions that have the potential to significantly affect Native Hawaiian resources, rights or lands. Similarly, the U.S. State Department, in announcing the United States' support for the Declaration on the Rights of Indigenous Peoples, included Native Hawaiians as one of the indigenous peoples in the U.S. to whom the Declaration applies. The State Department cited support for Congressional efforts to form a government-to-government relationship between the U.S. and a reorganized Native Hawaiian government, as well as the many federal laws, "similar to those for other native people," that specifically relate to Native Hawaiians. *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples-Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples,* U.S. Department of State, Dec. 16, 2010.

[131] Act of July 6, 2011, No. 195, §§ 1-2, 2011 Hawai'i Session Laws (codified at Hawai'i Revised Statutes Chap. 10H).

Hawaiian."[132] Since 2012, the Roll Commission has undertaken an extensive effort to inform the Native Hawaiian community of the enrollment process as well as to gather support from Hawai'i's general population. Kana'iolowalu, the Commission's campaign to "reunify Native Hawaiians in the self-recognition of unrelinquished sovereignty, by enrolling Native Hawaiians and supporters in this declaration," resulted in the enrollment of over 125,000 Native Hawaiians who seek to re-establish a Native Hawaiian government.[133]

Native Hawaiian Renaissance and Reaffirmation as a Distinct People

Economic and political developments stimulated by statehood transformed Hawai'i's social system and unexpectedly, rather than fully integrating Hawai'i's people into American life, laid the foundation for a Native Hawaiian cultural renaissance and revival of the historic sovereignty movement. In developments that paralleled the sovereignty movement, traditional cultural practices and arts were reinvigorated and revitalized. Traditional Native Hawaiian navigational arts were revived through the voyages of the Hōkūle'a double-hulled canoe. During the 1970s and 1980s, Hawaiian music and traditional hula flourished as indicated by a significant increase in the number of hālau hula (hula schools), greater participation in the annual Merrie Monarch Hula Festival honoring King David Kalākaua and the King Kamehameha Day oli (chant) and hula competition, and the popularity of Hawaiian music radio stations and live-music venues on each island. Lā'au lapa'au (traditional Hawaiian herbal healing practices), and ho'oponopono (traditional family dispute resolution) were also revived. The Hawaiian language

[132] *Id.* § 2. A "qualified Native Hawaiian," is a "descendant of the aboriginal peoples who occupied the Hawaiian Islands prior to 1778" or someone "eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act of 1920, or . . . a direct lineal descendant." In addition, a qualified Native Hawaiian must also have maintained a "significant cultural, social or civic connection to the Native Hawaiian community," wish to participate in organizing a Native Hawaiian governing entity and be eighteen years or older.

[133] See Kana'iolowalu *available at* http://www.kanaiolowalu.org (last visited May 31, 2014).

was brought back from the brink of extinction, subsistence access and gathering practices vital for rural Native Hawaiian communities were recognized under state law, and other Hawaiian cultural practices—including the protection of iwi kūpuna (ancestral remains) and practices relating to birth—have been revitalized by the Native Hawaiian community. Culturally and spiritually significant Native Hawaiian lands have been reclaimed for the Hawaiian people.

Summary

Today, Native Hawaiians continue to live and thrive as a distinct, unique, indigenous people in Hawaiʻi, the homeland. Native Hawaiians are undeterred in the quest to exercise an inherent sovereignty, that has never been relinquished, through a formal government that can represent them in government-to-government relations with the U.S. government, so as to perpetuate the Hawaiian culture and language and protect their natural and cultural resources and ancestral, trust and national lands. As we begin this moʻolelo, let us reflect upon the words of Queen Liliʻuokalani expressing her love for her native people in her kāhea (call) to stand firm, with one heart, in unity, as she continues to be the inspiration and national icon for Nā Kānaka Maoli.

He aloha la, he aloha
No kuʻu lahui ʻōiwi
I ho'okahi pu'uwai
Kupaʻa me ka lōkahi

O my love and adoration
For my native people,
Be of one heart
And stand firm with unity.

Verse 2, Ke Aloha ʻĀina / Love for the Land by
Her Majesty Queen Lili'uokalani [134]

[134] Unpublished Songs by Liliʻuokalani, Newly Arranged, Queen of Hawaii Liliuokalani, *The Queen's Songbook: Her Majesty Queen Lili'uokalani* [Dorothy Kahananui Gillett, Barbara Barnard Smith] (Honolulu: Hui Hānai, 1999), p. 194. The words of the song are:

Chapter 2: Origins of Native Hawaiians, The Indigenous Maoli People of Hawai‘i

Generations 1 to 16 (A.D. 980 to 1600)

[Generations 1 to 111 (300 B.C. to A.D. 1640)][135]

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1. He lei he aloha keia la	This is a lei of love
No ku‘u one hanau,	For my birth sands,
Kona mau kualono uliuli	Its verdant ridges
Na lau nahele kupaoa	And fragrant greenery
Pu'ili mai a pa‘a i loko	[I] embrace and hold close within me
Ke aloha i ka ‘aina	Love for the land
Haliu i ka mea mana	I turn to the Almighty
A e ola no ka lahui	And the nation will live
2. He aloha la, he aloha	O my love and adoration
No ku'u lahui oiwi	For my native people,
I ho'okahi pu‘uwai	Be of one heart
Kupa'a me ka lokahi	And stand firm with unity
3. He aloha la, he aloha	How precious and enchanting
Ka makani o ka ‘aina,	Is the wind of the land,
I ka pa kolonahe mai	As I fee the soft touch
A ka makani la he Moa'e	Of the breeze heralded as the Moa'e
4. E alu ka pule i ka haku	Let us focus our prayers upon the Lord
Me ka na‘au ha‘aha‘a	With humble heart,
E noi me ka walohia	And ask in earnest sincerity
E maliu mai no ia	That He pay heed [to us]

[135] Continuing from Chapter 1, we are tracing the generations of ruling chiefs in Hawai‘i utilizing two approaches and methods of calculation, as indicated in the title for this chapter. One source, Carolyn Kehaunani Cachola Abad, *The Evolution of Hawaiian Socio-Political Complexity: An Analysis of Hawaiian Oral Traditions,* (Unpublished PhD Dissertation in Anthropology, University of Hawai‘i, Mānoa, 2000) locates the origin of formal governance in Hawai‘i with the emergence of a first generation of district chiefs around A.D. 980 on each island. The second source, Hawaiian Studies Professor and genealogist Lilikalā Kame‘eleihiwa, locates the origin of ruling chiefs in Hawai‘i deeper in history, with Chief Palikū in 300 B.C., based upon the genealogical succession of chiefs provided in the Kumulipo genealogy chant. In order to benefit from the depth, richness and nuances of both approaches and methods, both calculations for the successive generations of chiefs are presented in this and all chapters of this manuscript. Both approaches are introduced and explained below and Appendix 1 provides the genealogy of the ruling chiefs from Palikū through to the ruling chiefs of the 18th century.

Overview

Throughout history, Native Hawaiians, the Kānaka Maoli O Hawaiʻi (true people of Hawaiʻi), have maintained a deep abiding faith in the ʻāina (land) and the life forces of nature as their source of sustenance, spiritual well-being, collective identity and political empowerment. Moʻokū'auhau (family genealogies) and moʻolelo (legendary histories) trace the lineage of contemporary Native Hawaiians to astronomers, navigators, planters, fishermen, engineers, healers, and artisans who settled what is known today as Hawaiʻi. They cultivated the landscape with irrigated kalo (taro) terraces and dryland agricultural systems. They farmed the ocean within great walled fishponds. They constructed kauhale (compounds and villages) of extended families kauhale and heiau (temples) to honor their gods.[136]

Beyond these forbearers, the genealogical chants trace Native Hawaiian origins to the ʻāina (land) and the life forces of nature itself - Papanuihānaumoku (the earth mother); Wākea (the sky father); Kāne (the sun and fresh water springs and streams); Lono agricultural productivity and the seasonal rains); Kanaloa (the ocean); Pele (volcanism); Hina (the moon, reefs and tides). For example, the genealogy of Keohokalole, the mother of the last two reigning monarchs of the Hawaiian Kingdom and Constitutional Monarchy, King David Kalākaua and his

[136] *See generally*, Samuel Mānaiakalani Kamakau, *Ruling Chiefs of Hawaiʻi* (Honolulu: Kamehameha Schools Press, 1961); Samuel Mānaiakalani Kamakau, *Ka Poʻe Kahiko: The People of Old* (Honolulu: Bernice Pauahi Bishop Museum Press, 1992); Samuel Mānaiakalani Kamakau, *The Works of the People of Old: Na Hana a ka Poʻe Kahiko* (Honolulu: Bernice Pauahi Bishop Museum Press, 1992); Davida Malo, *Hawaiian Antiquities (Moolelo Hawaii)* (Dr. Nathaniel B. Emerson trans., 1898) (Honolulu: Bernice Pauahi Bishop Museum Press, 1951); E.S. Craighill Handy, Elizabeth Green Handy & Mary Kawena Pukui, *Native Planters in Old Hawaii: Their Life, Lore, and Environment* (Honolulu: Bernice Pauahi Bishop Museum Press, 1991); Patrick V. Kirch, *Feathered Gods and Fishhooks: An Introduction to Hawaiian Archaeology and Prehistory* (Honolulu: Univ. of Hawaii Press, 1985); Abraham Fornander, *Fornander Collection of Hawaiian Antiquities and Folk-lore Vol. IV and VI*, first published in 1916-1917 and 1919 as Memoirs of the Bernice Pauahi Bishop Museum of Polynesian Ethnology and Natural History Volume IV, and Volume VI (Honolulu: Bishop Museum Press, 1916-1917 & 1919); Abraham Fornander, *An Account of the Polynesian Race: Its Origins and Migrations, Ancient History of the Hawaiian People to the Times of Kamehameha I Vols. I - III* (Rutland: Charles E Tuttle, 1969).

sister Queen Lydia Kamakaʻeha Liliʻuokalani, traces the origin of their dynasty to the first spark of light out of the Kumulipo, the deepest source of darkness.

The first verse of this Kumulipo genealogy chant, as translated by Native Hawaiian language professor, Rubellite Kawena Johnson, provides the following account of the origin of the lineage from which King Kalākaua and Queen Liliʻuokalani descend:

Source Darkness: The First Era (Kumulipo: Ka Wā Akahi)[137]

O ke au i kahuli wela ka honua
O ke au i kahuli lole ka lani
O ke au i kuka'iaka ka la
E ho'omālamalama i ka mālama
O ke au o Makali'i ka pō
O ka walewale ho'okumu honua ia
O ke kumu o ka lipo, i lipo ai
O ka lipolipo, o ka lipolipo
O ka lipo o ka lā, o ka lipo o ka pō
Pō wale ho'i
Hānau ka pō
Hānau Kumulipo i ka pō, he kane
Hānau Pō'ele i ka pō, he wahine.

When space turned around, the earth heated
When space turned over, the sky reversed
When the sun appeared standing in shadows
To cause light to make bright the moon,
When the Pleiades are small eyes in the night,
From the source in the slime was the earth formed
From the source in the dark was darkness formed
From the source in the night was night formed
From the depths of the darkness, darkness so deep
Darkness of day, darkness of night
Of night alone
Did night give birth
Born was Kumulipo in the night, a male
Born was Pōʻele in the night, a female.

[137] Rubellite Kawena Johnson, *Kumulipo: The Hawaiian Hymn of Creation* (Honolulu: Topgallant Publishing Co., 1981). *See also* Liliuokalani of Hawaii, *The Kumulipo: An Hawaiian Creation Myth*, (Kentfield: Pueo Press, 1978).

In a total of 2,012 lines, this quintessential Hawaiian genealogy chant traces the evolution of life out of the depths of darkness into the corals, shellfish and seaweeds; the plants of the forest; fishes, insects, and birds; the godly forces of nature; and finally to a succession of chiefs who establish themselves in Hawai‘i, culminating in the birth of the High Chief Kalani-nui-‘īa-mamao. The Kumulipo is fundamentally a chant of creation documenting the scientific understanding of the evolution of the natural world as observed and recorded by generations of Native Hawaiian specialists. It also reflects the Native Hawaiian world-view of lōkahi, that nature, deities and humans are inextricably related, interdependent and united, and that living in balance with each other is essential for their well-being.

History of Native Hawaiian Governance of Hawai‘i in Genealogies and Oral Traditions

This interrelationship and balance was also identified as pono – well-being through balanced and judicious rule. This principle served as the ethical mandate guiding the system of sovereign governance in traditional Native Hawaiian society. Native Hawaiian political scientist, Dr. Noenoe Silva, described the Native Hawaiian polity as follows:

> In the ancient Kanaka [Hawaiian] world, pono [well-being through balanced and judicious rule] meant that the akua, (deities) ali‘i [chiefs], kahuna [priests], maka‘ainana [commoners], and ‘āina [land] lived in balance with each other, and that the people had enough to eat and were healthy. This state of balance hinged on ali‘i [chiefs] acting in accordance with the shared concept of pono.[138]

Another way to explain this principle of well-being through balanced and judicious rule is that the power of the chiefs to govern was derived from their ancestral connection and relationship to the land and to the godly life forces of nature, as validated by their genealogies. In turn, the chiefs' rule was validated and reinforced through their own conduct of proper protocols

[138] Noenoe Silva, *Aloha Betrayed, Native Hawaiian Resistance to American Colonialsm* (Durham: Duke Univ. Press, 2004), p. 16 (translation in brackets added). *See also*, Lilikalā Kame‘eleihiwa, *Native Land and Foreign Desires: Pehea Lā E Pono Ai?* (Honolulu: Bishop Museum Press, 1992).

and rituals honoring the godly life forces of nature and their pono (balanced and judicious) governance of the land and the people to sustain overall well-being.

The genealogies of the chiefs were committed to memory until a written form of the language was developed in the early 19th century. Hawaiian genealogies constituted the foundation of the moʻolelo (history) of the development of the maoli (indigenous) social and political system. According to Native Hawaiian historian Dr. Lilikalā Kameʻeleihiwa:

> The genealogies *are* the Hawaiian concept of time, and they order the space around us. Hawaiian genealogies are the histories of our people . . . Even though the great genealogies are of the *Aliʻi Nui* [ruling chiefs] and not of the commoners, these *Aliʻi Nui* [ruling chiefs] are the collective ancestors, and their moʻolelo (histories) are histories of all of all Hawaiians, too. It is Davida Malo, a Hawaiian scholar of the 1840s, who tells us, 'Commoners and chiefs were all descended from the same ancestors, Wākea and Papa.' The Hawaiian historian of the 1860s, Samuel Kamakau, in his introduction to a genealogical discussion agrees, 'In this chiefly genealogy are the ancestors of the chiefs and the general populace of Hawaiʻi nei.'[139]

Moʻokūʻahau (genealogy chants) were composed to place historic ancestors within a historical and cultural context. Modern genealogy projects provide a sense of ancestry that come to life when family members go beyond the names on a family tree and research the places or countries of origin, occupations, associated historical events and cultural activities of ancestors. Hawaiian genealogy chants and oral traditions provided this kind of rich historical and social texture to the lives of Native Hawaiian ancestors.

Given this historical and cultural context, Native Hawaiian ancestry and genealogy is not a function of race; it is at the core of Native Hawaiian national identity. Genealogy connects Native Hawaiians to each other as the People whose collective indigenous ancestors developed the first society to establish sovereignty over Ka Pae ʻĀina Hawaiʻi (the Hawaiian Archipelago)

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[139] Kameʻeleihiwa, *Native Land and Foreign Desires*, p. 19 (citing David Malo, *Hawaiian Antiquities*, p. 52; Kamakau as cited in Edith K. McKinzie, *Hawaiian Genealogies* (extracted from Hawaiian Language Newspapers) (Lāʻie: Institute for Polynesian Studies, 1983), p. xxv).

no less than six and perhaps as many as eight centuries prior to European contact in 1778. Genealogy is a cultural and political relationship that locates Native Hawaiians within the indigenous homeland at the first critical point of the establishment of a social and political system in the Hawaiian Islands.

Dr. Kameʻeleihiwa tells us that in the Kumulipo we learn about the 800 generations of ancestors who lived before the navigating chiefs sailed north to the Hawaiian Islands, and how there are at least 100 generations of ancestors living in Hawaiʻi until the present day. From the Kumulipo we learn of major lineages who settled Hawaiʻi - the Palikū, the ʻOlolo, the Kumuhonua and the Kumuuli. Of these clans, the Kumulipo teaches us that the Palikū is the oldest, beginning in Hawaiʻi around 600 B.C. if one counts back from Queen Liliʻuokalani in 1893, using 20 years per generation. In fact, when the Queen went to court to fight for the Crown lands, she cited the Palikū lineage to argue the validity of her claims, making her generation 125 from that ancient ancestor.[140]

Palikū is the lineage of Haumea, the earth mother, who was born on the cliffs of Nuʻumealani, in Waolani, Nuʻuanu, Oʻahu. According to ancestral traditions, it was Haumea who united the warring factions of the Kumuhonua who worshipped Kāne, the god of the sun, with those of the ʻOlolo who worshipped Wākea, and with the Kumuuli who worshipped Kanaloa, god of the ocean. It was Haumea of the Palikū clan who, after defeating the forces of Kumuhonua, gave the rule over the land to Wākea. The Kumulipo chant agrees that Wākea, in generation 46 of the Palikū clan, or around A.D. 300, was the first ruling chief who established

[140] Lilikalā Kameʻeleihiwa, "Hawaiʻi-nui-akea Cousins: Ancestral Gods and Bodies of Knowledge are Treasures for the Descendants" in *Te Kaharoa e-Journal*, Vol. 2 (2009), p. 45; Lilikalā Kameʻeleihiwa "Kumulipo: A Cosmogonic Guide to Decolonization and Indigenization," in *International Indigenous Journal of Entrepeneurship, Advancement, Strategy & Education,* WIPCE 2005 Special Edition. (Hamilton: Te Wananga o Aotearoa, Vol. 1, Issue 1); Lilikalā Kameʻeleihiwa, *Hawaiian Genealogies* Unpublished Manuscript. Chart of Hawaiian Timeline - 100 Generations, 2013.

the kapu, or sacred restrictions, at the temple, as well as the ʻAi Kapu religion, which included a restriction forbidding men and women from eating together. All subsequent rulers traced their lineage back to Wākea in order to validate that they had the right to rule.[141]

Utilizing genealogies as a history of the establishment of governance over the islands, the evolution of the Native Hawaiian socio-political system spans at least 118 generations from the first set of chiefs who migrated from Tahiti to Hawaiʻi, forward to Mōʻī (King) Kamehameha I who unified all of the islands under a central monarchy. In 2000, Native Hawaiian anthropologist Dr. Carolyn Kēhaunani Cachola Abad conducted an extensive analysis and comparison of maoli (Native Hawaiian) genealogical histories and oral traditions regarding Mōʻī or Island Ruling Chiefs. She used sources collected in the early to mid-19th century by Native Hawaiian historians Samuel M. Kamakau and Davida Malo; judge and cultural historian Abraham Fornander; and King David Kalākaua.[142] In generation 118, according to Kameʻeleihiwa or generation 23 according to Abad, King Kamehameha I, who was born some time in the 1750s, began his rise to power on Hawaiʻi Island in 1782, and united all of the islands by 1810. Counting back 20 years per generation from A.D. 1780, the first generation of his ancestors, according to Kameʻeleihiwa,

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[141] Joseph Mokuohai Poepoe, "Moolelo Hawaii Kahiko," *in Ka Nai Aupuni*, April 21-30, 1906.

[142] *See generally* Abad, *The Evolution of Hawaiian Socio-Political Complexity.* Dr. Abad cites the following sources for her analysis: Davida Malo, *Ka Moʻolelo Hawaiʻi: Hawaiian Traditions* (translated by Malcolm Chun) (Honolulu: First Peopleʻs Productions, 1996) and *He Buke no ka ʻOihana Kula*, TMs. 1827 (of unkown origin and unknown date provided in the reader for the UH Hawaiian Genealogies course Hawaiian Studies 341) on file at the center for Hawaiian Studies, Univ. of Hawaiʻi-Mānoa; Samuel Mānaiakalani Kamakau*, Tales and Traditions of the People of Old: Nā Moʻolelo o ka Poʻe Kahiko* (Honolulu: Bishop Museum Press, 1991); Kamakau, *Ruling Chiefs of Hawaii*; Samuel Kamakau *Ke Kumu Aupuni: Ka moʻolelo Hawaiʻi no Kamehameha Ka Naʻi Aupuni a me Kāna aupuni i Hoʻokumu ai.* Hoʻoponopono ʻia e Puakea Nogelmeier. (Honolulu: Ke Kumu Lama, ʻAhahui ʻŌlelo Hawaiʻi, 1996); Abraham Fornander *An Account of the Polynesian Race: Its Origins and Migrations and the Ancient History of the Hawaiian People to the Times of Kamehameha I, Vols. 1 - III* (Rutland: Charles E Tuttle, 1969); Abraham Fornander, *Fornander Collection of Hawaiian Antiquities and Folk-lore,* Memoirs of the Bernice Pauahi Bishop Museum, Vol. IV and VI (Honolulu: ʻAi Pōhaku Press, 1999, first published 1916 - 1920 by the Bishop Museum Press); and King David Kalākaua, *Legends and Myths of Hawaii: The Fables and Folklore of a Strange People (*edited and with an introduction by Rollin M. Daggett) (Honolulu: Mutual Publishing, 1990).

begins in 600 B.C. Utilizing Abad's approach and counting 25 years per generation would place generation 1 in A.D. 1200, while counting 0 years would place generation one at 1090 (35 years per generation yields a date of 980).[143] (See Appendix One.) Abad's dates are similar to the dates generated from recent radiocarbon dating of specimens from habitation sites, i.e., approximately A.D. 1000 to 1200.

Dr. Abad focused on a remarkable history of 23 successive generations of Mōʻī or Island Ruling Chiefs for each of the islands of Hawaiʻi, Maui, Oʻahu and Kauaʻi, thereby documenting a notably long record of organized and consistent governance of each of the islands of Hawaiʻi by Native Hawaiian chiefs. Her monograph also provides a description of the geographic, social, and political factors that contributed to the evolution of the socio-political system in Hawaiʻi. She begins with the separate and independent district aliʻi ʻai moku (chieftainships) of generation one on every island and traces their evolution into the complex hierarchy of four island-wide paramount aliʻi nui or mōʻī (high chiefs) and ʻaha aliʻi (council of chiefs) by generation 22 with whom British explorer James Cook interacted in 1778.[144] Dr. Abad's history of the ruling chiefs culminates with the unification of all of the islands under one paramount Mōʻī (King) Kamehameha I of generation 23, in 1810.

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[143] Abad, *The Evolution of Hawaiian Socio-Political Complexity*, p. 225. The estimate of the generations of Native Hawaiian rulers and the approximate years that they ruled is based on Dr. Abad's analysis of Hawaiʻi chiefs, from the last set who migrated from Tahiti to Hawaiʻi, forward to King Kamehameha I. Chiefly genealogies trace the origins of Hawaiian rulers deeper in time. For example, Fornander, in *An Account of the Polynesian Race* places the chief that Abad selected as generation One (1) in her study, as a descendant of 29 generations of ruling chiefs in the Ulu line who preceded him. The Kumulipo Genealogy, traces the Kalākaua Dynasty back to the origin of the universe itself. Professor Kameʻeleihiwa, using the Kumulipo as her main source of ancestral documentation identifies the first generation ruling chief as Palikū in 600 B.C. and places High Chief Māweke, the first generation chief identified by Abad in her study at generation 94 around A.D. 1300.

[144] At the time that Cook arrived in Hawaiʻi, Hawaiʻi Island and the district of Hāna, Maui were under the rule of High Chief (Aliʻi Nui) Kalaniopuʻu; Maui (except the Hāna district), Lānaʻi and Kahoʻolawe were under High Chief Kahekili; the islands of Oʻahu and Molokaʻi were in transition from High Chief Peleiholani to High Chief Kahahana; and the islands of Kauaʻi and Niʻihau were under High Chief Kaʻeokūlani.

History of the Native Hawaiian Social System Through Anthropology and Linguistics

The discovery, settlement and evolution of complex social and political social systems throughout the Pacific and Hawai‘i, in particular, have engaged scholars for 150 years according to Anthropologist Dr. Patrick V. Kirch.[145] Abraham Fornander researched genealogies and oral traditions and published *An Account of the Polynesian Race: Its Origin and Migration and the Ancient History of the Hawaiian People to the Time of Kamehameha I* in three volumes in 1878, 1880, 1885.[146] He placed the habitation of the Hawaiian Islands between A.D. 900-1000, in accordance with the genealogies of the ruling chiefs descended from Tahitian voyaging chiefs. He also argued that the islands had already been occupied for several centuries prior to the Tahitian voyages, by earlier migrations from Polynesia.[147]

In 1920, Herbert Gregory, director of the Bernice Pauahi Bishop Museum (Bishop Museum), prioritized research on Polynesian origins and sponsored expeditions to most of Polynesia's major islands to collect oral traditions and to map cultural sites. The Maori ethnographer, Te Rangi Hiroa (Sir Peter Buck), who succeeded Gregory as Director of Bishop Museum, synthesized the results of the research program in his book, *Vikings of the Sunrise*, in 1938.[148] Kenneth Emory was a researcher at the Bishop Museum beginning in 1920. His 1946 dissertation at Yale University, *Eastern Polynesia: Its Cultural Relationships*, analyzed changes in the vocabularies of the Polynesian languages to assess relationships and the points at which the various branches of the Polynesian culture diverged. Combining his findings with genealogies and oral traditions, Emory dated a diaspora out of Tahiti beginning approximately

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[145] Kirch, "When Did the Polynesians Settle Hawai‘i?," pp. 3-26.
[146] Abraham Fornander, *An Account of the Polyesian Race: Its Origin and Migration and the Ancient History of the Hawaiian People to the Time of Kamehameha I.* (London: 1878, 1880, 1885) republished (Honolulu: Mutual Publishing, 1996)
[147] Kirch, "When Did the Polynesians Settle Hawai‘i?," p. 4.
[148] Te Rangi Hiroa (Sir Peter Buck), *Vikings of the Sunrise* (Philadelphia: J.B. Lippincott, 1938).

A.D. 900 and the settlement in Hawai‘i approximately A.D. 1150. He also left open the possibility of an earlier migration and settlement by Polynesians, possibly from the Marquesas.[149]

The invention of radiocarbon dating by Willard Libby stimulated extensive sub-surface stratigraphic archaeological field studies during the 1950s, which indicated an early and long chronology for the settlement of Polynesia, including Hawai‘i. This was corroborated by studies in historic linguistics which indicated that the Eastern Polynesian languages, including ‘Ōlelo Hawai‘i (the Hawaiian language) had branched off from the Proto Polynesian languages at an earlier date.[150] From the 1960s until the 1990s, the prevalent view among archaeologists and most of the public was the hypothesis that the islands of Hawai‘i were settled and Native Hawaiian society evolved through three historic eras of colonization, development and expansion which led to a Proto Historic Period. Europeans and Americans engaged in the China trade in the 1780s encountered and established trade relations with Native Hawaiian ali‘i (chiefs) of this last era. According to this proposed long chronology, Hawai‘i began to be settled during a colonization period of A.D. 300-600 by boatloads of migrants who probably came from the nearest occupied Polynesian archipelago, the Marquesas.[151] Refinements in radiocarbon dating and the development of new protocols for sample selection in the 1990s led to the testing of new samples from sites that had been previously excavated and dated. The results were new and more recent dates. The re-dating of sites throughout Eastern Polynesia, including Hawai‘i in the 1990s

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[149] Kirch, “When Did the Polynesians Settle Hawai‘i?,” pp. 5 - 7.

[150] *Id.*, pp. 9-10. Roger Green, “Linguistic Subgrouping within Polynesia: The Implications for Prehistoric Settlement,” 75 *Journal of the Polynesian Society* 6-38 (1966). Roger Green, “The Immediate Origins of the Polynesians,” (eds. G.A. Highland, et al.), *Polynesian Culture History* (Honolulu: Bishop Museum Press, 1967), pp. 215-240.

[151] For this early and long chronology, *see generally* Ross Cordy, *Exalted Sits the Chief: The Ancient History of Hawai‘i Island* (Honolulu: Mutual Publishing, 2000); Ross Cordy, *The Rise and Fall of the O‘ahu Kingdom* (Honolulu: Mutual Publishing, 2002).

and 2000s has led to a re-evaluation of the chronology of settlement of Hawai‘i. Archaeologists have derived new dates ranging conservatively from A.D. 800 to A.D. 1000 for the settlement of the islands.[152] However, anthropologists Dr. Michael Graves and Dr. David Addison have suggested that, “The conditions for accepting radiocarbon dates as evidence of colonization are most likely met only when a population of sufficient size is reached and a group establishes relatively permanent occupation of a location.”[153] In other words, for a site to have samples that would qualify for the refined radiocarbon dating process, there would have been a significant population settled in a particular location over an extended period of time. This development might have only occurred in Hawai‘i at the period identified in the above chronology as the “expansion” phase, which coincides with the traditional genealogies at the point where the lineages of the Tahiti migratory chiefs merged with the lineages of the prominent lineages in Hawai‘i. Given its limitations, it is possible that the radio-carbon method of dating is only capable of documenting the expansion phase in the development of Hawaiians society when there were concentrations of Native Hawaiians in compounds of ‘ohana or extended families and cannot be used to accurately determine the period of original discovery and early settlement.[154]

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[152] Matthew Spriggs and A. Anderson, “Late Colonization of East Polynesia,” 67 *Antiquity* 200-217 (1993); J. Stephen Athens, J.V. Ward, H.D. Tuggle, and D. J. Welch, "*Environment, Vegetation Change, and Early Human Settlement on the ‘Ewa Plain: A Cultural Resource Inventory of Naval Air Station, Barber’s Point, O‘ahu, Hawai‘i," Part III, Paleoenvironmental Investigations*, 1999, International Archaeological Research Institute, Inc., Honolulu; Patrick V. Kirch and M.D. McCoy, “Reconfiguring the Hawaiian Cultural Sequence,” *The Journal of the Polynesian Society*, v.116, no. 4 (2007), pp. 38-406; Patrick Kirch, “When Did the Polynesians Settle Hawai‘i?” *Hawaiian Archaeology*, v. 16 (2011), pp. 3-26; Timothy Rieth, T. Hunt, C. Lipo, J. Wilmshurst, “The 13th Century Polynesian Colonization of Hawai‘i Island,” *Journal of Archaeological Science*, v. 38 (2011), pp. 2740-2749.

[153] Michael Graves and David Addison, “The Polynesian settlement of the Hawaiian Archipelago: Integration Models and Methods in Archaeological Interpretation,” 26 *World Archaeology*, No. 3, Colonization of Islands, (1995) p. 388.

[154] Kamakau, *Tales and Traditions of the People of Old*, p. 100, wrote, “It is said that Hawai‘i island was without a chief, and so a chief was brought from Kahiki; this is according to the chiefly genealogies. Hawai‘i island had been without a chief for a long time, and the chiefs of Hawai‘i were ali‘i maka‘āīnana or just commoners, maka‘āinana during this time.”

History of Native Hawaiian Livelihoods Imprinted in the Cultural Landscape

The landscapes of Hawai‘i also bear the imprint of the historic development of a sophisticated social system organized around the cultivation of the land and the ocean. The cultivated fields and irrigation networks reflected the industry and skill of the common people working together as ‘ohana (extended families) and under the oversight of konohiki (chiefly stewards). When George Menzies, the surgeon and naturalist on board the *H.M.S. Discovery* under Captain George Vancouver, walked through Lahaina on the island of Maui in 1792, he then wrote with admiration about the accomplishments of the common people evident in the landscape:

> We could not help but admire the laudable ingenuity of these people in cultivating their soil with so much economy. The indefatigable labor in making these little fields in so rugged a situation, the care and industry with which they were transplanted, watered and kept in order, surpassed anything of the kind we had ever seen before. It showed in a conspicuous manner the ingenuity of the inhabitants in modifying their husbandry to different situations of soil and exposure, and it was with no small degree of pleasure we here beheld their labor rewarded with productive crops.[155]

In Waikīkī, on the island of O‘ahu, Menzies observed the fishponds maintained by the common people and wrote:

> Here and there we met with ponds of considerable size and besides being well stocked with fish, they swarmed with water fowl of various kinds such as ducks, coots, water hens, bitterns, plovers and curlews.[156]

Native Hawaiians named the ‘āina (land), as they did their children, for observed features, qualities, ancestral connections and experiences. They also named the winds and the rains of each specific place to describe their intensity and temperature, scents, how they affect the people, plants and land. These place names provide further evidence of the sovereignty

[155] Archibald Menzies, *Hawaii Nei 128 Years Ago by Archibald Menzies* (Honolulu: 1920), p. 105.
[156] *Id*. p. 24

established by the indigenous Kānaka Maoli O Hawai‘i (Native Hawaiian People) over the entire Pae ‘Āina Hawai‘i (Hawaiian Archipelago).[157]

In the 1960s, cultural ethnographer Mary Kawena Pukui, who was also a respected Native Hawaiian kupuna (elder) traveled to every island to interview Native Hawaiian kūpuna (elders) about the meaning of the names of the places where they lived. In 1984, she published, *Place Names of Hawaii*, which provides the interpretation and history of the places that were named by Native Hawaiian ancestors.[158] Some examples of place names interpreted by Mary Kawena Pukui are:

> Pu‘uloa - old name for Pearl Harbor; long hill.
>
> Waikīkī - spouting water, (said to be named for swamps later drained to form Ala Wai Canal); also the name of a chiefess.
>
> Mōkapu - peninsula in Kailua, O‘ahu originally named Moku- (sacred district) because Kamehameha I met his chiefs here, it was "the sacred land of Kamehameha;" taboo district. [Present location of Marine Corps Base Hawai‘i].

Pukui also published *‘Ōlelo No‘eau: Hawaiian Proverbs and Poetical Sayings,* which includes the names of the winds and rains of various districts of every island.[159] For example,

> Ka ua Kanilehua o Hilo. *The Kanilehua rain of Hilo*. Hilo, where the rain moistens the lehua blossoms. (#1562)
>
> Ka ua kea o Hāna - *The white rain of the Hāna*. Refers to the misty rain of Hāna, Maui, that comes in from the sea. (#1566)

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[157] Native Hawaiian anthropologist, Dr. Kekuewa Kikiloi has researched and re-discovered the original Hawaiian names for the distant northwest Hawaiian Islands, extending to Kure Atoll. His work validates that Native Hawaiian ancestors (Kānaka Maoli o Hawai‘i) had extended their sovereignty over the entire Hawaiian archipelago. His initial findings are published as "Rebirth of an Archipelago: Sustaining a Hawaiian Cultural Identity for People and Homeland," 6 *Hulili: Multidisciplinary Research on Hawaiian Well-Being* 73-115 (2010).

[158] Mary Kawena Pukui, Samuel H. Elbert, and Esther T. Mookini, *Place Names of Hawaii* (Honolulu: Univ. of Hawaii Press, 1984). Also available at http://wehewehe.olelo.hawaii.edu/cgi-bin/hdict?l=e (last visited July 22, 2012).

[159] Mary Kawena Pukui, *‘Ōlelo No‘eau: Hawaiian Proverbs and Poetical Sayings* (Honolulu: Bishop Museum Press, 1983).

> Ka makani hali ʻala o Puna - *The fragrance-bearing wind of Puna*. Puna, Hawaiʻi, was famed for the fragrance of *maile*, *lehua*, and *hala*. It was said that when the wind blew from the land, fishermen at sea could smell the fragrace of these leaves and flowers. (#1458)

The recent work of Native Hawaiian Anthropologist, Dr. Kekuewa Kikiloi, re-constructs the Hawaiian names for the northwest islands of the Hawaiian archipelago, managed in the 21st century as the Papahānaumokuākea Marine National Monument by the State of Hawaiʻi and U.S. Departments of the Interior and Commerce.[160] For example, Necker Island, also known as Mokumanamana (branching island), may have been originally named Hāʻena (burning breath); Lisianski Island was possibly Kapou (post, pole, pillar or shaft); and Kure Atoll may have been Hōlani Kū (bringing forth heaven).

Kikiloiʻs research of the oral traditions regarding the Northwest Hawaiian Islands reveals that Native Hawaiian ancestors (Kānaka Maoli o Hawaiʻi) considered these islands as "ʻāina akua, or ancestral islands where the souls of the deceased would travel to and lived in afterlife (also known as pō - darkness or creation)."[161] Kikiloi notes that, "the pattern of island names that is described at each stage in the sequence will give the impression of islands undergoing stages of spiritual transformation . . . This proces of aging, death, and deification for islands runs parallel to the lifecycle of their human siblings, as both spiritually descend into the ocean, transforming into godly ancestors on their journey to the source (pō)."[162]

Native Hawaiians also composed (oli) chants and (mele) songs in honor of the land, the winds and rains. Some chants speak of the birth of the islands from a mating of Papa, the earth mother, with the Wākea, the sky father, in the same manner that humans are born. The ʻohana (extended families) who descend from the volcano goddess Pele composed chants which

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[160] See, http://www.papahanaumokuakea.gov/welcome.html (last visited Aug. 5, 2012).
[161] Kikiloi, "Rebirth of an Archipelago," p. 89.
[162] *Id.*

document various hulihia (eruptions) on the different islands throughout the centuries. In 2010, geologist Don Swanson examined some of these chants and compared them to the eruptive phases documented through geological science.[163] Swanson concluded that the chants that he studied described the two largest volcanic events that have taken place in Hawai‘i since people arrived. He wrote, “During the past decade, geologic evidence has been found to support the chants . . . regarding the development of the summit, which involves the eruption of a huge lava flow in the 15th century, the development of the caldera immediately afterward, and 300 years of ensuing explosive eruptions.”[164]

In the 1930s, E.S. Craighill Handy conducted an exhaustive survey on each island of the original endemic and Polynesian plants raised by Native Hawaiians, their uses, and the methods and areas of their cultivation. Handy’s findings were published as *The Hawaiian Planter, Volume I* in 1940.[165] Subsequently, in collaboration with Mary Kawena Pukui, Handy expanded his research and published *The Polynesian Family System in Ka‘ū* in 1958 and *Native Planters in Old Hawaii, Their Life, Lore and Environment* in 1972.[166] By focusing on the livelihoods, customs, practices and rituals of the ‘ohana (extended families) of maka‘āinana (common people), these works provide an understanding of the broader spectrum of the pre-contact Native Hawaiian society. In the foreward to the 1972 book, Handy wrote:

> One of the primary reasons for the decision in 1930 to study the Hawaiian as a planter was the realization that in this frame of reference a new comprehension of the very foundation of native culture, lore, mentality, and temperament might be

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[163] Don Swanson, "Hawaiian Oral Tradition Clarifies 400 Years of Volcanic Activity at Kīlauea," 6 *Hūlili: Multidisciplinary Research on Hawaiian Well-Being* 25-33 (2010).
[164] *Id.*, p. 25.
[165] E.S. Craighill Handy, *The Hawaiian Planter - Volume I, His Plants, Methods and Areas of Cultivation* (Honolulu: B. P. Bishop Museum, 1940), Bull 161.
[166] Mary Kawena Pukui and E.S. Craighill Handy, *The Polynesian Family System in Ka-‘u, Hawai‘i* (Tokyo and Rutland: Charles E. Tuttle, 1976); E.S. Craighill Handy, Elizabeth Green Handy and Mary Kawena Pukui, *Native Planters in Old Hawaii, Their Life, Lore, and Environment* (Honolulu: Bishop Museum Press, 1972).

> formulated. Studies of political and social conventions, of material culture, of language, lore and religion, dancing, the graphic arts, games and sports, war, society, and other phases of the native culture fill many volumes. But these are all external phases of the native civilization, and none represents the true fundamentals of life as lived by Hawaiians.[167]

Understanding subsistence cultivation as the foundation of the Native Hawaiian social system provides a useful insight into the evolution of Native Hawaiian society from the vantage point of the maka‘āinana (common people).

An Overview of the Development of the Native Hawaiian Social System

While the chronology of settlement, development and expansion of the Native Hawaiian social system will continue to be the subject of research and analysis, the pattern and stages of development can be thoughtfully re-constructed from oral histories, genealogies, archaeology reports and the cultural and cultivated landscape.

Discovery & Settlement (A.D. 300 - 600) [600 B.C. - A.D. 300: Palikū to Wākea]

According to Hawaiian ancestral traditions in the Kumulipo, which records the oldest chiefly linage as the Palikū lineage, and working backwards from Kamehameha I in generation 118 around A.D. 1780, using 20 years per generation, we find his ancestor Palikū in generation one at 600 B.C. The long chronology developed by archaeologists places the early settlement of the islands between A.D. 300 and A.D. 600. While the early date derived from Hawaiian traditions may be controversial in the world of archaeology, there is general agreement that following discovery, initial settlements on each of the islands of Hawai‘i would have been concentrated along the shorelines and near rivers, streams and springs. This afforded access to marine resources for protein and access fresh water for domestic use. Handy wrote:

[167] Handy, Handy & Pukui, *Native Planters in Old Hawaii*, p. vi

> For generations the small, slowly growing population clustered around shore sites near streams that supplied them with water. Such sites are best for inshore fishing. When they had acquired taro, they no doubt rapidly cleared away the jungle along the streams to make room for taro patches, and there was a beginning of terraced flats that could be irrigated directly from the stream.[168]

The population of these settlements gradually spread inland and along the shoreline of the well-watered windward sides of the main islands of Hawai‘i.

Colonization and Development (A.D. 600 - 1000) [A.D. 300 - 1200: Wākea to Haho]

As the settlements on each island expanded to eventually occupy an entire island, from shorelines to valley bottoms and the leeward areas, the generations born in Hawai‘i, Kānaka Maoli O Hawai‘i developed a shared common language and culture uniquely adapted to Hawai‘i. Subsistence production was organized within large ‘ohana (extended families) around the cultivation of a variety of plants to provide for all of their basic necessities. Handy provides a description of the process of expansion as follows:

> In the course of native settlement, as the early *kanaka* [Hawaiian] colonizers spread from fishing sites on the shore to inland areas and fanned out over the plains and hills from original centers of settlement, households with ties of relationship became scattered. Some located on upland slopes (*ko kula uka*), some on the plains toward the sea (k*o kula kai*), and some along the shore (*ko kaha kai*). Neighborly interdependence, the sharing of goods and services, naturally resulted in the settling of contiguous lands by a given *‘ohana* [extended family] rather than in a scattering over an entire district. In this way there came to be an association of particular *‘ohana* [extended family] with the land units later designated as *ahupua‘a* [basic land management units generally coinciding with watersheds].[169]

The ahupua‘a evolved as basic geographic land management units that extended from the shoreline and inland to the mountains, were watered by a stream, and included landscape features such as mountain ridges and pu‘u (hills). Generally, these areas coincided with watershed units. They included the shoreline areas where the ‘ohana (extended families) first settled and would

[168] *Id.*, p. 12
[169] *Id.*, pp. 227-228. Translation in brackets added.

have access to marine resources such as fish, limpets, crustaceans and seaweeds for their main source of protein; a fresh water stream or springs; low lying lands irrigated for taro; gently sloping inland areas for sweet potato and thatching grasses; and forested mountain areas for vines, timber, ferns and medicinal plants.[170]

Of all of the plants, taro emerged as the staple crop that was central in the lives of the ʻohana (extended families) and the society as a whole. Indicative of the singular importance of kalo (taro) in the lives of the people, is that the name for extended family in Hawaiʻi became ʻohana, meaning "offshoots from a common stock of taro." The single corm of the taro is called ʻohā and the offshoots that sprout out from the central corm are called ʻohana. The taro propagates itself through offspring from one generation to another in the same manner that the human family propagates from one generation to the next. The Hawaiian varieties of kalo (taro) that are planted and eaten today are descended from the kalo (taro) planted by Native Hawaiian ancestors many generations ago.

During the periods of settlement and through colonization and development, the basic social unit continued to be the ʻohana who were led by their kūpuna (elders), from among whom haku (leaders) were recognized. Kamakau described this in relation to the island of Hawaiʻi, saying, "the chiefs of Hawaiʻi were aliʻi makaʻāinana (chiefly commoners) or just, makaʻāinana (commoners) during this time."[171] Kamakau also wrote,

> It is not clear from the tradition whether the ancient ancestors lived in Hawaii as ruling chiefs . . . The parents were masters over their own family groups. For the 28 generations from Huilihonua to Wakea, no man was made chief over another. During the 25 generations from Wakea to Kapawa, various noted deeds are mentioned in the traditions and well-known stories. Kapawa was the first chief to be set up as a ruling chief.[172]

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[170] For a detailed description of traditional Hawaiian land divisions *see* Malo, *Hawaiian Antiquities (Moolelo Hawaii)* and Kamakau, *The Works of the People of Old.*
[171] Kamakau, *Tales and Traditions of the People of Old*, p. 100.
[172] Kamakau, *Ka Poʻe Kahiko: The People of Old*, p. 3.

Due to the centrality of the cohesive extended family as the core unit, Native Hawaiians did not congregate in conventionally defined villages as was common in other parts of the Pacific. Instead, extended families lived in dispersed compounds of households called kauhale. Exchange among the dispersed compounds of extended family members functioned more as a sharing of what had been produced upon their communally held land and worked upon in common. Handy notes that there was no word for village in the Hawaiian language and that, "It was only when topography or the physical character of an area required close proximity of homes that villages existed. The old Hawaiians, in other words, had no conception of village or town as a corporate social entity."[173]

Mary Kawena Pukui and E.S. Craighill Handy in *The Polynesian Family System in Ka'u, Hawai'i* describe this pattern of community as follows:

> Between households within the *'ohana* [extended family] there was constant sharing and exchange of foods and of utilitarian articles and also of services, not in barter but as voluntary (though decidedly obligatory) giving. '*Ohana* [families] living inland (*ko kula uka*), raising taro, bananas, wauke (for tapa, or barkcloth, making) and *olona* (for its fibre), and needing gourds, coconuts and marine foods, would take a gift to some '*ohana* [families] living near the shore (*ko kula kai)* and in return would receive fish or whatever was needed. The fisherman needing *poi* or *'awa* [pounded taro or kava] would take fish, squid or lobster upland to a household known to have taro, and would return with his *kalo (*taro) or *pa'i'ai* (hard *poi,* the steamed and pounded taro corm). . . . In other words, it was the *'ohana* [extended family] that constituted the community within which the economic life moved.[174]

Between the islands of Hawai'i there was some variation of language dialect and names for plants, animals, rains and winds. There were also variations in physical structures, and

[173] Handy, Handy & Pukui, *Native Planters in Old Hawaii*, p. vii.
[174] Handy, E.S. Craighill and Mary Kawena Pukui, *The Polynesian Family System in Ka'u, Hawai'i* (Tokyo and Rutland: Charles E. Tuttle, 1976), p.5-6 (translation in brackets added).

cultural and art forms.[175] Origin myths varied according to the particular migration and genealogical line that the families descended from. The prominence of akua (gods) and other kupua (deities) also varied by island. Pele and her family of deities are claimed as ancestors by families from Kaʻū and Puna on Hawaiʻi Island. The deity Māui is associated with many places and land features on the island that bears his name. Various moʻo (dragon lizards) are identified with ponds and places on Molokaʻi. Kauaʻi has an ʻauwai (irrigation ditch) as well as fishpond said to have been built by the legendary race of small people, called menehune. However, qualitatively, the language, culture, social system and spiritual beliefs, customs and practices were shared among the inhabitants of the islands as the society evolved.

Establishment and Expansion on All The Islands

All of the historical sources (archaeology, oral traditions, cultural landscapes) indicate that the Native Hawaiian social system reached a critical turning point around A.D. 1000-1200. By this time, a substantial and rapidly expanding population occupied all of the districts on all of the islands. Ruling chiefs emerged in each district to assume stewardship over the land and the responsibility to organize the makaʻāinana (common people) in the development of infrastructure to intensify the production of food and basic necessities. The work of Dr. Abad provides an overview of the major developments and accomplishments of the ruling chiefs in this and the ensuing period.

The Evolution of Institutions

Ruling Generations One (1) to Seven (7) (A.D. 980 - 1350)
[Ruling Generations 89 - 102: Haho - Kalaunuiohua A.D. 1200 - 1460]

From Dr. Abad, we learn about the rise of the first seven generations of district chiefs in

[175] For example, Kauaʻi poi pounders were shaped like a stirrup and unique images (kiʻi) carved of the spikes of sea urchins (wana) were only found on Kahoʻolawe.

Hawai‘i from A.D. 980 - 1090 through A.D. 1270 - 1350 while migratory chiefs from Tahiti and Rai‘iatea continued to arrive and settle on various islands.[176] By the end of this period, the voyaging between Hawai‘i and Tahiti stopped and the families of the ruling chiefs had intermarried, so that the district ruling chiefs of each island were descended from both earlier and more recent chiefly lineages.[177]

One of the key developments that occurred in generation 2 (A.D. 1120 - 1225) was the establishment of an ‘aha ali‘i (council of chiefs) on each island. Chief Haho of Maui [Generation 89 in A.D. 1200] was the first to establish such an ‘aha ali‘i (council), on his island and subsequently the chiefs of every other island adopted the institution.[178] Abad describes the function of the ‘aha ali‘i as follows:

> Once fully established, the ‘aha ali‘i [council of chiefs] provided the following: 1) a means for ali‘i [chiefs] to be recognized as such, 2) a venue in which the relative ranks of ali‘i [chiefs] could be determined, 3) an opportunity for ali‘i [chiefs] from across an island to interact, exchange information, and to develop mutually beneficial ties, and 4) a group decision making process that served to support, advise, or even correct the ali‘i nui [paramount chief of the island]. In short, the ‘aha ali‘i [council of chiefs] provided an internal governance structure among the ali‘i of a nation and a balance to the power that ali‘i nui [paramount chiefs] held.[179]

Distinctions between the ruling chiefs and the maka‘āinana (common people) were instituted during this period, such as the enactment of required labor days for the common people on Hawai‘i Island; alterations in the construction of heiau (temples) for the conduct of religious

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[176] The High Priest Pa‘ao comes from Ra‘iatea bringing the ceremonies of Taputapuatea marae. He renames Hawai‘i island, formerly called Lononuiakea, after the old name of Ra‘iatea, which was Havai‘i. See Kame‘eleihiwa, “Hawai‘inuiakea Cousins.”

[177] *Id.*, pp. 300 - 301. Regarding the end of the transpacific voyages, *see* fn. 16 above which places the end of voyaging at 1400.

[178] *Id.*, p. 159. Note that Professor Kame‘eleihiwa, utilizing the generations accounted for in the Kumulipo, and starting with Palikū as generation 1, places Haho at generation 89 in A.D. 1200.

[179] *Id.*, pp. 158 -159. Translation in brackets added. See also Fornander, *Ancient History of the Hawaiian People to the Times of Kamehameha I*, p. 28

ceremonies from which the common people were excluded; and the introduction of capital punishment for violations of kapu (sacred restrictions) imposed by the ruling chiefs.[180]

Unification, Island Organization and Prosperity Under Renown Island Chiefs

Ruling Generations Eight (8) to Fourteen (14) (A.D. 1350 - 1500)
[Generation 89 - 107 A.D. 1200 - 1560]

The next era, according to Abad, spanned from six to seven generations on Hawai‘i Island, Maui, O‘ahu and Kaua‘i, from A.D. 1270 - 1350 through A.D. 1480 - 1525 [A.D. 1460 - 1560]. The period began with a series of raids by High Chief Kalaunuiohua of Waipi‘o Valley, island of Hawai‘i, on Maui, Moloka‘i and O‘ahu during which he took the paramount chiefs of each of these islands hostage. He would have been the first ruling chief to unite all of the islands under his control, 16 generations before Kamehameha I, if Kukona, the high chief of Kaua‘i had not been able to defeat him.[181] Raiding and continued inter-island conflicts during this era led the chiefs on each island to develop stable internal alliances organized under their own paramount chief. On each island the chiefs focused on increasing the productivity of their lands, providing for the well-being of their expanding populations and sustaining peace. Thus, after High Chief Kalaunuiohua was defeated, the island nations were politically stable and prospered during a period of peace. District boundaries were established on Maui and O‘ahu and roads were constructed to facilitate the central administration of distinct administrative units on each island. Irrigation networks and major fishponds were constructed to support an expanding population. Major heiau (temple) were constructed to honor the akua (gods) of the ali‘i nui (paramount

[180] *Id.*, p. 302. Professor Kame‘eleihiwa notes that the high priest Pa‘ao comes from Rai‘atea bringing the ceremonies of Taputapuata marae to the north. He renames Hawai‘i island, formerly called Lononuiakea, after the old name of Rai‘atea, which was Havai‘i. Kame‘eleihiwa, “Hawai‘inuiakea Cousins.”
[181] Davida Malo, *Hawaiian Antiquities (Moolelo Hawaii)*, pp. 251–254. This invasion, according to Kamakau, was given the name of Kawelewele, meaning the opening up or clearing of a path. Kamakau, *Tales and Traditions of the Hawaiian People*, p. 56

chief). The chiefs of this era have become famous down through the ages for their wise and benevolent governance and for understanding and providing for the needs of the people.

During this period, on the island of Oʻahu, High Chief Māʻilikūkahi [Generation 103 in A.D. 1480] was chosen by the ʻaha aliʻi (council of chiefs) to rule their island. For the first time, on Oʻahu, the boundaries between the various divisions of lands were instituted. Six major moku (land districts) were established as administrative units under aliʻi ʻai moku (district chiefs). In addition, lesser chiefs were assigned to smaller divisions of land and the tenure of the common people on their ancestral lands was acknowledged and secured.[182] In a succeeding generation of this era, Oʻahuʻs first female paramount chief, Kūkaniloko [Generation 106 in A.D. 1540] ruled over what was known as a period of peace and order.[183] She was succeeded by her daughter, Kalaimanuʻia who was praised by the historian Kamakau as a "good chiefess" whose governance allowed the aliʻi and makaʻāinana (common people) to live in comfort.[184] During her reign, she oversaw the construction of the Pāʻaiau, Opu and Kapaʻakea fishponds.[185]

On Kauaʻi, the noted chief of this era was Manokalanipō [Generation 104 in A.D. 1500] who became famous for developing long and difficult irrigation networks, thereby providing the infrastructure for agriculture on the island. The island prospered under his rule. He continues to be acknowledged in ʻōlelo kaena (honorific epithets) in songs and chants as one of the great chiefs of Kauaʻi and the island itself is often referred to as "Kauaʻi a Manokalanipō" (Kauaʻi of Manokalanipō).[186]

On Maui, the High Chief Kakaʻalaneo [Generation 104 in A.D. 1500] planted an abundant grove of ʻulu (breadfruit) trees in Lahaina. His daughter, Wao oversaw the

[182] Kamakau, *Tales and Traditions of the Hawaiian People*, pp 54- 56.
[183] Abad, *The Evolution of Hawaiian Socio-Political Complexity, p. 328.*
[184] *Id.*, p. 332.
[185] *Id.*, pp. 332-333.
[186] *Id.*, pp. 309- 310.

development of an irrigation watercourse, ‘Auwaiawao, in Lahaina for the cultivation of her lands in the area called Kalewa.[187] According to Kamakau, High Chief Kaka‘alaneo divided “the island into ahupua‘a [watershed land divisions], ‘okana [smaller land divisions], and moku ‘āina [main districts]” which improved the management of the land and clarified the rights of the ali‘i and the maka‘āinana.[188] Kaka‘alaneo sent his son, High Chief Kaululā‘au to Lāna‘i to make it habitable by humans, after which he incorporated Lāna‘i under his rule.[189] In the next generation of this era, High Chief Ka‘uholanuimāhū built a fishpond at Keone‘ō‘io.[190] However, the most prominent Maui chief of this era was High Chief Pi‘ilani. He was renowned for his good and wise governance over Maui Nui, or great Maui, which was inclusive of the islands of Maui, Lāna‘i, Moloka‘i, and Kaho‘olawe. High Chief Pi‘ilani established his residence in Hāna, where he constructed the largest heiau on the island, Pi‘ilanihale (Pi‘ilani‘s House). Like High Chief Līloa, he frequently toured all of the districts under his rule to enforce order and promote the industry of his people.[191] The famous Maui ‘ōlelo kaena (epithet), “Nā hono a Pi‘ilani,” meaning “the bays of Pi‘ilani,” honors his outstanding rule by linking his name to the bays of West Maui throughout succeeding generations to the present.[192]

On Hawai‘i Island, High Chief ‘Ehu built a road from the uplands of Kona into Ka‘u, called “the way of Ehu.”[193] The greatest and most famous Hawai‘i Island ruler of this era was the

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[187] *Id.*, p. 19.
[188] Kamakau, *Tales and Traditions of the Hawaiian People*, p. 152 (translation in brackets added). According to Curtis J. Lyons, “Land Matters in Hawai‘i,” *The Islander* (No. 2, Honolulu: 1875), “On East Maui, the division [of land] in its general principles was much the same as on Hawaii, save that the radial system was better adhered to. The fact there is pointed out, to this day, on the sharp spur projecting into the east side of Haleakala crater, a rock called the ‘Pohaku oki aina,’ --land-dividing rock, to which the larger lands came as a centre. How many lands actually came up to this is not yet known (Lyons, 1875:111).”
[189] Abad, *The Evolution of Hawaiian Socio-Political Complexity*, p. 325 - 326.
[190] *Id.*, p. 322.
[191] *Id.*, p. 331.
[192] *Id.*, p. 331-332.
[193] Kamakau, *Ruling Chiefs of Hawaii*, p. 429.

High Chief Līloa [Generation 107 in A.D. 1560]. He kept the peace and fostered positive relations with his akua (gods), his aliʻi (chiefs), his kāhuna pule (priests), and his people. High Chief Līloa succeeded in having all of the chiefs of Hawaiʻi Island acknowledge his leadership as the Ali'i Nui (paramount chief). High Chief Līloa frequently traveled throughout Hawaiʻi Island, sometimes incognito, to observe and keep in touch with the needs of his people. He adopted the sons of various aliʻi and elevated them to mamaka kaua (war leaders), thereby gaining their allegiance and that of their relatives.[194] One of the innovations that High Chief Līloa introduced was the use of ʻaha kapu (consecrated sennit cordage) to delineate the sacred space of the chiefs separate from his retainers and people.[195]

By the end of this era, the paramount chiefs of each island were firmly in charge of each of their own nations that prospered under their central authority.

Rivalries Shift Rule to Younger Siblings

Ruling Generations Fourteen (14) to Sixteen (16) (A.D. 1500 - 1600)
[Generations 108 - 111 A.D. 1580 - 1640: Hakau - Kakuhihewa]

According to Abad, this period was distinguished by shifts in power from senior siblings to younger siblings, the aliʻi nui (paramount chiefs) of each island were held to higher standards of leadership and accountability by the lesser aliʻi, kāhuna pule (priests) and the makaʻāinana (common people).

The first aliʻi nui (high chief) of this era to be challenged by and lose his position to a younger sibling was Aliʻi Nui Hākau [Generation 108 in A.D. 1580] of the island of Hawaiʻi. He was challenged by his younger half-brother, High Chief ʻUmi a Līloa (ʻUmi). Before High Chief Līloa passed away he determined that Hākau, his son by his highest ranking wife from Oʻahu,

[194] Abad, *The Evolution of Hawaiian Socio-Political Complexity,* pp. 328 - 329.
[195] *Id.*, p. 330

would inherit the political rule and stewardship of the lands, while ʻUmi, his son with a lower ranking woman from a Molokaʻi lineage, would inherit the religious rule and serve as guardian of the akua (gods) and heiau (temples). However, once installed as the ruler, High Chief Hākau proved to be irresponsible. According to Fornander, High Chief Hākau "impoverished all the old and faithful counselors and servants of his father, chiefs, priests and commoners."[196] Priests who had been loyal to High Chief Līloa and were mistreated by High Chief Hākau united to replace him with High Chief ʻUmi, who was already the heir to the religious rule. High Chief Hākau was assassinated and sacrificed at the Honuaʻula heiau (temple) in Waipiʻo Valley, Hawaiʻi.[197]

Subsequently, High Chief ʻUmi and his supporters engaged in successful battles against dissenting chiefs of the other districts of Hawaiʻi Island and re-united the island under his central rule. As a ruler, High Chief ʻUmi was known to be "religious, kind-hearted, humble, just, skillful in the arts of war, adept in physical games such as surfing, ready to seek and follow the advice of his advisors, and willing and able to labor with his own hands."[198] High Chief ʻUmi instituted a specialization and division of labor among the chiefs and makaʻāinana (commoners); helped to build large taro patches in his home district of Waipiʻo Valley; initiated or expanded the dryland field systems of Kona (leeward) Hawaiʻi; and established the kōʻele (cultivation plots for chiefs) system wherein specified plots of land were assigned to be cultivated and harvested by the makaʻāinana for the aliʻi. High Chief ʻUmi constructed two new heiau (temples) for astronomical observations at Kūkiʻi in the district of Puna and ʻĀhua a ʻUmi on the slopes of Hualalai. The seasonal movement of the sun was observed at these heiau to maintain a sun calendar. He also solidified the district boundaries of Hawaiʻi Island, emanating from ʻĀhua a ʻUmi, for the annual

[196] Abraham Fornander, *Ancient History of the Hawaiian People to the Times of Kamehameha I,* p. 76, cited in Abad, *The Evolution of Hawaiian Socio-Political Complexity,* p. 340.
[197] Abad, *The Evolution of Hawaiian Socio-Political Complexity,* pp. 340-342.
[198] *Id.*, p. 353; *see,* Samuel Mānaiakalani Kamakau, *Ruling Chiefs of Hawaiʻi* (Honolulu: Kamehameha Schools Press, 1961), pp. 1, 6-9, 19-20.

collection of Makahiki Harvest Season hoʻokupu or offerings to him as the paramount chief and steward of Lono, God of Agriculture.

Before High Chief ʻUmi passed, he divided the rule that he had established over Hawaiʻi Island between his two sons, Keliʻiokāloa and Keawenui a ʻUmi. After an initial period of peace, the two brothers battled each other and Keliʻiokāloa was killed. Six high chiefs from the districts of Hilo, Puna, Hamakua, Kaʻū, Kona and Kohala rebelled against High Chief Keawenui a ʻUmi, but he prevailed and established his rule over the entire island of Hawaiʻi. High Chief Keawenui a ʻUmi then assigned control over the conquered districts to chiefs loyal to his rule. The reign of Keawenui a ʻUmi is recorded as having been peaceful and prosperous.[199]

On Maui, High Chief Piʻilaniʻs successor in this era was High Chief Lono-a-Piʻilani [Generation 108 in A.D. 1580], eldest son by his highest ranking wife. High Chief Lono-a-Piʻilani grew jealous of his younger brother, High Chief Kiha-a-Piʻilani (Kiha). He abused him and sought to kill him. High Chief Kiha, fearing for his life, fled to the island of Molokaʻi, and then to Lānaʻi and finally returned to the uplands of Maui, outside of High Chief Lono-a-Piʻilani's court. High Chief Kiha planned how to challenge the rule of his older brother. The key to his success was attaining the support of his brother-in-law, High Chief ʻUmi of Hawaiʻi Island. In a final battle in Hāna, the warriors of High Chief Kiha and High Chief ʻUmi killed Lono-a-Piʻilani, his son and his chiefly allies. When Kiha assumed control of Maui he assigned his own chiefs to rule over each of the districts of Maui, in place of the chiefs he had killed. Kiha is renowned for the construction of roads on Maui and Molokaʻi. The Kīpapa a Kiha a Piʻilani (Paved Trail of Kiha a Piʻilani) on Maui extends 30 miles from Pihehe, Hāna, to Oopuloa, Koʻolau. Ke Ala Pūpū A Kiha (the Seashell Road of Kiha) was built along the entire shoreline of the Kaluakoʻi district in west Molokaʻi. Kiha also built two large fishponds, Mauʻoni and

[199] Abad, *The Evolution of Hawaiian Socio-Political Complexity*, pp. 363-365.

Kanahā in Wailuku, Maui, as well as the Halekiʻi heiau (temple) at Paukukalo in Wailuku and the heiau Honuaʻula mauka of the hill of Kaʻuiki in Hana.[200]

Kihaʻs successor, Kamalālāwalu [Generation 111 in A.D. 1640] was known for his excellent management of the lands and resources of Maui, Lānaʻi and Molokaʻi and his just rule over the people. According to Fornander, "Maui probably never stood higher, politically, among the sister kingdoms of the group than during the life of Kamalalawalu."[201] In honor of the beneficent rule of Kamalālāwalu, Maui came to be known as Maui a Kama, "Maui, island of Kama," through the ages to present.[202]

On Oʻahu during this era, paramount High Chiefess Kalaimanuʻia [Generation 107 in A.D. 1560] passed on control of Oʻahu to her four offspring - (1) Kū a Manuʻia inherited control of the moku of Kona (except Moanalua) and Koʻolaupoko; (2) Kaʻihikapu a Manuʻia inherited lands in Moanalua, Kona, and the guardianship of the akua (gods) Kūkalani and Kūhoʻoneʻenuʻu; (3) Haʻo inherited control of the moku of ʻEwa and Waiʻanae; and (4) a daughter, Kekela, inherited the moku of Waialua and Koʻolauloa. Sibling rivalries ensued resulting in Kaʻihikapu a Manuʻia ruling the three districts of Kona, ʻEwa and Koʻolaupoko, while Kekela ruled the three districts of Waiʻanae, Waialua and Koʻolauloa, jointly with Nāpūlānahumahiki, the son of Haʻo who she married. Kaʻihikapu a Manuʻia is known for the construction of two large fishponds in Moanalua, Oʻahu - the 258-acre Kaʻihikapu fishpond and the 332-acre Lelepaua fishpond.[203]

High Chief Kākuhihewa [Generation 111 in A.D. 1640] succeeded Kaʻihikapu a Manuʻia and managed to unite all of Oʻahu under his rule through his marriage to Kaea-a-Kalona, the

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[200] *Id.*, pp. 344-347, 357-359.
[201] *Id.*, pp. 371 - 372, citing Fornander, *An Account of the Polynesian Race: Its Origins and Migrations and the Ancient History of the Hawaiian People to the Times of Kamehameha I,* p. 207.
[202] Mary Kawena Pukui, *ʻŌlelo Noʻeau,* p. 234.
[203] Abad, *The Evolution of Hawaiian Socio-Political Complexity*, pp. 347 - 351 and 359 - 360.

daughter of Nāpālānahumahiki. Like his contemporaries on Hawai‘i and Maui, Kākuhihewa ruled wisely and kindly. According to Kamakau, “During the reign of Kākuhihewa, O‘ahu became known for its productiveness; its smell reached Kaua‘i there was so much cultivation . . . Kākuhihewa became a famous chief from Hawai‘i to Kaua‘i.”[204] Kamakau described the high level of cultural activities at the court of Kākuhihewa at Pāmoa in ‘Ālele, Kailua, O‘ahu:

> All these were done here: storytelling, distribution of lands, recalling traditions of the ancestors, reciting of genealogies, practicing of battle skills, wielding of war clubs, thrusting of spears, observation of omens, study of land features, study of the stars, playing kōnane [checkers], learning the mele [songs] of the ancestors and chiefs, running, learning to leap from cliffs, maika [stone] rolling, dart throwing, boxing, hand wrestling, sitting wrestling, shoulder wrestling, hand-to-hand fighting, all kinds of sports that strengthened the body, cultivating, and fishing.[205]

During the period of political changes described above, Kalanikukuma [Generation 109 in A.D. 1600] ruled Kaua‘i. The oral traditions record very little information, except for a journey of observation and goodwill by his son, Kahakumakaliua, throughout the islands. In the final stop on Hawai‘i Island, he was hosted by High Chief ‘Umi where he fell in love with and married High Chief ‘Umi‘s daughter, ‘Akahi‘ilikapu.[206] The oral traditions are silent about the rule of Kahakumakaliua and his successor, Kamakapu on Kaua‘i.

By the end of this era, on the eve of the Proto-Historic period, each island had achieved a high level of productivity and prosperity and was ruled by a single ali‘i nui (paramount chief). The paramount chiefs had also formed alliances across the islands that were reinforced through intermarriage and exchanges of good will.

Native Hawaiian Farmers and Fishers

Throughout the five centuries (A.D 1000 - A.D. 1600) of dominance by ruling chiefs,

[204] Kamakau, *The Tales and Traditions of the People of Old*, p. 69
[205] *Id.*
[206] *Id.*, pp. 360-361.

described above, the ‘ohana (extended families) of farmers and fishers endured as the stable social unit of Native Hawaiian society. Their stewardship responsibility and tenure over ancestral lands and cultural customs and beliefs remained stable and continued to be honored and respected by the ruling chiefs.[207]

On each of the islands, the paramount chiefs had divided their island into moku (districts), which were initially assigned to the stewardship of chiefs from those districts. However, as described above as paramount chiefs ascended to power through military conquest, stewardship of the various districts was assigned to those chiefs who were instrumental in the paramount chief’s rise to power. The moku (districts) were divided in accordance with the ahupua‘a (watershed management units) established by the original ‘ohana (extended families). Under the ruling chiefs, these land units were supervised by land stewards who were lesser ranking chiefs called konohiki. As described above, the ahupua‘a boundaries reflected the pattern of land use that had evolved as the most efficient and beneficial to the well-being of the ‘ohana, as the population expanded throughout previous centuries. This pattern of land use and the boundaries were adopted and then instituted by the ruling chiefs and their supervisors to delineate units for the annual collection of the Makahiki Harvest Season offerings to them as the land stewards of Lono, God of Agriculture.[208]

The ahupua‘a of the konohiki (land stewards) were further divided into strips of land called ‘ili, which were acknowledged as allocations by the chief or konohiki to ‘ohana (extended families) of commoners. In most cases, these ‘ohana were descended from ancestors who had originally settled and cleared the lands for cultivation and continued to make it productive from generation to generation. Handy wrote:

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[207] See generally Handy, Handy & Pukui, *Native Planters in Old Hawaii.*
[208] *Id.*

> Probably the most permanent units of land were the sections of the *ahupuaʻa* termed *ʻili* (strips) or *ʻili ʻāina*. These were portions of an *ahupuaʻa* land allotted to the families which lived on them and cultivated them, in distinction to *aliʻi* who were overseers or higher chiefs. It seems likely that the right to continue to use and to cultivate *ʻili* stayed with the *ʻohana* (extended families) dwelling thereon, regardless of any transfer of title to the *ahupuaʻa* in which they were located.[209]

These ʻili (strips of land) either extended continuously from the mountain to the ocean or were comprised of separate plots of land located in each of the distinct resource zones of a ahupuaʻa (watershed management unit). The ʻohana (extended families) of commoners were afforded access to all of the resources within the ahupuaʻa (watershed management unit). In some areas, the ʻohana (extended families) were able to access forested areas and fishing grounds that were located outside of their ahupuaʻa (watershed management unit) but were within the broader moku (district) in which ahupuaʻa was located. For example, on the island of Hawaiʻi, Kamoku in the moku (district) of Hamākua and the Wao Kele O Puna in the moku (district) of Puna were forested areas accessible for subsistence gathering by the families from all the ahupuaʻa within those respective moku. On Hawaiʻi Island, Maui, and Molokaʻi, fishing grounds for the residents were marked from the points of land in the ocean that aligned with the boundaries between moku (districts), rather than simply between the ahupuaʻa (watershed management units).[210]

Throughout the centuries of chiefly rule, land in Hawaiʻi was not privately owned. The chiefly class that provided stewardship over the land divided and re-divided control over the districts of the islands among themselves through war, marriages and succession. However, up until the time that a constitutional monarchy was established by King Kamehameha III there was

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[209] Handy, Handy & Pukui, *Native Planters in Old Hawaii*, p. 49 (italics in original).
[210] Davianna McGregor, *Na Kuaʻāina: Living Hawaiian Culture* (Honolulu: Univ. of Hawaiʻi Press, 2007).

no private ownership of land.[211] While paramount and district chiefs and land stewards changed over time, the tenure of the ʻohana (extended families) of commoners on the land remained stable. There were two Hawaiian sayings that illustrated this principle. The first saying was "Ko luna pōhaku no ke kaʻa i lalo, ʻaʻole hiki i ko lalo pōhaku ke kaʻa," meaning "A stone that is high up can roll down, but a stone that is down cannot roll."[212] In other words, the paramount chief and lesser chiefs and supervisors could be overthrown and lose their control over the land. A paramount or district chief could be defeated in war and lose his lands. When a paramount chief or district chief passed on and a new chief succeeded him, the lands were re-distributed and the previous chief's supervisors could be displaced. The common people who lived on the land from the days of their ancestors, however, were not displaced when the chief or supervisor over them changed. They continued to live on and cultivate their ancestral lands from one ruling chief to the next. Their tenure was stable.

A second saying illustrating this stable tenure of the families of commoners on the land was, "I ʻāina no ka ʻāina i ke aliʻi, ai waiwai no ka ʻāina i ke kanaka," translated as, "The land remains the land because of the chiefs, and prosperity comes to the land because of the common people."[213] In other words, the ruling chiefs held the land, but it was the labor of the common people that made it valuable. As Handy, Handy, and Pukui noted:

> The tenants who faithfully cultivated the acreage allotted to them were usually secure in their occupancy. It was wholly to the advantage of the aliʻi landlord and his konohiki (land supervisor) to maintain this permanent bond between planter families and their land.[214]

While the tenure of the families of commoners was stable, they were not tied to the land and did have the option to move away if they chose to. There is little evidence however that

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[211] *Id.* See Chapter Five
[212] Pukui, *ʻŌlelo Noʻeau: Hawaiian Proverbs & Poetical Sayings*, #1833, p. 198.
[213] *Id.*, #1149, p. 125.
[214] Handy, Handy & Pukui, *Native Hawaiian Planters in Old Hawaii*, p. 41

moving off the land of one's birth was ever a common practice. The cultural traditions remained rooted in this stability.

The Chiefs' Responsibility for the Common People

In various historical accounts, the relationship among chiefs, the common people, and the land is incorrectly characterized as "feudal." For example, Handy, Handy, and Pukui state, "The system of land holding and use in ancient Hawaii was, in European terms, feudalistic."[215] However, they goes on to explain this characterization by stating that the chiefs held the land but did not own it and that the tenants were not serfs. They wrote,

> The supreme chief, moʻi, of an island "held" the land; but even for him the concept was not one of "owning" it, but of being trustee under Kane and Lono, the nature gods who caused the land to be fruitful . . .These tenants were not serfs; they had the right to abandon the land and move into the territory of another overlord if they were unfairly treated by their konohiki or aliʻi.[216]

In this example, Handy, Handy, and Pukui used the term "feudal" descriptively, drawing upon a term familiar to his western audience. However, their detailed explanation reconstructs the essential relationship between the commoners and the chiefs as that of a trustee on behalf of the nature gods rather than as "feudal."

Historian Dr. Ralph Kuykendall, who did not speak Hawaiian, in *The Hawaiian Kingdom, Volume 1*, also referred incorrectly, to the relationship among the chiefs and to the common people as feudal. He wrote,

> On attaining the supreme position, whether by orderly succession or as a consequence of victory in battle, the alii-aimoku, after taking such portions of land as he desired for his own use, divided the rest among his chiefs in the way best calculated to insure peace and stability; the chiefs in turn rewarded their retainers, and a sort of feudal relationship was established.[217]

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[215] *Id.*
[216] *Id.*
[217] Ralph S. Kuykendall, *The Hawaiian Kingdom, Vol I: 1778-1854 Foundation and Transformation* (Honolulu: Univ. of Hawaii Press, 1938), p. 10 (emphasis added).

Kuykendall's characterization of the Hawaiian social system as "sort of feudal," seems tentative. In the same paragraph he goes on to describe the wars between the chiefs as typical of areas in the world where "feudalism prevailed." Again, his use of the term seems descriptive and drawn from the limited vocabulary of his own experience and, more importantly, the experience of his western audience, which perhaps had little contact or understanding of social systems outside of Europe and Asia, such as the cultures of the broader Pacific, Africa, or the Americas.

The notion of feudalism has at its base, that title to the land was owned by a lord in an absolute sense without any shared duties or defined obligations and that the "serf" had no rights or prerogatives or enduring obligations to preserve the culture. Moreover, under European feudalism, serfs were required to provide military service and could not leave their lords or lands.[218] As described above, this is antithetical to the reality of Hawai'i's history. Historian, Dr. Edward Joesting, who also did not speak Hawaiian, in his book, *Kauai, The Separate Kingdom*, wrote about this as follows:

> The class system of Kauai had many parallels with the feudal system of medieval Europe. There was, however, one important difference. On Kauai, as on the other islands of Hawaii, commoners did not belong to the land. If a commoner was unhappy with his situation under one chief, he was free to leave and establish himself in the domain of another. This practice was not uncommon, although those who too often switched allegiance were considered unstable and difficult.[219]

The extended 'ohana of commoners communally produced all the necessities of life from the 'ili (strips of land) that were allotted to them. In addition to cultivating their own plots for their subsistence, the 'ohana (commoner families) were also obligated to cultivate plots of land set aside for the konohiki (land stewards) and the ali'i (ruling chiefs). These were called haku

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[218] *See* Stuart Banner, "Preparing to Be Colonized: Land Tenure and Legal Strategy in Nineteenth-Century Hawaii," 39 *Law & Society Rev.* 279, 281 (2005), discussing parallels between European feudalism and Hawaiian land tenure, and pointing out significant differences.
[219] Edward Joesting, *Kauai, The Separate Kingdom* (Honolulu: Univ. Hawaii Press, 1984), pp. 27-28.

one (for the land steward) and koele (for the chief), respectively. The common people were also required to provide the ruling chiefs and the land stewards with an annual Makahiki Harvest Season hoʻokupu (offering) that included food and all types of household needs from kapa (bark cloth) and woven mats to stone and wooden containers and implements as well as feathers to make cloaks and helmets that were symbols of the aliʻi rank. In addition, the commoners were obligated to provide labor service and products from the land upon the request of the aliʻi (chief) or the konohiki (land steward).

All of the ʻohana (extended families) within an ahupuaʻa (watershed management unit) could be organized to do massive public works projects under the oversight of the land stewards. This included construction and maintenance of roads, irrigation systems and fishponds, for which they would come and work together until the project was completed.

Although the ruling chiefs and their land stewards enjoyed certain appropriation rights over the land and the people, in the main this was a system of mutual obligation and benefit between the chiefs and the people. The aliʻi nui (paramount chief) and aliʻi ʻai moku (district chiefs) controlled the land that was distributed among the makaʻāinana (common people). The aliʻi nui (paramount chiefs) and aliʻi ʻai moku (district chiefs) were obligated to manage and oversee the production on the land in a manner that provided for the well-being of all the people through pono or balanced and judicious rule. They regulated the use of scarce resources; apportioned these resources among the people according to principles of fair usage; regulated the use of water, which was the most valued resource of the land; assured that the irrigation systems were properly maintained; conducted proper rituals to the gods who embodied nature; and conserved the resources of the land through restriction and replacement policies. In return, the

families of commoners were obliged to provide labor service and products of the land to the ali‘i (chiefs) and konohiki (land stewards).

While Native Hawaiian oral traditions record cases of arbitrary, irresponsible, and self-serving ruling chiefs who abused the people, they were clearly exceptional cases and such chiefs were quickly replaced with responsible chiefs who cared for the well-being of the people.[220]

The Hawaiian proverb, “I ali‘i no ali‘i no nā kānaka,” “A chief is a chief because of the people,” reflects the Hawaiian attitude that the greatness of a chief was judged according to the welfare of the people under him. [221]

The Hawaiian historian Davida Malo wrote, “In former times, before Kamehameha, the chiefs took great care of their people. That was their appropriate business, to seek the comfort and welfare of the people, for a chief was called great in proportion to the number of his people”[222] In his book, *Hawaiian Antiquities*, Malo described the type of training given to young chiefs who were destined to rule:

> It was the policy of the government to place the chiefs who were destined to rule, while they were still young, with wise persons, that they might be instructed by skilled teachers in the principles of government, be taught the art of war, and be made to acquire personal skill and bravery. The young man had first to be subject to another chief, that he might be disciplined and have experience of poverty, hunger, want and hardship, and by reflecting on these things learn to care for the common people, and at the same time pay due respect to the ceremonies of religion and the worship of gods to live temperately, not violating virgins . . . conducting the government kindly to all.[223]

As the Native Hawaiian society became more stratified, kapu (sacred restrictions) were employed to elevate and separate the ali‘i nui (paramount chiefs) from the lesser ali‘i (chiefs)

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[220] Kamakau, *Ruling Chiefs*, pp. 1-21; Marion Kelly, *Majestic Ka‘u: Mo‘olelo of Nine Ahupua‘a* (Honolulu: Bishop Museum Press, 1980), pp. 1-6.
[221] Pukui, *‘Ōlelo No‘eau: Hawaiian Proverbs & Poetical Sayings*, #1150, p. 125.
[222] Davida Malo, "Causes for the Decrease of the Population in the Islands," (trans. with comments by Lorrin Andrews), *The Hawaiian Spectator II,* No. 2, 1839, p. 125.
[223] Malo, *Hawaiian Antiquities*, p. 53-54.

and the maka‘āinana (commoners). As discussed above, alterations were made to temples and ceremonies were designed to exclude the maka‘āinana from certain rituals. High Chief Līloa instituted the use of an ‘aha kapu (sacred sennit chord) to rope off and delineate the space around his residence as kapu, or sacred and restricted, to his retainers and the common people. In the Proto-Historic era and through the time of Kamehameha I, the kapu moe (prostration restriction) requiring all to prostrate in the presence of the highest ranking ali‘i (chief) was instated and the kapu noho (sitting restriction) was required for the lesser ranking chiefs.

In the management of the resources of the ‘āina (land), the ali‘i (chiefs) and kāhuna pule (priests) developed a system of kapu (sacred restrictions) and kānāwai (edicts) in order to maintain lōkahi or the well-being and balance of the society with the natural resources and the life forces of nature. For example, there was a kapu on catching fish and other marine resources during their spawning season, so as not to impact their reproduction. The konohiki (land stewards) might impose a kapu on gathering a resource that was in decline, until it recovered. Some kapu functioned to conserve prime and favored resources by reserving them for consumption by the ali‘i. For example, tasty red fish such as kumu and ‘āweoweo, and thread fish or moi, were reserved for the chiefs, as were the sweet tasting red lehua and kumu taros and the strong black kava, ‘awa hiwa. Kānāwai or edicts regulated the use of the most essential resource - water. Its distribution, allocation and protection was carefully regulated and strictly enforced.[224]

[224] Kānāwai literally means belonging to the water, and was later adopted to translate the English concept of law. According to the Hawaiian Dictionary, "Since some early laws concerned water (wai) rights, some have suggested that the word kānāwai is derived from wai, water; this seems doubtful in view of the many ancient edicts of gods that have no relation to water. Perhaps the most famous kānāwai is the kānāwai kai‘okio promulgated by the gods Kāne after the flood of Kahinali‘i, promising that ever afterwards the sea would be separate (‘okia) from the land (i.e., not encroach on the land). Persons swore oaths by this and other kānāwai. The kānāwai of Kū was that no one might lean backwards (kīki‘i) during ceremonies.

Kapu (sacred restrictions) also functioned to divide the labor performed by men and women. Men cultivated taro; engaged in deep-sea fishing; cooked all of the food; and built stone structures. Women were prohibited from these activities and engaged in the gathering, as distinct from the cultivation, of food, thatch and medicinal plants; specialized in coastal and reef fishing and gathering; wove mats out of plant fibers; and beat cloth from tree bark.

Kapu (sacred restrictions) also defined the roles of men and women in religious ceremonies and rituals. Men engaged in religious ceremonies honoring male akua (gods) and ʻaumākua (family deities), while women honored female akua and ʻaumākua. Women worshipped in specific female temples called Hale O Papa, which are not found anywhere else in Polynesia.[225] Women conducted ceremonies to cleanse participants in preparation for rituals and to cleanse places and structures, including heiau (temples). Flowing from these religious distinctions, women were restricted from eating certain foods that were phallic forms of the male gods, such as the coconut, sacred to the god Kū; honu (turtle) and bananas, sacred to Kanaloa; and pork, sacred to Lono. Men and women were also required to eat separately and their food was prepared in separate underground imu (ovens) by the men. This was called the ʻAi Kapu (sacred eating restrictions). These restrictions are recorded as dating back to the time of Wākea.[226] Nineteenth century Native Hawaiian historian Kepelino wrote of 11 kānāwai or laws relating to the ʻAi Kapu established at the time of Wākea:

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[225] Lilikalā Kameʻeleihiwa, *Kaulana Oʻahu Me He ʻĀina Momona Mamuli O Nā Haʻawina ʻAumākua: Famous is Oʻahu as a Land Fat with Food because of Ancestral Teachings*, Unpublished Manuscript, 2014.

[226] Kameʻeleihiwa, *Native Lands and Foreign Desires*, pp. 23-24. She states, "The *ʻAikapu* is a religion in which males and females are separated in the act of eating, males being *laʻa* or "sacred," and females *haumia* or "defiling," by virtue of menstruation. Since, in this context, eating is for men a religious ceremony or sacrifice to the male *Akua Lono*, it must be done apart from anything defiling, especially women. (Female *mana* however, was only *haumia* to the male *Akua*, and not to the female *Akua* whom women worshipped freely.)" Furthermore, "The *kahuna* suggested that the new *ʻAikapu* religion should also require that four nights of each lunar month be set aside for special worship of the four major male

Here are the laws of class I:
1. It is not right for a man to eat with his wife.
2. It is not right for a woman to enter the *mua* or house of worship.
3. It is not right for women to go to the men's eating house.
4. It is not right for women to eat bananas except the *pupuulu* and the *iholena* varieties.
5. Women must not eat pork, the yellow coconut, the *ulua* fish, the *kumu* fish, the *niuhi* shark, the whale, the porpoise, the spotted sting-ray, the *kailepo*; all these things were dedicated to God, hence women could not eat them.

Here are the laws of class II:
1. There is to be one house (the noa) for the wife and the husband, etc.
2. There is to be a house (called mua) for the men's eating house.
3. There is to be a heiau for the images.
4. Thera are to be two eating houses, one for the men and another for the women.
5. There is to be a house (called *kua*) for tapa beating.
6. There is to be a house (called *pea*) for the separation of the woman when she is unclean.[227]

Prayer and ritual were integral to the day-to-day life of the people and chiefs. Nine days in each lunar month were dedicated to specific restriction and rituals to honor the major gods - Kāne (2 days); Kanaloa (2 days); Kū (3 days); Hua (2 days). Kamakau noted that these restrictions were ancient. He wrote, "These days, kapu to the god, were established in the time of Wakea, and they were very sacred days."[228]

'Ohana (extended families) honored their ancestors as 'aumākua or spiritual guardians. Healing practices were conducted with prayer and ritual. Prayer and ritual was also part of cultivation and fishing. Each phase of cultivation of their crops from planting to sprouting to bearing fruit and harvesting was acknowledged with a prayer. An example of a prayer for taro when it began to sprout was as follows:

Pause and receive thanks, O god,

Akua, Kū, Lono, Kāne, and *Kanaloa*. On these nights it was *kapu* for men to sleep with their *wahine*." Kame'eleihiwa refers to the oral traditions, which attribute the establishment of these kapu to the desire of Wākea to sleep and mate with his daughter Ho'ohōkūkalani without Papa knowing of it.

[227] Kepelino, *Kepelino's Traditions of Hawaii* (ed. Martha Warren Beckwith) (Honolulu: Bishop Museum Press, 2007), p. 64

[228] Kamakau, *Ka Po'e Kahiko*, p. 11.

O Kane, O Kane-of-lifegiving-water;
Here is lua‘u[leaf bud], the first lu‘au [leaf bud] of our taro;
Turn back and eat, O god;
Make my family also eat, the pigs eat, the dogs eat.
Grant success to me, your offspring,
In farming, in fishing, in house-building,
Until I am bent with age, blear-eyed as a rat,
Dried as a hala leaf [pandanus], and reach advanced age;
This is the life that is yours to grant.
Amama [free], the kapu [restriction] is freed; the prayer has gone on its way.[229]

The annual Makahiki Harvest Season and ceremonies reflected the importance of prayer and ritual in maintaining the well-being and lōkahi (harmony) of the traditional Native Hawaiian society. The season began when the constellation Pleiades or Makali‘i rose in the east as the sun set in the west. This phenomenon marked the beginning of the rainy season associated with Lono, the god of agriculture and productivity. During this season, wars and battles ceased, as the whole society, from the chiefs to the priests and the commoners focused on activities to enhance the productivity of the land and its resources. On each island, a procession of chiefs and priests made a clockwise circuit of the entire island (land on the right, ocean on the left) with the image of the Lono. At the boundary of each ahupua‘a (watershed management unit), the procession stopped and the people from the district brought their ho‘okupu or offerings in tribute to the Lono, the chiefs, and the priests.[230] The formal ceremony of offerings was followed with a period of feasting and games. Handy, Handy and Pukui provided the following description of the season of rituals:

> The most elaborate and complex rituals in the Hawaiian religion were those of the annual Makahiki harvest festival. This, from the planter's point of view, was calculated to guarantee rain sufficient for his crops, while for the reigning chiefs and the landlords it was the occasion of levying a tax in kind on crops, livestock, and all other forms of wealth, such as bark cloth and feathers used for making the

[229] Handy, Handy & Pukui, *Native Planters in Old Hawaii,* p.98 (translation in brackets added).
[230] Malo, *Hawaiian Antiquities*; Handy, Handy & Pukui, *Native Planters in Old Hawaii;* Kamakau*, Ka Po‘e Kahiko.*

capes, helmets, and neck ornaments worn by aristocrats. The festival continued for about four months during the rainy season.[231]

Interestingly, Captain James Cook's first contact with Native Hawaiians occurred during the Makahiki Harvest Season and the rituals and protocols for this season framed their interactions, as will be discussed in Chapter Three.

Summary

By the time of contact with Europeans in 1778, at a point when the United States was a fledgling nation, Native Hawaiians had effectively governed Hawai'i for at least seven centuries as self-sufficient island societies, with a robust and healthy population estimated to be between 400,00 and 800,000.[232] Each of the four chiefdoms had developed highly efficient sustainable systems of production, which maximized the use of limited island resources under the stewardship of the ali'i (chiefs) and maka'āinana (commoners) alike. Oral traditions, works of art, chant and dance, and spiritual protocols passed down to contemporary generations reveal that Native Hawaiians had a complex, well-developed, and sophisticated culture.

By the end of this era, each island was ruled by a single ali'i nui (high chief) and had achieved a stable society with a high level of productivity. The ali'i nui had also formed alliances, reinforced through intermarriage and exchange of goods, across the islands. These interfamily alliances are exemplified by the Kumulipo's sixteenth wā (period) in which Pi'ikea, daughter of Maui Ali'i Nui Pi'ilani, mates with 'Umi, the Mō'ī of Hawai'i Island, and as Hawaiian historian Dr. Lilikalā Kame'eleihiwa writes, "thereby joining the lineages, and

[231] Handy, Handy & Pukui, *Native Planters in Old Hawaii*, p. 346.
[232] David E. Stannard, *Before The Horror: The Population Of Hawai'i on the Eve of Western Contact* (Honolulu: Univ. of Hawai'i Press, 1989), pp. 32–58, arguing that most population figures have vastly undercounted the population and setting the pre-European population between eight hundred thousand and one million people. Based on Prof. Stannard's analysis, Professor Kame'eleihiwa uses the population figure of 800,000 in 1778. Kame'eleihiwa, *Native Land and Foreign Desires,* pp. 140-41.

perhaps, in time, the sovereignty of those two islands."[233] From this union, come the two leading chiefly lines of Hawai'i Island – the 'Ī chiefs of Hilo and the Keawe chiefs of Kona. It was hoped that the child from the joining of these chiefly lines – Kalaninui'īamamao – would bring peace and prosperity to Hawai'i Island and by extension, to all of Hawai'i. He is best known by the name Lono-i-ka-makahiki, invoking the name of the God of Agriculture and the harvest of the fruits of the land.

> 'O Pi'ikea noho ia 'Umi, hānau o Kumu-lae-nui Umi
> Nona ka Pali haili kauwā;
> Kumu-lae-nui a Umi ke kane, 'o Kumunuipuawale ka wahine
> Makua ke kane, ka wohi kukahi o ka moku,
> Kapohelemai ka wahine, he wohi ali'i kapu, ka ho'ano,
> O 'I, ia 'I ka moku, ka haina kanaka
> Ke kaulana 'āina i Pakini
> Ka 'ohi'a a kō, ku ku'ina o ka moku o Hawai'i;
> Ia Ahu, ia Ahu-a-'I, ia Lono
> Ia Lono-i-ka-makahiki ho'i.
>
> Pi'ikea lived with 'Umi, born [was] Kumulae-nui-a-'Umi
> His the cliff cursing kauwā outcasts;
> Kumulae-nui-a-Umi, husband, Kumunuipuawale, wife;
> Makua, husband, the wohi kapu [sacred] chief of the district,
> Kapohelemai, the wife, a kapu wohi chiefess, revered;
> 'I, to 'I the district, the [right to offer] human sacrifice(s),
> The famous land of Pakini, heiau (in Ka'ū)
> The 'ohi'a kō rite of the temple, center of the island of Hawai'i
> To Ahu, Ahu-a-'I, to Lono
> To Lono-i-ka-makahiki, indeed.[234]

As Kame'eleihiwa reminds us:

> [A]ll Hawaiians were related to Kalaninui'īamamao, [and thus] we are all elevated by the recounting of mana in this cosmogonic genealogy. By the Kumulipo, we Hawaiians know that we are descendants of Akua, descendants of the earth mother and sky father, as well as all living things of the Pacific that are also our 'Aumakua, or family guardians. As the younger siblings of the Hawaiian islands, we are inextricably part of this land and born with the responsibility to

[233] Lilikalā Kame'eleihiwa, "Kumulipo" (unpublished manuscript, 1999), p. 15.
[234] Rubellite Kawena Kinney Johnson, *The Kumulipo mind: a global heritage: in the Polynesian Creation Myth* (Honolulu: s.n., 2000), p. 151.

> mālama, or love and care for the land, for the earth, for the Akua and ʻAumākua. Our ancestors define our identity.[235]

The fragile relationship between the common people and ruling chiefs that developed during the latter stage of Hawaiʻi's pre-European contact history functioned efficiently so long as the interest and values of both classes remained in basic harmony. To the extent that the Native Hawaiian society had evolved into a socially and economically stratified system, however, there was always an inherent threat of dissolution of the bonds that tied commoners and ruling chiefs together. In the next generations, Native Hawaiian aliʻi and commoners alike would be dramatically affected by the conflict between the pursuit of new economic aspirations with traditional cultural values and the responsibility to provide stewardship over the land and the people.

[235] Lilikalā Kameʻeleihiwa "Kumulipo: A Cosmogonic Guide to Decolonization and Indigenization" in *International Indigenous Journal of Entrepeneurship, Advancement, Strategy & Education,* WIPCE 2005 Special Edition. Hamilton: Te Wananga o Aotearoa, Vol. 1, Issue 1, p. 129.

Chapter Three: Evolution of Hawai‘i’s Chiefdoms into a Unified Kingdom

Generations 17 to 23 [Generations 112 to 118]
Keakealani to Kamehameha I A.D. 1660 – 1780

Overview

This chapter discusses the evolution of the Hawaiian political system from four independent chiefdoms under four paramount chiefs into one federated kingdom under the central rule of King Kamehameha I and his allied chiefs. Non-Hawaiian accounts of Hawai‘i usually begin at this point in the history of the islands - Western contact and the establishment of a unified kingdom. However, as illustrated in Chapter Two, the unification of the islands under one paramount chief was preceded by 700 years of parallel governance of individual island chiefdoms by Native Hawaiian ruling chiefs. Throughout the centuries of sovereign rule over the individual island realms, the ali‘i nui (paramount chiefs) and their ‘aha ali‘i (council of chiefs) had organized their individual, yet interrelated, island societies to the point where it was possible in the late 18th century for a mō‘ī (paramount chief) to consolidate and govern the chiefdoms as a federated interisland kingdom.[236]

From his decisive victory in the Battle of Nu‘uanu Valley on O‘ahu in 1795, through his passing in 1819, King Kamehameha I [Generation 118 in A.D. 1780] ruled the islands of

[236] Kaua‘i and Ni‘ihau were ruled as one island chiefdom and the chiefdom of Maui Nui included Lāna‘i and Kaho‘olawe. The rule over Moloka‘i shifted between the Maui and the O‘ahu paramount chiefs in different historical generations. Insight related to the islands functioning as a confederation under King Kamehameha I’s rule can be gleaned from the practical realities of governing an island nation, and by drawing a parallel with the United States of America’s early confederated structure. That confederated structure may have been influenced structurally, in part, by the Iroquois Confederacy, though its democratic principles were based on the Enlightenment and related European influences (*see also* H. Con. Resolution 331, October 21, 1988, and Elizabeth Tooker, “The United States Constitution and the Iroquois League,” *in The Invented Indian: Cultural Fictions and Government Policies*, James A. Clifton, ed., (New Brunswick: Transaction Publishers, 1990), p. 107). In Hawai‘i, all of those experiences provide an appropriate frame to encompass the dynamics of administering an island kingdom with long established roots in individual chiefdoms.

Hawai‘i, Maui, Moloka‘i, Lāna‘i, Kaho‘olawe and O‘ahu for 24 years. During this period, the island of Kaua‘i was under his rule for nine years, from 1810 through 1819.[237]

While Kamehameha rose to power, European and American ships that were engaged in fur trading with Native Americans in Northwest America for the China trade began to regularly stop in Hawai‘i for supplies and crewmen. At the start of his reign, the harvesting of sandalwood from Hawai‘i's forests for the China trade began. Throughout his reign, and under his authority, the sandalwood trade grew to dominate the economy of Hawai‘i and became a major factor in the unraveling of its social fabric. Sailors from the trading ships introduced diseases that reached epidemic proportions, decimating the Native Hawaiian population. Harvesting of sandalwood and of firewood from other trees changed the cultural landscape and altered the spiritual responsibility of the Native Hawaiians for such resources. Conducting the trade conflicted with the religious restrictions and rituals of the Makahiki Harvest Season. Socializing with the foreigners undermined the kapu (sacred restrictions) governing gender roles and relations.

The passing of King Kamehameha, at a time when the society was coping with the devastating impacts of the sandalwood trade, generated a political crisis. Kamehameha's successors chose to manage the crisis by abolishing the traditional state religion. In addition to the burning of the wooden images of the gods and the dismantling of the temples, the godly status of the chiefs and the restrictions on the role of women were abolished.

At the time of the ‘Ai Noa (freedom from sacred eating restrictions), the abolishment of the traditional religion, the priest Kapihe uttered these words:

E iho ana o luna That which is above shall be brought down;

[237] Samuel Mānaiakalani Kamakau, *Ruling Chiefs of Hawaii* (Honolulu: Kamehameha Schools Press, 1961); Stephen L. Desha, *Kamehameha and His Warrior Kekūhaupi‘o* (Trans. Frances N. Frazier) (Honolulu: Kamehameha Schools Press, 2000); John Papa ‘Ī‘ī, *Fragments of Hawaiian History* (Honolulu: Bishop Museum Press, 1973).

E pii an o lala That which is below shall be lifted up;

E hui ana na moku The islands shall be united;

E ku ana ka paia The walls shall stand upright[238]

The ʻAi Noa laid the groundwork for the development of a secular political, economic and social system in Hawaiʻi in which commoners and foreigners could equally participate with chiefs. It redefined the relationship between the chiefs and the gods and the people. It not only transformed the role of women, but also the role of men. Natural resources, now released from the realm and protection of the gods and their attendant protocols and rituals, became available for broader economic utilization. As the chiefs were at the nexus of transactions with foreigners, they had grown open to foreign innovations and this included the acceptance of Christianity when missionaries from New England arrived in 1820. However, the process of change and adaptation was slower among and was often resisted by the majority of the common people, especially those who did not live near the trading ports and the courts of the Kamehameha chiefs. They continued to farm and fish as their ancestors before them and continued to rely upon their ancestral knowledge, spiritual beliefs and cultural customs and practices for success in these endeavors.

Continuing from Chapter Two, the next era in the evolution of the Hawaiian nation from four chiefdoms into a unified nation and constitutional monarchy begins in 1600 and continued through contact with Europeans in 1778.

Interisland Alliances and Wars On the Eve of Contact

Ruling Generations 17 to 23 (A.D. 1600 - 1780)

[Generations 112 - 118 (A.D. 1660 - 1780)]

[238] Davida Malo, *Hawaiian Antiquities (Moolelo Hawaii)* (Trans. Dr. Nathaniel B. Emerson, 1898) (Honolulu: Bishop Museum Press, 1951), p. 115.

The proto-historic period from A.D. 1600 to 1778 [1660 - 1778] can be divided into two periods - from generations 17 to 21 [generations 112 to 115 or A.D. 1660 - 1720] and from generations 21 to 23 [generations 115 to 118 or A.D. 1720 - 1780], according to the work of Dr. Caroline Kēhaunani Cachola Abad. In the first period, the peace and prosperity achieved by the exemplary and beloved high chiefs of the previous era was disrupted by wars, internal to each island and between islands. By the end of the first period, the chiefs of each island could no longer remain insular. They expanded their interactions and established alliances across islands, most commonly through multiple inter-island marriages. Succeeding generations of chiefs and chiefesses born from these inter-island marriages increased their travel to neighboring islands to visit with their chiefly relatives and they exchanged gifts when they visited each other. This contributed to greater interaction, communication and sharing of innovations throughout the four major chiefdoms.[239]

In the second period, successor paramount chiefs were descended from shared lineages on more than one island and were closely related to each other. Interisland alliances were forged among kindred paramount chiefs to defend themselves against challenges by rival district chiefs on their home islands. The interisland alliances that developed during this period provided the elemental geopolitical building blocks for the unification of the chiefdoms into a federated kingdom. Wars were common during this period, with the only reprieve occurring during the

[239] Carolyn Kēhaunani Cachola Abad, *The Evolution of Hawaiian Socio-Political Complexity: An Analysis of Hawaiian Oral Traditions* (Unpublished PhD Dissertation in Anthropology, University of Hawai'i, Mānoa, 2000), pp. 374-412. Notable high chiefs of this era included the chiefess Kaikilani on Hawai‘i Island who jointly ruled first with Kanaloakua‘ana and then with Lonoikamakahiki. Successor Keakealanikāne loosened his hold on the district chiefs, which allowed the ‘I family of Hilo and the Mahi chiefs of Kohala to rise in prominence. On O‘ahu, the two sons of Kākuhihewa ruled-Kānekapu a Kākuhihewa and Ka‘ihikapu a Kākuhihewa. Two generations after them, Kū‘ali‘i rose to prominence as a chief famous for his interisland invasions. On Maui, Kamalālāwalu continued to rule and led the Maui chiefs into a war on Hawai‘i Island, which failed. On Kaua‘i, Kawelomakualua ruled and re-instated the prostration requirement (kapu moe) for high ranking chiefss. His son Kawelo‘aikanaka was defeated by Kawelo a Maihunali‘i who received assistance from O‘ahu chiefs related to his wife.

annual Makahiki Harvest Season. Into this contentious political era entered European and American explorers and traders who ultimately altered the balance of power among the ruling chiefs with the introduction of cannons, guns and warships.[240]

Western Contact - 1778

At the point of Western contact in 1778, the islands of Hawai‘i were ruled as four quasi-independent, yet interrelated chiefdoms. Hawai‘i Island and the district of Hāna, Maui, were under the rule of Ali‘i Nui (High Chief) Kalani‘ōpu‘u [Generation 117 in 1760]. The islands of Māui (except the Hāna district), Lāna‘i and Kaho‘olawe were under Ali‘i Nui Kahekili [Generation 117 in 1760]. The islands of O‘ahu and Moloka‘i were in transition from Ali‘i Nui Peleiōhōlani to Ali‘i Nui Kahāhana [Generation 118 in 1780]. Ali‘i Nui Kā‘eokūlani [Generation 118 in 1780] ruled the islands of Kaua‘i and Ni‘ihau.[241] At the same time, these ruling chiefs shared a common heritage. This was epitomized in the person of Kahekili of Maui. He and Kā‘eokūlani of Kaua‘i were half-brothers. Kahekili had raised Kahāhana from childhood into manhood. Kahekili was also reputed to be the father of Hawai‘i Island Ali‘i Nui Paiea Kamehameha, who would later unite the islands as Kamehameha I.[242]

In addition, as discussed in Chapter Two, although separated by turbulent ocean channels, each island chiefdom was organized according to the same pattern of layered

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[240] *Id.*, pp. 413-483.

[241] Samuel Mānaiakalani Kamakau, *Ruling Chiefs of Hawaii* (Honolulu: Kamehameha Schools Press, 1992), p. 92. Note that Hawai‘i Island is twice the size of all of the other islands put togther. When Cook first arrived on Kaua‘i in January 1778, High Chief Kaneoneo jointly ruled with his wife High Chiefess Kamakahelei. By the time that Cook returned in November 1778, High Chiefess Kamakahelei had allied with Ka‘eokūlani to take over control of Kaua‘i.

[242] Historical accounts provide evidence that Kahekili was the actual father of Kamehameha. Kamakau, *Ruling Chiefs*, p. 188-189, states that when Ke‘eaumoku was passing away and was visited by Kamehameha, that he informed Kamehameha that his father was Kahekili and provided him tokens of proof. In contrast, Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, p. 32, states that the mother of Kamehameha became pregnant after her visit with Kahekili on Maui and refers to Kahekili as the father of Kamehameha. *Id.*, pp. 41-42.

responsibilities and interests. Each island was organized into moku (administrative districts) under district chiefs; ahupuaʻa (watershed land management units) under konohiki (land stewards); and ʻili (strips of land) that were cultivated and settled by ʻohana (extended families) of makaʻāinana (common people). All of the people on all of the islands honored the chiefs as divine rulers and lived in accordance with kapu (sacred restrictions) regarding the use of natural resources, gender roles, and the mutual responsibilities of the chiefs and the people. All of the people honored the four chiefly gods – Kū, Kāne, Kanaloa, and Lono – and participated in the annual Makahiki Harvest Season ceremonies and offerings of goods. The makaʻāinana (common people) throughout the islands also honored their ancestors as ʻaumākua (family spiritual guardians) and the various elements of nature as spiritual entities.[243]

Contact with Europe and the U.S. drew Hawaiʻi into the world system of trade with China and introduced western weapons and gunships into the escalating competition and rivalry among the increasingly ambitious ruling chiefs of the islands. The use of western weapons and ships, as opposed to hand-to-hand combat and canoes, changed the nature of the battles, and laid the foundation for one chief to rise as paramount above all of the chiefs. As discussed in Chapter Two, High Chief Kalaunuiohua had attempted, but failed 500 years earlier to unite all of the islands under his central rule. By 1795 however, one High Chief, Paiea Kamehameha, had acquired the technological capacity and weaponry to complement his extraordinary military genius, religious prominence, multiple marriage unions, and charismatic leadership to enable him to organize an army of warriors that could unite all of the islands under a central government. This combination of factors finally made it possible for the four island chiefdoms to be united and governed as a federated island nation.

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[243] *See generally*, Samuel Mānaiakalani Kamakau, *Ka Poʻe Kahiko: The People of Old* (Honolulu: Bishop Museum Press, 1964).

In 1778 the Englishman Captain James Cook made the European discovery of Hawai‘i while seeking a northern trade route across North America that could provide British merchants with a shorter route to the lucrative trade with China. While this was not the first time that Hawai‘i had come into contact with explorers from outside of the islands, this event was significant because it drew Hawai'i into a world system of trade.[244] The transactions between Cook and the Native Hawaiian chiefs foreshadowed the invasive elements, misinterpretations, and conflicting expectations, that would ensue as the fur, sandalwood and whaling trades developed in the islands. Essentially, there was a clash between completely different and incompatible social systems. Cook and the traders who followed him represented the mercantile capitalist social system that had emerged in Great Britain and Europe and was transplanted in the Americas. Cook's expedition originated out of and was financed by a cash economy that was rooted in the private ownership of land and resources as commodities, relied upon labor performed for employers for wages, and exchanged commodities for profit. Hawai‘i was still a subsistence and largely communal social system where the majority of the people worked collectively as members of large extended families to produce food and necessities that were

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[244] Samuel Mānaiakalani Kamakau*, Tales and Traditions of the People of Old: Nā Moʻolelo o ka Poʻe Kahiko* (Honolulu: Bishop Museum Press, 1991), pp. 113-114, recounts:

> It is said that the first *haole* arrived at Kāne‘ohe and Kailua in Ko‘olaupoko, O‘ahu . . . The name of the ship was the *Ulupana*; Molo Lana was the captian, and Malaea was his wife. The names of the men aboard were Olomana, Aniani, and Holo-kamakani. The chiefs named some lands and prominent hills after these men, and these places are called by their names to this day . . . Here are some of the first *haole* to come to *Hawai‘i nei*. They arrived during the time of Wakalana the chief of Maui and his wife Kaua‘i . . . The ship came to Wailuku, Maui; it was the *Mamala;* the captain was Kuluiki-a-Manu, and on board were Masawell, Neleiki, Malaea, Ha‘akoa, and Hīkā-some were men and some were women.

Abraham Fornander, *An Account of the Polynesian Race: Its Origins and Migrations and the Ancient History of the Hawaiian People to the Times of Kamehameha I, Vols. 1-III* (Rutland: Charles E Tuttle, 1969); Vol 2, p. 158, states that, "There can be no doubt that in the early part of the sixteenth century shipwrecked Spaniards arrived at the Hawaiian Islands."

shared among each other. Land and resources were honored as manifestations and kinolau (body forms) of spiritual and sacred deities and there was no private ownership of land or its resources.

Captain Cook first landed in the islands at Waimea, Kaua‘i on January 20, 1778. He replenished his supply of fresh water and firewood and exchanged iron nails for hogs, taro, potatoes and yams. At only one point during his two week tour of the islands did a landing party stay on shore overnight and this was because of the high winter surf. Due to relations that the sailors had with the women during a two-night stay on Ni‘ihau, venereal disease was introduced into a population that had never been previously exposed to it.[245] Cook did some initial exploring and charting of the islands, and then continued on his mission in search of a northwest passage to the north Atlantic.

In November 1778, Cook returned to the islands to wait out the northern winter. During both visits, Cook arrived during the Makahiki Harvest Season and thus, his actions were interpreted within that cultural milieu. On his second visit, Cook arrived in East Maui just as the invading forces of Hawai‘i Island High Chief Kalani‘ōpu‘u were suspending their battle with the forces of Māui High Chief Kahekili to begin the observance of the Makahiki Harvest Season. Some of the Hawai‘i Island warriors boarded Cook’s vessels, the *Resolution* and *Discovery,* to return with him to Kealakekua Bay in Kona, Hawai‘i. Rather than taking the direct route across the ‘Alenuihāhā Channel, they instead guided Cook’s ships to make a long circuit around the island of Hawai‘i along the Hāmākua coast to Puna and south to Ka‘ū and then north to Kealakekua Bay. Along the way, canoe loads of Native Hawaiians came out to the ships with large amounts of food for which they were given iron nails. Cook and his men considered this as trade and Captain Clerke of the *Discovery* wrote, “This is the cheapest market I ever yet saw, a

[245] Ralph S. Kuykendall, *The Hawaiian Kingdom, Vol. 1: 1778-1854 Foundation and Transformation* (Honolulu: Univ. of Hawaii Press, 1938), pp. 14-15.

moderate sized Nail will supply my Ships Company very plentifully with excellent Pork for the Day, and as to the Potatoes and Tarrow, they are attained upon still easier Terms."[246] From the perspective of the Native Hawaiians, however, they were participating in the Makahiki Harvest Season tribute with Cook and chiefs who were on board the ships. This is an excellent example of how the same transaction was interpreted through completely different cultural lenses and provided a situation ripe for misunderstanding and unrealistic expectations.[247]

While at Kealakekua Bay, Cook was accorded the protocols and privileges of a godly chief of the Lono lineage by the Lono priests.[248] However, when he set sail and was forced to return to repair a foremast damaged in a winter storm, the cultural context had changed. It was the beginning of the season of Kū, the war god, a period when political rivalries often erupted into battles. Cook's reappearance at Kealakekua was interpreted as a challenge to the rule of the Kona chiefs. No longer accorded the previously enjoyed protection of the Lono priests, some thefts and incidents occurred, leading up to the theft of a large cutter that was indispensable to Cook for ship to shore transport. Cook proceeded to kidnap the high chief, Kalani'ōpu'u, and hold him hostage until the cutter was returned. These actions resulted in the killing of Cook and four of the nine marines in his landing party. The British officers and crew on Cook's voyage retaliated against the people at Kealakekua for the death of their captain. Historian Dr. Ralph Kuykendall described the attack as follows:

> The hot anger on both sides kindled by the tragic affray of February 14 [date of Cook's death] was not easily cooled. During the next few days there was

[246] *Id.,* p. 13.
[247] Patrick Vinton Kirch, *A Shark Going Inland Is My Chief* (Berkeley: Univ. of California Press, 2012), pp. 250-264
[248] *Id.*, Kamakau, *Ruling Chiefs of Hawaii*, pp. 92-104. According to Kamakau, the Hawaiians had initially interpreted Cook's presence as the fulfillment of a promise that the God Lono would return to Hawai'i with gifts from abroad, but that this interpretation changed during the course of his stay and return to Kealakekua Bay. Fornander, *An Account of the Polynesian Race*, Vol 2, pp. 158 -199, provides the same interpretation.

> desultory fighting, in which the Hawaiians exhibited great courage and daring in the face of gunfire, a good many of them being killed; a number of houses, behind which the native warriors sheltered themselves, were burned down by the foreigners; a few of the latter indulged in reprisals for which even savages might blush.[249]

Lieutenant James King reported that 7 natives, including five chiefs, were killed at the time that Cook was killed at Ka‘awaloa. Another eight natives, three of whom were chiefs, were later killed across the bay at Hikiau temple.[250]

Native Hawaiian historian, Samuel M. Kamakau, described the impacts of Cook's visits as follows:

> The fruits and the seeds that his [Cook's] actions planted sprouted and grew, and became trees that spread to devastate the people of these islands:
> 1. Gonorrhea together with syphilis.
> 2. Prostitution.
> 3. The false idea that he was a god and worshipped.
> 4. Fleas and mosquitoes.
> 5. The spread of epidemic diseases.
> 6. Change in the air we breathe.
> 7. Weakening of our bodies.
> 8. Changes in plant life.
> 9. Change in religions, put together with pagan religions.
> 10. Change in medical practice.
> 11. Laws in the government.[251]

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[249] Kuykendall, *Hawaiian Kingdom, Vol. I,* p. 19

[250] Fornander, *An Account of the Polynesian Race, Volume 2*, p. 194. On p. 186, Fornander critiqued Captain Cook as follows:

> And how did Captain Cook requite this boundless hospitality, that never once made default during his long stay of seventeen days in Kealakekua Bay, these magnificent presents of immense value, this delicate and spontaneous attention to his every want, this friendship of the chiefs and priests, this friendliness of the common people? By imposing on their good nature to the utmost limit of its ability to respond to the greedy and constant calls of their new friends; by shooting at one of the king‘s officers for endeavouring to enforce a law of the land, an edict of his sovereign that happened to be unpalatable to the newcomers, and caused them some temporary inconvenience after a week‘s profusion and unbridled license; by a liberal exhibition of his force and the meanest display of his bounty; by giving the king a linen shirt and a cutlass in return for feather cloaks and helmets, which, irrespective of their value as insignia of the highest nobility in the land, were worth singly at least from five to ten thousand dollars, at present price . . . by a reckless disregard of the proprieties of ordinary intercourse, even between civilised and savage man, and a wanton insult to what he reasonably may have supposed to have been the religious sentiments of his hosts.

It would be another seven years before European and American trading ships would come to Hawai‘i. Once the ships began to arrive in 1786, Hawai‘i became a regular stopover in the fur trade between America, Europe, and China. By 1810, Hawai‘i was an integral part of the China trade route as a profitable source of sandalwood. Gradually, Hawai‘i was pulled into the economic web of the worldwide market causing far-reaching and irreversible changes that devastated the common people. Although there were random incidents of violence by the traders against Native Hawaiians and retaliation by Native Hawaiians, no wars were ever fought between foreigners and Native Hawaiians.[252]

The Rise of King Kamehameha I

On Hawai‘i Island, the death of High Chief Kalani‘ōpu‘u [Generation 117] in 1782 triggered a civil war over who would rule the island. Prior to his death, Kalaniopu‘u determined that the successorship be divided along the lines of the existing dual system of political and religious authority in Hawai‘i. He designated his son, High Chief Kīwala‘ō, as successor to his political rule and the steward of his lands. He designated his nephew, High Chief Paiea Kamehameha (Kamehameha I), as the successor to his religious rule and the guardian of the war God Kūkā‘ilimoku (Kū who snatches districts/islands).[253]

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[251] Kamakau, *Ke Kumu Aupuni*, p. 57, translated in Noenoe K. Silva, *Aloha Betrayed, Native Hawaiian Resistance to American Colonialsm* (Durham: Duke Univ. Press, 2004) p. 22.

[252] Marshall Sahlins, *Anahulu: The Anthropology of History in the Kingdom of Hawaii, Volume 1. Historical Ethnography* (Chicago: The Univ. of Chicago Press, 1992), p. 39, lists eight hostile incidents in the domains of Kahekili from 1786 through 1795. Kahekili died in 1794, but the 1795 incident was carried out by his son, Kalanikūpule.

[253] Kamakau, *Ruling Chiefs of Hawaii,* p. 107. This is similar to the dual succession planned by High Chief Līloa for his son High Chief Hākau to inherit the political rule and his younger son, High Chief ‘Umi-a-Līloa, to inherit the religious rule, as discussed in Chapter Two.

Upon the death of his father, Kīwala‘ō aligned himself with his powerful uncle, High Chief Keawemauhili, and allowed him to oversee the kālai‘āina (re-division) of the districts of the island of Hawai‘i. Keawemauhili subverted the proper function of the re-division of lands. Instead of a balanced distribution that provided for pono or the well-being of all concerned, he allocated the largest and best lands to himself. He divested the Kona chiefs of their lands and relegated Ka‘ū chiefs Kīwala‘ō, his brother High Chief Keōuakū‘ahu‘ula, and Kohala Chief, Paiea Kamehameha, to their own limited personal land.[254] Incensed, the Kona chiefs (Kekūhaupi‘o, Keaweaheulu, Ke‘eaumoku, and the latter's twin half brothers Kame‘eiamoku and Kamanawa), who would become Kamehameha's most formidable and loyal allies, urged Kamehameha to exercise his authority as the guardian of Kūkā‘ilimoku and declare war. Although he was disgruntled, Keōuakū‘ahu‘ula aligned his forces with those of his brother and uncle against Kamehameha and the Kona chiefs.[255] This division of the Hawai'i Island chiefs into two distinct camps marked the beginning of the Hawai‘i Island war, which lasted 18 years and resulted in the consolidation of all of the islands under King Kamehameha I.

War on Hawai‘i Island

In the first battle of Moku‘ōhai, Kamehameha's ally and military general, Chief Ke‘eaumoku, killed Kīwala‘ō. During the battle, Kamehameha's warriors also captured his other rival, Keawemauhili, but they took pity on him and allowed him to escape. At the end of this battle, Hawai‘i Island was now divided among three ruling high chiefs. Keawemauhili ruled Hilo, Puna, and half of Hāmākua; Kamehameha ruled Kona, Kohala, and the other half of Hāmākua; and Keōuakū‘ahu‘ula ruled Ka‘ū. These three ruling chiefs fought three more major

[254] Lilikalā Kame‘eleihiwa, *Native Land and Foreign Desires: Pehea Lā E Pono Ai?* (Honolulu: Bishop Museum Press, 1992), p. 57; Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, pp. 113-118.
[255] Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, pp. 105-122.

battles for control over Hawai‘i Island, without any decisive victory – two in 1782 and one in 1786.[256]

Beginning in 1786, the first of the trading ships to be attracted to Hawai‘i by the findings of the Cook expedition, visited Hawai‘i – two English ships commanded by Captains Portlock and Dixon and two French ships commanded by Captain La Perouse. As the trade grew, ruling chiefs of each island began to acquire and accumulate Western guns and ammunition.[257] Four years later, in 1790, the balance of military power, in what had effectively amounted to an arms race among the ruling chiefs, shifted in favor of Kamehameha.[258] Kamehameha acquired his own Western schooner, the *Fair American*, and engaged the services of the Englishmen, John Young and Isaac Davis, to train his warriors in the use of Western military technology.

Another critical element in Kamehameha's military ascendancy was the recruitment of the Kaua‘i High Chief Ka‘īana, to settle on Hawai‘i Island upon his return from a round-the-world voyage with Captain John Mears on the *Nootka.* Ka‘īana had left Kaua‘i in 1787 and spent some time in China where he learned how to use cannons, rifles, and other foreign weapons. He returned to Hawai‘i with his own cannons, muskets, and gunpowder. Upon accepting the invitation to ally himself with Kamehameha and live with his family on Hawai‘i Island, Ka‘īana gave these weapons to Kamehameha and agreed to train his warriors, both men and women, in their use.[259]

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[256] For a description of these battles, see Desha, *Kamehameha and His Warrior Kekūhaupi‘o* and Cachola Abad, *The Evolution of Hawaiian Socio-Political Complexity*. Cachola Abad, notes that two of these major battles were fought in 1782 when Kalani‘ōpu‘u died and the third was fought in 1786.
[257] Kuykendall, *The Hawaiian Kingdom, Vol. I*, p. 20.
[258] *Id.*, pp 34-35.
[259] Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, pp. 228-229; Kamakau, *Ruling Chiefs of Hawaii*, pp. 153; Kuykendall, *Hawaiian Kingdom, Vol. I,* p. 22, 35.

Inter-Island Wars

During the wars on Hawai‘i Island, Maui High Chief Kahekili had gained control, either directly or through alliances over all of the other islands. He was poised to become the first chief to unite the islands of Hawai‘i under his rule. If he had achieved this victory, the history of Hawai‘i might have unfolded very differently.

In 1781, upon hearing of the failing health of Kalani‘ōpu‘u, Kahekili‘s first move was to regain control over the district of Hāna on his own island of Maui. In a battle that lasted one year, the fortress of the Hawai‘i Island warriors at Ka‘uiki, Hāna, was finally penetrated, the warriors were slaughtered and the district of Hāna was once again under the ruler of Maui.[260] Kahekili's next move was to invade O‘ahu and defeat Kahāhana and the O‘ahu chiefs. In January 1783, a decisive battle was fought in the area behind Puowaina (Punchbowl), facing Pauoa and Kapena. Kahāhana's army was thoroughly defeated. Kahāhana and his wife fled to the mountains where they were fed and clothed by the commoners for two years and six months. When Kahāhana was finally apprehended, Kahekili had him killed, spurring the O‘ahu chiefs to plot the overthrow of the hated Kahekili and the Maui chiefs.[261] Learning of the plot, Kahekili attacked the rebels and ruthlessly killed and tortured the O‘ahu chiefs and chiefesses. Kahekili‘s victory in 1783-1785 decisively defeated a generation of O‘ahu chiefs. Significantly, this laid the groundwork for Kamehameha's ultimate conquest of the Maui chiefs in the Battle of Nu‘uanu on O‘ahu in 1795 because the people of O‘ahu bitterly resented – and therefore felt little loyalty to – forces of occupation from Maui.[262]

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[260] Kamakau, *Ruling Chiefs of Hawaii,* pp. 115-116. Fornander, *An Account of the Polynesian Race, Volume 2*, pp. 215-217. Fornander notes that the surrender of the Ka‘uiki fortress occured at about the same time as the passing of Kalani‘ōpu‘u.

[261] *Id.*, pp. 128-141; Fornander, *An Account of the Polynesian Race, Volume 2,* pp. 216-228.

[262] Kamakau, *Ruling Chiefs of Hawaii*, p. 138. "When Kahekili learned that Elani of ‘Ewa was one of the plotters, the districts of Kona and ‘Ewa were attacked, and men, women, and children were massacred,

At this point, Kahekili assumed control over O‘ahu and Moloka‘i, in addition to the islands of Maui, Lāna‘i and Kaho‘olawe, which he already ruled. Through his alliance with his half-brother, Kā‘eokūlani of Kaua‘i, he effectively controlled all of the islands, except Hawai‘i. Kahekili ruled his expansive realm from Waikīkī on O‘ahu and dispatched his son and heir, Kalanikūpule to rule Maui.[263]

Meanwhile, on Hawai‘i Island, by the spring of 1790, Kamehameha had acquired an arsenal of foreign weapons, including a Western schooner and a fleet of war canoes, and had trained men and women warriors in the skill to efficiently use all of these. Although Kamehameha was not yet in control of the entire island of Hawai‘i, he set out to wage war against Maui, where Kahekili's son, Kalanikūpule, now ruled. Kamehameha had a truce with his Hawai‘i Island rivals and so he asked both ruling high chiefs for assistance. Only Keawemauhili agreed to supply men and canoes.[264]

After some initial skirmishes with the forces of Kalanikūpule in east Maui, the main battle was fought in the central valley of ‘Īao. Kamehameha and his warriors dominated the battle, but the decisive factor in their victory was the use of Kamehameha's newly acquired cannon, Lopaka. Kamakau wrote:

> For two days there was constant fighting in which many of the most skillful warriors of Maui took part, but Kamehameha brought up the cannon, Lopaka, with men to haul it and the white men, John Young and Isaac Davis, to handle it; and there was great slaughter. Had they fought face-to-face and hand-to-hand, as the custom was, they would have been equally matched.[265]

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until the streams of Makaho and Niuhelewai in Kona and of Kahoa‘ai‘ai in ‘Ewa were choked with the bodies of the dead, and their waters became bitter to the taste . . . All the Oahu chiefs were killed and the chiefesses tortured." A lot of the oral histories and genealogies of the O‘ahu chiefs were lost with the killing of these chiefs.

[263] *Id.*, pp. 128-141; Fornander, *An Account of the Polynesian Race, Volume 2,* pp. 216-228.

[264] Kamakau, *Ruling Chiefs of Hawaii*, p. 147. Because of the nature of their escape, the battle was also called Ka‘uwa‘upali (precipice-clawing).

[265] *Id.*, p. 148.

Kamehameha next traveled to the island of Moloka‘i to pursue another equally important traditional path to power. His purpose for going there was to meet with High Chiefess Kalola, the widow of High Chief Kalani‘ōpu‘u and the mother of the High Chief Kīwala‘ō, who Kamehameha’s warriors had slain in the Battle of Moku‘ōhai. Kalola was the guardian of Kīwala‘ō’s high ranking daughter, High Chiefess Keōpūolani, and Kamehameha intended to gain Kalola’s permission to marry this granddaughter. This marriage would enable Kamehameha to appropriate the mana (spiritual power and political status) of the high ranking and sacred daughter of Kīwala‘ō unto himself. More importantly, it would elevate the status of the children that she would bear for him. The marriage would also prevent the power and status of Keōpūolani to be usurped by a rival chief. Already in failing health, Kalola agreed that upon her death, the care of Keōpūolani would fall to Kamehameha. Very soon after this meeting, Kalola died and Kamehameha assumed the guardianship of Keōpūolani. Later, in 1796, a year after the decisive Battle of Nu‘uanu, Kamehameha married Keōpūolani as his 17th, highest ranking and most sacred wife. The children she bore with him became his designated successors, Liholiho Kamehameha II and Kauikeaouli Kamehameha III.[266]

While on Moloka‘i, Kamehameha made plans to invade Kahekili on O‘ahu. He sent a messenger to Kahekili with an offer of peace or war, conveyed with the presentation by his messenger of two maika (game stones), a white symbolizing peace and a black symbolizing war. Kahekili responded that Kamehameha should delay the invasion of O‘ahu until Kahekili’s passing. Kamakau provides the following version of Kahekili’s words:

> Go back and tell Kamehameha to return to Hawaii and watch, and when the black tapa covers Ka-hekili and the black pig rests at his nose, then is the time to cast

[266] Charles Ahlo and Jerry Walker with Rubellite Kawena Johnson, *Kamehameha’s Children Today*, (Honolulu: 2000). This book documents the 30 wives of King Kamehameha I, the children they gave birth to, and their descendants through the end of the 20th century.

stones. Then, when light is snuffed out at Kahiki, that is the time to come and take the land.[267]

While Kamehameha was on Maui and Molokaʻi, the Kaʻū chief, Keōuakūʻahuʻula, took advantage of his absence. Interpreting Keawemauhili's support of Kamehameha's invasion of Maui as the sign of a potential alliance between his two rivals, the resentful Keōuakūʻahuʻula took the offensive and made war on Keawemauhili. After killing Keawemauhili in battle, Keōuakūʻahuʻula invaded and plundered the lands controlled by Kamehameha in Hāmākua and Kohala. [268]

When word of the killing of Keawemauhili and the treacherous attack upon his people and lands reached Kamehameha, he abandoned the plan to invade Oʻahu and immediately returned to Hawaiʻi Island to retaliate against the forces of Keōuakūʻahuʻula. After a fierce battle in east Hāmākua, Keōuakūʻahuʻula and his warriors retreated back to Kaʻū, through Puna and past the Kīlauea volcano. While marching through the area of the volcano, a violent eruption exploded. An entire division, close to 400 warriors, of Keōuakūahuʻula's army was annihilated.[269] The footprints of the fleeing warriors were embedded in the lava and can still be seen today.[270]

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[267] Kamakau, *Ruling Chiefs of Hawaii*, p. 150. Desha, in *Kamehameha and His Warrior Kekūhaupiʻo*, provides a similar account, pp. 263-264.

[268] Kamakau, *Ruling Chiefs of Hawaii*, pp. 151-152; Desha, *Kamehameha and His Warrior Kekūhaupiʻo*, pp. 269-282. Desha wrote, "Also with Kāʻeokūlaniʻs army were some large dogs which he had gotten from some Russians. They had been trained to fight with the enemies of that Kauaʻi *aliʻi*."

[269] Kamakau, *Ruling Chiefs of Hawaii*, p. 152, provides this description, "A pillar of sand and rock rose straight up in the air to a heigh above the summits of Mauna Loa and Mauna Kea, and a flame of fire appeared at its top. It looked as if a little hill were being pushed straight up by a larger one until it burst into masses of sand and rock . . . Eruptions continued for some days and many were killed." Desha, *Kamehameha and His Warrior Kekūhaupiʻo*, pp. 278-279 described it, "Columns of rock and volcanic sand [ash or fine cinder] rose up at placs close to the volcanic pit on the seaward side, accompanied by the flashing of fire above them. The air became filled with fine volcanic sand (one ʻaeʻae), and thos of Keōuaʻs army at that place who were lying down were covered over with that sand. Also the air was filled with sulphur (kūkaepele)."

[270] Kirch, *A Shark Going Inland Is My Chief*, pp. 265-267.

Realizing that Kamehameha was now entangled with an internal war on his home island, Kahekili immediately took action to avenge the slaughter of his chiefs at ʻĪao Valley and regain control of his island. Leaving his son Kalanikūpule to rule Oʻahu, he aligned himself with his half-brother, High Chief Kāʻeokūlani of Kauaʻi, promising to give him control of the lands of Maui. Kāʻeokūlani sailed from Kauaʻi to Oʻahu with his warriors, war canoes, and a large cannon mounted on one of his largest canoes. When he reached Oʻahu, he and Kahekili planned the invasion of Hawaiʻi Island and the demise of Kamehameha. Reverend Stephen Desha in his history, *Kamehameha and His Warrior Kekuhaupiʻo*, wrote:

> They knew that if Kamehameha's strength was not broken at that time, the day would come when Kamehameha would turn and overcome them. This was a very good time for them to seek war with Kamehameha as there was war on Hawaiʻi at that time between Keōua and Kamehameha.[271]

On their way to Hawaiʻi Island, they stopped on Maui to re-group and recruit Maui warriors for the assault on Kamehameha. The main battle of the invading forces of Kahekili and Kāʻeokūlani against Kamehameha was fought at sea off of Waipiʻo Valley. Both sides used cannons acquired from the trade. Kamehameha's cannons were mounted on the *Fair American* and large war canoes, while those of the Kauaʻi chief, as discussed above, were mounted on large war canoes. Because of the prominence of the cannons in the outcome of the battle, it was called the Battle of the Red-Mouthed Cannon. There were heavy losses on both sides and neither side was considered to be victorious. Kamehameha successfully repelled the invaders. Kahekili and Kāʻeokūlani retreated to Maui, where they re-established and sustained their rule through 1794. Kalanikūpule continued to rule Oʻahu on behalf of his father, and Kāʻeokūlani ruled Kauaʻi through his regent, Nakaikuaʻana.[272]

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[271] *Id.*, p. 293.
[272] Kamakau, *Ruling Chiefs of Hawaii*, pp. 159-162; Stephen Desha, *Kamehameha and His Warrior Kekūhaupiʻo*, pp. 290-302; Cachola Abad, *Evolution of Hawaiian Socio-Political Complexity*, p. 469.

A Temple To End the War on Hawai‘i Island

At this point, Kamehameha turned to yet another traditional chiefly path to power. He sought out the Kaua‘i prophet Kapoukahi to provide insight about how to win the war to unite Hawai‘i Island. The prophet advised Kamehameha to build a great temple at Pu‘ukoholā in Kawaihae, Hawai‘i for his war god, Kūka‘ilimoku.[273] Pu‘ukoholā was to be constructed as a class of luakini (war) temples where human sacrifices were offered to the war god. For the consecration of this heiau, Kapoukahi prophesied, "War shall cease on Hawaii when one shall come and shall be laid above on the altar (*lele)* of Pu‘ukohola, the house of the god."[274] The hidden meaning of this prophecy was that Kamehameha's last remaining rival on Hawai‘i Island, Keōuakū‘ahu‘ula, would make the perfect sacrifice to dedicate the heiau and to end the war. Desha provides the following description of the construction of the temple:

> This *heiau* of Pu‘ukohola for the god Kūkā‘ilimoku was built by Ali‘i [chief] Kamehameha and his chiefs and numerous people from Kona, Hāmākua, Kohala, and also from the uplands of Waimea. It was two hundred fifty feet in length, one hundred feet in width, and the surrounding walls were twelve feet thick, rising up eight feet in height on the upper side and, on the lower side, twenty feet. This was perhaps one of the greatest deeds accomplished by Kamehameha at the time when he was seeking the way to achieve victory for himself over this entire archipelago, and it followed the advice of that *kaula* [prophet] Kapoukahi of Kaua‘i and O‘ahu.[275]

When the temple was completed, Kamehameha sent two of his Kona counselors, Keaweaheulu and Kamanawa, to summon his rival Keōuakū‘ahu‘ula to attend the dedication of

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[273] This temple is currently managed as Pu‘ukoholā Heiau National Historic Sited as part of the U.S. National Park System.

[274] Kamakau, *Ruling Chiefs of Hawaii*, p. 157; Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, p. 308, gives this account of the prophecy: "Build the house of the god large and make all the boundaries well. This indeed will be the house of the god. Then the whole island will be his, nor will their be harm to the skin *(a ‘a‘ole ho‘i e nui ka ‘eha o ka ‘ili).* It is the sluice-gate to fetch the fish, then the *niuhi* [shark] will enter, and this will sweeten (*mānalo*) the temple. This is what will defeat the opponent and end the obsession. The nights will be pleasurable all around Hawai‘i, and this condition will reach as far as the other islands."

[275] Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, p. 304.

the war temple. According to Kamakau and Desha, Keōuakū‘ahu‘ula acknowledged his fate, accepted the invitation and made the journey from Ka‘ū to Kawaihae knowing full well that he would be the sacrifice to dedicate Pu‘ukoholā.[276] Indeed, the dedication of Pu‘ukoholā with the offering of Keōuakū‘ahu‘ula, brought an end to the war on Hawai‘i Island and united the island under the supreme rule of Kamehameha.[277]

Peace and Agriculture

To consolidate his rule over his home island of Hawai‘i, Kamehameha made a circuit, on land, of the entire island of Hawai‘i during the Makahiki Harvest Season after the sacrifice of Keōukūa‘ahu‘ula at Pu‘ukoholā. Now that the civil war on Hawai‘i Island was over, he sought to restore order in the lives of the chiefs and people who would now live under his rule. He observed and assessed the conditions under which the common people lived and encouraged them to cultivate the land and make it productive. Desha described this as follows:

> Kamehameha established order in the lives of the *ali‘i* [chiefs] and the *maka‘ainana* [common people]. The common people were to pay heed to the *ali‘i* [chiefs] who held the land and took care of the things to benefit their lives. Likewise, the *ali‘i* [chiefs] were to look after the well-being of the common people who dwelt under their protection. The men were to perform their appropriate work, such as house-building or fishing, and the women were to perform their appropriate work such as beating *kapa* [bark cloth] and weaving mats. This property neatly made by the hands of the women was to become tribute for the *ali‘i ‘ai moku* [district chief] when it was desired. Not only did the women make *kapa* [bark cloth] and weave mats, but they also twined fishing cordage from which both large and small fishing nets were made.[278]

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[276] Kamakau, *Ruling Chiefs of Hawaii*, p. 156, documents a ceremony that Keōua‘ahu‘ula conducted on the evening before he arrived at Pu‘ukohola as evidence that he knew that he would be the sacrifice for the dedication of the heiau, and was resigned to his fate. “They left Kailua and went as far as Luahinewai at Kekaha, where the landed the canoes. Keoua went to bathe, and after bathing he cut off the end of his penis (‘omu‘o), an act which . . . was a certain sign that he knew he was about to die.”
[277] *Id.*, pp. 315-338; Kamakau, *Ruling Chiefs of Hawaii*, pp. 155-158.
[278] Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, p. 342, (translation added in brackets).

At this time, Kamehameha worked side-by-side with the people of Kona to open up extensive new gardens in the uplands, above Kainaliu and in South Kona above Kealakekua.[279] Secure in his control, Kamehameha declared a period of peace on Hawai‘i Island that lasted through 1794. During those years Kamehameha trained his army, built a large fleet of war canoes and had the chiefs work with the common people to plant acres of food for the trade and to supply his army of warriors. All of the other islands were under the control of High Chief Kahekili in alliance with his half-brother Kā‘eokūlani and his son Kalanikūpule.

Between March 1792 and March 1794 the British Captain George Vancouver, who had been on Cook's voyage, made three visits to Hawai‘i (March 1792; February-March 1793; January-March 1794). On his second visit, Vancouver met with Kamehameha and gifted him with cattle that he had acquired in California. Kamehameha placed a kapu (sacred restriction) on killing the cattle and their offspring multiplied and spread wild throughout the hills of Waimea and up the slopes of Mauna Kea.[280] Vancouver made an effort to broker a peace agreement between Kamehameha and Kahekili and Kā‘eokūlani, but it was never finalized.

On Vancouver's last visit to Hawai‘i Island Kamehameha and his chiefs participated in a ceremony through which Vancouver claimed that Kamehameha ceded the island of Hawai‘i to Great Britain. The accounts of others on the voyage describe the event as Kamehameha seeking the protection of Great Britain from other foreign powers. Desha wrote that the event took place in Hilo and that Kamehameha and his leading chiefs swore to become British subjects, although that account is contradicted by other Native Hawaiian historians.[281] Kuykendall believed that from the standpoint of the Hawaiian ali‘i (chiefs), the "transaction was in the nature of a

[279] *Id.*, pp. 344-348.
[280] *Id.*, p 361.
[281] Kuykendall, *Hawaiian Kingdom, Vol. I*, p. 41; Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, pp. 145-380. Desha attributes this information to the Native Hawaiian historian S.L. Peleiholani, but notes that other writers of Hawaiian history did not substantiate this account.

defensive alliance."[282] He noted that the naval officers of other foreign nations who visited the islands recognized the existence of a protectorate or special alliance between Hawai'i and Great Britain.[283]

Victory

Three consecutive events led to the final victory of Kamehameha over his rivals and the assumption of his control over Maui, Moloka'i, Lāna'i, Kaho'olawe and O'ahu. The first event was the passing of Kahekili in the summer of 1794. Kalanikūpule, Kahekili's son, became the sovereign of Maui, Lāna'i, Moloka'i, Kaho'olawe and O'ahu. However, Kā'eokūlani governed Maui.[284]

The second event, in November 1794, was the killing of High Chief Kā'eokūlani in a war on O'ahu by Kahekili's son, Kalanikūpule. This left Kalanikūpule as the sole the ruler of Maui, Lāna'i, Moloka'i, Kaho'olawe, and O'ahu.[285]

The third event was the failure of Kalanikūpule, in January 1795, to launch an armed fleet of canoes and foreign ships to wage war against Kamehameha on Hawai'i Island. After the slaying of Kā'eokūlani and the defeat of the Kaua'i chiefs, Kalanikūpule gained control of two foreign ships that were anchored in Honolulu harbor - the *Jackall* and the *Prince Lee Boo*. Having possession of these ships and their large arsenal of guns and ammunition, Kalanikūpule opportunistically decided to organize his warriors and a fleet of canoes to make war on Kamehameha on Hawai'i Island. Traveling under cover of night, the foreign crew managed to re-take possession of the ships, the guns and the ammunition. Leaving Kalanikūpule and his wife on

[282] Kuykendall, *Hawaiian Kingdom, Vol. I*, pp. 41-42.
[283] *Id.* p. 54.
[284] Kamakau, *Ruling Chiefs of Hawaii*, pp. 166-168; Kuykendall, *Hawaiian Kingdom, Vol. I*, pp. 44-45, cites Fornander regarding Kahekili's successors.
[285] Kamakau, *Ruling Chiefs of Hawaii*, pp. 168-170; Kuykendall, *Hawaiian Kingdom, Vol. I*, p. 45.

shore at Waikīkī, they sailed to Hawai‘i Island and reported to John Young, Isaac Davis and Kamehameha about the actions of Kalanikūpule. According to Kamakau, before the crew departed for their next destination, they also turned over their guns and ammunition to Kamehameha.[286]

The auspicious moment to launch a war against Kalanikūpule had arrived and Kamehameha was fully prepared. He had an army of 16,000 men and women warriors who were well-trained and fully armed, a fleet of 1,200 canoes, and four foreign ships to transport his warriors, weapons and supplies to O‘ahu.[287] Stopping on Maui and Moloka‘i along the way, the invading forces of Hawai‘i Island reached Waikīkī on O‘ahu and stretched east as far as Wai‘alae Kahala. The final battle for control of O‘ahu, Maui, Moloka‘i, Lāna‘i and Kaho‘olawe was fought at the Nu‘uanu Pass, called the Pali, in February 1795. Kamehameha won a decisive victory.

As he had done on Hawai‘i Island, after gaining control of all of its districts, Kamehameha made a circuit, on land, of each district of O‘ahu. He also sent his men into the communities to collect guns, knowing that if the people had weapons it would breed rebellion.[288] At each place, he stopped for a few days and he and his chiefs met with the common people to assure them of their safety and well-being under his peaceful rule. They also worked side-by-side with the common people to plant taro and sweet potato fields and encourage them to continue to farm the land and make it productive. Desha described the cultivation as follows:

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[286] Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, pp. 393-398; Kamakau, *Ruling Chiefs of Hawaii*, pp. 170-171.

[287] Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, p. 400 Desha said there were 8,000 warriors but also wrote that according to the descriptions of ancient historians of Hawai‘i, that the true number of warriors was 16,000. Sahlins, *Anahulu*, p. 41, writes that Kamehameha‘s fleet was divided into four “divisions” of 300 hundred canoes each, in other words, 1200 war canoes.

[288] *Id.*, pp. 419-424.

> Before he began his journey, he commenced the planting of *kalo* at the place called Kapālama and Niuhelewai. He planted many *kalo* tops (*huli kalo*) in the *kalo* patches in which the *kalo* had been heedlessly pulled up during the time of war. In this he was greatly assisted by his warriors from Hawai‘i. Not only did his warriors participate, but Kamehameha encouraged his *ali‘i* from Hawai‘i to enter into this work of farming on the land over which they had triumphed . . .When the people of the island of O‘ahu saw the good example set by this victorious *ali‘i* of Hawai‘i, they were inspired and ceased to feel abased (*mana‘o hopepe*), and they worked as the saw Kamehameha was doing.[289]

Kamehameha kept his army on O‘ahu in preparation for an invasion of Kaua‘i. According to some accounts, O‘ahu's resources were stretched to the point of near famine, which was another reason for Kamehameha's concerted effort to have the chiefs and the common people re-focus and re-double their efforts on cultivation. In the spring of 1796, Kamehameha launched his fleet of war canoes to invade Kaua‘i. However, the canoes met a storm in the middle of the channel between O‘ahu and Kaua‘i. Some swamped, some returned to O‘ahu, and the invasion failed.[290] Later in 1796, Kamehameha received news of a rebellion being organized by a Maui chief, Nāmakehā, who was living in Ka‘ū. He returned to Hawai‘i Island with his warriors and easily defeated the rebel chiefs.[291]

Kamehameha's rise to power epitomized and demonstrated his effective utilization of the various traditional routes to power that had been developed and perfected by the ruling chiefs of his era. First and foremost, was his status as a nephew of the departed high chief, Kalani‘ōpu‘u, who had trained and mentored him as his he did his own son. Before Kalani‘ōpu‘u died, he acknowledged the prominence of Kamehameha by awarding him the guardianship of his

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[289] *Id.*, p. 420.

[290] Lawrence Fuchs, *Hawaii Pono: A Social History* (San Diego: Harcourt Brace Jovanovich, 1961), p. 7, states, "Insatiable, he [Kamehameha] headed for Kauai with a large force but returned exhausted and depleted, due, said Kamehameha, to a storm at sea; Kauaians insist that he was repulsed by the courage of their islanders, and even to this day, skulls are plucked from the 'invasion' beaches to prove the point."

[291] Kamakau, *Ruling Chiefs of Hawaii*, pp. 172-174; Sahlins, *Anahulu*, p. 41. The chiefs and people of Ka‘ū, home district of Kamehameha's last rival, resented Kamehameha's sacrifice of their great chief, Keōukū‘ahu‘ula at the war temple, Pu‘ukoholā.

esteemed war god, Kūkailimoku. Second, was the cultivation and maintenance of a major and longstanding alliance with the powerful district chiefs of Kona. Third, Kamehameha cemented his alliance with the Kona chiefs through his marriage to the High Chiefess Ka‘ahumanu, the daughter of Ke‘eaumoku and niece of the remaining Kona chiefs.[292] Fourth, was his invocation of the chiefly gods. He always made certain to honor the gods and their sacred restrictions. The volcanic eruption which overwhelmed the warriors of Keōuakū‘ahu‘ula validated that the goddess Pele was on the side of Kamehameha because of the honor and respect he accorded to her. Fifth, he followed the advice of his priests and prophets and honored the gods who were under his care by constructing, Pu‘ukoholā, a major temple for his war god. Sixth, he exercised his religious authority to advance his military aims by offering his rival Keōuakū‘ahu‘ula as the ultimate sacrifice to dedicate the Pu‘ukohola temple. Seventh, he elevated his own status and that of his designated heirs and political successors through his marriage to the highest ranking and most sacred chiefess, Keōpūolani, the daughter of the slain Kīwala‘ō. Most significantly, Kamehameha honored his obligation to look after and care for the common people. He guided them in production and labored with them, side by side, in the cultivation of the land. Adding to these traditional routes to power, Kamehameha was able to understand the importance of the trade and to take advantage of the technology introduced by the traders. He also recognized the military skills and expertise of two foreigners and a Native Hawaiian chief and engaged their services to train his warriors in the foreign technology. The true test of his leadership came after his conquests. The challenge that faced him was how best to consolidate and organize the chiefs and common people of the island chiefdoms that he had conquered into a unified kingdom.

[292] Indeed, Ka‘ahumanu was always deemed Kamehameha’s favorite wife, and became one of the most powerful figures in the kingdom. *See* Kamakau, *Ruling Chiefs of Hawaii*, pp. 82, 84 (birth of Ka‘ahumanu).

Ke Aupuni (The Government) of Kamehameha I

When Kamehameha left O‘ahu to subdue the rebellion of Nāmakehā, he was advised by his prophet to take the young chiefs with him to Hawai‘i and appoint commoners to be in charge of O‘ahu. This would not only enable Kamehameha to keep a watchful eye on the young chiefs, it would also deter the potential for them to conspire against him in his absence. Kamehameha placed his steward, Kuihelani in charge of governance of O‘ahu and Kahanaumaika‘i in charge of collecting the taxes.[293] After the defeat of Nāmakehā, Kamehameha stayed on Hawai‘i for another six years, rebuilding his fleet of war canoes for his intended invasion of Kaua‘i.

While on Hawai‘i, according to Kamakau, Kamehameha established a "deliberative council" consisting of his counselors and chiefs who handled the affairs of government in matters of war and the welfare of the people.[294] This "deliberative council" had its antecedents in the ‘aha ali‘i councils of each island, described in Chapter Two, and served as the predecessor to the privy council that was instituted under the 1840 Constitution. According to Desha, Kamehameha chose skilled persons among his chiefs to serve as counselors and advisors to discuss the administration of the islands. After he met with these men, he reported to his ‘aha kuhina (council) who were the chiefs who were responsible for his rise to power. Desha wrote:

> His first conference was held with these men who were skilled in government administration, and when they were of the same mind, then he reported to his *‘aha kuhina* [council] who were: Ke‘eaumoku, the father of Ka‘ahumanu; Keaweaheulu; and Kame‘eiamoku and his twin sibling, Kamanawa, all of whom were called *makua kāne* [uncles] to said Pai‘ea Kamehameha. These high-ranking *ali‘i* had fought with Kamehameha in the battles to conquer the kingdom. This governmental action by Kamehameha showed his political skill because these *ali‘i* of his *‘aha kuhina* were the pillars of his house of government, and they had many followers.[295]

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[293] Kamakau, *Ruling Chiefs of Hawaii*, p. 173.
[294] *Id.*, 175.
[295] Desha, *Kamehameha and His Warrior Kekūhaupi‘o*, p. 451. His fifth great warrior, Kekūhaupi‘o died in 1784 in Kona.

Regarding, the government of Kamehameha, Kamakau wrote that the four Kona uncles were appointed as his governors. He wrote:

> He made his uncles, Keaweaheulu, Keʻeaumoku, Kameʻeiamoku and Kamanawa, who had aided him to secure the rule, his governors (kuhina) and gave them large tracts of land from Hawaii to Oahu in payment for their services; Kamehameha himself had no power to recover these lands.[296]

According to Dr. Kameʻeleihiwa these great chiefs were given the right to pass their lands on to their descendants upon their death, instead of having the land revert to the King. This was an unprecedented privilege and was reserved for these chiefs alone.[297] All other lands distributed to his chiefs and foreign allies were to revert to his successor after Kamehameha passed away, as was the established tradition.

Native Hawaiian historian, John Papa ʻĪʻī described the division of lands on Oʻahu as follows:

> For the benefit of the young people of today and those of the future, the land divisions were as follows: The *ʻiliʻaina* land of Kaneloa in Waikiki and also the *ahupuaʻa* of Punaluu in Koolauloa to Keliimaikai [brother of Kamehameha]; Hamohamo and the *ahupuaʻa* of Kaawa to Keawe a Heulu [one of the four Kona uncles]; Kaluaokau and Pau and the *ahupuaʻa* that includes the two Laie's to Kalaimamahu [brother of Kamehameha]; Kalaepohaku and a part of Halawa for an *ahupuaʻa* to John Young; Kanewai and a *kalana* land division of Moanalua to Keeaumoku [one of the four Kona uncles]; Kapunahou and Moanalua for his *ahupuaʻa* to Kameeiamoku [one of the four Kona uncles]; Waialae together with all of the large ʻili *kupono* within the lands of the king to Kaahumanu [wife of Kamehameha and daughter of Kona uncle, Keʻeaumoku].[298]

A young High Chief of Kona, and nephew of Keʻeaumoku, Kalanimōkū, was appointed as the pūkaua (commander-in-chief) and puʻukū nui (chief treasurer). His duty was to divide the lands to the chiefs and commoners, to all those who had contributed to the victory of

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[296] Kamakau, *Ruling Chiefs of Hawaii*, p. 175. There is no reference as to which islands each of the uncles were appointed to rule.
[297] Kameʻeleihiwa, *Native Land and Foreign Desires*, p. 58.
[298] John Papa ʻĪʻī, *Fragments of Hawaiian History* (Honolulu: Bishop Museum Press) pp. 69-70. Identification of chiefs added in brackets.

Kamehameha. Kamehameha waived the privilege of giving anything away without the consent of the treasurer. If the treasurer did not confirm a gift it would not be binding. Kamakau wrote:

> If he were staying, not in Kailua but in Kawaihae or Honaunau, the treasurer had to be sent for, and only upon his arrival could things be given away to chiefs, lesser chiefs, soldiers, to the chief's men or any others. The laws determining life or death were in the hands of this treasurer; he had charge of everything.[299]

Together with his counselors and chiefs, Kamehameha made laws to protect both the chiefs and commoners, such as prohibiting murder, theft, destruction of property, taking of property without cause, robbing the weak, praying to death and to observe the restrictions sacred to the gods.

Kamehameha also regulated the fishermen and the distribution of their catch. He recognized and supported skilled wood workers, strong paddlers and persons skilled in traditional arts and crafts. He sponsored kahuna (experts) skilled in the arts of healing and he honored the gods in their temples. He organized the collection of annual tribute and appointed tax collectors throughout the islands. Kamakau wrote:

> Kamehameha had tax collectors who went out to ear-mark the hogs that were given him and to see that one-tenth of the taro patches, dry-land taro, and sweet-potato cultivations were marked by sticking up one end of a sugar can stalk as a sign where his property ended. He appointed tax gatherers for large and small properties and tax assessors to fix the tax on large and small land divisions all over Hawaii to Oahu in proportion to the size of the lands, the larger lands paying larger taxes and the smaller lands smaller taxes . . . these taxes were paid yearly and delivered at a place named by the king. On all the tracts of land in the different divisions certain days of the year were set aside as days of cultivation of food for the king, for his use and for that of the chiefs and people who lived with him.[300]

The taxes collected from the common people continued to be in the form of food and goods, such as bark cloth, hogs, dogs, chickens, mats, nets and feathers.[301]

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[299] Kamakau, *Ruling Chiefs of Hawaii*, p. 175
[300] Kamakau, *Ruling Chiefs of Hawaii*, p. 177
[301] *Id.*

According to Kamakau, Kamehameha appointed men to serve under the different chiefs as stewards, and he summoned the chiefs to come and live with him. He discouraged the chiefs from living far away where they would be able to gather support and conspire against his rule. Kamehameha continue to train warriors loyal to him from among the chiefs and the commoners.

Kamehameha stayed on Hawai‘i Island through 1802, until he was ready to launch a fleet of 20 to 30 ships and 800 peleleu (double) war canoes to transport 7,000 to 8,000 warriors to O‘ahu to launch an invasion of Kaua‘i. All of these had been constructed at a naval yard in Kawaihae by European and Hawaiian carpenters and blacksmiths.[302] Through the trade, he had accumulated an arsenal of 600 muskets, 14 cannon, 40 swivel guns, and six small mortars.[303] When Kamehameha left for O‘ahu, John Young was appointed as the governor of Hawai‘i Island in his absence.[304] The expedition first landed at Maui, where they lived for a year feeding and clothing themselves with the abundance of Maui, Moloka‘i, Lāna‘i and Kaho‘olawe. While there, the young Liholiho, destined to succeed his father as Kamehameha II, rededicated several heiau (temples). At that time Kame‘eiamoku, one of the four Kona uncles passed away and was succeeded in his position on Kamehameha‘s council by his son, High Chief Ulumaheihei Hoapili (Hoapili).[305]

Kamehameha and his forces landed on O‘ahu in 1804 just when a fatal epidemic that the Hawaiians called ma‘i oku‘u was spreading throughout O‘ahu. It was likely cholera and it rapidly spread to every island. [306]

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[302] Sahlins, *Anahulu*, p. 43.
[303] Sahlins, *Anahulu*, p. 43, cites Urey Lisiansky, *A Voyage Around the world in the Years, 1803, 1804, 1805, and 1806* (London: Booth, 1814), p. 33.
[304] Kuykendall, *Hawaiian Kingdom, Vol. I*, p. 54.
[305] Kamakau, *Ruling Chiefs of Hawaii*, p. 188; Kame‘eleihiwa, *Native Land and Foreign Desires*, p. 62.
[306] Kuykendall, *Hawaiian Kingdom, Vol. I*, p. 49, indicates that this was cholera or bubonic plague. Oswald Bushnell, *The Gifts of Civilization: Germs and Genocide in Hawai‘i* (Honolulu: Univ. of Hawai‘i Press, 1993), p. 280-281, states that ma‘i oku‘u was probably typhoid fever, bacillary or amoebic

Hawaiian historian Davida Malo recorded that half of the population died during this epidemic.[307] Samuel Kamakau provided the following description:

> It was a very virulent pestilence, and those who contracted it died quickly. A person on the highway would die before he could reach home. One might go for food and water and die so suddenly that those at home did not know what happened. The body turned black at death. A few died a lingering death, but never longer than twenty-four hours; if they were able to hold out for a day they had a fair chance to live.[308]

Kamehameha himself caught the disease, but survived. Many of the Hawai‘i Island war leaders, chiefs and warriors succumbed to the disease when they got to O‘ahu, including his two prominent generals and counselors, Ke‘eaumoku and Keaweaheulu. Given the debilitation of his forces, the plan to invade Kaua‘i was suspended. With the passing of Ke‘eaumoku and Keaweaheulu, the last of the great chiefs who had enabled Kamehameha's rise to power were gone, leaving Kamehameha to govern the Kingdom with the next generation of chiefs, his trusted foreign advisors, and his wives.[309]

Kamehameha and those warriors who survived the epidemic remained on O‘ahu until 1812, and some of his warriors settled permanently on O‘ahu. Kamehameha engaged in trade and established a naval yard in Honolulu. Anthropologist Marshall Sahlins writes that the accounts of traders from that period note that the armament trade declined in favor of articles

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dysentery and less likely, though possibly "Asiatic cholera." In a personal communication with microbiologist Dr. Rosanna Alegado (Aug. 30, 2012), she stated that the rapid onset of gastroenterological symptoms within 24 hours, strongly support *Vibrio cholera* as the infective agent. In contrast, the incubation period for bubonic plague is between two to six days, and while it includes diarrhea, it would have also been accompanied by the eruption of very prominent bubos, enlarged lymph nodes on the thigh and neck, that Kamakau would surely have noted in his description of the disease. Typhoid fever has an incubation period of around 10 days and persists for approximately a month with a mortality rate less than 50 percent, again inconsistent with the descriptions of the epidemic.

[307] Davida Malo, "Causes for the Decrease of the Population in the Islands." Translated with comments by Lorrin Andrews. *Hawaiian Spectator* 2, no. 2 (1839).

[308] Kamakau, *Ruling Chiefs of Hawaii*, p. 189.

[309] *Id.*, p. 190 He states that with the death of Keaweaheulu, the last of the four war leaders who suffered and gave their lives for the uniting of the kingdom under Kameahema died. As mentioned above, Kame‘eiamoku had died in 1803 on Maui. However, neither he, nor Desha provide an account of the passing of High Chief Kamanawa.

related to shipping and Spanish dollars. Sahlins specifically refers to Archibald Campbell's report that there were more than 30 locally built sloops or schooners hauled up at Waikīkī, a brig of 200 tons purchased from Americans anchored in Honolulu, and ten or 12 smaller vessels on shore at Honolulu.[310]

Under Kamehameha's peaceful rule over the former chiefdoms, foreign trade expanded and flourished. Kamehameha was still determined to extend his rule over Kaua'i and Ni'ihau and he was prepared to invade Kaua'i and fight a war if necessary. However, given that such a war would disrupt the conduct of profitable trade, he instead decided to achieve his elusive goal through diplomatic means. In 1810, Kamehameha sent a representative to Kaua'i to invite High Chief Kaumuali'i, successor of Kā'eokūlani to come to O'ahu to agree to a treaty of peaceful cession. Kaumuali'i feared for his life. After the exchange of several emissaries, Kaumuali'i finally agreed to travel to O'ahu on the ship of the American Captain Nathan Winship. Winship left his first mate on Kaua'i as a hostage to guarantee the good faith of Kamehameha. On O'ahu, in a meeting with Kamehameha, Kaumuali'i agreed to place Kaua'i and Ni'ihau under his supreme rule. Kamehameha accepted and agreed to have Kaumuali'i return to Kaua'i to rule the islands as governor, on his behalf. It was understood that upon the passing of Kaumuali'i, the rule of Kaua'i and Ni'ihau would be transferred to Kamehameha or his successor.[311]

In 1812, Kamehameha returned to Hawai'i Island where he lived until he passed away in 1819. He turned over the conduct of the foreign trade to the younger chiefs and advisers. Kaumuali'i governed Kaua'i on behalf of Kamehameha I. John Young who had been governor

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[310] Sahlins, *Anahulu,* p. 43 Cites Archibald Campbell, *A Voyage Around the World from 1806 to 1812 . . . With An Account of the Present State of the Sandwich Islands* (Honolulu: Univeristy of Hawai'i Press, 1967) pp. 111-12, 144.

[311] Kuykendall, *Hawaiian Kingdom, Vol. I*, p.50-51; Kamakau, *Ruling Chiefs of Hawaii*, pp. 196-197. Both sources also note that Kamehemaha's chiefs plotted to kill Kaumuali'i and when Isaac Davis warned him, he immediately returned to Kaua'i. The chiefs later poisoned Isaac Davis for what they viewed as a betrayal.

of Hawai‘i while Kamehameha was on O‘ahu, was then made governor of O‘ahu and assigned to conduct the foreign trade on behalf of the King. The great chiefs who had served as the governors and counselors of Kamehameha were replaced by their sons - Koahou, son of Kamanawa; Hoapili, son of Kame‘eiamoku; Kahekili Ke‘eaumoku, son of Ke‘eaumoku; and Haihā Nāihe, son of Keaweaheaulu. According to Kamakau, they inherited all the rights of their fathers, on their district lands, large and small. Kalanimōkū continued to be the supreme war leader and administrator for the kingdom.

Kamehameha continued his policy of keeping the great chiefs near to him, requiring them to accompany him when he traveled from place to place. While these chiefs received the tribute from their landholdings, it was the land stewards who actually managed their lands on each island. Therefore, the islands continued to be managed as they had under their individual paramount and district chiefs, and the kingdom effectively functioned as a federation of islands under the central rule of King Kamehameha and his council of chiefs.[312]

Kuykendall characterizes the government of Kamehameha I as a feudal autocracy in theory, but not in actual practice.[313] Again, his use of the term "feudal" is effectively contradicted by his own narrative description in the text itself. He wrote:

> The government continued to be essentially a feudal autocracy. The king's will was the supreme authority, but Kamehameha's will was not arbitrarily capricious; on the contrary, it was just, and he governed his kingdom, as he governed himself,

[312] Kuykendall, *Hawaiian Kingdom, Vol. I*, p. 52-53.

[313] *Id.* As has been described above and will be clarified in Chapter Four discussing the nature of the Bill of Rights and the 1840 Constitution, the term "feudal" as descriptive of the Hawaiian political system is inaccurate. Perhaps Kuykendall used this term because his work was sponsored and reviewed by the Hawai‘i Territorial Government, which had rationalized and attributed its existence to a triumph by American businessmen over a monarchy that it characterized as feudal. The Territorial Government was also deeply engaged in eliminating the Hawaiian language and displacing Hawaiian institutions with American institutions. On pp. vii-ix Kuykendall explained that he started to write the history of the Hawaiian Kingdom in 1922 as the executive secretary of the Historical Commission of the Territory of Hawaii. When the Commission dissolved in 1932, he taught as a professor of Hawaiian History at the University of Hawai‘i. Members of the Commission included the Governor of the Territory and the President and Board of Regents of the University of Hawai‘i.

> in accordance with the acceptable traditions of his race . . . In theory, the land belonged to the king and he could dispose of it as he saw fit; in practice, there was some limitation upon his exercise of this power, for he had to satisfy his supporters or run the risk of rebellion . . . the land held by each great chief consisted of pieces scattered over the several islands instead of being all together on one island. This lessened the danger of rebellion.[314]

Kuykendall notes that governance on each island followed the traditional pattern with the exception that, since the King could only be on one island at a time, he appointed a governor to be his special representative on each island, except Kaua‘i. Kuykendall wrote:

> It is probable that the governorship was at first only a temporary expedient and that it became a permanent institution because of the obvious necessity for such an office under the new conditions. The governors doubtless owed their appointment to their executive ability and their tested loyalty to the king rather than to chiefly rank. The little information we have suggests that they were frequently changed.[315]

In his introduction to the Roster Legislatures of Hawai‘i 1841 - 1918, the Public Archives Librarian, Robert Lydecker, described the governors as having much the same powers over their islands as the paramount chiefs had assumed. He wrote:

> With the uniting of the islands under one government by Kamehameha I, the country was divided into four parts, corresponding in the main with the former Kingdoms, and governors were appointed over them, who had legislative and other powers almost to the extent of the Kings whom they succeeded.[316]

The appointment of governors for each island allowed the day-to-day management of each island to continue to be decentralized and somewhat autonomous, as it had been before the unification under Kamehameha. This allowed the central position of the mō‘ī (king) to be elevated and have oversight over all of the governors and islands. The king also conducted trade, commerce, and foreign relations under his central authority. If anything, the governance of

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[314] *Id.*, pp. 51-52.
[315] *Id.*, pp 53-54.
[316] Robert Lydecker, *Roster Legislatures of Hawaii, 1841-1918* (Honolulu: The Hawaiian Gazette Co., Ltd) p. 3. Note, however, that during the lifetime of Kamehameha I, Kaumuali‘i continued to rule Kaua‘i and Ni‘ihau.

Hawai‘i had more in common with the federal system of governance of the United States than a feudal autocracy.

Despite these changes in the structure of governance among the chiefs, the most significant new factor affecting the lives of the people was the growing importance of the sandalwood trade under the rule of Kamehameha and the diseases that were inadvertently introduced through that trade.

Impacts of Trade During the Rule of Kamehameha

For Native Hawaiians, the cost of initial contact with the Europeans and Americans was extraordinary. Exposure to Western continental diseases such as colds, influenza, dysentery, whooping cough, measles, and influenza killed thousands of Native Hawaiians. Venereal diseases, when not fatal, left the native victims infertile. The cholera epidemic alone, as described above, is reported to have killed half of the population in 1804.[317]

Lt. James King had estimated the Native Hawaiian population at 400,000 when he was part of the expedition of Captain James Cook in Hawai‘i in 1778–79. Recent studies indicate that the population of Native Hawaiians at contact may have been as high as 800,000.[318] In 1823, when the first missionary census was conducted, there were approximately only 135,000 Native Hawaiians. This showed a decline of 66 to 83 percent of the population within only the first 50 years of contact.[319]

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[317] Malo, *Causes for the Decrease of the Population*.

[318] As noted in Chapter 2, Professor Kame‘eleihiwa places the 1778 population at at-least 800,000. Lilikalā Kame‘eleihiwa, *Native Land and Foreign Desires,* pp. 140-41.

[319] Robert C. Schmidt, *Historical Statistics of Hawai’i* (Honolulu: The University Press of Hawai‘i, 1977) Table 1.1. Re-evaluation of the population information by Dr. David Stannard places the pre-contact population at between 800,000 to a million. David Stannard, *Before the Horror* (Honolulu: Univ. of Hawai‘i Press, 1989), pp. 32-58. An estimate of one million would mean that 90 percent of the Native Hawaiian population died within the first 50 years of contact.

Around 1810, traders realized that the fragrant sandalwood was highly valued in China for drawers, chests, fans and combs. As a result, Hawai‘i became more than just a “stop off” for provisions, but, instead, it developed into an integral part of the complex fur and sandalwood trade route to China, especially for the Americans. The following description of how John Jacob Astor, an American mercantilist conducted the fur and sandalwood trade between America, Europe, Hawai'i and China, illustrates the economic forces at work:

> In return for these furs, from London come drygoods and hardware, such as blankets, cutlery, and muskets. From Hamburg, perhaps, are received iron, lead, and gin. Le Havre gives drygoods of a somewhat finer quality than those furnished by London. At New York some of these goods are, perhaps, offered in the open market. Some of the blankets, cutlery, muskets, lead, iron, gin, and other suitable articles are sent into the interior to be sold to the Indians for furs.
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> But those which we are especially concerned in following are loaded on a vessel, intended for the Pacific Ocean. This vessel, perhaps, touches first at one of the Hawaiian Islands, where a miscellaneous assortment of goods from her cargo is sold on short credit because of the low prices made possible by Astor's large capital. Rum is popular, as are the fine textiles from Le Havre. Leaving the natives to collect the sandalwood for which the goods are exchanged, the vessel sails next for Norfolk Sound to trade with the Russians for seal skins and the fur of the sea otter . . . Having pretty well disposed of the cargo they took on board at New York, the captain and supercargo decide to return to the Islands. Here they take on the sandalwood which has been cut for them in their absence on the Coast, and with this and the furs from Norfolk Sound, Columbia River, and California - perhaps some silver and pearl-shell from the last-named place - they sail to Canton.
>
> Here the sandalwood and furs are bartered for teas, silks, nankeens, chinaware, sugar, spices, etc.. - a cargo sure to meet with a ready sale at New York . . . Back to the Hawaiian Islands they head. The wives of the chiefs are impressed by the beautiful Chinese silks. What matter that their storehouses are already piled with goods sufficient to last a generation? There is plenty of sandalwood on the mountains, plenty of commoners to cut and carry it to the seashore free of charge. Soon a part of the Canton cargo has been sold and the ship's sails are again set for the coast of the Americas.[320]

[320] Kenneth Wiggins Porter, *John Jacob Astor, Business M*an, Vol II (New York: Russell & Russell, 1966), pp. 662 - 664.

The sandalwood trade further increased the social and cultural disparity between the chiefs and the common people, providing the seeds for the common people to withdraw away from the centers of trade in favor of perpetuating their customary way of life. The chiefs ordered the common people to go into the mountains for weeks at a time to cut sandalwood and haul it to the shore. Consequently, they often had neither the time nor the energy to cultivate their land and to fish for food. The cycle of continuous planting was disrupted and for the first time Hawaiʻi experienced widespread famine from Kauaʻi to Hawaiʻi Island.[321]

King Kamehameha moved the central government's full authority to intervene in the economic crisis precipitated by the sandalwood trade. He established a monopoly over sandalwood and granted the right to trade in this highly prized commodity to only a select group of chiefs. He then ordered the chiefs and the people under them to farm the land and get the islands out of the grip of a famine. Historian Samuel M. Kamakau described this development as follows:

> He [Kamehameha I] ordered men into the mountains of Kona and Ka'u to cut sandalwood, paying them in cloth and in tapa material, food and fish. Other men carried the wood to the landings . . . the chiefs also were ordered to send out their men to cut sandalwood. This rush of labor to the mountains brought about a scarcity of cultivated food throughout the whole group. The people were forced to eat herbs and tree ferns, hence the famine called Hi-laulele, Haha-pilau, Laulele, Pualele, ʻAmaʻu, or Hapuʻu from the wild plants resorted to. The chief [Kamehameha I] immediately declared all sandalwood to be the property of the government and ordered the people to devote only part of their time to its cutting and to return to the cultivation of the land.[322]

Overall, Kamehameha exercised his central authority and established a monopoly on all trade by virtue of his control of all the islands of Hawaiʻi. The trade had led the chiefs and the government to pursue political and economic interests separate from sustaining the general welfare of the common people. This experience provided the common people a lesson and

[321] Kuykendall, *Hawaiian Kingdom, Vol. I*, p. 88-91.
[322] Kamakau, *Ruling Chiefs of Hawaii*, p. 204.

instilled in them a determination to hold on steadfastly to the customs, practices and knowledge that had always enabled them to subsist and be self-sufficient and independent of the political and economic ambitions of the chiefs.

‘Ai Noa: Abolition of the Religion of Divine Chiefs

Kamehameha I died on May 8, 1819 in Kailua-Kona, Hawai‘i. His death led to the first major adjustment to the nature of the rule of the Hawaiian monarchy. After his return to Hawai‘i Island in 1812, Kamehameha had empowered the Kona chiefs and his politically influential wife, Ka‘ahaumanu, with the privilege of conducting most of the foreign trade and diplomatic relations on his behalf, especially the lucrative sandalwood trade. Upon Kamehameha's death these chiefs had the principal vested interest in sustaining the centralized government and they also had the principal landholdings in the kingdom.[323]

The problem facing the central government and the chiefs who had staked their future upon its development was that Liholiho, Kamehameha’s heir lacked the influence and experience to hold together the alliance that Kamehameha had forged during his rise to power and reign as king. The parallel power structure of traditional ritual chiefs versus the newly emerging central government conceded considerable prominence to the rival traditional chiefs. To bolster Liholiho’s rule, High Chiefess Ka‘ahumanu, Kamehameha’s most politically influential wife, who was also the sister and cousin of the heirs of the four Kona uncles, was appointed to jointly rule with Liholiho as kuhina nui or premier while her cousin (her mother’s brother’s son), Kalanimōkū headed the council of chiefs and served as prime minister.[324] The prestige and influence of the traditional divine chiefs would have to be minimized or eliminated for the rule of

[323] Marshall Sahlins, *Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom* (Ann Arbor: University of Michigan, l981), pp. 55-64.
[324] *Id.*, p. 55-64

Kamehameha's heirs and allies to be unchallenged. Abolition of the system of kapu (sacred restrictions) that also sustained the alternative power structure of traditional divine chiefs would accomplish this and helped consolidate the rule of the successor government.

The event itself was timed in accordance with the funeral rituals following the death of King Kamehameha I and the transition of power to the new king, Liholiho; the Kuhina Nui (premier) Ka'ahumanu; and the head of the Council of Chiefs, Kalanimōkū. Kamehameha's son Liholiho was the designated political successor and heir to hold in trust the lands conquered by Kamehameha, from Hawai'i Island to Ni'ihau. Kamehameha's nephew Kekuaokalani, son of a favorite brother, Keli'imaika'i, was the designated religious successor who inherited the guardianship of the chiefly family's war god, Kūkā'ilimoku. This role made Kekuaokalani the most powerful ritual and divine chief of that time. Kekuaokalani was in the same ritual and political position that Kamehameha had been upon the death of his uncle Kalani'ōpu'u.[325]

Upon Kamehameha's death, Liholiho and Kekuaokalani retreated to Kawaihae and remained there in seclusion for 10 days to avoid the defilement of the corpse while it was being prepared for consecration. This also protected them from contamination by the chiefs and general populace who, as part of the funeral observances, were released from observing the traditional kapu (sacred restrictions) that had been imposed and enforced by King Kamehameha I. When a ruling chief died, his kapu over the people and the land were lifted and women were allowed to enter the temples, eat restricted foods, and eat with the men. Kamakau described this as follows:

> In old days the period of mourning at the death of a ruling chief who had been greatly beloved was a time of license. The women were allowed to enter the heiau, to eat bananas, coconuts, and pork, and to climb over the sacred places . . . Free eating followed the death of the ruling chief; after the period of mourning

[325] The description of the events leading up to the 'Ai Noa and through the Battle of Kuamo'o are derived from Kamakau, *Ruling Chiefs of Hawaii*, King David Kalākaua, *Legends and Myths of Hawaii: The Fables and Folklore of a Strange People* (Honolulu: Mutual Publishing, 1990) and Sahlins, *Historical Metaphors and Mythical Realities.*

> was over the new ruler placed the land under a new tabu following old lines. In this case Kamehameha II merely continued the practice of free eating.[326]

Ten days after Kamehameha's death, according to tradition, Liholiho returned to Kailua and was formally installed as Mōʻī (King). According to Kamakau, Liholiho received the ritual blessing of the high priest Hewahewa and then was installed by Kaʻahumanu who announced the last commands of Kamehameha as follows:

> O Heavently one! I speak to you the commands of your grandfather. Here are the chiefs, here are the people of your ancestors; here are your guns, here are your lands. But we two shall share the rule over the land.[327]

An account by the missionary historian William De Witt Alexander states that Kaʻahumanu also used the occasion to announce her intention, and the intention of her people, to abandon the eating restrictions and to live according to foreign practices. She said:

> We intend that the husband's food and the wife's food shall be cooked in the same oven, and that they shall eat out of the same calabash. We intend to eat pork and bananas and coconuts and to live as the white people do.[328]

Following the formal installation, Liholiho and Kekuaokalani returned to their seclusion at Kawaihae. While away, the revelries and freedom from the traditional restrictions continued. It would be the responsibility of the new king to impose the restrictions upon the people and the land. During Liholiho's absence, the council of chiefs led by Kaʻahumanu and Kalanimōkū met and discussed issues raised by the succession, including the all-important allocation of the lands and the appropriation of the sandalwood. During this period the plan to abolish the traditional restrictions altogether was finalized.

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[326] Kamakau, *Ruling Chiefs of Hawaii*, p. 222. He also wrote, "The custom of the tabu upon free eating was kept up because in the old days it was believed that the ruler who did not proclaim the tabu had not long to rule."
[327] *Id.*
[328] As cited in Sahlins, *Historical Metaphors*, p. 63.

On the day of the monthly memorial rite of Kamehameha, in October 1819, on the night of the Kūkahi moon, Ka‘ahumanu prepared a feast.[329] Liholiho and Kekuaokalani were summoned to Kailua to participate in the feast. Kekuaokalani refused to go because he anticipated the declaration of the ‘Ai Noa (freedom from sacred eating restrictions) and did not want to be compromised into violating the restrictions and undermining his status as the most powerful ritual and divine chief.

Liholiho made a slow voyage to Kailua during which time he and his retainers drank rum, feasted and danced the hula. Upon landing at Kailua, according to an account by King David Kalākaua in his *Legends and Myths of Hawaii*, Liholiho spent the afternoon drinking and smoking with the chiefesses. His mother, Keōpūolani, ate the restricted banana and drank the milk of a coconut.[330]

In the evening, Liholiho went to the feast. Separate tables were set for the women and the men and Liholiho proceeded to sit down with the women. Some thought he was drunk or disoriented, and many rose from the tables in horror. When it became clear that he was acting deliberately and had the sanction of the high priest and a majority of the chiefs, the people began to declare that the ‘Ai Kapu or the sacred eating restrictions was replaced with the ‘Ai Noa or freedom from the sacred eating restrictions. The restrictions on men and women eating together was broken and there would always be unrestricted eating. Following the feast, further orders were issued that the ‘Ai Kapu would not be re-imposed by King Kamehameha II but that the ‘Ai Noa was to be accepted throughout the islands. Orders were also given for the temples to be dismantled and the images of the gods to be burned. Messengers were sent to Maui, Moloka‘i,

[329] Bernice Pauahi Bishop Museum, Hawaiian Hall exhibit on the Hawaiian moon calendar identifies Kūkahi as the moon when the Sacred Eating Restrictions were abolished in Kailua, Kona.
[330] Kalākaua, *Legends and Myths of Hawaii*, pp.429-446.

O‘ahu and Kaua‘i and the ‘Ai Noa and abandonment of the religion of divine chiefs was implemented throughout the islands.

As anticipated, Kekuaokalani, as the guardian of Kūkā‘ilimoku became the central figure in rallying support for the traditional religion and opposing the Kamehameha chiefs. Rival chiefs united under the leadership of Kekuaokalani and they amassed their forces at Ka‘awaloa in Kona. King Liholiho and his mother, Keōpūlani, made overtures to Kekuaokalani to try and stop the confrontation, but failed. Honoring traditional gods and carrying the war god with them into battle, Kekuaokalani, his wife Manono and the traditional divine chiefs who were not aligned with the Kamehameha chiefs, fought the forces of King Liholiho, Premier Ka‘ahumanu and Prime Minister Kalanimōkū at Ka‘awaloa.[331] In this first battle, Kekuaokalani and the traditional divine chiefs were victorious. In a second battle at Kuamo‘o in Kona, Kekuaokalani, his wife Manono and the rival chiefs were killed in battle and the traditional divine chiefs and their Gods were defeated. The military power of the Kamehameha chiefs proved superior. Political power and authority in Hawai‘i would now be based upon military and secular power rather than divine right. Liholiho’s and Ka‘ahumanu’s rule was secure from challenges of rival chiefs claiming traditional divine rights. The stage was set for the reorganization of the government and the development of new laws and reforms under King Liholiho and his Premier Ka‘ahumanu, as the government made the transition from divine rule to the rule of secular law.

In 1820, the year following the ‘Ai Noa (freedom from sacred eating restrictions), American missionaries began to settle in Hawai'i and convert Native Hawaiians to Christianity.

[331] The war god that Kekuaokalani carried into battle is in the Peabody Museum at Harvard University. The feather cloak that he wore into battle is at the Smithsonian Museum of Natural History.

In that same year, commercial whaling began to attract increasing numbers of foreign settlers who began to demand rights of citizenship and private ownership of land.[332]

The abolition of the traditional religion by its ruling chiefs is unprecedented throughout indigenous Pacific Island societies. The ʻAi Noa abolished the system under which those chiefs who rivaled Liholiho in ritual prominence could lay any claim to political power outside of the context of the central government. With the abolition of divine status, chiefly rank, privileges, and rights were attained through meritorious and loyal service to the evolving government of the monarchy.[333] The abolition of the religion allowed the evolving central government to be consolidated into the sole source of political and military power, prestige and social position in Hawaiʻi.[334]

Economically, the ritual requirements of maintaining the system of religious restrictions and rituals, especially those related to the Makahiki Harvest Season directly conflicted with the trade. The bulk of the trading ships came to Hawaiʻi during the northern winter, which coincided with the Makahiki Harvest Season. In order to conduct trade during this religious season, many restrictions had to be violated, especially those relating to ocean travel. In addition, the Makahiki Harvest Season ceremonies and festivities consumed surplus foods and products that could have gone to the trade. The abolition of the traditional religion allowed for all the surplus food and products to be redirected to the trade.

Socially, the abolition of the religious restrictions contributed to transforming the role of men and women in the developing economy. Up until this time, men conducted most of their

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[332] Kamakau, *Ruling Chiefs of Hawaii;* Kuykendall, *Hawaiian Kingdom, Vol. I.*

[333] Davenport, William, "The Hawaiian 'Cultural Revolution': Some Economic and Political Considerations," LXXI *American Anthropologist* 1-20 (1969); Sahlins, *Historical Metaphors*.

[334] In many Pacific Island nations, the traditional chiefs retain their titles and roles in the conduct of customary practices and matters relating to the village and extended families. For example, in Samoa, the Matai System coexists with the system of formal governance as a territory of the United States. In Fiji and Vanuatu, the village chiefs coexist with the constitutional governments. Tonga is still has a monarchy.

productive labor within the households of the extended families. Women were restricted from planting and cultivating the land, fishing, or cooking food. By lifting these restrictions, women could engage in work to provide for the subsistence needs of the household and the men were freed to conduct more of their productive labor outside of the context of the extended family in the sandalwood trade for the chiefs and as wage laborers for foreigners.

Native Hawaiian historian Lilikalā Kameʻeleihiwa eloquently describes the central role and ambition of Kaʻahumanu in advocating for the freedom from restrictions upon women. She also explains that enlisting the support of Liholiho's mother, Keōpūolani, of Kaheiheimālie, another wife of Kamehameha, and of Liholiho's sisters Kamāmalu, Kīnaʻu and Kekāuluohi was critical in convincing Liholiho to support the ʻAi Noa (freedom from sacred eating restrictions). Upholding the ʻAi Kapu (sacred eating restrictions) in light of the blatant public violation of the restrictions by his mothers and sisters, would have compelled Liholiho to order their death, an action he was loathe to take.[335] Kuykendall refers to the accounts of foreigners in Hawaiʻi at the time who also attributed the main reason for the abolition of the restrictions to the desire of the high chiefesses to have the gender restrictions lifted.[336]

The incomprehensible and horrific decimation of the Native Hawaiian people from foreign diseases contributed to a loss of faith and confidence in the chiefly gods and the social restrictions sacred to them. It is hard to fathom how the survivors were able to cope and maintain a desire for life after witnessing the mass deaths. Dr. Noenoe Silva compared the experience of the Native Hawaiian survivors with that of the Yupʻik people. She wrote:

> In reference to similar catastrophes that befell the Yupʻik people, Harold Napoleon wrote that 'the cataclysm of mass death changed the persona, the lifeview, the world view of the Yupʻik people . . . Their medicines and their medicine men and women had proven useless. Everything they had believed in

[335] Kameʻeleihiwa, *Native Land and Foreign Desires*, pp.66-85.
[336] Kuykendall, *Hawaiian Kingdom, Vol. I*, pp. 65-70.

> had failed. Their ancient world had collapsed . . . from their inability to understand and dispel the disease, guilt was born into them. They had witnessed mass death - evil - in unimaginable and unacceptable terms.'[337]

While Kamehameha I was alive, he held the society together by the force of his personality and leadership. He was widely respected as the king who brought an end to war, honored the Gods and their restrictions, and followed the advice of his priests. Kame'eleihiwa's analysis is insightful regarding this:

> In traditional Hawaiian society, the universe was *pono* [exhibited well-being] when the *Mō'ī* [Paramount Chief/King] was *pono* [just and spiritually grounded]. Conversely, when disaster struck, it was because the *Mō'ī* [Paramount Chief/King] was no longer *pono* [just and spiritually grounded]; he or she had neglected the *kahuna* [priests] or offended the *Akua* [Gods] and must be replaced. Certainly epidemic disease and massive death were signs of loss of *pono* [well-being], but Kamehameha - who ruled at the time - was the epitome of a *pono Ali'i* [just and spiritually grounded chief] . . . if the old *Akua* [Gods] did not *ho'omalu* [protect] and preserve the *Lāhui* [people], even when the *Mō'ī [*King] was as faultless in his *pono* [just and spiritually grounded rule] as had been Kamehameha, why should the *Lāhui* [people] continue to *mālama* [care for and honor] the *Akua* [Gods]? Why should the *Ali'I* [chiefs] and *maka'āinana*[common people] make *ho'okupu* [offerings] to *Lono* [god of agriculture] and *Kū* [God of war], when these *Akua* [Gods] did not protect their lives?[338]

Kamehameha's successors were hard pressed to hold the social system together upon his passing. Before the people had a chance to judge if the fault for the loss of pono (just and spiritually grounded rule) actually lay with the chiefs who governed the land under Kamehameha, and not the King himself, his successors abolished the religion of divine chiefs and its sacred restrictions. They were able to deflect blame for the failure of the king and chiefs

[337] Silva, *Aloha Betrayed*, p. 27.
[338] Kame'eleihiwa, *Native Land and Foreign Desires*, p. 81. Italics in original, translations added.

to protect the people from the ravages of foreign diseases to the failure of the gods and their sacred restrictions to protect the people.[339]

It is crucially significant to note that while the chiefly and state rituals and temples were abolished, the traditional spiritual beliefs and relation of the people to their ancestral deities and to the life forces of nature and the land continued to be the basis of Native Hawaiian cultural values, practices, oral traditions and customs. Native Hawaiian extended families continued to honor their family ancestral spirits and care for the bones of their ancestors. They continued to plant, fish, hunt, and gather in accordance with the belief and practice of aloha ʻāina and mālama ʻāina (respect and caring for the land) and with respect for the spirits of the land and its natural resources. They continued to call upon their deities to draw out the healing powers of native species of plants used as traditional herbal medicine for common ailments and injuries that could be treated. They continued to observe, read and interpret natural phenomena as hoʻailona (spiritual natural signs) to guide them in their daily lives. These extended family beliefs, customs, and practices had pre-dated the establishment of the rites and rituals of the religion of divine chiefs and these extended family beliefs, customs, and practices have survived the abolition of the religion of divine chiefs into the 21st century. As alluded to above and discussed in more detail in Chapter Four, in critical respects, these traditional and customary practices were eventually incorporated into and protected under laws established by King Kamehameha III.

Sahlins cites the observations of the missionaries Thurston and Bishop about the continued adherence of the common people to their religion:

> Certainly they [the common people] had already demonstrated they could outwardly submit to a mandated change of religion without necessarily changing their convictions. Perhaps the missionaries Thurston and Bishop exaggerated

[339] The role of the mass deaths in the loss of confidence in the Gods and religious system is discussed in Kameʻeleihiwa, *Native Land and Foreign Desires*; Silva, *Aloha Betrayed*; and Jon Osorio, *Dismembering Lāhui, A History of the Hawaiian Nation to 1887* (Honolulu: Univ. of Hawaiʻi Press, 2002).

> when they wrote to the ABCFM secretary in 1824, some five years after the downfall of the tabu, that far from renouncing their former gods, possibly two-thirds of the people still adhered to them to some degree and sacrificed to them in private (AB: 5 Aug 1824).[340]

Individuals trained in selected arts such as hula and oli (dance and chant), lāʻau lapaʻau (traditional herbal healing) and lua (the fighting arts) privately perpetuated their customs and practices and trained succeeding generations in these arts. These arts were primarily practiced in private, with relatives and protégés selected to pass on the culture and its values to future generations, except for a brief public flourishing during reign of King David Kalākaua in the 1880s. In the 1970s, despite decades of Christianization and suppression of the Native Hawaiian religion and culture, a renaissance led to a major public revival of cultural and spiritual customs and practices. While remembered and honored by only a few Hawaiian elders by that time, nevertheless, by the end of the 20th century a new generation of Native Hawaiians broadly embraced and honored Native Hawaiian cultural and spiritual beliefs, customs and practices, as will be discussed in Chapter 11.

Summary

The unified interisland kingdom established by King Kamehameha I survived the major political crisis prompted by his passing. A dynasty would be established and a centralized monarchy would evolve into a 19th century constitutional government. Naval and diplomatic agents of the countries conducting trade with Hawaiʻi recognized the authority of the central government established by King Kamehameha I and maintained by his successor Kamehameha II.

[340] Sahlins, *Anahulu*, p. 73

For those at the center of the government, the abolition of the religion of divine chiefs, its sacred restrictions, protocols and rituals empowered them to develop the political system and economy to serve their best interests.

Internal to each island, the central government was represented by a governor and new chiefs who were descendants of the allies of Kamehameha I. The common people remained on the lands of their ancestors and cultivated them for their sustenance. With the abolition of the religion of divine chiefs, the annual offerings connected with the Makahiki Harvest Season were replaced with a system of labor and taxation that revolved around supplying the ruling chiefs and the King with what was needed to fulfill the expanding demands of the foreign trade.

The abolition of the traditional religion and its sacred restrictions and rituals enabled the government to continue its evolution into a secular constitutional government. Kame‘eleihiwa identified some of the factors in the historical dilemma this posed:

> The state religion which ordered the Hawaiian universe was abandoned, removing the foundation upon which Hawaiian society had been established. The breaking of the *‘Aikapu* [Sacred Eating Restrictions] created a kind of religious void at the Chief and State level, although the *maka‘āinana* [commoner] practice of *‘Aumākua* [ancestors] worship continued. Whatever were to be the new rules? How would the *Mō‘ī* [King] be considered *pono* [just and spiritually grounded]? By what right did the *Ali‘i Nui* [High Chiefs], who formerly were Akua [Gods] on earth, have the right to rule if they insisted on no longer observing their divinity?[341]

According to the account of King Kalākaua, Kekuaokalani had a premonition about the costs that abolishing the religion of the divine chiefs would exact from his opponents when he told his wife Manono, “I fear nothing, but the thought has sometimes come to me of late that the

[341] Kame‘eleihiwa, *Native Land and Foreign Desires*, p. 68. Italics in original, translations added.

gods are reserving for Liholiho and his advisers a punishment greater than I may be able to inflict."[342]

The unfolding history of the development of the central government of the Hawaiian Kingdom and Constitutional Monarchy has revealed consequences that were not anticipated and certainly not intended by King Kamehameha II or Premier Kaʻahumanu and Chief Counselor Kalanimōkū when they instituted the ʻAi Noa. Under the democratic government established by the constitutions of Kamehameha III, the common people were given a prominent role in the governance of Hawaiʻi through the House of Representatives, while chiefs were in constant competition with foreigners for positions in the Cabinet and the House of Nobles. Perhaps the Native Hawaiian people of old, if living today, would remind us of Kapihe's prophecy, set out at the beginning of this chapter, and say that it has been fulfilled:

E iho ana o luna	That which is above shall be brought down;
E pii an o lala	That which is below shall be lifted up;
E hui ana na moku	The islands shall be united;
E ku ana ka paia	The walls shall stand upright[343]

In the next era, the King and the chiefs begin to focus on protecting the integrity of the government and the nation from the increasing demands of foreign residents and threats to the

[342] Kalākaua, *Legends and Myths of Hawaii*, p. 445.

[343] Davida Malo, *Hawaiian Antiquities (Moolelo Hawaii)*, p. 115. Samuel Kamakau, *Ke Kumu Aupuni, Ka Moʻolelo Hawaiʻi no Kamehameha Ka Naʻi Aupuni a me kāna aupuni i hoʻokumu ai* (Honolulu: ʻAhahui ʻŌlelo Hawaiʻi, 1996), p. 208, "'E amo ʻia ka malo lōʻihi mai Kuamoʻo a hiki i Hōlualoa. E hui ana nā moku, e hiolo ana nā kapu, e iho mai ana ko ka lani, e piʻi aku ana ko ka honua i ka lani.' Ua kō ka wānanaa a Kaihe; ʻo Kuamoʻo ke kahua kaua i hoʻohiolo ʻia ai nākapu kahiko. ʻO Hōlualoa ka malo lōʻihi, ʻo ka hoʻohui ʻana ia i nā aupuni mai Kahiki a Hawaiʻi Nei. Ua iho mai ke aupuni o ke akua mai ka lani mai, a ke piʻi nei ka poʻe manaʻo ʻiʻo i ka lani. A ke hoʻokō ʻia nei kekahi o ia mau wānana. Kamakau, *Ruling Chiefs of Hawaii*, p. 223, provides a translation of the above passage from *Ke Kumu Aupuni*, "'There shall be a long malo reaching from Kuamoʻo to Holualoa. The islands shall come together, the tabus shall fall. The high shall be brought low, and the low shall rise to heaven." The prophecy was fulfilled when the battle was fought at Kuamoʻo for the downfall of the ancient tabus. Holualoa was the long malo uniting the kindom from Kahiki to Hawaii. The kingdom of the gods fell, and the believers rose to the heavens. Part of the prophecy is still being fulfilled."

independence of the nation from foreign governments. Protection of the natural resources for the subsistence of the people; perpetuation of Native Hawaiian cultural and spiritual beliefs, customs and practices; and holding the monarch and the chiefs accountable to the responsibility of caring for the well-being of the people, evolved into the province of the common people. The perseverance of the common people in the exercise of their traditional and customary beliefs, customs and practices are recognized and incorporated into the laws of the Hawaiian Kingdom and Constitutional Monarchy. These actions combined account for the endurance of the Native Hawaiian culture and nationalism through the 20th century and its elevation entering the 21st century, despite the ʻAi Noa in 1819.[344]

[344] *See generally*, Davianna McGregor, *Nā Kuaʻāina: Living Hawaiian Culture* (Honolulu: Univ. of Hawaiʻi Press, 2007).

Chapter Four: Kamehameha II to Kamehameha III and the Constitutional Monarchy

Generation 24 [Generation 119] - King Kamehameha II (Liholiho) 1819 – 1824

Generation 25 [Generation 120] - King Kamehameha III (Kauikeaouli) 1825 – 1854

According to Kanaka Maoli (Native Hawaiian) historian Samuel M. Kamakau, the last words uttered by Kamehameha I were:

> E ʻoni wale nō ʻoukou i kuʻu pono ʻaʻole e pau.
>
> Endless is the good that I have given you to enjoy.[345]

Subsequently, these words were combined with the famous words of Kauikeaouli, Kamehameha III, upon restoration of sovereignty to the Kingdom of Hawaiʻi in 1843 after a five-month period under British occupation:

> Ua mau ke ea o ka ʻāina i ka pono.
>
> The sovereignty of the land has been continued because it is pono [just, beneficial to the people].[346]

The resulting mele or song honors each of the islands with a chorus that links together the words of Kamehameha I with those proclaimed by his son almost 25 years later.

E naʻi wale nō ʻoukou	Strive indeed, all of you
I kuʻu pono, ʻaʻole pau	Toward the good I've done, boundless
I ke kumu pono o Hawaiʻi	Toward the solid foundation of Hawaiʻi
E mau ke ea o ka ʻāina i ka pono	The land shall live through righteousness

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[345] Samuel Mānaiakalani Kamakau, *Ruling Chiefs of Hawaii* (Honolulu: Kamehameha Schools Press, 1961), p. 211. The Rev. Stephen L. Desha gives a slightly different version of Kamehameha I's final words: "E naʻi wale nō ʻoukou e nā aliʻi, i kuʻu pono aʻu i naʻi ai ʻaʻole loa e pau," translated as "Endless is the good I have conquered for you." Stephen L. Desha, *Kamehameha and His Warrior Kekūhaupiʻo* (Trans. Frances N. Frazier) (Honolulu: Kamehameha Schools Press, 2000), p. 484.

[346] Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham: Duke Univ. Press, 2004), p. 37 (translation in brackets added). Silva notes that this became the motto of the Kingdom and eventually the State of Hawaiʻi, where it has been translated as "The life of the land is perpetuated in righteousness."

E mau ke ea o ka ʻāina i ka pono The land shall live through righteousness

Overview

The rule of Liholiho, King Kamehameha II, was a short five years, from his father's death in May 1819 until his own death in July 1824 from the measles while he was in Great Britain on a diplomatic mission. Despite the briefness, however, events of major historical significance occurred during his reign. These seminal events included the declaration of the ʻAi Noa (freedom from sacred eating restrictions) and the abolition of the chiefly religion and the divinity of the chiefs, the arrival and settlement of American Calvinist missionaries from New England, and the start of the whaling trade.

Liholiho's successor, his brother Kauikeaouli, Kamehameha III, was only 11 years old when he was declared the new mōʻī or king in 1825. Therefore, the Kuhina Nui (Premier) High Chiefess Kaʻahumanu and the Kalaimoku (Prime Minister) High Chief Kalanimōkū actually governed the islands until Kaʻahumanu, passed away in 1832.[347] In fulfilling their traditional roles as aliʻi (chiefs), they sought to ensure the survival of the kingdom and their people amid difficult and massive political and social changes. Premier Kaʻahumanu and Prime Minister Kalanimōkū navigated the Hawaiian government through increasingly complex and sometimes hostile relationships with merchants, seaman and emissaries of the great powers, as well as a rebellion by some Kauaʻi chiefs. Kamehameha III assumed the full authority of his office in 1832, upon Kaʻahumanu's death.[348] By then, he was 18 years old.

[347] Kamakau, *Ruling Chiefs of Hawaii*, pp. 257-258. Liholiho died in London on July 14, 1824, but the bodies of the royal party did not return to the Islands until May 4, 1825, after which a council of aliʻi nui (high chiefs) met and confirmed Kauikeaouli as mōʻī (king).
[348] Lilikalā Kameʻeleihiwa, *Native Land and Foreign Desires: Pehea Lā E Pono Ai?* (Honolulu: Bishop Museum Press, 1992) p. 157

During Kamehameha III's 30-year reign, from 1825 through 1854, three closely related developments unfolded that not only continued to propel Hawai'i into a global system of trade and commerce, but also transformed the nature and character of the Kānaka Maoli (Native Hawaiian) social system. First, a settler community of New England missionaries and European and American merchants, seamen and vagabonds became established in Hawai'i; second, the Pacific whaling industry and commerce flourished; and third, the U.S. became the primary market and trading partner for Hawai'i. Combined, these three developments, along with continued threats from foreign governments, led to the establishment of a constitutional monarchy and a new system of private land ownership that unsettled old relationships and created new relationships between the common people and the chiefs and the foreign settler community.[349]

On June 7, 1839, King Kamehameha III proclaimed the Declaration of Rights, imposing restraints on the government and recognizing individual and communal rights of the chiefs and the common people. Within a year, these declarations were incorporated and transformed into Hawai'i's first constitution in 1840.[350] In the years following, the laws of Hawai'i were established with Organic Acts, passed in 1845-1847, organizing the Executive, Legislature, and Judiciary.[351]

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[349] *See* Jonathan Kay Kamakawiwo'ole Osorio, *Dismembering Lāhui: A History of the Hawaiian Nation to 1887* (Honolulu: Univ. of Hawai'i Press, 2002), pp. 13-33; *see* Merze Tate, *The United States and the Hawaiian Kingdom: A Political History* (New Haven and London: Yale Univ. Press, 1965), pp. 1-20.

[350] Kingdom of Hawai'i Const. of 1840, *reprinted in The Fundamental Law of Hawaii* (Ed. Lorrin Thurston) (Honolulu: Hawaiian Gazette Company, Ltd., 1904), pp. 2-9 ("Prerogatives of the King," "Respecting the Premier of the Kingdom," "House of Nobles," "Respecting the Legislative Body," "On the Judges"); *see also* "Na Kumukanawai O Ka Makahiki 1839 A Me Ka 1840" in *Ka Ho'oilina, The Legacy: Puke Pai 'Olelo Hawai'i, Journal of Hawaiian Language Sources*, Puke (Volume) I, Helu (Issue) 1 Malaki (March) 2002, pp. 43, 48-53, 54-57.

[351] *See, Statute Laws of His Majesty Kamehameha III, Vol. I* (Honolulu: 1846), *Vol. II* (Honolulu: 1847).

During the reign of King Kamehameha III, the United States recognized the independence of the Hawaiian Kingdom and extended diplomatic recognition to the Hawaiian government. The Hawaiian Kingdom and Constitutional Monarchy entered into three agreements and treaties with the U.S. - in 1826, 1842, and 1849 relating to friendship, commerce and navigation.[352] Great Britain, France, and Belgium also recognized the independence of Hawai‘i.[353]

Discernible threads in the evolution of the Native Hawaiian social and political culture distinct from the Hawaiian monarchy began to form during the 1840s. Those seeking to live their lives in customary fashion coalesced when necessary, through *ad hoc* or temporary organizations, with other Native Hawaiians to express resistance to government conduct. For example, numerous Native Hawaiians signed petitions in 1845 against selling land to foreigners, the appointment of foreigners to government offices, and the imposition of new taxes.[354] The continued exercise of traditional and customary beliefs, customs, and practices by the maka‘āinana (common people), despite the abolition of the chiefly religion was eventually recognized and incorporated into the land laws of the Kingdom and Constitutional Monarchy.

This chapter discusses the brief reign of Liholiho, King Kamehameha II, and the overall political, economic and social developments during the reign of Kauikeaouli, King Kamehameha III. Chapter Five will discuss in more detail the evolution and adoption of a system of land ownership unique to the Hawai‘i.

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[352] *See for example*, Treaty with Hawaii on Friendship, Commerce and Navigation, 9 Stat. 977 (1850).
[353] Ralph S. Kuykendall, *The Hawaiian Kingdom, Vol I: 1778-1854 Foundation and Transformation* (Honolulu: Univ. of Hawaii Press, 1938), pp. 196-205.
[354] *See*, Davianna Pōmaika‘i McGregor, *Nā Kua‘āina: Living Hawaiian Culture* (Honolulu: Univ. of Hawai‘i Press, 2007), pp. 3, 12-14, 55-59 (July petition to Kamehameha III by 1600 commoners concerning “the independence of the kingdom,” and prohibition against foreigners owning land).

Kamehameha II

Chapter Three discussed the installation of King Kamehameha II and his first act as mōʻī (king), the declaration of the ʻAi Noa (freedom from the sacred eating restrictions) and the abolition of the chiefly religion and the divinity of the chiefs. On March 30, 1820, only five months after the ʻai noa, the first party of Calvinist missionaries sponsored by the American Board of Commissioners for Foreign Missions (ABCFM) arrived at Kawaihae, Hawaiʻi Island.[355]

According to Native Hawaiian historian Samuel M. Kamakau, the missionaries rejoiced when they received news that the new king, Kamehameha II, had abolished the kapu (sacred restrictions). Hearing that the king was at Kailua, they sailed there and asked permission to land and live in the islands. King Kamehameha II met with the council of chiefs for several days and it was agreed to allow the missionaries to remain in Hawaiʻi for one year. Kamakau wrote, "They agreed that the missionaries might remain on Hawaii for a year without interference with their worship or teaching, and if their work was good they might remain permanently."[356] Some of the missionaries remained at Kailua and others went on to Oʻahu and Kauaʻi. Kamakau described their reception as follows:

> No people could have treated them more kindly. No one begrudged their coming, grumbled, spoke unkindly of them, or raised any trouble, but all dwelt with them in peace.[357]

The missionaries opened schools and began teaching reading, writing, and the English language. Henry Ōpūkahaiʻa, one of several Native Hawaiians who had been connected with the ABCFM in New England, had developed an alphabet, grammar, dictionary and spelling book for the Hawaiian language, which assisted the missionaries in the translation of the Bible into

[355] Kamakau, *Ruling Chiefs of Hawaiʻi*, p. 246.
[356] *Id*., p. 247.
[357] *Id*.

Hawaiian.[358] According to Kamakau, education in reading and writing was enthusiastically embraced by the ali‘i (chiefs) and maka‘āinana (common people) who made rapid progress. In 1823, the king's mother, Keōpūolani, while on her deathbed, was the first chief to formally convert to Christianity.[359] However, as discussed later in this chapter, it was the Kuhina Nui (Premier) Ka‘ahumanu who became the most enthusiastic patron of the missionaries in the islands.

Native Hawaiian historian and scholar Lilikalā Kame‘eleihiwa observes that one of the practical ramfications of the abolition of the kapu and the divine status and prerogatives of the chiefs, was the abandonment of the practice of kālai‘āina (re-division of the lands by the new ruler). As discussed in Chapter Three, Kuhina Nui Ka‘ahumanu and the council of chiefs decided instead to retain the allotment of lands as it had evolved under the rule of King Kamehameha I. The result was that Kuhina Nui Ka‘ahumanu and the members of the council of chiefs continued to hold and control the major and richest lands of the islands. In effect, this meant that the chiefs did not owe the allotment of their lands to King Kamehameha II and thus, were not obligated to render tribute or tax payments to him. Therefore, the king only received tax revenues from the personal lands that had been alloted to him by his father. Kame‘eleihiwa explains this as follows:

> [B]ecause Liholiho had not given *‘Āina* [lands] to his *Ali‘i Nui* [High Chiefs] in a *Kālai‘āina* [re-division of lands by the new ruler], the Ali‘i Nui did not owe him any *ho‘okupu* [tribute] on political grounds nor, with the *‘ainoa* [freedom from sacred restrictions] was there any religious reason for him to receive *ho‘okupu* from all *Ali‘i* [chiefs]. He received *ho‘okupu* and taxes from his own *‘Āina*, but not from the *‘Āina* of other *Ali‘i*. This was a further unsettling departure from traditional behavior. As the *‘Ali‘i Nui* held all the larger tracts of *‘Āina* at this time, Liholiho was a rather impoverished *Mō‘ī* [King]. He had no *‘Āina* to give

[358] Edwin Wells Dwight, *Memoirs of Heny Obookiah, a Native of Owhyhee, and a Member of the Foreign Mission School; Who Died at Cornwall, Connl, Feb. 17, 1818, aged 26 years* (New Haven: Office of the Religious Intelligencer, 1819).

[359] Kame‘eleihiwa notes that Keōpūolani was baptized by the Rev. William Ellis, “an English Methodist, not a an American Calvinist.” Kame‘eleihiwa, *Native Land and Foreign Desires,* p. 144 (translation in brackets added).

away and and he was too poor to be a generous *Ali‘i Nui*.[360]

Kame‘eleihiwa also points out that Kuhina Nui Ka‘ahumanu, with the support of her relatives, who comprised the council of chiefs, held the real sovereign power in the kingdom. The king was relegated to the relatively unimportant position of a political figurehead. This led him to seek alternate sources of influence through diplomatic missions to the island of Kaua‘i and later to Great Britain.[361]

Early in 1821, Liholiho moved his court from Kailua-Kona, Hawai‘i Island to Honolulu. The royal siblings, Kauikeaouli and Nahi‘ena‘ena, together with their mother, Keōpūolani and her husband Hoapili, journeyed with the chiefs to O‘ahu. As was traditional, one of the first acts of the new mō‘ī was to make a royal progression around O‘ahu to visit the people. Lilholiho's selected route took him from Honolulu through the Ko‘olau region to Waialua to "enjoy the fat mullet of Uko‘a and to catch aholehole fish" and then by way of "Ka‘ena point to Wai‘anae and then to Honolulu."[362]

After this progression around O‘ahu, Liholiho proposed to go to Kaua‘i. As discussed in Chapter Three, Kamehameha I had not conquered Kaua‘i. Instead Kaumuali‘i, Ali‘i Nui (High Chief) of Kaua‘i, had agreed to recognize Kamehameha as king. King Kamehameha I allowed High Chief Kaumuali‘i to govern Kaua‘i and thus, Kaumuali‘i retained his authority and lands. When Liholiho proposed his visit to Kaua‘i, his advisers wanted a large group of chiefs and warriors to accompany him. Instead, he heeded the advice of his mother, Keōpūolani, who assured him that he would find men loyal to him on Kaua‘i. In July 1821, Liholiho sailed for

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[360] *Id*., p. 84.
[361] Kame‘eleihiwa writes, "From 1819 until 1832, when Ka‘ahumanu died, the *Ali‘i Nui* [high chiefs] - although led by Ka‘ahumanu in most respects - ruled as a body and attempted to relegate the *Mō‘ī* [king] to the position of political figurehead." *Id*. (translation in brackets added).
[362] Kamakau, *Ruling Chiefs of Hawaii*, p. 252.

Kaua‘i with very little preparation and in an open boat with about 30 people and without a great contingent of chiefs and warriors. Keōpūolani was proved right, as described by Kamakau:

> On Kauai [Liholiho] was welcomed with great affection by Ka-umu-ali‘i and with the firing of guns and ringing of bells at the Hipo fort, and loud acclamations from the people to show their respect for the royal descendant of Ke-kaulike. ‘Here comes the son of our lord; he alone has the right to gouge out our eyes!’ was the phrase often heard. Ka-umu-ali‘i stepped down from his place as ruler to act as steward for the king, preparing his food and attending to his wants in every way. Fire sticks were made ready awaiting the signal for starting the ovens in which to cook the pigs, dogs, fowl, fish, and all the things for the feast; from Makaweli to Waimea fires were started simultaneously with the speed of lightning.[363]

Two days after arriving, a council of Kaua‘i chiefs was convened at which Liholiho reaffirmed the agreement between his father Kamehameha I and Kaumuali‘i, stating, “[I]n accordance with the words of Kamehameha I off Mamala, Oahu, Ka-umu-ali‘i shall be the ruling chief of Kauai and occupy the place inherited from his ancestors, only the name of king to belong to Liholiho, the flesh and bones to be Ka-umu-ali‘i’s.”[364] Kaumuali‘i, in the tradition of kala‘āina (redivision of lands by the new ruler), offered Kaua‘i lands to the new mō‘ī. However, in a magnanimous gesture, Liholiho refused. Instead, in order to cement the bond with High Chief Kaumuali‘i, Liholiho took one of his wives (Kekaiha‘akulou) as his own. Kame‘eleihiwa, characterizes Liholiho’s actions as “[d]isplaying his administrative ability with the *Kalai‘āina* [redivision of lands by the new ruler], and dabbling in sexual politics with Kaumuali‘i’s wife.”[365]

Learning of the welcome extended to Liholiho, others of the royal court, including Keōpūolani and Ka‘ahumanu, joined him on Kaua‘i. While there, Ka‘ahumanu expressed an interest in visiting the island of Nīhoa. Hawaiian historian Samuel M. Kamakau recounts:

> While Ka‘ahumanu and the Mo‘i Liholiho were visiting Kaua‘i, she greatly desired to search for Nihoa. Nihoa was a land not known by her generation. But,

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[363] *Id*.
[364] *Id*.
[365] Kame‘eleihiwa, *Native Land and Foreign Desires,* pp. 84-85 (translation in brackets added).

> Nihoa was heard of in stories and songs of the old people. Kaumuali‘i and Ka‘ahumanu sought out Nihoa by an expedition of 2-3 vessels under the leadership of Captain William Sumner. Nihoa was found in 1822, and added to Hawai‘i’s domain that year.[366]

Although Kaumuali‘i had recognized Liholiho as his superior, Liholiho made sure that Kaumuali‘i, as well as his son Keali‘iahonui, returned to Honolulu with the royal party, in some sense, as prisoners of state.[367] Again, Kame‘eleihiwa provides insight into this action, “[a]lthough it was a bloodless act, it was inherently violent and a great coup for Liholiho . . . and was part of Liholiho’s campaign to restore the supremacy of the *Mō‘ī*.”[368] Subsequently, on the return to Honolulu, Ka‘ahumanu took Kaumuali‘i and Keali‘iahonui as her husbands, thereby, in Kame‘eleihiwa’s words, “caputur[ing] Liholiho’s prize and *mana* [spiritual and political power] in one masterful stroke.” Kame‘eleihiwa explains:

> As Kaumuali‘i had been given nominal control over his Kaua‘i *‘Āina* [lands] by Liholiho, the tribute from such *‘Āina* [lands] rightfully belonged to Liholiho.

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[366] *Ka Nupepa Kuokoa*, Feb. 1, 1868, at 1 (trans. Bernice K. Kaiama). Kamakau also notes that Ka‘ahumanu was familiar with a mele (chant) for Nihoa composed by her ancestor, Kawelo-a-Mahuna-ali‘i:

Ea mai ana ke ao ua o Kona,	The rain cloud of Kona rises,
Ea mai ana ma Nihoa	It rises over Nihoa
Ma ka mole mai o Lehua,	Beyond the base of Lehua,
Ua iho la pulu ke kahawai.	It pours down and floods the streams.

As well as from the mele of Hi‘iaka:

Ea mai ana ma Nihoa	It rises over Nihoa
Ma ka mole mai o Lehua,	Beyond the base of Lehua,

Kamakau, *Ruling Chiefs of Hawaii*, p. 253. Lilikalā Kame‘eleiwiha notes that “ka mole” is also a sailing route, so “Ma ka mole mai Lehua” could mean “along the sailing route of Lehua.” E-mail communication, July 5, 2014 (on file with the author). Although from Kamakau’s account, the trip to Nihoa was discussed at the time of Liholiho’s first visit to Kaua‘i, it actually took place after Kaumuali‘i’s marriage to Ka‘ahumanu when they were touring Kaua‘i. Jane Silverman, *Kaahumanu—Molder of Change* (Honolulu: Friends of the Judiciary History Center, 1987), p. 83. Ka‘ahumanu married Kaumuali‘i in 1821 and all sources agree, including Kamakau, that the trip to Nihoa took place in 1822.

[367] James Jackson Jarves, *History of the Hawaiian Islands* (Honolulu: Charles Edwin Hitchcock, 1847), p. 116.

[368] Kame‘eleihiwa, *Native Land and Foreign Desires*, p. 85.

> However, as control of Kaumuali‘i passed to Ka‘ahumanu, tribute from Kaua‘i was more likely to have been shared with Kaumuali‘i’s new wife and superior *Ali‘i Nui [Ruling Chiefess]*, Ka‘ahumanu.[369]

Thwarted in his initiative to gain wealth and influence through exerting his authority over Kaumuali‘i, King Kamehameha II sought to enhance his prominence through a diplomatic mission to Great Britain. On November 27, 1823, Kamehameha II and his wife, Kamāmalu, departed from the islands with the goal of confirming an alliance between the Hawaiian Kingdom and Great Britain. Kanaka Maoli (Native Hawaiian) historian Samuel M. Kamakau wrote:

> It has been said in explanation of this determination on the king's part that he was ashamed because no taxes had been collected for him or gifts received from the chiefs and people, and he had no lands left to give away; others said that he went to hide his bones. It is a fact that during Liholiho’s time all the larger tracts of land were held by the chiefs, and he received only what the chiefs were willing to give him, and the government had received nothing.[370]

Before his departure, the king named his ten year old brother, Kauikeaouli, as his successor and he left the care of his heir and that of the Kingdom in the hands of High Chiefess Ka‘ahumanu as regent and Kalanimōkū as prime minister.

Ka‘ahumanu’s Regency

High Chiefess Ka‘ahumanu ruled the Kingdom as regent from November 1823 until her death in June 1832.[371] For most of that period she depended upon her cousin, High Chief Kalanimōkū, to serve as her advisor and assist her in carrying out their combined wishes. Although initially lukewarm to the Christian missionaries, Ka‘ahumanu gradually became greatly influenced by them. They taught her to read and write and she eventually became their

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[369] *Id*. (translation in brackets added).
[370] Kamakau, *Ruling Chiefs of Hawaii*, p. 256.
[371] As Kuhina Nui (Premier), High Chiefess Ka‘ahumanu ruled as the regent in the absence of the king and continued to rule as regent after the passing of King Kamehameha II, while his successor was a minor.

most devoted convert and ardent advocate. Prime Minister Kalanimōkū had also been one of the early converts to Christianity. Acting together as regent and prime minister, High Chiefess Ka‘ahumanu and High Chief Kalanimōkū originated new laws based on Christian principles. Regent Ka‘ahumanu built churches and schools for the people to learn the palapala and pule (reading and prayer).

Early Lawmaking

The earliest printed law of the Hawaiian Kingdom highlighted the increasing disruption caused by foreigners, particularly seamen, in the Islands. On March 8, 1822, two "notices" were issued in Honolulu. The first law mandated that seamen who caused disturbances were to be imprisoned in the fort and fined thirty dollars. The second law declared that all foreigners who molested strangers or disturbed the peace would be imprisoned in the fort and "thence sent from the Islands by the first conveyance."[372]

Laws affecting the conduct of Native Hawaiians were originally proclaimed by crier, rather than by posted notices. On December 21, 1823, less than one month after Liholiho's departure and her assumption of the rule, Regent Ka‘ahumanu declared a "strict observance of the Sabbath."[373] Within another six months, Regent Ka‘ahumanu proclaimed a code of laws for the island of Maui that prohibited murder, theft, and boxing or fighting, and reinforced the observance of the Sabbath. The code further required that, once schools were established, "all the people shall learn the palapala [reading and writing]."[374]

In 1825, Ka‘ahumanu confronted the issue of prostitution and found herself in the middle of the conflict between the strict moral standards of the Calvinist missionaries and the unbridled

[372] Ralph S. Kuykendall, *The Hawaiian Kingdom, Vol. I*, p. 121.
[373] Kuykendall reports that even the kindling of a fire was prohibited on Sunday. *Id.,* p. 117.
[374] *Id*. (translation in brackets added); Silverman, *Ka‘ahumanu - Molder of Change*, pp. 91-92.

raucous behavior of seaman and whalers in Hawai‘i’s ports. She placed a kapu (sacred restriction) on “loose and lewd practices” and forbade husbands or wives to leave their spouses. This kapu (restriction) led to disputes with sailors; confrontations between seaman and missionaries; and eventually an attack in Lahaina on missionary William Richard’s house. Ka‘ahumanu remained steadfast in upholding the law. The following year, the Christian Native Hawaiian chiefs sought to adopt the Ten Commandments as the basis of law for the Kingdom. Opposed by O‘ahu governor Boki, who was Ka‘ahumanu’s cousin and Kalanimōkū’s brother, the law failed. The major point of contention was the prohibition against “moe kolohe” or “sleeping mischievously.”[375] Ka‘ahumanu was eventually forced to suspend the law, when the *U.S.S. Dolphin* arrived in Honolulu in January 1826. Commanded by Capt. Jack Perceival, about 20 men of the Dolphin came ashore wielding sticks, rioted at Kalanimōkū’s house and attacked missionary Hiram Bingham. Ka‘ahumanu lifted the kapu while the *Dolphin* was in port but reinstated it after the ship left.[376]

The Kaua‘i Rebellion and the Rise of Christianity

In May 1824, six months after the departure of Kamehameha II for England, Kaua‘i ruler Kaumuali‘i passed away and Regent Ka‘ahumanu and Prime Minister Kalanimoku faced a major challenge to their rule by the Kaua‘i chiefs. Before his death, Kaumuali‘i decreed that Kaua‘i lands were to remain in the hands of those who possessed them, stating: “Let the lands be as they are, those chiefs who have lands to hold them and those who have not to have none.”[377] High Chief Kaumuali‘i had sent his son, George Kaumuali‘i or Humehume, to America at the age of four under the care of Captain James Rowan to obtain an education in the United States. After an

[375] Silverman, *Ka‘ahumanu - Molder of Change*, pp. 104-106.
[376] *Id*., p. 106-109.
[377] Kamakau, *Ruling Chiefs of Hawaii*, p. 258.

extended stay in the United States, where he was educated for part of the time and also served in the military, Humehume was able to travel back to Kaua‘i on the same ship as the first American missionaries. Dissatisfied with the status of his landholdings after the passing of his father Kaumuali‘i, Humehume sought a kalai‘āina, the traditional re-distribution of the lands after the death of a chief. Humehume led some of the other disgruntled Kaua‘i chiefs in a rebellion against the government of Kamehameha II. Prime Minister Kalanimōkū sailed to Kaua‘i and restored order with aid of reinforcements from High Chief Hoapili of Maui. Humehume was defeated.[378] Prime Minister Kalanimōkū appointed High Chief Kaikioewa, a cousin of Kamehameha I and guardian of Kamehameha III, as the governor of the island.[379]

In traveling to Kaua‘i to put down the rebellion, Hoapili brought with him Tauā, a Tahitian Christian chaplain, to lead his warriors into battle with Christian prayers. Native Hawaiian historian Lilikalā Kame‘eleihiwa attributed the victory of Kalanimōkū and Hoapili, under what they perceived to be the patronage of the Christian God, as a turning point for Christianity in Hawai‘i. She writes,

> The victory of [the Christian chiefs] symbolized to Ka‘ahumanu the victory of the new foreign *Akua* [god] over the old Hawaiian *Akua* [gods]. Ka‘ahumanu had found a new source of *mana* [power] . . . . She subsequently was able to convince the majority of her Māui relatives that the Christian *Akua*, however foreign and uncomfortable his ways, was indispensable.[380]

Waiting for news of the rebellion on Maui, Ka‘ahumanu was overjoyed at the victory and

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[378] Humehume was captured after hiding for over a month in the forests of Kōke‘e, Kaua‘i, and expected to be put to death. Kalanimoku took pity on him, as well as others involved in the rebellion, and spared their lives. Douglas Warne, *Humehume of Kaua‘i: A Boy’s Journey to America, an Ali‘i’s Return Home* (Honolulu: Kamehameha Publishing, 2008), p. 202. As a result of this rebellion, however, all lands of the Kaua‘i chiefs, even those chiefs who had been loyal to Kalanimōkū and some who had been at Kaumuali‘i’s funeral in Lahaina, lost their lands. The lands were redistributed amongst the Maui and Hawai‘i island chiefs who had suppressed the Kaua‘i Rebellion. Kame‘eleihiwa, *Native Land and Foreign Desires*, p. 110.
[379] Edward Joesting, *Kauai: The Separate Kingdom* (Honolulu: Univ. of Hawaii Press, 1984), p. 158.
[380] Kame‘eleihiwa, *Native Land and Foreign Desires*, p. 153 (translation in brackets added).

believed the hand of the Christian God "had been evident in [the] victory." She called for a day of prayer, and before she left Maui, ordered schoolhouses be built and sent for teachers from Honolulu. She directed that the people be told it was her wish that they attend to reading and prayer. Similarly, on Kaua'i and on O'ahu she ordered that schoolhouses and churches be built.[381]

Ka'ahumanu's conversion became official when she was baptized on December 4, 1825, adopting the Christian name of Elizabeth.

The Passing of Kamehameha II

Native Hawaiians mourned when they received the news that King Kamehameha II and Queen Kamāmalu had succumbed to measles while on their diplomatic mission to England. Their bodies were sent home on a British warship under the command of Lord Byron. According to Native Hawaiian historian, Samuel M. Kamakau, 11 chiefs and a Frenchman, John Rives, accompanied the king, four of them also died.[382] Before their mournful departure from England, High Chief Boki and his wife, High Chiefess Liliha, and four other members of the company finally obtained an audience with King George. After expressing sorrow for the unfortunate death of Kamehameha II and the Queen, the king was reported to have said, "You must return,

[381] Silverman, *Ka'ahumanu - Molder of Change*, p. 93.

[382] Kamakau, *Ruling Chiefs of Hawaii*, pp. 256-257. "Those who accompanied the king were Queen Ka-meha-malu; Boki Ka-ma'ule'ule, son of Ke-kuamanoha' and now governor of Oahu, and his wife Liliha, daughter of Hoa-pili; Ka'uluhai-malama son of Ke-ku-hau-pi'o, a younger brother of Hoa-pili; Maunia, son of Ka-ulu-nae; Ke-ku-anao'a, son of Na-hiolea; Na-ihe-kukui, son of Hanakahi; No-ukana, son of Ka-manawa; Na-'aiweuweu, son of Ke-kumu'ino; James Kane-hoa, son of John Young; and John Rives, a Frenchman and an intimate friend of the king; twelve in all." Aside from the king and queen, Kamakau does not list the three others who passed away, but he identifies those who had an audience with King George as Boki, Liliha, Kane-hoa, Ke-ku-anao'a, Manuia and Na-'ai-weuweu and states that Rives returned to France. Therefore, it is likely that the three who passed away were Ka-uluhai-malama, Na-ihe-kukui and No-ukana.

and his younger brother shall be king. I shall not interfere in your internal troubles, but I shall guard you from outside invasion just as I did in the time of Kamehameha I."[383]

On May 4, 1825, Lord Byron's ship, with the bodies of Liholiho and Kamāmalu, arrived in Honolulu. After a period of mourning, the council of chiefs held a meeting on June 6, 1825, to confirm Kauikeaouli as King Kamehameha III. Since Kauikeaouli was only 11 years old, however, Ka'ahumanu continued as regent and with Prime Minister Kalanimōkū remained in control of the government.

At this same meeting, the chiefs discussed the redistribution of lands, the kalai'āina (redvision of lands by a new ruler), which usually accompanied the ascension of a new high chief. Lord Byron, the captain who brought the bodies of Kamehameha II and Queen Kamāmalu back to Hawai'i, recorded in his journal that Kalanimōkū addressed the chiefs and spoke of the "inconveniences arising from the reversion of lands to the king on the death of their occupants, a custom . . . which it had been the object of Tamehameha I to exchange for that of hereditary succession. This project of their great king he proposed to adopt as the law, excepting in such cases as when a chief or landholder should infringe the laws; then his lands should be forfeited."[384] Not surprisingly, the council of chiefs agreed with the new policy that perpetuated their control over the major lands of the islands.

At this meeting, Lord Byron also presented the chiefs with several suggestions for their consideration. He was very careful to offer these as advice and "not as dictates of the British government, which had no wish whatever to interfere with the regulations of the chiefs, who must be the best judges of what suited the people."[385] Lord Byron had been instructed by his

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[383] Kamakau, *Ruling Chiefs of Hawaii*, p. 257.
[384] Voyage of H.M.S. Blonde, p. 154. *See* Kuykendall, *The Hawaiian Kingdom, Vol. I,* pp. 119-122 (discussing the adoption of this policy and early law-making in Hawai'i).
[385] *Id*., p. 120. Lord Byron made the following suggestions:

government to maintain strict neutrality in the internal affairs of Hawai‘i but to acquaint himself with the political situation and most particularly “the influence and interests which any foreign Powers may have in [the islands].” The instructions clearly set forth the basis for Great Britain’s right to claim sovereignty over the islands, which, however, would only be asserted if necessary:

> This right His Majesty does not think it necessary to advance directly in opposition to, or in controul [sic] of, any native Authority;—with such the question should not be raised, and, if proposed, had better be evaded, . . . but if any Foreign Power or its Agents should attempt, or have attempted, to establish any Sovereignty or possession . . you are then to assert the prior rights of His Majesty, but in such a manner as may leave untouched the actual relations between His Majesty and the Government of the Sandwich Islands; and if by circumstances you should be obliged to come to a specific declaration, you are to take the Islands under His Majesty's protection, and to deny the rights of any other Power to assume any Sovereignty, or to make any exclusive settlement in any of that group.[386]

The following year, another development, this time formalizing the relationship between the United States and Hawai‘i took place.

Relations with the United States

In 1826, responding in part to concerns over American deserters from whaling and other trade ships taking up residence in Hawai‘i, as well as over debts allegedly owed by the chiefs to Americans resulting from the sandalwood trade, the first formal agreement between the United

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1. That the king be the head of the people.
2. That all the chiefs swear allegiance to the king.
3. That the lands which are now held by the chiefs shall not be taken from them, but shall descend to their legitimate children, except in cases of rebellion, and then all their property shall be forfeited to the king.
4. That a tax be regularly paid to the king to keep up his dignity and establishment.
5. That no man's life be taken away except by consent of the king, or the regent, for the time being, and of twelve chiefs.
6. That the king, or regent, can grant pardons at all times.
7. That all the people shall be free, and not bound to any one chief.
8. That a port duty be laid on all foreign vessels.

[386] Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, p. 80-81.

States and the Hawaiian Kingdom was negotiated by Thomas ap Catsby Jones.[387] The agreement was never ratified by the United States Senate and thus was not an official "treaty" under U.S. law. Nevertheless, the document was:

> clearly an international act, signed as such by the authorities of the then independent Hawaiian government, and by a representative of the United States, whose instructions, while vague, must be regarded as sufficient authority for his signature, in view of the then remoteness of the region from the seat of government and the general discretion which those instructions granted[.][388]

Further, "for more than a decade [after the agreement was signed], American officials and residents of the Hawaiian Islands were seeking to impress upon the perplexed chiefs the sanctity of this agreement which the government of the United States had refused to accept."[389] The first section of the agreement acknowledged "the peace and friendship" between the United States and Hawai'i, which was "confirmed, and declared to be perpetual."[390] The fifth section provided for citizens of the United States engaged in commerce or trade in Hawai'i to be protected and allowed to "sue for, and recover, by judgment all claims against the subjects of His Majesty The King."[391]

Prior to finalizing the treaty, Jones had negotiated a settlement with the Hawaiian government to guarantee payment of the sandalwood debts owed by individual Hawaiian chiefs to American commercial traders totaling 15,000 piculs. The estimated value of the debt ranged

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[387] Charles I. Bevans, *3 Treaties and Other International Agreements of the United States of America, 1776-1949*, (1971), p. 861; Robert H. Stauffer, "The Hawaii-United States Treaty of 1826," in 17 *Hawaiian Journal of History* 40, pp. 55-58 (1983).
[388] *U.S. State Department, Treaties and Conventions Concluded Between the United States of America and Other Powers Since July 4, 1776*, (1886), p. 274.
[389] H. Bradley, "Thomas Ap Catesby Jones and the Hawaiian Islands, 1826-1829," in 39 *Hawaiian Historical Society Rep.* 23 (1931).
[390] *Bevans*, *3 Treaties and Other International Agreements of the Unite States*, p. 681.
[391] Stauffer, "The Hawaii-United States Treaty of 1826, p. 57

at the time from $150,000 to $200,000.[392] The decree was signed by Regent Ka‘ahumanu, Prime Minister Kalanimōkū, High Chief Boki, Governor of O‘ahu, High Chief Hoapili, Governor of Maui and High Chiefess Nāmāhana. Essentially, the government assumed the individual debts of the chiefs as a national debt and imposed the first annual national tax upon the people in was one of the earliest written laws, dated December 27, 1826.[393] Under the law, every able bodied man was required to deliver before September 1, 1827, half picul of sandalwood, four Spanish dollars or a valuable commodity of equal value. Each woman was required to provide a mat six by twelve feet or tapa of equal value or one Spanish dollar. Ultimately, the debt was not fully paid until 1843, given the diminishing sandalwood in the island forests.[394]

Death of Ka‘ahumanu

Ka‘ahumanu died on June 5, 1832, a confirmed Christian. Before she passed, she had ushered in a new religion to replace the traditional Hawaiian religion and she had succeeded in keeping Hawai‘i independent. One biographer, in evaluating Ka‘ahumanu’s conversion, states:

> "[she] tried to carry the message of Christianity into practice by lightening the burdens imposed on the common people. She forbade the chiefs to put heavy taxes on them or make them travel long distances to work for the chiefs. On Oahu she lifted the kapu that reserved certain fish for the chiefs. She told the landlords to let the common people catch the fish also."[395]

In her last months, High Chiefess Ka‘ahumanu gave up the formality that marked her status as a chief—she went back to a simple house in Mānoa Valley and lived in a modest way. As she lay dying, she sent this final word to Kamehameha III, “O my friends have great

[392] Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, pp. 91-92 and 434 - 436.
[393] *Id*, p. 92.
[394] *Id*. p. 92
[395] Silverman, *Ka‘ahumanu - Molder of Change*, p. 142; Kamakau, *Ruling Chiefs of Hawaii* p. 307.

patience, stand firm on the side of the good way."[396] Kamakau recounts that when it became known that Ka'ahumanu was dead, the roads:

> were filled with people bewailing her death, some with lamentation, some recounting her good deeds with shrill voices, some chanting meles in her honor, all with love and regret for the one whom they looked upon as 'the cable that held the ship of state.' Thus in different ways they showed their devotion to her who had so loved the common people.[397]

Kamehameha III

Kame'eleihiwa describes Kamehameha III as "ecstatic" after the death of Ka'ahumanu because "he was at last free to live as he pleased, even as a traditional *Mō'ī*."[398] High Chiefess Kīna'u, Kamehameha III's half-sister, was selected to be the kuhina nui to succeed Ka'ahumanu.[399] Kīna'u was also a Christian chiefess and sought to continue the laws established under the rule of Regent Ka'ahumanu.

King Kamehameha III had to contend with the growing influence and increasing demands of American and European settlers in the islands. In particular, the missionaries, whalers and merchants who resided in Hawai'i, began to demand rights to own land and participate in the government. Ultimately, the mō'ī (king) transformed his government into a constitutional monarchy in order to protect the rights of his people and the independence of his nation, while, at the same time, acknowledging the status of resident foreigners and their powerful governments.

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[396] Silverman, *Ka'ahumanu - Molder of Change*, p. 142-45.
[397] Kamakau, *Ruling Chiefs of Hawaii*, p. 308.
[398] Kame'eleihiwa, *Native Land and Foreign Desires*, p. 157.
[399] High Chiefess Kīna'u was the daughter of King Kamehameha I and High Chiefess Kaheiheimalie. In her marriage to Kekuanao'a, she gave birth to Alexander Liholiho Kamehameha IV and Lot Kapuaiwa Kamehameha V. *See* Kamakau, *Ruling Chiefs of Hawaii*, p. 346.

Settler Community

Between 1820 and 1857, ninety-two missionaries worked in Hawai‘i, with two-thirds of them settling permanently.[400] By 1840, the mission had three printing presses that had printed 100 million pages covering 50 different works.[401] The mission had established 19 stations and 6 schools by 1842 and had converted 20,000 Hawaiians, training 15,000 Hawaiians in missionary schools.[402] The phenomenal success of the missionaries can be attributed to the vacuum created by the abolition of the chiefly state religion and the enthusiastic sponsorship of the Ali‘i Nui (High Chiefess) Ka‘ahumanu and the council of chiefs.

The American missionaries not only preached Christianity, they also prepared Native Hawaiians to accept the commercial economy that the whaling industry developed in Hawai‘i. In 1838, the mission's stated policy provided:

> We deem it proper for members of this mission to devote a portion of their time to instructing the natives into the best method of cultivating their lands, and of raising flocks and herds, and of turning the various products of the country to the best advantage . . . The missionary should endeavor to call forth the ingenuity, enterprise and patient industry, and give scope for enlarged plans for profitable exertion, which . . . would clothe the population in beautiful cottons, fine linens and silk, and their arable fields with rich and various productions . . . [and] would adorn the land with numerous comfortable habitations.[403]

The missionaries thereby introduced Native Hawaiian commoners to a new lifestyle that would be sustained by trading the surplus from their cultivated gardens and fishing endeavors for the manufactured products of the trade. This new lifestyle competed with the traditional practice of sharing the surplus with other members of the ‘ohana (extended family).

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[400] Theodore Morgan, *Hawaii, A Century of Economic Change, 1778 – 1876* (Cambridge: Harvard Univ. Press, 1948), pp. 86-91.
[401] Merze Tate, *Hawaii: Reciprocity Or Annexation* (East Lansing: Michigan State Univ. Press, 1968), p. 6.
[402] Sylvester Stevens, *American Expansion in Hawaii 1842-1898* (New York: Russell & Russell, 1945), pp. 8-9.
[403] Minutes of the General Meeting for 1838, Lahainaluna, 1838, *cited in* Morgan, *Hawaii*, p. 92.

The whaling industry, unlike the fur and sandalwood trades, attracted a resident foreign population in addition to the missionaries. In 1830, the British consul in Honolulu described the routes followed generally by the whalers of that time:

> The vessels engaged in whaling . . . generally arrive here in the months of March or April, and sail toward the coast of Japan in May, where they cruise until the beginning of September (often in sight of the coast), when they leave and return to these islands), where they arrive early in October and remain until the latter end of November. . . Those not full proceed toward the Equator and cruise between the parallels of 5' N. and 10' S. until February, when they proceed towards these Islands to refit previous to their proceeding to the coast of Japan.[404]

Thus, for two to three month periods each year there were hundreds of seamen off of the whalers in Hawai‘i with a significant amount of money to spend. The whaling activities centered on Lahaina, Maui, where not coincidentally the Maui chiefs who were primarily responsible for the trade resided. Honolulu also developed as a port of significance during this time. However, unlike Lahaina where the chiefs managed the trade, trade at Honolulu was principally conducted by foreigners.

This kind of mercantile activity around the whalers attracted foreign merchant houses to set up permanent operations in Hawai‘i to directly conduct the trade in Hawai‘i as well as a re-export trade with San Francisco. By 1845, there were three British and four American commercial merchant houses in Honolulu. In addition there were 11 American, one British and three Chinese storekeepers. It is interesting to note that four of the five corporations that would come to monopolize Hawai‘i’s economy during the Territorial Period were established by 1851 and had their origins in the whaling industry—C. Brewer was founded in 1826; Theo H. Davies in 1845; American Factors in 1848; and Castle and Cooke in 1851.[405]

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[404] Richard Charlton to Captain Waldyman, dated August 8, 1830, *cited in* Morgan, *Hawaii*, p. 77.
[405] Davianna McGregor, "Cultural and Political History of Hawaiian Native People" in *Our History, Our Way: An Ethnic Studies Anthology*, ed. Gregory Yee Mark, Davianna Pomaika‘i McGregor, Linea A.

Americans dominated the whaling trade as well as related mercantile businesses. Even with an uncertain land tenure system, foreigners managed to gain enormous economic power in the islands. A naval officer visiting the islands in 1839 commented upon the extent of American holdings in Hawai‘i:

> The Americans alone have at least $572,000 worth of property at stake upon Hawaiian grounds. They have two or three sugar mills already in successful operation, and two extensive silk plantations on Kauai Island alone. . . . They will soon have a mill for extracting paint oil from the abundant candle nuts. . . . At least thirty merchant vessels are annually reported to our American Counsel, and not less than fifty whale ships stop annually at Honolulu, for refreshment and repairs.[406]

In 1842 it was estimated that $3 million to $4 million was permanently invested in Hawai‘i by the whaling industry.[407] Between 1845 and 1857, 4,402 American whaling vessels operated in Hawai‘i while there were only 405 whaling vessels from all other countries combined. Out of 2,017 merchant vessels, 1,250 were American.[408] Between 1845 and 1856, $6.9 million worth of merchandise was imported from the U.S., while $5.6 million worth of merchandise was imported from all other countries combined.[409] The profits generated from the re-export trade and whaling was substantial and most of this capital was reinvested in Hawai‘i.

Thus, within 20 years of the death of Kamehameha I and the abolition of the kapu (sacred restrictions), the Hawaiian economy had spiraled to a new level through the whaling industry, and capitalist enterprise had established an initial beachhead in Lahaina and Honolulu. While a traditional subsistence economy was still widespread and engaged in by Native Hawaiian

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Revilla (Dubuque: Kendall/Hunt, 1996), pp. 333 - 396. The fifth corporation, Alexander and Baldwin, was founded in the 1870s.

[406] *Quoted in* Jean F. Hobbs, *Hawaii: A Pageant of the Soil* (1953), p. 31.

[407] Stevens, *American Expansion*, p. 11.

[408] *Id*., p. 40.

[409] Historian Merze Tate states that $2.l million was imported from Great Britain and its colonies and $71,941 from France. Tate, *Hawaii*, p. 40.

extended families, the most dynamic factor in the economy was the commercial activity that centered around the whaling industry.

The mōʻī (king) and the aliʻi (chiefs) comprised the traditional forces that, in the eyes of the non-Hawaiians, stood as a barrier to the productive forces of Hawaiʻi that could be unleashed so that a free enterprise system could flourish. While this conflict was multi-faceted and surfaced in many different forms, it became concentrated in the struggle over the traditional land system and how it would be transformed into private property ownership. Increasingly, Caucasian settlers required and demanded political influence commensurate to their economic influence in order to consolidate their investments and secure their profits.

The dynamics of this political conflict was perhaps best captured in a letter written by Hawaiian historian Davida Malo to Kuhina Nui Kīnaʻu and Governor Kekūanāoʻa in 1837:

> [Y]ou must not think that this is anything like olden times, that you are the only chiefs and can leave things as they are. . . . This is the reason. If a big wave comes in, large fishes will come from the dark Ocean which you never saw before, and when they see the small fishes they will eat them up; such also is the case with the large animals, they will prey on the smaller ones. The ships of the white man have come, and smart people have arrived from the great countries which you have never seen before, they know our people are few in number and living in a small country; they will eat us up, such has always been the case with large countries, the small ones have been gobbled up . . . God has made known to us through the mouths of the men of the man-of-war things that will lead us to prepare ourselves. . . . Therefore get your servant ready who will help you when you need him.[410]

The conflicts that arose between nationals of foreign countries and the Hawaiian mōʻī (king) and aliʻi (chiefs) over property rights, violations of Hawaiian law, and the conduct of commercial activities often were settled by the intervention of foreign gunboats. One of the most significant of these interventions occurred in 1839 when the French captain La Place threatened to start a war with Hawaiʻi. He demanded that Kamehameha III grant concessions to French missionaries and traders to conduct affairs and reside in Hawaiʻi on the same basis as their

[410] Kuykendall, *The Hawaiian Kingdom, Vol. I*, p. 153.

counterparts from other countries. King Kamehameha III was compelled to sign a treaty granting his demands and forwarding the sum of $20,000 as a guarantee of good conduct toward France.[411]

King Kamehameha III relied heavily upon the American missionaries for advice on how to handle the conflicts with foreign nationals doing business in Hawai‘i and their respective governments. In particular, missionary William Richards, who had come in the second company of arrivals from the American Board of Foreign Missions, became a teacher and advisor to the mō‘ī (king) and ali‘i (chiefs) on political science and economics. The mō‘ī and ali‘i had been searching for such a teacher since 1836, when they decided that they needed to understand how the foreign world worked. Unable to find anyone else outside of the mission, they prevailed on Richards. “The ali‘i wanted someone who could offer them knowledge of the outside world, and who had skills in the Hawaiian language.”[412] On the same day he resigned from the mission, he began his work for the king and chiefs, offering a series of lectures to Kauikeaouli and the other ali‘i about political economy and government. American historian Ralph S. Kuykendall notes this about Richard’s appointment: “It may be pointed out that Richards’ position was purely instructional and advisory; he did not consider that he was a government officer in the ordinary sense of the term.”[413]

The mō‘ī (king) and ali‘i (chiefs) sought to transform the government into a Constitutional Monarchy similar to that of Great Britain. They believed that this would compel the European and American powers to deal with the Hawaiian Kingdom as an equal among

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[411] *Id.*, pp. 165-67.
[412] B. Kamanamaikalani Beamer, *Na Wai Ka Mana? ‘Ōiwi Agency and European Imperialism in the Hawaiian Kingdom* (Unpublished Ph.D. Dissertation, University of Hawai‘i-Mānoa, 2008), p. 188.
[413] Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, p. 155.

nations and to deal with the Hawaiian monarch as the head of a civilized, democratic and modern nation.[414]

Establishing a Constitutional Monarchy

The Declaration of Rights

The first step in the process of establishing a Constitutional Monarchy was the drafting of the 1839 Declaration of Rights and basic laws. The declaration and first laws were published in a small pamphlet on June 7, 1839. There is some dispute as to the actual author of the 1839 Declaration. Some accounts indicate that Boaz Mahune, a graduate of Lahainaluna Seminary, drafted the Declaration, while others attribute the Declaration to Richards. An unsigned article in the July 1839 issue of the *Hawaiian Spectator* gives this account:

> They were written by a graduate [Boaz Mahune] of the [Lahainaluna] Seminary at the direction of the King, but without any definite instructions as to what he should write. He in the first instance wrote about one third of the present quantity of matter, and that was read to the King and several of the chiefs, who met and spent two or three hours a day for five days in succession, in the discussion of the laws, and the various subjects of which they treated. In some particulars the laws were pronounced defective, in others erroneous, and the writer was directed to rewrite them, and conform them to the views that had been expressed. This was done, and they were thus considerably enlarged, and then passed a second reading at a meeting of the King and all the important chiefs of the Islands.
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> At this reading a longer time was spent than at the first. They were still pronounced defective, and further additions and corrections were made in the same manner and by the same person as before. They then passed their third and last reading, after which the King inquired of the chiefs if they approved, and on their saying, yes, he replied, "I also approve," and then rose and in their presence affixed his name.[415]

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[414] *Id*., pp. 153-69.

[415] *Hawaiian Spectator,* II, 347 (July, 1839). The whole article is reprinted in MH, XXXVI (1840), 101-104. *See* Bernice Judd, *William Richard's Report to the Sandwich Islands Mission on his First Year in Government Service, 1838-39,"* in 51 *Hawaiian Hist. Society Report*, pp. 66-67 (1942). Kuykendall believes William Richards authored the *Hawaiian Spectator* article, Kuykendall, *The Hawaiian Kingdom, Volume I*, pp. 159-60.

In contrast, Native Hawaiian historian Samuel M. Kamakau states that the 1839 Declaration was written by William Richards with Mahune acting as Kamehameha III's representative and Jonah Kapena as Kuhina Nui Kīna‘u's representative.[416]

Whether drafted by Mahune or Richards, the Declaration, sometimes called the Hawaiian "Magna Carta," was intensely scrutinized by the mō‘ī (king) and ali‘i (chiefs) before it was promulgated. The Declaration was short, with five provisions. The first recognized that God has "bestowed certain rights alike on all men, and chiefs and all people of the lands." The second section detailed some of these rights—"life, liberty, the labor of his hands and production of his mind"— and the third section recognized that "it is by no means proper to enact laws for the protection of rulers only without also providing protections for their subjects." The fourth section emphasized that "no chief may be able to oppress any subject, but that chiefs and people may enjoy the same protection under one and the same law." The fifth section stated in whole:

> 5. Protection is hereby secured to the persons of all the people, together with their lands, their building lots and all their property, while they conform to the laws of the kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws. Whatever chief shall act perseveringly in violation of this Constitution, shall no longer remain a chief of the Hawaiian archipelago, and the same shall be true of the governors, officers and all land agents.[417]

[416] Kamakau, *Ruling Chiefs of Hawaii*, p. 370.

[417] "Na Kumukanawai O Ka Makahiki 1839 A Me Ka 1840," p. 32-33. The original Hawaiian states:

> 5. Ua ho‘omalu ‘ia ke kino o na Kanaka a pau, a me lo lakou ‘Āina, a me ko lakou mau pa hale, a me ko lakou waiwaia pau; ke malama lakou in na kanawa o ke aupuni, ‘a‘ole ho‘i e lawe ‘ia kekahi mea, ke ‘olelo ‘ole ‘ia kela mea ma ke kanawai. ‘O ke ali‘i e hana i kekahi mea ku‘e i keia Kumukanawai, e pau kona noho ali‘i ‘ana ma keia pae ‘Āina ‘o Hawai‘i nei, ke ho‘omau ‘ia ma laila, pela na kia‘Āina, a me na luna a me na konohiki a pau.

Note the English translation of "pae ‘Āina o Hawai‘i nei" states "Sandwich Islands" but it has been translated more precisely here as "Hawaiian archipelago."

The Constitution of 1840

The second step in the transformation to a constitutional monarchy was the enactment of a more detailed constitution in 1840 and the compilation of laws for the Hawaiian Kingdom. The constitution established the executive, legislative and judicial branches of government. The Constitution incorporated much of the Declaration of Rights, including the statement regarding the protection of the people, their lands, their building lots, and all of their property.[418] In addition, the Constitution of 1840 clarified the principles upon which the dynasty was founded and reaffirmed the trust responsibility of the Kamehameha dynasty over the land on behalf of the indigenous chiefs and people. The Constitution clearly stated that the mōʻī (king) held the lands of the islands of Hawaiʻi *in common* with the chiefs and the people. Again, this Constitution vested the rights of the king, the aliʻi (chiefs), and the people in the land at a time when Native Hawaiians were the only citizens of the islands. The Constitution stated:

> 14. Exposition of the Principles on which the Present Dynasty is Founded
>
> The origin of the present government, and system of polity, is as follows. Kamehameha I, was the founder of the kingdom, and to him belonged the land from Hawaii to Niihau, though it was not his own private property. It belonged to the people, and the chiefs in common, of whom Kamehameha I was the head, and had the management of the landed property. Wherefore, there was not formerly, and is not now any person who could or can convey away the smallest portion of land without the consent of the one who had, or has the direction of the kingdom.[419]

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[418] The 1840 Constitution firmly establishes the Hawaiian Kingdom as a Christian nation, undoubtedly as a result of missionary influence but also because the . See, e.g., articles 7-9 in the 1840 Constitution.

[419] *Id.*, pp. 40 – 41. The original states:

> 14. Ka hoʻākāka ʻana i ke ʻAno o ka Noho o nā Aliʻi
> Eia ke ʻano o ka noho ʻana o nā aliʻi a me ka hoʻoponopono ʻana i ka ʻāina. ʻO Kamehameha I, ʻo ia ke poʻo o kēia aupuni, a nona no na ʻāina a pau mai Hawaiʻi a Niʻihau, ʻaʻole naʻe nona ponoʻī, no nā kānaka no, a ma nā aliʻi, a ʻo Kamehameha no ko lākou poʻo nānā e ʻōlelo i ka ʻāina. No laila, ʻaʻohe mea pono ma mua, ʻaʻohe hoʻi mea pono i kēia manawa ke hoʻolilo aku i kekāhi lihi iki o kēia mau ʻāina me ka ʻae ʻole o ka mea iā ia ka ʻōlelo o ke aupuni.

This provision recognized a division of rights between the king as sovereign, distinct from the chiefs and the common people.

The 1840 Constitution began the process of establishing a governmental structure for the Kingdom beyond the mōʻī (king), the council of chiefs and the island governors. The king would continue to hold executive power. The office of kuhina nui, created by King Kamehameha I, was formally defined to fulfill the functions of a premier, with authority to act on behalf of the king.[420] The constitution confirmed the appointment of governors for each of the island groups (Hawaiʻi, Maui and adjacent islands, Oʻahu, and Kauaʻi and adjacent islands) and more clearly delineated their authority. This reflected how the Hawaiian Kingdom and Constitutional Monarchy still functioned as a federation of the original island chiefdoms whereby the island governors exercised autonomy over matters of tax gathering, the appointment of judges, improvements and the conduct of business.[421]

The constitution created a two-body legislative council, with a House of Nobles consisting of chiefs who were specifically identified and a House of Representatives chosen by the people.[422] The number of representatives and how they would be chosen was not set out in the constitution but subsequent laws set their number at seven, which was later increased to twenty-four representatives in 1850. The privy council, the council of chiefly advisors that met

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The translation here has been altered to more accurately translate the Hawaiian as "from Hawaiʻi to Niʻihau" instead of "from one end of the Islands to the other." The Hawaiian version stated, "It belonged to the people and the chiefs in common," although the English version of the constitution changed the order to read, "It belonged to the chiefs and people in common."

[420] *Id*. The 1840 Constitution noted, that the position of kuhina nui was created by Kamehameha I, "When Kamehameha I, died, his will was, 'The kingdom is Liholiho's, and Kaʻahumanu is his minister.'"

[421] *Id*. "The Governor shall be the superior over his particular island or islands . . . He shall have charge of all the King's business on the island, the taxation, new improvements to be extended, and plans for the increase of wealth, and all officers shall be subject to him. He shall also have power to decide all questions, and transact all island business which is not by law assigned to others."

[422] *Id*. §§ 27-35, pp. 49-50.

with the king, was not specifically mentioned in the constitution, although there was a statement that the king should "consult with the above persons (the Nobles) respecting all the great concerns of the kingdom, in order to promote unanimity and secure the greatest good."[423]

The constitution also created a judicial system, including a supreme court, consisting of the king, kuhina nui (premier) and four others appointed by the House of Representatives. The island governors were to appoint at least two judges of inferior courts to hear cases arising under all the laws excepting those which regard taxation, or difficulties between land agents, or landlords and their tenants.[424]

The 1840 Constitution and the laws enacted immediately thereafter attempted to deal with the increasing conflicts with foreigners over land. While preserving the traditional land system and stating that land could not be conveyed without the consent of the king, these laws were also designed to provide clarity concerning the rights of the people and the rights of foreign residents. The laws established a new system for regulation and assessment of taxes, defined the role and responsibilities of the police, established quarantines, regulated schools, road construction, weights and measures, marriage and divorce, and prohibited swearing and slander.

The Hawaiian Kingdom as a Member of the International Community

In follow-up to these constitutional innovations, Kamehameha III, with the advice of his missionary consultants and the agreement of the Legislature, in July 1842 dispatched two diplomatic emissaries, Timothy Ha'alilio and American missionary William Richards, to

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[423] *Id*. § 29.

[424] *Id.* §§ 41-44, pp. 55-57. American historian Ralph S. Kuykendall notes that although the 1840 constitution says nothing about the island or Governors' courts, "these courts continued to exist as they had before, occupying a position intermediate between the inferior courts [established in the constitution] and the Supreme Court." Ralph S. Kuykendall, *Constitutions of the Hawaiian Kingdom: A Brief History and Analysis* (Honolulu: Papers of the Hawaiian Historical Society No. 21; Millwood, NY: Kraus Reprint Co., 1978), p. 13.

negotiate the recognition of Hawai‘i as an independent kingdom by the United States and European powers. In December 1842, these representatives of the Hawaiian government succeeded in having the U.S. extend the policy of non-intervention embodied in the Monroe Doctrine to Hawai‘i. In a special message to Congress, President John Tyler articulated U.S. policy:

> It cannot but be in conformity with the interest and wishes of the Government and the people of the United States that this community, thus existing within a vast expanse of ocean, should be respected and all its rights strictly and conscientiously regarded . . . Far remote from the dominions of European Powers, its growth and prosperity as an independent state may yet be in a high degree useful to all whose trade is extended to those regions; while its near approach to this continent and the intercourse which American vessels have with it, such vessels constituting five-sixths of all which annually visit it, could not but create dissatisfaction on the part of the United States at any attempt by another power, should such attempt be threatened or feared, to take possession of the islands, colonize them, and subvert the native government.[425]

U.S. Secretary of State Daniel Webster had also written to Ha‘alilio and Richards that, “the President [is] . . . quite willing to declare, as the sense of the Government of the United States, that the Government of the Sandwich Islands ought to be respected; that no Power ought either to take possession of the islands as a conquest, or for the purpose of colonization . . .”[426]

Events in Hawai‘i from February through July 1843 might have put the policy to the test if Great Britain had chosen to challenge the role and position that the United States carved out for itself in Hawai‘i under this policy. In February 1843, King Kamehameha III’s diplomatic initiatives suffered a setback. The British Captain George Paulet forced King Kamehameha III to cede Hawai‘i to Great Britain when the king refused to meet Paulet’s unreasonable demands on behalf of British subjects in the islands. The conflict revolved around the property rights of a

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[425] House Doc. No. 35, 27th Cong., 3d Sess., Sandwich Islands and China, Message from the President of the United States (December 30, 1842), p. 2.
[426] *Id*., p. 7.

British subject, Hawaiian jurisdiction over British subjects who violated Hawaiian law, and the settlement of grievances forwarded by British subjects.

In making the cession, however King Kamehameha III nevertheless asserted his continuing sovereignty over the Kingdom and justness of his position in the following statement:

> Where are you, chiefs, people, and commons from my ancestor, and people from foreign lands? Hear ye, I make known to you that I am in perplexity by reason of difficulties into which I have been brought without cause; therefore I have given away the life of our land, hear ye! But my rule over you, my people, and your privileges will continue, for I have hope that the life of the land will be restored when my conduct shall be justified.[427]

In part, the recently announced Tyler Doctrine may have discouraged Great Britain from provoking an international incident with the United States over Hawai‘i. In the main, however, the British government had no intention of colonizing Hawai‘i and Captain Paulet's actions were hasty, arbitrary and lacked official authorization.[428] The British government immediately dispatched Admiral Thomas to restore Hawai‘i's independence. On July 31, 1843, a formal apology, restoration and flag ceremony was held at what was subsequently named Thomas Square in honor of the event. In the afternoon, a thanksgiving religious service was held at Kawaiaha‘o Church and the king gave a speech in which he proclaimed "Ua mau ke ea o ka ‘āina i ka pono" that is, "The sovereignty of the land has been continued because it is pono."[429] Thereafter, July 31st became a national holiday celebrated as Lā Kū‘oko‘a (Independence Day). The king's proclamation became the motto of the Kingdom and was later adopted by the governments of both the Territory of Hawai‘i and the State of Hawai‘i.

Having temporarily lost control of the government largely due to disputes with foreigners over land, the king and his council passed a law in August 1843, which formally prohibited

[427] Kamakau, *Ruling Chiefs of Hawaii*, p. 364.
[428] There is also some support for the proposition that Paulet's actions were meant to counter French interests in acquiring Hawai‘i.
[429] Noenoe Silva, *Aloha Betrayed*, p. 37

foreigners from owning land in Hawai‘i. The law stated, “And it is hereby unanimously declared that we will neither give away or sell any lands in future to foreigners, nor shall such gift or sale by any native be valid.”[430]

In November 1843, as a result of negotiations conducted by the diplomatic mission of Ha‘alilio and Richards, Great Britain, France and Belgium agreed to recognize the sovereignty of the Hawaiian Kingdom.[431]

Clearly, American and European settlers in the islands were instrumental in the creation of the Constitutional Monarchy of Hawai‘i and in securing the recognition of its independence by the U.S. and European powers. Once the new system of government was in place, King Kamehameha III began to appoint missionaries to key positions of influence in his cabinet and other administrative positions in the government. In practice, the Constitutional Monarchy represented an alliance between the chiefs of the Kamehameha dynasty and the American and European settlers. Each party played a crucial role in upholding the Constitutional Monarchy. Many Native Hawaiian ali‘i (chiefs) who had served as councilors to the king, were gradually replaced by American or European settlers. Neither the chiefs nor the people as whole supported this move. According to Kanaka Maoli (Native Hawaiian) historian Samuel Kamakau:

> The chiefs objected to placing the new constitution over the kingdom, seeing that little by little the chiefs would lose their dignity and become no more than commoners . . . the laws drawing up the new constitution were made just before the death of Elizabeth Kina‘u, and the reason why they were passed was because the old chiefs were dead, those who had refused absolutely to approve the new laws except in the matter of protection from crime and keeping the peace among the people.[432]

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[430] *Laws and Regulations passed by His Majesty Kamehameha III, King of the Hawaiian Islands and His Council*, assembled at Honolulu, August 11, 1843 (broadside), *cited in* Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, p. 239.
[431] Kamakau, *Ruling Chiefs of Hawaii*, pp. 367 - 368. Timothy Ha'alilio passed away in France in March 1845 during the course of conducting the diplomatic negotiations.
[432] *Id.*, p.370

The complete transformation of the traditional system of governance into a constitutional monarchy required the co-operation of foreign nationals settled in Hawai‘i. To enable their participation in government it was necessary to allow foreigners to become naturalized citizens and, eventually, to acquire fee simple title ownership to the lands that they leased. These policy changes were implemented through a number of steps beginning in 1845 and their implementation marked yet another crucial watershed in the declining control over "Ke Ea O Ka ‘Āina" or the "Life and Sovereignty of the Hawaiian Nation" by Native Hawaiian rulers.

New Laws and the Prelude to Ka Māhele (Land Division)

American missionaries, in particular, began to assume leading positions within the government. William Richards had entered the service of the king in July 1838. Dr. Gerrit P. Judd, another missionary, was appointed Translator and Recorder for the government in 1842 when Richards was dispatched on a diplomatic mission, along with Timothy Ha‘alilio, to gain recognition of Hawai‘i's independence from the United States and European governments. In March 1844, John Ricord, the first trained attorney in Hawai‘i who had arrived in the islands only a month earlier, was appointed attorney general of the Kingdom after taking the oath of allegiance to Kamehameha III and renouncing his allegiance to the United States. From this point forward, foreigners could enter government service if they took the oath of allegiance to the king. In 1846, the policy was formalized into law.[433]

In March 1844, the king and the legislature also announced their intention to set up a board of commissioners to establish a system of private property ownership. Then, on June 7, 1845, Kuhina Nui (Premier) Kekauluohi died unexpectedly from complications that developed

[433] See *Statute Laws of His Majesty Kamehameha III, Vol. I* (Honolulu: 1846), pp.78-79, Ch. 5 – Of Subjects and Foreigners, art. I – Aliens, Denizens and Natives, section 10 (process for aliens to apply for naturalization); Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, pp. 154-55, 210, 230-41.

from a fall off of a horse. Her death symbolized the passing away of the last of the line of great Maui chiefs of the time of Kamehameha I. In her place, the half Hawaiian-half European Keoni Ana was appointed to serve as kuhina nui (premier). He was the son of John Young, the first British advisor to Kamehameha I and Kaliokalani, the daughter of King Kamehameha I's brother, Keli'imaika'i. As a hapa-haole (part-Native Hawaiian, part-foreigner), his premiership provided a transition from the period when the Hawaiian chiefs served as the principal advisors and councilors of the king to the period when American and European settlers began to play this role.

The proposed policy changes evoked widespread resistance from the Hawaiian chiefs and maka'āinana (common people), with the strongest opposition centered at Maui. From April through July 1845 seven petitions were sent to King Kamehameha III and the legislature. They were signed by a total of 5,790 persons from Lahaina, Wailuku, Lana'i, Moloka'i, Kailua-Kona, and Kona from Kainaliu to Ahuene. This represented eight perent of the total adult population of Hawai'i in 1845. For Lahaina and Wailuku the proportional representation was even greater. The 2,181 residents of Wailuku who signed represented one-half of the adult population of that district. The 1,600 petitioners from Lahaina represented one-third of the adults there.[434]

The central demands of the petitions were as stated in the following petition signed by 1,344 residents of Moloka'i:

> 1. For the independence of your nation, King (Kamehameha) III, we do not want the haole [foreigners] you have appointed over the Hawaiian government to serve as officials.
> 2. We do not want haole [foreigners] to be made naturalized citizens.
> 3. We do not want you to sell any portion of your nation to haole [foreigners].

[434] Information compiled by Prof. McGregor by examining the petitions on file at the Hawai'i State Archives. Additional petitions from maka'āinana and chiefs can be found in Kame'eleihiwa, *Native Land and Foreign Desires*, Documents 2-5, Appendix, pp. 331-338; Document 5 in the Appendix is the Lahaina petition signed by more than 1,600 persons.

> 4. Do not place confusing taxes upon your humble people (huna lepo - bits of earth).[435]

The petition of fifty-two people from Kailua, Kona on June 25, 1845, best expressed the concerns regarding the selling of Hawai‘i’s lands on a private property basis:

> Do not sell the land to new foreigners from foreign countries. We have heard of this sale of land to foreigners. There is aroused within us love and reluctance to lose the land, with love for the chiefs, and the children, and everything upon the land. We believe we will soon end as homeless people. Therefore we kiss the soil of the land and petition you at the legislature. . . Do not give laws covenanting to give away our own Hawaii. There is the entry [puka] where the foreigners get into the body [opu] of our own Hawaii. If, perhaps, many people come from foreign countries, will they not cause disturbances to the true Hawaiians? Yes, wrong will come in the midst of all of them. Perhaps they all will say, ‘We are true Hawaiians, therefore it is not your land.’ That is what those foreigners say, indeed. ‘We are naturalized Hawaiians, therefore the land is ours, not yours, because you are brown skinned and we are white!’ The result of this will be only blood - not life. . . The land strives [kulia] for revenue every day. The earth continues to receive its wealth and its distinction every day. There would be no end of worldly goods to the very end of this race. But, the money from the sale of land is quickly ended, by ten years time. Listen to the voice of wisdom announcing to you in this petition. Withold [‘au‘a - be stingy] the land as it is very valuable. Withold the people and the independent government and the rule of the King over Hawaii from the foreigners.[436]

The sentiments of the Hawaiian petitioners against foreigners holding government positions were perhaps best elaborated in a letter from Samuel M. Kamakau to King Kamehameha III, in which he recounted a meeting he had with some of the old people who had lived during the time of Kamehameha I and High Chief Kahekili. The old people said to him:

> [T]he King has chosen foreign ministers, foreign agents (luna). This is wrong. The Hawaiian people will be debased and the foreign exalted. The Hawaiian people will be trodden under foot by the foreigners. Perhaps not now, or perhaps it will not be long before we shall see it. The land will be diminished, the length and breadth of it. . . . With so many foreign agents the dollar will be lost to the government through the cleverness of foreigners and their cunning, and instead of

[435] Original in Hawaiian in the Hawai‘i State Archives, ser. 222, box 2, folder 3, translated by W.H. Wilson, 8-10-77 (translation in brackets added).
[436] June 25, 1845, Petitions from Kailua, Kona, in Archives, State of Hawai‘i.

> good coming to the Hawaiian people, strangers will get the benefit from the wealth of the government.
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> And therefore we believe that we ought all stand together against the foreigners holding office in Hawai'i. Let chiefs be placed in the vacancies and do not let all of the government positions go to foreigners.[437]

The fears of the Hawaiian chiefs and commoners about the effect of having foreigners become naturalized citizens and hold political office were reinforced by international and domestic events of the era. The Paulet episode in early 1843 served as a vivid reminder of how vulnerable Hawai'i was to outside interference. The Paulet incident had been carried out against the backdrop of Great Britain's annexation of Aotearoa (New Zealand) in 1840, the French seizure of the Marquesas in 1842, and the establishment by France of a protectorate over Tahiti in the same year.[438] In early 1845, the United States annexed Texas away from Mexico, and American settlers in California staged a revolution against Mexico ultimately leading to the Mexican-American War and the forced ceding of California, New Mexico, Arizona, Nevada, Utah and Wyoming to the U.S. Hawaiians feared incursions by American filibusters or mercenaries to Hawai'i as an extension of American intervention in the West and Southwest.[439]

On July 18, 1845, the council of chiefs wrote a reply to the petitioners reaffirming the policy of appointing foreigners to office. In part it stated:

> Who in the Hawaiian government are qualified to transact business with foreigners . . . let His Majesty select persons [foreign officials] skillful like those from other lands to transact business with them . . . There is no one [among the Ali'i] to be found at the present time; hereafter, perhaps the young chiefs will be qualified when they have grown up to manhood and shall have completed their education.[440]

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[437] Samuel M. Kamakau, *Ruling Chiefs of Hawaii*, pp. 399-401.
[438] Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, p. 187.
[439] Stevens, *American Expansion*, pp. 42-44.
[440] Reply of the Council Assembled to the Petition, *The Friend*, August 1845, p. 118, *cited in* Lilikalā Kame'eleihiwa, *Native Land and Foreign Desires: Pehea Lā e Pono 'Ai?* (Honolulu: Bishop Museum Press, 1992), pp. 194-95.

The king also responded to the petitioners:

> I have appointed foreign officials, not out of contempt for the ancient wisdom of the land, but because my native helpers do not understand the laws of the great countries who are working with us. That is why I have dismissed them. I see that I must have new officials to help with the new system under which I am working for the good of the country and of the old men and women of the country . . . and as soon as the young chiefs are sufficiently trained I hope to give them the places.[441]

While these responses, according to Kamakau, satisfied some of the people, over 1600 persons signed a new petition in response to the council and the king. They wrote:

> Our wishes at this time are the same as those expressed by us to you, it shall never change, because we are positive of the troubles that are sure to come to your government, to ourselves, even to the first and third generation after us. We still look with pride to the glory of our Rulers and of our services under you. But with all this you have seen fit to surrender your throne to the care of the foreigners. Alas, for us you now dislike us and you together with your chiefs have turned and followed the advice of foreigners.[442]

The fears of the petitioners were well founded. From 1842 to 1880, out of a total of 34 different men who held cabinet positions, 28 were Europeans or Americans and only six were Hawaiian or part-Hawaiian. Throughout this same period Caucasians comprised 28 percent of the Legislature although they made up only seven percent of the population.[443]

The Organic Acts

Although the 1840 Constitution had set forth some basic principles, it provided only the rough outlines of a governmental structure. In an 1845 report, Attorney General John Ricord put forth the case for a complete reorganization of government, including the executive and

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[441] Kamakau, *Ruling Chiefs of Hawaii*, pp. 401-02.
[442] Hawai‘i State Archives; August 1845; F.O. and Executive file
[443] Davianna McGregor-Alegado, *Hawaiian Resistance: 1887-1889* (Unpublished M.A. Thesis, Univ. of Hawai‘i, 1979), p. 5. In 1880, King David Kalākaua adopted the policy of appointing Hawaiians to fill cabinet level positions.

judiciary, as well as the adoption of a civil and criminal code. He found authority—both expressed and implied—for reorganization in the 1840 Constitution. Thus, between 1845 and 1847, the Legislature enacted a series of laws designated as the Organic Acts of the Hawaiian Kingdom.

The first Organic Act,[444] which went into effect in March 1846, provided that the executive branch should be divided into five departments: Interior, Foreign Relations, Finance, Public Instruction, and Law, with a minister for each appointed by the king. The kuhina nui or premier, at the time John Young (Keoni Ana), was to be minister of the interior. The act formally established the privy council, to be composed of the five ministers, the four island governors, and others as appointed by the king; it also defined the duties and powers of the island governors.

The second Organic Act, "An Act to Organize the Executive Departments," was passed on April 27, 1846.[445] The act was divided into five parts and gives in great detail the functions of each of the executive departments. Some parts of the act were passed and became operative at earlier dates. Most important of these provisions were those relating to the Board Commissioners to Quiet Land Titles, whose work is discussed in Chapter Five.

The third Organic Act, which organized the Judiciary, was passed in 1847, and went into effect in January 1848.[446] Although the Supreme Court continued to exist, most of its work was assigned to a new court called the Superior Court of Law and Equity. The act provided for three superior court judges, one designated as the chief justice, to be appointed by the House of Representatives. The kingdom was divided into four judicial districts, each with a circuit court, which was a court of record. One of the judges of the superior court presided over each circuit

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[444] First Act of Kamehameha III, An Act to Organize the Executive Ministry of the Hawaiian Islands, *Statute Laws of His Majesty Kamehameha III, Vol. I* (Honolulu: 1846), p. 9.
[445] *Id*. at p. 19.
[446] Third Act of Kamehameha III, An Act to Organize the Judiciary Department of the Hawaiian Islands, *Statute Laws of His Majesty Kamehameha III, Vol. II* (Honolulu, 1847), p. 3.

court, assisted by two local circuit judges appointed by the governor. The kingdom was further subdivided into twenty-four districts, with one or more justice courts, not of record, presided over by district justices appointed by the governor. The district justices at Honolulu and Lahaina were given more extensive powers. The act also defined the jurisdiction and procedures of the courts and set out the method for selecting juries.

1852 Constitution

In 1851, the Legislature established a three-member commission, to be appointed by the king and both houses of the Legislature, to review the 1840 Constitution and make recommendations for revisions. The king appointed Dr. Gerrit P. Judd, the Nobles appointed Judge John Papa ʻĪʻī, and the Representatives appointed their Speaker, Judge William Little Lee.[447] The recommendations amounted to an entirely new constitution, drafted principally by Justice William Lee reflecting "his American and democratic point of view and the fact that he was the peoples' representative on the commission."[448]

Hawaiian historian and scholar Jonathan Kamakawiwoʻole Osorio characterized the draft of the 1852 Constitution in this way:

> This draft was not so much a liberal extension of the 1840 Constitution and the Organic Acts that followed as it was a fundamentally different philosophy of government and society. It redefined power and political legitimacy. The first of these new definitions was quintessentially American, the separation of powers. The Constitution of 1840 had simply made provisions for elected representatives to help frame the laws. The authority of the Mōʻī (king) . . . pervaded every aspect of government. The new constitution in 1852 consigned the king . . . to a more limited role as the kingdom's chief executive officer.[449]

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[447] Note, however, that Osorio indicates that R.C. Wyllie represented the king, not Judd. Osorio, *Dismembering Lāhui*, p. 91. Kuykendall has an interesting note indicating that Wyllie was originally appointed but, according to Wyllie, Judd manipulated his way into the process. Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, p. 266, ftnte 166.
[448] Kuykendall, *Constitutions of the Hawaiian Kingdom*, p. 16.
[449] Osorio, *Dismembering Lāhui*, p. 87.

Moreover, as Osorio points out, the 1852 Constitution gave important legislative powers, the power of appropriation and spending, to the House of Representatives. "In political terms, this constitution represented not merely the limitations of the mōʻī's authority but also a concomitant appropriation of real power—spending and lawmaking—by representatives of the people."[450] This shift in power constituted one of the unanticipated consequences of the abolition of the Kapu or sacred restrictions and the divinity of the chiefs and, in a sense, represented in the fulfillment of part of the prophesy of the priest Kapihe at the time of the ʻAi Noa (freedom from the sacred eating restrictions) – "That which is above shall be brought down, That which is below shall be lifted up."[451]

The 1852 Constitution gave the right to vote to male taxpayers over the age of 20 who had resided in Hawaiʻi for more than a year, provided that the legislature should meet every year, and made most of the acts of the king subject to approval of the privy council and kuhina nui.[452] The constitution also specifically recognized the role of the privy council, stating, "[t]here shall continue to be a Council of State for advising the King in the executive part of the government, and in directing the affairs of the kingdom, according to the Constitution and laws of the land, to be called the King's Privy Council of State."[453] The privy council, appointed by the king, also

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[450] *Id*.

[451] Davida Malo, *Hawaiian Antiquities (Moolelo Hawaii)*. Trans. by Dr. Nathaniel B. Emerson in 1898. (Honolulu: Bishop Museum Press, 1951), p. 115. Samuel Kamakau, *Ke Kumu Aupuni, Ka Moʻolelo Hawaiʻi no Kamehameha Ka Naʻi Aupuni a me kāna aupuni i hoʻokumu ai* (Honolulu: ʻAhahui ʻŌlelo Hawaiʻi, 1996) , p. 208. This prophecy was referred to in the summary section of Chapter Two.

[452] *See* Art. 78 (voting qualifications); art. 61 (Legislature to convene every year); art. 27-30 (approval of privy council required) and art. 45 ("all important business of the kingdom, which the king chooses to transact in person, he may do, but not without the approbation of the Kuhina Nui. The King and Kuhina Nui shall have a negative on each other's public acts."). 1852 Constitution of the Hawaiian Kingdom, "Nā Kumukānāwai o ka Makahiki 1852," *reprinted in Ka Hoʻoilina (The Legacy): Puke Pai ʻŌlelo Hawaiʻi (J. of Hawaiian Language Sources)* Puke (Volume) I, Helu (Issue) 2 Kepakemapa (September), 2002 pp. 212-213, 204-205, 192-195, 198-199 (Luna Hoʻoponopono, Kalena Silva, ed., Jason Kāpena Achieu trans., 2002).

[453] *See* Art. 49, "Nā Kumukānāwai o ka Makahiki 1852," 2 *Ka Hoʻoilina (The Legacy): Puke Pai ʻŌlelo Hawaiʻi (J. of Hawaiian Language Sources)*, pp. 200-201.

included the cabinet ministers and the island governors as ex-officio members.

Osorio highlighted two specific provisions in the proposed constitution that were the subject of debate. One provision would have allowed the House of Representatives to appoint two persons from each island to sit in the House of Nobles, with the king appointing the remaining Nobles. The House of Representatives debated this provision extensively and, as Osorio notes, it was surprising that "some of the votes and most of the arguments" against the provision came from non-Hawaiian representatives. The argument of some was that the constitution was a "free gift of the King" and that he had "by his own free will given . . . all the indistinct rights we possess." The House of Representatives did approve the provision, but the House of Nobles "amended it out of existence." The second controversial provision—one that Osorio notes was "the only vitriolic public debate over any of the constitution's provisions" and that pitted Minister of Foreign Affairs R.C. Wyllie against Judge John Papa ʻĪʻī—would have disallowed any priest or clergyman from sitting in the House of Representatives as long as he continued his ministerial functions. The House of Representatives voted down the provision, while a deadlock in the House of Nobles was broken by Alexander Liholiho, the designated successor to the throne. Liholiho, who earlier in the day had spoken in favor of the provision, eventually voted to strike it.

According to R.C. Wyllie, the king reluctantly signed the 1852 Constitution. Wyllie, originally from England, was supportive of a government styled more along the lines of Great Britain and, as a member of the House of Nobles, attempted to guard the prerogatives of the king. Although William Little Lee evidently listened to Wyllie and made some changes to the draft constitution, the final product was more American in political structure and tone than Wyllie or the king wished. Wyllie is the source of the statement that "the king asserted his right

to abrogate the constitution if it worked badly for him and his people."[454]

International Disputes & Treaty Making

Although the Hawaiian Kingdom had signed treaties with France and Great Britain in 1843 and the United States had also made clear through the Tyler Doctrine that it supported the Kingdom's independence, Hawai'i was always in danger from outside forces. In early 1848, a new French consul, M. Dillion, arrived in Honolulu and soon raised concerns by making claims against the Hawaiian government, primarily about the tariff on French brandy and the ill treatment of Catholics in the islands. The Hawaiian government referred all disputed issues to the French government and in April 1849 asked that Dillon be recalled. About the same time, Dillon appealed to the French commander in the Pacific, Rear Admiral Louis de Tromelin. In August 1849, de Tromelin arrived in Honolulu Harbor with two warships and after consulting with Dillon, sent a list of ten demands to the Hawaiian government, which the king refused to grant. De Tromelin's troops landed, seized the Honolulu Fort, ransacked government offices and stole the king's yacht. After a few weeks, de Tromelin left Honolulu, taking Dillon with him.

The Hawaiian government, determined to protest and seek redress for de Tomelin's actions, sent Dr. Gerritt P. Judd on a mission to France. In September 1849, Judd left Honolulu taking with him the young princes, Alexander Liholiho, immediate successor to the throne, and Lot Kamehameha.

On his way, Judd stopped in San Francisco and was able to negotiate the terms of a treaty with new American Commissioner Charles Eames. Eames was on his way to Honolulu when he was detained in San Francisco. At the same time another representative of the Hawaiian government, James Jackson Jarves, negotiated a separate treaty in Washington, D.C. Eventually,

[454] Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, p. 267.

the United States Secretary of State combined terms from each treaty to come up with a version that, while not as favorable as the Hawaiian government would have liked, was acceptable. It is likely that news of de Tromelin's actions in Honolulu encouraged the United States to conclude the treaty. The treaty provided for "reciprocal liberty of commerce and navigation" between the two nations, and contained a clause that neither nation would discriminate against the trade of the other if not applicable to other powers. There were also specific provisions on the privileges of American whaling vessels in Hawaiian ports and the rights of American citizens in the Islands. Although not as much as the Hawaiian government hoped for, the treaty embodied "a recognition of the government of the Islands as a responsible power capable of maintaining a law and polity as applied to foreigners."[455]

Judd and the young princes arrived in London and, based upon the treaty signed by the U.S., Judd was able to begin negotiations for a new treaty with Great Britain, which was signed later in July 1851.[456] Judd arrived in Paris at the end of January 1850 and spent several months in vain trying to persuade the French government to address the actions of de Tromelin and Dillon.

Judd and the princes returned to Hawai'i in September 1850. Soon after their return, French commissioner M. Emile Perrin arrived on the warship *Sérieuse*. He and Foreign Minister R.C. Wyllie took up the disputed issues between the two countries. On February 1, 1851, Commissioner Perrin again forwarded a list of ten demands, similar if not identical to those that had first been presented by Admiral de Tromelin. The renewed demands, the general hostility in the negotiations, and the presence of the French warship caused great alarm within the

[455] Stevens, *Expansion in Hawaii*, p. 48.
[456] Kuykendall notes that the new British treaty then became a model for treaty between Hawai'i and the Kingsom of Sweden and Norway, signed in July 1852. Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, p. 381.

government of Kamehameha III. As a measure of self-defense, the king signed a secret proclamation putting the islands under the protection of the United States until relations between France and the Hawaiian Kingdom should be restored. This proclamation, which was given to the U.S. commissioner, Luther Severance, was to be used only in case of emergency.[457]

French Counsel Perrin, having gotten heard of the Hawaiian government's approach to the United States, became more conciliatory and eventually a settlement was reached. Although the settlement was not definitive and did not settle all issues in dispute, it was enough to avert the immediate danger of French aggression. Nevertheless, Kamehameha III felt it necessary to consider a more permanent arrangement with the United States. Wyllie and Severance conferred and drew up a document that set forth, in order of preference, several alternate plans by which Hawaiʻi might be saved from French occupation. The first called for the establishment of a joint protectorate by the United States, Great Britain, and France; if France would not agree, then a joint protectorate by the United States and Great Britain; if England would not agree, then a protectorate under the United States. The last option was cession to the United States. None of these options, however, was to be considered unless France endangered the islands again. The government of Kamehameha III again called upon Great Britain and the United States to use their good offices to bring about a resolution of the difficulties with France. Fortunately, the alternatives set out in the document were not necessary. The *Serieuse* left Honolulu on March

[457] *Id*., p. 401. Even before approaching the United States, the Hawaiian government approached British Counsel Miller with the proposal for a British protectorate. The privy council minutes of March 11, 1851, summarize a meeting with Miller at which the King again sought the protection of Great Britain, asking, "Will the British government assist me if I will hoist your flag?" *Privy Council Records*, March 11, 1851, p. 308. Miller remonstrated against the idea of a protectorate or annexation, especially to the United States, stating, "the United States are very hard upon the natives of the countries they obtain." *Id*. After more discussion, the kuhina nui remarked that, "the King did not send for you to enquire respecting annexation to the United States. We wish to depend (lean) upon Great Britain, our ancient friend, and to hear from you some word of encouragement that we will be protected in time of danger." *Id*. Miller's response must not have been encouraging because the next item in the privy council minutes is a draft of the proclamation placing the islands under the protection of the United States. *Id*. at 310.

30th and Perrin left at the end of May in order to consult with authorities in France.

Although the immediate danger had been averted, talk of annexation to the United States continued and increased, in part because of U.S. westward expansion into Washington, Oregon, and particularly California. From 1848 on there were continual rumors that "filibusters" (men engaged in unauthorized warfare) from California were organizing to take over Hawai'i and bring about annexation to the U.S., or even set up a separate republic. In the fall of 1851, these rumors mounted, in part as a result of American fears that Hawai'i would fall into French hands. Moreover, the number of Americans residing in Hawai'i had greatly increased after California was settled, and these Americans wanted to see the U.S. flag flying over Hawai'i. In 1853, a new U.S. President, Filmore Pierce, took office and expressed support for annexation although he disapproved of the filibusters.

In the spring of 1853 smallpox broke out in the islands. The government took vigorous steps to prevent the spread of the disease but without success. Before the epidemic ended, thousands of Native Hawaiians died.[458] The epidemic was used as an excuse by some in the foreign community to agitate against members of the cabinet. Both Dr. Judd, as finance minister, and Richard Armstrong, as public instruction minister, were accused of mishandling the outbreak. Calls came, primarily from the foreign community, for their dismissal and a Committee of Thirteen formed and presented petitions to the king and privy council seeking the dismissal of Judd and Armstrong. Native Hawaiians, led by Judge John Papa 'Ī'ī, signed counter petitions and resolutions declaring the charges against the two men to be false. The Committee of

[458] The actual number of Kānaka that died as a result of the smallpox epidemic is unclear. Kuykendall reports that a special file in the Archives of Hawai'i contains reports showing, as of March 10, 1854, 11,081 cases of smallpox with 5,947 deaths but casts doubt on the reliability of these figures. Three commissioners of health—Dr. T.C.B. Rooke, Dr. G.P. Judd, and Marshal W.C. Parke—were appointed to oversee the fight against the disease and they reported in January of 1854, a total of 6,405 cases with 2,485 deaths. Kuykendall, *Hawaiian Kingdom, Vol. I*, p. 412.

Thirteen continued to meet and considered taking possession of the government with the help of filibusters from California. Eventually, all of the cabinet ministers resigned and the king reappointed all of them save Judd; instead Elisha H. Allen was appointed as minister of finance.

While this agitation was going on, the king received a petition asking him to take steps to bring about the annexation of Hawai'i to the United States.[459] Kamehameha III and his advisers very seriously considered the proposal for two principal reasons: one was the danger of revolution from foreigners residing in the Kingdom; the other was the danger of some attack from without, either by the California filibusters or by some foreign power. In February 1854, the king instructed Minister Wyllie to discuss possible terms of annexation with U.S. Commissioner David L. Gregg and to negotiate a treaty subject to the approval of the king, the cabinet, and the heir-apparent, Prince Alexander Liholiho.[460]

Through the summer of 1854, treaty negotiations between Wyllie and Gregg went slowly. Several of the high chiefs with much influence, including High Chief Paki and Judge John Ī'ī, opposed annexation. Moreover, there were several important points of contention in the treaty proposals: Kamehameha III insisted that Hawai'i should be admitted as a state, not as a territory; due compensation to the king and chiefs, who would lose their places as a result of annexation, was required; and a sum for support of the schools was included.[461] Gregg did not believe that the first two provisions would be acceptable to the U.S. government, but agreed to include them

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[459] *Id*. at 417.

[460] On April 6, 1853, Alexander Liholiho was named successor to the throne by Kamehameha III pursuant to Article 25 of the Constitution of 1852. See *The Polynesian*, April 9, 1853, p. 90. Article 25 provides that the "successor shall be the person whom the King and the House of Nobles shall appoint and publicly proclaim as such, during the King's life . . . ."

[461] W.D. Alexander, *The Uncompleted Treaty of Annexation between the United States of America and the Hawaiian Kingdom Negotiated in 1854* (Honolulu: Papers of the Hawaiian Historical Society, No. 9, July 2, 1897), p. 9. Gregg believed that the question of Hawai'i's admission as a state would have to be left to Congress and he thought a yearly payment of $100,000 was sufficient. Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, pp. 426-27.

in the treaty and refer the whole matter to the president. The treaty was then submitted to the king, the cabinet, and Prince Alexander Liholiho for approval. Weeks passed without any action, attributable to Prince Alexander Liholiho's absence from Honolulu, a purposeful delay since Liholiho opposed annexation to the United States except as a last resort.[462]

Then in November 1854, the Hawaiian government received a report that a band of filibusters was coming from California to overthrow the government, and that this could only be avoided by annexation. Kamehameha III's government interpreted this as an attempt to force the signing of a treaty. At the time, there were American, British, and French warships in Honolulu and the Hawaiian government sought and received assurances of aid from the ships' commanders from any attack by filibusterers. Since the government had been successful in calling upon all three great powers for protection, this incident served to strengthen the resolve of the Hawaiian government, and particularly Alexander Liholiho, against annexation.

During these political developments, Kamehameha III had been ill and on December 15, 1854, he passed away. The idea of annexation to the United States ended with his passing.

The Passing of Kamehameha III

Kamehameha III had been in poor health for almost a year before his death. He was 41 years old and had reigned as king for 30 of those years. Native Hawaiian historian, Samuel M. Kamakau recounts:

> At eleven in the morning on Monday, December 16, 1854, the cannon boomed its signal and the flag at half-mast gave warning of his death. Our parent Kua-papa-nui had passed on with the procession that moves on forever. The whole nation heard the report, from 'Ewa and the Ko'olaus, from every mountainside; and the

[462] On their trip to Great Britain and France with Dr. Judd to secure agreement on Hawai'i's independence, Alexander Liholiho and Lot Kamehameha had visited the United States and been subjected to racial discrimination. *See*, Alexander Liholiho, *Journal of Prince Alexander Liholiho: Voyages Made to the United States, England and France in 1849-1850* (Ed. Jacob Adler) (Honolulu: Univ. of Hawaii Press, 1967), pp. 108-109. Thus, Liholiho was wary of political incorporation into the United States.

> foreigners within the town, both strangers and those of the land. The sound of wailing rose and increased like the clamorous sound of the breaking waves. It beat upon the ears insistently and mournfully like the reiterative strokes of the tapa stick in the hands of the cunning craftsman who beats out a fine cloth. Like the plaintive voice of the yellow-feathered lale bird singing its dirge, was the tremulous voice of the queen, lost in the thousands of voices of the crowd who stood without . . . .[463]

Soon after the passing of Kamehameha III, Kekūanāoʻa, the governor of Oʻahu, with a company of soldiers marched through downtown Honolulu proclaiming Prince Alexander Liholiho as King Kamehameha IV.[464] The funeral of Kamehameha III was held on January 10, 1855, with the formal inauguration of Kamehameha IV the next day.

Summary

King Kamehameha IV, on January 11, 1855, delivered his first address as constitutional monarch to a large crowd at Kawaiahaʻo Church. He eloquently spoke of his predecessor and summarized his character and major accomplishments:

> The good, the generous, the kind hearted Kamehameha is now no more. Our great chief has fallen! Though dead, he still lives. He lives in the hearts of his people! He lives in the liberal, the just, and the beneficent measures which it was always his pleasure to adopt. His monuments arise to greet us on every side. They may be seen in the church, the school house and the hall of justice; in the security of our persons and property; in the peace, the law, the order and general prosperity that prevail throughout the islands. He was the friend of the Makaainana, the father of his people, and so long as a Hawaiian lives his memory will be cherished!
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> * * *
>
> The age of Kamehameha III was that of progress and of liberty—of schools and of civilization. He gave us a Constitution and fixed laws; he secured the people in the title of their lands, and removed the last chain of oppression. He gave them a voice in his councils and in the making of laws by which they are governed. He was a great national benefactor, and has left the impress of his mild and amiable

[463] Kamakau, *Ruling Chiefs of Hawaii*, p. 422.
[464] *The Polynesian*, December 16, 1854, p. 126.

disposition on the age for which he was born.[465]

Kamehameha III had also faced the greatest threat to the independence of Hawai‘i and, by his perseverance and steady leadership, succeeded not only in restoring Native Hawaiian governance over Hawai‘i but also in securing international recognition of Hawai‘i as a full-fledged member of the family of nations.

Thus, the words of the mele, Ka Na‘i Aupuni, quoted at the beginning of this chapter, are appropriate not only to describe the reign of Kamehameha I, but also the reign of his son, Kauikeaouli, Kamehameha III:

E na‘i wale nō ‘oukou	Strive indeed, all of you
I ku‘u pono, ‘a‘ole pau	Toward the good I've done, boundless
I ke kumu pono o Hawai‘i	Toward the solid foundation of Hawai‘i
E mau ke ea o ka ‘āina i ka pono	The land shall live through righteousness
E mau ke ea o ka ‘āina i ka pono	The land shall live through righteousness

Kamehameha III's attempts to ensure that his nation and people thrived through pono (harmonious and balanced) governance will continue to be examined in the next chapter, which describes the historical evolution of Hawai‘i's land tenure system under King Kamehameha III. It examines how Kamehameha III, the chiefs, and the privy council sought to protect the

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[465] Quoted in the *The Polynesian*, January 13, 1855, p. 142. Kamehameha IV also took this opportunity to address the foreigners in Hawai‘i, noting that Kamehameha III "opened his heart and hand with a royal liberality, and gave till he had little bestow and you, but little to ask stating." He continued with a warning, however:

> I therefore say to the foreigner that he is welcome. He is welcome to our shores. Welcome so long as he comes with the laudable motive of promoting his own interests and at the same time, respecting those of his neighbor. But if he comes with no more exalted motive than that of building up his own interests at the expense of the Native–to seek our confidence only to betray it–with no higher ambition that that of overthrowing our Government, and introducing anarchy, confusion and bloodshed–than he is most unwelcome!

Id. See also, Kame'eleihiwa, *Native Land and Foreign Desire,* pp. 311-312, discussing Kamehameha IV's concern about the "overbearing influence" of American Calvinists.

continuing responsibilities and rights of Native Hawaiians in the lands of their ancestors for succeeding generations.

Chapter Five: Ka Māhele - The Division of Lands for Private Ownership

Generation 25 [Generation 120] - King Kamehameha III (Kauikeaouli) 1839 - 1854

E ʻIke Mai	Behold
I luna la, i luna	Above, above
Nā manu o ka lewa	All birds in the air
I lalo la, i lalo	Below, below
Nā pua o ka honua	All earth's flowers
I uka la, i uka	Inland, inland
Nā ʻulu lāʻau	All forest trees
I kai la, i kai	In the sea, the sea
Nā iʻa o ka moana	All the fishes of the ocean
Haʻina mai ka puana	Sing out and say, again the refrain
A he nani ke ao nei	Behold this lovely world![466]

The mele above demonstrates the Native Hawaiian sense of the interconnection of humans, the air, ʻāina (land), the ocean, and all living things. It reflects a tranquility of life in the islands through a continuum of time and space. This tranquil way of life and relationship to land and nature, however, was about to be disrupted by laws establishing a system of private ownership of land that would transform the land and its resources into commodities and alienate many Kānaka Maoli (Native Hawaiians) from their ancestral lands. During the reign of Kamehameha III the process known as Ka Māhele, meaning division, took place resulting in the adoption of a unique private property system in Hawaiʻi.

Overview

The establishment of a system of private property ownership in Hawaiʻi was complicated and evolved through a process that began with the Declaration of Rights in 1839 and continued

[466] Mary Kawena Pukui and Alfons L. Korn, *The Echo of Our Song: Chants and Poems of the Hawaiians* (Honolulu: University Press of Hawaii, 1973), pp. 192 – 194.

up to the 1850 "Kuleana" Act, which allowed the makaʻāinana (common people) to make claims to cultivation lands and to purchase government lands. Collectively, these laws constituted Ka Māhele, the division of lands for the establishment of a system of private land ownership in Hawaiʻi, referred to as Ka Māhele throughout this chapter.[467] This chapter will also discuss the auctioning off of land belonging to the government of the Kingdom of Hawaiʻi from 1850 through 1860 and the enactment of an adverse possession law in 1870. Cumulatively, these laws resulted in the alienation of a majority of Native Hawaiians from their ancestral lands. However, at the same time, a careful re-reading of each law and its legislative history and intent, when passed by King Kamehameha III and the Legislature of the Hawaiian Kingdom, reveals that the king and the Legislature succeeded in reserving substantial rights for Native Hawaiians that survive into the twenty-first century. On one hand, the system of private Hawaiian land ownership that Kamehameha III, his council of chiefs and the Board of Commissioners to Quiet Land Titles crafted was not an entirely Western system of private property ownership. It was, in fact, a uniquely Native Hawaiian system that reserved traditional rights of access to natural resources on undeveloped lands for Native Hawaiians to be able to fulfill their customary subsistence, cultural and religious kuleana or responsibilities.[468] The process, as originally designed, was not fully implemented. As a result, Native Hawaiians in the twenty-first century

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[467] As discussed in this chapter, the cumulative process of setting up a system of private property ownership in Hawaiʻi, Ka Māhele, is comprised of several steps, including what is most commonly referred to as the 1848 Māhele in which the king and the chiefs divided out their interests in the lands.

[468] Jon M. Van Dyke, *Who Owns the Crown Lands of Hawaiʻi?* (Honolulu: Univ. of Hawaiʻi Press, 2008), pp. 49-50 and fn. 145; *see generally* Davianna Pōmaikaʻi McGregor, "An Introduction to the Hoaʻāina and Their Rights," 30 *Hawaiian Journal of History* 1 (1996); Paul Nāhoa Lucas, "Gathering Rights," *in Native Hawaiian Rights Handbook*, ed. Melody Kapilialoha MacKenzie (Honolulu: Native Hawaiian Legal Corporation and Office of Hawaiian Affairs (distributed by Univ. of Hawaiʻi Press): 1991), p. 223.

have inherited the traditional vested interests of their ancestors living in Hawai‘i at the time of Ka Māhele, in the national lands of the Hawaiian Kingdom and Constitutional Monarchy.

As described in Chapter Two, the traditional land system of Hawai‘i evolved over centuries as the social and political system developed in the islands. As a result, by the middle of the 19th century, all of the lands of Hawai‘i were encumbered by the interests of the three major classes of people who had historically held tenure over the land.

Historically, the lands of the islands were collectively cleared, cultivated, and lived upon by Kānaka Maoli (Native Hawaiians) organized as ‘ohana (extended families) that lived in dispersed compounds of households called kauhale. The ‘ohana endured as the basic social unit of Native Hawaiian society and their stewardship and tenure on the land extended from generation to generation to the time of Ka Māhele and, in many rural areas, until today. The basic areas of settlement, cultivation, harvesting and stewardship of resources established by the ‘ohana extended from makai (the ocean and coastal area) to mauka (the mountain area) and were within ahupua‘a (watershed management unit). The *Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands* describes an ahupua‘a as follows:

> The typical form of an Ahupuaa was a strip running from the sea to the mountains and containing a sea fishery and sea beach, a stretch of kula or open cultivatable land and higher up its forest. All Ahupuaas had definite boundaries, usually of natural features, such as gulches, ridges and streams, and each had it specific name.[469]

Around A.D. 1000, ali‘i ‘ai moku (district chiefs) emerged as rulers over moku or districts on each island. Each of these moku or districts was comprised of several ahupua‘a (watershed management units). The district chiefs appointed supervisors or konohiki to oversee the work of the various ‘ohana (extended families) within each ahupua‘a. The district chiefs also

[469] Office of the Commissioner of Public Lands of the Territory of Hawaii, *Indices of Awards Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands* (Honolulu: Star-Bulletin Press, 1929), p. ix.

imposed sacred restrictions that created a class system of ali‘i or chiefs who were separate and apart from the extended families of maka‘āinana or common people. Around A.D. 1500 [A.D. 1300],[470] ali‘i nui (paramount chiefs) established four distinct island chiefdoms and instituted firm boundaries for the moku or land districts on each island. In 1810, King Kamehameha I gained control of all of the islands from Hawai‘i to Ni‘ihau. His successors governed the islands at the time of Ka Māhele.

Māhele means division. As applied to the process of establishing private property ownership in Hawai‘i, it has been interpreted to mean a dividing up of the land into different parcels and assigning ownership to various individuals and entities. It has been compared to the manner in which a pie is cut up into various sized pieces and served to different individuals. This assumes that each parcel of land under the traditional land system had only one interest that needed to be replaced by a private property owner. However, the traditional land system is more comparable to a three-layered cake. The series of laws that defined traditional land rights – the 1839 Declaration of Rights, the 1840 Constitution, and the 1846 Principles Adopted by the Land Commission, indicate that all of the lands of Hawai‘i were held collectively in a joint trust by the mō‘i (king), for the chiefs, and the people. In other words, all of the lands of Hawai‘i were vested with three layers of responsibilities and rights.

‘Ohana (extended families) of maka‘āinana (common people) were recognized as having one layer of responsibilities and vested rights in the land.[471] They had inherited the responsibility

[470] The A.D. 1300 estimate is based on Prof. Lilikalā Kame‘eleihiwa’s genealogical research and timeline as explained in chapters 1 and 2.
[471] Terms used to refer to the maka‘āinana in the laws of Ka Māhele included maka‘āinana (commoners), kānaka (the people), and ho‘āina (land tenants, although the literal translation is friend of the land). These laws include the 1839 Declaration of Rights; the 1840 Constitution; the 1846 Principles Adopted by the Board of Commissioners to Quiet Land Titles in Their Adjudication of Claims Presented to Them; the Act of June 7, 1848, Relating to Lands of His

and right to the cultivated gardens and taro lands of their lineal ancestors. To fulfill subsistence needs, as well as cultural and religious responsibilities, the maka‘āinana (common people) had provided stewardship and harvested resources from makai (the ocean and coastal area) to mauka (the mountain region) within their residential ahupua‘a (watershed management unit) and moku (district).

Over the maka‘āinana (common people), the ali‘i (chiefs) and konohiki (land stewards) were responsible for the management of the ahupua‘a and the well-being of the maka‘āinana who resided within the ahupua‘a. Thus, the ali‘i and konohiki also had a layer of responsibility and vested interest in each of the individual lands that made up the ahupua‘a (watershed management unit). These responsibilities were jointly fulfilled and their rights were jointly held with those of the extended families of mak‘āinana (common people) of the land.

Finally, King Kamehameha I who had conquered the ali‘i nui (paramount chiefs) of all of the islands ultimately controlled all of the lands from Hawai‘i to Ni‘ihau. He had the ultimate responsibility to provide for the well-being of the people and the independence of their nation. After his conquest, King Kamehameha I placed the loyal chiefs who had allied with him in his rise to power, as the governors of the main islands and rulers of specific districts. King Kamehameha I and his heirs bore ultimate responsibility and held vested rights in lands in every part of every island of the Hawaiian archipelago. Thus, as noted above, the division of land was more like the dividing out of layers of interest as in a multi-layered cake. In order for one person to end up with title to a whole piece or parcel of land, including all of its of layers of interest, those who held a claim to each layer of interest had to surrender that claim and their interest in

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Majesty the King and of the Government; and the August 6, 1850, Kuleana Act (Enactment of Further Principles).

that layer to that one person. Under the Western system of private property, the person who owns title to a parcel of land owns all of the layers of interest of that parcel.

The final outcome of Ka Māhele was a hybrid system of unique elements of Kānaka Maoli (Native Hawaiian) principles of land stewardship combined with Western private property land ownership. All of the lands in the Hawaiian Islands—both private and public—retained a layer of vested rights of the hoaʻāina or the tenants of the land. The following phrase retaining these rights was included in titles granted as Land Commission Awards, Royal Patents, Māhele Awards, and in the law setting aside the Crown and Government lands of the Kingdom of Hawaiʻi—"koe wale no na kuleana o na kanaka e noho ana ma ua mau aina la," which literally translates as "reserving only the right of the people who live on the aforementioned lands," and was translated at the time as "subject only to the rights of tenants."[472] This chapter describes how the process for Ka Māhele unfolded through a series of laws and policies from 1839 through 1870.

It would be a mistake to view Ka Māhele as solely an internal process of the Hawaiian Kingdom. The decision to undertake such a process and to institute a form of private property was influenced by external forces, and particularly by the actions of the "great powers" in the Pacific. As discussed in Chapter Four, King Kamehameha III and his chiefs were well aware of Great Britain's annexation of Aotearoa (New Zealand) in 1840 and France's military actions taking the Marquesas and Tahiti in 1842.[473] The Paulet affair in early 1843, which had been brought about in part by a land dispute, also showed how vulnerable Hawaiʻi was to outside

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[472] It should be noted that subsequent royal patents and deeds sometimes contained slightly different language, such as "koe nae no kuleana o na kanaka maloko." *See Kalipi v. Hawaiian Trust Co.*, 66 Haw. 1, 656 P.2d 745 (1982), in which the Hawaiʻi Supreme Court translated the phrase as: "The kuleanas [sic] of the people therein are excepted."

[473] Ralph S. Kuykendall, *The Hawaiian Kingdom, Vol I: 1778-1854 Foundation and Transformation* (Honolulu: Univ. of Hawaii Press, 1938), p. 187.

interference. Moreover, American expansion to the West Coast of the United States in the mid-1840s also raised concerns about further expansion to Hawai‘i or incursions by U.S. mercenaries.[474] Finally, the demands of foreigners living in Hawai‘i for land needed to be addressed. Thus, Kamehameha III and the chiefs were confronted with devising a land system that would be recognized by foreign powers should Hawai‘i ever be conquered, and that would "assuage the demands for land from westerners living in the Kingdom and those patrolling the Pacific with their warships, while also protecting the interests" of the people.[475]

The 1839 Declaration of Rights

The 1839 Declaration of Rights was the first step in the process of defining and separating out the respective rights of the various classes.[476] It recognized the distinct rights of the king as sovereign, separate from the rights of the chiefs and the common people. More importantly, it guaranteed the protection of the rights of the people, together with their lands, their building lots and all their property. The recognition of these rights laid the foundation for the reservation of the vested rights of Native Hawaiians in the lands of Hawai‘i as the laws creating private ownership of land were written. An excerpt from the 1839 Declaration of Rights affirming the property rights of Native Hawaiians states:

> 5. Ua ho‘omalu ‘ia ke kino o na Kanaka a pau, a me lo lakou ‘Āina, a me ko lakou mau pa hale, a me ko lakou waiwaia pau; ke malama lakou in na kanawa o

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[474] Sylvester Stevens, *American Expansion in Hawaii 1842-1898* (New York: Russell & Russell, 1945), pp. 42-44.

[475] Van Dyke, *Crown Lands?*, p. 30; Stuart Banner, "Preparing to Be Colonized: Land Tenure and Legal Strategy in Nineteenth-Century Hawaii," *39 Law & Soc'y. Rev.* 273 (2005), p. 278 (arguing that the strategy of the king and chiefs "was to convert those landholdings into a legal form that would be recognized by an incoming colonial government—whether American, British, or French—as private property.").

[476] The Declaration of Rights was titled "Ke Kumukānāwai," meaning "the source of law," and is oftentimes considered the first constitution of Hawai‘i, setting forth the basic relationships, rights, and responsibilities of the king, chiefs, and people. It was substantially incorporated into the 1840 constitution.

> ke aupuni, ʻaʻole hoʻi e lawe ʻia kekahi mea, ke ʻolelo ʻole ʻia kela mea ma ke kanawai. ʻO ke aliʻi e hana i kekahi mea kuʻe i keia Kumukanawai, e pau kona noho aliʻi ʻana ma keia pae ʻĀina ʻo Hawaiʻi nei, ke hoʻomau ʻia ma laila, pela na kiaʻĀina, a me na luna a me na konohiki a pau.
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> 5. Protection is hereby secured to the persons of all the people, together with their lands, their building lots and all their property, while they conform to the laws of the kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws. Whatever chief shall act perseveringly in violation of this Constitution, shall no longer remain a chief of the Sandwich Islands, and the same shall be true of the governors, officers and all land agents.[477]

It should be noted that in 1839 there was no process for foreigners to become naturalized citizens of the Kingdom and thus, when the law referred to "na Kanaka a pau," or all of the people, it expressly referred to Native Hawaiians.[478]

The Constitution of 1840

The second step was the 1840 enactment of a detailed constitution and the compilation of laws for the Hawaiian Kingdom. As described earlier, the 1840 Constitution established the executive, legislative and judicial branches of government. The Constitution incorporated much of the Declaration of Rights, including the statement regarding protection of the people, their lands, their building lots, and all of their property. In addition, the Constitution of 1840 clarified the principles upon which the dynasty was founded and reaffirmed the trust responsibility of the Kamehameha dynasty over the land on behalf of the indigenous chiefs and people. The

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[477] "Na Kumukanawai O Ka Makahiki 1839 A Me Ka 1840" in *Ka Hoʻoilina, The Legacy: Puke Pai ʻOlelo Hawaiʻi, Journal of Hawaiian Language Sources*, Puke (Volume) I, Helu (Issue) 1 Malaki (March) 2002, p. 32-33. Note the Journal provides the official 1839 government translation of "pae ʻĀina o Hawaiʻi nei" as "Sandwich Islands" but the more precise translation would be "Hawaiian archipelago."

[478] American Historian Ralph S. Kuykendall also describes efforts by the chiefs in 1838 to draft a policy prohibiting foreigners from "owning" and transferring land, stating that the chiefs "were still determined that full title to land should not be granted to foreigners." Kuykendall, *The Hawaiian Kingdom, Vol. I,* pp. 155-56.

Constitution clearly stated that the king held the lands of the islands of Hawaiʻi *in common* with the chiefs and the people and not as private property. There was no private ownership of any land in Hawaiʻi by any person or entity prior to Ka Māhele.

Again, the 1840 Constitution vested the rights of the king, the chiefs, and the people in the land at a time when Kānaka Maoli (Native Hawaiians) were the only citizens of the islands. The constitution stated:

> 14. Ka hoʻākāka ʻana i ke ʻAno o ka Noho o nā Aliʻi
> Eia ke ʻano o ka noho ʻana o nā aliʻi a me ka hoʻoponopono ʻana i ka ʻāina. ʻO Kamehameha I, ʻo ia ke poʻo o kēia aupuni, a nona no na ʻāina a pau mai Hawaiʻi a Niʻihau, ʻaʻole naʻe nona ponoʻī, no nā kānaka no, a ma nā aliʻi, a ʻo Kamehameha no ko lākou poʻo nānā e ʻōlelo i ka ʻāina. No laila, ʻaʻohe mea pono ma mua, ʻaʻohe hoʻi mea pono i kēia manawa ke hoʻolilo aku i kekāhi lihi iki o kēia mau ʻāina me ka ʻae ʻole o ka mea iā ia ka ʻōlelo o ke aupuni.
>
> 14. Exposition of the Principles on which the Present Dynasty is Founded
> The origin of the present government, and system of polity, is as follows. Kamehameha I, was the founder of the kingdom, and to him belonged the land from Hawaii to Niihau, though it was not his own private property. It belonged to the people, and the chiefs in common, of whom Kamehameha I was the head, and had the management of the landed property. Wherefore, there was not formerly, and is not now any person who could or can convey away the smallest portion of land without the consent of the one who had, or has the direction of the kingdom.[479]

The 1840 Constitution and the laws enacted immediately thereafter laid the foundation to resolve conflicts between Kānaka Maoli (Native Hawaiians) and foreigners over land.[480] While preserving the traditional land system and stating that land could not be conveyed without the

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[479] "Na Kumukanawai O Ka Makahiki 1839 A Me Ka 1840," in *Ka Hoʻoilina, The Legacy: Puke Pai ʻOlelo Hawaiʻi, Journal of Hawaiian Language Sources*, Puke (Volume) I, Helu (Issue) 1 Malaki (March) 2002, pp. 40–41. The translation here has been altered to more accurately translate the Hawaiian as "from Hawaiʻi to Niʻihau" instead of "from one end of the Islands to the other." The Hawaiian version stated, "It belonged to the people and the chiefs in common," although the English version of the constitution changed the order to read, "It belonged to the chiefs and people in common."

[480] Kuykendall, *The Hawaiian Kingdom, Vol. I,* pp. 273-98 (discussing some of the factors involved in the enactment of these laws).

consent of the king and his council, the constitution implicitly acknowledged that foreigners asserted claims to Native Hawaiian lands. In 1841, a concession to foreigners was made with the adoption of a plan allowing the various island governors to enter into 50-year leases with foreigners.[481]

The Land Commission and Its Principles

On December 10, 1845, a statute to create the Board of Commissioners to Quiet Land Titles (Land Commission) was passed, over the objections of the commoners. The statute provided for a board of five commissioners to undertake "the investigation and final ascertainment or rejection of all claims of private individuals, whether natives or foreigners, to any landed property acquired anterior to the passage of the act."[482]

The commission was comprised of two pure Hawaiians: John Papa ʻĪʻī, a member of the privy council, and Zorababella Kaʻauwai, a member of the House of Representatives; a hapa-haole (Native Hawaiian partly of non-Native Hawaiian ancestry), James Young Kanehoa, the governor of Maui; as well as two Americans who had taken an oath of allegiance to Kamehameha III, William Richards who was eventually chosen to head the Land Commission, and Attorney General John Ricord.[483] The commissioners took their oath of office on February 9,

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[481] This concession was made in the Royal Proclamation of May 31, 1841, *cited in* Kuykendall, *The Hawaiian Kingdom, Vol. I,* pp. 275-76.

[482] Act of Dec. 10, 1845, An Act to Organize the Executive Departments of the Hawaiian Islands, Part I, ch. VII, art. IV, *1845-46 Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands*, p. 107; Jon J. Chinen, *The Great Mahele: Hawaii's Land Division of 1848* (Honolulu: Univ. of Hawaii Press, 1958), p. 8.

[483] Kuykendall, *The Hawaiian Kingdom, Vol. I,* p. 280. Changes in the composition of the Commission occurred over the course of the 9 years that it functioned. On May 8, 1847, J.H. Smith replaced Ricord. On August 18, 1847, W.L. Lee and N. Namauʻu replaced Richards and Kanehoa. On December 9, 1848, S.M. Kamakau replaced Namauʻu. On March 21, 1850, J. Kekaulahao replaced Kaʻauwai. On August 5, 1850, G.M. Robertson replaced Kamakau. John Papa ʻĪʻī was the only member who served throughout the existence of the Commission. Commissioner of Public Lands of Public Lands of the Territory of Hawaii, *Indices of Awards*

1846. On February 14, 1846, they issued a notice in the *Polynesian* newspaper for all persons to file their claims for land, with supporting evidence, with the Land Commission within two years. The deadline for the filing of land claims was set for February 14, 1848.[484]

This singularly important notice to the common people to lay claim to their ancestral lands was surprisingly vague and used Western terms relating to property that were foreign and unfamiliar to Native Hawaiians, even when awkwardly translated into Hawaiian:

> E haawi ma ke ano alodio na palapala Sia nui, a i ole ia, na palapala hoolimalima no na makahiki, e haawiia keia mau mea mamuli o ka makou hoakaka ana, e like me na mea i hoakakaia mai ia makou.
> Ua noiia ʻku na kanaka a pau e hoike mai ia makou in na Lua i ka olelo hoakaka i ko lakou kuleana aina, a hoike mai hoi i ke kuuo ko lakou koi ana i kela kuleana aina ma Hawaii nei; hana hoi mamua o na makahiki elua mai keia la aku.
>
> Patents in fee simple, or leases for terms of years, will be issued to those entitled to the same, upon the report which we are authorized to make by the testimony to be presented to us.
> All persons are required to file with the Board by depositing with its Secretary specifications of their claims to land, and to adduce the evidence upon which they claim title to any land in the Hawaiian Islands, before the expiration of two years from this date.[485]

On October 26, 1846, the king and the Legislature adopted into law the "Principles Adopted by the Board of Commissioners to Quiet Land Titles in Their Adjudication of Claims Presented To Them."[486] These principles served to guide the establishment of a system of private property in Hawaiʻi by articulating what the Land Commission, after consulting the king and the chiefs, believed were the traditional principles of land tenure in the islands.

Made by the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands (Honolulu: Star-Bulletin Press, 1929), p. vii, notes that the original commission was composed of "two white men, two full blooded Hawaiians and one half-white."

[484] Commissioner of Public Lands, *Indices of Awards*, pp. 8, 19 – 20.

[485] *Id*.

[486] Act of Oct. 26, 1846, Approving Principles Adopted by the Board of Commissioners to Quiet Land Titles, in their Adjudication of Claims Presented to Them, *1847 Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands (Including Acts of Public Recognition and Treaties)*, p. 81.

The Land Commission principles reiterated that there were three classes of persons who had vested rights in the lands of Hawai'i—the government, the landlord, and the tenant—stating:

> Ua akaka loa hoi, ekolu wale no mea kuleana ma ka aina hookahi. 1. O ke Aupuni. 2. O na konohiki. 3. o na hoaaiana, a nolaila he mea nui ka hoakaka i ka nui o ko kekahi kuleana , a me ko kekahi.
>
> It being therefore fully established, that there are but three classes of persons having vested rights in the land, - 1st, the government, 2nd, the landlord, and 3rd, the tenant, it next becomes necessary to ascertain the proportional rights of each.[487]

It is important to emphasize here that the context for these principles was the indigenous Native Hawaiian Nation. Naturalized foreigners were still considered foreigners under the law of August 1843, discussed in Chapter Four.[488] Foreigners were specifically prohibited from owning land in the islands. Therefore, those persons identified as having vested rights in the lands of Hawai'i under the Land Commission Principles adopted in 1845 were classes of persons who were indigenous Kānaka Maoli (Native Hawaiians) – the indigenous Native Hawaiian government, Native Hawaiian chiefs and landlords, and Native Hawaiian commoners.

If there is yet some uncertainty about this, the fifth principle stated specifically that the Commission could not disregard restrictions established by the Legislature. The first of these restrictions was: "Aliens are not allowed to acquire any allodial or fee-simple estate in lands." The second provided that no leasehold estate should be considered validly acquired by any alien "until he shall have obtained a certificate of nationality" pursuant to Kingdom law.[489] However,

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[487] Commissioner of Public Lands, *Indices of Awards*, pp. 3, 14.

[488] *Laws and Regulations passed by His Majesty Kamehameha III, King of the Hawaiian Islands and His Council*, assembled at Honolulu, August 11, 1843 (broadside), *cited in* Kuykendall, *The Hawaiian Kingdom, Vol. I,* p. 239.

[489] Commissioner of Public Lands, *Indices of Awards*, p. 9. In Hawaiian, the principles stated: 1. Aole e loaa i ka lahui e no lakou ponoi ma ke ano alodio kekahi aina iki. 2. Aole e lilo io i ua poe lahui e la ka waiwai paa i hoolimalima, a loaa mua ia lakou ka palapla noho e ahoakaka ana i ko lakoua aina. *Id*. at p. 21.

such restrictions on aliens owning fee-simple title to Hawaiian land were modified by a law passed on June 28, 1847, which stated that this restriction would not apply to "freehold estates less than allodial" in lands in possession of aliens at the time of the passage of the law. The law stated that "it would be lawful for them, subject to the control of the Hawaiian government, so far as such lands are concerned, to receive royal patents in fee-simple for those estates in like manner as Hawaiian subjects, on the payment of such commutation as shall be approved by the Privy Council."[490] Nevertheless, the law prohibited the conveyance of such estates received in fee-simple to any person other than a Hawaiian subject by the holder of the title and any of that person's heirs who were not Hawaiian subjects.[491] As discussed below, foreigners did not attain full rights to own land in Hawai'i until the passage of a special act in 1850.[492]

The principles also reviewed the nature of the vested rights of the king, the chiefs, and the commoners in the land. In this law, the commoners were now called hoa'āina or tenants of the land (literally translated, the term means "friend of the land"):

> O na pono a pau i pili i ke Alii maluna o na konohiki nui, a me na mea malalo o lakou, oia na pono o na konohiki nui maluna o na hoaaina o lakou, a me na lopa a pau i noho i ko lakou aina. Nolaila, me he poe hui la lakou, a ua pili ka aina ia lakou a pau . . .
> Nolaila, he mea kupono maoli, a he mea pololei no hoi i ka haawi ana o ke Alii i ke kuleana alodio, ke haawi i ke konohiki maluna, oia hoi ka mea i loaa mua ka aina na ke Alii mai, no ka mea, i ka hana na pela, aole i hana ino ia na konohiki, a me na hoaaian malalo ona; ua hoomaluia lakou e ke kanawai, e like maka wa mamua. He mea akaka loa hoi ka hiki ole i ke Alii ka haawi aku i ke kuleana alodio ia hai, no ka mea, ina pela, ua nele ke konohiki mua. Aka, ina loaa i ke konohiki mua kona aina ma ke ano alodio, ma ke kuai, a ma ka haawi wale o ke Alii, ua mau no ke kuleana o na hoaaian, a me na lopa, no ka mea aole nele kekahi mea e ae no ka hoolilo ana o ka Moi i kona iho. Nolaila, o ke konohik i

[490] Act of June 28, 1847, An Act Relating to the Land Titles of Aliens, *1847 Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands* (Including Acts of Public Recognition and Treaties), p. 78.
[491] *Id*.
[492] Act of July 10, 1850, An Act to Abolish the Disabilities of Aliens to Acquire and Convey Lands in Fee Simple, *1850 Penal Code and Session Laws of Kamehameha III, King of the Hawaiian Islands*, p. 146.

> kuai me ke Alii a loaa kona aina ma ke ano alodio, ua hiki ole ia ia ke pai i ka poe malalo ona, e like ma ka hiki ole i ke Alii i keia manawa ke pai i ke konohiki.
>
> The same rights which the King possessed over the superior landlords and all under them the several grades of landlords possessed over their inferiors, so that there was a joint ownership of the land; the King really owning the allodium, and the person in whose hands he placed the land, holding it in trust . . . .
>
> It seems natural then, and obviously just, that the King, in disposing of the allodium, should offer it first to the superior lord, that is to the person who originally received the land in trust from the King; since by doing so, no injury is inflicted on any of the inferior lords or tenants, they being protected by law in their rights as before; and most obviously the King could not dispose of the allodium to any other person without infringing on the rights of the superior lord. But even when such lord shall have received an allodial title from the King by purchase or otherwise, the rights of the tenants and sub-tenants must still remain unaffected, for no purchase, even from the sovereign himself, can vitiate the rights of third parties. The lord, therefore, who purchases the allodium, can no more seize upon the rights of the tenants and dispossess them, than the King can now seize upon the rights of the lords, and dispossess them.[493]

In examining this principle, let us first recall that the Constitution of 1840 established the joint interests of the people, the chiefs, and the king in all of the lands of Hawai‘i, under the management of the king as their head. As noted above, the Constitution stated that the land was not the private property of the king, but "[i]t belonged to the chiefs and the people in common, of whom Kamehameha I was the head, and had the management of the landed property."[494]

These principles taken together with this declaration in the Constitution of 1840, describe all of the lands of Hawai‘i as being vested with multiple layers of responsibilities and rights, as discussed above. The principles provided the following example of how the multiple interests in any tract of land might be divided out as follows:

> Ina hookoia kela manao, e hiki no, ina he aina i ka lima o ke konohiki, a e noho ana na hoaaina, a ina like wale no ka aina a pau, hiki no ke Māhele maoli, i ekolu Apana like, a e haawi i ke konohiki i palapala alodio no knoa Apana, a pela no ko ka hoaaina, a koe hoi kekahi hapkolu i ke Alii i waiwai no ke Aupuni.

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[493] Commissioner of Public Lands, *Indices of Awards*, p. 2.
[494] *See* text from the 1840 Constitution accompanying note 14, *supra*.

> According to this principle, a tract of land now in the hands of a landlord and occupied by tenants, if all parts of it were equally valuable, might be divided into three equal parts, and an allodial title to one then be given to the lord, and the same title be given to the tenants of one third, and the other one third would remain in the hands of the King, as his proportional right.[495]

Therefore, the establishment of a private property system in Hawai‘i was a process of dividing out the multiple layers of interest in each piece of land and ahupua‘a (watershed management unit) on each island. The first step in this process of dividing out multiple interests in the land was for the king and the chiefs and konohiki (jointly called "landlords" in some of the English versions of the laws enacted during the Māhele process), to distinguish their respective claims. The second step was for the king and the chiefs to commute a portion of their respective claims to the Hawaiian government. The third step was for the commoners who lived on the lands to file for their portion of the lands that had been claimed by the king, the chiefs and konohiki, and the government.

Privy Council Rules for Ka Māhele

Although the Land Commission had adopted principles, which subsequently had been approved by the legislative council and king, the commission could act on very few claims until the king and chiefs divided out their interests in the land.[496] During the summer and into the fall of 1847, the privy council debated the best way to bring about this first Māhele. Finally, King Kamehameha III and chiefs accepted William Little Lee's formulation for division of the lands.[497] Under Lee's plan, the king would retain his private lands "subject only to the rights of the tenants." The remaining land of the kingdom would be divided into thirds: one-third to the

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[495] Commissioner of Public Lands, *Indices of Awards*, p. 3, 15.

[496] The Land Commission handled very few claims, primarily for leasehold interests, during the first two or three years of its existence. Louis Cannelora, *The Origin of Hawaii Land Titles and of the Rights of Native Tenants* (Honolulu: Security Title Corporation, 1974), p. 11-12.

[497] *See* Robert H. Stauffer, *Kahana: How the Land Was Lost* (Honolulu: Univ. of Hawai‘i Press, 2004), pp. 14-15, 62-67 for a discussion of Lee's role in the Māhele process.

Hawaiian government, one-third to the chiefs and konohiki, and the final third to the native tenants. In December 1847, the privy council adopted clear principles and established a committee to help with the division.[498]

Louis Cannelora, a licensed abstractor and examiner of titles and chief counsel for Security Title Corporation, published a manual that provides a useful summary of the substance of the rules governing Ka Māhele (division) and the division of interests in the land between the king, ali‘i (chiefs) and konohiki (land stewards), and people. The summary is as follows:

> 1. That the King should retain all of his private lands as his personal and individual property, subject only to the rights of tenants.
> 2. That one-third of the remaining lands be allocated to the Hawaiian government; one third to the chiefs or konohiki; and the remaining one-third to the tenants or common people.
> 3. That the division between the chiefs or konohiki and the tenants might be effected whenever either party required such a division, subject to confirmation by the King and Privy Council.
> 4. That the tenants on the King's private lands were entitled to one-third of the lands actually possessed and cultivated by them, and that such division should be made whenever either the King or the tenant required it.
> 5. That the divisions provided for in rules 2, 3, and 4 should be made without any prejudice to any fee simple grant theretofore made by any of the Hawaiian Kings.
> 6. That the chiefs or konohikis might satisfy the commutation due by them, by the payment to the government of a sum equal to one-third of the unimproved value of the lands awarded to them, or by conveying to the government a one-third part of such lands.
> 7. That the lands allocated to Kamehameha III were to be recorded in the same place and manner as all other allodial titles but that all lands allocated to the Hawaiian government were to be recorded in a separate book.[499]

Kamehameha III specifically requested the final rule listed above since he wanted to insure that his title would be recognized as private title, the same as other ali‘i (chiefs) and

[498] *Privy Council Minutes*, December 11-18, 1847, pp. 250-308.

[499] Cannelora, *The Origin of Hawaii Land Titles*, p. 12.

konohiki (land stewards), should a foreign power take over the kingdom.[500] With these rules in place, the actual division could begin.

1848 Ka Māhele Between the King and Chiefs

The process for Ka Māhele to separate out the interests of the mōʻī (king) from the interests of the aliʻi (chiefs) and konohiki (land stewards) began on January 27, 1848, and was completed on March 7, 1848. All transactions were recorded in the Buke Māhele (Māhele Book). Each division was, in essence, a quitclaim arrangement between the king and a particular aliʻi or konohiki. In the Māhele Book, the lands in which a chief surrendered his or her interests to the king are listed on the left side, with a signed statement by the chief relinquishing any rights to the land and acknowledging that the lands belong to the king. Similarly, on the opposite page were entered the lands in which the king surrendered his interest to a particular aliʻi or konohiki, with a signed statement by the king agreeing to the division and giving permission for the chief to take the claim to the Land Commission.[501]

Native Hawaiian historian Lilikalā Kameʻeleihiwa described the outcome of Ka Māhele between the king and the chiefs as follows:

> The individuals who signed the *Buke Māhele* fall into three categories: there were 10 *Aliʻi Nui [high chiefs],* 24 *kaukau aliʻi [lesser chiefs],* and 218 *konohiki [land supervisors*]. Of the 252 individuals, there were 229 Hawaiians, 19 *hapa*-Hawaiians [half-Hawaiians], 3 Tahitians, and 2 whites. The latter two categories of foreigners were treated as *konohiki [land supervisors]*. By gender, there seem to have been 29 women and 223 men, with half of the women being members of the *Aliʻi Nui [high chiefs]* (5) and *kaukau aliʻi [lesser aliʻi]* (10) rank.[502]

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[500] *Privy Council Minutes*, December 18, 1847, pp. 304-06.
[501] Cannelora, *The Origin of Hawaii Land Titles*, pp. 12-13.
[502] Lilikalā Kameʻeleihiwa, *Native Land and Foreign Desires: Pehea Lā E Pono Ai? How Shall We Live in Harmony?* (Honolulu: Bishop Museum Press, 1992), p. 227 (translation added in brackets).

In his explanation of the Māhele, Judge Jon J. Chinen, former deputy territorial attorney general and federal bankruptcy judge, emphasized that the division between the mōʻī (king) and the aliʻi (chiefs) and konohiki (land stewards) did not convey any title to land to the chiefs. King Kamehameha III merely agreed that an individual chief or konohiki could present the claim to the Land Commission.[503] Even an award from the Land Commission did not give fee simple title to the chiefs or konohiki; the chief or konohiki was required to pay a commutation fee to the government, either in land or money, in order for the title to the land to be confirmed. The chief or konohiki would then be issued a Royal Patent from the government giving fee simple title. The Land Commission Award and the subsequent payment of the commutation did not address the rights of native tenants, so both the Land Commission Award and Royal Patent issued by the government contained a reservation of the rights of native tenants.

1848 Ka Māhele Between the King and Government

After the last division between King Kamehameha III and the chiefs on March 7, 1848, the king held an estimated 2.5 million acres or 60.3 percent of the total ʻāina (land) of Hawaiʻi, while the chiefs had received a total approximating 1.6 million acres.[504] The mōʻī (king) then divided his lands into two parts. The larger portion, about 1.5 million acres, he "set apart forever to the chiefs and people." This second division is also recorded in the Māhele Book. Later in the year, the Legislature ratified and accepted the lands conveyed to the chiefs and people, declaring them to be "set apart as the lands of the Hawaiian government, subject always to the rights of tenants."[505] These lands were designated as Government lands.

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[503] Chinen, *The Great Mahele*, pp. 20-21.
[504] *Id*., p. 8.
[505] Act of June 7, 1848, *1848 Supplement to the Statute Laws of His Majesty, Kamehameha III, King of the Hawaiian Islands*, p. 22 (listing of lands and ratifying division of lands).

Kamehameha III retained for himself, his heirs and successors, the remaining lands, approximately 984,000 acres.[506] These private lands became known as the King's Lands and were also subject to the rights of native tenants.[507]

It should be remembered that the lands of the Government and Crown, as well as the lands of the ali'i and konohiki, were not surveyed at the time of Ka Māhele.[508] Thus, the figures that are given above for the number of acres received are estimates based on subsequent information and surveys. With this caveat in mind, these two steps in the Māhele process resulted in approximately the following distribution:

King's Lands	984,000 acres	(23.8%)
Lands granted to 251 Ali'i and Konohiki	l,619,000 acres	(39.2%)
Government Lands	l,523,000 acres	(37.0%)
	4,126,000 acres	(100 %)[509]

Those reserved by the mō'i (king), as well as those granted to the government and to the ali'i (chiefs) and konohiki (land stewards) continued to be subject to the rights of the hoa'āina (tenants). The phrase, "koe wale no ke kuleana o na kanaka e noho ana ma ua mau aina la" which the government translated as "subject or reserved only to the rights of the tenants" is at the

[506] *See* Estate of Kamehameha IV, 2 Haw. 715, 722-23 (1864); Van Dyke, *Crown Lands*, p. 42.
[507] Act of June 7, 1848, p. 25.
[508] *See e.g.*, Act of June 19, 1852, *1852 Constitution and Laws of His Majesty, Kamehameha III, King of the Hawaiian Islands*, p. 28, allowing lands to be awarded to the chiefs and konohiki without a survey. *See also* Chinen, *The Great Mahele*, p. 2; Curtis J. Lyons, *Notes on Land Matters in Hawaii*, *in* A History of the Hawaiian Government Survey Office, Appendixes 3 & 4 of the Surveyor's Report of 1902 (Honolulu: Hawaiian Gazette Co., 1903), pp. 5-6.
[509] Davianna Pōmaika'i McGregor, "The Cultural and Political History of Hawaiian Native People," in *Our History, Our Way: An Ethnic Studies Anthology*, Gregory Yee Mark, Davianna Pōmaika'i McGregor, and Linda A. Revilla, eds. (Dubuque, IA: Kendall Hunt Publishing Company 1995), p. 35; *see also*, Jean Hobbs, *Hawaii: A Pageant of the Soil* (Palo Alto: Stanford Univ. Press, 1935), p. 52.

end of the declaration establishing the King's and Government lands, and in the act confirming this division of lands, and appears on the grants of land issued by the Land Commission as well as Royal Patents issued once an aliʻi or konohiki paid the commutation for his or her lands.[510]

The Chiefs and Konohiki

As noted above, the chiefs and konohiki (land stewards) were still required to go before the Land Commission and make claim to their lands. In addition, they had to pay a commutation fee of one-third the value of the unimproved land or cede one-third of the land to the government. After paying the commutation, the chiefs and konohiki were entitled to receive full allodial title to their lands in the form of royal patents. All awards, however, were subject to the rights of native tenants.[511] Although the Land Commission dissolved, the chiefs and konohiki were given several extensions of time in which to file and prove their claims. The final extension, an act passed in 1892, allowed claims until January 1, 1895, after which all lands not claimed reverted to the government.[512] The chiefs and konohiki received awards to their lands by name only, with the ancient boundaries controlling until a survey could be done.[513] Subsequently, in 1862, a Boundary Commission was established to settle boundary questions

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[510] *See for example*, LCA 7713 and Royal Patent 4475 to V. Kamamalu, both of which have language reserving the rights of the people in the lands, *reprinted in* Jon J. Chinen, *Original Land Titles in Hawaii* (Honolulu: Jon J. Chinen, 1961), pp. 14-15.
[511] *Id.*, pp. 15-16.
[512] Act of August 10, 1854, 1854 Laws of His Majesty Kamehameha III, King of the Hawaiian Islands, p. 25; Act of August 24, 1860, 1860 Laws of His Majesty Kamehameha IV, King of the Hawaiian Islands, p. 27; and Act of December 16, 1892, 1892 Laws of Her Majesty Liliuokalani, Queen of the Hawaiian Islands, p. 165.
[513] Act of June 19, 1852, *1852 Constitution and Laws of His Majesty, Kamehameha III, King of the Hawaiian Islands*, p. 28. The Act applied solely to the division of lands between the King and konohiki; it did not apply to divisions between the Government and King, the Government and a konohiki, or between two konohiki. *See also* Chinen, *The Great Mahele*, p. 21.

relating to the ahupuaʻa (watershed management unit) and ʻili kūpono (independent land management unit located within an ahupuaʻa) that had been awarded by name only.[514]

Rights of Foreigners

Beginning in 1840, the Hawaiian government gradually granted foreigners selected rights, such as marriage, the right to a trial with a jury of peers, and the privilege of holding public office. However, the government deliberately limited and restricted foreigners' access to full rights of citizenship, and particularly the right to hold land.[515]

The first Hawaiian legislation on the naturalization of foreigners was passed in November 12, 1840, and related only to requirements for marriage. Under the law, in order to marry a Native Hawaiian wife, a foreigner was required to declare under oath before the governor his intention to remain in Hawaiʻi, take an oath of allegiance to the Hawaiian government, and obtain a certificate of marriage from the governor.[516] It is important to note that this was a marriage law, not a naturalization law, which attempted to protect Native Hawaiian women from desertion by a foreign husband.

A law passed on May 5, 1842, relating to the courts, defined the composition of juries.[517] Under this law, if both parties were foreigners, the jury was to be composed only of foreigners and if both parties were natives the jury should be composed only of natives. However, if there was a foreigner on one side and a native on the other, then the jury must be made up of an equal number of foreigners and natives. In his book on the Hawaiian Kingdom, historian Ralph Kuykendall discusses a dispute over the meaning of "foreigners" in two early court cases, one

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514 Act of Aug. 23,1862, *1862 Laws of His Majesty Kamehameha IV, King of the Hawaiian Islands*, p. 27.
515 *See* Kuykendall, *The Hawaiian Kingdom, Vol. I*, pp. 227-41.
516 *Constitution and Laws of the Hawaiian Islands, Established in the Reign of Kamehameha III* (1842), p. 75; see also Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, p. 230.
517 *Constitution and Laws* (1842), p. 177-78.

decided in 1844 and the second decided the following year.[518] These cases demonstrated that naturalized foreigners were still considered foreigners and in a category separate from Native Hawaiians. On one side, it was argued that when a person was naturalized, he ceased to be a foreigner and should be placed in the same category with natives. The government, on the other hand, argued that naturalized subjects of the king were still "foreigners" (haole), though they were not aliens, and they were accordingly classified as "foreigners" for jury purposes.[519]

In relation to land, the legislature restricted foreigners from holding land. As already explained, the law enacted in August 1843 after the Paulet affair explicitly stated, "And it is hereby unanimously declared that we will neither give away or sell any lands in future to foreigners, nor shall such gift or sale by any native be valid."[520]

Beginning in 1844, foreigners who entered the service of the mōʻi (king) were required to take the oath of allegiance. According to Kuykendall, John Ricord took his oath on March 8, 1844, the day he was appointed attorney general; Rev. William Richards signed the oath on May 8, 1845, after his return from Europe as emissary of the king, although he had previously, in July 1842, promised full allegiance to the king; Robert C. Wyllie signed his oath on March 25, 1845, in order to become the Minister of Foreign Affairs although he reserved his rights of inheritance in his native Great Britain. Ricord was released from his allegiance when he resigned from government service in 1847, a development that undermined the credibility of such oaths in the

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[518] In the Estate of William French and Francis J. Greenway vs. Richard Charlton and Henry Skinner (1844) and in the Case of James Gray (1845), discussed at Kuykendall, *The Hawaiian Kingdom*, *Vol. I*, p. 231, nte. 26.
[519] *Id*.
[520] *Laws and Regulations passed by His Majesty Kamehameha III, King of the Hawaiian Islands and His Council*, assembled at Honolulu, August 11, 1843 (broadside), *cited in* Kuykendall, *The Hawaiian Kingdom, Vol. 1,* p. 239.

eyes of Kānaka Maoli (Native Hawaiians).[521] Kuykendall noted that statistics published in the *Polynesian*, on January 1, 1848, before the Māhele was completed, show that only 481 persons were naturalized between 1844 and 1847.[522] By 1851, there were approximately 1,600 foreigners living in Hawai'i, with 676 having been naturalized, 428 of them American.[523]

A gradual shift, allowing aliens to own land, became apparent with passage of the 1847 law, discussed above, that allowed aliens who had acquired "freehold estates less than allodial" as of June 28, 1847, to obtain fee simple title by paying a commutation to the government and receiving a Royal Patent.[524] These lands were restricted in that they could not be sold to or inherited by anyone but a subject of the Kingdom. On July 10, 1850, aliens were given full rights of land ownership in Hawai'i with the passage of the "Act to Abolish the Disabilities of Aliens to Acquire and Convey Lands in Fee Simple."[525]

In 1851, Richard C. Wylie, the Minister of Foreign Affairs, and Keoni Ana, the Minister of the Interior, presented a resolution to the privy council suggesting that it would be only fair that the missionaries and those of missionary descent, both Protestant and Catholic, who had helped Christianize the islands, be given the right to make application to hold lands in the same manner as other people. The missionaries in Hawai'i were allowed to claim the lands that had been granted to the mission, totaling 9,566.77 acres, and they purchased another 21,226 acres at 25 cents per acre. Their children were given the right to purchase another 10,401.80 acres.

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[521] *Id*., pp. 238-40.
[522] Kuykendall, *The Hawaiian Kingdom, Vol. I,* p. 240, n. 60.
[523] Osorio, *Dismembering Lāhui*, p. 52, *citing* Robert C. Schmitt, *Demographic Statistics of Hawaii, 1778-1965* (Honolulu: Univ. of Hawaii Press, 1977), p. 25.
[524] Act of June 28, 1847, An Act Relating to the Land Titles of Aliens, *1847 Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands* (Including Acts of Public Recognition and Treaties), p. 78.
[525] Act of July 10, 1850, *1850 Penal Code and Session Laws of Kamehameha III, King of the Hawaiian Islands*, p. 146. *See* Osorio, *Dismembering Lāhui*, pp. 50-52, for a discussion of this act and opposition by the Representatives in the Hawaiian Legislature to the act.

Therefore, 33 missionary families purchased 4,304.992 acres at the price of 25 cents per acres.[526] This should be contrasted with the 50 cents per acre for land sold to maka‘āinana that was established in section four of the 1850 Kuleana Act, discussed below.

Reserved Rights of Native Hawaiians

The reserved rights of the maka‘āinana (common people) in the lands of Hawai‘i were twofold. The first right was proclaimed by the Land Commission. Through February 14, 1848, the maka‘āinana had the right to file a claim against the lands apportioned to the chiefs, the konohiki (land stewards), the king and the government, for those lands that they had cultivated and upon which they lived. The principles of the Land Commission, as adopted by the king and the Legislative Council, envisioned that the maka‘āinana (common people) would ultimately own one-third of the lands in the islands.

The "Kuleana" Act of August 6, 1850, authorized the Land Commission to award fee simple title to native tenants for their land.[527] The word kuleana has many meanings including right, privilege, concern, responsibility, and tenure. Tenant farmers had the right to apply for their own plots of land or "kuleana." A kuleana parcel could come from lands of the king, government, or chiefs and konohiki (land stewards).[528] Moreover, native tenants were not required to pay a commutation fee since the ali‘i (chief) or konohiki (land stewards) of the

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[526] Hearings Before the Committee on the Territories, House of Representatives, 66th Congress, 2nd Session, Rehabilitation and Colonization of Hawaiians and Other Proposed Amendments to the Organic Act of the Territory of Hawaii and on the Proposed Transfer of the Buildings of the Federal Leprosy Investigation Station at Kalawao on the Island of Molokai to The Territory of Hawaii. Feb. 3,4,5,7, and 10 1920 (Washington: Government Printing Office, 1920 H-248-7), Testimony of Mr. Wise, p. 29, and Testimony of Mr. Rawlins, p. 55.

[527] Act of August 6, 1850, An Act Confirming Certain Resolutions of the King and Privy Council, *1850 Penal Code and Session Laws of Kamehameha III, King of the Hawaiian Islands*, pp. 202-203 (hereinafter Kuleana Act).

[528] *Id.* §§ 1, 2

ahupuaʻa (watershed management unit) or ʻili (portions of a watershed management unit) in which the kuleana parcel was located was responsible for the commutation.[529]

While kuleana lands were generally among the richest and most fertile in the islands,[530] there were several restrictions placed on kuleana claims. First, kuleana (individual plots of land) could include only the land that a tenant had "really cultivated," plus a house lot of not more than a quarter acre.[531] Second, the native tenant was required to pay for a survey of the land as well as bring two witnesses to testify to the tenant's right to the land.[532]

When the final land grants were made, the makaʻāinana (common people) received 28,659 acres or less than one percent of all of the lands of Hawaiʻi. All of the land granted to the makaʻāinana could have fit into the island of Kahoʻolawe, which has 28,800 acres. Although all of the 29,221 adult males in Hawaiʻi in 1850 were eligible to make land claims, only 29 percent received land, while 71 percent remained landless.[533] While the king had originally intended for the makaʻāinana to receive one–third of the lands of Hawaiʻi, less than one percent of the land was actually distributed to the makaʻāinana by the Land Commission based upon claims. The following chart shows the reported distribution of awards by island:

Table I. Lands Awarded to Native Tenants

By Island[534]

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[529] *Id*. Jon Chinen notes that upon the death of a kuleana owner without an heir, the kuleana escheated to the owner of the ahupuaʻa or ʻili who had a reversionary interest as a result of paying the commutation. Chinen, *The Great Mahele*, p. 30. In 1996, this law was amended to name the Office of Hawaiian Affairs as the entity to whom kuleana lands would escheat. 1996 Hawaiʻi Sess. Laws, Act 288.
[530] Stauffer, *Kahana*, p. 5.
[531] Kuleana Act, §§ 4, 5.
[532] Act of October 26, 1846, p. 91; Chinen, *The Great Mahele*, p. 30.
[533] Marion Kelly, "Results of the Great Mahele of 1848 and the Kuleana Act of 1850," unpublished manuscript, *cited in* Kameʻeleihiwa, *Native Lands and Foreign Desires*, p. 295.
[534] Thomas G. Thrum, *Hawaiian Almanac and Annual for 1895* (Honolulu: Press Publishing Steamprint, 1894), p. 35. It should be noted that using the same dataset, Thrum erroneously provides a total of 28,658.49 acres.

Island	Acres
Hawai‘i	9,412.87
Maui	7,379.74
O‘ahu	7,311.17
Moloka‘i	2,288.87
Kaua‘i	1,824.17
Lana‘i	441.97
TOTAL	28,658.79

Several factors contributed to the low number of awards and the low number of acres awarded to the maka‘āinana.[535] Overall, the concept of private ownership of ‘āina (land) was a foreign notion. The Hawaiian language does not even have a word for private property ownership of land. The word "kuleana ‘āina" which was used to translate "land claim" can be translated as "land for which one is responsible" and does not imply ownership, but stewardship of the land. As discussed in the first chapter, the concept of owning land as a personal possession was not only completely foreign but also contradicted the world view and spiritual belief in lōkahi (harmony of Native Hawaiians with nature and spiritual life forces) and aloha ‘āina (love and respect for the land). Thus, many Kānaka Maoli (Native Hawaiians) did not understand the importance of filing a land claim within the given two year period in order to continue living upon their ‘āina (land). While the law was published and posted in key locations, it was vaguely

[535] For additional analysis of the factors that prevented the maka‘āinana from filing claims see Kame‘eleihiwa, *Native Land and Foreign Desires*, pp. 296-98; Jonathan Kay Kamakawiwo‘ole Osorio, *Dismembering Lahui: A History of the Hawaiian Nation to 1887* (Honolulu: Univ. of Hawai‘i Press, 2002), pp. 53-56.

worded, using foreign concepts that were not understood by the common people. Those who lived in out of the way places may not have heard about the law, or heard of it too late to file a claim.

Anthropologist Marion Kelly, who undertook an extensive study of Ka Māhele, noted that after William Little Lee became involved in the Māhele process, taking over for the gravely ill William Richards, Lee discovered in December 1847 that only a dozen claims had been received from the maka‘āinana (common people) on Hawai‘i Island, where 30 percent of the population lived.[536] Lee's solution was to call upon the missionaries to assist with getting claims filed. Thus, one scholar notes that the bulk of the maka‘āinana (common people's) claims were filed in the period between December 1847 and the February 14, 1848 filing deadline.[537]

The maka‘āinana (common people) had a very short period of time in which to make their claims. All kuleana (individual plots of land) claims must have been filed by February 14, 1848, and were barred if not proved by 1854. Thus, the maka‘āinana (common people) had only two years in which to file, and six years in which to prove, their claims.[538]

Another reason the maka‘āinana (common people) received so little land was that kuleana grants were limited by the "really cultivated" clause of the act.[539] The area actually cultivated by individual farmers was relatively small since Native Hawaiians had always cultivated large portions of their lands in common as an ‘ohana (extended family) and, given the importance of sustaining nutrients in the soil, some lands were always left fallow. Moreover, the

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[536] Marion Kelly, "Land Tenure in Hawai‘i," 7 *Amerasia Journal*, pp. 57-73, p. 64 (1980).
[537] Stauffer, *Kahana*, p. 15.
[538] All kuleana claims must have been filed by February 14, 1848, the date on which the Land Commission was to have terminated. Although the Commission's powers were extended, the deadline for filing native tenants' claims was not. The Act of May 26, 1853, barred claims not proved by May 1, 1954. *Laws of His Majesty Kamehameha III, King of the Hawaiian Islands, passed by the Nobles and Representatives 1853,* p. 26. Compare this law to those extending the time period for the konohiki to file claims.
[539] Levy, p. 856.

surveying of kuleana (individual plots of land) awards was fraught with problems. There were no uniform guidelines for surveys and surveyors had varying methods and rationale to determine the area "really cultivated." In 1875, Curtis J. Lyons, then a surveyor with the Government Survey Office, wrote an article that illustrated the "haphazard" nature of the kuleana surveys. He provided an example of three different surveyors sent to survey kuleana (individual plots of land) claims on Hawai'i Island. One was new to the islands, didn't understand that lands needed to lie fallow for several years between planting, and thus surveyed lands only under actual cultivation at the time, resulting in awards too small to farm. Another, a Native Hawaiian surveyor working in a district with a missionary who believed that the maka'āinana (common people) had a primary right to the lands, and taking his cue from the resident missionary, recommended awards between 15 and 40 acres. The third surveyor, working under the watchful eyes of the konohiki's agent, included lands that would need to lie fallow and calculated kuleana lots of between 6 to 12 acres.[540] The Land Commission approved the work of all three surveyors.

Another factor was that most of the maka'āinana (common people) lived as farming tenants of the chiefs and functioned outside of the nexus of a cash economy. Most Native Hawaiians did not have a way to raise the cash needed for the land surveys, which cost between $6 and $12. Wages at the time were normally between 12 1/2 cents and 33 cents a day. There were few wage earning jobs outside of the port towns. Cash would have to be raised from selling extra fish or other products, which was difficult given the subsistence level of living.

Some scholars have suggested that the rapid decrease in the Kānaka Maoli (Native Hawaiian) population because of devastating epidemics in 1848 and 1849 resulted in fewer

[540] Curtis J. Lyons, *Notes on Land Matters in Hawaii*, *in* A History of the Hawaiian Government Survey Office, Appendixes 3 & 4 of the Surveyor's Report of 1902 (Honolulu: Hawaiian Gazette Co., 1903), pp. 35-36.

claims.[541] Finally, some of the makaʻāinana (common people) were intimidated by the chiefs into foregoing their land claims; and some preferred to live under the protection of the chiefs as they had for generations.[542]

Samuel M. Kamakau, who served on the Land Commission from December 9, 1848, through August 5, 1850, provides insight on the various factors that prevented the makaʻāinana (common people) from filing land claims:

> This law would have been better had the time for registering titles been extended for twenty years. Very few of the people living in the country were educated and knew how to apply for their titles. Others wanted to remain on the lands under their chiefs, and when the trading days came, and the chiefs leased their lands too the foreigners [and these people were obliged to leave them] they learned their mistake and were left to wander in tears on the highway. The fish of Piliwale are stranded; the sea has left them high and dry.[543]

The isolated district of Puna, Hawaiʻi, illustrates the problems encountered by makaʻāinana in making their claims. In an 1851 petition to the legislature, several Puna residents asked to be issued land grants without penalty, as they had only heard of the filing process just before the deadline and had filed their claims after February 14, 1848. It read:

> We are the common citizens of Puna and we petition the legislature that:
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> 1. That our kuleana that have not been entered with the Land Commissioners be immediately entered without fees.
> 2. That the kula areas be left untouched without being owned in fee simple.
> 3. That government lands be given only to those who really want to work.
> 4. That people not be allowed to occupy a single house in large numbers.
> 5. That a law dealing with laziness be brought up.
> 6. That marriages between old people and young people be abolished.[544]

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[541] Hawaii Institute for Management & Analysis in Government, *Land and Water Resource Management in Hawaii* (Honolulu, 1979), p. 156.
[542] Jon J. Chinen, *They Cried for Help: the Hawaiian Land Revolution of the 1840s and 1850s* (Xlibris Corp, 2002), pp. 85-97, citing examples of hostile chiefs and konohiki as well as friendly chiefs who supported the tenants in filing claims.
[543] Samuel M. Kamakau, *Ruling Chiefs of Hawaii* (Honolulu: Kamehameha Schools Press, 1961), p. 407.
[544] 1851 Petition from Puna Native Hawaiians to Extend the Deadline to File a Land Claim, Hawai'i State Archives, Legislature of the Hawaiian Kingdom, Series Number 222, 1851, 222-4-5, 1851 [no date]

It is remarkable that in a district with 311,754 acres, almost as large as the island of Kaua‘i (which has 354,112 acres), only 19 awards of private land were granted in the entire district. Of these awards, 16 grants of 50,876 acres—four ahupua‘a and two portions of a third ‘ili—were given to ten chiefs who lived outside of Puna. Three small parcels totaling 32.33 acres were granted to maka‘āinana—Baranaba, Hewahewa and Haka.[545] This was not for lack of a population. In 1854, six years after the filing deadline and four years after the Kuleana Act passed, the estimated population for Puna was 2,702. The 1858 tax records for Puna show that there were a total of 894 males over the age of 20 who paid poll taxes in Puna in 1858. This was the population after the devastating measles epidemic in the fall of 1848, which according to Samuel Kamakau claimed the lives of one-third of the population and also the smallpox epidemic of 1853. Clearly, in February 1848, there were more than three Native Hawaiians who would have qualified as applicants for land. The bulk of the Puna lands were designated as either the King's Lands or as Government lands.[546] This means that the interests of the majority of

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"Palapala Hoopii a na makaainana o Puna no na kuleana i komoole a pela aku," translated as "Petition from Puna to give time those who have not had time to file in their papers for fee simple lands, etc." (trans. W. H. Wilson, October 5, 1977).
In Hawaiian, the Petition read:
O makou ka poe makaainana o Puna nei, ke noi aku nei makou i ka aha olelo
1. O ko makou mau kuleana i komo ole i loko i na Lunahoona, e hookomo koke ia mai me ka uku ole.
2. E waihoneole ia na kula ma ka Alodio ole ia.
3. Ona aina aupuni i haawi wale ia i ka poe makemake maoli i ka hana.
4. E pau ka noho nui 'ana o na kanaka ma ka hale hookahi.
5. E hoola ia ke kanawai o a poe palaualelo.
6. E pau ka male ana o kaluahine ma ka mea opiopio pela ou no ka ele ma kule me ka mea opiopio.
See also, Chinen, *They Cried for Help*, pp. 80-84.

[545] Commissioner of Public Lands, *Indices of Awards*, p. 78.

[546] Commissioner of Public Lands, *Indices of Awards*, pp. 25-26, lists the following Puna lands as King's lands (Crown lands): the ahupua‘a of Apua, Kaimu and Ola‘a as well as the ‘ili of Waiakolea in Kalapana. The following lands were listed as Government lands: ahupua‘a of Aahalanui, Halepua‘a, Halona, Hapaiki (‘ili in Kupahua), Haukalua 1 and 2, Honolulu, Honomu, Kaikowowo (‘ili in Nanawale), Kamaili, Kanekiki, Kaniahiku (‘ili in Kapoho), Kaohe, Kapaahu, Kaualea, Kaukulau, Kealakomo & Kiluaea, Keauohana, Keokea, Keonepoko, Ki, Kiapu, Kikala

maka‘āinana (common people) in Puna were never separated out from the lands of Puna and can be said to be reserved in the lands that were held by the Crown and the Government of the Hawaiian Kingdom and Constitutional Monarchy.

Ultimately, the kuleana (individual plots of land) claims process resulted in only 29 percent of adult Native Hawaiian men receiving less than one percent of the land of Hawai‘i. This did not conform to the original design of Ka Māhele. More importantly, this outcome is the foundation for Kānaka Maoli (Native Hawaiian) claims in the early and late twentieth century to the Crown and Government lands of the Kingdom of Hawai‘i as part of the collective ancestral inheritance of Native Hawaiians as the Hawaiian nation.

This argument surfaced publicly in Hawai‘i and in the U.S. Congress in the campaign to set aside the Crown lands for Native Hawaiians to homesteading in 1920. Prince Jonah Kūhiō Kalaniana‘ole, Hawai‘i’s delegate to Congress, argued that the Crown lands were the principal trust held by the Hawaiian monarchy for the Kānaka Maoli (Native Hawaiians) people. According to Kūhiō, King Kamehameha III and the council of chiefs had recognized that the common people had a one-third interest in the lands of Hawai‘i at the time of the Māhele. When the common people only received less than one percent of the land on an individual fee simple basis, the remaining portion of the lands were held in trust by the monarchy. Prince Kūhiō explained this point in an article he wrote for *The Mid-Pacific Magazine* in February 1921:

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1 & 2, Kupahua, 3 ‘ili in Kupahua, Lonokaeho (‘ili in Kupahua), Makena, Maku‘u, Malama, Manawale, Oneloa, Opihikao, Panauiki, Pohoiki, Popoiki, Poupou 1 & 2, Waawaa. *Id*., pp. 29-37. Seven lands in Puna were left unassigned during the Māhele - Kahue, Huluna-nai, Iililoa, Kaunaloa, Ki (B), Keekee, and Keonepoko 2. In 1888, it was decided that these would be government lands. Melinda Sue Allen, “The Kalapana Extension in the 1800’s, A Research of the Historical Records,” prepared for the National Park Service, Hawaii Volcanoes National Park, 1979, in Hawaii Volcanoes National Park Archives.

> The act creating the executive department contained a statute establishing a board of royal commissioners to quiet land titles. . . . This board decided that there were but three classes of vested or original rights in land, which were in the King or Government, the chiefs, and the common people, and these three classes of interest were about equal in extent. . . . The common people, being left out in the division after being recognized as owners of a third interest in the kingdom, believing that new methods had to be adopted to place them in possession, assumed that these lands were being held in trust by the crown for their benefit. However, the lands were not reconveyed to the common people, and it was so held by each monarch from the time of the division in 1848 to the time of the dethronement of Queen Liliuokalani in 1893.[547]

Prince Jonah Kūhiō presented a compelling argument that the people believed that the land in which they held a vested interest were being held in trust by the monarchy for their benefit. This review of the key developments under Ka Māhele, describes how the king and government of the Hawaiian Kingdom and Constitutional Monarchy recognized that the Native Hawaiian aliʻi (chiefs), konohiki (land stewards) and makaʻāinana (common people) had reserved rights in the land. The vested rights of 252 chiefs and konohiki or landlords were transformed into fee-simple ownership for a combined total of 1.6 million acres through the process of Ka Māhele. The vested rights of over two-thirds of the common people were never transformed into fee-simple ownership.[548]

Two court cases can arguably be interpreted as a reaffirmation of Prince Kūhiō's contention that the lands awarded to the king under Ka Māhele were lands held in trust for indigenous Hawaiian nation and its people under the sovereign ruler. First, in 1864, upon the death of King Kamehameha IV, the Hawaiʻi Supreme Court held that the King's Lands should descend to the successors to the throne, and were not solely the personal property of Alexander Liholiho Kamehameha IV. Thus, control of the lands passed to the successor Monarch, King

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[547] Prince Jonah Kuhio Kalanianaole, "The Story of the Hawaiians," in *The Mid-Pacific Magazine*, Volume XXI, No. 2, February 1921.
[548] Native Hawaiian claims to the Crown and Government lands of the Kingdom of Hawaiʻi beyond the 1921 Hawaiian Homes Commission Act will be discussed in later chapters.

Kamehameha V, as head of the government rather than to Queen Emma, who was the wife and personal heir of King Kamehameha IV.[549] In confirming the court's decision, the legislature passed an act on January 3, 1865, that designated the King's lands as Crown lands. The law also declared that they "shall henceforth be inalienable and shall descend to the heirs and successors of the Hawaiian crown forever."[550]

In 1882, Princess Ruth Keʻelikōlani filed a civil suit that raised the question of whether, as the principal heiress of her half brother, King Kamehameha V, she had any claim to the Crown lands that predated the Act of January 3, 1865. The Supreme Court of Hawaiʻi reaffirmed that the Crown lands were not the personal property of King Kamehameha V, but were the property of the institution of the Monarchy.[551] Although Princess Ruth Keʻelikōlani's claim to other personal lands of King Kamehameha V was valid, she could not inherit the Crown lands. The Crown lands descended to the successors to the Hawaiian Crown—King William Lunalilo, King David Kalākaua and Queen Liliʻuokalani.

Unfortunately, at the time of the 1893 coup dʻetat against the Hawaiian Kingdom and Constitutional Monarchy, the decisions of the Hawaiʻi Supreme Court in these two cases and the 1865 Act, were used to determine that the Crown lands were the property of the government rather than the personal property of Queen Liliʻuokalani.[552] The Provisional Government and the Republic of Hawaiʻi usurped the constitutional powers of Queen Liliʻuokalani and laid claim to

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[549] *In re* Estate of Kamehameha IV, 2 Haw. 715 (1864).
[550] Act of Jan. 3, 1865, 1864-65 Laws of His Majesty Kamehameha V, King of the Hawaiian Islands, p. 69.
[551] *Keʻelikolani v. Comm'r. of Crown Lands*, 6 Haw. 446, 447, 457-460 (1883), Laws at 11-12 (1882)).
[552] *See generally*, Neil Thomas Proto, *The Rights of My People: Liliuokalani's Enduring Battle with the United States 1893-1917* (New York: Algora Publishing, 2009).

the Crown and Government lands. The subsequent transfer of these lands to the U.S. government is discussed in Chapter Seven.

In addition to the reserved rights in the ʻāina itself, there was another set of makaʻāinana rights provided by the king and the legislature in Section 7 of the Kuleana Act. The Privy Council Records describe the king's concern that ownership of small parcels of land by the makaʻāinana was not sufficient to provide for the needs of the people if they were cut off from their privileges of gathering the resources they needed for subsistence. The records indicate that the king was concerned that a "little bit of land even with allodial title, if they [the people] be cut off from all other privileges would be of very little value."[553] Although some chiefs objected to including such a clause in the law, eventually "the proposition of the King, which he inserted as the seventh clause of the law, as a rule for the claims of common people to go to the mountains, and the seas attached to their own particular lands exclusively" was agreed to by the chiefs.[554]

Thus, the Kuleana Act also granted the makaʻāinana (common people) their traditional and customary gathering rights, rights to drinking water and running water, and the right of way, provided that permission was obtained from the aliʻi and konohiki, designated as landlords in the act. This section read:

> When the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, *should they need them* but they shall not have a right to take such articles to sell for profit. *They shall also inform the landlord or his agent, and proceed with his consent.* The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.[555]

[553] *Privy Council Minutes*, July 13, 1850, p. 713.
[554] *Privy Council Minutes*, Aug. 27, 1850, p. 763.
[555] Act of August 6, 1850, Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands (1850), pp. 202-04.

However, when permission from the landlords was denied, the common people suffered. For example, 54 makaʻāinana (common people) in Kāneʻohe petitioned their representative in the Legislature as follows:

> We are in trouble because we have no firewood and no lai, and no timber for houses, it is said in the law that those who are living on the land can secure the things above stated, this is all right for those persons who are living on lands which have forests, but we, who live on lands which have no forest, we are in trouble. The children are eating raw potato because of no firewood, the mouths of the children are swollen from having eaten raw taro. We have been in this trouble for three months, the Konohikis with wooded lands here in Kaneohe have absolutely withheld the firewood and lāʻī and the timber for houses.[556]

In 1851, the consent provisions were eliminated, the legislature reciting that "many difficulties and complaints have arisen, from the bad feeling existing on account of the Konohiki's [sic] forbidding the tenants on the lands enjoying the benefits that have been by law given them."[557] Since 1851, the law has remained unchanged, and is currently found in section 7-1 of the Hawaiʻi Revised Statutes:

> Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they

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[556] Hawaiʻi State Archives, Interior Department, Land Letters (Incoming) 1851, August 1-14, Translation of Petition of 14 Aug. 1851 to J. Kalili by archive staff. The petition read: 1. Ua pilikia makou i ka wahie ole, a me ka lai ole, a me ka Laau hale ole, no ka mea, ua olelo ke kanawai o na Kanaka ponoi iho no o kona aina ke kii ia mau mea i olelo ia ae la maluna, ua pono no keia, no ka poe e noho ana ma ua aina uka laau, aka, o makou ka poe i noho iho ma aina uka laau ole, ua pilikia makou. Ua ai maka na keiki i ka uala no ka wahie ole, ua pehu ka waha o na keiki i ka ai maka i ke kalo. A kolu malama o ko makou pilikia ana, ua ana loa na Konohiki uka laau o Kaneohe ka wahie, lai, laau. Signed by Hio plus 55.
1. Hio 2. Kahinu 3. Hina 4. Makuakane 5. Piikea 6. Hapeaealii 7. Haole 8. Kaleikau 9. Kaaiaioi 10. Kahuakai 11. Wahaulaula 12. Kapule 13. Makuaiole 14. Kekeni 15. Kaua 16. Makaioulu 17. Keau 18. Puupuu 19. Keakuanani 20. Helepo 21. Puhi 22. Hepili 23. Kahana 24. Kaoaa 25. Ilai 26. Naili 27. Papaiaeae 27. Mahulu 28. Hala 29. Keliiholomoku 30. Hapuaikolia 31. hoonui 32. Malene 33. Naiku 34. Kanehoalani 35. Kapeau 36. Haili 37. Kamakane 38. Koenakaia 39. Nika 40. Nui 1. Kane 42. Nohowale 43. Palapou 44. Kaanohua 45. Opu 46. Kulailua 47. Hopai 48. Kanekohipuu 49. Hinaaimolona 50. Keawe 51. Lani 52. Lawaia 53. Mano 54. Kaohanohano 55. Kaukaliu

[557] Act of July 11, 1851, (Amending Kuleana Act), *Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands* (1851), pp. 98–99.

> live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.[558]

As discussed above, the layer of rights of Native Hawaiian maka‘āinana (common people) survived in the form of access to private and public lands to fulfill traditional and customary responsibilities. This was implemented through the reservation clause that the Land Commission included in the awards and royal patents "koe wale no na kuleana o na kanaka e noho ana ma ua mau aina la" or "reserving only the right of the people who live on the aforementioned lands." This feature of the private land system is uniquely Native Hawaiian and contrary to Western rights of private property which afford the owner the absolute right to exclude anyone from their privately owned land. This unique feature of private property law in Hawai‘i became a contentious focal point in the advocacy for Native Hawaiian rights and entitlements in the twentieth century.

A second, lesser known, method by which maka‘āinana (common people) could secure land under the 1850 Kuleana Act can be found in section four of the act. This section allowed maka‘āinana (common people) to purchase government lands that were specifically set-aside for the people. The law provided that "na kanaka nele i ka aina ole" or "Hawaiians lacking or without ‘āina," could purchase between one and 50 acres for the minimum price of 50 cents per acre.[559] This purchase method of securing land was established because even in 1850, the government was aware that the kuleana (individual plots of land) claims process was failing to

[558] Hawaii Revised Statutes § 7-1 (2014). See the discussion of traditional and customary rights in Chapter 11.
[559] Kuleana Act, § 4.

adequately distribute land to the maka‘āinana (common people).[560] In 1851, the government passed a second law to encourage the purchase of land by establishing a network of government agents in the districts islands other than O‘ahu to facilitate sales.[561] One researcher estimates that the maka‘āinana (common people) received another 167,000 acres through this provision of the Kuleana Act as well as other laws allowing the sale of Government lands.[562] Titles to these purchased lands were conveyed in the form of Royal Patent Grants.[563]

The Alienation of Hawaiian Lands

The 50-year period after the Māhele brought the growth of large-scale plantation agriculture, especially sugar, and the steady loss of lands from Native Hawaiian control. Between 1846 and 1865 over 400,000 acres of Government land were sold as grants. As noted above, some of this land was sold to maka‘āinana (common people), but Professor Neil M. Levy has reported that, "[a]s of 1864, 320,000 acres had been sold to 213 foreigners, as compared to 90,000 acres that were sold to 333 Native Hawaiians."[564]

Several large purchases highlight the sales to foreigners between 1861 and 1882. Thrum's Alamanac reported the following sales: [565]

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[560] In the Feb. 16, 1850, edition of the *Polynesian*, Land Commissioner William Little Lee wrote an editorial noting that the claims process was failing to sufficiently provide for the common people and suggested that the King could help to solve this problem by making lands available for sale. Riley Moffit and Gary L. Fitzpatrick, *Surveying the Mahele: Mapping the Hawaiian Land Revolution*, Palapala‘āina, v. 2 (Honolulu: Editions Limited, 1995), p. 50.

[561] Act of July 11, 1851, An Act Relating to Appointment of Land Agents, *Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands* (1851), p. 52.

[562] Donovan Preza, *The Empirical Writes Back: Re-examining Hawaiian Dispossession Resulting from the Māhele of 1848* (unpublished MA Thesis, University of Hawai'i at Mānoa) (on file with Hamilton Library, University of Hawai‘i at Mānoa, May 2010), p. 138.

[563] Royal Patents were issued after commutation was paid by the chiefs and konohiki or, for maka‘āinana, after the land was surveyed and the survey fees paid. In contrast, Royal Patent Grants were issued when Government Land was sold.

[564] Neil M. Levy, *Native Hawaiian Land Rights*, 63 Cal. L. Rev. 848, p. 859 n.73 (1975).

[565] Thrum, Hawaiian Almanac and Annual for 1895, p. 40.

Table II. Highlights of Land Sales to Foreigners Between 1861 and 1882

Grant Number	Grantee	District	Acreage
Grant 2769	J.P. Parker	Hamākua	37,888 acres
Grant 2791	C.C. Harris	Ka‘ū	184,298 acres
Grant 2243	C. Spreckels	Wailuku	24,000 acres
Grant 3146	C.R. Bishop	Moloka‘i	46,500 acres
Grant 2944	J.M. and F.S. Sinclair	Ni‘ihau	61,038 acres

The establishment of a system of private property ownership in Hawai‘i resolved the major source of conflict between the resident foreigners and the Native Hawaiian monarchy, in favor of the foreigners. It also opened up new horizons for the development of Hawai‘i on a capitalist basis, organized around the production of sugar. This generated widespread negative impacts, even in areas previously untouched by trade, missionaries, or commercial agriculture. The alienation of Native Hawaiian land to Caucasian foreigners proceeded rapidly. By 1862, of all the land on O‘ahu, 75 percent was owned or controlled by Caucasians except at Waialua where they controlled half of the land in that district.[566]

Professor Neil M. Levy has aptly described the situation in the half-century after the Māhele:

> With a permanent population of fewer than two thousand, Westerners took over most of Hawaii's land . . . and manipulated the economy for their own profit. They had already stripped the land of its only readily exploitable resource, sandalwood. After the Reciprocity Treaty of 1876, which allowed Hawaiian sugar to enter the United States duty-free, Western-owned sugar plantations dominated the Hawaiian economy. That the local population did not participate in this economy proved no obstacle; laborers were imported from the Orient and Europe. By the turn of the century Hawaiians were a minority in their own homeland.[567]

The ancient land divisions were well suited to the needs of the sugar industry. Control of several contiguous ahupua‘a (watershed management units) often provided the basis for

[566] William F. Blackman, *The Making of Hawaii: A Study in Social Evolution* (New York: AMS Press, 1977), p. 161.
[567] Levy, *Native Hawaiian Land Rights*, p. 858.

plantation operations since ahupuaʻa included extensive level areas of rich soil, water supplies, and forested areas for lumber for plantation mills. Land not suited for agriculture was used for ranching, augmenting the plantation operations.

Numerous kuleana (individual plots of land) grants were lost as a result of changes in the economy and the failure by Kānaka Maoli (Native Hawaiians) to understand the foreign legal and institutional systems.[568] Kuleana lands became isolated islands in the midst of large agricultural or ranching operations. Lacking access to previously shared grazing and cultivation areas, native farmers were unable to earn a subsistence living on their small plots of land. Without the shared labor to maintain irrigation systems, it became more difficult, if not impossible, to gain sufficient water for taro cultivation.[569] Moreover, kuleana owners often had to contend with grazing cattle from surrounding ranches. Faced with all of these obstacles, native farmers were forced to leave their lands.[570] Some kuleana (individual plots of land) that had been leased to Westerners were never returned and others were lost to surrounding landholders through adverse possession laws.[571]

An adverse possession law was passed in 1870 to take effect in 1871, a mere twenty years after Ka Māhele instituted a private property system.[572] Under this law, one could acquire property owned by another if one occupied the land for a statutory length of time in a visible, notorious, continuous, exclusive, and hostile manner and paid the property tax. The original statutory period was set at 20 years, but was shortened to ten years in 1898 after annexation and

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[568] *Land & Water Resource Management*, p. 163.
[569] *Id*.
[570] Chinen, *They Cried for Help*, p. 32.
[571] See Native Hawaiians Study Commission: Report on the Culture, Needs and Concerns of Native Hawaiians, Vol. I (prepared pursuant to P.L. 96-565, Title III, 1983), pp. 260-261.
[572] Act Limiting the Time, Within Which, Actions May Be Brought to Recover Possession of Land (July 18, 1870) (effective July 31, 1871), *1870 Laws of His Majesty Kamehameha V, King of the Hawaiian Islands*, ch. XXII, p. 28.

remained at ten years until 1973.[573] According to Professor Levy, in Hawai‘i, adverse possession was used "primarily by large landholders to absorb the enclosed kuleana of Native Hawaiians."[574]

One scholar points to an 1874 non-judicial mortgage act[575] allowing foreclosure and sale of mortgages without judicial action, as a primary factor in leading to loss of maka‘āinana lands.[576] After a detailed examination of records from Kahana Valley on O‘ahu, he concluded that it wasn't until after the passage of that act that Native Hawaiians began to lose great quantities of kuleana (individual plots of land). Indeed, his research indicated that in the years after Ka Māhele, the Native Hawaiians of Kahana banded together to form a hui or group that held land "communally."[577]

As with the maka‘āinana (common people), even the ali‘i (chiefs) and konohiki (land stewards) were unable to maintain control of their lands. The great majority of chiefs were already heavily in debt, primarily to foreigners, for past liabilities linked to a growing demand for material goods.[578] Many of the chiefs paid their debts in land. Those chiefs who attempted large-scale agriculture were unable to manage plantations and the cash demands for supplies and equipment. Consequently, large estates were lost through foreclosure.[579]

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[573] *Native Hawaiian Rights Handbook*, Melody Kapilialoha MacKenzie, ed. (Honolulu: Native Hawaiian Legal Corp. & Office of Hawaiian Affairs, 1991), pp. 119-21.
[574] Levy, *Native Hawaiian Land Rights*, p. 869.
[575] Act of July 18, 1874, Ch. 33, 1874 Laws of His Majesty Kalakaua, King of the Hawaiian Islands, p. 31.
[576] Stauffer, *Kahana*, pp. 92-107.
[577] *Id*. at 109-11. Indeed, Stauffer argues that the hui (landholding organization) movement was viewed by the members or these hui (organizations) as a "counter-revolt to gain some of what was taken in the Great Māhele." *Id*. at 125. These landholding hui (organizations) are discussed below).
[578] Levy, *Native Hawaiian Land Rights*, p. 860.
[579] *Id.*

Samuel Kamakau alluded to the alienation of the land to foreigners in the following poignant observation:

> They girded up their loins, sharpened their knives, and chose which part of the fish they would take, one the side piece, another the belly, one the eyes, another the white meat, and another red meat. So they chose as they pleased. When the last man of them had come they were treated like chiefs, lands were parceled out to them. They were given the same honors as Ka - umu - ali'i. Yet they found fault. Now you want to close the door of heaven to the Hawaiians. You want the honors of the throne to yourselves because you sit at ease as ministers upon your large land. . . .
>
> * * *
>
> The kingdom of Hawaii became . . . . Rich, aye rich! It could be cut up, salted down, hung out to dry; it filled the big drying frame, the little drying frame until the smell of it was wafted from one end of the islands to the other. This was the result of the land-giving fishermen of the chief.[580]

The rapid alienation of Native Hawaiians from the land was reflected in the census of 1890. Native Hawaiians paid taxes on 257,457 acres of land, while non-Hawaiians paid taxes on 1,052,492 acres.[581] American historian Sylvester Stevens observed in 1945:

> By 1890 Native Hawaiians numbered but 41,000 out of a total population of nearly 90,000. Declining in numbers and forced into an inferior position in the labor system, the natives devoted themselves to agriculture on a small scale, fishing, and maritime activities. Their small holdings, however, were of little significance in the new economic dispensation. While in 1890, 3,271 natives out of a total of 4,695 landholders held real estate, this was but a meager portion of the valuable land in Hawaii.[582]

By 1898, the Government and Crown lands had been reduced from approximately 2,500,000 acres to near 1,800,000 acres.[583] The majority of the 600,000 acres had passed into the hands of non-Native Hawaiians.

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[580] Kamakau, *Ruling Chiefs*, pp. 425-26

[581] Sylvester K. Stevens, *American Expansion in Hawaii 1842-1898* (New York: Russell & Russell, 1945), pp. 45-46.

[582] *Id*., p. 45

[583] The commission established under the Joint Resolution of Annexation, submitted a report that gave varied figures from 1,782,500 acres to 1,744,713 (with another 28,000 acres under the control of the minister of the interior or set aside for homesteading under the 1895 Land Act) for the "government lands" of Hawai'i. *See Report of the Hawaiian Commission* (Washington, DC:

Native Hawaiian historian Jonathan Kamakawiwoʻole Osorio further criticized Ka Māhele and the Kuleana Act as dismembering the mutually supportive interdependent relationship of the chiefs and the makaʻāinana (common people) into one mediated by capital and in which they competed against each other for resources. He criticized the rights reserved for the makaʻāinana (common people) as capricious as they were now narrowly based upon the law rather than upon customary practice.[584] It is true that a court ruling of 1858, *Oni v. Meek*, read the rights of the makaʻāinana (common people) in the Kuleana Act narrowly, limiting them to only those rights that were expressly included in the Act.[585] However, in 1892 the legislature of the Hawaiian Kingdom and Queen Liliʻuokalani passed a law that recognized Hawaiian usage as part of the common law of the Kingdom, together with the common law of England.[586] This law, which is today known as Section 1-1 of the Hawaiʻi Revised Statutes, provided the basis for the rights of the makaʻāinana (common people) beyond the rights reserved under the 1850 Kuleana Act, so as to include whatever was broadly customary as Hawaiian usage prior to 1892.

Gov't. Printing Office, 1898), pp. 45, 51 (appendix 1). A 1900 report, however, notes an error in the earlier calculations and sets the amount of land at 1,720,055 acres. U.S. House of Representatives Rept. No. 305 on Government for the Territory of Hawaii (56th Cong., 1st Sess. 1900), pp. 16-17. The Apology Resolution, Pub. L. 103-150, 107 Stat. 150 (1993), gives the amount of land ceded by the Republic of Hawaiʻi to the United States as 1,800,000 acres.

[584] Osorio, *Dismembering Lāhui*, pp. 53-57.

[585] *Oni v. Meek*, 2 Haw. 87 (1858).

[586] Act of November 25, 1892, Act to Reorganize the Judiciary Department, ch. LVII, § 5, *1892 Laws of Her Majesty Liliuokalani, Queen of the Hawaiian Islands*, p. 9, providing for exceptions to the English common law where "established by Hawaiian national usage." Moreover, the 1847 act establishing an independent judiciary, authorized the adoption of common law principles, provided that they were "not at conflict with the laws and usages of this kingdom." Third Act of Kamehameha III, An Act to Organize the Judiciary Department of the Hawaiian Islands, ch. 1, § 4, *1847 Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands*, p. 5.

Native Hawaiian Land Hui (Landholding Organizations)

After Ka Māhele, the Native Hawaiian people did not simply acquiesce to the dismantling of their collective stewardship of the ʻāina (land). One of the ways they adapted to the new system of land tenure was by organizing themselves into collective land ownership associations called Land Hui (hui means to join or unite as in a group or association).[587] The makaʻāinana (common people) could purchase government lands that were specifically designated for them under a provision of the Kuleana Act.[588] As discussed above, the government established this purchase option because even in 1850, it was aware that the kuleana (individual plots of land) claims process could not adequately distribute land to makaʻāinana. In 1851, a network of government agents on the neighbor islands was established to facilitate these land sales.[589]

The fragmentation of communities into strictly separated small plots on the New England yeoman farmer model was incompatible with the Native Hawaiian way of life. Thus, both for those left out of the kuleana award process and those that were inadequately served by it, the purchase of land was the remaining option. Many chose to combine their efforts by creating Land Hui (associations) rather than to go it alone. As surveyor Leslie Watson, writing in 1932, observed, "the communal ideas, which had been developed through the course of centuries, were so deeply a part of the life of the Hawaiians as to make it natural that the urge to continue such ideas should manifest itself, - so shortly after 1850 the Hawaiian Hui was born."[590] These Land Hui (associations) actively participated in the purchase of government lands, but importantly,

[587] The formation and demise of Hawaiian Land Hui is discussed in detail in Appendix 2, *The Hawaiian Land Hui Movement: Perpetuation of Hawaiian Land Tenure*.
[588] 1850 Kuleana Act, § 4.
[589] *See* L.1851, p. 52 (establishing land agents).
[590] Leslie J. Watson, *Old Hawaiian Land Huis - Their Development and Dissolution* (1932) (typescript, originally published in *Star-Bulletin*, December 12 - 16, 1932), p. 9.

they were also active in the secondary market for land that quickly arose in the Kingdom. Indeed, although accurate figures are unavailable for many Land Hui, the available information as shown in Table III, indicates that the land base controlled by the Hawaiian Land Hui (associations) dwarfed the collective kuleana (individual plots of land) awarded to maka'āinana. Combined, the Land Hui controlled at least 47,703.42 acres in comparison to the 28, 658.79 acres awarded directly to makaʻāinana through the Kuleana Act.

Table III. Partial Summary of Hawaiian Land Hui[591]

Hui Name	Location	Origin	Acreage	Members
Peahi	Hāmākualoa, East Maui	RPs 149, 221, 160, 2182	2000	159
Mailepai	Kāʻanapali, West Maui	?	2825	106
Huelo	Hāmākualoa, East Maui	?	1500	70
Ulumalu	Hāmākualoa, East Maui	LCA 10474	1500	70
East Kaupakulua	Haʻikū, East Maui	?	1036	45
Hāmākuapoko	Pāʻia, East Maui	?	929	28
Paʻuwela	Haʻikū, East Maui	RPG 226	210	33
Moʻomuku	Kāʻanapali, West Maui	LCA 11216, Apana 28	?	29
Olowalu	West Maui	?	?	?
Ukumehame	West Maui	?	?	?
Moloaʻa	Koʻolau, Kauaʻi	RPG 535, ?	1500+	?
Wainiha	Haleleʻa, Kauaʻi	LCA 11216	15,110	71
Hāʻena	Haleleʻa, Kauaʻi	LCA 10613	1760	38
Māhāʻulepū	Kona, Kauaʻi	LCA 7713 / RP 4482	?	?

[591] In Table III, the following abbreviations are utilized:

LCA - Land Commission Award: LCAs were the initial title documents issued to Māhele awardees and to commoners who successfully applied for Kuleana lands. LCAs issued for kuleana lands required payment of a survey fee, before fee-simple title was confirmed; LCAs issued to aliʻi and konohiki, in conjunction with their Māhele claims, were further subject the government's rights in the land.

RP – Royal Patent: Royal Patents in fee-simple were issued on LCAs after a commutation to the government was either paid or waived.

RPG – Royal Patent Grant: RPGs, not to be confused with RPs, were issued to the purchasers of government land.

MA – Māhele Award: MAs were issued to konohiki and aliʻi who had failed to obtain LCAs to which they were entitled prior to the dissolution of the Land Commission in 1855.

Hui Name	Location	Origin	Acreage	Members
Kahana	Koʻolauloa, Oʻahu	LCA 8452 / RP 4387	5,050	115
Waikāne	Koʻolaupoko, Oʻahu	RPG 464	1698.48	33
Mānoa	East Oʻahu	RPG 161	513	34
Waimea	Koʻolauloa, Oʻahu	RPG 880	2855	49
Hōlualoa	Hawaiʻi	?	7,330	400
Kaliʻi & Pauwalu-mauka	Koʻolau, East Maui	RPG 1899	115	11
Pauwalu-makai	Koʻolau, East Maui	RPG 2549	151.65	16
Paehala	Koʻolau, East Maui	RPG 3048	43.5	?
Kokomo	Hāmākualoa, East Maui	RPG 183	180	13
Hāmoa	Hāna, East Maui	MA 2, RP 4473	169	?
Kaumakani	Kīpahulu, East Maui	RPG 3057	227.5	20
Kōloa	Koʻolau, East Maui	RPG 1396	391.63	?
Kukuiʻula	Hāna, East Maui	RPGs 1902, 2966	456.28	8
Waianu	Koʻolau, East Maui	RPG 1911	107	19
Puheʻemiki	Koʻolauloa, Oʻahu	RPG 3053	45.38	?
Keopukapaiole	Puʻuohoku, Molokaʻi	?	?	46
		Totals	**47,703.42**	**1,413**

A typical Land Hui (association) was created by a group who joined together to purchase a block of land, often an entire ahupuaʻa (watershed management unit), and hold it in common.[592] Although each individual owner might be assigned a house lot or small plot as nominally "his" or "hers," the remainder of the land was held for the benefit of the group as a whole. The ownership structure of a Hui (associations) was typically based upon holding shares in the Hui. As Watson observed, "[T]he ownership of an undivided interest in a large tract of land was far more adaptable to the Hawaiians' needs and background then ownership in entirety of small parcels."[593]

[592] *See* Watson, *Old Hawaiian Land Huis,* p. 13.
[593] *Id*.

Central to the Hui's purpose was the maintenance of traditional 'auwai (irrigation networks) that, by definition, required community cooperation.[594] Without communally maintained 'auwai, wetland kalo (taro) cultivation that was both a dietary and cultural core of traditional Kānaka Maoli (Native Hawaiian) society could not survive. In addition to a network of 'auwai, the typical Hui (associations) maintained communal pasturelands for livestock and sometimes have leased out surplus Hui land to produce income that was shared among the members or used to pay land taxes.[595]

Through the use of the Hui model, Native Hawaiians joined together to purchase large tracts of land that they held in common, working to maintain a semblance of traditional communal life under a new legal regime of fee simple property ownership. Large Land Hui sometimes owned thousands of acres, and would have as many as one hundred to two hundred members.[596]

Watson characterized Land Hui (associations) as "unorganized" and "organized" based in part, upon the presence or absence of internal organizational documents. The presence of organizing documents, however, is only one of a handful of distinctions between the two. In fact, it may be more accurate to describe the later "organized" Hui as an evolution, or second generation, of the original concept.

Beginning in 1854, relatively small groups of Native Hawaiians began forming Land Hui (associations) by purchasing grants of government lands. These Land Hui controlled relatively

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[594] *'Auwai*. "Artificial ditch or stream of water for irrigating land," Lucas, Paul F. Nāhoa (ed.), *Dictionary of Hawaiian Legal Land-Terms Terms* (Honolulu: Native Hawaiian Legal Corp.: University of Hawai'i Committee for the Preservation and Study of Hawaiian Language, Art, and Culture, 1995), p.14.
[595] See Stauffer, *Kahana*, p. 131; see also, Watson, *Old Hawaiian Land Huis*, p. 13.
[596] Stauffer, *Kahana*, pp. 168-82, discusses the gradual dissolution of the Kahana hui. *See also* Leslie J. Watson, *Hawaiian Land Huis*, pp. 12-16.

small areas of land, ranging between 45 and 450 acres. As illustrated by the four Land Hui organized in Keʻanae, Maui, these early Land Hui were formed primarily by groups of individuals, many of whom had in fact received small kuleana awards.[597] As noted previously, kuleana awards were generally limited to small, lowland cultivated kalo lands and associated house lots and excluded upper kula lands, which were "nevertheless . . . integral part[s] of the Hawaiian economy."[598]

Native tenants historically used kula (fields) lands for gathering natural materials and cultivating non-irrigated crops such as sweet potato, olonā (vine for cordage), wauke (tree whose bark was used to beat cloth), or melon, and by the time of the Māhele, they also used the kula (fields) lands for pasturage.[599] These early "unorganized" Land Hui, formed to ensure that "the administration of unirrigated upland areas used for pasturage and the cultivation of dryland crops" would continue in spite of the dismantling of the traditional konohiki (land steward) land management system.[600]

These small, unorganized Hui (associations) controlled lands that were vital to the lives of their members, but they were often too small to make them targets of later partition actions by plantation interests. The value of the land and resources that these Hui controlled simply did not justify the legal cost of partition proceedings. As a result, in Keʻanae for instance:

> [T]he land Huis contributed to the survival and integrity of Hawaiian settlement. Keanae is a rarity in the islands today: a locale where Hawaiians retained ownership of land for several generations. This long history of Hawaiian possession has made possible a distinctively Hawaiian community life that may exist nowhere else except perhaps Niihau.[601]

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[597] Jocelyn Linnekin, "The Hui Lands of Keanae: Hawaiian Land Tenure and the Great Māhele," 92 *The Journal of the Polynesian Society* 169 (1983), p.185.
[598] *Id*., p. 175.
[599] *Id*., pp. 175-176.
[600] *Id*., p. 180.
[601] *Id*., p. 183.

The second generation of "organized" Land Hui (associations) generally began to form a decade after the first generation of "unorganized" Hui, beginning in the late 1860s. Watson described these Hui as "organized" because they were governed by internal constitutions and bylaws establishing the rules of self-government for the members and their land.[602] Aside from their formal organizational structure, they also differed significantly in the size of their membership, the land area they controlled, and in the process by which they acquired land. Many of these second generation Hui (associations) had over a hundred members and each controlled thousands of acres of land. In addition, they generally did not purchase their lands from the government; rather, they purchased large intact holdings that originated as land awards to various ali‘i (chiefly) awardees during Ka Māhele.

The ali‘i (chiefs) who originally acquired whole ahupua‘a and vast acreages in Ka Māhele managed, for a time, to retain their holdings intact, and the maka‘āinana (common people) residing on these lands saw their daily lives relatively unaffected. Over time, however, as the original awardees died or fell into debt, their large land holdings became available for purchase. In this context, organized Hui (associations), generally composed of the residents of a particular ahupua‘a, formed to purchase these now available lands. In some cases, as with the Ulumalu or Mailepai Hui on Maui, land was purchased directly from the ali‘i awardees or their heirs. In other instances, such as with the Wainiha or Hā‘ena Hui of Kaua‘i, the lands were purchased from speculators who acquired the properties at probate auctions or in direct sales from the original awardees.

Because these large organized Land Hui (associations) controlled sizeable tracts of often-valuable agricultural land and associated water rights, they were later subject to forced partition actions to make their lands available for commercial agricultural interests. Although none of

[602] *See* Watson, *Old Hawaiian Land Huis*, p. 13.

these large organized Hui exist today – the last dissolved in 1967 – their existence played an important role in preserving Native Hawaiian communities that continued to maintain a traditional, ‘āina-based (land-based) way of life.

Summary

King Kamehameha III agreed to establish a system of allocating private property ownership of Hawaiian lands in large part to prevent a foreign power, in the event of conquest, from automatically confiscating all of the lands of Hawai‘i, which before Ka Māhele were entirely under his control. He believed that allocating the lands to the ali‘i (chiefs) and konohiki (land stewards) and the maka‘āinana (common people) would assure that these lands would remain in Native Hawaiian hands. The process outlined in the principles adopted by the Land Commission provided for a proportionately fair distribution of the lands among the three general classes who historically held an interest in the lands of Hawai‘i—the king, the ali‘i and konohiki, and the maka‘āinana. The implementation of the process felt far short of the goal of fairly distributing the land to the maka‘āinana or common people, for a number of reasons discussed above. Those who benefitted most from Ka Māhele were foreign residents who, at the beginning of the process were unable to acquire or own land and by the end of the process had acquired vast amounts of land, especially on the island of O‘ahu.

The establishment of private property as a result of Ka Māhele transformed the relationship of the common people with the mō‘i (king) and the ali‘i (chiefs). At the beginning of the process, the king and the chiefs held the lands of Hawai‘i in trust for the maka‘āinana and the maka‘āinana provided labor and tribute to the king and the chiefs. By the end of the process, the king and the chiefs were major landowners and the maka‘āinana were considered tenants who paid rent to the chiefs upon whose lands they continued to live and paid taxes to the king and the

government. With only one-third of the maka‘āinana acquiring land through Ka Māhele, a large pool of landless maka‘āinana became available to be hired as laborers to be paid in wages, by the chiefs and the government as well as foreigners. The availability of land to be owned as private property and of Native Hawaiians to be hired as wage laborers laid the foundation for the establishment of sugar plantations in the islands, as will be discussed in Chapter Six.

Ka Māhele opened the way for the development of a capitalist economy in the Hawaiian Islands. It allowed the lands of Hawai‘i, which had been held as a sacred trust for the gods and the people, to became a commodity that could be bought and sold and developed into its most profitable use. It severed the traditional bond of trust and mutual support between the chiefs and the people by dividing the interests of the chiefs from that of the people in the land.

Ka Māhele also strained the relations within the ‘ohana (extended families) by requiring that the lands that had flourished under the collective stewardship of the extended families for generations be broken into parcels claimed and owned by individual members of the ‘ohana.

Allowing non-Native Hawaiians to own land, as discussed above, led to the alienation of many Native Hawaiians from their ancestral lands, a process which continues into the 21st century with land speculation and development of tourist resorts and luxury home subdivisions. It is interesting to note that many other Pacific Islands nations, such as Tonga and Sāmoa did not allow non-natives to own lands in their islands, and the native people of those islands continue to own their traditional ancestral lands.

The impact of Ka Māhele was profound and continues to affect Native Hawaiians into the 21st century. Ka Māhele resulted in disrupting the relationship between humans, the natural world, ‘āina (land), and the gods. Thus, the Native Hawaiian sense of the interconnection of humans, the land, and all living things – illustrated so well by the mele that opened and closes

this chapter – was disrupted by laws establishing private ownership of land, transforming the land and its resources into commodities.

I luna la, i luna	Above, above
Nā manu o ka lewa	All birds in the air
I lalo la, i lalo	below, below
Nā pua o ka honua	all earth's flowers
I uka la, i uka	inland, inland
Nā ʻulu lāʻau	all forest trees
I kai la, i kai	in the sea, the sea
Nā iʻa o ka moana	all the fishes of the ocean
Haʻina mai ka puana	sing out and say, again the refrain
A he nani ke ao nei	Behold this lovely world![603]

[603] Pukui & Alfons L. Korn, *The Echo of Our Song*, pp. 192 – 194.

Chapter Six: Hawaiian Kingdom and Constitutional Monarchy

Generations 26 to 30 [Generations 121 to 125], 1855 – 1892

Generation 26 [Generation 121] - King Kamehameha IV (Alexander Liholiho)	***1855 - 1863***
Generation 27 [Generation 122] - King Kamehameha V (Lota Kapuāiwa)	***1863 - 1872***
Generation 28 [Generation 123] - King William Charles Lunalilo	***1873 - 1874***
Generation 29 [Generation 124] - King David Kalākaua	***1874 - 1891***
Generation 30 [Generation 125] - Queen Lili'uokalani	***1891 - 1893***

Hawai'i Pono'ī

Hawai'i pono'ī	Hawai'i's own sons and daughters
Nānā i kou Mō'ī	Look to your Sovereign
Ka Lani Ali'i	His Highness
Ke Ali'i	The Monarch
Hui:	Chorus:
Makua Lani ē	O monarchial father
Kamehameha ē	Kamehameha The Great
Na Kaua e pale	You and I will defend [our country]
Me ka ihe	With the spear

The Hawaiian national anthem composed by King Kalākaua in 1874, was put to the melody of the song, Hymn of Kamehameha, composed by Henry Berger, conductor of the Royal Hawaiian Band of King Kalākaua. This translation is by Larry Kauanoe Kimura.[604]

Overview

The Hawaiian Kingdom and Constitutional Monarchy enjoyed its most prosperous and renowned era as an independent nation from the reign of King Alexander Liholiho Kamehameha

[604] Carol Wilcox with Vicky Hollinger, Kimo Hussey and Puakea Nogelmeier, *He Mele Aloha, A Hawaiian Songbook* (Honolulu: 'Oli'Oli Productions, 2003), p. 47. Translation by UH-Hilo Hawaiian Language Professor Larry Kauanoe Kimura, personal email communication (October 26, 2013).

IV through that of Queen Lydia Nāmakaʻeha Liliʻuokalani Dominis. The Hawaiian government fully exercised the status that it had attained within the international community of nations and this was fully embraced and defended by Native Hawaiians through active participation in national politics, the formation of nationalist political parties, and the participation in the discourse of Hawaiian language newspapers.

Despite the prosperity of Hawaiʻi's economy due to the rapid expansion of the sugar industry during the American Civil War, the health and well-being of the Native Hawaiian people continued to decline. Foreign diseases - smallpox, measles, whooping cough, leprosy and diphtheria - diminished the overall population of Native Hawaiians.[605] The establishment and expansion of sugar plantations displaced Native Hawaiians from their ancestral lands and they began to engage in wage labor on plantations, in ground transportation, stevedoring, construction and public works.[606] During this period, plantations began to rely heavily on immigrant contract workers imported from China and Japan; by 1890, the influx of foreign workers had reduced Native Hawaiians to a minority population in their own homeland, although they still comprised a majority of the citizens of the Hawaiian Kingdom and Constitutional Monarchy.[607]

The government continued to accommodate the demands of resident foreigners, naturalized and non-naturalized, especially Americans who sought the creation of a stable business climate for investments and the establishment of a profitable market for Hawaiʻi-

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[605] 1853-54 Smallpox epidemic killed 7,000; 1860 Measles & Whooping Cough; 1861 Smallpox epidemic kills 282; 1866 First leprosy patients sent to Kalawao-Kalaupapa; 1890 Diptheria epidemic. Papa Ola Lōkahi, "Notable Historical Events in Hawaiian History" contributed by Richard Kekuni Blaisdell, M.D. in *Conference Proceedings, 1998 Native Hawaiian Health and Wellness Summit and Island ʻAha: Issues, Trends, and General Recommendations* (Honolulu: Papa Ola Lokahi, 1998), pp. 110 – 116.

[606] See generally William W. Goodale, "The Hawaiian As an Unskilled Laborer" in *Hawaiian Almanac and Annual for 1914* (Honolulu: 1913).

[607] Kingdom of Hawaii, *Census of the Hawaiian Islands 1890*, Hawaiʻi State Archives, also microfilm in UH Hamilton Library.

produced commodities in America, especially sugar. At the same time, the Native Hawaiian people vigorously held on to and asserted their role at all levels of the Hawaiian government and insisted that the monarchs uphold their traditional responsibility to look after the well-being of the people. This was most evident in the growth of a nationalist Hawaiian movement that rallied around the slogan "Hawai'i for the Hawaiians."[608]

From January through October 1881, King Kalākaua traveled around the world, making official state visits to the rulers of Japan, China, Singapore, India, Egypt, Italy, England, Belgium, Austria, Spain, Portugal, France and the United States. He was the first world leader to undertake such an extensive diplomatic mission and travel around the world.[609]

Upon his return to Hawai'i, King Kalākaua launched a number of programs aimed at promoting the prestige of the monarchy and Hawaiian national identity. He revived the public performance of the hula and established organizations to document Hawaiian genealogies, scientific knowledge and the arts. He built the 'Iolani Palace, commissioned the iconic Kamehameha statue and held a formal coronation. He also sponsored the education of 17 young men and one woman in leading universities throughout the world.[610]

When King Kalākaua refused to cede control over Pu'uloa or Pearl Harbor to the U.S. in order to renew a reciprocal trade treaty, the business-planter-missionary (descendant) interests organized a coup d'état and forced the king to sign away his authority through what was called

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[608] Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham: Duke Univ. Press, 2004) p. 90; Ralph S. Kuykendall, *The Hawaiian Kingdom Volume III: 1874 – 1893 The Kalakaua Dynasty* (Honolulu: Univ. of Hawaii Press, 1967), pp. 4, 5, 7, 14, 191, 193, 197-198, 224 - 225, 515, 517.

[609] Kamanamaikalani Beamer, "Na wai ka mana? 'Ōiwi Agency and European Imperialism in the Hawaiian Kingdom" (Unpublished Dissertation, University of Hawai'i, 2008), p. 226

[610] On Kalākaua's public art endeavors, see generally Stacy Kamehiro, *The Arts of Kingship: Hawaiian Art and National Culture in the Kalākaua Era* (Honolulu: Univ. of Hawai'i Press, 2009); on the education of Hawaiians abroad, see generally Agnes Quigg, "Kalakaua's Hawaiian Studies Abroad Program," *Hawaiian Journal of History*, Volume 22 (Honolulu: Hawaiian Historical Society, 1988).

the Bayonet Constitution. The Hawaiian people rallied and campaigned against this usurpation of the authority of the Constitutional Monarchy throughout the remainder of the King Kalākaua's reign. This struggle persisted and gained momentum when Queen Lili‘uokalani ascended to the throne.

Given the continued decline of the Native Hawaiian population, the increase of immigrant contract labor, and the strain placed upon the resources of the government as it struggled to fulfill the demands of non-natives, the royalty of this generation privately took intentional steps to provide for their people and their descendants. They established trusts that reserved their personal landholdings in perpetuity, for the direct benefit of generations of Native Hawaiian people.[611]

Changes in the Livelihoods of Native Hawaiians

The break up of the traditional land system not only led to the establishment of land tenure on the basis of private property ownership, it also created a large pool of landless Native Hawaiians with no other means of subsistence than to hire themselves out as wage laborers.

Native Hawaiians had begun to work outside of the context of their traditional ‘ohana (extended families) as early as the trading period. Early in their encounters in the Hawaiian Islands, Americans recognized that Native Hawaiian men had qualities that could be employed to advance American interests in the Pacific Northwest. Native Hawaiian men were renown as vigorous, strong and hardworking seamen; skilled, agile and fearless seafarers and swimmers; gregarious and easy-going; and accustomed to living outdoors. On these long voyages to unknown territories, loyalty was highly valued and Native Hawaiians gained the reputation of supporting the officers in case of mutiny or other disturbance on the ships. Native Hawaiians

[611] The genesis of each of these trusts is discussed later in this chapter and in Appendix 3. Legacy of the Hawaiian Rulers: Ali‘i Land Trusts.

were recruited to work as sailors, to conduct trade with the indigenous peoples of the Northwest, and to establish settlements in geographically remote areas. Alexander Ross, a fur trader at Astoria wrote:

> The Owhyhees are such expert swimmers that little of our effects are lost beyond recovery which accident now and then consigns to the bottom of the water in our perilous navigations: and it is next to impossible for a person to get drowned if one or more of them are near at hand: in that element, they are as active and expert as the reverse on dry land.[612]

At first, many of the Native Hawaiians did not adjust to the cold damp climate on the continent and contracted tuberculosis and died. George Simpson, governor of the Hudson's Bay Company's American territory observed the following about the Native Hawaiians at the trading posts:

> A few Sandwich Islanders mixed among the Canadians and Europeans can be usefully employed here as guards and for common drudgery about the establishments but they are not generally disposable men being unfit for the laborious duties of the voyage; they are however valuable in establishing new countries or they can be depended upon in cases of danger from the natives.[613]

Over time, some of the Native Hawaiians acclimated to the northwest climate and married into American Indian and Alaska Native families, and became active members of the native communities.[614]

During the whaling period, individual Native Hawaiians were lured away from their farms to the burgeoning port towns of Lahaina and Honolulu. From there, some shipped out to

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[612] Alexander Ross, *The Fur Hunters of the Far West* (Norman, Oklahoma: 1956), p. 194, *cited in* David Kittelson, "Hawaiians and Fur Traders," in *Hawaii Historical Review*, Vol. I, Number 2, January 1963, p. 18.

[613] George Simpson, *Fur Trade and Empire* (Cambridge: 1931), p. 91, *cited in* David Kittelson, "Hawaiians and Fur Traders," p. 18.

[614] See generally, Jean Barman and Bruce McIntyre Watson, *Leaving Paradise: Indigenous Hawaiians in the Pacific Northwest, 1787-1898* (Honolulu: Univ. of Hawai'i Press, 2006).

sea on the whalers. Others performed manual labor for wages as boatmen, stevedores, haulers, peddlers, waiters and domestic help.[615]

The 1849 California gold rush attracted many young Native Hawaiian men. As this coincided with the establishment of private property ownership and the extension of these rights to non-Hawaiians, Americans and Europeans used their influence in the Hawaiian Kingdom and Constitutional Monarchy to enact a law restricting emigration from Hawaiʻi so as to protect their limited domestic labor supply. Beginning in 1850, Native Hawaiians had to receive a permit in order to emigrate from Hawaiʻi.[616]

The combination of the establishment of private land ownership and the imposition of taxes led greater numbers of Native Hawaiians to enter the market economy - by selling what they farmed or fished or by becoming wage laborers. The loss of land also forced Native Hawaiians to rent housing to live in, making them more dependent on a market economy. On one hand, the common people were freed from the tax and labor service traditionally owed to the chiefs and the king. Katharine Coman, in her article, "Contract Labor in the Hawaiian Islands" wrote:

> With the distribution of lands in 1848, service tenure was abolished and the people were exempted from the labor service due the King and chief . . . Thenceforth, the taro patches of the chiefs must be cultivated by wage-paid labor.[617]

In 1850, Reverend Richard Armstrong, Minister of Public Instruction, observed:

> The government has lately granted fee simple titles to all the natives, for the land they have lived on and occupied . . . On their [the chiefs] part it lost a great struggle as it cut them off, at once, from the labor of all their tenants, and they

[615] Theodore Morgan, *Hawaii: A Century of Economic Change 1778 - 1876* (Cambridge: Harvard Univ. Press, 1948) p. 74 -85, 96 – 120.
[616] Ralph S. Kuykendall, *The Hawaiian Kingdom, Volume I: 1778 – 1854 Foundation and Transformation* (Honolulu: Univ. of Hawaii Press, 1965), pp. 328 - 331.
[617] Katherine Coman, "Contract Labor in the Hawaiian Islands" in *Hawaii Planter's Monthly* (Honolulu: 1903-1904) Vol. 22, 1903, p. 438.

> must now work their lands by hired labor. This will compel them to sell their waste lands of which they have an abundance.[618]

On the other hand, Native Hawaiians commoners were either alienated from the ancestral lands that they had cultivated together with their extended family members, or they were granted parcels of land that were too small to provide food, clothing and shelter for their families. This circumstance, combined with the enactment of new taxes, pushed Native Hawaiian commoners to enter the market economy. These taxes included a kuleana land tax; a $2 school tax for males; a poll tax of 50 cents for males 15 to 20 years old; a 50 cent horse tax; a 25 cent mule tax and a $1 dog tax.[619]

In the *Ke Au ʻOkoʻa* newspaper of January 27, 1870, Samuel M. Kamakau lamented the abandonment of traditional Native Hawaiian skills in favor of labor for wages*:*

> Ka poʻe kahiko [the people of old] were rich in possessions; they found their riches and provisions in the natural resources of the land. Their skill and knowledge are proven by their works. The people of today are destitute; their clothing and provisions come from foreign lands, and they do not work as their ancestors did. Some women sell their bodies for coverings and fine clothing to buy "food" and "fish" to relieve hunger and poverty. The men too have deserted the works of their ancestors - farming, fishing, painting kua'ula tapas, building canoes, scraping olona, carving wooden bowls, making nets, twisting two, three, or four ply cords, making feather capes and round leis and preparing gum for snaring birds. One cannot again find skilled persons who had a deep knowledge of the land; those who are called learned today are mere vagabonds who follow after one of skill and knowledge, and fawn and flatter, and smack their lips and lap with their tongues at the fortunes of others. Because of the foreign ways of the race, they have abandoned the works of the ancestors and have become lazy and make a living by peddling; a practice despised by the ancestors . . .[620]

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[618] Letter on file in Library of Congress, Armstrong-Chapman papers; copy on file, Hawaiian Mission Children's Society, Honolulu, Hawaiʻi, *cited in* Neil Levy, "Native Hawaiian Land Rights" *California Law Review*, LXIII No. 4 (July 1975), p. 858.

[619] Marion Kelly, *Historical Background of the South Point Area, Kaʻu Hawaiʻi*, Pacific Anthropological Records, No. 6 (Honolulu: Bernice Pauahi Bishop Museum, 1969), pp. 42, 43, 46-47.

[620] Samuel Manaiakalani Kamakau, *Works of the People of Old, Na Hana a ka Poʻe Kahiko* (Honolulu: Bishop Museum Press: 1978), p. 123.

Despite strong economic and social forces pushing to disperse the ʻohana (extended families), Native Hawaiians still maintained strong family ties and obligations. They continued to look after the welfare of their relatives and friends. Hawaiians who had to move away to earn a living were periodically able to return to their ʻohana to visit and find refuge and solace from the drudgeries and alienating social conditions of wage labor. Some Native Hawaiians left their children to be raised in a traditional rural setting by grandparents rather than in the urban setting of port towns. An 1873 article in the newspaper, *Ka Nūhou*, described the ʻohana as a source of support and comfort:

> The kanaka has no need to be very constant, and does not suffer if he has neglected accumulation and a provision for old age. The bounty of the whole race affords a sure refuge to any bankrupt, cripple, or pauper among their number. A kanaka can never become dead broke and dread the poor house, because he will always be welcome to fish and poi in any native hut that he enters. And so it is hard to get plantation hands out of such easy going, spending, mutually helping people.[621]

While the foundation for wage labor to develop into the dominant form of labor was laid in the 1850s, it was the emergence of sugar as the primary commodity around which the Hawaiian economy would be organized that provided the impetus for the transformation of the Hawaiian way of life. The ʻohana (extended families) eventually transformed from the primary unit of work and the context within which to make a livelihood, to having no direct relation to the organization of work and production in the broader economy. Instead the ʻohana began to

[621] *Ka Nuhou*, May 23, 1873, p. 2. The article opens with "Native Labor Is the best we have, we never doubted this. The Hawaiian on his own ground, and in his own climate can do more work than any other man; he can row a boat, hoe his row, work a road, clear a field, load a ship, capture a bullock, shear a sheep, ride a horse, swim, run, dive, or climb better than any other man, white or colored, who comes here to work alongside him. But for all that, he does not supply all the needs of the country for labor, and does not supply as much as he could. He is inconstant; - and inconstancy or want of application is the loose screw in the characters of all the colored races."

serve as a source of refuge, comfort and support to Native Hawaiian laborers who felt overworked and socially alienated when they labored on the plantations or in port towns.

Employment demands of 10 to 12 hours of labor per day for five to six days a week made commuting to work places that were distant from their homes impossible and compelled families to live apart from each other. In the *Ke Au ʻOkoʻa* newspaper of May 6, 1869, Kamakau compared working conditions under the old system and the new system and provided an insightful observation about the impact of wage labor on the ʻohana (extended families) and on the individual separated from his ʻohana:

> In the old days people who lived in out-of-the-way places were heavily burdened by the labor performed for chiefs, landlords and land agents. But although the work was hard, that today is even more so when families are broken up and one must even leave his bones among strangers.
>
> In the old days, the people did not work steadily at hard labor but at several years' interval, because it was easier then to get food from the fishponds, coconut groves, and taro patches . . . This was the generous way of living under a chief who made a good lord; the people were fed and every wish of the chief was gratified. Labor done in the patch of the chief was a rental paid for the use of the land and everyone was benefited thereby.
>
> Today the working man labors like a cart-hauling ox that gets a kick in the buttocks. He shivers in the cold and dew-laden wind, or broils in the sun with no rest from his toil. Whether he lives or dies it is all alike. He gets a bit of money for his toil; in the house where he labors there are no blood kin, no parents, no relatives-in-law, just a little corner for himself.[622]

In 1872, there were 51,531 Native Hawaiians and they comprised 90.6 percent of the population. This included 3,299 Hawaiian laborers, who comprised 85 percent of the plantation work force. In 1882, six years after the Reciprocity Treaty with the United States went into effect, the 2,575 Native Hawaiian laborers comprised only 25 percent of the plantation

[622] Samuel Mānaiakalani Kamakau, *Ruling Chiefs of Hawaii* (Honolulu: The Kamehameha Schools Press, 1992), p. 372.

workforce. By comparison, Chinese immigrant contract workers comprised 49 percent of the plantation workforce.[623]

By 1884, the Native Hawaiian population was 44,232 and they comprised only 54.9 percent of the nation's entire population, when including the foreign non-citizen plantation workers. Among Native Hawaiians, 24 percent lived in Honolulu and made their living in various wage-earning occupations, while the remaining 76 percent lived in rural O‘ahu and the neighbor islands. In Honolulu, Native Hawaiians found employment as stevedores, sailors, coachmen, boatmen, gardeners, fruit peddlers, waiters, soldiers, and domestic help. Many were also employed by the government as clerks, magistrates, and policemen. A few became lawyers. The average monthly wage for Native Hawaiian free laborers was $20.64. Wages for unskilled labor varied from 12.5 cents to 50 cents a day, or from two to six dollars a month, being highest near the port towns. Wages on Kaua'i were usually 12.5 cents a day plus provisions, as it was on Maui, except at Lahaina where laborers were paid 25 cents a day. Domestic servants in their thirties were paid in food and lodging. Skilled laborers received higher wages. For example, in Kealakekua, carpenters earned $1.25 to $1.50 a day and blacksmiths earned $2 a day.[624]

In the rural areas, some Native Hawaiians still worked on the plantations as mechanics, coopers, carpenters, blacksmiths, and sugar boilers where the average monthly wage for Native Hawaiian contract labor was $18.50.[625] As ranches were established in several rural areas, Native

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[623] James Shoemaker, *Labor in the Territory of Hawaii*, 1939, U.S. Bureau of Labor Statistics (Washington D.C.: 1940), p. 34, Table 12. The negotiation of the Reciprocity Treaty and its impact upon the Hawaiian social system are discussed below.

[624] Theodore Morgan, *Hawaii, A Century of Economic Change, 1778-1876* (Cambridge: Harvard Univ. Press, 1948), p. 107. Population distribution figure based on Hawaii (Kingdom), General Superintendent of the Census, Board of Education, *Census of the Hawaiian Islands Taken December 27th, 1884 under the direction of the Board of Education* (Honolulu: 1885), Table of Occupations of Individuals. "Census of the City of Honolulu" and "Census by Election Districts."

[625] Kalakaua, *Legends and Myths of Hawai‘i,* p. 63. Goodale, "The Hawaiian As An Unskilled Laborer," p. 184.

Hawaiians were hired as cowboys, an occupation at which they excelled. In addition to receiving an advance on wages, the ranches usually provided their cowboys with lodging and meat and allowed them to hunt, fish and gather on ranch lands. Native Hawaiians found the vigorous outdoor work interspersed with periods of relaxation and socializing appealing. Native Hawaiians in rural areas were also hired in smaller export industries gathering pulu (tree fern wool) and pepeiao (edible fungus), producing salt, and growing coffee.[626] Native Hawaiian farmers and fishermen sold their products whenever they needed cash to pay taxes or to purchase manufactured items that the land could not provide, such as lumber, nails, steel tools, cloth, and rope. Some also worked a day or two from time to time on a government road or for another neighbor who might have plantation money to pass on.[627]

The 1890 census reported that 9,698 Native Hawaiian males were in the work force, as compared with 13,067 Chinese males and 9,837 Japanese males. The top three categories of work for Native Hawaiian men were listed as agriculture (4,307), laborers (2,328), and mechanics (893).[628] The census also reported that there were 357 Native Hawaiian women in the work force as compared to 1,418 Japanese women and 98 Chinese women and 169 American and European women. The top three categories of work for Native Hawaiian women were listed as mechanics (103), agriculture (85), and laborers (41).[629] It would be interesting to know what kinds of trades the Native Hawaiian women mechanics worked in and why so many Native Hawaiian women were involved in wage labor.

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[626] Goodale, "The Hawaiian As An Unskilled Laborer," p. 183.
[627] see generally Morgan, *Hawaii, A Century of Economic Change.*
[628] Kingdom of Hawaii, *Census 1890*, Table 6. The other categories of work for Hawaiian men were: transport (608); professional (199); traders (161); clerks (136); planters (65); and other (1,001).
[629] *Id.,* The other categories of work for Hawaiian women were: professional (37); traders (3); planters (2); clerks (2) and other (84).

These changes in the livelihoods and way of life of the Native Hawaiian people provide the back drop to the reigns of the monarchs of the Hawaiian Kingdom and Constitutional Monarchy from 1855 through 1892. The monarchs were forced to navigate between the increasing demands of foreigners to invest the government's resources into the development of the economy and the insistence of Native Hawaiians that the government provide for the well-being of the people and protect the independence of the Hawaiian Kingdom and Constitutional Monarchy. In response, the monarchs steered toward enhancing the power and prerogatives of their own office to keep the nation strong, while the common people rallied for a shared role in guarding the resources of the nation.

Hawaiian Language Newspapers and Hawaiian Nationalism

Beginning in 1861, the struggle between the competing interests of natives and non-natives over the future of the Hawaiian nation began to unfold through a new medium - Hawaiian language newspapers. Native Hawaiian political scientist, Noenoe Silva, describes this dynamic as follows:

> In this struggle among the mōʻī [king], other aliʻi nui [high chiefs], the makaʻāinana [commoners], missionaries, and planters of various types, newspapers would become the main battleground for competing discourses . . . in 1861, to the shock and outrage of the missionary establishment, a group of Kānaka Maoli [Native Hawaiians], makaʻāinana [commoners], and aliʻi [chiefs] together, transformed themselves into speaking subjects proud of their Kanaka [Native Hawaiian] ways of life and traditions and unafraid to rebel. Their medium was a Hawaiian-language newspaper called *Ka Hoku o ka Pakipika* (The star of the Pacific). This paper began a long tradition of nationalist anticolonial resistance through the print media.[630]

[630] Silva, *Aloha Betrayed*, pp. 54-55 (translation in brackets added).

Historian Helen Chapin noted that Chief David Kalākaua sponsored this first Hawaiian language paper and was later known affectionately as the "editor king."[631]

Silva reports that, in 1861, there were 266 Hawaiian language medium schools, with a student population of over 8,000. According to Silva, literacy in Hawaiian was "almost universal" and the Hawaiian language newspapers held the largest circulation and the majority of readers until the end of the 19th century.[632]

Hawaiian language professor Puakea Nogelmeier noted that *Ka Hoku o ka Pakipika* (*The Star of the Pacific*) had 2,700 subscribers in its first full year of production and that its reach was probably much larger given the practice of reading the paper aloud to family members and then passing it along from house to house.[633] Nogelmeier's dissertation documents the impressive repository that the Hawaiian language newspapers provide regarding Native Hawaiian culture, history and politics. According to Nogelmeier:

> From 1861 to 1870, the three Hawaiian newspapers *Hoku o ka Pakipika*, *Kuokoa*, and *Ke Au Okoa* produced six thousand broadsheet pages of text. The large broadsheet format makes this sum equivalent to well over 60,000 letter size pages of material, most of which was produced by Hawaiian writers. The thousands of writings from the decade of the 1860s represented a new scale of Hawaiian writers and a newly independent setting.[634]

One of the important benefits of the Hawaiian language press was to connect Native Hawaiians in rural areas and neighbor islands to Native Hawaiians at the hub of the Hawaiian nation in Honolulu, thus enabling the emergence of a truly nationalist movement. Silva noted that, "[i]n its recitation of traditional mele [songs], moʻolelo [history and traditions], and

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[631] Helen Geracimos Chapin, *Shaping History: The Role of Newspapers in Hawaiʻi* (Honolulu: Univ. of Hawaiʻi Press, 1996), p. 59. According to Chapin, Kalākaua also sponsored the daily newspaper, *Ka Manawa* (The Times) in 1870 as well as the literary journal, *Hoku O ke Kai* (Star of the Sea), in 1883.
[632] *Id.,* p. 55
[633] Puakea Nogelmeier, *Mai Paʻa I Ka Leo: Historical Voice in Hawaiian Primary Materials, Looking Forward and Listening Back* (Unpublished Doctoral Dissertation, University of Hawaiʻi, Manoa, December 2003), p. 117.
[634] *Id.,* p. 129.

moʻokūʻauhau [genealogy], *Ka Hoku o ka Pakipika* reflected and communicated a specifically Kanaka [Hawaiian] national identity."[635]

Chapin, in her book documenting the role of newspapers in Hawaiʻi's history, noted five general themes that set the Hawaiian language newspapers apart from the English language newspapers after 1861:

> [T]hey were united in sharing several basic themes that were markedly different from those of establishment papers: one, a conviction that Hawaiians knew what was best for themselves; two, an awareness that the decline of the native population was a serious matter; three, an insistence that Hawaiʻi remain an independent nation; four, a deep respect for the monarchy; and five, a great love for their land.[636]

Nogelmeier observed that the independent Hawaiian language newspapers, as compared to the missionary newspapers, also carried more articles and letters directly addressing Hawaiian culture and more letters submitted and published from the reading audience.[637] He wrote:

> The century-long concern over the loss of Hawaiian knowledge generated a massive amount of written cultural material: genealogies; histories; legends; chants; riddles; extensive categorical listings regarding stars, plants, fish, sites, winds, rains, clouds, deities, and innumerable other fields of cultural practice.[638]

Silva noted that in an era of imperialist colonization of the Pacific, the independent Hawaiian language press focused on what was possible for Native Hawaiians to accomplish–cultural integrity and perpetuation. She wrote, "Its editors understood well the dangers that a small nation faced in the imperial century, and so they focused on the possible: a strengthening pride in heritage, the preservation of valuable traditional knowledge, and the provision of a space to contest the more grievous acts of the colonizers."[639]

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[635] Silva, *Aloha Betrayed*, p. 85 (translation in brackets added).
[636] Chapin, *Shaping History: The Role of Newspapers in Hawaiʻi*, p. 61
[637] Nogelemeier, *Mai Pa'a I Ka Leo*, p. 129.
[638] *Id.,* p. 146.
[639] Silva, *Aloha Betrayed*, p. 86.

According to Silva, the Hawaiian language newspapers emerged as one of the primary weapons for the Hawaiian nationalist movement by contributing to the collective imagining of the nation among Native Hawaiians, whose primary point of reference had previously been their own island. She wrote:

> Newspapers from that time on served to consolidate the lāhui [nation], allowing people to communicate with each other from Hawai‘i Island to Ni‘ihau . . . The lāhui was also created in the collective imagination by Kanaka Maoli [Native Hawaiians] grouping themselves as alike, sharing a language and culture, albeit with regional variations.[640]

Silva noted that newspapers also introduced Native Hawaiians to anticolonial struggles in other parts of the world.

Today Hawaiian language newspapers still provide an important window into the period from 1861 through 1892 and the social, political and economic trends that challenged the monarchs who ruled in this era.

King Alexander Liholiho Kamehameha IV (Generation 26 [Generation 121]: 1855 - 1863)

Alexander Liholiho, King Kamehameha IV, was born in 1834 to High Chiefess Kīna‘u, the daughter of King Kamehameha I and High Chiefess Kaheiheimalie. His mother, Kīna‘u, had succeeded her maternal aunt Ka‘ahamanu as the kuhina nui or premier of the Hawaiian Kingdom and Constitutional Monarchy in 1832. Alexander Liholiho’s father was a kaukau ali‘i (lesser chief). Mataio Kekūanāo‘a, who became the governor of O‘ahu because of the high rank of his wife Kīna‘u. King Kamehameha III adopted Alexander Liholiho and in 1853 designated him as his heir and successor.[641]

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[640] *Id.,* p. 88.
[641] Kamakau, *Ruling Chiefs of Hawaii*, pp. 346 - 347; Ralph S. Kuykendall, *The Hawaiian Kingdom, Volume II: 1854 – 1874 Twenty Critical Years* (Honolulu: Univ. of Hawaii Press, 1966), p. 33.

Alexander Liholiho was educated in the Chiefs' Children's Royal School until the age of 14. A year later (1849–50), he and his brother Lota Kapuāiwa traveled to the United States and Europe as part of a diplomatic mission. While in the U.S., the racism that he witnessed and experienced, to the extent that he was almost removed from his train car for being "dark," made a deep impression and later shaped his view against the annexation of Hawai'i to the U.S.[642]

In 1852, Alexander Liholiho was appointed to the privy council. King Kamehameha III died on December 15, 1854, and Alexander Liholiho was inaugurated as King Kamehameha IV on January 11, 1855. One year later, in June 1856, he married Emma Rooke, in an elegant ceremony of the Church of England.[643] She had also been educated at the Chiefs' Children's Royal School. Her maternal grandmother, Ka'ō'ana'eha, was the daughter of King Kamehameha I's brother, High Chief Keli'imaika'i and sister of the chief, Kekuaokalani, who was killed in the Battle of Kuamo'o defending the Native Hawaiian religion and gods. Her maternal grandfather, John Young, was the British military advisor to Kamehameha I. Queen Emma was born to High Chief George Na'ea of Kaua'i and High Chiefess Fanny Kekelaokalani Young and adopted and raised by her mother's sister, High Chiefess Grace Kama'iku'i Young and her British husband, physician Dr. Thomas C. B. Rooke. Her adopted father often took Emma with him as he attended to the medical needs of the Native Hawaiian people, teaching her the usefulness of western medicine in dealing with western diseases, and making her a strong supporter of what would

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[642] Kamehameha 1834-1863, *Journal of Prince Alexander Liholiho: Voyages Made to the United States, England and France in 1849-1850* (Ed. Jacob Adler) (Honolulu: Univ. of Hawai'i Press, 1967), pp. 108-109. "I found he was the conductor, and took me for somebody's servant just because I had a darker skin than he had. Confounded fool. The first time that I have ever received such treatment, not in England or France or anywhere else . . . In England an African can pay his fare and sit alongside Queen Victoria. The Americans talk and think a great deal about their liberty, and strangers often find that too many liberties are taken of their comfort just because his hosts are a free people."

[643] *Ka Hoku Loa O Hawaii, The Pacific Commercial Advertiser*, July 2, 1856 in Rubellite Johnson, *Kukini 'Aha 'Ilono - Carry On the News: Over a Century of Native Hawaiian Life and Thought from the Hawaiian Language Newspapers of 1834 to 1948* (Honolulu: Topgallant Publishing, 1976).

becom the Queen's Hospital. In May 1858 Emma gave birth to a son, Prince Albert Kauikeaouli Leiopapa a Kamehameha. The British Queen Victoria was the godmother for his christening in the Church of England. Tragically, the young prince died at the age of four in 1862.[644]

Throughout his reign, King Kamehameha IV continuously tried to amend the Consitution of 1852 (as amended in 1856) to expand his powers as king and to redefine the composition and reduce the authority of the House of Representatives. However, he could not overcome the opposition to his amendments from the House of Representatives, those who represented the common Native Hawaiian people. The provisions he sought to change were summarized by Kuykendall as follows:

> the existence of the office of kuhina-nui, which detracted from the dignity and strength of the kingly office; the defective character of the provisions regarding the succession to the throne; the power of the privy council, which had a practical veto on many of the acts of the king and the cabinet and could interfere seriously with the policies of the administration; the universal manhood suffrage guaranteed by the constitution; the absence of any property qualification for members of the house of representatives; the strong position of the house of representatives arising from the fact that all financial measures must originate in that house.[645]

The House of Representatives succeeded in retaining its control over the national budget, despite pressure from King Kamehameha IV and his supporters in the House of Nobles. This control enabled the common people, through their elected representatives to hold the monarch accountable to care for the well-being of the people.

In foreign policy, King Kamehameha IV suspended negotiations for the annexation of Hawai'i to the U.S., which had been initiated under Kamehameha III, upon strong advice from

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[644] Kuykendall, *The Hawaiian Kingdom, Vol. II*, pp. 94 - 95. Queen Victoria designated the wife of British commission and consul general to Hawai'i, Mrs. William W.F. Synge, as her proxy. She ordered an ornate silver cup to be made as a christening gift for her godson, which Mr. Synge carried to Hawai'i when he assumed his post.
[645] *Id.,* p. 119.

his foreign minister Dr. Gerrit P. Judd. Instead, he began to negotiate a reciprocal trade agreement with the United States in order to secure the market for Hawai‘i’s sugar.

In a move that was interpreted at the time as anti-American, the king and queen invited the British Episcopal Church to establish itself in Hawai‘i. Having participated in services of the Episcopal Church during his visit to England, the king believed that these doctrines and rituals were more compatible with a monarchical government than those of the Congregational and Presbyterian churches already established in Hawai‘i. The king and queen and other members of the royal family, including Lota Kapuāiwa, left the American Protestant Mission and joined the Church of England, after it was established in Hawai‘i.[646]

One of the greatest contributions of King Kamehameha IV to his people was the founding of the Queen’s Hospital in 1859. In his first speech at the opening of the Legislature on April 7, 1855, the king identified the establishment of public hospitals as a priority for the government to deal with the continuing decrease of the Native Hawaiian population. In part, he stated:

> A subject of deeper importance, in my opinion, than any I have hitherto mentioned, is that of the decrease of our population. It is a subject, in comparison with which all others sink into insignificance; for, our first and great duty is that of self-preservation. Our acts are in vain unless we can stay the wasting hand that is destroying our people . . . I think this decrease in our numbers may be stayed; and happy should I be if, during the first year of my reign, such laws should be passed as to effect this result. I would commend to your special consideration the subject of establishing public Hospitals.[647]

The king sponsored legislation to “Provide Hospitals for the Relief of Hawaiians in the City of Honolulu and Other Localities.”[648] To supplement the government appropriation, he and Queen Emma personally went house-to-house to solicit funds to build the hospital. The charter

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[646] *Id.*, p. 84 - 99.
[647] Robert Lydecker, *Roster Legislatures of Hawaii 1841-1918, Constitutions of Monarchy and Republic Speeches of Sovereigns and President* (Honolulu: The Hawaiian Gazette Co., Ltd., 1918), p. 59.
[648] An Act to Provide Hospitals for the Relief of Hawaiians in the City of Honolulu and Other Localities, *1859 Hawaiian Islands Civil Code* appendix, p. 433.

establishing the Queen's Hospital stated that this was "a permanent hospital at Honolulu, with a dispensary, and all necessary furniture and appurtenances for the reception, accommodation and treatment of indigent sick and disabled Hawaiians, as well as such foreigners and others who may choose to avail themselves of the same."[649] The Queen's Hospital, which essentially functioned as a national hospital, continued to be funded by the legislatures of the Kingdom, the Republic and the Territory until 1909.[650]

King Lota Kapuāiwa Kamehameha V (Generation 27 [Generation 122]: 1863 - 1872)

Lota Kapuāiwa succeeded his brother as King of the Hawaiian Kingdom and Constitutional Monarchy in 1863. Like Kamehameha IV, Lota Kapuāiwa had been educated in the Chiefs' Children's Royal School and had travelled to the U.S. and Europe. His world travels, as well as holding several official positions in the government, made King Kamehameha V one of the most experienced members of the royal family to assume the responsibilities of king. From 1852 through 1862, he was a member of the House of Nobles. During that time, from 1852 through 1855, he served on the privy council until he assumed the position of Minister of Interior from 1856 to 1863. He was also the Chief Justice of the Supreme Court from 1857 to 1858.[651] Lota Kapuāiwa had definite plans to succed in amending the constitution, where his brother had failed.

When Lota Kapuāiwa became king, he did not hold a public inauguration and he refused to take the oath to maintain the Constitution of 1852. Kuykendall noted that King Kamehameha

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[649] Charter and By-laws of Queen's Hospital, 1859, p. 7.
[650] Report by Victor S.K. Houston, Delegate to U.S. Congress, to the Hawaiian Civic Club, September 1939. Also see Chapter 8.
[651] Kamehameha, Lot office record. State Archives Digital Collections, State of Hawai'i, *available at* http://archives1.dags.hawaii.gov/gsdl/collect/governme/index/assoc/HASH7d7b/c4e2ebee.dir/Kamehameha,%20Lot.jpg (last viewed Sept. 16, 2012).

V was more Hawaiian in his point of view than his brother, King Kamehameha IV. Kuykendall wrote:

> Before he became king, the latter [King Kamehameha V] is said to have permitted and even encouraged the revival of some old Hawaiian customs such as the *hula* and *kahuna* practices. After the death of his brother, the scenes and sounds round the palace were strongly reminiscent of ancient times. The last of the Kamehamehas to sit on the throne, Prince Lot, more than any other of his family, resembled his grandfather, Kamehameha I, the founder of the dynasty. Dr. W. D. Alexander, speaking from personal knowledge and from long study of the facts of Hawaiian history, has described Kamehameha V as 'the last great chief of the olden type.'[652]

In 1864, King Kamehameha V promulgated a new constitution which expanded the authority of the monarch by eliminating the position of kuhina nui (prime minister) and reducing the powers of the privy council. In the 1852 Constitution, the article relating to freedom of speech and of the press stated, "No law shall be enacted to restrain the liberty of speech, and of the press." In the 1864 Constitution this article was qualified by the addition of the clause, "except such laws as may be necessary for the protection of His Majesty the King and the Royal Family."[653] Under the new constitution, money could be drawn from the treasury in cases of emergency without legislative approval, provided the whole cabinet and a majority of the privy council concurred.[654]

Another major change in the constitution was the adoption of a literacy and property qualification for voters and members of the House of Representatives. The king, consistent with the practices of other nations at the time, abandoned universal male suffrage in favor of establishing standards for males to qualify as voters and candidates. All male subjects of 20 years of age were eligible to vote if they paid taxes; could read and write, if born after 1840; and

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[652] Kuykendall, *The Hawaiian Kingdom, Vol. II*, p. 125.
[653] Robert Lydecker*, Roster Legislatures of Hawai 1841-1918, Constitutions of Monarchy and Republic Speeches of Sovereigns and President* (Honolulu: The Hawaiian Gazette Co., Ltd., 1918), Constitution of 1864, Art. 3, p. 88.
[654] *Id.,* Art. 15, p. 89.

possessed real property valued at $150 or leased property for $25 a year or had an income of $75. Males of 21 years of age could qualify to be a member of the House of Representatives, provided they paid taxes; could read and write; had lived in Hawai‘i for at least three years; and owned real estate valued at $500 or had an annual income of at last $250.[655]

During his reign, King Kamehameha V, continued to pursue negotiations for a reciprocal trade agreement with the United States, but without achieving success.

In an effort to address the health of his people, King Kamehameha V provided official support for kahuna lā‘au lapa‘au (traditional Hawaiian herbal healers) with the establishment of a Hawaiian Board of Medicine to license these practitioners.[656] While unable to heal foreign diseases, the Hawaiian healers were still able to effectively treat injuries, common ailments and psychological disorders.

During the reign of Kamehameha V, leprosy spread among the Native Hawaiian population at an alarming rate. On January 3, 1865, the Legislature passed, and the king approved, “An Act to Prevent the Spread of Leprosy.” This act gave the Board of Health the authority to banish those with confirmed cases of leprosy to the isolated peninsula of Kalawao-Makanalua-Kalaupapa. The first group arrived at Kalawao on January 6, 1866, beginning a long and heartbreaking history of forced segregation and isolation of leprosy patients on the peninsula.[657]

King William Lunalilo (Generation 28 [Generation 123]: 1873 - 1874)

King Kamehameha V passed away on his birthday, December 11, 1872, at the age of 42 years, without designating a successor. He had asked his cousin Princess Bernice Pauahi Bishop

[655] *Id.,* Art. 61 and Art. 62, p. 95.
[656] Malcolm Naea Chun, *Must We Wait in Despair? The 1867 Report of the ‘Ahahui La‘au Lapa‘au of Wailuku, Maui on Native Hawaiian Health* (Honolulu: First Peoples Productions, 1994).
[657] Kuykendall, *The Hawaiian Kingdom, Vol. II,* p. 72-74.

to succeed him on the throne, but she had declined.[658] Under such circumstances, the Constitution of 1864 provided for the cabinet to call for a meeting of the Legislative Assembly to "elect by ballot some native Alii of the Kingdom as Successor to the Throne."[659] The cabinet promptly set the date for the meeting of the Legislative Assembly as January 8, 1873.

Two ali'i or (high chiefs) emerged as candidates for the throne: High Chief William Lunalilo and High Chief David Kalākaua. William Lunalilo was more closely related to King Kamehameha I than Kalākaua and was the popular choice.[660] Rather than simply rely upon the Legislative Assembly, as defined by the constitution, however, Lunalilo called for and organized a national plebiscite of the male subjects of the Kingdom to be held on January 1, 1873, to guide the Legislative Assembly in its deliberations. In a statement issued on December 16, 1872, he stated in part:

> Nothwithstanding that according to the law of inheritance, I am the rightful heir to the Throne, in order to preserve peace, harmony and good order, I desire to submit the decision of my claim to the voice of the people to be freely and fairly expressed by a plebiscitum.[661]

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[658] *Id.,* p. 241.

[659] Lydecker, *Roster Legislatures*, Art. 22, p. 90. The 16 chiefs who had been educated in the Chiefs' Children's Royal School were eligible candidates. These included: Moses Kekuaiwa (son of Kekūanāo'a and Kina'u); Lota Kamehameha (brother of Moses); Alexander Liholiho (brother of Moses and Lota, adopted by King Kamehameha III); Victoria Kamāmalu (sister of Moses, Lota and Alexander Liholiho); William Charles Lunalilo (son of Kana'ina and Kekāuluohi); Bernice Pauahi (daughter of Pakī and Konia, adopted by Kīna'u); Abigail Maheha (daughter of Nāmaile and Liliha, adopted by Kekauonohi); Jane Loeau (half–sister of Abigail, adopted by Kaukauali'i); Elizabeth Kekauiau (daughter of La'anui and Oana Ana); Emma Rooke, (daughter of Naea and Kekela); Peter Young Kāeo (son of Kāeo and Lahilahi); James Kaliokalai (son of Pa'akea and Keohokalole); David Kalākaua (brother of James); Lydia Maka'eha Lili'uokalani (sister of James and David); Polly Pa'a'āīna (daughter of Henry Lewis and Kekela, adopted by John 'Ī'ī; John Pitt Kīna'u - listed in Amos Starr Cooke, *The Hawaiian Chiefs' Children's School*; a record compiled from the diary and letters of Amos Starr Cooke and Juliette Montague Coke by their granddaughter Mary Atherton Richards, (Rutland: C.E. Tuttle Co., 1970) Chapter 4. Figure 12.

[660] Jonathan Kay Kamakawiwo'ole Osorio, *Dismembering Lāhui: A History of the Hawaiian Nation to 1887* (Honolulu: Univ. of Hawai'i Press, 2002), pp.147-148.

[661] Kuykendall, *The Hawaiian Kingdom, Vol. II,* p. 243.

The plebiscite vote was nearly unanimously in favor of Lunalilo and the Legislative Assembly affirmed the vote by electing him as King William Lunalilo.[662] Unfortunately, the popular king reigned for only one year and 25 days before he succumbed to pulmonary tuberculosis.[663]

The most controversial issue during his brief reign was the negotiation of a reciprocal trade treaty with the United States. American planter interests proposed that the king offer to cede Puʻuloa (Pearl Harbor) to the United States in return for a reciprocal trade treaty and the king agreed to include such an offer in the official negotiations for the treaty. When news that the king had authorized the cession of Pearl Harbor to secure a trade treaty was published in the *Pacific Commercial Advertiser*, there was an immediate adverse reaction.[664] The proposal was vigorously opposed by Native Hawaiians. Large mass meetings with crowds of up to as many as 1,500 persons were held to protest the ceding of Pearl Harbor to the U.S.[665] Resolutions against the cession were adopted by various organizations and forwarded to the king. Meetings were held on the neighbor islands and petitions were circulated and sent in to the king.[666] In the end, the King Kalākaua decided to listen to the voices of his people who had elected him king. He dropped the proposal to cede Pearl Harbor from the negotiations.[667]

The plebiscite allowing the people to vote for king prior to the vote of the Legislative Assembly, empowered the common people to be actively involved in Lunalilo's government. The threat of losing control of any portion of the Hawaiian nation to the United States provoked Native Hawaiians to organize appeals to the king to protect the independence of the Hawaiian nation. Organizing around the slogan, "Hawaiʻi for Hawaiians," Native Hawaiians actively

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[662] *Id.,* p. 244
[663] Osorio, *Dismembering Lāhui*, p. 147.
[664] Kuykendall, *The Hawaiian Kingdom, Vol. II,* pp. 254-255.
[665] *Ka Nuhou*, August 19, 1873.
[666] Kuykendall, *The Hawaiian Kingdom, Vol. II,* pp 254 - 255.
[667] Davianna McGregor-Alegado, *Hawaiian Resistance: 1887-1889* (University of Hawaiʻi, Mānoa: Unpublished M.A. Thesis, 1979), p. 16.

campaigned in the 1874 elections for the House of Representatives. The election was held on February 2, 1874, one day before King Lunalilo died. All of the representatives elected from Honolulu and nearly all of the representatives, as a whole, were Native Hawaiian. The *Pacific Commercial Advertiser* observed, "This is the first time since . . . 1851 that Honolulu has failed to be represented by one or more foreign-born subjects of the King."[668] While non-Native newspapers of the time characterized this slogan as racist, the slogan represented the cohesion of the Native Hawaiian people as a nation to protect and defend their independence from the United States. Silva accurately observes: "[W]hile racism works at subjugating another class or race of people, the slogan was part of a larger effort by the Kanaka Maoli to forestall their own subjugation."[669]

The threat of turning over Hawaiian lands to the U.S. had given rise to a nationalist tide against the growing influence of Americans, a tide that would not recede. Instead, the nationalist political movement intensified and continued to gain momentum throughout the reign of King Kalākaua. The sentiments of the nationalists can be understood with the comments of Queen Emma in a letter she wrote to an acquaintance in August 1873, saying:

> The reciprocity treaty, giving away land, is much discussed these days, . . . There is a feeling of bitterness against these rude people who dwell in our land and have high handed ideas of giving away somebody else's property as if it were theirs.[670]

When King Lunalilo died on February 1874 without designating a successor, a fierce political struggle for the throne ensued. A reciprocal trade treaty with the U.S. and the ceding of Pearl Harbor were at the center of the controversy between the two contenders.

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[668] *Pacific Commercial Advertiser,* February 7, 1874.
[669] Silva, *Aloha Betrayed*, p. 90
[670] Queen Emma to Keliimoewai, Aug. 20, 1873, *cited in* Kuykendall, *The Hawaiian Kingdom, Vol. II*, p. 256. Kuykendall noted that, "Other letters show the extreme bitterness of Queen Emma's feeling against Americans, including the missionaries." *Id.* fn 46, p. 297.

King David Kalākaua (Generation 29 [Generation 124]: 1874 - 1891)

Under the constitution, the privy council and the Legislature were responsible to elect the new ruler. Many of the nationalist Native Hawaiians who were elected to the House of Representatives in 1874 supported the candidacy of David Kalākaua. However, Kalākaua also needed the support of the pro-American and pro-treaty members of the privy council and the House of Nobles.

While King Lunalilo lay on his deathbed in December 1873, David Kalākaua started his campaign to be elected king. That same month, Kalākaua wrote the following letter to the editor of the *Pacific Commercial Advertiser*:

> Many people had fears that if the United States had possession of Pearl Harbor, the independence of the nation would be jeopardized. The previous action of the United States does not seem to justify those fears, for that government has always desired to see the Hawaiian nation free and independent.
>
> We say to the world, as our neighbor the United States says, that we have always welcomed foreigners to our shores. Let them come, and bring with them money and skill to develop the resources of the country.
>
> A great deal had been said by a few persons in our community to the effect that the natives are antagonistic to the foreigners. This I deny, and I take this opportunity to say that no such feeling has or now exists.[671]

Queen Emma emerged as the standard bearer of the explicitly anti-American Native Hawaiian nationalists. In her declaration for the candidacy she announced that King Lunalilo had endorsed her to assume the throne:

> To The Hawaiian People
>
> WHEREAS, His late lamented Majesty LUNALILO died on the 3rd of Febauary, [sic] 1874 without having publicly proclaimed a Successor to the Throne; and whereas, His late Majesty did before his final sickness, declare his wish and intention that the undersigned should be His Successor on the Throne of the

[671] *Pacific Commercial Advertiser*, December 13, 1875.

> Hawaiian Islands, and enjoined upon me not to decline the same under any circumstances; and whereas, Many of the Hawaiian people have since the death of His Majesty urged me to place myself in nomination at the ensuing session of the Legislature;
>
> Therefore, in view of the forgoing considerations and my duty to my people and to the memory of the late King, I do hereby announce and declare that I am a Candidate for the Throne of the Hawaiian Islands, and I request my beloved people throughout the group, to assemble peaceably and orderly in their districts, and to give formal expression to their views on this important subject, and to instruct their Representatives in the coming session of the Legislature. GOD PROTECT HAWAII.
>
> EMMA KALELEONALANI. HONOLULU, February 5th, 1874[672]

As was characteristic of Native Hawaiian political campaigns, songs were composed to highlight the political stakes involved in the race. Excerpts from the translation of a mele kālaiʻāina (political chant) supporting Emma as a national leader, *He lei keia no ʻEma* (*This is a lei for Emma*) provide an example:

> This is an adornment for Emma
> The great queen of Hawaiʻi
> Your lei famed for righteousness
> Extends from Hawaiʻi to Niʻihau . . .
>
> Your lei is the anguish of the citizenry
> The sharp pangs felt in the heart
> There are the plovers perched atop mounds
> Pleading for government positions
>
> It is appropriate that you be transformed (win the election)
> The people of distant lands have heard
> About the many good-hearted deeds
> Of your humble royal soul
>
> And what of us, the rebels
> Who push for the throne
> Tell of the name, that it be heard
> The crown flag shall fly forever more.[673]

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[672] Puakea Nogelmeier, editor, *He Lei no ʻEmalani: Chants for Queen Emma Kaleleonālani,* (Honolulu: The Queen Emma Foundation and Bishop Museum Press, 2001), pp. 184 - 185.

[673] *Id*. The reference to the migratory plover birds is a metaphor for foreigners who, upon fattening on the wealth of the islands, go back to their homelands. The Hawaiian for these verses is as follows:

On the day that the legislative delegates met to cast their votes, hundreds of Queen Emma supporters rallied outside of the courthouse where the Legislature met in a special session. When Kalākaua was proclaimed the winner, rioting broke out. Crowd members assaulted delegates who were known supporters of Kalākaua. The government building was ransacked with rocks, clubs and pieces of wood from broken carriages and furniture. Not only were the police unable to control the mob, many of them were in sympathy with the crowd and some even joined them. Finally, King Kalākaua called upon the U.S. and British consular delegates for support. 150 U.S. marines and 70 British troops were landed and they dispersed the riot and restored order.[674]

To his credit, one of King Kalākaua's first acts as king was to support an amendment to the Constitution of 1864 to remove the property qualification for voters and members of the House of Representatives. In his speech to the Legislative Assembly of 1874, the king stated:

He lei kēia no ʻEma
Ke kuini nui lā o Hawaiʻi
Kō lei kaulana i ka pono
Mai Hawai'i a Niʻihau

[4 more verses]

Kō lei lili makaʻāinana
Nā kui nao ʻoi o loko
Kōlea kau āhua
Noinoi ʻoihana aupuni

Ua pono nō ʻoe ke lilo
Ua lohe nā kupa o Kahiki
I ka hana lokomaikaʻi nui
A ka na'au lani haahaʻa

Pehea mākou nā kipi
Kuʻi i ka noho kalaunu
Haʻina ka inoa i lohe
ʻO ka he kalaunu welo mau.

[674] William De Witt Alexander, *History of Later Years of the Hawaiian Monarchy and the Revolution of 1893* (Honolulu: Hawaiian Gazette, 1896), p. 2; Thrum, *The Second Interregnum: A Complete Resume of Events from the Death to the Burial of His Late Majesty Lunalilo* (Honolulu: 1874); Liliuokalani, Queen of Hawaii, *Hawaii's Story By Hawaii's Queen* (Tokyo & Rutland: Charles E. Tuttle Co., 1964), p. 47

> I would invite you to carefully consider the amendment removing the property qualification of voters. The limited diffusion of wealth among the masses of people tend directly to circumscribe, under the present franchise, the expression of the popular will in the return of members to the House of Representatives.[675]

This amendment expanded the participation of Native Hawaiians in the elections for the House of Representatives during a period of lively and expanded participation of the common people in the political life of Hawai‘i.

Sugar: A Driving Force of Hawai‘i Politics

Beginning with the reign of King Kamehameha IV and through the reign of Queen Lili‘uokalani, sugar emerged and developed as the primary commodity around which Hawai‘i's political economy evolved. Whaling crashed as an industry when the demand for sperm whale oil disappeared because petroleum began to be processed for fuel. At the same time, whaling vessels were by the government into service during the American Civil War. Moreover, given the diminishing number of whales, whaling vessels would have to be outfitted for longer and more perilous voyages, increasing the cost of each expedition.

While experiments were made in producing coffee, rice, tobacco, cotton, livestock and silk as commodities for large scale commodity production and export, ultimately sugar proved to be the most viable and profitable to produce on a large scale plantation basis.

The critical turning point in the development of sugar as the centerpiece of Hawai‘i's economy was the Civil War in the United States. While the North was cut off from its normal source of sugar from Louisiana, prices soared from 6.95 cents per pound between 1850 and 1859 to a peak of 17.19 cents per pound in 1864. The average price continued over 10 cents per pound

[675] Lydecker, *Roster Legislatures of Hawaii*, p. 130.

until 1873.[676] The Civil War provided the sugar planters with a stable and profitable market until it ended and the South began to "Reconstruct."

Commercial houses in Honolulu, which had accumulated substantial profits from the whaling industry, provided the initial investment capital for independent planters and eventually assumed a whole range of financial and marketing responsibilities. Plantation agriculture demanded a large initial outlay of capital for long term investments on land, buildings, equipment and labor, until the crop was harvested and milled and the sugar and molasses shipped and marketed. There were risks of crop failure and fluctuations of the market. The planters were consumed in the managerial and technical problems of producing sugar from its planting and cultivation to its harvesting and milling. They welcomed the services of commercial houses as agents and financiers. These agencies or "factors" purchased supplies and equipment for the plantations, including food and other necessities of the workers. They also arranged for the transport and marketing of the raw sugar, molasses and syrup. However, the most important function of the agencies was serving as financial agents: arranging loans from mainland banking houses; negotiating the sale of plantation stocks; and investing capital surpluses generated from plantation operations. They also maintained the payrolls and audited the books of the plantations. The commercial agencies received payments owed to plantations and honored plantation drafts in Honolulu and in the U.S., wherever agency branch offices were maintained.[677]

For these services, the commercial houses profited handsomely from interest on loans and a large percentage of plantation profits. Eventually, the planter evolved into more of a foreman for the agency rather than an independent businessman.

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[676] Morgan, *Hawaii, A Century of Economic Change*, p. 180

[677] Andrew Lind, *An Island Community, Ecological Succession in Hawaii* (New York: Greenwood Press, 1968), pp. 178 - 187.

The control of the agencies over the plantations expanded. During periods of economic recession and financial austerity, a number of plantations were compelled to either declare bankruptcy or turn over their share of plantation stock to these agencies to whom they were indebted. Each successive depression resulted in a greater concentration and centralization of the sugar plantations under the agencies.[678]

When the Civil War ended, the U.S. imposed a 3.5 cent tariff on all foreign sugar, including Hawaiʻi's. This tariff was aimed at assisting the South in its reconstruction. At the same time, the American sugar market contracted and prices dropped. Several Hawaiʻi plantations went bankrupt. Even the largest agency, Walker, Allen and Co., an American firm that had an interest in 12 plantations and mills by 1866, went bankrupt.[679]

While Hawaiʻi's sugar was also marketed in Canada, Australia and New Zealand, the populations in these countries could not compare to that of the U.S. In 1880, the population of the U.S. was 50.l million, while the population of Canada was only 4.3 million and that was concentrated in the Eastern part of the country. In Australia, the white population was l.8 million, while in New Zealand it was 500,000. Moreover, Australia and New Zealand had more accessible sources for sugar from other British colonies, such as Mauritius, Fiji and Queensland.[680]

The United States provided the only profitable market for Hawaiian sugar. However, U.S. protective tariffs loomed as the major obstacle to the stabilization of Hawaiʻi's sugar industry. There were two options available to the agencies and planters to overcome this obstacle - a

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[678] *Id.*, p. 181.

[679] Gavan Daws, *Shoal of Time: A History of the Hawaiian Islands* (Toronto: Macmillan Company, 1968), pp. 175-176. According to Daws, the firm had assets of $700,000 and liabilities of $600,000. However, because most of the assets were in the form of uncollectible debts owed by plantations, the firm folded.

[680] See generally Merze Tate, "Myth of Hawaii's Swing Toward Australia and Canada," *Pacific Historical Review,* August, 1964.

reciprocal trade treaty that would exempt Hawai‘i grown sugar from the tariffs or the annexation of Hawai‘i to the U.S.

A Reciprocal Trade Treaty

After his election, King Kalākaua immediately initiated negotiations with the U.S. for a reciprocal trade treaty. On January 30, 1875, less than one year after his election, the negotiations were completed. The treaty was signed by President Ulysses S. Grant on May 31, 1875 and approved by Congress on May 1876. By September 1876 the treaty was implemented.[681]

Throughout the first eight years of his reign, King Kalākaua collaborated with the American business-planter-missionary (descendant) faction that controlled the economy of the nation. During this same period, the Native Hawaiian nationalist movement continued to grow in political experience and influence in the Legislature. They consolidated their base of support among Native Hawaiians who comprised the majority of the voters. The Native Hawaiian nationalists maintained their majority in the legislature from 1874 through the election of 1887, when the 1887 Bayonet Constitution, which was forced upon King Kalākaua, changed the voting qualifications in favor on non-Native Hawaiians.[682]

While the Native Hawaiian nationalist movement had its start as a spontaneous movement to oppose the ceding of Pu‘uloa (Pearl Harbor) for a reciprocal trade treaty with the U.S., the actual implementation of the treaty created new conditions that contributed to the maturation, persistence, and endurance of the movement.

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[681] Sylvester Stevens, *American Expansion in Hawaii, 1842 - 1898* (New York: Russell & Russell, 1945), p. 116
[682] Osorio, *Dismembering Lāhui*, pp. 145 - 192.

In 1893, U.S. Commissioner James Blount in his report on the conditions that led up to the illegal overthrow of the Hawaiian monarchy, characterized the Reciprocity Treaty as follows:

> From it [the Reciprocity Treaty] there came to the islands an intoxicating increase of wealth, a new labor system, an Asiatic population, an alienation between the native and white race, an impoverishment of the former, an enrichment of the latter, and the many so-called revolutions, which are the foundation for the opinion that stable government can not be maintained.[683]

The reciprocity treaty stimulated an unprecedented growth of the sugar industry and Hawai'i's economy. Immense amounts of capital were invested in land, labor and technological developments. The profits derived from it were reinvested in further expansion of sugar production. Between 1875 and 1882, 38 new plantations were opened. Altogether, 20,000 acres of additional land was converted to sugar. This represented a capital investment of $10 million.[684]

Exports in sugar increased from 26 million pounds valued at $1.2 million in 1876, to 63.5 million pounds valued at $4.3 million in 1880, to 171 million pounds valued at $8.3 million in 1885. [685] Because of the Reciprocity Treaty, sugar profits increased by 373 percent.

One area of capital investment that was pivotal to the vast expansion of sugar acreage was irrigation. Pioneering the field were sugar planters H.P. Baldwin and S.T. Alexander who, in 1878, financed construction of the Hāmākua Ditch on Maui. Investments in sugar technology

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[683] U.S. Department of State, *Papers Relating to Mission of James H. Blount, United States Commissioner to the Hawaiian Islands.* (Washington, D.C.: U.S. Govt. Printing office, 1893) (hereinafter *Papers Relating to Mission of Blount),* p. 5; U.S. House of Representatives, 53rd Congress 2d Session, Ex. Doc. No. 47, *President's Message Relating to the Hawaiian Islands*, December 18, 1893 (Washington, D.C.: U.S. Government Printing Office, 1893), p. 105 (hereinafter *President's Message*); U.S. House of Representatives, 53rd Congress, 3d Session, Ex. Doc. No. 1, Part 1, App. II, *Foreign Relations of the United States 1894, Affairs in Hawaii* (Washington: Government Printing Office, 1895) (hereinafter *Affairs in Hawaii*), *available at* http://libweb.hawaii.edu/digicoll/annexation/blount.html (last viewed August 1, 2014), p. 571.

[684] Merze Tate, *The United States and the Hawaiian Kingdom: A Political History* (New Haven: Yale Univ. Press, 1968), p. 119. Three new plantations opened in 1875 followed by five in 1876, eight in 1877, nine in 1878, eight in 1879, four in 1880 and one in 1882

[685] Sylvester Stevens, *American Expansion in Hawaii 1842 - 1898*, p. 141

and mechanization increased the efficiency of the milling process. Iron grinders replaced wooden grinders, steam power replaced animal power in the mills and railroads replaced mules for hauling cane.[686]

The phenomenal expansion of the sugar industry was under the direction and for the benefit of the business-planter-missionary (descendant) elite of American and European backgrounds. The displacement of Native Hawaiians from their traditional lands increased as the cultivation of sugar increased. The diversion of natural stream waters into plantation irrigation systems lowered the water table and reduced the flow of water into the streams or dried them up altogether. Being cut off from free access to the streams that had watered their taro pond fields from generation to generation, many Native Hawaiians farmers were forced off their kuleana lands and therefore had to pay rent for shelter.[687] In his thesis about the coalition politics of Native Hawaiians between 1887 and 1890, David Earle wrote about petitions from the common people to their legislators regarding these developments:

> During the 1890 legislative session, a large number of petitions were regularly sent to the legislature from Native Hawaiians throughout the kingdom. One of the major issues that petitioners were concerned about [was] the treatment of leprosy . . . This raised continual complaints about misdiagnosis and concerns as to whether the government was doing all that it could to properly treat the sufferers.

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[686] Morgan, *Hawaii: A Century of Economic Change*, pp. 173-194.

[687] Figures on the effect of the diversion of water from the Hāmākua Ditch are not available. However, figures available for the Waiāhole Tunnel diversion provide a conception of the impact of sugar irrigation projects on stream waters used by small farmers. When the Waiāhole Tunnel was constructed, the Waikāne stream dried up below the ditch and two Waiāhole streams that had a combined flow of 5.7 million gallons per day dried up. (Pete Thompson "Kahaluu and the Development of Windward Oahu," *Hawaii Observer*, Reprint No. 1, Honolulu: 1973). Randy Kalāhiki whose family owned and worked twenty-seven taro patches in Kahalu'u related how the construction of the Waihe'e and Waiāhole Tunnels forced many taro farmers to give up farming and sell or abandon their lands because they had been cut off from their free access to water and could not afford to pay for water, in an interview in Fall, 1973. In 1868, D.K. Naiapaakai of Kapa'au wrote to Minister of Interior Hutchinson complaining of charges made by Rev. W. Bond of $40 a year for drinking water and $10 a year for each taro patch. The charge was later reduced to a total of $200 per year. When Bond sold the water to the Kohala Plantation, the plantation told the natives that it planned to take the water and deprive them. The writer warned that this would mean trouble. (Letter cited in unpublished manuscript by Clayton Hee, "Le'i Kohala Ka Nuku O Na Kanaka," 1979).

> Another major issue, which received less attention from the government, was the impact of the development of irrigation schemes, railroads and other infrastructure needed for the plantations on the neighboring land owners.[688]

In 1883, the value of sugar plantations in Hawai‘i was estimated at $15,586,800. Of this amount, 65 percent, valued at $10,185,000, were American interests; 21 percent valued at $1,230,000 were British interests; six percent valued at $970,000 were German interests; four percent valued at $641,204 were Native Hawaiian interests; and slightly less than four percent valued at $560,000 were Chinese interests.[689]

By far, the most significant effect of the Reciprocity Treaty upon Native Hawaiians was the increased immigrant of contract labor for Hawai‘i’s plantations.

Between 1876 and 1887 there were 39,926 Chinese, Japanese, Portuguese, Norwegians, Germans and South Sea Islanders imported to labor on Hawai‘i’s plantations. Except for the Portuguese, who were brought in as families, the immigrant work force was adult and predominantly male. Moreover, the Hawaiian monarchy subsidized the importation of this workforce paying $1 million while the planters paid only $565,547.[690] By 1890, Native Hawaiians were reduced to a minority within their own homeland, comprising only 45.2 percent of the population due to the influx of foreign workers, although they still comprised 85 percent of the citizens of the Hawaiian Kingdom and Constitutional Monarchy.[691]

Not only did the Native Hawaiian chiefs lack the capital resources to compete in the development of the sugar industry, the Hawaiian masses were also marginalized as the industry

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[688] David William Earle, *Coalition Politics in Hawai‘i - 1887 - 90: Hui Kālai‘āina and the Mechanics and Workingmen‘s Political Protective Union* (Unpublished Master‘s Thesis, University of Hawai‘i, Mānoa, December 1993.), p. 178.
[689] Thomas G. Thrum, *Hawaiian Almanac and Annual for 1884* (Honolulu: 1883), p. 14.
[690] *Papers Relating to Mission of Blount*, p. 5; *President’s Message*, p. 105; *Affairs in Hawaii*, p. 571.
[691] Census of the Hawaiian Islands, 1890.

developed in Hawai‘i. The alteration of the ethnic composition of the workforce weakened the leverage that Native Hawaiians enjoyed in Hawai‘i’s politics.

By 1886, nine-tenths of Hawai‘i’s exports were sold to the U.S. and eight-tenths of Hawai‘i’s imports came from the U.S.[692] In February 1887, the American Consul R.M. Daggett wrote the following reflections on Hawai‘i’s predicament in his introduction to *The Legends and Myths of Hawaii* by King David Kalākaua:

> Year by year their foot prints will grow more dim along the sands of their reef-sheltered shores, and fainter and fainter will come their simple songs from the shadow of the palms, until finally their voices will be heard no more for ever. And then, if not before - and no human effort can shape it otherwise - the Hawaiian Islands, with the echoes of their songs and the sweets of their green fields, will pass into the political, as they are now firmly within the commercial, system of the great American Republic.[693]

The overall effect of the Reciprocity Treaty was to make the production of sugar the principal force shaping Hawai‘i’s political economy, effectively taking on a life of its own in competition with the well-being of the Native Hawaiian commoners. The production and marketing of sugar turned Hawai‘i into a virtual economic colony of the United States and posed a major threat to the political independence of the Hawaiian Kingdom and Constitutional Monarchy.

King Kalākaua’s Nationalism and Reaction

Throughout his reign, King Kalākaua worked to protect Hawai‘i's vulnerable independence. Many of his programs were aristocratic in nature and could not bring about the type of change needed to improve the material conditions of the Native Hawaiian commoners. His primary contribution was the promotion of a Native Hawaiian cultural renaissance through a

[692] Kalākaua, *The Legends and Myths of Hawaii*, pp. 63-64; William Adam Russ, Jr. *The Hawaiian Revolution, 1893 - 1894* (Selinsgrove, PA: Susquehanna Univ. Press, 1959), pp. 12 - 17
[693] Kalākaua, *Legends and Myths of Hawaii*, p. 64 - 65

number of initiatives. King Kalākaua founded the Hale Nauā Society to revive the ancient scientific knowledge of Native Hawaiians in combination with modern science. He established a Hawaiian Board of Genealogists to research and perpetuate the genealogies of the chiefs of Hawai‘i. The King also established a Hawaiian Board of Health consisting of five native doctors who were empowered to issue licenses to native kahuna lā‘au lapa‘au (traditional Hawaiian herbal healers) to practice medicine. He sponsored hula and songwriting contests that not only perpetuated traditional Native Hawaiian dance, chant and song, but also created chants, songs hula and styles of hula. In her book, Silva observes:

> The enactment of tradition that Kalākaua undertook that strengthened the identity of Kanaka Maoli [Native Hawaiians] as a people proud of their past and of their achievements made him more popular, and his legacy of national pride has persisted to this day.[694]

Silva notes that the collection and transcription of the genealogy chant of King Kalākaua, the Kumulipo, discussed in Chapter Two, was one of the most ambitious projects of the Hawaiian Board of Genealogy with the most far-reaching consequences. According to Silva:

> The Kumulipo is a cosmological chant/prayer that describes the genesis of living things on earth, including humankind, and links them to the genealogy of Lonoikamakahiki, which then leads directly to Kalākalua. It is the only chant of its kind preserved in its entirety . . . it figures into the national consciousness of the lāhui and, thus, . . . it continues to function as a resistance to colonization and the attendant project of assimilation. The collection and transcription of such a chant certainly served its narrow political function of the time - that is, it validated Kalākaua's claim to the throne. But the Kumulipo also functioned, and continues to function, as ideological resistance.[695]

Under a program called Ho‘oulu Lāhui (Increase of the Nation), King Kalākaua extended free health care for Native Hawaiians at Queen's Hospital. He and his wife, Queen Kapi‘olani, founded the Kapi‘olani Maternity Home. Queen Lili‘uokalani described the founding of the home as an accomplishment of the Ho‘oululāhui organization as follows:

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[694] Silva, *Aloha Betrayed*, p. 90
[695] Silva, *Aloha Betrayed*, pp. 97 - 98.

> In the early part of the year 1886 His Majesty Kalakaua designed and established an organization for benevolent work amongst his people it was called Hooululahui . . . Like many other enterprises of charity, the original intentions of the founders have been improved upon; and the society is merged in other good works, or its purposes diverted to slightly different ends. The organization is now consolidated in the Maternity Home; the charitable funds which used to be distributed amongst the poor, the amounts contributed by the people everywhere to carry out the designs of the king, are still doing good through this institution, of which the Dowager Queen Kapiolani is the president, assisted by a board of managers consisting of notable Hawaiian ladies, and by others of foreign descent.[696]

Under the program, a manual on health and sanitation authored by the king's prime minister, Walter Murray Gibson, was published and circulated at government expense. King Kalākaua also hand picked 17 Native Hawaiians men and one Native Hawaiian woman to study abroad at government expense, in the fields of military science, engineering, surveying, physics, foreign language, arts, music, engraving, sculpture, law, medicine, stenography and teaching.[697] They were groomed to assume key posts in the government in place of the non-Native Hawaiians who were in government service. Native Hawaiian agriculturalists were allowed to qualify for government loans using their crops, instead of land or cash, for collateral.

Finally, King Kalākaua's Hoʻoulu Lāhui included the promotion of the immigration of government contract workers from Japan beginning in 1884. Kalākaua considered the Japanese

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[696] Liliuokalani, *Hawaiiʻs Story by Hawaiiʻs Queen*, p. 111. The maternity home became Kapiʻolani Maternity Hospital and in 1978, merged with Kauikeolani Childrenʻs Hospital to become Kapiʻolani Medical Center for Women and Children. It is now also known as the birthplace of President Barack Obama, the 44th President of the United States.

[697] The following men were sent to foreign schools as follows: St. Chad's College, England - Matthew Makalua, Abraham Piʻianaia; Scotland Ironworks - Hugo Kawelo, Henry Kapena, John Lovell; Italy - Robert Wilcox, Robert Napuʻuako Boyd, James Kaneholo Booth, August Hering, Noble's School in Japan - Isaac Harbottle, James Hakuole; Canton, China - James Kapaʻa; St. Matthew's College, California - Jonah Kūhiō Kalanianaʻole, David Kāwananakoa, Edward Kealiʻiahonui, Thomas Pualiʻi Cummins, Tomas Spencer, Henry Grube Marchant. One woman, Maile Nowlein, was sent to Italy to study stenography. Agnes Quigg, "Kalākaua's Hawaiian Studies Abroad Program," pp. 171 - 172.

as a race cognate with Native Hawaiians, and with whom Native Hawaiians could intermarry to reproduce and increase the overall Native Hawaiian population.[698]

Kalākaua's famous trip around the world exposed him to the grandiose style in which the European and Asian rulers lived. Upon his return to Hawai'i he took steps to emulate this grand style. He had the 'Iolani Palace designed and constructed to resemble a section of the palace at Versailles. He commissioned the casting of a statue of Kamehameha I as the founder of the Hawaiian nation. He ordered European-style crowns and thrones for himself and Queen Kapi'olani, which he incorporated into an elaborate and expensive Coronation Ceremony. His sister, Queen Lili'uokalani, explained the importance of this ceremony as follows:

> Certainly the coronation celebration had been a great success. The people from the country and from the other islands went back to their homes with a renewed sense of the dignity and honor involved in their nationality, and an added interest in the administration of their government . . . It was necessary to confirm the new family "*Stirps*" - to use the words of our constitution - by a celebration of unusual impressiveness. There was a serious purpose of national importance; the direct line of the "Kamehamehas" having become extinct, it was succeeded by the "Keawe-a-Heulu" line . . . It was wise and patriotic to spend money to awaken in the people a national pride.[699]

Kalākaua also held an elaborate two-week long jubilee celebration in November 1886 which included bonfires, receptions, a parade, a regatta, a grand lū'au followed by an impressive hula program, a brilliant birthday ball, competitive athletic games and military drills, a formal state dinner and church service.[700]

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[698] Nevertheless, Japanese men, unlike the Chinese who extensively intermarried with Hawaiian women, had access to Japanese women in Hawai'i who were also imported as contract labor and through the "Picture Bride" system had a low outmarriage rate. See Eileen Tamura *Americanization, Acculturation, and Ethnic Identity: The Nisei Generation in Hawaii* (Urbana & Chicago: Univ. of Illinois Press), p. 183. "Japanese were much less likely to 'marry out' than other groups in Hawaii. Even in the territory's mulitcultural setting the Issei's propensity to 'marry in' was extraordinarily high."
[699] Liliuokalani, *Hawai'i's Story By Hawai'i's Queen*, pp. 104 - 105.
[700] Kuykendall, *The Hawaiian Kingdom, Vol. II,* pp. 340 – 341.

For the first and only time, Hawaiian coins were minted, bearing the image of King Kalākaua. The U.S. government would have minted the coins at a cost of 85 cents per dollar, but instead, because King Kalākaua was personally indebted to Claus Spreckels, the Hawaiian government borrowed $l million from Spreckels at an interest of $150,000 to mint the coins.[701]

In an effort to project the prestige of the Hawai‘i Kingdom and Constitutional Monarchy internationally, King Kalākaua attempted to forge a Pacific "Confederation" between Hawai‘i, Samoa, Tonga and other Pacific Island nations. The Confederation would function as an alliance of small Pacific nations against colonization by powerful European nations. In his speech at the closing of the Legislative Assembly of 1886, King Kalākaua explained the purpose for his pursuit of a Polynesian alliance:

> You have wisely provided the means for carrying out the policy of advising and aiding those Polynesian communities of the same race as the Hawaiian, which still preserve their independence. I entertain a sanguine hope that these kindred peoples will, through your liberality, be assisted to secure their permanent autonomy, by the establishment among them of stable governments and a reliable administration of justice.[702]

Kalākaua's government purchased and renovated a British-built steam as a gunboat and dispatched it as a national naval vessel, *Kaimiloa* (The Search to Distant Places) to conduct negotiations with Samoan chiefs to establish the "Confederation." Shortly after the arrival of the *Kaimiloa* in Samoa in 1887, King Malietoa, one of the two ruling Chiefs, signed a treaty with King Kalākaua. Native Hawaiian scholar Kamana Beamer provided the English translation of this treaty in his dissertation:

> By Virtue of my inherent and recognized rights as King of the Samoan Islands by my own people and by Treaty with Three great powers of America, England, and Germany, and by and with the advice of my government, and the consent of the Taimua and Taipule representing the Legislative powers of my Kingdom, I do hereby freely and voluntarily offer and agree and bind myself to enter into a

[701] *Id.*, pp. 86 – 94.
[702] Lydecker, *Roster Legislatures of Hawaii,* p. 157

> political confederation with his Majesty Kalakaua King of the Hawaiian Islands, and I hereby give this solemn pledge that I will conform to whatever measures may hereafter be adopted by His Majesty Kalakaua and be mutually agreed upon to promote and carry into effect this political confederation and to maintain it forever.
>
> In witness whereof I have hereunto set my hand and seal this 17th day of February A.S. 1887.
>
> M.R. Malietoa
> King of Samoa[703]

The U.S. and Germany, who at the time were negotiating the terms by which they would divide up Samoa, viewed the Hawaiian mission as an interference and communicated their protest through diplomatic exchanges.[704]

These programs, while attempting to instill national pride and patriotism among Native Hawaiians, did little to improve the living conditions of the maka‘āinana. Instead, King Kalākaua increased the national debt from $389,000 in 1880 to $1.9 million in 1887 while the conditions of the common Native Hawaiian people deteriorated.[705] He sponsored the immigration of thousands of Asian contract laborers and allowed his people to be reduced to a minority so that the sugar interests could have their workforce. Moreover, rather than secure the independence of the government, the national debt and nationalist initiatives led the conservative business-planter-missionary (descendant) element to become disaffected with the king and made him vulnerable to their accusations of reckless extravagance as their justification to organize a coup d‘état to supplant his authority.

The propertied class in Hawai‘i conserved their profits and reinvested them in Hawai‘i businesses; however, they also sought out loans from the U.S., primarily from California, to

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[703] Beamer, “Na Wai Ka Mana?,” p. 241
[704] Osorio, *Dismembering Lāhui*, pp. 229 - 235.
[705] Stevens, *American Expansion in Hawaii*, p. 117; *International Bureau of the American Republics, Hawaii* (Washington D.C.) Handbook No. 85, August 1897, p.42.

supplement their working capital. The large national debt incurred by King Kalākaua discouraged investment in Hawai‘i from the U.S. and jeopardized the securing of credit by Hawai‘i businessmen.

By 1884, Americans owned $10.5 million of the capital invested in Hawaiian plantations. Americans also had $3.5 million invested in Oceanic mercantile marine operations; $3.5 million in Hawai‘i-based bank capital; and held $1 million in mortgages on foreign-owned property. Americans had a total capital investment of $22 million in Hawai‘i from which they earned interest and profits.[706] Six-sevenths of this capital was created by and through the Reciprocity Treaty.[707] However, Henry Carter, Hawaiian Minister of Interior, presented statistics to Congress in 1885 that showed that much of the capital remained on the U.S. continent:

> The export trade of the U.S. to Hawaii was $4 million while the importations amounted to $8.2 million. But no coin of any amount was sent to the islands in liquidation of the surplus. In fact, the surplus remained in this country as profits on capital invested in the islands.[708]

Four-fifths of the property was owned by the settlers and they paid the bulk of the taxes. They strongly opposed what they deemed excessive expenditures by King Kalākaua for his various schemes that, in their perspective, diverted government resources away from the development of Hawai‘i's industry. However, while the settlers controlled nearly all of the real property in Hawai‘i and conducted most of the business and commerce of the archipelago, they had only indirect, uncertain and precarious control of government policy under Kalākaua's nationalist cabinet. Out of 15,000 voters in 1882, 11,000 were Native Hawaiians and only 4,000 were settlers.[709]

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[706] Tate, *Hawaii: Reciprocity or Annexation*, p.167
[707] Id., p. 163.
[708] "National Capital Topics The Hawaiian Treaty What It Has Done for the United States, Views of Mr. Carter," New York Daily Tribune, Jan. 5, 1885, *cited in* Tate, *Hawaii: Reciprocity or Annexation*, p. 168.
[709] *Id.*, p. 163.

The problems of control over the Kalākaua government by the business-planter-missionary (descendant) element became more acute when the Reciprocity Treaty was due to expire in 1885. While negotiations for its renewal stalled, the treaty was briefly extended on a year-to-year basis. Renewal of the treaty received bitter opposition in the U.S. Congress. It was clear to the Hawai‘i sugar planters that the treaty could not be renewed unless Hawai‘i would turn over exclusive use of Pu‘uloa (Pearl Harbor) to the U.S. It was also evident that King Kalākaua and his nationalist cabinet and legislature would never agree to surrender Native Hawaiian sovereignty over Pu‘uloa to the U.S. for the sake of a Reciprocity Treaty. In January 1885, Prime Minister Gibson wrote the following in a letter to U.S. Minister Carter:

> This Government is not prepared to listen to any such proposals for one moment, neither, I feel sure, would the Nation ever give consent to any alienation of territory for that or any other purpose.[710]

The political stage was set for a clash between the two major political interests in Hawai‘i - the nationalists who stood for the independence of the Hawaiian Kingdom and Constitutional Monarchy versus commercial interests for whom a profitable market for Hawai‘i sugar was primary, even if it meant surrendering the independence of Hawai‘i.

The Bayonet Constitution

A consensus formed among the multi-national settler interests to force King Kalākaua to serve the needs of the sugar industry or be removed from the throne. The conservative element among the business-planter-missionary (descendant) contingent was not yet prepared to abandon the monarchy and seek annexation to the United States. They sought to change the ministry and the constitution but to keep the monarchy as an institution only under a much tighter rein.

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[710] Gibson to Carter, no. l/85 (Jan. 15, 1885), cited in Kuykendall, *The Hawaiian Kingdom, Vol. III,* p. 386.

To accomplish their aims, the business-planter-missionary (descendant) elite organized a secret all-white underground organization called the Hawaiian League. It had a military counterpart called the Honolulu Rifles, which comprised the First Battalion of the Volunteer Hawaiian Armed Forces. Beginning in the early part of 1887, with 12 founding members, the Hawaiian League grew to 342 by June 1887 when the coup was carried out.[711] In 1887, the armed forces of the Kingdom consisted of the King's Guard, made up of 85 officers and enlisted men. There were six volunteer military companies - the King's Own, the Queen's Own, the Prince's Own, the Māmalahoa Guard and the Leleiohoku Guard, all made up of Native Hawaiians, and the Honolulu Rifles made up of Caucasians.[712] The Honolulu Rifles became the military arm of the Hawaiian League - recruiting members, holding military drills and target shooting competitions in the name of Hawaiʻi's defense, when in fact they were preparing themselves to carry out a coup dʻétat against King Kalākaua.

On June 30, 1887, the Hawaiian League and Honolulu Rifles successfully forced King Kalākaua to oust his nationalist cabinet, abrogate the amended Constitution of 1864 and to sign what came to be called the "Bayonet Constitution."[713]

Under the new constitution, the king was reduced to a virtual puppet of the new "Reform" cabinet, which was to be composed of the leaders of the 1887 coup. The king could make no decision or take any action without the advice and consent of the cabinet. The cabinet could only be removed by a vote of "no confidence" by the Legislature, which required a majority vote of the elected members of the Legislature.[714]

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[711] Lorrin Thurston, *Memoirs of the Hawaiian Revolution* (Honolulu: Advertiser Publishing Co., 1936), pp. 131, 134, 141.
[712] Ernest Andrade, Jr. *The Hawaiian Revolution of 1887* (University of Hawaiʻi Unpublished Master's Thesis, 1954), pp. 103 – 106; Kuykendall, *The Hawaiian Kingdom, Vol. III,* p. 352.
[713] Osorio, *Dismembering Lahui,* pp. 193 - 249.
[714] 1887 Constitution, Art. 41.

The king's power to appoint nobles was taken away. Nobles were to be elected by voters owning taxable property over $3,000 or earning an income of $600 per year.[715] This gave propertied settlers political control commensurate to their wealth. Considering that the annual income of the highest paid Native Hawaiians free laborer was $248 and recalling the extensive alienation of Native Hawaiians from their lands, most Native Hawaiians did not qualify to vote for nobles. The voting statistics for 1890 showed that only 3,778 persons voted for nobles, while 11,671 persons voted for representatives. Assuming that those voting for nobles also voted for representatives, 8,484 voters were excluded from voting for nobles.[716]

Under Articles 59 and 62 of the 1887 Constitution, Asians were totally excluded from voting for both the House of Nobles and House of Representatives. Even the wealthy Chinese merchants and factors who had voted under the 1864 Constitution and met the property and wealth qualifications to vote for nobles were disenfranchised because of their nationality.[717]

On the other hand, all Europeans in Hawaiʻi were enfranchised, even if they did not renounce their citizenship or become naturalized citizens of Hawaiʻi. Non-citizens merely had to take a specially devised oath of allegiance to the Bayonet Constitution in order to attain the right to vote.[718]

Clearly the measure to allow non-citizens the right to vote while denying voting rights to many citizens was an oppressive measure. These changes, combined, severely limited the voting power that Native Hawaiians formerly wielded under the amended 1864 Constitution.

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[715] *Id.,* Art. 56.
[716] McGregor-Alegado, *Hawaiian Resistance*, p. 44
[717] The 1887 Constitution, Article 59, defined the voters for Nobles as, "Every male resident of the Hawaiian Islands, of Hawaiian, American or European birth or descent, who shall have attained the age of twenty years, and shall have paid his taxes." Article 62, defined the voters for Representatives as "Every male resident of the Kingdom, of Hawaiian, American, or European birth or descent, who shall have taken an oath to support the Constitution and laws."
[718] *Id.* and *Papers Relating to Mission of Blount,* pp. 12-13; *President's Message*, p. 112-113; *Affairs in Hawaii*, p. 578-579.

Again, the U.S. commissioner who investigated the causes of the 1893 overthrow provided a critical insight on the effect of the changes in requirements to vote for representatives under the 1887 constitution. He pointed out that only three Portuguese were naturalized in 1888 and only five more through 1893. Nevertheless, all of the adult Portuguese men were enfranchised if they took the oath of allegiance to the 1887 constitution. According to Commissioner Blount:

> These ignorant laborers [the Portuguese] were taken before the election from the canefields in large numbers by the overseer before the proper officer to administer the oath and then carried to the polls and voted according to the will of the plantation manager. Why was this done? In the language of the Chief Justice Judd, "to balance the native vote with the Portuguese vote." This same purpose is admitted by all persons here . . . citizens of the United States, Germany and Great Britain [were] invited to vote under this constitution to neutralize further the native voting strength.[719]

To further limit the representation of Native Hawaiians in the legislature and to shift the balance of power in favor of the wealthy settler interests, the 1887 constitution increased the number of nobles to equal the number of representatives. Although these were two distinct bodies, the Legislature functioned as a unicameral body - meeting together for business and passage of legislation. With control over the house of nobles within reach under the property and wealth requirements, the settlers had the potential to control the entire Legislature if they were able gain a few seats.[720] While this unfair advantage was in their favor, we will see that Native Hawaiians still found ways to continue to use what political advantages remained.

With these changes in place, the Bayonet Constitution vested authority that was previously the sole prerogative of the king as chief executive, in the Legislature. Rather than enjoying an absolute veto, the king's veto could be overridden by a two-thirds vote of the Legislature. The king's authority over the armed forces was also transferred to the Legislature.

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[719] *Papers Relating to Mission of Blount*, p. 13; *President's Message,* p. 113; *Affairs in Hawaii*, p. 579.
[720] *Id.*

Following the coup d'état against King Kalākaua, the business-planter-missionary (descendant) elite who formed the so-called "Reform Government," finalized negotiations with the U.S. to renew the Reciprocity Treaty. This time the Hawaiian Kingdom was required to cede exclusive use of Pearl Harbor in return for Hawai'i-grown sugar to be allowed into the U.S. on a duty-free basis. King Kalākaua signed the new treaty on October 20, 1887, and President Cleveland signed it on November 7, 1887.[721]

The events of 1887 leading to the Bayonet Constitution and the 1887 Reciprocity Treaty ceding Pu'uloa (Pearl Harbor) to the U.S. undermined the government of the Hawaiian Kingdom and the Constitutional Monarchy. The settler elite still lacked a consensus to completely abandon and dismantle the Constitutional Monarchy, which they had helped to fashion in the image of their Western democracies and which they had worked so strenuously to develop. However, it was clear that they were prepared to bargain away the Native Hawaiian people's sovereignty and the independence of the Hawaiian Kingdom and Constitutional Monarchy to achieve their ends - a secure, stable and profitable market for their primary commodity - sugar.

The coup d'état achieved a compromise between the conservative and radical elements among the settlers. They agreed to try to reform the Constitutional Monarchy through the changes incorporated into the Bayonet Constitution rather than to overthrow it. However, the contradictions between the Native Hawaiian monarchy and the -missionary (descendant) elite were fundamental. The long-term development of the Hawaiian Kingdom and Constitutional Monarchy required an independent political status, but the economic interests of s-missionary (descendant) elite were inextricably bound up with the United States. Hawai'i was on a trajectory of complete incorporation into the U.S. political system.

[721] Kuykendall, *The Hawaiian Kingdom, Vol. III*, p. 397.

Native Hawaiians Struggle Against the Bayonet Constitution

The six-year period between the 1887 Bayonet Constitution and the 1893 coup d'état was characterized by political unrest and economic instability internal to Hawai'i. The internal unrest was exacerbated by arbitrary reforms implemented by a protectionist U.S. Congress seeking to bolster America's manufacturing industries.[722]

The 1887 Constitution and the Reform Government became a rallying point for the Hawaiian nationalist movement, which immediately organized mass meetings, circulated petitions, and sent delegations to the king asking him to abrogate the Constitution and dismiss the cabinet. A group of loyalists entered the palace one night and demanded that King Kalākaua abdicate in favor of his sister, Lili'uokalani, who would, in turn, abrogate the constitution. The king refused to cooperate with the conspirators and they lacked the military force to carry out their plan.[723]

The most militant confrontation between Native Hawaiian nationalists and the Reform Government was the 1889 Wilcox Rebellion - an armed insurrection seeking to reinstate the 1864 Constitution - which was suppressed within 18 hours. Eight Native Hawaiians nationalists were killed, twelve were wounded, and seventy were arrested for carrying out the insurrection. All those arrested were subsequently acquitted of charges of treason by all-Native Hawaiian juries.[724]

Following the failure of the armed insurrection, the Native Hawaiians nationalists utilized the electoral arena to achieve their goals. On November 22, 1888, between 500 and 1500 Native

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[722] The impact of the 1890 McKinley Tariff is discussed below, see fn 130.
[723] *Queen Lili'uokalani's Diary*, January 16, 17, 18, 1888; Cabinet Meetings 1887 - 1890 entry for January 18, 1888; Thurston, *Memoirs of the Hawaiian Revolution*, pp. 180 - 183; "Reply of Hon. R.W. Wilcox to Statements of Minister Thurston Before the Hawaiian Legislative Assembly," June 10, 1890. (Honolulu: Hawaiian Gazette Steam Print, 1890.)
[724] McGregor-Alegado, *Hawaiian Resistance*, pp. 76 - 107.

Hawaiians met in Honolulu to form the Hui Kālaiʻāina (Hawaiian Political Organization). The call to form a Hawaiian political party was announced through the *ʻElele* (*Messenger*) newspaper in August 1888. Those interested in joining were asked to sign a membership book at the newspaper office. Efforts to establish branches on the neighbor islands failed either because of lingering animosity between the backers of King Kalākaua and those who had supported Queen Emma or because of intervention by the Reform Government. An effort to form a branch on Maui failed in March 1889 such over political differences.[725] A meeting of 63 members of the Hui Kālaiʻāina (Hawaiian Political Organization) in the remote valley of Waipiʻo Valley was raided by the Reform Government's police.[726]

Despite internal differences with the Hui Kālaiʻāina (Hawaiian Political Organization), the organization formed an alliance with the Mechanics Workingmen's Political Protective Union and launched the National Reform Party in January 1890. They agreed to a joint platform and slate of candidates for the 1890 elections. In the February 5, 1890 elections, 90 percent of the registered voters cast ballots. On Oʻahu, this National Reform Party won all of the seats for nobles and all but one seat for representative. On the other hand, the Reform Government's political party, the Reform Party, won seats on the neighbor islands - four seats for the House of Nobles and nine seats in the House of Representatives. Each party won 13 seats.[727]

The National Reform Party of 1890 proved to be short-lived. However, the Hui Kālaiʻāīna (Hawaiian Political Organization) persisted as the primary political organization of Native Hawaiians into the early 20th century. The National Reform Party had set an important precedence for coalition politics across national and ethnic lines and made inroads in the control

[725] Earle, *Coalition Politics in Hawaiʻi - 1887 - 90,* p. 75.
[726] *Id.,* p. 89
[727] *Id.,* p. 138.

of the Reform Government and contributed to sustaining the national independence of the Hawaiian Kingdom and Constitutional Monarchy.

Private Trusts of Hawaiian Ali'i Nui (High Chiefs)

By the latter part of the 19th century, ali‘i nui (high chiefs and chiefesses) who had been educated in the Chiefs' Children's Royal School and were eligible to rule Hawai‘i, established charitable trusts to serve the needs of their native people. None of these ali‘i nui had birth children of their own who survived them and therefore they bequeathed their ancestral ‘āina (lands) to their Lāhui ‘Ōiwi (Native People/Nation). As they witnessed the ravages of foreign diseases upon Native Hawaiians and the alienation of their people from ancestral lands, these ali‘i nui decisively took steps to dedicate their personal lands for the benefit of all Native Hawaiians in perpetuity.

In 1871 King Lunalilo, before he was elected to the throne, wrote his will, in which he reserved his vast and valuable lands for a trust that would create a home to benefit the "poor, destitute and infirm people of Hawaiian (aboriginal) blood or extraction, giving preference to old people . . ."[728] In 1883, Princess Bernice Pauahi Bishop wrote her will bequeathing her vast landholdings, most of which were inherited from her cousin, Princess Ruth Ke‘elikolani, for the establishment of the Kamehameha Schools for the education of Native Hawaiian youth.[729] The Princess passed away in 1884 and the Kamehameha School for Boys was established in 1887, while the Kamehameha School for Girls opened in 1894. When avid nationalist Queen Emma passed away, her will created the Queen Emma Trust to support the Queen's Hospital and St. Andrew's Priory, an Episcopalian School for girls. At the time, the Queen's Hospital, which she

[728] See Lunalilo Trust, http://www.lunalilo.org/, viewed 10-23-12. The history of the Lunalilo Trust and Lunalilo Home established by the trust, as well as the other trusts established by the High Chiefs is described in Appendix 3. Legacy of the Hawaiian Rulers: Ali‘i Land Trusts.
[729] See Kamehameha Schools, http://www.ksbe.edu/pauahi/will.php, viewed 10-23-12

and her husband, King Kamehameha IV, had established still provided free medical care for indigent Native Hawaiians.[730] In 1909, Queen Liliʻuokalani executed a Deed of Trust that established a private foundation dedicated to the welfare of orphaned children. In 1911, she amended the Deed of Trust to add destitute children among her beneficiaries. In providing these services, the Queen Liliʻuokalani Trust was mandated to give preference to Hawaiian children of pure or part aboriginal blood.[731] These trusts provided a continuity of leadership and support for the overall health, education and well-being of the Native Hawaiian people from the 19th century through to the 21st century.[732]

Queen Lydia Nāmakaʻeha Liliʻuokalani Dominis (Generation 30 [Generation 125]: 1891 - 1893)

By January 1892, Hawaiʻi's political economy reached a new turning point. First, King Kalākaua died in San Francisco on January 20, 1891. He was succeeded by his sister, Liliʻuokalani, who had been openly antagonistic to the business-planter-missionary (descendant) elite since the events of 1887. She had orchestrated the various efforts to abrogate the Bayonet Constitution, including the Wilcox Rebellion, and as queen she would constitute a serious political threat to control of Reform Government.

Secondly, the anti-American nationalist movement had consolidated a popular base of support among Native Hawaiians who comprised the majority of voters. Out of 13,593 registered voters in 1890, 8,777 were full Native Hawaiian and 777 were Native Hawaiians of mixed

[730] Queen Emma's Will, 1884.
[731] See Queen Liliʻuokalani Childrenʻs Center, http://www.qlcc.org/, viewed 1023-12.
[732] The history of this continuity of leadership and support is described in Appendix 3. Legacy of the Hawaiian Rulers: Aliʻi Land Trusts.

ancestry.[733] By the end of 1892, the Hui Kalaiʻāina claimed over 3,000 members - 2,320 on Oʻahu; 384 on Maui; 266 on Hawaiʻi Island; and 222 on Kauaʻi.[734] While the voting restrictions on nobles and the enfranchisement of non-naturalized foreign residents had made inroads into the dominance of the Native Hawaiian vote, the interests of business-planter-missionary (descendant) elite were still outnumbered at the polls.[735]

Thirdly, the U.S., which was in the throes of a severe economic recession, passed the protectionist McKinley Tariff which removed tariffs on all foreign sugar while paying American sugar growers a subsidy of two cents a pound. Although the McKinley Tariff abided by the official letter and terms of the 1887 Reciprocity Trade Treaty with Hawaiʻi, it nullified the spirit and intent of the treaty. The McKinley Tariff put Hawaiʻi sugar growers at a severe disadvantage, reducing the price of Hawaiian sugar by 2.75 cents a pound, approximately the amount of the former duty. It is estimated that Hawaiian sugar growers lost $4 million in the first seven months that the McKinley Tariff was in effect. After the first two years, the price of Hawaiian sugar dropped from $100 to $60 per ton and sugar properties depreciated by $12 million.[736] The same amount of sugar that sold for $12.1 million in 1890, sold for only $6.9 million in 1892, at a loss of $5.1 million.[737]

Finally, by 1892, the anti-Reform Government forces combined to offset the Reform Party's influence in the House of Representatives. They attempted to change the constitution

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[733] *President's Message*, p. 132; *Affairs in Hawaii*, p. 598; "The Census of 1890 by Age and Nationality, Showing Number of Registered Voters," cited in Thos. G. Thrum, *Hawaiian Almanac and Annual for 1893*. A Handbook of Information (Honolulu: Press Publishing Co. 1892), p. 14.

[734] *President's Message*, p. 19; *Affairs in Hawaii*, Interview with W.L. Holokahiki of the Hui Kalaiʻāina Hawaiian Political Association, p. 485.

[735] U.S. House of Representatives, 56th Congress 1st Session, House Rep. No. 305 to Accompany H.R. 2972, *Government for the Territory of Hawaii*, February 12, 1900 (Washington: U.S. Government Printing Office, 1900), p. 9.

[736] Tate, *Hawaii: Reciprocity or Annexation*, p. 219; Kuykendall, *The Hawaiian Kingdom, Vol. III*, pp. 57 - 58.

[737] Lorrin Thurston, "The Sandwich Islands, I, the Advantages of Annexation," *North American Review CLVI,* 1893, p. 278.

through legal channels, but ultimately lacked the two-thirds majority needed to amend it.[738] When this failed they conducted a massive petition drive appealing to the queen to promulgate a new constitution. The petition read:

> To Lili‘uokalani.
>
> By the kindness (grace) of God, the Queen of the Hawaiian Islands. Greetings:
>
> We the humble undersigned people of your nation, of the true reigning Hawaiian Queen, voting district of _____ Island of _____ of the Hawaiian Islands.
>
> We hereby petition in earnest, that, it be executed by your authority as Queen of the Hawaiian Kingdom, the initiation of action to promptly obtain a new constitution for our country and our people.
>
> To verify this important matter we hereby sign our names in prayer.
>
> May the Queen live by (the grace of) God.[739]

According to Queen Lili‘uokalani, 6,500 registered voters had signed these petitions. In her book, *Hawaii's Story by Hawaii's Queen* she reflected, "To have ignored or disregarded so general a request I must have been deaf to the voice of the people, which tradition tells us is the

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[738] Kuykendall, *The Hawaiian Kingdom, Vol. III,* pp. 517 – 21.

[739] Hawai‘i State Archives, M-93, Box 18, Folder 145 S10 Schedule of Papers and Documents Found in the safe and writing desk of Liliuokalani by A.F. Judd Between 12 and 4:20pm on Wednesday January 16, 1895. "S" stands for "Seized. Translation by Jason Achiu, archivist. The petition was written in Hawaiian as follows:
Palapala Hoopii
Ia Liliuokalani
Ma ka Lokomaikai a ke Akua, ka Moiwahine o ko Hawaii Pae Aina.
Me ke Aloha:
O makou, me ka haahaa, na poe o kou Lahui nona na inoa malalo iho nei, i kupono i ke Koho Balota, e noha ana ma ka Apana Koho Balota o _____ Mokupuni o ___ o ko Hawaii Pae Aina.
Ke nonoi aku nei me ka iini nui, e hookoia e Kou Kulean he Moiwahine no ke Aupuni Hawaii, ka hoohana ana au e hiki a e loaa koke mai he Kumukanawai hou no ko kakou Aina a me ko kakou Lahui.
I ka hooiaio ana au i keia kumuhana pookele ke kakau nei makou i ko makou mau inoa me ka pule.
E ola ka Moiwahine i ke Akua.

voice of God. No true Hawaiian chief would have done other than to promise a consideration of their wishes."[740]

All of the above elements combined caused the most serious political and economic crisis that the kingdom ever faced. It led to a realignment among the business-planter-missionary (descendant) elite along the lines of a consensus for overthrowing the Hawaiian monarchy altogether and seeking annexation to the U.S.

Conspiracy

In August 1891, the U.S. minister to Hawaiʻi, John L. Stevens requested the deployment of a U.S. man-of-war to Hawaiian waters by December, to remain throughout 1892. Stevens wrote:

> The best security in the future, and the only permanent security, will be the moral pressure of the business men and of what are termed 'the missionary people', and the presence in the harbor of Honolulu of an American man-of-war . . . But as early as the first of December, without fail, the month preceding the election, and for sometime thereafter, there should be a United States vessel here to render things secure. I have strong reluctance to being regarded an alarmist, but with due regard to my responsibility I am impelled to express the opinion that a proper regard for American interests will require one ship here most of the time in 1892.[741]

As early as January 1892, the business-planter-missionary (descendant) elite went into motion, forming the Annexation League to achieve their goals.[742] According to Lorrin Thurston, a founder of the League and one of their chief propagandists, their object was:

> not to promote annexation, but to be ready to act quickly and intelligently, should Liliʻuokalani precipitate the necessity by some move against the constitution, tending to revert to absolutism or anything of the nature . . . we further felt that we

[740] Liliʻuokalani, *Hawaii's Story By Hawaii's Queen*, p. 231.

[741] James Gillis, *The Hawaiian Incident, An Examination of Mr. Clevelandʻs Attitude Toward the Revolution of 1893* (Freeport: Books for Libraries Press), p. 6.
[742] Kuykendall, *The Hawaiian Kingdom, Vol. III,* p. 523.

> should know beforehand the probable attitude of the United States government toward annexing Hawai‘i.[743]

In May 1892, Lorrin Thurston went to Washington, D.C. to get support for annexation from the U.S. According to Thurston, he met with the Secretary of State Blaine and informed him that the League:

> had no intention of precipitating action in Honolulu, but conditions had gone so far that we felt the maintenance of peace to be impossible. We believed that Liliuokalani was likely, at any time to attempt the promulgation of a new constitution. If she tended toward absolutism, we proposed to seek annexation to the United States, provided it would entertain the proposal.[744]

`Secretary of State Blaine advised Thurston to meet with B. F. Tracy, Secretary of the Navy. Thurston met with Tracy who subsequently met with President Benjamin Harrison to convey Thurston's assessment of the situation in Hawai‘i. Tracy reportedly told Thurston:

> I have explained to the President what you have said to me . . . the President does not think he should see you, but he authorizes me to say to you that, if conditions in Hawai‘i compel you people to act as you have indicated, and you come to Washington with an annexation proposition, you will find an exceedingly sympathetic administration here.[745]

By January 1893, Queen Lili‘uokalani was prepared to make her move to restore full political authority to the monarchy. In response to the mass appeal of Native Hawaiians through the petitions, she had a new constitution drafted that included the following changes:

> (l) Only male subjects could vote in elections. In other words, one had to be a Hawai‘i-born or a naturalized citizen to register to vote.
>
> (2) Supreme court justices’ terms would be for six years rather than for life.
>
> (3) Powers lost under the 1887 Constitution were restored to the monarch: (a) the power to appoint and dismiss the cabinet was restored to the monarch from the legislature; (b) The monarch would again appoint members to the House of

[743] *Id.,* p. 534; Thurston, *Memoirs of the Hawaiian Revolution*, pp. 229-233.
[744] Thurston, *Memoirs of the Hawaiian Revolution*, pp. 230 - 231.
[745] *Id.*, pp. 231 - 232

Nobles for life; and (c) Language was removed which constrained the monarch to make decisions only upon the advice and consent of the cabinet.[746]

At this time the Annexation League was also prepared to take full advantage of such a move to advance their cause. The clash between the two opposing interests was irrepressible and its outcome would be shaped not so much by forces internal to Hawai‘i, but by the role that the United States would play in the conflict.

Summary

By 1892, the Constitutional Monarchy had ruled Hawai‘i for over 50 years under five different monarchs. The Native Hawaiian people had begun to fully participate in national politics. National leaders had been trained abroad at leading universities in Europe, America and Asia. The Hawaiian nation had attained international recognition as an independent Kingdom and Constitutional Monarchy.

The sugar industry had enhanced the national economy and increased wealth in the Hawaiian Islands. Unfortunately, it had grown to such importance that its prosperity took precedence over the well-being of the Native Hawaiian people. The reliance of the industry upon the U.S. for a profitable market threatened the stability and independence of Hawai‘i’s government. The business-planter-missionary (descendant) elite took their first treasonous steps to pursue the incorporation of Hawai‘i within the United States of America by forming an Annexation League.

“Hawai‘i pono‘ī - Hawai‘i’s own sons and daughters,” as exhorted in the second and third verses of the national anthem composed by King David Kalākaua, would be challenged to stand behind their royal leaders and defend the integrity and independence of their constitutional government in 1893.

[746] *President’s Message*, p. 581 – 590; *Affairs in Hawaii*, pp. 1047 – 1056.

Hawai‘i pono‘ī	Hawai‘i’s own sons and daughters
Nānā i nā ali‘i	Look to your royal leaders
Nā pua muli kou	We countrymen are your descendants
Nā pōki‘i	Your younger siblings
Hawai‘i pono‘ī	Hawai‘i’s own sons and daughters
E ka lāhui ē	Citizens of this nation
‘O kāu hana nui	Be ever mindful, your most important task
E ui ē	To aspire [for your country][747]

[747] Translation by UH-Hilo Hawaiian Language Professor Larry Kauanoe Kimura, personal communication (Oct. 26, 2013).

Chapter Seven: Rupture and Resilience

Generation 30 [Generation 125], 1893-1900

Generation 30 [Generation 125] Queen Lili‘uokalani 1891 - 1893

Kaulana nā pua a‘o Hawai‘i	Famous are the children of Hawai‘i
Kūpa‘a māhope o ka ‘āina	Ever loyal to the land

These lyrics from a song by Ellen Keho‘ohiwaokalani Wright Prendergast were written shortly after the overthrow of the Hawaiian Kingdom in 1893. They express the loyalty of the Native Hawaiian people to Queen Lili‘uokalani and their determination to oppose annexation to the United States. The song further declares*:*

‘A‘ole ‘a‘e kau i ka pulima	No one will fix a signature
Maluna o ka pepa o ka ‘enemi	To the paper of the enemy
Ho‘ohui ‘āina kū‘ai hewa	With its sin of annexation
I ka pono sivila a‘o ke kanaka.	And sale of native civil rights.
‘A‘ole mākou a‘e minamina	We do not value
I ka pu‘ukālā o ke aupuni,	The government’s sums of money.
Ua lawa mākou i ka pōhaku	We are satisfied with the stones,
I ka ‘ai kamaha‘o o ka ‘āina.	Astonishing food of the land.

The song concludes with the lines, “We back Lili‘ulani who has won the rights of the land. Tell the story of the people who love their land.”[748]

[748] Written by Ellen Wright Prendergast, in honor of the members of the Royal Hawaiian Band who refused to sign an oath of allegiance to the Provisional Government and lost their jobs. Words and translation from *Na Mele O Hawai‘i Nei: 101 Hawaiian Songs*, songs collected by Samuel H. Elbert and Noelani Mahoe (Honolulu: Univ. of Hawaii Press, 1970), pp. 62-64; most recently re-published in J.F. Testa’s 1895 collection, *Buke Mele Lahui—Book of National Songs* (Honolulu: Univ. of Hawai‘i Press, Hawaiian Historical Society, Hawaiian Language Reprint Series, 2003).

Overview

During four days in January 1893 - from the 14th through the 17th, the steady, gradual and sometimes imperceptible changes that had led to the dominance of the Caucasian settlers over the Native Hawaiian ali‘i (chiefs) and people culminated with political and military maneuvers that resulted in the suppression of the sovereignty of the Hawaiian Kingdom and Constitutional Monarchy. The Constitutional Monarchy was overthrown, a provisional government was established, and martial law was declared to quell any mass uprising of Native Hawaiians against the oligarchy which had siezed state power. Of crucial significance for the events of that time, and to later generations, were the pivotal roles played by the American Minister to Hawai‘i and the U.S. military in the overthrow of the monarchy.

From 1893 through 1898, the provisional government and the Republic of Hawai‘i worked to secure annexation to the United States. The lands of the Crown and Government of the Hawaiian Kingdom and Constitutional Monarchy were confiscated by the provisional government and merged into the “public lands” by the Republic of Hawai‘i. Throughout this period, Native Hawaiians mounted a strong anti-annexation movement, characterized by political protest songs, articles in the papers, meetings, petitions, and even armed resistance. After the failure of two treaties of annexation, first in 1893 and later in 1897, the United States Congress claimed to annex Hawai‘i in 1898 through which Native Hawaiians participated in the governance of Hawai‘i, while also establishing their own forms of indigenous self-governance.

During the years that Hawai‘i was ruled as a territory of the U.S., the actual role played by John L. Stevens, American Minister to Hawai‘i, in bringing the business, planter, and missionary descendant oligarchy to power and their motives for seeking the overthrow of the queen, have been obscured. Only in the late 20th century has the Republic of Hawai‘i’s transfer

of sovereignty and land to the United States been critically examined. This has led, in turn, to the modern Native Hawaiian nationalist movement to raise its voice to protest the overthrow and usurpation of Native Hawaiian sovereignty.

Four Days in January 1893[749]

On the evening of Friday, January 13, 1894, the Queen Liliʻuokalani's party caucused to finalize plans for promulgating a new constitution.

[749] There are many works analyzing the events of January 1893 and this discussion provides only a brief overview based on the following primary sources: Liliuokalani, *Hawaii's Story by Hawaii's Queen* (Honolulu: Mutual Publishing, 1990); U.S. Department of State, *Papers Relating to Mission of James H. Blount, United States Commissioner to the Hawaiian Islands* (Washington: U.S. Govt. Printing office, 1893) (hereinafter *Papers Relating to Mission of Blount*); U.S. House of Representatives, 53rd Congress 2d Session, Ex. Doc. No. 47, *President's Message Relating to the Hawaiian Islands*, December 18, 1893 (Washington, D.C.: U.S. Government Printing Office, 1893), p. XIX (hereinafter *President's Message*); U.S. House of Representatives, 53rd Congress, 3d Session, Ex. Doc. No. 1, Part 1, App. II, *Foreign Relations of the United States 1894, Affairs in Hawaii* (Washington, D.C.: Government Printing Office, 1895) (hereinafter *Affairs in Hawaii*), *available at* http://libweb.hawaii.edu/digicoll/annexation/blount.html (last viewed August 1, 2014). It should be noted that many of the original congressional reports related to the 1893 overthrow, including *Papers Relating to Mission of Blount* and *President's Message*, are combined into one document in *Affairs in Hawaii*. Where appropriate, parallel citations are provided but the entire *Affairs in Hawaii* document, available from the University of Hawaiʻi Library website noted above, is an invaluable resource and contains most of the information conveyed to the U.S. President and Congress in the 1893-1894 period. Additional sources are: William DeWitt Alexander, *History of Later Years of the Hawaiian Monarchy and the Revolution of 1893* (Honolulu: Hawaiian Gazette Co., 1896); Helena G. Allen, *The Betrayal of Liliuokalani Last Queen of Hawaii, 1838 – 1917* (Glendale: The Arthur H. Clark Company, 1982); James A. Gillis, *The Hawaiian Incident: An Examination of Mr. Cleveland's Attitude Toward the Revolution of 1893* (Freeport: Books for Libraries Press, 1970, reprint of 1897 ed.); Albertine Loomis, *For Whom Are the Stars? Revolution and Counterrevolution in Hawaii, 1893-1895* (Honolulu: UH Press, 1976); Lorrin A. Thurston, *Memoirs of the Hawaiian Revolution* (Honolulu: Advertiser Publishing Co., 1936); Sanford B. Dole, *Memoirs of the Hawaiian Revolution* (Honolulu: Advertiser Publishing Co., 1936); Petitions in Hawaiʻi State Archives to Queen Liliuokalani; U.S. House of Representatives, 53rd Congress 2d Session, House Rep. No. 243, *Intervention of United States Government in Affairs of Foreign Friendly Governments*, December 21, 1893 (Washington, D.C.: U.S. Government Printing Office, 1893); U.S. Senate, 53d Congress 2d Session, Senate Rep. No. 227, *Report from the Committee on Foreign Relations and Appendix in Relation to the Hawaiian Islands*, February 26, 1894 (Washington, D.C.: Government Printing Office, 1894) (hereinafter *Morgan Report*).

Day One: Saturday January 14, 1893

Early on the morning of Saturday, January 14, before 10 a.m., the queen informed her newly appointed cabinet – Minister of Foreign Affairs Samuel Parker, Minister of Finance William H. Cornwell, Minister of Interior John F. Colburn, and Attorney General A.P. Peterson – that she planned to abrogate the 1887 Bayonet Constitution and sign a new constitution. She instructed these men, who had been handpicked to support her position, to be present at ʻIolani Palace to sign the document with her after the closing of the Legislature at noon that day.

Colburn immediately went to inform Annexation League supporters Henry Waterhouse and Judge A.S. Hartwell, who called on Lorrin Thurston and W.O. Smith. Attorney General Peterson also joined them. The annexationists advised the ministers to refuse to sign the new constitution and to discourage the queen from signing it. Under no circumstances were they to resign from the cabinet, as the queen would just appoint others who would support her position.

The *U.S.S. Boston*, which had been on a routine training exercise in Hilo, put into Honolulu harbor around 10:30 or 11 a.m. Minister Stevens, who had been on the ship, came ashore and immediately went to the U.S. legation. Judge Hartwell sent word to Captain Wiltse of the *U.S.S. Boston* to make preliminary arrangements to land military forces to "protect American lives and property." Hartwell also informed Minister Stevens that the queen proposed to promulgate a new constitution.

Stevens called upon British Minister Wodehouse and together they went to the Palace to seek an audience with the queen in order to dissuade her from her plans. Unable to meet with the queen, they instead met with the cabinet and impressed upon them the urgency of dissuading the queen from attempting to promulgate a new constitution.

At noon the queen prorogued the Legislature of 1892. After that, between 30 and 40 members of the Hui Kālaiʻāina (Hawaiian Political Organization) marched to ʻIolani Palace to witness the signing of a new constitution. This had been a goal of theirs for over the five-and-a-half turbulent years since the Bayonet Constitution had been imposed upon King Kalākaua in the 1887 coup dʻétat. Legislators and the diplomatic corps had been invited to witness the momentous occasion. Outside of the Palace, hundreds of Native Hawaiians gathered in anticipation of the queen's announcement, heralding the promulgation of a new constitution.

While the spectators waited in the Palace Throne Room, the queen met with the cabinet ministers in the Blue Room for the signing. A long debate ensued when the cabinet members refused to sign the new constitution, pleading ignorance of the terms, despite having previously received copies of the proposed constitution. The embittered queen accused the cabinet of leading her "out to the edge of the precipice" and then leaving her to take the next step alone.[750]

Finally, Colburn, Cornwell and Peterson left Parker with the queen and went to consult with the foreign diplomats who urged the cabinet to convince the queen to abandon her plan at once. Colburn also visited W.O. Smith's law office to consult with the Annexation League members who had gathered there to assess the situation and make their plans. Again they exhorted the ministers to stand firm, to stay in their posts, and to abstain from signing the constitution.

At 2:30 p.m. the ministers returned to the Palace's Blue Room and continued the meeting with the queen. After a prolonged, stormy and bitter debate, the queen agreed to postpone her long cherished plan.

[750] Liliuokalani, *Hawaii's Story by Hawaii's Queen*, p. 385.

She then went to the second-floor balcony of the Palace and, speaking in Hawaiian, she addressed the crowd below, many who had petitioned the queen for the change in the constitution:

> O ye people who love the chief, I hereby say to you that I am now ready to proclaim the new constitution for my kingdom, thinking that it would be successful, but behold, obstacles have arisen. Therefore, I say unto you, loving people, go with good hope, and do not be disturbed or troubled in your minds, because within the next few days now coming I will proclaim the new constitution. Retire to your homes and maintain the peace, and leave matters hopefully to the future.[751]

At 4:30 p.m. the Annexation League reconvened at W.O. Smith's office. The general sentiment was that the queen's actions had given them a "splendid opportunity to get rid of the old regime, and [make] strong demands for annexation, or any kind of stable government under the supervision of the United States[.]"[752]

A "Committee of Thirteen" was appointed to serve as a "Committee of Public Safety" and the other men left the room. The committee approved a resolution by Lorrin A. Thurston that "preliminary steps be taken at once to form and declare a Provisional Government with a view to annexation to the United States."[753] A sub-committee was appointed to gather arms and ammunition and to reorganize the volunteer rifle companies that had been disbanded in 1890. Another special sub-committee was appointed to call on Minister Stevens "and inform him of the situation and ascertain from him what, if any, protection or assistance could be offered by the

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[751] Alexander, *History of Later Years*, p. 35; see also, Ralph S. Kuykendall, *The Hawaiian Kingdom, Volume III: 1871-1893 The Kalakaua Dynasty* (Honolulu: Univ. of Hawaii Press, 1967), note on pp. 585-586.
[752] Gillis, *The Hawaiian Incident*, p.15, *quoting* the supplemental statement of C. Bolte, a member of the Committee of Safety and Provisional Government, given to the U.S. Sen. Foreign Relations Comm.
[753] Alexander, *History of Later Years*, p. 37.

United States forces for the protection of life and property, the unanimous sentiment and feeling being that life and property were in imminent danger."[754]

The subcommittee of Thurston, Wilder and Glade met with Minister Stevens at 7 p.m. that evening. He informed them that, "the United States troops on board of the Boston would be ready to land at any moment to prevent the destruction of life or property of American citizens, and that as to the matter of establishing a Provisional Government, he, of course, would recognize the existing government, whatever it might be."[755]

Thurston specifically informed Stevens that plans were being considered to establish a provisional government and asked Stevens what his posture would be toward such a government. Stevens replied that whatever government was established and actually in possession of the city as a *de facto* government would be recognized. Later he specified that that meant holding Ali'iōlani Hale (the government building), the executive departments ('Iolani Palace), as well as the archives and the police station.

After the meeting with Stevens, Thurston convened another meeting in which those present were charged with drafting papers that would be needed to establish a provisional government.

Thus by the end of Saturday, January 14, 1893, plans were well underway to use the queen's intention to abrogate the 1887 Constitution as a pretext to dethrone her and establish a provisional government with the implicit support of the U.S. government.

Day Two: January 15, 1893

On Sunday, January 15, the queen decided to abandon her plan to promulgate a new constitution. Through her ministers, the queen issued a proclamation, which was posted on

[754] Gillis, *The Hawaiian Incident*, p. 16
[755] Alexander, *History of Later Years*, p. 38.

Monday, January 16, stating in part: "[T]he position taken by Her Majesty in regard to the promulgation of a new Constitution, was under the stress of Her native subjects. Authority is given for the assurance that any changes desired in the fundamental law of the land will be sought only by methods provided in the constitution itself."[756] However, the queen's assurance that the 1887 Constitution would not be abrogated did little to placate the Annexation League, which intended to exploit what was described as a "splendid opportunity." By then, its plans were well into motion.

By the end of Sunday, January 15, 1893, the queen had conceded defeat and withdrawn her attempt to abrogate the Bayonet Constitution and sign a new one. However, the Committee of Safety was pushing forward with its plan to overthrow the monarchy and establish a provisional government. They issued a call for their forces to gather the following day for a rally and possible further action.

Day Three: January 16, 1893

On the morning of January 16, 1893, the Committee of Safety met for three hours. Before adjourning around noon to attend their rally, the Committee of Safety drafted the following request to Minister Stevens to land U.S. troops:

> Sir:
>
> We the undersigned, citizens and residents of Honolulu, respectfully represent that in view of recent public events in this Kingdom, culminating in the revolutionary acts of Queen Liliuokalani on Saturday last, the public safety is menaced, and lives and property are in peril, and we appeal to you and the United States forces at your command for assistance.
>
> The Queen, with the aid of armed force, and accompanied by threats of violence and bloodshed from those with whom she was acting, attempted to proclaim a new constitution; and, while prevented for the time from accomplishing her object, declared publicly that she would only defer her action.

[756] *President's Message*, p. 116.

> This conduct and action was upon an occasion and under circumstances which have created general alarm and terror.
>
> We are unable to protect ourselves without aid and therefore pray for the protection of the United States forces.
>
> Signed: Citizens' Committee of Safety.[757]

The mass meeting of the Committee of Safety attracted between 1,200 and 1,300 people composed of nearly all the white male foreign element in Honolulu and some Portuguese and hapa-haole (half-Native Hawaiian, half-Caucasian) people. Earlier in the day, Native Hawaiians had also held a rally with between 500 and 1,000 people supporting the queen and calling for a new constitution.

At 3 p.m. Monday, January 16, U.S. Minister Stevens hand-delivered a written request to Captain Wiltse, Commander of the *U.S.S. Boston*, to land U.S. troops to protect the U.S. consulate and legation and to secure the safety of American life and property. Anticipating the request, Wiltse had already prepared his own order and had begun preparations for a 5 p.m. landing of the troops. Thurston and other annexationists, believing they were not quite ready, sent a request to Minister Stevens asking him to delay landing of troops. It was too late.

Close to 5 p.m., 162 U.S. marines, each carrying 80 rounds of ammunition, one gatling gun and one 37-millimeter revolving gun, landed at the foot of Nuʻuanu Avenue and marched up Fort Street to Merchant Street. They were accompanied by a hospital corps equipped with stretchers and medical supplies. Some troops were deployed to guard the U.S. consulate and some were sent to the U.S. legation. The remaining troops marched down King Street, past the Palace and halted briefly across from Kawaiahaʻo Church. Just before dark, they continued along

[757] Signed by the following 13 men: Henry E. Cooper, F. W. McChesney, W. C. Wilder, C. Bolte, A. Brown, William O. Smith, Henry Waterhouse, Theo. F. Lansing, Ed. Suhr, L. A. Thurston, John Emmeluth, Wm. E. Castle, J. A. McCandless. *President's Message*, p. 35; *Affairs in Hawaii*, p. 501.

King Street to the corner of King Street and Alapai Street. About four hours later, the troops marched back down King Street to their quarters for the night. The main body of three companies took up quarters at Arion Hall, across from the Ali‘iōlani Hale and near ‘Iolani Palace.

In a report to the U.S. Congress on December 18, 1893, President Cleveland observed that:

> There is as little basis for the pretense that such forces were landed for the security of American life and property. If so, they would have been stationed in the vicinity of such property and so as to protect it, instead of at a distance and so as to command the Hawaiian Government building and palace. Admiral Skerrett, the officer in command of our naval force on the Pacific station, has frankly stated that in his opinion the location of the troops was inadvisable if they were landed for protection of American citizens whose residences and places of business, as well as the legation and consulate, were in a distant part of the city, but the location selected was a wise one if the forces were landed for the purpose of supporting the provisional government.[758]

Immediately after the landing of troops, the queen’s representatives, Minister of Foreign Affairs Parker and Archibald Cleghorn called upon Stevens to ask why troops had been landed. His response was noncommittal, so they later filed a formal protest. Stevens answered that in whatever actions the U.S. diplomatic and naval representatives might take, “we will be guided by the kindest views and feelings for all the parties concerned, and by the warmest sentiments for the Hawaiian people and persons of all nationalities.”[759] Representatives from Great Britain, France, and Portugal also visited Stevens informally to inquire about the landing of troops. Monday, January 16, 1893 ended after a strong display of determination by those in favor of annexation, helped along by the occupation of American troops awaiting further orders.

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[758] *President’s Message*, p. IX; *Affairs in Hawaii*, 451.
[759] Alexander, *History of Later Years*, p. 58.

Day Four: January 17, 1893

On Tuesday, January 17, 1893, Samuel M. Damon called on the queen at 9 a.m. and informed her that he had been invited to join a revolutionary council, but had declined. Nevertheless, he asked her advice, suggesting that his participation might be of service to her, and she told him to join the council.[760] He advised her not to resist what was inevitable but to submit, as resistance would only cause useless bloodshed.

The Committee of Safety met at 10 a.m. Bolstered by the presence of U.S. marines, they made the final arrangements to declare a provisional government. They expanded the advisory council from eight to thirteen, including Damon, and appointed Sanford B. Dole as president of the new government. Dole accepted after his proposal to establish a regency, with Princess Ka‘iulani as monarch, was rejected. The committee also decided to charter the steamer *Claudine* to immediately carry their representatives to the United States to seek annexation.

At 1 p.m., the queen’s cabinet met with all the foreign diplomats, except Stevens who claimed to be ill. The foreign diplomatic corps advised the cabinet against armed resistance. The queen sent the entire cabinet to ask for assistance from Minister Stevens in defending the Hawaiian government. Stevens informed them that the troops had been landed for a peaceful purpose, and he could not use them to sustain the queen. According to Peterson, Stevens also said that if the Committee of Safety were attacked and its members arrested by the queen’s forces, U.S. troops would intervene, and should a provisional government be established by responsible citizens, Stevens would recognize and support it on request.

Around 2:30 p.m., a Native Hawaiian policeman stopped John Good, an annexationist who had been collecting arms and ammunition from stores in downtown Honolulu, at Fort and

[760] Liliuokalani, *Hawaii’s Story*, p. 387.

King Streets. The policeman grabbed the reins of Good's horses, and Good shot him. The shot attracted the attention of the police who had been watching the office of W.O. Smith.

The diversion enabled the Committee of Safety to proceed almost unobserved to Ali'iōlani Hale, the government building, which they seized without any resistance. From there they declared the provisional government installed in a proclamation that read, in part:

> We, citizens and residents of the Hawaiian Islands, organized and acting for the public safety and the common good, hereby proclaim as follows:
>
> 1. The Hawaiian Monarchial system of Government is hereby abrogated.
>
> 2. A Provisional Government for the control and management of public affairs and the protection of the public peace is hereby established, to exist until terms of union with the United States of America have been negotiated and agreed upon.[761]

Dole and other members of the new Provisional Government then sent a communication to Minister Stevens informing him that the monarchy had been abrogated and concluding:

> Such Provisional Government has been proclaimed, is now in possession of the Government departmental buildings, the archives, and the treasury, and is in control of the city. We hereby request that you will, on behalf of the United States of America, recognize it as the existing de facto Government of the Hawaiian Islands, and afford to it the moral support of your Government, and, if necessary, the support of American troops to assist in preserving the public peace.[762]

Sometime between 4:20 and 5 p.m., *before* the queen had yielded and *before* the police station or barracks had been surrendered by the Hawaiian Government, Stevens recognized the provisional government:

> A Provisional Government having been duly constituted in the place of the recent Government of Queen Liliuokalani and said Provisional Government being in full possession of the Government Building, the Archives and the Treasury and in control of the capital of the Hawaiian Islands, I hereby recognize said Provisional Government as the de facto Government of the Hawaiian Islands.[763]

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[761] Proclamation of the Committee of Safety, January 17, 1893, *Affairs in Hawaii*, p. 788; reprinted in *Fundamental Law of Hawaii* (Honolulu: Hawaiian Gazette Co., Ltd., ed. Lorrin Thurston, 1904), pp. 196-197.
[762] *President's Message*, Letter of W.Q. Gresham to the President, p. XVIII.
[763] Alexander, *History of Later Years*, p. 65.

After reading their proclamation on the steps of the Ali‘iolani Hale, the provisional government declared martial law and demanded surrender of the station house, which was held by the queen’s forces.

Thus on January 17, 1893, Queen Lili‘uokalani and her cabinet sent the following message to members of the provisional government, who, with the support of the U.S. Minister to Hawai‘i and American troops, had declared the Constitutional Monarchy of Hawai‘i abrogated. The queen wisely surrendered to the U.S. government rather than to the provisional government:

> I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.
>
> That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said Provisional Government.
>
> Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representative and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.
>
> Done at Honolulu this seventeenth day of January, A.D. 1893.
>
> LILIUOKALANI R.[764]

[764] *President’s Message*, p. XIX; *Affairs in Hawaii*, p. 790; Liliuokalani, *Hawaii’s Story*, App. B., pp. 387-388. One scholar has characterized the queen’s carefully worded statement of surrender and President Cleveland’s subsequent acknowledgment of it, as the *Lili‘uokalani Agreement*, temporarily transferring executive authority pursuant to the kingdom’s constitution to the President of the United States, while an investigation would be conducted and appropriate action taken to restore the queen. David Keanu Sai, *1893 Cleveland-Lili‘uokalani Executive Agreements*, *available at* http://www2.hawaii.edu/~anu/pdf/Exec_Agmt.pdf (last viewed July 31, 2014), p. 3.

At 7 p.m. that evening, Dole accepted the queen's protest, without challenging the queen's assertion of surrender to the "superior force of the United States" rather than the provisional government:

At 7:30 p.m., the station house was turned over to the provisional government.

By the close of Tuesday, January 17, 1893, the queen and the Constitutional Monarchy had been overthrown. In its place was the provisional government, brought to power with the backing of the U.S. Minister to Hawai'i and American forces.

Provisional Government

On January 18, 1893, the provisional government was recognized by Austria-Hungary, Belgium, Chile, Denmark, France, Germany, Italy, Mexico, the Netherlands, Peru, Portugal, Russia and Spain. Great Britain and Japan extended their recognition on January 20, 1893.[765]

Two days after the overthrow, on Thursday January 19, 1893, commissioners of the provisional government traveled to Washington, D.C. to negotiate annexation with the United States. The queen's commissioners were denied passage on the *U.S.S. Claudine*, which the provisional government chartered. However, the queen was allowed to send a written appeal to President Benjamin Harrison asking that no conclusions be reached until her envoy arrived. The queen's commissioners departed Hawai'i on February 2, 1893.[766]

It took just a few days to accomplish the overthrow, but the question quickly turned to whether the provisional government could maintain control. On February 1, 1893, Minister Stevens declared Hawai'i a protectorate of the United States, pending annexation negotiations,

[765] U.S. Senate, 52nd Congress 2d Session, Ex. Doc. No. 76, *Message from the President of the United States Transmitting A Treaty of Annexation Concluded on the 14th Day of February 1893 Between the United States and the Provisional Government of the Hawaiian Islands*, December 18, 1893 (Washington, D.C.: U.S. Government Printing Office, 1893), p. 30.
[766] Liliuokalani, *Hawaii's Story*, p. 388-390.

and hoisted the American flag over Hawai‘i.[767] On the same day, in an official dispatch to Secretary of State John W. Foster, Minister Stevens wrote, “The Hawaiian pear is now fully ripe and this is the golden hour for the United States to pluck it.”[768]

The provisional government’s commissioners arrived in Washington, D.C., on February 3, 1893 and were warmly received. Unfortunately for the provisional government, the pro-annexationist President Harrison was about to be succeeded in office on March 4, 1893 by the anti-expansionist Grover Cleveland, who had won the 1892 presidential election. President Harrison quickly submitted a treaty of annexation to the Senate. It received support from the Senate Committee on Foreign Relations, but Congress adjourned for Cleveland’s presidential inauguration before the treaty could be debated on the Senate floor.

On March 9, 1893, President Cleveland withdrew the treaty from the Senate and on March 11 he dispatched his own commissioner, former Georgia Congressman James H. Blount, to investigate and report on “the conditions of affairs in the Hawaiian Islands, the causes of the revolution by which the Queen’s Government was overthrown, the sentiment of the people toward existing authority, and, in general, all that can fully enlighten the President touching the subject.”[769] Blount left Washington, D.C. on March 14 and arrived in Hawai‘i on March 29. Two days later, he ordered the American flag lowered and the American troops on shore to return to their ships. Minister Stevens was relieved of his post and left Hawai‘i that May.

The Blount Report

The provisional government may have expected to influence Blount’s understanding of events and thereby shape his report. Instead, Blount kept both the annexationists and the royalists

[767] Kuykendall, *The Hawaiian Kingdom, Vol. III*, p. 608.
[768] *President’s Message*, Correspondence of Minister Stevens to Sec. of State Foster (Feb. 1, 1893), p. 136.
[769] Alexander, *History of Later Years*, p. 80.

at arm's length, renting a small cottage with his wife near the Hawaiian Hotel and declining social engagements. He conducted numerous detailed interviews with participants and eyewitnesses under oath, transcribed by a stenographer who then had each witness verify the accuracy of the statement. Queen Lili'uokalani said of Blount's investigation:

> Of the manner in which Hon. J.H. Blount conducted the investigation, I must speak in the terms of the highest praise. He first met the parties opposed to my government, and took down their statements, which were freely given, because they had imagined that he could be easily turned in their favor. So they gave him the truth, and some important facts in admission of their revolutionary intentions, dating from several years back. Mr. Blount afterwards took the statements of the government, or royalist side. These were simply given, straightforward, and easily understood. Compare the two statements, and it is not difficult to explain the final report of Mr. Blount.[770]

The annexationists, however, grew impatient with Blount's reticence and his meticulous ways, so much so that when he left Hawai'i, they had their newly formed band play "Marching Through Georgia" as a farewell to this former officer of the Confederate Army.[771]

Commissioner Blount completed his investigation in July 1893 and submitted a report – which included dispatches, interviews, statements, memoranda, affidavits and related materials – to Secretary of State Walter Q. Gresham who, in turn, reported to President Cleveland. Gresham advised Cleveland that annexation did not have the support of the residents of Hawai'i and that a majority of the people with voting rights "earnestly desire that the government of their choice shall be restored and its independence respected."[772] Indeed, Blount had stated that:

> [W]hile at Honolulu he did not meet a single annexationist who expressed willingness to submit the question to a vote of the people, nor did he talk with one on that subject who did not insist that if the Islands were annexed suffrage should be so restricted as to give complete control to foreigners or whites. Representative annexationists have repeatedly made similar statements to the undersigned.[773]

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[770] Liliuokalani, *Hawaii's Story*, p. 235.
[771] Allen, *Betrayal of Liliuokalani*, p. 304.
[772] *President's Message*, p. XX; *Affairs in Hawaii*, p. 462.
[773] *President's Message*, p. XX; *Affairs in Hawaii*, p. 462.

Executive Restoration Fails

After receiving the Blount report, President Cleveland determined that the United States should work to restore the queen to the throne. Minister Albert S. Willis, who replaced Stevens as the U.S. representative in Hawai'i, presented President Cleveland's position to the queen.[774] In the first interview between the two at the American legation on November 13, 1893, Willis asked the queen to sign a proclamation of general amnesty, granting protection and pardon to those who had overthrown the government. The queen demurred, indicating that she would need to consult with the privy council and cabinet.[775] She told Willis that according to Hawaiian Kingdom law, the penalty for treason was death but that she would be more inclined personally "to punish them by banishment, and confiscation of their property to the government." In a second meeting on December 16, this time with several others present, including one of the queen's advisors, J. O. Carter, the queen again declined full clemency.[776]

On Monday, December 18, Mr. Willis came to Washington Place and again met with the queen and J.O. Carter. According to Willis' report, the queen was not in favor of full clemency, but banishment and confiscation of the annexationists' property.[777] But later that afternoon, she sent Minister Willis the following message:

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[774] U.S. House of Representatives, 53rd Congress 2d Session, Ex. Doc. No. 70, *Message from the President of the United States Transmitting Certain Further Information Relating to the Hawaiian Islands*, January 14, 1894 (hereinafter *President's Transmission–Further Information*), p. 2; *Affairs in Hawaii*, pp. 1242.

[775] Liliuokalani, *Hawaii's Story*, p. 246; *see*, *Affairs in Hawaii*, pp. 1242, in which Willis reports that the queen indicated that she might leave the decision to her ministers.

[776] The queen gave as her reason that "this being the second offence of these individuals, they were regarded as dangerous to the community. That their very residence would be a constant menace; that there never would be peace in my country, or harmony amongst the people of different nations residing with us, as long as such a disturbing element remained, especially after they had once been successful in seizing the reins of government." Liliuokalani, *Hawaii's Story*, p. 248.

[777] *President's Transmission–Further Information*, pp. 26-28; *Affairs in Hawaii*, p. 1268.

> Since I had the interview with you this morning I have given the most careful and conscientious thought as to my duty and I now of my own free will give you my conclusions.
>
> I must not feel vengeful to any of my people. If I am restored by the United States, I must forget myself and remember my dear people and my country. I must forgive and forget the past, permitting no proscription or punishment of anyone but trusting that all will hereafter work together in peace and friendship for the good and for the glory of our beautiful and once happy land.[778]

In a separate statement accompanying her message to Willis, the queen agreed to full amnesty and also to follow the terms of the 1887 Constitution:

> I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government.
>
> I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fu1ly execute that constitution with all the guaranties as to person and property therein contained.[779]

In Washington, D.C., on December 18, 1893, President Cleveland provided Congress with a full report, which condemned the role of the American minister and the U.S. marines in

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[778] *President's Transmission–Further Information*, p. 29; *Affairs in Hawaii*, p. 1269.

[779] *President's Transmission–Further Information*, p. 29; *Affairs in Hawaii*, p. 1269-1270. Emerging scholarship characterizes the communication of President Cleveland to Queen Lili'uokalani, through Minister Willis, setting forth the conditions under which the United States would agree to restoration, and the queen's acquiescence to those terms in her statement of December 18, 1893, as Executive Agreements. Thus, it is asserted, the United States still has an obligation under both domestic and international law to honor those agreements and restore the constitutional monarchy in the present day. The most detailed explanation of the Executive Agreements thesis can be found in the works of Dr. David Keanu Sai, including the article, *1893 Cleveland-Lili'uokalani Executive Agreements*, cited above in note 17.

the overthrow of the Hawaiian monarchy and called for the restoration of Queen Lili‘uokalani. At the time he had not received the report of the queen’s statement granting amnesty to those who participated in the coup d‘état of January 17, 1893, and her willingness to assume the throne under the 1887 constitution. The following are significant excerpts from the President Cleveland’s Message to Congress:

> The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives. . . .
>
> But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen’s Government. . . .
>
> Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration . . .
>
> By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair. . . .
>
> I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned.[780]

On December 19, after Minister Willis had received the queen’s guarantee of a full pardon, he advised Dole and the provisional government of President Cleveland’s determination to restore Lili‘uokalani as queen and requested their compliance. Dole and members of the provisional government, however, did not agree with the President Cleveland’s position. Dole,

[780] *President’s Message*, pp. XIII-XVI; *Affairs in Hawaii*, pp. 455-458.

after taking four days to consider the demand, responded in a lengthy letter approved by the provisional government's councils. By that time, the provisional government was aware of President Cleveland's message to Congress and the general tenor of the Blount report. Thus, Dole took the opportunity to refute the contention that "but for" the support of Minister Stevens and the landing of U.S. troops, the overthrow would have failed. He stated, "No man can correctly say that the Queen owed her downfall to the interference of American forces. . . . If the American forces had been absent the revolution would have taken place, for the sufficient causes for it had nothing to do with their presence."[781]

Ironically, Dole and the provisional government disavowed the right of the United States to "interfere" in the internal affairs of Hawai'i, citing U.S. policy as well as international law:

> We do not recognize the right of the President of the United States to interfere in our domestic affairs. Such right would be conferred upon him by act of this Government, and by that alone; or it could be acquired by conquest. This I understand to be the American doctrine, conspicuously announced from time to time by the authorities of your Government.[782]

Dole's letter concluded:

> I am instructed to inform you, Mr. Minister, that the Provisional Government of the Hawaiian Islands, respectfully and unhesitatingly declines to entertain the proposition of the President of the United States that it should surrender its authority to the ex-Queen.[783]

Negotiations for the restoration of Queen Lili'uokalani and the Native Hawaiian Constitutional Monarchy had thus reached an impasse with the provisional government. It was apparent that restoration could only be accomplished through the use of U.S. military force, an action that, under U.S. law, could only be authorized by the U.S. Congress. President Cleveland, in submitting his report on the Hawaiian Islands, including related diplomatic documents, to the

[781] Dole, *Memoirs*, p. 126.
[782] *Id.*, p. 113.
[783] Dole, *Memoirs*, p. 126.

U.S. Congress, had referred the decision on restoration of the queen over to that body. The U.S. Congress had no inclination to use force to restore the queen. At the same time, the provisional government's plans for annexation were also stalled, as long as President Cleveland was in office. In the months following Cleveland's message, the "Hawaiian question" continued to be debated and argued in Congress.[784]

Congressional Action: The Morgan Report

The provisional government, through their contacts in Washington, D.C., convinced the Senate Foreign Relations Committee to conduct its own investigation into the events surrounding the overthrow of the monarchy. The committee, headed by pro-annexationist Senator John Morgan, conducted hearings in Washington, D.C. from December 27, 1893, through February 26, 1894. A slim majority of the committee issued a report that justified and condoned the actions of Minister Stevens and recommended the annexation of Hawai'i. In part it stated:

> It is not a just criticism upon the correspondence of Minister Stevens with his Government that he earnestly advocated annexation. In this he was in line with Mr. Marcy and nearly every one of his successors as Secretary of State, and with many of Mr. Stevens' predecessors as Minister to Hawaii . . . Whatever motives may have actuated or controlled any representative of the Government of the United States in his conduct of our affairs in Hawaii, if he acted within the limits of his powers, with honest intention, and has not placed the Government of the United States upon false and untenable grounds, his conduct is not irregular.[785]

The minority members of the committee submitted their own report stating that they could not exonerate Stevens of "officious and unbecoming participation in the events which led to the revolution in the Sandwich Islands."[786] Lacking consensus within his committee, Senator

[784] *See* Osborne, *Annexation Hawaii: Fighting American Imperialism* (Waimānalo: Island Style Press, 1998), pp. 68–85, for a discussion of the congressional debates and actions following Cleveland's message.
[785] *Morgan Report*, p. XXXII.
[786] *Morgan Report*, p. XXXV.

Morgan was unable to garner congressional endorsement for what later became known as the "Morgan Report."

Both the House and Senate declined to take any further action to restore the queen. On February 7, 1894, the U.S. House of Representatives passed a resolution condemning the actions of Minister Stevens and declaring that "interference with domestic affairs of an independent nation [was] contrary to the spirit of American institutions." While the resolution condemned Stevens' actions, it also asserted that the people of Hawai'i should have "absolute freedom and independence in pursuing their own line of policy, and that foreign intervention in the political affairs of the islands will not be regarded with indifference by the Government of the United States."[787] In other words, the United States would take no action but also warned other nations not to become involved.

On May 31, 1894, the Senate, while not mentioning Stevens' actions at all, passed a strongly worded resolution asserting the right of "the people of the Hawaiian Islands to establish and maintain their own form of Government and domestic policy; [and] that the United States ought in no wise to interfere therewith." Moreover, the resolution stated that, "any intervention in the political affairs of these islands by any other Government will be regarded as an act unfriendly to the United States."[788]

Although President Grover Cleveland had not been able to restore the queen, his position against annexation prevailed. The annexation of Hawai'i continued to meet strong opposition from Cleveland and his anti-imperialist cohorts in the U.S. Congress. They were backed by those who eventually formed the prestigious Anti-Imperialist League – including the industrialist Andrew Carnegie, the writer Mark Twain, and Senator Richard Pettigrew – which opposed the

[787] 26 *Congressional Record* 2007 (53rd Cong., 2nd Sess., 1894).
[788] *Id*. at 5500.

expansion of America's boundaries into any non-contiguous territory outside of the continental United States. Meanwhile, the U.S. held fast to its special claim on Hawai'i, warning all foreign states that intervention in the political affairs of the islands would be considered an act unfriendly to the U.S.

Hawaiian Nationalist Resistance

In Hawai'i, the Hawaiian nationalists persevered with their efforts to reinstate the monarchy and stand against the provisional government and annexation. The two major royalist political organizations, Hui Kalai'āina and Hui Aloha 'Āina, joined together with other Native Hawaiian political clubs and formed the Hawaiian Patriotic League. The League's purpose was to oppose the provisional government, restore the queen to the throne, and protest the annexation of Hawai'i to the United States.[789] On December 27, 1893, the League submitted a petition to President Cleveland declaring that the provisional government did not represent Native Hawaiians, outlined injustices that Native Hawaiians suffered under the provisional government's control, and urged President Cleveland to continue his efforts to restore the queen to power. At the time, the group represented over 8,000 legal voters of the Hawaiian Kingdom:

> The Provisional Government, its leaders, and their defenders claim abroad to represent the Hawaiian nation. This we most *emphatically deny;* they represent only a clique bent upon oppressing the masses, they are only a fractional portion of the population, wealth, intelligence, and civilization of Hawaii, and even a fraction only of the American colony, and the fact of there being among the

[789] Kuykendall, *The Hawaiian Kingdom, Vol. III*, pp. 448-450. According to Kuykendall, the Hui Kalai'āina whose English name was Hawaiian Political Association was organized on November 22, 1888, to maintain the influence of the native people and the king and to restore the constitutional system existing before June 30, 1887, when King Kalākaua was forced to sign the "Bayonet Constitution." In 1890, the Hui formed the National Reform Party in alliance with the Mechanics' and Workingmen's Political Protective Union. This coalition won a majority in the kingdom's Legislature despite the restrictions on voting that had been written into the 1887 Bayonet Constitution. The Native Sons of Hawai'i was another royalist party that had formed in 1891 and ran candidates in the elections of 1892 when they advanced the political slogan, "Hawai'i for the Hawaiians." *Id.*, pp. 513-522. The goals of the Hawaiian Patriotic League were explained in testimony to the U.S. Senate Foreign Relations Committee headed by U.S. Senator Morgan. *Morgan Report*, pp. 1294-1298, *see* Appendix I, p. 484.

> usurpers some men of intelligence and capital makes their conduct only more odious. . . The presence of men of intelligence and capital among the usurpers only shows that even in those classes there can be found depraved men and moral criminals. We assert that any trial at the ballot box would show that the native Hawaiians and the rapidly increasing class of halfwhites, both claiming to be the equal in intelligence of any electorate in the United States, are virtually, as a unit, 'Royalists' and opposed politically to the P.G. and its self-appointed dictators; moreover, fully one-half of the foreign merchants, capitalists, planters, and mechanics are also opposed to the same and are avowed sympathizers of the monarchy.[790]

Although the Hawaiian nationalists had challenged the provisional government to hold elections, they subsequently decided to boycott the election for representatives to a Constitutional Convention. Participation would have required signing an oath of allegiance to uphold a government they despised. Just 745 Native Hawaiians cast their votes in that election, less than one-tenth of the 9,931 Native Hawaiians who voted in the last election held under the monarchy in 1892.[791]

The Republic

In Hawai'i, members of the provisional government had not given up on the idea of annexation. While annexation no longer appeared imminent, its supporters felt it was only a matter of time until the political tide in the United States turned in their favor.[792] In the meantime, the trappings of governance were put into place. Use of the title "Provisional Government" projected an undesirable image of impermanence, so on the last day of 1893,

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[790] *Morgan Report*, pp. 1294-1298. The petition was presented to U.S. Minister Albert Willis. It was signed by J.A. Cummins, Honorary President; Joseph Nāwahī, President; John E. Bush, Vice-President; John Lot Kaulukou, Vice-President; J.K. Kaunumano, Vice-President; J.W. Bipikane, Vice-President; Jas. K. Kaulia, Secretary; Enoch Johnson, Treasurer; and the following Executive Councilors: John Uahiai Kaneakua, D.W. Pua, J.K. Merseburg, W.H. Rickard, John Ross, John K. Prendergast, Abraham K. Palekaluhi, J. Kahahawai, A. Marques and W.T. Seward.

[791] U.S. House of Representatives, 56th Congress 1st Session, House Rep. No. 305 to Accompany H.R. 2972, *Government for the Territory of Hawaii*, February 12, 1900 (Washington, D.C.: U.S. Government Printing Office, 1900), p. 9.

[792] William Adam Russ, Jr., *The Hawaiian Revolution (1893-94)* (Selinsgrove, Pennsylvania: Susquehanna Univ. Press, 1959), p. 348.

Dole, Thurston, Smith and two others met as a council and agreed to take steps to "shed the word 'provisional'" by writing a constitution. Thurston was assigned the task of drafting the document.[793] Thurston returned to his duties in Washington, D.C., as representative of the provisional government, but in a letter to Dole he included notes for the new constitution. Among his suggestions were that voting should be restricted "to those who can speak, read, and write the English language." Thurston also commented on the name of the new government: "I think that whatever else it is called, it should have Republic in the name. It seems to me also that to call it the Republic of Hawaii gives it more character and distinctness than to call it the Hawaiian Republic or other similar name."[794]

Calling the new government a "republic," however, belied its true nature:

> When the provisional government on March 15, 1894, called a convention to draft a constitution for the proposed "Republic of Hawaii," they made certain that the revolutionary leaders would retain control. There would be thirty-seven members in the convention. Automatically named to the convention were the president and members of the executive and advisory councils of the provisional government. They numbered nineteen—a clear majority of one. The voters were then privileged to choose the minority of eighteen. But the oligarchy did not stop there. Even to allow the franchise to those who had voted before the revolution, under the limitations imposed by the Constitution of 1887, was considered dangerous. Therefore, those who were allowed to vote for a minority of the convention, besides possessing a certain amount of wealth, had to take an oath of allegiance to the provisional government and to oppose any attempt to re-establish the monarchy. In the finished constitution the qualifications for voting and holding office were so stringent that comparatively few natives, and no Orientals, could vote. Fewer still were eligible to serve in either house of the legislature.[795]

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[793] Tom Coffman, *Nation Within: The History of the American Occupation of Hawai'i* (Kāne'ohe, Hawai'i: Epicenter, rev. ed. 2009), p. 150.

[794] *Id.*, pp. 148, 155-161. Although Thurston's suggestion for the name of the republic was adopted, the final provision on language qualification required that a voter "[b]e able understandingly to speak, read and write the English or Hawaiian language." 1894 Constitution of the Republic of Hawaii, Art. 74 (7), reprinted in *Fundamental Law,* p. 224. This section goes on to provide, "In order to comply with this requirement, he shall be able to read and write, with ordinary fluency, any section or sections of this Constitution." Moreover, in order to register to vote, one had to pass the constitutional section "fluency" test given by a Board of Registration. Art. 77, sec. 7. *Id.* p. 226.

[795] Kuykendall, *The Hawaiian Kingdom, Vol. III*, p. 649.

American historian W.A. Russ, although largely sympathetic to the U.S. acquisition of Hawai‘i, commented on the Native Hawaiian attitude toward the new regime:

> Native Hawaiians were, perhaps, not extremely sophisticated in governmental matters, but it took no great amount of political insight to perceive that this constitutional system was a beautifully devised oligarchy devoted to the purpose of keeping the American minority in control of the Republic. Hence, even those Kanaka (Hawaiians) who could fulfill the requirements generally refused to register, to vote, and to take part in the Government when it was established.[796]

On July 4, 1894, the provisional government declared itself to be the Republic of Hawai‘i with a constitution that named Sanford Dole as president.[797] Although Lili‘uokalani protested to the United States and Great Britain, every foreign power that had diplomatic relations with Hawai‘i soon recognized the republic.[798]

It was clear, however, that Native Hawaiians did not support the republic. Just two days before the republic unveiled its constitution, Hawaiian nationalists held a rally, drawing over 5,000 people. Nationalist and former Hawaiian Kingdom of legislator Joseph Nāwahī gave a stirring speech "The House of government belongs to us, just as the Kamehamehas built it," he proclaimed. "But . . . we were ousted by trespassers who entered our house, and who are now saying to us, to reside in the lei stand which they have set up and are forcing all of us to enter." Nāwahī asked the crowd whether they would they live in a lei stand. "'A‘ole!!" (no!!) they answered.

At the rally, Nāwahī and two others were chosen to present resolutions to the foreign counsels in Hawai‘i protesting the promulgation of a constitution without consent of the

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[796] William Adam Russ, Jr., *The Hawaiian Republic (1894-1898) And Its Struggle to Win Annexation* (Selinsgrove, Pennsylvania: Susquehanna Univ. Press, 1961), pp. 33-34.
[797] *Id*. at 36.
[798] Ralph S. Kuykendall and A. Grove Day, *Hawaii: A History From Polynesian Kingdom to American State* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1948), p. 185.

governed and "changing the form of government from the one under which we have lived peacefully and prosperously for many years." The protest stated: "And we maintain that the will of the majority of the legitimate voters of Hawai'i should be the supreme power of the land, as such power is so recognized and accepted in all civilized countries, and by all of the enlightened governments of the world."[799]

The failure of the republic to gain support from Native Hawaiians was made further evident by the fact that only 1,126 Native Hawaiians took the oath pledging allegiance to the republic's constitution and then voted in the 1897 elections for representatives to the republic's Legislature.[800] The republic could not rightfully claim to represent the Native Hawaiian people.

The contempt of Native Hawaiians for those who overthrew Lili'uokalani was memorialized in songs such as the haunting "Mele Aloha 'Āina" (Song of Love for the Land), now known as "Kaulana Nā Pua" (Famous Are The Children), cited at the beginning of this chapter, and which was sung throughout Hawai'i as a political anthem of Native Hawaiian patriots.

1895 Restoration Attempt and Imprisonments

In January of 1895, those loyal to the Hawaiian Kingdom and Constitutional Monarchy attempted to regain control of the government.[801] Hawaiian nationalists organized an armed insurrection aimed at restoring the queen to the throne. However, it did not come to pass. Despite months of planning and amassing of arms smuggled in from the West Coast of the United States, the restoration effort was crushed just as it was about to be launched. In all, 220 nationalists were

[799] Coffman, *Nation Within*, pp. 161-62. Based on original research by Native Hawaiian historian and professor, Noenoe Silva.
[800] House Rep. No. 305 to Accompany H.R. 2972, *Government for the Territory of Hawaii*, p. 9.
[801] *See* Russ, *Hawaiian Republic*, pp. 55-57.

arrested and held as prisoners of war and charged for treason and concealment of treason. Of those charged, 188 were given prison sentences; 148 were sentenced to five years at hard labor. The six men believed to be the primary organizers of the insurrection—H.F. Bertlemann, W.H.C. Greig, Samuel Nowlein, W.H. Rickard, William T. Seward, Carl Widemann, and Robert W. Wilcox—were each fined $10,000 and given jail sentences of 35 years. The remaining men were given lesser jail sentences, anywhere from one month to one year to ten years, and fined between $100 and $5,000. [802]

Those sentenced to five years were released on July 4, 1895. In September 1895 conditional pardons were granted to Queen Liliʻuokalani, Prince Kūhiō, Carl Widemann and 46 others. Seven received pardons on Thanksgiving Day 1895. A final group was released on December 31, 1895.[803] On July 17, 1898, all of those who were sentenced and found guilty were fully pardoned and had their civil rights restored.[804]

The queen herself was arrested, tried and found guilty for misprision, or concealment of treason. She was sentenced to five years of hard labor and fined $5,000. The republic held her prisoner at ʻIolani Palace for eight months and then kept her under house arrest at Washington Place (the queen's residence) for five months. She was then restricted from leaving Oʻahu for another eight months. In total, her length of detainment lasted 21 months.[805]

On January 24, 1895, while being held prisoner in ʻIolani Palace, Queen Liliʻuokalani was forced to sign a statement of abdication in favor of the republic. However, in the queen's

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[802] Hawaiʻi State Archives, 1895 Insurrection File, *Index to Accused*; *List of names of persons arrested and charged as prisoners of war to date* January 16, 1895 11am; *Trial of a Queen: 1895 Military Tribunal* (Honolulu: Judiciary History Center, Hawaiʻi State Judiciary, and Friends of the Judiciary History Center, 1995), pp. 34-39 (List of Persons Accused of Misprison of Treason and List of Persons Accused of Treason).
[803] Loomis, *For Whom Are the Stars?*, p. 219-220.
[804] *Hawaiian Gazette*, July 18, 1898;
[805] Allen, *Betrayal of Liliuokalani*, pp. 331-350.

book, *Hawaii's Story by Hawaii's Queen*, she renounced the abdication, explaining that she had been coerced to sign the statement. She described her plight:

> For myself, I would have chose death rather than to have signed it; but it was represented to me that by my signing this paper all the persons who had been arrested, all my people now in trouble by reason of their love and loyalty towards me, would be immediately released. Think of my position, - sick, a lone woman in prison, scarcely knowing who was my friend, or who listened to my words only to betray me, without legal advice or friendly counsel, and the stream of blood ready to flow unless it was stayed by my pen.[806]

The arrests, trials and imprisonment of the Hawaiian nationalists effectively suppressed any further armed resistance to restore the monarchy. Nevertheless, Native Hawaiians persisted in their opposition to annexation through rallies, meetings, petitions, newspapers, songs and publications. One notable anthology was *Buke Mele Lahui—Book of National Songs*, which contained patriotic songs honoring the queen and those who defended her.[807]

Once granted the freedom to travel outside of Hawaiʻi, the queen immediately went to Washington, D.C. to lobby against a treaty of annexation that the republic negotiated with President William McKinley in 1897. She also wrote her book *Hawaii's Story By Hawaii's Queen* as an appeal to the hearts and minds of the American people to oppose the annexation of Hawaiʻi and to support her restoration as the rightful leader of the Kingdom of Hawaiʻi.

Confiscation of the Crown Lands and the 1895 Land Act

At the time of the 1893 overthrow, the provisional government took over all functions of government, including management of the Government lands.[808] Under its constitution, the

[806] Liliuokalani, *Hawaii's Story*, p. 274.
[807] Testa, *Buke Mele Lahui—Book of National Songs*.
[808] Proclamation of the Committee of Safety, January 17, 1893, reprinted in *Fundamental Law*, p. 195. The Proclamation does not specifically mention the Government lands but does establish a provisional government taking over the function of all aspects of governance presumably including the management of the Government lands.

republic also expropriated the Crown lands, without compensation to the queen. Article 95 of the republic's constitution provided:

> That portion of the public domain heretofore known as Crown Land is hereby declared to have been heretofore, and now to be, the property of the Hawaiian Government, and to be now free and clear from any trust of or concerning the same, and from all claim of any nature whatsoever upon the rents, issues, and profits thereof. It shall be subject to alienation and other uses as may be provided by law. All valid leases thereof now in existence are hereby confirmed.[809]

The following year, the 1895 Land Act passed, formally merging the Crown and Government lands into one category—public lands.[810] Repealing the 1865 Crown Lands Act, which had made the Crown lands inalienable, the 1895 Land Act established a comprehensive homesteading program on the commingled public lands.[811] The Land Act created five different homesteading mechanisms—two types of leasing arrangements and three types of purchase plans.[812] Anyone over 18 years of age who was a citizen by birth or naturalization and paid taxes

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[809] Article 95 of the 1894 Constitution of the Republic of Hawaii, reprinted in *Fundamental Law of Hawaii*, p. 233

[810] Section 2, Act of August 14, 1895, No. 26, 1895 Hawaii Laws Spec. Sess. 49.

[811] See Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai'i?* (Honolulu: Univ. of Hawai'i Press, 2008), pp.188-199, and Robert Henry Horwitz, *Public Land Policy in Hawaii: An Historical Analysis*, Report No. 5 (Honolulu: Legislative Reference Bureau, Univ. of Hawai'i, 1967), pp. 5-15, for extensive discussions and analysis of the 1895 Land Act.

[812] House Rep. No. 305 to Accompany H.R. 2972, *Government for the Territory of Hawaii*, pp. 65-66, 105-106. The five homesteading mechanisms were:

1) 999-year Homestead Lease – Lots ranging from 8 to 45 acres were available for 999-year leases, provided that the homesteader resided on and cultivated a portion of the lot. The homesteader paid nothing except a small application fee and annual taxes on the property. The land could not be sold, mortgaged, assigned or sublet. If there were no heirs, the property reverted back to the government upon the death of the last eligible heir.

2) Right-of-Purchase Lease – Lots ranging from 100 to 1,200 acres could be purchased at the original appraised value any time after two years of residence and the cultivation of at least 25 percent of the lot. The homesteader annually paid 8 percent of the appraised value as rent, until the purchase was completed.

3) Cash Freehold – Lots ranging from 100 to 1,200 acres could be bought at an auction with the purchase price paid in four installments over three years. The homesteader was required to live on the land for two years and cultivate at least 25 percent of the land to finally acquire title.

4) Special Agreement of Sale – Lots ranging from 100 to 600 acres were also available under a special agreement of sale at an auction. Installment payments, and requirements of cultivation, improvements and residence or non-residence were arranged at the time of purchase.

5) Public Auction – A prospective homesteader could also purchase a plot for cash, outright, at a public auction.

could apply. One report indicates that more than 40,000 acres of public land were alienated under this program,[813] while another suggests that almost a quarter of those acres came from the inventory of Crown lands.[814] Through the 1895 Land Act, 139 Americans received 10,084 acres, 143 Portuguese received 5,119 acres, and non-Native Hawaiians born in Hawai‘i received 3,120 acres; Native Hawaiians got the least amount of land, on a per capita basis, with 230 Native Hawaiians receiving 6,502 acres.[815]

Kū‘ē Petitions – The 1897 Annexation Treaty Defeated

As American historians Ralph S. Kuykendall and A. Grove Day have pointed out, it was never intended that the republic last for a long period of time:

> It was a kind of interim government. Its purposes, all of which were successfully carried out, were to give a greater appearance of regularity and permanence than did the Provisional Government, to keep the way clear for annexation whenever the United States government became ready to take up that question again, and in the mean time to maintain in authority the group that had carried through the Revolution of 1893.[816]

By 1896, it seemed apparent that the mission of the republic would soon be fulfilled. In the United States, William McKinley, who advocated for a Hawai‘i "controlled" by the United States during his presidential campaign, replaced Grover Cleveland as President.[817] On June 16, 1897, with Secretary of State John Sherman in attendance, the republic's annexation commissioners signed a new annexation treaty to be submitted to the U.S. Senate for ratification

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[813] John H. Bay and Jane vanSchaick, *Analysis of the 999 Year Homestead Lease Program: Current Problems and Possible Solutions* (1994), p. 12.
[814] Report of J.F. Brown, Agent of Public Lands, in *The Report of the Hawaiian Commission* (1898), p. 46.
[815] Van Dyke, *Crown Lands*, p. 197, Table 9. Van Dyke notes that because the program was open only to citizens, denizens, and those with special rights of citizenship (those who had rendered substantial service in support of the provisional government), it was intended to benefit immigrants from the United States and Europe, as well as Native Hawaiians, possibly to gain support for the republic from landless Hawaiians. *Id.*, pp. 192-193.
[816] Kuykendall & Day, *Hawaii: A History*, p. 183.
[817] Osborne, *Annexation Hawaii*, p. 85.

by the necessary two-thirds majority.[818] In Hawai‘i, President Dole called for a special session of the republic's Senate to ratify the document.

On September 7th, the U.S. Minister to Hawai‘i, H.M. Sewall, as well as Dole and his cabinet, were given a set of resolutions that had been adopted at a mass meeting of Native Hawaiians the day before.[819] The resolutions, representing the views of Native Hawaiians, made two essential points: first, that Hawaiians "were largely against annexation" and second, that "they wanted independence under a monarchy."[820] Ironically, at the same time the resolutions were being presented, the republic's senate was ratifying the annexation treaty.[821]

The treaty was not so readily welcomed in the United States Senate. A coalition of U.S. sugar interests, which feared competition from Hawaiian sugar; organized labor, which opposed the contract labor system in the islands; and anti-expansionists mounted a vigorous campaign against annexation.[822] The anti-expansionists framed their arguments in historical, constitutional, moral, and racial terms. Perhaps the most principled argument raised by opponents to the annexation treaty was that the United States must adhere to its republican tradition and forgo a policy of imperialism.[823]

The anti-annexationist camp held a wide range of attitudes concerning the racial makeup of the islands' population, where whites comprised a minority. In spite of the spectrum of opinion on the suitability of Hawai‘i's indigenous people for American citizenship, "the critics of

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[818] *See* Tom Coffman, *Nation Within: The History of the American Occupation of Hawai‘i* (Kāne‘ohe, Hawai‘i: Epicenter, rev. ed. 2009), pp. 245-250, for a discussion of the events leading up to the signing of the 1897 treaty.

[819] Russ, *Hawaiian Revolution*, p. 198. *See* Noenoe K. Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham & London: Duke Univ. Press, 2004), pp. 146-47, describing the Hui Aloha ‘Āina meeting on September 6, 1897, attended by thousands of "po‘e aloha ‘āina" or people who love the land.

[820] Russ, *Hawaiian Revolution*, p. 198.

[821] *Id*.

[822] *See* Osborne, *Annexation Hawaii*, pp. 85-95 (discussing the arguments against annexation advanced by sugar and labor interests).

[823] *Id*. at 95.

empire were nearly unanimous in their belief that no transfer of sovereignty should take place without the consent of the natives of Hawaii."[824]

Native Hawaiians continued to express their opposition to annexation. Native Hawaiian Professor of Political Science Noenoe Silva translated Hawaiian language newspapers and publications of the period, which document the many ways in which Native Hawaiian men and women organized to protest the provisional government and oppose annexation. In Hawaiʻi, according to Professor Silva, a massive petition drive against this treaty became the centerpiece of Native Hawaiian organizing efforts from Hawaiʻi to Kauaʻi. The Palapala Hoʻopiʻi Kūʻē Hoʻohuiʻāina, or Petition Protesting Annexation, read:

> We, the undersigned, native Hawaiian citizens and residents . . . who are members of the Hawaiian Patriotic League of the Hawaiian Islands, and others who are in sympathy with the said League earnestly protest against the annexation of the said Hawaiian Islands to the said United States of America in any form or shape.[825]

The Hui Aloha ʻĀina (Hawaiian Patriotic League) of men and women collected 21,000 signatures. The Hui Kālaiʻāina, which had a similar petition calling for the restoration of the monarchy, collected 17,000 signatures.

Senator John Morgan and four congressmen, who went to Hawaiʻi to rally support for the Treaty of Annexation in September and October 1897, met mass opposition as thousands of Native Hawaiians rallied at Palace Square against the treaty. A Hawaiian delegation—composed of leaders of the poʻe aloha ʻāina (nationalists/patriots) —went to Washington, D.C. to represent the views of the Hawaiian people.[826] They carried two sets of petitions, submitted by the Hui Aloha ʻĀina and Hui Kālaiʻāina, with a total of almost 38,000 signatures opposing annexation.

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[824] *Id*. at 100.
[825] Cited in Noenoe K. Silva, "Kanaka Maoli Resistance to Annexation," in *ʻŌiwi: A Native Hawaiian Journal*, Inaugural Issue (Honolulu: Kuleana ʻŌiwi Press, December 1998), p. 59.
[826] The four members of the delegation were John Richardson, William Auld, James Kaulia and David Kalauokalani. Silva, *Aloha Betrayed*, pp. 157-58.

The Hui Aloha ʻĀina petitions protested annexation while the Hui Kālaiʻāina petitions called for restoration of the monarchy. Senator George Hoar, who met with the delegation, read the text of the Hui Aloha ʻĀina petitions, which had garnered over 21,000 signatures, into the Congressional Record during the Senate debate on annexation.[827]

When the delegation arrived on December 6, 1897, they were informed that 58 senators were prepared to vote for the treaty, just two votes short of the 60 needed for its ratification. By the time the delegates left Washington, D.C. on February 27, 1897, only 46 senators were prepared to vote for the treaty.[828] The delegation and the queen had successfully defeated the treaty of annexation for Hawaiʻi. No annexation treaty ceding the sovereignty and lands of Hawaiʻi ever secured the U.S. Senate's two-thirds approval and subsequent ratification by the President.

Annexation Asserted By Joint Resolution

During the spring of 1898, events in Asia helped reinvigorate the annexation movement in Hawaiʻi. The Spanish-American war, the prospect for increased trade in the Far East, and developments in China where the European powers were scrambling for spheres of influence, heightened Hawaiʻi's strategic profile. After Commodore Dewey's victory in Manila on May 1st, many annexationists insisted that the United States needed to annex Hawaiʻi in order to have a Pacific base from which to send supplies and reinforcements to American forces in the Philippines.[829] Pearl Harbor's military importance had long been recognized, and securing access to it became a primary objective of annexation. Although America had rights to a base at

[827] *Id.*, pp. 158-59. The Hawaiʻi delegation, in consultation with Queen Liliʻuokalani, made the decision to submit only the Hui Aloha ʻĀina's petitions because "they did not want to appear divided or as if they had different goals." *Id.* David Kalauokalani, representing the 17,000 people who had signed the Hui Kālaiʻāina's petitions, formally endorsed the Hui Aloha ʻĀina's petitions.
[828] *Id.*
[829] Osborne, *Annexation Hawaii*, pp. 115-16.

Pearl Harbor, those rights derived from a treaty that could be abrogated. Annexationists argued that it was necessary for the United States to have the absolute and permanent control over Pearl Harbor, which only annexation could provide.[830]

On May 4, 1898, Representative Francis G. Newlands of Nevada introduced a joint resolution of annexation in the House of Representatives. The constitutionality of annexing a territory by way of resolution rather than by treaty was hotly debated in Congress.[831] Nevertheless, on June 15, 1898, by a vote of 209 to 91, the House approved the Newlands resolution. On July 6, 1898, the Newlands measure passed the Senate by 42 to 21, with 26 abstentions. President McKinley signed the resolution the very next day. The formal transfer of sovereignty occurred in ceremonies on August 12, 1898 at ʻIolani Palace.

Most Native Hawaiians stayed home that day. Once the Hawaiian flag was lowered and the American flag was raised, there was widespread weeping among those who did attend the ceremonies.[832] Although all members of the royal family were invited to the event, none attended. The royal family, instead, gathered at the home of Queen Liliʻuokalani at Washington Place where a photographer caught the strong emotions of the day.[833]

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[830] *See, e.g.*, *31 Congressional Record*, p. 5981 (June 15, 1898).

[831] The primary argument against the resolution was that only under the constitutional treaty-making power could the United States gain territory. To acquire Hawaiʻi by a legislative act, a joint resolution, would usurp the power of the Senate and executive to act in matters relating to acquisition of new territories and set a dangerous precedent. Although annexationists pointed to the acquisition of Texas in 1845 by joint resolution as precedent, most anti-annexationists believed that Texas had been brought into the Union legally under Congress' power to admit new states. Statehood was not proposed for Hawaiʻi so the Texas acquisition had no precedential value. Moreover, in the Texas situation, the joint resolution was approved by a plebiscite held in Texas. No plebiscite was proposed for Hawaiʻi. One Senator offered an amendment to the Newlands measure providing for such a vote by all adult males, but it was defeated. See *31 Congressional Record*, p. 6018 (June 15, 1898); p. 6149 (June 20, 1898); p. 6310 (June 24, 1898); pp. 6709-12 (July 6, 1898) for debate and vote on the resolution.

[832] Gavan Daws, *Shoal of Time: A History of the Hawaiian Islands* (Honolulu: Univ. of Hawaii Press, 1968), p. 291; Andrew Lind, *Hawaii, The Last of the Magic Isles* (London: Oxford Univ. Press, 1969), p. 88.

[833] The photograph by Frank Davey appears on the cover of Vol. 32 of *The Hawaiian Journal of History* (Honolulu: Hawaiian Historical Society, 1998). A note about the photographer explains, "[a] prolific

For a period of two years, the terms of Hawai'i's incorporation into the U.S. and how it was to be governed were negotiated and written into the Organic Act of 1900, which served as the constitution for the Territory until statehood in 1959.

Under the terms of the Joint Resolution, the Republic of Hawai'i ceded its self-declared right of sovereignty of the Hawaiian Islands to the United States.[834] The republic also ceded and transferred to the United States its claimed ownership of the public lands – Government and Crown lands – including buildings and other public property. On its part, the Congress of the United States, through the Newlands Joint Resolution, accepted, ratified and confirmed the cession. It annexed Hawai'i as a part of the United States and vested itself with the property and sovereignty rights over Hawai'i.

The Government and Crown lands were estimated to have comprised almost 1.8 million acres at a value of at least $5.5 million.[835] The Joint Resolution, allegedly ceding absolute title to the lands, declared that:

> The existing land laws of the United States relative to public lands shall not apply to such land 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*.[836]

The Joint Resolution set up an interim government for the islands and laid down some governing guideposts. It provided that all preexisting laws not inconsistent with federal laws,

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photographer, Davey had worked in London, Paris, and California before coming to Hawai'i in 1897. He remained for three years, returning to California in 1901." The photograph is in the Hawaiian Historical Society collection.

[834] Joint Resolution of Annexation of July 7, 1898, 30 Stat. 750.

[835] J.F. Brown, Agent of Public Lands, reported to the Hawaiian Commission, which had been appointed pursuant to the Joint Resolution of Annexation, a total of 1,772,640 acres of public land conservatively valued at $5,581,000, as of August 12, 1898. THE REPORT OF THE HAWAIIAN COMMISSION 45, Appendix 1 (1898).

[836] Joint Resolution of Annexation (emphasis added).

treaties, or the U.S. Constitution would remain in effect until Congress could provide for a territorial government. The Joint Resolution also voided any existing treaties that Hawaiʻi had with foreign nations. U.S. treaties would govern Hawaiʻi's international relations from then forward. In addition, the Resolution declared that all immigration of Chinese into Hawai'i was to stop and forbade any Chinese from entering the United States via the Hawaiian Islands.[837]

The Joint Resolution of Annexation effectuated a transaction between the Republic of Hawaiʻi and the United States. The Native Hawaiian people never directly relinquished their claims to sovereignty as a people or over their national lands to the United States, not through their monarchy nor a plebiscite or referendum.[838]

The Organic Act – Hawaiʻi as a U.S. Territory

In 1898, President McKinley formed a commission to draft legislation that would incorporate Hawaiʻi as a Territory of the United States. His appointed commissioners were: Sanford B. Dole, President of the Republic of Hawaiʻi; Walter F. Frear, who later became the first chief justice of the Territory's Supreme Court; Senator Shelby Moore Cullom from Illinois, who had been instrumental in imposing national regulation on railroad monopolies in 1886; Senator John Tyler Morgan from Alabama, a member of the Foreign Relations Committee whose hearings in 1894 exonerated Minister Stevens and U.S. troops of any wrongdoing or censure for their role in the overthrow of the monarchy; and Representative Robert R. Hitt from Illinois, who had previously served in the diplomatic corps.[839] These men drafted the Hawaiian Organic Act, which would provide the new territory with a more permanent government. It was passed by the

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[837] *Id.*
[838] Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii, and to Offer an Apology to Native Hawaiians on behalf of the United States for the Overthrow of the Kingdom of Hawaii, Pub. L. 103-150 (Nov. 23, 1993), whereas clause no. 39.
[839] Robert M.C. Littler, *The Governance of Hawaii* (Palo Alto: Stanford Univ. Press, 1929), p. 54.

56th Congress of the United States on April 27, 1900 and signed by the President on April 30, 1900. The Act defined the political structure and powers of the Territorial Government and its relationship to the United States.

The Organic Act established a government structurally similar to that of many states in the Union. The differences lay in fact that the federal government held a more substantial degree of authority over Hawai‘i than it did over the states. For example, Congress, having erected the territorial government, could abolish it and substitute it with some other form. The President, with the consent of the Senate, appointed principal territorial officers—the governor and the secretary, who was to assume the governor's post should he ever be absent.[840] The governor appointed heads of the various territorial departments.[841] The President of the United States appointed judges of the territorial supreme court, the circuit court, and the federal district court, while district magistrates were appointed by the chief justice of the territorial cupreme court.[842] A bicameral Legislature was established with universal suffrage for anyone who had held citizen status under the republic. Although the Legislature could pass laws on substantially the same range of subjects as state legislatures, Congress possessed the right to amend or invalidate them.[843] The act also assigned Hawai‘i a non-voting delegate to Congress.[844]

Before the Organic Act was finally approved, Congress conducted debates over a number of the provisions. The most significant issues for the Hawaiian people included: an amendment to award Queen Lili‘uokalani $250,000 for her claim to the Crown lands; provisions relating to the disposition of Hawai‘i's ceded lands; and the provision to enfranchise Native Hawaiians by

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[840] Organic Act, Act of April 30, 1900, ch. 339, §§ 66, 69, 31 Stat. 141 (1900).
[841] *Id*. Section 80.
[842] *Id*.
[843] *Id*. Section 55. *See* Inter-Island Steam Nav. Co. v. Territory, 305 U. S. 306 (1938) (noting that Congress may abrogate territorial laws or legislate directly for territories).
[844] *Id*. Section 85.

doing away with any property qualifications that had restricted the vote for senators in the past. These issues deserve closer examination because they defined the political agenda of Native Hawaiians during the early years of the Territory.

The Queen's Claim to the Crown Lands[845]

In a protest signed by the queen on December 16, 1898, she:

> [E]arnestly and respectfully, protest[ed] against the assertion of ownership by the United States of America of the so-called Hawaiian crown Lands amounting to about one million acres and which are my property, and I especially protest against such assertion of ownership as a taking of property without due process of law and without just or other compensation.

The queen called upon the President, Congress, and people of the United States to "do justice in this matter and to restore to me this property, the enjoyment of which is being withheld from me by your Government under what must be a misapprehension of my right and title." The protest was filed with the Senate, House of Representatives, and Secretary of State.[846]

During the congressional debates over the passage of the Organic Act in the spring of 1900, Senator Clark of Wyoming introduced an amendment to compensate Queen Lili'uokalani $250,000 for her claim to the Crown lands. He pointed out that traditionally all of the revenues from the Crown lands were reserved for the exclusive use of the reigning sovereign to cover his or her expenses. Prior to the overthrow the revenues averaged $50,000 per year. Provisional government officials had confiscated those lands, subsumed them into a commingled class of

[845] For a detailed discussion of the queen's efforts to gain acknowledgement of her rights in the Crown lands, *see* Neil Thomas Proto, *The Rights of My People: Liliuokalani's Enduring Battle with the United States 1893-1917* (New York: Algora Publishing, 2009); Van Dyke, *Crown Lands*.

[846] *Id.* at 133. Proto describes several failed efforts in the U.S. Congress to provide compensation to the queen. For instance, in 1903, the Senate passed an appropriation to settle the claim, but it failed to pass in the House. On February 12 and 15, 1904, a similar bill was debated in the Senate and failed passage by a tie vote of 26 to 26.

public government lands, and began to collect the revenues from the leases for their government's treasury.

Senator Clark proposed to compensate Lili‘uokalani from the Crown lands’ revenues in exchange for her relinquishing any and all claim to those lands.[847] In debating the merits of the queen’s claim to the Crown lands, a number of senators decided that they did not want to reopen the issue of whether the United States government was culpable for the actions of the provisional government in overthrowing the monarchy and seizing the Crown lands. They defeated the amendment.[848] An effort was then made to delete the section of the Organic Act that stated that the Crown lands were free and clear of any trust or claim, in order to allow Queen Lili‘uokalani the opportunity to press her claim through the court system. This was also defeated.[849]

In its final form, section 99 of the Organic Act mirrored the language of section 95 of the republic’s constitution. Section 99 declared that the Crown lands were the property of the Hawaiian government on August 12, 1898, the date of the formal transfer of power from the republic to the United States government. It also specified that the Crown lands were free and clear from any trust or claim on the lands or its revenue generating agreements. The intent of this

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[847] U.S. Congress, 56th Congress, 1st Session, 1899 - 1900. *Congressional Debates on Hawaii Organic Act, Together with Debates and Congressional Action on Other Matters Concerning the Hawaiian Islands*. (photostat reproduction from the Congressional Record, v. 33 pts. 1 - 8) (hereinafter referred to as *Congressional Debates on Organic Act*), p. 2442.

[848] *Id.*, pp. 2442 -2449.

[849] *Id.*, p. 2449. The queen eventually brought suit against the United States to recover the value of “a vested equitable life interest” in the Crown lands. In 1910, the U.S. Court of Claims, relying upon the earlier Hawai‘i Supreme Court decision in *Estate of Kamehameha IV* and the Act of January 3, 1865, determined that the Crown lands belonged to the office of the crown and not to the individual monarchs. The court upheld the confiscation of the Crown lands and their eventual transfer to the United States by concluding:

> The crown lands were the resourceful methods of income to sustain, in part at least, the dignity of the office to which they were inseparably attached. When the office ceased to exist they became as other lands of the Sovereignty and passed to the defendants as part and parcel of the public domain.

Liliuokalani v. U.S., 45 Ct. Cl. 418, 428 (1910). *See generally*, Proto, *The Rights of My People*.

section was to eliminate any claim to the Crown lands by Queen Liliʻuokalani or heirs of the Hawaiian monarchs and any other inhabitant of Hawaiʻi.[850]

For almost a decade thereafter, the queen sought compensation from the United States for the taking of the Crown lands. She continued to maintain that she had never recognized the authority of the provisional government or the Republic of Hawaiʻi over the Crown lands. Despite Queen Liliʻuokalani's persistent efforts, Congress never acknowledged her claims nor offered compensation for the injustices perpetrated against her. Without such a settlement, the queen never relinquished her traditional claim to the Crown lands.[851]

The Public Lands – The Crown and Government Lands

The Organic Act confirmed the cession of public lands to the United States and provided specific laws to dictate how they would be administered.[852] Section 91 of the Organic Act, one of several sections dealing directly with lands, stated in relevant part:

> [E]xcept as otherwise provided, the public property ceded and transferred to the United States by the Republic of Hawaii under the joint resolution of annexation . . . shall be and remain in the possession, use, and control of the government of the Territory of Hawaii, and shall be maintained, managed, and cared for by it, at

[850] Section 99 of the Organic Act stated:

> That portion of the public domain heretofore known as Crown land is hereby declared to have been, on the twelfth day of August, eighteen hundred and ninety-eight, and prior thereto, the property of the Hawaiian government, and to be free and clear from any trust of or concerning the same, and from all claim of any nature whatsoever, upon the rents, issues, and profits thereof. It shall be subject to alienation and other uses as may be provided by law.

[851] In a petition signed by Queen Liliʻuokalani in Honolulu in 1905, which is in the Delegate Kalanianaole petitions file at the Hawaiʻi State Archives, the queen offered to relinquish all of her claims if a settlement was reached: "That petitioner is advised and therefore respectfully suggests the sum of ten million dollars as a proper and reasonable amount in settlement for all the damages and losses sustained by her, and in consideration therefore she hereby solemnly agrees to and with the United States of America to relinquish all her claims [sic] of whatsoever kind or nature."

[852] Joint Resolution of Annexation.

> its own expense, until otherwise provided for by Congress, or taken for the uses and purposes of the United States by direction of the President or of the Governor of Hawaii.[853]

Section 73 of the Organic Act provided that the proceeds from the sale, lease, or other disposition of these ceded lands should be deposited in the Territory's treasury for "such uses and purposes for the benefit of the inhabitants of the Territory of Hawaii as are consistent with the joint resolution of annexation."[854]

Although the republic had ceded title of Hawai'i's public lands to the United States, both the Joint Resolution of Annexation and the Organic Act recognized that these lands were impressed with a special trust while under the federal government's proprietorship.[855] In fact, it has been suggested that Hawai'i's ceded lands never became an integral part of the federal public domain. Rather, due to their unique status, the United States received legal title to the land, while the beneficial title rested with the inhabitants of Hawai'i:

> The territorial government had in effect become a conduit of Congress. For all practical purposes the ceded lands had not changed hands. Building on Hawaii's existing land administration scheme, Congress prescribed several significant changes in the Organic Act to insure widespread use of public lands for settlement and homesteading. Otherwise, the territory was given direct control over the public lands and was authorized to dispose of them as a governmental entity. . . . The federal government continued to hold absolute title to the public domain, but did so only 'in trust' for the islands' people.[856]

Nevertheless, the federal government also reserved the right to withdraw lands for its own use.[857]

These policies dealing with the lease, sale, and use of the ceded public lands proved to be the most important and controversial sections of the Organic Act. Congress sought to open up the

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[853] Organic Act, Section 91.
[854] *Id*. Section 73(4)(c).
[855] U.S. Op. Att'y Gen. 574 (1899) characterized the Joint Resolution as creating "a special trust" for the benefit of Hawai'i's people.
[856] Cheryl Miyahara, Note, *Hawaii's Ceded Lands*, 3 U. Haw. L. Rev. 101, 121 (1981).
[857] Organic Act, Section 91.

public lands for homesteading. They hoped to attract settlers from the U.S. to Hawai‘i who would aid in the development of a “healthy American community of men who themselves till the farms they own.”[858] This demographic would provide the foundation for a white middle class in Hawai‘i. At the same time, as discussed above, Queen Lili‘uokalani continued to contest the right of the U.S. government to possess and control the Crown lands. Further undercutting the homesteading scheme was Hawai‘i’s sugar planter elite, who saw small scale homesteading as detrimental to their business interests.

During the Organic Act debates, Congress had expressed concern over the concentration of Hawai‘i’s land ownership in a few estates and plantations. Several of the Organic Act’s provisions placed restrictions on the size of private landholdings that could be owned or under public lease, and put a cap on leasing period terms. Other provisions defined how the public lands were to be managed for the promotion of homesteading and small farming.

Although existing vested rights in real estate were not to be affected, Congress sought to combat the concentration of land ownership in Hawai‘i with section 55 of the Organic Act. This provision prohibited a corporation, domestic or foreign, from acquiring and holding real estate in Hawai‘i in excess of 1,000 acres.[859] In proposing that this section be incorporated into the Organic Act, Senator Newlands explained, “this proposition reaches the vital question whether we shall allow in those islands a system which will gradually monopolize all the lands in large

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[858] U.S. Congress, Senate Committee on Pacific Islands and Porto Rico, *Hawaiian Investigation: Report of Subcommittee on Pacific Islands and Porto Rico on General Conditions in Hawaii* (Washington, D.C.: Government Printing Office, 1903), Part III, p. 163.

[859] Section 55 of the Organic Act dealt primarily with the legislative power of the Territory, but contained the following clause:

> *Provided*, That no corporation, domestic or foreign, shall acquire and hold real estate in Hawaii in excess of one thousand acres; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States, but existing vested rights in real estate shall not be impaired.

holdings either in the hands of individuals or of corporations, the mass of the population being attached to the soil in a semi-servile capacity without right to a foot of land upon which they stand."[860]

The disposition of the ceded public lands, however, held far greater potential for distributing land to the common person. Under the republic's 1895 Land Act, the public lands were to be opened for homesteading by the general public. The 1895 Land Act also made large tracts of land available to plantations and ranches through general leases. These were limited to 21 years and contained a clause allowing the government to take possession of any part of the leased land at any time for the purpose of promoting homesteading settlement.[861]

Congress believed that the 1895 Land Act would prioritize the settlement of the land by small independent farmers over their lease or sale to plantations and ranches. For this reason, it left the republic's land law in place and did not impose the more expansive U.S. homesteading laws upon the Territory of Hawai'i, with one key exception: Congress limited the length of the general leases to five years.[862]

The limits placed upon the leasing of the public lands and the policy to promote homesteading by small independent farmers created problems for the planters and the ranchers who were accustomed to leasing enormous tracts of public lands at low rents. The ability to utilize land through long-term lease agreements rather than through fee simple purchase had given the planters the flexibility to invest available capital in other areas.[863] In addition, the

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[860] *Congressional Debates on Hawaiian Organic Act*, p. 3812.
[861] House Rep. No. 305 to Accompany H.R. 2972, *Government for the Territory of Hawaii*, App. I, p. 106.
[862] Section 73 of the Organic Act confirmed the existing laws of Hawai'i relating to public lands and replaced several officials with the Commissioner of Public Lands. Section 73 also stated: "And no lease of agricultural land shall be granted, sold, or renewed by the government of the Territory of Hawaii for a longer period than five years until Congress shall otherwise direct."
[863] Horwitz, *Public Land Policy in Hawaii,* p. 21.

unrestricted assignment of public land leases meant that they could secure the loans that would be used to purchase plantation equipment or invest in other innovations. The established practice under the kingdom and the republic to issue leases for periods of 15 or more years made the amortization of these debts possible.

Reducing the lease period to five years prevented the use of these public lands for collateral. This deterred many plantations from upgrading their operations with capital intensive, labor saving devices. Planters were also reluctant to make improvements upon leased public lands, which would revert to the government after the lease expired and could then be lost to homesteading programs.[864] Thus, the planters and ranchers continually pushed for changes to the public lands laws until 1921, when they were amended in conjunction with the establishment of the Hawaiian Home Lands Program.

The effort by Congress to prevent the further concentration of land under the plantations and to promote homesteading failed. Hawaiʻi's governors did nothing to promote general homesteading of the public lands. Nor did they prosecute the plantations for circumventing the 1,000-acre limitation, which was accomplished through agreements with small corporations and individuals.[865] From 1900 to 1920, when the land laws were amended, the area of land

[864] *Id*., pp. 21-22.

[865] Marylyn M. Vause, *Twenty Years of Contest Over the Public Lands 1900–1921* (Unpublished Manuscript in the Hawaiian/Pacific Collection of Hamilton Library, University of Hawai'i, Honolulu, 1962), p. 139 - 140. Vause cites a letter to the editor of the *Pacific Commercial Advertiser* dated July 17, 1918, from a homesteader who was a former employee of the Territorial Agricultural Experiment Station. He wrote, "The present land laws are not enforced. It is well known throughout the Territory that one can fulfill the homesteading requirements in a perfunctory way, and it will be passed. There is no efficient inspection of what is going on on the homesteads. The knowledge that this is so encourages large land owners and corporations to ignore the third paragraph of the Organic Act, Section 73 [prohibiting the transfer of title to leases or to lease public lands to any corporation or alien]."

cultivated in sugar almost doubled from 128,000 acres to 236,500 acres. The average size of the plantations steadily increased from 2,462 acres in 1900 to 4,548 acres in 1920.[866]

Voting Restrictions

Congress seriously considered imposing a property qualification to vote for the Territorial Senate as a way of giving the Caucasians in Hawai‘i some means of offsetting the voting majority held by Native Hawaiians.

Native Hawaiians comprised the majority of voters under the Constitutional Monarchy, and they could not be denied citizenship or the right to vote for the Territorial Government. However, congressmen from the South balked at giving brown-skinned Hawaiians the power to control the legislature of an "American territory." Requiring that voters for the Territorial Senate own $3,000 in real property or earn an income of $600, just as the 1887 Bayonet Constitution had done, would effectively turn control of at least one house of the legislature over to Caucasians. The following statements by U.S. Senators Platt and Tillman typified the white supremacist sentiments of the proponents for property qualifications:

> *Senator Platt of Connecticut*: Only an educational qualification is required as to members of the House of Representatives. The object of that - and I do not propose to disguise it - is, as I have said, to perpetuate the government in the hands of the people already there and exercising governmental power.
>
> When I was interrupted I was saying that they were the people who had redeemed the islands from savagery and barbarism, from its original cannibalism, and who have brought it up, step by step, to a position where a republican form of government had been established and where it was desirable that it should be maintained, and maintained by those best qualified to administer it.
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> *Senator Tillman of South Carolina*: I would just remark right there that the Senator possibly misunderstands my position. I do not object to having the

[866] In 1900, sugar was planted on a total of 128,000 acres. By 1910, sugar was planted on a total of 214,000 acres and the average size of a plantation was 3,695 acres. John Anthony Mollett, *Capital in Hawaiian Sugar: Its Formation and Relation to Labor and Output, 1870-1957* (Honolulu: 1961), pp. 27-34.

> Government of the Hawaiian Islands remain in the possession of the white people there, because I believe in white supremacy; and I believe that white supremacy in the Hawaiian Islands is necessary to good government, just as I believe that white supremacy in South Carolina is necessary for good government in that State.[867]

Dr. Sereno E. Bishop, D.D., son of an American Protestant missionary, an ordained minister, teacher and editor of the monthly paper, *The Friend* from 1887 to1902, published an article in the *New York Independent* about Hawai'i in which he criticized the liberals in Congress who opposed imposing a property qualification to vote for Hawai'i's Senate.[868] He praised the use of the property qualification in Hawai'i adopted in the 1887 Bayonet Constitution and described the majority of Native Hawaiian male voters as shiftless:

> We have just cause just now for the most serious apprehension as to the kind of government that Congress is about to give Hawaii. For nearly thirteen years, by means of a property qualification for Senatorial voters, we have been able to obtain Legislatures that were fairly exempt from gross corruption, although a considerable proportion of the Lower House, elected by general suffrage, was bad. . . .
>
> Very justly, the native Hawaiians are to retain their equal franchise and share in the government. . . . But while a large minority of Hawaiians possess enough character and intelligence for voters, that is certainly not true of the majority, who are dissolute and shiftless.
>
> The proposed qualification for Senatorial voters, to possess $600 income or $1500 property, would embrace all of the better working class, whether native or white. It would exclude mainly the incapable and unthrifty.[869]

His position on the franchise question merits attention since it reflected the thinking of Hawai'i's ruling elite on the issue. The *Paradise of the Pacific* took a liberal stance on the issue. The January 1900 issue of the magazine pointed out that the percentage of Native Hawaiians educated in the English language was higher than that of Americans in the United States and that

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[867] *Pacific Commercial Advertiser* (*P.C.A.*), March 13, 1900, p. 2 (both quotes).
[868] American historian Ralph S. Kuykendall considered Dr. Bishop to be "one of the most prolific and most controversial commentators on political, social, and religious conditions and developments, and on natural phenomena in Hawaii." Kuykendall, *The Hawaiian Kingdom, Vol. III*, p. 277.
[869] *P.C.A.*, April 11, 1900, p. 9.

Native Hawaiians were more experienced in politics and more likely to vote than many American citizens. According to the *Paradise of the Pacific*, Native Hawaiians resented annexation but would ultimately accept U.S. rule if treated justly:

> The Hawaiians are a liberty-loving people, and took great pride in their independence, which was taken away from them by force. Hawai'i was annexed to the United States by act of conquest, and without the consent of the people, yet, they are in every way fitted to become intelligent American citizens . . .
>
> They can be depended upon to be law-abiding and intelligent American citizens. The nature of the Hawaiian is intense, but he is as polite as a Frenchman. To the brusque American, he seems to be lacking in resentment, but deep down in his heart he feels the wrong done him. Yet, the strongest trait in Hawaiian character is a keen sense of justice, and he is always philosophical. Having once accepted the inevitable, he looks for justice from the oppressor and, if it is accorded, will be contented.[870]

Finally, on April 20, 1900, the *Pacific Commercial Advertiser* reported that Congress had decided on universal male suffrage rather than the imposition of property requirements to vote for Senate. In an editorial, it criticized Congress and warned Kānaka Maoli (Native Hawaiians) against using their voting majority to control Hawaiʻi, saying: "When a color line is drawn against the whites the people who draw it are made to mourn the circumstance. If color is to rule any subdivision of American territory that color will be white." In its criticism of Congress, the editor wrote:

> The [territorial government] bill was amended to throw the voting privilege wide open. The property qualification for Senate was denounced as un-American.
>
> The proposed suffrage will vest a majority of votes in a class of aborigines and their natural allies who would even restore the throne of Hawaii if they were able to do so; and who, in the Legislature and the field of city government, will carry out, if their present boasts and threats are to be trusted, an anti-American policy of spoliation and revenge. That is the prospect which Congress, in its mistaken zeal, is opening up before the pioneers of American progress in the islands.[871]

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[870] *Paradise of the Pacific*, January 1900, p. 9.
[871] *P.C.A.*, April 20, 1900, p. 4.

Native Hawaiian royalist George Markham, who had been involved in the 1889 Wilcox Rebellion, wrote a letter to the editor of the *Pacific Commercial Advertiser* responding to those who disparaged Native Hawaiian voters:

> When Congress assumed our independence, flag and sovereignty which was ever so dear to us, we Hawaiians became by such act an American citizen whether we disavowed it or not, and we as citizens of such will exercise all the rights and privileges as a body politic with discretion, moulding and wielding that power in the spirit of true "republicanism" and the spirit of true democracy . . . Men of intelligent education and of progressive ideas will be selected from the native element. Men that has the courage of convictions to stand steadfast and firm, that has no strings tied to them, nor loaded down with burden of debt . . . We do detest dishonest scoundrels and imbecile cowards of our elements that are not able to turn an honest penny or a day's labor.[872]

Summary

After annexation in 1898, Grover Cleveland wrote to former Secretary of State Richard Olney, "Hawaii is ours. As I look back upon the first steps in this miserable business and as I contemplate the means used to complete the outrage, I am ashamed of the whole affair."[873]

Although Hawai'i's government and lands had passed to the control of the United States, for Native Hawaiians, Lili'uokalani remained the mō'ī wahine (queen) until her death in 1917. She embodied the sovereignty and independence of the nation. In her biography of Lili'uokalani's life, Helena G. Allen recounts that when the queen returned to Hawai'i on August 2, 1898, weary after her failed effort to defeat annexation, she was greeted by crowds of her people at the harbor, in silence and sorrow, and with expressions of aloha and tears. She returned to Washington Place, to again find throngs of Native Hawaiians waiting in the courtyard. After changing out of her traveling clothes, she sat down near the doorway, and held out her hands to welcome her people. "Then the years were swept away and for the first time in nearly a hundred

[872] *P.C.A.*, April 24, 1900, p. 7.
[873] Osborne, *Annexation Hawaii*, citing Letter of Cleveland to Olney, July 8, 1898, p. 121.

years, the native Hawaiians fell on their knees before the *alii*, to creep up the steps of Washington Place veranda, to kiss the hand of *moi wahine*. . . . There was no kapu that required . . . people to give such honor to Liliuokalani. It was not 'obeisance' to royalty. It was *aloha* for *moi wahine*."[874]

The seven years from 1893 to 1900 brought momentous changes for the Native Hawaiian people. The Constitutional Monarchy had been lost and with it the primary vehicle through which Native Hawaiians exercised and expressed their inherent sovereignty. Also lost were Hawai'i's national lands. Native Hawaiians were now U.S. citizens, an indigenous minority within the United States. Nevertheless, although the formal mechanism of the government established by the ali'i (chiefs) had been usurped, Native Hawaiians would persist in participating in the governance of Hawai'i as an indigenous people with their own political and cultural organizations of self-governance.

The next chapter examines the persistence of Native Hawaiian nationalist leaders in playing a major role in the governance of the Territory of Hawai'i to ensure that the national lands and resources of the Native Hawaiian homeland would support the well-being of the indigenous people of the islands. Nationalist songs such as *Kaulana Nā Pua,* quoted at the beginning of this chapter continued to be sung as an inspiration and call to continue to rally around the queen as a symbol of the leader of the Native Hawaiian people, as evident in the last verse:

Mahope mākou o Lili'u-lani	We back Lili'u-lani
Aloa'a 'ē ka pono a ka 'āina	Who has won the rights of the land
(A kau hou 'ia e ke kalaunu)	(She will be crowned again)
Ha'ina 'ia mai ana ka puana	Tell the story

[874] Allen, *Betrayal of Liliuokalani*, p. 363.

Ka poʻe i aloha i ka ʻāina. Of the people who love their land.[875]

[875] *Na Mele O Hawaiʻi Nei*, pp. 62-64.

Chapter Eight: Territory of Hawai‘i and Indigenous People

Generation 31 [Generation 126] of Native Hawaiian Governance, 1900 - 1922

Nā Ali‘i	**The Chiefs**
Aloha nā ‘ahahui o nā ali‘i	Hail societies of chieftains
Nā ali‘i mai nā kūpuna mai	Chieftains from our ancestors
E pa‘a i nā ‘ōlelo kaulana	Remember the famous saying
E hele a moe i ke ala	Go and sleep upon the byways
Hū wale a‘e nā ho‘omana‘o ‘ana	Memories come
No nā ali‘i kaulana	Of the famous chiefs
Ua pau, ua hala lākou	They are gone, they have passed
A koe nō nā pua	And their flowers [descendants] survive
Ua pau, ua hala lākou	They are gone, they have passed
A koe nō nā pua	And their flowers [descendants] survive
E lei i ka lei ha‘aheo o Hawai‘i	Wear the cherished leis of Hawai‘i
Ka wehi ho‘i o nā ali‘i i hala	Adornment of departed chiefs
E pa‘a ka mana‘o me ka lōkahi	May all unite in recalling
E mau ke ea o ka ‘āina i ka pono	That the life of the land is perpetuated in righteousness
He ali‘i ‘o ka lani, ua kaulana	Royal chief, famous
Ka Napoliona o ka Pākīpika	Napoleon of the Pacific
E lei i ka wehi ha‘aheo o Hawai‘i	Wear the cherished adornments of Hawai‘i
Nā hulu mamo like ‘ole	The mamo feather leis
E lei i ka wehi ha‘aheo o Hawai‘i	Wear the cherished adornments of Hawai‘i
Nā hulu mamo like ‘ole	The mamo feather leis[876]

Samuel Kuahiwi composed this song around 1928, by which time the American colonial system had undermined the expression and practice of the Hawaiian language and culture in Hawai‘i’s schools and the Territorial Government. By 1928, Queen Lili‘uokalani, Prince Jonah Kūhiō Kalaniana‘ole, and many of the chiefly descendants of Generation 31 [Generation 126] had passed away. This song was an appeal to existing Native Hawaiians to honor the departed chiefs, especially Kamehameha I, and to respect and be proud of the Hawaiian culture and

[876] Samuel Elbet and Noelani Mahoe, *Nā Mele o Hawai‘i Nei: 101 Hawaiian Songs* (Honolulu: University of Hawaii Press, 1970), p. 79.

heritage. This chapter describes how Native Hawaiian national leaders, as exhorted in this song, did indeed persist in exercising the inherent right of governance of the Native Hawaiian people, as their chiefs had done in the generations preceding them.

Overview

Throughout the years following the 1893 coup d'état, Queen Liliʻuokalani continued to embody the Hawaiian Kingdom and Constitutional Monarchy and was considered to be the iconic leader of a parallel Native Hawaiian government of her people. Even before she passed away in 1917, Prince Jonah Kūhiō Kalanianaʻole of Generation 31 [Generation 126], who had been in line to succeed Queen Liliʻuokalani under the Hawaiian monarchy, began to assume the mantle of national leader of the Native Hawaiian people and advocate for their national rights.[877] He was affectionately called Ke Aliʻi Makaʻāinana (Prince of the Common People).

Together with the queen and the prince, Native Hawaiian national leaders who had been prominent in the government of the Hawaiian Kingdom and Constitutional Monarchy conciously decided to play major roles in the entity that the U.S. set up to govern Hawaiʻi as one of its incorporated territories. As an assertion of their inherent sovereignty, these leaders formed the

[877] Article 22 of the Bayonet Constitution of 1887 provided for the monarch to name his or her successor. The will of King Kalākaua published in the *Hawaiian Gazette*, March 10, 1891, lists the line of succession that he envisioned. The order was first, his sister, Princess Liliʻuokalani; second, his niece, Princess Kaʻiulani; third, his wife, Queen Kapiʻolani; fourth, his sister-in-law, Princess Poʻomaikelani; fifth, the eldest son of his sister-in-law, Prince David Kawānanakoa; sixth, the second son of his sister-in-law, Prince Kūhiō Kalanianaole. The latter two were to assume the name and title of Kalākaua and to be numbered in order from him. The *Hawaiian Gazette* of March 24 1891 published a proclamation dated March 9, 1891 by Queen Liliʻuokalani naming Princess Kaʻiulani as her successor. There is no similar proclamation naming any other successor. In U.S. House of Representatives, 53rd Congress, 3d Session, Ex. Doc. No. 1, Part 1, App. II, *Foreign Relations of the United States 1894, Affairs in Hawaii* (Washington: Government Printing Office, 1895) (referred to as *Affairs in Hawaii*), the constitution that Queen Liliʻuokalani intended to promulgate in January 1893, starts on p. 1047, and art. 22 regarding succession can be found on p. 1049. It shows the line of succession to be first, Princess Kaʻiulani; second, Prince David Kawānanakoa, and third, Prince Jonah Kūhiō Kalanianaʻole. Sadly, Princess Kaʻiulani died in 1899, while Prince David Kawānanakoa passed away in 1908.

Home Rula Kūʻokoʻa, the Independent Home Rule Party, to define and advocate their nationalist agenda, field Native Hawaiian candidates, and assume their rightful positions in the governance of the islands. These leaders continued to contend with missionary descendants, American business interests, and owners of plantations and ranches in the governance of Hawaiʻi. However, the overaching framework of governance and the balance of power had shifted away from the Hawaiian Kingdom and Constitutional Monarchy to the white oligarchy, which began to rule Hawaiʻi as a Territory of the United States of America, under the Organic Act of 1900.[878]

Prince Kūhiō, like the great ancestral aliʻi nui (high chiefs) who gathered leaders of knowledge and skill around them into an ʻaha or council, had a core group of colleagues with whom he worked for the welfare of the Native Hawaiian people. These national leaders of Generation 31 [Generation 126] included the University of Michigan and Yale Law School educated attorney Noa Webster Aluli; Honolulu Mayor John C Lane; Oberlin College educated minister and educator John Henry Wise; Hartford Seminary educated Reverend Akaiko Akana; as well as the widow of his brother David Kawānanakoa, College of Notre Dame (San Jose) educated Princess Abigail Campbell Kawānanakoa. Native Hawaiian leaders of Generation 31 [Generation 126] were descendants of aliʻi (chiefs), nā koa (warriors), kāhuna (skilled craftspersons, engineers, scientists, artisans, and healers) and makaʻāinana (commoners). As their predecessors had done under the Hawaiian Kingdom and Constitutional Monarchy, these aliʻi descendants fully participated in the governance of Hawaiʻi while also sustaining and forming political, civic and benevolent organizations to provide for the well-being of the Native Hawaiian people outside of the formal government.[879] These independent organizations assumed the rudimentary functions of a governing entity for the Native Hawaiian people, who under the

[878] An Act to Provide a Government for the Territory of Hawaii (Hawaiian Organic Act of 1900), Pub. L. 56-331, 31 Stat. 141 (Apr. 30, 1900).
[879] See Appendix 4. Continuing Native Hawaiian Self-Governance

framework of U.S. law, were relegated to the status of an indigenous people within the United States of America.

The official policy of the U.S. toward Hawai‘i as a territory was to assimilate the multi-ethnic people of the islands into American society through political, economic, and educational institutions. At the same time, the policy that the U.S. Congress adopted toward the Native Hawaiian people was to treat them as an indigenous people of the United States, with a special political and legal relationship like that existing between the U.S. government and American Indian tribes. These policies were implemented by the President of the United States and the Secretary of the Interior.

A singularly critical factor in the survival of the Native Hawaiian people and culture were small rural enclaves or cultural kīpuka where the majority of the population were Native Hawaiians who sustained a prolonged and uninterrupted continuity of settlement and tenure on the lands of their ancestors.[880] These rural Native Hawaiians persisted in providing for their ‘ohana (extended families) through subsistence fishing, farming and gathering in accordance with traditional and customary cultural practices that were guided by spiritual and cultural beliefs. Moreover, these practices continued to be protected by laws established under the Hawaiian Kingdom and Constitutional Monarchy of Hawai‘i which were incorporated into the laws of the Territorial Government.

Hawai‘i’s Territorial Period spans Generations 31 and 32 [Generation 126 and 127] of Native Hawaiian governance. This chapter examines the governance exercised by Generation 31 [Generation 126] during the Territorial period from 1900 through 1922. The passage of the Hawaiian Homes Commission Act in 1921 marked a major milestone in the recognition of the

[880] The term cultural kīpuka is more fully described in Chapter 9 and is based upon the documentation of the continuity of Native Hawaiian culture and language in isolated rural communities in Davianna Pōmaika‘i McGregor, *Nā Kua‘āina: Living Hawaiian Culture* (Honolulu: Univ of Hawai‘i Press, 2007).

Native Hawaiian people as an indigenous people within the United States of America, similar to American Indian tribes. Through this law the U.S. Congress established a special legal and political relationship with the Native Hawaiian people and set aside a distinct land base for Native Hawaiians as a people, rather than as individuals. The passing of Prince Jonah Kūhiō Kalaniana‘ole in 1922 marked the transition of the national leadership of the Native Hawaiian people to Generation 32 [Generation 127], and their governance experience will be discussed in Chapter Nine (9).

Queen Lili‘uokalani: Unrelinquished Claims

Queen Lili‘uokalani lived until November 11, 1917. As discussed in Chapter Seven, the she continued to play a major role in leading the Native Hawaiian people in an appeal to the U.S. President, the U.S. Congress and the American people as a whole to oppose annexation and support the restoration of the Hawaiian Kingdom and Constitutional Monarchy up until passage of the 1898 Newlands Joint Resolution of Annexation. Subsequently, throughout the two years of deliberations in the U.S. Congress on how the U.S. would govern Hawai‘i, the queen persisted in asserting her unrelinquished claim to the Crown lands of Hawai‘i. She argued that except for the active support of the U.S. minister to Hawai‘i and the landing of U.S. naval forces, the Provisional Government would not have succeeded in supplanting her government and establishing its rule. The ability of the Provisional Government to take control of the Crown lands could be traced directly to the intervention of the U.S. government, making it the responsibility of the U.S. Congress to return the Crown lands to the hereditary monarch of the Native Hawaiian people.[881]

[881] See generally Liliuokalani, *Hawaii's Story by Hawaii's Queen* (Honolulu: Mutual Publishing, 1990) and Neil Thomas Proto, *The Rights of My People: Liliuokalani's Enduring Battle with the United States 1893-1917* (New York: Algora Publishing, 2009).

Between 1900 and 1909, Queen Liliʻuokalani made five trips to Washington, D.C. to seek an acknowledgement from the U.S. for her claim to the Crown lands.[882] She continued to assert that she had never recognized the authority of the Provisional Government or the Republic of Hawaiʻi over the Crown lands. Despite her persistent efforts and proposed legislation to provide compensation to the queen for the lucrative Crown lands, the U.S. Congress never officially acknowledged her claims, nor offered compensation for the injustices perpetrated against her. [883]

In 1910, the queen filed a claim to the Crown lands in the United States Court of Claims.[884] The court declared that the Supreme Court of the Kingdom of Hawaiʻi had ruled that the lands were not the personal property of its monarchs, but the property of the institution of the monarchy. The court also ruled that the monarchy had been replaced by the Provisional Government and succeeded by the Republic of Hawaiʻi, which had ceded the Crown and Government lands of the Hawaiian Kingdom and Constitutional Monarchy to the U.S. Government. Judge Fenton W. Booth, who authored the decision of the court, wrote, "The crown lands were the resourceful methods of income to sustain, in part at least, the dignity of the office to which they were inseparably attached. When the office [of the Monarch] ceased to exist, they

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[882] Jon Van Dyke, *Who Owns the Crown Lands of Hawaiʻi?* (Honolulu: Univ. of Hawaiʻi Press, 2008), p. 229. For a thorough description of these journeys, see Neil Thomas Proto, *The Rights of My People*.

[883] In 1903, the U.S. Senate passed an appropriation to settle Queen Liliʻuokalani's claim to the Crown Lands, but it failed passage by the House of Representatives. (58th Congress 2d Sess., S. 1553 For Payment to Liliuokalani, formerly Queen of the Kingdom of Hawaii, by Mr. Blackburn.) On February 12 and 15, 1904, a similar bill was debated in the Senate and failed passage by a tie vote of 26 to 26. (H.R. 7094, Sixtieth Congress, First Session A BILL for payment to Liliʻuokalani, formerly Queen of the Kingdom of Hawaii.) In a petition signed by Queen Liliʻuokalani in Honolulu in 1905, which is in Delegate Kalanianaole' petitions file in the Hawaiʻi State Archives, the queen offered to relinquish all of her claims if a settlement was reached: "That petitioner is advised and therefore respectfully suggests the sum of ten million dollars as a proper and reasonable amount in settlement for all the damages and losses sustained by her, and in consideration therefore she hereby solemnly agrees to and with the United States of America to relinquish all her claims [sic] of whatsoever kind or nature." Her claim was not acknowledged and therefore was never relinquished.

[884] *Liliuokalani v United States*, 45 Ct. Cl. 418 (1910).

became as other lands of the Sovereignty and passed to the defendants [the United States] as part and parcel of the public domain."[885]

The queen continued to derive income from her personal lands, which she placed into a trust on December 2, 1909. Section IV of the trust document, as amended on October 22, 1911, defined the purpose of the trust as "for the benefit of orphan and other destitute children in the Hawaiian Islands, the preference to be given to Hawaiian children of pure or part aboriginal blood."[886]

In 1912, the Legislature of the Territory of Hawai'i passed a law to provide Queen Lili'uokalani with an annual pension of $12,000 in recognition of her unique status and as a modest compensation for her losses.[887]

Throughout her lifetime, the Queen Lili'uokalani never relinquished her traditional claim to the Crown lands, and neither did the Native Hawaiian people as a whole, a fact that the U.S. Congress and President finally acknowledged in the 1993 Apology Law, Public Law 103-150.[888]

Native Hawaiian National Leader: Undeterred

Professionals, clergy, businessmen, government workers, farmers and fishers, descended from ali'i (chiefs), kahuna (craftspersons, engineers, scientists, healers, and artisans), and commoners (maka'āinana) comprised the Native Hawaiian leaders of Generation 31 [Generation 126] on each island. During his lifetime, Jonah Kūhiō Kalaniana'ole, as prince and heir to the Hawaiian throne, was one of the major advocates and spokespersons for the Native Hawaiian people. Despite the status of Hawai'i as a Territory of the U.S., most Native Hawaiians of

[885] *Id*., at 428.
[886] Trust Deed of Liliuokalani, December 2, 1909, as amended on October 22, 1911 wherein "and other destitute children" was inserted after the word "orphan," as cited in Van Dyke, *Crown Lands,* p. 336, fn 79.
[887] *Id*., p. 236.
[888] The Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (Nov. 23, 1993).

Generation 31 [Generation 126] continued to strongly identify themselves as Native Hawaiian nationals. This was reinforced in the realm of electoral politics where Native Hawaiians comprised the majority of voters through 1930 and continued to hold most of the political offices through the 1950s. Table IV below shows the number and percentage of Native Hawaiian registered voters as compared to the overall number of registered voters, from 1902 through 1930.

Table IV. Number and Percent of Native Hawaiians Registered To Vote 1902 -1930[889]

Year	Total Voters	# Hawaiian Voters	% Hawaiian Voters
1902	12,612	8,680	68.8
1910	14,442	9,619	66.6
1920	26,335	14,650	55.6
1930	52,149	19,858	38.0

The increase in the number of registered voters in 1930 reflects the maturation to voting age of the second generation of Hawai‘i residents, many descended from Asian immigrant contract workers. Under U.S. law, first generation Chinese were prohibited from becoming naturalized citizens until 1943 and first generation Japanese could not become naturalized citizens until 1952.[890] Therefore, it was not until the second generation of Asians, those born and raised in Hawai‘i had matured to voting age and registered to vote, that Native Hawaiians began to lose their influence in the governance of the islands. However, the shift in the ethnic composition of registered voters did not become a major factor in Hawai‘i’s elections until after World War II

[889] Hawaii (Territory) Governor of the Territory of Hawaii, *Report to Secretary of Interior, 1931* (Washington: Government Printing Office, 1931), p. 14.
[890] Chinese Exclusion Repeal Act of 1943 (Magnuson Act) Pub.L. 78-199, 57 Stat. 600 (December 17, 1943) and Immigration and Nationality Act of 1952 (McCarran-Walter Act) Pub. L. 82-414, 66 Stat. 163 (June 27, 1952).

and the years leading up to statehood.[891] The following tables show the ethnic composition of the Hawai'i Territorial Senate and House of Representatives from 1901 through 1931.

Table V: SENATORS AND REPRESENTATIVES

BY PARTIES AND ETHNICITY 1901 - 1930[892]

SENATORS

Session	Republican	Democratic	Homerule	Hawaiian	Portuguese	Others	Chinese	Japanese
1901	5	-0-	9	10	-0-	5	-0-	-0-
1903	10	1	4	9	-0-	6	-0	-0-
1905	14	1	0-	7	-0-	8	-0-	-0-
1907	12	2	1	8	-0-	7	-0-	-0-
1909	9	4	2	8	-0-	7	-0-	-0-
1911	12	1	2	8	-0-	7	-0-	-0-
1913	8	5	2	6	-0-	9	-0-	-0-
1915	8	7	-0-	7	-0-	8	-0-	-0-
1917	12	3	-0-	8	1	6	-0-	-0-
1919	14	1	-0-	7	1	7	-0-	-0-
1921	14	1	-0-	7	1	7	-0-	-0-
1923	15 -	-0-	-0-	7	1	7	-0-	-0-
1925	13	2	-0-	8	1	6	-0-	-0-
1927	13	2	-0-	7	1	7	-0-	-0-
1929	14	1	-0-	7	-0-	7	1	-0-

[891] See generally, Lawrence Fuchs *Hawaii Pono: A Social History* (New York: Harcourt, Brace & World, Inc., 1961).
[892] Hawaii (Territory) Governor, *Annual Report to the Secretary of Interior, 1931,* p. 15.

1931	14	1	-0-	7	1	6	1	-0-

Source: Hawaii (Territory) Governor, *Annual Report to the Secretary of Interior, 1931* (Washingtc Government Printing Office, 1931), p. 15.

REPRESENTATIVES

Session	Republican	Democratic		Homerule	Hawaiian	Portuguese	Others
Chinese	Japanese						
1901	9	4	17	23	-0-	7	-0-	-0-
1903	20	-0-	10	23	-0-	7	-0-	-0-
1905	28	1	1	21	-0-	9	-0-	-0-
1907	24	6	-0-	24	2	4	-0-	-0-
1909	22	7	1	21	3	6	-0-	-0-
1911	28	-0-	2	20	3	7	-0-	-0-
1913	18	11	1	20	2	8	-0-	-0-
1915	29	1	-0-	19	4	7	-0-	-0-
1917	24	6	-0-	20	5	5	-0-	-0-
1919	24	6	-0-	21	5	4	-0-	-0-
1921	26	4	-0-	21	3	6	-0-	-0-
1923	29	1	-0-	16	5	9	-0-	-0-
1925	27	3	-0-	18	6	6	-0-	-0-
1927	28	2	-0-	15	6	8	1	-0-
1929	27	3	-0-	14	6	9	1	-0-
1931	27	3	-0-	13	6	9	-0-	2

Source: Hawaii (Territory) Governor, *Annual Report to the Secretary of Interior, 1931* (Washingtc Government Printing Office, 1931), p. 15.

Home Rula Kūʻokoʻa, The Independent Home Rule Party

The first elections held in Hawaiʻi under the Organic Act took place on November 6, 1900. Five months prior to the elections, on June 6 and 7, 1900, there were 90 representatives of the Hawaiian Patriotic League who held a convention at the drill shed in Honolulu and formed the Home Rula Kūʻokoʻa or Independent Home Rule Party for Native Hawaiians. The League was an alliance of the Hui Kalaiʻāina (Hawaiian Political Organization), the Hui Aloha ʻĀina (Hawaiian Patriotic League), and other royalist Hawaiian political organizations that had come together at the time of the overthrow of the monarchy to oppose the Provisional Government, restore Queen Liliʻuokalani to the throne, and protest the Annexation of Hawaiʻi to the United States. Both the Hui Kalaiʻāina and the Hui Aloha ʻĀina had chapters in various districts on each island throughout Hawaiʻi. Prior to the convention, the district and precinct chapters had met to consider how to most effectively utilize the franchise that had been granted to all Native Hawaiian men 21 years of age and over. They also selected delegates to represent them at the convention in Honolulu.[893]

D. Kalauokalani, president of the Hui Kalaiʻāina (Hawaiian Political Organizaiton) and chairman of the convention, presided over the gathering of delegates from all the islands. He was assisted by J. K. Kaulia, president of the Hui Aloha ʻĀina (Hawaiian Patriotic League), and Robert W. Wilcox, who had represented the Hawaiian groups in Washington, D.C. during the deliberations on the Organic Act. These three men opened the convention with speeches that acclaimed the significance of the political standing of Native Hawaiians as voting citizens of a

[893] *Pacific Commercial Advertiser* (*P.C.A.*), June 7, 1900, p. 1; June 8, 1900, p. 1

territory of the United States and called upon the delegates to take up the political task of founding an independent political party.[894]

Kalauokalani explained that the convention had been called together so that the Native Hawaiian patriotic groups could jointly decide how to exercise their full franchise and interact with the oligarchy that would now function as a government of a Territory of the United States. For the seven years after the overthrow, the groups had banded together to restore the Constitutional Monarchy. They had formed chapters in various districts on each island and had hoped for the restoration of the Constitutional Monarchy through the intervention of a European power. Since Hawai‘i had been incorporated into the United States as a Territory, any hope for the restoration of the monarchy was past. The Hawaiian patriotic groups had to decide if, and how, to exercise the franchise, which had left them in control of two-thirds of the votes in the Territory of Hawai‘i. Kalauokalani explained:

> By our persistence we have been made a portion of the United States of America, which gives us all citizenship. We have been given the right of balloting without restriction, and can now vote for members of both the Senate and House of Representatives. Having that power shall we make use of it and unite to make the best of this privilege or shall we stand aloof and let it go? You are here today to decide whether we will be Republicans or Democrats. It is for you to make that decision, and when you return to your respective homes you will organize. . . . We are here to discuss the merits and demerits of both parties and make up our minds what we are to do. You must always bear in mind that the flag we once loved has gone from us. It was August 12, when the American flag was raised, our Hawaiian flag came down, and from that day our chances for the restoration of the monarchy were gone forever.[895]

In his address to the convention, J.K. Kaulia, reminded the delegates that there had only been one party in Hawai‘i during the past seven years - the Annexation Party. Hawaiians had been deprived of voting rights. With Hawai‘i‘s new status as a territory, the Annexation party

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[894] *P.C.A.* June 7, 1900, p. 1

[895] *P.C.A.* June 7, 1900, p. 1

split into the Republican and Democratic parties. Kaulia believed that Hawaiians should stay free and independent of either party. To prevent the formation of an independent Hawaiian party, the Republicans and Democrats had, through their newspapers, threatened to disenfranchise Native Hawaiians if they formed an independent party. Kaulia dared them to try. The franchise had been granted by the U.S. Congress in Washington, D.C. over the protests of Caucasians from Hawai‘i who had advocated for a property restriction that would exclude large numbers of Hawaiians from voting. At this juncture he did not think that the Hawai‘i Republicans or Democrats had the power to disenfranchise Native Hawaiians.[896]

When Robert Wilcox addressed the convention, he recounted the struggle he put up in Congress to prevent the imposition of a property qualification on the franchise. He urged his fellow Native Hawaiian patriots to take advantage of the power they had gained over two-thirds of the votes in Hawai‘i, and to wield it to send an independent delegate to Congress:

> The question of the restoration of the monarchy is gone from us forever, said Wilcox. We are now a people however, who can vote. You all know we have two-thirds of the votes of this country. I say to you that the people who have been living on your rights and held the reins of government are now without that power. If you want to rule, it is for you to decide. If you don't want to rule you must so decide. . . . The monarchy is like a dear person that has died. Let it go. Look to the future. We can send a Delegate to Congress.[897]

Following these addresses, the convention recessed and proceeded to Washington Place where Queen Lili‘uokalani received the delegates to the convention. In her brief address to the representatives, she encouraged them to stand together and work for the benefit of the whole Hawaiian nation. She did not align herself with any political party nor did she convey explicit or implicit support for the formation of an independent party:

> It is useless for us to abstain from taking our future stand. Our future prosperity depends upon it. As soon as the United States flag was hoisted over these Islands,

[896] *Id*.
[897] *P.C.A*. June 7, 1900, p. 1

> and our Hawaiian flag was lowered by the authority of the American government, it meant that it had come to stay. It is my wish for your future welfare to stand shoulder to shoulder and seek every means that will conduce to the benefit of the whole nation. When the flag went down, it went down for good. We must now do our duty as Americans.[898]

After a lūʻau (feast) at the home of Kalauokalani, the delegates reconvened in the afternoon. The chairman called for reports from each of the districts represented. According to *The Pacific Commercial Advertiser* of June 7, 1900, delegations from each of the islands reported that their constituents had instructed them to remain separate from either the Republican or Democratic parties and to vote for the formation of an Independent Hawaiian Party:

> Kamai, a delegate from the Fourth District of Honolulu, said he was instructed to vote for an Independent party organization, and he was not to work for either the Republican or Democratic party.
> W. Mossman, of the sixth precinct, fifth district, stated first, his people had instructed him to inform the Convention that they were ready to enter the political field, and second, that they were ready to unite with an Independent party that will be formed, and would not join either of the two greater parties now organized.
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> A resolution from Kipahulu, Kaupo, Maui, was read as follows: "We, the undersigned fit persons for voting, residing in the district of Kipahulu, Kaupo, Maui, do hereby state that we are not Democrats or Republicans, but belong to an Independent party." The resolution was signed by seventy-one persons.
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> . . . Delegate after delegate came forward with the same report - none were instructed to affiliate with the other parties, but to form a Home Rule party of their own.[899]

Upon completion of the reports, the chairman of the convention, Kalauokalani entertained a motion to establish an independent Hawaiian party, "Moved that the Hawaiians should stand as an Independent or Home Rule Party." The motion was carried unanimously. Having decided to form an independent political party rather than affiliating with either the Republican or Democratic parties, the convention adjourned its first day of work.[900]

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[898] *Id*.
[899] *P.C.A*. June 7, 1900, p. 1
[900] *Id*.

On the second day, June 7, 1900, the delegates adopted a platform that expressed the political philosophy and viewpoint of the party. The fundamental principle that the delegates agreed to uphold was "equal rights and freedom for all people." They pledged to work for the opening up of homesteads on the ceded public lands; for an appropriation to cover damages caused by the Chinatown fire that was started by the Board of Health; and to encourage education, industrial pursuits, farming, road making, railroads, and commerce where it will be to the advantage of the country.[901] The party also pledged to oppose monopolies; any attempts to restrict the voting privileges of natives; heavy taxation of the people; and restriction of the jury rights of Native Hawaiians. Several labor planks were added to the original platform. These pledged the party to support laws that would establish an eight-hour work day; exclude non-citizens from government contract work; encourage the immigration of other U.S. citizens as laborers; and resist the establishment and expansion of trusts in Hawai'i.[902]

One of the most prominent tenets of the platform was to strive to secure statehood for Hawai'i. They pledged themselves to support whichever political party would work for statehood. Having acknowledged U.S. control over Hawai'i, statehood would provide Hawai'i's people the widest latitude for homerule. As a state, Hawai'i's majority would be able to elect their own governor and a full congressional delegation. If these positions were elected, the Hawaiians who controlled the majority of votes would choose the governor and the

[901] A case of bubonic plague in Chinatown was confirmed in December 1898. Unable to contain the spread of the plague, the Board of Health decided to burn the infested buildings on January 1, 1900. A second fire on January 20, 1900 burned out of control when the wind shifted direction and burned 38 acres of tenements and Chinese-owned business establishments, displacing more than 6,000 Native Hawaiian, Japanese and Chinese residents. Some of these displaced residents were confined to quarantine camps for several months. The Republic established a commission to receive claims for damages and determine the amount to be compensated. Out of 6,784 claims totalling $3.1 million, only $1.4 million, half of the claimed amount, was awarded. *See generally*, Summary of the Fire Claims Commission 1901 - 1903 file, Hawai'i State Archives.
[902] *P.C.A.* June 8, 1900, p. 1.

congressional delegation. As it stood, they anticipated that the President of the United States would select a governor in accordance with the wishes of the Caucasian oligarchy that had lobbied for the annexation of Hawai‘i.[903]

The convention adjourned on Thursday, June 7, but the delegates planned to hold a mass meeting on Saturday, June 9, 1900, to report on the work of the convention to the members of the party in Honolulu. Over 500 Hawaiians and a few Caucasians attended the rally and heard speeches by Kalauokalani, Robert Wilcox, J.K. Kaulia, and John Wise urging Native Hawaiians to exercise their newly acquired right to vote in support of the newly formed independent Native Hawaiian party.[904]

Victory

Recognizing the overwhelming voting power of Native Hawaiians, both the Republican and Democratic Parties recruited Native Hawaiians into their ranks and ran Native Hawaiians as candidates for various offices, including the most influential office of delegate to Congress. The Republicans selected Colonel Samuel Parker to run for delegate and the Democrats chose Prince David Kawānanakoa. Both parties also included platform planks aimed at garnering the support of Native Hawaiians. They supported the eight-hour workday; the exclusion of non-citizens from government jobs; the establishment of county and municipal governments; a pension for Queen Lili‘uokalani; and the payment of fire claims.[905]

The Native Hawaiians who joined the Republican Party were from among the prominent and wealthy. Colonel Samuel Parker owned a ranch in Waimea and had served in the cabinets of King Kalākaua and Queen Lili‘uokalani. A.N. Kepoikai, an attorney, had served as a judge of the

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[903] *Id*.
[904] *P.C.A*. June 11, 1900, p. 12.
[905] *P.C.A*. October 9, 1900, p. 1.

Kingdom. In a rally of Native Hawaiians on Maui, Hawaiian politics was compared to a bull, on which the Democratic Party was one horn, the Republican Party was another horn and the Hui Kūʻokoʻa as the tail. S.E. Kekipi of Pauwela said that Native Hawaiians were weary of being trailed in the mire while holding on to the tail of a bull, and they planned to play a more prominent part in politics by joining the Republican Party.[906]

Most Native Hawaiians who did not join the Independent Home Rule Party, joined the Democratic Party, which had chosen Prince David Kawānanakoa as the party's standard bearer. Prince Kawānanakoa explained his reasons for joining the Democrats as follows:

> Annexation is a settled fact. We're part of the United States now. I'm not a kicker at this late day. But I want to tell you one thing. The Hawaiians will always feel grateful to a Democratic President - Mr. Cleveland - for acting squarely and honestly in squashing a plot of the Republicans under President Harrison to steal their country away from them. On this account the natives, high and low, as a rule think more kindly of the Democratic than Republican Party.[907]

John Wise, a Hawaiian minister, who had attended the Home Rula Kūʻokoʻa (Independent Home Rule Party) convention joined the Democratic Party, as did royalists John D. Holt and W.H. Cornwell. Cornwell had served as minister of finance under Queen Liliʻuokalani and was believed to have shipped guns from the U.S. West Coast to Hawaiʻi for the 1895 Restoration Attempt.[908] John Wise was quoted as having written the following statement in the *Ke Aloha Aina* newspaper:

> The Democratic party is the party of Cleveland, who tried to restore the monarchy but failed because the Republicans, the party who robbed the Hawaiians of their independence, controlled Congress. The Democrats are against annexation and are opposed to any attempt that will rob the people of their rights. The Democratic Party is the party of the poor, and will see that equal rights are given to all, regardless of whether a man is rich or poor.

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[906] *P.C.A.* June 30, 1900
[907] *Id.*
[908] *Id.*

> The Democratic Party gave to the Hawaiian people full civil rights and were not beguiled into accepting bribe money from W. O. Smith and others, who represent the Republican Party here today. The Democratic Party is the party that will benefit native Hawaiians, because it will not sanction any measures that will deprive us of our rights, and will oppose those who in the past seven years have done everything to deny us those rights.[909]

Although President Cleveland had advocated for the restoration of Queen Liliʻuokalani to the throne, Native Hawaiians were hesitant about joining the Democratic Party whose influential and bigoted Southern contingent had lobbied against an unrestricted franchise for the brown-skinned Native Hawaiians. Native Hawaiians were even more reluctant to support the Republican Party of President Harrison, who had aided in the overthrow of the monarchy, and of President McKinley, who had maneuvered Congress into passing the Newlands Joint Resolution of Annexation.

The 1900 elections unleashed the pent up anger and bitterness of the Native Hawaiians against those who had overthrown the Constitutional Monarchy and imprisoned Queen Liliʻuokalani. Native Hawaiian Nationalists who had attempted to restore the monarchy, and those who had been denied basic civil rights through property restrictions on the franchise, now saw a chance to regain political power after feeling helpless for seven years. The Home Rula Kūʻokoʻa (Independent Home Rule Party) capitalized upon those sentiments and rode the wave of opposition – Home Rula Kūʻokoʻa was victorious in the 1900 elections. "Hawaiʻi for the Hawaiians" was the effective rallying slogan of the Homerulers.[910]

Voting for the Home Rula Kūʻokoʻa candidates was portrayed to be a matter of love and loyalty to one's country and countrymen and a stand for Hawaiian independence.[911] It was a vote

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[909] *P.C.A.* September 1, 1900, p. 11.

[910] *P.C.A.* June 25, 1900.

[911] In the *P.C.A.*, October 11, 1900, p. 9, Wilcox was quoted as saying in a political campaign speech, "I urge you to show your independence by going to the polls and casting your vote for the Independent

against the oligarchy that had usurped the Hawaiian constitutional monarchy. Through the Independent Home Rule Party, Native Hawaiians asserted their inherent sovereignty as a people, refusing to participate in either party of the American social system. They still comprised the majority of the citizens and of the voters of the nation and they exercised their national political muscle.

The following excerpts from campaign speeches are representative of the appeals made by the Home Rula Kūʻokoʻa (Independent Home Rule Party) candidates to the nationalistic sentiments of Native Hawaiians:

> The supporters of the Republican party have been in office for seven years, and what did they do for us? (Someone shouted in the audience 'They gave us the [Chinatown] fire!')
>
> They did not do anything else but steal our country and they cannot deny it. As soon as annexation was secured what did they do? The same party sent Hartwell, Smith and others to the United States to work for the disenfranchisement of the natives. When I think of them I cannot express in any other word than 'gall' the feeling I have after they stole the country and ask [for] your votes with their glittering eyes. In the first place they went to Washington and wanted to have this country ruled as Louisiana. - James Quinn, Caucasian candidate of the Home Rula Kūʻokoʻa.[912]
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> Therefore let us consider this: When these people were in power, did they look after our affairs? Did they give us the right to vote? Why did they not do so. When we received this right from the United States they come to us today and beg us for our votes. . . . In '95 we suffered the consequence of the haole's work and we bore our burdens. Can we suffer the same men rule us as they did in the past? No. . . .These people misrepresented us. They went to America and told the people there that we are ignorant. Now that we have the right to vote let us show our intelligence. Let us secure an Independent legislature and send an Independent delegate. If we show our intelligence we would get independence or statehood. If we should get statehood we can vote for our own Governor and other Government officials. . . .In the country these peoples have taken away the water for their cane

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candidates. This will show to the whole world that you lover your country. This election will show that we are going to have our local administration."

[912] *P.C.A.*, October 11, 1900, p. 3.

> and they do not think of our taro lands. Now is the time for us to try and weigh these things well and see that the equal rights [are] enjoyed by all. - - J.K. Clark[913]

> For the last seven years we have remained true to the Aloha ʻAina society. . . . Remember when we lost our independence we were cast out in the deep ocean and we were not given our franchise. We swam for shore but these people stood on the shore and stopped us with their bayonets. Finally we have been landed on the Territory of Hawaii and you have the power - the ballot. If you are going to neglect this we will always be squeezed by these people. With these remarks I urge you to support the H.R. party. - - D. Kalauokalani. [914]

The Home Rula Kūʻokoʻa won the overwhelming majority of seats in the Territorial House of Representatives and Senate, as well as the coveted delegate seat in the U.S. Congress. All through the campaign the Caucasian newspapers accused the Home Rulers of drawing a color line in the elections and condemned their actions as narrow-minded, short-sighted and vengeful. However, after the election, they had to begrudgingly acknowledge that if the situation were reversed and the Caucasians had felt oppressed and wronged by the Hawaiians for seven years, that they would probably have only voted for their own kind when they finally possessed the power to vote. Moreover, as it turned out, the Hawaiians did not only vote for Hawaiian Home Rulers. Two Caucasian Republicans were elected on Hawaiʻi, another two on Maui, and five were elected on Oʻahu. A Caucasian Democrat was elected on Kauaʻi and the Home Rula Kūʻokoʻa itself ran some Caucasian candidates who were elected. On Oʻahu, Samuel Parker actually beat Robert Wilcox who was carried into office by the neighbor islands, where the majority of Hawaiians lived. In addition, Parker and Kawānanakoa, together, received more votes than Robert Wilcox. The final vote tally was 4,083 votes for Robert Wilcox, 3,856 votes for Samuel Parker, and 1,650 votes for David Kawānanakoa.[915]

The *Pacific Commercial Advertiser* of November 13, 1900, editorialized:

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[913] *P.C.A.*, October 16, 1900, pp. 1, 3.
[914] *P.C.A.*, November 6, 1900, p. 9.
[915] Hawaii (Territory) Governor, *Report to Secretary of the Interior, 1929* (Washington: Government Printing Office, 1929), p. 17.

> The fact that a native Queen and native officers under the monarchy were removed, and that a native independent government was subverted, and a foreign government under the control of white men proposed to be made sovereign here, gave foundation enough on which to build an argument that the revolution was a movement of the whites against the natives and their interests . . .
>
> The election of 1900 was the first one at which they saw their opportunity to even up the score . . . Under the circumstances above stated, it is a matter of the greatest surprise to the writer that the Republicans have elected six out of fifteen Senators, and of still greater surprise that Parker has come within a few hundred votes of securing the election as Delegate to Washington.
>
> If the situation had been reversed, and a community of Americans or Englishmen felt and had felt for seven years that they had been oppressed and wronged by the natives, and then should suddenly have found themselves in possession of a free ballot, and had outnumbered the natives four to one can anyone doubt that they would have voted for their own kind only, and have everlastingly snowed under every candidate of the party which they looked upon as responsible for their wrongs. [916]

In the final tally, Native Hawaiians had voted for the men whom they trusted. In most cases that person was Native Hawaiian, but there were exceptions. In future elections, Native Hawaiians continued to show a preference for Native Hawaiians, but only for those who matched their political sentiments.[917]

A Difficult Term of Office

The Home Rula Kūʻokoʻa (Independent Home Rule Party) held nine of the 13 Senate seats and 14 of the 27 seats in the House of Representatives. The power to pass legislation for Hawaiʻi was in their hands. The major obstacle that they faced in developing legislation was their lack of control or influence with the governor or any section of the administration of the Territorial Government. The Organic Act had concentrated the power to execute laws, expend

[916] *P.C.A.*, November 13, 1900, p. 4.
[917] For example, in the 1902 elections, as discussed below, the Home Rule Party was voted out of office in favor of Hawaiian and Caucasian Republicans. Hawaiians continued to vote for Republicans, even after the Democratic Party was re-organized to more aggressively represent the concerns of laboring people.

appropriations and administer the Territorial Government, with the office of the governor, who was appointed by the President of the United States. The governor could veto legislation that he did not agree with. He could ignore and withhold the expenditure of appropriations that he did not support. He could function with very little accountability to the Legislature, and he did.

The 1900-1902 Legislative session was the first time that the Legislature convened as the Legislature of a Territory of the United States under the special set of rules drafted by the U.S. Congress and contained within the Organic Act. Some of the men elected had served as legislators under the monarchy. However, the rules of the territorial legislative "game" were new, foreign, and heavily tilted in favor of the executive branch of government, which was tightly controlled by Governor Sanford B. Dole. Any group of legislators assuming responsibility for establishing the legislative process for a new territorial government would encounter problems. However, a group of legislators who were critical of the American government and antagonistic toward the hand-picked governor for the Territory would find it very difficult to perform their outlined duties. While the Native Hawaiian Home Rule Party legislators had a role in the governance of Hawaiʻi, they quickly learned the limitations of exercising that authority under the laws of the U.S. territorial government.

One measure of the accomplishments of the Home Rule legislators are the bills and resolutions that were passed. Although the Organic Act stipulated that all legislative business had to be conducted in English, the Hawaiian Home Rula Kūʻokoʻa (Independent Home Rule Party) legislators who included fishermen, and hack-drivers as well as teachers and lawyers, voted to speak in Hawaiian and to employ interpreters in order to comply with the strict terms of the Organic Act.[918] This was an important political and cultural policy to establish. The Republican

[918] Section 44 of the Hawaii Organic Act provided, "All legislative proceedings shall be conducted in the English language." 31 Stat. 148.

Party supported this policy in their 1902 party platform and Kūhiō later introduced a resolution in Congress to amend the Organic Act to allow legislative business to be conducted in Hawaiian as well as English. Another important cultural policy was a bill to license traditional medical kāhuna (herbal healers) to practice healing. Given the shortage of Western trained physicians, and the absence of any Native Hawaiian Western trained doctors, most of the Hawaiians in rural areas relied upon traditional medical kāhuna for healing anyway. This bill passed the legislature but was vetoed by Governor Dole.[919]

The Home Rula Kūʻokoʻa (Independent Home Rule Party) legislature also passed a series of taxation laws that reduced the tax burden upon the poor, most of whom were Native Hawaiian. One law exempted persons worth less than $3,500 from liability for debt. Another abolished the poll tax thereby enabling more Native Hawaiians to vote. The legislature also imposed a 2 percent income tax, but exempted all men with more than five children from all taxation. The piece of legislation that attracted the most attention was a law that reduced the tax on female dogs from $3 to $1 a year. The bill passed, was vetoed by Governor Dole, and then was passed again over the Governor's veto. The Republicans seized upon the attention given to this relatively unimportant measure to discredit the session by labeling it the Lady Dog Legislature.[920]

At the end of the first 60-day legislative session, no appropriations had been made for the schools or for essential public works projects then in progress. The Governor refused to extend the session. The legislators voted a want of confidence in the Governor and sent Mr. Beckley, the

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[919] Hawaiʻi State Archives, Delegate Kalanianaole File, Bills & Reports, 1903 - 1913, April 19, 1904, H.R. 15226 -was introduced on April 19, 1904 to make both English and Hawaiian official languages in legislative proceedings of the Territory of Hawaiʻi for the period of ten years. It did not pass. With regard to the bill to license Kahuna, the source is Henry K. Iwasa, Jr., "The Home Rule Party: Its Short Life and Decline" (Unpublished Paper, University of Hawaiʻi-Mānoa, Hamilton Library, 1958), p. 12.

[920] *P.C.A.*, June 21, 1901, p. 1; Thomas Patrick Healy, "The Origins of the Republican Party in Hawaii," (M.A. thesis, University of Hawaiʻi-Mānoa, 1963), pp. 118 – 119; Iwasa, 1958, p. 12.

Home Rule leader of the House to San Francisco to communicate the "want of confidence" vote to President McKinley.[921]

Robert Wilcox did not fare much better in his position as delegate from Hawai'i to the U.S. Congress. The contradictions in his status as an independent in a two-party national Congress became apparent very soon after he got to Washington, D.C. By April 16, 1901, after only five months as delegate, Wilcox was back in Hawai'i successfully mustering support to change the name of the "Independent Home Rule Party" to the "Home Rule *Republican* Party." The name change would enable him to affiliate with the Republican Party, which not only held the presidency but also a majority in Congress. He had discovered that it was useless to be in Congress representing a small obscure faction of Native Hawaiians outside the auspices of one of the two national parties.[922]

Renaming the Home Rula Kū'oko'a to Home Rula Republalika discredited Wilcox and the party in the eyes of the people of Hawai'i and the U.S. Congress. It was an admission to the people of Hawai'i that one had to affiliate with the Republican Party in order to make a difference in Washington, D.C. At a deeper level, it represented the acceptance of defeat for the notion that an independent Hawaiian political party could exist and function under the two-party American political system.

The contradiction inherent in organizing a Native Hawaiian political party that was to be independent, on one hand, and still functioned under the laws of the American government, on the other, became glaringly apparent during the 1902 elections. The Territorial Legislature's main political task at that historical juncture was to establish a democratic process through which laws would be passed, government departments held accountable to the public, and taxes

[921] *P.C.A.,* June 21, 1901, p. 1.
[922] *P.C.A.*, April 17, 1901, p. 1

assessed and appropriated. The Independent Home Rule Party failed to provide the leadership necessary to establish those processes. While they succeeded in articulating political concerns that had been suppressed for seven years, they did little to shape the future policies and operations of the territorial government. Nor did they use their political leverage to carve out a niche for Native Hawaiians under the territorial system. During the next round of elections, the ineffectiveness of the leaders of the Home Rule party was exposed and led to the disaffection and resignation of a number of young Hawaiian leaders, including Prince Jonah Kūhiō Kalaniana‘ole from the party. Native Hawaiians decided to simply vote straight Republican instead of Home Rule Republican.

The Forging of a Native Hawaiian - Oligarchy Alliance

The oligarchy clearly realized the need to win the support of the Native Hawaiian electorate behind their political party in order to establish the kind of political stability that would instill confidence for capital to invest in Hawai‘i. Their liberal political platform of 1900, which included a commitment to secure an appropriation for Queen Lili‘uokalani and to provide reparations for victims of the Chinatown fire, represented an effort to win over the support of the Native Hawaiians. In fact, both the Democrats and the Home Rulers criticized the Republicans for trying to lure Native Hawaiians into voting Republican by adopting a pro-Native Hawaiian platform. The Democrats openly and directly accused the Republicans of outright hypocrisy:

> We charge that every plank of the platform of the Republican party of the Territory of Hawaii, which on its face would seem to denote friendship for the native Hawaiian, is but an ingenious bid for votes, and that the Republican ticket, as a whole, and the past record of a large majority of its active supporters, makes it but too apparent that the seeming concern of the Republican party in the political welfare of the native Hawaiian has its hypocritical beginning and end in a selfish purpose to corral the forgetful voter.[923]

[923] Text of Democratic Party Platform of 1900, *P.C.A.*, October 9, 1900, p. 1.

Nevertheless, given the strong nationalist sentiments of Native Hawaiians in 1900, the oligarchy was unable to recruit leading Native Hawaiians who could rally their people behind the Republican Party. By 1902, however, conditions had changed. The Independent Home Rule Party had discredited itself by trying to affiliate with the national Republican Party. Local legislators had failed to provide the outstanding leadership needed to forge an independent party that could successfully champion the cause of Native Hawaiians against the U.S. sponsored oligarchy.

The turning point for the Independent Home Rule Party occurred in its July 9 - 10, 1902, convention. A number of young Native Hawaiian men, led by Prince Jonah Kūhiō Kalaniana‘ole, made an effort to reform and re-organize the party to include leadership that could set a new direction for the party and accept a new constitution. Some of the longtime members of the party, led by President Kalauokalani, opposed the constitutional changes. They had been active in electoral politics since the Hui Kalai‘āina (Hawaiian Political Organization) had first formed in 1888 and they did not want to share control of the party with young upstarts.

On the first night of the convention, Kalauokalani and Wilcox met with Kūhiō and his group. Together they agreed to postpone the election of a new president in order to allow Kalauokalani to maintain his position if a new constitution would be adopted. On the following day, when the new constitution went to the floor for discussion, the delegates aligned with Kalauokalani and Wilcox vigorously opposed the new constitution, and the two leaders who had worked out the compromise with Kūhiō said nothing in support of a new constitution. When Kalauokalani deferred action on the new constitution, Prince Kūhiō considered that a betrayal and stormed out of the convention. The entire group of young reformers followed him. Convinced that Kalauokalani and Wilcox were not trustworthy and that the differences between

the old guard and the young reformers were irreconcilable, Kūhiō and his followers decided to form the Hui Kūʻokoʻa or Independent Party as a non-partisan political party on July 14, 1902. Prince Kūhiō explained his position to the newspapers:

> As a man I could no longer associate with men who would not keep faith. If they would not keep their word, given in the carrying out of party management, they would not do so with the people, and I cannot be associated with them. I have done with the Home Rule party and its leaders. I went into it to work for the good of my people. I do not believe it can ever help them while it is conducted as it is now, and I shall not remain in the party in any way.[924]

The embittered "reform" group included the young Native Hawaiian men who later became acknowledged political leaders of the Native Hawaiian people as Republicans and Democrats. Along with Prince Kūhiō, they included J.K. Nakoʻokoʻo, John Emmeluth, J.W. Bipikane, Carlos Long, Shanks Mossman, Sol Meheula, S. K. Kaloa, John Markham, Emil T. Dreier, Senator David Kanuha, George L. Desha, John Wise, Ewaliko, Archie Mahaulu, Colonel W.H. Cornwell, George Kaia, Piianaia, John Bowler, "Nolte" Kreuger, Joe Clark, Moses Kaaikaula, C. Andrews, Keohokalole, Solomon Kaleiopu, F.W. Irving, L. Sheldon, and Kalaiopii.[925]

Rather than affiliate with any one political party, or try to compete with the parties by fielding candidates, the Independent Party decided to endorse individual candidates whom they could support. They could be from any of the parties provided that they were willing to work together with all of the parties on important issues and causes for the Native Hawaiian people, such as setting up county governments.[926] Interestingly, these developments opened the way for Prince Kūhiō and others in this Independent Party to be approached and recruited into the Republican Party when it held a convention in September 1902.

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[924] *P.C.A.*, July 11, 1902, p. 1.
[925] *P.C.A.*, July 12, 1902, p. 2, and July 15, 1902, p. 1.
[926] *P.C.A.*, July 19, 1902, p. 3.

The accounts about who approached Prince Kūhiō and persuaded him to run as delegate to Congress on the Republican Party ticket differ. In *Hawaii Pono*, Lawrence Fuchs notes that future-governor and congressional delegate Samuel King informed him that Henry P. Baldwin persuaded the prince to join the ranks of the Republicans in a clandestine meeting at the stately Pacific Club that went on until 2 a.m. in the morning. In *The Empty Throne*, Kūhiō biographer, Lori Kuulei Kamae, says that it was Joseph Cooke and Jack Atkinson who met with Kūhiō at the Pacific Club on the night before the Republican convention was to choose its nominee for the delegateship. Baldwin had stayed behind at the convention to keep the nomination open and to lobby for Kūhiō.[927] At any rate, some combination of these three missionary descendants and members of the oligarchy sat down with Kūhiō and negotiated the conditions under which he consented to run as delegate for Congress as a Republican and to convince his followers also to join the ranks of the Grand Old Party.

Kūhiō had already severed his ties with the Independent Home Rule Party and publicly proclaimed his contempt for Robert Wilcox. The Independent Party had maintained a principled stand of non-alignment with any party, while working to educate the Native Hawaiian people about their political rights. The platform adopted by the Republican Party made it easier for Kūhiō to join the Republicans with its promises to oppose any restriction or limitation of suffrage already extended under the Organic Act; demands for immediate passage and implementation of an act by the next Legislature to establish county governments; support for awards of fire claims; support for appropriations to care for leprosy patients at Kalaupapa; and support for statehood. The platform also favored exclusive employment of citizens for government public works projects; a pension for Queen Lili‘uokalani; use of Hawaiian as well as

[927] Fuchs, *Hawaii Pono*, p. 158; Lori Kuulei Kamae, *The Empty Throne, A Biography of Hawaii's Prince Cupid* (Honolulu: Topgallant Publishing, 1980), p. 108.

English in legislative proceedings; and appropriations for schools, harbors and public works projects. Its opposition to trusts and monopolies, support for diversified industries, and pledge to revise the taxation system in order to reduce the burden on the poor also appealed to Kūhiō.[928]

By September 1902, the decision for Kūhiō to accept the nomination for delegate to the U.S. Congress as a Republican appeared to be a reasonable path forward. Moreover, in 1902, Kūhiō had few options open to him to pursue the social and economic advancement of the Native Hawaiian people. The oligarchy had a stranglehold on Hawaiʻi's economy. The Republican Party was in power in Washington, D.C. The oligarchy controlled the Republican Party in Hawaiʻi. As Americans and descendants of American settlers in Hawaiʻi with an influential lobby in Congress, they were able to quickly establish a direct line to Washington, D.C. In Hawaiʻi, the Republican Party controlled all political patronage through the governor, his political appointees, and the Hawaiʻi Chamber of Commerce lobbyist in Congress. Kūhiō could have chosen not participate in politics or he could have participated in obstructionist politics. However, he decided to cooperate with the oligarchy and try to influence governmental policy to be supportive of the Native Hawaiian people.

The bitter experience of hard labor in the Republic's prison was probably still vivid in his memory. Kūhiō's decision to ally with the oligarchy by joining the Republican Party could only have been a calculated strategy to exact major concessions for the Hawaiian people from the oligarchy. In return for cooperation and support for government policies and expenditures that would advance the economic interests of the oligarchy, it is reasonable to assume that he would expect economic and social programs, advantages, and political patronage for the Hawaiian

[928] *P.C.A.*, September 2, 1902, p. 1.

people. He would use his position to carve out a niche for the Hawaiian people in the Territory of Hawai'i. [929] In his acceptance of the nomination Prince Kūhiō said the following:

> I am a Republican from top to bottom, and I hope that with your solid support the Republican party will win and prove to the Hawaiians that there is something that can be done for them at Washington.
>
> I have preached this to my people and I would like to prove to them that through the Republican party we will get all that we wish from the general government and the Congress.
>
> I would like to say that I have a following and I hope that the Republicans will recognize them for they are still my loyal followers. I am, as I said, a Republican and I hope that we will win a victory at the polls.[930]

Kūhiō, who ran for delegate to Congress, and his followers who joined the Republican Party and ran for the Territorial Legislature, made an excellent showing at the polls. Kūhiō polled 6,628 votes while Wilcox won 4,698 votes. The Republicans won 10 of the 15 Senate seats and 20 of the 30 seats in the House of Representatives. The Home Rule Party won only 4 of the 15 Senate seats and 10 of the 30 seats in the House of Representatives.[931]

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[929] Fuchs, *Hawaii Pono*, pp. 158 – 159. Fuchs states that Governor and Delegate Samuel Wilder King described the meeting between Baldwin and Prince Kūhiō. King said that Baldwin probably played upon Kūhiō's substantial vanity and spoke of important meetings in Washington and the good Kūhiō could do for his people. He also pointed out that Wilcox was irresponsible and if Hawaiians did not produce a good leader, the haole might convince Washington to establish direct control over Hawai'i. Kūhiō was encouraged to join the haole to protect the Hawaiians from the aggressive Japanese. According to King, the prince undoubtedly knew that the haole would use him for their purposes, but that Kūhiō, in his conceit, felt that he could outwit the haole into using his position to benefit the Hawaiian people in the form of jobs and land. In the final analysis, Kūhiō was said to have reasoned that the monarchy was over, haole financial control was great, the Republican Party ruled in Washington, D.C., and controlled patronage, and Wilcox was irresponsible. *P.C.A.*, September 3, 1902, p. 1, reported on the nomination of Kūhiō at the convention. A letter from Delegate Kūhiō to John Lane provides insight on Kūhiō's motivation for serving as delegate: "Honors are very little thought of by me, and as to ambition, I have only one, and that is, to uplift and forward the interest and rights of our race and how that is to be done lies right in their power if they use it intelligently. Maybe there are other ways, but I would like to know, as no one else will work for it more strongly than I will if only to gain that object." Ltr. dated February 2, 1906, from Jonah Kūhiō Kalaniana'ole to John Lane, Hawai'i State Archives, Delegate Kalanianaole Correspondence File.

[930] *P.C.A.,* September 3, 1902, p. 1.

[931] Governor, *Report to Secretary of the Interior, 1929*, p. 17.

The Home Rule Party never regained the standing it enjoyed in 1900 or even in 1902. In 1904 and 1906, only one Home Rule candidate was elected to the legislature. In 1908, the party elected three members to the legislature. In 1910, four Home Rulers were represented in the legislature. The last year in which the Home Rule Party fielded candidates was 1912 and they elected two members to the Senate and one to the House of Representatives.[932]

By contrast, the Republican Party controlled 77 percent of the Senate and 80 percent of the House of Representatives from 1902 through 1930. At least 55 percent of those Republican politicians were Native Hawaiian or part-Native Hawaiian. During this period, the Democrats held, on the average, two seats in the Senate and four seats in the House of Representatives. The Democratic party was primarily organized on O‘ahu, having no real following on the neighbor islands.[933]

Thus, throughout the Territorial Period, the Native Hawaiian people exercised their inherent sovereignty through their active participation in the governance of the islands at the federal, territorial and county levels.

Hawaiian Leadership In The Republican Party

Once in office, Prince Kūhiō and the Native Hawaiian politicians worked to establish and develop the infrastructure for the economy of Hawai‘i. In Congress, much of Kūhiō’s time was spent lobbying for appropriations and bond monies for various public works projects in Hawai‘i, such as improvements to the harbors and wharves on each island; and the construction of lighthouses, roads, and of federal buildings, including post offices. He also sought support for the leprosy station at Kalaupapa and the quarantine station in Honolulu, as well as for the insane asylum and the industrial school. In 1902 he worked for the establishment of a federal land grant

[932] *Id*.
[933] *Id*.

college, which evolved into the University of Hawai‘i. He was also instrumental in getting franchises for public utilities and railroads to operate in Hawai‘i. [934]

In 1904, Kūhiō made county home rule the major issue of the campaign. He succeeded in pressuring Governor Carter to appoint a commission to draft an act to create counties. The 1905 legislature passed an act that created five counties - O‘ahu, Maui, Kaua‘i and two on Hawai‘i Island. New county offices included sheriff, clerk, auditor, attorney, treasurer and supervisors (county councils). These governments managed police, fire protection, water, road construction, sewage, rubbish collection and disposal and construction and maintenance of certain public facilities, parks and playgrounds. Education, taxation and property assessment was centralized in Honolulu. This created hundreds of new jobs that were primarily filled by Native Hawaiians.[935] This also followed the pattern of governance of the Hawaiian Kingdom and Constitutional Monarchy whereby select functions were centralized, while each island still exercised autonomy over many functions that provided for the well-being of the common people.

Kūhiō helped the oligarchy to promote Hawai‘i’s sugar industry, primarily through the maintenance of protective tariffs for American sugar now that Hawai‘i was a U.S. Territory. He also supported labor legislation and appropriations for public works projects that would enhance the infrastructure for the industry. For example, Kūhiō supported the sugar planters’ efforts to expand their immigrant labor force, especially through the 1921 Emergency Labor Act proposal to increase the immigration of Chinese into Hawai‘i to counteract the domination of Japanese labor in Hawai‘i. Kūhiō’s cultivation of a network of social and political ties in Washington, D.C was designed to develop a strong base of support in Congress for Hawai‘i’s sugar industry.

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[934] Hawai‘i State Archives, Delegate Kalanianaole File on U.S. Congress, Bills & Reports, 1903 - 1913 and the Correspondence File. Correspondence, speeches and reports indicate the efforts of Kūhiō to secure Congressional appropriations for these projects.
[935] Lawrence Fuchs, *Hawaii Pono,* pp.166 - 167.

Throughout his tenure in office, from 1902 until his death in 1922, Kūhiō worked loyally and tirelessly to protect Hawai'i's industries and to expand federal support for Hawai'i's economic development. This was complemented at the local level by Native Hawaiian Republican legislators who did their share to protect and enhance the economic interests of the Big Five in Hawai'i.[936] In return for this political collaboration, Native Hawaiians were hired in government patronage jobs and were given preferential status in selected private sector industries, such as the utility companies, the ranches and as longshoremen.[937] Kūhiō and the Native Hawaiian Republican legislators were also able to establish another layer of influence for Hawaiians by creating governments at the county level. These provided an important channel for homerule on each of the major islands and created more political and patronage positions for Native Hawaiians to fill.[938]

Native Hawaiians swelled the ranks of government employees in the county and the territorial governments. In 1926, University of Hawai'i political scientist Robert Littler surveyed 6,358 elected officers, appointive executives, clerks, and other government employees, including laborers in federal, territorial, and county offices. He found that Native Hawaiians comprised 44.5 percent of the total number of government employees.[939] Not only did Native Hawaiians

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[936] In a letter from Delegate Kalaniana'ole to John Lane, Kūhiō notes the leverage that the Hawaiian majority in the legislature afforded him in dealing with the Big Five: "One good argument you can always put to the haoles is this: whether they believe that it is more to their interest, "business," to have a delegate that they may not favor or to have a poor legislature. For arguments sake, a poor delegate can never hurt the interests of the Territory but a poor legislature can do a lot of harm. Whether they want to take chances by putting a haole up to head the Republican ticket and take the chance of losing everything from delegate down which I honestly believe will be the case." Ltr. dated April 6, 1906, from Jonah Kūhiō Kalaniana'ole to John Lane, Hawai'i State Archives, Delegate Kalanianaole Correspondence File.

[937] Fuchs, *Hawaii Pono*, p. 162.

[938] Robert Littler, *The Governance of Hawaii, A Study in Territorial Administration* (Stanford: Stanford Univ. Press, 1929), p. 57; Fuchs, 1961, p. 165 – 66; see generally, U.S. Congress, "Report of Subcommittee on Pacific Islands and Porto Rico on General Conditions in Hawaii: Hawaiian Investigation" (Washington: Government Printing Office, 1902).

[939] Littler, *The Governance of Hawaii*, p. 74 - 79. Only 208 employees in the office of the city engineer were not included in the survey.

make up 55 percent of the elected officials in the Territory of Hawai'i in 1926, they were predominant in most of the government jobs. Native Hawaiians made up 46 percent of the appointive executives such as department heads and bureau chiefs; 54 percent of the judges and district magistrates; 35 percent of the technical employees; 55 percent of the clerks and white collar governmental employees; 26 percent of the public school teachers; and 62 percent of the blue collar government workers, such as road workers and custodians.[940]

These figures for Native Hawaiians in political and patronage positions were not surprising given that Native Hawaiians comprised 55 percent of the registered voters in 1920. The statistics on Caucasians in the Territorial Government were more lopsided than for Native Hawaiians. Littler's survey showed that Caucasians made up 26 percent of the registered voters in 1926 and comprised 30 percent of the elected officials; 46 percent of the appointed executives (the same amount as the Hawaiians); 40 percent of the judges and district magistrates; 51 percent of the technical employees; 20 percent of the clerks and white collar workers; 45 percent of the school teachers and only four percent of the blue collar laborers. The following table summarizes these patterns:

Table VI: Predominance of Native Hawaiians and Caucasians

In Government Positions, 1926[941]

Position	% Hawaiian	% Caucasian	%Portuguese	Total % Hawn & Cauc
Total Population	16	8	11	24
Total Voters	55	26	12	81
elected officials	55	30	13	85

[940] Littler, *The Governance of Hawaii*, pp. 74 - 79.

[941] *Id*., p. 74 - 81. Percentage of Voters is from Hawaii (Territory) Governor, *Annual Report to the Secretary of Interior, 1931*, p. 14.

appointed executives	46	46	7	92
judges & magistrates	54	40	4	94
technical employees	35	51	5	86
clerks / white collar	55	20	12	75
school teachers	26	45	9	71
blue collar	62	4	20	66
boards & commissions	12	80	8	92

This table provides a graphic illustration of the patronage provided to Native Hawaiians under the Native Hawaiian-Oligarchy alliance within the Republican Party up through the 1930s. Native Hawaiians were dominant among elected officials, general employees, and blue-collar workers. They equaled the Caucasians in appointed posts but comprised only a small fraction of those appointed to boards and commissions. Appointive boards and commissions, such as the Board of Health, the Board of Public Instruction, and the University of Hawai‘i Board of Regents were unsalaried but wielded significant executive decision-making power. These positions (80 percent) were concentrated among the Caucasians.

Throughout the 59 years as a territory only one part-Native Hawaiian, Samuel Wilder King, was ever appointed to serve as governor. Every other governor was Caucasian. Kūhiō himself had aspired to be appointed governor someday, but was constantly bypassed by the Republican elite in Honolulu and Washington. If not appointed himself, he at least expected to be consulted on the selection of the governor and other key executive posts. However, he was often bypassed in the deliberations over these critical positions.[942]

[942] Fuchs, *Hawaii Pono*, pp. 162 - 170. In Hawai‘i State Archives, Delegate Kalanianaole Correspondence File, Letter from Kūhiō to John Lane, February 2, 1906 he writes of problem he has in getting his appointments recognized by President Roosevelt. “This is the same man that has been ignoring me as to appointments although I have had quite a fight lately with him, in re Robinson case and in that I

Aside from the role of Native Hawaiians in the governance of Hawai‘i, the other major issue of contention between Native Hawaiians and the oligarchy in the Republican Party was the leasing of the public lands, which were Hawaiian Kingdom Government and Crown lands. These issues surfaced from 1909 to 1912 when Kūhiō began to openly condemn the land policies of Governor Frear and oppose his re-appointment in 1912. The controversy constituted the first major open struggle for leadership and power between Native Hawaiians and the oligarchy. It resulted in a major break between Kūhi‘ō and the oligarchy. Hawaiian political leaders still played a major role in the governance of Hawai‘i but also realized that they needed to organize their own political and social organizations to work for the well-being of Native Hawaiians.

Kūhiō Versus Frear: Strains Upon the Alliance

The public land policy of Governor Walter Frear, who succeeded Governor Carter in 1907, was thoroughly scrutinized and bitterly attacked by Delegate Jonah Kūhiō Kalanianaole from 1909 until Frear's term ended in November 1913. In the course of leveling charges against Frear, Kūhiō also campaigned against Frear's reappointment as governor. So determined was Kūhiō to oust Frear that he threatened to oppose the Republican Party and not to run as delegate to Congress if Frear was reappointed. He made these threats public on more than one occasion in interviews with newspapers:

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have made one step forward in defeating Carter." In a letter from Noa Webster Aluli to Kūhiō dated January 27, 1908, Aluli wrote about an appointment to a Kaua‘i Circuit Judgeship, " You know Prince, I thought that we were ahead of the Haoles in planning for the Kauai Circuit Judgeship, but I fear that we were just a little behind them, for Chas. Dole, a newphew [sic] of S.B. Dole's, and who did some clerical work for Kinney, was appointed to a District Magistrateship on Kauai sometime ago, and lately was elevated to the principal District Court on Kauai in place of Judge Kahele who was removed for reasons unknown by me. And can we not conclude that he Chas. Dole and his friends and relatives are aiming for the Circuit Judgeship? I thought I was Americanized enough to be ahead of the Haoles in planning ahead of time, but I see now that they have again shown their superiority, and have often laughed to myself over it, by and in acknowledging to myself that the Haoles bet [sic] me. Nevertheless, my dear Prince, we will be in the fight for it, if you say the word."

> If I can not defeat Governor Frear's reappointment in Washington, I will oppose him here when I return. I will oppose him and the party that supports him and his administration. I stand on the same platform as Link McCandless - to defeat Frear's administration for another term. . . . I will never run again if Frear is Governor - - interview with Kūhiō in the *Evening Bulletin*, May 9, 1911.
>
> If Frear is reappointed, I am finished with the position I now hold. I will buck the Republican party at the polls and attempt to put in office men of independent feeling. - - interview in *San Francisco Call*, June 28, 1911.[943]

Kūhio's criticisms of Frear began to appear in the newspapers in December 1909 under such headlines as "Cupid Breaks With Gov. Frear" and "Declaration of War by Kūhiō."[944] He was frustrated and disgusted with the unwritten but operational policy of the Republican Party's executives to prevent the homesteading of the arable public lands that were traditionally leased by the plantations and ranches. The particular incident that angered Kūhiō was Frear's failure to open up lands at Kamāʻoa on Hawaiʻi Island for homesteading, despite earlier promises to do so. On December 12, 1909, the *Pacific Commercial Advertiser* quoted Kūhiō's reaction to the Kamāʻoa incident as follows:

> I myself heard the Governor in a speech at Waiohinu promise the people that the Kamaoa lands would be opened up to homesteaders within three months . . . And I supposed this had been done. I never knew that the lands had not been opened up, until I got to Waiohinu and they told me about it. That put me in a bad position with the people there, for I, relying on the statement of the Governor, had promised them that the land should be opened up. Governor Frear made me lie. The people don't like that, and I don't like it. The plantations can get anything they want from Governor Frear; the people can't get anything. That's the kind of a man Governor Frear is. Yes, I suppose my remarks about the Governor do amount to a split in the Republican party.[945]

Kūhiō's dissatisfaction with Frear and the Republican Party's policies on the public lands steadily increased over the years. On December 16, 1909, the *Pacific Commercial Advertiser*

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[943] *P.C.A.,* October 19, 1912, p. 4 (both quotes).
[944] *P.C.A.*, December 12, 1909, p. 1; December 16, 1909, p. 2.
[945] *P.C.A.*, December 12, 1909, p. 1

printed a carefully prepared statement issued by Delegate Kūhiō regarding the overall policy of the Republican Party on the public lands, in which he said:

> We have got to get the land out among these people; we have to make good all our promises; we have to act promptly, and if our heart is in it, a great deal more can be accomplished than has been accomplished, and I feel that the people have a just grievance against the administration of the land laws.[946]

The process of leasing out the public lands for homesteading by small farmers and ranchers was exceedingly slow. Those interested in leasing public lands for homesteading faced one bureaucratic obstacle after another, and in many cases ended up with nothing. Those fortunate enough to receive a homestead lease received unfertile, marginal land, often remotely situated and without water, roads, or transportation facilities. If they intended to raise sugar they were dependent upon the sugar plantations to purchase their crop, mill it, and transport it to a market on the U.S. mainland. Prince Kūhiō outlined these problems in a formal list of charges he filed with the U.S. Secretary of the Interior Walter Fisher.

A three-part series of articles, written by Ray Stannard Baker, which appeared in *The American Magazine* from November 1911 through January 1912, created national awareness of and gave prominence to the issues Kūhiō had been raising since 1909, and encouraged him to officially file the charges in Washington, D.C.[947] In January 1912, Delegate Kūhiō charged that Governor Frear had failed to administer the law on the public lands to create a class of freehold farmers. Instead, according to Kūhiō, the Governor administered the public lands in the interest of the sugar corporations. Moreover, Frear's failure to regulate the local transportation monopolies in order to assist small farmers had contributed to the failure of homesteading

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[946] *P.C.A.*, December 16, 1909. p. 1-2.

[947] Reproduction of charges by Delegate Kūhiō against Governor Frear that originally appeared in the *P.C.A,* January 17, 1912, pp. 9 -10. Kamae, *The Empty Throne*, p. 229 -265; Ray Stannard Baker "Wonderful Hawaii: A World Experiment Station," 3 parts from the *American Magazine,* pt. 1 "How King Sugar Rules in Hawaii, Nov. 1911, pp. 28 - 38; pt. 2 "The Land and the Landless," Dec. 1911, p. 201 - 214, v 73; pt. 3 "Human Nature in Hawaii," Jan. 1912, p. 328 - 339.

efforts. In short, Frear's close affiliation with the corporate interests in Hawai'i, induced and existing largely through matrimonial and social ties, led him to promote still further concentration of land, wealth, and power into the hands of a few individuals operating, in most instances, under corporate forms.[948]

While these charges were directed against Governor Frear, the same problems had existed under previous administrations and had evolved and accumulated over the years. Under Frear, the problems became more acute because more sugar leases on public lands were due to expire and more people desired to homestead lands of their own rather than work for the plantation. Kūhiō himself acknowledged that the leading members of the same Republican Party to which he belonged and from which he gained support were as much, if not more, to blame for the problems as Governor Frear. He was prepared to disassociate himself from the Republican elite over this issue:

> I myself have been supported by the plantations in my candidacy for Delegate in the past elections, but I have also been supported of their free will by the mass of voters at large. I had hoped until recently that those in control of the industrial system of Hawaii would of their own motion and by the pressure of changed conditions conform to the new demand upon them, and that their protestations of good will to homesteads and a permanent home population would result in an up-building and success of a movement to secure such results; but successful homesteading is confessedly at a standstill in Hawaii today, and the true attitude of the local administration and the plantations today seems to be that they want homesteads to succeed, if they can succeed so as not to disturb them or their profits, or their domination over affairs, which in its final analysis, to all practical purposes, means that they do not want homesteads at all or a population attached to the soil. Under these conditions and with no promise even of a change for the better in the future, I do not care to run again as Delegate, relying upon or asking for the support of the local administration or plantation interests. If I consented to do so, I feel that the people at large, who are looking for some relief in the premises, would repudiate me, and I would have to be a party to an extensive, coercive and money-spending campaign on the part of the plantations to secure reelection. I do not care to run under such conditions and upon such terms.[949]

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[948] Kūhiō's Charges in Kamae, *The Empty Throne*, p. 230.
[949] *P.C.A.*, October 19, 1912, p. 4.

From September 9, through October 2, 1912, U.S. Secretary of the Interior Fisher conducted hearings to investigate the charges raised by Prince Kūhiō against Governor Frear. In the final analysis, Kūhiō, Fisher and even Frear acknowledged that the problems raised and identified by Kūhiō were real. They reached the conclusion, however, that the problems were inherent under the political economic structure of the Territory, which was dependent upon the sugar industry and controlled by the oligarchy. Thus, Governor Frear was exonerated of any malicious wrongdoing. Instead he was guilty of failing to disassociate himself from the sugar oligarchy and challenge their political and economic control:

> The domination of Hawaii by the sugar plantations, which are in turn directly controlled by the sugar agencies in Honolulu, has been progressing and extending throughout the Governor's administration, and this fact has been winked at, certainly not challenged, by Governor Frear, and in this respect, his public utterances and written reports in reference to industrial conditions in Hawaii, claiming satisfactory progress in the development of this Territory are misleading and offer cogent proof of this, that the Governor either cannot see or refuses to see that while there is great, in fact too much, wealth concentrated and concentrating in the industrial corporations of Hawaii, and in the hands of a few men that control them, the population at large was never relatively shorter in its supply of independent land and home-owning citizens.
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> The vital trouble is that the people who control the industrial life of Hawaii have become so blinded by long continued prosperity and the habit of controlling everything from their own standpoint that they, themselves, do not realize how deadly that policy is to the ultimate welfare of the Territory.[950]

To Kūhiō's extreme disappointment, Governor Frear was reappointed in 1912. However, given the election of Democrat Woodrow Wilson to the presidency in that year, Frear's new term lasted only until November 1913, when Lucius Pinkham was appointed to the position.[951]

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[950] *P.C.A.,* September 8, 1912, p. 1

[951] Hawai'i State Archives. Delegate Kalanianaole Correspondence File. John Lane to Kūhiō, February 21, 1911 regarding a Territorial Legislative Resolution endorsing Kūhiō to replace Frear as Governor. Letter from William A. Kinney to the Delegate, November 23, 1911 advising Kūhiō not to nominate a candidate for Governor for fear of discrediting Kūhiō's earlier charges and campaign against Frear as being motivated out of personal ambition. Letter from Delegate Kalanianaole to Secretary of Interior

By 1912, Prince Kūhiō had provided ten years of loyal service to the white oligarchy as delegate to the U.S. Congress. He had watched them centralize and consolidate increasingly more and more power and wealth in the hands of the few elite Caucasian families. At the same time, increasingly more and more of his own people were displaced from their ancestral lands, cut off from access to natural stream and spring waters, and forced to live in run down shacks, makeshift squatter shelters, or crowded tenement rooms. He had been bypassed in the selection of a governor and left out of major decisions concerning Republican Party patronage. Kūhiō had made a public and national indictment of the oligarchy in the person of Governor Frear, who, as the son-in-law of Benjamin Dillingham, was a member of their inner circle.[952] By publicly filing formal charges against Frear, Kūhiō had shown that he was not a pawn of the oligarchy. His failure to achieve substantive reforms to the public land policies of the Territory in 1912 led him to seek out other means by which to open up the public lands for homesteading. Ultimately it led him to a campaign to set aside a portion of the public lands for exclusive homesteading by Native Hawaiians.

The differences that emerged between Prince Kūhiō and the oligarchy during the course of the campaign against Governor Frear and his public land policies spilled over into the elections of 1912 and 1914 and remained a permanent feature of the strained relationship between Native Hawaiians and the Caucasians in the Republican Party. In 1914, the first year that primary elections were held after the Frear controversy, the oligarchy fielded Charles Rice

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Walter Fisher, April 2, 1912, informing the Secretary that while he opposes the reappointment of Frear, he will not endorse anyone to replace Frear so as not to discredit the earlier charges and investigation into Frear's public land policies.

[952] Benjamin Dillingham was a sailor from Massachusetts who founded an industrial dynasty in Hawai'i through his development of the Oahu Railway and Land Company and founding of the construction firm, Dillingham Corporation. Dillingham Corporation dug the Ala Wai Canal to drain the lo'i kalo (taro patches) and fishponds of Waikīkī in order to develop it into a tourist destination and received most of the military construction contracts to develop the Pearl Harbor Naval Base and other bases in Hawai'i. See generally Noel J. Kent, *Hawaii: Islands Under the Influence* (Honolulu: Univ. of Hawai'i Press, 1993).

against Prince Kūhiō in a campaign that pitted Hawaiian against Caucasian and was reminiscent of the 1900 battle between the Independent Home Rule Party and the Republican Party. Kūhiō and his followers made a strong appeal to the Native Hawaiian voters to show up in force and vote them back into office. A sample of such an appeal appeared in a newspaper, *Ka Holomua*:

> I call on each and all of the Islands to vote only for Hawaiians, from Hawaii to the setting of the sun at Lehua. By voting for our own race we will be saved. The great wish of my heart is that you will do this work to keep the government of the land for the people who heretofore possessed it, so that the benefit will not go to strangers and not help the rich. If we Hawaiians win at this election, and I believe we will, then this work will be for the true Hawaiians. By voting for others than Hawaiians it will be like the plague on our beautiful city of Honolulu. Rise up, my people, in your own interests on the twelfth of September. Whether we gain victory or not will depend upon you Hawaiian voters.[953]

Kūhiō won an overwhelming two-to-one primary victory over Charles Rice despite the combined efforts of the Caucasian oligarchy to unseat him. Kūhiō and the Native Hawaiian national leaders loyal to him had held on to their positions of power and influence in the Republican Party and within the Territorial Government. They demonstrated that Native Hawaiians would continue to play a major role in the governance of Hawai‘i, despite the oligarchy.

The oligarchy's effort to unseat Prince Kūhiō in the hard fought elections of 1912 and 1914 probably impressed upon Kūhiō and his cohorts the need to work more directly with his own people in meeting their expanding social needs. It led Prince Kūhiō and the Native Hawaiian political leaders to form their own organizations of self-governance. The ‘Ahahui Pu‘uhonua O Nā Hawai‘i (Hawaiian Protective Association) was the major national Hawaiian organization through which Native Hawaiians began to govern their own people distinct from the general public. After defining its own scope of work and implementing its programs of action, the association attempted to coordinate the work of all of the Hawaiian associations. Leaders of

[953] *P.C.A.*, August 27, 1914, p. 7.

the association also founded the Hawaiian Civic Club to assist in the work of improving the living conditions of Hawaiians in the tenements. As discussed in detail below, ultimately the association conceived of and led the campaign to "rehabilitate" the Native Hawaiian people upon the Crown lands of the Hawaiian Kingdom, that had been ceded by the Republic of Hawai'i to the U.S. government at annexation.

'Ahahui Pu'uhonua O Nā Hawai'i - Hawaiian Protective Association

On November 13, 1914, 200 Hawaiians attended a meeting at the Waikīkī residence of Prince Kūhiō, and agreed to form the Ahahui Pu'uhonua O Nā Hawai'i (Hawaiian Protective Association), an organization that would work to uplift the Hawaiian people. Prince Kūhiō, together with Reverend Akaiko Akana, Reverend John Wise, Mayor John Lane, and attorney Noa Webster Aluli were selected to draft the constitution and by-laws of the organization. From 1914 through 1928, the organization published its own newspaper and attracted into its ranks Native Hawaiian political leaders who were interested in uplifting the Hawaiian people through education, steady work, sobriety and commercial enterprise. This organization eventually devised the plan to rehabilitate Hawaiians upon the Hawaiian Crown lands under the Hawaiian Homes Commission Act.[954]

The organization's constitution was published in its newspaper, *Ka Pu'uhonua O Nā Hawai'i* of April 14, 1916. It portrayed the organization as distinctly Native Hawaiian, taking on the responsibilities of self-governance for the Native Hawaiian people. According to the constitution, the association planned to reclaim and uphold the traditional principles of good and just living of the Native Hawaiian nation, such as living as one with the land, in one spirit, one thought, one shoulder, and one in work under their leaders and chiefs. This unity had been

[954] *P.C.A.*, November 13, 1914.

broken through the affiliations of Native Hawaiians with different religions, different political parties, and different organizations, and the ‘Ahahui aimed to build the unity of the Native Hawaiian people in order to rebuild the strength of the enlightened Hawaiian nation.[955]

The year 1918 proved to be a critical one for the Native Hawaiian people. After the U.S. had entered the war in Europe in 1917, shipping was disrupted and prices on staple food items, particularly fish and poi, almost doubled. This inflation caused a severe strain upon poor urban Native Hawaiians living in tenements or squatter camps and, as discussed below, living conditions for the Native Hawaiian people continued to deteriorate. In January of 1918 the Honolulu Ad Club, almost exclusively Caucasian in membership, began a public campaign to demolish or repair the tenement buildings in Honolulu.

In February 1918, Native Hawaiian businessmen attempted to form a business association to supply Native Hawaiians with staple foods at prices they could afford. Initially called the Hawaiian Chamber of Commerce, the founding group decided to charter themselves under the name of United Hawaiian Association.[956]

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[955] *Ka Pu‘uhonua O Na Hawai‘i,* April 14, 1916, p. 4. In Hawaiian, the five points were as follows: l. Ka hoopakele ame ke kakoo ana in na loina kupono o ka noho‘na Lahui Hawaii ana. . . . O kekahi o ia mau loina, o ia no ka noho‘na lokahi ana o na Hawaii iloko o ka aina. Hookahi uhanae, hookahi manao, hookahi poohiwi, hookahi ma ka hana, malalo o ko lakou mau alakai a mau alii paha. O keia ano, ka nahaha nei i keia mau la, aole ma o na mahele hoomana wale no, aka, ma o na hana kalaiaina ala, ame kekahi mau hana ahahui e ae. Minamina wale ka ikaika iloko o keia lahui naauao, i ka mahaeia a hiki i ka lilo ana o ka mea maikai i mea nawaliwali. Aka, aolE I hala ka manawa. Aole, NO HOI I EMI Loa ka heluna O Na Hawaii i hiki ole ai ka hana. Eia ka Ahahui Puuhonua o na Hawaii ke hana nei ma keia mahele o ka hoihoi mai i na Hawaii a akoakoa iloko o ke apo o ka lokahi. . . . 2. Ka hoopakele ame ka hoomahuahua ana i ka non‘na maluhia ana o knoa mau lala. Ke ku nei ka ‘Puuhonua' ma keia kahua e lilo i mea uwao, a i mea e huli aku i ka maluhia o ka Lahui Hawaii, maluhia iloko, a iwaena o na poe e noho ku-ee ana; maluhia iloko, a, iwaena o na poe e noho huikau ana; amluhia iloko o na hana like ole iwaena o na Hawaii. . . . 3. Ka hoopakele ana i ko lakou noho na launa ame ko lakou noho‘na lahui ana.. . . 4. Ka hoopakele ana, a me ka hoonui ana i ka lakou mau hana hoonaauao ame kalepa. . . . 5. Ka hoopakele, kakoo a me ka hoonui ana aku i ko lakou mau hana kokua a manawalea.

[956] *P.C.A.*, February 15, 1918, p. 1 Section II. The officers of the organization were to be Samuel Dwight, president; James L. Holt, vice-president; William Ahia, treasurer; William C. Achi Jr., secretary. The Board of Directors included Mayor Joseph J. Fern, Jonah Kumalae, Jesse Uluihi, David Kalauokalani Jr., and Thomas Treadway.

The *Pacific Commercial Advertiser* of October 12, 1918, announced that the United Hawaiian Association, Ltd. had acquired two stalls at the makai (toward the ocean) Waikīkī market on Kekaulike St. They planned to sell fresh fish at one stall and kalo (taro) at the other. It was estimated that they would have 1,000 to 2,000 pounds of kalo (taro) available to sell.[957]

In November 1918, one year after the passing of Queen Lili‘uokalani, Prince Kūhiō, Rudolph Duncan, Jesse Uluihi, John C. Lane and Noa Aluli decided to organize a Hawaiian "Ad Club" that would draw together leading middle to upper class Native Hawaiians to work on the tenement issue and to help gain support for the "rehabilitation" program. This initiative resulted in the founding of the Hawaiian Civic Clubs.[958] About 40 Native Hawaiians met at Honolulu's Young Hotel in December 1918 and founded the organization. Judge William Heen was elected president, Reverend Akaiko Akana was elected vice-president, and Charles Marques and Joseph Ordenstein were to be treasurer and secretary, respectively. The original purpose of the Hawaiian Civic Club was to create an open forum for Native Hawaiians to discuss and take action on matters of importance affecting the welfare of the Native Hawaiian people and to perpetuate the language, history, traditions, music, dances and other cultural traditions of Hawai‘i. As it turned out, the first order of business for the clubs was discussion on how to secure the passage of the Hawaiian Homes Commission Act.[959]

The annual report to the trustees of the ‘Ahahui Pu‘uhonua O Nā Hawai‘i (Hawaiian Protective Association) for November 1918 through December 1919, by Noa Webster Aluli described the activities and programs of the ‘Ahahui Pu‘uhonua O Nā Hawai‘i for that period. Aluli also took an active interest in getting Native Hawaiians educated. He helped young

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[957] *P.C.A.*, October, 12, 1918, p. 1, Section II.
[958] *Paradise of the Pacific*, 67 (Annual 1955) 95 - 96. Hawai‘i State Archives. Delegate Kalanianaole Letters and Miscellaneous File (P), Annual Report to the Trustees of the Ahahui Pu'uhonua for November 1918 through December 1919 by Noa Webster Aluli.
[959] *Id.*

students get into Kamehameha, St. Louis, and Lahainaluna schools. He also successfully advised many young students to go to the Normal School to train as teachers. In addition, he helped to secure financial aid for promising students to go away to school and receive training for specialties not available in Hawai'i. Aluli also did outreach among Hawaiians to talk with them about what he called "Puuhonuaism." He traveled to every major island, wrote articles in the *Pu'uhonua* newspaper and letters to individuals, urging Native Hawaiians to save, look to the future, to buy their own home and to look after the health of their families.[960]

Through churches, letters, new articles, and home visits, the Hawaiian Protective Association taught Hawaiians about the dangers of the congested and poor living conditions of the city; they pointed out the advantages of the country and outdoor life; extolled the benefit of sanitary and hygienic living; explained the advantages of home economics; offered instruction in pre-natal care and the care of infants; and emphasized the value of saving money. The volunteers worked through special agencies to get as many Native Hawaiian students as possible to take up specialized training in agriculture, medicine, law, dentistry, and other fields of work that would help uplift their people. They encouraged Native Hawaiians to purchase or lease homestead lands to live upon, raise their own food and secure other necessities of life. In Honolulu, they encouraged Native Hawaiians to purchase, own and never to sell their own homes.[961]

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[960] *Id*. In closing his report, Aluli wrote: "I have given my time and etc. in the work. Throughout the day I think of it - - I sleep thinking of it - - I awake with thoughts of it. It has been accused that this Society is a 'one man' society. I still believe in it - - 'one-man' power or 'leadership'. The failures of the past, where there were too many leaders and too many talkers are sufficient to warn us. . . . Ours is a noble Cause. To save a Race from becoming extinct - - to help and labor in the rebuilding of a dying race, whose only fault is its big-heartedness, is a work emphasized by our Master. It is an almost impossible task but with His help as He has done with the Maori People, we will succeed."

[961] Testimony of Reverend Akaiko Akana in U.S. Congress, Senate, Committee on Territories, *Hawaiian Homes Commission Act, 1920, Hearings Before the Committee on Territories, United States Senate 66th Congress, 3rd Session on H.R. 13500. A Bill to Amend an Act Entitled An Act to Provide a Government for the Territory of Hawaii, Approved April 30, 1900, As Amended to Establish An Hawaiian Homes Commission And For Other Purposes,* (Washington: Government Printing Office, 1921), p. 46.

The practical day-to-day work of the ʻAhahui Puʻuhonua led its leaders to the conclusion that aggressive action was needed to arrest and reverse the decline of the Native Hawaiian people. They considered the serious conditions facing the Native Hawaiian people and the handicaps that had to be overcome. Given the association's experience in carrying out its work for over four years on a volunteer basis with limited funds, as well as the limited success of Native Hawaiian businessmen with the United Hawaiian Association, they decided the best channel for substantial and lasting results was to seek federal aid. They believed that such aid should not be in the form of charity but should enable Native Hawaiians to become progressively self-supporting. The association's legislative committee finally came up with a draft of a "rehabilitation" resolution, which was sponsored by John Wise in the Territorial Legislature and then introduced into the U.S. Congress.[962] The Hawaiian Homes Commission Act, which resulted from the "rehabilitation" effort, was the greatest accomplishment of the ʻAhahui Puʻuhonua O Nā Hawaiʻi and its president, Delegate Prince Kūhiō Kalanianaʻole. It also formally established the federal government's fundamental trust relationship with Native Hawaiians as an indigenous people of the United States.

The Origins of the Hawaiian Homes Commission Act

The work to pass the Hawaiian Homes Commission Act wove together the various strands of governance issues that concerned the Native Hawaiian people during the first two decades of American rule. The bill in its final form embodied the types of compromises that Hawaiians often found necessary to make in order to win a concession and maintain their status in the governance of the islands. Thus, an examination of the politics and issues behind passage

[962] *Id.*, p. 48.

of the Hawaiian Homes Commission Act provides an important case study in Hawaiian governance of the period.

More significantly, the legislative record of the deliberations of the congressional committees which oversaw the passage of the bill form a clear articulation of the policy of the U.S. Congress to acknowledge Native Hawaiians as an indigenous people with a significant land base in Hawai‘i and with whom the U.S. government sustained a special trust relationship.

Many historians contend that the passage of the Hawaiian Homes Commission Act was primarily a means of amending the basic land laws of the Territory, rather than a genuine humanitarian effort to rehabilitate Native Hawaiians.[963] While this accurately characterizes the standpoint and motives of the Big Five in relation to the Hawaiian Homes Commission Act, it does not accurately reflect the intentions and the aspirations of the Native Hawaiian proponents of the bill.

After the Land Act of 1895, which set up five methods of homesteading upon the former Government and Crown lands for the general public, Native Hawaiians had consistently advocated for lands to be made available for homesteading by Native Hawaiians.[964] Native Hawaiians had applied for and received homestead lands, individually and through homestead associations.[965] As noted above, Kūhiō's charges against Governor Frear were based on the

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[963] Marylyn Vause, "The Hawaiian Homes Commission Act, 1920: History and Analysis" (Unpublished M.A. thesis, University of Hawai‘i, 1962).

[964] U.S. Congress, House, Committee on the Territories, "Government for the Territory of Hawaii, *Report No. 305 to Accompany H.R. 2972*, 56th Congress, 1st Session, February 12, 1900 (Washington: Government Printing Office, 1900), pp. 65 - 66, 105 - 107.

[965] By 1911, 1,156 Hawaiians had received homesteads under the 1895 Land Act. They received a total of 30,800 acres valued at $150,513. The average lot size was 26.67 acres valued at $4.88 per acre. At the same time, 466 Americans had received 26,900 acres with an average area per lot of 58 acres valued at $9.23 an acre; 531 Portuguese received lots averaging 35 acres in size and valued at $8.72 per acre. Hawaii (Territory) Governor, *Report to the Secretary of Interior, 1911* (Washington: Government Printing Office, 1911), p. 53. From 1912 through 1918, 827 more Hawaiians took out homesteads. During the same period, 237 Americans, 420 Portuguese and 41 Japanese were awarded homesteads. Statement of Hon. William T. Rawlins, Member of the Hawaiian Legislative Commission, and Chairman of the

numerous complaints of Hawaiian homesteading associations who were not awarded homestead lands by the government.

Gradually, the general desire of Hawaiians to obtain land for homesteading evolved into an explicit demand to "rehabilitate" the Hawaiian people upon the Crown lands that were taken away from the Hawaiian nation and ceded by the Republic of Hawaiʻi to the U.S. Five major factors drove the "back to the land" rehabilitation movement, transforming it from a general idea into a strategic plan to repatriate the Hawaiian national lands to the Native Hawaiian people. These factors, discussed below, included the expiration of leases to Crown lands negotiated during King Kalākaua's reign; the declining health and destitute conditions of Native Hawaiians in Honolulu; inflated prices of the two staple foods (fish and taro) of Native Hawaiians during World War I; competition from Japanese workers moving off the plantations and into Honolulu; and the contention between Hawaiian national leaders and the oligarchy.

Expiration of King Kalākaua's Crown Lands Leases

The plantations and ranches had acquired low-cost 30-year leases on large tracts of Crown lands during the reign of King Kalākaua, beginning in 1888, after the 1887 Bayonet Constitution. These leases were due to expire beginning in 1918. Under the Organic Act, once the leases expired, these lands would be opened up for homesteading to an expectant general public. From the perspective of the planters and the ranchers, quick and decisive action would be needed to prevent the opening of these valuable Crown lands for homesteading. From the perspective of the Hawaiian national leaders, Queen Liliʻuokalani, the lawful hereditary monarch who held the rightful claim to the Crown lands had recently passed away; the expiration of the

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Public Lands Committee of the Hawaiian House of Representatives, in *Proposed Amendments to the Organic Act of the Territory of Hawaii, Hearings Before the Committee on the Territories*, House of Representatives, 66th Congress, 2nd Session, February 3, 4, 5, 7, and 10, 1920, p.188.

leases presented a rare and perfect opportunity to repatriate the Crown lands to the Native Hawaiian people in her place. Hawaiian national leaders recognized that immediate action was necessary to secure these lands before the oligarchy managed to change the law to extend the leases of the Crown lands to plantations and ranches.[966]

Declining Health and Destitute Conditions of Native Hawaiians in Honolulu

The weak health and impoverished conditions of Native Hawaiians in the first two decades of the 20th century was the primary impetus behind the rehabilitation movement. The population of pure Native Hawaiians had declined from 26,000 in 1910 to 23,700 in 1920. The life expectancy of Native Hawaiians was 30.2 years in 1910 and 35 years in 1920. The infant mortality rate was still 136 per 1,000 live births, compared to only 39 per 1,000 for Caucasians in 1925.[967]

The overall decline of Native Hawaiians as a people, and the destitution of Native Hawaiians in Honolulu tenements, drew the concentrated attention of the Honolulu Ad Club, the ʻAhahui Puʻuhonua O Nā Hawaiʻi, and the Hawaiian Civic Clubs. They believed that the Native Hawaiian population could increase and be replenished through a systematic program of returning Native Hawaiians to the soil to farm, fish, and live in the healthy outdoors. Prince Kūhiō described the decline of the Hawaiian people and how rehabilitation would reverse the problem in a letter that he circulated in the U.S. Senate:

> The Hawaiian Race is fast becoming a minority element among the races of the Territory. The mortality rate among the Hawaiians is exceedingly high as compared to the other races and if conditions exist as they do today the Race will become extinct in a very short period of time.

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[966] Davianna Pōmaikaʻi McGregor, "ʻĀina Hoʻopulapula: Hawaiian Homesteading" *Hawaiian Journal of History* Vol. 24 (1990): 1-38.

[967] U.S. Bureau of the Census, *15th Census of the United States: 1930, Population Second Series, Hawaii: Composition and Characteristics of the Population and Unemployment* (Washington: Government Printing Office, 1931), p. 48, Table 2 for Composition and Characteristics of Population.

> After extensive investigation and survey on the part of various organizations organized for the purpose of rehabilitating the race, it was found that the only method in which to rehabilitate the race was to place them back upon the soil. The Hawaiians were a seafaring and agricultural people. Their entire life was spent in the outdoors. But with the coming of civilization conditions were changed, the Hawaiians on account of their lack of business experience, and otherwise, were forced into the crowded tenements of the cities and towns and were subjected to all the evils of modern civilization. Disease and the change in their living conditions weakened their vitality to such an extent that today they are susceptible to all diseases and their resistance being very low the death rate is high. Under the provisions of this bill, by placing the Hawaiians upon the soil, away from the cities and towns, it is certain that they will again retain their former vitality and in the course of years the race will increase, and become a majority element in the land of their birth.[968]

The Crown lands leased by ranches and plantations were ideal for farming and fishing if they could be made available to Native Hawaiians for homesteading.

Inflated Prices for Fish and Taro

When shipping was interrupted during World War I, food shortages occurred, in turn triggering the inflation of food prices, particularly the Native Hawaiian staples of fish and poi (mashed taro). In 1917, the government declared meatless days for the duration of the war in order to help conserve the scarce amounts of meat, which was mainly shipped in from the U.S. continent. This automatically raised the price of fish by almost 100 percent. Efforts by the Territorial Legislature to fix the price of fish were thwarted by a Hawai‘i Supreme Court decision finding it unconstitutional for the legislature to place a ceiling on the price of food.[969]

During World War I, prices for all food items went up. Kalo (taro) was no exception. In April 1918, the *Pacific Commercial Advertiser* noted that the price of poi (mashed taro) was

[968] Hawai‘i State Archives, Delegate Kalanianaole File.
[969] Territory v. McCandless, 24 Haw. 485 (1918); U.S. Bureau of Labor Statistics. *Fourth Report of the Commissioner of Labor on Hawai‘i*, 1910 (Washington: Government Printing Office, 1910), p. 45.

climbing out of reach of the poor. It reported on a meeting held to discuss measures to reduce the price:

> Poi, long the national dish of the Hawaiian race, may become the exclusive dish for the wealthy, unless prices come down, and it was for this reason that a meeting was held in the city supervisors' chamber last night. . . . the price of poi has reached a figure which makes it an expensive dish and the supply to the Hawaiian family must be reduced in quantity, because he has not sufficient funds to purchase a normal supply.[970]

The inflated prices on the two basic foods of Native Hawaiians increased the hardships endured by Native Hawaiians who lived in Honolulu tenements and did not have access to land to farm or the ocean to fish. These conditions warranted direct and immediate action to give Native Hawaiians access to the natural resources needed for their survival. These circumstances added a sense of urgency to the program of placing Native Hawaiians on the Crown lands where they could farm and fish to provide for the day-to-day needs of their families.

Competition for Jobs From Former Plantation Workers

The ability of Hawaiians to earn enough money to pay for food at inflated wartime prices or to escape the squalor of urban tenements was further impaired by competition from other ethnic groups, particularly the Japanese, for wage earning jobs.

The number of Native Hawaiians living in Honolulu increased from 13,500 in 1910 to 17,500 in 1920. There they faced increasing competition from the Chinese and Japanese for jobs. In 1910, there were 9,600 Chinese in Honolulu, and by 1920 there were 13,400. The number of Japanese in Honolulu more than doubled from 12,000 in 1910 to 24,500 in 1920.

Competition for jobs from the Japanese and Chinese increased in 1900 when the penal contracts were abolished and those who had been held to the plantations under the labor

[970] *P.C.A.*, April 5, 1918, p. 1, II.

contracts were free to leave the plantations or negotiate new terms of employment.[971] Hawaiian labor leaders, particularly the poʻolā or stevedores and longshoremen had made certain that the platforms of the various political parties in 1900 included provisions for excluding alien labor from government funded jobs.[972]

In July 1919, the *Honolulu Star Bulletin* reported on a meeting organized by the Hui Poʻolā (Hawaiian Stevedores Association) to discuss how to drive the Chinese and Japanese stevedores out of the waterfront. According to the report, the membership expressed strong prejudices against their Japanese competitors:

> "Drive the Japanese out," Clarence L. Crabbe, superintendent of the Oceanic wharf at Pier 6, shouted. "Today 80 percent of the laborers are Japanese and only 20 percent Hawaiians."
>
> At Hilo, it was stated by George Kane, the Hawaiians no longer are able to get jobs, and all the work is done by orientals. The Matson Navigation company is willing to displace orientals with Hawaiians. . . the officials of C. Brewer & Co., the American Factors, Ltd., Alexander & Baldwin, and others are willing to lend support to anything the Hawaiians attempt.
>
> D.K. Kaeao, aged 65 years, one of the oldest Poʻola men on the front, spoke for a rejuvenation of the old days when the red-shirted, black-trousered and black-capped workers had a good deal of prestige. "Then we had everything," he said. "Now, alas, we have nothing. Even our jobs are going away from us."
>
> Benjamin Wright of the Honolulu Iron Works declared the natives had lost their flag and their lands, and had nothing but their vote. "And now the Japanese are coming in herds to take your jobs away."

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[971] Up through 1900, plantation workers were hired under contracts authorized by the 1850 Masters and Servants Act that were enforced by the government and included imprisonment for violation of the contract terms. Contracts were for five to ten years and once signed had to be completed. Workers had to work two days for every day missed. This penal labor system was considered a form of slavery, which was abolished in the U.S. by the passage of the 13th Amendment in 1865. Thus, in 1900, when the Organic Act went into effect and Hawaiʻi was governed as a territory of the U.S., the contract labor laws were abolished and the contracts enforced by those laws were nullified. Edward Beechert, *Working in Hawaii: A Labor History* (Honolulu: Univ. of Hawaiʻi Press, 1985), pp. 40 – 57, 326. Also see Victor Weingarten "Raising Cane: A Brief History of Labor in Hawaii" (Honolulu: International Longshoremen and Warehousemen's Union, September 1945), p. 18.

[972] *P.C.A.*, June 8, 1900, p.1; and October 9, 1900, p. 1.

> Frank Archer said, "This is our land. It belongs to us. Strangers have come here from the other side and have fattened on the land. When they get fat they go back. Everybody gets rich through the Hawaiians, and we are thrown out."[973]

The increased competition from Japanese for jobs in Honolulu, especially on the docks, continued to be a major concern of Native Hawaiians. It was linked to a concern that the industrious Japanese agriculturalist would also begin to compete for homestead lands that would be opened for general leasing to citizens if the Organic Act was not amended.

During hearings in the U.S. Congress on the Hawaiian Homes Commission Act, Reverend Wise testified that he did not think it was fair that the Native Hawaiians, for whom the King had held the Crown lands in trust, should have to compete for homestead lands with the other nationalities, especially the Japanese. For example, at Waiākea, 50 percent of the lands were awarded to Native Hawaiians, while 15 percent were given to Caucasians, 19 percent to Portuguese and 10 percent to Japanese.[974] He testified as follows:

> From the time of the division up to the time of annexation, most of the Government lands, the agricultural lands in the division of the Government, had been sold, and the only reason why the Crown lands were left was simply because King Kalakaua, the last monarch, went to work and leased these lands under long-term leases, and these leases are now expiring or are about to expire, and they are the only lands we have to be homesteaded. Now, to go to work and allow these lands to be homesteaded by other nationalities, American citizens other than Hawaiians, does not seem fair to us. Mr. Japanese, who is born in Hawaii, as soon as he is old enough, goes in and draws with the Hawaiians and gets a piece of land.[975]

Mr. Wise found a sympathetic audience in Congress for his expressed concerns about Japanese competition. In particular, Representative Charles Curry of California who served as chair of the House Committee on Territories was known to be rabidly anti-Japanese.[976] The fear

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[973] *Honolulu Star Bulletin*, July 4, 1919, pp. 1-2.
[974] Goodale, William, "An Experiment in Homesteading," A paper read at the Meeting of the Honolulu Social Science Association, November 2, 1925.
[975] *Id.,* p. 161 - 162.
[976] Vause, "The Hawaiian Homes Commission Act, 1920," pp. 46 - 51.

of Japanese domination of Hawai‘i was one of the factors that won political support for the “rehabilitation” proposals presented to Congress by John Wise and Delegate Jonah Kūhiō Kalaniana‘ole.

Pu'uhonua Resolution

Since Prince Kūhiō had raised his charges against Governor Frear, the disposition of the public lands had been a major source of conflict between the Native Hawaiians and the sugar plantations. In seeking passage of a measure to set aside the Crown lands for exclusive homesteading by Native Hawaiians, the contention between Hawaiian national leaders and the oligarchy shaped the final version of the bill.

In its original form, the Pu‘uhonua Resolution to set aside the Crown lands under the management of a Hawaiian Homes Commission was simple and direct. It laid out the primary concerns of the Hawaiian Protective Association with regard to the destitute conditions of Native Hawaiians in Honolulu’s tenements and the rationale for setting aside a portion of the Crown lands for Native Hawaiian homesteading. The original measure was worded as follows:

> WHEREAS, the distribution of lands under the Kingdom of Hawaii, whereby the power to alienate the same has resulted in the loss to the Hawaiian people of a large part of their original birthright so that the members of the race now constitute a large part of the floating population crowding into the congested tenement districts of the larger towns and cities of the Territory under conditions which will inevitably result in the extermination of the race; and
>
> WHEREAS, members of the Hawaiian race or blood should be encouraged to return to the status of independent and contented tillers of the soil, preserving to posterity the valuable and sturdy traits of the race, peculiarly adapted to the islands comprising the Territory of Hawaii, inhabited and governed by peoples of their race and blood as their birthright for a long period of time prior to annexation with the United States of America; and
>
> WHEREAS, there is now available or soon to become available large tracts of public lands under the control of the United States of America from which suitable areas could readily be set aside permanently as government lands subject

> to long term leases and renewals of leases for the encouragement of associations or colonies of individuals of Hawaiian blood for mutual growth and help to bring a rehabilitation of their race and to furnish an incentive for the preservation of the best characteristics of an independent citizenship of Hawaiian blood;
>
> NOW THEREFORE, BE IT RESOLVED: by the Senate of the Legislature of the Territory of Hawaii, the House of Representatives concurring, that the Congress of the United States of America be respectfully petitioned herein to make such amendments to the Organic Act of the Territory of Hawaii, or by other provisions deemed proper in the premises, that from time to time there may be set aside suitable portions of the public lands of the Territory of Hawaii by allotments to or for associations, settlements, or individuals of Hawaiian blood in whole or in part, the fee simple title of such lands to remain in the government, but the use thereof to be available under such restrictions as to improvements, size of lots, occupation and otherwise as may be provided for said purposes by a commission duly authorized or otherwise giving preference rights in such homestead leases for the purposes hereof as may be deemed just and suitable by the Congress assembled;
>
> AND BE IT FURTHER RESOLVED that copies of this Resolution be engrossed for presentation by the Delegate of the Territory of Hawaii to the Speaker of the House of Representatives, the President of the Senate, and the President of the United States.[977]

The Ahahui Pu‘uhonua O Nā Hawai‘i explained the rationale for their proposal in a memorial to Congress. It was a blend of traditional concepts about the intimate and interdependent relationship of Native Hawaiians with the land, and modern notions about agricultural technology and capital investment.

> There must be land legislation to enable the race to secure more land than it has in order to substantiate its earthly existence and to establish more than ever before, its rightful claim to the land of its birth. In addition to this project, capital must be furnished to enable the people to care for their lands in a fruitful manner. Experts in agriculture must be furnished them in order to guide the people's agriculture activities along productive and progressive lines. . . .
>
> The soil is a redeeming factor in the life of any race, and our plan for the rehabilitation of the Hawaiians is futile unless the question of returning to mother earth takes precedence to all other considerations in such a plan. . . . Therefore, the question of rehabilitation of the Hawaiian people, not only on the basis of

[977] Hawai‘i State Archives, Delegate Kalanianaole File on Rehabilitation, "Statement by the Legislative Commission of Hawaii in Support of a Bill Providing for the Setting Apart of Portions of the Public Lands of the Territory of Hawaii for Use by Hawaiian Citizens of Hawaiian Blood, Honolulu, January 1, 1920."

> education, but on their direct contact with mother earth, is paramount at this moment.
>
> In so far as experience has proven and as much as science has revealed, physical health and vigor, the power to propagate the race, eradication of diseases, the restoration of normal domestic living conditions, the elimination of poverty and pauperism, the establishment of business relationship with the business world, the deepened appreciation of the soil and of the material wealth, - all of these benefits come, not by the fashionable [sic] life of this century, but, by the intimate acquaintance with the life and the possibilities of the soil.[978]

Sugar Planters' Resolution

The Territorial Legislature also passed a second resolution sponsored by the plantations and ranches to limit the amount of the Crown lands that would be opened for general homesteading so that those lands could be made available for continued leasing for plantation agriculture and ranching.[979]

Governor McCarthy appointed a Territorial Legislative Commission of four to carry the two resolutions to Congress for its approval. Appointed to the Commission were Republican Senators Robert Shingle and John Wise and Republican Representatives William Rawlins and Norman Lyman. Senator Robert Shingle, one of the leading Republicans in the territory, was an advocate of changing the land laws. Senator John Wise was a Native Hawaiian politician, teacher, translator, member of the Ahahui Pu‘uhonua O Nā Hawai‘i, and founder of the Hawaiian Civic Clubs. He had introduced the rehabilitation bill into the Territorial Legislature. Representative Rawlins was an attorney and chairman of the Public Lands and Internal Improvements Committee. Representative Lyman was a Native Hawaiian homesteader from

[978] Hawai‘i State Archives, Delegate Kalanianaole File, “Memorial to Congress from the Ahahui Pu‘uhonua O Na Hawaii.”
[979] HCR 28, *reprinted in* Vause, “The Hawaiian Homes Commission Act, 1920,” Appendix III, p. 157.

Hilo. Attorney General Harry Irwin was also assigned to accompany the group by the governor.[980]

Upon hearing the testimony of each of the members of the Hawai‘i commission, as well as Delegate Kalaniana‘ole, the U.S. House Committee on the Territories urged the merging of the two resolutions into one bill. Initially, there was resistance to this suggestion by the parties involved, but all eventually agreed that the best way to gain Congressional support for their respective proposals was to merge the two resolutions together into one measure, which became H.R. 12683. It was introduced in Congress on February 21, 1920.

Compromise

Rather than setting aside the Crown lands for Native Hawaiians to homestead, the compromise resolution set aside selected third and fourth class Crown and Government lands of the Hawaiian Kingdom for exclusive homesteading by persons of whole or part Hawaiian ancestry under the purview of a Hawaiian Homes Commission. The administration of these lands would be funded by leasing the first and second-class agricultural public lands to the plantations and ranches for periods of up to 15 years. The fund would amount to $1 million and be used for loans and advancements to Hawaiian lessees of up to $3,000 at an interest rate of 5 percent per annum. Such loans were to be used for erecting dwellings and other farm improvements, including the purchase of livestock and farming implements. When implemented, H.R. 12683 would mean the demise of homesteading of the public lands by the general multi-ethnic public.[981]

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[980] *Id*., pp. 35 - 36.
[981] U.S. Congress, House, Committee on the Territories, February 3, 4, 5, 7, and 10, 1920, Appendix B, pp. 314 - 320.

When news of this compromise was carried in the Hawai‘i papers, the Native Hawaiian reaction against it was immediate and heated. On March 6, 1920, 1,000 people attended a rally at ‘A‘ala Park to protest H.R. 12683. Supervisor Jonah Kumalae, Representative Lorrin Andrews, Maui physician Dr. J.H. Raymond, and Jessie Uluihi of the Ahahui Pu‘uhonua O Nā Hawai‘i led the rally. The rally authorized the organizers to send a cable to Washington, D.C., conveying their support for the general homesteading of the public lands and their opposition to H.R. 12683 which would effectively terminate homesteading by the general public. The cable read as follows:

> Mass meeting of 1,200 voters of Honolulu protests the sale of leases of public lands to highest bidder. Mailing newspaper report. Legislative committee reported acting contrary to resolutions by legislature and citizens demanded public lands to be homesteaded. Request that Congress defer action until arrival of appointed committee of citizens asking hearing of homesteading [as] soon as transportation available, not later than May 20.[982]

Newspapers throughout the islands, such as the *Daily Post-Herald*, *Maui News*, *New Freedom*, *Garden Island*, as well as the two large Honolulu newspapers, the *Pacific Commercial Advertiser* and *Honolulu Star-Bulletin*, criticized the resolution as a measure that would eliminate homesteading in favor of allowing the public lands to be leased cheaply to the plantations and ranches. These newspapers also criticized the proposal to “rehabilitate” Native Hawaiians on the third and fourth-class agricultural lands that were listed in the bill. They felt that the compromise “rehabilitation” plan would reduce the Native Hawaiians to the status of the “blanket” American Indians on reservations, while the plantations would end up with inexpensive leases on prime agricultural lands.[983]

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[982] *Honolulu Star Bulletin*, March 17, 1920, p. 14. The *Nupepa Ku‘oko‘a* also reported on the mass meeting at ‘A‘ala Park where views opposing the work of the Washington Commission regarding the public lands were heard. Kumalae, Andrews, and Raymond were appointed to form a committee to convey the opposing views to Congress. *Nupepa Ku‘oko‘a*, March 12, 1920, p. 1.
[983] Vause, “Hawaiian Commission Act, 1920,” pp. 57 - 66.

The *Pacific Commercial Advertiser* contended that prominent Hawaiian leaders viewed the "rehabilitation scheme" as deceptive because Native Hawaiians would only be permitted to lease second-class agricultural land while the first-class lands would be solely for the sugar planters. They also felt that the "rehabilitation" scheme would make Native Hawaiians wards of the government and eventually lead to their disenfranchisement just as American Indians living on reservations had been wards of the government without a vote. In support of this report, the *Advertiser* quoted Representative Jonah Kumalae as saying:

> "If they mean to do something great and good for the Hawaiians, why do they not provide for us to secure a fair portion of the highly cultivated government lands of the Territory?" asks Jonah Kumalae. "They don't do that; they fix it so we may get the second class lands, which nobody wants and which would only be good for raising goats, and Hawaiians are not good at goat-raising."[984]

On March 31, 1920, the Territorial Legislative Commission returned to Hawai'i and issued the following statement to explain their work in Washington, D.C. and to answer some of the criticisms that they expected to hear:

> Senator Wise made such a strong presentation of his case . . . his plan occupied the center of the stage almost to the exclusion of other matters of importance to Hawaii. . . .In preparing the bill for the rehabilitation plan it became apparent to everybody that if the plan was to be a success a considerable sum of money would be required immediately for the purposes outlined in the bill . . .We finally decided that the only funds from which this needed money could be obtained was from the rentals derived from the government lands and water rights under the present law, and the bill was drafted accordingly. It must be here emphasized that the bill prepared and filed by your commission did not contemplate nor suggest the withdrawal of any of these highly cultivated public lands from homesteading, but expressly provided for such homesteading under the provisions of HCR 28.[985]

Once the members of the commission returned to Hawai'i, those who had advocated the "rehabilitation" plan continued to discuss changes to the bill with those who had proposed withdrawing the highly cultivated lands from general homesteading. Their respective

[984] *P.C.A.*, March 14, 1920, sec. II, p. 1.
[985] *Honolulu Star Bulletin*, March 31, 1920, p. 14.

constituencies provided them with considerable input. These discussions resulted in the drafting of a new version of the homestead legislation - H.R. 13500, the Hawaiian Homes Commission Act, 1920.

With regard to homesteading, the new version authorized withholding of all public lands from homesteading, unless the Governor decided to withdraw land, provided he gained support from two-thirds of the land board. Rather than have Congress decide whether to lease or homestead the cane lands, the territorial government would be authorized to manage the public lands. The allocation of homesteads would still be conducted by lottery.

With regard to the "rehabilitation" program, H.R. 13500 specifically listed the lands that were to be granted to the Hawaiian homesteading project, and eliminated the provision allowing for expansion of the program on additional lands. H.R. 13500 added 3,000 acres to the list of lands for Hawaiian homesteading. In addition, a blood quantum of 1/32 Hawaiian ancestry was specified to qualify as a beneficiary of this Act; the previous bill had defined the beneficiaries as anyone who had Hawaiian ancestry.[986] The duration of the leases was shortened from 999 years to 99 years. H.R. 13500 also described in greater detail the establishment and operations of the loan program for Hawaiian homesteading.

[986] Congressmen inquired as to which Hawaiians were to be rehabilitated. Opponents of the Hawaiian homesteading program sought to limit its scope by proposing that only full Hawaiians were threatened with extinction and needed the benefits of a rehabilitation program. Proponents of the Hawaiian homesteading program countered that the program should be available to anyone who was any part Hawaiian, even if the person was only one-thirty second Hawaiian. Therefore, when the bill was re-written, the Native Hawaiian authors defined Native Hawaiian as anyone who was at least one-thirty second Hawaiian. Frank Bailey Jr." ʻĀina Hoʻopulapula: A Contested Legacy: Kūhiō Kalanianaʻole's Hawaiian Homes Commission Act During the Territorial Years, 1921 - 1959" (Unpublished PhD Dissertation, University of Hawaiʻi, Mānoa, December 2009, available in UH-Mānoa Hamiliton Library), pp. 82 – 97.

The House of Representatives passed this measure on May 22, 1920.[987] The report of the House Committee on Territories explained the basic rationale for establishing the "rehabilitation" program and laid out the basic policies to guide its operations.

In the Committee's findings on why the program was needed, the Committee report quoted the testimony of John Wise and John Lane, Secretary of the Interior. Their testimonies explained the urgent need to restore Hawaiians to the land and the trust responsibility that the U.S. would assume toward the Hawaiian people:

> Mr. WISE. . . The Hawaiian people are a farming people and fishermen, out-of-door people, and when they were frozen out of their lands and driven into the cities they had to live in the cheapest places, tenements. That is one of the big reasons why the Hawaiian people are dying. Now, the only way to save them, I contend, is to take them back to the lands and give them the mode of living that their ancestors were accustomed to and in that way rehabilitate them. We are not only asking for justice in the matter of division of the lands, but we are asking that the great people of the United States should pause for one moment and, instead of giving all your help to Europe, give some help to the Hawaiians and see if you can not rehabilitate this noble people.
>
> Secretary LANE. One thing that impressed me there was the fact that the natives of the islands, who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty. They never owned the land of the islands. The land was owned by the King originally, and they had in 1848 what they called a mahele, in which there was a division. As a result of that and legislation that passed subsequently, we have approximately 1,600,000 acres of public lands in the islands. . . .
>
> In my judgment, from the limited knowledge I have of the history of the islands, those people, the natives, were not treated fairly in the division of the lands that was made in 1848. At any rate, they are a problem now and they ought to be cared for by being provided with homes out of the public lands; but homes that they could not mortgage and could not sell. They are a most lovable people[,] a kindly people, and a generous people. They have arts of their own which endear them to the people who visit the islands. It is not altogether the beauty of the islands that attracts people there. It is the spirit that they see and the old civilization that they meet. There is a thriftlessness among those people that is characteristic among peoples that are raised under a communist or feudal system. They do not know what the competitive system is and they will get rid of property that is given them.

[987] Hawai'i State Archives, Delegate Kalanianaole File on Rehabilitation, Report of Delegate Kalanianaole to the Territorial Legislature of Hawaii.

> They do not look forward. They can not see to-morrow. Therefore, they should be given as close identification with their country as is possible and yet be protected against their own thriftlessness and against the predatory nature of those who wish to take the land from them.[988]

By incorporating these testimonies into their report as background to the bill, the House Committee on Territories accepted the notion that the U.S. Congress had a trust responsibility to the Native Hawaiian people as wards. The committee report also recognized the special interest of the common Native Hawaiian people to a third of the lands of Hawai‘i:

> But having been recognized as owners of a third interest in the lands of the kingdom, the common people, believing that in the future means were to be adopted to place them in full possession of these lands, assumed that the residue was being held in trust by the Crown for their benefit. However, the lands were never conveyed to the common people and, after a successful revolution, were arbitrarily seized, and by an article in the Hawaiian constitution became the public lands of the Republic of Hawaii.[989]

The committee report outlined four policies for homesteading the public lands of the Territory of Hawai‘i. Native Hawaiians were to be placed upon the land in order to insure their rehabilitation. The alienation of such land must, not only in the immediate future but also for many years to come, be made impossible. Accessible water in adequate amounts must be provided for all tracts of land. The Native Hawaiian must be financially aided until his farming operations are well underway.[990]

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[988] Hawai‘i State Archives, Delegate Kalanianaole File on Rehabilitation, U.S. Congress, House, Committee on Territories, 66th Congress 2nd Session. Report No. 839, p. 4.

[989] *Id*., p. 5. This analysis of the Crown lands as having been held in trust for the common people by the monarchy was also described by Prince Kūhiō Kalanianaole in an article in the *Mid-Pacific Magazine*, 21 (February 1921), p. 126. He wrote the following: “This board [Board of Commissioners to Quiet Land Titles] decided that there were but three classes of vested or original rights in the land, which were in the kingdom or Government, the chiefs, and the common people, and these three classes of interest were about equal in extent. The common people being left out in the division after being recognized as owners of a third interest in the kingdom, believing that new methods had to be adopted to place them in possession, assumed that these lands were being held in trust by the crown for their benefit. However, the lands were not reconveyed to the common people, and it was so held by each monarch from the time of the division in 1848 to the time of the dethronement of Queen Liliuokalani in 1893.”

[990] *Id*., p. 7.

The U.S. Senate did not take a position on H.C.R 13500. The Senators were influenced by the Hawaii Chamber of Commerce and the lobbyist for the Hawaii Sugar Planters, who indicated that they did not fully support the resolution as drafted and needed more time to work on the measure. Thus, the bill was held in the Senate Committee on Territories.[991]

Upon his return home, Prince Kūhiō found himself in the position of having to defend the contents of the "rehabilitation" bill to his constituents during his re-election campaign. In particular, he had to explain why he had listed the worst of the public lands for homesteading by Hawaiians, while the plantations and ranches would be allowed to lease the finest of the former crown and kingdom lands. In an address before the Civic Club in June 1920, Kūhiō presented his rationale for selecting the lands that were listed in the bill. Not only did he feel that the lands selected for Hawaiian homesteading would be good for diversified agriculture and enterprise, he also believed that Congress would not support the homesteading of prime agricultural lands. Part of the thinking behind the homesteading program on the American continent was to have Americans settle on open land worth nothing and transform it into farmland through hard work:

> Much has been said that the Hawaiians are not getting the best lands. I have told the committee that they don't want the sugar lands, but the lands on which they can diversify the industries. This bill provides for means to educate the people, to tell you what best to plant on certain lands, and where cattle and hogs can be best raised and so on. . . .
>
> I want to tell you that Congress does not believe and never will believe as a policy in homesteading land worth from $500 to $1,000 an acre. That is not the American way. What made the American people great was the work of its pioneers in developing that which was worth nothing.
>
> Too many Hawaiians have said in effect: 'Give us the best land you've got, give us all the money you can, feed us on poi and fish, and we'll be happy.' I want to tell you that you never will succeed unless you get out and hustle.[992]

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[991] Vause, "Hawaiian Homes Commission Act, 1920," p. 75 -78.
[992] *P.C.A.*, June 26, 1920, p. 6.

In September, while campaigning on O‘ahu, in Kaka‘ako, Prince Kūhiō again answered criticisms that had been directed against the “rehabilitation” bill. He explained that the bill was an opportunity to give the poor Native Hawaiian some land; that he could never get Congress to take away cane lands from the plantations and give it to the Native Hawaiian people; and that rather than kill homesteading, the bill would support the efforts of Native Hawaiians to homestead. He said:

> This rehabilitation bill is the first opportunity given the poor man to go on the land with funds to help him make a living. . . . They say that the lands to be set aside under this bill are no good. If I were to attempt in Congress to take away cane lands for the Hawaiian people there would be a terrible row; one would never hear the last about. They say the bill will kill homesteading. Nothing of the kind. The money from the first-class agricultural lands will go to supporting the Hawaiians on the other lands . . . This will save the Hawaiian people from being a dead race.[993]

In the third session of the 66th Congress, new hearings on H.R. 13500 were convened on December 14, 1920. During the course of these hearings, planter and ranching interests appeared before the committee to testify against the Hawaiian Homes Commission program. They questioned the constitutionality of limiting the homesteading of public lands in Hawai‘i to Native Hawaiians. They also questioned the potential for the program to succeed, given the poor quality of the lands that were to be set aside for homesteading. Reverend Akana and John Wise traveled to Washington, D.C., to counteract this opposition and to lobby for support of the Hawaiian Homes Commission program. Again, the bill did not pass Congress.

On April 11, 1921, Delegate Kalaniana‘ole addressed the Territorial Legislature and presented a report on his work to pass the Hawaiian Rehabilitation Bill. Delegate Kalanian‘aole emphasized how Congress had, in the course of discussing H.R. 13500, taken a clear and definite

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[993] *P.C.A.,* September 24, 1920, Section II, p. 2. The *Nupepa Ku‘oko‘a* covered both sides of the issue during this period. See *Nupepa Ku‘oko‘a*, July 9, 1920, p. 3 and 4; July 23, 1920, p. 1 and 4; August 13, 1920, p. 4; October 1, 1920, p. 1.

position to oppose the homesteading of the public sugar lands by the general public or by the Native Hawaiians. The "rehabilitation bill" could not, therefore, turn over those lands for homesteading:

> The fact was that the House Committee was opposed to homesteading developed cane lands. This position had found definite expression in an earlier committee draft of this same bill. The earlier draft prohibited all homesteading of sugar lands, on the theory that the distribution to a few among thousands of applicants of land worth from $500 to $1,000 an acre did not constitute "homesteading." Here lies the answer to much of the criticism that has been directed against me and this Bill. We could not "give the Hawaiians sugar lands" because the national Congress desired that the highly developed lands be withheld from homesteading. The whole idea and purpose of the Committee was to lease the richer sugar lands, using a portion of the income to carry out the rehabilitation scheme, the balance to be used by the Territory for the benefit of all the people.[994]

Kūhiō also shared the contents of a letter he had received from Senator Harry S. New of Indiana, Chairman of the U.S. Senate Committee on Territories. The letter explained his reservations about the bill, which according to Kūhiō would have to be addressed in amendments to H.R. 13500 in order for it to pass the U.S. Senate. Senator New questioned the constitutionality of the resolution on the grounds that it would tax one element of the population of Hawai'i for the exclusive benefit of another. He objected to extending the benefits of the Act to those of one thirty-second Hawaiian blood. He felt that it should be limited to full-blooded Hawaiians. He also had reservations about the effectiveness of a "rehabilitation" program for the limited number of homesteaders who would be accommodated during the initial phases of implementing the program.[995]

In a move calculated to get the support of the planter interests, John Wise introduced a concurrent resolution in the Territorial Legislature to authorize the governor to extend any expired sugar leases until such time as Congress acted to accept or reject the "rehabilitation" bill.

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994 Hawai'i State Archives, Delegate Kalanianaole File on Rehabilitation, Report of Delegate Kalanianaole to the Territorial Legislature of Hawaii. Also reported in *P.C.A.*, April 12, 1921, p. 2 - 3.

995 *Id.*

It passed the legislature on April 13, 1921.[996] The next day, on April 14, 1921, a meeting was held in the Governor's office to discuss new amendments to H.C.R. 13500 to address congressional concerns outlined by Kūhiō in his report to the legislature. A second meeting was called later that day, at the home of Kūhiō, to finalize the compromises that would be incorporated into proposed amendments. The participants in these negotiations were Governor McCarthy, Delegate Kalaniana'ole, John Wise, Charles Rice, Harold Rice, Harry Baldwin, and Charles Chillingworth.[997]

There were four major issues that had to be resolved before the Big Five and Congress would support the Hawaiian Homes Commission Act. These issues were discussed and amendments proposed in Senate Concurrent Resolution 8, which was introduced into the Territorial Legislature by John Wise.[998] A blood quantum for qualified Hawaiian applicants had to be set. The first version of the resolution made anyone of Hawaiian ancestry eligible to apply for a Hawaiian Homestead. The third version specified that Hawaiians of one-thirty-second Hawaiian ancestry could benefit from the Act. The final proposal established native Hawaiians of half Hawaiian ancestry or more as beneficiaries of the Hawaiian Homes Commission Act. While the oligarchy wanted to limit the beneficiaries of the Act to full Hawaiians, setting the blood quantum at one-half Hawaiian ancestry was a compromise accepted by both the oligarchy and Native Hawaiian leaders.

The oligarchy wanted a trial period of five years to demonstrate that the program would work before setting aside all of the listed lands for homesteading. The Hawaiian proponents of the bill agreed to establish the first homesteading program on Moloka'i for a period of five years, after which time Congress could evaluate the program and extend and expand Hawaiian

[996] *P.C.A.*, April 13, 1921, pp. 1–2; *Honolulu Star Bulletin*, April 11, 1921, p. 1.
[997] Vause, "Hawaiian Homes Commission Act, 1920," p. 85 - 87.
[998] The contents of S.C.R. 8 was reported in the *P.C.A.*, April 17, 1921, p. 2.

homesteading to other listed land areas. The oligarchy wanted to limit the size of the individual homesteads. It was agreed that agricultural lots would be between 20 and 80 acres in size; first class pastoral lots would be between 100 and 500 acres in size; and second class pastoral lots would be between 250 and 1,000 acres in size. The section of the Organic Act prohibiting corporations from holding and acquiring real estate in excess of 1,000 acres was to be repealed.

Passage of the Hawaiian Homes Commission Act

Once these compromises were worked out, the oligarchy agreed to support passage of the Hawaiian Homes Commission Act, 1920. Delegate Kalaniana‘ole introduced the revised version of the measure in Congress, on May 25, 1921 and it was passed by both houses of Congress and was signed into law on July 9, 1921.[999]

The U.S. Congress had set aside more than 200,000 acres of former Crown and Government lands for exclusive homesteading by Hawaiians of at least half Hawaiian ancestry. The lands would be parceled out for homesteading under 99-year leases at a charge of $1 per year. A Hawaiian Homes Commission comprised of the governor, and four others (of whom three were to be Hawaiian) would administer the homesteading program. The remaining Crown and Government lands would be leased out for agricultural purposes through auctions to the highest bidder. The monies received from the leases were to go into a fund, ultimately to total $1 million, to assist in the implementation of the Hawaiian homesteading program. Loans of $3,000 would be granted to Hawaiian homesteaders at 5 percent interest for the construction of dwellings and farm structures, and the purchase of farm implements and seed.

On January 7, 1922, only six months after he had succeeded in having the Hawaiian Homes Commission Act enacted, Prince Jonah Kūhiō Kalaniana‘ole passed away. His passing

[999] *P.C.A.*, May 26, 1921, p. 1.

left a vacuum in the leadership of the Hawaiian community. No other individual enjoyed the respect and the popular support that Prince Kūhiō had commanded.

Summary

The men and women of Generation 31 [Generation 126] who were Kūhiō's contemporaries in the ʻAhahui Puʻuhonua O Nā Hawaiʻi concentrated their efforts on implementing the Hawaiian Homes program during the five year experimental period to establish the program, and thereafter. A new group of Native Hawaiian leaders began to move into political office after the passing of Prince Kūhiō. Kūhiō and his cohorts had been born under the Hawaiian Kingdom and Constitutional Monarchy, had risked their lives to restore the Constitutional Monarchy in 1895, and had served time, at hard labor in the Provisional Government and Republic's prisons. While they worked with the leaders of the oligarchy, the relationship was strained and often adversarial. The new leaders of Generation 32 [Generation 127], however, were born in a Hawaiʻi that was claimed as a territory of the United States. They had been trained in private and public schools under the American system where they were socialized into the American culture and political system. The passing of Kūhiō marked the beginning of a new era of Native Hawaiian governance in Hawaiʻi, one marked by greater cooperation with the oligarchy and one that focused on organizing internally among the Native Hawaiian people in civic organizations and Hawaiian homestead associations.

In closing this chapter, let us reflect upon the last two stanzas of the song with which twe opened - Nā Aliʻi. The composer declares that the rule of America cannot compare with that of the wise ancestral chiefs, or of the great King Kamehameha I. The lively cadence of the melody combined with the patriotic sentiment expressed by the lyrics made it an inspirational and

popular song that continued to resonate among succeeding generations of Native Hawaiian nationalists.

‘Imi nui ‘o Maleka o Lōli‘i	America seeks our welfare.
Ka wehi ho‘i o nā li‘i i hala	The adornment of departed chiefs
‘A‘ole nō na‘e e like aku	Not the same
Me ka ea no‘eau he kupuna	As the ancestors’ wisdom
He ali‘i o ka lani ua kaulana	Chief royal and famous
Ke ‘ahi kananāo ka Pākīpika	Fierce tuna of the Pacific
Nānā nō i ulupā nā paemoku	When he struck the island group
A pau ma lalo ona	All were subdued
Nānā nō i ulupā nā paemoku	When he struck the island group
A pau ma lalo ona	All were subdued

Chapter Nine: Territory of Hawai‘i and Persistence of Native Hawaiian Self-Governance

Generation 32 [Generation 127] of Native Hawaiian Governance, 1922 - 1959

E Mau – Let's Strive

E mau ko kākou lāhui e ho‘omau
E mau ko kākou ‘ōlelo e ho‘omau
E mau ka hana pono o ka ‘āina
I mau ka ea o ka ‘āina i ka pono
I ka pono o ka ‘āina

Let's strive to keep our nation alive, let's strive
Let's strive to keep our language alive, let's strive
Let's strive to preserve the good of the islands
So that the well-being of the land and nation will endure through judicious rule
The well-being of the land and nation will endure[1000]

The composer of this 1941 song, Alvin Kaleolani Isaacs, Sr., was a popular musician, singer, bandleader and recording artist, of Generation 32 [Generation 127].[1001] While the lyrics of this song are Hawaiian and it is written in a traditional chant style, the melody was American jazz contemporary to 1941. "E Mau," which was popular in its day, expressed the ongoing hope and aspiration of the Native Hawaiian people to flourish and thrive as a distinct people, with a unique language, history, culture and ancestral land base. At the same time the song was representative of the negotiation by many Native Hawaiians of Generation 32 [Generation 127], between their traditional Hawaiian roots and their need to function within the broader American society in order to succeed economically. Mr. Isaacs composed over 300 songs and his musical groups not only entertained in Hawai‘i at the Royal Hawaiian Hotel, they also broadcasted a

[1000] Words to the song, *E Mau*, *see* http://www.huapala.org/E/E_Mau.html (last viewed Dec. 30, 2013), the translation of the song is by the authors.
[1001] For information on musician and composer, Alvin Kaleolani Isaacs, Sr., *see* http://www.hawaiimusicmuseum.org/honorees/1996/alvin_isaacs_sr.html (last viewed Dec. 30, 2013).

radio program to the American continent called "The Voice of Hawaii," toured with the USO during World War II, toured the American continent to large audiences, and appeared on Bing Crosby's radio show and in Harry Owens' movies.[1002] Despite his success in America, Mr. Isaacs remained grounded in his Hawaiian language and culture, as revealed in this song, which gained new popularity for its nationalist message during the Hawaiian cultural renaissance of the 1970s.

Overview

Generation 32 [Generation 127] was the first generation of Native Hawaiians born into an island nation not governed by the ali'i nui (ruling chiefs) who had governed Hawai'i since approximately A.D. 1000.[1003] This generation was born into a Hawai'i that was claimed as a territory of the United States, in which Native Hawaiians comprised an indigenous national minority, a status similar to American Indians. This was the first generation educated in schools where English was the language of instruction and the Hawaiian language was banned from being spoken on school campuses throughout the islands.[1004] By 1930, more than half of those in this generation were of mixed, rather than full Native Hawaiian ancestry.[1005]

Having been educated in the English language and socialized in American-run schools, Native Hawaiian political leaders of Generation 32 [Generation 127] fully and easily interacted

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[1002] See, http://www.squareone.org/Hapa/alvinisaacs.html, (last viewed Dec. 30, 2013).

[1003] Chapter Two describes the emergence of district chiefs as rulers in the islands at approximately A.D. 1000, and cites Carolyn Kehaunani Cachola Abad, *The Evolution of Hawaiian Socio-Political Complexity: An Analysis of Hawaiian Oral Traditions,* (Unpublished PhD Dissertation in Anthropology, University of Hawai'i, Mānoa, 2000).

[1004] Maenette Benham and Ronald Heck, *Culture and Educational Policy i Hawai'i: The Silencing of Native Voices* (Mahwah, New Jersey: Lawrence Erlbaum Associates, 1998), pp. 148 - 157.

[1005] U.S. Bureau of the Census, *Fifteenth Census of the United States, 1930: Population, Second Series, Hawaii, Composition and Characteristics of the Population and Unemployment.* (Washington D.C.: Government Printing Office, 1931), p. 48, Table 2. By the 1930 census, for the first time, the number of Part-Hawaiians (28,224) exeeded the number of Pure Hawaiians (22,636)

within the mainstream of Hawai‘i’s territorial politics. Many Native Hawaiian leaders continued to be active in the governance of Hawai‘i as a territory of the U.S., but by the end of the Territorial Period, on the eve of statehood, post-World War II developments and changes in electoral politics displaced many Native Hawaiians from political office and left Native Hawaiians marginalized within their own homeland.[1006]

A second generation of Asians born, raised, and educated in Hawai‘i identified theselves as part of the “Local” people of Hawai‘i. As they were U.S. citizens, they began to participate in the political life of the territory - through labor organizing and electoral politics.[1007]

The U.S. military, particularly the U.S. Navy, became a major force in Hawai‘i’s political economy. As discussed more fully below, the full extent of the military’s power and influence was first exposed in the Massie assault and rape and Kahahawai murder trials of 1931-32.[1008] The massive U.S. naval presence at Pearl Harbor eventually made Hawai‘i the prime military target of the Japanese imperial navy and led to the attack on Pearl Harbor and the major catalyst for U.S. involvement in World War II. During the war, Martial Law was declared and the military took control of the island of Kaho‘olawe for live fire ordnance delivery training exercises; it had previously taken control of Hawaiian Home Lands at Lualualei on O‘ahu in the 1930s, and with

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[1006] Lawrence Fuchs *Hawaii Pono: A Social History* (New York: Harcourt, Brace& World, Inc., 1961), pp 68 - 85 and pp. 442 - 449. While Fuchs provides an overview of how Native Hawaiians were marginalized, he emphasizes the negative stereotypes of Native Hawaiians, without providing information on their agency in organizing as a community and their postive accomplishments during the Territorial Period. The changes in electoral politics are discussed on pp. 308 - 353.

[1007] See generally, Lawrence Fuchs, *Hawaii Pono.* “Local” emerged as a term for the non-white descendants of immigrant plantation workers and Native Hawaiians in Hawai‘i during the Territorial Period. It was first coined in the media to refer to the men who were accused of assault and rape by Thalia Massie in 1931. See generally, John Patrick Rosa, “Local Story: the Massie Case and the Politics of Local Identity in Hawai‘i” (Unpublished PhD Dissertation, University of California, Irvine, 1999).

[1008] *See generally* David Stannard, *Honor Killing: How the Infamous “Massie Affair” Transformed Hawaii* (New York: Viking, 2005) and John P. Rosa, *Local Story: The Massie-Kahahawai Case and the Culture of History* (Univ. of Hawai‘i Press, 2014).

the start of the war in the Pacific, also took Nōhili on Kaua'i for defense purposes.[1009] Wartime conditions, the postwar organization of labor, the reorganization of the Democratic Party and the emergence of the U.S. as the principal world power at the end of the war, laid the foundation for the ascent of new political forces that launched a forceful campaign to secure statehood for Hawai'i.[1010]

In 1946, a year after the United Nations (U.N.) was established, Hawai'i was inscribed with the U.N. Committee on Decolonization under Chapter XI, Article 73 of the U.N. Charter as a non-self-governing territory, with the right to determine its own political future.[1011] Self-determination options included full incorporation into the U.S.; separation from the U.S. and independence; or free association with the United States of America.[1012] These options were not fully known or understood in Hawai'i and the U.S. made no efforts to inform Hawai'i's people of the options. Thus, the broad-based political and social movements that emerged in post-World War II Hawai'i to challenge the economic, social and racial injustices under the white oligarchy,

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[1009] *See* State of Hawaii v. United States, 676 F. Supp. 1024 (D. Haw. 1988), for a discussion of the gubernatorial executive orders transferring Hawaiian Home Lands at Lualualei, O'ahu, to the U.S. Navy. Over 2,000 acres at Nōhili, Kaua'i, what is now known as the Pacific Missile Range Facility or "Barking Sands," was set aside to the U.S. Government by two gubernatorial executive orders at the start of World War II. Gov. E.O. 887 set aside 548.570 acres in 1940, while Gov. E.O. 945 set aside 1,509.00 acres in 1941 both for Bonham Air Force Base. Herman Doi & Robert Horwitz, *Public Land Policy in Hawaii: Land Reserved for Public Use* (Honolulu: Legislative Reference Bureau, Rpt. No. 2, 1966), p. 35.

[1010] *See generally*, Noel Kent, *Hawai'i: Islands Under the Influence* (Honolulu: Univ. of Hawaii Press, 1993).

[1011] Chapter XI, Article 73 of the U.N. Charter states:

> Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants are paramount, and accept as a sacred trust the obligation . . . to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its people and their varying stages of advancement.

[1012] Rob Williams, Esq., Working Paper for "Status and Entitlements of Hawaiian Natives" Study funded by the Ford Foundation to the Native Hawaiian Advisory Council, 1992 - 1993; Hawaiian Sovereignty Advisory Council Report To The Hawai'i State Legislature, January 1992.

sought statehood. Full incorporation into the U.S. was viewed as an achievable means of attaining full democratic rights. The aspiration for statehood intersected with the goal of the United States to incorporate Hawai‘i into the U.S. in order to secure its strategic military position in Hawai‘i and play a major role in the Cold War politics and economies of the Asia and Pacific region.[1013]

Throughout the Territorial Period, the Hawaiian community continued to be active in distinctly Native Hawaiian organizations established to exercise the inherent sovereignty of the Native Hawaiian people and to advocate for their well-being and the perpetuation of their culture. These organizations were established on every island and also provided mutual support for their members. Such organizations of self-governance included the four Royal Societies, each with a deep connection to an earlier period of the Hawaiian Kingdom - the Royal Order of Kamehameha I, the Ka‘ahumanu Society, the Hale O Nā Ali‘i O Hawai‘i and the Daughters and Sons of Hawaiian Warriors. They also included the Pu‘uhonua Society and the Hawaiian Civic Clubs, founded by Prince Kūhiō.[1014] Land Hui or Native Hawaiian landholding organizations established after Ka Māhele, as discussed in Chapter Five, persisted as a viable model of self-governance into the 1960s.[1015]

The Ali‘i Trusts, which had been established to provide for the health, education, and social welfare of Native Hawaiians continued to fulfill their missions and provide services to their beneficiaries but, operated under the constraints and oversight of the oligarchy, as will be described below.[1016]

[1013] See generally Fuchs, *Hawaii Pono,* and Tom Coffman *The Island Edge of America: A Political History of Hawai‘i* (Univ. of Hawai‘i Press, 2003).
[1014] See the history of these organizations in Appendix 4. Continuing Native Hawaiian Self-Governance.
[1015] See the history of these landholding organizations in Appendix 2. The Hawaiian Land Hui Movement: Perpetuation of Hawaiian Land Tenure.
[1016] See Appendix 3. Legacy of the Hawaiian Rulers: Ali‘i Land Trusts

The Hawaiian Home Lands public trust provided a land base for the development of new Native Hawaiian communities on Molokaʻi, Hawaiʻi, Oʻahu and Kauaʻi during the Territorial Period. These communities formed organizations for self-governance, political advocacy and economic advancement.[1017]

Native Hawaiian national leaders, expert in the Hawaiian language, cultural beliefs, customs and practices, sciences and the arts continued to reside in various rural communities throughout the islands. The kuaʻāina, or residents of these rural communities which were isolated from the mainstream of territorial politics and commerce, continued to speak Hawaiian, live as ʻohana or extended families, practice Native Hawaiian customs and uphold Native Hawaiian spiritual beliefs. These kuaʻāina who did not assimilate into the American social system sustained the social base of Native Hawaiians as a distinct indigenous people.[1018]

Territorial laws continued to uphold the exercise of Native Hawaiian traditional and customary beliefs, customs and practices.[1019] The U.S. Congress instituted programs and adopted policies that recognized the Native Hawaiian people as the indigenous people of Hawaiʻi. These included continued funding of the Smithsonian Institution U.S. Bureau of American Ethnology to conduct ethnological research on Native Hawaiians; implementation and oversight of the Hawaiian Homes Commission Act, discussed in the previous chapter; and passage of the 1938 Kalapana Extension Act providing Native Hawaiian access for fishing in the Hawaiʻi Volcanoes National Park.[1020]

[1017] See Appendix 4. Continuing Native Hawaiian Self-Governance. Note that the first homestead area on Maui opened at Paukūkalo in 1963, after statehood.
[1018] See generally, Davianna Pōmaikaʻi McGregor, *Nā Kuaʻāina: Living Hawaiian Culture* (Honolulu: Univ. of Hawaiʻi Press, 2007).
[1019] See for instance, Rev. Laws of Hawaii 1925, § 1 and § 576.
[1020] See full discussion of these programs below. *See for example*, Pub. L. No. 61-266, 26 Stat. 703, 718 (1910); Pub. L. No. 69-600, 44 Stat. 1069, 1079 (1927); Pub. L. No. 71-158, 46 Stat. 229, 241 (1930);

In 1959, when Hawai‘i became a state, the Hawai‘i Admission Act included key provisions that demonstrated that the U.S. Congress continued to recognize Native Hawaiians as a distinct indigenous people. As a compact with the U.S., the Admission Act mandated that the State of Hawai‘i assume responsibility for the administration of the Hawaiian Homes Commission Act and management of the approximately 203,500 acres of "ceded land" set aside for Native Hawaiian homesteading, with oversight by the U.S. Congress. Congress also turned over administration of another 1.2 million acres of "ceded lands," the former Crown and Government lands of the Hawaiian Kingdom and Constitutional Monarchy, to the State to manage for five trust purposes. One trust purpose is "the betterment of the conditions" of Native Hawaiians, as defined by the Hawaiian Homes Commission Act. The other 4 purposes are education, farm and home ownership, public improvements, and public uses.[1021]

With the provision of two public land trusts for Native Hawaiians - the Hawaiian Home Lands trust and the Public Land Trust - under the Admission Act, Native Hawaiians of Generation 33 [Generation 128] had a solid foundation for exercising their inherent right of sovereignty and self-governance into the 21st century.

Involuntary Assimilation

The official policy of the U.S. government toward the Territory of Hawai‘i was to assimilate the Native Hawaiian and multi-ethnic peoples of the islands into the American social

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Hawaiian Homes Commission Act, Pub. L. No. 66-34, 42 Stat. 108 (1921); Kalapana Extension Act, Pub. L. No. 75-680, § 3, 55 Stat. 784, 784-85 (1938).

[1021] *See* §§ 4 (HHCA) and 5 (public land trust), Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959). The Admission Act, Section 5(f) states that the ceded public land trust "shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible[,] for the making of public improvements, and for the provision of lands for public use."

system.[1022] (As has been articulated elsewhere, assimilationist policies existed side-by-side with policy and law affirming a special legal and political status for Native Hawaiians as indigenous peoples.) An essential element of this policy was the requirement that all legislative proceedings were to be conducted in English and English was also the medium of instruction in the public and private schools.[1023] The Hawaiian language was banned from school campuses. In 2000, Native Hawaiian attorney Paul F. Nahoa Lucas, in an article in the *Hawaiian Journal of History* wrote about this as follows:

> Although complete statistics are not yet available, there are numerous accounts in the Hawaiian community of Hawaiian children being punished for speaking Hawaiian in school. Hawaiian was strictly forbidden anywhere within schoolyards or buildings; physical punishment could be harsh. Teachers who were native speakers were threatened with dismissal for singing Hawaiian in school, and, at times, teachers were even sent to Hawaiian-speaking homes to reprimand parents for speaking Hawaiian to their children.[1024]

Generation 32 [Generation 127] was raised to think and speak in English, as Americans, so that they could be fully assimilated into the American society.[1025] In 1900, 92.8 percent of the full Hawaiians and 98.2 percent of the part-Hawaiians over the age of 10 were literate in any language and in 1930 this increased to 96.6 percent literacy for full Hawaiians and 99.3 percent

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[1022] See generally, Benham and Heck, *Culture and Educational Policy in Hawai'i.*

[1023] Section 44 of the Hawaii Organic Act, provided that, "All legislative proceedings shall be conducted in the English language." An Act of the Republic of Hawaii, June 8, 1896, ch. 57 sec. 30 (codified at 1897 Haw. Civ. Laws § 123) stated, "The English language shall be the medium and basis of instruction in all public and private schools, provided that where it is desired that another language shall be taught in addition to the English language, such instruction may be authorized by the Department, either by its rules, the curriculum of the schools, or by direct order in any particular instance. Any schools that shall not conform to the provisions of this section shall not be recognized by the Department." This provision was continued with only slight amendments in the laws of the Territory of Hawai'i. See for instance, *Revised Laws of Hawai'i 1915*, Ch. 24, sec. 277, p. 194.

[1024] Paul F. Nahoa Lucas "E Ola Mau I Ka 'Ōlelo Makuahine: Hawaiian Language Policy and the Courts," *Hawaiian Journal of History*, Vol. 34 (2000), p. 9. Lucas cites the noted Hawaiian language scholar Sarah K. Nakoa, who recounted that as a young girl she was slapped on the cheek at school for not recognizing her English name. *Id.*, note 47. He also cites to Larry K. Kimura and William Wilson in the *Native Hawaiian Study Commission Minority Report*. *Id.*, note 48.

[1025] Benham and Heck, *Culture and Educational Policy in Hawai'i,* pp. 148–157.

for part-Hawaiians. From 1900 to 1930, the number of Native Hawaiians over 10 who were unable to speak English decreased from 32.9 percent to only 4.6 percent.[1026] In her study of culture and educational policy in Hawai‘i, Native Hawaiian educator Dr. Maenette K.P. Benham, currently Dean of the University of Hawai‘i, Mānoa Hawai‘inuiakea School of Hawaiian Knowledge, and her co-author, Ronald Heck, provided the following description of the Territorial Government's policy of Americanization and its consequences for Native Hawaiians:

> The dominant institution that emerged during our analysis of this period was Americanization. This cultural value was translated into educational policies that had as their goal the acculturation of Native Hawaiians and other ethnic children into a social order demanding English speech, adherence to U.S. social and political ideals, and industrious labor in their assigned jobs. Students learned their social places, were taught to avoid confrontation and competition with the Euro-Americans, and to accept without protest the laws and regulations of the Territory of Hawai‘i. In this, educational policy was successful. Other consequences were that Native Hawaiians were heavily represented in lower social classes, laborer or service occupations, middle to lower income brackets, and in non-English Standard Schools.[1027]

Even the Kamehameha Schools, established to educate young Native Hawaiian men and women, adopted a policy of banning the Hawaiian language from the classrooms and campus and educating students to fully assimilate into the American culture.[1028]

In 1948, the last Hawaiian language newspaper still being published went out of business. Surprisingly, one of the last institutions to perpetuate the Hawaiian language in the conduct of their services and meetings were the independent Hawaiian churches. These indigenous churches, such as Ka Makua Mau Loa Church, founded by Reverend John Wise, had several

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[1026] Figures for 1910 from the U.S. Bureau of the Census, 1921, *14th Census of the United States: 1920, Population: Hawai‘i* (Washington DC: US Dept. of Commerce, 1921), p. 19, Table 18. Figures for 1930 from U.S. Bureau of the Census, 1931, p. 59, Table 10.

[1027] Benham and Heck, *Culture and Educational Policy in Hawai‘i*, p.172

[1028] Samuel P. King and Randall W. Roth, *Broken Trust: Greed, Mismanagement and Political Manipulation at America's Largest Charitable Trust* (Honolulu: Univ. of Hawaii Press, 2006), pp. 31-51.

thousand members who belonged to congregations on every island.[1029] Native Hawaiian historian and author, Dr. George Kanahele, in his 1986 book *Kū Kanaka Stand Tall* acknowledged this phenomenon:

> Collectively, the heaviest influence of the Hawaiian churches may be in the preservation of Hawaiian traditions and especially the language. Until recently the Hawaiian churches conducted all or parts of their services and classes in the Hawaiian language, and some of the independents still continue to do so, in spite of pressure by the young to switch to English.[1030]

Kanahele noted that the churches also continued to emphasize Hawaiian values and practices such as "prayer, meditation, clearing-the-way, hoʻoponopono (family dispute resolution process), purification rites, and healing through prayers and faith."[1031]

Overall, the policy of assimilation into the American society made serious inroads in the national and cultural identity of members of Generation 32 [Generation 127] who lived in urban Honolulu and were disconnected from their ancestral lands and subsistence livelihoods in rural Oʻahu and the neighbor islands. Kanahele, described the assimilation process and the outcome as follows:

> Imagine, if you will, the effect these prejudices must have had on Hawaiians - as they met, year after year, those superlative specimens from the Western world, to be told in the most unqualified terms that they were inferior, stupid, unreasoning, and depraved and debauched to boot . . . When repeated often and long enough, even the most insidious and distorted ideas, provided they are accepted, can become part of one's perception of self. Thus, in time, many Hawaiians began to believe the unthinkable. The haoles [whites], right in everything else, must have been right when they said that Hawaiians were inferior, stupid, irrational - indeed, heathen and savage. This response assuredly differed from individual to individual, but we are talking here about the collective consciousness of the Hawaiian people.[1032]

[1029] George Kanahele, *Kū Kanaka State Tall: A Search for Hawaiian Values* (Honolulu: Univ. of Hawaii Press and Waiaha Foundation, 1986), p. 434.
[1030] *Id.*, p. 435
[1031] *Id.* (translation added in brackets).
[1032] *Id.*, p. 26-27.

On the eve of statehood, national and cultural identity among urban Native Hawaiians had reached a low point as a result of Americanization. In 1964, the Native Hawaiian author and publisher John Dominis Holt, a prominent member of Generation 32 [Generation 127], having been born in 1919, published an essay "On Being Hawaiian" which asked the question that many of his generation, living in urban Honolulu, had also asked of themselves, "What is a Hawaiian?" The essay eloquently articulated the internal conflict felt by many urban Native Hawaiians of his generation, because of the policy of assimilation and the suppression of the Hawaiian language and culture by the territorial government. In the introduction to the 1976 reprint of his essay, Holt described how the colonization of Hawaiʻi had affected his generation:

> The broken spirit battens on shattered dreams. Illusion and despair combine to make bitterness attractive, or in reverse, the ceaseless search for pleasure - if not euphoria - becomes a passionately sought after way of life. Most Hawaiians in the years of my growing up took one of these two paths as a way of life. In between these extremes stood the few who adapted and abided. But among them were those who blinded themselves somehow to the widespread evidence of the ancient culture of our Hawaiian ancestors having been wantonly destroyed and that among the few surviving people of Hawaiian ancestry many floundered at the edges of life, bewildered, poor, and cynical . . .
>
> We have known too the sorrow, the pain of being alienated from our roots and our land. We know what it is to have been pummeled into accepting the stranger's view of ourselves as being cute, all-abiding, friendly nincompoops, charming and lovable, but certainly inferior as humans - and in need of being looked after by superior beings.[1033]

A study published by the Kamehameha Schools in 1983, *Native Hawaiian Educational Assessment Project,* examined the historical cumulative impacts of colonization upon Native Hawaiians, as reflected in educational and social inequity that was evident by the 1980s. The study found that there was a recurring theme of culture loss and stress among Native Hawaiians, which was manifest in "self-disparagement, feelings of inadequacy, fear of failure as well as fear

[1033] John Dominis Holt, "On Being Hawaiian" (Honolulu: Topgallant Publishing Co. Ltd, 1976 printing), p. 8-9.

of success, alienation, hopelessness and helplessness, depression."[1034] The study cited the following statement as an example:

> I come before you today as a young Hawaiian, sincerely seeking constructive ways to remedy the past and redirect the present day plight of Native Hawaiians. The history of the Hawaiian people shows the unjust abrogation of their lawfully constituted government, the unlawful seizure of ancestral lands without compensation, the stripping away of their sovereignty, and the imposition of a more dominant Western culture. A sad feeling of hopelessness and powerlessness followed (late 19th and 20th centuries). Widespread demoralization and disintegration of Native Hawaiians is demonstrated by present day social, economic, and educational statistics.[1035]

The study offered a "Culture Loss/Stress Syndrome" to account for the lower school performance among Native Hawaiians, which in turn had contributed to negative social outcomes and was reflected in negative social and economic statistics for Native Hawaiians.[1036]

An examination of the social and economic statistics for Native Hawaiians in 1950, 30 years before the *Native Hawaiian Educational Assessment Project,* illustrates some of the antecedents of the unequal status of Native Hawaiians in the 1980s. In 1950, Native Hawaiians comprised 17.2 percent of the population.[1037] Their life expectancy was the lowest for all of the ethnic groups in Hawai'i at 62.64 years, compared to 69.64 for Caucasians and 72.57 for the Japanese.[1038] In employment, only 9.9 percent of the gainfully employed Native Hawaiians worked in professional fields, while 54.6 percent worked as laborers.[1039] However, of the 27,277 laborers in Hawai'i, Native Hawaiians made up only 10.8 percent of the total, while the Filipinos

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[1034] Kamehameha Schools/Bishop Estate, *Native Hawaiian Education Assessment Project* (Honolulu: Kamehameha Press, 1983), p. 203 - 204.
[1035] *Id.*, p. 204, citing Keoni Agard, Indian Affairs Committee, United States Senate. Ninety-sixth Congress, first session on Senate Bill No. 916 to amend the act of September 30, 1950 (Public Law 874, Eighty-first Congress) to provide education programs for native Hawaiians and for other purposes. (Washington, D.C.: U.S. Government Printing Office, 1979), p. 91.
[1036] *Id.*, p. 204.
[1037] Robert Schmitt, *Demographic Statistics of Hawaii* (Honolulu: Univ. of Hawai'i Press, 1986), p. 115.
[1038] Kamehameha Schools/Bishop Estate, *Native Hawaiian Education Assessment Project*, p. 43.
[1039] Andrew Lind, *Hawaii's People* (Honolulu: Univ. of Hawai'i Press, 1980), pp. 85, 87.

made up 49 percent of the laborers, Japanese made up 27.4 percent and Caucasians made up only 8.2 percent.[1040] Of the 8,829 professional positions in Hawai‘i in 1950, Native Hawaiians held only 8.4 percent of these positions, while Caucasians held 48 percent, followed by Japanese with 28.4 percent.[1041] In 1949, the annual median income for males of all ethnic groups was $2,340. Native Hawaiian males earned a slightly higher median income of $2,368, however, 22.5 percent of Native Hawaiians earned under $1,000 and only 0.1 percent earned $10,000 and up. Caucasian males earned a higher annual median income of $2,856, with only 9.7 percent earning under $1,000 and 3.7 percent earning $10,000 and up. Japanese males earned an annual median income of $2,427, with 18.6 percent earning under $1,000 and 1.5 percent earning $10,000 and up.[1042] In summary, Native Hawaiians had the lowest life expectancy of all of the ethnic groups in the islands. The majority of Native Hawaiians worked as laborers and earned a median income of $2,368, although one-fifth of Native Hawaiians earned less than $1,000. Caucasians and Japanese earned higher incomes and held a greater number of the professional positions in the islands.

Hawaiian National Leaders Continued to Participate in the Governance of Hawai‘i

In the special election for a delegate to serve the unexpired term of Prince Kūhiō through November 1922, Republican Henry A. “Harry” Baldwin was elected. However, in the regular election of 1922, Native Hawaiian Democrat William P. Jarrett defeated the non-Hawaiian Baldwin. In 1926, the Republicans made a comeback by running a Native Hawaiian, Victor K.

[1040] *Id.*, p. 85.
[1041] *Id.,* p. 87. Filipinos held only 3.4 percent of the professional positions.
[1042] *Id.*, p. 106.

Houston, for delegate. He served three terms before he was defeated in 1932 by longtime Democratic candidate for delegate, the non-Hawaiian Lincoln Loy McCandless.[1043]

In the years following Kūhiō's passing, Hawaiian national leaders were concerned with the implementation of the Hawaiian Homes Commission Act, especially because the Hawaiian homesteading program was only approved on a trial basis for a five-year period on the islands of Moloka'i and Hawai'i. By 1926, the trial period was successfully completed and Congress gave approval for the program to be permanent and to expand to the entire 203,500 acres that had been set aside under the Hawaiian Homes Commission Act.[1044]

As the transition to Generation 32 [Generation 127] of Hawaiian national leaders unfolded, the new generation of leadership began to function more in accordance with the terms prescribed by the white oligarchy. One factor contributing to this was the declining proportion of votes controlled by Native Hawaiians by 1930. As shown in Table IV in Chapter 8, while Hawaiians made up 55.6 percent of the voters in 1920, by 1930, they comprised only 38 percent of the electorate. Although this still constituted a plurality of the electorate, the statistics were an indication that Native Hawaiians would not be able to dominate electoral politics into the distant future. The looming threat to Native Hawaiian influence in electoral politics was the increasing number of Hawai'i-born or "Local" Asian voters, particularly the Nisei or second generation of Japanese in Hawai'i. In 1920, the "Local" Chinese and Japanese had made up only 7 percent of the voters; however, in 1930, they comprised 22 percent of those registered to vote.[1045] This changing balance of political influence led the Hawaiian national leaders to cooperate more fully

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[1043] Richard Wisniewske, editor. *Hawaii: The Territorial Years, 1900 - 1959: A Pictorial History* (Honolulu: Pacific Printers, 1959), Appendix B, p. 119.
[1044] Felix Keesing, *Hawaiian Homesteading on Molokai,* Univ. of Hawaii Research Publications, Vol. I, No. 3, January 1936, pp. 7-9; *also see*, Appendix 4. Continuing Native Hawaiian Self-Governance.
[1045] Hawaii, Governor of the Territory of Hawaii, *Report to the Secretary of Interior, 1931* (Washington: Government Printing Office, 1931), p. 14.

with the white oligarchy in order to protect their interests from the perceived threat of competing ethnic groups. In addition to ongoing concerns with the establishment and operations of the Hawaiian Homes Commission, an issue of special concern to Native Hawaiians in pre- World War II Hawai‘i, was the Massie assault and rape and Kahahawai murder cases. The Territorial Legislature and the Delegate to Congress continued to focus on general issues of economic development for the territory and its major industries - sugar and pineapple.

A Challenge to Democratic Self-Governance

In 1931, a major incident challenged the democratic governance of Hawai‘i and the prominent role of Native Hawaiians in the territorial government. Thalia Massie, the Caucasion wife of a Navy Lieutenant, filed charges against five non-white local men for allegedly raping and assaulting her in Waikīkī, near Ala Moana. Two of the accused men, Joseph Kahahawai and Ben Ahakuelo were full Native Hawaiian; one, Henry Chang, was Hawaiian-Chinese; and two, Horace Ida and David Takai, were Japanese. Mrs. Massie's mother, Mrs. Granville Fortescue was a well-known Washington socialite and niece of Alexander Graham Bell.[1046]

The Hearst newspapers throughout the U.S. gave broad coverage to the case and the trial, characterizing Hawai‘i's streets as being unsafe for white women. Governor Lawrence M. Judd, in his autobiography, described the newspaper coverage as follows:

> At the height of the crisis, American newspapers were reviling Hawaii as a central Pacific sin spot, where bands of 'natives' haunted tropical jungles awaiting the approach of hapless white women. Special writers described the Islands as seething with race hatred, with violence checked only by bayonet rule.[1047]

[1046] See generally David Stannard, *Honor Killing: How the Infamous "Massie Affair" Transformed Hawaii* (New York: Viking, 2005); John Patrick Rosa, "Local Story: The Massie Case and the Politics of Local Identity in Hawai‘i" (Unpublished PhD Dissertation, University of California, Irvine, 1999).
[1047] Lawrence M. Judd, *Lawrence M. Judd & Hawaii, An Autobiography* (Tokyo: Charles E. Tuttle, 1971), p. 168.

The U.S. Navy used the incident to embarrass the Territorial Government and press Washington, D.C. to turn over control of Hawai‘i to a commission form of government under direct control of the U.S. Navy. Despite the national pressure, the local jury did not come up with a unanimous verdict. The five defendants were discharged and a new trial was scheduled. However, Lieutenant Thomas Massie, and his mother-in-law, Mrs. Grace Fortescue, decided to take the law into their own hands. With the help of two enlisted Navy men, they kidnapped Joseph Kahahawai in order to force a confession out of him, and ended up killing him. Despite an excellent defense by Clarence Darrow, Massie and Fortescue and the two Navy men were convicted of second-degree manslaughter and sentenced to ten years at hard labor. U.S. congressmen and the U.S. Secretary of Navy demanded that Governor Judd issue a pardon for the four convicted murderers. In response to extraordinary pressure, the governor commuted the sentence to one hour in the custody of the High Sheriff, Major Gordon Ross, at ‘Iolani Palace, after which the Massie family caught a boat and left Hawai‘i. With Thalia Massie away from Hawai‘i, it was impossible to reschedule a trial of the men she had accused of rape and assault. They were eventually discharged from the custody of the courts. The U.S. Department of the Interior hired the Pinkerton Detective Agency to conduct an investigation into the Massie case. The detectives who conducted the investigation finally concluded that the men that Mrs. Massie had accused of kidnapping and assault were innocent.[1048]

The entire incident tested the strength of the democratic institutions that had been established and maintained by the oligarchy in alliance with Hawaiian national leaders. The U.S. Congress sent Assistant Attorney General Seth Richardson to investigate the system of law enforcement in Hawai‘i and to consider the proposal for a commission form of government to replace the democratically elected legislature and presidentially selected governor. The proposed

[1048] *Id.*, pp. 166-216.

commission would be appointed by the President and include Army and Navy representatives.[1049]

The primary concern of Congress and the Navy was the predominance of citizens of Asian ancestry in Hawai‘i. According to the proponents of a commission form of government, Hawai‘i was primarily annexed because of its military significance to the U.S. It was viewed as a military spearhead for protection of U.S. interests in the Pacific. It was also a first line of defense for the U.S. West Coast. National security interests were expected to take precedence over civil and industrial interests. The racial make-up of Hawai‘i, being two-thirds Asian, was considered to be a serious handicap and liability if the U.S. went to war with an Asian power. Admiral Yates Stirling articulated these concerns to the assistant Attorney General:

> The present system of self-government tends to increase the number of voters, and consequently of politicians and potential office-holders, from amongst racial mixtures, bred for centuries with ideas of government of social and living standards, so diverse from our American ideals, that the social and political conditions in these islands will have a tendency to drift further and further from such ideals and thus make the islands more and more difficult of control in time of emergency. . . . It may be that, in time, under drastic measures of education along American lines of thought, and the elimination of oriental thought, the characteristics of the people may be so changed that subsequent generations in the Hawaiian Islands would be capable of a complete measure of self-government with safety to the interests of the United States, but at the present moment it is believed that such characteristics do not generally exist, nor that the present tendencies are in that direction. Present governmental control should be by men primarily of the Caucasian race, specially selected for the most important positions in the government of the islands; by men who are not imbued too deeply with the peculiar atmosphere of the islands or with the predominance of interfamily connections; by men without preconceived ideas of the value and success of the melting-pot.[1050]

[1049] U.S. Department of Justice, Seth Richardson, *Law Enforcement in the Territory of Hawaii* "Letter from the Attorney General Transmitting in Response to Senate Resolution No. 134, Certain Information Relative to Law Enforcement in the Territory of Hawaii," (Washington, D.C.: Government Printing Office, 1932).
[1050] *Id.*, pp. 198 - 99.

Despite pressure from the U.S. Navy, Assistant Attorney General Richardson and Congress decided that Hawai‘i provided a valuable experiment in self-government among Asian and Polynesian peoples. Success of this experiment would prove to the world that the principles embodied in the U.S. Constitution could be applied to any population in the world. In case of war and under the Organic Act, a military government could be immediately imposed over the territory. In the final analysis, Hawai‘i’s Territorial Government, which had functioned for 30 years, primarily as an alliance between the oligarchy and the Native Hawaiians, had passed the most critical test since its establishment. Except for a period of Martial Law from December 1941 to October 1944, the Territorial Government established under the 1900 Organic Act would continue to govern Hawai‘i until statehood.

Nevertheless, the national attention given to Hawai‘i during the Massie assault and rape - Kahahawai murder cases signaled the increased interest in Hawai‘i as a military outpost. In the ensuing years, the U.S. Navy continued to build up its forces in Hawai‘i. The naval and army commands followed territorial politics very closely. Gradually the U.S. military in Hawai‘i became a major force in Hawai‘i’s economy, rivaling the economic significance of the sugar and pineapple plantations. World War II was the next major turning point in the political economy of Hawai‘i and for the Native Hawaiian people.

A Major Turning Point - World War II and Its Aftermath

World War II ushered in major changes in the social, economic and political life of the Hawaiian Islands. Many Hawaiians left their rural enclaves to join the service or to work in higher-paying military jobs in Honolulu. Hawai‘i was governed by the U.S. military under Martial Law and soldiers were deployed throughout the islands to guard against any potential invasion of the islands by Japanese forces. The war experience broadened the social horizons and

raised the expectations and aspirations of Hawai‘i‘s people for greater participation in politics and access to a higher standard of living.[1051]

During the war, the Japanese community endured severe discrimination in Hawai‘i, despite the valor exhibited by young Japanese Nisei (second generation Hawai‘i-born) men on the bloody European battlefields of World War II as members of the 100th Battalion and 442nd Regiment. Having shed their blood and lost their fellow Nisei soldiers in the defense of democracy, the veterans of World War II were inspired and determined to attain full social justice as citizens of the United States upon their return to Hawai‘i.[1052]

Labor unions, which had started to organize in the 1930s, were banned from organizing throughout the period of Martial Law in Hawai‘i, from December 8, 1941 through October 1944. Wages were frozen and plantation workers were bound to their jobs, which were designated as critical to the war effort.[1053] Labor unions were also determined to attain social justice and full democratic rights in postwar Hawai‘i.

Territorial status translated into second-class citizenship for Hawai‘i’s people and in the wake of World War II, the desire for first-class citizenship and full democratic representation and rights within the United States led to statehood for Hawai‘i.

The U.S. emerged as the dominant world power at the end of World War II. Economically, this enabled U.S. corporations to invest capital on a worldwide scale. In Hawai‘i, this resulted in the phasing out of agribusiness operations, and the investment by Hawai‘i corporations internationally.[1054]

[1051] McGregor, *Na Kua‘āina*, p. 45
[1052] Kent, *Hawaii: Islands Under the Influence*, pp. 128 - 132.
[1053] Gerald Horne, *Fighting in Paradise: Labor Unions, Racism, and Communists in the Making of Modern Hawai‘i* (Honolulu: Univ. of Hawai‘i Press, 2011), pp. 47 - 81.
[1054] Kent, *Hawaii: Islands Under the Influence,* pp. 104 - 121.

Part of the incentive for U.S. and Hawai‘i corporations to expand overseas was the increased cost of labor due to the postwar success of unions in achieving major concessions, such as pay increases, sick leave and retirement benefits, an eight hour work day, and paid vacations. For Hawai‘i, the gains of labor across the U.S. continent had the added benefit of creating a market for large-scale tourism, as hundreds of thousands of workers across the U.S. were granted annual paid vacations. In Hawai‘i, the International Longshoremen and Warehousemen's Union (I.L.W.U.) succeeded in organizing the stevedores and the plantation workers throughout the islands and winning contracts that provided a living wage and job security. Fortuitously, just as Hawai‘i-based corporations phased out their sugar and pineapple plantations in Hawai‘i, to open plantations in the cheap labor markets of Asia and South America, the tourist industry became a viable and lucrative alternative. In addition, as an innovation of the war, jet planes replaced the propeller planes that had serviced the Hawaiian Islands, making a vacation in Hawai‘i accessible and affordable by an American work force that now earned incomes resulting in expendable cash.

The Hawai‘i-born Japanese American veterans utilized their veterans' benefits to earn college degrees and buy homes. This propelled many of them into positions of leadership in Hawai‘i's expanding economy. By 1940, Hawai‘i-born Japanese had comprised the largest number of voters in Hawai‘i, surpassing the Native Hawaiians for the first time. Unable to exercise this voting power under Martial Law, after the war, the Japanese community enthusiastically got involved in electoral politics to work for the economic and social justice that they had been denied under the white oligarchy. In their political involvement, the Japanese community leaders allied themselves with the labor movement in the re-organization of the Democratic Party. In 1954, the Democratic Party won control of the Territorial Legislature and in

1956, Democratic Party leader John Burns was elected as the Hawai‘i delegate to the U.S. Congress. These two elections marked a turning point in the prominence of Native Hawaiian national leaders in the Territorial government, most of whom had been elected as members of the Republican Party throughout the Territorial Period. Gradually, Native Hawaiian national leaders were replaced in elected positions by Democrats, the majority of whom were of Japanese ancestry.[1055] The ethnic composition of the 1959 Territorial Legislature illustrates this change - 46.1 percent of the seventy-six members were Japanese, 23.7 percent were Caucasian, 14.5 percent were Hawaiian, 10.5 percent were Other Asian and 8.9 percent were Other Caucasian (Portuguese).[1056] The displacement of Native Hawaiian national leaders from the governance of Hawai‘i beginning in 1954, marked the beginning of the process of marginalization of the Native Hawaiian people from the electoral process. By the 1970s, this marginalization resulted in their alienation from the government of the State of Hawai‘i. It was at this point in time that Native Hawaiians began to organize to protect their trust and ancestral lands, cultural sites and subsistence resources in the 1970s, they formed independent grassroots organizations that evolved into a movement for self-determination as a Native Hawaiian people.

Continuity and Self-Governance

Despite cultural discrimination and social and economic obstacles that burdened Native Hawaiians in the Territorial Period, the national leaders were determined to fulfill the potential of the Hawaiian Home Lands program on Moloka‘i, Hawai‘i, Maui, O‘ahu and Kaua‘i. From the first generation to move on to these lands in 1922, to the third generation of the 21st century, Native Hawaiian homesteaders established solid, hard-working communities and formed

[1055] Fuchs, *Hawaii Pono*, pp. 161-162, 308 – 353.
[1056] Norman Meller, “Recent Changes in Composition of Hawaiian Legislatures,” *Social Process*, Volume 25, 1961 - 1962, p. 47.

organizations of self-governance, political advocacy, and economic advancement as the Hawaiian Home Lands program expanded from Molokaʻi to the other islands.[1057] By the 1950s, communities of Native Hawaiian ʻohana (extended families) were established on Hawaiian Home Lands on Molokaʻi, Oʻahu and Hawaiʻi island and they were organized into associations of self-governance. On Molokaʻi, there was the Hoʻolehua Community Association, the Kalamaʻula Community Association and the One Aliʻi Community Association. On Oʻahu, there were the Waimānalo Homesteaders Community Club, the Papakōlea Community Association, the Kewalo Homesteaders Improvement Association and the Nānākuli Community Association. Hawaiʻi Island had the Keaukaha Community Association.[1058]

The ʻAhahui Puʻuhonua O Nā Hawaiʻi reorganized as the Puʻuhonua Society after the passing of its founder, Prince Kūhiō.[1059] Noa Webster Aluli took over as president, future governor Samuel Wilder King served as vice president, John Wise as auditor, David K. Trask as secretary, and Samuel C. Dwight continued as treasurer.[1060] The founding principles continued to guide the organization. The Puʻuhonua Society asked members to "support and abide by the prohibition laws on the grounds that liquor retards the advancement of the Hawaiian people, to take an active interest in politics, live frugally and temperately and to raise as much of their own foodstuffs as possible, especially poi."[1061] They also hoped to fund a $150,000 endowment that could be used for further rehabilitation efforts, including the education of young Hawaiians.[1062]

[1057] Every homestead community has its own association and many of the organizations have confederated into what is now called The Sovereign Councils of the Hawaiian Homelands Assembly. See history of the homestead associations in Appendix 4. Continuing Native Hawaiian Self-Governance.
[1058] See Apencix 4. Continuing Native Hawaiian Self-Governance.
[1059] "Hawaiian Society is Organized in Honor of Late Prince Kuhio." *Semi-Weekly Maui News*, 9 May 1922, p. 1.
[1060] *Id.*
[1061] *Id.*
[1062] *Id.*

In 1935, Noa Aluii, on behalf of the Pu‘uhonua Society and other Hawaiian organizations, developed a brief which he submitted to the Territorial Legislature and Secretary of the Interior Harold Ickes that recommended a concentrated effort over a five-year period to rehabilitate and protect the 5,000 full Native Hawaiians who lived in the islands.[1063] This brief recommended that the U.S. Congress spend $1 million a year for five years to return the full Native Hawaiians to the soil or to small house lot areas, in the same manner that it provided for Indian rehabilitation projects on the continent. The Honolulu Advertiser of June 16, 1935, quoted Aluli as follows:

> There are not more than 5,000 left. By carrying on a full-blooded Hawaiian rehabilitation project, these can be saved. Otherwise they will perish during the next five or six years.[1064]

There is no record of how and when the Pu‘uhonua Society disbanded, but the ethos and mission of the ‘Ahahui Pu‘uhonua O Nā Hawai‘i and the Pu‘uhonua Society lived on in the Hawaiian Civic Clubs.

Throughout the Territorial Period, Hawaiian Civic Clubs on every island continued to function as distinct political and social entities for civic purposes, scholarship programs and cultural perpetuation. The Hawaiian Civic Clubs and associations of Hawaiian homesteaders persisted in organizing “as Native Hawaiians, for Native Hawaiians” throughout the 20th century to the present, to advocate for Native Hawaiian rights, land claims and benefits, and to perpetuate the practice of the culture.[1065] Where the government and the private sector fell short, Club leaders and members mobilized participation and investment in Native Hawaiian education, cultural preservation, social welfare, economic development, and homesteading. Along the way,

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[1063] *Honolulu Advertiser*, June 26, 1935, and letter from Noa W. Aluli to Hon. Harold S. Ickes, Secretary of Interior, July 17, 1935. National Archives, NA2, RG126, Office of Territories, Entry 1, Clarified Files, 1907 - 1951. Economic and Social Conditions, Box 688, Folder 9498.
[1064] *Honolulu Advertiser*, June 26, 1935.
[1065] See Appendix 4. Continuing Native Hawaiian Self-Governance.

sophisticated governance capabilities developed in the coordination of an ever-expanding network of highly localized Clubs.[1066]

Other Hawaiian organizations have also continued to keep alive uniquely Native Hawaiian perspectives in political, civic, and social issues. Among them are the four Royal Societies, each with a deep connection to an earlier period of the Hawaiian Kingdom. In 1865, King Kamehameha V established the Royal Order of Kamehameha I to honor his grandfather.[1067] Not surprisingly, the annexationists viewed the group as a threat and the Royal Order went underground during the decade after the 1893 overthrow until 1903, when Prince Kūhiō publicly reintroduced the Royal Order in a ceremony at the statue of Kamehameha I fronting Ali‘iōlani Hale. The Royal Order, whose goal is to advance the Native Hawaiian people and protect Hawaiian culture, customs, and traditions is the oldest Hawaiian organization in existence today.[1068]

Another organization with deep roots in the kingdom is the Ka‘ahumanu Society, established by Princess Victoria Kamāmalu in 1864, and named for Kamehameha I's most politically influential wife.[1069] An organization for women, its central purpose is to care for one another in times of sickness and death. Princess Kamāmalu's death on May 29, 1866, brought about the official dissolution of the 1,500-member organization.[1070] Nearly forty years later, in June 1905, the Ka‘ahumanu Society was reorganized by Native Hawaiian women, daughters and

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[1066] See Appendix 4. Continuing Native Hawaiian Self-Governance.
[1067] See Royal Order of Kamehameha I, *available at* http://www.mamalahoa.org/about/royal-order-of-kamehameha-i (last visited July 31, 2014).
[1068] *Id.*
[1069] Program, Convention of the Four Hawaiian Royal Societies, Honolulu: Ala Moana Hotel, July 2006, p. 19.
[1070] Helen K.W. Salazar, *Ka‘ahumanu Diamond Jubilee: A Brief History* (Honolulu: Ka‘ahumanu Society, 1980), p. 3.

grand-daughters of Hawaiian ali‘i, inspired by the public re-emergence of the Royal Order of Kamehameha I.[1071]

Like the Ka‘ahumanu Society and the Royal Order of Kamehameha I, Hale O Nā Ali‘i O Hawai‘i has a Kingdom-era antecedent—the Hale Nauā Society. Founded in 1886, Hale Nauā was an important part of King Kalākaua's efforts to preserve and revive Hawaiian culture.[1072] Hale O Nā Ali‘i O Hawai‘i was formed on April 7, 1918,[1073] and since 1920 has been under the leadership of the Kawānanakoa family— descendants of Prince David Kawānanakoa, the brother of Prince Jonah Kūhiō Kalaniana‘ole.

The fourth of the Royal Societies is the Daughters and Sons of Hawaiian Warriors – Māmakakaua. Formed in 1913, the original organization was made up solely of women. When the Daughters of Hawaiian Warriors decided to admit men, the women established an ancestral qualification for membership: a candidate would need to show descent from "the warriors of the old days" before the coming of foreigners.[1074] The group is dedicated to preserving Hawaiian antiquities, and ensuring the faithful depiction of life in ancient Hawai‘i.[1075]

Land Hui (Associations)

As discussed in Chapter Five, Native Hawaiians had formed Land Hui, landholding organizations, to acquire and collectively manage large landholdings. The Land Hui movement persisted as a viable model of self-governance until it was largely destroyed, by the 1950s, by a combination of Territory of Hawai‘i Supreme Court decisions and legislative action aimed at

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[1071] Helen De Haven, "Only Women with Hawaiian Blood are Eligible for Membership," *Honolulu Star-Bulletin*, Apr. 15, 1964, p. 17.
[1072] Esther T. Mo‘okini, "The Hale Naua of David Kalakaua," (unpublished manuscript, University of Hawaii, undated), p. 6
[1073] Program, *Four Hawaiian Royal Societies*, p. 26.
[1074] "Daughters of Warriors Will Be in Pageant," *Honolulu Star-Bulletin,* Dec. 7, 1915, p. 1.
[1075] "New Society to Cherish Relics of Olden Days," *Honolulu Star-Bulletin,* Dec. 13, 1915, p. 7.

making more land and water available for plantation interests.[1076] Over time, as members of a particular Land Hui passed on, the land interests became more fractionated with numerous heirs. Eventually, some heirs sold their interests to outside parties, particularly plantations, which ultimately led to the demise of the Land Hui movement.[1077] Despite these actions, some prominent Hui survived until well after World War II. Although the Hawaiian Land Hui disappeared as a model for land ownership and traditional community organization, the fact that it existed and functioned in some areas for almost one hundred years played a crucial role in maintaining traditional Hawaiian communities. Where Hui once controlled the land, large Native Hawaiian communities still exist today. The fact that the Hui arose organically from within discrete Hawaiian communities attests to the strength and sustainability of traditional ways of life.[1078]

Charitable Trusts Established by Native Hawaiian Rulers – The Ali‘i Trusts

The trusts established by the Native Hawaiian rulers, the Ali‘i Trusts, continued to function and serve Native Hawaiians throughout the Territorial Period. However, they also reflected the assimilationist policy of the oligarchy, through the Caucasian trustees who administered the trusts. Throughout the Territorial Period, the Kamehameha Schools' policy was to Americanize their Native Hawaiian students. Administrators and teachers were recruited from the U.S. continent and the Hawaiian language and ways of life were suppressed in the

[1076] See Appendix 2. The Hawaiian Land Hui Movement: Perpetuation of Hawaiian Land Tenure.
[1077] Robert H. Stauffer, *Kahana: How the Land Was Lost* (Honolulu: Univ. of Hawai‘i Press, 2004), pp. 109–112. Stauffer argues that the Hui movement was viewed by Hui members as a "counter-revolt to gain some of what was taken in the Great Māhele." *Id*., p. 125; see *id*., pp. 122-143 for a detailed discussion of the Kahana Land Hui on O‘ahu. *See also* Leslie J. Watson's five-part series on "Old Hawaiian Land Huis–Their Development and Dissolution," *Honolulu Star-Bulletin*, December 12–16, 1932. As a result of a series of cases decided by Hawai‘i's Territorial courts, the centralized and communal nature of the Land Hui became more difficult to maintain. The last large organized Hui, located in Hāena on Kaua‘i, was destroyed in 1967 through a partition action.
[1078] See Appendix 2. The Hawaiian Land Hui Movement: Perpetuation of Hawaiian Land Tenure.

classrooms and on the campus.[1079] The Lunalilo Trust established a nursing home for elderly Native Hawaiians, which was relocatd in 1927 to the base of the Koko Head Crater in the area that is now called Hawai‘i Kai. The bulk of the lands of the trust began to be sold under a court ruling in the time of King Kalākaua. Monies from the sale of the trust lands that were invested in the American stock market were diminished at the time of the stock market crash of 1929.[1080] The trust established by Queen Lili‘uokalani to benefit Hawaiian children was able to increase the assets of the trust for the coordination and administration of services for the beneficiaries rather than building an institution, such as an orphanage. Native Hawaiian children were placed in foster homes, boarding schools and other appropriate settings. The trust evolved into the Queen Lili‘uokalani Children's Center.[1081] Unfortunately, despite efforts by Native Hawaiian national leaders to protect the assets of the Queen Emma trust estate for Native Hawaiians, the bulk of the real property was transferred to The Queen's Hospital even after it no longer provided free health care for "indigent sick and disabled Hawaiians" as envisioned by Queen Emma. This significant series of events is discussed below.

Queen's Hospital and the Queen Emma Estate

Another pre-war issue of concern to the Native Hawaiian national leaders was the Territorial Government's abandonment of support for The Queen's Hospital as the national health care system in 1909 and the termination of free medical care for indigent sick and disabled Hawaiians by The Queen's Hospital. As discussed in Chapter Six, King Kamehameha IV and his wife, Queen Emma, established The Queen's Hospital as a national hospital in 1859 with funding from a government appropriation and private funds that they personally raised. The Legislature

[1079] King and Roth, *Broken Trust*, pp. 31 - 51.
[1080] Van Dyke, *Who Owns the Crown Lands of Hawai‘i?*, pp. 324 - 331.
[1081] Id., pp 336 - 342.

of the Hawaiian Kingdom and Constitutional Monarchy established The Queen's Hospital under the Civil Code of April 1859, "for the relief of sick and destitute Hawaiians."[1082] The charter and by-laws of The Queen's Hospital in 1859 stated that the hospital was for the "reception, accommodation and treatment of indigent sick and disabled Hawaiians, as well as such foreigners and others."[1083]

In 1884, Queen Emma made her will in which she left her valuable lands to benefit relatives and dear friends during their lifetimes, the Queen's Hospital, and St. Andrew's Priory. The Queen's Hospital was designated as the primary residual beneficiary of her trust upon the passing of her heirs, with a nominal annual amount to be provided to St. Andrew's Priory for scholarships. When Queen Emma died on April 25, 1885, the mission of The Queen's Hospital was the same as it had been in 1859 and throughout the 26 years following its establishment, to provide health care for indigent sick and disabled Hawaiians.[1084]

In 1889, the *Hawaiian Gazette* wrote the following about The Queen's Hospital as a national hospital, "This institution has always been and still is a credit to its founders and the Hawaiian nation by whom it is now maintained. The income is derived in part by direct appropriations from the national treasury, and in part from what is known as the Hospital tax, levied on every passenger who arrives from a foreign country."[1085]

In 1909, the Territorial Government reduced the annual appropriation to The Queen's Hospital and transferred management of Hospital and other government hospitals to the

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[1082] Act of April 20, 1859, *Kingdom of Hawaii 1859 Civil Code*, p. 434.
[1083] Charter and By-Laws of Queen's Hospital 1859, p. 7.
[1084] This point was noted in A.G.M. Robertson "A statement of Judge Stafford's decision in Queen's Hospital Case," *Honolulu Advertiser*, May 12, 1941, and cited in "Review of Historical Documents Relating to Care of Hawaiians," compiled by Helen Wong Smith, Reference Librarian/Archives Hawaii Medical Library in "Queen's Service to Hawaiians: A Historical Resource Binder" prepared by Corporate Communications, The Queen's Health Systems, Honolulu, Hawaii.
[1085] *Hawaiian Gazette*, 30 July 1889, cited in Victor Houston, "The Queen's Hospital, VIII" *Honolulu Advertiser*, December 27, 1950.

counties.[1086] At that point, the Board of Trustees of The Queen's Hospital voted to terminate free health care for indigent Native Hawaiians and to eliminate government representation on the Board. The 1909 charter amendment defined the mission of the hospital to be "for the treatment of sick and disabled persons . . . to maintain wards and apartments . . . for the treatment of pay-patients as well as free wards for the treatment of indigent persons." The term "Hawaiians" was deleted from the stated mission of the hospital. The number of trustees was reduced from 20 to seven, to be chosen solely from the "members of the Corporation."[1087] No members were to be nominated by the government, as had been provided in the 1859 charter and by-laws of the hospital.[1088]

Despite these major policy changes, it was not until 1938 - 1939 that Native Hawaiian national leaders challenged the changes in the mission of The Queen's Hospital that were effected by the 1909 amendments to the charter. The Native Hawaiian former delegate to Congress, Victor S. Houston, wrote an editorial in the *Honolulu Advertiser* on December 19, 1938, in which he outlined the history of the Queen's Hospital and noted that none of the newspapers in 1909 had carried news of the termination of free services to Native Hawaiians. He wrote, "So far as I have been able to find, none of the newspapers carried the story of the *real changes in the charter.* One of the papers merely said: 'By the amendment to their charter . . . *the*

[1086] Victor Houston, "Some Interesting Queen's Hospital History," in "Letters From the People," *Honolulu Advertiser*, December 19, 1938, p. 12, columns 3 and 4.
[1087] The Queen's Hospital Charter, Granted June 20th, 1859; Charter Amendment, Granted June 29th, 1909; By-Laws, Adopted June 23rd, 1909; Rules Adopted Feb. 20th, 1980, Amended July 23rd, 1909, Amended Sept. 10th, 1909, Honolulu T.H., State of Hawai'i Archives, pp. 24-25.
[1088] *Id.*, p. 25, and Charter and By-Laws of the Queen's Hospital (Honolulu: Commercial Advertiser Print, 1859), State of Hawai'i Archives.

number of trustees of the Queen's Hospital will be reduced from twenty to seven."[1089] He sadly concluded, "And so the Hawaiians were eased out of another one of their benefits."[1090]

On May 9, 1939, I.M. Stainback, the U.S. District Attorney, who served as the master for the Queen Emma Trust that year, recommended that the trust be terminated and its assets be distributed to the Queen's Hospital on the grounds that all individual beneficiaries under the will had passed on.[1091] On July 11, 1939, Charles Hite, Trustee for the Trust Estate of Queen Emma petitioned the Territorial Court for instructions and the construction of the will. The brief submitted by attorneys William Heen and Marguerite Ashford on behalf of Trustee Hite stated:

> The Queen's Hospital is now and for an unascertained time last past has been diverting the funds received from the estate of Queen Emma for the relief, reception, accommodation and treatment of indigent and sick Hawaiians for general hospital purposes, mainly for the use of patients able to pay and paying for accommodation and treatment in said hospital; and that the only free relief, reception and accommodation and treatment given by said hospital to sick and indigent Hawaiians are those given by virtue of charitable grants made by others than Queen Emma.
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> That there are now a large number of Hawaiians throughout the Territory and particularly in the City and County of Honolulu who are indigent, sick and disabled and who cannot now and have not for an unascertained number of years last past been able to receive free treatment, accommodation and relief at The Queen's Hospital under the present rules and regulations and method of operation of said hospital.[1092]

Hite's petition to the court inquired whether the funds left by Queen Emma to the Queen's Hospital must be expended solely or at least primarily for the maintenance and medical care of sick, indigent and disabled Hawaiians. It questioned whether the amendments to the charter of the hospital in 1909, 1922, and 1935 effected a change in the charter with respect to the requirement that expenditures from the Queen Emma trust estate be used to support sick,

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[1089] Houston, "Some Interesting Queen's Hospital History" (emphasis in original).
[1090] *Id.*
[1091] "Hodgson Files Objection to Ending Trust," *Honolulu Star Bulletin*, July 15, 1939, p. 1.
[1092] Petition and Summons, In Equity, *Charles M. Hite vs The Queen's Hospital*, p. 18, subsequent appeal and court decision, *Hite v. The Queen's Hospital*, 36 Hawaii 250 (1942).

indigent and disabled Hawaiians under the will of Queen Emma. He also inquired if the Queen's Hospital could be entrusted with the expenditure of the funds from the Queen Emma Estate for the relief of sick, indigent and disabled Hawaiians, given that "The Queen's Hospital had been derelict in the administration of the trust imposed upon the bounty received."[1093]

On September 1, 1939, Victor Houston presented a report to the Hawaiian Civic Club entitled, "Medical Care Needed for Hawaiians," which documented the special health needs of Native Hawaiians and the responsibility of The Queen's Hospital to provide free health services for indigent, sick and disabled Hawaiians. In response, the Hawaiian Civic Club publicized the actions of the hospital among their members, leading the broader community to question whether The Queen's Hospital truly qualified for a tax exemption.

In response to the petition of Trustee Hite, Judge H. E. Stafford ruled, in 1941, that the Queen's Hospital must provide an accounting of approximately $1 million before it received any additional income from Queen Emma's trust estate. Stafford instructed the hospital to restore any monies diverted to purposes other than the relief of indigent sick and disabled Hawaiians to the Queen Emma trust estate. The judge instructed that, annually, after the deduction of $600 for St. Andrew's Priory, the income of the trust, not the corpus, be expended for medical care of sick indigent and disabled Hawaiians. The Judge noted:

> It was the intention of Queen Emma and the consequent nature of the trust imposed upon the fund she willed that it be used for the reception, accommodation and treatment of indigent, sick and disabled Hawaiians, without charge to them, and that foreigners and others who may choose to avail themselves of the facilities of the Hospital and dispensary in Honolulu might do so by contract, that is, pay for what they receive.
>
> That the Hospital had wilfully, materially and fundamentally changed its charter so as to change, and has changed the nature and purpose of the corporation and that such corporation and said Hospital is taking not only the income but the principal which has reached its hands and wilfully diverting it to a different use

[1093] *Id.*, pp. 20 - 21.

> than contemplated by the donor and to a use to which she would not have devoted her property and in violation of the trust.[1094]

In response to this ruling, A.G.M. Robertson, the attorney for The Queen's Hospital wrote a letter to the editor and filed an appeal to the Hawai'i Supreme Court. In his statement, Robertson re-interpreted the mission of the hospital in the 1859 charter to mean:

> for the treatment of all sick and disabled persons of whatever nationality, whether indigent or not. Those who could afford to pay would be expected to pay. All Hawaiians were not indigent. Not all foreigners could afford to pay. All who chose could get hospitalization. Such was the situation and the practice of the Hospital at the time Queen Emma made her will, and had been during the 25 years which she lived after the Hospital was established, and all of which was of course well known to her . . .
>
> Queen Emma if she had seen fit, could have given property to The Queen's Hospital with the direction that it be used solely for the benefit of indigent, sick and disabled Hawaiians. Had she done that, the Hospital could not have used the money for any other purpose. But she did not do that . . .
>
> Queen Emma's will contained no direction or limitation as to the purpose for which the Hospital could expend the money it receives from the trustee of the estate.[1095]

In 1942, the Territory of Hawai'i Supreme Court reversed Judge Stafford's decision and ruling in response to the appeal from the Queen's Hospital trustees. The high court ruled that the gift by Queen Emma was given to the Queen's Hospital without any limitation or restriction upon its use and that the Queen's Hospital was founded "for the use alike of indigent Hawaiians and such foreigners and others who might choose to avail themselves of the same."[1096]

In 1950, the Territory of Hawai'i Supreme Court distributed all of the real property of the Queen Emma trust estate to The Queen's Hospital, except the amount of property necessary to

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[1094] *The Honolulu Advertiser*, May 10, 1941, editorial page, column 2.
[1095] Robertson, "A Statement on Judge Stafford's Decision in Queen's Hospital Case"
[1096] Hite v. The Queen's Hospital, 36 Hawaii 250 (1942), p. 268

maintain the scholarship that Queen Emma had endowed to St. Andrew's Priory.[1097] At that point, Victor Houston wrote an eight-part series for the *Honolulu Advertiser*. He opened the series with the following statement:

> With the turning over of the earthly assets of the Queen Emma estate, but not her spiritual legacy, to The Queen's Hospital Trustees, there comes to an end the last hope entertained by Hawaiians of seeing carried out at law, what they in all good faith, and in their common knowledge felt to be the intent of Queen Emma, when she signed the will that had been prepared for her in 1884.[1098]

In effect, the Queen Emma estate, as a trust for Native Hawaiians was dissolved by the 1950 distribution of assets. However, the formal termination of the Queen Emma trust estate occurred in 1967 by Judge Allen Hawkins.[1099] This brief history of the Queen Emma trust estate provides an insight into how Native Hawaiian national leaders and the Hawaiian Civic Clubs sought to protect the legacy left to Native Hawaiians by the Ali'i (rulers) of the 19th century. However, the white oligarchy utilized the rule of U.S. law to gradually diminish the benefits to Native Hawaiians and convert Native Hawaiian assets into private corporate assets.

Cultural Kīpuka - Strongholds of Hawaiian Culture

In addition to the Hawaiian Home Lands communities and the Land Hui, small rural enclaves or cultural kīpuka, where Native Hawaiian comprised the majority of the population, played a singularly critical role in the continuity of Native Hawaiians as a unique people with a distinct culture, language and ancestral land base. These communities sustained a prolonged and uninterrupted continuity of settlement and tenure on the lands of their ancestors. Community members persisted in providing for their 'ohana (extended families) through subsistence fishing,

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[1097] Van Dyke, *Who Owns the Crown Lands of Hawai'i?* p. 335.
[1098] Victor K. Houston, Capt USN, Ret, Former Delegate to Congress, "The Queen's Hospital, Part I," *Honolulu Advertiser*, December 18, 1950, p. 8.
[1099] Van Dyke, *Who Owns the Crown Lands of Hawai'i?,* p. 335 (citing *Honolulu Advertiser*, March 8, 1967, p. 1, col. 6).

farming and gathering which were conducted according to traditional and customary cultural practices and guided by spiritual and cultural beliefs. Such practices continued to be protected by laws established under the Kingdom of Hawai‘i, laws that extended into the Territorial Period.[1100]

The significance of these areas can be appreciated by looking to the natural dynamics of the volcanic rainforest. Even as the volcano deity Pele covers the forest with lava, she leaves behind intact, whole sections or large oases of the forest, with tall old growth ‘ōhi‘a (a native tree), tree ferns, creeping vines and mosses. These oases are called kīpuka. The beauty of these natural kīpuka is not only their ability to resist and withstand destructive forces of change, but also their ability to regenerate life on the barren lava that surrounds them. From these kīpuka come the seeds and spores carried by birds and blown by the wind to sprout upon and regenerate the forest on the new lava, sparking a new dynamic cycle of coming into and passing out of life.[1101]

The rural communities where Native Hawaiian kua‘āina (back country folk) have remained are cultural kīpuka which have been bypassed by major historic forces of economic, political, and social change in Hawai‘i. Like the dynamic life forces in a natural kīpuka, cultural kīpuka are communities from which Native Hawaiian culture has been regenerated and revitalized in the contemporary settings in Hawai‘i. Moreover, from the examination of the lives of the Native Hawaiian kua‘āina in Hawaiian cultural kīpuka, emerges a profile of the strongest and most resilient aspects of the Native Hawaiian culture and way of life. Such an examination provides insight into how the Native Hawaiian culture survived dynamic forces of political and

[1100] This discussion of cultural kīpuka draws from McGregor, *Nā Kua‘āina*, pp. 1 - 48.
[1101] *Id.,* pp. 7- 8

economic change throughout the 20th century.[1102]

Features of Cultural Kīpuka

Originally, cultural kīpuka were traditional centers of spiritual power. In traditional Hawaiian chants and mythology, major akua (gods and Hawaiian deities) were associated with these wahi pana (sacred lands). These districts were isolated and difficult to access over land and by sea. Due to the lack of good anchorage and harbors, early traders often bypassed these districts in favor of more accessible areas. The missionaries entered these areas and established permanent stations during a later period than in other parts of Hawai‘i. Thus, traditional Native Hawaiian spiritual beliefs and practices persisted there, without competition, for a longer period of time. As Christian influences entered these areas, they had to co-exist with traditional beliefs and practices.[1103]

The geography of these districts discouraged the widespread or long-term development of sugar plantations. In the arid areas, the lack of water resources made development of sugar plantations unfeasible. In the areas with sufficient rainfall, the terrain was too steep or rugged for plantation agriculture. Where plantation agriculture failed, such as in Moloka‘i and the Hāna district, ranches were able to succeed. The ranches employed Native Hawaiian men as cowboys and allowed them to live with their families in these isolated districts and pursue traditional fishing, gathering, and hunting activities to supplement their wages. In some areas small stores provided Native Hawaiian kua‘āina access to some basic western commodities such as kerosene, lanterns, tools, flour, crackers, and sugar. However, for the most part, Native Hawaiian kua‘āina were not consumption oriented. Money to purchase these basic provisions came from selling taro or fish or an occasional day’s labor for a local entrepreneur or the government road crew.

[1102] *Id.*
[1103] *Id.*, p. 8

Where neither plantations nor ranches were established, traditional subsistence activities continued to be pursued undisturbed by modern economic development. In the wetland areas taro continued to be farmed, often in conjunction with rice. In the arid areas, sweet potatoes, dryland taro and other traditional and introduced crops suited to the dry soil and climate were cultivated. Thus, the natural features and resources of these districts which rendered them unsuitable for plantation agriculture and ranching played a role in the survival, and eventual revitalization, of Native Hawaiian cultural, spiritual and subsistence customs and practices. Concurrently, the quality and abundance of the natural resources of these rural communities can be attributed to the persistence of Native Hawaiian cultural and spiritual values and practices in the conduct of subsistence activities.

Very few whites settled in these districts and there was very little interaction of Native Hawaiian residents with the outside community. Chinese who completed their contracts on the plantation and did not return home or move to the continent leased or rented lands from the Native Hawaiian landowners. Some Chinese served as middlemen, marketing whatever taro and fish the Native Hawaiians desired to sell in the towns, and bringing back consumer goods for sale or barter in the rural communities. Where there was a small rural store in these districts, it was invariably owned by a Chinese, who in some cases was married to a Native Hawaiian woman.

By 1930, there were still 17 rural districts where Native Hawaiians were still predominant. Andrew Lind, in his book, *An Island Community: Ecological Succession in Hawaii,* wrote of the significance of these areas for the continuity of Hawaiian culture:

> These racial havens - small population islands still relatively secure from the strong currents which have swept the archipelago as a whole into the world-complex of trade - are strikingly similar to those which appear in the census of 1853. The dry and rocky portions of Kau, Puna and the Kona coast, the deep

> valley of Waipio, the wild sections of Hana, Maui, portions of lonely Lanai and Molokai where industrial methods of agriculture have not succeeded, the leper settlement, and Niihau, the island of mystery - these are the places of refuge for some 4,400 or nearly one-fifth, of the native Polynesians. . . .
>
> The old fish and poi company, with its accompaniment of tutelary deities, taboos, religion, and magic, still persists in modified form within many of these isolated communities. A small plot of taro and access to the sea and the mountains are apparently all that is required for the satisfaction of their material wants. The wage from an occasional day's work on the government road enables them to purchase the necessary supplies which the old economy cannot now provide. . . . The natives themselves have found these rural havens where the economy of life to which they are best adapted can survive.[1104]

The 17 districts where Native Hawaiians comprised a majority in 1930 were small isolated valleys and districts on the fringes of the economic and social life of Hawai‘i. The overall population in these districts averaged 341 and the number of Native Hawaiians in them averaged 248. The largest district, Pāla‘au/Ho‘olehua on Moloka‘i, had 1,031 inhabitants, of whom 826 were Native Hawaiian; and the smallest, Keomoku on Lana‘i, had 54 inhabitants, of whom 33 were Native Hawaiian.

On Hawai‘i Island, these districts included Kalapana (88 percent Native Hawaiian); Waipi‘o and Waimanu (66 percent Native Hawaiian); Keaukaha, an area opened for Hawaiian Homesteading in 1925 (83 percent Native Hawaiian); the Pu‘uanahulu, Pu‘uwa‘awa‘a and Kīholo district (79 percent Native Hawaiian); the Kohanaiki, Kalaoa, Hu‘ehu‘e, and Honokōhau district (52 percent Native Hawaiian); ‘Alae, Pāhoehoe, Honokua, ‘Opihihale and ‘Ōlelo-moana district (82 percent Native Hawaiian); and Ho‘ōpūloa, Pāpā, ‘Ālika, , Kaunāmano, Kapu‘a and Miloli‘i district (64 percent Native Hawaiian).

On Maui, the districts with a predominance of Hawaiians included Ke‘anae to Nāhiku (78

[1104] Andrew Lind, *An Island Community: Ecological Succession in Hawaii* (Chicago: The Univ. of Chicago, 1938; reprint New York: Greenwood Press, 1968), pp. 102-103.

percent Native Hawaiian); Nāhiku to Hāna (55 percent Native Hawaiian); Kīpahulu (80 percent Native Hawaiian); and Kaupō to Kahikinui (86 percent Native Hawaiian). On Moloka‘i, the districts with a majority of Hawaiians included Kawela to ‘Ualapu‘e (62 percent Native Hawaiian); Kalawao (66 percent Native Hawaiian); and the Hawaiian Homestead lands at Pālā‘au and Ho‘olehua (80 percent Native Hawaiian). The small district of Keomoku on the island of Lāna‘i was 61 percent Native Hawaiian. The island of Ni‘ihau was 93 percent Native Hawaiian. On O‘ahu, only the district that included the Kalihi Receiving Station and the Hospital for Hansen's disease patients had a majority of Native Hawaiians. Sixty-one percent of the patients were of Native Hawaiian ancestry. The statistics are summarized in the table below:

Table VII. Rural Districts With Population Over 50 Percent Hawaiian, 1930[1105]

District	Total	Hawaiian	Percent Hawaiian
Hawai‘i			
Kalapana	235	207	88
Waipi‘o, Waimanu	271	178	66
Keaukaha	754	625	83
Pu‘uanahulu, Pu‘uwa‘awa‘a, Kīholo	149	117	79
Kohanaiki,Kalaoa,Hu‘ehu‘e, Honokōhau	422	221	52

[1105] Statistics based on U.S. Bureau of the Census, 1931, p. 70, 72, table 22. The district boundaries were found in Governors Proclamations 1926 - 1929, pp. 6 - 21 and 1930, pp. 128 - 147, and Map No. 301 O‘ahu in the State of Hawai‘i Archives.

‘Alae, Pāhoehoe, Honokua,			
Opihihale, ‘Ōlelo-moana	239	197	82
Ho‘ōpūloa, Pāpā, ‘Ālika,			
Kaunāmano, Kapu‘a, Miloli‘i	146	94	64
Maui			
Ke‘anae/Hāna	337	262	78
Nāhiku/Hāna	182	101	55
Kīpahulu	147	118	80
Kaupō	185	160	86
Moloka‘i			
Kawela, ‘Ualapu‘e	789	487	62
Kalawao	605	400	66
Pālā‘au, Ho‘olehua	1,031	826	80
Lāna‘i			
Kahue to Kamaiki			
(Keomoku, Lāna‘i)	54	33	61
O‘ahu			
Kalihi Receiving Station/Hospital	114	70	61
Ni‘ihau	136	126	93
TOTAL	5,796	4,222	72

Except for the homestead districts of Pālā‘au/Ho‘olehua and Keaukaha, the Hansen’s

disease receiving station at Kalihi and the settlement at Kalawao, the ethnic concentrations of Hawaiians were not induced or encouraged by governmental policy. Among the remaining districts, certain common qualities and patterns of change and continuity can be observed.

In the 1930's, anthropologists from the Bernice Pauahi Bishop Museum, E.S. Craighill Handy and Elizabeth Green Handy, in collaboration with Mary Kawena Pukui traveled through all of the major districts of the Hawaiian Islands to assess the original native horticulture of the islands, prior to the introduction of Euro-American plants. Their findings were published in *The Hawaiian Planter, Volume I,* and in *Native Planters in Old Hawaii, Their Life, Lore, and Environment*. These volumes provide a snapshot of the lives of the kuaʻāina in the rural districts during the 1930s. In the foreword to the *Native Planters in Old Hawaii*, E.S. Craighill Handy wrote:

> It was shown that the older generation of country natives still had an extraordinarily intimate and thorough knowledge of the many varieties of taro, sweet potato, sugar cane, and banana still cultivated . . . The Hawaiians, more than any of the other Polynesians, were a people whose means of livelihood, whose work and interests, were centered in the cultivation of the soil. The planter and his life furnish us with the key to his culture.[1106]

The diverse undeveloped natural resources in these areas provided an abundance of foods for the Native Hawaiians who lived in there. Forested lands provided families with fruits to eat; vines, plants, and woods for making household implements and tools; and herbs to heal themselves. They provided a natural habitat for animals that were hunted for meat. Marine life flourished in the streams. The ocean provided an abundance of food. Subsistence activities continued to be the primary source of sustenance for the Native Hawaiians in these districts. Production in these districts was primarily oriented around home consumption.

[1106] E.S. Craighill Handy and Elizabeth Green Handy with Mary Kawena Pukui, *Native Planters in Old Hawaii, Their Life, Lore, and Environment* (Honolulu: Bishop Museum Press, 1972).

The quality and abundance of the natural resources of these rural Hawaiian communities can be attributed to the persistence of traditional values and practices of the ʻohana (extended families) in the conduct of subsistence activities. An inherent aspect of these ʻohana values is the practice of conservation to ensure availability of natural resources for present and future generations. Ancestral knowledge about the land and its resource has been reinforced through continued subsistence practices. While traveling to the various ʻili (land sections) of the traditional cultural practices region, through dirt roads and trails, along spring-fed streams, and the shoreline, practitioners continuously renew their cultural knowledge and understanding of the landscape, the place names, names of the winds and the rains, traditional legends, wahi pana (sacred places), historical cultural sites, and the location of various native plants and animals. The practitioners stay alert to the condition of the landscape and the resources and their changes due to seasonal and life-cycle transformations. This orientation is critical to the preservation of the natural and cultural landscape.

The importance of these rural Hawaiian communities in perpetuating the Hawaiian national identity and culture became apparent in the period after statehood, when leaders from these communities emerged at the forefront of the Native Hawaiian renaissance of language, culture, music, dance and spirituality. Among such leaders was Uncle Harry Kūnihi Mitchell, a taro farmer in Keʻanae, Maui, who became a leader of the Protect Kahoʻolawe ʻOhana together with Aunty Alice Kuloloio and her son, Leslie Kuloloio of Mākena, Maui. Mitchell was also instrumental in the revival of Hawaiian language, the resurgence of taro planting throughout the islands and the revival of Native Hawaiian healing arts.[1107]

Edith Kanakaole of Honomū, Hawaiʻi, founded Hālau o Kekuhi, the premier classical dance company that perpetuates the chants and dances in the Pele tradition of hula. She was

[1107] McGregor, *Nā Kuaʻāina*, p. 266 - 267.

instrumental in the establishment of a department of Hawaiian language and studies at the University of Hawai‘i in Hilo. Mary Kawena Pukui of Ka‘ū, Hawai‘i was the leading Hawaiian scholar who co-authored the Hawaiian-English dictionary, and collected and translated ‘ōlelo no‘eau or wise saying and proverbs. In her work at the Bernice Pauahi Bishop Musuem, she collected and translated chants, songs, proverbs, place names, and oral histories. She also translated vast sections of the Hawaiian language newspapers which were published as books authored by the writers, Samuel Kamakau, Kepelino, Davida Malo, and John Papa ‘Ī‘ī. Lokalia Montgomery was very influential in the perpetuation of the hula, in the tradition of the Kaua‘i school of hula. ‘Iolani Luahine, from the small rural village of Nāpo‘opo‘o, Hawai‘i, was trained in the Kaua‘i school of hula by her aunt Julia Keahi Luahine, as well as Lokalia Montgomery and Mary Kāwena Pukui and brought national focus to the sacred hula.[1108]

Kūpuna on the island of Moloka‘i such as Mary Lee, Clara Kū, and Harriet Ne were instrumental in the perpetuation of the indigenous Hawaiian knowledge and cultural customs, beliefs and practices of this island renowned for its powerful kāhuna (priests and healers).

Recognition of Native Hawaiians as a Distinct Native People

While the United States policy was to incorporate the Territory of Hawai‘i into the United States and to Americanize the multi-ethnic peoples of Hawai‘i, the U.S. Congress, nevertheless, instituted programs and adopted policies that recognized the Native Hawaiian people as the indigenous people of Hawai‘i.

[1108] See generally Shuzo Umemoto *Nana I Na Loea Hula: Look to the Hula Resources, with narratives by Hula Resources* (Honolulu: Kalihi-Palama Culture and Arts Society, 1997).

Smithsonian Institution U.S. Bureau of American Ethnology

From June 30, 1906 through August 22, 1949, the U.S. Congress annually appropriated funds to the Smithsonian Institution's U.S. Bureau of American Ethnology "for continuing ethnological researches among the American Indians and the natives of Hawaii under the direction of the Smithsonian Institution."[1109] By contrast, in 1905, the appropriation was "[f]or continuing ethnological researches among the American Indians under the direction of the Smithsonian Institute."[1110] Although the indigenous peoples of American Sāmoa, Guam and the Philippines were also under the jurisdiction of the United States by 1906, only the American Indians and Native Hawaiians were to be studied by the U.S. Bureau of American Ethnology under the congressional mandate.[1111] On March 12, 1904, William H. Holmes, Chief of the Bureau of American Ethnology, wrote a letter to Smithsonian Institute Secretary S.P. Langley that explained the justification for extending the Bureau's research to Hawai'i. He wrote:

> The reasons for recommending the extension of the work to the natives of these islands are, first, that although these people are our wards in the same sense that the Indians are we know very little regarding them. It would seem the part of wisdom to acquire a working knowledge of their history, racial affinities, and physical and mental characteristics; and a record of their native arts and industries, their manners and customs, before it is finally too late. In a dozen years little will be left of either the people or their culture for study. Unless the government undertakes this work now, nothing can be done, and future generations can justly accuse us of neglecting opportunities presented now for the last time.[1112]

[1109] *See for example*, Act of June 20, 1906, Pub. L. No. 59-383, 34 Stat. 704 (1906) and Act of August 24, 1949, Pub. L. 81-266, 63 Stat 649 (1949).

[1110] Act of June 30, 1905, Pub. L. No. 58-194, 33 Stat 452, 461 (1903–1905).

[1111] *See for example*, Pub. L. No. 61-266, 26 Stat. 703, 718 (1910); Pub. L. No. 69-600, 44 Stat. 1069, 1079 (1927); Pub. L. No. 71-158, 46 Stat. 229, 241 (1930)

[1112] Letter from William H. Holmes, Chief of the Bureau of American Ethnology, to Smithsonian Institute Secretary S.P. Langley, March 12, 1904, in Smithsonian Institution Archives. As a result of this Congressional mandate, the U.S. Bureau of American Ethnology conducted research and published significant studies of Hawaiian chant, dance, and literature. These studies included,Smithsonian Institution. Bureau of American Ethnology, Bulletin 38, *Unwritten Literature of Hawaii: Sacred Songs of the Hula* by Dr. Nathaniel Emerson (Washington: Government Printing

The Congressional mandate for the U.S. Bureau of American Ethnology to conduct research on Native Hawaiians was one of the first acknowledgements that Native Hawaiians were indigenous peoples with whom the U.S. government had a special legal and political relationship, similar to the American Indians.

Hawaiian Homes Commission Act

The Hawaiian Homes Commission Act, which passed in 1921, was the second and primary act of the U.S. Congress acknowledging Native Hawaiians as the indigenous people of Hawaiʻi with whom the U.S. government had a trust relationship. The origins, purpose and legislative history of the act is discussed above in Chapter Eight.

1938 Kalapana Extension Act

In 1938, the U.S. Congress passed the Kalapana Extension Act which set an important precedent by including a provision to lease lands within the extension of the Volcanoes National Park to Native Hawaiians and to permit fishing in the area "only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance." The definition of native Hawaiian was "any descendant of not less than one-half part of the blood of the race inhabiting the Hawaiian Islands previous to 1778."[1113] Through this Act, the U.S. Congress acknowledged the special traditional subsistence lifestyle of the Native Hawaiians in Kalapana and instituted significant measures to protect it.

Office, 1909); *The Romance of Laieikawai* in Hawaiian and English by Martha W. Beckwith in the Thirty-Third Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution 1911 - 1912; and *Archaeological Work in Hawaii* in Bureau of American Ethnology, Bulletin 76 by Gerard Fowke (Washington: Government Printing Office, 1922).

[1113] Kalapana Extension Act, Pub. L. No. 75-680, § 3, 52 Stat. 784, 784-85 (1938).

The Hawai‘i Volcanoes National Park staff had been urged by the governor’s office, the Hawai‘i County Board of Supervisors and prominent citizens of Hawai‘i Island to expand the park to include all of the land from ‘Āpua over to Kaimu Black Sand Beach. The people in Kalapana strongly opposed the plan. Edward G. Wingate was the superintendent of the Hawai‘i Volcanoes National Park at the time of the proposed acquisition. In an interview with historian Russell Apple, he said that he supported the Native Hawaiians in Kalapana and felt it was wrong of the federal government or the park service to dispossess the Native Hawaiians of their homes, their land, and their traditional way of life. He and the Kalapana community developed a compromise. The Hawai‘i Volcano National Park would expand to include the six ahupua‘a (watershed land divisions) of ‘Āpua, Kahue, Kealakomo, Panaunui, Lae‘apuki and Kamoamoa, and parts of Pulama and Poupou in Puna and Keauhou in the Ka‘u district. However, the relatively densely populated lands from Kalapana over to Kaimū were deleted from the extension proposal.[1114]

Still concerned about negative impacts on the way of life of the Kalapana Native Hawaiians, Wingate proposed that home sites be made available to them in the park extension so that the villagers could move into the park as they saw the need. In addition a fishing provision was added allowing only Kalapana residents and those accompanied by a local guide to fish within the park extension.[1115] Russell Apple summarized Wingate’s thinking as follows:

> A new village inside the Kalapana Extension was foreseen. The idea was a subsistence-type arrangement, with Hawaiians living in a traditional manner - - fishing offshore and along the coast, houses near the shore and agricultural plots inland. Exclusive fishing rights for those still living in Kalapana and for those living within the Extension were included.[1116]

[1114] McGregor, *Nā Kua‘āina*, p. 173 - 176
[1115] *Id.*, p. 173 - 175.
[1116] Russell Apple, “Transcription of a 1974 Interview by Russell Apple with Former Superintendent Wingate Concerning the Kalapana Extension” and “Homesite Provisions of the 1938 Kalapana Act,” Hawai‘i Volcanoes National Park Headquarters Library.

According to Wingate, these provisions of the Kalapana Extension Act were included "to protect the fishing for the people who lived from the sea and who lived from the land, to have some food source from the sea as some areas have been fished out." He also noted that serving as a guide would provide jobs and a source of a small cash income for the Kalapana Native Hawaiians.[1117]

Admission Act

Significantly, when the U.S. Congress developed the Admission Act for Hawaiʻi as a state, it mandated the State of Hawaiʻi to manage and administer two important public trusts for the indigenous Native Hawaiian people. First, the U.S. Congress mandated that the State of Hawaiʻi perpetuate the Hawaiian Homes Commission Act in Section 4 of the Admission Act as follows:

> As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State . . . subject to amendment or repeal only with the consent of the United States, and in no other manner.[1118]

Second, under Section 5 (f) of the Admission Act, the U.S. Congress established the ceded Public Land Trust for the State of Hawaiʻi to manage for the benefit of the general public and Native Hawaiians. The Admission Act specifies that the lands transferred to the state:

> Shall be held by said State as a public trust for the support of the public schools and other public educational institutions, **for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended**, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use.[1119]

[1117] Id

[1118] *See* § 4 (HHCA), Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959).

[1119] *See* § 5 (Public Land Trust), Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959) (emphasis added).

The origin of these two provisions of the Admission Act can be traced to a report submitted to the U.S. Congress in 1947 by Acting Secretary of the Interior Oscar L. Chapman. In his report, Acting Secretary Chapman asked Congress to guarantee that the trust relationship and benefits established for Native Hawaiians under the Hawaiian Homes Commission Act would continue to be protected by the U.S. even after Hawai‘i became a state.[1120]

Statehood for Hawai‘i had first been identified by the Homerula Kū‘oko‘a (Independent Homerule Party) as a strategy for the Native Hawaiians, who comprised the majority of voters, to be able to elect the governor and voting members of the U.S. Congress.[1121] In 1903, the Territorial Legislature, in which 70 percent of the members were Native Hawaiian, voted unanimously to petition Congress for statehood. In 1919 Prince Jonah Kūhiō Kalaniana‘ole introduced the first bill for statehood, followed by a second bill in 1920.[1122] Similarly, Native Hawaiian delegates to Congress, Victor Houston and Samuel Wilder King, introduced bills for statehood in the early 1930s and in 1935, respectively.[1123] The first hearing regarding statehood was held in Hawai‘i in 1935 by the U.S. House Committee on the Territories. There were 150 persons who testified, 90 were in favor and 60 opposed to statehood. Of those who testified, seventeen were Native Hawaiian and fifteen testified in favor, one opposed and one offered conditional support.[1124] Significantly, attorney Noa Webster Aluli, who had drafted and lobbied for the original Hawaiian Homes Commision Act, stated that he would only support statehood if

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[1120] H.R. 1620, 79-2, pp. 36 - 37. This process is elaborated on below.
[1121] *Pacific Commercial Advertiser*, June 8, 1900, p. 1
[1122] Gavan Daws, *Shoal of Time: A History of the Hawaiian Islands* (New York: Macmillan, 1968), p. 333.
[1123] *Id.*
[1124] U.S. House Committee on Territories, *Hearings Before the Subcommittee of the Committee on the Territories, House of Representatives, Seventy-Fourth Congress, First Session on H.R. 3034, A bill to enable the people of Hawaii to form a constitution and a state government to be admitted into the union on an equal footing with the states, October 7 to October 18, 1935* (Washington D.C.: U.S. Government Printing Office, 1936).

the welfare, well-being and non-extinction of Native Hawaiians would be protected. He urged the committee members to include Native Hawaiians under the Wheeler-Howard Act or the Indian Reorganization Act which had passed a year earlier, in 1934. He stated:

> Shall you, in your deliberations, in your conclusions, in your recommendations to your Committee on Territories, ask that protection be given to the natives before Statehood is granted to Hawaii? I do beg of you, Gentlemen, that the same consideration given to the American Indians under the Howard-Wheeler Bill, recently adopted by your good selves, be extended to the native Hawaiians.[1125]

Hearings on statehood were again held in Hawaiʻi in 1937. At that point, the committee recommended that a plebiscite be held to document the extent to which the residents supported statehood. The first statehood plebiscite was held on November 5, 1940. Of those voting, 67 percent favored and 33 percent opposed statehood.[1126]

Throughout the war, Hawaiʻi was governed under Martial Law and no hearings on statehood were held. When the war ended, the House Subcommittee of the Committee on the Territories held hearings in Hawaiʻi to "study and investigate the various questions and problems relating to the Territory of Hawaii" in 1946.[1127] This hearing and the committee report that was developed, laid the foundation for the 1947 introduction of a Statehood Bill, H.R. 49, Enabling the People of Hawaii to Form a Constitution and State Government and to be Admitted into the Union on an Equal Footing with the Original States.[1128] The bill had been jointly drafted in early 1947 by the Hawaiian Statehood Commission, established by the Legislature of the Territory of Hawaiʻi and the Department of Interior. Originally, the bill included a section that provided that

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[1125] *Id.,* p. 20.

[1126] Subcommittee of the Committee on the Territories, U.S. House of Representatives, 79th Congress, 2d Session, *H.R. 1620*, p. 1 – 2.

[1127] *Id.*, *H.R. 1620*, 79-2. Hearings Before the Subcommittee of the Committee on the Territories, House of Representatives, 79th Congress, 2d Session Pursuant to H.R. 236 A Resolution Directing the Committee on the Territories to Conduct a Study and Investigation of Various Questions and Problems Relating to the Territories of Alaska and Hawaii (hereinafter referred to as 1946 Hearings).

[1128] H.R. 1620, 79-2, pp. 9 – 11, Conclusions and Recommendations. H.R. 194, 80-1, U.S. House Committee on Public Lands.

the Hawaiian Homes Commission Act be adopted as a law of the new state, subject to amendment or repeal only in the manner required for amendment or repeal of the state constitution. However, Acting Secretary of the Interior, Mr. Oscar L. Chapman believed that the federal government should also retain title to all of the ceded public lands, including the Hawaiian Home Lands, for administration by the Bureau of Land Management of the Department of the Interior. He testified as follows:

> This paragraph of the bill, as now written, provides for the adoption of the Hawaiian Homes Commission Act, 1920, as a law of the State of Hawaii, subject to alteration only to the extent and in the manner specified by the paragraph. However, it is questionable whether the safeguards here intended to be afforded to native Hawaiians for whose benefit the Hawaiian Homes Commission Act, 1920, was enacted by the Congress would be enforceable in the form in which the paragraph now stands (see Coyle v. Smith, 221 U.S. 559). In order to protect adequately the benefits, the title to the Hawaiian homelands should be retained by the United States, and the paragraph should be recast into a compact by the State to carry out the purposes of the Hawaiian Homes Commission Act, 1920, in such a manner as to prohibit the obligation thus assumed by the State being altered in substantive particulars without the consent of the United States. This arrangement would permit the actual administration of the Hawaiian homelands to continue to be exercised by the local officials, while the Congress would retain ultimate authority over those lands as Federal property.[1129]

The Committee on Public Lands incorporated Chapman's recommendations that the government of the State of Hawai‘i administer the Hawaiian Homes Commission Act for the benefit of Native Hawaiians as a compact with the U.S. government, with ongoing oversight by the U.S. Congress. As articulated by Acting Secretary Chapman, the intent of crafting this provision as a compact between the state and the federal government was to impose strong enforceable safeguards to protect the benefits afforded to Native Hawaiians by the U.S. Congress.

Statehood for Hawai‘i was deliberated in the U.S. Congress each year, from 1947 until the Hawaii Admission Act finally passed on March 18, 1959. In all, the territorial legislature had

[1129] H.R. 1620, 79-2, pp. 36 – 37.

introduced 17 petitions to the U.S. Congress for statehood; there had been 66 bills for statehood introduced from 1920 through 1959; and more than 22 congressional hearings had been held after 1935.[1130] Throughout the twelve years from 1947 to 1959, the constitutionality of the provision of the bill relating to the Hawaiian Homes Commission Act was researched and scrutinized by various congressional committees and solicitors for the Department of the Interior. The congressional committees also received and carefully considered reports, petitions, testimonies and telegrams protesting the Hawaiian Homes Commission provision as unnecessary and as a form of discrimination against the non-Native Hawaiian citizens of the territory. It is significant, therefore, to note that after each yearly critical review of the Hawaiian Homes Commission Act provision, Congress affirmed rather altered or deleted the provision.[1131]

After 12 years of deliberation and careful review, the final language of the Hawaiian Homes Commission section in the Hawaiʻi Admission Act was nearly identical to the original provisions proposed by Acting Secretary of the Interior Oscar Chapman in 1947. Indeed, one major change, which required the new state of Hawaiʻi to adopt the Hawaiian Homes Commission Act as part of its constitution rather than in regular state law, ensured the continuity of the Hawaiian home lands program.

The following shows what was added to the original provision between 1947 and 1959 in underlining and what was deleted from the original provision in brackets:

> That, as a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, <u>shall be</u> [is] adopted as a <u>provision of the Constitution</u> [law] of said State, <u>as provided in section 7, subsection (b) of this Act</u>, subject to amendment or repeal only with the consent of the United States, and in no other

[1130] Sheryl L. Miyahara "Hawaiiʻs Ceded Lands," 3 *University of Hawaiʻi Law Rev*iew, 101, 124 (1981), citing 105 *Congressional Record*, 3,858 (1959) and H.R. Rep. No. 32, 86th Cong., 1st Sess., Appendix B, at 68 - 69 (1959).

[1131] Author McGregor read the yearly reports of the hearings from 1947 through 1959 and related documents at the U.S. Department of Interior library in Spring 2000.

> manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the [original] constitution, or in the manner required for ordinary State legislation, but the Hawaiian Home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the [original] constitution or in the manner required for [ordinary] State legislation but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands," as defined by said Act, shall be used only in carrying out the provisions of said Act.[Hawaiian home lands, but not from other lands belonging to the United States, shall be available to said State for use in accordance with the terms of said Act.][1132]

In conformance with the direct and unequivocal mandate of the 1959 Admission Act, the Hawai'i State Constitution did include the Hawaiian Homes Commission Act, 1920, as amended, with the conditions laid out in by the U.S. Congress in the Admission Act.

At the same time that U.S. Congressional committees deliberated the fate of the Hawaiian Home Lands under a state government, they also discussed how the bulk of the lands of the Hawaiian Kingdom and Constitutional Monarchy, which were ceded to the federal government by the Republic of Hawai'i, would be owned and managed.

The same 1947 testimony provided by Acting Secretary of the Interior Oscar L. Chapman to the U.S. House Committee on Public Lands, about the Hawaiian Home Lands also recommended amendments to establish what eventually evolved into the ceded public land trust.[1133] As stated above, it was the position of the Department of the Interior that the bulk of Hawai'i's public lands should continue to be administered by the federal Bureau of Land

[1132] H.R. 1620, 79-2, pp. 36 – 37, in comparison with Public Law 86-3, 73 Stat 4.
[1133] H.R. 1620, 79-2, pp. 9 – 11, Conclusions and Recommendations. H.R. 194, 80-1, U.S. House Committee on Public Lands, p. 22 – 23.

Management. Notwithstanding this provision, the Acting Secretary also recommended that the proposed new state of Hawai‘i would hold title to 180,000 acres of these public lands as a public trust.[1134]

Acting Secretary Chapman identified four purposes for this 180,000 acre Public Land Trust – the support of the public schools; the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended; the development of farm and home ownership; and the making of public improvements. These amendments suggested by the Acting Secretary of Interior in 1947, were also incorporated into the statehood bill, H.R. 49. This is the origin of the provision in the Admission Act that made Native Hawaiians beneficiaries of the ceded public land trust. Subsequently, in June 1950, the U.S. Senate Committee on Interior and Insular Affairs incorporated a fifth purpose for the public land trust into the Admission Act - "and for the provision of lands for public use."[1135]

Like the Hawaiian Homes Commission provision, the establishment of a Public Land Trust, with Native Hawaiians as one of the beneficiaries was scrutinized from 1947 when it was first included in the statehood legislation, through 1959 when the Admission Act passed. As with the Hawaiian Homes Commission Act, the provision remained substantively unchanged from the original language proposed by Acting Secretary of the Interior Oscar Chapman in 1947.[1136] The following shows what was added to the provision in underlining and what was deleted from the original provision in brackets:

[1134] *Id.*

[1135] 64th Congress, U.S. Senate Committee on Interior and Insular Affairs, Senate Report 1928, 81-2, in 11369, June 1950, on land for public use, 5th provision.

[1136] One significant change though was that rather than 180,000 acres of land, eventually about 1.4 million acres of the ceded lands, the former Government and Crown lands of the Hawaiian Kingdom, was transferred to the new state to be held in trust. Van Dyke, *Who Owns the Crown Lands of Hawai‘i?*, p. 257-58.

> 5 (f) The lands granted [patented] to the State of Hawaii by subsection (b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e) [pursuant to the preceding subsection], together with the proceeds from the sale or other disposition of any such lands, [thereof] and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, [and] for the making of public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such a manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States.[1137]

After twelve years of deliberations and debates, in recognition of the trust relationship of the U.S. government with the Native Hawaiian people, the U.S. Congress mandated that the State of Hawaiʻi provide revenues to better the conditions of Native Hawaiians. The establishment of two public land trusts for the benefit of Native Hawaiians is a clear indication that the U.S. Congress and the Department of the Interior acknowledged the interest of Native Hawaiians in the lands of the Hawaiian Kingdom and Constitutional monarchy that were ceded to the U.S. government by the Republic of Hawaiʻi. Law professor Jon Van Dyke pointed this out in his book, *Who Owns the Crown Lands of Hawaiʻi?* as follows:

> These carefully crafted provisions were based on the clear recognition that Native Hawaiians had continuing claims to these lands and that they must be held in trust until those claims are finally resolved.[1138]

Ironically, the Admission Act, which incorporated Hawaiʻi within the United States as its 50th state, also laid the foundation for the recognition of Native Hawaiians as an indigenous people within the United States with an ancestral land base and the right of self-governance and the right to perpetuate the Native Hawaiian language, culture, and retain a distinct identity as a unique native people.

[1137] Public Law 86-3, 73 Stat 4, see Appendix I.
[1138] Van Dyke, *Who Owns the Crown Lands of Hawaiʻi?,* p. 258.

Summary

Despite the adversity, discrimination, negative stereotypes and marginalization endured by Native Hawaiians of Generation 32 [Generation 127], Native Hawaiian individuals, ʻohana (extended family), hālau (schools of learning), organizations, and homestead and rural communities persisted as Kānaka ʻŌiwi - Native Hawaiians.

In an article in the *Paradise of the Pacific* in December 1950, author Kathleen Dickenson Mellen quoted a Hawaiian kupuna (elder), Kamakakualani Kananamalie Woolsey Harris about the perseverance of Native Hawaiians as the indigenous people of Hawaiʻi:

> ʻAe [yes], said Maka, ʻae [yes], we Hawaiians are the taro of the land. You can cut off the top of the taro plant, but when the little leaves begin to grow again they will be taro leaves - not sugar cane! . . . We Hawaiians are the root of the land and in God's eyes it will always belong to us. Other people can grab the land; they can own the top soil; but the thing that is real will always belong to us. Always and forever the root of the land will keep on making new life.[1139]

Likewise, in the second stanza of the song, "E Mau – Let's Strive" which introduced this chapter, Alvin Isaacs exhorted his contemporaries of Generation 32 [Generation 127] and future generations to restore the goodness of the land and build the nation so that the life and the well-being of the nation would endure. Those who did strive to keep the Hawaiian nation, language, and culture alive were rewarded with the flourishing of the culture in a vibrant cultural renaissance that was vigorously pursued by Generation 33 [Generation 128] of Native Hawaiians. This accomplishment is described in the following two chapters.

E Mau – Let's Strive

Hoʻoulu ka pono o ka ʻāina e hoʻoulu
Hoʻōla ka nani o ka ʻāina e hoʻōla
Hoʻōla lā hoʻoulu lā a hoʻolaha

[1139] Kathleen Dickenson Mellen, *Paradise of the Pacific* 62 (December) 1950, pp. 82-84, 120 - 121.

I mau ka ea o ka ʻāina i ka pono
I ka pono o ka ʻāina

Build the greatness of Hawaiʻi, let's build
Restore the goodness of the islands, let's restore
Restore, build and sustain them throughout the world
So that the well-being of the land and nation will endure through judicious rule
The well-being of the land and nation will endure

Chapter Ten: Statehood to Present, Unrelinquished Native Hawaiian Self-Governance

Generation 33 [Generation 128], 1959 - 1993

Generation 34 [Generation 129], 1993 - present

All Hawai‘i Stand Together

As I travel from place to place, some familiar and some strange,
To hear the ancient chantings of our home,
As I’ve listened to the stories, my eyes have seen the glory,
So let us raise our voice in song to save our land

Chorus in English:
All Hawai‘i stands together,
It is now and forever,
To raise your voices, and hold your banners high,
We shall stand as a nation,
To guide the destiny of our generations,
To sing and praise the glories of our land

Within stone walls and cities of refuge we learn the sacred ways,
Upon Waipio’s valley floor the ancient battles rage,
From the barren slopes of Kaho‘olawe to the shores of Kahana Bay,
We shall claim our lands from the Barking Sands to the Valleys of Hanalei

Chorus in English

From the fiery pit of Tutu Pele, I hear my mother’s call
Old Tutu Kane and Mauna Kea, send their love to all
To stand as one beneath the sun, blessings from Haleakala
For our sweet Ka‘ala and Wai‘ale‘ale, where the greatest waters fall

Chorus in Hawaiian:
Hawai‘i Loa, kū like kākou,
Kūpa‘a me ka lōkahi ē,
Kū kala me ka wiwo‘ole
‘Onipa‘a kākou, ‘onipa‘a kākou,

A lanakila, nā kini ē,
E ola, e ola, e ola nā kini ē[1140]

Written by the Hawaiian songwriter, musician, poet and political activist Liko Martin, this song recollects the awakening of his generation of Native Hawaiians throughout the Hawaiian Islands to their responsibilities to care for the lands of the ancestors and the Hawaiian nation as a whole. The song became an anthem for the various Native Hawaiian land movements that coalesced together and reasserted Native Hawaiian sovereignty in the 1970s and 1980s.

Overview

Economic and political developments stimulated by statehood transformed Hawai'i's geographic as well as social and cultural landscape. Unexpectedly, by the 1970s, rather than fully integrating Hawai'i's people into American life, statehood had laid the foundation for a Native Hawaiian cultural renaissance and revival of the historic Aloha 'Āina or sovereignty movement. This chapter identifies key economic and political developments that occurred during the first decade of statehood and outlines the stages in the emergence of the Native Hawaiian cultural renaissance and sovereignty movement in the following decades. It looks specifically at the Native Hawaiian groups that organized to protect Hawaiian lands, resources, and culture. Some of these organizations, as described in Chapter Nine, were founded at the time of the Hawaiian Kingdom and Constitutional Monarchy or during the Territorial Period. However, most of these organizations arose after statehood in response to assaults on Hawaiian ancestral lands and resources and impacts upon subsistence, and cultural and spiritual practices. This chapter also identifies the landmark decisions and policies whereby the government – both federal and state –

[1140] Liko Martin, *All Hawai'i Stand Together: Hawai'i Loa Ku Like Kākou*, note that Mana Keale translated the chorus of the song into Hawaiian, words and chords *available a*t http://kauaikanikapila.com/Kauai_Kanikapila/Hawaiian_Song_Sheets.html (last viewed Mar. 2, 2014).

accorded recognition to Native Hawaiians as the indigenous people of the Hawaiian Islands and as the beneficiaries of the Hawaiian public land trusts that were transferred to the State of Hawai‘i under the 1959 Admission Act.

Post Statehood Economic Forces

Statehood decisively incorporated Hawai‘i within the U.S. political system, assuring a stability that bolstered confidence in the economy and made it attractive to U.S. investors. In a *Honolulu Advertiser* article of Sunday, August 16, 2009, former First Hawaiian Bank CEO Walter Dods stated, "Statehood and jet travel catapulted us. They were the start of dramatic, positive increase in Hawai‘i's economic situation. Historically, Hawai‘i was a capital-short state. It was an awakening to have money come in for the construction of hotels and infrastructure. Outside capital poured in, which had a tremendous impact on the economy."[1141]

Within the first decade of statehood, the number of hotel rooms tripled, and the number of tourists increased fivefold, from a total of 300,000 visitors in 1960.[1142] Pineapple and sugar plantations "ran away" to cheaper labor markets in Southeast Asia and South America. Former agricultural lands were developed into costly residential subdivisions.[1143] The Vietnam War, which was staged from the Commander-in-Chief U.S. Pacific Command, increased military

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[1141] Michael Tsai, *Honolulu Advertiser* (Sunday, August 16, 2009), *available at* http://the.honoluluadvertiser.com/article/2009/Aug/16/ln/hawaii908160306.html (accessed January 20, 2014). Jet service between Hawai‘i and the U.S. was initiated in 1960.

[1142] Tom Coffman, *Catch A Wave: Hawaii's New Politics* (Honolulu: Univ. of Hawaii Press, 1973), p. 8-9. Coffman also wrote: "Retail sales doubled. Contracting nearly tripled. Defense spending almost doubled, stimulated by the war in Vietnam. Wages and salaries increased by about 50 per cent, and the number of cars on the road by 70 per cent. Virtually every household in Hawaii had a TV set. Unemployment dropped below the theoretical possible low of three per cent to 2.7 per cent."

[1143] Noel Kent, *Hawaii: Islands Under the Influ*ence (Honolulu: Univ. of Hawaii Press, 1993), pp. 104 – 121.

training and activities in Hawai‘i. The draft and the deployment of the Hawai‘i National Guard and reservists engaged young men from Hawai‘i in the Vietnam War.[1144]

Throughout the decade of the seventies, the majority of Native Hawaiians were in the low-income category. Almost one-third of Native Hawaiian families made less than $4,000 per year, which was the poverty level for a family of four at the time. More Native Hawaiians held low-skilled jobs as compared to other ethnic groups in Hawai‘i. Native Hawaiians had a higher unemployment rate than the statewide unemployment rate.[1145] Native Hawaiians made up almost one-third of welfare recipients and 49.6 percent of adults incarcerated in prison, despite comprising only 16.7 percent of the state's population.[1146] Native Hawaiians had lower graduation rates from high school and college than the general public.[1147]

High-cost residential developments displaced farmers and rural families on O‘ahu, which changed their livelihoods and way of life, increasing the risk of turning to welfare for support. Despite the unprecedented number of subdivisions and condominiums under construction, a government survey in 1970 revealed that 80 percent of Hawai‘i's people were priced out of the market for these units.[1148] Rents doubled from $64 a month in 1960 to $120 a month by

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[1144] Gavan Daws, *Hawaii 1959 -1989: The First Thirty Years of the Aloha State* (Honolulu: Publishers Group Hawaii, 1989), p. 17. Daws states, "In 1968 there was a nationwide call of army reserves and national guardsmen for active duty in Vietnam. About 4,600 men in the islands were affected. Amazingly about 1500 of them signed a protest petition. Hawaii, the smallest of the states in population, was being tapped for 17 percent of the national total of men who were called up, meaning that Hawaii boys in disporportionate numbers would be pushed to the front lines of the fighting war. Not fair said the protesters. By their figures, since World War II the death rate for Hawaii boys in combat had been the highest in the nation."
[1145] Alu Like, *He Hawai‘i Makou: We Are Hawaiians* (Honolulu: Alu Like, 1979), p. 5.
[1146] State of Hawai‘i Department of Labor and Industrial Relations, *Socio-Economic Characteristics of Minorities in Hawaii, (*Honolulu: Dept. of Labor and Industrial Relations, 1975), pp. 5, 16.
[1147] Native Hawaiian Educational Assessment Project, Final Report, July 1983, pp. 36 - 40.
[1148] Pete Thompson, "The Inside of Housing: An Overall Perspective," in *Hawaii Pono Journal,* 1:2 (1971): 19 - 36.

1970.[1149] Land and housing markets were being artificially inflated with no attention to the impact upon the local people living with the consequences of development, such as eviction and the loss of natural resources relied upon for subsistence. Development of resorts in previously undeveloped rural areas had a particular impact upon Native Hawaiians who, as discussed in Chapter Nine, had sustained their traditional livelihoods and way of life in these cultural kīpuka.[1150]

Political Changes

Political developments also contributed to the development of the Hawaiian cultural renaissance and sovereignty movement. In 1954, the Democratic Party gained control of both houses of the territorial legislature and advocated for statehood. The Democratic agenda for statehood succeeded in 1959. Beginning in 1962, with the election of Democratic Party candidate John A. Burns as governor, a Democrat was elected as governor over the following 40 years. Throughout the Territorial Period, Native Hawaiians had led the Republican Party and had held the overwhelming majority of elected offices and government jobs. After World War II, labor unions and the Japanese American community allied together and re-organized the Democratic Party. Burns sought to form an alliance with Native Hawaiians, and indeed there

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[1149] Davianna McGregor-Alegado, "Hawaiians Organizing in the 1970's," in *Amerasia* 7:2 (1980): 29 - 55.

[1150] *Id*. Cultural kīpuka is a term that Prof. McGregor introduced in her book *Na Kuaʻāina: Living Hawaiian Culture* (Honolulu: Univ. of Hawaiʻi Press, 2007) to refer to isolated rural communities where Native Hawaiians continued to comprise a majority of the residents. Hawaiians living in these communities continued to live as generations before them, practicing subsistence cultivation, gathering, fishing and hunting for survival in accordance with traditional cultural and spiritual values and responsibilities. As the last strongholds of Hawaiian culture, development of these areas not only threatened to transform a rural lifestyle, but also to destroy the last centers of Native Hawaiian life ways.

were many Hawaiians who were strong Democratic party supporters.[1151] Nevertheless, the ascendence of the Democratic Party over the Republican Party significantly reduced Native Hawaiian political influence and changed the face of Hawai'i's politics throughout the last half of the 20th century.

Native Hawaiians in the New State of Hawai'i

Journalist and historian Tom Coffman observes that unlike the Japanese and other immigrants in Hawai'i who chose to be Americans, Native Hawaiians "found themselves on a distant, dark hillside, conversing with ancestral ghosts. They were the remains of a vibrant, indigenous nation that had been taken away." Statehood "seemed to diminish the unique identity and political consciousness of native Hawaiians, at least initially."[1152] The low point of Native Hawaiian life was 1959. The Rev. Abraham Akaka of the Kawaiaha'o Church, keenly aware of the disappointment felt by the Hawaiian community over statehood, addressed his congregation at a special statehood service. He asked Native Hawaiians to view statehood as the "lifting of clouds of smoke," thereby releasing opportunities for all peoples of Hawai'i. He reminded them that Hawai'i's mission was to teach the spirit of aloha to the rest of the world.[1153]

Historian Lawrence Fuchs, writing in 1983, discussed the sense of loss and despair shared by many in the Hawaiian community immediately after statehood. He noted that their despair was reinforced by the expanding social and economic disparities between Native

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[1151] Tom Coffman in *The Island Edge of America: A Political History of Hawai'i* (Honolulu: Univ. of Hawai'i Press, 2003), pp. 146-47, cites two Native Hawaiians, William S. Richardson, an attorney, and Herman Lemke, an accountant, as early additions to the Burns' circle. Moreover, some Native Hawaiians, including the Heen family, had strong ties to the Democratic Party.
[1152] *Id*., pp. 289-90.
[1153] Lawrence Fuchs, *Hawaii Pono–"Hawaii The Excellent": An Ethnic and Political History* (Honolulu: Bess Press, 1961), p. 447.

Hawaiians and the greater community. Fuchs wrote that Native Hawaiians had the highest infant death rate, experienced the most difficulty in school, had the highest rates of serious mental and physical illness and high rates of suicide and crime.[1154]

In addition, Tom Coffman observed that the Hawaiian culture was at risk of disappearing at the time of statehood. He wrote that:

> [The] vast body of knowledge that defines a culture was being relegated to Bishop Museum. A handful of people clustered around Mary Kawena Pukui, a woman of profound cultural knowledge and amazing memory. Throughout the islands a relatively small but indeterminate number of people perpetuated different areas of the Hawaiian culture, often centering on fishing and farming, oral traditions and hula. Such people as Iolani Luahine and Maiki Aiu Lake in hula, Ka‘upena Wong in chant, Harriet Ne in oral tradition, and Papa Auwae in the healing arts were walking respositories of what was widely described as a doomed culture.[1155]

By the end of the 20th century, predictions that Native Hawaiians were a doomed and vanquished people were proven wrong. It was precisely because of those who kept the culture alive—kumu hula or hula masters, kāhuna lā‘au lapa‘au or traditional herbal healers, those knowledgeable in fishing and farming—that Native Hawaiians continued to have a vibrant and unique language and culture. It is also because of the work of countless Native Hawaiians in national organizations that resisted assimilation and continued to advocate for protection of Hawaiian lands, resources, and culture, that the predictions of doom did not come true.

[1154] *Id.*, p. xvii (preface, August 1983).
[1155] Coffman, *The Island Edge of America*, pp. 288-291.

Continuity of Hawaiian National Organizations

Throughout the 1960s to the present, the Hawaiian Civic Clubs on every island persisted. In the 21th century, there are over 60 individual civic clubs on the four major islands – Oʻahu, Hawaiʻi, Maui, and Kauaʻi – as well as throughout the U.S.[1156] All together, the clubs make up the Association of Hawaiian Civic Clubs and, from 1959 to the present, delegates from each club have gathered annually in a convention.

The annual convention is a time for cultural workshops, Hawaiian arts and crafts, and song - the ʻAha Mele or song contest, which first began in 1963, continues to this day. The major focus of every convention is the adoption of resolutions whereby the Hawaiian Civic Clubs make decisions, collectively, on a host of issues. All resolutions are drafted and submitted by the various clubs in advance. At the 2012 convention held in Washington, D.C., almost 40 resolutions were introduced, each assigned to one of nine committees. Some resolutions honor those who have advanced Native Hawaiian causes or represented the Native Hawaiian people and others are declarations of support for various projects. The resolutions also request government agencies to take specific actions,[1157] and many seek to build consensus for a particular position on a policy, law, or development. The Association's resolutions are often a prelude to actual law, giving this legislative exercise real impact.

Similarly, the Hawaiian Homestead Associations have continued to provide a form of

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[1156] At last count, the Hawaiian Civic Club website listed 23 clubs on Oʻahu, 5 on Maui, 3 on Kauaʻi, 10 on Hawaiʻi Island, and 20 on the U.S. continent in Alaska, California, Colorado, Illinois, Nevada, Utah, Virginia, Washington, Tennessee, and Texas, *available at* http://aohcc.org/ (last visited July 26, 2013).

[1157] *See, for example,* Draft Resolution No. 12-7, Urging the Governor and the State Legislature to Appropriate Sufficient Sums to the Department of Hawaiian Home Lands; Draft Resolution No. 12-18, Urging the President of the United States by Executive Order to Authorize and Require Federal Agencies to Establish Native Hawaiian Consultation Policies on Regular and Meaningful Consultation with the Indigenous People of Hawaiʻi in Implementation of Law and Federal Policies Affecting Native Hawaiians.

self-governance for their communities, a role now recognized by the State of Hawai‘i Department of Hawaiian Homelands.[1158]

Among the oldest Native Hawaiian organizations, dating back to the Hawaiian Kingdom and Constitutional Monarchy are the royal societies, as discussed in Chapters Eight and Nine. These include the Royal Order of Kamehameha I, the ‘Ahahui Ka‘ahumanu Society, the Hale O Nā Ali‘i O Hawai‘i, and the Daughters and Sons of Hawaiian Warriors–Māmakakaua. Leadership of these organizations passed on to Generation 33 [Generation 128] who expanded their membership and activities, especially during the cultural renaissance.[1159]

Native Hawaiians Organize to Protect ‘Āina

By the 1970s the U.S. Civil Rights Movement had expanded beyond the African-American community into Latino American, Asian American, and Native American communities. The politics and successes of this movement also influenced island ethnic groups. The Native American movement for self-determination struck a distinct chord among Native Hawaiians. The occupations of Wounded Knee and Alcatraz Island made a deep impression among Native Hawaiians.[1160]

For the first time since Native Hawaiian nationalists had opposed the ceding of Pu‘uloa to the U.S. for a naval base in the 1870s, the Hawai‘i Anti-Vietnam War movement challenged the role of the U.S. military in Hawai‘i. The National Student movement politicized students from Hawai‘i who were attending colleges on the continental U.S. These movements inspired Native Hawaiian and local university students to get involved in the Anti-War and Student Rights

[1158] See Appendix 4 for a more detailed discussion on both the Hawaiian Homestead Associations and the Hawaiian Civic Clubs.
[1159] The genealogy and history of these organizations are recounted in Appendix 4.
[1160] Personal communication by Davianna McGregor with Noa Emmett Aluli, founder of the Protect Kaho‘olawe ‘Ohana, January 16, 2014.

movement. One outcome was the establishment of the Ethnic Studies Department at the University of Hawai‘i at Mānoa in 1970.[1161]

Native Hawaiians responded to the changing political and economic conditions depending upon their own economic backgrounds. In unionized industries, Native Hawaiians actively worked for better wages and working conditions and the rights of workers. Native Hawaiian welfare recipients played leading roles in organizing advocate groups against cutbacks.[1162]

In communities destined for development, Native Hawaiians joined with "Local People" to organize for low-income housing, long-term farm leases and protection of subsistence fishing, cultivation and gathering areas, and sacred sites.[1163] In 1969, landowner Bishop Estate/Kamehameha Schools evicted farmers from Kalama Valley in east O‘ahu in order to expand "Hawai‘i Kai," a subdivision development by Henry J. Kaiser and Aetna Life Insurance. This eviction sparked a broad grassroots movement to challenge the uncontrolled development on O‘ahu in the post-statehood years. Native Hawaiian political scientist Haunani-Kay Trask places the "birth of the modern Hawaiian movement" in the struggle to protect Hawaiian and other Local pig farmers in Kalama Valley from eviction. Residents and their supporters formed a group called Kōkua Kalama to help the residents. As Trask points out, although the community failed in their efforts to halt the eviction, "the practice of using cultural values like *Kokua* (self-help and reciprocity) to inspire the creation of political organizations continues to characterize

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[1161] See generally Ibrahim Aoude, "The Ethnic Studies Story: Politics and Social Movements in *Hawai‘i: Essays in Honor of Marion Kelly," Social Process in Hawai‘i v. 39* (Honolulu: Department of Sociology, University of Hawai‘i at Mānoa, 1999).
[1162] See generally Davianna McGregor-Alegado, "Hawaiians Organizing in the 1970's," *Amerasia Journal Hawaii: Issues and Perspectives* 7:2 (1980): 29 - 55.
[1163] *Id*.

Native resistance to this day."[1164] UH political scientist Neal Milner also acknowledged the role of the Kalama Valley struggle as a catalyst for social movements in Hawai'i. He wrote:

> The Kalama Valley protests triggered broader and more militant concerns about land, race, ownership, and ultimately autonomy and sovereignty for *Kanaka Maoli.* From then on, land and dispossession became the cornerstone of politics. The Kalama protests link to subsequent struggles over urban and rural eviction and finally to a nationalist, *Kanaka Maoli* sovereignty movement."[1165]

In the broader island society, communities began to organize against the evictions of working class and farming communities to make way for urban renewal and suburban subdivisions. The tenants facing eviction demanded decent relocation housing and long-term agricultural leases.[1166]

In response to proposed developments in Native Hawaiian communities, Native Hawaiians asserted their inherent sovereignty and right of self-governance by forming political organizations to hold the managers of the Native Hawaiian public and private land trusts accountable for the appropriate stewardship of Hawaiian lands. In rural communities, Native Hawaiians formed organizations to protect ancestral lands, cultural lifestyles, sacred sites and access to natural resources for subsistence.[1167]

[1164] Haunani-Kay Trask, "Native Social Capital: The Case of Hawaiian Sovereignty and Ka Lahui Hawaii," *Policy Sciences*, Vol. 33 (2000), p. 150; see also, Haunani-Kay Trask, "The Birth of the Modern Hawaiian Movement: Kalama Valley, O'ahu," *The Hawaiian Journal of History*, Vol. 21 (1987), p. 126.

[1165] Neal Milner, "Home, Homelessness, and Homeland in the Kalama Valley: Re-Imagining a Hawaiian Nation Through a Property Dispute," Vol. 40 (2006), *The Hawaiian Journal of History*, p. 149.

[1166] McGregor-Alegado, "Hawaiians Organizing." Other communities included Halawa Housing (1971); Ota Camp (1972; Censust Tract 57 People's Movement (1972); People Against Chinatown Eviction (1972); Waimanalo People's Organization (1973); Old Vineyard St. Residents' Association (1973); Young St. Residents' Assn. (1973); Niumalu-Nawiliwili Residents (1973); Waiahole-Waikane Community Assn (1974); He'eia Kea (1975); Mokauea Fishermen's Assn (1975); Hale Mohalu (1978); Sand Island Residents (1979).

[1167] McGregor-Alegado, "Hawaiians Organizing" p. 44.

On Hawai‘i Island, Native Hawaiian communities in Ka‘ū and Puna organized to stop a spaceport and to protect the volcano deity Pele from geothermal development. On Moloka‘i, Native Hawaiians formed community organizations to open access across private lands, stop tourist developments that threated subsistence resources and start community-based economic development programs. On Maui, Native Hawaiian communities in Makena, Hāna and Kipahulu organized to keep their access and water rights and to develop community-based economic development projects. On Kaua‘i and O‘ahu, Native Hawaiian communities worked to protect their cultural and natural resources, particularly water resources, in Windward areas, and also initiated community-based economic development projects.[1168]

While each of the Native Hawaiian organizations organized in response to specific circumstances, land was at the heart of each movement: protection of ancestral lands, Hawaiian national lands and the cultural and natural resources of the land. Aloha ‘āina (love and respect for the land) and mālama ‘āina (taking care of the land) were central organizing themes uniting the various organizations.

Native Hawaiian Organizations of Self-Governance

One of the first Native Hawaiian self-governance organizations that formed was “The Hawaiians” in 1970.[1169] Their main focus was to reform the Department of Hawaiian Home Lands (DHHL). The Hawaiians exposed negligence and mismanagement of the DHHL land base

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[1168] Davianna Pōmaika‘i McGregor, “Recognizing Native Hawaiians: A Quest for Sovereignty,” *Pacific Diaspora: Island Peoples in the United States and Across the Pacific* (eds. Paul Spickard, Joanne Rondilla, Debbie Hippolite Wright) (Honolulu: Univ. of Hawai‘i Press, 2002), pp. 336-337. Organizations on Hawai‘i - Ka ‘Ohana O KaLae and Pele Defense Fund; Moloka‘i - Hui Ala Loa, Ka Leo O Mana‘e, Hui Ho‘opakela ‘Āina; Maui - Hui Ala Nui O Makena, Hāna Pohaku, Ke‘anae Community Assn; Kaua‘i - Native Hawaiian Farmers of Hanalei; O‘ahu - Hui Malama ‘Āina O Ko‘olau, Hakipu‘u ‘Ohana, Ka‘ala Farms, Opelu Project, Nā Hoa‘āina O Makaha.

[1169] Coffman, *The Island Edge of America*, pp. 294-95.

and demanded that more lands be opened up so that the applicant waiting list could be reduced and qualified beneficiaries could be served.[1170] They lobbied for an increase in legislative appropriations so that more houses could be built on Hawaiian Home Lands. They began "People's Markets" for farmers to sell their produce directly to people. They also sought an inventory of the Hawaiian Home Lands trust and compensation to the trust for use of these lands by other state agencies.[1171]

The Congress of Hawaiian People formed in 1971 out of the controversial selection of Matsuo Takabuki, as a trustee for the Bishop Estate-Kamehameha Schools, the largest private landowner in Hawai'i, whose sole purpose is to fund the Kamehameha Schools for the education of children of Hawaiian ancestry.[1172] The organization worked for the appointment of a Hawaiian trustee to the estate when the next opening occurred. The Congress of Hawaiian People also examined the policies that waived lease rent payments to the Estate for 20 years and allowed developers to sell and re-sell development rights for millions of dollars, with none of the profits going to Bishop Estate.[1173] They also sought to expand the reach of the educational programs offered by the Kamehameha Schools into the broader Hawaiian community. This resulted in the creation of an Extension Education Division within the schools that offered summer education programs and alternative educational opportunities to at-risk youth in rural Hawaiian

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[1170] The Department of Hawaiian Home Lands did not make the lists of applicants available to the public until 1989, leading charges to manipulation of the lists and favoritism. *See* Office of the Governor, *An Action Plan to Address Controversies Under the Hawaiian Home Lands Trust and the Public Land Trust* (Jan. 1991), p. 77.

[1171] McGregor-Alegado, "Hawaiians Organizing," p. 44

[1172] Trask, p. 149; Dennis M. Ogawa & Glen Grant, *Kodomo No Tame Ni-For the Sake of the Children: The Japanese-American Experience in Hawaii* (Honolulu: Univ. Hawaii Press, 1980), pp. 489-92, for a discussion of the Takabuki controversy.

[1173] McGregor-Alegado "Hawaiians Organizing" pp. 44 - 45.

communities.[1174] The organization eventually served as an advocate for the Hawaiian community on a variety of issues.

Reparations Movement

Beginning in the early 1970s, several organizations were formed in Hawai‘i to examine and reassess the historical and legal relationships between Native Hawaiians and the federal government. In 1972, the group, the Aboriginal Lands of Hawaiian Ancestry (A.L.O.H.A.) Association[1175] formed to seek reparations from the U.S. Congress to the Native Hawaiian People for the role of the U.S. government in the overthrow of the Hawaiian monarchy. This strategy was inspired by other movements across the United States: efforts to seek monetary reparations from the U.S. Congress for Japanese Americans illegally interned during World War II and initial efforts by the Maine Indians to seek a monetary settlement for the illegal sale of their ancestral lands. However, the primary impetus was the successful fight by Alaska Natives for the recognition of their land claims and right of self-determination and self-governance when the U.S. Congress passed the Alaska Native Claims Settlement Act. Notably, the Cook Inlet Region, Inc. provided a substantial grant to A.L.O.H.A. for its congressional campaign.[1176] The

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[1174] Ethnic Studies 221, “Hawaiians: Organizing Our People” (Honolulu: Robert “Moose” Lui Memorial Print Shop, 1974), pp. 27 – 32.

[1175] Some of the material in this section is based on *Native Hawaiian Rights Handbook*, Melody Kapilialoha MacKenzie, ed. (Honolulu: Univ. of Hawaii Press, 1991), pp. 80-81. The A.L.O.H.A. Association is generally acknowledged in the Hawaiian community as the organization that first focused congressional attention on the Hawaiian claim for reparations. Other organizations active in the reparations movement included The Hawaiians, the Congress of Hawaiian People, the Council of Hawaiian Organizations, the Friends of Kamehameha, and the Hawaiian Civic Clubs.

[1176] One of the members of the Cook Inlet Region, Inc. (CIRI) board of directors, Agnes Brown, was a descendant of a Native Hawaiian who had settled in Alaska during the 18th century fur trade and was also related to founder of A.L.O.H.A., Louisa Rice of the Ho‘olehua homestead. In a personal communication with Davianna McGregor, Ms. Brown described the support that CIRI provided A.L.O.H.A.

A.L.O.H.A. Association was most active among the groups who sought federal reparations and called attention to the United States' involvement in the overthrow of the Native Hawaiian Constitutional Monarchy. In a 1975 hearing, Charles Maxwell, president of the A.L.O.H.A Association noted the growth in the Hawaiian movement:

> [T]he ALOHA Association . . . was founded in 1972 by Louisa K. Rice . . . . First there were only a handful of members, who joined, because the Hawaiian natives felt that the United States of America is such a powerful Government and they would not listen to the native Hawaiians, who claimed their kingdom was lost over 80 years ago.
>
> The native Hawaiians were made aware of the Alaskan Native Claims Bill and that the Alaskan natives were successful in their claims. The membership and interest in the ALOHA Association began to increase and the native Hawaiians started to investigate the basis of the claim, which they found to be true. . . . The mission of ALOHA is to get legislation to justly and fairly compensate the Hawaiian natives for what the United States of America took from them.[1177]

As a result of these efforts, a series of reparations bills[1178] was introduced in Congress. Modeled after the Alaska Native Claims Settlement Act,[1179] they would have created a Hawaiian Native corporation, with a board of directors elected by Hawaiian Natives who signed up on a roll, to receive monetary reparations from the federal government. These bills would have given the Hawaiian Native corporation the first option to receive, without cost, all federal lands in Hawai'i declared surplus to federal needs.

[1177] Hawaiian Native Claims Settlement Act: Hearings on H.R. 1944 Before the Subcomm. on Indian Affairs of the House Comm. on Interior & Insular Affairs, 94th Cong., 1st Sess. 28 (1975) (statement of C. Maxwell, President of ALOHA Assn.).

[1178] See, e.g., H.R. 15666, 93rd Cong., 2d Sess. (introduced June 27, 1974); H.R. 1944, 94th Cong., 1st Sess. (introduced January 23, 1975).

[1179] 43 U.S.C. §§ 1601-1628, Pub. L. No. 92-203 (1971). See generally, Eric C. Chaffee, "Business Organizations and Tribal Self-Determination: A Critical Reexamination of the Alaska Native Claims Settlement Act," 25 *Alaska Law Review* 107 (2008); Shannon D. Work, "The Alaska Native Claims Settlement Act: An Illusion in the Quest for Native Self-determination," 66 *Oregon Law Review* 195 (1987); Thomas R. Berger, *Village Journey: The Report of the Alaska Native Review Commission* (1985).

During the hearings on these bills, the complexity of the issues and related social concerns emerged. When it became clear that Congress was not ready to directly address Native Hawaiian claims, other forums were suggested, including a Hawaiian Native claims settlement study commission.

In Hawaiʻi, in order to draw the attention of the U.S. Congress to the injustices borne by Native Hawaiians and stress the importance of the reparations bill, A.L.O.H.A. president–Charles Maxwell called for the occupation of the island of Kahoʻolawe. This was the inception of the movement to stop the bombing of Kahoʻolawe and led to the formation of the Protect Kahoʻolawe ʻOhana.[1180]

In 1977, resolutions were introduced in Congress that would have created a commission to "conduct a study of the culture, needs, and concerns of the Hawaiian Natives; the nature of the wrong committed against and the extent of injuries to Hawaiian Natives by reason of the actions set forth in the preamble of this resolution; and various means to remedy such wrong."[1181] The preamble to the resolution acknowledged the involvement of Minister Stevens and U.S. troops in the 1893 overthrow. This settlement study commission measure died. Although unsuccessful, these early attempts to obtain federal reparations brought attention to Native Hawaiian claims on a national and state level, encouraging a more serious inquiry into the events of 1893.

Windward Oʻahu Hawaiian families, led by Randy Kalāhiki, the Kawelo and Padekan ʻohana, and other community activits, formed Hui Mālama ʻĀina o Koʻolau in 1973 (Organization to Care For the Land of Windward Oʻahu) to protect their ancestral lands from development and the increase of property taxes related to surrounding development. Native

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[1180] McGregor-Alegado, "Hawaiians Organizing," p. 48.
[1181] S.J. RES. 4, 95th Cong., 1st Sess. (introduced January 10, 1977) and H.J. RES. 526, 95th Cong., 1st Sess. (introduced June 21, 1977).

Hawaiians also formed the Homerule Movement to support the candidacy of Native Hawaiians for political office and to lobby for laws to protect Hawaiian ancestral lands.

Peggy Ha‘o Ross founded ‘Ohana O Hawai‘i in 1974, with a focus on the ‘ohana or extended family and the genealogical connection of Native Hawaiians with each other as the foundation for its organization and leadership. ‘Ohana O Hawai‘i introduced Native Hawaiian claims into international forums for the re-establishment of the sovereignty of Hawai‘i as a nation, independent of the United States. The group petitioned the United Nations to oversee a process to decolonize Hawai‘i. In the same year, the Hawaiian Coalition of Native Claims (subsequently renamed the Native Hawaiian Legal Corporation), a legal advocacy group, was established to support Native Hawaiian families in dealing with litigation and legal procedures relating to their ancestral lands and access to traditional natural resources used for cultural, religious and subsistence purposes. NHLC also conducted research to document the basis for the reparation claims of Native Hawaiians to land and ocean resources.[1182]

A major breakthrough occurred in 1974 when the U.S. Congress included Native Hawaiians in the definition of Native Americans who could qualify for the funding and programs set up under the Native American Programs Act. In Hawai‘i, Native Hawaiians leaders, like Myron “Pinky” Thompson and Winona E. Rubin, formed Alu Like, Inc. in 1975 as a nonprofit organization to qualify for the Native American Programs Act and thereby channel federal funds into the community for job training, small business development and overall social and economic development.[1183]

[1182] McGregor-Alegado, “Hawaiians Organizing,” p. 46.
[1183] Coffman, *The Island Edge of America*, pp. 296-97.

Hui Ala Loa and the Protect Kahoʻolawe ʻOhana

On Molokaʻi, Native Hawaiians launched the Hui Ala Loa (The Group of the Long Trails) in 1975. Their goal was to advocate for issues of concern to Native Hawaiians on Molokaʻi. Their first issue was to open access through Molokaʻi Ranch lands to the ocean for subsistence fishing and gathering. On the July 4th weekend of 1975, Hui Ala Loa organized a march along the historic Kealapūpū-a-Kiha trail from Moʻomomi Beach to Kawikiu Beach. They succeeded in having public access opened through Molokaʻi Ranch land to Kawikiu Beach for ten years, through 1985. The group continued to organize against development of the island that would adversely affect the way of life of the residents of Molokaʻi.[1184]

In January 1976, members of Hui Ala Loa responded to the call by Charlie Maxwell of A.L.O.H.A. to occupy the island of Kahoʻolawe to gain national attention for the Native Hawaiian reparations bill held up in Congress. They ended up on the only boat to make it past the Coast Guard blockade and actually land on the island. All but two of the protesters, Noa Emmett Aluli, M.D., and Walter Ritte, were arrested on the first day. These two men roamed the island for two days before being discovered and arrested. While witnessing the vast destruction, they also felt the presence of a deep spiritual force.[1185]

Upon their return to Molokaʻi, these men, together with George Helm, sought out Native Hawaiian kūpuna or elders to share their knowledge of Kahoʻolawe and explain its spiritual significance. Aluli and Helm traveled on to Maui, Hawaiʻi, Oʻahu and Kauaʻi to seek out kūpuna who were knowledgeable about Kahoʻolawe. Their journey eventually resulted in the decision to follow the advice of kupuna Edith Kanakaʻole and organize as an ʻohana or extended family for the island. The Protect Kahoʻolawe ʻOhana (ʻOhana) formed as an organization dedicated to

[1184] McGregor-Alegado, "Hawaiians Organzing," p. 47.
[1185] McGregor, *Nā Kuaʻāina*, p. 252-253.

stopping the bombing and all military training on the island and to restoring the island's cultural and natural resources. This organization attracted Native Hawaiians from every island and became the centerpiece and moving force of the Native Hawaiian movement for land rights and sovereignty. The organization also sparked the Native Hawaiian cultural renaissance.[1186]

Hawaiian Home Lands Beneficiaries

Self-governance on lands set aside under the Hawaiian Homes Commission Act has served as one of the primary focal points for Hawaiian homesteaders.[1187] The individual homestead associations, some in existence since the 1920s, formed a unified organization in 1987 as the State Council of Hawaiian Homestead Associations (subsequently renamed the Sovereign Councils of the Hawaiian Homelands Assembly). Representing over 30,000 Native Hawaiian beneficiaries of the HHCA, SCHAA was formed, in part, to facilitate the discussion of self-governance.[1188] The SCHAA, which has an annual convention, has adopted as its mission:

> To preserve life and liberty and property of its beneficiaries by providing for practice, preservation of our culture, our Ohana, our rights and freedom of traditional worship and beliefs as the traditional heirs of the lands.[1189]

The SCHHA advocates for the perpetuation of the Hawaiian homelands trust and to improve the conditions of beneficiaries residing on and off homestead lands. It also seeks to empower beneficiaries to participate in decisions on policies and programs impacting homestead communities and to increase their capacity for and advance self-governance and self-

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[1186] *Id.,* pp. 249 - 285.
[1187] *See* Stu Glauberman, "Third Hawaiian group enters self-determination fight," *Honolulu Advertiser*, July 25, 1989, at A-3.
[1188] *See* The Sovereign Councils of Hawaiian Homelands Assembly ("SCHHA") website at http://www.schha.com (last visited July 20, 2013).
[1189] *See* SCHHA website, La Hui, *available at* http://www.schha.com/about-schha-2/ (last visited July 26, 2013).

determination.[1190]

In 2001, the State Legislature recognized the self-governing authority of the Hawaiian Homestead communities by enacting Act 302, providing the Hawaiian homestead organizations with more self-governance authority. The law gives the Hawaiian Homes Commission the power to "contract with and delegate authority to a Hawaiian homestead community self-governance organization to perform governmental services for the homestead community represented by that homestead organization." However, certain amendments to the Hawaiian Homes Commission Act, such as this one, only become effective after Congress gives its consent and approval. Unfortunately, Congress has not yet consented to the amendment.[1191]

Separately, the Hou Hawaiians—also beneficiaries under the HHCA—have actively but unsuccessfully asserted status as a tribal government in litigation in the federal courts.[1192] In the 1990s, Hui Kakoʻo ʻĀina Hoʻopulapula (guardians of the homestead lands) organized to advocate for those on the homestead waiting list. In spite of this advocacy work, as of June 30, 2008, there were 24,296 beneficiaries on the list waiting to receive homestead awards.[1193] In 2009, another group of those on the waiting list organized as the Association of Hawaiians for Homestead Lands.

Ka Lāhui Hawaiʻi

Ka Lāhui Hawaiʻi (literally meaning, the Hawaiian Nation, known as Ka Lāhui), a Native Hawaiian self-governance initiative with an enrollment that was estimated to be over 20,000 as

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[1190] *Id*.
[1191] *See* Act 302, 2001 Hawaiʻi Session Laws; Hawaiʻi Admission Act, §4.
[1192] *See* discussion of the Hou Hawaiians' claim of tribal status in *Price v. State*, 764 F.2d 623 (9th Cir. 1985), *cert. denied sub nom. Hou Hawaiians v. Hawaii*, 404 U.S. 1055 (1986).
[1193] Because beneficiaries can apply for a residential plus either an agricultural or pastoral lot, DHHL records reflect that 39,155 applications were held by 24,296 beneficiaries. Department of Hawaiian Home Lands, *2008 Annual Report*, p. 12.

of the year 2000,[1194] was established in 1987. Ka Lāhui grew out of an initiative by individual Native Hawaiians, such as Mililani and Haunani-Kay Trask,[1195] who believed that it was time for the native people themselves to assert self-governance and self-determination. As a result, they called a constitutional convention and adopted a governing structure. The Constitution of Ka Lāhui laid the groundwork for a democratically elected nation of Hawaiʻi within the American federal and state system.[1196] Ka Lāhui endorsed a government-to-government relationship with the federal and state governments, free from external controls as one area of sovereignty work. Ka Lāhui also advocated for complete independence through the United Nations' process for decolonization as another arena of work, and did not believe the two options to be mutually exclusive.[1197]

Ka Lāhui defined sovereignty as "the ability of a people who share a common culture, religion, language, value system and land base, to exercise control over their lands and lives, independent of other nations." Ka Lāhui identified the five elements of Hawaiian sovereignty as: a strong and abiding faith in the Akua [god or spirit]; a people with a common culture, language, tradition and history; a land base; a government structure; and an economic base."[1198] The

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[1194] Haunani-Kay Trask, "Native Social Capital: The Case of Hawaiian Sovereignty and Ka Lahui Hawaii," *Policy Sciences: Social Capital as a Policy Resource*, Vol. 33, No. 3/4 (2000), pp. 375-385.
[1195] Others involved in supporting the Trask sisters were Black Hoʻohuli, Kealiʻiʻoluʻolu Gora, Lehua Kinilau, Kawika Nahoʻopiʻi, Sweets Mathews, Anita Gouveia, and Lilikalā Kameʻeleihiwa. Personal communication from Lilikalā Kameʻeleihiwa (Aug. 1, 2014).
[1196] Constitution of Ka Lāhui Hawaiʻi, with amendments through 1992, *available at* http://kalahuihawaii.files.wordpress.com/2009/10/ka-lahui-hawaii-constitution-1993.pdf (last visited July 20, 2013).
[1197] Personal communication from Lilikalā Kameʻeleihiwa (Aug. 1, 2014).
[1198] Constitution of Ka Lāhui Hawaiʻi, p. 2.

legislature of Ka Lāhui Hawai‘i met 3 times a year, rotating to different islands, and held 3 constitutional conventions over a 10-year period to refine its constitution.[1199]

In 1987, after the first Ka Lāhui Hawai‘i constitutional convention, the organizing arm of the organization became established at the UH-Mānoa Kamakakūokalani Center for Hawaiian Studies, where all of the professors were citizens of Ka Lāhui. They included Dr. Richard Kekuni Blaisdell, who was the first director of the new Center,[1200] Haunani-Kay Trask who taught Hawaiian Politics, Lilikalā Kame‘eleihiwa who developed courses on Hawaiian Ancestral Knowledge, and Kanalu Young and Jonathan Kay Kamakawiwo‘ole Osorio, who taught Hawaiian history and introductory classes. Hawaiian students flocked to the Center for Hawaiian Studies because the professors were activists and, in addition to teaching academic subjects, also taught students how to organize politically.[1201]

Under Ka Lāhui's constitution, Native Hawaiians and their descendants can enroll as citizens of Ka Lāhui. This constitution defines Native Hawaiians as those of 50 percent or more Hawaiian ancestry, while Hawaiians are defined as those with Hawaiian ancestry. The constitution also allows for honorary citizenship, with no voting rights or privileges for those

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[1199] Personal communication from Lilikalā Kame‘eleihiwa (Aug. 1, 2014).

[1200] Abraham Pi‘iana‘ia, a distinguished educator and authority on Polynesian seafaring and culture, had been director of the Hawaiian Studies Program, which preceded the Center.

[1201] Graduates of the Hawaiian Studies BA were encouraged to go on to graduate school, with an estimated 95% of these graduates continuing to receive higher education degrees, and now most of the Hawaiian Studies departments on each of the 10 UH campuses are taught by those graduates, spreading Ancestral Knowledge, as well as knowledge of Hawaiian History and Hawaiian Political Analysis. Now that the Kamakakūokalani Center for Hawaiian Studies has an M.A. program, and has merged with the Hawaiian Language department into the Hawai‘inuiākea School of Hawaiian Knowledge, its graduates are working at OHA, at the Department of Hawaiian Homelands, at Alu Like, at the Kamehameha Schools, in the Hawaiian Immersion and Charter Schools, in the Public Schools, and have been elected to the Hawai‘i State Legislature. Thus, Hawaiian Ancestral knowledge and activism have been institutionalized in higher education throughout the University of Hawai‘i system. Personal communication from Lilikalā Kame‘eleihiwa (July 31, 2014).

without Hawaiian ancestry. Ka Lāhui's constitution provides for an elected executive and legislature, and for an independent judiciary with elected island court judges and appointed High Court judges, as well as a Council of Elders to advise on matters relating to ʻŌlelo Hawaiʻi, moʻolelo, and "other ethical, social, traditional, and cultural values."[1202]

The Nation of Hawaiʻi

In 1987, independence sovereignty activist Dennis "Bumpy" Puʻuhonua Kanahele and about 50 people occupied Makapuʻu Lighthouse and the surrounding area, a former Coast Guard Station, on Oʻahu for a two-month period. Kanahele sought to bring attention to U.S. actions in Hawaiʻi and the plight of many homeless Native Hawaiians. During one confrontation with police, Kanahele pulled a shotgun. He was arrested and served 14 months in jail.[1203] Subsequently, in 1993, Kanahele and a group of 300 people organized as the Nation of Hawaiʻi (Nation), occupied an area at Makapuʻu beach on Oʻahu, in resistance to U.S. actions in Hawaiʻi and seeking the return of Hawaiian lands. After a 15-month occupation, the Nation negotiated a 55-year lease on a 45-acre parcel of state land in Waimānalo. Since that time, the Nation has successfully maintained it as place to live Hawaiian culture, values, and practices, and as a puʻuhonua—a place of healing and refuge.[1204] Puʻuhonua o Waimānalo represents:

> a land base for the developing sovereign Hawaiian nation, where Kanaka Maoli and our extended ʻohana are living close to the ʻaina in a self-determined

[1202] Ka Lāhui Constitution (as amended through July 5, 1992), art. II (Citizenship); art. VIII (Miscellaneous Provisions) §§ 6 and 7 (definitions of Native Hawaiian and Hawaiian); art. II, § 4 (honorary citizenship);); art. IV (Legislative Authority); art. IV, § 7 (elections); art. V (Legislative Branch); art. VI (Judicial Branch); art. VI, § 4 (election of island court judges; appointment of High Court judges); art. VII (Executive Branch); art. VIII, § 16 (Council of Elders).

[1203] Tomas Alex Tizon, "Fight for Sovereignty Gains Ground in Hawaii," *Seattle Times*, July 30, 2005.

[1204] *See* Tomas Alex Tizon, "Rebuilding a Hawaiian Kingdom," *Los Angeles Times*,July 21, 2005; Dan Nakasao, "A Life of Resistance," *Honolulu Star-Advertiser*, July 6, 2014, p. A-1.

> taroroots community dedicated to cultural, social, political, and economic advancement of the people. Pu'uhonua – the refuge – was born out of struggle and out of hope.[1205]

Moreover, the lease for the 45-acre parcel has been extended to the year 2056, with a provision stating that the land will be transferred to a "sovereign nation of Hawaii, established for the benefit of Native Hawaiians" once a new sovereign entity is created.[1206]

Common Goals for Native Hawaiian Sovereignty and Self-Governance

There is great diversity in the Hawaiian sovereignty movement, but there are some points on which many agree. At an August 1988 Native Hawaiian Rights Conference, a resolution on self-governance was adopted calling for:

> (1) An apology by the United States government to Native Hawaiians and their government for the United States' role in the coup of 1893.
>
> (2) A substantial land and natural resource base comprised of a reformed Hawaiian Homes program, a fair share of the ceded lands trust, the return of Kaho'olawe and other appropriate lands.
>
> (3) Recognition of a Native Hawaiian government with sovereign authority over the territory within the land base.
>
> (4) Recognition and protection of the subsistence and commercial hunting, fishing, gathering (including beach access), cultural and religious rights of Native Hawaiians, and the legitimate exercise of sovereign powers over such rights.
>
> (5) An appropriate cash payment.[1207]

A Native Hawaiian Sovereignty Conference held in December of 1988 produced an even stronger statement on self-governance. The attendees agreed that sovereignty, with self-

[1205] Information on Pu'uhonua o Waimanalo, *available at* http://alohafirst.com/puuhonua-o-waimanalo-village/ (last visited July 20, 2014).
[1206] Nakasao, "A Life of Resistance," p. A-18.
[1207] Resolution adopted at Native Hawaiian Rights Conference, August 7-8, 1988. *Native Hawaiian Rights Handbook*), pp. 90-91.

government and control of land and lifestyle, is a birthright for all Hawaiians. A Hawaiian nation, it was agreed, could be a nation within the U.S. nation or it could be independent from state and federal jurisdiction and gain the recognition of other nations. Although no single form of government was endorsed at the conference, participants acknowledged that options could range from a democratic republic, to a federation, to limited sovereignty similar to that exercised by Native Americans. The participants also concluded that the nation's territory should include the former Government and Crown lands of the Hawaiian Kingdom and Constitutional Monarchy, Hawaiian Home Lands, and the marine and mineral resources of the Hawaiian archipelago.[1208]

ʻOnipaʻa (Be Steadfast)

In 1992, in preparation for January 17, 1993, the 100th year anniversary of the overthrow of the Hawaiian Kingdom and Constitutional Monarchy, a coalition of over 40 Native Hawaiian organizations developed a community education project called Hui Naʻauao (Group seeking wisdom or enlightenment). Its role was to produce educational materials and conduct various forms of education through different media to educate Native Hawaiians and the general public about Native Hawaiian governance and the events which led up to and followed the 1893 overthrow and the 1898 joint resolution of the annexation of Hawaiʻi.

In January 1993, a five-day observance of the 100th anniversary of the overthrow of the Hawaiian Constitutional Monarchy took place throughout the islands, but most notably in Honolulu on the grounds of ʻIolani Palace. As one newspaper recounted, "[f]rom across the state,

[1208] The Native Hawaiian Sovereignty Conference was held on December 3-4, 1988. Participants included Ka Lāhui Hawaiʻi, the Institute for the Advancement of Hawaiian Affairs, Nā ʻŌiwi O Hawaiʻi, the Protect Kahoʻolawe ʻOhana, E Ola Mau, and the Council of Hawaiian Organizations. See *Native Hawaiian Rights Handbook*, p. 91.

Hawaiians descended upon ‘Iolani Palace by the thousands to remember their beloved queen and protest the loss of the kingdom to U.S. interests that had forced her to relinquish control.”[1209] In a controversial move, Governor John Waihe‘e ordered that U.S. flags not be flown over state buildings near the Palace throughout the observance. Only the flag of the State of Hawai‘i, originally the flag of the Hawaiian Kingdom and Constitutional Monarchy, flew over ‘Iolani Palace for five days, from January 13 - 17, 1993. When questioned, he explained that he didn’t believe his action was disrespectful but was “an appropriate reminder” of U.S. involvement in the overthrow of Queen Lili‘uokalani.[1210]

Throughout the five days, there was chanting, singing, hula, re-enactments of the events of 1893, ‘awa ceremonies, a five-day vigil, and political and historical discussions and forums. On the final day, January 17, 1993, some 18,000 Native Hawaiians and their supporters, led by Mililani Trask, Ka Lāhui Hawai‘i, and UH-Mānoa Hawaiian Studies professors and students, marched through the streets of Honolulu from the waterfront to ‘Iolani Palace. As Native Hawaiian historian Lilikalā Kame‘eleihiwa has written:

> The streets of Honolulu were closed to traffic and the police were out in force to protect the marchers from any possible harassment in response to previous anonymous death threats. Honolulu town resounded with the voices of thousands of Hawaiians shouting out “Ea” (sovereignty), “‘Ike Pono” (see clearly), and “Ka Lāhui Hawai‘i (the Hawaiian nation). Thousands more Hawaiians awaited them at the palace and respected *Kumu Hula* (Hula Masters) were on hand to greet the people with traditional chanting as they poured through the gates of ‘Iolani Palace. Despite the large crowd, the event was entirely peaceful without a single

[1209] Mike Gordon, “Onipa‘a,” *Honolulu Advertiser* (posted on July 2, 2006), available at http://the.honoluluadvertiser.com/150/sesq5onipaa (last visited July 29, 2013). See also, Office of Hawaiian Affairs, ‘Onipa‘a: FiveDays in the History of the Hawaiian Nation: Centennial Observance of the Overthrow of the Hawaiian Monarchy (Honolulu: Office of Hawaiian Affairs, 1994),

[1210] Mike Gordon, “‘Onipa‘a.”

instance of violence or drunkenness.[1211]

During the program at the ʻIolani Palace, Paul Sherry, president of the United Church of Christ (UCC), the denomination whose American Board of Commissioners for Foreign Missions sponsored missionaries to Hawaiʻi, presented an official public apology by the UCC to the Native Hawaiian people for the complicity of their members in the illegal overthrow of the Hawaiian Kingdom and Constitutional Monarchy in 1893. The apology also initiated a process of reconciliation between the United Church of Christ and Native Hawaiians which has included grants and the repatriation of land to a Native Hawaiian organization.[1212]

The 5-day observance ended on the evening of January 17, 1993 with Leo Anderson Akana re-enacting the surrender of the Queen 100 years earlier. Akana said, "Hold fast to the pride and love you have for your country. Yes, your country, for your nation—ʻonipaʻa. Hold fast!"[1213]

The 100th anniversary observance was a watershed moment in the history of the Native Hawaiian sovereignty movement. As Kameʻeleihiwa notes, it was "the first time in 100 years that thousands of Hawaiians had marched for the return of sovereignty—that is, for independent political control over some of their ancestral lands."[1214] The observance gave birth to renewed efforts at the state, national, and international level to call attention to the illegal events of 1893 and to provide justice to the Native Hawaiian people.

[1211] Lilikalā Kameʻeleihiwa, "Preface: The Hawaiian Sovereignty Movement," *Islands in Captivity: The International Tribunal on the Rights of Indigenous Hawaiians* (eds. Ward Churchill & Sharon H. Venne, Cambridge, MA: Southend Press, 2004), p. XVIII.
[1212] The Apology Resolution, Pub. L. No. 103-150, 107 Stat. 1510 (Nov. 23, 1993) specifically references this Apology by the United Church of Christ.
[1213] Mike Gordon, "Onipaʻa."
[1214] Kameʻeleihiwa, *Islands in Captivity*, p. XXII.

Peoples' International Tribunal

In the summer of 1993, Ka Pākaukau, a coalition of 12 Kānaka Maoli organizations committed to the exercise of sovereignty, led by medical doctor and Ka Lāhui Hawai'i citizen Kekuni Blaisdell, along with Ka Lāhui Hawai'i and other Native Hawaiian individuals and organizations, brought together a distinguished panel of international judges to hear the testimony of Native Hawaiians from throughout the Hawaiian archipelago on charges against the United States. Over a period of two weeks, Ka Ho'okolokolo Nui Kānaka Maoli, the "Peoples' International Tribunal," called international attention to the actions of the United States in Hawai'i, leading to a series of recommendations including recognition of the Native Hawaiian Nation's "sovereignty and the right to self-determination"; the right to decolonization; and the return of "ceded lands," Hawaiian home lands, and other resources to Kānaka Maoli control and ownership.[1215]

At the same time, spurred by the outpouring of emotion exhibited at the 1993 100th anniversary observance, and realizing the need for reconciliation with the Native Hawaiian community, the state Legislature also acted to establish a Hawaiian Sovereignty Advisory Commission, discussed in greater detail below.

Rediscovery of Anti-Annexation Petitions

Another significant event of the 1990s was the "rediscovery" of the 1897 Hui Aloha 'Āina anti-annexation petitions by Native Hawaiian scholar Noenoe Silva and the subsequent display of reproductions of all 556 pages of the petition by the Bishop Museum. Silva recounts that because of the publicity generated by the display, "the Kanaka Maoli community throughout

[1215] "Recommendations of the Peoples' International Tribunal, Hawai'i," *Islands in Captivity*, p.725.

the islands suddenly knew of the existence of mass opposition to annexation in 1897." Silva was deluged by phone calls from strangers thanking her, and many indicated that they suspected or knew that their ancestors had opposed annexation but had never had proof before. Silva notes:

> The petition and the story of the several hui that organized it changed the commemoration of the 1898 annexation in many ways. . . . The petition, inscribed with the names of everyone's kūpuna, gave people permission from their ancestors to participate in the quest for national sovereignty. More importantly, it affirmed for them that their kūpuna had not stood by idly, apathetically, while their nation was taken from them.[1216]

At the August 12, 1998, observance of the 100th anniversary of annexation, the petition was displayed throughout the Palace Grounds and State Capitol. Thousands of Native Hawaiians poured over the names, seeking to find the signatures of their kūpuna and, once having found their names, feeling a renewed sense of pride and determination.

Council for Native Hawaiian Advancement

In 2001, Native Hawaiian organizations and individuals founded the Council for Native Hawaiian Advancement (CNHA), led by Ka Lāhui Hawaiʻi citizen Robin Puanani Danner, as a statewide and national network of Native Hawaiian organizations to enhance the well-being of Hawaiʻi through cultural, economic and community development. Inspired by and receiving start-up funding from the Alaska Federation of Natives, the membership organization also receives private grants and federal funds to provide capacity building and support services to agencies and organizations focused primarily on native communities in Hawaiʻi and the Pacific. CNHA operates a community loan fund, delivers capacity building and leadership development

[1216] Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistence to American Colonialism* (Durham & London: Duke Univ. Press, 2004), p. 3-4.

services, promotes community-owned enterprises and provides a voice on public policy.[1217]

Federal Recognition of Native Hawaiian Self-Determination and Governance

The first important response by the federal government to the emergence of Native Hawaiian organizations exercising varying degrees of sovereignty and self-governance was the 1974 inclusion of Native Hawaiians, by the U.S. Congress, in the definition of Native Americans who could qualify for funding and programs set up under the Native American Programs Act.[1218] Shortly thereafter, the Hawai'i state government followed the federal government's lead in affirming the inherent rights of Native Hawaiians as an indigenous people in the Hawai'i State Constitution. The next sections discuss the various forms of federal recognition accorded to Native Hawaiians by the U.S. Congress, following passage of the 1974 Native American Programs Act and these sections are followed by a description of the recognition of Native Hawaiian rights and self-governance by the State of Hawai'i.

The Native Hawaiians Study Commission[1219]

In 1980, the initial efforts to establish a commission to study Native Hawaiian claims came to fruition. Congress created the Native Hawaiians Study Commission (NHSC) to study the "culture, needs and concerns of Native Hawaiians."[1220] The act was a weakened version of the earlier proposals from the mid-70s calling for a commission to study Native Hawaiian claims. In

[1217] For information on CNHA, *see*, http://www.hawaiiancouncil.org (last viewed on March 24, 2014).
[1218] The Native Americans Programs Act was enacted as Title VIII of the Economic Opportunity Act of 1964, Pub. L. No. 88-452 (1964); Native Hawaiians were added to the definition of Native Americans by Pub. L. No. 93-644, § 801, 88 Stat. 2992, 2324 (1975).
[1219] This section is substantially based on portions of the *Native Hawaiian Rights Handbook*, pp. 81-83.
[1220] Pub. L. No. 96-565, Title III, § 303(a) (December 22, 1980).

the NHSC act, there was no mention of the events of 1893, of the wrong committed by the United States, or of a remedy for the wrong.

The NHSC act called for the president to appoint a nine-member commission, including three Hawai'i residents.[1221] Although not publicly acknowledged, the legislative history of earlier proposals for a settlement commission revealed that the NHSC's primary mission was to make an inquiry into the extent of U.S. involvement in the 1893 overthrow of the Constitutional Monarchy and to examine the validity of Native Hawaiian claims for reparations because of actions taken by American agents at the time. The commission held eight public hearings in Hawai'i, and heard testimony and received written statements from hundreds of individuals during dozens of hours of hearings.[1222]

At the conclusion of the commission's work, the nine members were irreconcilably divided on fundamental issues involving the overthrow of the Hawaiian government. The majority report admitted that the U.S. Minister to Hawai'i, John L. Stevens and U.S. naval forces played principal roles in the events leading to the overthrow of the Hawaiian monarchy. [1223] The

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[1221] *Id*. § 302(b). Nine members were appointed by President Carter during the last week of his administration. These commissioners were dismissed when President Reagan took office. Eight months later new commissioners were appointed. The three commissioners from Hawai'i were were Kina'u Boyd-Kamali'i, House Minority Leader of the Hawai'i Legislature; Winona K.D. Beamer, a cultural expert and teacher at Kamehameha Schools; and H. Rodger Betts, Corporation Counsel for the County of Maui. The six non-Hawaiian members were Stephen Shipley, Executive Assistant to the Secretary of the Department of Interior; Carl A. Anderson, Counselor to the Under Secretary, Department of Health and Human Services; Carol E. Dinkins, Assistant Attorney General, Department of Justice Land and Natural Resources Division; James C. Handley, Special Assistant to the Secretary of Agriculture; Diane Morales, Member of the Civil Aeronautics Board; and Glenn R. Schleede, President, North East Energy, Inc. Kina'u Boyd Kamali'i served as chair of the commission, while Stephen Shipley held the vice-chair position.

[1222] Native Hawaiians Study Commission, "Report on the Culture, Needs and Concerns of Native Hawaiians (Majority Report)" (Washington D.C.: U.S. Dept. of Interior 1983) (hereinafter "NHSC Report (Majority)"), p. 4.

[1223] *Id*., p. 28.

report also acknowledged that the 1893 Blount Report and the message of President Cleveland to the U.S. Congress on December 18, 1893 concluded that the actions of U.S. agents and military personnel were " without express authority from the United States Government."[1224] However, the majority report also recognized that the Senate Committee on Foreign Relations had justified and condoned the actions of United States Minister Stevens and the U.S. naval forces. The majority of the commissioners concluded that the historical "truth lies somewhere between these two reports" and "found no present legal entitlement to compensation for any loss of sovereignty" for Native Hawaiians. The three Native Hawaiian commissioners filed a separate report disputing the majority's finding that the United States government was blameless in connection with the overthrow of the Hawaiian monarchy.[1225]

In subsequent hearings before the Senate Committee on Energy and Natural Resources, the majority's findings were soundly repudiated. Numerous legal scholars and historians questioned the methodology and motives of the majority.[1226] Unfortunately, the majority report stood as an additional obstacle to federal action on Native Hawaiian claims. The NHSC, however, did serve a useful purpose. The resulting report provided needed statistical and background information on education, health, and social welfare needs of Native Hawaiians. Thus, while the majority report did not support compensation for loss of lands or sovereignty, it did recommend continuing efforts to include Native Hawaiians in the Native

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[1224] *Id*., p. 25.

[1225] Native Hawaiians Study Commission, "Report on the Culture, Needs and Concerns of Native Hawaiians (Minority Report)" (Washington, D.C.: U.S. Dept. of Interior, 1983), p. v; NHSC Report (Majority), p. 28.

[1226] See *Hearings on the Report of the Native Hawaiians Study Commission Before the Senate Comm. on Energy and Natural Resources*, 98th Cong., 2nd Sess. (April 16, 1984) (statement of Dr. Pauline Nawahineokalali'i King, p. 34, statement of Jon Van Dyke, Professor of Law, University of Hawai'i, p. 133, statement of David H. Getches, Federal Indian law expert, p. 48).

American Programs Act and expanded attention by relevant state and federal organizations and agencies on the poor social, economic, and health conditions of Native Hawaiians.

Protect Kahoʻolawe ʻOhana - Shared Governance

As described earlier, the Protect Kahoʻolawe ʻOhana was founded to stop the U.S. Navy bombing of the island of Kahoʻolawe, heal the island and reclaim it for the Native Hawaiian people.[1227] In addition to continued illegal landings on the island, the ʻOhana also filed a federal lawsuit to enjoin the Navy from further bombing.[1228] A pivotal moment in March 1977 was the mysterious loss of the ʻOhana's leader George Helm, with James Kimo Mitchell in the ocean off of Kahoʻolawe during a protest of the bombing. That summer, the ʻOhana decided to stop the illegal occupations, which had led to arrests, expensive court defenses, imprisonments and the loss of lives, to focus on litigation and legislation.[1229] In October 1980, as a result of the federal lawsuit, the parties entered into a consent decree and order, which required that the United States "recognize that Plaintiffs' organization [the ʻOhana] seeks to act as stewards of the *moku* [island] Kahoʻolawe," and gave the ʻOhana access to the island with the responsibility to evaluate and ensure that the Navy lived up to specific responsibilities set out in the order.[1230] Thus, both in practice and as a matter of law, a Native Hawaiian political organization exercised shared governance responsibility with the U.S. Navy over the Island of Kahoʻolawe, from 1980 until

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[1227] Noa Emmett Aluli, "*The Most "Shot-at" Island in the Pacific: The Struggle to Save Kahoʻolawe," in Islands in Captivity: The Record of the International Tribunal on the Rights of Indigenous Hawaiians* (eds. Ward Churchill & Sharon H. Venne) (Cambridge, MA: South End Press, 2005), p. 242.
[1228] *Aluli v. Brown*, 437 F. Supp. 602, 604 (D. Haw. 1977).
[1229] McGregor, *Nā Kuaʻāīna*, pp. 265-266.
[1230] Consent Decree and Order, December 1, 1980, filed in the United States District Court, Civil No. 76-0380 in *Aluli, et al., v Brown, Secretary of Defense, et al*. (signed by Hon. William Schwarzer, (D.C. N.D. Cal.)).

2003, while the United States Navy retained control of access to Kahoʻolawe.[1231] A United States District Court gave cognizance to a Native Hawaiian political organization "acting as stewards of the island" for a period of nearly 23 years (from December 1, 1980, to November 11, 2003 when control of access to Kahoʻolawe was transferred to the State of Hawaiʻi). Moreover, under the consent decree, the Court accorded specific access to Kahoʻolawe, not to the state or county officials, but to the ʻOhana—a Native Hawaiian political and cultural organization.

In 1993, Congress acknowledged the cultural significance of the island, required the Navy to return the island to the state and directed the Navy to conduct an unexploded ordnance cleanup and environmental restoration in consultation with the state.[1232] Hawaiʻi law guarantees that when a sovereign Native Hawaiian entity is established and recognized by the United States and the State of Hawaiʻi, the state will transfer management and control of Kahoʻolawe to that governing entity.[1233]

1993 U.S. Apology Resolution

In November of 1993, the U.S. Congress passed, and President Clinton signed into law, a joint resolution apologizing to the Native Hawaiian people for U.S. participation in the overthrow of the Hawaiian Kingdom.[1234] Although styled as a "joint resolution," the Apology Resolution was enacted as a public law and signed by then President William Clinton.

[1231] Title to Kahoʻolawe was transferred to the State of Hawaiʻi on May 7, 1994, but control of access and the Consent Decree remained in full force and effect until November 11, 2003.
[1232] Department of Defense Appropriations Act of 1994, Pub. L. No. 103-139, tit. X, 107 Stat. 1418 (1993).
[1233] Hawaiʻi Revised Statutes § 6K-9 (2012) states, "the resources and waters of Kahoʻolawe shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawai'i."
[1234] Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaiʻi, Pub. L. No. 103-150, 107 Stat. 1510 (1993) [hereinafter Apology Resolution].

Consequently, it is a statute of the United States and has the same force and effect as other laws enacted by Congress.[1235]

The Apology Resolution explicitly acknowledged the "special relationship" that exists between the United States and the Native Hawaiian people. Congress confirmed in the Apology Resolution that Native Hawaiians are an "indigenous people," a key characterization that establishes that a "political" relationship exists between the Native Hawaiian people and the United States government.[1236]

In the Apology Resolution, the U.S. Congress acknowledged that the Republic of Hawai'i ceded 1.8 million acres of Crown, Government and Public Lands of the Kingdom of Hawai'i without the consent of or compensation to the Native Hawaiian people or their sovereign government; that the Native Hawaiian people never directly relinquished their claims to their

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[1235] *See, e.g., Ann Arbor R. Co. v. United States*, 281 U.S. 658, 666 (1930) (treating a joint resolution just as any other legislation enacted by the U.S. Congress). Moreover, given the failure of the U.S. Senate to ratify a treaty of annexation for Hawai'i, the U.S. utilized a joint resolution, the Newlands Joint Resolution of Annexation, to assert political sovereignty over Hawai'i.

[1236] The Apology Resolution states that United States military and diplomatic support was essential to the success of the 1893 overthrow of the Hawaiian Monarchy and that this aid violated "treaties between the two nations and international law." Apology Resolution, clause 8. Among the other findings in the Apology Resolution are the following:

> Whereas the Republic of Hawai'i also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawai'i without the consent of or compensation to *the native Hawaiian people* of Hawai'i or their sovereign government. . . .
>
> Whereas *the indigenous Hawaiian people* never directly relinquished their claims to *their inherent sovereignty as a people* or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum. . . .

Apology Resolution, at clauses 25, 29. After documenting in detail the wrongs done to the Hawaiian people at the time of the illegal overthrow—including "the deprivation of the rights of Native Hawaiians to self-determination"—the Apology Resolution urges the President of the United States to "support reconciliation efforts between the United States and the Native Hawaiian people." *Id.* at § 1: Acknowledgment and Apology, (5).

inherent sovereignty or over their national lands to the United States, and that the overthrow was illegal.[1237]

Congress thereby expressed its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawai‘i, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people, and urged the President of the United States to support reconciliation efforts between the United States and the Native Hawaiian people.[1238]

Hawaiian Home Lands Recovery Act (HHLRA)

In 1986, the DHHL filed a federal quiet title lawsuit seeking the return of, or compensation for, some 1,356 acres of land at Lualualei, O‘ahu from the U.S. Navy. Under gubernatorial executive orders issued in 1930 and 1933, the Navy had been using the property as a radio transmitting facility and ammunition depot. The Navy's use of the Lualualei lands effectively deprived beneficiaries of the use of flat and arable land on O‘ahu, the island where demand for residential homesteads is the greatest.[1239] The lawsuit was unsuccessful because it was filed too late.[1240]

[1237] Apology Resolution, clauses 25 & 29, § 1: Acknowledgment and Apology, (1).
[1238] Apology Resolution, § 1: Acknowledgment and Apology, (4)-(5). *See*, however, Hawaii v. Office of Hawaiian Affairs, 556 U.S. 163 (2009), in which the U.S. Supreme Court determined that the Apology Resolution's findings had no "operative effect" and that its substantive provisions were conciliatory or precatory in nature. Notably, the Court did not dispute the factual basis for the Apology Resolution.
[1239] For instance, as of June 30, 2012, of the 21,511 applications on the DHHL residential homestead waiting list, 9,965 were for residential homesteads on O‘ahu. DHHL Applicant Waiting List (June 30, 2012), *available at* http://dhhl.hawaii.gov/wp-content/uploads/2011/06/2012-06-30_01-Oahu_Waitlist_156pgs.pdf (last visited July 20, 2013).
[1240] *State of Hawaii v. United States*, 676 F.Supp. 1024 (D. Haw. 1988), affm'd. 866 F.2d 313 (9th Cir. 1989).

Responding to the case, in November 1995, Congress enacted the Hawaiian Home Lands Recovery Act (HHLRA) to settle land use and ownership disputes between the DHHL and the federal government.[1241] In this act, the Secretary of the Interior is required to determine the value of lands initially designated as "available lands" under the HHCA that were illegally transferred to or acquired by the federal government, as well as the value of the lost use of those lands. After the Chairman of the HHC and the Secretary agree on the values, the Secretary is authorized to exchange federal surplus lands for the continued retention of those Hawaiian Home Lands and for value of the lost use of those lands while under federal control. The lands conveyed to DHHL gain the status of "available lands" under the HHCA. From 1995 when the Act passed to June 30, 2010, 913 acres had been authorized for conveyance to DHHL although only 843 acres, or 92 percent, had actually been conveyed to DHHL.[1242]

The HHLRA also establishes a procedure for approval of amendments to the HHCA.[1243] While some state amendments to the HHCA have received congressional approval over the years, several key amendments have yet to receive approval.

Reconciliation Report of the Departments of Interior and Justice[1244]

In October 1999, six years after the Apology Resolution, and at the request of Hawai'i U.S. Senator Daniel Akaka, the U.S. Department of the Interior and the Department of Justice conducted meetings in Hawai'i to further reconciliation efforts as called for in the Apology

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[1241] Hawaiian Home Lands Recovery Act of November 2, 1995, Pub. L. No. 104-42, 109 Stat. 353 (1995)
[1242] 2011 DHHL Annual Report, p. 26 (the last annual report to provide this information).
[1243] HHLRA § 204.
[1244] *See*, Ashley Obrey, "Broken Promise? A Brief Update on the U.S. Role in Native Hawaiian Reconciliation since the 1993 Apology," in *Ka He'e*, the E-Newsletter of the Center for Excellence in Native Hawaiian Law, Issue 3, August 2007, *available at* http://www2.hawaii.edu/~nhlawctr/article3-6.htm (last visited July 20, 2013).

Resolution.[1245] Their purpose was to investigate progress on the reconciliation called for in the Apology Resolution and to solicit input from the Hawaiian community so that their concerns could be included in a forthcoming report to Congress. In late 1999, the Justice and Interior representatives consulted the Native Hawaiian community on Kaua‘i, Maui, Moloka‘i, Lana‘i, and in Hilo and Kona on Hawai‘i Island. On O‘ahu alone, more than 300 people attended the meetings. Hundreds testified, and 265 submitted written statements. These statements touched on topics ranging from sovereignty to community and economic development, and from health and education to housing.

In August 2000, the Departments jointly issued a detailed report, *From Mauka to Makai: The River of Justice Must Flow Freely*, on the reconciliation process. The *Mauka to Makai* report encouraged acts of reconciliation to heal the wounds of Native Hawaiians. According to the report:

> Reconciliation is an evolving and continuing process to address the political status and rights of the Native Hawaiian people, based on dialogue among the Federal and State Governments, Native Hawaiians, and Hawai‘i's Congressional delegation, and further action by the United States Congress. This document contains recommendations with respect to the continuation of the reconciliation process and should be read as merely the next step, as the United States and Native Hawaiians move forward in further dialogue.[1246]

In acknowledging the 1993 Apology Resolution and formally recommitting to reconciliation, the Departments cast their recommendations in terms of moral responsibility and justice. The Report's first and most significant recommendation urged clarification of the political status of Native Hawaiians and the creation of a framework for recognizing a

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[1245] Department of Interior and Department of Justice, *Mauka to Makai: The River of Justice Must Flow Freely* (October 23, 2000), p. 13.
[1246] *Id*., p. ii.

government-to-government relationship with a representative Native Hawaiian governing body.[1247]

The Report offered four additional recommendations: establish an office in Interior to address Native Hawaiian issues; assign a representative from the Department of Justice' Office of Tribal Justice to maintain dialogue with Native Hawaiians on pertinent issues; create a Native Hawaiian Advisory Commission to consult with agencies under Interior that manage land in Hawai'i; and continue to address past wrongs to promote the welfare of Native Hawaiians.[1248]

At least one of the *Mauka to Makai* recommendations has been implemented. In a 2004 appropriation bill, Congress established the Office of Native Hawaiian Relations (ONHR). ONHR, housed in the Department of the Interior, is charged with "continu[ing] the process of reconciliation with the Native Hawaiian people." The purpose of the ONHR is to effectuate and implement the "special legal relationship" between the Native Hawaiian people and the United States; continue the process of reconciliation with the Native Hawaiian people; and fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian people by assuring timely notification of and prior consultation with the Native Hawaiian people before any Federal agency takes any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands.[1249]

[1247] *Id*. at 3-4. At the time, the most direct way to implement this recommendation appeared to be through congressional action.
[1248] *Id*. at 4.
[1249] Consolidated Appropriations Act of 2004, Pub. L No. 108-199, 118 Stat. 3, div. H, sec. 148 (2004); *see also*, § 206, Hawaiian Home Lands Recovery Act, Title II of Pub. L. 104-42, 109 Stat. 353, 363 (1995). One example of federal consultation with Native Hawaiian organizations is the U.S. Department of Defense Instruction Number 4710.03: Consultation Policy with Native Hawaiian Organizations and the Native Hawaiian Cultural Communications Course to train Department of Defense personnel in how to consult with Native Hawaiian organizations.

State Recognition of Native Hawaiian Rights and Self-Governance

The State of Hawai‘i has recognized the rights of Native Hawaiians as the indigenous people of Hawai‘i through its constitution, laws, administrative policies, court rulings and funding of a sovereignty plebiscite. The state also established and provides funds for an Office of Hawaiian Affairs. State recognition of Native Hawaiian rights, entitlements and self-governance is described below.

1978 Hawai‘i State Constitutional Convention

The 1978 Hawai‘i State Constitutional Convention marked a watershed for Native Hawaiian self-determination and self-governance efforts. For the second time since the 1950 Constitutional Convention drafted the original constitution that was submitted to the U.S. Congress for the admission of Hawai‘i into the U.S. as a state, Hawai‘i voters decided to hold a convention to overhaul the document. The 1968 Constitutional Convention had recommended 23 amendments to the constitution, with the electorate approving all but one.[1250] Most of the 1968 amendments were refinements on the initial state constitution.

The 1978 Constitutional Convention, however, was quite different. The delegates voted to create a Hawaiian Affairs Committee. This committee drafted major amendments recognizing the rights of Native Hawaiians, which the general electorate ultimately approved in the November 1978 election. Far-reaching amendments spoke to the long-standing claims of the Native Hawaiian community, particularly to claims of self-determination and self-governance.

[1250] Richard H. Kosaki, “Constitutions and Constitutional Conventions of Hawaii,” Vol. 12, *The Journal of Hawaiian History* (1978), pp. 124-126.

One amendment established the Office of Hawaiian Affairs (OHA) with a board of trustees elected by all Hawaiians, regardless of blood-quantum.[1251] Native Hawaiians and the general public were specifically designated as the two beneficiaries of the "public land trust," the majority of the Government and Crown lands of the Hawaiian Kingdom and Constitutional Monarchy that had been ceded to the United States in 1898 and subsequently transferred to state control through the 1959 Hawai'i Admission Act.[1252] The amendments designated a pro rata share of the revenue from the public land trust as a primary funding source for OHA.[1253]

Other amendments sought to ensure that the state's trust responsibility in relation to the Hawaiian Home Lands program was fulfilled. Article XII, sections 1 and 2 built on the earlier 1950 Constitution, including the language adopting the Hawaiian Homes Commission Act into the Hawai'i State Constitution, as mandated by the Admission Act. Thirty percent of the state receipts derived from the leasing of cultivated sugarcane lands under any provision of law or from water licenses must be transferred to the native Hawaiian rehabilitation fund. The revenues in this fund are dedicated to programs of the Department of Hawaiian Homelands. A new provision was added, however, that requires the state Legislature to provide "sufficient sums" to develop homestead lots, provide loans to lessees, to use for rehabilitation projects, and to provide for DHHL's operating and administrative expenses.[1254]

Another provision protected the traditional and customary rights of Native Hawaiian ahupua'a tenants.[1255] The state was also required to promote the study of Hawaiian culture,

[1251] Hawai'i State Constitution, art. XII, § 5.
[1252] Hawai'i State Constitution, art. XII, § 4.
[1253] Hawai'i State Constitution, art. XII, §§ 5-6.
[1254] Hawai'i State Constitution, art. XII, § 1.
[1255] Hawai'i State Constitution, art. XII, § 7.

history and language and institute a Hawaiian education program in public schools.[1256] Finally, the Hawaiian language and English were designated as Hawai‘i’s two official languages.[1257]

The successful passage of the amendments can be attributed to many factors, including the increasing concern by Native Hawaiians and the local community about over-development of the ‘āina or lands and natural resources; the “impoverished living conditions” of the Native Hawaiian community; and the realization “by a relatively few disjoined people who saw that their ancestral heritage was rapidly slipping away.”[1258] Opposition to U.S. Navy bombing of Kaho‘olawe became “the focal point of a major political movement challenging American control of Hawai‘i.”[1259] Former Governor John Waihe‘e, a delegate to the 1978 Constitutional Convention, attributes the success of Native Hawaiian initiatives, in part, to activism in the Native Hawaiian community, a strong leader in Adelaide “Frenchy” De Soto (Chair of the Hawaiian Affairs Committee at the Convention), and the growing recognition by many in Hawai‘i of the illegal overthrow of the Hawaiian Kingdom.[1260] Reawakened Hawaiian consciousness was fueled by examples from other ethnic and civil rights movements. Moreover, as historian and journalist Tom Coffman noted, “[a]round the world indigenous people—about one-tenth of the earth’s population—became more assertive in the course of the 1970s. A shift was occurring in the relationship between the colonizing societies and those who had been colonized.”[1261]

[1256] Hawai‘i State Constitution, art. X, § 4.
[1257] Hawai‘i State Constitution, art. XV, § 4.
[1258] Coffman, *The Island Edge of America*, p. 291, *citing* Herb Kawainui Kane.
[1259] McGregor, *Nā Kua‘āina*, p. 48.
[1260] Former Governor Waihe‘e also cited an increasing cadre of young activist including graduates of the newly opened Law School at UH-Mānoa. Former Governor John Waihe‘e, Remarks at William S. Richardson School of Law (July 18, 2011).
[1261] Coffman, *The Island Edge of America*, p. 291.

Securing a portion of the public land trust revenues for Native Hawaiians was a primary motive for establishing OHA. Of equal importance, however, were the objectives of providing all Hawaiians with the right to choose their leaders through the elective process and providing a vehicle for self-governance and self-determination.[1262] Eighty-five years after the illegal overthrow of the Hawaiian Constitutional Monarchy, the 1978 amendments establishing OHA afforded Native Hawaiians an unprecedented measure of self-governance. For 20 years thereafter, until 2000, Native Hawaiians elected OHA trustees to administer trust proceeds and programs benefiting the Hawaiian community.[1263]

The Public Land Trust[1264]

Native Hawaiians have a special connection to the Crown and Government Lands of the Hawaiian Kingdom. Indeed, the Hawai‘i Supreme Court, in considering the status of these lands, noted the relationship between Native Hawaiians and ‘āina, stating: "*To Native Hawaiians, land is not a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians.*"[1265]

[1262] *See* Hawaiian Affairs Comm., Standing Comm. Rep. No. 59, *reprinted in Proceedings of the Constitutional Convention of Hawaii of 1978,* Vol. 1 (Honolulu: State of Hawaii, 1980), pp. 644–46; Comm. of the Whole Rep. No. 13, *reprinted in id.*, at 1017.

[1263] In 2000, the U.S. Supreme Court struck down the state law limiting OHA voters to Hawaiians as violative of the 15th Amendment to the U.S. Constitution. Rice v. Cayetano, 528 U.S. 495, 520 (2000). The State, the U.S. Solicitor General, and many native rights organizations, had argued that the voting limitation was permissible based upon the political relationship between the U.S. and native peoples, and the history of special protections for native peoples. The Court, however, viewed OHA elections as solely state elections, distinguishable from elections of Indian communities, the internal affairs of quasi-sovereign governments. Subsequently, the Ninth Circuit Court of Appeals also struck down the requirement that candidates for OHA trustees be of Hawaiian ancestry. Arakaki v. State, 314 F.3d 1091 (9th Cir. 2002). As a result, currently all Hawai‘i voters elect OHA trustees and any resident can serve as an OHA trustee.

[1264] Portions of this section are based on Melody Kapilialoha MacKenzie, "Ke Ala Loa–The Long Road: Native Hawaiian Sovereignty and the State of Hawai‘i," 47 *Univ. of Tulsa Law Rev.* 621 (2012).

[1265] Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Hawai‘i, 177 P.3d 884, 924 (Haw. 2008) (citing the trial court).

The Republic of Hawai‘i ceded these lands to the United States and today the State of Hawai‘i administers approximately 1.2 million acres of the Crown and Government lands in addition to the 200,000 acres of Hawaiian Homelands discussed above.[1266] The Admission Act of 1959 transferred administration of these "ceded lands" to the State of Hawai‘i and established the public land trust to be managed for five purposes, including "the betterment of the conditions of Native Hawaiians, as defined by the Hawaiian Homes Commission Act."[1267] Under the 1978 amendments to the Hawai‘i State Constitution, Article XII, Section 4, the beneficiaries of the public land trust are native Hawaiians and the general public. Section 5 established OHA to hold assets in trust for Native Hawaiians and Hawaiians. Finally, section 6 provided that a pro rata portion of the income and proceeds from lands identified in article XII, section 4, would be included in OHA's trust assets.[1268]

In 1980, the state Legislature set 20 percent as the pro rata share that OHA would receive from the public land trust.[1269] However, many unresolved issues remained. Disputes over the classification of specific parcels of land as ceded or non-ceded, questions as to whether section

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[1266] It should be noted that the Republic of Hawai‘i also ceded to the United States 254,418.10 acres of emerged and submerged lands of the Northwestern Hawaiian Islands, most of which had been claimed by the Kingdom of Hawai‘i after the Māhele. *See Mauka to Makai Report*, pp. 52-54 (discussing the lands "ceded" to the United States). Moreover, the federal government retained control of approximately 374,000 acres of the Crown and Government lands. Approximately 31,000 acres of these lands, including the island of Kaho‘olawe, have been returned to state control. *Dep't of Land & Natural Res., State Land Information Management System—Inventory File* (August 29, 2012) (on file with author).

[1267] Admission Act, § 5(f).

[1268] Art. XII, §§ 4, 5, Hawai‘i State Constitution, (1978); art. XII, § 6 provides, in part:
The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, *including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians* . . . . (emphasis added).

[1269] Act 273, 1980 Hawai‘i Session Laws (codified at Hawai‘i Revised Statutes § 10-13.5 (2012)).

5(f) meant gross or net income, and problems in defining "proceeds" plagued the state and hampered OHA in effectively carrying out its responsibilities to Native Hawaiians.[1270] In its first years, OHA received approximately $1.4 million annually from trust lands.[1271]

OHA thus sought clarification from the courts on the amounts due from the public trust lands. In 1990, OHA and the state reached a temporary resolution, increasing OHA's revenue amount to approximately $10 million annually.[1272] But, there were still unresolved issues and OHA returned to the courts. In September 2001, the Hawai'i Supreme Court rendered a decision undercutting the amount and the stability of the public land trust revenues that OHA received. In *Office of Hawaiian Affairs v. State of Hawaii,*[1273] the court determined that under applicable state law, revenues from certain concessions at state airports should be paid to OHA. The court further found, however, that a federal law prohibited such payments; the conflict between federal and state law invalidated the state law.[1274] Although it found OHA's claims barred, the court called

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[1270] There is no accurate inventory of the lands in the public land trust although numerous efforts over the years have been undertaken to do such an inventory. The State Department of Land and Natural Resources maintains the State Land Information Management System (SLIMS), which became operational in the fall of 2000. SLIMS integrates information about state lands into one system that identifies property and tracks information such as lease renewal dates and lease receipts. According to information in the SLIMS system as of 2003, the state's total land inventory was 1,302,515 acres, excluding the Hawaiian Homelands. SLIMS also includes lands that are not part of the trust lands but does not necessarily include lands held by all state entities. In recognition of the fact that SLIMS does not include all trust lands and that the trust status of some lands is not clearly delineated, the 2011 legislature passed Act 54 to further study and clarify the trust status of lands, particularly those to which state agencies other than the DLNR hold title. Act May 20, 2011, No. 54, 2011 Hawai'i Session Laws.

[1271] William Paty, Director of the State Department of Land and Natural Resources, stated that during a nine-year period, OHA received $12,466,383. Administration of Native Hawaiian Home Lands: Joint Hearings Before the S. Select Comm. on Indian Affairs and the H. Comm. on Interior and Insular Affairs, 101st Cong., pt. 2, at 63, 64 (1989).

[1272] Act 304, 1990 Hawai'i Session Laws.

[1273] Office of Hawaiian Affairs v. State, 31 P.3d 901 (Haw. 2001).

[1274] *Id*. at 913. Under the terms of the state law, its invalidity resulted in reinstating earlier state law. Ironically, the Hawai'i Supreme Court had previously determined that the prior state law lacked judicially discoverable and manageable standards. Trustees of the Office of Hawaiian

upon the Legislature to implement the state constitution's trust provisions. In a subsequent unsuccessful action by OHA over the revenue issue, the Hawai'i Supreme Court quoted U.S. Senator Daniel Inouye's speech on the floor of the U.S. Senate, stating "[i]n light of the unique history of Hawaii's ceded lands and the obligations that flow from these lands for the betterment of the Native Hawaiian people . . . *this is more than a fiscal matter, this is a fiduciary matter—one of trust and obligation*[.]"[1275]

In 2006, the Legislature set an annual $15.1 million payment to OHA as the equivalent of trust lands revenue.[1276] Finally, in 2012 the state settled OHA's claims for back revenue by transferring valuable lands in Kaka'ako Makai, an urban Honolulu area fronting the ocean, to OHA.[1277] Today, OHA continues to receive the statutorily set $15.1 million from the public land trust.

Another major issue affecting the Crown and Government lands of the Hawaiian Kingdom revolves around the state's sale or alienation of the lands. In 2008, in a ground-breaking decision implicating Hawai'i's trust duties, the significance of land to Native Hawaiians, and the value of apology, the Hawai'i Supreme Court took the extraordinary step of permanently enjoining the sale or transfer of trust lands.[1278] In *Office of Hawaiian Affairs v. Housing and Community Development Corporation of Hawai'i,* OHA and four individual

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Affairs v. Yamasaki, 737 P.2d 446, 458 (Haw. 1987). Based on its earlier decision, the court then held that the case presented a nonjusticiable political question. *OHA,* 31 P.3d at 912.

[1275] Office of Hawaiian Affairs v. State, 133 P.3d 767, 795 (Haw. 2006) (emphasis added by court).

[1276] The Legislature had previously established $15.1 million as an appropriate amount. Act 329, § 2, 1997 Hawai'i Session Laws.

[1277] Act of June 7, 2006, No. 178, 2006 Hawai'i Session Laws (establishing $15.1 million as the amount OHA would receive from the public land trust); Act of April 11, 2012, No. 15, 2012 Hawai'i Session Laws, (approving transfer of ten parcels of land in Kaka'ako to OHA).

[1278] Office of Hawaiian Affairs v. Hous. & Cmty. Dev. Corp. of Haw., 177 P.3d 884 (Haw. 2008).

plaintiffs sought to prevent a state-created entity from transferring two parcels of trust lands to private developers for developments that would include low-cost housing. The case was filed in 1994, soon after the passage of the 1993 Congressional Apology Resolution and similar state legislation recognizing the Native Hawaiian people's unrelinquished claims to the trust lands.

In permanently enjoining trust land sales, the court stated, "without an injunction, any ceded lands alienated from the public lands trust will be lost and will not be available for the future reconciliation efforts." The Hawai'i Supreme Court (HSC) recognized that 'āina is not fungible or replaceable and holds unique cultural, spiritual and political significance for Native Hawaiians, citing the trial court's decision:

> *'Aina is a living and vital part of the [n]ative Hawaiian cosmology, and is irreplaceable.* The natural elements—land, air, water, ocean—are interconnected and interdependent. *To [n]ative Hawaiians, land is not a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians.* The 'aina is part of their 'ohana, and they care for it as they do for other members of their families. *For them, the land and the natural environment [are] alive, respected, treasured, praised, and even worshiped.*[1279]

The HSC concluded that while the Apology Resolution did not require that trust lands be transferred to Native Hawaiians, it did recognize their unrelinquished claims to the lands. Moreover, the court reasoned, the Apology Resolution and analogous state legislation implicated the state's fiduciary duty to preserve the trust lands until the claims of the Native Hawaiian community are resolved through the political process.[1280] Relying upon earlier cases setting out the trust responsibilites of the state in dealing with the public trust lands, the court determined that "[s]uch duty is consistent with the State's 'obligation to use reasonable skill and care' in

[1279] *Id*. at 924 (emphasis in original).
[1280] *Id*. at 920.

managing the public lands trust" and that "the State's conduct 'should . . . be judged by the most exacting fiduciary standards.'"[1281]

Although the HSC relied on the Apology Resolution, it separately based its decision on Hawai'i law, specifically pointing to two 1993 laws in which the state Legislature recognized that "the indigenous people of Hawai'i were denied . . . their lands" and made other findings similar to those of the U.S. Apology Resolution.[1282]

In a controversial move, the state administration sought U.S. Supreme Court review. In Honolulu, hundreds of Native Hawaiians and their supporters lined the streets near the State Capitol wearing red T-shirts with the words "Kū I Ka Pono" (Stand for Justice) printed across the front and holding signs reading, "Justice for Hawaiians" and "Ceded Lands Are Stolen Lands." [1283] In a march through Waikīkī organized by Vicky Holt Takamine of the 'Īlio'ulaokalani Coalition, along with Manu Ka'iama, Lilikalā Kame'eleihiwa and student of the Kamakakūokalani Center for Hawaiian Studies, and other student organizations, thousands protested against the state's move to take the case to the U.S. Supreme Court.

The state refused to withdraw its request and the U.S. Supreme Court accepted the case for review. In an opinion issued in March 2009, the U.S. Supreme Court reversed the ruling of

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[1281] *Id*. at 905; *see*, Ahuna v. Department of Hawaiian Home Lands, 640 P.2d 1161 (Haw. 1982); Pele Defense Fund v. Paty, 837 P.2d 1247 (Haw. 1992).

[1282] *Id*. at 903-04 (quoting Act 359, § 1(9), 1993 Hawai'i Session Laws). The court also found support for its decision in a 1997 law designed to clarify the proper management of lands in the public land trust, and another 1993 law requiring that the island of Kaho'olawe be held in trust and transferred to a sovereign Native Hawaiian entity in the future. *Id*. at 904.

[1283] *See* Lisa Asato, *Youth Uprising—Ceded Lands Case Spurs New Generation of Hawaiian Leaders*, KA WAI OLA, Jan. 2009, at 15, *available at* http://www.oha.org/kwo/2009/01/story01.php; *Groups Oppose Ceded-Land Appeal*, *Honolulu Advertiser*, Nov. 24, 2008, *available at* http://the.honoluluadvertiser.com/article/2008/Nov/24/br/hawaii81124053.html (last visited July 30, 2013).

the HSC. In *Hawaii v. Office of Hawaiian Affairs*,[1284] the Court determined that the Apology Resolution's powerful findings had no "operative effect"[1285] and that its substantive provisions were merely conciliatory or precatory.[1286]

The U.S. Supreme Court's views of the public land trust and claims of Native Hawaiians thus stand in sharp contrast to those of the Hawai'i Supreme Court. The Hawai'i Supreme Court, giving full effect to the findings of the Apology Resolution, reasoned that those findings implicated the state's fiduciary duty to preserve the trust lands until the claims of Native Hawaiians are resolved. Although it did not rule on the ultimate claims of Native Hawaiians, the Hawai'i court sought to protect the trust lands until a political resolution could be achieved.[1287] The U.S. Supreme Court faulted the Hawai'i Supreme Court's interpretation of the Apology Resolution, but since the Hawai'i Supreme Court's decision was also based on state law, the U.S. Supreme Court remanded the case.

Ultimately, a political solution was reached through the state legislative process. Thus, under current law, public trust lands can be sold or alienated only after following a detailed procedure requiring notice to OHA, disclosure of the trust status of the lands and the proposed use of the lands, informational meetings in the affected community, and a two-thirds approval vote in each house of the state Legislature.[1288] This process provides a level of protection for the public land trust while allowing flexibility for the state in managing the trust lands.

[1284] *Hawai'i v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009).
[1285] *Id*. at 175 (*citing* District of Columbia v. Heller, 554 U.S. 570, 578 n.3 (2008)).
[1286] *Id*. at 173.
[1287] *OHA v. HCDCH*, 177 P.3d at 902.
[1288] Act of July 13, 2009, No. 176, 2009 Hawai'i Session Laws, as amended by Act July 1, 2011, No. 169, § 1, 2011 Hawai'i Session Laws, as amended by Act of June 24, 2014, No. 146, 2014 Hawai'i Session Laws. The permanent alienation of trust land requires a two-thirds majority legislative approval. Act 146, signed into law in June 2014, requires a simple majority approval for an exchange of public lands for private lands.

The Hawaiian Homelands Trust

Although some Native Hawaiian families have benefitted from the Hawaiian Homelands trust, many Native Hawaiian beneficiaries of the trust remain on the waiting list for homestead lands. Some families have been waiting for decades. Over the years, HHCA beneficiaries had called attention to the poor management of the homestead program, the questionable leases of homestead land to large ranches, and the long wait for homestead awards. In the late 1970s and early 1980s, federal and state courts determined that in several instances lands had been removed from the Hawaiian Home Lands trust in violation of the HHCA.[1289] In 1982, as a result of a beneficiary lawsuit alleging widespread violations of the trust, the Secretary of the Interior and Governor of Hawai'i appointed an 11-member Federal-State Task Force to conduct a "comprehensive review of every facet" of the HHCA.[1290]

After its 9-month investigation, the Task Force issued a report detailing many problems with the implementation of the HHCA during the territorial period and after statehood, and made a number of recommendations. The Task Force identified problems that included an inadequate inventory of the trust lands, a dismal record in placing Native Hawaiians on homesteads, and questionable removal of lands from the trust.[1291] For instance, over 30,000 acres had been transferred from the trust to other agencies for public use. In 1984, based on the Task Force report, then-Governor Ariyoshi withdrew or cancelled 27 executive orders and proclamations,

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[1289] *See*, Aki v. Beamer, Civ. No. 76-1044 (D. Haw. 1978) (use of executive order to create a county park on Hawaiian Home Lands illegal); Keaukaha-Panaewa Community Ass'n. v. Hawaiian Homes Comm'n., Civ. No. 75-0260 (D. Haw. 1976) (HHC decision allowing county to acquire and use 24 acres of trust lands to complete a flood control project pending a land exchange violates HHCA § 204(4)).
[1290] *Federal-State Task Force Report on the Hawaiian Homes Commission Act* 4 (August 1983)
[1291] *Id*. at 57-60, 30, 39-40.

thereby returning 27,835.6 acres of land to DHHL.[1292] The Task Force also recommended allowing beneficiaries the right to sue to enforce the trust provisions in state courts.

Responding to this recommendation and years of Native Hawaiian advocacy for the right to sue, in 1988, the state Legislature passed Act 395 allowing beneficiaries to file suit for breach of trust claims from 1988 forward. The law also attempted to address claims from statehood to 1988 by allowing the Governor to design a process to address those claims.

In 1991, then-Governor John Waiheʻe submitted an action plan to the Legislature. The plan proposed a task force of representatives from DHHL and other state agencies to review the DHHL's land title and compensation claims. The role of the task force was to verify title claims, determine if improper uses of Hawaiian Homelands still existed and whether to cancel or continue these uses, determine compensation for use of trust lands, and pursue possible claims against the federal government. The Action Plan recommended a separate process to address losses by individual beneficiaries for trust breaches between statehood and 1988.[1293]

The Land Claims Task Force and Act 14

In 1992, the Land Claims Task Force's first recommendations resulted in legislative approval of $12 million to resolve gubernatorial executive orders and proclamations that had illegally set aside 29,653 acres of homestead land for public uses.[1294] In 1995, the Legislature passed Act 14 to settle all claims for illegal conveyance or use of trust lands between statehood and 1988.[1295] Act 14 created a DHHL trust fund to settle all title-related trust claims and

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[1292] *Native Hawaiian Rights Handbook*, p. 53.
[1293] Office of the Governor, *An Action Plan to Address Controversies Under the Hawaiian Home Lands Trust and the Public Land Trust* (Jan. 1991).
[1294] Act 316, 1992 Hawaiʻi Session Laws.
[1295] Act 14, 1995 Haw. Spec. Sess. Laws.

authorized payment of $600 million to DHHL, to be paid out annually in $30 million increments over a 20-year period to the fund, with a final payment in 2014.[1296]

Act 14 specifically provided that payments made under the act would not affect funds that DHHL was entitled to receive under the 1978 amendment to the state constitution mandating the Legislature to "make sufficient sums available" to DHHL for the "development of home, agriculture, farm and ranch lots" and for other purposes, including DHHL's administrative and operating budget.[1297] Thus, Act 14 clearly intended that the $30 million annual trust fund payments not replace the state's constitutional obligation to fund DHHL. Nevertheless, according to allegations filed in a recent lawsuit, that is exactly what happened. The beneficiaries contend, for instance, that in 2006-07, DHHL received less than $1.5 million in general funds from the Legislature and that from 1989 through 2007, the state's general fund appropriations for DHHL's "administration and operating budget never exceeded 0.5 percent of the total general fund budget for any given fiscal year."[1298] Beneficiaries are concerned that in the future, without the $30 million annual payment, DHHL will be forced to lease more trust land to generate income rather than utilizing the lands for homestead purposes.[1299]

In the 2012 *Nelson v. HHC* decision, the Hawai'i Supreme Court, after reviewing the Constitutional Convention committee reports and debates, found that the Hawaiian Affairs

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[1296] Act 14, § 6. Governor Waihe'e had previously announced that the state would transfer 16,518.00 acres to DHHL to bring the trust to the full acreage contemplated in the HHCA. Act 14 confirmed that these lands would be held as trust lands. Act 14, § 19.
[1297] Hawai'i State Constitution, art. XII, § 1.
[1298] Nelson v. Hawaiian Homes Comm'n., Civ. No. 07-1-1663-08 BIA, First Amended Complaint 5-6, 9-10, 11 (Oct. 19, 2007) (on file with the author).
[1299] *Id*. at 3, 11-13. DHHL's 2007-2011 Strategic Plan, includes the goal of pursuing "financial self-sufficiency by 2015 replacing the Act 14 financial settlement of $30 million per year and generating significant non-governmental revenue to support DHHL's housing program," with the objective of "[s]trategically identif[ing] properties in DHHL's inventory to maximize income generation from our current lands."

Committee calculated a figure (approximately $1.3 and $1.6 million per year) that represented "sufficient sums" for the administrative and operating expenses of DHHL.[1300] Therefore, the Court determined, the Constitutional Convention of 1978 provided "judicially discoverable and manageable standards" to calculate the "sufficient sums" for the DHHL administrative and operating budget.[1301] On the other hand, because the constitutional history gave no guidance on what would constitute "sufficient sums" for the other three purposes, their judicial determination was barred.[1302] Thus, the *Nelson* plaintiffs will be able to pursue their claim to compel funding for the administrative and operating expenses of DHHL.

The Individual Claims Process

In addressing claims of individual beneficiaries, the 1991 Legislature established a unique process that incorporated administrative, legislative, and judicial review.[1303] A panel was established to receive and review claims of individual trust beneficiaries arising between statehood and June 30, 1988, with a deadline for beneficiaries to file claims. After reviewing claims, the panel was to submit findings and an advisory opinion, including damages estimates or recommended corrective action, on each claim to the legislature. The legislature could then choose to award compensation or implement corrective action. Claimants dissatisfied with legislative action would have the right to sue in state court.[1304]

[1300] Nelson v. Hawaiian Homes Comm'n., 277 P.3d 279, 296 (Haw. 2012).
[1301] *Id*. at 297.
[1302] *Id*. at 299.
[1303] See Kalima v. State, 137 P.3d 990 (Haw. 2006) for a detailed description of the claims process.
[1304] *Id*.

The panel's 1996 report, its first after the August 1995 claims filing deadline, indicated that 4,327 claims had been filed by almost 2,800 claimants.[1305] Approximately 66 percent of the claims were "waiting list claims"—claims based on an unreasonably long wait for a homestead award.[1306] The panel's report to the 1999 Legislature stated that as of December 31, 1998, the panel had closed or issued recommendations on 2,050 claims, "representing 47% of the total number of claims."[1307] Damages for the meritorious claims totaled almost $16.5 million. By the time the panel closed down in the fall of 1999, it had reviewed 53 percent of all claims, with recommended damages amounts totaling near $18 million.[1308]

Unfortunately, most claimants have never received compensation for their claims, even for those claims deemed meritorious by the Claims Panel. Ongoing litigation, almost 15 years after the panel closed its doors, is attempting to resolve the current damages amounts owed to claimants.[1309]

Moving Forward

Although efforts to resolve claims related to the Hawaiian Homelands trust have been less than successful in relation to individual beneficiaries, Act 14 provided a source of funding

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[1305] Hawaiian Home Lands Trust Individual Claims Review Panel, *Report to the Governor and the 1996 Legislature* (1996), p. 3.
[1306] The panel categorized 42 percent of claims as only "waiting list claims." *Id*. An additional almost 24 percent were "waiting list claims with other issues," including blood quantum determinations. *Id*.
[1307] *Id*.
[1308] Panel's *Final Report*, pp. 6-7. The panel was also responsible for notifying claimants that if they wished to preserve their rights, they needed to file a notice rejecting legislative action on their claims by October 1, 1999. By the deadline, the panel had received written notices in 2,592 claims, including a notice from a public interest law firm, the Native Hawaiian Legal Corporation, on behalf of all claimants who had not yet filed notices, rejecting legislative action. *Id*., pp. 7-8.
[1309] *See* Kalima v. State, 137 P.3d 990 (Haw. 2006) and http://www.kalima-lawsuit.com (last visited June 19, 2014) for an update on the status of the claims.

for DHHL's homestead development efforts over a 20-year period. Perhaps in reaction to the Hawai'i Supreme Court's decision in the *Nelson v. HHC* case, the 2013 state Legislature passed a budget of $9.6 million for DHHL's administrative and operating expenses, the largest in the history of the Department.[1310] Nevertheless, the major issue that DHHL faces going forward is funding for homestead development without the benefit of the $30 million year from the Act 14 settlement. DHHL has made significant strides in the last decade in putting beneficiaries on homestead lands. Nevertheless, as of June 30, 2013 there were 26,926 Native Hawaiian beneficiaries on the waiting list waiting to receive homestead lands.[1311] Moreover, the U.S. Department of the Interior recently announced increased oversight of the trust and greater efforts to ensure a smoother process for Congressional approval of amendments to the HHCA.

Hawai'i State Water Code

On May 1987, the Hawai'i state legislature passed the State Water Code. The code protects both appurtenant and Native Hawaiian water rights. With regard to appurtenant rights, which are inclusive of Native Hawaiian families whose ancestral lands are along streams, the water code provides that "[n]othing in this part shall be construed to deny the exercise of an

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[1310] DHHL News Release (May 2, 2013), *available at* http://dhhl.hawaii.gov/wp-content/uploads/2013/05/130502-Budget-Passed.pdf (last visited July 28, 2013). The news release notes that:

> The Legislature's appropriation of $9.6 million, while more than any previous appropriation, was less than the request of $14.68 million for DHHL that Gov. Abercrombie submitted in the Executive Budget on December 17, 2012 or the nearly $26 million that the Hawaiian Homes Commission and the department had developed and proposed to "sufficiently" cover administrative and operating costs in response to the *Nelson v. HHC*.

[1311] Beneficiaries can apply for more than one type of homestead award (residential and either agricultural or pastoral), thus DHHL has received 43,080 applications from 26,926 beneficiaries. Department of Hawaiian Home Lands Applicant Waiting List through June 30, 2013 – A-K, *available at* http://dhhl.hawaii.gov/wp-content/uploads/2011/06/2013-06-30_07-Alpha_Waitlist_A-K_259pgs.pdf (last visited Aug. 2, 2014), Applicant Summary.

appurtenant right by the holder thereof at any time. A permit for water use based on an existing appurtenant right shall be issued upon application."

With regard to Native Hawaiian water rights, the code acknowledges the entitlements to water provided for the Hawaiian Home Lands by the Hawaiian Homes Commission Act and the Hawai'i State Constitution. In addition, it contains the following specific provisions for traditional and customary rights of Native Hawaiians:

> (c) Traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own kuleana and the gathering of hihiwai, opae, 'o'opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.[1312]

Hawaiian Sovereignty Advisory Commission and the Sovereignty Plebiscite

In 1993, the State of Hawai'i took several important actions in recognition of the 100th anniversary of the overthrow of the Hawaiian Kingdom and in response to a consensus among

[1312] HRS Chapter 174C-101, State Water Code, Part IX, Native Hawaiian Water Rights. With regard to the Hawaiian Home Lands, the water code states: (a) Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act. (b) No provision of this chapter shall diminish or extinguish trust revenues derived from existing water licenses unless compensation is made." The code also states that failure to apply for a permit shall not diminish or extinguish these rights. It states, "(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter." [L 1987, c 45, pt of §2; am L 1991, c 325, §8]

Native Hawaiians and the broader community that reconciliation efforts must be renewed. The state Legislature adopted a powerful statement of its commitment to reconciliation in House Concurrent Resolution 179,[1313] which contains language similar to the 1993 Apology Resolution, passed by the U.S. Congress in 1993. The state also adopted Act 359 "to acknowledge and recognize the unique status the native Hawaiian people bear to the State of Hawaii and to the United States and to facilitate the efforts of native Hawaiians to be governed by an indigenous sovereign nation of their own choosing."[1314]

Act 359 established the Hawaiian Sovereignty Advisory Commission to advise the Legislature on a voting process to determine the will of the Native Hawaiian people regarding a convention. The convention would seek to achieve consensus on an organic governing document and decide on a form and structure for a native government. For many Native Hawaiians, enactment of Act 359 was viewed as an appropriate response to Native Hawaiian calls for self-governance.[1315]

In 1994, Act 359 was amended to provide for the next step in the process, establishment of the Hawai'i Sovereignty Elections Council (HSEC).[1316] HSEC was tasked with holding a plebiscite to "determine the will of the indigenous Hawaiian people to restore a nation of their own choosing[.]"[1317] On July 15, 1996, HSEC sent out ballots to approximately 85,000 Native Hawaiians, asking, "Shall the Hawaiian People elect delegates to propose a Native Hawaiian

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[1313] *See*, H.C.R. No. 179, 1993 Hawai'i House Journal 755.
[1314] Act 259, §2, 1993 Hawai'i Session Laws, amended by Act 200, 1994 Hawai'i Session Laws, amended by Act 140, 1996 Hawai'i Session Laws.
[1315] Others, however, questioned the legitimacy of a state process to further Native Hawaiian self-government and self-determination. See for instance, Lilikalā Kame'eleihiwa, "The Hawaiian Sovereignty Movement: Update from Honolulu (January-August 1993)," *The Journal of Pacific History*, Vol. 28, No. 3 (1993), pp. 63-72.
[1316] Act 200, § 6, 1994 Hawai'i Session Laws.
[1317] *Id*. (emphasis added).

government?"[1318] To be eligible to vote in the Native Hawaiian vote, a person had to be of Hawaiian ancestry and at least 18 years old.

Two lawsuits were filed seeking to stop the vote. One alleged that the election was an attempt to undermine the constitutional ability of Native Hawaiians to independently seek redress from the federal government. The second suit alleged that the Native Hawaiian vote discriminated against those who could not vote because they were not of Hawaiian ancestry. In *Rice v. Cayetano*, U.S. District Court Judge Ezra determined that the Native Hawaiian vote was constitutional.[1319] An appeal filed with the 9th Circuit Court of Appeals delayed announcement of the election results but on September 11, 1996, the court of appeals lifted an order preventing the release of the election results.[1320]

The next day, election results were announced. 30,423 eligible ballots had been returned to HESC to be counted, of these ballots, 22,294, or 73.28 percent had voted yes on the question.[1321] The voter response to the election was perceived in different ways. Although celebrated by some as a victory for the Hawaiian people, others believed that the state should not be involved in any decision regarding Native Hawaiian sovereignty.[1322] In spite of criticism that only around 40 percent of voters chose to participate in the election, election officials believed

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[1318] Cary Goldberg, "Native Hawaiians Vote in Ethnic Referendum," *New York Times*, Jul. 23, 1996.
[1319] Rice v. Cayetano, 941 F. Supp. 1529 (D. Haw. 1996). The court consolidated two separately filed cases, Rice v. Cayetano and Kakalia v. Cayetano for hearing.
[1320] Staff Reporters, "Supporters say the plebiscite is an important step toward a native Hawaiian government," *Honolulu Star-Bulletin*, Sep. 12, 1996.
[1321] Sovereignty Elections Council, *Final Report* (December 1996), p. 28.
[1322] Ron Stanton, "Hawaiians take step toward self-determination: Result of Native Hawaiian Vote favors convention to propose form of sovereign government," Associated Press, Sept. 12, 1996.

that this was a respectable turnout for a mail-in election.[1323] In compliance with state law, the HSEC disbanded on December 31, 1996.[1324]

A non-profit organization, Hā Hawai'i, continued the HSEC's efforts by seeking to elect delegates for a Native Hawaiian Convention that would develop a constitution to create a government model for Native Hawaiian self-determination. Eventually, 77 delegates were elected to represent the Native Hawaiian community.[1325] With the delegates in place, the Native Hawaiian Convention began at the Hawai'i State Capitol on July 31, 1999. Two proposed constitutions emerged from the convention. One called for complete independence of the Hawaiian nation. The other proposed constitution established a framework for an integrated nation within a nation government. Lack of funding, as well as continued opposition from some vocal Native Hawaiian organizations, and the 2000 *Rice v. Cayetano* decision from the U.S. Supreme Court, brought a halt to the process. Although this process did not result in the establishment of a self-governing Native Hawaiian entity, it set the stage for the Native Hawaiian community's ongoing efforts and highlighted both the aspirations and the obstacles faced by Kānaka Maoli in moving forward.

[1323] Carey Goldberg, "Native Hawaiian Vote Favors Sovereignty," *The New York Times*, Sep. 14, 1996.
[1324] Sec 2, Act 140, 18th leg., 1996 (stating, "The Council shall cease to exist on December 31, 1996.").
[1325] The Department of the Interior and the Department of Justice, *From Mauka to Makai: The River of Justice Must Flow Freely*, Report on the Reconciliation Process Between the Federal Government and Native Hawaiians (October 23, 2000), p. 44.

Act 195 – The Native Hawaiian Roll Commission

In 2011, the State of Hawaiʻi enacted Act 195 recognizing Native Hawaiians as the "only indigenous, aboriginal, maoli population" of Hawaiʻi.[1326] Act 195 identifies Native Hawaiians as a distinctly Native community, reaffirming that since its inception, the state "has had a special political and legal relationship with the Native Hawaiian people and has continuously enacted legislation for the betterment of their condition." The act also expresses the state's "desire to support the continuing development of a reorganized Native Hawaiian governing entity and, ultimately, the federal recognition of Native Hawaiians."[1327]

Substantively, Act 195 act created a five-member Native Hawaiian Roll Commission, administratively housed within OHA, responsible for preparing and maintaining a roll and certifying that each individual on the roll meets the definition of a "qualified Native Hawaiian."[1328] A "qualified Native Hawaiian" is a "descendant of the aboriginal peoples who occupied the Hawaiian Islands prior to 1778" or someone "eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act of 1920, or . . . a direct lineal descendant." In addition, a qualified Native Hawaiian must have maintained a "significant cultural, social or civic connection to the Native Hawaiian community," desire to "participate in organizing a Native Hawaiian governing entity," and be 18 or older.[1329]

[1326] Act of July 6, 2011, No. 195, 2011 Hawaiʻi Session Laws (hereinafter Acti 195) (codified at Hawaiʻi Revised Statutes Chap. 10H).
[1327] Act 195, § 1.
[1328] Hawaiʻi Revised Statutes § 10H-3 (2013). The governor appoints commissioners, one from each of the four counties—Hawaiʻi, Maui, Oʻahu, and Kauaʻi—plus an at-large member. Commissioners must be a qualified Native Hawaiians nominated from a qualified Native Hawaiian membership organizations, the latter defined as organizations that have been in existence for at least ten years and whose purpose is the betterment of the conditions of the Native Hawaiian people. *Id*. § 10H–3(b).
[1329] *Id*. §§ 10H–3(a)(2)(A), (B)–(C).

Once the commission publishes and certifies the Native Hawaiian roll and updates it, the commission will be dissolved.[1330] Act 195 contemplates that the next step would be a Native Hawaiian convention "independently" commenced by those on the roll "for the purpose of organizing themselves."[1331]

Other provisions of the act reaffirm the delegation of federal authority contained in the 1959 Admission Act to the state "to address the conditions of the indigenous, native people" of Hawaiʻi.[1332] It also provides that nothing in the act is intended to serve as "a settlement of any claims" against the state or to "affect the rights of the Native Hawaiian people under state, federal, or international law"[1333]

The Roll Commission has undertaken a campaign, called Kanaʻiolowalu, to register Native Hawaiians. Kanaʻiolowalu signifies the sound that is created by the mass of people who come together and move "forward to strive and achieve and recognize the unrelinquished sovereignty of the Native Hawaiian people."[1334] In many ways, Kanaʻiolowalu calls upon the Hawaiian tradition of protest and resistance embodied in the 1897 Kūʻē Petitions protesting annexation to the United States. In being the first to place his name on the Kanaʻiolowalu registry, U.S. Senator Daniel Akaka stated:

> Native Hawaiians are on a long and difficult journey to regain control of our collective future, and transmit our culture, knowledge and values to future generations. Signing this petition affirms that as a state, we recognize the rights of Native Hawaiians, as the indigenous people of Hawaiʻi, to perpetuate the culture of our island home. It is time to holomua, to move forward together, and to

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[1330] *Id*. §§ 10H–4, 6.
[1331] *Id*. § 10H–5.
[1332] *Id*. § 10H–8(a).
[1333] *Id*. § 10H–9. Act 195 also contains another disclaimer stating that it "does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun" before its effective date. Act 195, §§ 6, 7.
[1334] *See* About Kanaʻiolowalu on the Kanaʻiolowalu website, *available at* http://www.kanaiolowalu.org (last visited July 5, 2013). Kanaʻiolowalu also encourages non-Hawaiian supporters of Native Hawaiian sovereignty to sign a separate statement of support.

express our commitment to the future of Hawai‘i and her indigenous people.[1335]

By May 1, 2014, when the roll closed, more than 12 years after the overthrow of the Hawaiian Kingdom and Constitutional Monarchy, 125,631 Native Hawaiians had registered to engage in the process of re-establishing a sovereign governing entity for the Native Hawaiian nation.[1336]

Moreover, the Office of Hawaiian Affairs has announced that it will expend resources and act as a neutral facilitator in going forward for the election of delegates and the formation of an ‘Aha or Native Hawaiian convention. The OHA Trustees stated that the goal of the process is "to empower Native Hawaiians to participate in building a governing entity."[1337] Under the current timetable, those registered on the Official Roll of Native Hawaiians, compiled through the Kana‘iolowalu process, will elect delegates in January 2015 to represent them at a governance convention in April. It is expected that by July 2015, voters will have the opportunity to approve or disapprove the governing document drafted at the ‘Aha.[1338]

Conclusion

The quest for Native Hawaiian self-governance began when the U.S. military landed troops in Honolulu on January 16, 1893, to support the illegal overthrow of the Hawaiian monarchy. It continues to be inspired by the thoughts Queen Lili‘uokalani expressed in her songs and writings, which have been performed and read from one generation to the next. It is

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[1335] *See* Latest News, "Kana‘iolowalu launches online registry for Native Hawaiians," *available at* http://www.oha.org/news/kana‘iolowalu-launches-online-registry-native-hawaiians (last visited July 20, 2013)
[1336] See Kana‘ioloawlu website, *available at* http://www.kanaiolowalu.org (last viewed Aug. 2, 2014).
[1337] See Office of Hawaiian Affairs news release of July 24, 2014, *available at* http://www.oha.org/news/oha-trustees-extend-nation-building-timeline (last visited Aug. 2, 2014).
[1338] *Id*.

reinforced by the historical and contemporary injustices reflected in the low incomes, high unemployment rates, high incarceration rates, reliance on public assistance and poor health conditions of Native Hawaiians. It is provoked by legal suits seeking to dismantle the private and public land trusts established for Native Hawaiians in the late 19th and early 20th centuries. It is nurtured by the renaissance of Hawaiian language, music, hula, navigation, and spiritual practices.

Critiques of Native Hawaiian sovereignty as unviable in a global post-colonial social system cannot derail a quest that has been instilled in the hearts and minds of a people for generations. Moreover, the concept of sovereignty envisioned by Native Hawaiians is rooted in the traditional and customary exercise of indigenous sovereignty, which evolved over centuries preceding contact and commerce with European, American and Asian nation-states.

In Hawaiian, the word for sovereignty is "Ea" which also means "Life" and "Breath" signifying that sovereignty is essential to the survival of the Native Hawaiian people. In other words, sovereignty is inherent, as described and affirmed in the U.N. on the Rights of Indigenous Peoples of September 7, 2007.

Within the framework of U.S. law, sovereignty for Native Hawaiians is a call to recognize Native Hawaiians as having the same inherent right of self-governance as Native American Indians and Alaska Natives. Recognition of the nation arising from the Kanaʻiolowalu process would achieve sovereignty for an autonomous Native Hawaiian nation within the United States.

We close with a song, written at the dawn of the new millennium, expressing Kānaka Maoli pride, resilience, and hope for the future of a Native Hawaiian nation. It echoes the same

call as the song that opened this chapter, reminding us to stand together, and "to stand tall and proud and live with dignity."

E Kū Kanaka

Jay Kauka

E kū Kanaka, e kū ha‘aheo
E kū Kanaka e kū ha‘aheo
Stand tall and be counted
Stand tall and be proud
Stand high as a mountain
And let your voice ring out
We are nā ‘ōiwi
Born of kings and queens
As children of ali‘i
We live with dignity

Hui:
Stand tall and proud as one, e nā ‘ōiwi
Stand tall and proud
And let your voice ring out
Stand tall and proud as children of ali‘i
Stand tall and proud and live with dignity
E kū kanaka, e kū ha‘aheo
E kū kanaka, e kū ha‘aheo

Stand together and rally
Stand as one hand in hand
Stand firm to the challenge
Restoring life to this land
As truth fuels our passion
And justice guides our pat
We'll rectify the callous
Transgressions of the past

Strive on to perfection
Strive on to success
In every single endeavor
Strive to be the best
For we are nā ‘ōiwi
Born of kings and queens
As children of ali‘i

We live with dignity[1339]

[1339] Jay Kauka, E Kū Kanaka, on Hoʻokena: Hoʻokena 5 (1999).

Chapter 11: Undeterred - A Distinct, Unique, Native People

Generation 33 [Generation 128], 1959 - 1993

Generation 34 [Generation 129], 1993 - present

Kūpaʻa

Eia mai mākou
Nā pulapula o nei ʻāina
E kupu ai a nani
I ka uluwehiwehi

Here we are
The descendants of this land
Growing beautifully
In verdant splendor

Haʻaheo nā kupa ʻāina
Mai Kumukahi i Lehua
I ka nani kāhelahela
O nā kai ewalu

Proud are the people
From Kumukahi to Lehua
Of the splendid expanse
Of the eight seas[1340]

This song was written in 1993 by two Hawaiian musicians and teachers for the ʻAha Pūnana Leo Hawaiian language immersion preschool in Honolulu. It echoes themes found throughout this moʻolelo – themes of love for the land, ocean, and environment that surrounds our islands, and speaks of the pride of nā kupa ʻāina (people of the land) who form Lāhui Hawaiʻi, the Hawaiian Nation. It celebrates the growth of the lāhui and reminds us to kūpaʻa, stand firmly behind our ʻāina with loyalty to each other behind.

[1340] From the song, Kūpaʻa, by Horace K. Dudoit III and Manu Boyd.

Overview

In developments that paralleled the sovereignty movement in the period after statehood, Kānaka Maoli traditional cultural practices and arts were reinvigorated and revitalized. Organizing of the Native Hawaiian community, combined with the action of the U.S. Congress to include Native Hawaiians in the definition of Native Americans, and the recognition of the Native Hawaiian language, culture, history, land entitlements and self-governance in the Hawai‘i State Constitution contributed to this renaissance of Native Hawaiian language and cultural and spiritual practices. The knowledge of kūpuna (elders) and loea (experts) like Mary Kawena Pukui, hula masters ‘Iolani Luahine, Edith Kanaka‘ole, and Lokalia Montgomery, musicians and singers such as Aunty Genoa Keawe, Haunani Kahalewai, and Gabby Pahinui, lā‘au lapa‘au practitioners Harry Kūnihi Mitchell, Kalua Kaiahua, Kahu David Kealakea, Sr., Henry “Papa” Auwae, Katherine Maunakea and lomilomi practitioner Margaret Machado began to be shared with the next generation.

During the 1970s and 1980s, Hawaiian music and traditional hula flourished, as indicated by an increase in the number of hālau hula (hula schools) participating in the annual Merrie Monarch Festival honoring King David Kalākaua, the Prince Lot Hula Festival, and the Kamehameha Day hula and oli (chant) competition. The popularity of Hawaiian music soared with concerts almost every week and Hawaiian music radio stations on each island.

The Protect Kaho‘olawe ‘Ohana revived the annual Makahiki Havest Season rituals on Kanaloa Kaho‘olawe honoring the Hawaiian god, Lono, for bringing the seasonal rains that nourish the land, making it fertile. From Kaho‘olawe, the Makahiki rituals expanded to ceremonies on the islands of Hawai‘i, O‘ahu and Moloka‘i.

In a corresponding development, traditional Native Hawaiian navigational arts were revived through the voyages of the Hōkūleʻa (Star of Gladness), a large double-hulled 60-foot long replica of an ancient Polynesian voyaging canoe. In the mid-70s, the Polynesian Voyaging Society was established to explore celestial navigation and voyaging and attempt to determine whether Kānaka Maoli ancestors intentionally traveled between Hawaiʻi and other parts of Polynesia. In 1976, the Hōkūleʻa, with the guidance of Micronesian navigator Mau Pialug, completed its first voyage to Tahiti and back to Hawaiʻi using solely the stars, moon, winds, and ocean to navigate. This inspired young Hawaiians, including Nainoa Thompson, to master celestial navigation. Thompson—the first Hawaiian navigator in centuries—made his own successful voyage to Tahiti and back in 1980. Hōkūleʻa revived an interest in canoe building, celestial navigation, and voyaging in Hawaiʻi and the Pacific. Since then, voyaging canoes have been built and sailed from islands across the Pacific. In 1994, Nainoa Thompson and Lilikalā Kameʻeleihiwa wrote the curriculum for the first two-semester course on Hawaiian Traditional Navigation. Every year since 1994, the course has been taught at the Kamakakūokalani Center for Hawaiian Studies at the University of Hawaiʻi (UH) at Mānoa and has been exported to other campuses in the UH system, training the next generation of Hawaiian voyagers.[1341] In 2014, Hōkūleʻa and its sister canoe, Hikianalia, launched a worldwide voyage with the mission of navigating "toward a healthy and sustainable future for ourselves, our home - the Hawaiian Islands - and our Island Earth."[1342]

The Hawaiian language was brought back from the brink of extinction. Customary practices requiring access to the shoreline and mountains were recognized in state law and

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[1341] Personal communication from Lilikalā Kameʻeleihiwa (July 31, 2014).
[1342] *See* Polynesian Voyaging Society website, available at http://pvs.kcc.hawaii.edu (last visited July 25, 2013); *see also*, Hōkūleʻa website, available at http://hokulea.org (last visited March 25, 2014).

validated by Hawai‘i’s courts. Hawaiian cultural practices relating to birth were given protection by the state legislature, and traditional Hawaiian lā‘au lapā‘au (medicinal healing practices) and ho‘oponopono (family dispute resolution) were also revived by the community. Practices relating to the care of iwi kūpuna (ancestral remains) have been revitalized by the Native Hawaiian community and iwi kūpuna have been given protection by state law. Native Hawaiians from all walks of life have accepted their kuleana (responsibility) to mālama ‘āina (care of the land) and thousands of acres of lands have been reclaimed for the Native Hawaiian people. Today, Native Hawaiians continue to live and thrive as a distinct, unique, native people in Hawai‘i.

‘Ōlelo Hawai‘i – The Hawaiian Language Lives![1343]

A well-known ‘ōlelo no‘eau (Native Hawaiian proverb) states: *I ka ‘ōlelo no ke ola, i ka ‘ōlelo no ka make. In language there is life and in language there is death*.[1344] Language is an important repository of knowledge about Indigenous values, concepts, and philosophy. By reacquiring a foundation in ‘ōlelo makuahine (mother-language), Kānaka Maoli have been able to reclaim a uniquely Hawaiian identity and way of seeing the world.

In the early 19th century, Hawaiian was the primary medium for commerce, government, and education in Hawai‘i. As Hawai‘i’s government and economic life came to be dominated by Americans, English also began to dominate. In 1846, the Hawaiian Kingdom Legislature determined that all laws were to be published in both Hawaiian and English.[1345] In early cases involving discrepancies in the Hawaiian and English versions of various laws, the Hawaiian

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[1343] This discussion on the revitalization of ‘Ōlelo Hawai‘i is based on Melody Kapilialoha MacKenzie, “Ke Ala Loa–The Long Road: Native Hawaiian Sovereignty and the State of Hawai‘i,” 47 *Univ. of Tulsa Law Rev*. 621, 654-57 (2012).
[1344] Mary Kawena Pukui, *‘Ōlelo No‘eau: Hawaiian Proverbs & Poetical Sayings* (Honolulu: Bishop Museum Press, 1983), p. 129.
[1345] An Act to Organize the Executive Departments, *1846-1847 Statute of Laws of His Majesty Kamehameha III, King of the Hawaiian Islands*, Act of April 27, 1846, ch. 1, art. 1, § 5.

Kingdom Supreme Court found that the Hawaiian version should control. In 1856, the court stated, "where there is a radical and irreconcilable difference between English and Hawaiian, the latter must govern, because it is the language of the legislators of this country."[1346] A few years later, however, the Legislature passed a law providing that where a "radical and irreconcilable difference" existed between the English and Hawaiian versions of a law, "*the English version shall be held binding*."[1347]

By 1896, three years after the illegal overthrow of the Hawaiian Kingdom and in order to facilitate annexation to the U.S., English, which was already the language of government, became the sole medium of instruction in the public schools. Hawaiian children were punished for speaking even one word of Hawaiian in school.[1348] During Hawai'i's territorial period, there was a concerted effort to eliminate the Hawaiian language from public life—from schools, from government, from media—all under the guise of uplifting the Hawaiian people by assimilating them into American society.[1349]

Hawaiian was in danger of becoming an extinct language, until efforts in the 1970s and 1980s by Native Hawaiians led to its rebirth. In 1961, only one Hawaiian language professor taught four classes at the University of Hawai'i campus in Mānoa. By 1983, only 2,000 native speakers remained, many of them over age 70, and there were less than 50 children who were

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[1346] Hardy v. Ruggles, 1 Haw. 255, 259 (1856); *see also* Metcalf v. Kahai, 1 Haw. 225 (1856).
[1347] *Hawaiian Kingdom Civil Code of 1859*, § 1493.
[1348] Laws of the Republic of Hawaii, Act of June 8, 1896, ch. 57, § 30 (codified in 1897 Haw. Comp. Laws at § 123); *see*, Keith Ka'ano'i Walk, Comment, "'Officially' WHAT? The Legal Rights and Implications of 'Ōlelo Hawai'i," 30 *University of Hawai'i Law Review* (2007), pp. 246-247, for a discussion of the introduction of English language based schools in Hawai'i.
[1349] For a general discussion of this period and the suppression of the Hawaiian language, see Paul F. Nāhoa Lucas, "E Ola Mau Kākou I Ka 'Ōlelo Makuahine: Hawaiian Language Policy and the Courts," 34 *The Hawaiian Journal of History* (2000), pp. 8-10 (2000); *see also*, Walk, "'Officially' WHAT?," pp. 249-50.

native speakers; nearly all came from the lone remaining Hawaiian-speaking community on the island of Niʻihau.[1350]

In 1978, through the advocacy of Native Hawaiians, the Hawaiʻi State Constitution was amended to provide, "English and Hawaiian shall be the official languages" of the state.[1351] The Constitutional Convention committee reports indicate that the amendment was meant to "give full recognition and honor to the rich cultural inheritance that Hawaiians have given to all ethnic groups of this State." Specifically the delegates wanted to "overcome certain insults in the past where the speaking of Hawaiian was forbidden in the public school system, and of today where Hawaiian is listed as a foreign language . . . at the University of Hawaii."[1352] A second 1978 amendment requires the state to promote the study of Hawaiian culture, history and language including a Hawaiian education program in the public schools consisting of language, culture and history.[1353]

In 1983, inspired by the Māori (Aotearoa-New Zealand) immersion preschools, Hawaiian language advocates lead by university faculty and kuaʻāina (country folk) from rural communities and most especially Niʻihau and Hawaiʻi Island, established Hawaiian immersion schools called Pūnana Leo, meaning "language nest." As English had been the only legally mandated medium of instruction since 1896, Pūnana Leo schools initially operated contrary to

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[1350] Albert J. Schütz, *The Voices of Eden: A History of Hawaiian Language Studies* (Honolulu: Univ. of Hawaii Press, 1994), p. 362; Larry K. Kimura & William Wilson, "Native Hawaiian Culture: The Hawaiian Language," *Native Hawaiians Study Commission (Minority Report)* (Washington D.C.: U.S. Dept. of Interior, 1983), p. 191.
[1351] Hawaiʻi State Constitution, art. XV, § 4 (1978).
[1352] Hawaiian Affairs Comm., Stand. Comm. Rep. No. 57, *reprinted in Proceedings of the Constitutional Convention of Hawaii of 1978*, Vol. I (Honolulu: State of Hawaii, 1980) p. 638; Debates in the Comm. of the Whole on Hawaiian Affairs, Comm. Prop. No. 12, *reprinted in Proceedings of the Constitutional Convention of Hawaii of 1978*, (Honolulu: State of Hawaii, 1980) Vol. II pp. at 426, 432 (Sept. 2, 1978).
[1353] Hawaiʻi State Constitution, art. X, § 4 (1978).

state law while attempting to change the law.[1354] Thanks to the efforts of the dedicated Pūnana Leo families, the 1896 English-only law was finally amended to allow "special projects" using Hawaiian language.[1355]

When the immersion preschoolers were ready to enter elementary school in 1986, the state had no classes taught in the Hawaiian language and Pūnana Leo students were assigned to "limited English proficiency" classes for immigrants. The Pūnana Leo parents started a boycott school called Kula Kaiapuni Hawai'i (Hawaiian environment school). A long-standing lobbying battle waged by Hawaiian language advocates including Ni'ihau native 'Īlei Beniamina resulted in a two year pilot program that eventually expanded to offer K-12 public school education in the Hawaiian language.[1356] In 1999, the first students educated entirely in Hawaiian in more than a century graduated from high school.[1357] By 2004, the Kula Kaiapuni schools had grown to 19 sites statewide with approximately 1,500 students.[1358] Today, there are over 26,000 Hawaiian language learners and speakers, approximately 5.2% of the Native Hawaiian population, and increasing numbers of college students receive undergraduate and graduates degrees in Hawaiian language, with the University of Hawai'i-Hilo offering a Doctorate degree in Hawaiian and

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[1354] Schütz, *The Voices of Eden*, pp. 366-67.
[1355] *See* Walk, *"'Officially' WHAT?,"* p. 51, discussing the law and describing the development and expansion of the Kula Kaiapuni program. In 1990, cognizant of a long history of U.S. policies to eliminate native people, their language, and culture, Congress passed the Native American Language Act ("NALA") to encourage native language preservation and particularly the use of native language as a medium of instruction for native children. Native American Languages Act, 25 U.S.C. §§ 2902-2906 (1990). Unfortunately, the courts have interpreted NALA merely as a statement of policy, without providing any private enforceable rights. *See* Office of Hawaiian Affairs v. Department of Education, 951 F. Supp. 1484 (D. Haw. 1996).
[1356] *See* Lucas, *E Ola Mau Kākou I Ka 'Ōlelo Makuahine*, p. 11
[1357] *See* Walk, "'Officially' WHAT?," p. 251.
[1358] *See*, Papahana Kula Kaiapuni, History of Ka Papahana Kaiapuni Hawai'i *available at* http://www.k12.hi.us/~kaiapuni/HLIP/history.htm (last visited July 19, 2013).

Indigenous Language and Culture Revitalization.[1359] In 2013, the first act written in ʻŌlelo Hawaiʻi in more than a hundred years—officially recognizing February as ʻŌlelo Hawaiʻi month—was passed and signed into law.[1360]

Increased interest in the language has created hundreds of teaching, administrative, and research jobs so that now, growing numbers of people can actually make a living by speaking Hawaiian.[1361] In addition, language advocates have created opportunities for the use of ʻŌlelo Hawaiʻi in commerce by successfully lobbying banks to accept checks written in Hawaiian and, most recently, working with one bank to add ʻŌlelo Hawaiʻi as a language of choice on the menu of automatic teller machines.[1362] Since the 1970s, when a one-hour radio program called *Ka Leo Hawaiʻi* was conducted entirely in Hawaiian, small and steady gains have also been made in the media.[1363] In print, the *Honolulu Star-Bulletin* (now the *Honolulu Star-Advertiser*) has a weekly Hawaiian-language editorial column called Kauakūkalahale, which covers a range of topics,

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[1359] Ng-Osorio, J., and Ledward, B. C., *Aia ke ola i ka ʻolelo Hawaiʻi: Revival of the Hawaiian language (*Honolulu, HI: Kamehameha Schools–Research & Evaluation, 2011), *available at* http://www.ksbe.edu/spi/PDFS/Lang_prevalence.pdf; *see Graduate Degrees*, University of Hawaiʻi Mānoa Hawaiʻinuiākea School of Hawaiian Knowledge, available at http://manoa.hawaii.edu/hshk/index.php/site/degrees_grad/en/ (last visited July 23, 2013); *Ka Haka ʻUla O Keʻelikōlani College of Hawaiian Language Graduate and Post-Baccalaureate Certificate Programs* U. Hawaiʻi Hilo, http://hilo.hawaii.edu/catalog/khuok-post-baccalaureate.html (last visited July 23, 2013); *See Doctor of Philosophy (Ph.D.) in Hawaiian and Indigenous Language and Culture Revitalization*, University of Hawaiʻi Hilo, http://hilo.hawaii.edu/catalog/phd_hilcr.html (last visited July 23, 2013).

[1360] April 22, 2013, No. 28, 2013 Hawaiʻi Session Laws.

[1361] *See, e.g.*, Treena Shapiro, "Renaissance Waiting to Bloom," *Honolulu Advertiser*, Nov. 7, 2005, *available at* http://the.honoluluadvertiser.com/article/2005/Nov/07/ln/FP511070321.html.

[1362] *See* Lucas, *E Ola Mau Kākou I Ka ʻŌlelo Makuahine*, p. 25 n.67. *See* Scott Kaʻōhiakūikaʻaʻā Whitney, "Hoʻōla ʻŌlelo Hawaiʻi–Saving Hawaiian," *Honolulu Magazine*, July 1999, p. 36; Stephanie Silverstein, "Bank of Hawaii Adds Hawaiian Language to ATM Menu in Honolulu," *Pacific Business News*, Dec. 18, 2012, *available at* http://www.bizjournals.com/pacific/blog/2012/12/bank-of-hawaii-adds-hawaiian-language.html?page=all.

[1363] Schütz, *The Voices of Eden*, p. 363.

from historical events to political issues and even light satire.[1364] Another recent innovation has been the advent of ʻŌiwi TV, a Native Hawaiian focused television station, started by UH–Mānoa Hawaiian Studies graduate Naʻalehu Anthony, that offers programming in ʻŌlelo Hawaiʻi as well as a Hawaiian language learning series.[1365] These are just a few of the more visible examples of ʻŌlelo Hawaiʻi's increasing use in the mainstream media.

Concurrent with the emphasis on increasing Hawaiian language fluency, has been a movement to improve the overall quality of education offered to Native Hawaiian children. Thus, in addition to immersion schools, Native Hawaiian educators and parents started charter schools to address the failure of the public school system in educating Native Hawaiian students and to establish educational institutions according to Native Hawaiian values. The 17 Native Hawaiian public charter schools, each with a slightly different focus and approach, have combined to form Nā Lei Naʻauao, the Native Hawaiian Charter School Alliance. Today, more than 4,000 students, primarily Kānaka Maoli, attend Hawaiian-focused public charter schools and benefit from a curriculum that encompasses Hawaiian language, culture and traditions.[1366]

Kanu o ka ʻĀina school on Hawaiʻi Island, founded in 2000, is one example of a Hawaiian focused public charter school. Kanu o ka ʻĀina, whose name literally means "plants of the land" and figuratively refers to "natives of the land from generations back," is a bi-lingual

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[1364] Prior *Kauakūkalahale* columns are available online. *See* Kauakūkalahale, *Honolulu Star Advertiser*, *available at* http://www.staradvertiser.com/editorials/kauakukalahale/ (last visited Dec. 3, 2012).

[1365] ʻŌiwi TV is shown on channel 326, Oceanic Time Warner Cable's Hawaiʻi statewide digital cable network, and is also available online. *See* http://www.oiwi.tv (last visited Dec. 3, 2012). *Ka Leo ʻŌiwi*, ʻŌiwi TV's Hawaiian language lesson series, is also available online. *See* http://www.oiwi.tv/live/category/channels/olelo/ (last visited Dec. 3, 2012). Short Hawaiian language videos can be downloaded from the ʻAha Pūnana Leo website. *See* ʻAha Pūnana Leo, http://www.ahapunanaleo.org/ (last visited Dec. 3, 2012).

[1366] In 2013, approximately 4,033 students were enrolled in the 17 Hawaiian focused public charter schools. *See* OHA awards $1.5 million to charter schools at http://www.oha.org/news/oha-awards-15-million-charter-schools (last visited July 14, 2013).

public charter school currently serving 260 students in grades K-12. The school's name reflects the "commitment to perpetuate Hawai'i's native language, culture and traditions," and to ensure that future generations have the ability to remain natives of the land. As Hawai'i's first native designed and controlled public charter school, the school is based on over a decade of indigenous action research, integrating native values and traditions with 21st century educational technology. Some of the culturally driven foundations of the school include use of Hawaiian language at all age levels, strong familial relationships and family involvement—especially utilization of the essential wisdom of kūpuna (elders) in the education process—inclusion of Hawaiian protocol and traditional spirituality, and an educational environment that recognizes, respects and promotes Hawaiian values, ideologies and philosophies.[1367]

Restoring knowledge and use of the Hawaiian language has opened to Hawaiian scholars and readers a wealth of information. In the pages of Hawaiian language newspapers, printed from 1834 to the early 20th century, can be found Hawaiian viewpoints on religion, economics, culture, and politics. When the ongoing effort to digitize all of the Hawaiian language newspapers is completed, there will be another will be another 1.5 million pages to read in Hawaiian, making it perhaps the largest archive of Indigenous language materials in the world.[1368] These newspapers serve as a primary source of information on issues facing Hawai'i in the nineteenth and early twentieth centuries and present a Native view of historical events in Hawai'i and the world, and show us how Native Hawaiians' nearest kūpuna perceived the many changes and challenges they faced. During the late 19th century, they were a primary medium

[1367] *See*, Kanu o Ka 'Āina website at http://kanu.kalo.org (last visited July 19, 2013).
[1368] It is estimated that over 100 million pages of Hawaiian language newspapers and other materials were produced in the mid-19th century alone. *See* Hawaii Alive – Nūpepa 'Ōlelo Hawai'i at http://www.hawaiialive.org/topics.php?sub=Unification+and+Monarchy&Subtopic=126 (last visited Aug. 1, 2014).

through which Native Hawaiians expressed their resistance to overthrow of the constitutional monarchy and annexation to the United States and they helped connect rural and neighbor island communities with Honolulu.[1369]

The newspapers are also a tremendous source for rediscovering ancestral chants and stories. Hawaiians of earlier times were prolific writers and composers, recording not only their contemporary stories but recalling and retelling the ancient histories of Native Hawaiians.

Native Hawaiian Traditional and Customary Practices

Native Hawaiians have continued to practice their customs and traditions, those related to land but also those related to every aspect of life, from birth to death. In doing so, they have been supported by laws originally instituted in the Kingdom of Hawai‘i as well as more recent laws.

Protection of Access and Gathering Practices[1370]

As discussed in earlier chapters, Hawaiian customary practices related to land have been recognized under Hawai‘i law since the mid-1800s. For instance, an 1846 joint resolution set forth the rights of native tenants in lands, including the right to their kalo patches, and other cultivated areas as well as to the grasslands and lands for pasturage.[1371]

[1369] *See*, Ulukau-Hawaiian Electronic Library, Ho‘olaupa‘i Hawaiian Nūpepa collection at http://nupepa.org/gsdl2.5/cgi-bin/nupepa?l=en (last visited July 19, 2013).

[1370] For an in-depth analysis of the laws and relevant cases relating to traditional and customary gathering rights, *see* Melody Kapilialoha MacKenzie, “Hawaiian Custom in Hawai‘i State Law,” *Yearbook of New Zealand Jurisprudence*, Vol. 13 (2010), pp. 112-142.

[1371] Joint Resolutions on the Subject of Rights in Lands and the Leasing, Purchasing, and Dividing of the Same, Nov. 7, 1846, 1847 Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands. The Joint Resolutions provided, in pertinent part, that:
The rights of the Hoaaina in the land, consists of his own taro patches, and all other places which he himself cultivates for his own use; and if he wish to extend his cultivation on unoccupied parts, he has the right to do so. He has also rights in the grass land [sic], if there be any under his care, and he may take grass for his own use or for sale, and may also take fuel and timber from the mountains for himself. He may also pasture his horse and cow and other animals on the land,

In the Māhele process, Native Hawaiian tenants could claim title to their house lots, plus lands under cultivation, through section 7 of the Kuleana Act.[1372] Over the years, every section of the Kuleana Act has been repealed with the exception of section 7, codified as Haw. Rev. Stat. section 7-1, which provides:

> [T]he people on each of their lands shall not be deprived of the right to take firewood, house–timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple . . . .[1373]

This section of the Kuleana Act was included by King Kamehameha III because of his concern that "a little bit of land even with allodial title, if they [the people] were cut off from all other privileges, would be of very little value."[1374] The Privy Council Minutes record:

> [T]he proposition of the King, which he inserted as the seventh clause of the law, a rule for the claims of the common people to go to the mountains, and the seas attached to their own particular land exclusively, is agreed to[.][1375]

A second basis for customary and traditional rights is found in the "Hawaiian usage" exception set forth in Haw. Rev. Stat. section 1–1. This section adopts the English common law in Hawai'i, "except as otherwise expressly provided by the Constitution or laws of the United

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but not in such numbers as to prevent the konohiki from pasturing his. He cannot make agreements with others for the pasturage of their animals without the consent of his konohiki, and the Minister of the Interior.

[1372] August 6, 1850, *Penal Code of the Hawaiian Islands and Other Acts Passed In the General Assembly for 1850,* 202-204. The original version of this section required the tenant to seek the consent of the konohiki in exercising these rights. The consent provisions were eliminated in 1851, the legislature reciting that "many difficulties and complaints have arisen, from the bad feeling existing on account of the Konohiki's [sic] forbidding the tenants on the lands enjoying the benefits that have been by law given them." *See* July 11, 1851, 1851 Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands, pp. 98–99.

[1373] Hawai'i Revised Statutes § 7–1 (2012).

[1374] Privy Council Record 713 (July 13, 1850).

[1375] Privy Council Record 763 (Aug. 27, 1850).

States, or by the laws of the State, *or fixed by Hawaiian judicial precedent, or established by Hawaiian usage* . . . .[1376] Hawai‘i courts have held that since this section is derived from an act approved on November 25, 1892, "Hawaiian usage" is usage that predates November 25, 1892.

In 1978, the Hawai‘i Constitution was amended to add, Article XII, section 7, specifically recognizing traditional and customary Hawaiian practices:

> The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a [watershed management units] tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Although this provision was voted on and adopted by all voters in the state, this was a Native Hawaiian initiative, proposed by Native Hawaiians and moved through the Constitutional Convention process by Native Hawaiians with the support of sympathetic non-Hawaiians. The provision was intended to be broadly construed and to cover a wide-range of customary rights. Delegates to the 1978 Hawai‘i Constitutional Convention proposing this amendment declared:

> The proposed new section reaffirms *all* rights customarily and traditionally held by ancient Hawaiians. . . . [B]esides fishing rights, other rights for sustenance, cultural and religious purposes exist. Hunting, gathering, access and water rights . . . [were] an integral part of the ancient Hawaiian civilization and are retained by its descendants.[1377]

The provision was not meant to "remove or eliminate any statutorily recognized rights or any rights of native Hawaiians . . ." but was intended to "encompass all rights of native Hawaiians such as access and gathering."[1378]

In a series of cases—cases brought by kua‘āina (country folk) engaged in customary

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[1376] Hawai‘i Revised Statutes § 1–1 (2012) (emphasis added).
[1377] Hawaiian Affairs Comm., Stand. Comm. Rep. No. 57, in 1 *Proceedings of the Constitutional Convention of Hawaii of 1978*, at 637, 640 (1980) (emphasis added).
[1378] *Id*.

practices who wished to gather items necessary for subsistence, religious or cultural purposes—the Hawai‘i Supreme Court (HSC) has interpreted these three laws in relation to Native Hawaiian access and gathering practices.

Soon after the 1978 amendment was adopted, the Hawai‘i Supreme Court (HCS) heard its first gathering rights case. In the 1982 case, *Kalipi v. Hawaiian Trust Co*., the HSC acknowledged its "obligation to preserve and enforce such traditional rights [as] a part of our Hawaii State Constitution."[1379] The court held that gathering rights derive from both Hawai‘i Revised Statutes (HRS) sections 7-1 and 1-1, but that three conditions must be met to validate a right to gather the items enumerated in section 7-1: the tenant must physically reside within the ahupua‘a from which the item is being gathered; the right to gather can only be exercised upon undeveloped lands within an ahupua‘a; and, the right must be exercised for the purpose of practicing Native Hawaiian customs and traditions.[1380] The court also recognized that section 1-1 ensures that other Native Hawaiian customs and practices not specifically set out in section 7-1 may continue "so long as no actual harm is done thereby." It adopted a balancing test in which "the retention of a Hawaiian tradition should in each case be determined by balancing the respective interests and harm once it is established that the application of the custom has continued in a particular area."[1381]

Ten years later, in *Pele Defense Fund v. Paty*,[1382] the HSC held that Native Hawaiian traditional and customary rights protected by Article XII, section 7 of the Hawai‘i Constitution "may extend beyond the ahupua‘a in which a native Hawaiian resides where such rights have

[1379] Kalipi v. Hawaiian Trust Co., 656 P.2d 745, 748 (Haw. 1982).
[1380] *Id*. at 749.
[1381] *Id*. at 751.
[1382] Pele Defense Fund v. Paty, 837 P.2d 1247 (Haw. 1992).

been customarily and traditionally exercised in this manner."[1383] In this case, Native Hawaiian residents of ahupuaʻa neighboring a large tract of land, Wao Kele o Puna, on the Island of Hawaiʻi, based their claims on HRS section 1-1 and Article XII, section 7. In the trial court, they had submitted evidence to support their claims concerning the exercise of subsistence, cultural, and religious practices according to ancient custom and tradition in the Wao Kele o Puna area.[1384] The HSC explained that although the *Kalipi* case had limited gathering rights under section 7-1 to the ahupuaʻa in which a native tenants lives, section 1-1's "Hawaiian usage" clause may establish certain customary Hawaiian rights beyond those found in section 7-1.[1385] The *Pele* court also reviewed the proceedings of the 1978 Constitutional Convention, noting that the Hawaiian Affairs Committee "contemplated that some traditional rights might extend beyond the ahupuaʻa" and found persuasive the Hawaiian Affairs Committee's statement that the amendment should not be narrowly construed.[1386] The court concluded, "if it can be shown that Wao Kele ʻO [sic] Puna was a traditional gathering area utilized by the tenants of the abutting ahupuaʻa, and that the other requirements of *Kalipi* are met in this case, then PDF members . . . may have a right to enter the undeveloped areas of [Wao Kele o Puna] to exercise their traditional practices."[1387]

Once the *Pele* case returned to the trial court, the trial court ruled in favor of Pele Defense Fund members, determining that customarily and traditionally exercised subsistence and cultural activities actually practiced by Native Hawaiians in the Puna area prior to 1892 were not limited to one's ahupuaʻa of residence or by common law concepts associated with tenancy

[1383] *Id*. at 1272.
[1384] *Id*. at 1271, 1272.
[1385] *Id*. at 1271.
[1386] *Id*.
[1387] *Id*. at 1272.

or land ownership.[1388]

Three years later in *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission* ("*PASH*"),[1389] the HSC concluded that since Hawaiian custom and usage were underlying principles at the time of the Māhele, "the western concept of exclusivity [in property] is not universally applicable in Hawai'i."[1390] Thus, the original land patents issued in Hawai'i confirmed a limited property interest when compared with Western land patents and property rights.[1391]

The court traced the origins of the Hawaiian usage exception in HRS section 1–1 back to an 1847 law, which allowed the adoption of common law principles that were "not in conflict with the laws and usages of this kingdom."[1392] The *PASH* court further stressed that, "the precise nature and scope of the rights retained by § 1–1 . . . depend upon the particular circumstances of each case."[1393]

The court also distinguished the doctrine of custom in Hawai'i in several ways. First, contrary to the "time immemorial" standard used by English and American common law, traditional and customary practices in Hawai'i must be established in practice by November 25, 1892.[1394] Second, continuous exercise of the right is not required, although the custom may become more difficult to prove.[1395] Moreover, the *PASH* court stated, "[t]he right of each ahupua'a tenant to exercise traditional and customary practices remains intact, notwithstanding

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[1388] Pele Defense Fund v. Paty, No. 89–089 Haw. 3d Cir. Aug. 26, 2002 (Findings of Fact, Conclusions of Law, and Order) (on file with author).
[1389] Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission, 903 P.2d 1246 (Haw. 1995).
[1390] *Id*. at 1268.
[1391] *Id*.
[1392] *Id*. at 1258 n.21.
[1393] *Id*. at 1259, 1261.
[1394] *Id*. at 1268.
[1395] *Id*. at 1262 n.26 (citation omitted).

arguable abandonment of a particular site."[1396]

The HSC also rejected the argument that when a landowner develops land, gathering rights disappear, holding instead that the state is "obligated to protect the reasonable exercise of traditional and customary rights to the extent feasible."[1397] The HSC stated that, "once land has reached the point of 'full development' it *may* be inconsistent to allow or enforce the practice of traditional Hawaiian gathering rights on such property."[1398] The *PASH* court cautioned, however, that although "access is only *guaranteed* in connection with undeveloped lands, and [the Hawai'i Constitution] does not *require* the preservation of such lands, the State does not have the unfettered discretion to regulate the[se] rights . . . out of existence."[1399]

Once the HSC had issued its decision, the developer sought further review in the U.S. Supreme Court, which was denied. There was an outcry in the development and real estate communities, who then sought a legislative fix.[1400] In 1997, bills were introduced in the Hawai'i State Legislature to regulate customary and traditional rights. Senate Bill 8 sought to institute a process to determine and register all traditional and customary uses exercised on a parcel of land,

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[1396] *Id*. at 1271.
[1397] *Id*. at 1269–70 (holding that "common law rights ordinarily associated with tenancy do not limit customary rights existing under the laws of this state. . . . Consequently, those persons who are descendants of native Hawaiians who inhabited the islands prior to 1778, and who assert otherwise valid customary and traditional Hawaiian rights under HRS § 1–1, are entitled to protection regardless of their blood quantum" (citation and internal quotation marks omitted)).
[1398] *Id*. at 1272 (emphasis added).
[1399] *Id*. (emphasis added); see also *id*. at 1262 n.26 (stating that one of the requirements for custom is that the use or right at issue is "obligatory or compulsory (when established)").
[1400] See, e.g., Kenneth R. Kupchak, "Native-Use Rights to Affect Permits," *Pacific Business News* (April 16, 1996) calling for the creation of a Native Rights Commission to determine such rights.

while House Bill 1920 sought a cause of action that could be initiated in circuit court to "determine the nature and extent of customary and traditional practices in land."[1401]

Out of this legislative reaction, the ʻĪlioʻulaokalani Coalition, an archipelago-wide grassroots organization of kumu (master teachers) and loea (cultural experts) formed to oppose legislation defining and regulating customary practices. ʻĪlioʻulaokalani took its name, which means "red dog of the heaven," from a red-tinged, canine-shaped cloud formation that was traditionally viewed as a hōʻailona or omen of an imminent upheaval of the natural elements. The coalition held a 24-hour vigil at the State Capitol with over 250 people chanting and drumming on 28 pahu (drums) each hour in the chilly rain.[1402] This powerful statement of opposition to regulating and defining customary rights and practices was successful—both bills died.

Nevertheless, the next customary practices case to reach the Hawaiʻi Supreme Court appeared to undercut *PASH*. In *State v. Hanapi* (1998),[1403] a criminal trespass case, the court held that "it is the obligation of the person claiming the exercise of a native Hawaiian right to demonstrate that the right is protected."[1404] In order to assert a traditional and customary right as a defense in a criminal trespass case, a defendant must be a "native Hawaiian,"— a descendant

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[1401] See, D. Kapuaʻala Sproat, Comment: "The Backlash Against PASH: Legislative Attempts To Restrict Native Hawaiian Rights," 20 *Univeristy of Hawaiʻi Law Review* 321, 353 (Summer/Fall 1998) for a description of these legislative efforts and analysis of the bills in relation to the Hawaiʻi Supreme Court's decisions.

[1402] Catherine Kekoa Enomoto, "Dance of the Red Dog: Kumu hula unite and realizetheir power in the push for sovereignty and preservation of culture," *Honolulu Star Bulletin* (Dec. 29, 1997), *available at* http://archives.starbulletin.com/1997/12/29/features/index.html (last visited July 29, 2012).

[1403] State v. Hanapi, 970 P.2d 485 (Haw. 1998), recons. denied, 1999 Haw. LEXIS 34 (Haw. Feb. 8, 1999).

[1404] *Id*. at 492.

of native Hawaiians who inhabited the islands prior to 1778, regardless of blood quantum.[1405] Second, a defendant must also establish that the claimed right "is constitutionally protected as a customary or traditional native Hawaiian practice."[1406] To establish the existence of a traditional or customary Native Hawaiian practice, there must be an "adequate foundation in the record connecting the claimed right to a firmly rooted traditional or customary native Hawaiian practice."[1407] This foundation can be made through testimony of experts or kamaʻāina[1408] witnesses as proof of ancient Hawaiian tradition, custom, and usage.[1409] Third, a defendant must prove that "the exercise of the right occurred on undeveloped or less than fully developed property."[1410] The court clarified *PASH* by holding that if property is deemed "fully developed"—lands zoned and used for residential purposes with existing dwellings, improvements, and infrastructure—it is always 'inconsistent' to permit the practice of traditional and customary Native Hawaiian rights on such property.[1411] The court, however, also reserved the question of the status of Native Hawaiian rights on property that is 'less than fully developed.'[1412]

Although *Hanapi* set some stringent requirements to show tradition and custom in a

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[1405] *Id*. at 494.
[1406] *Id*. at 494. The court noted that, although some customary and traditional native Hawaiian rights are codified in the Hawaiʻi Constitution, art. XII, § 7, or in Hawaiʻi Revised Statutes §§ 1–1 and 7–1, "[t]he fact that the claimed right is not specifically enumerated in the Constitution or statutes, does not preclude further inquiry concerning other traditional and customary practices that have existed." Id. (citing PASH, 903 P.2d at 1259).
[1407] *Id*. at 495.
[1408] A kamaʻāina is a person who is "familiar from childhood with [a] locality" and its customs. In re Ashford, 440 P.2d 76, 77 n.2 (Haw. 1968). Because Hawaiʻi's land laws are uniquely based on "ancient tradition, custom, usage, and practice," Hawaiʻi courts generally allow reputation evidence from kamaʻāina in land disputes. Id. at 77.
[1409] *Id*.
[1410] *Id*. at 495 (citing PASH, 903 P.2d at 1271).
[1411] *Id*. at 494–95 n.10.
[1412] *Id*. at 495 (citing PASH, 903 P.2d at 1271).

criminal case, two years later, in *Ka Paʻakai O Ka ʻĀina v. Land Use Commission* (2000)[1413] the Hawaiʻi Supreme Court provided an analytical framework "to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private [property] interests." The court held that a state agency, in this case the Land Use Commission, "must — at a minimum — make specific findings and conclusions" on:

> (1) the identity and scope of "valued cultural, historical, or natural resources" in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources -- including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the [state agency] to reasonably protect native Hawaiian rights if they are found to exist.[1414]

These legal pronouncements on protection of traditional and customary rights have a profound effect on the ability of Native Hawaiians to continue their cultural practices. In the Puna area for instance, "Native Hawaiian residents supplement their income . . . by engaging in subsistence fishing, hunting, and gathering for the households of their ʻohana. The fishermen, hunters and gatherers utilize and exercise their traditional access to the ocean offshore of the Puna district and the adjacent mauka forest lands." Native Hawaiians utilize the Puna forest to gather maile (a shrub with small fragrant leaves), fern, ʻieʻie, ʻōhiʻa and other native plants for weaving, to make lei, and for decoration. They also gather plants such as koʻokoʻolau, māmaki, and noni for lāʻau lapaʻau (herbal medicine). Indeed, because of the degradation of forests in

[1413] Ka Paʻakai o Ka ʻAina v. Land Use Commission, 7 P.3d 1068 (Haw. 2000). The plaintiffs in this case were Native Hawaiian organizations who formed a single association in order to bring suit. Paʻakai is salt and ʻāina means land and thus, Ka Paʻakai o Ka ʻĀina literally means salt of the land.
[1414] *Id*. at 1083-84.

other parts of Hawai‘i Island, Native Hawaiians from other parts of the island and even from O‘ahu also gather some of these materials for hula and medicinal use.[1415]

These cases demonstrate how important it is that the country folk – the kua‘āina – continue in their traditional ways – continue to go to the mountains to get medicinal herbs, continue to gather flowers and ferns to make lei for hula and special celebrations, continue to seek hala (pandanus) trees for leaves to weave mats and baskets, continue to catch ‘ōpae (small shrimp) in ponds at the seashore. None of these cases could have been brought to court without the kua‘āina continuing in their ways; all of these cases included kua‘āina as parties to the lawsuits.[1416]

Hānau - Protection for Customs Related to Birth[1417]

Customary practices related to birth are culturally and spiritually significant to Native Hawaiians. The proper care of both the piko (umbilical cord) and ‘iewe (placenta) of a newborn increases the child's health and well-being throughout its life. Important rituals associated with both the piko and ‘iewe connect a child to its homeland. In earlier times, the piko would be carefully guarded and then placed in a special reserved place. Hawaiian Scholar Mary Kawena Pukui stated, "In every district on every island were places, usually stones, especially reserved

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[1415] Davianna Pōmaika‘i McGregor, "Research in Action: Ethnohistory of Puna," in *The Ethnics Studies Story: Politics and Social Movements in Hawai‘i*, Vol. 39 *Social Process in Hawai‘i* (1999), p. 201.

[1416] Although Native Hawaiian traditional and customary rights have received substantial protection under Hawai‘i law, the Hawai‘i Supreme Court has also indicated that a practitioner must conduct traditional activities "within the limits of state law" and that in weighing the interests of the public and a cultural practitioner, a totality of the circumstances test is appropriate. State v. Pratt, 277 P.3d 300 (2012) (convictions of a Native Hawaiian kahu who resided in Kalalau valley for extended periods, tended a heaiu (temple), and cleared the land of brush and rubbish, upheld because practitioner's actions went "beyond stewardship" and balance of interests tipped in favor of state regulation).

[1417] This section is based on Melody Kapilialoha MacKenzie, "Hawaiian Custom in Hawai‘i State Law,"

for the *piko*. *Wailoa* was one on the Big Island. . . another was *Mokuola*. *Ola* means 'life' and *loa* means 'long'. Mothers took the cords to stones with names like these so their babies would live long, healthy lives."[1418] Traditionally, Hawaiians cleaned the 'iewe of blood to ensure that the child's eyes will not be weak or sore. The 'iewe is later buried, usually under a tree, to keep the child connected to its home and to prevent the child's spirit from wandering homeless or hungry after death.[1419] For instance, under the practice of one modern Hawaiian family, the placenta is planted in the earth along with a tree that is watched as it grows to better understand psychological and spiritual changes in the child.[1420]

These practices continue today, but in 2005, the State of Hawai'i Department of Health began enforcing a policy that classified the 'iewe as infectious waste. Previously, hospitals and doctors had given the 'iewe to a mother upon request. A Native Hawaiian couple filed a lawsuit in federal court contesting the policy as a violation of religious freedom as well as a violation of Hawaiian traditional and customary practices. Once the mother had given birth, the federal court ordered the 'iewe to be frozen and stored while the suit was pending. Subsequently, the court dismissed the lawsuit.[1421]

Native Hawaiian families then sought relief from the state Legislature and in 2006, the Legislature passed and the governor signed a law that allows a hospital to release the 'iewe to the mother or her designee after a negative finding of infectious or hazardous disease.[1422] A draft of the bill stated that "the State has the obligation to assure that religious and cultural beliefs and

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[1418] Pukui, et al., p. 184.
[1419] *Id*.
[1420] Tara Godvin, "Hawaiians Await Bill on Access to Placenta," *Honolulu Star-Bulletin*, April 17, 2006, at http://starbulletin.com/2006/04/17/news/story01.html (last visited March 29, 2014).
[1421] N.S. and E.K.N. v. State of Hawai'i, U.S. D. Ct. for the District of Hawaii, Civ. No. 05-00405 HG, Complaint (June 24, 2005); Minute Order (Aug. 5, 2005).
[1422] Act of April 21, 2006, No. 12, 2006 Hawai'i Session Laws.

practices are not impeded" without a strong reason. The final committee reviewing the bill noted that "the rich ethnic and cultural practices of Native Hawaiian traditions are essential to sustaining the Hawaiian culture, and need protection. . . ."[1423] According to news reports, no other U.S. state has laws addressing the cultural need to take placentas from hospitals.[1424]

Mauli Ola - Traditional Native Hawaiian Healing

One of the functions of culture is to promote a people's survival and improve their quality of life. Over many centuries Native Hawaiians developed a deep understanding of wellness and healing. Methods for diagnosing and treating illness using a set of techniques, rituals, and medicines were devised and passed on, leading to specialization within a class of powerful healers called kāhuna lapaʻau.[1425]

The basic theory of wellness that informs all of Hawaiian medicine is that to be well is to exist in a "state of being ola."[1426] The inverse of ola is maʻi, or sickness, and traditionally five forms of maʻi were recognized.[1427] The first kind of maʻi is conventional sickness, or what is usually meant when a person is said to be ill[1428] – "a natural one of the body."[1429] Physical injury, broken bones and lacerations, comprise a second kind of maʻi.[1430] Maʻi common to

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[1423] Twenty-Third Legislature, State of Hawaiʻi, Senate Comm. on Health, Standing Comm. Report No. 3185 on H.B. No. 2057, H.D. 2 (March 31, 2006). The Committee also noted that many other ethnic groups in Hawaiʻi, including Filipinos, Chinese, and Japanese, also have practices that require burial of the placenta to protect the health of the child.
[1424] Tara Godvin, "Hawaiians Await Bill on Access to Placenta," *Honolulu Star-Bulletin*, April 17, 2006, at http://starbulletin.com/2006/04/17/news/story01.html (last visited March 29, 2014).
[1425] Samuel Kamakau, *Ka Poʻe Kahiko: The People of Old* (Honolulu: The Bishop Museum Press, 1964), p. 98. "Kāhuna" is the plural form of "kahuna."
[1426] Malcolm Naea Chun, *No Nā Mamo* (Honolulu: Univ. of Hawaiʻi Press, 2011), p. 127. Ola means life, helath and well-being.
[1427] *Id*.
[1428] *Id*.
[1429] Kamakau, *Ka Poʻe*, p. 96.
[1430] Chun, *No Nā Mamo*, p. 127.

particular families, which we now understand as having a genetic or biological link, is a third type.[1431] The fourth and fifth types, unorthodox by Western standards, are ma‘i brought about by one person directing ill feelings towards another and ma‘i with a supernatural cause, often arising out of conflict with the ‘aumākua (family or ancestral gods).[1432]

Out of the five kinds of ma‘i, at least three, and arguably all five, have social and/or spiritual components. The belief that health problems may arise from the dysfunctions between and among people, even if they are no longer living, is an important principle in Hawaiian wellness. The corollary is that to be ola is to be in harmony with others, including the spiritual realm and the environment. Treating illness is by necessity a holistic process, in which the whole being is evaluated to identify and address any and all deficits.

In a 2001 study, Dr. Healani Chang conducted an assessment to determine how Hawaiian healing had fared after decades of being at the periphery of medicine. She interviewed 25 subjects, Hawaiian health practitioners who had been identified by members of the community and Hawaiian health organizations. Lā‘au lapa‘au (herbal medicine) and ho‘oponopono (family dispute resolution) stood out as the healing traditions that were still being actively practiced.[1433] Because of their widespread use among the group of interviewees, many of whom maintained apprenticeships, Dr. Chang believes that these traditions have the best chance of continuity and preservation.[1434]

[1431] *Id*., p. 128.
[1432] *Id*.
[1433] Chang, p. 265. Ho‘olomilomi, a Hawaiian form of massage and physical therapy, was another form of healing that Dr. Chang believed would continue.
[1434] *Id*. Lā‘au kahea was a fourth, and less commonly used, form of treatment. It relies exlusivley on prayer and oli (chants) to promote healing. *Id*. A fifth modality called ho‘ohānau, which the Hawaiian health practitioners regarded as a speciality, deals with the birthing process. *Id*.

As in the past, most practitioners became healers after being chosen, usually by family members, to apprentice. They don't typically charge fees for their services, and in lieu of payment, gifts of food, money, or services in-kind are often exchanged.[1435] Most practitioners do not view healing as a vocation, and keeping a full-time job is often required. None of them advertise or market their services, and any referrals come by word-of-mouth.

Keeping the practice free of commercial signifiers helps support the spiritual component that is still regarded as essential for healing. Dr. Chang reported that across her interviews, the practitioners stressed that, "Hawaiian spirituality was at the core of the Hawaiian healing process."[1436] Gods and ancestors are invoked through pule, and their presence in the healing process brings mana (spiritual power), forgiveness, gratitude, harmony, and competency. Some modern-day practitioners continue to see themselves as mere conduits—the true source of healing being spiritual. Without the presence of spirit, and without belief in the power of the treatment, ola cannot be restored.

Lāʻau Lapaʻau – Healing with Medicinal Plants

Native Hawaiians maintained deeply interwoven relationships with the surrounding environment, and unlocking therapeutic qualities in the environment comprised a branch of Hawaiian medicine called lāʻau lapaʻau. Lāʻau lapaʻau is the diagnosis and treatment of illness with the aid of prepared plant, animal, and mineral remedies, which are themselves called lāʻau.

[1435] *Id*., p. 264. Due in part to hoʻolomilomi's popularity as a form of mainstream massage, monetary payment for this form of healing is more common.
[1436] *Id*., p. 266.

Healing knowledge has long been regarded as hūnā, or secret, and therefore available only to those who have undergone extensive training.[1437]

Beginning in the 19th century, the prevalence of lāʻau lapaʻau began to recede. The introduction of foreign illnesses and methods tested the limits of Hawaiian medical knowledge. Lāʻau lapaʻau's emphasis on the spiritual and the ecological drew criticism from Western trained doctors. Questions surfaced about the efficacy and safety of Hawaiian medicine, which put lāʻau lapaʻau on the path towards obsolescence while Hawaiʻi's health care system came to mirror the West's. The insights that Hawaiians had gained about the human body and the natural environment might have been lost, but for a few healers in rural parts of Hawaiʻi who passed down their knowledge to family members and students. It has only been in the last several decades that lāʻau lapaʻau has undergone a revival with a growing body of practitioners, students, and patients.

As in any discipline, lāʻau lapaʻau had masters and apprentices; not everyone could become a kāhuna lāʻau lapaʻau. Particular talents, familial relationships, signs, or symbols offered clues as to whether or not a person possessed the capacity to heal.[1438] This would have been considered before someone was chosen by a kahuna lāʻau lapaʻau to begin the long apprenticeship, sometimes lasting up to 15 years. Training was highly formal with specific rules governing every aspect of life. For instance, certain foods, were kapu (forbidden) during the training period.[1439]

Training occurred at heiau (temples) dedicated to the practice of medicine and healing. Particular districts developed into clusters for the healing arts, with kāhuna often settling near

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[1437] Healani K. Chang, "Hawaiian Health Practitioners in Contemporary Society." *Pacific Health Dialog*, v. 8.2 (2001), p. 260.
[1438] June Gutmanis, *Kahuna Lāʻau Lapaʻau: Hawaiian Herbal Medicine* (Honolulu: Island Heritage Publishing, 1976), pp. 12-14.
[1439] *Id*., p. 15.

their teachers or other renowned healers. Kukuihaele on the island of Hawai‘i was one such place.[1440] In the mo‘olelo (histories) that tell of Hawaiian medicine's origins, Lonopuha and Kamakanui‘aha‘ilono, two powerful healers subsequently recognized as aumākua of healing, lived at Kukuihaele.[1441]

Training in lā‘au lapa‘au began by mastering healing's foundation, the appropriate god and the prayers associated with that god. According to the historian Samuel Kamakau, "[t]he god was the guide to all things, the giver of bondless life; therefore, every person who was learning the arts depended upon the god."[1442] Pule or prayers came second. They "were memorized by the pupil until he could say them without hesitation while making offerings of food and praying ritually." Next, the student learned how to identify diseases and their symptoms, along with their remedies. The teacher used a table of pebbles, the papa ‘ili‘ili, arranged in the shape of a person to familiarize apprentices with the body and its normal and abnormal functions. An apprenticeship concluded with lessons in the ultimate power—the ability to cause and to reverse death. The training period closed with a ceremony, the ‘ailolo.[1443]

Before a kahuna lā‘au lapa‘au offered any treatments, a diagnosis was made. Identifying the source of the ma‘i often required a kahuna to look beyond whatever observable physical symptoms might have been present. Was there conflict within the family? Did the patient wrong someone and receive a curse? Had a kapu been broken or had an ‘aumakua (ancestral god) been offended? Hawaiians believed these and other outside forces capable of triggering physical manifestations, so the kahuna couldn't always rely on the superficial. And diagnostic information didn't necessarily come from the patients or their families. Visions and apparitions, supernatural

[1440] *Id*., p. 16.
[1441] *Id*.
[1442] Kamakau, *Ka Po‘e*, p. 107.
[1443] *Id*., pp. 107-108. An ‘ailolo ceremony required the student to eat (‘ai) a portion of the brains (lolo) of a particular animal, often a pig, fish, or dog.

voices and sounds, dreams and trances, also contained insights that made it possible for a kahuna lāʻau lapaʻau to make a diagnosis.[1444]

The recommended treatments depended on the illness, but every case typically followed a set of basic practices and rituals. Pule or prayer was ever-present.[1445] From diagnosis, to the gathering and preparation of medicines, and on through the remedies' application, the healing power of the divine manifested itself through the recitation of chants and prayers.

The rules that gave the process some structure embodied core tenets of the Hawaiian worldview, which emphasizes the causality of words and the significance of signs and symbols. Certain foods were removed from a patient's diet because their metaphorical or figurative qualities were believed to work against treatment. The seaweed called līpeʻepeʻe, for example, was avoided. Its name denotes its tendency to be found in hard-to-see places—"peʻe" means to hide, and eating līpeʻepeʻe while undergoing treatment risked causing the illness to hide.[1446] When gathering materials, a kahuna looked for qualities that signaled the plant's potency—plants that had a darker hue or that were more symmetrical. A plant growing out in the open and away from other vegetation was more desirable because it was interpreted as being handpicked by the gods.[1447]

Before a kahuna administered treatments, the patient was prepared to receive them. A weak patient was built up with food and tonics—a tea made with koʻokoʻolau was a common one. Leaves from the ʻape plant, a variety of taro, for example, might have been spread beneath a patient's sleeping mat. The sap of the ʻape plant has a high concentration of calcium oxalate and

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[1444] Gutmanis, *Kahuna Lāʻau Lapaʻau*, p. 20.
[1445] Gutmanis, p. 48.
[1446] *Id*., p. 24.
[1447] *Id*., p. 45

makes for a particularly bitter irritant. That quality was believed to drive evil spirits away.[1448] If the patient had the strength, he or she underwent a cleansing with a regimen of emetics and laxatives.[1449] A native morning glory called koali, the fernlike moa plant, or kukui (candlenut) were typically used as a base ingredient for a strong purgative. A milder form was made from the noni fruit or pōpolo berries.[1450]

At the conclusion of this opening phase, the treatments began. Plant-based remedies were essential. They are what we think of today when we imagine the practice of lāʻau lapaʻau. Herbal medicine, however, was only one among a handful of other treatments at a kahuna lāʻau lapaʻau's disposal. Heat therapy was sometimes introduced through pūholoholo, or steam bathing. A special structure would be built and then burned down with each treatment. The steam baths were often enhanced with the addition of lāʻau, like fragrant maile or honohono grass. Ritual swimming, called kapu kai, could also be part of a patient's regimen. Often, it came at the close of treatment, known as the pani, to mark the return to wellness.[1451]

Just a fraction of traditional lāʻau lapaʻau knowledge is in active use today. As with other Hawaiian cultural practices, lāʻau lapaʻau's presence waned post-Western contact. A major impact was the introduction of diseases to Hawaiʻi carried by sailors on ships passing through from the East and the West. In 1778, Captain James Cook and his crew brought venereal disease, which quickly spread across the archipelago from Kauaʻi to Hawaiʻi Island.[1452] Incidences of

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[1448] *Id*., p. 24.
[1449] *Id*., p. 47.
[1450] *Id*., p. 24.
[1451] *Id*., pp. 26-28.
[1452] Hawaiian historian Samuel M. Kamakau, in assessing Cook's impact, stated: To these islands he bequeathed such possessions as the flea, never known on them before his day, and prostitution with its results, syphilis and other venereal diseases. These serious diseases caused the dwindling of the population after the coming of Captain Cook. Samuel Mānaiakalani Kamakau, *Ruling Chiefs of Hawaii*, (Honolulu: Kamehameha Schools Press, Rev. Ed. 1992), pp. 95-96.

disease that had never before been seen in the islands appeared at regular intervals during the 19th century and triggered a series of epidemics. The great maʻi okuʻu epidemic, believed to have been cholera, wiped out a significant number of the Native population in 1804 alone. One estimate put the death toll at 175,000, although native historians wrote that half the population succumbed to the disease.[1453] Subsequent epidemics were less cataclysmic, though still devastating. 10,000 died in an 1832-1834 epidemic of unknown cause.[1454] Then between 1848 and 1849, another 10,000, more than ten percent of the population, perished when a rash of measles, whooping cough, dysentery, and influenza broke out.[1455] Smallpox wiped out 5,000 in 1853.[1456] The Native Hawaiian population had no natural immunities to these new diseases, and so the infection and mortality rates among them were especially high.

Each outbreak tested Hawaiian medical knowhow. At least at the start, the scourge of disease reinforced a commitment to lāʻau lapaʻau. The historian John Papa ʻĪʻī wrote, "The method of training promising members of the court as medical kahunas is believed to have developed because of the great death rate among chiefs and commoners in the year 1806, perhaps owing to the terrible ʻokuʻu disease, when the epidemic spread among all of the chiefs and commoners of the islands."[1457]

[1453] Robert C. Schmitt, "The *Okuu* – Hawaii's Greatest Epidemic." *Hawaii Medical Journal*, v. 29.5 (1970). Davida Malo, "Causes for the Decrease of the Population in the Islands." Translated with comments by Lorrin Andrews. *Hawaiian Spectator* 2, no. 2 (1839).
[1454] Bruce A. Wilcox and Kepā Maly, *Hawaiian Epidemics and Cultural Collapse: A Social-Ecological Perspective*, unpublished article, n.d., available at http://www.hawaii.edu/publichealth/ecohealth/si/course-indighlth/readings/WilcoxandMaly.pdf
[1455] Robert C. Schmitt and Eleanor C. Nordyke, "Death in Hawaiʻi: The Epidemics of 1848-1849." *The Hawaiian Journal of History*, v. 35 (2001), p. 1.
[1456] Wilcox, p. 9.
[1457] John Papa Ii, *Fragments of Hawaiian History* (Honolulu: Bishop Museum Press, sixth print. 1995), p. 46.

But kāhuna faced competition from Western-trained doctors and Western-style medical facilities. Initially, Native Hawaiians viewed these foreign practices with skepticism, if not terror. That began to change with the help of institutions like the Queen's Hospital, founded shortly after the smallpox epidemic by King Kamehameha IV and his wife Queen Emma, and Queen Kapiʻolani's maternity home. These trusted aliʻi did much to promote the safety, comfort, and efficacy of the then-alternative medicine, and a preference for Western medical care eventually became the only option for most.

In recent decades, lāʻau lapaʻau has seen steady growth in interest, visibility, and use. The story of lāʻau lapaʻau today is one of revitaliation, rescued from near obscelesence by people like master lāʻau lapaʻau practitioner "Papa" Henry Auwae. He died in 2000 but not before passing on what he knew to scores of students, a number of whom are now teachers themselves. In 2001, another lāʻau lapaʻau expert, Levon Ohai from Kauaʻi began developing classes and teaching on Hawaiian medicinal plants and their uses at Kamakakūokalani Center for Hawaiian Studies. Although he passed away in 2010, his student, Keoki Baclayan, who wrote his Master's Thesis about Levon Ohai's work, carries on his work. Baclayan now teaches the five courses that Ohai developed, institutionalizing such ancestral knowledge at UH-Mānoa. Other students of Levon Ohai also teach these courses at UH-Windward Community College.[1458]

Lāʻau lapaʻau also benefited from efforts to reinforce the cultural fit between Native Hawaiians and healthcare institutions. *E Ola Mau*, a 1985 report on the health needs of Native Hawaiians, stressed the importance of culture and traditional healing methods to Native Hawaiian wellness. The report helped bring about the passage of the Native Hawaiian Health Care Improvement Act in 1988, which carved out a definition for "traditional Native Hawaiian healer" and affirmed the necessity of traditional healers' contributions to healthcare. This in turn

[1458] Personal communication from Lilikalā Kameʻeleihiwa (July 31, 2014).

prompted a push to reconcile the informal status of Hawaiian healing with the state's medical licensing regime. In 1998, Hawai'i passed Act 162, which exempted traditional Hawaiian healing practices from a ban on unlicensed medical practice in general. The Legislature has since amended the exemption with the aim of entrusting oversight and regulation in the community of healers. At present, credentialing is vested in a consortium of healer groups called kūpuna (elder) councils, and among practitioners, the policy has its share of detractors.[1459]

Given the gaps in knowledge transmission and the shortage of certain plants, the practice of lā'au lapa'au today has significantly changed. However, the fundamentals appear intact. Lā'au lapa'au has not seen a base of support, interest, and demand this broad in over a century. It has endured in large part because Native Hawaiian culture has thrived. Today, the greatest threat to lā'au lapa'au's future is the loss of ecological diversity. Many of the plants those early researchers catalogued are unique to Hawai'i. Too many of them are being pushed to extinction due to loss of habitat and invasions of non-native plant and animal species. As fundamental as pule (prayer) is to the practice, without lā'au, there is no lā'au lapa'au.

Ho'oponopono – Family Dispute Resolution

Ho'oponopono (to set or make right) is the Native Hawaiian method of restoring and maintaining good relationships among family members through spiritual prayer and talking through problems until forgiveness can be achieved.[1460] Besides addressing emotional relationships among family members, Native Hawaiians use ho'oponopono to uncover the cause

[1459] Amanda Lokelani Donlin, "When All the Kāhuna Are Gone: Evaluating Hawai'i's Traditional Hawaiian Healers' Law," *Asian-Pacific Law & Policy Journal*, v. 12.1 (2010), p. 213.
[1460] Mary Kawena Pukui, E.W. Haertig & Catherine A. Lee, *Nānā I Ke Kumu—Look to the Source*, Vol. I (Honolulu: Hui Hanai, 1972), p. 60.

of an illness, the source of which could be partly physical and partly metaphysical.[1461] The use of ho‘oponopono reveals the interconnectedness of the ancestral ‘ohana (extended family), the importance of duality, and the emphasis on spirituality inherent in the Native Hawaiian worldview. Through ho‘oponopono the physical and spiritual are considered as one in an effort to restore well-being and relationships among the ‘ohana, the ‘aumākua (family gods), and the akua (greater gods) to their proper state.

This traditional practice, kept alive by a few knowledgeable people, is increasingly used today to resolve problems within the extended ‘ohana. A survey in the late 1970s revealed that over one-third of all Native Hawaiian families used some form of ho‘oponopono (to set or make right).[1462] Noted Hawaiian scholar and cultural expert, Mary Kawena Pukui, is widely recognized as the main source of contemporary knowledge of ho‘oponopono, having guided the Queen Lili‘uokalani Children’s Center’s work with ho‘oponopono in the 1970s.[1463] Since that time, ho‘oponopono has been adopted as a tool in social work and related fields. Scholars from a variety of disciplines have studied the process and compared its effectiveness to that of other

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[1461] Pukui, et al., *1 Nānā I Ke Kumu*, p. 66. Pukui explains that before medical treatment, kāhuna would often ask whether ho‘oponopono had been held. *Id*.

[1462] A limitation on this figure is that not all respondents may have utilized the same definition of ho‘oponopono. *See* Pukui, et al., *1 Nānā I Ke Kumu*, pp. 69–70 (“Center staff members have compiled an almost unbelievable list of incomplete or distorted explanations of what *ho‘oponopono* is. Most—but not all—come from clients.”).

[1463] Sally Engle Merry, “Rights, Religion, and Community: Approaches to Violence Against Women in the Context of Globalization,” 35 *Law & Soc’y Rev*. 39 (2001), p. 72 (explaining that the major impetus behind the revival of ho‘oponopono in the 1980s and 1990s was the work of a psychiatrist, a psychologist, several social workers, and Pukui, as the Culture Committee of the Queen Lili‘uokalani Children’s Center. “[T]he committee met weekly from 1963 until at least 1970 to discuss ways of building bridges between ‘Western’ ideas of mental health and Hawaiian ones. . . . [A]lthough the project was an effort to reinterpret Hawaiian beliefs in psychological terms, it was also a way to validate Hawaiian beliefs rather than to dismiss them.”).

methods within their respective fields.[1464]

Ho‘oponopono (to set or make right) is based on the premise that problems can be resolved if approached correctly. Ho‘oponopono was traditionally conducted by a haku (facilitator or guide), by a family elder, or by a helping kahuna (healer). [1465] Today, a family elder often initiates ho‘oponopono while a friend or social worker is selected as the haku. The haku has the responsibility of educating the participants as well as guiding them toward resolution.[1466] To initiate ho‘oponopono, the haku invites all members of the ‘ohana, including those uninvolved in the particular dispute, to participate to the process.

Native Hawaiian educator Manu Aluli Meyer has outlined a series of commitments key to the success of ho‘oponopono, that participants must make before the process can begin: each individual in the ‘ohana (family) must commit to being part of the problem-solving process; all words and deeds that are part of ho‘oponopono will be shared in an atmosphere of ‘oia i‘o (truthfulness); a spirit of aloha is shared by the participants, or they are committed to reinstating that spirit; everything said during the ho‘oponopono will be kept in confidence and nothing will be repeated outside the ho‘oponopono; and all participants must believe that the chosen haku is a fair and impartial channel through which the ho‘oponopono can be done. As Meyer states, the five conditions "ensure an ethos of commitment, honesty, privacy, and fairness, and . . .provide

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[1464] Manu Aluli Meyer, "To Set Right: Ho‘oponopono, a Native Hawaiian Way of Peacemaking," *The Conflict and Culture Reader* 176 (Pat K. Chew ed., 2001), pp. 180–81; *see also* Lynette Paglinawan, *Ho‘oponopono Project Number II: Development and Implementation of Ho‘oponopono Practice in a Social Work Agency* (1972), pp. 98–101 (comparing ho‘oponopono to "Western professional approaches").
[1465] Pukui, et al., p. 61.
[1466] E. Victoria Shook and Leonard Ke‘ala Kwan, "Ho‘oponopono: Straightening Family Relationships in Hawaii," Kevin Avruch, Peter W. Black & Joseph A. Scimecca eds., *Conflict Resolution: Cross-Cultural Perspectives* (Evanston, IL: Northwestern Univ. Press, 1991), p. 219.

a foundation and structure for the discussions that will follow. [1467] In addition to the five conditions, there is an implied commitment to dedicate as much time as necessary for resolution.

In its essence, hoʻoponopono can be broken down into several important phases, some of which are repeated depending on the situation.[1468] The haku (facilitator or guide) opens with a pule (prayer) and may invoke pule at any time according to need. The haku will state the kūkulu kumuhana: "a clear, objective statement of why hoʻoponopono was called—a useful starting point for discussion—and a form of spiritual solidarity in which people focus on one person or one problem and, in doing so, unify their spiritual strength for positive ends. Kukulu kumuhana can be understood as the pooling of the emotional, physical, and spiritual strength of family members for a shared purpose."[1469]

During the second phase, mahiki, the participants seek to set right each successive problem.[1470] Participants speak directly to the haku, rather than to each other, about the problem until the source of the problem surfaces. "[T]he haku deals with only one problem at a time, tracing it from start to finish until it can be fully understood."[1471] Phase three, the mihi and kala stage of "repenting-forgiving-releasing,"[1472] is the key to being able to overcome the layers of the problem identified in phase two. Mihi (repenting) requires a wrongdoer to admit fault, make restitution, and ask for forgiveness, which is only complete when the victim forgives. Mihi also

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[1467] Meyer, p. 176.
[1468] Shook & Kwan, p. 221. *See also* Karen L. Ito, "Hoʻoponopono, to Make Right: Hawaiian Conflict Resolution and Metaphor in the Construction of a Family Therapy," 9 *Culture, Medicine and Psychiatry* 201 (1985), pp. 207–11.
[1469] Pukui, et al., p. 62.
[1470] *Id*.
[1471] Meyer, p. 178.
[1472] *Id*., p. 62.

requires an apology to the ʻaumākua (family gods or spirits) or akua (gods).[1473] Finally, kala (releasing) requires all parties to symbolically "let go of the cord" that binds them, to free each other "of the deed, and the recriminations, remorse, grudges, guilts and embarrassments the deed caused."[1474] This phase is the only time during hoʻoponopono when participants to speak directly to each other.[1475] After kala, the haku announces that the problem is pau (finished). The second and third phases may be repeated as many times as necessary to bring about resolution.

During pani, the closing phase, the haku may summarize the session, give thanks, and reaffirm family unity, all of which are frequently included in the pule hoʻopau, the closing prayer.[1476] Traditionally, hoʻoponopono was followed by an ʻaha ʻaina, or ceremonial meal. Today, a meal often follows, providing a time for closure and to celebrate the healing of family relationships.

Protection of Iwi Kūpuna - Ancestral Remains[1477]

> Wherever our Hawaiian ancestors are buried, an island of sovereignty exists. Each time a decision is made to disinter Hawaiian iwi from their place of burial, their home for numberless years, our right to exist is affected. On the other hand, every decision to preserve in place a native Hawaiian burial site strengthens us as a people.[1478]

[1473] *Id*., pp. 73-74.
[1474] *Id*., p. 75.
[1475] Meyer, p. 178.
[1476] Shook & Kwan, p. 220.
[1477] This section is based on information from Chapter 13, by Edward Halealoha Ayau, in *Native Hawaiian Rights Handbook* (ed. Melody Kapilialoha MacKenzie, Honolulu: Univ. of Hawaiʻi Press, 1991); see also, Melody Kapilialoha MacKenzie, "Hawaiian Custom in Hawaiʻi State Law," *Yearbook of New Zealand Jurisprudence*, Vol. 13 (2010), pp. 146-149.
[1478] Dana Naone Hall, "Sovereign Ground," Howes, Craig and Jonathan Kay Kamakawiwoʻole Osorio (eds), *The Value of Hawaiʻi: Knowing the Past, Shaping the Future* (Honolulu: for the Biographical Research Center by UH Press, 2010), p. 196.

For Native Hawaiians, beliefs and customs associated with death are deeply ingrained in Native Hawaiian culture, calling for respect and reverence.[1479] Traditional Hawaiians believe that the bones and the spirit of a person are connected and that the spirit remains near the bones (iwi or iwi kūpuna) following death. Therefore, the area of burial is a sacred place, particularly because the life-force or mana of the deceased person is infused into the place of burial. That mana is imparted to the ahupuaʻa and eventually to the entire island. Both the iwi (bones) and the burial site were so sacred that if either were disturbed, the ability of the spirit to join the ʻaumākua or ancestors in eternity was in jeopardy. This then could result in injury and spiritual trauma to the living descendants of the deceased person.

In 1988, a large resort on the island of Maui near Honokahua Bay was under construction and Hawaiian remains were being removed to make room for the new hotel. When local news accounts began to report the exhumation of more than 1,100 skeletal remains, Hawaiians were outraged by the desecration.[1480] They mobilized and held a 24-hour vigil at the State Capitol. Ultimately, with the intervention of Governor John Waiheʻe, the developer agreed to move the hotel inland, the disturbed iwi kūpuna were reinterred, and the burial area was set apart.[1481] Out of Honokahua, a new organization was born: Hui Mālama I Nā Kūpuna O Hawaiʻi Nei (Group Caring for the Ancestors of Hawaiʻi), led by Edward Kanahele and his wife, Pualani Kanakaʻole Kanahele, dedicated to the proper treatment of ancestral remains.

Honokahua sparked a demand for legislative protection for Hawaiian burial sites and it also signaled the need to revive knowledge that had been kept secret and hidden. As Hui Mālama states:

[1479] *See*, Pukui, et al., pp. 115-118, 195-196, for a discussion of Hawaiian concepts of death and treatment of human remains.
[1480] *Handbook*, p. 245.
[1481] Kūnani Nihipali, *Stone by Stone, Bone by Bone: Rebuilding the Hawaiian Nation in the Illusion of Reality*, 34 *Arizona State Law Journal* 27 (Spring 2002); Hall, p. 195.

> In one sense Honokahua represents balance, for from this tragedy came enlightment: the realization by living Native Hawaiians that we were ultimately responsible for the care and protection of our ancestors and that cultural protocols needed to be relearned and laws effectively changed to create the empowerment necessary to carry out this important and time honored responsibility to *malama (*take care) and *kupale* (protect) our ancestors.[1482]

In 1990 the Hawai'i State Legislature passed a burials law giving Hawaiian burial sites, especially those with large numbers of remains, additional protection.[1483] The law establishes island burial councils for each of the major islands, with representatives from both the Native Hawaiian community and large landowner interests, with Hawaiian interests constituting a majority.[1484] The councils assist the State Historic Preservation Division (SHPD) with the inventory and identification of unmarked prehistoric and historic Hawaiian burial sites and make recommendations regarding appropriate treatment and protection.

A major role of the councils is to "determine the preservation or relocation of previously identified native Hawaiian burial sites."[1485] The law states that "[a]ll burial sites are significant and shall be preserved in place until compliance with this section is met . . . ." The law also sets forth criteria the councils should consider in making determinations, including giving higher priority to preservation in place to "areas with a concentration of skeletal remains, or prehistoric

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[1482] See, Hui Mālama website, *available at* http://huimalama.tripod.com/index.html#background (last visited July 25, 2013).

[1483] Act 306, 1990 Hawai'i Session Laws. (codified at Hawai'i Revised Statutes Chap. 6-E). Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA) four months after Act 306 became law. NAGPRA provides a process for lineal descendants, Indian tribes, and Native Hawaiian organizations, including the Office of Hawaiian Affairs and Hui Mālama, to determine the control, ownership, and final disposition of cultural items excavated or discovered on Federal and tribal lands, including Hawaiian homelands. 25 U.S.C. § 3001 et seq. (2013).

[1484] Hawai'i Revised Statutes § 6E-43.5.

[1485] *Id*. § 6E-43.5(f)(1).

or historic burials associated with important individuals and events, or that are within a context of historic properties, or have known lineal descendants[.]"[1486]

Before a proposed government project that may affect unmarked prehistoric or historic Hawaiian burials begins, SHPD must be notified for review and comment. Similarly, for projects located on private property, before any agency of the state or its political subdivisions approves a project involving a permit, license, land use change or other entitlement for a use that may affect burials, the agency must advise SHPD. SHPD often requires an archaeological inventory survey before construction begins.

If an archaeological inventory survey reveals evidence of burials on the property, the appropriate island burial council has jurisdiction. The council has 30 days to make a determination whether to preserve in place or relocate the remains, a process undertaken with the input and advice of lineal or cultural descendants of the affected iwi kūpuna.[1487]

If Hawaiian remains are "inadvertently" discovered during construction, SHPD decides whether to preserve in place or relocate; in making that decision, SHPD must use the same criteria as the councils.[1488] In either instance, a mitigation plan will be developed by the SHPD or with its concurrence. Preservation in place is often the mitigation plan if there is no threat to the iwi. On the other hand, if removal of the iwi is necessary due to imminent harm, burial council members are notified and allowed to oversee the removal and reinterment process. SHPD determines the place of relocation after consulting with the property owner, lineal descendants and the council. Lineal and cultural descendants are allowed to perform traditional ceremonies during relocation of the iwi.[1489]

[1486] *Id*. § 6E-43(b).
[1487] *Id*. § 6E-42.
[1488] *Id*. § 6E-43.6(c)(3).
[1489] *Id*. § 6E-43.6(f).

Under Hawai‘i law, burial sites are “unique class[es] of historic property,” and the state holds title to known Hawaiian burial sites in trust for preservation or disposition by Native Hawaiian descendants. Moreover, the state cannot transfer a burial site without consulting the appropriate island burial council. [1490]

The success of the burial law depends on the cooperation of all parties. The law can only be successful if developers and landowners are aware of and sensitive to the cultural and spiritual, as well as legal, issues involved. Unfortunately, recent controversies indicate that the process envisioned by the law may not be working. For instance, in one case where over 60 iwi kūpuna were discovered, they were classified as “inadvertently discovered” and jurisdiction over whether to preserve in place or remove to another location fell to the SHPD rather than the O‘ahu Island Burials Council.[1491] In a controversial case on Kaua‘i, SHPD staff approved a burial treatment plan that allowed building a house on top of seven burials over the objections of the Kaua‘i Island Burial Council.[1492]

In August 2010, Native Hawaiians won a court victory involving iwi kūpuna when the Hawai‘i Supreme Court, in *Kaleikini v. Thielen*,[1493] specifically recognized the constitutional basis in article XII, section 7, for the protection of iwi kūpuna.[1494] Unfortunately, after another landmark ruling from the Hawai‘i Supreme Court holding that, consistent with state law, an

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[1490] *See* Hawai‘i Revised Statutes §§ 6E-2, 6E-7(c), 6E-7(d).
[1491] For a discussion on the Hawai‘i burials law and controversy surrounding its implementation, see, Rona Bolante, “Bones of Contention,” *Honolulu Magazine*, November 2007.
[1492] *See* Joan Conrow, “Cut to the Bones,” *Honolulu Weekly*, April 7, 2010, *available at* http://honoluluweekly.com/cover/2010/04/cut-to-the-bones/ (last visited June 23, 2013).
[1493] Kaleikini v. Thielen, 237 P.3d 1067 (Haw. 2010).
[1494] *Id*. at 1092.

archaeological inventory survey for a large transit project could not be done in phases, Hawai‘i lawmakers enacted a new law that would allow such phasing for almost any project.[1495]

Hula

Robert Uluwehi Cazimero, legendary contemporary kumu hula (hula master) and musician, has said, “Hula expresses everything we see, feel, hear, smell, taste, and touch. Hula is life.”[1496] Nathaniel B. Emerson, an observer of hula in the late 19th and early 20th century, expressed much the same:

> The most telling record of a people’s intimate life is the record which it unconsciously makes in its songs. The record which the Hawaiian people have left of themselves is full and specific. When, therefore, we ask what emotions stirred the old-time Hawaiian as he approached the great themes of life and death, of ambition and jealousy, of sexual passion, of romantic love, of conjugal love, and parental love, what his attitude toward nature and the dread forces of earthquake and storm, and the mysteries of spirit and the hereafter, his attitude toward nature, we shall find our answer in the songs and prayers and recitations of the hula.[1497]

Ancient Roots of Hula

In his 1909 collection of mele (chants/songs) and exposition on hula, Emerson waxed poetic about the sacred nature of hula.[1498] Indeed, it appears that the hula pahu (hula accompanied by a drum) originated with ritual movements designated as ha‘a, danced with bent knees, and performed as part of religious ceremonies at large state heiau (temples).[1499] The

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[1495] See, Kaleikini v. Yoshioka, 283 P.3d 60 (Haw. 2012); Act of May 21, 2013, No. 85, 2013 Hawai‘i Session Laws.
[1496] Benton Sen, *Men of Hula: Robert Cazimero and Hālau Nā Kamalei* (Honolulu: Island Heritage Publishing, 2011), p. 7.
[1497] Nathaniel B. Emerson, *Unwritten Literature of Hawaii: The Sacred Songs of the Hula* (Smithsonian Institution, Bureau of American Ethnology, Bulletin 38, 1909), p. 7.
[1498] *Id*., p. 11.
[1499] *See generally*, Adrienne L. Kaeppeler, *Hula Pahu: Hawaiian Drum Dances, Vol. I., Ha‘a and Hula Pahu: Sacred Movements* (Honolulu: Bishop Museum Press 1993), and more

historical record, however, also indicates that a secular form of hula was practiced by all segments of society, by old and young, and by ali‘i and maka‘āinana alike. As revered kumu and cultural expert Mary Kawena Pukui notes, “Dancers of one locality vied with those of another and many localities gained a reputation for having excellent dancers. A good hula master was always found in the court of his chief.”[1500]

Native Hawaiian historian Davida Malo agrees with these assessments of hula as a practice enjoyed by many: “1. Hula was another activity that was popular with the people of the Hawaiian Islands and the ali‘i(s) (*chiefs*) too. It was an activity that honored the ali‘i(s) and wealthy people. 2. When an ali‘i was born, the people danced a lot with the ali‘i. Kāla‘au (*stick dances*) was a popular form of dance performed for the ali‘i. A lot of the ali‘i(‘s) wealth ended up with the po‘e hula (*people associated with hula*).”[1501] Historian Samuel M. Kamakau also recounts that Hawai‘i Island Ali‘i Nui (High Chief) Kalaniopu‘u was extremely fond of hula:

> He delighted in the *hula* dance. Everyone, young and old, even to the babies just able to walk, was summoned to dance before him. The most popular dances were the *kala‘au* [danced to the beating of sticks one against the other], the *ala‘apapa* [similar to the modern *olapa* but with a different rhythm], and the dance of the

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specifically, her conclusions in ch. 6; *see also,* Elizabeth Tatar, *Hula Pahu: Hawaiian Drum Dances, Vol. II., The Pahu: Sounds of Power* (Honolulu: Bishop Museum Press 1993), pp. 18-20, for information on the pahu as part of religious ceremony, and also recounting instances in which Native Hawaiian historians have mentioned dances in relation to religious rites on heiau. Historian Dorothy Barrère states, “There is no evidence that the hula itself was performed as a religoius rite within the precincts of any other type of heiau [other than a heiau specifically dedicated to hula].” Dorothy B. Barrère, Mary Kawena Pukui & Marion Kelly, “Part I, The Hula in Retrospect,” in *Hula: Historical Perspectives* (Bishop Museum, Pacific Anthropological Records, No. 30, 1980), p. 13. *See also* Amy Ku‘uleilaoha Stillman, *Sacred Hula: The Historical Hula ‘Āla‘apapa* (Honolulu: Bishop Museum Press, 1998) for a discussion on hula ‘āla‘apapa as distinct from hula ‘olapa.

[1500] Mary Kawena Pukui, “The Hula, Hawaii’s Own Dance,” (Thrum’s Hawaiian Alamanac and Annual, 1942, p. 107), *reprinted in* Part II, *Hula: Historical Perspectives*, p. 70.

[1501] Davida Malo, *Ka Mo‘olelo Hawai‘i: Hawaiian Traditions*, Trans. Malcolm Nāea Chun (Honolulu: First People’s Productions 2005), English Translation, p. 175.

> marionettes (*hula ki'i*). Both chiefs and commoners participated in the dances, Ka-lani-'opu'u, over eighty years old as he was at the time, taking part.[1502]

In January 1778, Captain James Cook became the earliest European known to see a hula performance, although Cook believed he was witnessing a musical performance. Cook described a hula kāla'au (stick dance) with papa hehi (treadle board), and also noted the use of an 'ulī'ulī (feathered gourd).[1503] David Samwell, a surgeon on Cook's journey, described another dance that took place off the Kona coast of Hawai'i Island in January 1799:

> two or 3 Canoes came off to us, many Girls on board. In the afternoon they all assembled upon deck and formed a dance; they strike their Hands on the pit of their Stomack smartly & jump up all together, at the same time repeating the words of a song in responses . . .[1504]

Historian Dorothy Barrère concludes that the fact that the hula "was done in unison by a group of women indicates that they had been trained as a group, thus evidencing the existence of *hula* schools of some type" in pre-European contact Hawai'i.[1505] There are numerous other accounts by early Europeans who witnessed hula performances, some of them very formal and quite large with hundreds of dancers.[1506]

Even after the arrival of American Calvinist missionaries in 1820, hula continued to thrive for a time. Again, there are many accounts of ceremonies where hula played a prominent role in welcoming visiting dignitaries and chiefs or, for instance, when Kamehameha II and his court moved from Lahaina to Honolulu.[1507] In due course, the missionaries considered the hula lascivious and believed that it led to the neglect of work and drew the people away from the

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[1502] Kamakau, *Ruling Chiefs* (extract from *Ka Nupepa Ku'oko'a*, Feb. 16, 1867), p. 105.
[1503] Barrère, *Hula: Historical Perspectives*, p. 15.
[1504] *The Voyage of the* Resolution *and* Discovery – *1776-1780*, John Beaglehole, ed. (Cambridge: Hakluyt Society), p. 1157, reprinted in *id*., p. 15.
[1505] Barrère, *Hula: Historical Perspectives*, p. 15.
[1506] *See id*., pp. 15-26.
[1507] *Id*., pp. 26-28.

study of the scriptures. Barrère notes, "For a time old and new customs marched side by side, and hula performances occurred almost daily near the residences of the chiefs, with great crowds attending. Soon, however, under the pressure of missionary sermonizing against the hula and because of the desire to embrace Christianity, the *hula* fell into disfavor among many of the high chiefs."[1508]

In 1830, Ali'i Nui (High Chiefess) Ka'ahumanu, who had converted to Christianity in 1825, issued an edict banning public performances of hula.[1509] But, away from the missions and the Christian chiefs, the hula continued to be taught and practiced. Mary Kawena Pukui notes, "here and there in remote country places the people kept up with their dancing. Small groups trained under a master, thus preserving many of the old meles [songs/chants] which have come down to the present day."[1510]

In 1859, a law was passed that required a license for the public performance of hula if money was charged for attendance.[1511] The law stated that such a public performance without a license could result in a maximum fine of $500 or six-months of hard labor, but such a license could only be granted for Honolulu.[1512] Another provision gave the Chief of Police in any town or district the authority to regulate a hula performance "in such manner as he shall think necessary for the preservation of order, decorum and the public peace or morals."[1513] These

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[1508] *Id*., p. 33.
[1509] Hawaiian historian Samuel M. Kamakau lists, along with hula, "the chant (*olioli*), the song of pleasure (*mele*), foul speech and bathing by women in public places" as forbidden. Kamakau, *Ruling Chiefs*, p. 299. There is a long list of other forbidden acts including murder, robbery, cheating and stealing, adultery, prostitution, and planting and drinking 'awa. *Id*., p. 298-99.
[1510] Pukui, *Hula: Historical Perspectives*, p. 70.
[1511] 1859 Civil Code of the Hawaiian Kingdom, §§ 96-100, p. 26. It should be noted that other kinds of performances were similarly regulated, including the theater, circus, a public show or other exhibition "not of an immoral character." *Id.*
[1512] *Id*. §§ 98-99. Licenses for other entertainments, however, were permitted for both Honolulu and Lahaina. *Id*. § 99.
[1513] *Id*. § 97.

provisions, taken together, acted as a ban on the hula. Indeed, the newspaper *The Polynesian* published an article with the heading "Strangled to Death," stating:

> The great Hula question has been laid to rest at last, or rather such is its fate in all probability. . . . The hula has very probably received its deathblow by being made the subject of legislation. A license of $10 for each performance will take the cream off the profits . . . and it seems not unlikely that the art will gradually fall into perfect desuetude. Had hulas been entirely prohibited we doubt if there could have been found constables enough in the whole country to put them down.[1514]

Native Hawaiian political scientist Dr. Noenoe Silva, believes that the impetus for the law was not based solely on Calvinist moral grounds, although that was certainly present, but more importantly on the need for laborers in Hawaiʻi's rapidly expanding capitalist economy. Silva writes, "[e]xamination of the discourse preceding and accompanying the legal ban on hula reveals clearly that the exhortations against it were related to the problem of cheap labor needed for the plantations. The puritan work ethic and disdain for traditional Kanaka Maoli practices dovetailed seamlessly with the attempts to exploit Kanaka Maoli labor."[1515]

But hula did not die out. Indeed, private hula performances continued. "Clandestine *hula* schools operated throughout the islands in the 1860s, much to the displeasure of many a Calvinist Hawaiian, as shown by letters to the newspapers of the period."[1516] Moreover, in the 1860s, hula was openly advanced by some aliʻi who supported knowledgeable kumu (teachers and masters) and dancers.[1517] For instance, Prince Lot was said to "have permitted and even encouraged the revival of some old Hawaiian customs such as the hula and kahuna practices. After the death of his brother [in 1863], the scenes and sounds around the palace were strongly

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[1514] *The Polynesian*, April 9, 1859, *cited* in Noenoe K. Silva, "He Kanawai E Ho'opau I Na Hula Kuolo Hawai'i: The Political Economy of Banning the Hula," 34 *The Hawaiian Journal of History* 29 (2000), p. 42.
[1515] Noenoe K. Silva, "He Kanawai E Hoʻopau I Na Hula Kuolo Hawaiʻi," pp. 32-33.
[1516] Barrère, *Hula: Historical Perspectives*, p. 1.
[1517] *Id*.

reminiscent of ancient times."[1518] Queen Emma, wife of Kamehameha IV, was honored with hula and chant as she journeyed throughout the islands, especially after the death of her young son and her husband.[1519] During the month-long ceremonies in 1866 mourning the passing of Princess Victoria Kamāmalu, sister of King Kamehameha V, numerous hula were performed.[1520] Even though hula may have gone underground, Barrère concludes that "there was thus a nucleus of *po'e hula* [hula people] who kept the art alive, and from them have come the traditional 19th century hula . . . ."[1521]

Hula, along with other Hawaiian arts, enjoyed a renaissance beginning in 1874 with the reign of King David Kalākaua. During Kalākaua's era, hula once again gained open acceptance among the ali'i and, consequently, "the *po'e hula* [hula people] flourished."[1522] For the coronation of King Kalākaua and Queen Kapi'olani in 1883, the King selected seven of Hawai'i's kumu hula and their hālau (hula schools) to perform. Over the course of the coronation celebration, more than 260 hula and oli (chants) were performed by over 50 dancers and chanters.[1523] Many of the works had been written and choreographed specifically for the occasion, in honor of Kalākaua and his queen, Kapi'olani. Renowned contemporary kumu hula,

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[1518] Ralph S. Kuykendall, *Vol. II, The Hawaiian Kingdom: 1854-1874, Twenty Critical Years* (Honolulu: Univ. of Hawaii Press, 1953), p. 125.
[1519] Puakea Nogelmeir, Maiki Aiu Lake, "Kumu Hula and Preserver of Hawaiian Culture," *Biography of Hawai'i: Five Lives* (Honolulu: Hawai'i Council on the Humanities, n.d.), p. 2. See, e.g., *He Lei No 'Emalani: Chants for Queen Emma Kaleleonālani*, M. Puakea Nogelmeir, ed., Mary Kawena Pukui, Theodore Kelsey, and M. Puakea Nogelmeir, translators (Honolulu: The Queen Emma Foundation and Bishop Museum, 2001).
[1520] Silva, pp. 43-44; Mark Twain reported, in a less than sympathetic tone, that for over thirty days, mourners came from throughout the islands and "burned their candle-nut torches in the royal inclosure, and sung their funeral dirges, and danced their hulahulas, and wailed their harrowing wail for the dead." *The Sacramento Daily Union*, July 30, 1866, available at http://www.twainquotes.com/18660730u.html (last visited June 21, 2014).
[1521] Barrère, *Hula: Historical Perspectives*, p. 1
[1522] *Id.*, p. 50.
[1523] Jerry Hopkins & Rebecca Kamili'ia Erickson, *The Hula*, Amy Ku'uleialoha Stillman, ed. (Honolulu: Bess Press, Rev. Edition 2011), p. 45.

Maiki Aiu Lake explains that Kalākaua made a promise to the Chiefess Ha‘aheo on her deathbed: “By our Gods of Hawai‘i, I will make your way of life, Ha‘aheo, our way.” Kumu Lake continues, “So it was at his coronation that the elders, the young, chanters of old, famous singers and experts in the hula rejoiced with King Kalākaua. Our Islands lived again.”[1524] In 1886, for the King’s Jubilee (his 50th birthday), hula was performed over a two-week period. When Kalākaua returned from a two-week trip, another hula celebration followed.[1525]

During this period, a new form of hula that had begun to evolve in the 1860s and 70s, gained recognition. This form was called the hula ku‘i, meaning to stitch together, with new steps and movements borrowed from other cultures and, sometimes, the use of musical instruments such as the ‘ukulele and guitar.[1526] As one music historian states, “The old for the most part ceased to be created but continued to be performed so that from the time of Kalākaua we have a dualism in Hawaiian music–the traditional and the new which existed side by side.”[1527] Native Hawaiian musicologist, Dr. Amy K. Stillman describes the hula ku‘i tradition as “a late 19th-century genre which combined Hawaiian and Western poetic, musical, and dance elements, to form the basis of modern Hawaiian hula music.”[1528]

Dr. Stillman also commented on the hula ku‘i as an expression for Native Hawaiian resistance after the failed 1895 Royalist counter-revolution:

[1524] Rita Ariyoshi, *Hula Is Life: The Story of Hālau Hula o Maiki*, with excerpts from the unpublished writing of Maiki Aiu Lake, Lee Puakela Mann, ed. (Honolulu: Maiki Aiu Lake Bldg. Corp., 1998), p. 73.
[1525] See description of these celebrations reprinted in Barrère, *Hula: Historical Perspectives*, pp. 50-55. The unveiling of the statue of Kamehameha I across from the Palace and in front of Ali‘iolani Hale also took place during the coronation celebration. Ralph S. Kuykendall, Vol. III, *The Hawaiian Kingdom: 1874-1893, The Kalakaua Dynesty* (Honolulu: Univ. of Hawaii Press, 1953), p. 263-64; see *id*. at 261-64 for further description of the coronation ceremonies.
[1526] *See* Sen, *Men of Hula*, p. 32-33; Hopkins & Erickson, *The Hula*, p. 58
[1527] Adrienne Keppeler, *cited in* Hopkins & Erickson, *The Hula*, p. 58.
[1528] Amy K. Stillman, “History Reinterpreted in Song: The Case of the Hawaiian Counter-Revolution,” Vol. 23 *The Hawaiian Journal of History* (1989), p. 3.

> With Kalakaua's encouragement, hula ku'i was used as a vehicle for reinforcing pride in Hawai'i and being Hawaiian and also for validating Kalakaua's right to rule. He was, after all, an elected king. By virtue of its royalist stance, hula ku'i annoyed anti-royalists who could not be expected to appreciate its openly-expressed nationalist sentiments. Therefore the hula ku'i was the appropriate and ideal musical vehicle for the royalist sympathizers in 1895.[1529]

Early in the 20th century hula experienced a resurgence once again. But, this type of hula was very different from its predecessor and its primary purpose was to entertain visitors. The dance movements were no longer secondary to the words and poetry of the chant, which in earlier times were of primary importance. Instead, the motions of the dancer were emphasized. Moreover, the music was different – most hula were danced to melodic tunes, no longer chanted, and by the early 1900s, even the words to the mele were a mixture of Hawaiian and English called hapa-haole (part Hawaiian, part foreign), sometimes with a jazzy tune.[1530] This change was not surprising given the emphasis on Americanization in the territorial period, the need to cater to tourists, and the passing of a generation that had been raised with Hawaiian as their first language.

Dorothy Barrère provides a more sympathetic view of this new hula: "At its best, it was a graceful, eye-appealing dance, and its popularity among visitors and also among the multi-ethnic groups of Hawai'i became as great as that of the traditional hula of the Hawaiians of earlier times, and remains so today."[1531] Barrère also points out that more traditional forms of hula "never died out, although they became less often seen in public. Hālau hula, much the same as those described by Emerson, carried on the traditional training in the 20th century; occasionally

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[1529] *Id.*, p. 23. Stillman notes, "The revival of hula and other indigenous Hawaiian practices during Kalakaua's reign was not received well by the Christian segment of the community, which included Hawaiians and non-Hawaiians alike, or by Kalakaua's political detractors." *Id.*
[1530] Hopkins & Erickson, *The Hula*, pp. 67-68.
[1531] Barrère, *Hula: Historical Perspectives*, p. 66.

their kumu hula put on a performance in public, usually to a discriminating audience of Hawaiians and kamaʻāina."[1532]

Instead of giving in and allowing traditional hula to die, in the 1920s and 30s, some kumu began to take traditional hula to Waikīkī – to teach and perform. Among them were some of the most prominent teachers and poʻe hula, or hula people, of the day including Helen Desha Beamer, ʻIolani Luahine, Tom Hiona, and chanter, Kuluwaimaka Palea.[1533] During the war years, traditional hula was again put aside in favor of a modern hula that accommodated the troops. As the major crossroads of the war with Japan, more than a million men came through the islands and, "[i]t was the job of the musicians and hula dancers to entertain them."[1534]

After the war, in the years leading up to statehood, modern hula or hula ʻauana (ʻauana means to wander or drift or ramble) as it is known today, blossomed with the increase in tourism and the relative ease of getting to Hawaiʻi from the U.S. Nevertheless, during the post-war period, "the hula studios thrived. In some, the ancient style was taught, with dances and chants from the Kalākaua period and earlier. Maiki [Aiu Lake] was one who offered traditional instruction, specializing in [Kalākaua's] beloved hula kuʻi. ʻIolani Luahine was another one, offering classes in her . . . home staring in 1946. . . . Tom Hiona and Henry Pā were two more who taught the ancient hula."[1535] Thus, traditional hula, whether the 19th century hula kuʻi, earlier chants and dances grounded in haʻa, or the dances performed for large secular celebrations prior to European contact, continued to be taught and danced.

In the 1960s and 70s, the reawakening of Hawaiian consciousness fueled the interest in traditional hula. Maiki Aiu Lake, who had studied with Lokalia Montgomery and Mary Kawena

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[1532] *Id*.
[1533] Hopkins & Erikson, *The Hula*, pp. 93-94.
[1534] *Id*., p. 104.
[1535] *Id*. 116.

Pukui, and who had gone through an ʻuniki (graduation) ceremony under Lokalia Montgomery to become a kumu hula, saw it as her responsibility to pass on her knowledge and graduate kumu hula to continue teaching. From this one kumu, have come many respected kumu hula who started their own hālau hula in the 1970s and 80s, and from these kumu have come another generation of graduates who are now establishing their own hālau.[1536] Maiki Aiu Lake and those who went through ʻuniki ceremonies with her[1537] represent only one hula tradition; a tradition rooted in hula from Kauaʻi, which includes those hula pahu originating in haʻa, as well as the hula from the monarchy period honoring both the aliʻi and famous places of Hawaiʻi. At the other end of the archipelago, the Pele ʻaihaʻa hula tradition continues through the Edith Kanakaʻole family line and Hālau o Kekuhi.[1538] Similarly, the Beamer tradition remains strong in the Waimea-Kōhala area of Hawaiʻi Island. There are numerous other hula traditions – rooted in Maui, Molokaʻi, Lānaʻi, Niʻihau, and Oʻahu – that continue to live and be passed on to succeeding generations. Indeed, in many instances, the traditions overlap and intertwine, creating a rich and varied hula repertoire and cultural expression of the Hawaiian people.

In 1964, the Merrie Monarch festival began in Hilo to honor King David Kalākaua, but also as a way to attract visitors to the sleepy Hawaiʻi Island town. In 1971, Aunty Dottie

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[1536] Nogelmeier, Maiki Aiu Lake, p. 3.

[1537] Sally Wood Naluai and Kekauʻilani Correa Kalama also graduated from Lokalia Montgomery, and went on to become influential poʻe hula. *See* Ariyoshi, *Hula is Life*, pp. 81-85, discussing Maiki Aiu Lake's ʻūniki experiences.

[1538] For information on Hālau o Kekuhi see, https://www.edithkanakaolefoundation.org/halau-o-kekuhi/ (last visited June 21, 2014). Pele is the goddess of fire and volcanoes. Pele, who came from Kahiki to seek a home in Hawaiʻi, traveled down the island chain from Kaʻula to the island of Hawaiʻi, testing each volcano until she and her family finally settled at Kīlauea on Hawaiʻi Island. Hiʻiakaikapoliopele, Pele's youngest and favorite sister, undertook a long and arduous journey to Kauaʻi to bring Pele's lover, Lohiʻau, to her side at Kīlauea. The chants and hula describing Hiʻiaka's journey tell an epic story as intricate and moving as any of the great sagas of the world. *See generally*, *Hoʻoulumāhiehie: The Epic Tale of Hiʻiakaikapoliopele*, as told by Hoʻoulumāhiehie, trans. by M. Puakea Nogelmeier. (Honolulu: Awaiaulu, 2006); Nathaniel B. Emerson, *Pele and Hiiaka: A Myth from Hawaii* (Rutland, VT., and Tokyo, Japan: Charles E. Tuttle Co., Inc., 1978).

Thompson took over the festival and because she wanted the festival to have a Hawaiian cultural focus, she asked for the advice of two respected Hawaiian cultural experts: kumu hula George Nāope, and Hawaiian composer and musician Albert Nahale-a. Luana Kawelu, daughter of Thompson and current festival president explains her mother's thinking, "Uncle George would be in charge of the pageantry and the coronation, and Albert Nahalea would be in charge of the music. They wanted to replicate what King David Kalākaua had done, bringing the best hula dancers from around the islands to come and perform and share quality and the authenticity of hula at the time."[1539] Nine wāhine (women) hālau entered that first year, and Aloha Dalire, now a noted kumu hula, won the first solo Miss Hula title. In 1976 when the hula competition became open to kāne (men), the festival began to take off and attract many enthusiastic fans.[1540] Soon, the hula competition outdrew any other event of the festival. In its 50 years of existence, the Merrie Monarch hula festival has garnered national and international attention, drawing thousands of people to participate, attend, or watch on their TV and computer screens, dances that were created hundreds of years ago as well as those created in contemporary times. In 2014, some 23 hālau participated in the festival, with 6 hālau competing solely in the kāne category, and 5 hālau competing in both the kāne and wāhine category.[1541]

Although the Merrie Monarch hula festival is the most well-known hula competition, other competitions and celebrations of hula are widespread. These include the Malia Craver Hula Kahiko Competition for middle and high schools, the Kamehameha Day Chant and Hula

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[1539] Luana Kawelu, current festival president and daughter of Dottie Thompson, Merrie Monarch Festival–History, available at http://www.merriemonarch.com/history (last visited June 21, 2014).
[1540] *Id*.
[1541] Merrie Monarch Festival–Contestants and Judges, available at http://www.merriemonarch.com/photo-of-the-2014-halau-and-judges (last visited June 21, 2014).

competition every June, the Prince Lot Hula Festival held in July, and the Queen Lili‘uokalani Keiki (children’s) Hula Competition every August.

Hula in its oldest form as represented by hula pahu, hula from the monarchy period, and hula in its relatively new form of ‘auana with the influence of instruments and music from other cultures, is alive and well in Hawai‘i today. Kalākaua’s promise to Chiefess Ha‘aheo is being fulfilled by all of the po‘e hula who keep alive the traditions and also create new hula to celebrate the current events, honored people, and storied places of modern Hawai‘i. Leina‘ala Heine Kalama, kumu hula of Nā Pualei O Likolehua, has eloquently expressed it this way:

> When you write a new mele you are writing from the viewpoint of your lifetime; when you lived, when you trained, when you taught. Your boundary is your death and that life span will record and preserve and express your existence. That is exactly what our masters and ancestors did before us and hopefully that’s what will happen with the generations after us.[1542]

An ‘ōlelo no‘eau (wise saying) tells us: “Ua lehulehu a manomano ka ‘ikena a ka Hawai‘i” meaning “Great and numerous is the knowledge of the Hawaiians.”[1543] The “great and numerous knowledge” of the Hawaiians as expressed in hula and chant continues to grow, from generation to generation. Although the basic core of hula has remained unchanged for centuries, each generation contributes its own experience and wisdom and thus increases the well of knowledge and understanding to pass on to the next generation.

[1542] Wendell Silva & Alan Suemori, eds., *Nānā I Na Loea Hula: Look to the Hula Resources*, (Honolulu: Kalihi-Palama Culture & the Arts Society, 1984), p. 48.
[1543] Mary Kawena Pukui, *‘Ōlelo No‘eau: Hawaiian Proverbs & Poetical Sayings* (Honolulu: Bishop Museum Press, 1983), p. 309.

Native Hawaiian Ancestral Lands

A Hawaiian proverb, *Hānau ka ʻāina, hānau ke aliʻi, hānau ke kanaka; Born was the land, born were the chiefs, born were the common people,*[1544] describes the inseparable ancestral connection between Native Hawaiians and their lands. This foundational principle of Hawaiian culture has been reinforced and expressed throughout time. In 1843, Kamehameha III marked the return of sovereignty to the Hawaiian Kingdom after it had been taken by the British for a 5-month period, by declaring, "Ua mau ke ea o ka ʻāina ka pono - The life and sovereignty of the land is preserved in right action and harmony." Native Hawaiian historian and author Dr. George Kanahele, recalled the relationship between the Native Hawaiian people and ʻāina in his 1986 book, *Kū Kanaka: Stand Tall*. He stated: "We are but stewards of the ʻāina and the kai (ocean), trusted to take care of these islands on behalf of the gods, our ancestors, ourselves, and our children . . . The land will surely be lost forever if we who have been entrusted with its care should betray our trusteeship."[1545] More recently, Dr. Carlos Andrade, in writing specifically of Hāʻena on the island of Kauaʻi and more generally on the relationship between the Hawaiian people and ʻāina, observed, "[t]he ʻāina contains the soul and spirit of an oceanic people whose experience permeates the stories found on the land and in the sea, soars on the winds, falls with the rains, and glimmers down from the stars."[1546] Thus, it is the responsibility of Native Hawaiians to care for ʻāina and the ʻāina will care for the people.

[1544] Mary Kawena Pukui, *ʻŌlelo Noʻeau: Hawaiian Proverbs & Poetical Sayings* (Honolulu: Bernice Pauahi Bishop Museum Press, 1983), p. 56.
[1545] George H.S. Kanahele, *Kū Kanaka: Stand Tall* (Honolulu: Univ. of Hawaii Press, 1986), p. 209.
[1546] Carlos Andrade, "Hāʻena," Howes, Craig and Jonathan Kay Kamakawiwoʻole Osorio (eds), *The Value of Hawaiʻi: Knowing the Past, Shaping the Future* (Honolulu: for the Biographical Research Center by UH Press, 2010), p. 227.

Kanaloa Kahoʻolawe: Rebirth of the Sacred

The island of Kahoʻolawe was discussed in Chapter Ten as an example of the recognition of Native Hawaiian self-governance by the federal and state governments. At this point, it is important to speak of the island of Kahoʻolawe in the role that it played in the rebirth of the Native Hawaiian religious beliefs and practices of aloha ʻāina (love of the land), the revival of the Makahiki Harvest Season ceremonies for the God Lono, and the overall revival of the Native Hawaiian religion.

In the process of reclaiming Kahoʻolawe, an entirely new image of Kahoʻolawe as a sacred island emerged.[1547] Members of the Protect Kahʻolawe ʻOhana (ʻOhana) learned from Native Hawaiian kūpuna (elders) that the island was traditionally known as a kinolau (physical form) of the Native Hawaiian god of the ocean, Kanaloa.[1548] Thus, one name for the island is Kanaloa, while another is Kohemālamalama o Kanaloa, the "shining birth canal" or the "southern beacon" of Kanaloa. This name denotes Kahoʻolawe's role as a place where traditional navigation was taught and how it served as a vital link in the navigational path between Hawaiʻi and Tahiti.[1549] Ancestral memories of the kūpuna focused upon aloha ʻāina as the Hawaiian value at the core of traditional spiritual belief and custom.

From the outset, George Helm and Noa Emmett Aluli, founders of the Protect Kahoʻolawe ʻOhana, followed the guidance of the kūpuna who counseled them by acknowledging and including the ancestral spirits of Kahoʻolawe in the effort to stop the bombing and heal the island. Kahuna Sam Lono and Aunty Emma DeFries of Oʻahu conducted a ceremony in 1976 at Hakioawa to ask permission of the ancestral spirits of the land to open the

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[1547] McGregor, *Nā Kuaʻāina*, p. 253.
[1548] *Id*.
[1549] *Id*.

religious sites on the island to receive hoʻokupu or offerings. In 1979, John Anuenue Kaʻimikaua of Oʻahu and Molokaʻi and his hālau hula (hula school) conducted a ceremony to give life to the land by burying offerings of food in the ground and dancing hula. Papa Paul Elia of Molokaʻi offered a prayer to the ancestral gods for strength, organization and protection of the land. At that time Aunty Emma DeFries did a hoʻouwēuwē or lamentation chant over the neglect of the island that caused its devastation. Other kūpuna who committed their mana (spiritual power) to the island included Aunty ʻIolani Luahine, Uncle Sam Hart, Aunty Luka Naluai, Uncle Henry Lindsey and Aunty Gardie Perkins.[1550] In 1981, the ʻOhana asked Aunty Edith Kanakaʻole and her daughter Nālani Kanakaole of Hālau o Kekuhi to train them in how to conduct a Makahiki ceremony. The ʻOhana wanted to place the healing and re-greening of the island under the care of Lono, Hawaiian god of agriculture and productivity.

Hālau o Kekuhi and the Edith Kanakaʻole Foundation have been the most influential force in the revitalization of sacred ceremonies and rituals on Kanaloa and in contemporary Hawaiʻi as a whole. Aunty Edith Kanakaʻole was trained in the hula by her mother, Mary Ahiʻena Kanaele Fujii, who was born in the 1880s and raised in the hula kapu (sacred hula) in the Puna district of Hawaiʻi.[1551] The Edith Kankaʻole Foundation was founded in summer of 1990 to heighten indigenous Hawaiian cultural awareness and participation through educational programs that maintain and perpetuate the teachings, beliefs, practices, philosophies and traditions of Edith and Luka Kanakaʻole and their ancestors, including Aunty Edith's mother,

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[1550] Edith Kanakaʻole Foundation, Edward Kanahele and Pualani Kanahele, "E Mau Ana O Kanaloa, Ho'i Hou, The Perseverance of Kanaloa, Return! The Cultural Practices and Values Established at Kanaloa/Kaho'olawe Past and Present," (Wailuku: Kaho'olawe Island Conveyance Commission Consultant Report No. 12, 1993) pp. 45-46.

[1551] Shuzo Uemoto *Nana I Na Loea Hula, Look to the Hula Resources, With Narratives by Hula Resources* (Honolulu: Kalihi-Palama Culture and Arts Society, Inc,, 1997) p. 54.

Ahi‘ena, and her grand uncle Lonokapu and Uncle Luka’s father and mother, Ioana Kanaka‘ole and Haleaka Kaleopa‘a.[1552]

In January 1982, the Protect Kaho‘olawe ‘Ohana conducted the first public Makahiki ceremonies in honor of the God Lono, since High Chief Kekuaokalani had conducted the Makahiki ceremonies before going into battle in defense of the Hawaiian religion in 1819, in the year of the ‘Ai Noa (freedom from sacred eating restrictions) when the ‘Ai Kapu (sacred eating restrictions) was abolished. The purpose of the ceremonies were to attract the Akua (God) Lono to Kanaloa in the form of rain clouds to soften the earth and be ready to receive young plants to revegetate the island. Every year since 1982, the ‘Ohana has opened the Makahiki season in November after the appearance of the Makali‘i or Pleiades Constellation on the horizon at sunset and closed the Makahiki season in January or February. Aunty Edith Kanaka‘ole and Nālani Kanaka‘ole prescribed the chants and the ten ho‘okupu or offerings. They advised the ‘Ohana in the crafting of an akua loa or the image of Lono. The Edith Kanaka‘ole Foundation described the central chant as follows:

> This Lono chant concentrates on the kinolau or bodyforms of Lono which are the manifestations that encourage growth. The prayer is a formula used in many traditional chants that is; recognizing and addressing the great Gods of the elements, followed by an account of their creations, then an enumeration of offerings, a statement of the body forms of the deities and finally the reason for the prayer. The need in this case is to ensure vegetation and growth on the island. The very last line releases the formal communication with the God. This is the FIRST formal prayer chant composed for a formal modern day Makahiki ceremony.[1553]

In May 1986, Pualani Kanaka‘ole Kanahele and Edward Kanahele were asked by the Protect Kaho‘olawe ‘Ohana to design a ceremony for the Akua Kanaloa. The biennial RIMPAC naval exercises were scheduled to culminate with the joint ship-to-shore shelling of the island by

[1552] McGregor, *Nā Kua‘āina*, p. 272
[1553] Edith Kanaka‘ole Foundation, Kanahele and Kanahele, “E Mau Ana O Kanaloa, Ho'i Hou, The Perseverance of Kanaloa, Return!,” pp. 52-53

U.S. and Canadian naval forces after 45 days of joint naval maneuvers from California to Hawai‘i. After years of protest, the ‘Ohana resolved to engage Kanaloa in the effort to protect his kinolau (physical form) from the bombing and the effort to the restore the island to the people of Hawai‘i. The ceremony was designed to be small and private. The central chant asked Kanaloa to give strength and skill to those united in the goal of protecting and giving life to the island. The ho‘okupu (offering) of he‘e or octopus, a kinolau of Kanaloa, could not be eaten by those involved in the ceremony. This ceremony provided focus and inspiration to those involved in the ongoing work to stop the bombing and restore the life of the island.[1554]

In 1982, Kumu Hula Hokulani Holt Padilla of Maui and a member of the Protect Kaho‘olawe ‘Ohana, decided to build a pā hula (hula platform) at Hakioawa so that there would be a formal arena for the hula practices on Kanaloa. Over the course of 5 years, many people who came to Kanaloa on an access with the Protect Kaho‘olawe ‘Ohana contributed their aloha and hard work to build up the platform. During the opening of the Makahiki in November 1987, the pā hula was dedicated to Laka and named Ka‘ie‘ie in a ceremony led by Kumu Hula Hokulani Holt Padilla with the participation of Kumu Hula Pualani Kanaka‘ole Kanahele, and Kumu Hula Keali‘i Reichel.[1555]

A special cultural ceremony for the healing of the land, ocean and people of Kaho‘olawe was held in August 1992 at Hakiowa. It was organized for the Kaho‘olawe Island Conveyance Commission (KICC) by the Edith Kanaka‘ole Foundation in coordination with the Protect Kaho‘olawe ‘Ohana and the Office of Hawaiian Affairs.[1556] The central feature of the ceremony

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[1554] *Id*., pp. 64 - 73
[1555] *Id*., pp. 74 - 82
[1556] The Kaho‘olawe Island Conveyance Commission was appointed by the U.S. Congress in 1990 to study the island and all of its potential uses and recommend the longterm uses for the island. Its final report in 1993, *Kahoolawe Island: Restoring a Cultural Treasure: Final Report of the Kahoolawe Island Convyance Commission to the Congress of the United States*,

was the construction of a mua or memorial platform to honor the kupuna (elders) who had contributed their lives for the healing of the island. Government leaders from the federal, state, county, and Office of Hawaiian Affairs were invited to sit on the mua with kūpuna from each island and the leaders of the Protect Kahoʻolawe ʻOhana. All were served the ceremonial drink, ʻawa, by Parley Kanakaʻole, the kahu or leader of the ceremony, and in receiving the drink each were asked to make a decision and commitment to do whatever is in their power to heal the island of Kahoʻolawe. The Edith Kanakaʻole Foundation composed special chants to open the ceremony at dawn; to acknowledge the genealogy of the decision-makers and kūpuna upon their entry onto the mua; to provide a genealogical history of the island; and to honor George Helm, Kimo Mitchell and Harry Kūnihi Mitchell. The opening chant at dawn was called E Ala E and it has become a popular chant throughout the islands, as a protocol to start the day in a Hawaiian frame of mind. This cultural ceremony affirmed support for the recommendations of the KICC to the U.S. Congress.[1557]

The revival of sacred ceremonies on Kanaloa is what distinguished the Protect Kahoʻolawe ʻOhana as a pro-Hawaiian and cultural organization. As the ʻOhana and its practical restoration efforts evolve, cultural protocols and religious prayers continue to be an essential element that shapes and defines their efforts. Ultimately, perseverance and this holistic approach proved successful in stopping the bombing and beginning the healing the island. Today, Native Hawaiians continue to participate directly in the preservation and protection of Kahoʻolawe's cultural, archaeological, historical, and environmental resources.[1558] Native Hawaiians, through

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recognized the island as a national cultural treasure and recommended that title to the island be turned over to the State of Hawaiʻi and that Congress appropriate $400 million to conduct a ten year omnibus ordnance clean up of the island.

[1557] *Id*., pp. 83 - 141.

[1558] *See* Protect Kahoʻolawe ʻOhana website *at* http://www.kahoolawe.org/ (last visited May 28, 2012); Sol Kahoʻohalahala, *Reflections of the Past Thirty Years,* KO HEMA LAMALAMA, Winter

dedicated action over many decades, have embraced the responsibility to protect and restore Kanaloa Kahoʻolawe, and in doing so have reconnected with an ancestral past steeped in indigenous knowledge. The island will continue to evolve as a center for cultural learning and practices.

Wao Kele o Puna[1559]

Wao Kele o Puna rainforest on the Island of Hawaiʻi was successfully returned to Native Hawaiian stewardship after a more than 20-year legal and political battle resulting from a private company's attempts to drill for geothermal energy on the land.

In Wao Kele o Puna, a nearly 26,000 acre native rainforest on the flanks of Kīlauea Volcano, three important factors converged: the spiritual and religious importance of the area as the home of Pele, the Hawaiian deity of fire and the volcanoes; the use of Wao Kele o Puna for traditional subsistence, cultural, and religious purposes; and the classification of these lands as Government lands of the Hawaiian Kingdom.

The legal controversy over Wao Kele o Puna began in the early 1980s when a large landowner, Campbell Estate, sought to develop geothermal energy on Kahaualeʻa, a **nearly 25,800 acre** parcel of conservation land adjacent to Volcanoes National Park and upland from Wao Kele o Puna.[1560] When lava flows overran Kahaualeʻa, beginning on January 3, 1983 to present, the plan to develop geothermal became untenable. Campbell Estate and the State of Hawaiʻi proposed an exchange of Kahaualeʻa lands for Wao Kele o Puna and part of the Puna

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2006, *available at* http://kahoolawe.hawaii.gov/newsletters/newsletter_win05.pdf (last visited May 28, 2012).

[1559] This discussion of Wao Kele o Puna is based upon Melody Kapilialoha MacKenzie, Susan K. Serrano & Koalani Kaulukukui, "Environmental Justice for Indigenous Hawaiians: Reclaiming Land and Resources," *Natural Resources & Environment*, Vol. 21, No. 3, Winter 2007.

[1560] *See Dedman v. Board of Land and Natural Resource*, 740 P.2d 28 (Haw. 1987).

Forest Reserve so that geothermal energy could be developed in the rainforest.[1561] Under state law, Wao Kele o Puna was classified as a Natural Area Reserve, a pristine area supporting unique natural resources to be preserved in perpetuity so this was an astonishing proposition.[1562]

Moreover, Native Hawaiians, and in particular those who honor or are genealogically connected to Pele and her ʻohana or extended family, believe that geothermal drilling desecrates Pele's body and takes her energy and lifeblood.[1563] In hearings on geothermal development in Wao Kele o Puna, individual Pele practitioners challenged the proposal on the First Amendment's free exercise of religion provision. On appeal to the Hawaiʻi Supreme Court, the court acknowledged the sincerity of the religious claims, but because there was nothing to show that religious ceremonies were held in the specific area of development, the court held that religious exercise was not burdened.[1564]

The Pele Defense Fund (PDF), including Pele practitioners and Native Hawaiians living in ahupuaʻa adjacent to Wao Kele o Puna, then brought suit in federal court challenging the land exchange. Ultimately, the federal court and a parallel state court challenge failed.[1565] However, as discussed above, testimony provided by the kuaʻāina (back country folk) of Puna about their customary use of the forest convinced the circuit court judge and the judges of the Hawai'i Supreme Court that Hawaiian cultural and subsistence belief, custom, and practice continued to be actively practiced in the Puna Forest Reserve. This resulted in a ruling of the Hawaiʻi State Supreme Court that more broadly defined the recognition of Native Hawaiian rights to access

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[1561] *Id*. at 30-31.
[1562] Hawaiʻi Revised Statutes Chap. 195.
[1563] Dedman, 740 P.2d at 32.
[1564] *Id*. at 33.
[1565] Ulaleo v. Paty, 902 F. 2d 1395 (9th Cir.1990); Pele Defense Fund v. Paty, 837 P.2d 1247 (Haw. 1992). Nevertheless, the case was an important victory for Native Hawaiians who use Wao Kele o Puna for hunting, gathering, and religious and cultural purposes.

undeveloped private and public lands for cultural, religious, and subsistence purposes. The court case set a precedent for all Native Hawaiian rights of access by ruling that, "Native Hawaiian rights protected by Article XII. Section 7, may extend beyond the ahupua'a in which a Native Hawaiian resides where such rights have been customarily and traditionally exercised in this manner."[1566] Prior to this ruling, Native Hawaiian rights of access had been limited to the ahupuaʻa in which they lived.

Civil disobedience and protest were also part of the movement to stop geothermal development in Wao Kele o Puna, with 141 out of 1,500 protestors arrested in March 1990.[1567] Ironically, even with significant federal and state support for drilling and exploration for the resource in the Wao Kele O Puna the resource was elusive. Faced with the prospect of an investment of hundreds of thousands of dollars before a viable geothermal resource could be found, the requirement to allow access into the undeveloped areas of the project area for Native Hawaiian cultural practices, and continued protests from the neighboring community, the developer decided to abandon the project. With the passing of its last heir, Campbell Estate underwent a process of dissolution, which led to a decision in 2001 to sell Wao Kele o Puna.

Pele Defense Fund approached the Trust for Public Lands (TPL), a national nonprofit land conservation organization, and TPL worked with the state Department of Land and Natural Resources (DLNR) over several years, to get substantial funding from the federal Forest Legacy

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[1566] Pele Defense Fund, at 1272.

[1567] In 1991, the Hawaiʻi Supreme Court reviewed a group of trespass convictions arising out of Native Hawaiian protests over geothermal development in Wao Kele O Puna. In a series of memorandum opinions, which have no precedential effect, the court gave little credence to arguments that the geothermal developer violated the defendants' free exercise of religion by prohibiting access to the development site. The defendants wished to conduct a religious ceremony at the site to heal damage to Pele caused by geothermal drilling. See e.g., *State of Hawaii v. McGregor*, 817 P.2d 1067 (Haw. 1991) (table dec.). Other efforts to stop geothermal development included challenges to the permitting process. See e.g., *Pele Defense Fund v. Puna Geothermal Venture*, 881 P.2d 1210 (1994).

Program to purchase Wao Kele o Puna.[1568] The Office of Hawaiian Affairs (OHA) stepped forward with the final funding.[1569] The three groups reached a landmark agreement under which OHA received title to Wao Kele o Puna. TPL negotiated the sale and purchase of the land from Campbell Estate, and then conveyed Wao Kele o Puna to OHA in July 2006.[1570]

Hailed as the first return of ceded lands to Native Hawaiian ownership since the 1893 overthrow of the Hawaiian Kingdom, Wao Kele o Puna is part of a land base for a future Native Hawaiian nation.[1571] Equally important is the role that Native Hawaiians have played in reclaiming Wao Kele o Puna as a place where indigenous customs, traditions, and religion remain intact. Palikapu Dedman, of the Pele Defense Fund, acknowledged at a dedication ceremony for Wao Kele o Puna:

> It's been a real emotional journey, and I feel real proud about how far we've come as Native Hawaiians. But we gotta grow on this; we have to stand up for ourselves and keep doing what we're doing, and if government's gonna have to catch up, they're gonna have to catch up. But we still have to be there to remind them of their responsibility to indigenous people.[1572]

The theme of the dedication ceremony was "Māpu keʻala o Puna, the fragrance of Puna permeates," referring to the fragrance of maile, lehua, and hala that are abundant in the uplands of Puna. It was said that when the wind blew from the land, even fishermen at sea could smell the scent of these three plants, all closely associated with Pele and held dear by Native Hawaiians. But the phrase also has importance in another sense. For it reminds Native Hawaiians

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[1568]Curt Sanborn, "Protecting Pele's Forest—Land & People," available at http://www.tpl.org/publications/land-and-people-magazine/archive/landpeople-fall-2006/protecting-peles-forest.html (last visited Sept. 25, 2011).
[1569] See Hawaiʻi State Constitution, art. XII, §§ 5-6; Hawaiʻi Revised Statutes Chap. 10.
[1570] Wao Kele o Puna Forest Acquired by the Office of Hawaiian Affairs in Partnership with the Pele Defense Fund, the Trust for Public Land, and the Department of Land and Natural Resources, OHA Press Release, July 19, 2006.
[1571] *See*, Curt Sanborn, "Protecting Pele's Forest—Land & People."
[1572] Ka Wai Ola o OHA, October 2007, at 13.

of the spirit—the fragrance—of Puna that lives in all those who worked so hard for so many years to preserve Wao Kele o Puna. It is also a kāhea (a call) to all Kānaka Maolo to have that same strength and dedication continue to permeate their lives in preserving their ancestral lands.

Additional Lands Acquired by the Office of Hawaiian Affairs

In addition to Wao Kele o Puna, over the last decade, the Office of Hawaiian Affairs has received or purchased lands, which are now held in trust for a sovereign Native Hawaiian nation. Waimea Valley is a lush and culturally-rich 1,875-acre ahupuaʻa (watershed land management unit) on the north shore of Oʻahu. It is believed that Waimea was originally awarded in A.D. 1090 by the aliʻi nui (high chief) of Oʻahu to the high priest Lono-a-Wohi. From that time until Western contact and the abolition of the kapu (sacred restrictions) in 1819, the land was managed by kāhuna nui (high priests) of the Paʻao line. More recently, the valley was privately-owned and threatened with being sub-divided into luxury-home lots. Again, through a partnership with the Trust for Public Lands, Waimea Valley has also returned to Native Hawaiian ownership through the Office of Hawaiian Affairs.[1573] The Office of Hawaiian Affairs is protecting both the natural and cultural resources of this land and ensuring that Hawaiian traditional and customary activities are practiced there.

The Office of Hawaiian Affairs has also received and purchased other parcels of land for economic development and cultural preservation. In April 2012, the State of Hawaiʻi transferred ten parcels of land in the waterfront area of urban Honolulu district of Kakaʻako to the Office of Hawaiian Affairs in order to settle public land trust revenue claims that date back to 1978.[1574]

[1573] *See Hiʻipaka LLC*, Waimea Valley, http://www.waimeavalley.net/waimea_valley.aspx (last visited Mar. 3, 2012).
[1574] Act of April 11, 2012, No. 15, 2012 Hawaiʻi Session Laws.

The parcels currently generate revenue of $1.1 million a year, which will increase with the implementation of a development plan.

Additional lands recently acquired by OHA that will be part of a land base for a Native Hawaiian governing entity include: the Palauea cultural reserve, a 20-acre parcel with an ancient fishing village and agricultural sites located on Maui's west coast; the Kūkaniloko birthing stones, a sacred site where Oʻahu aliʻi nui (high chiefs) were born, along with over 500-acres of adjacent lands; and a commercial building, the Lama Kūkui property in Honolulu's Iwilei district, where OHA's primary office is now located.[1575]

Conclusion

We have come to the end of our story about the conditions and aspirations of the Native Hawaiian people. In doing so, we hope that the reader has gained a deeper understanding of Kānaka Maoli history, culture, values, and dreams. As new events and challenges unfold for Lāhui Hawaiʻi, the Hawaiian Nation, may this story provide a basic framework and foundation to appreciate these new developments.

We close with the words to the song, Kūpaʻa, which opened our final chapter. It draws upon the themes of loyalty, pride, and faithfulness to each other and to the ʻāina that has nurtured the Lāhui, the Native Hawaiian people, from generation to generation. In doing so, the song echoes the refrain of Kaulana Nā Pua, the song written in protest of the 1893 overthrow of the Hawaiian monarchy.

Ola mau kākou nā Hawaiʻi Let us live always

[1575] Lurline Wailana McGregor, "Preserving Palauea" *Ka Wai Ola o OHA*, June 2013, p. 14; Audrey McAvoy, Plan will protect farmland, birthing site, *The Maui News*, Jan. 3, 2013, available at http://www.mauinews.com/page/content.detail/id/568519.html (last visited July 19, 2013); OHA acquires new property in Honolulu, *available at* http://www.oha.org/news/oha-acquires-new-property-honolulu (last visited July 19, 2013).

Kūpaʻa ma hope o ka ʻāina With loyalty, standing firmly behind our land!

Kūpaʻa
Horace K. Dudoit III and Manu Boyd

Eia mai mākou
Nā pulapula o nei ʻāina
E kupu ai a nani
I ka uluwehiwehi

Haʻaheo nā kupa ʻāina
Mai Kumukahi i Lehua
I ka nani kāhelahela
O nā kai ewalu

Kupaʻa mahope o ka ʻāina
O ka ʻāina i aloha ʻiā
A he ʻōlelo hoʻohiki naʻu
E hiki i ka pono

E mālama i ka maluhia
Aloha aku, aloha ʻia mai
E laulima a hana like
A loaʻa mai aka pahuhopu

Ola mau kākou nā Hawaiʻi
Kūpaʻa ma hope o ka ʻāina

Here we are
The descendants of this land
Growing beautifully
In verdant splendor

Proud are the people
From Kumukahi to Lehua
Of the splendid expanse
Of the eight seas

Be loyal, and stand firmly behind the land
The land so beloved
This is a promise I will make
That will bring forth what is right

Protect this peaceful realm

Give love, and love will be returned
So that our goals will be realized

Let us live always,
With loyalty, standing firmly behind our land!

Appendix 1

Genealogies of the Ruling Chiefs of the Four Hawaiian Chiefdoms: Hawaiʻi, Maui, Oʻahu, Kauaʻi

Appendix 2

The Hawaiian Land Hui Movement: Perpetuation of Hawaiian Land Tenure

Appendix 3

Legacy of the Native Hawaiian Rulers: Aliʻi Land Trusts

Appendix 4

Continuing Native Hawaiian Self-Governance

Appendix 1

Genealogies of the Ruling Chiefs of the Four Hawaiian Chiefdoms:

Hawaiʻi, Maui, Oʻahu, Kauaʻi

This appendix includes parts of the genealogies (moʻokūʻauhau) of well-known chiefs (aliʻi) who became distinguished as political and cultural forces and who contributed to the development of the island polities of Hawaiʻi, Maui, Oʻahu and Kauaʻi. These genealogies reflect a history of sustained governance over the Hawaiian Islands, as well as the evolution of the Native Hawaiian socio-political system in the generations since first settlement.

The first part of this appendix traces the genealogy of Hawaiʻi's ruling chiefs as recorded in the Kumulipo genealogy of King Kalākaua and Queen Liliʻuokalani, from Ruling Chief Palikū through Ruling Chief Wākea. This excerpt from the Kumulipo was provided to the authors by Professor Lilikalā Kameʻeleihiwa. The assignment of a generation number and year is drawn from an unpublished manuscript shared with the authors by Professor Lilikalā Kameʻeleihiwa entitled *Hawaiian Genealogies*, Unpublished Manuscript, Chart of Hawaiian Timeline - 100 Generations. Professor Kame'eleihiwa teaches a course on Hawaiian Genealogies at the Kamakakūokalani Center for Hawaiian Studies in the Hawaiʻinuiakea School of Hawaiian Knowledge at the University of Hawaiʻi Mānoa.

The second part of this appendix traces the genealogies of the ruling chiefs of Hawaiʻi, Maui, Oʻahu and Kauaʻi from Wākea to the chiefs who ruled Hawaiʻi in the eighteenth century - Kamehameha I on Hawaiʻi; Kahekili on Maui; Kumuhana and Kahahana on Oʻahu and Kaumualiʻi on Kauaʻi. It was developed by Holly Coleman of the Office of Hawaiian Affairs. The genealogies found in this section are simplified because of space and format restrictions. Although they show succession over time, these genealogies follow limited paths of lineage by generally restricting analysis to one relationship between two individuals and one resulting offspring. Exploring other relationships between individuals and tracing lineage through multiple offspring would reflect the interconnected nature of traditional Native Hawaiian genealogies to a greater degree. In the Hawai'i Island genealogy presented below, King Kamehameha I, with Palikū at Generation 1, would be at Generation 115, however Professor Kame'eleihiwa who has studied the genealogies presented in multiple sources, starts with Palikū and places King Kamehameha at Generation 118. In the main text, the authors rely upon Professor Kameʻeleihiwaʻs calculations for the generations of ruling chiefs from Palikū through King Kamehameha I.

The analysis used to present these genealogies draws on the scholarship of contemporary Native Hawaiian scholars Edith McKinzie, Lilikalā Kameʻeleihiwa, and Këhaunani Cachola Abad, who have utilized the historical works of Davida Malo, Samuel Kamakau, Abraham Fornander, King David Kalākaua, and others.

HAWAI‘I			
Maui			
O‘ahu			
Kaua‘i			
		Kāne	**Wahine**
1	600 BC	Kumulipo Line (KL) 1735 KL 1735 Paliku	Palihai
2	580 BC	KL 1736 Palikaa	Palihiolo
3	560 BC	KL 1737 Lakaunihau	Keaona
4	540 BC	KL 1738 Nalaunuu	Puukahalelo
5	520 BC	KL 1739 Kapapanuinuiauakea	Kainainakea
6	500 BC	KL 1740 Kapapaku	Kapapamoe
7	480 BC	KL 1741 Kapapaluna	Kapapailalo
8	460 BC	KL 1742 Olekailuna	Kapapapaa
9	440 BC	KL 1743 Kapapanuialeka	Kapapahanauua
10	420 BC	KL 1744 Kapapanuikahulipali	Kapapaianapa
		KL 1745 Kapapanuiakalaula	Kapapaholahola
11	400 BC	KL 1746 Kapapakiilaula / Kapapanuikiialaula	Kapapiakea
12	380 BC	KL 1747 Kapapaiaoa	Kapapaoukahi
13	360 BC	KL 1748 Kapapauli	Kapapapoha
		KL 1749 [Hanau] o Kapapa-pahu ka mua,	Ka-po-heenalu mai kona hope noho
14	340 BC	KL 1750 Ka-po-heenalu ke kane	Kamaulikainaina ka wahine
15	320 BC	KL 1751 Kahookokohipapa	Mehakuakoko
16	310 BC	KL 1752 Papaiao	Mauluikonanui
17	280 BC	KL 1753 Papaheenalu	Hanauna
		KL 1754 Hanau a iloko o Puukahonualani o	Liaikuhonua o kona muli mai, o Ohomaila
18	260 BC	KL 1814 Liaikuhonua	Keakahulihonua
19	240 BC	KL 1815 Laka	Kapapaialaka
20	220 BC	KL 1816 Kamooalewa	Lepuukahonua
21	200 BC	KL 1817 Maluapo	Laweakeao
22	180 BC	KL 1818 Kinilauemano	Upalu
23	160 BC	KL 1819 Halo	Kinilauewalu
24	140 BC	KL 1820 Kamanookalani	Kalanianoho
25	120 BC	KL 1821 Kamakaokalani	Kahuaokalani
26	100 BC	KL 1822 Keohookalani	Kamaookalani
27	80 BC	KL1823 Kaleiokalani	Kapuohiki
28	60 BC	KL 1824 Kalalii	Keaomele
29	40 BC	KL 1825 Malakupua	Keaoaoalani
30	20 BC	KL 1826 Haule	Loaa
31	0 AD	KL 1827 Namea	Walea

HAWAI'I			
MAUI			
O'AHU			
KAUA'I (continued)			
		Kāne	**Wahine**
32	20 AD	KL 1828 Nananuu	Lalohana
33	40 AD	KL 1829 Lalokona	Lalohooniani
34	60 AD	KL 1830 Honuapoiluna	Honuailalo
35	80 AD	KL 1831 Pokinikini	Polelehu
36	100 AD	KL 1832 Pomanomano	Pohakoikoi
37	120 AD	KL 1833 Kupukupuanuu	Kupukupualani
38	140 AD	KL 1834 Kamoleokahonua	Keaaokahonua
39	160 AD	KL 1835 Paiaalani	Kanikekoa
40	180 AD	KL 1836 Hemoku	Panainai
41	200 AD	KL 1837 Makulu	Hiona
42	220 AD	KL 1838 Milipomea	Hanahanaiau
43	240 AD	KL 1839 Hookumukapo	Hoao
44	260 AD	KL 1840 Lukahakona	Niaulani
45	280 AD	KL 1841 Hanau O Kupulanakehau he wahine (also see KL 1844 below)	Kahiko-luamea (See KL 1845 below)
46	300 AD	KL 1847 Wakea (see KL 1847 below)	Papa
KL 1842 Hanau o Kulaniehu he kane			
KL 1843 Hanau o Koiaakalani			
KL 1844 O Kupulanakehau wahine			
KL 1845 I noho ia Kahiko, o Kahiko-luamea			
KL 1846 Hanau o Paupaniakea			
KL 1847 O Wakea no ia, o Lahuula, o Makulukulukalani			

HAWAI‘I		
Kāne	**Wahine**	**Keiki**
G 46 300 AD Wakea	Papa	Hoohokukalani
Wakea	Hoohokukalani	Haloa
Haloa	Hinamanouluae	Waia
Waia	Huhune	Hinanalo (Wailoa)
Hinanalo (Wailoa)	Haunuu (Hikawaopualanea, Hikawaoopuaianea)	Nanakehili
Nanakehili	Haulani	Wailoa
Wailoa	Hikawaopuaianea	Kio
Kio	Kamole	Ole
Ole	Hai	Pupue
Pupue	Kamahele	Manaku
Manaku	Hikohaale	Kahiko
Kahiko	Kaea	Luanuu
Luanuu	Kawaamaukele (Kawaomaukele)	Kii
Kii	Hinakoula	Ulu
Ulu	Kapunuu	Nanaie
Nana	Kapulani	Nanaie
Nanaie	Kahaumokuleia	Nanailani
Nanailaui	Hinakinau	Waikulani
Waikulani	Kekauilani	Kuheleimoana
Kuheleimoana	Mapunaiaala	Konohiki
Konohiki	Hikaululena	Wawena
Wawena	Hinamahuia	Akalana
Akalana	Hinakawea	Mauiakalana
Mauiakalana	Hinakealohaila	Nanamaoa
Nanamaoa	Hinakapaikua	Nanakulei (Nanakuae)

Nanakulei (Nanakuae)	Kehaukuhonua (Kahaukuhonua, Keaukuhonua)	Nanakaoko
Nanakaoko	Kahihiokalani	Heleipawa
Heleipawa	Kookookumaikalani	Hulumanailani
Hulumanailani	Hinamaikalani	Aikanaka
Aikanaka	**Hinahanaiakamalama**	Hema
Hema	Ulumahahoa (Ulamahaho, Ulahamahahoa)	Kahai
Kahai	Hinauluohia	**Wahieloa** Wahioloa
Wahieloa Wahioloa	Koolaukahili (Hoolaukahiki)	Laka
Laka	Hikawaelena (Hakawaelena)	Luanuu
Luanuu	Kapokulaiula	Kamea
Kamea	Popomaili (Popomaiili)	Pohukaina
Pohukaina	Huahuakapalei	Hua
Hua (Kahuaimoluna)	**Hikimolulolea** Hikimoluloleo.	Pau (Paunuikaikeanaina)
Pau (Paunuikaikeanaina)	Kapohaakia (Kapohakia)	Huanuiikalalailai
Huanuiikalalailai	Kapoea	Paumakua
Paumakua	Manokalililani	Haho
Haho	Kauilaianapu (**Kauilaianapa**)	Palena
Palena	Hikawainui	Hanalaanui
Hanalaanui	Mahuia	Lanakawai
Lanakawai	Kalohialiiokawai	Laau
Laau	Kukamolimolialoha	Pili
Pili	Hinaauaku	Koa
Koa	Hinaaumai	Ole
Ole	Hinamailelii	Kukohou
Kukohou	Hinakeuki	Kaniuhi
Kaniuhi	Hiliamakani	Kanipahu

Kanipahu	Alaikauakoko	Kalapana
Kalapana	Makemalamaihanae	Kahaemoeleaikaapou
Kahaimoeleaikaaikupou	Kapoakauluhailaa	Kalaunuiohua
Kalaunuiohua	Kaheke	Kuaiwa
Kuaiwa	Kamuleilani	Kahukapu (Kohoukapu)
Kohoukapu Kahukapu	Laakapu	Kauholanuimahu
Kauholanuimahu (Kauholanuimoku)	Neula	Kihanuilulumoku
Kihanuilulumoku	Waiolea	Liloa
Liloa	Akahiakuleana	Umi
Umi	**Kapukini** Henahena	**Keawenui-a-Umi** Kamolanui-a-Umi
Keawenui-a-Umi	**Koihalawai** Kamolanui-a-Umi	**Kanaloakuaana** Kanakeawe
Kanaloakua'ana Kanakeawe	**Kaikilani** Kauakekuole	**Keakealanikane** Kapukamola
Keakealanikane Makakaualii	**Kealiiokalani** Kapukamola	**Keakamahana** Iwikauikaua
Iwikauikaua	**Keakamahana** Kauakahi	**Keakealaniwahine** Kanekaiwilani
Kanaloaikaiwilewa Kanekaiwilani	**Keakealaniwahine** Keakealaniwahine	**Keaweikekahialiiokamoku** Kalanikauleleiaiwi
Keaweikekahialiiokamoku Keawe	Kalanikauleleiaiwi	Kekelakekeokalani
Haae	Kekelakekeokalani	Kekuiapoiwa II
Keoua	Kekuiapoiwa II	Kamehameha I
Kamehameha I	Keopuolani	Liholiho, Kauikeaouli

MAUI		
Kāne	**Wahine**	**Keiki**
G 46 300 AD Wakea	Papa	Hoohokukalani
Wakea	Hoohokukalani	Haloa
Haloa	Hinamanouluae	Waia
Waia	Huhune	Hinanalo (Wailoa)
Hinanalo (Wailoa)	Haunuu (Hikawaopualanea, Hikawaoopuaianea)	Nanakehili
Nanakehili	Haulani	Wailoa
Wailoa	Hikawaopuaianea	Kio
Kio	Kamole	Ole
Ole	Hai	Pupue
Pupue	Kamahele	Manaku
Manaku	Hikohaale	Kahiko
Kahiko	Kaea	Luanuu
Luanuu	Kawaamaukele (Kawaomaaukele)	Kii
Kii	Hinakoula	Ulu
Ulu	Kapunuu	Nana
Nana	Kapulani	Nanaie
Nanaie	Kahaumokuleia	Nanailani
Nanailani	Hinakinau	Waikulani
Waikulani	Kekauilani	Kuheleimoana
Kuheleimoana	Mapunaiaala	Konohiki
Konohiki	Hikaululena	Wawena
Wawena	Hinamahuia	Akalana
Akalana	Hinakawea	Mauiakalana
Mauiakalana	**Hinakealohaila** Hinaakealohaila	Nanamaoa
Nanamaoa	Hinakapaikua	Nanakulei (Nanakuae)

Nanakulei (Nanakuae)	Kehaukuhonua (Kahaukuhonua, Keaukuhonua)	Nanakaoko
Nanakaoko	Kahihiokalani	Heleipawa
Heleipawa	Kookookumaikalani	Hulumanailani
Hulumanailani	Hinamaikalani	Aikanaka
Aikanaka	Hinahanaiakamalama	Hema
Hema	**Ulumahahoa** Ulamakehoa (Ulamahaho, Ulahamahahoa)	Kahai
Kahai	Hinauluohia	Wahieloa
Wahieloa (Waiholoa)	Koolaukahili (Hoolaukahiki)	Laka
Laka	Hikawaelena (Hakawaelena)	Luanuu
Luanuu	Kapokuleiula	Kamea
Kamea	Popomaile (Popomaiili)	Pohukaina
Pohukaina	Huahuakapalei	Hua
Hua (Kahuaimoluna)	**Hikimolulolea** Hikimoluloleo	Pau (Paunuikaikeanaina)
Pau (Paunuikaikeanaina)	Kapohaakia (Kapohakia)	Huanuiikalalailai
Huanuiikalalailai	Kapoea	Paumakua
Paumakua	Manokalililani	Haho
Haho	Kauilaianapu (**Kauilaianapa**)	Palena
Palena	Hikawainui	Hanalaaiki
Hanalaaiki	Kapukapu	Mauiloa
Mauiloa	Kauhua	Alau
Alau	Moeikeana (**Moikeaea**)	Kanemokuhealii
Kanemokuhealii	Keikauhale	Lonomai
Lonomai	Kolu	Akalana (Wakalana)
Akalana. (**Wakalana**)	Kauai (Kawai)	Alo
Alo	Puhia	Kaheka
Kaheka	Maiaoula	Mapuleo

Mapuleo	**Kamaiokalani** Kamaeokalani	Paukei
Paukei	Painalea	Luakoa
Luakoa	Hinaapoapo	Kuhimana
Kuhimana (Kuhimau, Kaana)	Kaumana	Kamaluohua
Kamaluohua	Kapu (Kapuaiwahine)	Loe
Loe	Waohaakuna (Kawaohaakuna, Wahaakuna)	Kahaokuohua
Kahaokuohua	Hikakaiula	Kaulahea
Kaulahea I	Kapohanaaupuni	Kakae
Kakae	Kapohauola	Kahekili I
Kahekili I	Haukanuimakamaka	Kawaoka‘ohele
Kawaokaohele	Kepalaoa	**Piilani** Kelea-nohoanaapiapi
Kalamakua	Kelea-nohoanaapiapi	**Laieloheloheikawai** Laiieloheloheikawai.
Piilani	Laieloheloheikawai	**Kiha-a-piilani** Lono-a-piilani
Kiha-a-piilani Lono-a-piilani	Kumaka	Kamalalawalu
Kamalalawalu	Piilaniwahine I	Kauhi-a-kama
Kauhi-akama	Kapukini II	Kalanikaumakaowākea
Kalanikaumakaowakea	**Kaneakauhi** Makakuwahine	**Lonohonuakini** Umi-a-liloa II
Lonohonuakini Umi-a-liloa II	**Kalanikauanakinilani** Kuihewaikalua palolookalani	**Kaulahea II** Papaikaniau
Kaulahea II	Papaikaniau	Kekaulike
Kekaulike	Kekuiapoiwanui	Kahekili
Kahekili	Kauwahine	Kalanikupule

O‘AHU		
Kāne	**Wahine**	**Keiki**
G 46 300 AD Wakea	Papa	Hoohokukalani
Manouluae	Hoohokukalani	**Waia**
Waia	Huhune	**Wailoa** Hinanalo (Wailoa)
Wailoa Hinanalo (Wailoa)	**Hikawaopualanea** Haunuu (Hikawaopualanea, Hikawaoopuaianea)	Kakaihili (Nanakaihili)
Kakaihili (Nanakaihili)	Haulani	**Kia** Kio
Kia Kio	Kamole	Ole
Ole	Hai	Pupue
Pupue	Kamahele	Manaku
Manaku	Hikohaale	**Nukahakoa** Kahiko
Nukahakoa Kahiko	**Koulamaikalani** Kaea	Luanuu
Luanuu	Kawaamaukele (Kawaomaukele)	**Kahiko** Kii
Kahiko Kii	**Kaea** Hinakoula	**Kii** Nanaulu
Nanaulu	Ulukou	Nanamea
Nanamea	Puia	Pehekeula
Pehekeula	Uluae	Pehekamana
Pehekemana	Nanahapa	Nanamua
Nanamua	Nanahope	Nanaikeauhaku
Nanaikeauhaku	Elehu	Keaoa
Keaoa	Waohala	Hekumu
Hekumu	Kumukoa	Umalei
Umalei	Umaumanana	Kalai
Kalai	Laikapa	Malelewaa
Malelewaa	Piliohai	Hopoe
Hopoe	Hauananaia	Makalawena
Makalawena	Koihouhoua	Lelehooma

Lelehooma	Hapuu	Kekupahaikala
Kekupahaikala	Maihikea	Maweke
Māweke	Naiolaukea	Mulielealii
Mulielealii	Wehelani	Moikeha
Mö‘īkeha	**Hinaaulua** Hinauula (Henauulua)	Hookamalii
Hookamalii	Keahiula (Keaniula)	Kahai
Kahai	Keheau	Kuolono
Kuolono	Kaneakaleleoi	Maelo
Lauli-a-laa	Maelo	Laulihewa
Laulihewa	Akepamaikalani	Kahuoi
Kahuoi	**Palea** Peleawahine	Puaakahuoi
Puaakahuoi	Nononui	Kukahialiilani
Kukahialiilani	Kokalola	Mailikukahi
Mailikukahi	Kanepukoa	Kalonaiki
Kalonaiki	Kikinuiaewa	Piliwale
Piliwale	Paakanilea	Kukaniloko
Luaia	Kukaniloko	**Kalanimanuia** Klaimanuia
Lupekapukeahomakalii	**Kalanimanuia** Kalaimanuia	Kaihikapu-a-manuia
Kaihikapu-a-manuia	Kaunui-a-Kanehoalani	Kakuhihewa
Kakuhihewa	Kaea-a-Kalona	Kanekapu-a-kakuhihewa
Kanekapu-a-kakuhihewa	Kalua-a-Hoohila	Kahoowahaokalani
Kahoowahaokalani	Kawelolauhuki	Kauakahi-a-kahoowaha
Kauakahi-a-kahoowaha	Mahulua	Kuali‘i
Kualii	Kalanikahimakeialii	Peleioholani
Peleioholani	**Halakii** Lonokahikini	**Kumahana** Keeaumoku III **Kumahana was overthrown by Oahu council of chiefs and replaced by his cousin Kahahana, who was killed by Kahekili**

KAUA‘I		
Kāne	**Wāhine**	**Keiki**
G 46 300 BC Wakea	Papa	Hoohokukalani
Wakea	Hoohokukalani	Haloa
Haloa	Hinamanouluae	Waia
Waia	Huhune	Hinanalo (Wailoa)
Hinanalo (Wailoa)	Haunuu (Hikawaopualanea, Hikawaoopuaianea)	Nanakehili
Nanakehili	Haulani	Wailoa
Wailoa	Hikawaopuaianea	Kio
Kio	Kamole	Ole
Ole	Hai	Pupue
Pupue	Kamahele	Manaku
Manaku	Hikohaale	Kahiko
Kahiko	Kaea	Luanuu
Luanuu	Kawaamaukele (Kawaomaukele)	Kii
Kii	Hinakoula	Ulu
Ulu	Kapunuu	Nana
Nana	Kapulani	Nanaie
Nanaie	Kahaumokuleia	Nanailani
Nanailani	Hinakinau	Waikulani
Waikulani	Kekauilani	Kuheleimoana
Kuheleimoana	Mapunaiaala	Konohiki
Konohiki	Hikaululena	Wawena
Wawena	Hinamahuia	Akalana
Akalana	Hinakawea	Mauiakalana
Mauiakalana	Hinaakealohaila	Nanamaoa

Nanamaoa	Hinakapaikua	Nanakulei (Nanakuae)
Nanakulei (Nanakuae)	Kehaukuhonua (Kahaukuhonua, Keaukuhonua)	Nanakaoko
Nanakaoko	Kahihiokalani	Heleipaiwa
Heleipaiwa	Kookookumaikalani	Hulumanailani
Hulumanailani	Hinamaikalani	Aikanaka
Aikanaka	Hinahanaiakamalama	Puna-imua
Puna-imua	Hainalau	Ua
Ua	Kahilinai	Uamaikalani
Uamaikalani	Haimakalani	Uanini
Uanini	Welihaakona	Auanini
Auanini	Maunakuahaokalani	Newalani
Newalani	Kahihiikaale	**Lonohoonewa** Lonohuanewa
Lonohoonewa Lonohuanewa.	**Loiloi** Loiloa.	Lonowahilani
Lonowahilani	Kahikihaaueue	Pau
Pau	Kapalakuakalani	Paumakua
Paumakua	**Henanui** Keananui.	Moeanaimua
Moeanaimua	Alahoe	Kumakaha
Kumakaha	**Moemoeaaulii** Moanaaulii	Nana
Nana	**Hoakaleikini** Haakaleikini	Luahiwa
Luahiwa	Kilohana	Ahukai
Ahukai	Keakamilo	Laa
Laa	Kaikulani	Laamaikahiki
Laamaikahiki	Waolena	Ahukini-a-laa
Ahukini-a-laa	Hai-akamaio	Kamahano
Kamahano	Kaaueanuiokalani	Luanuu
Luanuu	Kalanimoeikawaikai	Kukona

Kukona	Laupuapuamaa	Manokalanipo
Manokalanipo	Naekapulani	Kaumaka-mano
Kaumaka-mano	Kapoinukai	Kahakuakane
Kahakuakane	Manokaikoo	Kuwalupaukamoku
Kuwalupaukamoku	Hameawahaula	Kahakumakapaweo
Kahakumakapaweo	Kahakukukaena	Kapoleikauila
Kalanikukuma	Kapoleikauila	Ilihiwalani
Ilihiwalani	Kamiliahonui	Kauhi-a-hiwa
Kuwalu(a)kawai	Kauhi-a-hiwa	Kanei-a-Haka
Kialohikanakamaikai	Kanei-a-Haka	Kapulauhi
Kainaaila	Kapulauhi	Kuluina
Kauakahilau	Kuluina	Lonoikahaupu
Lonoikahaupu	Kamuokaumeheiwa	Kaumeheiwa
Kaumeheiwa	Kaapuwai	**Kamakahelei** Kaeokulani
Kaeokulani	Kamakahelei	Kaumualii
Kaumualii	Kapuaamohu	Kinoike
19th Century		
Kuhio I	Kinoike	Kapiolani
Kapiolani	Kalakaua	

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Appendix 2

The Hawaiian Land Hui Movement: Perpetuation of Hawaiian Land Tenure*

Introduction

Traditional Hawaiian life was based upon a shared and intense management of land and resources that were used in common. While individual families enjoyed rights to specific plots of land for their homes and for cultivation, they were dependent upon communal irrigation networks and the shared use of common lands, streams, forested areas and ocean fisheries that provided all of the remaining necessities of life. The stewardship of these shared resources was necessarily a communal venture. This traditional Hawaiian system of communal land tenure was itself a social institution and not simply a manifestation of economic relationships. The adoption of a private property regime of land ownership throughout the Hawaiian Kingdom threatened to undermine these traditional relationships that had bound families, relatives and neighbors together for centuries.

The Hawaiian people, however, did not simply acquiesce to the dismantling of their way of life. One of the ways they adapted to the new system of land tenure was by organizing themselves into collective ownership associations called Land Hui (hui means to join or unite as in a group or association). Through the use of the Land Hui model, Hawaiians joined together to purchase large tracts of land that they held in common, enabling them to maintain a semblance of traditional communal life under a new legal regime of fee simple property ownership. The hui movement persisted as a viable model of self-organization until it was largely destroyed in the 1920s by a combination of Territory of Hawai‘i Supreme Court decisions and legislative action

* Written by Adam P. Roversi, J.D., and based on information from his forthcoming law review article, "The Hawaiian Land Hui Movement: A Counter-Revolution in Land Tenure and Community Resource Management," to be published in the University of Hawai‘i Law Review.

aimed at making more land and water available for plantation interests. Despite these actions, some prominent hui survived until well after World War II, and some even persist today.

This appendix begins by describing the Land Hui movement as a general phenomenon. Section II presents a detailed case study of the Wainiha Hui to examine the workings of the hui model. Sections III and IV discuss the evolution of legal precedents regarding the rights of Land Hui members under the Kingdom and, later, the Territory of Hawai‘i and their profound effect on the Hawaiian Land Hui model. Finally, Section V returns to the case study to demonstrate the effect of this legal evolution on Land Hui.

The 1850 Kuleana Act allowed maka‘āinana to claim lands under cultivation as well as house lots of not more than a quarter acre. Maka‘āinana could also secure land through a lesser known mechanism established in the Kuleana Act — the purchase of up to 50 acres of government land for not less than fifty cents an acre.[1] The government offered this purchase option because even in 1850, it was aware that the kuleana claims process was failing to adequately distribute land to the maka‘āinana.[2] In 1851, the government passed a second law to encourage the purchase of land by establishing a network of government agents on the neighbor islands to facilitate sales.[3]

Between 1846 and 1860, nearly 400,000 acres of government land were sold as grants.[4] Precisely how much of this land was sold to maka‘āinana as compared to foreign residents is still debated. The majority of individuals listed in the *Index of All Grants and Patents Land Sales*,

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[1] Section 4 of Act of August 6, 1850, *1850 Statute Laws of His Majesty Kamehameha III, King of the Hawaiian Islands*, p. 202-03.
[2] In the Feb. 16, 1850, edition of *The Polynesian*, Land Commissioner William Little Lee wrote an editorial noting that the claim process was failing to sufficiently provide for the common people and suggesting that the king would help to solve this problem by making lands available for sale. Riley Moffit and Gary L. Fitzpatrick, *Surveying the Mahele: Mapping the Hawaiian Land Revolution*, Palapala‘āina, v. 2 (Honolulu: Editions Limited, 1995), p. 50.
[3] *See* L.1851, p. 52 (establishing land agents).
[4] Moffit, et al, *Surveying the Mahele*, p. 50.

have Hawaiian names, but most of the larger sales are recorded to people with non-Hawaiian names.[5] Professor Neil M. Levy reported that, "[a]s of 1864, 320,000 acres had been sold to 213 foreigners, as compared to 90,000 acres that were sold to 333 Native Hawaiians."[6] More recent research by Native Hawaiian scholar Donovan Preza contends that through 1893, 652,521 acres were sold with 167,290 acres (twenty-six percent) purchased by Native Hawaiians and 485,230 acres (seventy-four percent) purchased by Non-Hawaiians.[7]

The kuleana award process failed to provide land to a large percentage of Native Hawaiian tenants. The kuleana lands that were awarded were often inadequate to meet the needs of their new owners. Moreover, the fragmentation of communities into small, discrete land plots, a replication of the New England yeoman farmer model, was simply incompatible with the Hawaiian way of life.

Consequently, for those left out of the kuleana award process and those who were inadequately served by it, buying government land was the only viable option. And many chose to combine their efforts by creating Land Hui rather than go it alone. As surveyor Leslie Watson observed, "the communal ideas, which had been developed through the course of centuries, were so deeply a part of the life of the Hawaiians as to make it natural that the urge to continue such ideas should manifest itself, - so shortly after 1850 the Hawaiian Hui was born."[8] Not only did these Land Hui actively participate in the purchase of government lands, but they also engaged in the secondary market for land that quickly arose in the Kingdom of Hawaiʻi. Indeed, the land

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[5] *Id.*

[6] Van Dyke, *Who Owns the Crown Lands*, p. 57 n.23 (citing, Neil N. Levy, "Native Hawaiian Land Rights," 63 *California Law Review* 848, 859 n.73 (1975)).

[7] Donovan Preza, *The Empirical Writes Back: Re-examining Hawaiian Dispossession Resulting from the Māhele of 1848* (unpublished MA Thesis, University of Hawai'i at Mānoa) (on file with Hamilton Library, University of Hawaiʻi at Mānoa, May 2010), pp. 126-128.

[8] Leslie J. Watson, *Old Hawaiian Land Huis - Their Development and Dissolution* (1932) (typescript, originally published in Star-Bulletin, December 12 - 16, 1932), p. 9.

base controlled by Hawaiian Land Hui eventually dwarfed the amount of kuleana lands awarded to maka'āinana.[9]

I. The Land Hui Movement

A typical Land Hui was created by a group of members who joined together to purchase a block of land, often an entire ahupua'a, and hold it in common.[10] Although each individual owner might be designated a house lot or small plot as nominally "his" or "hers," the remainder of the land was held for the benefit of the group as a whole. The ownership structure of a hui was usually based upon holding shares in the hui. "[T]he ownership of an undivided interest in a large tract of land was far more adaptable to the Hawaiians' needs and background then ownership in entirety of small parcels."[11]

Central to the hui's purpose was the maintenance of traditional irrigation networks of 'auwai that by definition required community cooperation.[12] Without communally maintained 'auwai, cultivation of the wetland kalo[13] that was both a dietary and cultural core of traditional Native Hawaiian society would cease. In addition to a network of 'auwai, the typical hui maintained communal pasturelands for livestock and may have leased out surplus hui land to produce income that was shared among the members and/or used to pay land taxes.[14]

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[9] See Table 1.

[10] *See* Leslie J. Watson, *Old Hawaiian Land Huis - Their Development and Dissolution* (1932) (typescript, originally published in Star-Bulletin), p. 13.

[11] Watson, *Old Hawaiian Land Huis*, p. 13.

[12] *'Auwai*. "Artificial ditch or stream of water for irrigating land." Paul F. Nahoa Lucas ed., *Dictionary of Hawaiian Legal Land-Terms* (Honolulu: Univ. of Hawai'i Press, 1995), p.14.

[13] *Kalo* means "Taro (*Colocasia esculenta*), a kind of aroid cultivated since ancient times for food, spreading widely from the tropics of the Old World. In Hawai'i, taro has been the staple from earliest times to the present, and here its culture developed greatly, including more than 300 forms. All parts of the plant are eaten, its starchy root principally as poi, and its leaves as lū'au." Mary Kawena Pukui & Samuel H. Elbert, *Hawaiian Dictionary*, (Honolulu: UH Press, 1971), p. 123.

[14] *See* Stauffer, *Kahana*, p. 131; *see also* Watson, *Old Hawaiian Land Huis*, p. 13.

Within this general form, there were two variations of the hui model. Watson identified them as "unorganized" and "organized" based in part upon the presence or absence of internal organizational documents.[15] But it may be more accurate to say that the latter "organized" hui evolved out of the "unorganized" hui.

Beginning in 1854, relatively small groups of Hawaiians began forming Land Hui by purchasing grants of government lands. This coincided with the installation of land sales agents to encourage the purchase of government lands beginning in 1851. These Land Hui controlled relatively small areas of land, ranging between 45 and 450 acres. Research on the four Land Hui organized in Ke'anae on Maui suggests that these early Land Hui were formed primarily by groups of individuals, many of whom had in fact received small kuleana awards.[16] As previously discussed, these kuleana awards were generally limited to small, lowland cultivated kalo lands and associated house lots and excluded upper kula lands, which were "nevertheless… integral part[s] of the Hawaiian economy."[17] Section Seven of the Kuleana Act ostensibly protected the rights of native tenants to access and use lands outside their kuleana parcels; nevertheless, some research suggests that in practice, there were no such assurances. According to a contemporary observer in 1850:

> The word has gone forth from the chiefs to all their *konohikis* to forbid all such *makaainanas* who get their land titles, the privileges they formerly enjoyed from the *kula* of the landlord . . . They are not to pull grass for their feasts or *ilima* for fuel, nor go into the mountain for any ki leaf or ki root or timber of any kind. Their horned cattle are prohibited from ranging in the *kula* . . . . It has nearly raised a rebellion among the people of Waianae . . . they say the chiefs have no *[aloha]* for them . . . .[18]

Native tenants historically used kula lands for gathering natural materials and cultivating

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[15] *See* Attachment I for a narrative summary of specific hui.
[16] Jocelyn Linnekin, "The Hui Lands of Keanae: Hawaiian Land Tenure and the Great Māhele," 92 *The Journal of the Polynesian Society* 169 (1983), p.185.
[17] *Id.*, p. 175.
[18] *Id.*, p. 175.

non-irrigated crops such as sweet potato, olonā, wauke, or melon, and by the time of the Māhele, they also used the kula lands for pasturage.[19] These early "unorganized" Land Hui, formed to ensure that "the administration of unirrigated upland areas used for pasturage and the cultivation of dryland crops" would continue in spite of the erosion of the traditional konohiki land management system that was effectively dismantled by the establishment of the private system of land ownership.[20]

These small, unorganized hui controlled lands that were vital to the lives of their members, and they were often too small to make them targets of later partition actions by plantation interests. The value of the land and resources that these hui controlled simply did not justify the legal cost of partition proceedings. As a result, in Ke'anae for instance,

> the land Huis contributed to the survival and integrity of Hawaiian settlement. Keanae is a rarity in the islands today: a locale where Hawaiians retained ownership of land for several generations. This long history of Hawaiian possession has made possible a distinctively Hawaiian community life that may exist nowhere else except perhaps Niihau.[21]

The second generation of "organized" land hui generally began to form a decade after the first generation of "unorganized" hui, beginning in the late 1860s. Watson described these hui as "organized" because they were governed by internal constitutions and bylaws establishing the rules of self-government for the members and their land.[22] Aside from their formal organizational structure, they also differed significantly in the size of their membership, the land area they controlled, and in the process by which they acquired land. Many of these second generation hui had over a hundred members and each controlled thousands of acres of land. In addition, they generally did not purchase their lands from the government; rather, they purchased

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[19] *Id.*, pp. 175-176.
[20] *Id.*, p. 180.
[21] *Id.*, p. 183.
[22] *See* Watson, *Old Hawaiian Land Huis*, p. 13.

large intact holdings that originated as Land Commission Awards ("LCA") to various Ali‘i awardees during the Māhele.

The ali‘i awardees who originally acquired large awards managed, for a time, to retain their holdings intact, and the maka‘āinana residing on these lands saw their daily lives relatively unaffected. Over time, however, as the original awardees died or fell into debt, their large land holdings became available for purchase. It was in this context that organized Land Hui, generally composed of the residents of a particular ahupua‘a, were formed to purchase these now available lands. In some cases, as with the Ulumalu or Mailepai Hui on Maui, land was purchased directly from the Ali‘i awardees or their heirs. In other instances, such as with the Wainiha or Hā‘ena Hui of Kaua‘i, the lands were purchased from speculators who acquired the properties at probate auction or in direct sales from the original awardees.

Because these large organized Land Hui controlled sizeable tracts of often valuable agricultural land and associated water rights, they were later subject to forced partition actions to make their lands available for commercial agricultural interests. Although none of these large organized hui survive until today – the last dissolved in 1967 – their existence played an important role in preserving Native Hawaiian communities that continue to maintain a traditional, ‘āina-based way of life.

Very few original hui records still exist. A fortunate exception is the original record books of the Hui Kū‘ai ‘Āina o Wainiha ("Wainiha Hui") for the years 1877 to 1885.[23] The following section utilizes the Wainiha Hui as a case study to further explore how the hui model functioned.

[23] *Hui Kū‘ai ‘Āina o Wainiha* (1877–1885) (on file with Hawai‘i State Archives, file U-29).

II. Case Study of an Organized Hui: The Hui Kūʻai ʻĀina o Wainiha

Mikahela Kekauʻōnohi, the great-granddaughter of King Kekaulike of Maui and the second largest recipient of land during the Māhele, was the original aliʻi awardee of the 15,000-acre ahupuaʻa of Wainiha.[24] Upon Kekauʻōnohi's death on June 23, 1849, her estate went to her husband Levi Haʻalelea.[25] When Haʻalelea died in 1864, his estate was auctioned off to pay debts of about $40,000.[26] The ahupuaʻa of Wainiha was purchased at probate auction on May 16, 1866, for $3,200 by J.H. Morse, John de Fries, and J. Halstead.[27] Thus, all of Wainiha, save the original kuleana awards still held by Hawaiians, had fallen out of Hawaiian ownership less than twenty years after the Māhele.

John de Fries subsequently sold his share of Wainiha to Castle & Cooke[28] in April of 1871.[29] Morse, who died some time prior to 1877, devised her share of Wainiha to Castle &

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[24] Kekapala Dye and Thomas Dye, *An Archaeological Survey for Animal Control Fencing in the Wainiha Preserve, Wainiha Valley, Kauaʻi*, Jan. 20, 2010, Kauaʻi Watershed Alliance c/o The Nature Conservancy in Hawaiʻi, Kauaʻi Program, Final Environmental Assessment for Wainiha Conservation Project (2010), p. 6, *at* http://hawaii.gov/health/environmental/environmental/oeqc/index.html. (M. Kekauʻōnohi received tens of thousands of acres on every island under Land Commission Award 11216); *see also* Pukui, et al, *Hawaiian Dictionary*, pp. 377, 128; *Indices of Awards Made By the Board of Commissioners to Quiet Land Titles in the Hawaiian Islands* (Honolulu: Star-Bulletin Press 1929), p. 69; An alternative authority places M. Kekauʻōnohi's death in 1851. Dye et al., *An Archaeological Survey*, p. 5.

[25] Dye et al., *An Archaeological Survey*, p. 6.

[26] *Id.* According to the Dyes, Haʻalelea's debt of $40,000 was the present day equivalent of approximately $565,000. The alienation of the Kekauʻōnohi's Aliʻi Nui ʻĀina (estate) is more fully chronicled by Lilikalā Kameʻeleihiwa.

> Haʻalelea died in 1864 at the age of forty-two, leaving $40,000 worth of debts, part of which he owed to Bishop & Co. in the probate of his estate and to pay off creditors, the court auctioned a great deal of his ʻĀina at minimal prices. Several pieces of real estate in Honolulu were sold for only $2,000. Twenty-six parcels of Māui ʻĀina were sold for a total of $2,965. Almost all of this ʻĀina was purchased by foreigners . . . . The ahupuaʻa of Hakalau and Pāpaʻikou in Hilo, and Honokōhau and Hōnaunau in Kona, as well as ʻĀina on Molokaʻi and Kauaʻi, were auctioned off to foreigners for a total of $12,660. . . .[T]hese auctioned ʻĀina were a steal and an excellent example of how the rigors of probate could be made to benefit foreigners.

Lilikalā Kameʻeleihiwa, *Native Land and Foreign Desires: Pehea Lā E Pono Ai?* (Honolulu: Bernice Pauahi Bishop Museum Press, 1992), pp. 307-308.

[27] Deed of Conveyance from Estate of Levi Haʻalelea to J.H. Morse, Book 21, Page 242-43, May 16, 1866 (on file with State of Hawaiʻi Bureau of Conveyance).

[28] Castle & Cooke was founded in 1851 as a partnership between Samuel Northrup Castle and Amos Star Cooke as a department store that sold farm tools, sewing equipment, and medicine.

Cooke who then sold the entirety of the ahupuaʻa to the Hui Kūʻai ʻĀina o Wainiha on May 3, 1877 for $5,500.[30] There is no reference in the deeds or earlier records as to what became of J. Halstead's interest.[31] The deed conveying Wainiha to the Hui Kūʻai ʻĀina o Wainiha notes L. Leka as the principle grantee but also lists all seventy-one members of the hui in the body of the deed granting,

> Unto said parties . . . their heirs and assigns all of that certain tract or parcel of land on said Island of Kauai situated in the District of Halelea, and known as the ahupuaa of Wainiha together with all the rights privileges and appurtenances and hereditaments to the same belonging or in any way appertaining.[32]

With this deed, the makaʻāinana residents of Wainiha reclaimed for themselves, in fee, the lands that their aliʻi landlord lost. According to the original records of the Hui Kūʻai ʻĀina o Wainiha, the group began organizing themselves to purchase the ahupuaʻa in early-1869, prior to the involvement of Castle & Cooke, and it took eight years to finalize the purchase.[33]

On September 10, 1877, the members of Hui Kūʻai ʻĀina o Wainiha convened to ratify the Kumukānāwai o ka Hui Kūʻai ʻĀina o Wainiha ("The Constitution of the Land Acquisition Association of Wainiha").[34] Its provisions are reproduced below:

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http://www.castlecooke.net/about/history.aspx; *see also* Castle & Cooke Ltd. *The first 100 Years: A Report of the Operations of Castle & Cooke for the Years 1851-1951* (Honolulu: Castle & Cooke Ltd., 1951).

[29] Deed of Conveyance from J. de Fries to Castle & Cooke, Book 33, Page 15-16, April 1871 (available at State of Hawaiʻi Bureau of Conveyance). *See* Deed of Conveyance from Castle & Cooke to L. Leka and Others, Book 50, Page 160-62, May 3, 1877 (on file with State of Hawaiʻi Bureau of Conveyance).

[30] Deed of Conveyance from Castle & Cooke to L. Leka and Others, Book 50, Page 160-62, May 3, 1877 (on file with State of Hawaiʻi Bureau of Conveyance).

[31] Dye et al., *An Archaeological Survey*, p. 6.

[32] Deed of Conveyance from Castle & Cooke to L. Leka and Others, Book 50, Page 160-62, May 3, 1877 (on file with State of Hawaiʻi Bureau of Conveyance).

[33] *See Kumukānāwai o ka Hui Kūʻai ʻĀina o Wainiha*, *Jan. 1877 amended in 1883*, Hui Kūʻai ʻĀina o Wainiha 424 (on file with the Hawaiʻi State Archives) (translation from Hawaiian by Devin C Forrest, on file with author).

[34] *Kumukānāwai o ka Hui Kūʻai ʻĀina o Wainiha.* The By-Laws of the Hui Lands of Aliomanu, Papaa, Moloaa, and Kaapuna contain 14 articles strikingly similar to those of the Wainiha Hui. *By-Laws of the Hui Lands of Aliomanu, Papaa, Moloaa, and Kaapuna*, October 17, 1868 (on file with Kauaʻi Historical Society, file MS-9).

Section 1. A group of Hawaiian subjects have come together to purchase the land known as Wainiha for the amount of $5,500. The sale of which began in January 1869 A.D.

Section 2. The name of this group will be The Land Acquisition Association of Wainiha.

Section 3. This association has chosen an overseer, treasurer and a secretary who will oversee the workings of this association.

Section 4. By consensus of this association D. Nu‘uhiwa has been chosen as Luna nui of the land, and Z. Seta as Treasurer as well as secretary.

Section 5. Five acres of land will be appropriated for each kuleana and given to every member of this association.

Amendment of Section 5: Members of this association will not be allowed to use the lands stated above except for use as a residence or a garden. Those who go against this section will be fined one hundred dollars.

Section 6. The duties of the Luna nui are to care for, and keep the peace of the land as well as the assets that are a part of the association.

Section 7. The duties of the treasurer are to maintain the monies of the association and to present the amount of money he/she has at every meeting.

Section 8. The duties of the secretary are to maintain the records of the association, as well as its documents and also to write down the minutes of all the things that are done at every meeting and record them in the association records.

Section 9. This association will meet twice every year on the last Saturday of January and the last Saturday of July. However, these meetings can be changed if that is the will of the majority of the association in attendance at a meeting.

Section 10. All members of the association will attend every meeting, except for those who have good reason (real problem) that is presented to the association and approved by the association.

Section 11. As for the place in which this association will meet, that will be where the overseer decides, notification however, must be given one month prior to the meeting of the association.

Section 12. If one or more owners desire to sell their parcels (Kuleana) within Wainiha, no sale will be allowed to people from other areas. But, they may sell to the owners of the association.

> Section 13. If one or more owners want to appoint a proxy for their kuleana(s) while they are going to be in another place. No more than two proxies will be allowed and they must present themselves to the overseer of the association.
>
> Section 14. If a problem arises between one or more owners or between the Luna nui of the lands, this conflict will be presented to the association before going to the district courts.
>
> Section 15. No more than ten animals per owner will be allowed to be set loose in Wainiha.
>
> Section 16. These will become the regulations for all members of this association that was approved by this association on this day September 10, 1877. Along with our signatures below.

The 1877 Constitution establishes several important principles. First, the members chose an elected luna nui (supervisor) to oversee the management of the association. Any conflicts among members or between members and the luna nui were to be resolved internally; the district court would be a venue of last resort. This system recreated, in a formalized manner, the pre-Māhele konohiki system of land management, with one important difference: the community of hui members chose their konohiki rather than having him imposed from above based upon royal prerogative and genealogy. Stauffer describes the luna nui as a "new ali‘i" filling the traditional konohiki role of managing the affairs of the ahupua‘a.[35]

Second, the hui opted to allot individual 5-acre parcels to each hui member for his or her personal use, creating areas of private use within the communal holding.[36] These individual allotments generally coincided with the land on which the members and their families already lived and farmed.[37] In effect, the residents of Wainiha valley parceled out kuleana lots to

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[35] Robert Stauffer, *Kahana: How the Land Was Lost* (Honolulu: Univ. of Hawai‘i Press, 2003), pp. 128-129.

[36] *See Kumukānāwai o ka Hui Kū‘ai ‘Āina o Wainiha*, Section 5.

[37] *See Hui Kū‘ai ‘Āina o Wainiha*, p. 10. Hui members presented a description of their home and farm lot either by name or in relation to other landmarks or other individual's properties and the luna nui signed the claim in confirmation. The hui's record book describes each member's claim and subsequent

themselves, which is significant in light of the Kuleana Act's failure to adequately distribute land titles to makaʻāinana.

Third, the hui established a policy barring the sale of any member's allotment or share to outsiders, thus striving to maintain the integrity of the ahupuaʻa. For a brief period of time between 1879 and 1889, the hui relaxed its prohibition against the sale of hui shares to outsiders by permitting sales to citizens of the Hawaiian Kingdom, but not to foreigners. When the constitution was revised in 1889, however, the clause regulating sales was amended to read, "[n]o share-holder can sell his Kuleana to another person, except to his own blood relative and if he has no blood relative, to sell again to the [Hui]. But he must first report to the manager. He shall sell to the [Hui] for just what it cost him."[38] This prohibition on alienation would later be challenged in court.

Fourth, the bulk of the land not allotted to individual members was set aside for grazing and other communal uses. The original 1877 Constitution established that each owner would be allowed to set loose a maximum of 10 animals in the ahupuaʻa.[39] As the livestock population grew, the constitution was amended, raising the maximum to 40 animals each and requiring

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allotment in much the same way that makaʻāinana testimony is recorded in the records of the Land Commission. *Compare e.g., Foreign Testimony Presented to the Board of Commissioners to Quiet Land Titles*, vol. 12, pg. 80 (on file with the Hawaiʻi State Archives; containing the testimony presented in conjunction with Kowelo's kuleana claim, LCA 11063, describing the physical location, boundaries, history and use of the parcel of land), with *Hui Kūʻai ʻĀina o Wainiha,* p.7 (Translation from original Hawaiian by Leinani Cagulada):

> On the 9th of November 1877, Z. Seta requested of the president and the secretary of the Land-purchasing Company of Wainiha for Kamaalewa. The boundaries are as follows: to the North is the Wainiha stream, to the East is D.N. Kaohule's place, to the South is Kaunupepeiao, a hill, to the West is the irrigated terrace of Umi and the road. This is for a house lot, [and] 2 irrigated terraces of Kapaeli, just inland of the bridge of Umi. Z. Seta Secretary of the Wainiha hui. Witness D. Nuuhiwa. The hui has granted this proposal. Witness: D. Nuuhiwa, Luapuu).

[38] Translation of the *Translation of the Constitution of the Land Purchasing Association of Wainiha, 1889*, Exhibit C, Bill for Partition, Equity Proceeding No. 109, Filed Mar. 25, 1942, (available on microfilm at the Fifth Circuit Court, Kauaʻi, Hawaiʻi), at C-6.

[39] *See Kumukānāwai o ka Hui Kūʻai ʻĀina o Wainiha*, *Sept. 10, 1877,* Section 15.

owners to pay $10 for each animal over it.[40] In addition to grazing, the hui added a kapu[41] to the 1889 Constitution, forbidding members from cutting the "famous hala trees on the plains of Naue."[42] The 1904 bylaws went further, stating that "the cutting of the famous puhala trees of Naue and other valuable woods within the boundaries of the Hui is prohibited excepting when they are intended for the Hui's purposes as fence posts, house building, firewood, or other requirements of the Hui."[43]

Fishing practices in both the ocean and the Wainiha River were closely regulated as well. Each hui member would be given one throw net for use in the ocean and one kahe ʻoʻopu (fish trap) that would have been used primarily in the river.[44] The hui granted exclusive heʻe (octopus) fishing rights to a group of women in exchange for one-dollar annual payments to the hui and regulated the times of year that the heʻe fishery would be opened and closed.[45] Meeting minutes

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[40] *Kumukānāwai o ka Hui Kūʻai ʻĀina o Wainiha*, *Jan. 1877 amended in 1883*, HUI KUAI ʻĀINA O WAINIHA 424 (on file with the Hawaiʻi State Archives) (translation from Hawaiian by Devin C Forrest, on file with author).

[41] Kapu means, "[t]aboo, prohibition; special privilege or exemption from ordinary taboo; sacredness; prohibited; forbidden; sacred, holy, consecrated; no trespassing, keep out." Pukui et al., *Hawaiian Dictionary*, p. 132.

[42] *Translation of the Constitution of the Land Purchasing Association of Wainiha, 1889*, Exhibit C, Bill for Partition, Equity Proceeding No. 109, Filed Mar. 25, 1942, at C-7 (available on microfilm at the Fifth Circuit Court, Kauaʻi, Hawaiʻi). The hala tree (*Pandanus tectorious*) is of great cultural, health, and economic importance throughout the Pacific, used particularly for weaving as well as for food and construction material. Lex A.J. Thomson, Lois Englberger, Luigi Guarino, R.R. Thaman, and Craig R. Elevitch, *Pandanus tectorius*, *Species Profiles for Pacific Island Agroforestry*, April 2006, *at* www.agroforestry.nett/tti/P.tectorius-pandanus.pdf. Nauē is a coastal point on the boundary between the ahupuaʻa of Wainiha and Hāʻena. The hala grove there was famous for its "emotional and mythic properties" and also for the "practical resources" it provided. Carlos Andrade, *Hāʻena: Through the Eyes of the Ancestors* (Honolulu: Univ. of Hawaiʻi Press, 2008), pp. 41-42.

[43] *Translation of the By-Laws of the Land Purchasing Company of Wainiha, 1904*, Bill for Partition, Equity Proceeding No. 109, Filed March 25, 1942, Exhibit D, Section 21 at D-15 (available on microfilm at the Fifth Circuit Court, Kauaʻi, Hawaiʻi).

[44] *First Special Meeting, Mar. 17, 1879*, Hui Kūʻai ʻĀina o Wainiha, p. 25.

[45] *Meeting Minutes of Apr. 17, 1880*, Hui Kūʻai ʻĀina o Wainiha, pp. 39-42 (Translation from Hawaiian by Leinani Cagulada & Puakea Noglemeier, on file with author).

also reveal that the hui members coordinated akule (scad fish)[46] harvests, operated communal kahe (fish traps), and adhered to an array of other fishing restrictions and regulations.[47]

The members tested and refined each of these principles during the first decade of the hui's existence. In the ensuing years, the Hawai'i Supreme Court would also weigh in, supporting these tenets of hui self-governance at first but later dismantling them.

III. Early Supreme Court Cases: Supporting Hui Self-Governance in the Face of Private Property Rights

The Wainiha Hui, as isolated as it was on the remote north shore of Kaua'i, did not exist in a vacuum. It could not escape the Kingdom's evolving legal terrain altered by the Hawai'i Supreme Court, a world away in Honolulu. The first two hui cases to reach the Hawai'i Supreme Court each dealt with the tension between the property rights of individual members and the communal power of the hui to regulate its members based on its constitution.

The first hui case in 1882, *Burrows v. Paaluhi,* involved a conflict between a member and the luna of the Mānoa Hui located on O'ahu. The hui member, Kanui, leased his hui pasturage interest to Burrows for $15 a year. Burrows subsequently placed twelve head of cattle on the hui's land. The luna nui, Paaluhi, then seized the cattle claiming that Kanui violated rule 18 of the hui constitution, which stipulated that members would not rent out the right of pasturage on the common land without the luna's consent. At the trial court, Judge M. McCully ruled in Burrows' favor, holding that as tenants in common a member cannot be prevented "from selling his rights and title therein" and that the hui rules cannot make a lease to a third party void, unless the lease's terms violated the deed to the land itself.

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[46] Big-eyed or goggle-eyed scad fish, *Trachurops crumenoph-thalmus*. Mary Kawena Pukui and Samuel H. Elbert, *Hawaiian Dictionary* (Honolulu: Univ. of Hawai'i Press, 1986 ed.), p. 16

[47] *See* Hui Kū'ai 'Āina o Wainiha, p. 30 (referring to the construction of a community kahe); *see also Meeting Minutes of Jan. 30, 1880*, Hui Kū'ai 'Āina o Wainiha, p. 35.

The Supreme Court opinion, written by Chief Justice Albert Francis Judd, ruled in Burrows' favor, but it gave far more credence to the hui's self-governing authority. The court confirmed that, "the Constitution of this Hui is to be regarded as a mutual agreement which bound the tenants."[48] While the Supreme Court acknowledged that tenants in common, which it regarded hui members to be, had the right to alienate or lease their respective undivided share of the common property, the court ruled that the restrictions laid out in the hui's constitution superseded this right. The problem was not that the hui was powerless to enforce its constitution in the face of a private property right, as the lower court held; rather, the problem was that the luna arbitrarily refused to endorse Kanui's lease. Kanui's lease did not violate the maximum number of cattle allowed per member, and Kanui offered to pay the required management commission to the luna. Nevertheless, the luna withheld approval. The hui had the power to enforce its constitution, and the court had the power to ensure that in doing so, the hui fairly applied that constitution.

In *Mahoe v. Puka,* the second hui case to reach the Supreme Court, Chief Justice Judd expanded upon the legal strength of hui constitutions:

> We are of the opinion that where parties owning land enter into written agreements as to the management of their property, whether these take the form of articles of co-partnership of a constitution and bylaws, as in this case, these should be upheld and enforced by the Courts as far as possible to do so. If these agreements are found to work disadvantageously they can be amended, and if they should be found to be oppressive or subversive of the right of the minority, the Courts will relieve them.[49]

Although the substance of *Mahoe*, involving the resolution of a conflict between the newly elected luna and the outgoing leadership of the Waikāne Hui on O'ahu, is not historically

[48] J. Burrows v. Paaluhi, 4 Haw. 464 (Haw. Kingdom 1882).
[49] Mahoe v. Puka and J.N. Paikuli, 4 Haw. 485 (Haw. Kingdom 1882).

important, the pro-hui language of Judd's opinion would be recalled in later cases where the stakes were higher.

A. Tenancy in Common, Possessory Rights, and the Origin of the "Hui Problem"

In the next two hui cases – *Awa v. J.M. Horner* and *Lui v. Kaleikini* – the court more clearly defined what a hui was within Hawai'i's emerging common law.[50] What pre-existing legal box could this "peculiar native institution" be squeezed into? In *Awa*, the court resolved the issue of whether two members of a hui in Hāmākua on the Island of Hawai'i held the land as tenants in common or as joint tenants.[51] If the hui was a tenancy in common, the deceased member's shares would descend to his or her heirs. If it was a joint tenancy, the deceased's shares would revert to the surviving shareholders.

Although the choice of law might seem obvious today, it was not as clear in the Hawaiian Kingdom in 1886, where the concept of private property was only forty years old. If the court adopted the common law of England, then a joint tenancy would exist whenever two or more persons held property concurrently. The court indicated that for English common law to be adopted, "we must be satisfied that the principle to be adopted is found in justice, and not in conflict with the laws and customs of this Kingdom."[52] The court noted that the English practice was rooted in the desire to keep feudal estates intact, but since Hawai'i had no feudal tenure, the court found no underlying reason to adhere to English common law. It instead found relevance in "the policy of American law" that "is opposed to the notion of survivorship, and therefore

[50] *See* Awa et al. v. J. M. Horner et al., 5 Haw. 543 (Haw. Kingdom 1886) and Lui and Kilauano, Aleka and Maluhia, Minors, By Their Guardian, David Kua v. William Kaleikini, 10 Haw. 391 (Haw. Prov. Govt. 1896).
[51] *Awa*, 5 Haw. at 543.
[52] *Id.*

regards such estates as tenancies in common."[53] The court supposed "that such conveyances have generally been understood and treated in this kingdom as creating estates of tenancies in common" and confirmed "that such is the law of the country."[54]

In *Awa v. Horner*, the court's decision determined which of two individuals would take title to one hundred and twelve acres in Hāmākua on Hawai'i Island. In the larger view, however, the court's decision determined whether hui interests or shares would be diluted over time or kept intact. Using the Wainiha Hui as an example, the original 71 founding members each received 1/71 share in the ahupua'a, entitling each shareholder to a five-acre allotment of land and shared use of the remaining common lands. Under the doctrine of tenancy in common, within two generations of inheritance, assuming two children per generation, the 1/71 share would devolve into four times as many individuals each holding a 1/284 share in the hui. This fragmentation of interests raised questions over subsequent shareholders' entitlements and complicated governance.

Most importantly, the complex ownership structure created by so many fractional interests frustrated the acquisition of clear title to hui lands and resources.[55] This is exactly what Leslie Watson, in his series of articles on Land Hui, referred to when he described the "Hui problem."[56] And the hui problem was especially vexing to plantation owners who coveted the expanse of fertile hui lands but faced a jumble of interested parties. In this way, calling hui members tenants in common hindered consolidation under a single owner and facilitated the hui's near-term survival; ultimately though, it proved to be its undoing.

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[53] *Id.*
[54] *Id.*
[55] *See* Watson, *Old Hawaiian Land Huis*, pp. 14-15.
[56] Watson, *Old Hawaiian Land Huis*, p. 15.

B. The Enforceability of Hui Allotments: Empowering Hui Self-Governance and Planting the Seed of Their Demise

The underlying claim in *Lui v. Kaleikini*, decided ten years after *Awa*, involved the inheritance of a Land Hui interest that belonged to a man named Kilauano by his four children. What exactly did the children inherit when they acquired Kilauano's hui share? The children's guardian David Kua argued that the children inherited the specific parcel of land that had been allotted to their grandfather and subsequently deeded to their father.[57] The defendant William Kaleikini, who occupied and farmed Kilauano's allotment after it had been abandoned, contended that the children inherited a general communal interest to the hui lands but no legal interest to a specific allotment. Essentially, Kaleikini challenged the enforceability of the hui's internal allotment system.[58]

At issue was whether a co-tenant has a right to "bring ejectment against another co-tenant for a portion of the common estate." Under common law, each tenant has the right of possession of the entire parcel of land.

In response, Chief Justice Judd referred back to his earlier ruling in *Burrows v. Paaluhi* that supported the power of a hui to establish its own rules to regulate and manage its land. He held that "such an agreement made as this one is for the common benefit of the owners of the land, to secure harmony and to avoid expense, should be respected by the court." The court chose to treat the terms of the hui allotments, to the extent that the members had agreed to them, as if they were formal deeds. By doing so, the court empowered the hui in the collective management of its land but also elevated the status of the individual member's holdings in the

[57] Lui v. Kaleikini, 10 Haw. 391, 392 (Kilauano was the son of founding hui member Kumahakaua who had been allotted the parcel in question by D. Nuuhiwa in 1878).
[58] *Id.* (Kaleikini argued that hui allotments do not constitute legal partition in severalty of the common land to the individual members. In other words allotments were not legal divisions of hui property and all members continued to hold an undivided interest in the entire body of land).

eyes of the law, foreshadowing future court action that would bury the hui under the legal rights of the individual. This ruling was the last time that the Hawai‘i Supreme Court accorded Hawaiian Land Hui deference in determining how they would communally manage their lands.

IV. The Legal Tide Turns: Individual Property Rights and The Judicial Erosion of Land Hui

The turnaround came in a 1913 case called *In Re Assessment of Taxes, Hui of Kahana*.[59] The ruling disregarded the jurisprudence set forth by the Judd Court, which gave legal blessing to the Land Hui's unique communitarian features. The opinion is perhaps the first "nail in the coffin" and hastened the Land Hui's demise as a viable institution.

A. Hui Do Not Have Standing: Reversing 30 Years of Hawai‘i Supreme Court Precedent

Prior to 1913, the Kahana Hui on O‘ahu leased out water rights for "surplus water" to the Waiāhole Water Company for $40,000 per year over 50 years.[60] At issue before the court was the 1913 tax assessment levied against the Hui of Kahana.[61] Taxing Land Hui was commonly done, but the Kahana Hui contested the surplus water's $400,000 valuation. Rather than rule on whether or not $400,000 was a fair estimation, the court held that the tax assessment was invalid because "[t]he Hui of Kahana as such is not a legal entity. It is neither a corporation nor a

[59] Stauffer contends that the lease between Kaneohe Ranch and the Kahana Hui had a value of nearly $1 million annually when adjusted to reflect currency values in the year 2000. Stauffer, *Kahana*, p. 171. The "second case involving the Kahana Hui," In Re Assessment of Taxes, Hui of Kahana, 21 Haw. 676 (Haw. Terr. 1913), involved water rights valued at $400,000 even in 1913.

[60] *In Re Taxes of Kahana*, 21 Haw. at 676. For specific information on the water lease *See infra* Part VII.B (discussing Mary E. Foster v. Waiāhole Water Company Ltd., 25 Haw. 726, 729 (Haw. Terr. 1921). "Surplus waters" refers to amounts of water beyond what is necessary for irrigation and domestic purposes. *See* Foster v. Waiāhole Water Company, 25 Haw. 726, 731-32 (Haw. Terr. 1921). The later irrigation and domestic water are deemed an entitlement connected, or appurtenant, to the ownership of the land. *Id.* The surplus water was by definition considered "extra" water and therefore available for sale, lease, or simple expropriation by upstream parties. *Id*. *See also* D. Kapua‘ala Sproat, *Ola I Ka Wai: A Legal Primer for Water Use and Management in Hawai‘i* (Honolulu: Ka Huli Ao Center for Excellence in Native Hawaiian Law, Wm. S. Richardson School of Law, University of Hawai‘i, 2009), p. 13. Under Hawai'i current framework for water resource management, surplus water rights no longer exist. *Id.*

[61] *In Re Taxes of Kahana*, 21 Haw. at 677.

partnership. The title to its lands is not in a trustee for its use and benefit but is held in undivided interests by the members themselves as tenants in common."[62] Because hui were not corporations or partnerships, concepts of American and English common law, they were now nothing, from the law's perspective, but a collection of individuals.

It should be mentioned that the Judiciary Act of 1892, as well as common practice prior to 1892, established that the common law of England applied in Hawai'i except "as otherwise provided by Hawaiian judicial precedent, or established by Hawaiian national usage."[63] Nevertheless, the court chose to ignore what had become an accepted common practice after decades of Land Hui forming and functioning throughout Hawai'i. It undermined the deference that had previously been shown in *Burrows, Mahoe, Awa*, and *Lui*. Not only was this a stark about face from Supreme Court precedent, but it was also contrary to the established practice of issuing collective tax assessments that were paid out of hui treasuries.[64] The Kahana tax decision delegitimized the hui as an organizational entity, and laid the groundwork for two subsequent cases that further undermined their powers of self-management.

B. Downplaying Contract Rights Underlying Hui Agreements In Favor of Individual Property Rights

In 1921, two cases, *Foster v. Waiāhole Water Co*. and *Smythe v. Takara*, followed each other in close succession and established, respectively, that hui members have no power to prevent or regulate another member's sale of his or her hui interest and that the elected hui

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[62] *Id.*

[63] Act of Nov. 25, 1892, To Reorganize the Judiciary Department, ch. LVII, § 5, *in 1892 Laws of Her Majesty Liliuokalani, Queen of the Hawaiian Islands* 90, 91. The current version of this law adopts the common law of England as ascertained by English and American judicial decisions, "except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage." Hawaii Revised Statutes § 1-1 (2014).

[64] Watson, *Old Hawaiian Land Huis*, p.5. *See also, Meeting Minutes of Sept., 15, 1883,* Hui Kū'ai 'Āina o Wainiha, pp. 111-113 (translation from Hawaiian by Ka'ano'i Walk and Puakea Nogelmeier, on file with author) (listing the members and amounts contributed to the hui's collective tax in 1883).

leadership has no legal standing to sue to enforce a hui's constitution or bylaws.[65] Both cases rely on *In Re Taxes of Kahana* as an analytical starting point.

In *Foster v. Waiāhole*, Mary Foster, who owned 90% of the Kahana Hui shares, sought to invalidate the conveyance of water and water rights by a fellow hui member named Lincoln McCandless. McCandless had a 6.25% interest in the hui. He conveyed whatever surplus waters he owned or controlled above an elevation of 450 feet to Waiāhole Water Company. The water was to be transferred by tunnels and flumes to the dry and expansive 'Ewa plain on the south side of the Ko'olau Mountain range for sugar irrigation.

Mary Foster argued that a cotenant could not convey an easement with respect to the lands of the co-tenancy. She based her argument on the rule that a cotenant may not transfer an interest that interferes with the rights of other cotenants. It amounts to "an attempt to set aside and partition a common property of the co-tenancy and is thus an encroachment upon the rights of the other cotenants."[66] The court could not comprehend how Foster and other cotenants had been detrimentally affected by McCandless' sale of his water rights since it involved "surplus water" only. Without a showing of harm, the court held that Foster had no grounds to challenge McCandless' sale because it

> [i]s settled law that one cotenant may transfer his undivided interest [or any part thereof] to a third person and it is the modern rule . . . of this jurisdiction that one of the cotenants may by metes and bounds convey a specific part of the common property . . . voidable by the non-assenting tenants in common to the extent only that the conveyance may impair or vary their rights.[67]

Because there was no "impairment of or encroachment upon" Mrs. Foster's rights, it would have been "inequitable and fundamentally wrong" to "take away from the [water]

[65] Foster v. Waiāhole Water Company, 25 Haw. 726 (Haw. Terr. 1921); J.K. Smythe et al v. J. Takara et al. (Maalo), 26 Haw. 69 (Haw. Terr. 1921).
[66] *Foster v. Waiāhole,* 25 Haw. at 735.
[67] *Id.* at 736.

company valuable property rights which it has acquired in good faith and for which it has paid substantial consideration."[68] Putting aside the dubious assertion that there was no harm to Mrs. Foster or the Kahana Hui's other remaining co-tenants, the salient feature of the court's ruling with respect to the Hui was its absence from the court's opinion. The court held, based upon *In Re Taxes of Kahana*, that a hui has no legal existence, it was simply a synonym for tenancy in common and the court need only deal with the property rights of individual tenants.[69]

The case that sealed the fate of Land Hui as legal and cultural institutions came just five months after *Foster v. Waiāhole* was decided.[70] On Maui, G. M. Maalo, the owner of several shares in the Hui Kū'ai 'Āina o Peahi, executed a lease for sixty-three acres of common land to J. Takara.[71] This was part of the "wild scramble" for pineapple lands described by Leslie J. Watson.[72] Maalo executed the lease for more land than he had been allotted without the knowledge or consent of the other hui members and in direct violation of the hui's constitution, which required that any lease of the hui's lands be carried out by the executive committee and with the approval of two-thirds of the members. William Smythe, the acting luna of the Peahi Hui at the time, and the other hui officers filed suit to invalidate Takara's lease.

Again citing *In Re Taxes of Kahana*, the court held first that the Peahi Hui had no legal status; and therefore, the officers of the hui had no standing to either sue or be sued on behalf of the hui. Two-thirds of the hui membership voted to authorize Smythe and the other officers to bring this suit on their behalf, but the court called it an attempt "to clothe the petitioners with

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[68] *Id.* at 73.
[69] *See id*. at 730.
[70] J.K. Smythe et al v. J. Takara et al. (Maalo), 26 Haw. 69 (Haw. Terr. 1921). This case was described by contemporary observers as the "death knell" of Hawaiian Hui lands. Watson, *Old Hawaiian Land Huis*, p. 15.
[71] *Maalo,* 26 Haw. at 71.
[72] Watson, *Old Hawaiian Land Huis*, p. 15.

authority to proceed against the respondent"[73] and insufficient as a matter of law to bind all the hui members to the court's decision.

In Smythe's opening brief, his attorneys reminded the court of the land hui's legal and cultural stature:

> Under Hawaiian law, Huis and rules and regulations there under are regarded with peculiar favor. The Hui is [a] Hawaiian institution, honored by age and custom, and sanctioned by the Law, and as [a] Hawaiian institution, it is invested with special rights and privileges. Decisions in Hui cases by the Hawaiian courts all point to this conclusion. It has been established law in the Territory for many years that the contractual rights created by the Constitution and Rules of Huis are enforceable.[74]

They cited the string of cases – *Burrows, Lui, Foster v. Kaneohe,* and *Mahoe* – that recognized the legal power of a hui to enforce its constitution and bylaws, specify allotments to its members, and manage its common lands. Regrettably, their argument fell on deaf ears. The court applied *Foster v. Waiāhole* with the justification that "[t]he law is a progressive science and while the views of courts, judges and text writers are entitled to respect a strict adherence to precedent would prevent all progress in the law."[75] Evidently, "progress" required that land and water be taken from hui and made available to plantations. The "Hui problem" of complex, culturally-based multiparty titles managed by internal constitutions and bylaws adverse to the free alienability of land stood in the way of progress. The law also evolved in a manner that rendered the Land Hui, as an organizational entity, of dubious worth to its members. It could no longer serve as a vehicle to preserve communal rights in hui lands. The court's decision to allow

[73] *Maalo*, 26 Haw. at 72.
[74] Opening Brief for Petitioner-Appellants, J.K. Smythe, et al. at 5, *Maalo*, 26 Haw. 69 (No. 1314) (on file with the Hawai'i Supreme Court).
[75] *Foster v. Waiāhole*, 25 Haw. at 736.

any member to sell off or lease out sections of the common tenancy compromised each member's individual interest.[76]

C. The Partition Act of 1923

Ironically, the statute that provided the legal vehicle to end the hui movement in Hawai'i developed as an attempt to preserve the remaining rights of hui members. The law firm of Smith, Warren, Stanley, and Vitousek, who represented Smythe and the Peahi Hui in *Maalo* and helped Foster in her hui work, authored a study of the status of Hawaiian Land Hui.[77] This study ultimately resulted in the Partition Act of 1923.[78]

The Act provided generally for suits of partition, stating that "[w]hen one or more persons hold or are in possession of real property as joint tenants or as tenants in common . . . a suit in equity may be brought by any one or more of them in circuit court."[79] Partition was not new. It does appear, however, that prior to the Partition Act of 1923 it was a complex process subject to litigation and frustration.[80] In addition to streamlining the process, the 1923 Act contained several elements specifically designed to protect hui members whose property interests might not otherwise have been recognized by a court. Perhaps in recognition of the less-than-clear title of a hui share, which passed down over several generations, section 2 defined the parties both necessary and eligible to join any suit of partition broadly to include "[a]ny person having or claiming to have any legal or equitable estate, right or interest in the property or any

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[76] *See* Stauffer, *Kahana*, pp. 201-202.
[77] Stauffer, *Kahana*, p. 202; Watson, *Old Hawaiian Land Huis*, p. 16.
[78] An Act to Provide for the Partition of Real Estate, 1923 Hawaii Session Laws 216; *see* Stauffer, *Kahana*, p. 202 (describing the roles of Smith, Warren, Stanley, and Vitousek).
[79] 1923 Hawaii Session Laws 216.
[80] *See* Pilipo v. Scott, 21 Haw. 609, 617 (Haw. Terr. 1913) ("[P]laintiff-in error contends that the "tying up [of] the partition proceedings" by the defendant-in-error has prevented his client from obtaining the beneficial use of the premises to which the lease entitled her.").

part thereof."[81] Sections five and nine, respectively, required actual notice to all known parties and mandated that the court account for and preserve the rights of all unknown or unserved parties.[82] Finally, section ten addressed the validity of hui allotments where the "legal title of a claimant to any share or interest" may be lacking "but the claimant has color of title" and should be treated as a legal owner to a particular share or parcel.[83]

According to Watson, several of the larger hui that occupied valuable agricultural land, such as the Peahi and Mailepai Hui on Maui and the Moloaʻa Hui on Kauaʻi, entered partition proceedings soon after the passage of the 1923 Act.[84] The Wainiha Hui, however, persisted for another twenty-five years until McBryde Sugar Co. initiated a suit for partition to acquire even more rights to the Wainiha Hui's water and almost two-thirds of the hui's land base.

V. Wainiha Hui and the Partition of 1947

The events that led up to dissolution of the Wainiha Hui begin in 1903, when it leased water rights to McBryde Sugar Co. for the construction of a hydroelectric plant. McBryde operated sugar plantations on the south side of Kauaʻi and relied on coal-powered pumps to draw water from the ground and irrigate its crops.[85] Looking for a way to cut its energy costs, McBryde approached the Wainiha Hui about using the Wainiha Stream to power a hydroelectric plant. The company sent William E. Rowell to negotiate a water lease.[86] His bid for a fifty-year

[81] 1923 Hawaii Session Laws 216.
[82] 1923 Hawaii Session Laws 217-219.
[83] 1923 Hawaii Session Laws 220.
[84] Watson, *Old Hawaiian Land Huis*, p. 16.
[85] Wilcox, *Sugar Water*, pp. 78-79.
[86] *The Wainiha Water Rights Lease*, Hawaiian Almanac and Annual 161 (Thomas G. Thrum, ed., 1946-47) (reprinted from the 1924 Hawaiian Annual) [hereinafter *Wainiha Water Rights Lease*]; *see*, Carol Wilcox, *Sugar Water: Hawaii's Plantation Ditches* (Honolulu: Univ. of Hawaiʻi Press, 1996), pp. 78-79.

lease with annual payments of $1,500 was purportedly supported by the hui's then-president and Hanalei district court judge Kakina.[87]

The lease went into effect on March 3, 1903, and in 1906, the power plant went online.[88] Although the lease payments distributed to the hui members in the form of dividends were likely welcomed, the approaching expiration of McBryde's lease rights in 1953 most likely triggered the Company's legal efforts to break apart the hui and take ownership of most of the ahupuaʻa in 1947.[89]

In 1921, after the Supreme Court's ruling in *Foster v. Waiāhole* determined that a hui could not control the sale or lease of water rights by a hui member, McBryde Sugar Company began buying up shares of the Wainiha Hui. In March of 1942, when McBryde's attorneys filed a Bill for Partition, the company claimed ownership of 47.7656 out of 71 shares in the hui lands of Wainiha.[90] McBryde acquired slightly over ten shares in two transactions in 1922, purchasing just under three shares from A. Menefoglio and just over seven shares from the estate of A. Wilcox.[91] The accumulation of additional hui shares between 1921 and 1942 was facilitated by an "allotment guarantee" system created by the law firm of Smith, Warren, Stanley, and Vitousek.[92] Under the allotment guarantee system parties desiring to retain their allotments but willing to otherwise convey their common interest in the ahupuaʻa to McBryde received a deed

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[87] *The Wainiha Water Rights Lease*, p. 161.
[88] Wilcox, *Sugar Water*, pp. 78-80.
[89] *See, Short Form of Final Decree in Partition,* McBryde Sugar Company Ltd. v. William P. Arona et al., Equity No. 109, (Circuit Court of the Fifth Circuit, 1947, available on microfilm at the Fifth Circuit Court, Kauaʻi, Hawaiʻi).
[90] Bill for Partition, Equity Proceeding No. 109, Filed March 25, 1942, at 17 (on file with the Hawaiʻi Fifth Circuit Court) [hereinafter *Bill for Partition*]. At the time McBryde filed for Partition, the company had also acquired seven separate kuleana parcels in the valley. *Id.* at 9.
[91] *See* Deed of Conveyance from A. Menefoglio to McBryde Sugar, Oct. 1, 1922, Book 653, Page 447 (conveying 2.915 shares for $2000); Deed of Conveyance from A. Wilcox Estate to McBryde Sugar, Dec. 11, 1922, Book 666, Page 174 (conveying 7.26 shares for $4,732) (on file with State of Hawaiʻi Bureau of Conveyance).
[92] Watson, *Old Hawaiian Land Huis*, p. 34.

from the company effectively ensuring that they would receive ownership of their allotment in the event of a future partition of the hui lands. In effect, hui members sold McBryde any common interest they had in the ahupuaʻa in exchange for a guarantee that they would be able to retain their individual house and or farm lot in any future partition. A review of McBryde's purchases between 1922 and 1930 shows that the average price for one of the seventy-one existing shares of the Wainiha Hui was approximately $1,000.[93]

In the resulting Final Decree of Partition issued on September 1, 1947, some 250 distinct lots were created in the lower valley.[94] In some instances a single awardee received multiple lots; in others, a single lot was awarded to twenty or more individuals in fractional shares. In order to secure any lot, however, all claimants or parties were required to pay a proportional share of the $22,831 in costs incurred by McBryde in carrying out the partition proceedings.[95] If payment was not made within 60 days, the lot in question would revert to McBryde and the defaulting awardee would receive the difference between costs owed to McBryde and the assessed value of the lot.

Aylmer and Sinclair Robinson were collectively the second largest recipients of land, awarded just less than 240 acres. The big winner, unsurprisingly, was McBryde. It received over 10,000 acres, or the upper two-thirds of the entire ahupuaʻa. The court determined, as McBryde

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[93] *See, e.g.,* Deed of Conveyance from James K. Lota & Wife to McBryde Sugar, Nov. 25, 1927, Book 911, Page 293 (transfering 1/2 of share no.13, originally held by Kawaanui, for $500); Deed of Conveyance from Augustus F. Knudsen (trustee) to McBryde Sugar, June 9, 1928, Book 946, Page 312 (transferring share no. 15, originally held by Kumahakaua for $1000); Deed of Conveyance from May T. Pa to McBryde Sugar, Nov. 27, 1929, Book 1041, Page 415 (transferring share no. 23 originally held by Kealaula for $1000) (all records on file with the State of Hawaiʻi Bureau of Conveyance).

[94] Short form Final Decree in Partition, McBryde Sugar Company v. William P. Arona, et al. Eq. No 109, 3-10 (Circuit Court of the Fifth Circuit, Sept. 1, 1947).

[95] Report of Commissioners, McBryde Sugar Co. v. Wm. P. Aarona et al., Exhibit G, Eq. No. 109 (Cir. Ct., Fifth Cir., Terr. of Haw., May 24, 1947); *see also* Short form Final Decree in Partition, McBryde Sugar Company v. William P. Arona, et al. Eq. No 109, 11 (Circuit Court of the Fifth Circuit, Sept. 1, 1947).

requested in the Bill for Partition, that to maintain the full value of the petitioner's water rights the "upper forest and watershed together with use rights, rights of way for aqueducts, roads, trails, and power transmission lines, and the site for the powerhouse on the lower lands should be kept intact . . . and set aside unto their present lessee and user."[96] With this decree, McBryde acquired ownership of the upper Wainiha Valley along with its water six years before its 1903 lease to Wainiha water rights was set to expire.

Conclusion

The last large organized Land Hui, located in Hāʻena on Kauaʻi, was judicially destroyed in 1967. It was an experience that remains in the memories of many who are alive today. Although the Hawaiian Land Hui, as a model for land ownership and traditional community organization, eventually disappeared, the fact that it existed and functioned in some areas for almost one hundred years demonstrates that it played a crucial role in maintaining traditional relationships in Hawaiian communities. Where hui once controlled the land, large Native Hawaiian communities still exist today. That the hui arose organically from within discrete Hawaiian communities attests to the strength and synchronicity of traditional ways of life. That they were so easily taken apart in court attests to the lack of respect paid to earlier Hawaiian judicial precedent and established Hawaiian usage, usage that was entitled to legal protection.

[96] *Bill for Partition*, p. 36.

Table 1 – Partial Summary of Hawaiian Land Hui[97]

Hui Name	Location	Origin	Acreage	Members
Peahi	Hāmākualoa, East Maui	RPs 149, 221, 160, 2182	2000	159
Mailepai	Kāʻanapali, West Maui	?	2825	106
Huelo	Hāmākualoa, East Maui	?	1500	70
Ulumalu	Hāmākualoa, East Maui	LCA 10474	1500	70
East Kaupakulua	Haʻikū, East Maui	?	1036	45
Hāmākuapoko	Pāʻia, East Maui	?	929	28
Paʻuwela	Haʻikū, East Maui	RPG 226	210	33
Moʻomuku	Kāʻanapali, West Maui	LCA 11216, Apana 28	?	29
Olowalu	West Maui	?	?	?
Ukumehame	West Maui	?	?	?
Moloaʻa	Koʻolau, Kauaʻi	RPG 535, ?	1500+	?
Wainiha	Haleleʻa, Kauaʻi	LCA 11216	15,110	71
Hāʻena	Haleleʻa, Kauaʻi	LCA 10613	1760	38
Māhāʻulepū	Kona, Kauaʻi	LCA 7713 / RP 4482	?	?
Kahana	Koʻolauloa, Oʻahu	LCA 8452 / RP 4387	5,050	115
Waikāne	Koʻolaupoko, Oʻahu	RPG 464	1698.48	33
Mānoa	East Oʻahu	RPG 161	513	34
Waimea	Koʻolauloa, Oʻahu	RPG 880	2855	49
Hōlualoa	Hawaiʻi	?	7,330	400
Kaliʻi & Pauwalu-mauka	Koʻolau, East Maui	RPG 1899	115	11
Pauwalu-makai	Koʻolau, East Maui	RPG 2549	151.65	16
Paehala	Koʻolau, East Maui	RPG 3048	43.5	?
Kokomo	Hāmākualoa, East Maui	RPG 183	180	13
Hāmoa	Hāna, East Maui	MA 2, RP 4473	169	?
Kaumakani	Kīpahulu, East Maui	RPG 3057	227.5	20
Kōloa	Koʻolau, East Maui	RPG 1396	391.63	?
Kukuiʻula	Hāna, East Maui	RPGs 1902, 2966	456.28	8
Waianu	Koʻolau, East Maui	RPG 1911	107	19
Puheʻemiki	Koʻolauloa, Oʻahu	RPG 3053	45.38	?
Keopukapaiole	Puʻuohoku, Molokaʻi	?	?	46
		Totals	**47,703.42**	**1,413**

The following abbreviations are utilized in Table 1.
LCA - Land Commission Award: LCAs were the initial title documents issued to Māhele awardees and to commoners who successfully applied for kuleana lands. LCAs issued for kuleana lands required payment of a survey fee, before fee-simple title was confirmed; LCAs issued to aliʻi and konohiki, in conjunction with their Māhele claims, were further subject the government's rights in the land.
RP – Royal Patent: Royal Patents in fee-simple were issued on LCAs after a commutation to the government was either paid or waived.
RPG – Royal Patent Grant: RPGs, not to be confused with RPs, were issued to the purchasers of government land.
MA – Māhele Award: MAs were issued to konohiki and aliʻi who had failed to obtain LCAs to which they were entitled prior to the dissolution of the Land Commission in 1855.

[97] This table also appears as Table III in Chapter Five.

Attachment I: Partial Summary of Known Hawaiian Land Hui

A note on sources:

Aside from Leslie Watson's short paper elaborating on his talks to the Hawai'i Engineering Association, there has been little or no scholarly work aimed at broadly summarizing the Hawaiian Land Hui movement. As noted above, very few primary source materials have been uncovered. As a result, the following information relies heavily on Watson's monograph supplemented by an array of disparate sources such as court cases and deeds at the Bureau of Conveyance. These documents often refer to particular Land Hui only in passing, but they serve to verify and build upon the skeletal outline provided by Watson.

In 1932, referring to his paper, Watson wrote that, "[t]he huis referred to herein are a portion of the huis that the writer has intimate knowledge of. The examples are considered fairly representative of the many forms that the huis took but comprise, in number, only a small portion of the important huis." Thus, this summary is only a partial one and would perhaps more properly be described as a starting point for further research rather than a true or comprehensive summary.

First Generation, "Unorganized" Hui

Kokomo Hui, Hāmākualoa District, Ha'ikū, East Maui, established in 1860 –180 acres.
Described by Watson as an "unorganized" hui formed in 1860 when W.P. Alexander conveyed Grant 183 to 13 individuals.[98] Alexander received Grant 183 in 1849.[99]

Pa'uwela Hui, Ha'ikū, East Maui, established in 1864 – 210 acres.
33 Hawaiians purchased the Pa'uwela Hui lands in 1864.[100] "In 1850, King Kamehameha III by Royal Patent No. 226 granted a parcel of 210 acres described by metes and bounds and situate in

[98] Watson, *Old Hawaiian Land Huis*, p. 28.
[99] Territory of Hawaii, Commissioner of Public Lands, *Index of All Grants and Patents Land Sales* (Honolulu: Paradise of the Pacific Print, 1916), p. 80 [hereinafter "*Index*"].
[100] Watson, *Old Hawaiian Land Huis*, p. 28. See also Leialoha v. Mahiai, 23 Haw. 711, 711-712 (Haw. Terr. 1917) (an action for ejectment from a specific portion of the Hui land, dismissed).

Pauwela, Hamakualoa, Maui to William L. Lee, first Chief Justice of the Supreme Court of Hawaii. Subsequently, Lee's widow conveyed the parcel to 33 Hawaiians in 1864."[101]

Hāmoa Hui, Hāmoa, Hāna District, East Maui – 178.197 acres.[102]
The Hāmoa Hui lands are briefly mentioned in *Hana Ranch, Inc. v. Kumakahi*, a 1986 quiet title action. In that case, the land is described as, "located in Hamoa, Hana, Maui, and originally granted to Keohokalole under Māhele Award 3, Royal Patents 4473 and 6923."[103] No further details about the Hamoa Hui are known.

Kaumakani Hui, Kīpahulu District, Papauluana, Maui, established in 1868 – 227.5 acres.[104] The Kaumakani Hui is referenced in the 1983 quiet title action, *The Nature Conservancy v. Nakila*.[105] The case describes RPG 3057, conveyed in 1868 by Kamehameha IV to 20 shareholders, as the Hui Lands of Kaumakani. Watson also refers to the Kaumakani Hui at Kīpahulu as Grant 3057 to Nakila, et al.[106]

Hui ʻĀina o Koloa, Makaīwa, Koʻolau District, East Maui, established in 1854 – 391.63 acres. Watson describes the Hui ʻĀina o Koloa as example of an early "unorganized" land hui composed of Grant 1396 to Luka, et al.,[107] issued in 1854.[108]

Kukuiʻula Hui Land, Kīpahulu, Hāna District, East Maui, established in 1864 – 456.28 acres. Watson describes the Kukuiʻula Hui Land as Grants 1902 and 2966 to Makahio, et al.[109] Grant 1902 to Kaumaia and seven others was issued in 1855 for 273 acres in Popoloa & Kukuiʻula, Kīpahulu District.[110] Grant 2966 to Makahio & seven others was issued in 1864 for 183.28 acres in Kukuiʻula.[111] It is unclear whether these two Grants were combined into a single hui, as Watson suggests, or if they were two distinct land hui.

Keʻanae Hui Lands: The four Keʻanae Hui described below are the subject of an article *The Hui Lands of Keanae: Hawaiian Land Tenure and the Great Māhele*, by Jocelyn Linnekin.[112]

> **Waianu Hui Land**, Pāhoa and Waianu, Koʻolau District, East Maui, established in 1865 – 107 acres. Watson lists the Waianu Hui as another "unorganized" hui owning Grant

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[101] Yoshimoto v. Lee, 2 Haw. App. 477, 479, 634 P.2d 130, 131 (Haw. App., 1981) (appeal from a quiet title action).
[102] Hana Ranch, Inc. v. Kumakahi, 6 Haw. App. 341, 343-44, 720 P.2d 1025-25 (Haw. App., 1986).
[103] *Id.*
[104] *Index*, p. 89 (listing grant 3057 in Book 14 to Nakila and 19 others).
[105] *The Nature Conservancy v. Nakila*, 4 Haw. App. 584, 593, 671 P.2d 1025, 1032 (Haw. App. 1983).
[106] Watson, *Old Hawaiian Land Huis*, p. 10.
[107] Watson, *Old Hawaiian Land Huis*, p. 10 (cited as an example of an "unorganized" hui).
[108] *Index*, p. 83.
[109] Watson, *Old Hawaiian Land Huis*, p.10 (cited as an example of an "unorganized" hui).
[110] *Index*, p. 90.
[111] *Id.*
[112] Jocelyn Linnekin, "The Hui Lands of Keanae: Hawaiian Land Tenure and the Great Māhele," 92 *The Journal of the Polynesian Society*, 169 (1983).

1911.[113] Grant 1911 to Malailua and eighteen others for 107 acres of land in Pāhoa and Waianu, Koʻolau District, was issued in 1855.[114]

Kaliʻi & Pauwalu-mauka, Keʻanae, Koʻolau District, East Maui, established in 1855 – 115 acres. Watson wrote that "Grant 1899 to 11 Grantees and Grant 2549 to 16 Grantees were the two Pauwalu huis."[115] Grant 1899 to Kapali and 10 others for 115 acres in Kaliʻi and Pauwalu was issued in 1855.[116]

Pauwalu-makai, Keʻanae, Koʻolau District, East Maui, established in 1859 – 151.65 acres. Grant 2549 to Puula, Kaaihaa, et al for 151.65 acres in Pauwalu was issued in 1859.[117]

Paehala Hui, Keʻanae, Koʻolau District, East Maui, established in 1861 – 43.5 acres. R.P.G. 3048 of 43.5 acres was awarded to seven individuals in 1861.[118]

Puheʻemiki Hui Land, Koʻolauloa District, Oʻahu, established in 1867 – 45.38 acres.
Grant 3053 to Kaaimanu, et al.[119] Grant 3053 to Kaaimanu, et al for 45.38 acres at Puheʻemiki was issued in 1867.[120]

Second Generation, "Organized" Hui

Peahi Hui, Hāmākualoa, East Maui, established in 1890 – 2,000 acres.
The Peahi Hui was founded in 1890. Moke Kahiapo purchased the land from the estate of L.H. Anthon in 1888. The title Deed from L.H. Anthon to M. Kahiapo, executed on Feb. 14, 1888, transferred ownership of Royal Patents 149, 221, 160, and 2182.[121] The purchase was made possible by a loan from James Campbell who held a mortgage on the land until the hui raised the funds to pay off the note in 1890. At that time, Kahiapo presumably paid off the mortgage and deeded 190 of 191 shares to 159 individual Hawaiians retaining one for himself.[122] "The hui was a highly organized one and held regular annual meetings and also frequent director's meetings."[123] The Peahi Hui, which consisted of valuable pineapple lands, was dissolved via partition suit in 1925.[124] The Peahi Hui was the subject of the crucial Hawaiʻi Supreme Court case *Smythe v. Takara*,[125] which held that the Hui Kūʻai ʻĀina o Peahi was not a legal entity and

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[113] Watson, *Old Hawaiian Land Huis*, p.10 (cited as an example of an "unorganized" hui). *See also*, Linnekin, "The Hui Lands of Keanae," p. 182.
[114] *Index*, p. 83.
[115] Watson, *Old Hawaiian Land Huis*, p.10.
[116] *Index*, p. 83.
[117] *Id.*
[118] Linnekin, "The Hui Lands of Keanae," 182.
[119] Watson, *Old Hawaiian Land Huis*, p.10.
[120] *Index*, p. 53.
[121] Deed from L.H. Anthon to M. Kahiapo, Book 115, page 50 (on file at Hawaiʻi Bureau of Conveyance).
[122] Watson, *Old Hawaiian Land Huis*, p. 20.
[123] *Id.*, p. 21.
[124] *Id.*
[125] Smythe v Takara, 26 Haw. 69 (Terr. of Haw.1921).

therefore had no standing to sue on behalf of its members. This case effectively rendered self-management of hui lands legally impossible and paved the way for the passage of the Partition Act of 1923 that provided the legal vehicle to forcibly dissolve communally held lands by land hui.

Mailepai Hui, Kāʻanapali, West Maui, established in 1860 – 2,825 acres.
The land was originally owned by L. Konia and later inherited by Bernice Pauahi Bishop. In 1860, the land was conveyed to D.K. Naiapaakai and 105 other Hawaiians in 113 shares. The hui was subject to partition proceedings in 1930-31 instituted by Baldwin Packers, Ltd., the largest shareholder at the time of dissolution.[126] According to Watson, as with the Peahi Hui described above, the Mailepai Hui contained highly desirable pineapple land and was one of the first hui subject to legal partition action.

Huelo Hui, Hāmākualoa, East Maui, established in 1897 – 1,500 acres.
Composed partly of the bankrupt Huelo Sugar Plantation, the hui lands were purchased from W.R. Watson in 1897 by J.K. Smythe on behalf of 70 Hawaiian hui members. Partition occurred sometime after 1925 based on a proposal by then shareholder Hawaiian Commercial and Sugar.[127]

Ulumalu Hui, Hāmākualoa, East Maui, established in 1883 – 1,500 acres. The hui was formed in 1883 when Moses Kahiapo purchased the land on behalf of 49 other individuals. The hui was partitioned without judicial proceedings sometime after 1929.[128] "Ulumalu is an *ahupuaa,* which was awarded as Part 1 of [L.C.A.] 10474 to N. Namauu on September 29, 1852. In about 1883, the Hui Kuai Aina O Ulumalu (hui), composed of approximately 50 shareholders, purchased the ahupuaʻa consisting of about 1,500 acres, from Namauu. Subsequently, most of the hui members' interests were acquired by Haiku Fruit and Packing Co., Ltd. (Haiku Fruit), Maui Agricultural Co., and Hawaiian Commercial and Sugar Co., Ltd. In order to partition the property, the ahupuaʻa was conveyed by the owners to E.D. Baldwin in 1926, who in turn reconveyed the property in separate parcels to the owners."[129]

East Kaupakulua Hui, Haʻikū, East Maui, established in 1889 – 1,036 acres. Watson asserts that this was not a "real" hui but only a vehicle for partitioning a tract of land.[130] Formed in 1889 when "T. Akanaliilii conveyed a 1036 acre tract to A. Hocking and 44 others."[131]

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[126] Watson, *Old Hawaiian Land Huis*, p. 21.
[127] Watson, *Old Hawaiian Land Huis*, pp. 23-24. See also, Deed from Watson to J.K. Smythe as trustee, recorded June 18, 1899, transferring a schedule of lands in the Huelo ahupuaʻa comprising the defunct Huelo Plantation (available in book 171, pg. 292, Hawaii Bureau of Conveyance).
[128] Watson, *Old Hawaiian Land Huis*, p. 26, states that the partition plan was created between 1928-1939. This is likely a typo since Watson's paper was published in 1932.
[129] Maui Ranch Estates Owners Ass'n v. Maui County, 6 Haw. App. 414, 417-24, 724 P.2d 118, 120-21 (Haw. App. 1986) (action by homeowner's association claiming a section of road was a county roadway); *see also*, Santos v. Perriera, 2 Haw. App 387, 391 633 P.2d 1118, 1123 (Haw. App. 1981) (refering to the Ulumalu Hui Lands Partition Map, dated January 1929, partitioning Grant 771). Grant 771 to Hikiau for 1836 acres in Kaupakulua, Hamakualoa District, Makawao Maui was issued in 1852. See *Index*, p. 81.
[130] Watson, *Old Hawaiian Land Huis*, p. 27.
[131] *Id.*

Hāmākuapoko Hui, Kūʻau and Pāʻia, Maui, established in 1866 – 929 acres. The Hāmākuapoko Hui was formed in 1866 when 28 Hawaiians purchased the land from Haʻikū Sugar Company. The hui was subject to partial partition in 1877 under which James M. Alexander acquired two of four newly created tracts and the remaining hui members retained two others. Further partition took place in 1881 with the complete distribution of lands in individual lots. According to Watson, the "Chronicle of Hamakuapoko," written by Alexander, covers the history of Hāmākuapoko Hui from 1866 to 1881.[132]

Moʻomuku Hui, Honokawai, Kāʻanapali, West Maui, established in 1866 – acreage unknown. The Moʻomoku Hui is referred to in *Jellings v. Pioneer Mill Co.,* which describes the sale of a portion of LCA 11216 to M. Kekauʻōnohi by Charles C. Harris, the administrator of her deceased husband Levi Haʻalelea's estate, to J.A. Nakaku on June 13, 1866 to a group consisting of 29 shares. The case then states that this land was "known as the Moomuku Hui Land."[133] The Hawaiʻi Bureau of Conveyance has record of a deed from C. Harris (Administrator of Haʻalelea Estate) to J.A. Nahaku dated June 13, 1866 conveying the "land known as the ili of Moomuku, Honokawai district of Kaanapali Maui" for $285.[134] The land is further described as the land awarded to M. Kekauʻōnohion February 14, 1855 under LCA 11216, Apana 28. No RP is listed for this land.

Olowalu & Ukumehame Hui, West Maui – acreage unknown. These hui are referenced in a letter from P.H. Treadway, trustee for Hui of Olowalu & Ukumehame to the Commissioner of Crown Lands.[135]

Moloaʻa Hui, Moloaʻa, Koʻolau District, North East Kauaʻi, established before 1868 – 1,500 acres.[136] The Moloaʻa Hui is mentioned briefly in Watson's monograph as one of the first land hui subject to legal partition.[137] It is also referred to in a couple of Hawaiʻi court cases.[138] From the sparse record, it appears that the hui was formed sometime prior to 1868 and was subject to partition proceedings soon after the passage of the Partition Act of 1923. An available map of partition for the Moloaʻa Hui Lands is dated September 1932.[139]

A handwritten journal located at the Kauaʻi Historical Society, penned by an unknown author, contains the bylaws of the Moloaʻa Hui Lands established on October 1868 by then Luna nui,

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[132] Watson, *Old Hawaiian Land Huis*, p. 30.
[133] Jellings v. Pioneer Mill Co., 30 Haw. 184, 184-185 (Haw. Terr. 1927). See also, Jellings v. Baldwin, 29 Haw. 494, 497 (Haw. Terr. 1926) (describing the 29 shares of "Hui Aina of Moomuku.").
[134] Deed of Conveyance, book 21, pg. 331.
[135] Interior Department-Land Collection, March 23, 1866 (available at Hawaiʻi State Archives).
[136] Watson, *Old Hawaiian Land Huis*, p. 19. Watson describes the Hui's of Moloaʻa, Peahi, and Mailepai as being between 1500 and 2500 acres.
[137] Watson, *Old Hawaiian Land Huis*, p. 16.
[138] Watson, *Old Hawaiian Land Huis*, p. 16. See also, In re Taxes of Menefoglio, 25 Haw. 106 (Haw. Terr. 1919) (concerning the assessment of taxes upon Menefoglio's 4 1/8 shares in the Moloaʻa Hui); see also, In re Guardianship of Kaiu, 17 Haw. 517 (Haw. Terr. 1906) (involves 4 shares of Moloaa Hui Lands).
[139] See, Kikuchi, W., Archeological Assessment of Moloaʻa Hui Lands (available at University of Hawaiʻi, Hamilton Library, Hawaiian Collection, DU629.A45 K55, 1982).

Moses Kaanaana.[140] The same journal contains a copy of a deed to Royal Patent Grant No. 535 from Kamehameha III for 567 acres in Moloaʻa to James W. Smith for $567.50 in 1851. This is the only large grant of land listed in Moloaʻa and likely became part of the Moloaʻa Hui Land.[141] There are also no large Land Commission Awards listed for Moloaʻa.[142] It is uncertain whether James W. Smith purchased the land on behalf of the hui or was a predecessor in interest to the land. The ahupuaʻa of Moloaʻa more generally was set aside as Government Land during the Māhele.[143]

As a possible precursor to the formation of the Moloaʻa Hui, a group of Hawaiian residents calling themselves the "Destitute Citizens Group" wrote to Minister of Interior John Young in 1850 to plead for the right to purchase lands in Moloaʻa. Specifically, the citizens wrote to request the right to purchase the lands they occupied in Moloaʻa and to complain that the rich and foreigners were being allowed to purchase all the good land. "We are made to work by these foreigners and the rich people. We are like Pali's children drifting from place to place or like the pigs in the forest running around the mountain." The Destitute Citizens Group specifically requested that they be allowed to purchase the land, "north to the sea, east to Papaʻa Stream, south to Pauakalepaula's and down to Kanalo Stream, west to Moloaʻa Stream to the sea.[144]

Kaʻapuna Hui, Koʻolau District, North East Kauaʻi - acreage unknown. The Kaʻapuna Hui Lands are immediately adjacent to the Moloaʻa Hui Lands described above. The records of the Kīlauea Sugar Plantation contain an undated agreement regarding the allotment of homesteads and shared pasturage in the Kaʻapuna Hui.[145] The Kaʻapuna Hui Lands are also shown on the present day tax maps maintained by the County of Kauaʻi as being composed, at least in part, by Grant 535, referenced above in the description of the Moloaʻa Hui.[146]

ʻAliomanu & Pāpaʻa Hui Lands, Koʻolau District, North East Kauaʻi – acreage unknown. ʻAliomanu, Pāpaʻa, and Moloaʻa Hui Lands are referenced in a deed of conveyance without detail in *Levy v. Lovell*.[147] It may be that ʻAliomanu and Pāpaʻa, two small bays, were subsumed within the larger Moloaʻa Hui.

Hui Kūʻai ʻĀina o Wainiha, Wainiha, Haleleʻa, Kauaʻi. Established in 1869 – 15,110 acres. The Wainiha Hui formed in 1869 to purchase the ahupuaʻa of Wainiha. It took the hui eight years, until May 3, 1877, to raise sufficient funds to purchase the entire ahupuaʻa from Castle and Cooke for $5,500.[148] The deed transferring ownership records L. Leka as the principle grantee along with seventy-one other listed members of the hui. The Wainiha valley and coastal

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[140] Handwritten Journal, author unknown (available at Kauaʻi Historical Society, File MS-9).
[141] See, *Index*, p. 3.
[142] See, *Indices of Awards Made by the Board of Commissioners to Quiet Titles in the Hawaiian Islands*, Star-Bulletin Press, 1929.
[143] See, *id.*
[144] Letter to John Young, Minister of Interior (Oct. 8, 1850) (available at Hawaiʻi State Archives, Interior Department-Land Collection).
[145] Available at Kauaʻi Historical Society, Kīlauea Sugar Plantation Records, File MS-1, Land Records.
[146] See, TMK 4-4-9-11.
[147] 24 Haw. 716 (Sup. Ct. Terr. of Haw. 1919).
[148] Bureau of Conveyance, Liber 50, 160-62.

lands were originally granted under L.C.A. 11216 to Mikahela Kekauʻōnohi, the great-granddaughter of King Kekaulike of Maui and the largest recipient of land during the Māhele after King Kamehameha III. After she and her husband died, much of their vast estate was auctioned to pay off debts. The ahupuaʻa of Wainiha was purchased at probate auction on May 16, 1866 for $3,200 by J.H. Morse, John de Fries, & J. Halstead.[149] These individuals subsequently sold or devised interests in Wainiha to Castle & Cooke. The Hui Kūʻai ʻĀina o Wainiha, is one of the few hui whose original record books are still in existence and available for study.[150] According to the hui's records, the group's first act of business was to draft and ratify a constitution, the Kumukānāwai o ka Hui Kūʻai ʻĀina o Wainiha.[151]

Hui Kūʻai ʻĀina o Hāʻena, Hāʻena, Haleleʻa District, Kauaʻi, established in 1875 – 1,760 acres.[152] The Hāʻena Hui was formed in 1875 when Kenoi D. Kaukaha and 37 others organized to purchase the ahupuaʻa of Hāʻena from William Kinney.[153] The lands were originally granted to Abner Paki under L.C.A. 10613 and later inherited by Bernice Pauahi Bishop.[154] In 1858, W.H. Pease purchased from Pauahi Bishop and, in turn, sold the land to Kinney in 1872.[155] In 1954, John W. Gregg[156] and Paul Rice, who had respectively acquired a 12.36 percent and 6.87 percent ownership interest, filed a partition action of the hui's lands. During the partition proceedings, Charles A. Rice testified that he had been president of the hui for the preceding 15 years and that he was in possession of all of the hui documents. The whereabouts of theses original documents, if they still exist, is currently unknown. The partition was finalized, and the hui fully dissolved in 1967.[157] In the partition, the court sought to protect exisiting ʻauwai networks and "water rights established by ancient usage," creating deed provisions providing access and use rights to ʻauwai, streams, and drains that passed through private land. As a practical matter however, ʻauwai in Hāʻena have all been destroyed and traditional agriculture in the area has disappeared except for recently refurbished loʻi kalo in the Hāʻena State Park.

Māhāʻulepū Hui, Kona District, South East Kauaʻi - unknown acreage. The Māhāʻulepū Hui is discussed in a paper presented by J.M. Lydgate on May 31, 1916, that describes the various owners of Māhāʻulepū lands from the time of Victoria Kamāmalu, through the leasing of the land to Kōloa Plantation, and the hui that was formed to purchase the land at the end of the lease.[158] Victoria Kamāmalu received the 3,029 acre ahapuaʻa of Kīpū, encompassing

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[149] Deed of Conveyance from Estate of Levi Haʻalelea to J.H. Morse, Book 21, Page 242-43, May 16, 1866 (on file with State of Hawaiʻi Bureau of Conveyance).
[150] Hui Kūʻai ʻĀina o Wainiha (1877–1885) (on file with Hawaiʻi State Archives, file U-29)
[151] *Kumukanawai o ka Hui Kūʻai ʻĀina o Wainiha* (Constitution of the Land Acquisition Association of Wainiha), Sept. 10, 1877, in Hui Kūʻai ʻĀina o Wainiha 1-3, (1877–1885) (on file with Hawaiʻi State Archives, file U-29)
[152] Andrade, *Hāʻena*, p. 106. The gross land area of the Hāʻena ahupuaʻa was approximately 1800 acres. About 41 acres of land was either kuleana or grant land that that was excluded from the hui land.
[153] Bureau of Conveyance, Liber 52, 100-101. See also Andrade, *Hāʻena*, p. 99.
[154] Bureau of Conveyance, Liber 10, 627-8. See also Andrade, *Hāʻena,* p. 99.
[155] Bureau of Conveyance, Liber 35, 108.
[156] Andrade, *Hāʻena*, pp. 115. John W. Allerton had his name legally changed to John W. Gregg.
[157] Hāʻena Partition Map, Exhibit B, Civ. No 30, Fifth Circuit, Hawaiʻi, filed Oct. 20, 1967.
[158] J.M. Lydgate, *Mahaulepu Hui*, The Kauaʻi Papers, #23, Vol. 1, pgs. 187-190, May 31, 1916, available at Kauaʻi Historical Society.

Māhāʻulepū, under LCA 7713 (bk. 9, pg. 264), RP 4482 (bk. 18, pg. 436). It is unclear what portion of the 3,029 acres the hui owned.[159]

Kahana Hui, Kahana, Koʻolauloa District, Oʻahu, established in 1881 – 5,050 acres. The Kahana Hui acquired the ahupuaʻa of Kahana on October 31, 1881. It was deeded to the hui in 115 shares by Kamaka Niau, who had acquired the land on May 15, 1875 from H. Ahmee for $6,000.[160] "The hui lands are situated at Kahana, Oahu, and comprise 5267 acres of land extending from the summit of the Koolau range to the sea on the windward side of Oahu. This tract is covered by L. C. A. 8452, Ap. 2, R. P. 4387 to A. Keohokalole."[161]

The Hui of Kahana filed suit against the Territory of Hawaiʻi to legally establish its rights to the Kahana fishery. Judgment was issued on March 30, 1905 stating that:

> "[H]ui of Kahana . . . is entitled each year to set apart for itself for its sale and exclusive use upon the [fishing] grounds . . . any given species or variety of fish natural to said fishery, giving public notice of the kind and description of the fish so chosen or set apart; and also to the right in lieu of setting apart some particular fish to its exclusive use, to prohibit, upon consultation with the tenants of said land, all fishing upon the fishing grounds . . . during certain months of the year; and during the fishing season to exact from each fisherman one-third of all the fish taken . . . ."[162]

The hui had previously enlisted M.D. Monserrat to conduct a survey of the fishery. The survey, dated January 28, 1902, described the fishing grounds of Kahana Bay as encompassing 270 acres running from the boundary of Punaluʻu (to the west) to the boundary of Makaua (to the east).[163] On May 1, 1905, the hui exercised its fishery rights serving public notice that: "The Hui Aina o Kahana, as konohiki of the sea fishery of Kahana, has chosen to set apart for its exclusive use all akule caught within the bounds of said fishery for and during the year 1905."[164]

In 1969, the ahupuaʻa of Kahana was acquired by the State of Hawaiʻi from the estate of Mary Foster. Remaining residents of the valley were permitted to remain on the land under 65 year leases in exchange for providing 25 hours per month of interpretive services to the park "to preserve, restore, and share Kahana's history and rural lifestyle with the public."[165]

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[159] The Hui is also mentioned without detail in Kanakamaikai v. Pahulio, 12 Haw. 1, (Haw. Terr. 1899) (referencing "one share Hui of Mahaulepu" in an accounting for the distribution of an estate).
[160] Title Deed to Kahana ahupuaʻa (available in Mary Foster Papers, Hawaiʻi State Archives, file M-433, 1:1).
[161] Foster v. Waiahole Water Co., 25 Haw. 726, 727 (Haw. Terr. 1921).
[162] Hui of Kahana v. Territory of Hawaii, First Circuit (March 30, 1905) (available in Mary Foster Papers, Hawaiʻi State Archives, file M-433, 10:109.
[163] Survey of the Kahana Fishery (Jan. 28, 1902) (available in Mary Foster Papers housed at Hawaiʻi State Archives, file M-433, 10:109).
[164] Public Notice of Fishery Closure (May 1, 1905) (available in Mary Foster Papers housed at Hawaiʻi State Archives, file M-433, 10:109).
[165] Susan Jaworowski, *Kahana: What Was, What Is, What Can Be* (Hawaii Legislative Reference Bureau Report No. 5, December 2001), p. iv.

Waikāne Hui, Koʻolaupoko District, Oʻahu – 1,698.48 acres.
Marks v. Nee describes the "hui land known as the ahupuaʻa of Waikane, Royal Patent Grant 464 to Edwin O. Hall and Henry Dimond and held in 33 shares." The case further describes R.P.G. 464 as being 1,600 acres. The Plaintiffs in this interlocutory appeal were successors in interest to 32 hui shares owned by Lincoln Loy McCandless.[166] According to land records, Grant 464 to E.O. Hall and H. Dimond encompassed 1,698.48 acres in Waikāne, Koʻolaupoko District, Oʻahu was issued in 1850.[167] The original Hui o Waikāne Records from 1877–1898, translated from Hawaiian, are housed in the Bishop Museum Archive.

Mānoa Hui, Koloalu, Mānoa, Oʻahu, established approximately 1849 – 513 acres.
The 1882 case, *Burrows v. Paahui*, describes the Mānoa Hui as Royal Patent 116 to W.H. Rice, as trustee for 34 members.[168] According to land records, however, the Mānoa Hui, with W.H. Rice as trustee, owned Royal Patent Grant 161. The land is more specifically described as 513 acres in Koloalu, Mānoa, granted in 1849. Based upon *Burrows*, the Mānoa Hui had an organized structure with governing documents and an elected Luna nui.

Waimea, Koʻolauloa, Oʻahu – approximately 2,855 acres. The 5,725 acre ahupuaʻa of Waimea was conveyed by Royal Patent Grant 880 to Kaeliwai in 1852. On August 17, 1855, Kaeliwai conveyed one-half of the land to the 49 members of the Waimea Hui, which included himself. In 1860, Kaeliwai conveyed the remaining half of the land and his interest in the hui to Paalua, who later conveyed her interest to Mary Volkenburg and Annie Mott-Smith. On May 18, 1929, the Waimea Land Co., which had acquired an interest in the ahupuaʻa filed suit for partition of the land. In addition to a long list of hui descendants, other parties of interest included Honolulu Fruit Co., Oahu Railway and Land Co., and the Bishop Trust. Rather than partition the land, the First Circuit Court ordered the sale of the ahupuaʻa and the division of the proceeds among the fractional owners of the land. The sale at auction of the ahupuaʻa of Waimea was confirmed on March 12, 1930, with A.D. Castro purchasing the land for $75,000 on behalf of the Waialua Agricultural Co. Ltd.[169]

Keopukapaiole Hui, Puʻuohoku, Molokaʻi – acreage unknown. The 1927 case of *Brown v. Kaahanui*[170] discusses the Keopukapaiole Hui on Molokaʻi as consisting of 46 shares, but does not offer a legal description of the land or information on the Hui's origin or demise.

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[166] Marks v. Nee, 48 Haw. 92, 92-93, 395 P.2d 620, 621 (Haw. 1964). *See also*, McCandless v. Waiahole Water Co., 35 Haw. 314, 315 (Haw. Terr. 1940) (regarding the ownership of Kuleana number 5656 and refering to an 1863 conveyance by Hall and Dimond of "several hundred acres" to a hui); Mahoe v. Puka, 4 Haw. 485 (Haw. Kingdom 1882) ("The land of Waikane in Koolaupoko, Oahu, is owned by a number of Hawaiians who have associated themselves as a hui or partnership under a constitution.").
[167] *Index*, p. 55.
[168] Burrows v. Paahui, 4 Haw. 464 (Haw. Kingdom 1882) (concerning the leasing of pasturage rights by a member of Mānoa Hui). *See also*, *Index*, p. 15; Silva v. Lopez, 5 Haw. 424 (Haw. Kingdom 1885) (concerning loss of pasturage in Hui of Mānoa as one item in a claim for damages).
[169] Waimea Land Co. v. Achiu, Equity No. 2989 (First Circuit, Haw., May 18, 1929). *See also*, Waimea Falls Park, Inc. v. Brown, 6 Haw. App. 83, 87-88 712 P.2d. 1136, 1140 (Haw. App. 1985) (referencing previous partition proceedings).
[170] Brown v. Kaahanui, 29 Haw. 804, 805 (Haw. Terr. 1927).

Hōlualoa Hui, North Kona, Hawai‘i – 7,330 acres.[171] The Hōlualoa Hui lands were subject to repeated litigation beginning in 1901.[172] The hui is described as consisting of 400 initial shares, which were later reduced to 353 through retirement or repurchase by the hui.[173] It also appears from court records that the hui was partitioned sometime after 1911.[174]

[171] *Pilipo v. Scott*, 21 Haw.609, 610 (Haw. Terr. 1913).
[172] *See*, *Hawaii Land Co. v. Scott*, 13 Haw. 385, 385 (Haw. Terr. 1901)(concerning the lease of six shares of Hōlualoa Hui executed in 1895); *Scott v. Pilipo*, 25 Haw 386 (1920) (concerning the distribution of rents from Hōlualoa Hui Lands subsequent to judicial partition); *Pilipo v. Scott*, 21 Haw.609, 610 (Haw. Terr. 1913); *Moranho v. de Aguiar*, 25 Haw. 267 (Haw. Terr. 1919); *Scott v. Ai*, 27 Haw. 277 (Haw. Terr. 1923).
[173] *Pilipo v. Scott*, 21 Haw.609, 610 (Haw. Terr. 1913).
[174] *Moranho v. de Aguiar*, 25 Haw. 267, 268 (Haw. Terr. 1919).

Appendix 3

Legacy of the Native Hawaiian Rulers: Ali‘i Land Trusts

Introduction

Hawai‘i’s transforming political economy altered the benefits and burdens that traditionally attached to the ali‘i (chiefs) and maka‘āinana (common people). It did not, however, disturb a basic kuleana (responsibility) of the ali‘i to promote the well-being of their people. In fulfilling the traditional role of Hawaiian ali‘i, at the end of the 19th and beginning of the 20th century, four ali‘i established trusts to benefit the Native Hawaiian people.

> As Hawaiian *ali‘i*, they were stewards of lands held in trust for all. It was appropriate, therefore, that royal lands would ultimately be left to benefit the Hawaiian people. . . . [I]t is these lands, a spiritual as well as physical resource, that are the *ali‘i* legacy to the Hawaiian people.[1]

Each of the Ali‘i trusts was intended to address a specific need of the Native Hawaiian community: the King William Charles Lunalilo Trust—care for elderly Native Hawaiians; the Queen Emma Trust—medical care for the Native Hawaiian people; the Kamehameha Schools/Bernice Pauahi Bishop Trust—education of Native Hawaiian children; and the Queen Lili‘uokalani Trust—care for orphans and indigent Native Hawaiian children. Initially, these Ali‘i trusts, established by will or deed of trust, were all supported by an endowment of land.

I. King William Charles Lunalilo Trust

William Charles Lunalilo reigned as mō‘ī from 1873 to 1874. After Kamehameha V died heirless and without appointing a successor, the Constitution of 1864 dictated that the legislative assembly elect a “native ali‘i of the kingdom as successor to the throne.”[2] Lunalilo initiated a plebiscite that male subjects participated in on January 1, 1873, with Lunalilo the overwhelming

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[1] Allan Seiden, *Hawai‘i: The Royal Legacy* (Honolulu: Mutual Publishing, 1992), p. 161.
[2] 1864 Constitution of the Kingdom of Hawaii, Article 22, reprinted in *1864-65 Laws of His Majesty Kamehameha V, King of the Hawaiian Islands*, p. 88.

victor.[3] A week later, the legislative assembly convened and cast every ballot for Lunalilo, making him the first aliʻi to be elected to the throne.[4]

Lunalilo was Kamehameha I's grandnephew. His mother was high chiefess Miriam ʻAuhea Kekāuluohi, the daughter of a high-ranking Maui aliʻi nui named Kaheiheimālie.[5] Her father, Kalaimamahū, was Kamehameha's younger half-brother. Lunalilo's father was Charles Kanaʻina, who was of a much lower lineage than both his wife and son.[6]

Good-humored and sociable, he was well liked by his people.[7] They called him Ke Aliʻi Lokomaikaʻi (The Kind Chief).[8] Years of indulgence contributed to a chronically poor state of health and he died from tuberculosis one year and 25 days after ascending to the throne.[9] Despite his brief leadership, his legacy lives on in the Lunalilo Home, a care home for Native Hawaiian kūpuna (elders).

A. Founding History

The bulk of Lunalilo's vast landholdings came into his possession through his mother Kekāuluohi. Kekāuluohi's mother, Kaheiheimālie, was the younger sister of Kamehameha I's favorite wife Kaʻahumanu, a union that bore no children.[10] Kaheiheimālie was a second wife of Kamehameha, and they had three children together, all of whom passed away before Kaheiheimālie's own death in January of 1842.[11]

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[3] Ralph S. Kuykendall, *The Hawaiian Kingdom, Volume II: 1854-1874 Twenty Critical Years* (Honolulu: Univ. of Hawaii Press, 1953), p. 243.
[4] *Id*.
[5] Likikalā Kameʻeleihiwa, *Native Land and Foreign Desires: Pehea Lā E Pono Ai? How Shall We Live in Harmony?* (Honolulu: Bishop Museum Press, 1992), pp. 124-25.
[6] *Id*., p. 125.
[7] Allan Seiden, *The Hawaiian Monarchy* (Honolulu: Mutual Publishing, 2004), p. 41.
[8] *Id*., p. 43.
[9] *Id*.
[10] Jon M. Van Dyke, *Who Owns the Crown Lands of Hawaiʻi?* (Honolulu: Univ. of Hawaiʻi Press, 2008), p. 325.
[11] *Id*. These children were a son, Kamehameha Kapuāiwa Iwi, and two daughters, Kamehamalu Kekūāiwaokalani and Kahōʻanokū Kīnaʻu. Kameʻeleihiwa, p. 125.

This resulted in Kekāuluohi, Kaheiheimaile's only surviving child, taking control of her extensive landholdings.[12] To this, more property was added – some from Kekāuluohi's father, Kalaimamahū, and some that she had acquired during her tenure as Kamehameha II's kuhina nui.[13] When she died on June 7, 1845, Kekāuluohi left all of her lands to her minor son, Lunalilo. At the time, only Kamehameha III had more ʻāina.[14]

Lunalilo's father, Kanaʻina, acted as his guardian during his boyhood, but even after becoming an adult, Lunalilo's affairs were closely managed.[15] Out of a concern over his son's drinking habit, Kanaʻina petitioned the court to place the then 23-year-old Lunalilo under guardianship as a spendthrift. The court appointed Kanaʻina, along with Dr. Richard Armstrong and James W. Austin, as guardians. He remained under guardianship from 1858 until December 11, 1872, the day of Kamehameha V's death, when a court dissolved the guardianship. Less than a month later, Lunalilo began his brief reign as mōʻī.[16]

Before the expiration of the guardianship, Lunalilo had drafted and signed his will on June 7, 1871, at the age of 36. The will provided for the establishment of a trust, in the event that he died childless, which is what, in fact, occurred.[17] Comprised of 43 parcels that added up to more than 100,000 acres,[18] Lunalilo's estate qualified as one of the kingdom's largest at the time,

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[12] Van Dyke, *Crown Lands*, p. 325.
[13] Kekāuluohi served as Hawaiʻi's third Kuhina Nui alongside Kamehameha III under the title of Kaʻahumanu III between 1839 and 1845. Seiden, *Hawaiian Monarchy*, p.42.
[14] Kameʻeleihiwa, *Native Land*, p. 243.
[15] Van Dyke, *Crown Lands*, p. 327.
[16] Seiden, *Hawaiian Monarchy*, p. 41.
[17] "Lunalilo's Will provided first that upon his death, his real estate should pass for a life term to his father, Kanaʻina. If he married and had children, his lands would benefit them after his father's death. If he had no children, upon Kanaʻina's death, his lands would pass to His Majesty Kamehameha V for his natural life. After the death of Kanaʻina and Kamehameha V, and if he had no issue, the lands would revert to the Lunalilo trust." Van Dyke, *Crown Lands*, p. 325, n. 2.
[18] Van Dyke, *Crown Lands*, p. 327.

but the distinction was short-lived. A series of rulings during the ensuing decade triggered a sale of the lands under an order by the Hawai‘i Supreme Court to convert the land into cash.

B. Issues and Challenges

The dismantling of Lunalilo's estate began innocuously enough with an 1874 case that confirmed the validity of Lunalilo's will. Because Lunalilo executed the will while still under guardianship, it raised the question of whether or not he had the power to do so.[19] At the time, a law prohibited wards from gifting, selling, or transferring property.[20] The contestant argued that in creating a trust, the will conveyed land in a manner forbidden by this statute. The Hawai‘i Supreme Court disagreed, seeing no equivalence between Lunalilo making a gift, which would have been "stimulated by his appetite and passions to dispose of his property for immediate personal indulgence," and transferring land after death by which time a guardian would have no powers.[21]

Five years later, in a second case, the trustees asked for an opinion concerning the cash accruing from sales of some of the Lunalilo's lands.[22] In his will, Lunalilo expressed a desire to see a home established for "poor, destitute and infirm people of Hawaiian blood or extraction, giving preference to old people."[23] He instructed his trustees to finance its construction with whatever monies they could raise by selling lands from his estate. Once they secured $25,000, Lunalilo directed them "to expend the whole amount in the purchase of land and in the erection

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[19] *In the Matter of the Estate of His Late Majesty Lunalilo, Deceased*, 3 Haw. 519, 519 (1874).
[20] *Id*., p. 520.
[21] *Id*.
[22] *In the Matter of the Estate of His Late Majesty Lunalilo*, 4 Haw. 162 (1879) (*Estate of Lunalilo II*).
[23] Will of William Charles Lunalilo, June 7, 1871 available at http://www.lunalilo.org/admin/wp-content/uploads/2013/07/KINGS-WILL.pdf (last visited Aug. 11, 2014).

of a building or buildings" that would house Hawaiians.[24] By 1879, the trustees had $28,228.09 in cash.[25]

Anticipating the cost of housing residents and building upkeep, they wondered whether it might not be prudent to invest some of the money rather than sinking it immediately into the Lunalilo Home's construction. The court answered in the negative. Not one cent was to be set aside for operations and upkeep until the trustees spent $25,000 on the construction of a home.[26] Grasping for a motive, the justices stated that Lunalilo "probably had good reasons" for an approach that, even under the most optimistic conditions, is shortsighted.[27] What they found persuasive was the contemplation, contained in the will, that the Home's residents pay a fee for their room and board. It signaled to them that despite his estate's vast reserve of assets, Lunalilo's charity had a limit.

The trustees returned to court two years later seeking clarification on their power to lease and purchase lands.[28] A year earlier, the trustees agreed to rent an 'ili (a traditional area of land) near Honolulu called Pau for a ten-year term and the Wai'ehu fishery on Maui for five.[29] They also contemplated buying a parcel of land locked within the 'ili of Pau, which they believed would protect its value.[30] Uncertain of how much discretion they had in buying and leasing lands, the trustees sought counsel from the bench. They proposed that the following line from Lunalilo's will, with its reference to "net rents," vested them with at least leasing authority: "I hereby order and direct that the said trustees shall apply the net rents, issues and profits arising from the principal sum, etc."

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[24] *Id.*
[25] *Estate of Lunalilo II*, 4 Haw. at 163.
[26] *Id*. at 164.
[27] *Id*.
[28] *In the Matter of the Estate of His Late Majesty Lunalilo*, 4 Haw. 381 (1881).
[29] *Id.*
[30] *Id*.

The justices were not persuaded. In no uncertain terms, they responded "that the whole land is devised to the trustees, not to hold, but to sell[.]"[31] The court treated Lunalilo's instruction to raise $25,000 by selling his lands, as a command to put all of the lands in the trust on the market and spend the first $25,000 from the sale on the home's construction.[32] If the trustees happened to earn more than that, "then the estate thus reduced to ready money [was] to be used for the purpose of improving, enlarging and extending the accommodation and maintaining its inmates."[33] Because the will gave no point at which the land sales should stop, the court concluded that "the whole tenor of the will is to the effect that the whole of the real estate shall be turned to ready money[.]"[34] This set the liquidation of Lunalilo's lands into motion.

C. Accomplishments

Construction on the first of two Lunalilo Homes began in 1881 on 21 acres of land in Kewalo, which the Trust received from King Kalākaua.[35] The groundbreaking ceremony was a celebratory affair, attended by then-Princess Regent Lili'uokalani and Princess Likelike and Princess Ruth Ke'elikolani.[36] Sanford B. Dole, one of the original three trustees, opened with a speech. He clarified the mission of the trust – not to build a hospital, but a home where "Hawaiians who might become by their helplessness, wards of the public, as it were, should be comfortably sheltered and cared for by loving hands in the spirit with which this noble gift was

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[31] *Id*.
[32] *Id*. at 383.
[33] *Id*.
[34] *Id*.
[35] "The land was procured from [the] government in exchange for certain other lands belonging to the estate of Lunalilo." *Saturday Press*, September 16, 1881.
[36] *Id*.

made."[37] He spoke of the "princely estate" that Lunalilo "had hardly begun to enjoy" but "gladly devoted to the people he loved and who loved him[.]"[38]

Albert Francis Judd, who drafted Lunalilo's will, followed Dole with a speech in Hawaiian. He began by tracing Lunalilo's genealogy back to Keōua, the ancestor he shared with Kamehameha I.[39] Judd qualified Lunalilo's childlessness by reminding the audience that their king "was not without heirs, for he made by his will, the Hawaiian race his heirs."[40] That Lunalilo decided to leave all his lands for the benefit of Hawaiians was praised as an act of love for his country.[41]

The first Lunalilo Home operated for just over 40 years, officially opening its doors on March 31, 1883 to the first ten residents. It could accommodate about 50 kūpuna (elders).[42] *The Hawaiian Star* called it "an ornament to Honolulu, and one of the most striking objects as you sail into the harbor."[43] In 1888, the Kingdom government conveyed an additional 39 acres of adjoining land for use by the residents for a dairy and pasture. Nevertheless, the sprawl of urban Honolulu began to encroach on its idyllic surroundings so that by 1924, the trustees began preparing for the home's relocation.

They settled on 20 acres in Maunalua on Koko Head's western slope in 1928. Bishop Estate, discussed below, owned the land, 11 acres of which Francis 'Ī'ī and trustee George 'Ī'ī bought and then donated to the Home in honor of their mother Irene Kahalelauokekoa 'Ī'ī Holloway. The Trust purchased the other nine acres with earnings from the Makiki site's sale.

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[37] *Id*.
[38] *Id*.
[39] *Id*.
[40] *Id*.
[41] *Id*.
[42] *Id*.
[43] *The Hawaiian Star*, January 30, 1897, p. 4.

By the 1960s, tract housing arrived in the neighborhood with the area's suburban development. To shore up the Lunalilo Home's cash flow, the trustees subdivided 15 of the Home's 20 acres into eighty leasable lots.[44] They were eventually sold under a state law that mandated the conversion of houses from leasehold to fee simple.[45] The Lunalilo Home sits on the remaining five acres in an area of O'ahu now called Hawai'i Kai.

The Lunalilo Home is housed in a two-story building there that once served as a dormitory for workers and officers of Marconi's Wireless Telegraph Company. As a licensed adult residential care home, it can house just over 40 residents. In December 2012, it was one bed shy of full capacity. The typical elder resident is ambulatory but does require some assistance with daily living activities like bathing, preparing food, and taking medication. The Home is licensed to provide skilled nursing to eight beds, so when residents' needs intensify, they can often continue living at Lunalilo Home, their home. Residents live there full-time for an average monthly fee of $4,500. The Trust does subsidize some of the cost for any Native Hawaiian who cannot afford the full cost of care. Approximately $135,000 is spent each year on these subsidies, which come from a mix of fundraising, donations, and investment income.

Most of the Home's residents are Native Hawaiian, and the spirit of the place reflects its Hawaiian heritage. Above all else, the staff works to fill the Home with a deep sense of aloha. Not all of the residents have families that show them aloha, so the Lunalilo Home 'ohana (family) – made up of staff, other residents, volunteers, visiting school children, and members of community organizations – becomes a vital surrogate. Aloha is the foundation for mālama (care),

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[44] Van Dyke, *Crown Lands*, p. 330.

[45] Act 307, 1967 Haw. Session Laws 488 (codified at Hawaii Revised Statutes, Chap. 516 (2013)); *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 233 (1984). Under the Hawai'i Land Reform Act, upon request by the lesser of twenty-five eligible lessees or by lessees on half the lots in a tract, a state agency could condemn all or some of the single-family residential parcels built on leasehold land within development tracts of five or more acres and sell the land to the lessees in fee simple. Hawaii Revised Statutes § 516-22 (2013).

which the Lunalilo Home not only gives directly, but also facilitates by adovcating for kūpuna, celebrating their contribution and presence in our communities, and integrating cultural values and practices in its approach to eldercare.

D. Outlook

With current demographic trends and the rising cost of healthcare, the Lunalilo Home expects to see a growing demand for its services. There will be greater numbers of Hawaiian kūpuna (elders) as life expectancies improve. How the Home will be affected by these changes remains to be seen. In any case, the current trustees must plan strategically. A shortage of cash has long frustrated operations and at least once, led to the temporary closure of the Home. The Trust didn't have the money to make the renovations required by the Americans with Disabilities Act. It was forced to close the Home in 1997 to raise cash and make the necessary upgrades before reopening in 2001.

All signs indicate that the Home is on much firmer financial footing. The current board of trustees has pursued economically sensible initiatives that elide with the mission of eldercare. This has included the creation of three new offerings: an elderly day care program, a meals-on-wheels service, and respite care. Even though King Lunalilo's lands have been lost, there is still space for expansion on the five acres that the Home now sits on. The trustees are in the early planning stages of adding an affordable assisted living facility onsite. There is also a desire to see the Home's presence grow beyond East O‘ahu. Collaborating with organizations that already enjoy a dispersive footprint, like the Queen Lili‘uokalani Children's Centers or the Hawaiian Homestead Associations, is seen as a sensible way to do that.

It is impossible not to wonder how different things might have been had the estate not been forced to dispose of its land assets. Some parcels might have been developed, and rental

and lease income would have eased the Home's cash constraints. Others might have served as Lunalilo Home extension sites, offering kūpuna and their families more convenient access to care. Whatever the case, the legacy of Ke Ali'i Lokomaika'i would have been better served by a less restrictive physical footprint and a more diversified foundation of assets.

The William Charles Lunalilo Trust is notable for being the first ali'i trust. As the first to leave lands in service of the Hawaiian people, Lunalilo would have had some influence on his fellow ali'i. He not only inspired lokomaika'i (good will, generosity), but he also freed them up to tackle other needs, thereby ensuring a more comprehensive social safety net. And despite the whittled landholdings, the loss of Lunalilo's 'āina had at least one positive outcome. If not for the experience of the Lunalilo Trust, then it is suspected that Princess Bernice Pauahi Bishop, the founder of Kamehameha Schools, might not have added a proviso to her will forbidding her trustees from selling any lands unless they believed it "necessary for the establishment or maintenance of" the schools "or for the best interest of [her] estate."[46]

II. Queen Emma Trust

The jewel of Queen Emma's legacy is The Queen's Medical Center, a hospital that she helped found in 1855. Unlike the Lunalilo Home, the hospital had been open and serving predominantly Hawaiian patients for nearly 30 years when Queen Emma made the institution a principal beneficiary in her will in 1884. But as with the Lunalilo Home, the Hawaiian people saw their access to an ali'i legacy undercut when the hospital strayed from its founding mission – caring for sick and destitute Hawaiians.

Queen Emma was the wife of Alexander Liholiho, who reigned as King Kamehameha IV from January 11, 1855 to November 30, 1863. She was born on January 2, 1836, to Pane

[46] *Codicil to the last Will and Testament of Bernice Pauahi Bishop*, October 31, 1883, 17th paragraph, transcription available at http://www.ksbe.edu/pauahi/codicil2.php (last viewed Aug. 11, 2014).

Kekelaokalani Young and George Naeʻa.[47] She became the hānai (customarily adopted) daughter of Pane's sister, Grace Kamaʻikuʻi Young, and her husband, Dr. Thomas Charles Byde Rooke, a physician.[48] Emma's great-grandfather was High Chief Keliʻimaikaʻi, a favorite brother of King Kamehameha I.[49]

For the first two decades of Queen Emma's life, she resided in the stately home of her hānai parents. It doubled as her father's clinic, acquainting her with the treatment for the sick and the infirm that came to define Queen Emma's enduring legacy.

A. Founding History

This legacy's origins are evident in the founding of Hawaiʻi's first hospital. By the time Liholiho ascended to the throne in January of 1855, the need for a public care facility was obvious. Contact with the West had unleashed waves of epidemics that rippled across the 1800s and decimated the lāhui population, which lacked resistance to foreign afflictions.[50] Indeed, "self-preservation" was on the king's mind in his inaugural address to the legislature, calling it "our first and great duty" by which "all others sink into insignificance."[51] Pressing the legislators to act, he asked that they dedicate funds for the establishment of national hospitals.[52]

Four years passed with little action, but in 1859, a bill finally reached the king for signature. The legislation enabled the formation of an association vested with all the necessary powers required to establish a hospital for sick and needy Hawaiians.[53] The bill stipulated that upon raising at least $5,000, the corporation would be eligible to receive government lands of

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[47] George S. Kanahele, *Emma: Hawaiʻi's Remarkable Queen* (Honolulu: Univ. of Hawaii Press, 1999), p. 1.
[48] *Id*.
[49] *Id*., p. 6.
[50] Van Dyke, *Crown Lands*, p. 19.
[51] Kanahele, *Emma*, p. 56.
[52] *Id*.
[53] *Id*., p. 94.

equal value or their proceeds.[54] The king signed it on April 20, 1859, and immediately got to work raising the threshold funds by personally soliciting funds from friends, businesses, and community leaders.[55]

By this point, Liholiho and Emma had been married for nearly three years, and there's no question that Emma influenced the hospital's development.[56] The historian Ralph Kuykendall credited the Queen Emma for inspiring the king's resourcefulness, brought about not "alone in response to his own feeling of humanity but at the particular request of Queen Emma."[57] In tandem with her husband's fundraising efforts, the queen organized benefits, performances, and fairs.[58] Together, the pair netted over $13,500 drawn from some 250 subscribers, providing the association with the seed capital needed to build the first permanent facility at Manamana, which is where the hospital, now called the Queen's Medical Center, sits today.[59]

Although Queen Emma had no direct involvement in the political processes that brought the hospital into existence, the public regarded her as the catalyst. *Ka Nūpepa Kū'oko'a*, a Hawaiian language newspaper, remarked that the hospital "originated within the heart of our Queen."[60] Another paper, the *Pacific Commercial Advertiser*, echoed the sentiment, declaring "that the plan of erecting a general hospital originated in the heart of our noble queen."[61] It came as no surprise then that on May 24, 1859, King Alexander Liholiho and his cabinet christened the

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[54] *Id*.
[55] *Id*., p. 95.
[56] They were married on June 19, 1856. *Id*., p. 61.
[57] Kuykendall, *The Hawaiian Kingdom, Vol. II*, pp. 70-71.
[58] Kanahele, *Emma*, p. 106.
[59] *Id*., p. 105.
[60] *Id*., p. 98.
[61] *Id*.

institution "The Queen's Hospital" or "Hale Ma'i O Ka Wahine Ali'i" (Sick House of the Lady Chief).[62]

The queen sought to ensure the hospital's continued existence by putting most of her estate into a trust and naming the hospital as a beneficiary. She did this through a 16-paragraph will, signed on October 21, 1884. The pertinent trust provisions are spelled out in the paragraphs 11 through 16.[63]

In paragraph 11, the queen provided lifetime annuities to four people, and in paragraph 12, she bequeathed $600 per annum to St. Andrew's Priory so that four yearly scholarships of $150 could be maintained in her name.

In paragraph 13, Emma devised seven pieces of land[64] to her business agent Alexander J. Cartwright in trust. Any monies the properties generated were to be used to pay for the annuities and scholarships set out in paragraphs 11 and 12. Whatever incomes, profits, or rents remained would be split between The Queen's Hospital and Emma's cousin Albert Kūnuiākea,[65] with the remainder going to his lawful issue. Kūnuiākea died without issue in 1903, and according to paragraph 16 of the will, The Queen's Hospital absorbed his portion of unspent income.

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[62] *Id*., p. 96.

[63] Paragraphs one through ten of the will impacted a relatively insignificant portion of the queens's estate. They handled her funeral arrangements, gave away small sums of money and personal property, and devised smaller tracts of land.

[64] At least four of the seven 'āina were first awarded to other ali'i during the Māhele. Van Dyke, *Crown Lands*, p. 332. Lāwa'i, an ahupua'a in the Kōloa district on Kaua'i, was awarded to her uncle James Young Kanehoa in the 1848 Māhele. He bequeathed it to his wife Hikoni, who transferred it to Emma fourteen years before Emma's death. Kanahele, *Emma*, p. 245. Hānaia Kamalama was a property that Queen Emma used as a summer retreat and social center. She inherited it from her uncle, Keoni Ana. *Id*. In 1890, it was sold to the Hawaiian government, and in 1911 the surrounding area was made a public park. In 1915, the Daughters of Hawai'i renovated the house and now maintain it as a museum. Huehue in Honolulu was first awarded to Kauikeaouli, who preceded Emma's husband on the throne as Kamehameha III. Kaluaokau in Waikīkī first belonged to Lunalilo. Half of the ahupua'a of Hālawa in the Ewa district of O'ahu, first awarded to Emma's hānai mother Grace Kama'iku'i Young, went into the trust. Of unknown origin are the final two 'āina listed in paragraph thirteen: Mahinui and Ao in Kane'ohe and Mauna Kea Street.

[65] Albert was the son of King Kamehameha III and Jane Young, who was the younger sister of Emma's natural and hānai mothers. Kanahele, *Emma*, p. 364.

Paragraph 13 also authorized the alienation of trust lands once the four annuitants died, so long as the remaining properties could generate enough cash every year to support the four St. Andrew's Priory scholarships. Proceeds from any sales were to be distributed in the same fashion as earnings generated by trust lands – half to the hospital and half to Kūnuiākea.

In 1928, the last of the four annuitants died, prompting confusion as to how much discretion the trustee had in selling off trust lands, as stipulated in paragraph 13. The issue went unsettled until the Hawai'i Supreme Court took it up in a 1950 case called *The Queen's Hospital v. Hite*. Trustee Charles Hite argued for absolute and perpetual discretion in his power "to sell or not to sell a portion of real estate at any time[.]"[66] The hospital countered, taking the position that once all the annuitants died, the will mandated that the trustee sell off the trust estate, except for whatever portion would be needed to keep the scholarship funded.[67] Citing Queen Emma's "paramount intention" to gift and the absurdity of paying a trustee thousands of dollars in fees to administer a $600 scholarship, the court ruled in the hospital's favor.[68] It instructed Hite to select the properties he deemed "advisable to hold in trust" so that the excess could be turned over to The Queen's Hospital.[69] He held on to two lots in downtown Honolulu,[70] until 1967 when the Queen Emma Trust was dissolved.[71] The last of Queen Emma's lands, then worth $1 million, went to the hospital, and a $25,000 trust account was set up to keep the St. Andrew's Priory scholarships funded.

Paragraphs 14 and 15 of the will dealt with the other significant portion of the queen's estate by making various transfers. In the case of nine parcels of land bequeathed to Emma by

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[66] *The Queen's Hospital v. Hite*, 38 Haw. 494, 505 (1950).
[67] *Id.*, p. 504.
[68] *Id.*, at 518.
[69] *Id.*, at 520.
[70] Jason Y. Kimura, *The Queen's Medical Center* (Honolulu: Booklines Hawaii, 2011), p. 41.
[71] *Honolulu Advertiser*, March 8, 1967, p. A-2.

her hānai father, the transfer failed. She attempted to convey these properties to The Queen's Hospital in paragraph 14 of her will. In *C.C.K. Rooke v. The Queen's Hospital*, the Hawai'i Supreme Court found that she only had a life estate in the lands, so the transfer could not be sustained.[72]

In paragraph 15, Emma devised five pieces of real estate[73] on the islands of Hawai'i and Maui to Cartwright to hold in trust for Kūnuiākea. Once he died, the properties were to go to his lawful issue in fee. Having died without issue, The Queen's Hospital took ownership of the lands in accordance with paragraph 16.

B. Issues and Challenges

Unlike the wills of Lunalilo, Lili'uokalani, and Pauahi, nowhere in Emma's is there mention of giving any kind of preference to the care of Native Hawaiians. It's worth mentioning that unlike the Lunalilo Home, Queen Lili'uokalani Children's Center, and Kamehameha Schools, The Queen's Hospital existed at the time of Queen Emma's death, and when she signed her will, Native Hawaiians already enjoyed preferential treatment there. It was a hospital for Native Hawaiians, at least until the turn of the century when its mission began to change.

The legislation that gave rise to the hospital's founding – the Indigent Hawaiian Hospital Act of 1859 – gave the Minister of the Interior the power to grant a charter to those intending to

[72] In *C.K.C. Rooke v. The Queen's Hospital*, 12 Haw. 375 (1900), the Hawai'i Supreme Court decided that Emma took a life estate in her father's lands with a remainder in her son and an alternate contingent remainder in Dr. Rooke's nephew, Creswell Charles Keane Rooke. Because her son, Prince Albert Edward Kauikeaouli Leiopapa a Kamehameha, did not survive her, the properties went to the nephew in fee upon the queen's death. Having no interest in the properties beyond the duration of her life, Emma's transfer to the hospital could not be sustained.

[73] Former ali'i lands, the 'āina contained in this transfer included the ahupua'a of Kamoamoa and Kealahewa in the Puna and Kohala districts of Hawai'i Island. Both parcels originally belonged to the high chiefess Mary Kuamo'o Ka'ōana'eha, the daughter of Kamehameha the Great's brother Keli'imaika'i and Emma's grandmother. Also conveyed on Hawai'i Island were the ahupua'a of Kawaihae in Kohala, which Emma's uncle Keoni Ana claimed in the Māhele, and the ahupua'a of Waikahekahe in Puna, which was first awarded to Jane Lahilahi Young, the younger sister of both Emma's natural and hānai mothers. The final parcel called Halaka'a in Lahaina first belonged to Joshua Ka'eo, Emma's uncle through his marriage to Jane Lahilahi Young.

establish a hospital "for the relief of sick and destitute Hawaiians."[74] In a subsequent section, the bill allowed the hospital to "contract to receive and provide for sick and disabled seamen of other countries, or patients of any description who are fit subjects for hospital treatment."[75] The bill assured that this could be done "without interfering with the primary object" of the institution[76] – that is, caring for "sick and destitute Hawaiians."

The resulting charter affirmed the Indigent Hawaiian Hospital Act's primary and secondary aims as being within the new corporation's exercisable powers, meaning that Queen's Hospital held the power to:

> [P]urchase or rent on lease, a suitable site for, and provide for and proceed with the erection, furnishing, establishing and putting into operation a permanent hospital at Honolulu, with a dispensary, and all necessary furniture and appurtenances for the reception, accommodation and treatment of indigent, sick, and disabled Hawaiians; as well as such foreigners, and others, who may choose to avail themselves of the same.[77]

To advance the objective under which the charter was granted, the trustees pursued a policy of offering free medical care to Hawaiians. They were quite aggressive in promoting it too, perhaps because of the deep skepticism that encircled Western medicine. Seven years after the permanent facilities opened, for example, Queen's board of trustees took out a newspaper ad that announced the following:

> The Trustees desire that you would interest yourself to induce all Native Hawaiians . . . who are unable to pay for medical assistance, and who are afflicted with diseases that may reasonably be expected to be cured . . . to come to The Queen's Hospital and the Trustees will pay passage money of such to Honolulu and all reasonable expenses incurred in getting them there . . . the Trustees invite you thus to cooperate . . . to render the Hospital more efficient in benefiting that class of persons for whose relief it was established.[78]

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[74] *1859 Civil Code of the Hawaiian Islands*, pp. 433-34, section 1.
[75] *Id.*, section 7, p. 435.
[76] *Id*.
[77] Article 1, *Charter and By-Laws of The Queen's Hospital* (Honolulu: Commercial Advertiser Print, 1859), p. 7.
[78] *Hawaiian Gazette*, October 23, 1867.

The policy stayed in place until just before the turn of the century. In 1895, the Attorney General had asked that soldiers and policemen admitted to Queen's receive free care.[79] The trustees rejected his request, pointing out in a letter "that in accordance with the charter and with the intent of The Queen's Hospital since its incorporation the Board of Trustees has no discretion in the admission of patients free of charge except Hawaiians."[80] They regarded the request as outside their purview.

Five years later, the trustees revisited the policy of free care for Hawaiians. After examining the hospital charter, they discovered that it didn't contain language mandating the admittance of Hawaiian patients free of charge.[81] While technically true, how else would a "national eleemosynary institution"[82] accomplish its central purpose – caring for indigent Hawaiians – if not by offering free care? Calling the practice "a matter of custom arising from usage that has endured almost since the founding of the hospital[,]"[83] the trustees abandoned the policy. It was never reinstated. It's not clear whether the policy was phased out over a period years or swept away at once, but Native Hawaiian Mayor John H. Wilson recalled that in 1918, he tried to get a few Native Hawaiians admitted for free, but they were turned away.[84]

The charter was amended in 1909 to comport with the de-emphasis on the Hawaiian patient population. Instead of identifying "indigent, sick, and disabled Hawaiians" as a target

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[79] *The Honolulu Advertiser*, December 20, 1950.
[80] *Id*.
[81] *Pacific Commercial Advertiser*, October 19, 1900, p. 17.
[82] *Hawaiian Gazette*, 30 July 1885.
[83] *Pacific Commercial Advertiser*, October 19, 1900, p. 17.
[84] *Honolulu Advertiser*, December 12, 1939, p. 1.

patient population like the original charter did, the amended charter subsumed them into the general pool of "sick and disabled persons" and "indigent persons."[85]

It's this sequence of events that caused Charles M. Hite, the trustee for Queen Emma's Estate, to wonder whether or not the assets that went to, and were to go to, the hospital "must be expended solely or at least primarily for the maintenance and medical care of sick, indigent and disabled Hawaiians."[86] He petitioned the court for direction, believing that if Queen Emma formed her trust upon the knowledge that The Queen's Hospital was a "native hospital" where Hawaiians enjoyed access to subsidized treatment, then that intent must be honored. Circuit Court Judge H.E. Stafford agreed, forbidding Hite from distributing trust income to the hospital "until and unless a proper showing is made by [it] that . . . all income that had been diverted to other purposes than the relief of indigent, sick and disabled Hawaiians, be restored[.]"[87]

The decision was appealed, and the Hawai'i Supreme Court vacated and set aside the lower court's instructions.[88] The court began its analysis by looking at the provisions in Queen Emma's will establishing the gift. Seeing no conditions attached to its use by the hospital, the court ruled that the hospital was free to use any assets received from the estate "for its general eleemosynary purposes."[89] Next, the court identified what these purposes were at the time of Queen Emma's death in order to decide whether or not the diversion of her bequests away from Hawaiian patient care to general hospital expenditures amounted to a legal obstacle.[90] Looking at the charter's language, quoted above, the court concluded that The Queen's Hospital was "for the

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[85] Article 1, *The Queen's Hospital Charter Amendment* (Honolulu: Commercial Advertiser Print, 1859), p. 24.
[86] Petition, *Charles M. Hite, v. The Queen's Hospital*, the Circuit Court of the First Judicial Circuit Territory of Hawai'i, p. 20, subsequently appeal and court decision, *Hite v. The Queen's Hospital*, 36 Haw. 250 (1942).
[87] Instructions by the court, reprinted in *The Honolulu Advertiser*, May 10, 1941.
[88] *Charles M. Hite v. The Queen's Hospital*, 36 Haw. 250, 288 (1942).
[89] *Id*. at 264.
[90] *Id*. at 264-65.

use alike of indigent Hawaiians and such foreigners and others who might choose to avail themselves of the same,"[91] in other words, for anyone's use. Essentially, all that was required of The Queen's Hospital was to function as any hospital functions. And so long as Queen Emma's funds went to support the care of "foreigners and others," the Hawai'i Supreme Court saw no reason to upset the bequest.[92]

C. Accomplishments

To this day, hospital staff are asked why free care is no longer offered specifically to Hawaiians. Discounted care is in fact available to qualifying low-income patients, supported in part by federal and state funds, but even if the board of trustees wanted to single out "indigent, sick, and disabled Hawaiians," the practice would surely face legal challenges. The fact that the issue comes up more than a century later reveals something about how effectively Queen Emma's legacy is being upheld. The recent installation of a dedicated Native Hawaiian health department suggests that the trustees are finally recognizing that the hospital has long fallen short.

The Queen's Hospital is now The Queen's Medical Center, an acute care medical facility. With more than 505 acute care beds and 28 sub-acute beds, it is the largest private hospital in Hawai'i. In 2009, it achieved Magnet status, the first hospital in the state to do so, from the American Nurses Credentialing Center. Queen's rising prestige is a good indication of its excellence in delivering some of the best care available. However, where Native Hawaiian health is concerned, the hospital is really only just getting started. It wasn't until the 1990s that "Native Hawaiians" were brought back into Queen's mission statement, which now reads: "To fulfill the

[91] *Id*. at 268.
[92] *Id*. at 282-83.

intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all the people of Hawaii."[93]

This renewed sense of purpose to Native Hawaiian well-being got its first tangible commitment in 2005, when the trustees created the Native Hawaiian Health Program ("Program"). It's a small, four-person department within The Queen's Medical Center that's responsible for ensuring that the hospital undertakes initiatives targeted at improving Native Hawaiian well-being. For the first time since the early-1900s, there is measurable and sustained progress on a mission that inspired the hospital's existence.

Approximately 60 percent of the Native Hawaiian Health Program's energies and funds are spent on improving clinical outcomes for the hospital's Native Hawaiian patients. The Program looks for leverage points by asking, "where are Native Hawaiian mortality rates highest, and how can the delivery of care be improved?" This led to the selection of certain service lines, which receive support from the Native Hawaiian Health Program in the implementation of programs targeted to meet underserved needs in the Hawaiian patient population. The hospital's cardiac care floor was an early target. It has had at least one person in a nurse-level position working with the cardiac team to identify deficits and improve the delivery of care to Hawaiian inpatients. Since then, their utilization of cardiac services and satisfaction has gone up. Of course, every service line will require its own set of best practices. To develop them, the Native Hawaiian Health Program has expanded its clinical strategy into oncology, neuroscience, diabetes, and obesity. All are areas where Hawaiians are disproportionately represented.

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[93] *See* the Queen's Medical Center website *available at* http://queensmedicalcenter.org/about-us-home (last visited July 26, 2014).

The balance of the Native Hawaiian Health Program's funds and energies are spent on scholarships, research, healthcare training, and outreach. One of the Program's current initiatives is a collaboration with Stevenson Middle School, attended by children from Honolulu's Hawaiian homestead communities, called the Ulu Kukui Project. The idea is to prepare students for biomedical careers by getting them interested in science before they enter high school. That turned out to be easy the part. Getting their parents to understand how a passion for biology or chemistry translates into good-paying jobs took a little more effort. The Ulu Kukui Project has hosted health science evenings for students and their families, which gave parents a chance to connect what their children were learning in the classroom with the work that professionals do in various field.

D. Outlook[94]

King Alexander Liholiho and Queen Emma could not have imagined just how admired and state-of-the-art their humble infirmary would become. They are honored annually as the Medical Center's founders, and every employee is at least aware of their role in the hospital's origin story. Less recognized is the hospital's place within the circle of aliʻi legacies and, by extension, its identification as a Hawaiian organization. Despite recent inroads, the Native Hawaiian Health Program's long-term prospects are only as secure as the hospital administration's commitment to the wellbeing of Native Hawaiians. Thankfully, the Program enjoys broad support from the board and across the executive level. The mission of the Medical center includes the duty to improve the well-being of "all the people of Hawaii" and specifically

[94] A second healthcare institution owes its existence to aliʻi. Queen Kapiʻolani founded a maternity home for expectant Hawaiian mothers in 1890 at the tail end of her husband Kalākaua's reign, whose tenure had two major objectives: "The increase of the people; the advancement of agriculture and commerce." Ralph S. Kuykendall, *The Hawaiian Kingdom, Volume III: 1874-1893 The Kalakaua Dynasty* (Honolulu: Univ. of Hawaii Press, 1967), p. 17. Out of the first priority came what is known today as the Kapiʻolani Medical Center. For a concise history of this aliʻi legacy, *see generally*, Maili Yardley and Miriam Rogers, *The History of Kapiolani Hospital*, (Honolulu: Topgallant Publishing Company, 1984).

identifies the well-being of Native Hawaiians. As the Medical Center seeks to fulfill this dual mission, it will face challenges as well as immense opportunities.

III. The Kamehameha Schools/Bishop Estate

Best known among the ali‘i institutions is the Kamehameha Schools. Princess Bernice Pauahi Bishop founded it by setting aside more than 375,000 acres of land for use in establishing and financing a school for boys and a school for girls. The boys' school opened in 1887, three years after Pauahi's death, and a girls' school followed in 1894. Formerly known as the Bernice Pauahi Bishop Estate, Kamehameha Schools is one of the wealthiest and most influential private charitable trusts in the United States.

Pauahi has been called the "last and best of the Kamehamehas."[95] Through her mother, Laura Kanaholo Kōnia, Pauahi descended from Kamehameha I.[96] His first born son was Pauli Ka‘ōleiokū.[97] Ka‘ōleiokū was Kōnia's father, and Kōnia's mother was his second wife Kahailiopua Luahine.[98] From Ka‘ōleiokū's first wife Keoua came Pauahi, Bernice's namesake and the mother of her cousin Ruth Ke‘elikolani.[99] And it is through Ruth that the lands of the Kamehameha family passed to Princess Bernice Pauahi Bishop, where they remain held in trust and are used to further the education of the Native Hawaiian people.

A. Founding History

Pauahi executed her will on October 31, 1883. It was just under a year before she would succumb to cancer, and five months after vaulting into becoming one of the largest landowners

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[95] *Pacific Commercial Advertiser*, October 20, 1884.
[96] George Hu‘eu Sanford Kanahele, *Pauahi: The Kamehameha Legacy* (Honolulu: Kamehameha Schools Press, 1986), p. 9.
[97] *Id*., p. 7.
[98] *Id*., p. 9.
[99] *Id*.

in the Kingdom.[100] Some 353,000 acres had been added to her landholdings when Ruth passed away on May 24, 1883. Everything she owned she left to Pauahi.[101]

Up to that point, Pauahi had accumulated a comparatively smaller amount of ʻāina, first from her father Abner Pākī, then from her mother Konia two years later, and finally from her aunt ʻAkahi in 1877.[102] In all, her lands totaled 25,600 acres.[103] With the addition of Ruth's bequest, Pauahi's estate mushroomed by a factor of nearly 15.[104] This massive collection of land had been awarded to various members of the Kamehameha family during the Māhele.[105] Many of them died childless, and when the lands funneled into Pauahi's estate through Ruth, they reached the end of the Kamehameha line.[106]

Self-effacing and spiritually devout, Pauahi was far less eager than others in her family to assume the mantle of power. Her refusal of Lot's (Kamehameha V) deathbed request to succeed him to the throne drove the point home.[107] Ruth's bequest to Pauahi brought more than wealth. The 353,000 acres of land held enormous kuleana (responsibility) and power. Having been called

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[100] Pauahi died just after noon on Thursday, October 16, 1884. *Id*., p. 189.
[101] Ruth's adopted son Prince William Pitt Leleiōhoku, the heir apparent and brother of Kalākaua and Liliʻuokalani, died on April 10, 1877. *Id*., p. 151. That made Pauahi, Ruth's closest relative, the logical devisee. *Id*., p. 152.
[102] Van Dyke, *Crown Lands*, pp. 312-13.
[103] *Id*., p. 314.
[104] Kanahele, *Pauahi*, p. 168. Ruth entered the new era of land titling with a sizeable estate of her own, having been awarded twelve ʻāina during the Mahele. "Ruth later inherited ʻĀina from other Aliʻi who had received ʻĀina at the Mahele – from her first husband Leleiʻohoku, from her father Mataio Kekūanaōʻa, from her half brother Lot Kapuāiwa (Kamehameha V), and from her half sister Victoria Kamamalu – to form a massive collection of lands." Van Dyke, *Crown Lands*, p. 314.
[105] "The corpus of Ruth's estate comprised lands from the estates of her first husband Leleiōhoku, Victoria Kamāmalu, Mataio Kekūanaōʻa, Namauʻu (her father's brother), Moses Kekūʻaiwa, and Kamehameha V (Lot). The bulk of the estate came from Kamāmalu's lands, which had reverted to her father Kekūanaōʻa at her premature death in 1866, when she left neither will nor heir. Kamāmalu's lands in turn had come from Kamehameha III, who in 1848 had redistributed the lands in accordance with the Māhele. These were the Kamehameha lands, handed down from the greatest aliʻi of all, Kamehameha the Great."
[106] Pauahi and her husband Charles Reed Bishop never had any children of their own. They tried to adopt a baby boy the year before Pauahi died, but the adoption fell through. Kanahele, *Pauahi*, p. 168.
[107] *Id*., pp. 111-12.

to act, in part on behalf of her royal ancestors, Pauahi showed all the wisdom and beneficence of a true ali‘i.

To optimize the charitable use of the Kamehameha lands and to protect them from being repurposed, she created a testamentary trust. The first trustees named the trust the Bernice Pauahi Bishop Estate. Now called Kamehameha Schools ("KS"), the trust's value has swelled over the more than 130 years of its existence to more than ten billion dollars.[108] Real estate drives efforts to carry out Pauahi's vision of a people restored through education. Earnings from land leases and sales, along with investment income, go to support the trust's expanding network of schools and outreach programs.[109]

After leaving legacies of money and life estates to friends, family, attendants, and Kawaiaha‘o Church in the first 12 paragraphs of her will, Pauahi laid the foundation upon which the Kamehameha Schools have been built in paragraph 13. She transferred "all of the rest, residue and remainder" of her estate to her trustees, named in paragraph 14, and requested that they hold the property "upon the following trusts, namely: to erect and maintain in the Hawaiian Islands two schools, each for boarding and day scholars, one for boys and one for girls, to be known as, and called the Kamehameha Schools."[110] How much to spend on the schools' construction and maintenance, how to invest, and how to allocate income she left to the trustees' discretion. In fact, she left little more than a few governing criteria in her will, but they have shaped the schools' management in important ways.

Most crucial is paragraph 13's preference clause, which underpins an admissions policy that favors Native Hawaiian applicants. In it, Pauahi directs her trustees "to devote a portion of each years [sic] income to the support and education of orphans, and others in indigent

[108] Kamehameha Schools Report on Financial Activity (July 1, 2012 – June 30, 2013), p. 1.
[109] *Id.*
[110] *Will of Bernice Pauahi Bishop*, October 31, 1883, paragraph 13.

circumstances, giving the preference to Hawaiians of pure or part aboriginal blood[.]"[111] It isn't the most precise phrasing. Nevertheless, the trustees, being vested with the power to "regulate the admission of pupils,"[112] have long held to a policy of Native Hawaiian preference generally, not orphans and indigents exclusively, as one interpretation of the preference clause might suggest.

Pauahi's husband Charles Reed Bishop, one of the first five trustees, helped make his wife's intentions on the admissions issue clearer after her death. In a 1901 letter to fellow trustee Samuel Damon, Bishop confirmed that "it was intended and expected that the Hawaiians having aboriginal blood would have preference, provided that those of suitable age, health, character, and intellect should apply in numbers sufficient to make up a good school[.]"[113]

He left room for the possibility of there not being enough qualified Native Hawaiian enrollees, at which point, the preference would be suspended. At the inaugural Founder's Day celebration on December 19, 1887, Bishop stressed that the schools were "intended for capable, industrious and well-behaved youths only;" consequently, "if Hawaiian boys of such character fail to come in, other boys will certainly take their places."[114]

B. Issues and Challenges

This has resulted in the admissions policy that the school maintains today, one that it has been increasingly forced to defend. Non-Hawaiian students are not barred from attending the Kamehameha Schools, but their admittance is conditioned on the exhaustion of all qualified Native Hawaiian applicants. Because there are nearly always more qualified Native Hawaiian applicants than there are openings, enrollment by non-Hawaiian students is extremely rare. It

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[111] *Id*.
[112] *Id*.
[113] Harold Winfield Kent, *Charles Reed Bishop: Man of Hawaii* (Palo Alto: Pacific Books, 1965), p. 163.
[114] *Id*., pp. 153-54.

happened most recently at the school's Maui campus in 2002. The decision sparked outcries from those in the alumni and Native Hawaiian communities who saw it as a misconstruction of Pauahi's founding mission.[115]

The policy has been challenged in the courts, most notably in *Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate*. Filed in June of 2003 on behalf of John Doe, the suit involved a non-Hawaiian applicant who had been waitlisted in each of the two years he applied for admission. Doe claimed that Kamehameha Schools' admissions policy violated 42 U.S.C. § 1981, a civil rights law enacted in 1866 to ensure that recently freed slaves would be afforded certain basic rights, like the right to form contracts. Doe argued that the admissions policy impeded upon his parents' right to enter into a contract for educational services with Kamehameha Schools, in a manner that violated federal law. The U.S. District Court for the District of Hawai'i upheld the admissions policy, and in 2006, the Ninth Circuit Court of Appeals affirmed the ruling in an en banc decision issued by an eight-judge majority.[116]

To assess the legality of the admissions policy, the court borrowed an analysis from employment law. Any affirmative action plans maintained by private employers: "(1) must respond to a manifest imbalance in the work force; (2) must not 'unnecessarily trammel' the rights of members of the non-preferred class or 'create an absolute bar to their advancement'; and (3) must do no more than is necessary to attain a balance."[117]

Modifying this rubric to fit a school context, the Court of Appeals found enough evidence to put Kamehameha Schools within bounds of having a lawful affirmative action plan. It held that "[b]ecause the Schools are a wholly private K-12 educational establishment, whose

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[115] Rick Daysog, "Angry Ohana Grills Trustees," *Honolulu Star-Bulletin*, 16 Jul. 2002, *available at* http://archives.starbulletin.com/2002/07/16/news/index.html.
[116] *Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate*, 470 F.3d 827 (9th Cir. 2006).
[117] *Id*. at 840.

preferential admissions policy is designed to counteract the significant, current educational deficits of Native Hawaiian children in Hawaii, and because in 1991 Congress clearly intended § 1981 to exist in harmony with its other legislation providing specifically for the education of Native Hawaiians, we must conclude that the admissions policy is valid under 42 U.S.C. § 1981."[118] Plaintiff Doe filed a petition for a writ of certiorari, but before the U.S. Supreme Court considered it, the parties settled. This means that for now, the Ninth Circuit's ruling stands, preserving Kamehameha's decision to make Native Hawaiian children a first priority.[119]

C. Accomplishments

Kamehameha Schools' long and expansive influence means that its accomplishments are many. To show how it has breathed life into Pauahi's vision, this section will trace the development of the Schools' institutional underpinnings. It charts the ways in which Kamehameha has carried out Pauahi's desire, as stated in her will, to see education "make good and industrious men and women" out of the school's students.

1. The Kalihi Campus

Kamehameha Schools opened as the School for Boys in October of 1887 on a dry patch of land on the outskirts of Honolulu in an area called Kalihi. With five frame houses and 37 students, the school held its inauguration ceremony on November 4, 1887,[120] welcoming King David Kalākaua, his wife Queen Kapiʻolani, and the Princesses Liliʻuokalani and Kaʻiulani as well as Princes Kawānanakoa and Kalanaianaʻole.[121]

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[118] *Id*. at 849.
[119] A subsequent case filed in 2008 on behalf of four anonymous students attempted to re-litigate the issue and take it to the U.S. Supreme Court. The case – also called *Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate* – was dismissed because of the plaintiffs' refusal to disclose their names.
[120] Cobey Black and Kathleen Dickenson Mellen, *Princess Pauahi Bishop and Her Legacy* (Honolulu: The Kamehameha Schools Press, 1965), pp. 99, 101.
[121] *Id*., p. 99.

The curriculum in the school's earliest days had a strong technical and vocational emphasis. Training the boys for work in various trades – horseshoeing, carpentry, tailoring, forging, and machine-repair – was the objective. Academics came second. Around the turn of the century a graduate would leave Kamehameha with "the equivalent of a ninth grade education."[122]

Agriculture was also taught and practiced. In 1895, the students planted 28,000 huli (taro top used for planting).[123] An ʻauwai (water course) diverted water from an upland stream to feed the crops until the mid-1930s.[124] In 1925, neighbors began complaining about the campus dairy and piggery, so the school moved the operation to a valley called Hahaʻione in Hawaiʻi Kai towards Oʻahu's easternmost point.[125] The practical farm school would prepare the boys for the nascent Hawaiian homesteading program.[126] Interest in the project waned as work opportunities failed to materialize, so it closed after nine years.[127]

Before Kamehameha's inaugural year came to a close, it became obvious that many boys lacked the academic fundamentals required for admission. Mr. Bishop decided that Kamehameha needed a preparatory wing. He financed its construction on the Kalihi campus, and the Bishop Estate agreed to take responsibility over its day-to-day management.[128] In 1888, The Kamehameha Schools Preparatory Department opened as a boarding school with 19 six-to-twelve-year-olds.[129] They would receive lessons "in English, arithmetic, drawing, penmanship, and singing" in addition to being taught "[g]ood morals and gentle manners, cleanliness of

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[122] *Id*., p. 130.
[123] Donald D. Kilolani Mitchell, *Kū Kilakila ʻO Kamehameha: A Historical Account of the Campuses of the Kamehameha Schools* (Honolulu: Kamehameha Schools/Bernice Pauahi Bishop Estate, 1993), p. 123.
[124] *Id*.
[125] *Id*., p. 125.
[126] *Id*.
[127] *Id*., p. 127.
[128] *Id*., p. 29.
[129] *Id*.

person and clothing and general surroundings, neatness and the care of rooms and furniture."[130] Hawai'i's public schools eventually improved to the point that the trustees felt the Preparatory Department was no longer needed and it was closed in 1932. At the urging of parents, the Preparatory School reopened as a day school for boys and girls in 1943.[131]

In 1893, the trustees started making preparations for the girls' school on a site neighboring the boys' campus. In November of 1894, classes began, and by the end of the school year, 59 students had enrolled.[132] Complementing the boys' blue-collar training, the Kamehameha School for Girls readied young Hawaiian women for the life of a homemaker. Their education was built around the domestic arts – cooking, sewing, laundry, gardening, and home nursing – culminating in a three-month retreat at a practice cottage under the guidance of a director who taught them how to manage a home and care for a baby.[133] The academic curriculum gave them the equivalent of a grammar school education and one year of high school. Once finished, the girls could continue their studies as sophomores at O'ahu College (now Punahou School) or the public high schools.[134]

The 1920s brought a decade of change. Curriculum at both schools broadened so that graduates would leave with a complete high school education. The 1924 class was the first to do so.[135] Courses in stenography, accounting, and typewriting as well as in teaching and nursing were also added at the School for Girls, giving young women career options.[136] The Hawaiian language received a homecoming of sorts when Frank E. Midkiff, the schools' president from

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[130] Black and Mellen, *Princess Pauahi*, p. 106.
[131] Mitchell, *Kū Kilakila*, p. 35.
[132] *Id*., p. 39.
[133] *Id*., p. 42.
[134] Black and Mellen, *Princess Pauahi*, p. 114.
[135] *Id*., p. 134.
[136] *Id*., p. 116.

1923 to 1934, made a year of its instruction mandatory.[137] "To know their own language," he said, "gives our boys and girls a proper pride in things Hawaiian."[138] The first class of day students arrived in 1926, but class sizes remained small. The class of 1927, for example, numbered 26 boys and 17 girls.[139]

Kalihi was changing too. By the 1920s, it was no longer empty land as it had been 30 years prior. A burgeoning neighborhood of homes and businesses bustled around the campus edges. Predicting that the "city streets will eventually dismember the present location," Trustee E. Faxon Bishop and his colleagues prepared for the school's relocation. In December of 1928, they selected a swath of empty hillside just above Kalihi as the new site for the school.[140]

2. The Kapālama Campus

The School for Girls was first to make the migration mauka (upland) to Kamehameha's present location in Kapālama Heights. Construction began in 1928 along the uppermost slopes of the new site, and dedication ceremonies were held on September 13, 1931.[141] The original plan[142] envisioned something much more expansive than the six buildings christened that day, something closer to Kapālama today with its enrollment of more than 3000 boarding and day students.[143] But because of the Great Depression, the trustees scaled back development on the girls', and later the boys', campus. It was comprised of three dorms, a practice cottage, a library, a gymnasium, and a multipurpose building.

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[137] *Id*., p. 133.
[138] *Id*. It was later made an elective after parents complained, feeling that the emphasis should be on modern languages as college prep and Latin as an English reinforcement. *Id*., p. 134.
[139] *Id*., p. 135. "Students then numbered 256 in the boys' school, 156 in the girls' school and 76 in the Preparatory Department." *Id*., p. 136.
[140] Mitchell, *Kū Kilakila*, p. 43.
[141] *Id*., p. 46.
[142] "The architectural firm of Bertram Goodhue Associates of New York City was selected to work with local Honolulu architect C. W. Dickey. … Estimated cost of buildings and preparation of the site (terracing the mountainside) was four million dollars." Black and Mellen, *Princess Pauahi*, p. 137.
[143] *Id*., p. 138; see Kamehameha Schools Annual Report (June 1, 2012 – July 30, 2013), p. 3.

It took a few years for the estate to firm up its fiscal footing in the wake of the Depression, and in 1935, the trustees prepared to move the School for Boys and the Preparatory Department.[144] The earlier plan was scrapped and replaced with a simpler footprint, drawn up by the Midkiff's successor Dr. Homer F. Barnes.[145] Instead of opening Kamehameha up to day students, in the near term, it would remain exclusively a boarding school with a capacity for 240 boys.[146] "Work progressed rapidly and September 1941 found the boys' school happily ensconced in handsome new buildings on Kapalama Heights."[147] The Preparatory Department was last to settle onto the new campus in 1955 where the elementary and intermediate schools are today.[148]

Having modernized the school's infrastructure, Kamehameha's trustees and administrators turned their attention to admissions and curriculum. During the decade preceding the war, enrollment skewed toward the studious under an admission policy promulgated by Dr. Homer F. Barnes, the principal at the time.[149] "Sharp intellectuality" drove student selection during his tenure.[150] Enrollment numbers were consistent with earlier years – 225 and 140 in the boys' and girls' schools respectively – but the policy received enough criticism from the wider Kamehameha community to force Barnes' resignation, setting the stage for another approach adopted by his successor.[151] Softening the emphasis on intellectual aptitude, President Harold

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[144] Mitchell, *Kū Kilakila*, p. 67.
[145] *Id*.
[146] *Id*.
[147] Black and Mellen, *Princess Pauahi*, pp. 140-41.
[148] Mitchell, *Kū Kilakila*, p. 99.
[149] Black and Mellen, *Princess Pauahi*, p. 143.
[150] *Id*.
[151] *Id*.

Winfield Kent and the trustees amplified the weight of a candidate's qualitative makeup – "attitudes, character, ability and a well-rounded citizenship."[152]

Curriculum also liberalized. Vocational offerings continued to instill advanced skillsets in relevant fields, like radio, carpentry, auto mechanics, publishing, and nursing.[153] But it is during this post-war period that the schools' academic profile begins to climb. Science and math enjoyed a new emphasis.[154] Courses grew more rigorous, at once informing and responding to the growing college aspirations among Kamehameha students.[155] The shift in Kamehameha's scope from skills-training to college-preparatory persisted so that by the 1960s, 70 percent of graduates from the boys' school and 80 percent from the girls' school were going on to college.[156]

On the heels of a new attentiveness to academic excellence was the institution's embrace of its Hawaiian legacy. Hawaiian language courses, which had only ever been offered during President Midkiff's tenure, could be taken at all grade levels.[157] The school partnered with Bishop Museum to place students interested in Hawaiian history there, working alongside the curators among the museum's trove of Hawaiian artifacts.[158] And then there was the music. The legacy of Hawaiian composition and performance at Kamehameha is nearly as long as the school's existence, but the 1960s brought it new exposure. The annual Song Contest, first held in

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[152] *Id*., p. 145.
[153] *Id*., p. 147-48.
[154] *Id*., p. 148.
[155] *Id*., p. 147.
[156] *Id*., p. 148.
[157] *Id*., pp. 149-50. "Not since Mr. Midkiff's time had efforts been made to preserve the Hawaiian language."
[158] *Id*., p. 150.

1921, made its television debut in 1968. And spurred by a surging interest among the public in Hawaiian music, packed audiences greeted the boys and girls glee clubs at home and abroad.[159]

These developments look superficial in light of how nested culture and learning are becoming in Kamehameha's classrooms today, as discussed below. Yet, the growing regard for Hawaiian language, music, and history evince the beginning stages of an evolution in Kamehameha's ethos. Administrators, trustees, and teachers were beginning to recognize their unique responsibility in shaping men and women capable of competing in the American experience while being at home in their own Hawaiian identities.[160] At least until 2000, when the school adopted a new strategic plan, it perfected this strategy – college-prep infused with a Hawaiian sense-of-place and sense-of-being.

3. Expanding Kamehameha's Reach

Meanwhile, the school began to broaden is footprint through off-campus learning offerings and, later, standalone campuses on the islands of Maui and Hawai'i.

With the goal of reaching Native Hawaiian students outside of the immediate Kamehameha community, the school established the Extension Education Division ("EED") in 1962.[161] Today, EED is a bundle of many offshoots, ranging from short-term presentations to year-round programs.[162] It is now so comprehensive that a student need not attend Kamehameha to access the fruits of Pauahi's legacy, from preschool to post-college.

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[159] *Id*.

[160] "The goal, therefore, has been that of providing them with a strong academic basis for competing with other races yet at the same time leave unchanged their own basically fine Hawaiian qualities." *Id*., p. 149.

[161] Mitchell, *Kū Kilakila*, p. 148.

[162] They include: a distance learning platform; a network of 'āina-based, resource-management modules ('Āina Ulu); the Nānākuli Community Learning Center; a traveling cultural historical capsule ('Ike Pono Hawai'i); a multi-year college and career guidance program for non-Kamehameha highschoolers (Kamehameha Scholars); and an in-school literacy services network targeting public schools with high Native Hawaiian enrollments (Literacy Instruction and Support). Those in college can secure financial assistance through merit- and need-based scholarships (Nā Ho'okama a Pauahi & 'Imi Na'auao) as well

Best known of the EED programs is Explorations. Nearly every Native Hawaiian fifth-grader is familiar with the weeklong cultural immersion camp, and more than 50,000 have attended since it launched in 1968. For many, it's their first time away from home, and for some, it's their first introduction to Hawaiian values, mele, and crafts, to dancing hula and visiting wahi pana (significant cultural or historical places). It's organized every summer for keiki who are not already Kamehameha students. More recently, EED expanded Explorations into a progressive series spanning four years. Participants have the option of returning every year between the fifth and ninth grades, each time building upon what they learned the summer prior.

Early childhood education is another channel through which Kamehameha has widened its impact. Since the 1980s, preschools operated by Kamehameha have opened in communities across the state. There are now more than 30 of them on five islands, laying the critical social and cognitive foundation for 1,500 three and four-year-olds each year. There are always too few openings, so for parents who must enroll their child elsewhere, there is Pauahi Keiki Scholars, a need-based preschool scholarship program.[163]

All of these outward pushes led Kamehameha to an inevitable benchmark – full-fledged campuses on neighboring islands. There are now two neighbor island campuses, one in Pukalani, Maui, founded in 1996, and one in Kea'au, Hawai'i, founded in 2001. Both maintain average enrollments of 1,100 students kindergarten through the twelfth grade so that combined, the three K-12 campuses serve over 5,300 students every year.[164]

D. Outlook

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as through an intern-employer connector program (Kāpili 'Oihana Internship Program). Financial support is also available to Native Hawaiian students enrolled in vocational programs (Hana Lima Scholarship).

[163] Kamehameha Schools Annual Report (2012-2013), p. 3.

[164] *Id.*

Given its vast resources, Kamehameha's increasingly dense latticework of learning channels is a welcome, and entirely foreseeable, trajectory. What could prove to be more momentous is the present recalibration of the institution's Hawaiian character. In 2000, the trustees adopted a 15-year strategic plan that set this evolution into motion. The question around which the transformation turns is this: Is Kamehameha a school for Hawaiians or a Hawaiian school?

Since the school's founding, it has adhered to the assumption that the West knows best. Preparing Native Hawaiian boys and girls to live and compete in an Americanizing political economy has long been the curriculum's undergirding. This resulted in a learning system that would not have looked out of place elsewhere in the United States. Indeed, this was trustee Nainoa Thompson's basic critique of an early draft of the 2000-2015 strategic plan.[165] Kamehameha Schools was not a Hawaiian school per se; it was a school for Native Hawaiians. Of course, it had its cultural embellishments and an ali'i legacy, but it would be inaccurate to say that the teachers and administrators viewed these as essential elements in the transfer of knowledge at the schools. That is changing.

Giving rise to the change is Goal 3, out of a total of seven goals, in the school's current strategic plan. It says: "Kamehameha Schools will cultivate, nurture, perpetuate, and practice 'Ike Hawai'i (which includes Hawaiian culture, values, history, language, oral traditions, literature, and wahi pana, etc.)."[166] To make this commitment more concrete, leadership crafted a policy that contextualizes 'Ike Hawai'i (Native Hawaiian knowledge and culture) and reaffirms a commitment to 'Ōlelo Hawai'i's (Native Hawaiian language) ongoing revival.[167] It is known as

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[165] Anna Y. Sumida, *A Portrait of Decolonizing Practices at Kamehameha Elementary School*, unpublished PhD Dissertation in Philosophy, University of Hawaii, Mānoa, 2011, p. 6.
[166] *Kamehameha Schools Strategic Plan 2000-2015* (Honolulu: Kamehameha Schools, 2000), p. 21.
[167] Sumida, *A Portrait*, pp. 107-09.

Policy 740[C], and it lays out three components of "cultural vibrancy" that KS now strives to achieve in administration, operations, and program delivery and outcomes.

> Nohona Hawai'i: KS will learn and practice the attributes of Nohona Hawai'i, a living, vibrant Hawaiian way of life – one that embodies a kuana 'ike Hawai'i (a Hawaiian worldview), expresses a sense of pili 'uhane (spirituality), values launa (social interaction and relationships) and is characterized by a spirit of 'olu'olu (kindness) and ho'okipa (hospitality).
>
> 'Ike Hawai'i: KS will value, cultivate, nurture, perpetuate and apply 'Ike Hawai'i, Hawaiian knowledge and understanding, in ways that honor the depth and breadth of its many forms and expressions within our Hawaiian way of life.
>
> 'Ōlelo Hawai'i: KS will cultivate, nurture, perpetuate, honor, and engage in the proper and regular use of 'ōlelo Hawai'i – the native language of its founder and beneficiaries. Kamehameha Shcools understands and believes that the revitalization of 'ōlelo Hawai'i is critical in order for the native Hawaiian way of life to survive and thrive in perpetuity.[168]

Explicit for the first time is the aspiration to be not just a school for Native Hawaiians, but also a Kula Hawai'i – a Native Hawaiian school.

Putting that desire to practice is a complex undertaking. Its achievement rests on the agency of thousands of people with varying degrees of comfort with 'Ike Hawai'i, Nohona Hawai'i, and 'Ōlelo Hawai'i. But at all levels of the system, in big and small ways, the long practice of privileging a Western epistemology over a Hawaiian one is being reassessed.

A first step was the creation of the Ho'okahua Hawaiian Cultural Development office, responsible for managing KS staff's cultural engagement, in 2005.[169] Because of Ho'okahua, place-based learning experiences and excursions (huaka'i) and Hawaiian language workshops and other on-site cultural education offerings (papahana) are now a regular feature in the workplace.[170]

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[168] *Id*., pp. 292-93.
[169] *Id*., p. 111.
[170] *Id*.

The most visible undertaking is Ka‘iwakīloumoku, a Hawaiian cultural center that opened in 2012.[171] Located on the Kapālama campus, Ka‘iwakīloumoku is the architectural manifestation of Policy 740[C]. By hosting programs, speaking events, oral history presentations, and a virtual archive, it will house a dynamic collection of ‘ike Hawai‘i. And with a garden of native plants and a facility designed around Hawaiian uses, like ‘imu preparation, Ka‘iwakīloumoku provides a physical space for Nohona Hawai‘i and ‘Ōlelo Hawai‘i to thrive. It is a natural addition to Kamehameha’s flagship campus.

When it comes to curriculum in the classrooms though, the path is not as clear. How does a kula Hawai‘i (Native Hawaiian school) handle the breadth of subject matter that comprises a K-12 education, especially when getting into a good college remains the goal for many students and families? Successfully merging Hawaiian ways of knowing with a pedagogy that has college preparation as a primary concern requires creativity, dedication, and buy-in from administrators and parents.

One fifth-grade classroom at Kamehameha Elementary School hints at how that might be achieved. American History is the social studies topic for the year, and looking at it through multiple lenses is the method the students are taught to use in surveying the past.[172] Indigenous Peoples’ perspectives, long absent from conventional textbooks, are brought to the foreground.[173] Ten-year-olds are encouraged to confront the chain of events actively and critically, which develops their awareness to educational bias. In this learning capsule is a level of rigor that Kamehameha Schools is already known to cultivate, but also infused is a Native sense of knowing. That is a kula Hawai‘i.

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[171] *See*, Ka‘iwakīloumoku Hawaiian Cultural Center, available at http://kaiwakiloumoku.ksbe.edu (last visited July 25, 2014).
[172] Sumida, *A Portrait*, p. 181.
[173] *Id*., pp. 181-82.

Theories of how best to educate children change, and Kamehameha Schools has proven itself capable of adapting while expanding its reach. This has made it Hawai‘i’s most visible and impactful private institution. For that reason, it faces constant scrutiny, particularly from those who feel that the Hawaiians-first admissions policy stands as an unconscionable form of discrimination.

That rendering obfuscates the restorative nature of Pauahi’s legacy. In their role as protectors of the maka‘āinana, the ali‘i nui had a kuleana (responsibility) to safeguard their people’s well-being. And in the final years of the Hawaiian Kingdom, when the Native Hawaiian people looked to be on a path to extinction, ‘āina, as always, was the key. Keep the lands and waters fertile to achieve balance and order. Kamehameha Schools is a manifestation of this ancient compact. Pauahi carried out her kuleana to use the last reserve of Hawaiian lands to restore her and her ancestors’ people to a state of wellbeing. By equipping them with education to thrive in a Westernizing political economy, she no doubt believed that a state of pono (perfect equilibrium) might one day be achieved.

V. Queen Lili‘uokalani Trust

The Queen Lili‘uokalani Trust formed on December 2, 1909, when Hawai‘i’s last reigning monarch set her property aside to benefit orphans and other Native Hawaiian children in need. Lili‘uokalani succeeded her brother Kalākaua to the throne. Both descended from ali‘i who were allies and advisors of Kamehameha the Great. Their mother, Keohokalole, was the great-granddaughter of Keawe-a-Heulu,[174] who was Kamehameha I’s chief warrior and consellor.[175]

A. Founding History

[174] Liliuokalani, *Hawaii’s Story by Hawaii’s Queen* (Rutland, Vermont: Charles E. Tuttle Company, Inc., 1975), p. 407.
[175] *Id*., p. 399.

The Queen initially intended to use a will to dispose of her assets and asked her business agent, Curtis P. Iaukea,[176] to prepare it. Testimony from a court proceeding in 1916, which attempted to terminate the trust, reveals how events unfolded.[177] It gives us a rare glimpse into the deliberations that surrounded the formation of one of our aliʻi legacies. The following section provides an account of those events in some detail.

Doing as the queen had asked, Iaukea drafted a will and then took it to Judge Abram S. Humphreys[178] for him to review.[179] Seeing that it was incomplete, Humphreys asked to have a face-to-face meeting with Liliʻuokalani.[180] Iaukea recalled, "that he would not undertake to draw such an important paper as the Queen's Will without seeing her personally and ascertaining her wishes in this respect."[181] An appointment was made for November 26, 1909.[182]

From the outset, Humphreys noted the queen made it clear that she wanted her estate to benefit "her people" – the Native Hawaiian people. He supposed that a trust would provide a more efficient and secure means of accomplishing those ends.[183] Highlighting the key advantage of putting property into a trust, Humphreys explained that, "if any attack were made upon it,

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[176] Curtis P. Iaukea was a Hawaiian statesman who held a number of positions in a career that began in the Hawaiian Kingdom and ended during Hawaiʻi's territorial days. He served in King Kalākaua's cabinet and took up a post as the Kingdom's foreign diplomat under both Kalākaua and Liliʻuokalani's reigns. In Liliʻuokalani's later years, she entrusted him to handle her business affairs.

[177] In 1915, Kūhiō filed a complaint calling the queen's mental capacity into question and charging that undue influence tainted the trust's formation. In the Circuit Court of the First Judicial Circuit, Territory of Hawaii, *Bill of Complaint*, November 15, 1915, sec. XXII, 7. The challenge failed, because the court found that Kūhiō did not have standing. *Kalanianaole v. Liliuokalani*, 23 Hawaʻi 457, 473 (1916). In accordance with the rule that "no one is entitled to be recognized as heir until the death of the ancestor," it followed that his interest in the disputed property was a mere expectancy. *Id*. at 473.

[178] Judge Abram S. Humphreys sat on the bench of the First Circuit Court as its first judge between 1900 and 1902.

[179] Sydney Lehua Iaukea, *The Queen and I: A Story of Dispossessions and Reconnections in Hawaiʻi*, (California: Univ. of California Press, 2012), p. 104.

[180] *Id*.

[181] *Id*.

[182] *Id*.

[183] *Id*.

such attack would probably be made in [Lili‘uokalani’s] lifetime, and not, as in the case of a will, after her decease.” The queen accepted his reasoning.

Just what types of charitable works the trust would aim to do also was discussed. Humphreys recalled Lili‘uokalani supposing that she might like to leave “Washington Place, her home, to be used as a place where Hawaiian music and the Hawaiian language could be taught.”[184] Feeling as though there were more urgent needs, Humphreys suggested that she speak with William Owen Smith, who had helped others “promote the good of the Hawaiian people[.]”[185]

The next day, Humphreys, accompanied by Smith, resumed the meeting with the queen. In a memorandum filed during the later court challenge, Smith recalled his conversation with Lili‘uokalani as she deliberated the shape of her legacy:

> She asked me what I would suggest and I told her that we desired to carry out her wishes, but she again stated that she would like to know what suggestion, if any, we would make. I said that there were many different ways in which the property could be used which would do good and be a public benefit; that for religious work, educational work and caring for the health of the people, quite liberal provisions have been made; and there was the Lunalilo Home for indigent Hawaiians and the Children’s Hospital which has just been established for children who are sick, but there was no adequate provision for orphan children.

Humphreys noted that Lili‘uokalani “thought the suggestion a wise one [and] said so.”

It’s interesting to see how purposeful they were about selecting orphaned children as the trust’s beneficiaries. Protections had not yet been put into place for that particular segment of Hawaiian society, and Smith’s identification of that unmet need seemed to give the queen the confirmation she was seeking. “[S]he had thought of similar things before[,]” he observed. There’s something poignant about Smith’s allusion to Kamehameha Schools, The Queen’s

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[184] Samuel P. King, Walter M. Heen, and Randall W. Roth, “The Queen’s Estate,” 13 *Hawaii Bar Journal* 9 (May 2009), p. 10.
[185] *Id*.

Hospital, and Kapiʻolani Maternity Home, along with his identification of the Lunalilo Home. In spite of their shared aliʻi lineages, those institutions were from the era of the Constitutional Monarchy, an institution that no longer appeared to exist. In Liliʻokalani's decision to provide for the lāhui's most vulnerable group of people – orphaned children – in perpetuity, she undertook a final and most basic act of self-governance and self-determination.

Her mind made up, Liliʻuokalani made her wishes known – that "after providing for those whom she had especially named, to have the residue, or its income, used to help the orphans."[186] Section VII of the trust deed, as amended,[187] memorialized Queen Liliʻuoklani's wishes:

> From and after the death of the Grantor, all of the property of the trust estate, both principal and income, which shall not be required for any of the special provisions or payments in this instrument before mentioned, shall be used by the Trustees for the benefit of orphan and other destitute children in the Hawaiian Islands, the preference to be given to Hawaiian children of pure or part aboriginal blood.[188]

The queen's personal landholdings comprised a majority of the trust corpus.[189] This included nearly 50 parcels conveyed to her from various parties[190] along with the ʻāina attached to two Royal Patents that she held. Rounding out the inventory were lands devised to Liliʻuokalani in the will of her late husband John Owen Dominis, and the wills of Bernice Pauahi Bishop and Miriam Likelike.[191]

Between the trust's formation and the queen's death in 1917, it was maintained chiefly for her support and comfort. She drew a modest allowance off of the trust income, after the

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[186] Iaukea, *The Queen and I*, p. 106.
[187] On October 11, 1911, Queen Liliʻuokalani amended the Deed of Trust added "other destitute children" to the trust's class of beneficiaries.
[188] Queen Liliʻuokalani's Deed of Trust, section VII.
[189] Just over two-thirds of the trust's starting asset value of $199,445 came from the queen's personal landholdings. Buildings and stocks rounded out the balance: $22,500 in buildings and improvements and $27,140 worth of stocks.
[190] Van Dyke, *Crown Lands*, p. 337.
[191] *Id*., p. 339.

monies went to cover maintenance expenses, trustee compensation, and interest on a $70,000 mortgage.[192] Any leftover cash was to be used to pay down other debts the queen might accrue.[193] If a balance remained, it was to be used to advance the charitable cause.

Liliʻuokalani also reserved life estates for herself in two properties: her home on Beretania Street, known then and now as Washington Place, and her seaside cottage in Waikīkī called Kealohilani.[194] Washington Place is where the queen resided before, during, and after the overthrow. It belonged first and foremost to her mother-in-law Mary Lambert Dominis, whose husband had the home built but never actually lived in it. He disappeared at sea during its construction. Following her marriage to John Owen Dominis, the queen took up residence there, but the home was not known for its hospitability to Hawaiian sensibilities.[195] Her husband and his mother "believed completely in the rightness of their own ways and ideas, and anyone who differed was definitely *wrong*."[196] So Kealohilani became a refuge of sorts. She inherited it six years into her marriage and settled in without John, who chose to stay at Washington Place.

The queen made sure that after her passing, members of her ʻohana would have places to live and money to support themselves.[197] Liliʻuokalani never had any biological children of her own, but she mothered three by hānai: Joseph Kaiponohea Aea, John Dominis Aimoku, and

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[192] Towards the end of Queen Liliʻuokalani's years-long campaign to collect Crown Lands' rents and proceeds from the United States, she borrowed this $70,000 "in part to finance what she hoped would be her last and a successful visit to" the Capitol. Neil Thomas Proto, *The Rights of My People* (New York: Algora Publishing, 2009), p. 155.
[193] Queen Liliʻuokalani's Deed of Trust, section I.
[194] *Id*.
[195] Helena G. Allen, *The Betrayal of Liliuokalani: Last Queen of Hawaii, 1838-1917* (Honolulu: Mutual Publishing, 1982), p. 105.
[196] *Id*.
[197] Sections II through V memorialize those wishes. In Section II, an 8-acre parcel of land in Waikīkī called the Lele of Hamohamo was conveyed in fee to Iaukea. Sections IV and V directed the trustess to distribute either one-time payments of $100 or annuities ranging between $180 and $6,000 to various individuals and couples. The final payment was made in 1941. In Section III, various couples and individuals, and in many cases their children, were assigned life tenancies in twelve separate properties, including Kealohilani and Washington Place.

Lydia Aholo. Originally, the deed named Aea as life tenant of Kealohilani.[198] His death, however, prompted a substitution, and in 1915, the trust document was amended to give her cousin Prince Kūhiō and his wife the lifetime interest in her seaside cottage.

Controversially, the queen conveyed a life estate in Washington Place to Aimoku.[199] In Iaukea's personal notes, he explained how the decision rankled Kūhiō. As Lili'uokalani's closest blood relative, Kūhiō expected to take ownership of Washington Place when the queen passed, a presumption not lost on her.[200] Washington Place, though, was her husband's family's home, and Aimoku was her husband's biological son.[201] Naturally, the queen felt that Aimoku should receive the family home. Iaukea noted Kūhiō's "strenuous objection" to "the mere thought of having the old historic [residence of the last reigning monarch] turned into a private home, after the Queen's demise, for the use and occupation of one who was not legally entitled to it."[202] Aside from Kūhiō's charge that undue influence tainted the trust's formation resolved in the 1916 case *Kalanianaole v. Liliuokalani*, no other major issues or challenges confronted the Queen Lili'uokalani Trust. Kūhiō's objections lacked a legal basis, the case was dismissed, and the administration of queen's estate proceeded in accordance with the trust provisions.

B. Accomplishments

When Lili'uokalani executed her deed of trust, housing children in orphanages was the accepted practice. The queen imagined that her estate would further that practice by establishing and operating group homes for Hawaiian keiki (children). By the time the Queen Lili'uokalani Trust had enough funds to carry out her mission in the 1930s, institutionalized care was being phased out in favor of foster homes and boarding schools. The trustees sought approval from the

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[198] Van Dyke, *Crown Lands*, p. 341, n. 89.
[199] Queen Lili'uokalani's Deed of Trust, section III.
[200] King, et al., "The Queen's Estate," p. 15.
[201] *Id.*, p. 13.
[202] *Id.*, p. 15.

court to further their cause in accordance with contemporary child welfare practices. A decree was entered, removing any limitation there might have been on providing for orphans and destitute children, and in January 1935, the Trust began its work.

At first, it collaborated with other child and family welfare programs. From 1935 to 1941, it was a consitutent of the Children's Service Association, an independent charity that grew out of an effort to coordinate the charitable works of vaious agencies in the community. And when the Children's Service Assocation merged with a related entity called the Family Consultation Service to form the Child and Family Service, the Trust functioned as a unit within it. The trustees saw family issues take precedence and caseloads decrease during the war years, with fewer parents out of work, so in 1946, they dissassociated the Trust from the Child and Family Service and launched an independent child welfare agency of their own in 1948.[203]

Starting out, the agency focused its energies on children whose needs could be isolated from broader family issues. A small, five-person team offered a few basic services, giving preference to Hawaiian children as Queen Liliʻuokalani had requested and limiting their efforts to the island of Oʻahu. They took responsibility over any orphans or destitute children referred to the agency by the juvenile court.[204] The staff placed them in boarding schools and foster homes and handled any casework. They also helped Kamehameha Schools compile the social histories of scholarship awardees.[205]

In the 1960s and 1970s, the agency began to expand and solidify its identity as a freestanding child welfare organization. An office on the leeward coast of Oʻahu opened in 1965 and a year later, the agency moved into its present headquarters and began operations under its

[203] Margaret M. L. Catton, *Social Service in Hawaii* (Palo Alto: Pacific Books, 1959), p. 84.
[204] *Id*., p. 85.
[205] *Id*.

current name: Queen Liliʻuokalani Children's Center (QLCC). There are five QLCC units Oʻahu today, and it now has a presence on every other major island, except for Niʻihau.[206]

Accompanying their growing geographical footprint was an expansion in service scope. Treating a child's needs without addressing deficiencies in other areas of his or her life blunted QLCC's impact, so it began offering group services and community development in the 1970s. Group services nurtured the child's social, educational, and cultural development with peer-group experiences, and QLCC's community development services helped equip parents with skills they needed to feel empowered for their families. Hawaiian or part-Hawaiian children who lose one or both parents are the Center's primary beneficiaries, but it also assists kids whose parents are terminally ill, who are looked after by extended family, or who live a life of extreme neglect.[207]

C. Outlook

In the years since, QLCC has refined its multi-sided approach and given it a cultural anchor. Care concepts and practices are informed by Hawaiian values and traditions.[208] Hoʻoponopono, a Hawaiian form of dispute resolution, is used to heal intra-family wounds and mend grievances.[209] To ease the emotional upheaval that accompanies the abandonment or death of a parent, the QLCC operates as a network of puʻuhonua.[210] Traditionally, puʻuhonua were places of refuge used primarily by kapu violators. Harm never followed those who safely reached a puʻuhonua. The Children's Center's offices on Oʻahu, Hawaiʻi, Maui, Kauaʻi, and Molokaʻi are sites of safety and tranquility. They are spaces that allow QLCC to concentrate its

[206] Queen Liliʻuokalani Children's Center Annual Report (2012), p. 24.
[207] Queen Liliʻuokalani Children's Center Annual Report (2009), p. 7.
[208] Queen Liliʻuokalani Children's Center Annual Report (2010), p. 7.
[209] Queen Liliʻuokalani Children's Center Annual Report (2008), p. 7.
[210] Queen Liliʻuokalani Children's Center Annual Report (2007), p. 3.

strategic approach around ‘ohana with a principal objective – “strengthening families so they are better able to support the development of healthy, resilient children.”[211]

Activities are built around three service platforms: Ka ‘Ohana (Individual and Family Strengthening Services), Nā Hui ‘Ohana (Group Services), and Nā ‘Ohana Kaiaulu (Community Building).[212] These platforms are the interface through which the QLCC carries out the queen’s mission.

With Ka ‘Ohana activities, the strengths and needs within individual family units are the focal point.[213] The goal is to “provide a secure, safe, stable nurturing home for children exposed to high-risk environments through ‘ohana-based information and referral, culturally-based counseling, life-skills planning, parenting support and education, grief counseling, conflict resolution, and temporary financial assistance.”[214]

Nā Hui ‘Ohana activities utilize the power of groups to enrich an individual beneficiary’s personal development and to form connections.[215] The groups are of three types: psycho/emotional, supportive, or cultural enrichment.[216] In 2012, 1,485 orphan children and 8,692 destitute children received services through Ka ‘Ohana and Nā Hui ‘Ohana.[217]

The Nā ‘Ohana Kaiaulu platform is a community support channel. Recognizing that communities are their own best mobilizers, the Center plays the role of partner and collaborator

[211] Queen Lili‘uokalani Children’s Center Annual Report (2009), p. 6.
[212] Queen Lili‘uokalani Children’s Center Annual Report (2012), p. 6.
[213] Queen Lili‘uokalani Children’s Center Annual Report (2009), p. 6.
[214] *Id.*
[215] *Id.*
[216] Queen Lili‘uokalani Children’s Center Annual Report (2007), p. 6.
[217] Queen Lili‘uokalani Children’s Center Annual Report (2012), p. 2.

through its Nā ʻOhana Kaiaulu platform.[218] In 2012, the Center estimates that it reached 91,000 children indirectly through its cross-community initiatives.[219]

Over the past decade, the Queen Liliʻuokalani Trust underwent its own transformation. In 2002, First Hawaiian Bank resigned as a trustee, ending its oversight of the Trust's 6,500 acres, accompanying leases, and investments. A Trust Endowment Group was formed to look after these assets internally, and it has since revised the management strategy. For decades, the Trust's approach had been passive: buy nothing and sell nothing.[220] Asset values went from $400,000 in 1935 to $300 million in 2001, just before First Hawaiian Bank turned over the reigns.[221] Nevertheless, the Trust faced a cash shortage. With 95% of its value locked up in real estate, there wasn't enough revenue coming in to support QLCC's operations. 25 percent of its staff was let go in 2002.[222]

The Endowment Group put a turnaround plan into place, calling for more liquidity and revenue growth through asset diversification and development. In 2007, the Trust offered leasehold owners the fee-simple interest in three of its Waikīkī properties: the 385-unit Liliʻuokalani Gardens, the 876-unit Waikīkī Banyan, and the 435-unit Waikīkī Sunset.[223] It made a fourth Waikīkī property, Foster Tower, available for conversion in 2012. These transactions helped lift revenues, which is excellent news for the Trust's beneficiaries, and reconfigured the composition of trust assets so that there's less concentration in Hawaiʻi real estate, which currently accounts for about 75 percent of endowment's value.[224] With a target ratio of 65

[218] Queen Liliʻuokalani Children's Center Annual Report (2007), p. 6.
[219] Queen Liliʻuokalani Children's Center Annual Report (2012), p. 2.
[220] Jacy L. Youn, "Queen Liliuokalani Trust" *Hawaii Business* November 2001.
[221] *Id*.
[222] Shara Enay, "Up in a Down Economy" *Hawaii Business* August 2009.
[223] Kristen Consillio, "Sales Strong for Queen Liliuokalani Leashold Conversions" *Honolulu Star-Bulletin*, January 30, 2008.
[224] Queen Liliʻuokalani Children's Center Annual Report (2010), p. 18.

percent real estate to 30 percent financial assets,[225] more of the Trust's landholdings will be sold off. That's likely to make some in the Native Hawaiian community nervous, but insofar as the Endowment Group's goals are to reduce risk and generate better-than-expected returns, the diversification strategy is paying off. Its holdings have consistently outperformed investment benchmarks, the benefits of which go directly to support Lili'uokalani's mission. QLCC was spending an average of $4.5 million annually in the early-2000s on financial assistance and operations. Since 2009, spending on program services alone has exceeded $14 million. Expanding budgets are a good indication of the Trust's financial health.

The next decade will see a greater emphasis on using the Trust's land assets to generate new sources of income. Seventy percent of revenues come from its Waikīkī properties, even though more than 95 percent of the Trust's landholdings are on Hawai'i Island. That's expected to change. The Endowment Group is in the earliest phases of designing a master plan for its most significant parcel there – the 3,400-acre ahupua'a of Keaholū in Kona.

Real estate development will assure new revenue streams, but it will also attract a heightened degree of prominence that carries its own risk. Since its founding, the Queen Lili'uokalani Trust has kept a relatively low profile. A new attentiveness to its land assets exhibits a sense of confidence and strategic intent that bodes well for the long-term prospects of QLCC and, by extension, the Native Hawaiian community at-large. In developing its lands though, the Trust will encounter a barrage of environmental and cultural scrutiny. Although land developers routinely face increased public scrutiny in Hawai'i, the Trust has never had much exposure to it. And for an ali'i trust, there is a heightened expectation of care in preserving the environmental and cultural qualities of 'āina. How well the Queen Lili'uokalani Trust negotiates the delicate balance between profit and perservation remains to be seen. At least one thing is

[225] *Id*.

certain – generations of Native Hawaiian children will know the legacy and beneficence of Queen Liliʻuokalani.

Conclusion

Four aliʻi – King Lunalilo, Queen Emma, Princess Pauahi, and Queen Liliʻuokalani – in fulfilling their responsibilities as aliʻi, established charitable trusts to support the Native Hawaiian community in crucially needed areas including health care and education. These trusts, established through the income derived from aliʻi lands, represent an immeasurable resource for the Native Hawaiian community. They bridge the critical period in the Hawaiian nation from the late 19th to the early 20th century, when the government of Hawaiʻi was threatened both from within and from outside forces. In the face of those threats, these aliʻi sought to provide care, support, and hope to their people.

Although many Native Hawaiians have benefitted from the work of the aliʻi trusts, the trusts are faced with numerous obstacles and challenges as the needs of the Native Hawaiian community have increased and become more complex over time. In the case of the trusts established by King Lunalilo and Queen Emma, outside forces successfully challenged the trusts, reducing trust assets and undermining the original intent of these aliʻi to benefit primarily Native Hawaiians. In going forward and in interpreting the trust provisions, "the intent of the ali'i to benefit their people must be the guiding principle."[226]

[226] *Native Hawaiian Rights Handbook*, Melody Kapilialoha MacKenzie, ed. (Honolulu: Native Hawaiian Legal Corp., 1991), p. 290.

Appendix 4

Continuing Native Hawaiian Self-Governance

Introduction

In spite of the loss of the Hawaiian Constitutional Monarchy, Native Hawaiians continued to exercise forms of self-governance, expressing their inherent sovereignty by perpetuating their culture and traditions, acting to support economic and educational advancement, seeking land and homes for their families, and advocating for justice and reconciliation. This appendix highlights some of the organizations and Native Hawaiian leaders, especially those in the generation after the illegal overthrow of the Hawaiian government, who continued their efforts to ensure that Native Hawaiians had the opportunity to live as a distinct people with a unique heritage and customs. They also advocated for their right to live fruitful and productive lives on the lands of the Hawaiian monarchy. This appendix begins with a discussion of the Royal Societies, whose existences are rooted in the legacies of the Hawaiian aliʻi. It then turns to another part of the aliʻi legacy, the organizations and Hawaiian homesteading program fostered by Prince Jonah Kūhiō Kalanianaʻole.T The Hawaiian Civic Clubs, the Hawaiian Homesteading program, the Hawaiian Homestead Associations, and even the Sovereign Council of Hawaiian Homelands Assembly exist today because of the foresight, diligence, and vision of Prince Kūhiō and members of his generation.

I. The Royal Societies

One strand to the story of Hawaiʻi's aliʻi legacies are the four Royal Societies: the Royal Order of Kamehameha I, the ʻAhahui Kaʻahumanu (Kaʻahumanu Society), Māmakakaua–Daughters and Sons of Hawaiian Warriors, and Hale O Nā Aliʻi O Hawaiʻi. The royal societies play an important ceremonial role in and regularly preside over occasions that mark significant

events in Native Hawaiian history or honor leaders in the Hawaiian community. Their members are concerned more generally with the preservation of culture and protocol and with governing their internal affairs. They are rooted in the Hawaiian monarchy but also very much engaged with and active in the modern Hawaiian community, providing a bridge from the past and into the future.

A. The Royal Order of Kamehameha I

The Royal Order of Kamehameha I is the oldest of the four royal societies. Its purpose "is to unite men of Hawaiian ancestry in fraternal and benevolent work that preserves and perpetuates the ancient culture, customs, and traditions of Hawai'i, uplifts the Hawaiian people, and encourages and develops leadership."[1] There are nine chapters of the Royal Order located on five islands.[2]

Founding History

Pursuant to Article 35 of the 1864 Constitution,[3] King Kamehameha V established the Royal Order of Kamehameha I by decree on April 11, 1865.[4] He described it as an "order of merit"[5] and membership signaled a man's allegiance to the crown as a defender of the Hawaiian

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[1] "About the Royal Order of Kamehameha I," Moku 'O Kapuāiwa, *available at* http://kapuaiwa.org/ (last visited July 25, 2014). A more detailed articulation of the Royal Order's purpose can be found at http://royalorderofkamehameha.org (last visited July 25, 2014), which includes the following: unite in fraternal and benevolent work, men of Hawaiian descent, of good moral character, of sound bodily health; cultivate the cardinal principles of friendship, charity and benevolence; aid widows and orphans; improve the social and moral conditions of its members; to provide scholarship assistance; preserve and perpetuate the ancient culture, customs, and traditions of Hawaii, uplift the Hawaiian people; infuse the spirit of patriotism, loyalty, helpfulness and kindness among its members; advance the interest of its members in every rightful cause, encourage and develop leadership;

[2] A women's group, Nā Wahine Hui O Kamehameha, is also associated with the Royal Order. *See* http://www.royalorderofkamehamehai.org/nawahine/ (last visited July 25, 2014).

[3] Article 35 reads: "All titles of honor, orders and other distinctions, emanate from the King." Constitution of 1864 of the Kingdom of Hawaii, *available at* http://hooilina.org/collect/journal/index/assoc/HASHe7d7.dir/5.pdf

[4] "Historical Highlights," Māmalahoa Royal Order of Kamehameha I, *available at* http://www.mamalahoa.org/ (last visited July 25, 2014).

[5] *Minutes of the Privy Council, 1859-1872*, pp. 242 [Hawaiian] and 243 [English].

Kingdom's sovereignty.[6] Naturally, annexationists saw the group as threat so it was forced to go underground during the decade after the 1893 overthrow. On May 13, 1902, a group of prominent Hawaiian men lead by Dr. George H. Huddy, Territorial Representative from Kaua'i, met in Honolulu to discuss the restoration and reorganization of the Order.[7] The following year, at the first official meeting of the Order, Prince Jonah Kūhiō, was recognized as the Ali'i 'Aimoku (Grand Master) of the Order. On June 11, 1904, Prince Kūhiō led a torchlight parade through Honolulu and publicly declared the restoration of the Royal Order in a ceremony at the statue of Kamehameha I at Ali'iōlani Hale.[8]

There are nine heiau, or chapters, of the Royal Order of Kamehameha I. There are three on O'ahu: Heiau O Hawai'i based in central O'ahu, founded in 1903; Heiau O Kūhiō on the windward side, founded in 1962; and Heiau O Kapuāiwa on the leeward side, founded in 2007. There are three on the island of Hawai'i: Heiau O Māmalahoa in Hilo, founded in 1907; Heiau O Ahuena in Kona, founded in 1994; and Heiau O Kamehameha in Kohala, founded in 2011. Moloka'i, Maui, and Kaua'i have one chapter each: Heiau O Kalaniana'ole, founded on Moloka'i in 1928; Heiau O Kahekili, founded on Maui in 1922; and Heiau O Kaumuali'i, founded on Kaua'i in 1918.

Accomplishments

More than any of the other royal societies, the Royal Order of Kamehameha has kept a low profile for much of its history. That is beginning to change, and Heiau O Māmalahoa in Hilo

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[6] "About Royal Order of Kamehameha I," Māmalahoa Royal Order of Kamehameha I, *available at* http://www.mamalahoa.org/ (last visited July 25, 2014).

[7] "Māmalahoa, History," Māmalahoa Royal Order of Kamehameha I, *available at* http://www.mamalahoa.org/mamalahoa/history-historical-footnotes (last visited July 25, 2014)

[8] "About the Royal Order of Kamehameha I," Moku 'O Kapuāiwa, *available at* http://kapuaiwa.org/ (last visited July 25, 2014); see also, "Māmalahoa, History," Māmalahoa Royal Order of Kamehameha I, *available at* http://www.mamalahoa.org/mamalahoa/history-historical-footnotes (last visited July 25, 2014).

is a good representation of the Royal Order's new openness. Hilo's annual Kamehameha Day celebration has been a longstanding tradition. Members have been involved with its presentation since 1908.[9] They ensure that the celebration rightly honors Kamehameha with exhibitions in Hawaiian practices like the ha'a koa, a posture dance traditionally performed by warriors.[10] More recently, the Royal Order has redirected attention to Mokuola, an island in Hilo Bay, where it has hosted Kamehameha Day ceremonies since 1985.[11] Mokuola was a pu'uhonua (place of refuge) and held much spiritual and cultural significance in Kamehameha's time.[12] Heiau O Māmalahoa is the island's kahu (guardian) and holds the duty to preserve its cultural, environmental, and spiritual integrity.[13] That duty extends to the peaks of Mauna Kea, an extremely sacred place with immense scientific value. The interests of Native Hawaiians and astronomers don't always align, so Heiau O Māmalahoa monitors activities at Mauna Kea and holds ceremonies there to ensure that its natural and cultural resources are kept intact.[14]

B. 'Ahahui Ka'ahumanu (Ka'ahumanu Society)

Among the royal societies the 'Ahahui Ka'ahumanu, or Ka'ahumanu Society, is perhaps best known to the general public. The Society uses 1905 as its founding date but traces its origins to 1863, when the idea for a women's movement came from discussions between Princess Victoria Kamāmalu, sister to Kamehameha IV and Kamehameha V, Princess Bernice Pauahi Bishop and the future Queen Lydia Lili'uokalani Kamaka'eha Dominis.[15]

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[9] "Festival: History and Mission," Kamehameha Festival, *available at* http://www.kamehamehafestival.org/ (last visited July 25, 2014).
[10] "Exhibitions," Kamehameha Festival, *available at* http://www.kamehamehafestival.org/ (last visited July 25, 2014).
[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] Helen K.W. Salazar, *Kaahumanu Diamond Jubilee: A Brief History* (Honolulu: Kaahumanu Society, 1980), p. 1.

Founding History

The year 1863 was an uneasy time, and uncertainty hung over the Kingdom. In the United States, the war between the north and the south trudged into its third year. At home, the recent death of four-year-old Prince Albert Edward Kauikeaouli, the beloved heir to the throne, threw open the question of succession.[16] The memory of the thousands of Hawaiians who died during the smallpox epidemic a decade earlier no doubt lingered.[17] The Queen's Hospital was in its third year of operations, so there was reason to be hopeful; nevertheless, Kamāmalu clearly felt there was more to be done.

She established the Ka'ahumanu Society on August 8, 1964.[18] The central purpose was straightforward – to care for one another in times of sickness and death. Women in need of a support system would find it in each other. A little over one month after its formation, the Ka'ahumanu Society counted 1,500 Native Hawaiian women as members.[19]

Mark Twain relayed his observations of the group in a letter to the Sacramento Union: "It was composed of [Kamāmalu's] countrywomen and supported by their subscriptions. Its membership was exceedingly numerous and its ramifications extended over the several islands of the group. Its objectives were to secure careful nursing for its members when sick and a decent burial after death."[20]

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[16] *Id*.
[17] The Royal Health Commissioners recorded a death toll of 2,485 out of a reported 6,405 cases of smallpox. Jason Y. Kimura, *The Queen's Medical Center* (Honolulu: The Queen's Medical Center, 2010), p. 3.
[18] Hailama V.K.K. Farden, ed. *'Aha Hipu'u Convention of the Four Hawaiian Royal Societies*. July 21-23, 2006, Ala Moana Hotel (Honolulu: 2006), p. 19.
[19] Salazar, *Kaahumanu Diamond Jubilee*, p. 2.
[20] *Id*.

Unfortunately, their efforts were short-lived. Kamāmalu's death on May 29, 1866 brought about the Society's dissolution later that year.[21] Unspent monies were returned to the Catholic Church and donated to the Queen's Hospital and Kawaiahaʻo Church.[22]

Nearly forty years later, a woman named Lucy Kaheiheimālie Peabody revived the cause.[23] According to one member's account, it was an encounter between two of the charter members and the Royal Order of Kamehameha I that inspired the Kaʻahumanu Society's reestablishment. In 1905, Lilia Aholo and Lily Auld attended Kawaiahaʻo Church's Kamehameha Day celebration. At the event were the men from the recently reinstated Royal Order of Kamehameha I looking regal in their dark suits and brightly colored ʻahu (feather capes). They were a living memory of Kamehameha the Great and the ladies felt that Kamehameha's beloved wife, Queen Kaʻahumanu, deserved the same recognition.[24] They shared this with Lucy Peabody who gathered together twelve other women[25] and, on June 14, 1905, the Kaʻahumanu Society was reborn.[26]

Like the men who inspired them, the ladies of the Kaʻahumanu Society eventually fashioned their own signature look. Bedecked in black holokū (long, seamed, and yoked dresses), black gloves, and black wide-brim hats, the Kaʻahumanu Society women have been an unmistakable presence at public events. Their early-19th century style black muʻumuʻu (dresses)

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[21] *Id*., p. 3.
[22] *Id*.
[23] An attendant and cousin to Queen Emma, Miss Peabody's mother, Elizabeth Kamakaila Davis, was the daughter of High Chiefess Kahaʻanapilo Papa and George Hueu Davis. His father was Isaac Davis, the Welsh advisor to Kamehameha the Great. "Lucy Peabody, 89, Queen Emma Aide, Taken by Death" *Honolulu Advertiser*, Aug. 10, 1928, p. 1.
[24] Helen De Haven, "Only Women with Hawaiian Blood are Eligible for Membership," *Honolulu Star-Bulletin*, Apr. 15, 1964, p. 17.
[25] Charter members were: Lucy Kaheiheimālie Peabody, Lucy Kalanikūmaikiʻekiʻe Henriques, Mary Adams, ʻIhilani Burgess Techera, Abigail Aiwohi Hopkins, Lilia K. Aholo, Elizabeth Lahilahi Webb, Mary Parker Stillman, Kamaka Stillman, Rose McInerny, Celia Woods, Eliza Kānehaku, Maria K. Kehea, Lily Auld, and Grace Kahoaliʻi. Farden, *ʻAha Hipuʻu*, p. 19.
[26] De Haven, p. 17.

honor the Society's namesake Kaʻahumanu, who adopted the austere style of the missionary ladies for the 1829 dedication of Kawaiahaʻo Church.[27] Members wear a yellow "Kaʻahumanu Society" ribbon and gold lei hulu (feather lei) to denote their aliʻi heritage.[28]

There are Kaʻahumanu Society chapters on five islands. The original chapter is based in Honolulu on Oʻahu. Hawaiʻi island has chapters in Waimea, Hilo, Kona, and Kohala.[29] The Waimea and Hilo chapters organized in July 1907 and Kona in April of 1918. Kohala is home to one of the newer chapters, organized in March of 1968. Maui has a chapter in Wailuku, which formed in 1923, and one in Hāna, which formed in 1990, making it the youngest Kaʻahumanu Society chapter. Molokaʻi and Kauaʻi have one chapter each: Kaunakakai, founded in 1923, and Līhuʻe, founded in 1917.[30] Membership is open to women between 18 and 60 who have some Native Hawaiian blood.

Accomplishments

In 1905, the Hawaiian women who reorganized the Kaʻahumanu Society resurrected Kamāmalu's basic commitment to look after each other in times of distress. That mission remains intact today, with annual dues being used to provide sickness and funeral benefits to members of the Society. In the 1960s, for instance, a member who fell ill received a small monetary donation each week for three months depending on how long she had been a member.[31] The chronically ill were given $5 per month.[32] Back then, funeral benefits ranged

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[27] Not knowing what to wear to the event, the story goes, Kaʻahumanu summoned Sybil Bingham (Mrs. Hiram Bingham), Laura Fish (Mrs. Gerrit Judd), and Mary Ward for advice. She suggested that they all dress alike and brought out a black satin fabric striped in pink and silver that they might use for the gowns. The women balked; they would be wearing black. The next day, Kaʻahumanu had a bolt of black satin delivered with the instruction that they use it to make four dresses. Salazar, *Kaahumanu Diamond Jubilee*, p. 4.

[28] Anna Sajecki, "Molokaʻi Kaʻahumanu Chapter is 75," *Honolulu Advertiser*, Nov. 6, 2005, p. D1.

[29] A chapter formed in Kaʻū in 1912 but no longer exists.

[30] A chapter formed in Hanalei in 1980 but no longer exists.

[31] A member would receive either $3 or $4 per week. De Haven, p. 17.

between $200 to $300, depending on the number of years with the Ka‘ahumanu Society.[33] Membership also afforded the option to be buried for free in the Society's Ka‘ahumanu Cemetery,[34] which it has owned since 1914.[35]

Their support also reaches outside the confines of their membership. The Ka‘ahumanu Society has been a longtime benefactor of the Lunalilo Home. The women visit with kūpuna residents there, brightening its rooms with conversation and entertainment.[36] A portion of their annual dues goes toward supplies and furniture for the home.[37] In fact, the Ka‘ahumanu Society can be credited with getting the home its first elevator. A fund the members created had $150 in it when the wealthy industrialist Walter F. Dillingham heard of the initiative.[38] Through his influential network, another $25,000 was added to the fund and the Lunalilo Home got its elevator.[39]

At work alongside the Ka‘ahumanu Society's benevolence are its efforts to preserve Hawai‘i's cultural history. Members have helped ensure its passage from one generation to the next by sharing what they know, as kūpuna, with children in Hawai‘i's public schools.[40] Since the late 1960s, the Society has also provided scholarships to low-income families sending their fifth-graders to "Explorations," a summer enrichment program for Native Hawaiians hosted by the Kamehameha Schools.[41]

C. Māmakakaua—Daughters and Sons of Hawaiian Warriors

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[32] *Id*.
[33] *Id*.
[34] *Id*.
[35] "Women of Kaahumanu Society Plan Gala Observance of 50th Birthday," *Honolulu Advertiser*, Jun. 28, 1953, p. 11.
[36] Lois Taylor, "The Ladies of Kaahumanu," *Honolulu Star-Bulletin*, June 5, 1987, p. B-2.
[37] De Haven, p. 17
[38] *Id*.
[39] *Id*.
[40] Taylor, p. B-2.
[41] Salazar, p. 8.

Before it was the Daughters and Sons of Hawaiian Warriors, this royal society, founded by Eugenia Reis[42] and Rosalie Blaisdell,[43] was called the Daughters of the Warriors. In its first few years, the group numbered no more than 25 women.[44] They had been organized as the Daughters of the Warriors since at least 1911[45] and they decided to open membership up to men and incorporate as the Sons and Daughters of the Warriors in 1915.[46] Today, the group is called Māmakakaua or the Daughters and Sons of Hawaiian Warriors.[47]

Founding History

The warrior title honors the members' genealogical ties with those who did battle during the time of Hawai'i's ruling chiefs. When the Daughters of the Warriors first decided to admit men, the women established an ancestral qualification for membership. As they put it, a candidate would need to show descent from "the warriors of the old days"[48] before the coming of

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[42] Eugenia Keoho'okalani Kepo'okalani Reis came from a prominent Hawaiian family. Her mother's parents were the custodians of Pu'uhonua o Hōnaunau (City of Refuge). She attended the Mililani Girls' School with other ali'i children and looked after Kūhio's wife, Elizabeth Kahanu Kalaniana'ole, when she was a girl. "Eugenia Reis Dies; Rites Wednesday," *Honolulu Star-Bulletin*, Apr. 20, 1942, pp. 1-2.

[43] Wray Anthony F. Jose, "Manuel Reis Case," *Hawaiian Journal of History*, v. 16 (1982), p. 136.

[44] "The officers of this society are Mrs. Manuel Reis, president (Keohookalani); Mrs. Haka Iaukea, vice-president (Papaikaniau); Mrs. C. M. Blaisdell, secretary and manager (Puea-a-Makakanalii); Mrs. Frank Aki, assistant manager (Kaiakauilani); Miss Pinao, music (kanikapila); Mrs. Pauahi, hula. The members of the society are Keahioka Lua, Kamaeokalani, Kailinaoa, Kailipalaki, Lilinoe, Mrs. Kekumano, Peleioholani, Mrs. Kahalelehua Notley, Mrs. Almira Johnson, Mrs. Lilikalani, Mrs. Paalaa Hook, Mrs. David Maikai, Mrs. Kaikainaalii Munsey, Mrs. Koahou, Mrs. Lydia Kaloio, Mrs. Charles Akau." "Daughters of Hawaii to Give Unique Program," *Honolulu Star-Bulletin*, Feb. 18, 1913, p. 5.

[45] An announcement in the Honolulu Star-Bulletin on February 21, 1913 about an upcoming presentation by the Daughters of Warriors mentions that the group "has been in existence for two years for the purpose of preserving the old native ways." "Hawaiian Play is a Feature Tonight," *Honolulu Star-Bulletin*, Feb. 21, 1913, n.p.

[46] "New Society to Cherish Relics of Olden Days." *Honolulu Star-Bulletin*, Dec. 13, 1915, p. 7.

[47] Eloise Aguiar, "Descendants of Warriors Pay Tribute to Kamehameha," *Honolulu Advertiser*, June 12, 2008, p. B1. "Māmakakaua" means "company of warriors." Mary Kawena Puku'i & Samuel Elderts, *Hawaiian Dictionary* (Honolulu: Univ. of Hawaii Press, 1986), p. 234. Hailama writes that the māmakakaua were traditionally comprised of the chiefs' personal guards, skilled fighters, and kāhuna. Farden, *Aha Hipu'u*, p. 25.

[48] "Daughters of Warriors Will Be in Pageant," *Honolulu Star-Bulletin*, Dec. 7, 1915, p. 1.

foreigners. This aligned with one of the society's first objectives – to record the genealogies of society members.

Despite the connection to warfare, the group's early objectives reflected a broad commitment to preserving all of Hawai'i's history. Recording historical events, looking after Hawaiian antiquities, and ensuring the faithful depiction of life in ancient Hawai'i were the group's primary activities.[49] These came together most notably in their productions of plays and tableaux.

Accomplishments

One of the group's earliest performances was a series of twelve scenes called "Royal Hawaii of Old."[50] It was staged in 1913 at Honolulu's annual Mid-Pacific Carnival. The Honolulu Star-Bulletin promised that it would transport audiences "back to the primitive style of living long before the discovery of the islands by Captain Cook" by giving "a most fascinating exposition of native life, habits, costumes and manners of those times."[51] The Warriors returned to the 1916 carnival with a more elaborate production at Waikīkī Beach that reenacted the reunion of Lonoikamakahiki and Kaikilani, quarreling lovers and joint rulers of Hawai'i Island in the late-16th and early-17th centuries.[52] Keeping to the Warriors' attention to authenticity, original kāhili (feathered standards symbolic of royalty), feathered capes and helmets were incorporated into the costuming and design.[53]

These presentations lasted into the 1920s and, on occasion, were used to mark important anniversaries. For example, the Warriors organized an observance in 1925 of the centennial of

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[49] "New Society to Cherish Relics of Olden Days," *Honolulu Star-Bulletin*, Dec. 13, 1915, p. 7.
[50] "Hawaiian Play is a Feature Tonight," *Honolulu Star-Bulletin*, Feb. 21, 1913, n.p.
[51] *Id*.
[52] "Romance of Feudal Antiquity is Pictured in Colorful Pageant," *Honolulu Star-Bulletin*, Feb. 26, 1916, p. 24.
[53] *Id*.

Kauikeaouli's ascension to the throne as Kamehameha III.[54] It featured a tableaux on the 'Iolani Palace balcony and grounds depicting scenes from Kauikeaouli's life: his birth in Kona, his assumption of the Crown, the first treaty exchange between Hawai'i and the United States in 1826, promulgation of the 1840 constitution, and the Māhele.[55]

The Warriors' public presence is more subdued today. Staging elaborate historical reenactments is no longer done. Every June 11th though, on Kamehameha Day, the society stands watch at the King Kamehameha statue in downtown Honolulu during a ceremony that honors the mō'ī (king). It has carried out this vigil since 1917.[56]

D. Hale O Nā Ali'i O Hawai'i

Hale O Nā Ali'i O Hawai'i formed on April 7, 1918.[57] It got off to a shaky start. Marie Laura Kekapuwohi Makakuilani served as the first ikū ha'i, the society's chief officer, for nearly two years.[58] She was succeeded by William Hall whose term lasted until 1920, when internal conflicts forced him to resign.[59] Princess Abigail Wahi'ika'ahu'ula Kawānanakoa took over after Hall's departure and under her skilled management, the Society set itself up for a lasting presence.[60]

Founding History

Like the Ka'ahumanu Society and the Royal Order of Kamehameha I, Hale O Nā Ali'i O Hawai'i ("Hale O Nā Ali'i") has a Kingdom-era antecedent: the Hale Nauā Society. Founded by King Kalākaua in 1886, Hale Nauā was a sometimes considered a controversial part of

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[54] "Kauikeaouili [sic] Day Plans are Maturing," *Honolulu Advertiser*, Feb. 9, 1925, p. 1.
[55] *Id*., p. 2.
[56] Eloise Aguiar, "Descendants of Warriors Pay Tribute to Kamehameha," *Honolulu Advertiser*, Jun. 16, 2008, pp. B1, B6.
[57] Farden, *'Aha Hipu'u*, p. 26.
[58] *Id.*, p. 24.
[59] *Id*.
[60] *Id*., p. 26.

Kalākaua's Hawaiian revitalization efforts.[61] Its members were primarily concerned with the promotion of traditional crafts and Hawaiian ways of knowing.[62] Their efforts drew from various disciplines: genealogical studies, kahuna wisdom, and the sciences like astronomy, geology, and archeology.[63] Exclusive to Native Hawaiians—and to an extent occupied with advancing more obscure and mysterious aspects of Hawai'i's cultural past—Hale Nauā became the subject of derision, particularly from Kalākaua's political rivals.[64] It, too, was a secret society, so the evidence of continuity between Hale Nauā and Hale O Nā Ali'i is circumstantial.[65]

In many ways, Kawānanakoa was Kūhio's successor. She was his sister-in-law through her marriage to Prince David Kawānanakoa Pi'ikoi, Kūhiō's older brother.[66] Born in 1882, Kawānanakoa, like Kūhiō, came of age in the Kingdom of Hawai'i and forged a political career in the Territory of Hawai'i. Her parents – the millionare industrialist James Campbell, an Irish immigrant, and his Hawaiian wife, Abigail Kuaihelani Maipinepine Bright – were royalists.[67] Kawānanakoa aligned herself with Kūhiō's then-dominant Republican Party, which supported closer relations with the United States. She served as a delegate to the Republican National Convention from 1924, the first year women were allowed committee representation, until

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[61] Frank Karpiel, "Notes & Queries." *Hawaiian Journal of History*, v. 33 (1999), p. 204.
[62] *Id*.
[63] *Id*., pp. 204-205.
[64] *Id*., p. 205-206.
[65] Farden, *'Aha Hipu'u*, p. 24. There's little direct evidence to support the claim that one group descended from the other, but Hale O Nā Ali'i provides five points that suggest this to be the case: 1) One of its chapters owns six Hale Nauā capes; 2) these are the only two organizations that identify their leadership with the prefix "Ikū"; 3) the two groups share a similar leadership structure; 4) many of Hale O Nā Ali'i's initial members were also Hale Nauā members; and 5) a kupuna named Jennie Wilson confirmed the connection in an interview archived at the Bishop Museum. *Id*. Jennie Wilson had been a court dancer for King David Kalākaua so was familiar with the Hale Nauā and may well have known the connection between the two organizations.
[66] King Kalākaua bestowed the title of Prince of the Crown on Pi'ikoi and his two brothers Edward Keli'iahonui and Jonah Kūhiō by royal decree in in 1883. Richard A. Hawkins, "Princess Abigail Kawānanakoa: The Forgotten Territorial Native Leader." *The Hawaiian Journal of History*, v. 37 (2003), p. 165.
[67] *Id*.

1936.[68] The territorial government handed off official hosting duties to her whenever foreign and domestic dignataries visited the islands.[69]

Notwithstanding the complexities of political life in territorial Hawai‘i, she was vocal in her advocacy for the Hawaiian people and most notably so during the 1931 Massie and Kahahawai cases. She was extremely critical of the way that the government and the press had handled and covered the proceedings which resulted in manslaughter convictions for three U.S. Navy men and a New York socialite for the brutal killing of Joseph Kahahawai. In a Honolulu Star Bulletin editorial in 1931, Kawānanakoa remarked that:

> Missionaries of the olden days taught the Hawaiians to be gentle and sbumissive; that if you were slapped on one cheek to turn the other cheek, and we have been turning our cheeks from right to left ever since. It is high time that we became a[g]gressive enough to fight for the rights of the Hawaiian people in any [of] their pilikias [troubles].”[70]

Accomplishments

Under Kawānnakoa’s guidance, the group began expanding its reach to other islands. In 1921, she helped open two new chapters: Hālau ‘O Kalākaua in Hilo and Hālau ‘O Kapi‘olani on Kaua‘i.[71] Kaua‘i’s weekly newspaper covered the Princess’ visit and her remarks give us a sense of what she and Hale O Nā Ali‘i, by extension, hoped to cultivate. Self-reliance was the goal; she exhorted her people “that they must look to themselves for prosperity, influence, and advancement. By means of industry[,] thrift, intelligence and morality, they must build up their own fortunes. In a word, they must ‘make good.’”[72] In 1923, the organization added a chapter in

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[68] *Id*., p. 167.
[69] *Id*., pp. 167-77.
[70] *Honolulu Star-Bulletin*, Nov. 5, 1931, p. 16.
[71] Farden, *‘Aha Hipu‘u*, p. 26.
[72] “Ka Hale o Na Alii,” *The Garden Island*, February 8, 1921, p. 4

Maui with the name Hālau ‘O Lili‘uokalani.[73] The Honolulu chapter became known as Hālau ‘O Wahi‘ika‘ahu‘ula.[74]

Hale ‘O Nā Ali‘i has since been under the continuous leadership of the Kawānanakoa family. When Abigail Wahi‘ika‘ahu‘ula died in 1945, her son David Kalākaua Kawānanakoa replaced her until his death in 1953.[75] Meanwhile, her daughter Abigail Helen Kapi‘olani Kawānanakoa kept up the society’s expansion with the founding in 1949 of Hālau ‘O Kawānanakoa on Moloka'i and Hālau ‘O Keli‘iahonui in Kamuela, Hawai‘i.[76] She took over when David passed away and led Hale O Nā Ali‘i until her passing in 1961.[77]

Their younger sister Lydia Lili‘uokalani assumed the post for the next eight years. During her tenure as regent, discord surfaced that caused the head chapter Hālau ‘O Wahi‘ika‘ahu‘ula to break away until 1989.[78] By that time, Edward Keli‘iahonua, the son of Helen Kapi‘olani, had assumed the position of regency. [79] One year after his death in 1997, his son Quentin Kūhiō Kawānanakoa took his father’s place, where he remains today.[80] A seventh chapter was added in 2000 with the formation of Hālau ‘O Po‘omaikelani in Kapolei, O‘ahu.[81] That same year also saw the creation of a junior chapter called Pua Ali‘i for Native Hawaiian youth between the ages of 13 and 17.[82]

E. ‘Aha Hipu‘u

In 2003, the Royal Order of Kamehameha I, the ‘Ahahui Ka‘ahumanu, the Daughters and

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[73] Farden, *‘Aha Hipu‘u*, p. 26.
[74] *Id*.
[75] *Id*.
[76] *Id*.
[77] *Id*.
[78] *Id*.
[79] *Id*.
[80] *Id*., p. 27.
[81] *Id*.
[82] *Id*.

Sons of Hawaiian Warriors—Māmakakaua, and Hale O Nā Ali‘i O Hawai‘i, came together to form ‘Aha Hipu‘u, a hui of the royal societies.[83] The word ‘aha means gathering and "hipu‘u refers to the clasp of a necklace, holding it securely, thus ‘Aha Hipu‘u means the clasped gathering or the secure cordage."[84] In 2006, the ‘Aha Hipu‘u held its first convention with leaders from all four royal societies attending.[85] The ‘Aha Hipu‘u meets once a month to discuss issues that affect the societies as well as to share information, and at times take positions on important issues directly affecting their kuleana (responsibility/privilege). In May 2008, for instance, ‘Aha Hipu‘u decried the occupation of ‘Iolani Palace grounds by a Hawaiian sovereignty group, stating:

> [W]e strongly denounce the actions of this group as well as its claims to be heirs of the Hawaiian Kingdom. We represent the unbroken historical link to Hawai'i's past, and we continue to promote the protocol of our ali‘i heritage. Together with The Friends of Iolani Palace, we are working to preserve and maintain the dignity of ‘Iolani Palace and its grounds.[86]

Although the Royal Societies have kept a low-profile, only rarely taking active political positions, they continue as guardians of Hawaiian culture, genealogy, and heritage. As the website for the ‘Aha Hipu‘u confirms, "[t]he strength and unity of the Royal Societies continues."[87]

II. The Legacy of Prince Kūhiō

Hawai‘i confronted a very different political reality when it lost its independence and became a territory of the United States. No other Hawaiian leader was able to operate within the

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[83] Information on the ‘Aha Hipu‘u can be found on its website, *available at* http://www.ahahipuu.org/about/ (last visited July 25, 2014).
[84] *Id.*
[85] Gordon Pang, "Conference a First for Isles' 4 Royal Societies," *Honolulu Advertiser* (July 20, 2006), *available at* http://the.honoluluadvertiser.com/article/2006/Jul/20/ln/FP607200361.html (last visited July 25, 2014).
[86] "4 Hawaiian Royal Societies Criticize Sovereignty Group," *Honolulu Advertiser*, May 17, 2008, *available at* http://statehoodhawaii.org/2008/05/17/4-hawaiian-royal-societies-criticize-sovereignty-group/ (last visited July 25, 2014).
[87] *Id.*

new political system as deftly as Prince Jonah Kūhiō Kalaniana‘ole Pi‘ikoi, the Territory of Hawai‘i’s congressional delegate from 1903 until his death in 1922.

Kūhiō, a designated heir to the throne, had been groomed for leadership since boyhood. He was born on March 26, 1871, on the island of Kaua‘i to David Kahalepoili Pi‘ikoi and Kekaulike Kinoiki.[88] His mother was the granddaughter of Kaumuali‘i, Kaua‘i’s last ali‘i aimoku (island chief).[89] When the Kamehameha dynasty ended, a new one began under Kalākaua’s reign and continued with his sister Lili‘uokalani. Kūhiō’s father was their first cousin.[90] King Kalākaua’s wife Queen Kapi‘olani was Kekaulike Kinoiki’s sister. Queen Kapi‘olani became the guardian of Kūhio and his two older brothers after their father died and their mother was appointed Governess of Hawai‘i Island.[91] In a solemn ceremony just before Kūhiō’s thirteenth birthday, Kalākaua bestowed the title of Prince on him and his two brothers David Kawānanakoa Pi‘ikoi and Edward Keli‘iahonua Pi‘ikoi.[92]

On the first anniversary of Kūhiō’s death, the Speaker pro tempore of the U.S. House of Representatives, Rep. William A. Rodenberg of Illinois, dedicated the day’s session to honor Prince Kūhiō, and entered the following into the *Congressional Record* of the day:

> Having decided his path of duty, he never wavered, and was elected to Congress for 10 consecutive terms, at great personal sacrifice. A pure-blooded Hawaiian, it was natural and greatly to his credit that he devoted much serious thought and energy to rehabilitation of native Hawaiians. He saw his people flock to the larger cities where life in crowded tenements was leading to racial extinction, and he devoted himself to getting them back to the land. His efforts culminated in the passage in 1921 by Congress of the Hawaiian Homes Commission Act, a measure to provide homesteads for native Hawaiians for an indefinite term at a nominal rental and for government loans to the settlers.

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[88] Lori Kamae, *The Empty Throne* (Honolulu: Topgallant Publishing Co., 1980), p. 38.
[89] *Id*., p. 39.
[90] *Id*., p. 41.
[91] *Id*., p. 52.
[92] *Id*., p. 53.

> As the last titular prince of his line, his funeral was the last royal funeral ever held in Hawai‘i. He was buried with all the pomp and pageantry of ancient Hawaiian royalty in the royal mausoleum. American and foreign government officials were there to represent their countries, and throngs of friends came to pay their last respects.
>
> The beautiful silver mounted koa casket was placed in a catafalque and drawn by 200 stalwart Hawaiians from the former palace to his last resting place, a distance of over a mile. In the funeral procession the Army was represented by a considerable contingent, departments of government, organizations of various kinds, schools, and thousands of friends and admirers all marched in the procession. The services at the palace and at the mausoleum were indeed impressive and will dwell long in the memory of those who witnessed it.[93]

The endurance of his twin legacies – the Hawaiian Civic Clubs and the Hawaiian Home Lands Trust – speaks to his remarkable foresight. The first Hawaiian Civic Club was founded in 1918 and homesteading on Hawaiian Home Lands began in 1922, but each can trace its lineage to an organization called ‘Ahahui Pu‘uhonua O Nā Hawai‘i, founded in 1914.

A. ‘Ahahui Pu‘uhonua O Nā Hawai‘i

‘Ahahui Pu‘uhonua O Nā Hawai‘i ("‘Ahahui" or "‘Ahahui Pu‘uhonua"), also known as the Hawaiian Protective Association, was primarily a social welfare organization. Hoping to combat the impoverished conditions, particularly in urbanized Honolulu, that sapped the Native Hawaiian people's health and wellbeing, the group's goals centered on physical, moral, and occupational improvement.

Founding History

In November of 1914, Kūhiō hosted a group of Hawaiian leaders at his home to begin preparations for the ‘Ahahui.[94] They selected a committee to draft a constitution and a set of

[93] Reprinted from the Congressional Record, Sunday January 7, 1922, *in* Department of Hawaiian Home Lands, *‘Āina Ho‘opulapula Hō‘ike Makahiki, Annual Report 2012*, *available at* http://dhhl.hawaii.gov/wp-content/uploads/2011/11/DHHL-Annual-Report-2012-Web.pdf (last visited July 24, 2014), pp. 4–6.
[94] "Hawaiians Form Organization," *The Maui News*, Nov. 21, 1914, p. 8.

bylaws and elected Kūhiō as president.[95] Honolulu's mayor John C. Lane served as vice president; Reverend Akaiko Akana, Kawaiahaʻo Church's first Native Hawaiian pastor, as secretary; and Samuel C. Dwight as treasurer.[96] The members of the first board included Reverend H. Poepoe, W. J. Sheldon, Reverend John C. Wise, William Charles Achi, and William Ahia.[97] At their inaugural public meeting in October of 1914, the men gathered at ʻAʻala Park and admitted the first 74 members.[98]

A year later, on August 20, 1915, they held a second public meeting at Kawaiahaʻo Church.[99] The ʻAhahui published its invitation in the Hawaiian language newspapers, calling "all the Hawaiians of the City and County of Honolulu, and all those who have come from the other islands" to hear of the group's founding principles and its maiden year accomplishments.[100] One newspaper article pointed to the novelty of an association it described as non-sectarian and non-political while being inclusive of women, boys, and girls.[101] In remarks shared days before the meeting, Mayor Lane summarized the group's central purpose as "striving to uplift our people" and doing "everything that will tend to make better men and women of our people."[102]

Hundreds showed up to listen to the evening's speakers – Kūhiō, Poepoe, and Akana – explain just what they stood for. The five objectives the men laid out at the meeting echoed Lane's earlier message of uplifting the Hawaiian people:

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[95] *Id*.
[96] "May Start Temperance Crusade Among Hawaiians of Honolulu," *Honolulu Star-Bulletin*, Sept. 30, 1915, p. 9.
[97] *Id*.
[98] "Call Mass Meeting to Awaken Hawaiians to Their Interests," *Honolulu Star-Bulletin*, Aug. 12, 1915, p. 6.
[99] "Will Tell of Year of Work for People of Hawaii; Hold Election," *Honolulu Star-Bulletin*, Aug. 19, 1915, p. 8.
[100] *Id*.
[101] *Id*.
[102] "Call Mass Meeting to Awaken Hawaiians to Their Interests," *Honolulu Star-Bulletin*, Aug. 12, 1915, p. 6.

> To protect and to promote the worthy customs of the Hawaiian people.
>
> To protect and promote their moral welfare.
>
> To protect and to promote their social and national welfare.
>
> To protect, control and promote efficiently all the worthy benevolence of the people.
>
> To promote the economy among them and to solve their econom[ic] problems.[103]

The ʻAhahui's general welfare platform and its open enrollment policy point to the pervasiveness of the problems the men hoped to address. It would have been impossible to ignore the premonition that the Native Hawaiian people would one day be extinct. The demographic trend lines pointed toward a grim future. "Census records, and records on file in the office of the Bureau of Vital Statistics of the Territorial Board of Health, covering a period of many years, show that the Hawaiian race is slowly but gradually dying out," reported one newspaper.[104] The Native Hawaiian population, which had been in steady decline post-contact, fell by nearly nine percent from 26,000 to 23,700 between 1910 and 1920.[105] Not only was the population shrinking, it was shifting. In 1910, 52 percent of Native Hawaiians lived in Honolulu, and by 1920, it was home to 74 percent.[106]

Life for the poorest residents was tough in Honolulu's over-crowded and unsanitary districts. Violence and disease were commonplace, and the packed tenement houses where many Native Hawaiian city-dwellers lived offered nothing in the way of relief. The rising price of basic food staples like rice and fish compounded the hardship, and starvation loomed as a very real

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[103] "Hawaiians Pack Church to Hear Leaders Talk," *Honolulu Star-Bulletin*, Aug. 21, 1915, p. 5.
[104] Howard D. Case. "Hawaiian Homes Project," *Semi-Weekly Maui News*, Oct. 10, 1922, p. 5.
[105] Davianna Pōmaikaʻi McGregor, "ʻĀina Hoʻopulapula: Hawaiian Homesteading," *The Hawaiian Journal of History*, v. 24 (1990), p. 9.
[106] *Id*.

threat to those who no longer had any ties to the land.[107] Equally worrisome was the escalating price of poi, which had long been the foundation of the Hawaiian diet. Prices began climbing in 1917 as labor costs went up and taro lands were repurposed.[108] By 1918, the Pacific Commercial Advertiser labeled poi "an expensive dish" and made note of Hawaiian families reducing their poi consumption.[109] Basic living costs rose, but earnings did not necessarily follow. Japanese and Chinese laborers took work cheaply, undercutting Native Hawaiians in the labor market and flattening wages.[110]

Accomplishments

Amidst all of this, a modern Hawaiian civil society began to take shape under the ʻAhahui Puʻuhonua O Nā Hawaiʻi's banner. Sensing a correlation between the worsening condition of Native Hawaiians and their alienation from ʻāina, the ʻAhahui leadership set its goal on rehabilitation via reconstitution. By their reckoning, an essential artery had been severed with the dismemberment of the traditional system of land tenure that liberally assured Native Hawaiians' possessory and use rights. Getting Hawaiians out of the slums and back on the land was seen as the antidote to a way of life that had become disabling.

During the several years after formation, ʻAhahui Puʻuhonua put its rehabilitative focus on various educational and social programs. Members advised other Hawaiians on sanitation, good hygiene, and financial planning.[111] They promoted the virtues of physical labor and country living and, as Governor Charles McCarthy explained, put the philosophy to practice by working with "'down and out' Hawaiians, . . . putting them onto small plots of land, and fostering them

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[107] *Id*., pp. 10-11.
[108] "Poi Price May Increase Five Cents Shortly," *Honolulu Star-Bulletin*, Sep. 3, 1917.
[109] *Pacific Commercial Advertiser*, Apr. 1918.
[110] McGregor, "'Āina Hoʻopulapula," p. 12.
[111] *Id*., p. 5.

back to self-help and independence."[112] The ʻAhahui leadership hoped that over time, these Hawaiians would "form the nucleus of an independent citizen farmer class" that would restored their people to a condition of vitality and strength.[113]

To broaden the reach of their efforts, ʻAhahui members began the push for a more cohesive solution with a document called the Puʻuhonua Resolution. Introduced before the Territorial Legislature as Senate Concurrent Resolution No. 2 in 1919, the Puʻuhonua Resolution articulated the simple and straightforward policies that later inspired the Hawaiian Homes Commission Act ("HHCA" or "the Act").[114] In three "whereas" clauses, it: 1) explained how land privatization greased the market machinery that disinherited Hawaiians from the land and forced them into city slums; 2) expressed the hope that Hawaiians might return to their roots as "independent and contented tillers" of the soil; and 3) identified soon-to-be unencumbered lands to which the United States held title – a consequence of annexation – that could be used to jumpstart a new class of hoaʻāina (tenant or caretaker).[115] The resolution closed with an appeal to Congress, signed by both houses of the Territorial Legislature, requesting that it take the necessary steps to create, codify, and capitalize a homesteading program for Native Hawaiians.

It took several years before the Puʻuhonua Resolution's germ of an idea became law with the passage of the Hawaiian Homes Commission Act.[116] Easily one of the most consequential political developments for Native Hawaiians since the Kingdom's overthrow, the act's enormity – its early promotion and subsequent setbacks – eclipsed its humble beginnings. But as the prologue to an ongoing reordering of relations between Native Hawaiians and the State and Federal governments, the Puʻuhonua Resolution's significance cannot be overstated.

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[112] J.M. Lydgate. "A Day With the Governor," *The Garden Island*, March 29, 1921, p. 5.
[113] Howard D. Case, "Hawaiian Homes Project," *Semi-Weekly Maui News*, Oct. 10, 1922, p. 5.
[114] McGregor, "ʻĀina Hoʻopulapula," p. 14.
[115] S. Con. Res. 10th Leg. of the Territory of Hawaiʻi, *1919 Senate Journal*, pp. 25-26.
[116] Hawaiian Homes Commission Act ("HHCA"), Act of July 9, 1921, Pub. L. No. 67-34, 42 Stat. 108.

Outlook

The ʻAhahui stayed together long enough to see the Hawaiian Homes Commission begin organizing. Just six months after Kūhiō shepherded the Hawaiian Homes Commission Act through to its passage, he died.[117] Shortly thereafter, the members of the ʻAhahui Puʻuhonua O Nā Hawaiʻi wound the organization down and reorganized as the Puʻuhonua Society.[118] Noa Webster Aluli took over as president, future governor Samuel Wilder King served as vice president, John Wise as auditor, David K. Trask as secretary, and Samuel C. Dwight reprised his role as treasurer.[119]

Original principles stayed more or less intact. The Puʻuhonua Society asked members to "support and abide by the prohibition laws on the grounds that liquor retards the advancement of the Hawaiian people, to take an active interest in politics, live frugally and temperately and to raise as much of their own foodstuffs as possible, especially poi."[120] They also hoped to fund a $150,000 endowment that could be used to further rehabilitation efforts, including the education of young Hawaiians.[121] There is no record of how and when the Puʻuhonua Society disbanded, but the ethos of the ʻAhahui Pu'uhonua O Nā Hawaiʻi and the Pu'uhonua Society lives on today in the Hawaiian Civic Club.

B. Hawaiian Civic Clubs

Established in 1918, the Hawaiian Civic Club maintains an active and growing presence in the Native Hawaiian community. There are sixty-eight chapters on the four major islands

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[117] McGregor, "ʻĀina Hoʻopulapula," p. 32.
[118] "Hawaiian Society is Organized in Honor of Late Prince Kuhio," *Semi-Weekly Maui News*, May 9, 1922, p. 1.
[119] *Id*.
[120] *Id*.
[121] *Id*.

(O‘ahu, Hawai‘i, Maui, and Kaua‘i) and across the U.S. mainland.[122] Over its nearly 100-year existence, the Hawaiian Civic Club has nurtured a thriving Hawaiian civil society. Its contributions to rehabilitation, culture, social welfare, and education are long and enduring.

Founding History

Prince Kūhiō founded the Club’s very first chapter along with John Lane, John Wise, and Noa Webster Aluli.[123] All four held ‘Ahahui Pu‘uhonua leadership positions, and their objectives for the Hawaiian Civic Club complemented and furthered those of the ‘Ahahui. They had four main concerns: 1) halting the decline of Native Hawaiians; 2) preserving Native Hawaiian culture and traditions; 3) assisting with their people’s social welfare; 4) and increasing educational opportunities for Native Hawaiian students.[124]

The founding club is now known as the Hawaiian Civic Club of Honolulu. Ten years later, in 1929, a second chapter was established in Hilo.[125] A chapter in Waialua formed next in 1934, followed by ones in Wahiawa, Wai‘anae, and Lahaina in 1935.[126] Hawaiians in Ko‘olaupoko, Hāmākua, and Kapa‘a launched clubs two years later.[127] Eleven years passed before the next two clubs organized, in ‘Ewa and Naniakapono.[128] Waimea formed a year later, and then came Kona in 1952 and Moloka‘i in 1959.[129]

Accomplishments

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[122] At last count, the Hawaiian Civic Club website listed 28 clubs on O‘ahu, 5 on Maui, 4 on Kaua‘i, 10 on Hawai‘i Island, and 21 on the U.S. mainland in Alaska, California, Colorado, Illinois, Nevada, Utah, Virginia, Washington, Tennessee, and Texas. See Association of Hawaiian Civic Clubs, available at http://aohcc.org/ (last visited July 25, 2104).
[123] Dot Uchima, *Association of Hawaiian Civic Clubs History* (2007), p. 1.
[124] George West. “Hawaiian Civic Club Grows Stronger, Says David Bent.” *Honolulu Star-Bulletin*, 2 July 1960, p. 9.
[125] Uchima, *Association of Hawaiian Civic Clubs History*, p. 3.
[126] *Id*.
[127] *Id*.
[128] *Id*.
[129] *Id*.

Between the organization's founding in 1918 and statehood in 1959, the Hawaiian Civic Club concentrated its efforts on rehabilitation, culture, education, and economic welfare. These early highlights are worth mentioning not just for what they accomplished, but also for how formative they were to building the capabilities that define the Civic Club today as advocate, policymaker, cultural and environmental steward, fundraiser, and economic incubator.

Defender of Hawaiian Home Lands

Kūhiō and his contemporaries believed that the rehabiliation of the Native Hawaiian people required land for farming. Passage of the Hawaiian Homes Commission Act of 1921 set this form of rehabilitation into motion, and the Civic Club rallied around the cause as Hawaiian homesteading's chief mobilizer. Improving homesteading outcomes was an early and lasting concern.

Many, Hawaiians included, first greeted the HHCA plan with ambivalence. Skeptics wondered whether the concessions made to secure the Act's passage doomed the program to failure. One concession established homesteading solely for those with at least 50 percent Hawaiian ancestry when the original proposal contained no blood-quantum requirement.[130] Most glaringly, the 200,000-plus acres set aside under the Act were far from prime lands; the prime lands went to the sugar companies.[131] Some also predicted that homesteaders wouldn't be able to

[130] Section 201 of the act defines a native Hawaiian beneficiary as "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778." *See generally*, McGregor, "'Āina Ho'opulapula," for a discussion of the compromise leading to the blood-quantum requirement.

[131] "The sugar planters managed to exclude any of the fertile sugar lands from the distribution process, and nearly all of the allotted acreage was rock, arid, and sandy. Only two percent could be developed at a reasonable cost." Noel Kent, *Hawaii: Islands under the Influence* (Honolulu: Univ. of Hawai'i Press, 1993), p. 76.

sufficiently finance their farms because of the limited funds being made available. Critics believed that the program, on balance, left all Hawaiians worse off.[132]

Future territorial governor, Samuel Wilder King, sought to temper critics' concerns when he pressed for "the full support and cooperation of a united Hawaiian people" at a Hawaiian Civic Club luncheon in September of 1921.[133] He cautioned against "destructive criticism . . . that never accomplished anything."[134] He acknowledged those in the crowd who "may be out of sympathy with some idea of the [Hawaiian Homes Commission]" but believed that the best option was to help it carry out its work.[135] His conclusion was that "even an idea that is not [s]o good is a whole lot better than no idea at all."[136]

In time, the Hawaiian Civic Club threw the full weight of its support behind the program and worked in various ways to sustain it. In 1940, for example, the Club proposed a number of amendments to the Hawaiian Homes Commission Act. "Neither insufficient funds nor politics should block this rehabilitation of the Hawaiian race," the Club asserted. It suggested creating a revolving fund – drawn from rent monies generated by non-homesteading uses of trust land combined with a thirty percent cut of the territory's sugar land lease revenues – to prevent such an outcome.[137] The fund would cover operating costs, commissioner salaries, and capital improvements. Congress created the Hawaiian Home Development Fund in 1941 and the Hawaiian Home Operating Fund in 1948 to give the Hawaiian Homes Commission the means to do just that. The two funds were combined in 1986 to form the Hawaiian Homes Operating

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[132] *See* McGregor, "Aina Hoʻopulapula," pp. 20, 24-25.
[133] "Hawaiians Urged to Give Their Support to Rehabilitation," *Honolulu Star-Bulletin*, Sept. 30, 1921, p. 2.
[134] *Id*.
[135] *Id*.
[136] *Id*.
[137] "Hawaiian Club Offers Homes Act Changes," *Honolulu Advertiser*, August 9, 1940, p. 2.

Fund, which the Department of Hawaiian Home Lands uses to underwrite the construction, operation, and maintenance of any revenue-producing activities that serve homesteaders.

The Civic Club also took a more involved approach to the rehabilitation effort, beginning with an offer to assist in a water reclamation project. In 1940, Hugh Howell, an engineer from the U.S. Bureau of Reclamation, spoke with the Club about a plan to pipe in fifteen million gallons of water from Moloka‘i’s windward valleys to irrigate the 12,000 acres of homestead lands.[138] With this infrastructure, he expected that five million dollars worth of crops could be grown on the otherwise fertile land, relieving Hawai‘i from its dependence on imported fruits and vegetables and giving the homesteaders a secure economic engine.[139] Gus Sproat, the Club’s president at the time, appointed Archie Ka‘aua, Charles Chillingworth, Theodore Vierra, and Arthur Trask to a committee to help advance the reclamation project.[140] Two and a half million dollars in territorial funds were made available but, unfortunately, the matching federal funds never came through and the project stalled.[141]

When politics threatened to table the Hawaiian Homes program, as early negotiations over statehood did, the Hawaiian Civic Club pushed back. On June 7, 1950, the Hawaiian Civic Club of Honolulu’s president, Harry M. Field, sent a radiogram to U.S. Senator Joseph C. O’Mahoney, chairman of the Committee on Interior and Insular Affairs, withdrawing support for statehood.[142] The Club had earlier gone on record as a proponent of statehood, which Congress found compelling.[143] Field attributed the about-face to “the existence of a relentless campaign to deprive the Hawaiian people of the rights to which they are entitled under the terms of the treaty

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[138] “Hawaiian Civic Club Offers Aid on Molokai Water Plan.” *Honolulu Star-Bulletin*, 26 Jan. 1940, p. 5.
[139] *Id*.
[140] *Id*.
[141] Progress Report of the Hawaii Irrigation Authority (Territory of Hawaii: 1953), p. 7.
[142] “Civic Club Head Says Statehood Issue Closed,” *Honolulu Star-Bulletin*, June 14, 1950, p. 14.
[143] “Text of Radiogram From Field to Sen. O’Mahoney,” *Honolulu Advertiser*, June 14, 1950, p. 8.

which annexed their country to the United States."[144] The remark refered to Hawai'i's 1950 constitutional convention and an agenda Field described as an intent to bury, through "overt and surreptitious attacks[,]" the Hawaiian Homes Commission Act.[145] Field asked that O'Mahoney's committee "withhold action on Hawaiian statehood until such time as a complete investigation can be made of the effects of statehood on the rehabilitation, education and welfare of the Hawaiian people."[146]

Field's radiogram prompted a response from the Civic Club's directors, but instead of rebuking Field's actions, the directors clarified them. In a quickly issued statement, they affirmed a version of Field's position: support for statehood "[a]s long as the welfare of the Hawaiian people is upheld[.]"[147] His concern was eventually resolved. As a condition of statehood, Hawai'i was required to incorporate the Hawaiian Homes Commission Act into its Constitution and oversee administration of the Hawaiian Home Lands Trust.[148]

Cultural Custodian

Another early concern was the preservation and practice of culture, beginning with the hula. In the 1920s, circuses and fairs on the U.S. mainland began featuring hula girls as entertainment. Their grass skirts, undulating hips, and exposed midriffs made for an exotic, albeit inauthentic, spectacle. A resolution condemning these "indecent parodies" and their crass costuming received Hawaiian Civic Club members' unanimous support in 1922.[149] Calling them

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[144] *Id*.
[145] *Id*. In his words: "The chief aim of this campaign [is] to eradicate the Hawaiian rehabilitation law through which the Hawaiian people regained title to a small portion of their ancestral land which were theirs in entirety for a thousand years and of which they were deprived through deception and fraud." *Id*.
[146] *Id*.
[147] "Hawaiian Civic Club's Position: Statement Made for Statehood." *Honolulu Star-Bulletin*, June 13, 1950, p. 1.
[148] Section 4 of the Hawai'i Admission Act, Act of March 18, 1959, Pub. L. No. 86-3, 73 Stat 4.
[149] "Naughty Hula is Condemned by Hawaiian Club," *Honolulu Star-Bulletin*, Sep. 22, 1922, p. 1.

"attempts to exploit Hawaii and the Hawaiians for purely mercenary purposes[,]" the Club asked that any Native Hawaiian performers participating in these exhibitions stop.[150]

More controversial was whether or not hula performances should take place on church property. Hula's defenders faced off against the Club's moralists over its inclusion in the Civic Club's 1925 banquet program.[151] The banquet was to be held at Kawaiahaʻo Church.[152] A member named James Hakuole voiced his opposition to the performance there, believing it to be sacrilegious.[153] Eben Low, another member, countered arguing that correctly performed hula could occupy a space where Hawaiian culture and the culture of the church could coexist. "If we follow the teachers of the Bible," he supposed, "we still can give the hula in the clubhouse."[154] In the end, Reverend Akaiko Akana, Kawaiahaʻo's pastor, decided to ban hula's performance in the church.[155]

That same decade saw a second debate over cultural protocol, this time over the documentation of Hawaiian myths. In 1923, a Hawaiian Legend and Folklore Commission convened and contracted with Yale University to compile a collection of Hawaiian stories. Yale University chose Padraic Colum, an Irish writer, to produce it. Civic Club members felt that Colum, who had no relationship to Hawaiʻi or the Native Hawaiian people, was not a wise choice. They made their protest known in a resolution in which they opposed hiring any person "whose unfamiliarity with the Hawaiian language and customs would invariably mitigate against the correct and faithful representation of Hawaiian legends and folklore."[156] The resolution

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[150] *Id*., pp. 1-2.
[151] "World Court and Hula Stir Up Debate at Civic Club Meeting," *Honolulu Star-Bulletin*, Nov. 19, 1925, p. 1.
[152] *Id*.
[153] *Id*.
[154] *Id*.
[155] *Id*.
[156] *Id*.

passed with unanimous support but did not result in Colum's substitution. Yale University Press published his collection of Hawaiian stories, titled *The Bright Islands*, in 1925.

In the same vein of the debate over qualifications was the debate over Civic Club membership. In May of 1954, the board of directors unanimously backed an amendment to the Club's constitution that would have allowed non-Hawaiians to join as non-voting associate members at an annual fee of one dollar.[157] "To put it bluntly," vice president William C. Vannatta explained, "we need the money."[158] When the proposal went before the Civic Club's general membership, they shot it down.[159] Mary K. Robinson, a senator in the Territorial Legislature, felt that it smacked of dependency. "We must not get to the point where we can't carry on our own business," she said, "I don't want people saying the Hawaiians can't take care of themselves."[160] Fellow member David Brady offered that it "shows we don't love them but their money."[161] Club president Arthur Trask favored opening up enrollment to "friends of other races who are of Hawaiian hearts." Nevertheless, he accepted the decision.[162]

The membership qualification for the Hawaiian Civic Club of Honolulu and for most other chapters remains in place today. Only those with Hawaiian ancestry are eligible. Members' non-Hawaiian spouses can join as associate members, but they cannot cast votes on matters that go up for decision. Likewise, honorary membership can be conferred to non-Hawaiians who render "unusual and especially valuable service to the organization of the Hawaiian people,"[163] but they cannot hold office or vote.

Supporter of Education

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[157] "Hawaiian Club Directors Vote Racial Bar Drop," *Honolulu Star-Bulletin*, May 13, 1954, p. 7.
[158] "Civic Club Will Restrict Membership to Hawaiians." *Honolulu Star-Bulletin*, May, 27, 1954, p. 2.
[159] *Id*.
[160] *Id*.
[161] *Id*.
[162] *Id*.
[163] *By-Laws of the Hawaiian Civic Club of Honolulu*, Art. VII, Revised October 18, 2003.

The 1930s marked the start of the Hawaiian Civic Club's longest running fundraising event – the Holokū Ball. First held in 1933, the annual soirée was initially conceived as a showcase for the holokū, a formal Hawaiian gown. The emphasis of the event today is on fundraising. It brings in thousands of dollars every year for the Hawaiian Civic Club of Honolulu's college scholarship fund since 1936.[164] The number of Native Hawaiian students getting advanced degrees is higher than ever and many of the Hawaiian Civic Club chapters have followed the Honolulu Club's lead by organizing fundraising events and maintaining scholarship funds of their own.

Economic Welfare Incubator

In the late 1930s, the Hawaiian Civic Club began exploring other ways to lift the general welfare of the Native Hawaiian people. Housing showed promise. When President Roosevelt set aside one million dollars in 1938 for "a model Hawaiian Village" to accommodate low-income Hawaiian families, the Club officers seized the opportunity to help shape its development.[165] President Edwin Murray convened a special committee to study the state of Hawaiian housing.[166] After weighing different location options and looking at the sociological data, the committee lobbied for the purchase of a parcel off of Date Street in Honolulu. It was spacious, good for gardening and could be connected to the ocean via a canal. The neighborhood's improvement association pushed back though, eyeing it as a possible school site. The Hawai'i Housing Authority ("HHA") met with both groups and ultimately selected a 25-acre parcel near Waikīkī from the estate of John Papa 'Ī'ī, kahu (honored attendant) to the high chiefs and respected kingdom-era statesman, for the housing project.

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[164] "Hawaiian Civic Club Holoku Ball Provides Scholarships," *Honolulu Advertiser*, May 27, 1939, p. 4.
[165] Arthur K. Trask. "Hawaiian Civic Club Kilohana," *Honolulu Advertiser*, May 28, 1939, p. 7.
[166] *Id*.

The decision to reserve the units for Hawaiian families generated controversy from the start. Charges of discrimination, subordination, and that Hawaiians were receiving more than their due put the Hawai‘i Housing Authority on the defensive. Charles Pietsch, HHA's chairman, penned a heartfelt defense of the project's preference policy in the *Honolulu Star-Bulletin*. In it, he recalled a visit to Ni‘ihau, the privately owned island that's populated entirely by Hawaiians. "[N]owhere else will you find such fine looking, sturdy, healthy people," Pietsch pronounced, "eager to work and eager to make a success of their venture."[167] The impression supported his vision for a housing project that mirrored the self-reliance he witnessed on Ni‘ihau. It would be "strictly Hawaiian in character" with "the Hawaiian people themselves select[ing] the site, check[ing] the plans and layouts; hav[ing] someone selected from among the Hawaiians to superintend, collect rents and operate the project after completion."[168]

Had his fellow commissioners not resisted the idea, there would be more to say about the Hawaiian Civic Club's contribution to the very first modern, 225-family unit "Hawaiian village." But before the development was set to open, discord surfaced between Pietsch and his fellow commissioners. They questioned the legality of limiting residency solely to Hawaiian families and Pietsch was outvoted. The development, called Kalakaua Homes, is still operating today. It houses low-income residents but has never been exclusive to Native Hawaiians.

The Civic Club also made food security an early issue. When the price and supply of poi was at a tipping point in the 1940s, the Civic Club moved to intervene. In June of 1941, president Flora Hayes formed a committee to investigate the cause of a 200 percent rise in poi prices.[169]

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[167] Charles J. Pietsch, "Why a Hawaiian Village?," *Honolulu Star-Bulletin*, Aug. 26, 1939, p. 1.
[168] *Id*.
[169] "Committee to Probe Sharp Rise in Price," *Honolulu Advertiser*, June 5, 1941, p. 1. In his earlier investigation, "[h]igh rental of lands, shortage of water, and destruction by animals and crayfish were cited as reasons for the small crops and high prices." *Id*.

The probe attracted widespread attention, prompting a series of public meetings across Oʻahu in Kāneʻohe, Lāʻie, Waialua, and Waiʻanae to discuss the status of kalo and kalo farmers.[170]

Hayes also paid a visit to growers on Kauaʻi, which is where she came upon a solution. "[T]o assure an adequate supply of poi at a reasonable price for the Hawaiian people on Oahu[,]" Hayes proposed that the planters on Kauaʻi form a cooperative.[171] The cooperative would supply kalo to a poi manufacturer on Kauaʻi, which would be shipped to Oʻahu and purchased by the Civic Club in Honolulu. The Club would sell the poi from a market stall "at a price within the means of all Hawaiian families."[172] Any profits the venture generated would go into the Civic Club's scholarship fund.

Subsequent tries at keeping poi affordable and available relied on price and quality controls. In 1942, members Jesse Uluihi and Eben P. Low pushed for a maximum price "to help Hawaiians who depend on poi as their staff of life."[173] They suggested capping it at ten cents per pound. Members also opposed an attempt by Honolulu's Board of Supervisors to relax regulations around the sale of poi.[174] A bill before the board sought to allow retailers to sell poi that had less than the standard minimum of 30 percent solid content, so long as it was properly labeled.[175] The Civic Club came out against it.[176]

Hawaiian Civic Club members also turned their attention to another economic initiative that decade. In 1943, they debuted an entrepreneurial training program with a focus on areas where Native Hawaiians might naturally find a competitive advantage.[177] The commercial

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[170] "Civic Club Plans Public Meetings On Oahu Poi Situation," *Honolulu Star-Bulletin*, June 7, 1941, p. 3.
[171] "Cooperative Proposed to End Poi Shortage," *Honolulu Star-Bulletin*, Nov. 25, 1941, p. 1.
[172] *Id*.
[173] "Club Members Urge Ceiling Price on Poi." *Honolulu Star-Bulletin*, Sep. 11, 1942, p. 3.
[174] "Poi Law Change Opposed by Club." *Honolulu Star-Bulletin,* Sep. 12, 1943, p. 7.
[175] *Id*.
[176] "Hawaiian Club Against Change in Poi Quality." *Honolulu* Advertiser, Nov. 17, 1943, p. 7.
[177] Harry Stroup. "Hawaiians Promote Deep-Sea Fisheries." *Honolulu Advertiser*, Dec. 4, 1943, p. 3.

fishing industry was an early candidate, and the Club helped put a number of fishermen to work on the handful of boats it sponsored as part of the program. It also protected the supply of pork for laulau (bundles of pork wrapped in kalo leaves and steamed in an underground oven) and "other native foods" that went scarce during the war in order to keep Hawaiian food vendors from going out of business.[178] With the success of these first two efforts, President Ernest Heen expressed his hope that Hawaiians would seize other openings in the market. He saw opportunities in handicrafts and café and bar ownership. He made it a point, though, to distinguish the program as grounded in assistance not handouts. "Individuals desiring to enter almost any class of business at this time find the going hard because of wartime regulations and the difficult[y] of obtaining necessary materials, equipment and required permits or licenses," he explained.[179] The Civic Club would help them navigate through it.

Outlook

By 1959, there were six clubs on O'ahu and seven on the neighbor islands, and over the ensuing decades, on average, a new chapter formed every year. This steady growth prompted the formation of the Association of Hawaiian Civic Clubs ("AHCC" or "Association"). Decentralization has been AHCC's basic operating principle. Each chapter pursues causes important to its community in its own particular way.[180] From the snapshot of their varied efforts below, it's clear that the Hawaiian Civic Club's stewardship over education, culture, rehabilitation, and economic welfare is as dynamic as ever.

Localized Efforts

Improving the educational opportunities for Native Hawaiian students remains a priority for many clubs. As it did in the 1930s, the Hawaiian Civic Club of Honolulu continues to host

[178] *Id*.
[179] *Id*.
[180] Uchima, *Association of Hawaiian Civic Clubs History*, p. 2.

the annual Holokū Ball, which raises the monies that go into its scholarship program. At least 20 clubs also maintain some kind of scholarship fund that's used to help students defray some of the cost of pursuing advanced degrees. Some clubs offer student support in other ways. The Hawaiian Civic Club of Kapolei donates backpacks filled with school supplies to Native Hawaiian students at the area's public schools every year. The King Kamehameha Hawaiian Civic Club adots a special education class at Kalihi Kai Elementary School and equips it with books and supplies every quarter. And for several years, the Central Maui Hawaiian Civic Club ran an after-school program called Punawai. It paired kūpuna (elder) Civic Club members with homeless elementary school students, who learned not only literacy and math skills, but also a bit about Hawaiian culture and music.[181]

This is where the Hawaiian Civic Clubs' contributions have been most widespread in recent times: perpetuating, practicing, and teaching the artforms and skills that are expressions of Hawaiian cultural and social identity. Most common is the teaching of traditional arts and crafts. A number of Civic Clubs, including those on the U.S. continent, regularly hold classes in their respective communities where participants might learn how to make lei, weave lauhala, sew Hawaiian quilts, and construct ipu and other hula implements.

Other chapters host workshops to build up the know-how that kept Hawaiians connected to ʻāina. The Waikīkī Hawaiian Civic Club, for example, has for the past several years made a weekend out of traditional food preparation. At its recent Imu and Fish Workshop, held at the University of Hawaiʻi's loʻi (taro patch), Ka Papa Loʻi o Kānewai, particpants learned how to

[181] *See* Association of Hawaiian Civic Clubs reports for each Council and each Civic Club , *available at* http://www.aohcc.org/index.php/the-civic-clubs (last visited July 25, 2014).

prepare and cook food using an imu, a traditional underground earthen oven. The next day was spent working in the lo‘i and learning how to clean and dry fish.[182]

Civic Clubs have also contributed to the revival of the period that Hawaiians traditionally recognized as the start of a new year. It commenced with the November rising of Pleiades, a cluster of stars that Hawaiians call Makali‘i.[183] This signaled the beginning of a four-month-long festival season known as Makahiki. It was a time of peace and thanksgiving, with tribute being paid to the god Lono whose manifestations are found in the lifegiving elements like dark clouds, rain, and good harvests.[184] Maka‘āinana (common people) would step away from their ordinary responsiblities and labors to test their strength and health in contests of skill and athleticism.[185] The Hawaiian Civic Club of Waimānalo maintains this tradition by hosting a Makahiki festival in Waimānalo where community members spend a weekend competing in these ancient games.

Another feature to the Hawaiian Civic Clubs today is their attachment to place. Having expanded beyond Honolulu, the organization is a growing network of place-based nodes. Clubs often take the name of the moku or ahupua‘a where they’re based and where their energies and resources are directed. It’s a configuration that enables some of the old duties and responsibilities from the konohiki period to continue. The Hawaiian Civic Club of ‘Ewa-Pu‘uloa, for example, has organzied trainings in limu resotration and preservation. The coastal reefs at One‘ula in ‘Ewa Beach were renowned for an abundance and variety of limu, or seaweed, but development and overharvesting have turned the once thick beds bald. The Civic Club is working to reverse that.

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[182] *See* Hawaiian Civic Club of Waikīkī website, *available at* http://waikikihcc.org/events/ike-hawaii-2012 (last visited July 25, 2014).
[183] Will Kyselka, “On the Rising of the Pleiades,” *The Hawaiian Journal of History*, v. 27 (1993), pp. 173-74.
[184] Martha Beckwith, *Hawaiian Mythology* (Honolulu: Univ. of Hawaii Press, 1970), pp. 31-32.
[185] *Id*., p. 34.

Just as important as an area's gathering sites are its wahi pana. Wahi pana are "sacred sites such as heiau, shrines, burial caves, graves, and geographic features associatied with deities and significant natural cultural, spiritual, or historical phenomena or events."[186] Hawaiian Civic Clubs will often take wahi pana in their communities under their care and stewardship. For instance, the Kailua Hawaiian Civic Club and ʻAhahui Mālama I Ka Lōkahi, a Hawaiian environmental and cultural organization, maintain a co-curatorship to steward Ulupō Heiau. This heiau (temple) was originally an agricultural heiau, later re-dedicated as a luakini heiau, along the eastern edge of what was once a 400-acre fishpond on Oʻahu's windward side.[187] Similalry, there is a heiau on Kauaʻi's northshore that marks the birthplace of hula called Ka Ulu o Paoa. Students from across the islands once came to Ka Ulu o Paoa to receive the most rigorous training in this ancient and sacred art. The Hawaiian Civic Club of Hanalei helps maintain the site. For centuries, this sacred site was reserved for the births of high-ranking aliʻi. Today it's a state monument marked by 180 birthing stones spread across half-an-acre.

The importance of place persists even for those who leave the islands. The Hawaiian Civic Clubs located in California, Washington, Alaska, Nevada, Utah, Tennesse, Texas, Colorado, the Midwest, and Washington D.C. give transplants living on the continent a way to stay connected to Hawaiʻi and engaged in Native Hawaiian affairs. As active members of their respective communities, the Clubs on the continent promote wider awareness of the islands' unique culture and history. Workshops and classes in Hawaiian arts and crafts, hula and music, language, and genealogy are regularly held for new and old practitioners alike. Awarding post-high scholarships to Native Hawaiian students is another common feature. Some Clubs aim their

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[186] Davianna Pōmaikaʻi McGregor, "An Introduction to the Hoaʻāina and Their Rights," *The Hawaiian Journal of History*, v. 30 (1996), p. 21.
[187] History of Kailua Hawaiian Civic Club *available at* http://www.kailuahawaiiancivicclub.com (last visited Aug. 2, 2014), pp. 10-14.

support directly at Hawai‘i, like with the Hui Hawai‘i O Tenesi’s (Tennessee) sponsorshop of a Hawaiian language immersion school in Puna or ‘Ainahau O Kaleponi (California) Hawaiian Civic Club’s donations to the Lunalilo Home.

Culture and education have occupied much of the Civic Clubs’ attention in recent decades, but there has been a renewed effort to promote economic development intiatives from within the Native Hawaiian community. An annual business competion gives clubs a chance to test out their business ideas and at least one concept stemming from this contest is beginning to bear fruit. Soon after winning the 2009 competition, Ali‘i Pauahi Hawaiian Civic Club took its plan for a maile farm and lauched Mahi‘ai ‘Ihi in Wailea on the Big Island. Cherished for its deep green color and sweet frangrance, maile is used to make an open-ended lei that men often wear on special occasions. The Hawaiian varieties have become less and less abundant, reaching a point where more than 90 percent of the maile used in Hawai‘i is imported from the Cook Islands and Tonga.[188] Mahi‘ai ‘Ihi intends to reverse that trend by cultivating maile locally on a commercial scale. The new venture saw its first harvest in 2011 and currently produces between 60 and 100 lei each month.[189] Central to Mahi‘ai ‘Ihi’s operations is a triple-bottomline strategy built around a mission to grow a business that “is culturally, economically, and spiritually fulfilling for all involved[.]”[190] This rejection of profit-maximization as the company’s sole purpose sets an important benchmark that’s sure to influence the kinds of business models the Hawaiian Civic Club promotes in the future.

The tradition of civic engagement is still very much intact and so is its reputation as fountainhead of Hawaiian opinion. As diverse and dispersive as the Hawaiian Civic Club has

[188] Janice Crowl, “Fruit of the Vine,” *Hana Hou!*, Nov. 2011.
[189] “Hawaiian Grown Maile Lei,” *Honolulu Magazine*, May 2012.
[190] *See*, http://mahiaiihi.org/ (last visited July 25, 2014).

become, every year delegates from the various chapters come together for an annual convention to present a singular voice on the issues.

Unified Front – The Hawaiian Civic Club Convention

First held in 1959, these yearly gatherings offer up a mix of events. They serve as occasions to recognize outstanding members and clubs with awards, elect leadership and admit newly formed chapters into the AHCC ‘ohana. There are guest speakers and workshops that cover a diverse collection of topics. For example, at the 1999 convention, attendees explored AIDS education, genealogy, the Hawaiian sport of holua sledding, Hawaiian names, the craftsmanship of lauhala and a form of dispute resolution called ho‘oponopono.

Culture is ever-present at the convention. The convention’s first song contest, or ‘Aha Mele, was held in 1963 and is now an annual event.[191] It perpetuates a style of Hawaiian a cappella choral singing that developed in the 1820s.[192] Depending on the convention’s location, historical tours are also given to acquaint attendees with the area’s wahi pana and other notable sites. Recreational activities provide an infusion of traditional sport in the convention’s program, giving attendees a chance to sharpen their skills in ancient Hawaiian games.

The centerpiece of every convention, though, is the adoption of resolutions. They are the mechanism by which the Hawaiian Civic Club makes decisions, collectively, on a host of issues. All resolutions are drafted and submitted by the various charters in advance. For instance, almost forty resolutions were introduced at the 2012 convention held in Washington D.C. Each was assigned to one of nine committees: Community Relations, Benefits and Trusts, Education, Employment and Housing, Economic Development, Policy and Planning, Native Rights, Nohona Hawai‘i and Ecosystem/Environment.

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[191] Uchima, *Association of Hawaiian Civic Clubs History*, p. 10.
[192] *Id*., p. 2.

The resolutions function in several ways. Some honor those who have advanced Native Hawaiian causes or commendably represented the Native Hawaiian people. At the 2012 convention, for instance, Dr. Dennis Gonsalves, a Kamehameha Schools graduate, was recognized for leading a team of researchers in the development of a virus-resistant papaya varietal that saved Hawai'i's papaya industry.[193] Dr. Kekuni Blaisdell – whose contributions span medicine, academia, Hawaiian cultural and political advocacy, and nation-building – was another honoree. Resolution 12-2 lauded "his expanding legacy of thousands of individuals and families with whom he has counseled, taught, enlightened, mentored, nursed, and to whom he has restored a true sense of pono to our lives[.]"[194]

Some resolutions press governmental agencies to take certain actions such as urging the state to sufficiently fund the Department of Hawaiian Home Lands,[195] the Office of Hawaiian Affairs to begin financially preparing for the Hawaiian nation-building effort,[196] or the President of the United States to issue an executive order requiring federal agencies to establish policies that ensure that Native Hawaiian people are consulted whenever impacted by federal law.[197] Similarly, resolutions are used to prod the Hawaiian Civic Club into action, as in Resolution 13-29, which reaffirmed the Association of Hawaiian Civic Clubs' commitment to continuing the

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[193] *Honoring Dr. Dennis Gonsalves for His Internationally Recognized Humanitarian Research That is Credited with Saving Hawai'i's Papaya Industry*, Association of Hawaiian Civic Clubs Resolution 12-1 (2012).

[194] *Honoring Dr. Kekuni Blaisdell for His Expanding Legacy of Thousands of Individuals and Families with Whom He Has Counseled, Taught, Enlightened, Mentored, Nursed, and to Whom He Has Restored a True Sense of Pono to Our Lives*, Association of Hawaiian Civic Clubs Resolution 12-2 (2012).

[195] *Urging the Governor and the State Legislature to Appropriate Sufficient Sums to the Department of Hawaiian Home Lands*, Association of Hawaiian Civic Clubs Resolution 12-7 (2012).

[196] *Urging the Office of Hawaiian Affairs to Begin the Process of Establishing a Financial Plan for Underwriting the Cost of Hawaiian Nation Building*, Association of Hawaiian Civic Clubs Resolution 12-17 (2012).

[197] *Urging the President of the United States by Executive Order to Authorize and Require Federal Agencies to Establish Native Hawaiian Consultation Policies on Regular and Meaningful Consultation with the Indigenous People of Hawai'i in Implementation of Law and Federal Policies Affecting Native Hawaiians*, Association of Hawaiian Civic Clubs Resolution 12-18 (2012).

dialogue on nationhood.[198]

A final function of resolutions is to gather consensus around or stake a position on a policy, law, or development. This was evident in AHCC 2013 Resolution 13-25, which sought legislative support to correct language erroneously enacted by the 2011 State Legislature, that might have had a detrimental impact on the Hawaiian Homes Commission Act.[199] Other resolutions are declarations of support. They can be support for actions like the creation of a task force to explore establishing a program to aid in the repayment of debt for law graduates practicing public interest law.[200] And, similarly, they can be support for political or legal developments like the installation of an advisory committee rooted in traditional Hawaiian resource management at the State Department of Land and Natural Resources.[201]

After decades of convening like this, the Association of Hawaiian Civic Clubs has established itself as a thoroughly mobilized and engaged organization. The Association's resolutions are often a prelude to actual law, giving what is in many respects a legislative exercise real impact. The Hawaiian Civic Club has simultaneously played a pioneering role in the third sector of Native Hawaiian society over its nearly 100-year-long history. Where the government and the private commercial sector fell short, Hawaiian Civic Club leaders and members mobilized participation and investment in Native Hawaiian education, cultural

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[198] *Reaffirming the Association of Hawaiian Civic Clubs' Commitment to Conducting Nationhood Dialogues*, Association of Hawaiian Civic Clubs Resolution 13-33 (2013).

[199] *Requesting the State Legislature Repeal Section 3 of Act 195, 2011 Session Laws of Hawaii*, Association of Hawaiian Civic Clubs Resolution 13-25 (2013).

[200] *Supporting the Creation of a State Task Force to Establish a State Program for Graduates of the University of Hawai'i at Mānoa William S. Richardson School of Law Who Pursue Public Interest Work in Hawai'i in Order to Increase Access to Justice in Honor of William S. Richardson*, Association of Hawaiian Civic Clubs Resolution 13-19 (2013).

[201] *Urging the Association of Hawaiian Civic Clubs to Support the Formal Recognition of the Aha Moku System and the Establishment of the Aha Moku Advisory Committee within the Department of Land and Natural Resources and Advise on Implementation of the System of Best Practices for the Traditional Management of Hawaii's Natural and Cultural Resources*, Association of Hawaiian Civic Clubs Resolution 12-32 (adopted as amended, 2012).

preservation, social welfare, economic development and homesteading. Along the way, sophisticated governance capabilities developed which have helped deliver coordination and draw value from the ever-expanding network of highly localized clubs. These exercises in self-determination will serve the Lāhui (nation) well and long into the future.

C. Hawaiian Homestead Associations

The Hawaiian Civic Club carried the ʻAhahui Puʻuhonua O Nā Hawaiʻi's social work forward and the back-to-the-land vision of the ʻAhahui for rehabilitation was made permanent with the 1921 passage of the Hawaiian Homes Commission Act. Hawaiian homesteading began in 1922 with a five-year trial period, during which time activities were confined to certain tracts of land on the islands of Molokaʻi and Hawaiʻi. These first settlements launched on the idea that Hawaiian well-being would be improved, or "rehabilitated," with the formation of farming communities.

Few could have predicted the extent to which bureaucracy, mismanagement and cash shortages would muddy that vision. The troubles that have plagued the Hawaiian Home Lands program and the nine-member Hawaiian Homes Commission that oversees operations are chronic. To a certain degree, the effectiveness of homesteader-led community improvements has always been a function of homesteading's institutional capacity. In spite of its accomplishments, a history of chronic underperformance overshadows the program's record.[202] The cause can often

[202] A number of investigations and reports have documented the problems of the Hawaiian Homes program. Grace Humphries was one of the first to identify some of the obstacles, mostly financial, that had weakened homesteading's impact in her 1937 M.A. thesis *Hawaiian Homesteading: A Chapter in Economic Development of Hawaii*. The Legislative Reference Bureau published a series of reports highlighting various handicaps in response to growing public criticism: Tom Dinell, *The Hawaiian Homes Program: 1920-1963*; Herman S. Doi, *Legal Aspects of the Hawaiian Homes Program*; Allan A. Spitz, *Social Aspects of the Hawaiian Homes Program*. Diana Hansen offered a hard-nosed account of mismanagement and corruption in 1971's *The Homestead Papers: A Critical Analysis of Mismanagement of the Department of Hawaiian Home Lands*. The Advisory Committee to the United States Commission on Civil Rights held a forum in 1979 that gave the public an opportunity to air its complaints. That led to

be traced back to core structural deficiencies. Homesteading's prospects have been constrained by the very thing meant to ignite rehabilitation: the land. The properties that went into the trust inventory were, on the whole, undesirable. These were lands famously described by Territorial Representative William Jarrett as ones "that a goat couldn't live on."[203] A significant portion of the trust lands was located in remote parts along the islands' dry leeward sides. Lacking ready access to water, roadways, power grids, and other basic infrastructure, these areas required extensive initial outlays to make them productive and habitable. Moreover, the high cost of preparing the lands for homesteaders slowed the awarding of leases down to a crawl.

This discussion only hints at some of the problems that characterize the Hawaiian Home Lands troubled history. The takeaway is clear enough though: but for the historically poor structural and political conditions and unsound management practices, homesteaders' own efforts to grow their farming and ranching ventures and to create more livable communities would be further along.

Nevertheless, uneven institutional support hasn't prevented homesteaders from working to improve their economic and social welfare. Always beneath the administrative layer were farmers and families working together to build strong communities. They are at the heart of homesteading's founding vision. The organizations of self-governance they formed for social

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a 1980 report *Breach of Trust? Native Hawaiian Homelands*, which compiled the various allegations and the Advisory Committee's findings. In 1982, the Department of Interior criticized the poor condition of DHHL's accounting system and inventory records in its *Review of the Hawaiian Homes Commission Programs*. A Federal-State Task Force on the Hawaiian Homes Commission Act formed in July of 1982. Its 1983 report offered 134 recommendations. In 1991, the Governor's office released a plan laying out the ways in which these recommendations had either been implemented or had yet to be acted upon. A follow-up to the Advisory Committee's 1980 *Breach of Trust* report was released in 1991 and titled *A Broken Trust: The Hawaiian Homelands Program: Seventy Years of Failure of the Federal and State Government to Protect the Civil Rights of Native Hawaiians*. The 2000 report produced by the Departments of Interior and Justice called *From Mauka to Makai: The River of Justice Must Flow Freely* compiled a laundry list of past wrongs and mismanagement, including those pertaining to Hawaiian homelands. Many of these reports are more fully discuss in Chapter Ten.

[203] Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai'i?* (Honolulu: Univ. of Hawai'i Press, 2008), p. 248.

and economic advancement—the Hawaiian Homestead Associations—are the focus of this section.

A. Hawaiian Homestead Communities

Hawaiian Homestead Associations of self-governance were formed by the pioneer homestead settlers and continue to provide leadership and advocate for the well-being of the members of their communities. On Moloka‘i these associations were preceded with efforts to form cooperatives and collective business ventures.

Moloka‘i

In the homesteading program's early years, the chief motive for combining forces was to improve the performance of Moloka‘i's fledgling farms. After the Hawaiian Homes Commission planted the first pair of sites at Ho‘olehua and Kalama‘ula, the homesteaders struggled to find a viable farming strategy. Water shortages, high winds, pests, freighting costs, and competition from an established industry of Asian truck farmers all but guaranteed season after season of suboptimal results. To minimize these various risks, the homesteaders, on several occasions, formed agricultural marketing cooperatives. The results were mixed.

The earliest attempt at cooperative enterprise happened in 1923 at the Kalaniana‘ole Settlement, the very first plot of homesteads located on the coastal flats at Kalama‘ula.[204] There the farmers established the first Hawaiian Homes Cooperative Association.[205] All members pledged to devote each season's entire crop to a common pool, take it to market, and share equally in the earnings. A 1925 Hawaiian Homes Commission report identified their "great obstacle" as being a disinclination to share in "their losses as well their gains."[206] It's hardly

[204] Felix M. Keesing, *Hawaiian Homesteading on Molokai*, University of Hawaii Publications, v. 12 (1936), p. 63.
[205] *Id*.
[206] *Id*., p. 17.

surprising that the enterprise, as originally organized, failed to take off. By the mid-1930s, its efforts were scaled back considerably, "confined to meetings in which the pineapple transactions of its members are clarified."[207] Farmers at Molokaʻi's second homestead settlement in Hoʻolehua organized something similar; it too didn't work.[208] Diversified farming ultimately proved to be too risky and most of the Molokaʻi homesteaders turned to pineapple either supplying the pineapple companies with fruit or leasing out their lands for cultivation.

In 1929, the Hoʻolehua homesteaders tried a different version of the cooperative business model when they launched the Hoʻolehua Mercantile Company.[209] It began as a consumer cooperative organized to supply its customer-owners with basic goods more affordably. A year in, it incorporated as the Hoʻolehua Company with more than 80 homesteaders investing in the venture. The company built a store and stocked it with nearly everything the Hoʻolehua homesteaders might need. The Molokaʻi Trading Company (discussed below) eventually took over operations but the store later closed after running into financial difficulties.[210] Another group of homesteaders launched Hoʻolehua Homesteaders Associates, Limited, in 1952 and ran the shop under a 21-year license from the commission.[211]

The Hoʻolehua Company also became the agency through which truck-owning homesteaders first marketed their services. In 1931, 23 homesteaders executed a five-year hauling agreement with the trucking contractor for Libby, McNeill & Libby, one of the big pineapple corporations on Molokaʻi. The arrangement proved fruitful and in 1939 the truckers

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[207] *Id*., p. 89.
[208] *Id*., p. 63.
[209] *Id*., p. 89.
[210] Hawaiian Homes Commission, *Report of the Hawaiian Homes Commission to the Legislature of Hawaii,* Legislature of the Territory of Hawaii (1953), p. 29.
[211] *Id*.

formally organized themselves as the Molokaʻi Trading Company.[212] Shortly thereafter, the company took over the Libby contract, moving pineapples, fertilizer, planting material, mulch paper, and labor at a profit.[213] It paid out 25 percent and 50 percent dividends, for instance, to the shareholder-homesteaders in 1943 and 1944 respectively.[214]

Keaukaha, Hawaiʻi, and Other Homestead Communities

Keaukaha, Hawaiʻi, is the site of the Hawaiian Homes Commission's second trial-period outpost, where the first group of homes was allotted in 1923.[215] Unlike Molokaʻi, the commission awarded house lots rather than agricultural lots to the leasees.

At the close of the trial period in 1926, the Hawaiian homesteading program was judged a success and made permanent. The commission received the go-ahead to establish homesteading communities elsewhere on the 200,000-plus acres the Hawaiian Homes Commission Act had carved out as "available" for homesteading. The next group of homesteads went up for lease in 1930 in Nānākuli on Oʻahu, followed by Waimea on Hawaiʻi Island six years later. The Homes Commission broke ground in Papakōlea, Kewalo, and Waimānalo on Oʻahu between 1937 and 1940. One Aliʻi and Kapaʻakea on Molokaʻi opened in 1941 and 1950. Kauaʻi received its first homestead sites in Anahola in 1957 and Maui at Paukūkalo in 1963.

By this point, a discernable shift away from homesteading's first principal, rehabilitation by working the land, was evident. Except for the ranchlands in Waimea, the newer homestead communities lacked the agrarian culture and infrastructure of the first Molokaʻi settlements. A legislative report on the Hawaiian Homes program's first forty years confirmed the

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[212] Hawaiian Homes Commission, *Report of the Hawaiian Homes Commission to the Legislature of Hawaii,* Legislature of the Territory of Hawaii (1941), p. 11.
[213] Hawaiian Homes Commission, *Report of the Hawaiian Homes Commission to the Legislature of Hawaii,* Legislature of the Territory of Hawaii (1945), p. 14.
[214] *Id*.
[215] Keesing, *Hawaiian Homesteading on Molokai*, p. 19.

transformation: "As of September, 1963, there were 30 farmers and 55 ranchers out of a total of 1,752 Hawaiians holding current leases on Hawaiian home lands. The remaining 1,667 beneficiaries of the program hold leases on houselots, an indication that the overwhelming emphasis of the program has been the development of urban and suburban housing, rather than agricultural homesteads."[216]

The nature of homesteaders' communitarian undertakings mirrored the Hawaiian Home Land program's evolution from an agriculturally-oriented endeavor to a non-agricultural housing program. If economic self-sufficiency occupied the attention of the first homesteaders on Molokaʻi, then the orderliness and safety of the neighborhood and the comfort of its residents became priorities in their own right as dwellings grew to outnumber farms.[217]

B. Hawaiian Homestead Associations

When each new site opened up, the formation of an association typically followed so that by the 1950s, every homestead community could claim a homestead association of its own. There were three on Molokaʻi: Hoʻolehua Community Association, Kalamaʻula Community Association, and One Aliʻi Community Association. The Commission made note of them "doing much for the people in their communities."[218] There were four on Oʻahu: the Waimānalo Homesteaders Community Club, Papakōlea Community Association, Kewalo Homesteaders

[216] Tom Dinell, et al., *The Hawaiian Homes Program: 1920-1963* (Honolulu: Legislative Reference Bureau, 1964), p. 10.

[217] This is not to say that the early Molokaʻi homesteaders brushed quality of life issues aside. In a 1936 assessment of the homesteading program, the researcher Keesing noted "the growth of benevolent associations" as being a "characteristic feature of modern Hawaiian life" in Molokaʻi. Keesing, *Hawaiian Homesteading on Molokai*, p 90. These associations provided important services for its dues-paying members, he explained; namely, ensuring that they received "sick benefits and a suitable funeral at death[.]" *Id*.

[218] Hawaiian Homes Commission, *Report of the Hawaiian Homes Commission to the Legislature of Hawaii,* Legislature of the Territory of Hawaii (1951), p. 35.

Improvement Association, and the Nānākuli Community Association.[219] The Commission credited them with improving O‘ahu’s homestead areas through the propagation of “cultural, physical and social programs.”[220] And on the island of Hawai‘i, the Keaukaha Community Association maintained an active presence. The Keaukaha Community Association didn’t organize formally until the mid-1940s and, like their fellow homesteaders on Moloka‘i, the Keaukaha homesteaders had an entrepreneurial streak.[221] Their homestead association, for example, opened the area’s first store and developed a Hawaiian village attraction in the early 1950s.[222] As a venue for sharing traditional crafts, foods, customs, and ceremonies with visitors, the village was also meant to provide homesteaders with a market for products they grew or gathered.[223] And typical of a homestead association, the Keaukaha Community Association organized holiday programs and events, community cleanups and community beautification efforts.

Issues and Challenges

Moloka‘i’s pineapple industry peaked in the 1950s and then shrank over the next two decades before shuttering in the 1970s. This prompted some homesteaders to look at alternative offerings and business models. Six farmers from Ho‘olehua resurrected the cooperative model in 1972, organizing themselves as Na Hua Ai Farms.[224] After their 16-acre experimental plot of alfalfa showed promise, they scaled it out to 150 acres.[225] Growing conditions proved favorable,

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[219] *Id*., p. 67.
[220] *Id*.
[221] Hawaiian Homes Commission, *Report of the Hawaiian Homes Commission to the Legislature of Hawaii,* Legislature of the Territory of Hawaii (1947), p. 32.
[222] Hawaiian Homes Commission, *Report of the Hawaiian Homes Commission to the Legislature of Hawaii,* Legislature of the Territory of Hawaii (1953), p. 32.
[223] *Id*., p. 35.
[224] *Ka Nuhou*, Sep.-Dec. 1972, p. 7.
[225] *Ka Nuhou*, July 1979, p. 4.

demand from O‘ahu’s dairy farmers exceeded Na Hua Ai’s supply, and business was good well into the 1990s.

Hikiola Cooperative was another enterprise launched by Ho‘olehua homesteaders in the wake of the pineapple industry’s departure. Expecting an uptick in need for equipment and provisions from farmers forced to transition to other crops, Hikiola began as a supply and marketing cooperative in 1976. Today, it is primarily a supply cooperative and continues to offer its farmer-members affordable fertilizers, fuel, and other goods on cheap credit. Non-farmers and construction companies have also come to depend on Hikiola.[226]

Even if they aren’t formally going into business together, homestead farmers still maintain a loosely cooperative operation in their tightknit community. A 2012 agricultural needs assessment for Moloka‘i reported that, as a group, the homestead farmers “rely on each other to share farming techniques, information on new equipment, and promote their produce together.”[227] The chief benefit of working cooperatively is best expressed by one of their own – “new opportunities for one are opportunities for all.”[228]

Keeping with a tradition of economic self-reliance, Moloka‘i’s homesteads have more recently become seedbeds for community-based economic development initiatives.[229] Hui Mālama O Mo‘omomi, a non-profit established and run by Ho‘olehua homesteaders, is one such initiative. In 1994, Hui Mālama O Mo‘omomi received a license from the commission to manage 338 acres of Hawaiian home lands in North Moloka‘i. The group designated it the Mo‘omomi Recreational and Cultural Park and assumed management over facilities and stewardship of a coastal shoreline that features Mo‘omomi Bay. It is a heavily used resource, particularly for

[226] Glenn I. Teves, “Who is the Cooperative?” *The Molokai Dispatch*, October 12, 2011.
[227] Lahela Han, et al., *Sust‘āinable Molokai: Agriculture Needs Assesssment* (2012), p. 58.
[228] *Id*.
[229] *Ka Nuhou*, Aug. 1994, p. 6.

Hoʻolehua homesteaders whose livelihoods depend on subsistence fishing and gathering. The Hui acts as konohiki, regulating what is taken from a shared ocean resource that homesteaders call "the ice box."[230]

Pasturelands are another shared resource that homesteaders, organized as the Molokaʻi Homestead Livestock Association, began managing. In 1995, DHHL leased over 9,000 acres of pasturelands in Kalamaʻula, Kapaʻakea, Kamiloloa, and Makakupaʻia to the Association.[231] With a membership of 25 homestead families, the Molokaʻi Homestead Livestock Association set out to revive a community pasture program that came undone in the early 1980s.[232] Today, the association sends an average of 120 to 150 heads of cattle to the island's only slaughterhouse, the Molokaʻi Livestock Cooperative, every year.[233]

Beyond Molokaʻi

The quality of homesteading social life continues to be an active concern for nearly every homestead association. Many of their early programs and functions are now annual traditions. Honoring Kūhiō, whose leadership and advocacy brought the Hawaiian Homelands program into existence, is a regular occassion in many homestead communities. The associations that host Kūhiō Day celebrations often use the events to raise funds that underwrite community improvements. Awarding scholarships to university-bound high school students from the homestead community is another common practice. Molokaʻi's Hoʻolehua Homestead Association, for instance, has dedicated the proceeds from its annual Christmas craft fair to help students cover their tuition expenses since 1993.[234]

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[230] Karen Kamalu Poepoe, "Moʻomomi Managmeent Addresses Concerns," *The Molokai Dispatch*, Feb. 10, 2008.
[231] *Ka Nuhou*, Aug. 1994, p. 6.
[232] *Id.*, pp. 6-7.
[233] Eileen Chao, "Beefing Up Local Business" *The Molokai Dispatch*, June 17, 2012.
[234] *Ka Nuhou*, Oct.-Nov. 1997, p. 2.

As the number of homesteads expanded, the advantages of the various associations affiliating as a common hui became evident. The first umbrella group, the Homesteaders Community Association, launched in 1962 when the Hawaiian Homes Commission invited presidents from nine homestead areas (Waimea, Waimānalo, Kawaihae, Keaukaha, Nānākuli, Kewalo, Papakōlea, Anahola, and Molokaʻi) to gather in Honolulu. There, they formed a council and elected a board of officers. They viewed the hui as a opportunity to discuss common issues and hash out solutions.[235] The commission saw the council as an interface to the needs of the growing homestead population.[236]

C. Sovereign Council of Hawaiian Homelands Assembly (SCHHA)

The council as an official entity went dormant but, within the decade, a hui of homestead associations rebooted when the State Council of Hawaiian Homestead Associations ("SCHHA") formed in 1987, eventually renamed as the Sovereign Council of the Hawaiian Homelands Assembly.[237] It organized "to protect, preserve, and defend the Hawaiian home lands as defined in the Hawaiian Homes Commission Act" and "to work for the betterment of all native Hawaiian homeland beneficiaries."[238] By 1992, there were just over thirty homestead associations,[239] nineteen of which were represented by SCHHA, "the elected voice of nearly 6,000 homestead families[.]"[240] The participating associations arranged themselves by island into subdivisions, or ahupuaʻa, led by a president and other elected officers. Ahupuaʻa o Hawaiʻi, for example, represented Waimea Hawaiian Homestead Association, Inc., Makuʻu Farmers Association, and

[235] Biennial Report of the Department of Hawaiian Homelands (1963), p. 13.
[236] *Id*.
[237] *Ka Nuhou*, Feb.-Apr. 1997, p. 2.
[238] *Id*.
[239] *Ka Nuhou*, June 1992, pp. 6-7.
[240] *Ka Nuhou*, Oct. 1993, p. 3.

Keaukaha Homestead Association.[241] The presidents of these ahupuaʻa made up SCHHA's five-member executive council that crafted policy and steered decision-making. In one of SCHHA's sets of recommendations, drafted at the 1993 annual conference, it upheld the integrity of the Hawaiian Home Lands leasehold and the lands themselves and pressed for greater collaboration between DHHL and the various stakeholders.[242]

These elements came together most markedly around the issue of drug activity on homestead lands, which emerged as a top concern in the 1990s.[243] SCHHA's ahupuaʻa presidents and representatives from the Honolulu Police Department and DHHL gathered in 1995 to dissect the problem. Kamaki Kanahele, SCHHA's chairman, described it this way: "Drug abuse is spreading at such a rapid pace that the fear is that our family structure on the homestead land will collapse, leading to chaos[.]" SCHHA's executive council urged DHHL to pursue the cancellation of a homesteader's lease more aggressively whenever drug-dealing was involved.

Lease cancellations took time, particularly where accusations of criminal activity were involved. Rather than wait for an alleged drug dealer's removal to work its way through the contested case hearing process, homesteaders and their associations mobilized a grassroots policing front. Homesteaders in Waimānalo organized first. They launched Neighbors on Patrol Everywhere, or NOPE, in 1996 after Nani Akeo, a kupuna (elder) homesteader, posted signs on her property declaring "This Home is Drug Free" and "Druggies Stay Out."[244] The resulting program put homesteaders on patrol throughout the community, turning the spotlight on the drug sale and use that had started leaching out into the neighborhood streets and beaches.[245] NOPE Waimānalo successfully defused the threat and inspired community-based policing initiatives in

[241] *Ka Nuhou*, Feb.-Apr. 1997, p. 2.
[242] *Ka Nuhou*, Oct. 1993, p. 3.
[243] *Ka Nuhou*, Oct. 1995, p. 3.
[244] *Ka Nuhou*, Jul. 1997, p. 3.
[245] *Id*.

other homestead areas including Panaewa, where two police raids and a series of arrests failed to put a drug house out of business.[246]

Outlook

These instances of homesteaders self-policing their communities dovetailed with a broader policy of self-governance advanced by the State of Hawai‘i with the passage of Act 302 in 2001. The law intended to give the Hawaiian Homes Commission the power to "contract with and delegate authority to a Hawaiian homestead community self-governance organization to perform governmental services for the homestead community represented by that homestead organization."[247] The commission, however, cannot exercise the option because Act 302 is effective only after Congress gives its consent and approval. This has not yet happened.

That won't stop homesteaders from continuing to sharpen their self-governance capabilities. For instance, SCHHA now consists of 28 homestead associations representing over 30,000 beneficiaries on Hawaiian Home Lands. SCHHA continues to protect and promote the interests of homestead beneficiaries.[248] Over the years, it has worked with DHHL, OHA and other Native Hawaiian organizations to advocate for settlement of breach-of-trust claims, return or replacement of Hawaiian home lands unlawfully transferred to state or federal agencies and to extend homestead lease periods from 99 years to an aggregate of 199 years.[249] Additionally, SCHHA has worked with the Native Hawaiian Roll Commission in providing outreach and registering beneficiaries for the Kana‘iolowalu enrollment process that will lead to a Native Hawaiian government.[250]

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[246] *Ka Nuhou*, Jan.-Mar. 2002.
[247] HHCA, section 201.6 (2001).
[248] *See* Sovereign Councils of Hawaiian Homelands Assembly, *available at* http://www.schha.com/about-schha-2/ (last visited July 25, 2014).
[249] "About us," *id*.
[250] *Id.*

Moreover, particular homestead communities continue to push forward in new directions. The 2003 launch of a document digitization venture, which located its production facilities on Hawaiian homelands in Anahola, Waimānalo, and Papakōlea, opened up a new realm of economic development possibilities. The success of Hawaiian Homestead Technology, Inc., has led to more investment in skills and assets, particulalry in Anahola.

In 2011, the Hawaiian Homes Commission approved a request to lease 60 acres of homestead land to the Kaua'i Island Utility Cooperative ("KIUC"). It will be the site of a 12 megawatt solar energy project, the island's largest.[251] The venture is made possible through KIUC's partnership with the Homestead Community Development Corporation ("HCDC"), a non-profit corporation founded in 2009 to facilitate economic development in homestead areas. It counts the Anahola Hawaiian Homes Association, Kaupe'a Homestead Association and Waimea Hawai'i Homestead Association as affiliates. The strategizing, collaboration and initiative that has already been exhibited is very much in line with the spirit of rehabilitation that inspired Kūhiō and his contemporaries. And any project that brings jobs, revenues and clean, renewable energy to a rural area carries with it the hope that it ignites even more innovative and sustained community-led and community-based enterprise.

Such enterprise will find Hawaiian homeland lessees inhabiting an expanding sphere of accountability, responsibility, and independence. Future efforts of homesteaders and any 'ahahui they form will invariably encounter the bureaucracy and crosscurrent of interests that has, for nearly a century, defined Hawaiian homesteading. The Anahola solar project saw a bit of that when the Department of Hawaiian Home Lands sought to insert itself into the joint venture

[251] It is expected that the 12 megawatt solar plant will come on-line in 2015. *See* Duane Shimokawa, "Kauai Island Utility Cooperative close to reaching renewable energy goal," *Pacific Business News*, July 18, 2014, *available at* http://www.bizjournals.com/pacific/news/2014/07/18/kauai-island-utility-cooperative-close-to-reaching.html (last visited Aug. 2, 2014).

between KIUC and HCDC, much to the irritation of the homesteaders at the helm. A final agreement was worked out to address the needs of all parties.[252] Nevertheless, it's a reminder of how far homesteading has come and how far it has to go before its founding vision – Hawaiian self-reliance restored through the land – is achieved.

Conclusion

Although the government of Queen Liliʻuokalani—the government of the Native Hawaiian people—was illegally overthrown in 1893, Native Hawaiians continued to find ways to express their inherent sovereignty. Acting within the confines of U.S., territorial, and later, state law, Native Hawaiian leaders sought ways to improve the conditions of the Hawaiian people. They reorganized the four Royal Societies to ensure the perpetuation of culture, Hawaiian protocol, genealogical knowledge, and traditions, as well as to care for the physical needs of the Hawaiian people. Prince Kūhiō and other leaders of his generation such as the Rev. Akaiko Akana, Noa Webster Aluli, John C. Lane, and Rev. H. Poepoe, established organizations that would ensure specific lands were set aside for the Native Hawaiian people, and sought economic improvement, as well as social and educational development for the Hawaiian community. In doing so, they helped to foster organizations and programs in which Native Hawaiians could govern themselves and express their aspirations, hopes, and values in distinctly Hawaiians ways. These organizations, such as the Hawaiian Civic Clubs and SCHAA continue to play a major role in Native Hawaiian life and to demonstrate successful Native Hawaiian self-governance.

[252] Kauaʻi Island Utility Cooperative announcement of Feb. 21, 2014, "Work to start on $54 million KIUC solar project in Anahola" *available at* http://kauai.coopwebbuilder.com/content/work-start-54-million-kiuc-solar-project-anahola (last visited Aug. 2, 2014).

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