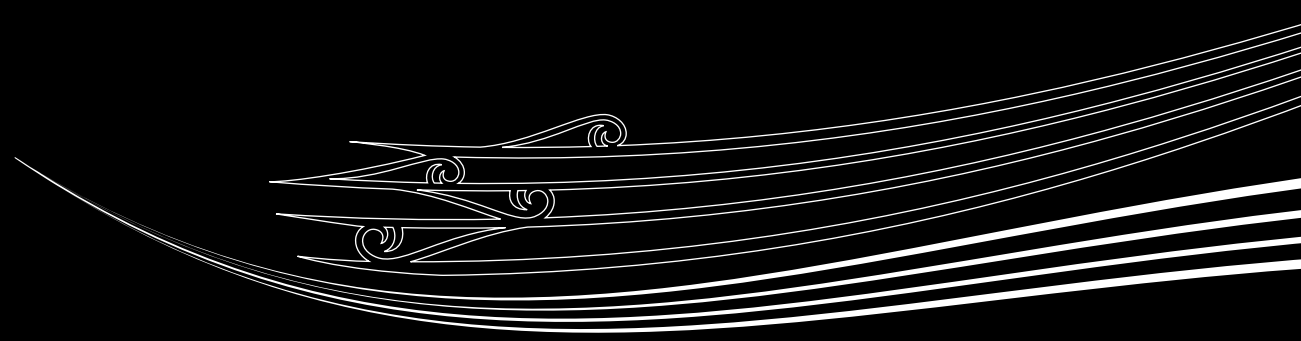




ALI'I SELECTIVE APPROPRIATION OF MODERNITY:
EXAMINING COLONIAL ASSUMPTIONS IN HAWAII
PRIOR TO 1893

Kamanamaikalani B. Beamer



Mellon-Hawai'i Postdoctoral Fellow, University of Hawai'i at Mānoa, Hawai'i
Email: beamer@hawaii.edu



Abstract

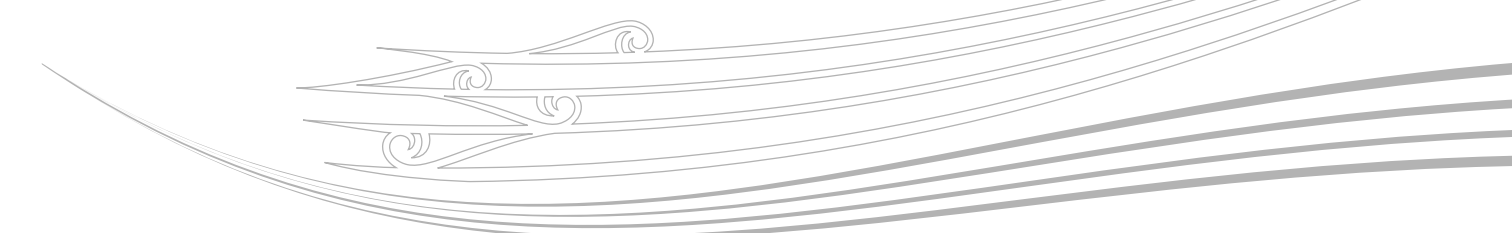
Accounts of the Hawaiian Kingdom (1810–1893) have typically argued that since the “discovery” of 1778, the islands have been progressively colonized—as if the first footfall of Captain James Cook set off a sequence of inevitable events that led to the overthrow of the monarchy in 1893 and annexation by the United States in 1898. The Hawaiian Kingdom has been categorized as a colonial institution, where aliʻi (native Hawaiian chiefs) were steadily duped by the invasion of Western people, ideas and institutions. This paper challenges such interpretations through a situated study of the first large-scale body of written law authored entirely in the Hawaiian language and passed by Kamehameha III in June 1839. This paper also challenges a colonial analysis of the Hawaiian Kingdom prior to 1893, and argues that aliʻi such as Kamehameha III selectively appropriated aspects of Euro-American legal frameworks and used them for their own means.

Introduction

On January 17, 1893, United States troops aided in overthrowing the government of the Hawaiian Kingdom. This event critically severed ʻōiwi (native Hawaiian, literally, of the bones) governance in ways that forever changed Hawaiian history, lands and population. Prior to this event, Hawaiian aliʻi (chiefs) had adopted a strategy of open diplomacy with the world, allowing it to modernize their traditional institutions and governance, yet still maintaining a distinctly Hawaiian identity. Aliʻi of the 19th century used laws, constitutional governments and maps to govern the Hawaiian Kingdom’s native and foreign populations. In doing so, the Hawaiian Kingdom was able to achieve recognition as an independent and sovereign state by the major colonial powers of the time, including Britain, France and the United States. On November 28, 1843, France and Britain, despite actively administering colonial governments in the Pacific, Africa and the Americas, formally recognized the Hawaiian Kingdom as an independent and sovereign state, thus establishing the government of the Hawaiian Islands as a co-equal sovereign state.¹ Hawaiians went to great lengths to achieve this formal recognition, manipulating political tensions between France, Britain and the United States. The Hawaiian Kingdom was one of the few places in the world that was an independent, non-colonized, non-European state.

Focusing on the Kumu Kānāwai (Source of Law, Constitution) and laws of 1839, this paper demonstrates that aliʻi were calculating and reflective in their adaptation and modernization of Hawaiian Kingdom governance. This article documents aliʻi agency in the creation and codification of Hawaiian law. It argues that instead of seeing law as an imposition, aliʻi interpreted law through existing indigenous structures while selectively appropriating Euro-American notions of jurisprudence to use law for their own means. This paper demonstrates that there existed complex political structures prior to 1778 that were modified and hybridized by aliʻi in the Hawaiian Kingdom (Beamer, 2008).

1. Hawaiʻi was recognized as an “independent state” by the formal joint-Declaration of Britain and France, November 28, 1843. See United Kingdom National Archives FO 93/33/40A.



The paper also engages in a broader discussion, by questioning a colonial analysis of the Hawaiian Kingdom. It documents ali'i agency in the Hawaiian Kingdom, and asserts that before the overthrow of the Hawaiian Kingdom in 1893 there were not the fundamental inequalities in power and the lack of access to power for natives, characteristic of a colony. 'Ōiwi were not only never colonized de jure,² but were not even colonized de facto, as most observers would claim, prior to the United States' occupation of Hawai'i. In fact, the recognition of the Hawaiian Kingdom as a sovereign and independent state in 1843 barred the possibility of de jure colonialism under international law (Sai, 2008). Furthermore, the Hawaiian Kingdom's recognition as an independent state and the continuity of the Hawaiian language in both the private and public spheres prior to 1893 are evidence that a colonial interpretation is problematic.

Mo'olelo, mo'okū'auhau: Genealogy and history

'Ike no ke ali'i i kona kanaka, a ua 'ike no ke kanaka i kona ali'i. The chief knows his servant; the servant knows his chief. Outsiders do not understand our relationship to our chiefs, and we do not care to discuss it with them. (Pukui, 1983, p. 132, no. 1,213)

This article builds on the pioneering works of previous 'ōiwi scholarship. It attempts to give an 'ōiwi voice and interpretation to a history that had been, for many years, written by academics unskilled in the Hawaiian language and unable to access these rich sources. However, this article's analysis departs from contemporary 'ōiwi scholarship surrounding the Hawaiian Kingdom. A large portion of the scholarship by recent 'ōiwi scholars on the Hawaiian Kingdom has been done through a colonial gaze (Trask, 1999; Kame'eleihiwa, 1992; Osorio, 2002; Silva, 2004). While such an approach has provided insights into the mindsets of some American missionaries in the Hawaiian Kingdom, I have attempted to view the story with the colonial optics removed. My reason for this course is not because I am unaware of the literature on colonialism, but because I am interested in seeing whether another story might be told with the colonial spectacles placed on the table.

A colonial analysis attempts to focus on the ways that the colonized became different from their ancestors; I am attempting to show the ways in which ali'i remained similar to their ancestors. Interpreting and understanding power relationships are essential to a colonial analysis. More than any other factor, it is the vastly unequal relationship of power that creates the binaries of colonizer and colonized. It is the colonizer's material and symbolic power which enables their domination of indigenous structures, and the settlement and

2. Given the Hawaiian Kingdom's recognition as an independent and sovereign state, and the fact that under international law independent states cannot be colonized, the Hawaiian Kingdom was never colonized. The term used to describe the situation where one independent state controls the governmental operations of another independent state within the territory of that state is "occupation." Today's occupation of Iraq by the United States is a clear case in point. The important part of this distinction is that occupations are not permanent and are governed by the principles of international law in regard to occupation (Sai, 2004, 2008; Young, 2006).



extraction of indigenous economic resources from colonized ancestral lands. From within these unequal power relationships, colonizers are able to implant the “cultural bombs” of colonialism (Ngūgĩ wa Thiong’o, 1994, p. 3).

The Hawaiian monarchical form of government provided power, and access to power, to the native population. Before 1893 there was not the vastly unequal power relationship between the native and foreign populations characteristic of a colony. As long as the aboriginal population had a *mō‘ī* (sovereign) of aboriginal descent and a government composed of Hawaiian nationals, they had access to power. *Ali‘i* were able to secure their national lands from foreign possession, while integrating aspects of European culture, thus creating complex symbols of royalty such as the ‘Iolani Palace, the exterior of which was built in Victorian style, while its interior was made entirely of native wood. European orders and gold-star medallions sat alongside ‘*ōiwi* symbols of royalty such as *kāhili* (feather standards) and ‘*ahu‘ula* (feathered cloaks) (Kamehiro, 2006).

It is not surprising that much of the recent work by ‘*ōiwi* scholars has focused on interpreting the past. *Ka wā ma mua* (the time in front or before) is of the utmost importance in the Hawaiian mindset, as Lilikalā Kame‘eleihiwa puts it:

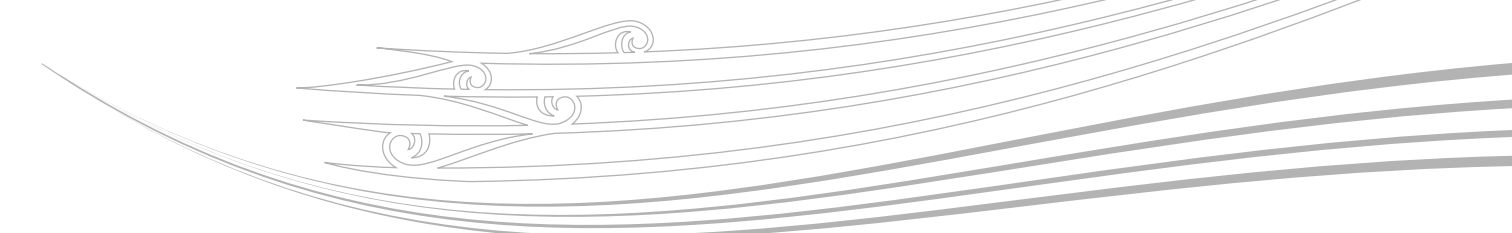
It is as if the Hawaiian stands firmly in the present, with his back to the future, and his eyes fixed upon the past, seeking historical answers for present-day dilemmas (Kame‘eleihiwa, 1992, p. 22).

In this context, the re-analyzing and debating of Hawaiian history is a very natural thing to do. Some might argue that it is a very *pono* (proper) thing to do, for it is our knowledge and interpretations of the past that inform our present and direct us toward possibilities for our future.

Beyond binaries: “I ka wā kahiko” a “Mai nā kūpuna mai”

Regardless of the fact that law has changed the Native and may have created a being that is not entirely like his ancestors, law has also been made a part of our being, adopted and adapted to our view of ourselves and the world. (Osorio, 2004, p. 113)

Like Osorio, I believe that native appropriation of modernity is possible. In fact, as an indigenous scholar in the modern world, I would say it has to be possible. However, I must admit that in order to accept my argument one must be open to the possibility that the *ali‘i* were able to become modern while maintaining their “Hawaiian-ness.” If you think that people must imitate exactly the deeds of their ancestors in order to preserve their identity, you will have serious problems with my argument and conclusions. I do value and trust traditional sources of knowledge such as *oli*, *mele* and *mo‘olelo* (chant, song, oral history), and find them to be crucial sources of knowledge. I also believe that we need to practise and preserve our culture more than we theorize it, but I do not consider myself or my analysis to be traditionalist. Living cultures are dynamic and always in a state



of change. As such, I feel that the dichotomy between traditional and modern is false. In fact, it constitutes the conceptual shackles that preserve European hegemony and often re-inscribe links between colonizer and colonized, occupier and occupied.

The analogy of the sickle

‘Ōiwi have been farming lo‘i (irrigated pond fields) for scores of generations. At some fairly recent point in ‘ōiwi history, sickles were introduced to the practice of mahi ‘ai kalo (taro cultivation). These turned out to be great tools and enabled work to be accomplished with greater ease. Today, I imagine that it would be difficult to find a lo‘i farmer who does not have a sickle. Most farmers I have met prefer the Japanese sickle. The idea that people incorporate and adapt new tools or technologies should not represent a paradigm shift; on certain levels it should be considered a matter of common sense. Yet, attempting to incorporate the sickle into the binaries of traditional and modern mahi ‘ai practice is problematic. In fact, there is nothing traditional about the sickle, yet to tell a mahi ‘ai today that he is not farming kalo traditionally would cause contention. That mahi ‘ai could easily state the genealogy of usage for the sickle from his great-grandfather to himself, providing a historical context that frames its appropriation into the practice of Hawaiian taro cultivation. Of course, there are more problematic examples of the adaptation of tools, such as the introduction of chemical weed killers and fertilizers to kalo farming, with sometimes harmful effects. Along with the adoption of new tools and technologies comes the possibility of unanticipated consequences. It is difficult for those in the midst of negotiation and adaptation to know precisely what the outcomes of their decisions might be. As a scholar who writes about those decisions with the benefit of hindsight, I am concerned with illustrating the negotiations involved in making those decisions and with deconstructing the binaries of the traditional and modern.

“I ka wā kahiko” is translated into English as “in ancient times.” The Lorrin Andrews dictionary, first published in 1865 when the Hawaiian language was thriving, contains no Hawaiian counterpart to the English word “traditional.” The phrase “mai nā kūpuna mai” is used in the more recent Pukui and Elbert dictionary, published nearly a century later, in 1957. When I interpret “mai nā kūpuna mai” it means literally “what comes from the ancestors into this time,” and has no antithesis as “modern” is to “traditional.” Conceptually, the phrase can be interpreted within the context of passing generations, where knowledge can be passed down mai nā kūpuna mai. It is a concept that is open-ended and collective. It is inter-generational and always expanding. Clearly, its conception is broader than that offered by its English translation.

Ke Kumukānāwai i kau ‘ia ma 1839: The source of law 1839

On June 7, 1839, the ali‘i Kauikeaouli (Kamehameha III) enacted the first formal body of written laws. When historian Samuel Kamakau discusses this event, he first shows that laws



certainly existed in the ancient system of government, such as in the time of the celebrated chief Kuali'i (Kamakau, 2001, p. 189). The concept of law, therefore, was not foreign to the ali'i, as it had been administered by governments of the ancient chiefs. The 1839 body of laws was one of the first ali'i attempts to use written law to define the relationship between Hawaiian classes. To this point, Hawaiian written laws had largely regulated taxation, trade, and engagements with foreigners. The laws in 1839 began to codify relationships between ali'i and maka'āinana (native subjects), and came under two headings: Kumu Kānāwai (Source of Law, or Constitution) and Ke Kānāwai Ho'oponopono Waiwai (Law Regulating Taxation, Property and the Rights of Classes). Kumu kānāwai literally means "source of law," and this section has been called a Declaration of Rights. It begins with a quotation from the Bible, Acts 17:26:

Ua hana mai ke Akua i na lahui kanaka a pau i ke koko hookahi, e noho like lakou ma ka honua nei me ke kuikahi, a me ka pomaikai.

God hath made of one blood all nations of men, to dwell on the face of the earth in unity and blessedness (translation by Achiu, 2002, p. 30).

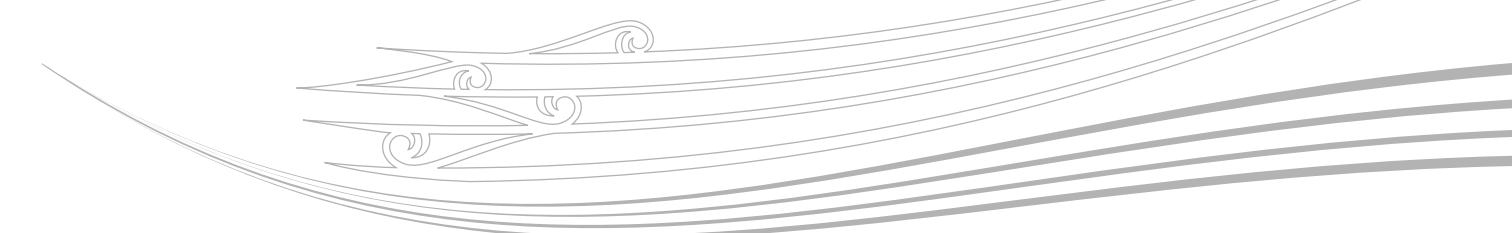
While this quotation declares the Christian God to be the source of all law, confirming the acceptance of some Christian doctrines by the ali'i of the time, a later passage seeks to define the origin of the ali'i class in a way that would have been accepted in pre-Christian times—that the ali'i were created by Akua (God):

Na ke Akua mai no hoi ka oihana alii, a me ka noho alii ana i mea e malu ai.

God has established the class of chiefs and the right of chiefs to rule to provide peace and protection.

I have offered a rather ornate translation of this passage to suggest the range of interpretations the ali'i may have intended when crafting the document. Here, then, is a principle that had been held for generations: the ali'i were granted their authority through their lineage and through Akua. Although this Akua was now the Christian God, and therefore markedly different to those previously worshipped, the essence was the same—the ali'i were established by Akua. The acceptance of Christianity did not therefore imply an acceptance of the universal equality of man, nor did it extinguish chiefly authority. Rather, it provided the ali'i with further metaphysical validation of what they already believed.

It is important to offer multiple perspectives on the Kānāwai of 1839 because it was authored in the Hawaiian language, with the ali'i actively involved in its creation and design. A multi-layered critical analysis of these early laws reveals how the ali'i, even as they drew on the political ideas taught to them by their recently hired advisor William Richards (Kame'eleihiwa, 1992, p. 174), also produced and legitimized their authority through codifying the law. That these ali'i were changing due to their encounters with foreigners and new ideas is certain, but it must not be forgotten that they were still ali'i—



that they alone held the kuleana (privilege, responsibility) of guiding and governing the society in ways they saw fit. Juri Mykkèanen (2003) has suggested that since the success of the missionary programme and teaching of literacy depended so heavily on the support of the chiefs, in many ways the mission was subservient to the aliʻi. And the missionaries recognised this. The prominent missionary Sheldon Dibble, for example, expressed his concerns that the “success of the mission had almost completely rested on the shoulders of the chiefs and the hierarchical functioning of Hawaiian society” (Mykkèanen, 2003, p. 123).

Empowering the mōʻī

The Kumu Kānāwai of 1839 also added a great deal to the authority of the mōʻī. The final paragraph warns chiefs who refuse to obey this edict:

O ke alii e hana i kekahi mea ku e i keia Kumu kanawai, e pau kona noho alii ana ma keia pae aina o Hawaii nei, ke hoomau ia malaila, pela na kiaaina, a me na luna a me na konohiki a pau.

Whatever chief shall disobey this Kumu kanawai, his or her rights as a chief shall be extinguished in the Hawaiian Islands, this is also the case for the governors, officers, and all land agents.³

This edict endowed Kauikeaouli with some formidable powers. Possibly for the first time, a mōʻī could actually extinguish the nobility of an aliʻi. In earlier times aliʻi occasionally took each other’s lives, but by 1839 that practice had ended. This claim to power may have allowed Kauikeaouli to affirm his authority by a means other than warfare. Although the Kumu Kānāwai did not overly restrict any particular class by requiring chiefs to obey the laws of Kauikeaouli, it was an extremely powerful tool of coercion. And the mōʻī used the law. An example can be seen in a letter dated August 4, 1839, to the Kiaʻāina or governor of Kauaʻi, Emilia Keaweamahi (see Figure 1).⁴ Word was received by Kauikeaouli’s council that Emilia’s in-laws were disregarding the law and unjustly punishing hoʻāina. The punishment Kauikeaouli threatened in response was grounded by law. These aliʻi were warned that they would lose their status as aliʻi if they continued to disregard the law:

Honolulu, August 4, 1839.

Regards to you Emilia, the Governor of Kauai and also to your in-laws. We have heard of the wrongs committed by your in-laws we have recently heard that your in-laws have caused suffering to hard working people. Because your in-laws struck a man without just cause, and his lands were taken and given to a haole named Kamena. This was the first offense that we have heard.

3. Author’s translation. Unless otherwise indicated, subsequent quotes are translated by the author.

4. See Hawaiian chiefs, M-59, Folder 9, 1834–1839 Misc. Hawaiʻi State Archives



The second offense that we have received news of is that your in-laws have said that they refused to acknowledge the new laws. Why have the disgraceful words uttered by your in-laws reached me and the Ali'i nui? Whereas the King's signature has been placed on the laws, if your in-laws continue to disregard the laws that the King had enacted, their rights as chiefs shall be extinguished as is stated by the laws. Here is your last chance; you must abide by the laws and not according to your own discretion.

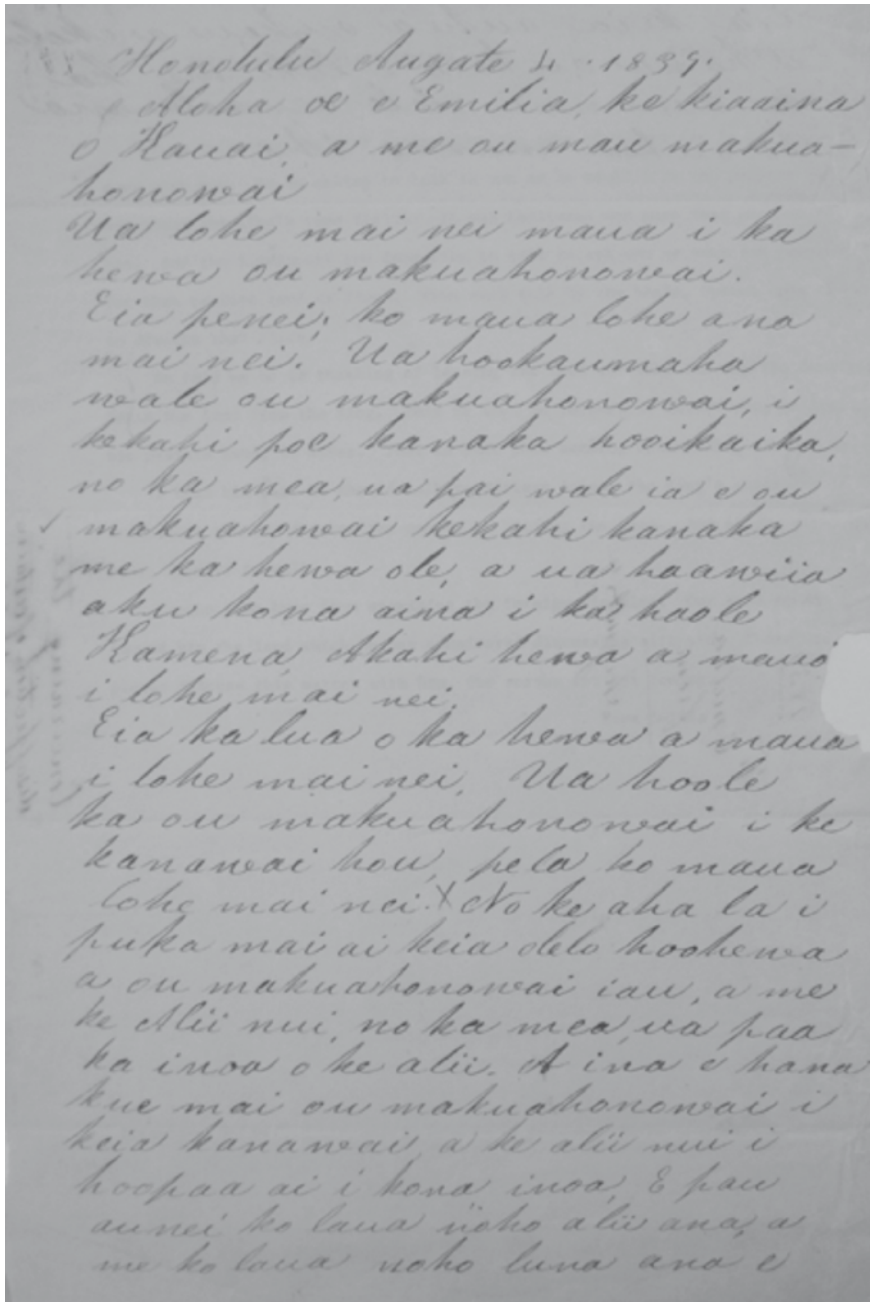



Figure 1: Letter of August 4, 1839. The letter is from a member of Kauikeaouli's council to Emilia Keaweamahi.



Kānāwai ho'oponopono waiwai: Laws organizing wealth

Kanawai Ho'oponopono Waiwai (laws organizing wealth), the second section of the 1839 laws, was enacted on the same day as the Kumu Kānāwai of 1839. Both of these bodies of law were passed at the same meeting of the chiefs. These laws began the process of codifying ancient relationships between ho'āina (chiefs) and konohiki (land managers), and between those of the ali'i class. There are 13 sections and 7 sub-sections:

1. No Ka Auhau O Ke Kino
 2. No Ka Auhau O Ka Aina
 3. No Ka Noa Ana O Ke Kai
 4. No Na Kai Kapu
 5. No Na Koele
 6. No Ka Poe Hana A Me Ka Poe Hana Ole
 7. No Na Kiaaina A Me Na Konohiki
 8. Ka Hana A Na Alii I Ka Makahiki Mua
 9. Ka Hana A Ka Poe Luna Auhau
 10. Ka Hana A Na Wahine
 11. No Ka Hana Ana I Na Mea Hou
 12. No Ka Ili Ana Aku O Ka Aina I Ka Hooilina
 13. No Ka Mahele Wai
-
- I. Auhau O Ka Makahiki Mua
 - II. Ka Hana A Na Alii
 - III. No Na Konohiki
 - IV. No Na Luna I Koho Hou Ia
 - V. Na Mea Kapu O Ke Kuahiwi
 - VI. No Ka Pili Ana O Ke Kanawai
 - VII. Ahaolelo Na Na Alii
-
1. Poll Tax
 2. Land Tax
 3. Open Divisions of the Ocean Given to Subjects
 4. Divisions of the Ocean (and Resources) Kept for the King
 5. Relating to Work Tax
 6. Relating to Landlords and Tenants
 7. Relating to Governors and Land Managers
 8. Relating to the Goals of Laws in the First Year
 9. Relating to Collection of Taxes
 10. Relating to the Work of Women
 11. Relating to Business Following this Law
 12. Relating to Inheritance of Lands by Heirs
 13. Relating to Water Given to all for Irrigation

- 
- I. Relating to Taxes in this Present Year
 - II. Relating to the Rights of Chiefs
 - III. Relating to the Land Managers
 - IV. Relating to New Officers
 - V. Relating to Kapu Items from the Mountains
 - VI. Relating to Administering Law
 - VII. Relating to the Council of Nobles

Through the 24 pages of these laws, Kauikeaouli sought to regulate and codify the relationship between the ali'i and the ho'a'aina, paying special attention to protecting the ho'a'aina from potential abuses of overbearing ali'i. These laws were most critical of the ali'i who excessively burdened ho'a'aina, and sought to protect ho'a'aina from situations where ali'i may have abused their power. Following the death of Kamehameha I, for example, sandalwood passed from his control and came to be owned individually by the chiefs. Many chiefs sent ho'a'aina into the forests to gather sandalwood at the expense of completing other duties. At this time, chiefs certainly may have overly burdened the ho'a'aina (McGregor, 2007, p. 30). These new laws seem designed to help protect ho'a'aina from such chiefs. Later, with the establishment of the Kumu Kānāwai of 1840, the mō'i would also enforce the law in a hybrid fashion, as Kauikeaouli would sit as a Supreme Court Justice for the Hawaiian Kingdom.

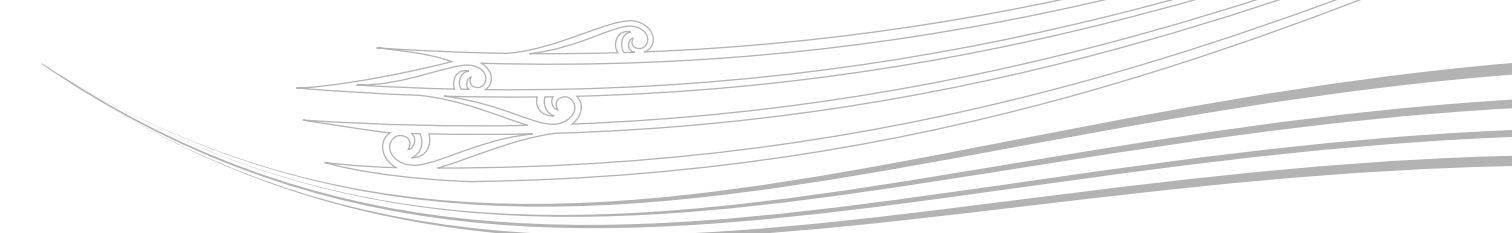
Law as imposition

Colonialist interpretations of the Hawaiian Kingdom have generally concluded that law was imposed on ali'i by missionary advisors such as William Richards, thereby minimizing the part played by ali'i in its creation, acceptance and legitimization. By doing so, such interpretations tend to overlook situations where ali'i used their knowledge of law, gained through advisors and experience, to create something new by codifying Hawaiian customary law. According to Jon Osorio (2002), for example, with the 1839 body of laws

[u]ltimate responsibility for the maintenance of the land and the people in Hawai'i passed from the ancient line of Ali'i and the gods they represented to the newer and much less understood authority of law (p. 25).

While Osorio is certainly correct in saying that law represented a major change, he does not discuss how much the ali'i may actually have understood their usage of law, or even the possibility that laws protecting the ho'a'aina from potentially abusive chiefs may have been welcomed following the mistakes made in the sandalwood trade. Similarly, Sally Engle Merry (2000) writes that

During the brief period from 1825 to 1850 the Kingdom of Hawai'i was transformed from a system of governance based on sacred laws, hereditary rank, and religious authority to one based on Anglo-American common law, a written constitution, and an elected legislature (p. 35).



Because Merry uses the phrase “was transformed,” rather than, perhaps, “the ali’i transformed,” she implies a reform imposed by forces unknown, glossing over the intimate ali’i involvement in the transformation. Merry’s classification of the laws of 1839 as “Anglo-American” is also problematic. While some laws were based on such common law, others were clearly based on Hawaiian custom and ancient structure. Merry’s and Osorio’s analyses downplay not only the fact that ali’i were instrumental in the modernization of the Hawaiian Kingdom, but that they were also selective in their adaptations. In short, acknowledging that the 1839 laws were Hawaiian-informed tools rather than Anglo- or Euro-American impositions allows us to see that by modifying existing structures and negotiating European legal forms, the ali’i created something new—neither completely Euro-American nor “traditionally” Hawaiian, but a combination of both.

Codifying existing indigenous structure

The sections of the 1839 laws devoted to dividing up the ocean and land, and to land inheritance, offer excellent examples of how the ali’i used law to codify existing indigenous structure. In sections 3 and 12 of the laws, the government recognized that resources and land were owned jointly by three classes—the ali’i nui (sovereign), konohiki (chiefs) and the hoā’āina. All the fisheries of the kingdom were divided among these three classes, with Kauikeaouli giving to the hoā’āina “o ke kai kilohee, o ke kai lu hee, o ke kai malolo o ka moana” (the kilohe’e grounds, the lūhe’e grounds, and the mālololo grounds).⁵ These ancient fishing grounds were intimately known by the hoā’āina and chiefs of the time, and their knowledge of such traditional resources was therefore transferred into the codified structure of the modern kingdom. When Kauikeaouli takes for himself fisheries on each island, such as those of Kālia, Ke’ehi, and Kapapa on O’ahu, he is also codifying into modern law the ancient rights of the mō’ī to fisheries and their resources.

The section devoted to land inheritance states that an inheritor must pay a one-third interest to the mō’ī in land, provided there is more than one parcel of land. One-third of the lands controlled by one’s ancestor must therefore revert to the mō’ī—a concept that resembles the ancient redistribution of land by the mō’ī and the other significant ali’i, known as Kālai’āina. What is important about this one-third interest in the division of lands and fisheries is the legal recognition of the three classes in relation to the kingdom’s resources—a notion that would be difficult to find in Euro-American law. According to the 1839 laws, all the landed and marine property in the kingdom was owned jointly by the three classes—the mō’ī, ali’i and hoā’āina. Rather than asserting that all rights to land were vested in the King, the law assumes that these rights were vested in these classes—an assumption consistent with the indigenous Hawaiian custom and practice of Kālai’āina. These principles are articulated even more clearly in the 1840 Kumu Kānāwai, which states

5. See He Kumu Kanawai a me ke Kanawai Hooponopono Waiwai No Ko Hawai’i Pae Aina Na Kamehameha III I Kau 1839, p. 6. Hawai’i State Archives.



Eia ke ano o ka noho ana o na 'lii a me ka hooponopono ana i ka aina. O Kamehameha I., oia ke poo o keia aupuni, a nona no na aina a pau mai Hawaii a Niihau, aole nae nona pono, no na kanaka, a me na 'lii, a o Kamehameha no ko lakou poo nana e olelo i ka aina.

The origin of the present government and system of polity is as follows. Kamehameha I, was the founder of the kingdom, and to him belonged all the land from one end of the islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head, and had the management of the landed property. [Official government translation]

When the Land Commission was formed by a legislative Act of Kauikeaouli in 1845 to investigate land titles, its principles further articulated the vested land rights of the King, chiefs and native subjects. From the earliest codification of law in 1839, however, land was conceived of as jointly “owned” through the undefined interests of these three classes, thereby reflecting ancient Hawaiian land tenure principles.

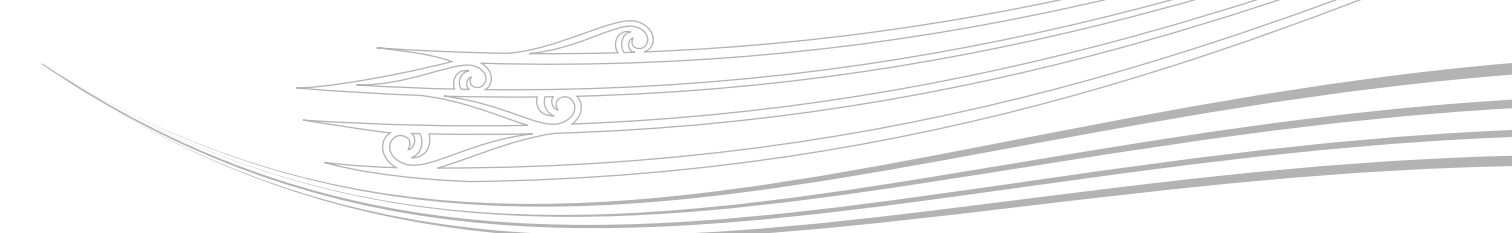
Why these laws were proclaimed, and who was involved in their composition, are questions of central importance when considering the agency of the ali'i in modernizing the Hawaiian Kingdom. Section 8 of the 1839 laws offers some reasons for their passing, and demonstrates that Kauikeaouli attempted to use law to recreate a state of harmony that had existed previously:

O ka imi i ka pono a oi aku mamua o ka malu a'u i lohe ai no keia pae aina, ia Kamehameha, o ka hele o ka elemakule, a me ka luahine, a me ke keiki a moe i ke ala; o ka hoopau ae i ka noho naaupo ana o na konohiki a me na luna auhau aku i na makaainana, no laila mai ke kaumaha i hana ole ai ka poe hana, a i ilihune loa ai ke aupuni...Oia ka hana a na alii e noonoo ai a e mau ai hoi ka noho alii ana maluna o keia pae aina, e hoi nui aku ko kakou mau kanaka a pau i kuaaina e mahi ai, a e imi i waiwai no lakou.

To seek even greater justice and peace than that I had heard of for this Kingdom, as stated by Kamehameha, wherein the elderly could roam freely, and children could sleep in the open without fear [the law of Māmalahoa]. Also, to cease the burdening behaviours of the Konohiki and the tax collectors to the maka'āinana, therefore do not burden the workers so greatly that they are able to accomplish nothing and leave the government destitute. These are the works that the chiefs should encourage so that they can continue to be as chiefs in these islands, to encourage all of our people to return to the countryside to cultivate and labour for a wealth of their own.

Kauikeaouli was explicitly attempting to use law to restore the state of pono (secured harmony) that had existed in the later years of his father's reign. Māmalahoa, the law proclaimed by Kamehameha I to protect people travelling through the kingdom, is made explicit, as is Kauikeaouli's desire to place people back on the land to farm and cultivate it.

A brief consideration of the rapid depopulation of the islands suggests what problems Kauikeaouli was trying to remedy. The population in Kamehameha's time was almost 800,000 (Stannard, 1989, p. 59), but by 1836 it had fallen to 107,954 (Kame'eleihiwa, 1992, p. 141). A population only 14% of the size it had been at the time of Cook's arrival



in 1778 was therefore left to carry out the same number of tasks. Clearly, this would have been a monumental challenge. Even in early times, however, when the population had not yet been affected by the influx of foreign disease, it was not uncommon for a mō'ī to encourage industry in the people. Stephen Desha (1996) has noted that Kamehameha returned from his conquest of O'ahu to famine in Kona, so he encouraged the hoā'āina to labour and cultivate the soil (Vol. 2, p. 283). Kauikeaouli therefore used the law to encourage cultivation and industry over his lands in ways consistent with the chiefs of old.

Boaza Mahune, the King's kanaka

But who, then, actually wrote the Kumu Kānāwai and the laws of 1839? A report in the Hawaiian Spectator of that year describes how they were written by a student of Lahainaluna, Boaza Mahune, under the supervision of Kauikeaouli. I will quote an extended passage to give a full sense of the procedures:

They [the laws of 1839] were written by a graduate of the Seminary at the direction of the king, but without any definite instructions as to what he should write. He in the first instance wrote about one third of the present quantity of matter, and that was read to the king and several of the chiefs, who met and spent two or three hours a day for five days in succession, in the discussion of the laws, and the various subjects of which they treated. In some particulars the laws were pronounced defective, in others erroneous, and the writer was directed to re-write them, and conform them to the views that had been expressed. This was done, and they were thus considerably enlarged, and then passed a second reading at a meeting of the king and all the important chiefs of the Islands.

At this reading a longer time was spent than at the first. They were still pronounced defective, and further additions and corrections were made in the same manner and by the same person as before. They then passed a third and last reading, after which the king inquired of the chiefs if they approved, and on their saying, yes, he replied, 'I also approve,' and then rose and in their presence suffixed his name.⁶

At least according to this account, these laws were not imposed on the ali'i; in fact, the ali'i were cautious and selective in their formulation of the laws. Mahune went through multiple revisions before the laws conformed to the wishes of the chiefs and mō'ī. Clearly, the ali'i were truly creating law—cautiously determining the appropriate content, designing the laws to reflect their own considerations and account for their reservations, and ultimately, to produce a pono state for society.

There are differing accounts about the authorship of these laws. Lilikalā Kame'eleihiwa (1992) notes that according to Kamakau, the Kumu Kānāwai was drawn up by William Richards, with Boaza Mahune representing the mō'ī Kauikeaouli and Iona Kāpena representing Kīna'u the kuhina nui (regent), and has questioned whether the laws were written by Boaza Mahune (pp. 174, 368). But Richards' own report states that the laws were written by Mahune, providing evidence that counters Kamakau. In any case, both

6. Hawaiian Spectator (1839), p. 247.



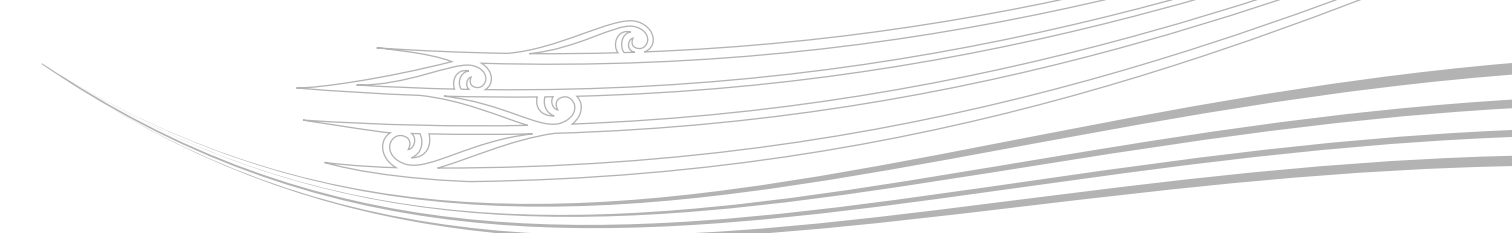
accounts agree that the ali'i met on a number of occasions to shape the laws, indicating their direct crafting of written Hawaiian law and selective appropriation of Euro-American law for their own purpose. Later laws were also drafted by 'ōiwi, reflecting their further appropriation of modernity (Chun & Malo, 2006, p. xiv).

Ali'i selective appropriation of modernity: Contemporary implications?

This article has examined 'ōiwi engagement with modernity through the laws enacted in 1839 by Kamehameha I and his council of chiefs. It has demonstrated that the ali'i were intimately involved in the modernization of Hawaiian society. It was a modernization accomplished through the codification of existing indigenous structure coupled with the selective appropriation of Euro-American law. The practical value of law for Kamehameha I in the context of the islands' geopolitical situation during his reign should not be underestimated. Law offered many practical advantages for ali'i. Law allowed a nation to stand as a theoretical equal in diplomatic negotiations with a country of superior military power. Law could set semi-autonomous regulations within the defined boundaries of one's nation. Embracing the concept of law could also keep foreign powers from using their military strength to assume control over a "lawless" nation and population. For a nation unequally matched in infantry, naval vessels and steel, law was a significant tool—one that could be manipulated non-violently to maintain control domestically and decrease the likelihood of external intervention.

Other examples of the ali'i's selective appropriation of the tools of modernity can be seen in their use of maps and newspapers. Many of the maps produced in the Hawaiian Kingdom "effectively preserved a considerable body of indigenous knowledge of place" (Beamer & Duarte, 2009), and Hawaiian-language newspapers such as *Ka Hoku o ka Pakipika* "reflected and communicated a specifically Kanaka national identity" (Silva, 2004, p. 85). As they had been with the laws of 1839, ali'i were also intimately involved in appropriating map-making and the printing press. It can be argued that maps and newspapers were used by 'ōiwi as a means to resist rather than facilitate colonialism prior to the Kingdom's recognition as an independent state.

This article has also called into question a colonial analysis of the Hawaiian Kingdom prior to 1893. It has articulated the agency of the ali'i in selectively appropriating modernity, suggesting that it was not a missionary imposition. I have argued that prior to 1893, 'ōiwi were not subjugated by an outside force or ruled by a distant colonial power, but rather by ali'i who successfully maintained sovereignty and warded off threats against Hawaiian independence. The significance of the Hawaiian nation-state in providing access to power for 'ōiwi has been underestimated in previous scholarship on the Hawaiian Kingdom (Trask, 1999; Kame'eleihiwa, 1992; Merry, 2000; Osorio, 2002; Silva, 2004; Beamer, 2008). If "language carries culture" (Ngūgĩ wa Thiong'o, 1994, p. 16), the fact that the Hawaiian language was thriving both in the public and private spheres prior to 1893 is



significant because it suggests that the “cultural bombs” of colonialism had not been in place before the overthrow. In fact, one of the early orders of business by Lorrin Thurston and the “provisional government” following the United States-backed coup de main of Queen Lili‘uokalani in 1893, was to plant a “cultural bomb” by calling for the removal of the Hawaiian language as a qualification for public office,⁷ and in 1896 formally removing the Hawaiian language as a medium of instruction in public schools.⁸

Concerned with seeing the ali‘i rather than missionaries as the agents in historical analysis, this article has provided a healthy counterpart to notions of ‘ōiwi passivity. But conclusions drawn from this article’s analysis speak not only about the past. They also have contemporary implications for ‘ōiwi in terms of how we see ourselves now and in the context of our history. There is a present-day debate in Hawai‘i regarding the use of the term “occupation” rather than colonization to express the relationship of the United States with Hawai‘i following the overthrow. I agree with scholars such as Kanalu Young and Keanu Sai that “occupation” is the proper term. However, this article is making a slightly different argument by refuting a colonial analysis of the Hawaiian Kingdom prior to 1893. I am questioning a colonial analysis of the Kingdom because I think that ‘ōiwi having and not having a country represents a fundamental change in structure and access to power. I do not see the overthrow as “the culmination of seventy years of U.S. missionary presence in Hawai‘i” (Silva, 2004, p. 202). Rather, it is a critical assault on indigenous Hawaiian structure within the hybrid Hawaiian nation-state, marking the beginning of the United States occupation. Furthermore, documenting the drastic changes following the overthrow and recasting of the Hawaiian language as an illegitimate mode of communication show that the overthrow was significant. I do not see many of the critical issues faced by ‘ōiwi today in terms of landlessness, language loss and cultural bewilderment as the result of our ali‘i being fooled by foreigners as much as being the result of the overthrow and occupation of our country by the United States.

Rather than seeing ali‘i such as Kauikeaouli as “weary and frightened” (Trask, 1999, p. 5), or the entire succession of mō‘ī as “little more than figureheads” (Kinser, 2006, p. 9), I have shown that ali‘i were empowered and engaged in navigating a future course for ‘ōiwi. Ali‘i appropriated tools and concepts of foreign origin as a means to advance the lāhui (nation) as a whole. The achievements of those such as Kauikeaouli and Boaza Mahune in creating and codifying Hawaiian law are acts worthy of further scholarly interpretation, and in my view are also worthy of praise. Accenting the achievements of ali‘i and ancestors, and seeing them as more than mere victims frees their spirits. At the same time it empowers and liberates ‘ōiwi to take control of the future, to emancipate our minds from previously established binaries, determined expectations and limited possibilities.

7. See Republic of Hawai‘i. (1894, May 15). Minutes of the Executive Council,. Series 432, Vol. 2. Hawai‘i State Archives .

8. See Republic of Hawai‘i (1896). Session Laws, Act 57, Section 30. Hawai‘i State Archives.



Acknowledgements

I would like to thank the reviewers and editors of *AlterNative*, the staff of Ho'okulāiwi, and especially Dr Laiana Wong for his kōkua and insight. The majority of this article was completed during my Mellon–Hawai'i postdoctoral fellowship, so a special mahalo to the Mellon Foundation, Dr Matt Hamabata, and the Kohala Center staff for their support.

Author Biography

Kamanamaikalani B. Beamer has bachelor's degrees in Philosophy and Hawaiian Studies. He received his MA in 2005 and his PhD in Geography in 2008. He is currently a member of the inaugural class of Mellon-Hawai'i Post-Doctoral Fellows. Kamana has been an active member of the Native Hawaiian community through his involvement with Hawaiian resource management initiatives and political activism and he is a songwriter and performer for the Hawaiian music band Kāmau.

Glossary

Hawaiian

'ahu'ula

'ōiwi

Akua

ali'i

ali'i nui

hoa'āina

kāhili

kānāwai ho'oponopono waiwai

konohiki

konohiki

kuhina nui

lāhui

lo'i

mahi 'ai kalo

maka'āinana

mele

mō'i

mo'olelo

oli

pono

English

feathered cloaks

native Hawaiian; lit. of the bones

God

chiefs

sovereign

chiefs

feather standards

laws organizing wealth

chiefs

land managers

regent

nation

irrigated pond fields

taro cultivation

native subjects

song

sovereign

oral history

chant

proper; secured harmony



References

- Achiu, J. K. (2002). Nā kumukānāwai o ka makahiki 1839 a me ka 1840. In D. M. Dudoit, K. Kamai, & S. Fukushima (Eds.), *Ka hoʻoilina: The legacy, Vol 1*, pp. 30–59. Honolulu: Kamehameha Schools Press.
- Andrews, L. (2003). *A Hawaiian dictionary of the Hawaiian language*. Waipahu: Island Heritage Publishing. (Originally published 1865)
- Beamer, K. B. (2008). *Na wai ka mana? ʻŌiwi agency and European imperialism in the Hawaiian Kingdom*. Unpublished doctoral thesis, University of Hawaiʻi at Mānoa, Honolulu.
- Beamer, K. B., & Duarte, T. K. (2009). I palapala ana no ia aina—documenting the Hawaiian Kingdom: A colonial venture? *Journal of Historical Geography*, 35, 66–86.
- Desha, S. (1996). *He moʻolelo kaʻao no kekūhaupio ke koa kaulana o ke au o kamehameha ka nui* (Vol. 2). Hilo: Hale Kuamoʻo.
- Hawaiian Kingdom Constitution of 1840 (1841). Hawaiʻi State Archives.
- Hawaiian Spectator* (1839). Hawaiʻi State Archives.
- He Kumu Kanawai a me ke Kanawai Hooponopono Waiwai no ko Hawaii nei pae Aina na Kamehameha III i Kau (1839). Hawaiʻi State Archives.
- Kamakau, S. M. (2001). *Ke aupuni mōʻī: Ka moʻolelo Hawaiʻi no Kauikeaoli, keiki hoʻoilina a Kamehameha a me ke aupuni āna i noho mōʻī ai*. Honolulu: Kamehameha Schools Press.
- Kameʻeleihiwa, L. (1992). *Native lands and foreign desires: Pehea lā e pono ai*. Honolulu: Bishop Museum Press.
- Kamehiro, S. L. (2006). Iolani Palace: Spaces of kingship in late nineteenth-century Hawaiʻi. *Pacific Studies* 29, 1–36.
- Kinser, S. (2006). *Overthrow: America's century of regime change from Hawaii To Iraq*. New York: Times Books, Henry Holt and Company.
- Malo, D. & Chun, M. N. (Eds.). (2006). *Ka moʻolelo Hawaiʻi*. Honolulu: First Peoples Publications.
- McGregor, D. P. (2007). *Nā kuaʻāina: Living Hawaiian culture*. Honolulu: University of Hawaiʻi Press.
- Merry, S. (2000). *Colonizing Hawaiʻi: The cultural power of law*. Princeton: Princeton University Press.
- Mykkänen, J. (2003). *Inventing politics: A new political anthropology of the Hawaiian Kingdom*. Honolulu: University of Hawaiʻi Press.
- Ngūgĩ wa Thiongʻo (1994). *Decolonising the mind: The politics of language in African literature*. London: James Currey/Heinemann.



- Osorio, J. K. (2002). *Dismembering lāhui: A history of the Hawaiian nation to 1887* (pp. 213–237). Honolulu: University of Hawai‘i Press.
- Osorio, J. K. (2003). Kū‘ē and kū‘oko‘a: History, law, and other faiths. In S. M. Merry, & D. Brenneis (Eds.), *Law & Empire in the Pacific: Fiji and Hawai‘i* (pp. 213–237). Santa Fe & Oxford: School of American Research Press/James Currey.
- Pukui, M. K. (1983). *‘Ōlelo no‘eau Hawaiian proverbs & poetical sayings*. Honolulu: Bishop Museum Press.
- Pukui M. K., & Elbert, S. (1957). *Hawaiian dictionary*. Honolulu: University of Hawai‘i Press.
- Republic of Hawai‘i (1896). Session Laws, Act 57, Section 30. Hawai‘i State Archives.
- Republic of Hawai‘i (1894, May 15). Minutes of the Executive Council, Series 432, Vol. 2. Hawai‘i State Archives.
- Sai, D. K. (2004). American occupation of the Hawaiian state: A century gone unchecked. *Hawaiian Journal of Law and Politics*, 1, 46–81.
- Sai, D. K. (2008). *The American occupation of the Hawaiian Kingdom: Beginning the transition from occupied to restored state*. Unpublished doctoral thesis, University of Hawai‘i at Mānoa, Honolulu.
- Silva, N. K. (2004). *Aloha betrayed: Native Hawaiian resistance to American colonialism*. Durham: Duke University Press.
- Stannard, D. E. (1989). *Before the horror: The population of Hawaii on the eve Of Western contact*. Honolulu: University of Hawai‘i Press.
- Trask, H. K. (1999). *From a native daughter: Colonialism and sovereignty in Hawai‘i*. Honolulu: University of Hawai‘i Press.
- Young, K. (2006). Kuleana: Toward a historiography of Hawaiian national consciousness, 1780–2001. *Hawaiian Journal of Law and Politics*, 2, 1–33.