

**Mo‘olelo Ea O Nā Hawai‘i**  
**History of Native Hawaiian Governance in Hawai‘i**

**Prepared for the Office of Hawaiian Affairs**  
**by**  
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‘elehiwa, Sena

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## Preface

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

### Hawaiian Language Terms

#### Hawaiian - Hawai‘i

**Hawai‘i** and **Kanaka Hawai‘i** are the two terms that are translated as “Hawaiian” in the *Hawaiian Language Dictionary* by Mary Kawena Pukui and Samuel H. Elbert.<sup>1</sup>

#### Native Hawaiian - Kanaka Maoli and Kanaka ‘Ōiwi

For “native,” there are several terms provided in the Hawaiian dictionary - maoli, ‘ōiwi, kama‘āina, kupa, keiki papa, kulaiwi, keiki hānau o ka ‘āina, ewe hānau o ka ‘āina.

Over time, as discussed below, the terms **Kanaka Maoli** and **Kanaka ‘Ōiwi** 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.

**‘Ōiwi** means native and native son and 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 ‘ōiwi significant.

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<sup>1</sup> Mary Kawena Pukui, *Hawaiian Dictionary: Hawaiian-English, English-Hawaiian* (Honolulu: University of Hawaii Press, 1986).

An ‘ōlelo 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.<sup>2</sup> 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 at least one Hawaiian ancestor who was part of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i.

Politically, the distinction between Native Hawaiians and non-Native Hawaiians did not become significant 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 and Constitutional Government, 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.<sup>3</sup> 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.

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

<sup>3</sup> 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.

Importantly the 1897 petitions in opposition to annexation of Hawai‘i to the U.S. used the term “Hawaii oiwi” for Native Hawaiians.

### **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.<sup>4</sup> Indigenous American Indian nations retain inherent powers of self-governance and self-determination because they are sovereign entities that existed before the formation of the United States.<sup>5</sup> Consequently, native nations today with whom the U.S. federal government has a government-to-government relationship exercise certain fundamental and inherent powers of self-governance protected and supported by U.S. law.<sup>6</sup> These include the power to establish a form of government, determine membership, exercise police powers, administer justice, and maintain immunity from suit among others.<sup>7</sup>

As of July 2015, the U.S. had acknowledged a government-to-government relationship with 567 American Indian and Alaska Native nations, tribes and peoples.<sup>8</sup> In 2012, there were

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<sup>4</sup> *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

<sup>5</sup> 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.

<sup>6</sup> See *Felix S. Cohen’s Handbook of Federal Indian Law*, Nell Jessup Newton, ed. (LexisNexis 2012), § 4.01.

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

<sup>8</sup> 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.

more than 5 million American Indian and Alaska Natives throughout the United States.<sup>9</sup> As of 2010, approximately 22 percent of the American Indian and Alaska Native population lived in American Indian and Alaska Native areas, including 325 American Indian 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.<sup>10</sup>

### **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.<sup>11</sup> 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.<sup>12</sup>

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.:

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<sup>9</sup> 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](http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb13-ff26.html) (last visited July 25, 2014).

<sup>10</sup> *Id.*

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

<sup>12</sup> *Id.*, p. 29

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:

- (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.<sup>13</sup>

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.<sup>14</sup> 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

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<sup>13</sup> *Id.*

<sup>14</sup> 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](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (last viewed June 27, 2014).

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*

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 16, 2010, President Barack 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.<sup>15</sup>

### **Conditions of Native Hawaiians**

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 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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> 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

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<sup>15</sup> 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).

<sup>16</sup> 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).

<sup>17</sup> 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).

<sup>18</sup> 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).

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.<sup>19</sup>

In 2013, Native Hawaiians made up 28.9 percent of the homeless population in the Hawaiian Islands.<sup>20</sup> Among the unemployed in Hawai‘i from 2006 to 2010, 6.2 percent of the Native Hawaiians were unemployed as compared to 3.6 percent for the State of Hawai‘i overall.<sup>21</sup>

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.<sup>22</sup>

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 and national groups in Hawai‘i for heart disease (68 percent higher), cancer (34 percent higher), stroke (20 percent higher) and diabetes (130 percent higher).<sup>23</sup> The life expectancy of 74.3 years for Native Hawaiians is 6.2 years lower than the life

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<sup>19</sup> 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](http://www.ohadatabook.com/ACS_12_1YR_S0201_STATE_HI.pdf) (last visited July 24, 2014).

<sup>20</sup> 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).

<sup>21</sup> 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).

<sup>22</sup> Office of Hawaiian Affairs, *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, 2010, pp. 10 - 11.

<sup>23</sup> 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.”

expectancy for the State, at 80.9 years, even though Native Hawaiian life expectancy has increased by 11.8 years since 1950.<sup>24</sup>

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.

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.<sup>25</sup> 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.<sup>26</sup> 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

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<sup>24</sup> *Id.*, p. 7

<sup>25</sup> Hawaiian Homes Commission Act, Pub. L. No. 67-34, 42 Stat. 108 (1921).

<sup>26</sup> The Hawaiian Homes Commission Act was amended to allow a total lease period of 199 years. *See* HHCA, Sec. 208(2).

ranches; technical assistance to farmers and ranchers; and the operation of water systems.<sup>27</sup> 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.<sup>28</sup>

### **Ka Pae ‘Āina Hawai‘i - The Hawaiian Archipelago**

The Hawaiian Kingdom and Constitutional Monarchy ruled over Ka Pae ‘Āina Hawai‘i, the Hawaiian archipelago, 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 comprise the Northwestern Hawaiian Islands. Since 2006 these islands are 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 ‘Ōlelo Hawai‘i, the Hawaiian language. Thus, in this mo‘olelo, to the greatest extent possible, diacritical marks are used in Hawaiian words, except in some proper names and in direct quotations where Hawaiian words appear as they did in the original texts. The sources for translations of ‘Ōlelo Hawai‘i 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 Hawai‘i’s history.

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<sup>27</sup> Web site of the Department of Hawaiian Home Lands, *available at* <http://dhhl.hawaii.gov/hhc/laws-and-rules/> (last visited July 24, 2014).

<sup>28</sup> 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.

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## Chapter One: Introduction to Mo‘olelo Ea O Nā Hawai‘i, Native Hawaiian Governance in Hawai‘i

### 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 Hawai‘i

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 Hawai‘i  
A Kingdom

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

### Overview

This mo‘olelo, 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 governance in Hawai‘i from

one generation to the next of Native Hawaiian leaders, until the present. It unfolds as a genealogy, tracing the governance by Native Hawaiian leaders 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 Aina* (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 provides 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 four 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.<sup>29</sup>

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<sup>29</sup> 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 Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States, 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.<sup>30</sup>

The fourth important fact is that beginning in the late 1800's and continuing to present, Native Hawaiian self-governance has become distinct from the governance of Hawai‘i and its multi-ethnic population.

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.<sup>31</sup> Most recently, the findings of the Hawai‘i

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<sup>30</sup> 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.

<sup>31</sup> 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*

Legislature in Act 195 (2011) also affirmed that the Native Hawaiian people are the “only indigenous, aboriginal, maoli people” of Hawai‘i.<sup>32</sup>

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 a 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.

In 1893, the self-proclaimed 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 exercised self-governance independent of those self-proclaimed governments by organizing 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,<sup>33</sup> but only 45

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*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).

<sup>32</sup> Act of July 6, 2011, No. 195, §§ 1-2, 2011 Hawai‘i Session Laws (codified at Hawai‘i Revised Statutes Chap. 10H).

<sup>33</sup> Robert Schmitt, *Demographic Statistics of Hawaii: 1778-1965* (Honolulu: Univ. of Hawaii

percent of the resident population. Moreover, Native Hawaiian men comprised seventy percent of the registered male voters.<sup>34</sup>

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.<sup>35</sup> 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

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

<sup>34</sup> 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.

<sup>35</sup> 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.

territory.<sup>36</sup> 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 residents 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. had a special a trust relationship. Through 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.<sup>37</sup>

The governance of Hawai‘i in the 21<sup>st</sup> 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 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.”<sup>38</sup>

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 twenty, and perhaps as many as twenty-three, centuries prior to 1778.<sup>39</sup> Genealogy is a cultural and political relationship that

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<sup>36</sup> These dynamics and processes are discussed below in Chapters 8 and 9.

<sup>37</sup> These laws and policies are described below in Chapters 8 and 9.

<sup>38</sup> 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)

<sup>39</sup> 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 Entrepreneurship, Advancement,*

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.

This chapter provides an overview of the longer mo‘olelo of Native Hawaiian governance throughout the centuries, which is elaborated in much greater detail in the chapters that follow. The four central themes of the mo‘olelo are emphasized throughout - 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; the continuing exercise of forms of self-governance, both formal and informal; and the distinctiveness of Native Hawaiian self-governance from the more general governance of Hawai‘i. These themes are developed chronologically and represented in Western (Gregorian) time as well as in the estimated number of generations of national leaders, beginning from the emergence and organization of Hawaiian society under district ruling ali‘i or chiefs, to present.

### **Settlement and Early Hawaiian Social System: A.D. 300 - 1000 [600 B.C. – A.D. 300]<sup>40</sup>**

The discovery, settlement and evolution of complex social and political social systems throughout the Pacific have engaged scholars for the past 150 years.<sup>41</sup> According to these sources, Hawai‘i began to be settled during a colonization period of A.D. 300 - 600 by

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*Strategy & Education*, WIPCE 2005 Special Edition. (Hamilton: Te Wananga o Aotearoa, Vol. 1, Issue 1), pp. 119 - 130.

<sup>40</sup> Lilikalā Kame‘eleihiwa, "Hawai‘i-nui-akea Cousins," p. 46–49; David Stannard, *Before the Horror* (Honolulu, Univ. of Hawai‘i Press, 1989)

<sup>41</sup> See Patrick V. Kirch, "When Did the Polynesians Settle Hawai‘i? A Review of 150 Years of Scholarly Inquiry and a Tentative Answer," 16 *Hawaiian Archaeology* 3-26 (2011).

Polynesians who are believed to have come from the nearest occupied archipelago, the Marquesas.<sup>42</sup> This discovery and settlement of Hawai‘i 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. From A.D. 600 - 1000, a core ‘Ōlelo Hawai‘i (Native Hawaiian language) and Nā ‘Ike a me Nā Hana Hawai‘i (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 ‘ohana (extended families) engaged in cooperative work and shared the fruits of their labor. Recent research by Hawaiian historian and genealogist Professor Lilikalā Kame‘eleihiwa, delving into the Kumulipo genealogy and the genealogies and mo‘olelo 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 ‘Ai Kapu or sacred eating restrictions). Her research of ancestral genealogies and mo‘olelo and her direct experience with the voyages of the Hōkūle‘a double-hulled canoe have led her to place the origin of the Hawai‘i migrations of settlement in Tahiti, rather than the Marquesas. In order to benefit from the depth, richness and nuances of both approaches and methods of calculation, two sets of dates are represented in the presentation of the pre-Kamehameha history, with the more recent range of dates, followed, in brackets, by the earlier range of dates.

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<sup>42</sup> 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).

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

### *Native Hawaiian Governance through District Chiefs*<sup>43</sup>

#### *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 maka‘āinana (common people) to develop an infrastructure of 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 within each ahupua‘a (watershed management units) reflected the industry and skill of the common people working together as ‘ohana and under the oversight of konohiki (chiefly stewards) on behalf of their district 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

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<sup>43</sup> 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 Hawai‘i chiefs, from the last set who migrated from Tahiti to Hawai‘i, forward to King Kamehameha I in “The Evolution of Hawaiian Socio-Political Complexity: An Analysis of Hawaiian Oral Traditions” (Univ of Hawai‘i 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 Kame‘eleihiwa, 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 identified in brackets throughout the next sections. See Appendix 1. Genealogies of the Ruling Chiefs of the Four Hawaiian Chiefdoms: Hawai‘i, Maui, O‘ahu, Kaua‘i.

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.<sup>44</sup>

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

#### **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

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<sup>44</sup> See generally, Ross Cordy, *Exalted Sits the Chief: Ancient History of Hawaii Island* (Honolulu: Mutual Publishing, 2000).

<sup>45</sup> The sources cited in footnote 31 place the end of transpacific voyaging between 1250 and 1400. Personal communication with Ben Finney, Professor Emeritus of Cultural Anthropology, Univ. of Hawai‘i - Mānoa 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 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.

who continued to compete for control over districts and islands through inter-island alliances and marriages, religious rituals and military conquest. Although the people of the chiefdoms shared a common ancestry, language, and culture, the ali'i nui (high chiefs of islands) 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*

Once King Kamehameha I gained control of the major Hawaiian Islands, he re-established the ancestral custom of the 'aha ali'i, to provide advice and to 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 need for direct management of local affairs and as an accommodation to the unique nature

of the governance of geographically separated islands as a unified Kingdom.<sup>46</sup> 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 Native Hawaiian governance of the nation was moving.<sup>47</sup>

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 practice and edicts 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.<sup>48</sup> 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, 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 ‘āina (land). These contradictory philosophies and practices continued to be an undercurrent influencing the competitive relations between the Native Hawaiian community and foreign residents.

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

<sup>47</sup> Kamakau, *Ruling Chiefs*, pp. 172-77; John Papa Ii, *Fragments of Hawaiian History* (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.

<sup>48</sup> 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, 1981), 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.

Kauikeaouli, the son of Kamehameha I and brother of Kamehameha II, officially became king as Kamehameha III in 1825. However, he was a young boy, so Ka‘ahumanu, the Kuhina Nui (regent/premier), and Kalanimōkū, the Kālaimoku (minister/counselor) of the Kingdom under Kamehameha II, continued to rule. Ka‘ahumanu 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 ali‘i, 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 Ka‘ahumanu’s death.

### **Hawaiian Constitutional Monarchy: 1839 – 1893**

#### *Native Hawaiian Governance through a Constitutional Monarchy*

<i>Generation 25 [Generation 120] - King Kamehameha III (Kauikeaouli)</i>	<i>1839 - 1854</i>
<i>Generation 26 [Generation 121] - King Kamehameha IV (Alexander Liholiho)</i>	<i>1855 - 1863</i>
<i>Generation 27 [Generation 122] - King Kamehameha V (Lota Kapuaiwa)</i>	<i>1863 - 1872</i>
<i>Generation 28 [Generation 123] - King William Charles Lunalilo</i>	<i>1873 - 1874</i>
<i>Generation 29 [Generation 124] - King David Kalākaua</i>	<i>1874 - 1891</i>
<i>Generation 30 [Generation 125] - Queen Lili‘uokalani</i>	<i>1891 - 1893</i>

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.<sup>49</sup> 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.<sup>50</sup>

Throughout the 19<sup>th</sup> 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.<sup>51</sup> In 1842, U.S. President John Tyler officially recognized Hawai‘i as an independent nation and declared a policy of maintaining Hawaiian independence.<sup>52</sup> The Hawaiian Kingdom also entered into treaties and received formal recognition as a sovereign, independent nation from nearly every major world power.<sup>53</sup>

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<sup>49</sup> 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.

<sup>50</sup> *Id.*, pp. 11-20 (“Prerogatives of the King,” “Respecting the Premier of the Kingdom,” “House of Nobles,” “Respecting the Legislative Body,” “On the Judges”).

<sup>51</sup> 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).

<sup>52</sup> House Doc. No. 35, 27<sup>th</sup> 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.

<sup>53</sup> 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

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 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 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 while resisting the influences of the missionary culture and its political progeny.<sup>54</sup>

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(June 19, 1869), Switzerland (July 20, 1864), Spain (Oct. 29, 1863) and Sweden (July 1, 1852). See Appendix 5 for a list of the treaties between the Kingdom of Hawai‘i and other nations.

<sup>54</sup> Davianna Pōmaika‘i McGregor, *Nā Kua‘āina: Living Hawaiian Culture* (Honolulu: Univ of Hawai‘i Press, 2007).

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.<sup>55</sup>

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. This included those descended from ali‘i, the kāhuna (scholarly, skilled and artisan classes) and the maka‘āinana. 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 20<sup>th</sup> century and its growth entering the 21<sup>st</sup> century.<sup>56</sup>

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<sup>55</sup> *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-‘u, Hawai‘i* (Rutland, VT: Charles E. Tuttle, 1976), pp. 5-6.

<sup>56</sup> *See generally* McGregor, *Nā Kua‘āina*, documenting the perpetuation of customary and traditional practices in rural Hawaiian communities throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries and the

## 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.<sup>57</sup> 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 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.”<sup>58</sup> 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.<sup>59</sup> The cabinet voted to turn over exclusive use of Pearl Harbor to the U.S. government in return for the renewal of the U.S.-

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significance of these communities in the 21<sup>st</sup> century revitalization of the Native Hawaiian language and culture.

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

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

<sup>59</sup> 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 vote for the House of Nobles were so high that many Native Hawaiians were disenfranchised from voting for that house of the legislature. Art. 59, provision 2 (setting property qualifications).

Hawai‘i Reciprocity Treaty, and the King reluctantly signed the new treaty.<sup>60</sup> 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.<sup>61</sup>

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.<sup>62</sup> 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 20<sup>th</sup> century.<sup>63</sup>

In 1891, 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

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<sup>60</sup> Van Dyke, *Crown Lands*, pp. 124-128.

<sup>61</sup> 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.)

<sup>62</sup> 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.

<sup>63</sup> 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.

1887 Constitution in favor of a new constitution that would limit voting rights to Hawaiian born and naturalized citizens and restore her power as the chief executive of the Hawaiian government.<sup>64</sup>

## **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 Home Rule 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 and 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. In addition to the Queen’s efforts, the Native Hawaiian people and their political organizations vigorously protested annexation through meetings, rallies, and petitions. They asserted the right of self-governance. There was an armed attempt to restore the Queen as ruler. Native Hawaiians also organized several diplomatic delegations to the U.S. to oppose annexation. These efforts succeeded in defeating the ratification of any treaty to annex the Hawaiian Islands by the U.S. Congress.

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<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup>

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 she sought the intercession of the President of the United States. Her statement to the President opened this way:

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.<sup>67</sup>

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<sup>65</sup> Thurston, *Memoirs*, p. 249.

<sup>66</sup> 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.

<sup>67</sup> Liliuokalani, *Hawaii's Story*, p. 387.

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 presented to it, undo the action of its representatives.”<sup>68</sup> 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.<sup>69</sup>

In 1894, Emma and Joseph Nāwahī started to publish the newspaper, *Ke Aloha Aina*, continuing the Native Hawaiian newspaper tradition begun in the 1860s. For the next 26 years –

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<sup>68</sup> Helen G. Allen, *The Betrayal of Liliuokalani: Last Queen of Hawaii, 1838 - 1917* (Honolulu: Mutual Publishing, 1998), p. 294; see also Liliuokalani, *Hawaii’s Story*, App. B., pp. 387-388; *President’s Message Relating to the Hawaiian Islands*, p. XIX.

<sup>69</sup> Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham: Duke Univ. Press, 2004), pp. 131, 136-163.

until 1920 – *Ke Aloha ‘Āina* remained a central vehicle for the publication of Native Hawaiian political positions, cultural histories and chants, and community, island and international news.<sup>70</sup>

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 Queen 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 separate from the self-declared Provisional Government.<sup>71</sup>

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.<sup>72</sup>

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<sup>70</sup> *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.

<sup>71</sup> *Id.*, pp. 130-134.

<sup>72</sup> *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.<sup>73</sup> 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.<sup>74</sup> Even by 1897, only 1,126 Native Hawaiians actually voted in elections for representatives to the Republic's legislature.<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup>

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.<sup>78</sup> The arrests, trials and imprisonment of the royalists effectively suppressed all armed efforts to restore the monarchy. Nevertheless,

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<sup>73</sup> William Adam Russ, Jr., *The Hawaiian Republic (1894-1898) And Its Struggle to Win Annexation* (Selinsgrove, Pennsylvania: Susquehanna Univ. Press, 1961), p. 36.

<sup>74</sup> 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.

<sup>75</sup> 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.

<sup>76</sup> See Russ, *The Hawaiian Republic*, pp. 55-57.

<sup>77</sup> Allen, *Betrayal of Queen Liliuokalani*, pp. 331-350.

<sup>78</sup> 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.<sup>79</sup>

### **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.<sup>80</sup> 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

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<sup>79</sup> For one example, see F.J. Testa, *Buke Mele Lahui—Book of National Songs* (Honolulu: Paia 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.

<sup>80</sup> 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.

defeated the treaty.<sup>81</sup> No treaty for the annexation of Hawai‘i has ever been ratified by the U.S. Senate or signed by a U.S. President.

### **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.<sup>82</sup> Nevertheless, both the House and Senate approved the Joint 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 Joint Resolution of Annexation also transferred the title to Hawai‘i’s public lands, as claimed by the Republic of Hawai‘i, to the United States.<sup>83</sup>

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<sup>81</sup> *Id.*

<sup>82</sup> Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States, J. Res. 55, 55th Cong., 30 Stat. 750 (1898) (hereinafter Joint Resolution). 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. *Native Hawaiian Rights Handbook*, p. 15, n. 100.

<sup>83</sup> 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

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.<sup>84</sup>

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.<sup>85</sup>

### **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.<sup>86</sup>

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

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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[.]”

<sup>84</sup> 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.

<sup>85</sup> Andrade, *Unconquerable Rebel*, pp. 182-83.

<sup>86</sup> Davianna Pōmaika‘i McGregor, “Kūpa‘a I Ka ‘Āina: Persistence on the Land” (University of Hawai‘i, Unpublished dissertation, 1989), pp. 201-224.

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.<sup>87</sup>

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 alliance 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 white oligarchy, which began to rule Hawai‘i as a Territory of the United States of America, under the Organic Act of 1900.<sup>88</sup>

As their predecessors had done under the Hawaiian Kingdom and Constitutional Monarchy, Native Hawaiian leaders—descendants of ali‘i, nā koa (warriors), kāhuna 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,

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<sup>87</sup> 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 Jonah Kūhiō Kalaniana‘ole. *Affairs in Hawaii*, p. 1049. By 1917, both Princess Ka‘iulani and Prince David Kawananākoa had passed away.

<sup>88</sup> 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).

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 now claimed to be a part of 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 Pu‘uhonua published its own newspaper, spoke through churches and civic groups, encouraged education in agricultural pursuits, and published articles in other newspapers.<sup>89</sup>

The health and social conditions of Native Hawaiians at the opening of the 20<sup>th</sup> century, especially in urban Honolulu, were alarming. Moreover, large ranches and plantations were displacing Native Hawaiian taro farmers and fishers who could move to Honolulu or remain marginalized in 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.<sup>90</sup>

In 1918, the ‘Ahahui Pu‘uhonua developed a plan to “rehabilitate” impoverished Native Hawaiians exposed to diseases, such as tuberculosis, in the crowded tenements and squatter camps of Honolulu. Led by Prince Jonah Kūhiō Kalaniana‘ole, 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

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<sup>89</sup> Davianna Pōmaika‘i McGregor, “‘Āina Ho‘opulapula: Hawaiian Homesteading,” *Hawaiian Journal of History*, Vol 24 (1990), pp. 1-4.

<sup>90</sup> *Id.*, p. 9.

the Hawaiian Homes Commission Act.<sup>91</sup> 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.

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 special 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.<sup>92</sup>

## **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

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<sup>91</sup> *Id.*; Hawaiian Homes Commission Act, Pub. L. No. 67-34, 42 Stat. 108 (1921).

<sup>92</sup> *Id.* The Kalapana Extension Act and Admission Act are discussed in the next section.

homesteaders established solid and hard-working communities and formed organizations of self-governance, political advocacy and economic advancement.<sup>93</sup>

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 Clubs and associations of Hawaiian homesteaders throughout the 20<sup>th</sup> century to the present, to advocate for Native Hawaiian rights, land claims and benefits, and to promote the culture.

During the territorial period, the Ali‘i Trusts, charitable land-based trusts formed by various Hawaiian rulers, also continued with their mission to support and advance the health, education and welfare of the Native Hawaiian community.<sup>94</sup>

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.

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<sup>93</sup> 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).

<sup>94</sup> 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.

## **Hawaiian National and Cultural Identity During the Territorial Period**

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.

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 unique 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 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 Hawai‘i, laws that survived into and beyond the Territorial Period.<sup>95</sup>

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 culture. 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 Hawai‘i. Moreover, from the examination of the lives of those who lived in these isolated communities, those called kua‘āina (back country folk) emerges a profile of the strongest and most resilient aspects of the Native Hawaiian culture and way of life.

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<sup>95</sup> See generally McGregor, *Na Kua ‘āina*.

Such an examination provides insight into how the Native Hawaiian culture persisted despite dynamic forces of political and economic change throughout the 20<sup>th</sup> 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:

[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 . . . .<sup>96</sup>

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.<sup>97</sup>

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<sup>96</sup> Andrew Lind, *An Island Community: Ecological Succession in Hawaii*. (Chicago: The Univ. of Chicago, 1938; reprint New York: Greenwood Press, 1968), pp. 102-103.

<sup>97</sup> McGregor, *Nā Kua 'āina*, pp. 15-17.

## **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 1949. As discussed above, the Hawaiian Homes Commission Act established an express trust relationship with the Native Hawaiian beneficiaries of the Act 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. The Kalapana Extension Act also had a provision for Kalapana Native Hawaiians to apply for homesteads in the Volcanoes National Park, although this latter provision was never implemented.<sup>98</sup>

### **State of Hawai‘i: 1959 to Present**

#### *Native Hawaiian National Organizations of Self-Governance*

*Generations 33 [Generation 128] 1959 – 1993*

*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*

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<sup>98</sup> Kalapana Extension Act, Pub. L. No. 75-680, § 3, 55 Stat. 784, 784-85 (1938).

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

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.<sup>99</sup>

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

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<sup>99</sup> See §§ 4 (HHCA) and 5 (public land trust), Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959).

lands. In rural communities, Native Hawaiians formed organizations to protect ancestral lands, cultural lifestyles, sacred sites and access to natural resources for subsistence.<sup>100</sup>

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 threatened 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.<sup>101</sup>

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

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<sup>100</sup> Davianna McGregor-Alegado, “Hawaiians: Organizing in the 1970s,” *Amerasia* 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).

<sup>101</sup> 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‘opakele ‘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.

‘Āina or Hawaiian Patriotic League in 1893 to support the constitutional monarchy and oppose annexation.<sup>102</sup> 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 honors the Hawaiian god of agricultural productivity, Lono. The ceremonies, which had ceased with the ‘Ai Noa 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 Kaho‘olawe, participants who had come from every island, began to conduct the ceremonies on their home islands of Hawai‘i, O‘ahu and Moloka‘i. Through Kaho‘olawe, the Native Hawaiian people re-established their beliefs and customary practices which honored the ‘āina as sacred life forces.

### **Native Hawaiian Organizations of Governance**

Possibly the first newly formed 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 Hawai‘i State Department of Hawaiian Home Lands, which administers the Hawaiian Homes Commission Act. 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 the trust lands set aside by the Act.<sup>103</sup>

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<sup>102</sup> 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.

<sup>103</sup> Tom Coffman *The Island Edge of America: A Political History of Hawai‘i* (Honolulu: Univ. of Hawai‘i Press, 2003), pp. 294-95.

Following the lead of The Hawaiians, in 1971, the Congress of Hawaiian People formed on O‘ahu. This organization monitored the administration of Kamehameha Schools, an ali‘i trust created by Princess Bernice Pauahi Bishop, which was formerly known as Kamehameha Schools Bishop Estate. The Congress of Hawaiian People scrutinized 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.<sup>104</sup>

In 1972, Aboriginal Lands of Hawaiian Ancestry (A.L.O.H.A.) became 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 Hawai‘i’s 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.<sup>105</sup> In 1976, in order to draw the attention of the U.S. Congress to the injustices and cultural trauma borne by Native Hawaiians, and to stress the importance of the reparations bill, then A.L.O.H.A. president Charles Maxwell called for the occupation of the island of Kaho‘olawe. This was the inception of the movement to stop the bombing of Kaho‘olawe, which led to the formation of the Protect Kaho‘olawe ‘Ohana. Although not immediately successful, A.L.O.H.A.’s efforts eventually led to a 1980 congressional action establishing a Native Hawaiians Study Commission to investigate “the culture, needs, and concerns” of the Native Hawaiian community.<sup>106</sup> As discussed below, the Protect Kaho‘olawe ‘Ohana developed into an islands-wide organization that ultimately stopped

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<sup>104</sup> Id. p. 44 - 45.

<sup>105</sup> 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).

<sup>106</sup> Pub. L. No. 96-565, Title III, § 303(a) (December 22, 1980).

the bombing of the island and resulted in the Native Hawaiian people sharing governance over the island with the U.S. Navy.

Like A.L.O.H.A., other Native Hawaiian organizations formed to focus on the political status of Native Hawaiians at the federal level. In 1975, Alu Like, Inc. (Working Together) started 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). Similarly, the Hou Hawaiians have actively asserted status as a tribal government in litigation in the federal courts.<sup>107</sup> Self-governance on lands set aside under the Hawaiian Homes Commission Act has also served as a focal point for Hawaiian homestead associations.<sup>108</sup>

In 1987, Ka Lāhui Hawai‘i (The Hawaiian Nation) organized a constitutional convention with representatives from every island. 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 Hawai‘i within the American federal and state system, contemplating a government-to-government relationship with the federal and state governments.<sup>109</sup>

In 1993, Dennis “Bumpy” Pu‘uhonua Kanahale and a group of 300 people, formed the Nation of Hawai‘i, and occupied an area at Makapu‘u beach on O‘ahu, in resistance to U.S. actions in Hawai‘i and seeking the return of Hawaiian lands. After a 15-month occupation, the Nation of Hawai‘i 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

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<sup>107</sup> See discussion of the Hou Hawaiians’ claim of tribal status in *Price v. State*, 764 F.2d 623 (9th Cir. 1985).

<sup>108</sup> See Stu Glauberman, *Third Hawaiian group enters self-determination fight*, HONOLULU ADVERTISER, July 25, 1989, at A-3.

<sup>109</sup> See Mililani Trask, *Ka Lāhui Hawai‘i: 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).

agricultural practices, and as a pu‘uhonua—a place of healing and refuge.<sup>110</sup>

In the late 1990s, Hā Hawai‘i, a non-profit organization, helped to hold an election and convene an ‘Aha ‘Ōiwi Hawai‘i (Native Hawaiian Convention) of 77 delegates to bring together the various groups working to solidify Native Hawaiian governance and to develop a constitution and create a central government model for Native Hawaiian self-determination.<sup>111</sup> Two proposals emerged from the convention—one calling for independence and the other establishing a framework for a “nation within a nation” government.<sup>112</sup> Due to financial constraints, the proposals were never put to a vote.

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 cultural, economic and community development of Native Hawaiians and serving as a forum for discussing the important policy issues—including sovereignty and the U.S.-Native Hawaiian relationship—facing the Hawaiian community.<sup>113</sup>

### **Recognition of Native Hawaiian Self-Determination and Governance**

The first important response to these Native Hawaiian organizations exercising varying aspects of Native Hawaiian 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

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<sup>110</sup> See Tomas Alex Tizon, “Rebuilding a Hawaiian Kingdom,” *Los Angeles Times*, July 2, 2005; Dan Nakasao, “A Life of Resistance,” *Honolulu Star-Advertiser*, July 6, 2014.

<sup>111</sup> 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.

<sup>112</sup> ‘Aha Hawai‘i ‘Ōiwi, *The Native Hawaiian Convention: A Consultation with the People*, <http://hawaiianperspectives.org/CompleteBooklet.htm> (last visited Feb. 8, 2014).

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

the funding and programs set up under the Native American Programs Act.<sup>114</sup> As noted above, in 1975, Native Hawaiian leaders in Hawai‘i 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.<sup>115</sup> Shortly thereafter, the people of Hawai‘i 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, Hawai‘i 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 Hawai‘i electorate.

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.<sup>116</sup> 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

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<sup>114</sup> 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).

<sup>115</sup> Coffman, *The Island Edge of America*, pp. 296-97.

<sup>116</sup> 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 15<sup>th</sup> 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.

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.<sup>117</sup> 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.<sup>118</sup>

### *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.<sup>119</sup> Along with continued landings on the Island, the ‘Ohana also filed a federal lawsuit to enjoin the Navy from further bombing.<sup>120</sup> 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.<sup>121</sup> Thus both in practice and as a matter of law, a Native Hawaiian political organization exercised shared governance responsibility with the

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<sup>117</sup> Hawai‘i State Constitution, 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.

<sup>118</sup> 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).

<sup>119</sup> 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.

<sup>120</sup> *Aluli v. Brown*, 437 F. Supp. 602, 604 (D. Haw. 1977).

<sup>121</sup> 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.)

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.<sup>122</sup> 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.<sup>123</sup> 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.<sup>124</sup>

*The 1993 Apology Resolution & Mauka to Makai Report—Reconciliation*

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.<sup>125</sup> 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.”<sup>126</sup> Congress also acknowledged that the Republic of Hawai‘i ceded 1.8 million acres of Crown, Government and Public Lands of the Kingdom of Hawai‘i to the United States without the

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<sup>122</sup> 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.

<sup>123</sup> Department of Defense Appropriations Act of 1994, Pub. L. No. 103-139, tit. X, 107 Stat. 1418 (1993).

<sup>124</sup> Hawai‘i Revised Statutes § 6K-9 (2012).

<sup>125</sup> *Apology Resolution*.

<sup>126</sup> *Id.* clause 8.

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.<sup>127</sup> Congress 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 it urged the President of the United States to support reconciliation efforts between the United States and the Native Hawaiian people.<sup>128</sup>

In 1999, the U.S. Department of the Interior and the Department of Justice conducted meetings in Hawai‘i 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 2000.<sup>129</sup> The recommendation to establish an Office of Native Hawaiian Relations (ONR), in the Secretary of Interior’s Office, has been implemented.<sup>130</sup>

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<sup>127</sup> *Id.*, clauses 26 & 29 and § 1.

<sup>128</sup> *Id.*, § 1.

<sup>129</sup> Department of Interior and Department of Justice, *Mauka to Makai: The River of Justice Must Flow Freely* (October 23, 2000).

<sup>130</sup> 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

*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. Act 195 contains an unequivocal declaration of recognition by stating that, “The Native Hawaiian people are hereby recognized as the only indigenous, aboriginal, maoli people of Hawaii.”<sup>131</sup> The new law also 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.”<sup>132</sup> Moreover, the purpose of the law is to “provide for and to implement the recognition of the Native Hawaiian people by means and methods that will facilitate their self-governance . . . .”<sup>133</sup>

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.”<sup>134</sup> 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 Hawaiian.”<sup>135</sup> Since 2012, the Roll Commission has undertaken

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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.

<sup>131</sup> Act of July 6, 2011, No. 195, §2, 2011 Hawai‘i Session Laws (codified at Hawai‘i Revised Statutes Chap. 10H).

<sup>132</sup> *Id.* at § 1.

<sup>133</sup> *Id.* at § 2.

<sup>134</sup> *Id.* at §§ 1-2.

<sup>135</sup> *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.

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 almost 123,000 Native Hawaiians who seek to re-establish a Native Hawaiian government.<sup>136</sup>

### **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, a double-hulled canoe that has traveled the world using traditional wayfing methods. During the 1970s and 1980s, Hawaiian music and traditional hula flourished as indicated by a substantial 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, as well as 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 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

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<sup>136</sup> See Kana‘iolowalu available at <http://www.kanaiolowalu.org> (last visited July 18, 2015).

revitalized by the Native Hawaiian community. Perhaps most importantly, legacy Native Hawaiian lands of cultural and spiritual value have been reclaimed for the Hawaiian people.

### Summary

Today, Native Hawaiians continue to live and thrive as a distinct, unique, indigenous people in Hawai'i, the homeland. Native Hawaiians have remained 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 and enable them to better perpetuate the Hawaiian culture and language and protect Hawaiian natural and cultural resources and ancestral, trust and national lands. As we begin this mo'olelo, let us reflect upon the words of Queen Lili'uokalani 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 lā, he aloha  
No ku'u lāhui 'ōiwi  
I ho'okahi pu'uwai  
Kupa'a 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 'Āina / Love for the Land by  
Her Majesty Queen Lili'uokalani*<sup>137</sup>

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<sup>137</sup> Unpublished Songs by Lili'uokalani, 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:

1. He lei he aloha kēia lā	This is a lei of love
No ku'u one hānau,	For my birth sands,
Kona mau kualono uliuli	Its verdant ridges
Nā lau nahele kūpaoa	And fragrant greenery

Pū‘ili mai a pa‘a i loko  
Ke aloha i ka ‘āina  
Hāliu i ka mea mana  
A e ola nō ka lāhui

[I] embrace and hold close within me  
Love for the land  
I turn to the Almighty  
And the nation will live

2. He aloha lā, he aloha  
No ku'u lāhui ‘ōiwi  
I ho'okahi pu‘uwai  
Kūpa'a me ka lōkahi

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

3. He aloha lā, he aloha  
Ka makani o ka ‘āina,  
I ka pā kolonahe mai  
A ka makani lā he Moa'e

How precious and enchanting  
Is the wind of the land,  
As I feel the soft touch  
Of the breeze heralded as the Moa'e

4. E alu ka pule i ka haku  
Me ka na‘au ha‘aha‘a  
E noi me ka walohia  
E maliu mai nō ia

Let us focus our prayers upon the Lord  
With humble heart,  
And ask in earnest sincerity  
That He pay heed [to us]

