

Ke Kanawai: J. Moku‘ōhai Poepoe’s Obscure Law Journal

A. Kuuipoleialoha Poai

‘ŌLELO HŌ‘ULU‘ULU / SUMMARY

‘O ka ‘ōlelo kānāwai, he mea mana ko‘iko‘i nō. Ke unuhi hewa ‘ia kekahi hua‘ōlelo, he ho‘okahi wale nō, e lilo wale paha kahi ‘āpana ‘āina kulaiwi iā ha‘i, a e ho‘omaka wale paha kahi hihia kānāwai e ‘ilihune ai kekahi o nā hoa paio—a i ka wā i hala aku, e ho‘ili hewa ‘ia paha ka ho‘opa‘i lawe ola ma luna o ke kanaka hala ‘ole. ‘O Iosepa Moku‘ōhai Poepoe, he loea i ka hana loio, he mea akeakamai, a he mea kākau. Ua ‘ike pono ‘o ia—he 135 mau makahiki a ‘oi i hala aku nei—e ulu ka mana o nā Kānaka ‘Ōiwi i ka ho‘ona‘auao ‘ia ‘ana ma ko mākou pono kīwila. Ma kēia ‘atikala, ho‘olauna ‘ia kā Poepoe puke pai kānāwai, ‘o ia ho‘i, *Ke Kanawai*. E hō‘ike kēia puke pai nei i ka hana kūpa‘a āna no ka ho‘omaopopo ‘ana i ka ‘ike kānāwai no nā mea kama‘āina ‘ole i ka ‘ōlelo Beretānia.

The language of law is powerful. The mistranslation¹ of a single word can lead to a multi-million-dollar lawsuit or the loss of ancestral land—historically, it could even mean the difference between life or death. Joseph Moku‘ōhai Poepoe, a talented lawyer, scholar, and writer, wisely recognized over 135 years ago that knowledge of legal rights could empower Native Hawaiians. This article introduces Poepoe’s law journal, *Ke Kanawai*, which illustrates his lifelong dedication to provide access to justice for those who only spoke ‘Ōlelo.

‘ŌLELO MUA / INTRODUCTION

That a Native Hawaiian was nearly arrested for speaking his mother tongue in 2018 indicates that despite the substantial progress made to revive the Hawaiian language over the years, we still have much further to go.

—Statement of Kamana‘opono Crabbe (2018),
CEO, Office of Hawaiian Affairs

Article XV, Section 4 of the Hawai‘i State Constitution recognizes ‘ōlelo Hawai‘i as a co-official language of the state. And yet, other than a few “token phrases,”² the use of ‘ōlelo Hawai‘i is largely symbolic and mostly excluded from our legal system. Indeed, questions relating to the utilization of ‘ōlelo Hawai‘i in courts have generally been met by judges with concerns about costs and judicial economy.³

In 2018, one judge went further and criminally penalized a defendant for the use of ‘Ōlelo in the courtroom. This resulted in the issuance of a \$750 bench warrant for the defendant’s “failure to appear in court” (Davis 2018). Although the bench warrant was revoked the next day, it sparked outrage in the community.

In response, the Hawai‘i State Judiciary issued a new policy stating that it would “provide or permit qualified Hawaiian language interpreters to the extent reasonably possible when parties in courtroom proceedings choose to express themselves through the Hawaiian language” (Hawai‘i State Judiciary 2018). The parameters of this policy have yet to be described, but the argument goes that no meaningful access to justice may be achieved without language parity.

The use of ‘Ōlelo in our government today is nearly nonexistent—a problem that can be attributed to an unjust history. For a period of time, ‘Ōlelo was the original language used by the courts and the legislature. By critically analyzing our legal history, we see embedded in its statutes, precedents, and legislative history a hidden narrative that shaped the dominant discourse we see today that omits or seeks to silence Native Hawaiian voice (Poai 2017, 598).

For Native Hawaiians, our continuing battle for self-determination has often involved issues related to our history and how it has been “interpreted” by the law (see, e.g., Smith 2005, 33).⁴ To combat these threats to our self-determination and achieve justice, we seek answers from our ancestors, who carefully bequeathed to us a vast repository of legal knowledge. Hawaiian Kingdom-era government and legal records are considered to be one of the most valuable and expansive written sources of Hawaiian. Within these records are the words of Native Hawaiian royalty, statesmen, jurists, attorneys, and everyday people.

This article introduces *Ke Kanawai*, an obscure law journal produced by esteemed author, editor, and attorney Joseph Moku‘ōhai Poepoe. Believed lost by scholars (see, e.g., Silva 2017, 136),⁵ *Ke Kanawai* reflects Poepoe’s concern for and commitment to providing equal access to justice for speakers of ‘Ōlelo. Although the title, *Ke Kanawai*, suggests it was focused on the dissemination of legal knowledge, it provides so much more, including carefully crafted translations and commentaries on a variety of topics, such as English grammar, *kākā‘ōlelo* (the art of oratory), and *mo‘okū‘auhau* (genealogy). Importantly, it provides rich insight into Poepoe’s sentiments regarding law and perhaps its restorative power. The first three issues⁶ of *Ke Kanawai* are reproduced in the reprints section of this journal so other scholars can examine and further expound upon Poepoe’s impressive work.

NO KA PAPA LOIO / ADMISSION TO THE HAWAI‘I BAR

Poepoe studied law under Judge P. Kamakaia, W. R. Kākela (Castle), S. B. Dole, J. M. Davidson, and Lukela (*Ke Aloha Aina* 1912, 1). At the age of twenty-nine, Poepoe was granted a license⁷ to practice law before the police and district courts of the kingdom as well as the intermediary court on January 10, 1882 (“Records of the Judiciary Branch” 1882). On January 7, 1883, Poepoe submitted a petition to practice law in all of the courts in the kingdom—this included the Hawai‘i Supreme Court (*ibid.*).

In his petition, he stated in English, “Your petitioner has ever been in Mr. Russell’s Law Office, who is a member of the Bar of this Court, and has been under his tuition ever since he was admitted to practice” (ibid.). John Russell⁸ wrote in support of Poepoe, noting, “I certify that the facts contained in the annexed and foregoing petition are true and recommend the prayer of the same” (ibid.). Poepoe’s petition was granted, allowing him to join the Hawai‘i Bar—at the time, a small, elite group of educated men who were permitted to practice law before all Hawai‘i courts.⁹

In 1883, of the approximately sixty attorneys licensed to practice law before all courts¹⁰ in the kingdom, twenty-one were Hawaiian. Thus, Native Hawaiians represented only 35 percent of the Hawai‘i Bar. According to the 1884 census, the Kingdom of Hawai‘i had a population of 80,578, with Native Hawaiians comprising approximately 55 percent¹¹ of the total population (Schmitt 1968, 74). Overall, attorneys comprised less than 1 percent of the total population, and Native Hawaiians, as compared with the total Native Hawaiian population, were underrepresented in the Hawai‘i Bar.

In comparison, in 2018, 473 of the 4,931 active attorneys registered with the Hawai‘i bar (or 10.36 percent) were Native Hawaiian¹² (Hawai‘i State Bar Association 2018, 6). Hawai‘i has an estimated population of 1.43 million, and Native Hawaiians represent 10.2 percent of the total population (United States Census Bureau, n.d.). Similar to the demographics of 1883, attorneys represent less than 1 percent of the total population. Today, however, Native Hawaiians appear to be adequately represented in the Hawai‘i Bar, as compared with the total Native Hawaiian population.

These statistics are important to mention because the legal profession has historically been an “exclusive club.” Poepoe’s admission to the Hawai‘i Bar represented a singular accomplishment. But more importantly, as evidenced by his later publication of *Ke Kanawai* and other works dedicated to disseminating legal knowledge in ‘Ōlelo, he recognized the profound power and concomitant responsibility attorneys have in providing equal access to law. Indeed, soon after Poepoe’s admission to practice in the early 1880s, he endeavored to share legal knowledge with the public in various contributions to the Hawaiian-language newspaper *Ka Hoku o ke Kai*.¹³ In doing so, Poepoe embarked on a lifelong journey to provide increased access to justice for Native Hawaiians.

NO KA ‘OIHANA LOIO / THE PRACTICE OF LAW

Poepoe appeared as counsel in at least eleven reported cases before the Hawai‘i Supreme Court.¹⁴ Seven of these cases were published between 1884 and 1885.¹⁵ During that two-year period, there were a total of 711 cases (*Biennial Report of the Chief Justice of the Supreme Court to the Legislative Assembly of 1886*, 1886, 12) entered before the Hawai‘i Supreme Court, but of that total, only approximately 151 of those cases¹⁶ were ultimately selected for publication in the Hawaiian Reports—a published series covering the opinions and decisions issued by the Hawai‘i Supreme Court. Thus, Poepoe’s appellate record represented 4.6 percent of the overall total during this time period¹⁷ (ibid., 14).

Some may endeavor to romanticize Poepoe’s legal career—perhaps envisioning a man who selectively represented only the most deserving of our community. Characterizing Poepoe in this way marginalizes his skill as an attorney and minimizes a

founding principle of the legal profession: everyone deserves representation and equal access to the law. Litigators might look at his body of work and see a fighter undaunted by the prospect of tackling unfavorable facts and representing so-called disreputable individuals.

Becoming an accomplished attorney takes patience, skill, and dogged determination. The cases that will most test your grit as an attorney are said to be the unwinnable cases. And certainly, some of Poepoe's cases suggest that he was dealing with challenging facts. For example, in *In re Keliikoa*, 5 Haw. 279 (1885), he and co-counsel Holokahiki were pitted against Antone Rosa. In that matter, they represented two attorneys who reportedly took "special opportunity to plunder the ignorant and timid" (*ibid.*, 282). Poepoe and Holokahiki lost, and their clients were found "guilty of conduct which violate[d] their obligations as attorneys" (*ibid.*).

Poepoe and Holokahiki went head-to-head with Rosa in another difficult case, *In re Kahulu*, 5 Haw. 283 (1885). In that matter, Poepoe and Holokahiki represented a judge accused of committing offenses that rendered him "totally unfit" to hold the position of district judge (*ibid.*, 285). This time, the court ruled that while "it appears there are many delinquencies and errors of this magistrate to be condemned . . . he is not guilty of fraud or of willful neglect of duties" (*ibid.*, 284). Despite strong words of condemnation, the district judge was permitted to complete his term, thus representing a small victory for Poepoe and Holokahiki (*ibid.*).

Over time, Poepoe not only gained valuable legal experience, he also became an adept legal translator and interpreter. Attorney advertisements (see below) at different points in his career reflected his growing expertise. At first, in 1883, Poepoe's advertisements were quite short: "Ua makaukau e hana i na Palapala pili kanawai a pau loa" (August 11, 1883, 4). These advertisements simply pointed to his "proficiency in preparing all legal documents." By 1887, the advertisements were longer: "Ua makaukau e hana i na palapala pili kanawai a pau, a he mea Unuhi a Mahele Olelo Beretania

Joseph. M. Poepoe,
He Loio a he Kokua ma ke kanawai
UA MAKAUKAU e hana i na Palapala pili kanawai
 a pau loa.
KEENA HANA—Motoko o ke keena o ka Loio i kela
 na Alani Kalepa.
 1883.

Figure 1. 1883 Advertisement in *Ko Hawaii Pae Aina* (Poepoe, August 11, 1883, 4)

JOSEPH. MOKUOHAI POEPOE
Loio a Kokua ma ke Kanawai.
 Ua makaukau e hana i na palapala pili kanawai a pau, a he mea Unuhi a Mahele Olelo Beretania a Hawaii. E paneia no na ninau e pili ana i na moohia no na Aha Hookolokolo.
Keena Hana: Maluna ae o ka Banako o Seperekela.
Puka, Komo: Mauka iho o ka halepohaku o Waila ma. 1-tf

Figure 2. 1887 Advertisement in *Ke Alakai o Hawaii* (Poepoe 1887, 1)

a Hawaii. E paneia no na ninau e pili ana i na moohihia no na Aha Hookolokolo” (Poepoe 1887, 1). Poepoe’s expertise had expanded and now included the ability to serve as a “translator/interpreter for English and Hawaiian.” He was also capable of “responding to questions related to case records for the courts.”

NO KE PA‘I ‘ANA O KE ALAKAI O KE KANAKA HAWAII /
PUBLICATION OF KE ALAKAI O KE KANAKA HAWAII

In 1891, Poepoe published *Ke Alakai o ke Kanaka Hawaii*, which was comprised of three parts: (1) “He Buke no na Olelo Hooholo o ka Aha Kiekie” (Decisions of the Hawai‘i Supreme Court), (2) “Na Rula o ka Aha Kiekie a me Na Aha Kaapuni a me na Aha Hoomalu me Apana o Ko Hawaii Pae Aina” (Rules of the Hawai‘i Supreme Court, Circuit Courts, and District and Police Courts of the Hawaiian Islands), and (3) “Ke Kanawai, Oia Hoi ka Hoakaka Kanawai” (Legal Digest, Exposition of Law). Dr. Noe-noe Silva (2017, 118) provides an excellent overview of *Ke Alakai o ke Kanaka Hawaii*, and, as she explains, “Poepoe demonstrates here his sense of kuleana to his fellow Kānaka who were not bilingual yet were at the mercy of the law.”

It might help, however, to have a better understanding as to the particular circumstances Poepoe faced in publishing *Ke Alakai o ke Kanaka Hawaii*. With regard to the first part, “He Buke no na Olelo Hooholo o ka Aha Kiekie,” it is actually the third volume in a series of translated reported cases. Each of these volumes correlates to published decisions contained in the Hawaiian Reports. As noted previously, the Hawai-

Table 1. Number of Hawaiian cases translated vs. number of English cases published in Hawaiian Reports^a

Author	Number of cases translated	Years covered	Hawaiian Reports (HR) volumes	Number of English cases contained in HR volumes
William Ragsdale	60	1847–65	vol. 1 (1846–56) vol. 2 (1857–65)	vol. 1 = 125 vol. 2 = 173
Henry Sheldon	186	1857–81	vol. 2 (1857–65) vol. 3 (1866–77) vol. 4 (1877–83)	vol. 3 = 168 vol. 4 = 149
Joseph Poepoe	48	1849–89	vol. 1–4 (1846–83) vol. 5 (1883–86) vol. 6 (1866–1889) vol. 7 (1887–89) vol. 8 (1889–92)	vol. 5 = 177 vol. 6 = 179 vol. 7 = 164 vol. 8 = 184
Total	294			1,319

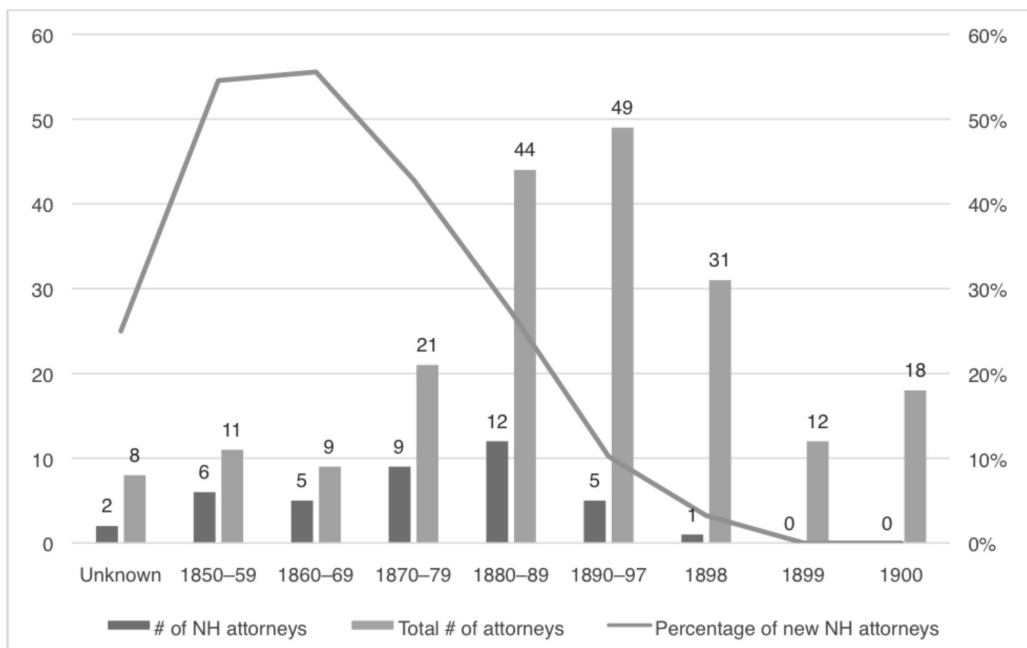
a. Data listed in table 1 was obtained using Westlaw’s Hawai‘i database, with the following advanced search parameters: “CI(#-haw).” The symbol # was replaced for the specific reporter volume number, thereby producing a list of all cases contained in that particular reporter volume.

ian Reports mainly contain the decisions rendered by the Hawai‘i Supreme Court, although other materials (rules, decisions from lower courts, etc.) are also sometimes included.

The first volume of translated cases is entitled *Na Olelo Hooholo o ka Aha Kiekie o ko Hawaii Pae Aina*. It was authored by William P. Ragsdale and published in 1867.¹⁸ The second volume, entitled *Na Olelo Hooholo i ka Aha Kiekie o ko Hawaii Pae Aina, 1857–1881*, was published in 1881 by Henry R. Sheldon. Table 1 above summarizes the total number of cases translated by each author as compared to the approximate total number of English cases contained in the corresponding Hawaiian Reports. This is relevant because it illustrates the sheer amount of information missing for those who only spoke ‘Ōlelo.

The combined efforts of Ragsdale, Sheldon, and Poepoe resulted in the translation and publication of only 22 percent of the decisions issued by the Hawai‘i Supreme Court as of 1891. By the time Poepoe published *Ke Kanawai* in 1902, there were approximately 2,070¹⁹ published decisions issued by the Hawai‘i Supreme Court. This now meant only 14 percent of the decisions of the Hawai‘i Supreme Court were translated. In short, the Hawaiian-speaking public was at a distinct disadvantage in having full access to the law—an issue that Poepoe continuously sought to address throughout his life, as demonstrated by his contributions to *Ka Hoku o ke Kai* and his publication of *Ke Alakai o ke Kanaka Hawaii* and *Ke Kanawai*.

Table 2. Newly admitted Native Hawaiian (NH) attorneys to Hawai‘i Bar^a



a. Data listed in table 2 was derived from the *Report of the Chief Justice* (1901, 161–66).

NO KE PA'I 'ANA O KE KANAWAI / PUBLICATION OF KE KANAWAI

For some time prior to the 1890s, Hawai'i had been steadily moving toward English-only educational and legal systems (Poai 2017, 595). This became further solidified in 1900 when Congress passed the Organic Act²⁰ establishing Hawai'i's territorial government. For example, the Organic Act provided in pertinent part that in the Territory of Hawai'i, "all legislative proceedings shall be conducted in the English language."²¹

The exclusion of 'Ōlelo in our legal system had a pernicious effect, and one such example may be seen in the precipitous decline in Native Hawaiian membership in the Hawai'i Bar (see table 2 above). From 1852 to 1901, approximately 203²² attorneys were admitted to practice before all courts in Hawai'i (*Report of the Chief Justice of the Supreme Court of the Territory of Hawaii for the Years 1898, 1899 and 1900, 1901*, 161–66). Of that total, an estimated forty were Native Hawaiian. Between 1890 and 1901, a total of 110 new attorneys were admitted to practice before all Hawai'i courts, but only six of those new attorneys were Native Hawaiian.

By 1901, there were 145 attorneys actively practicing before the Hawai'i Supreme Court, but only nineteen of those attorneys were Native Hawaiian. When Poepoe first joined the Hawai'i Bar in 1883, Native Hawaiian attorneys were underrepresented comprising only 35 percent of the population. By 1901, Native Hawaiian representation in the Hawai'i Bar shrank to 13 percent, and only six new Native Hawaiians had joined since 1890. Table 2 above tracks the total number of newly admitted Native Hawaiian attorneys from 1850 to 1900—of particular note is the dramatic decline²³ occurring in the latter part of the nineteenth century.

While Native Hawaiians were underrepresented in the Hawai'i Bar, they were overrepresented in the prison population. In 1900, the Territory of Hawai'i had a population of 154,001, with Native Hawaiians comprising approximately 24.4 percent of the total population (Schmitt 1968, 120). In comparison, the Native Hawaiian prison population for the period of 1898–99 was at 30 percent²⁴ (*Report of the Chief Justice 1901*, xxx). Notably, this level of Native Hawaiian overrepresentation in the prisons seemingly appears only at the turn of the century.²⁵

Such were the circumstances facing our loio kūpuna. The inequities perpetuated by a legal system that excluded 'Ōlelo, and the dearth of available legal materials in 'Ōlelo, must have been evident to any Native Hawaiian judge or attorney actively practicing law at that time. Arguably, Poepoe's *Ke Kanawai* offered a temporary salve to these harms.

In February 1902, announcements were made regarding the publication of *Ke Kanawai* (*Ka Nupepa Kuokoa* 1902, 5; *Ke Aloha Aina* 1902, 4). The advertisements suggest that it was the first in a series—perhaps similar to a law journal or serialized publication containing scholarly articles and commentary on legal topics. Figures 3 and 4 below are examples of advertisements for *Ke Kanawai*.

The first issue in the series of *Ke Kanawai* may be found at the Hawai'i State Archives and the Hawaiian Mission Houses Archives (Poepoe, January 1902). The State Archives' copy (see figure 5 below), which was originally housed in the Dole Collection, is of particular interest because it contains a signed dedication from Poepoe to Dole: "Kiaaina Dole, Me ke aloha a hoomaikai makahiki hou o kekahi o kau mau

He Buke Maikai.

He mea maikai i kela a me kela kaka Hawaii e kua i ka Buke "Ke Kanawai" e hoopuka ia nei e J. Mokuohai Poepoe. He buke kela e hoonaaao ana ia kakou, na Hawaii, ma na mea maikai, a ua makepono loa ke dala e lilo ana malaila. Mai poina e na Hawaii, he 50 keneta no ka helu hookahi.

Figure 3. Advertisement in *Ka Nupepa Kuokoa*, February 14, 1902

KE KANAWAI.

Ua loa ma i ka makou he kope o ka buke mua a ko makou hoaloha J. M. Poepoe i hoopuka ae nei i kapata "Ke Kanawai," he maemae a uaauao na alaka'i kanawai ana maloko ona. O ke kumu-kua'i he 50 keneta no ka buke hookahi, a he mea pono i kela a me kela Hawaii e hoolako i kela mau buke ma ko lakou mau home me no ka mea e hoia mai ana no he manawa no kela a me keia e ike ai i ka waiwai o ko lakou malama ana i kela mau buke ma keia mua aku.

Figure 4 (at right). Advertisement in *Ke Aloha Aina*, February 15, 1902

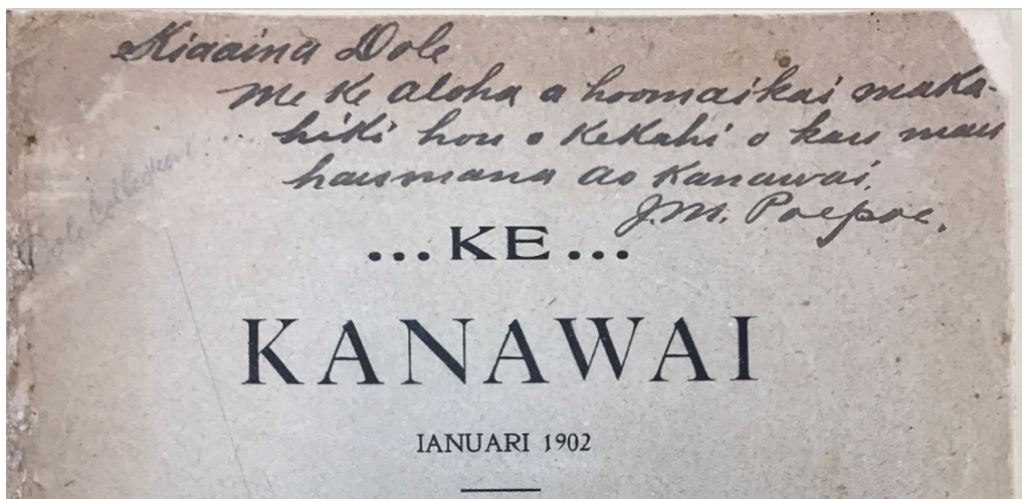


Figure 5. Front cover of the Hawai'i State Archives' copy of *Ke Kanawai*

haumana ao kanawai. J. M. Poepoe" (Governor Dole, With aloha and well-wishes for a new year from one of your former law students. J. M. Poepoe).

The second and third issues may be found at the Hawaiian Mission Houses Archives and belonged to Edward K. Lilikalani. Each issue is approximately fifty pages in length, and Poepoe is listed as "Hoa o ka Papa Loio Hawaii. Ona a Lunahooponopono" (Mem-

ber of the Hawai'i Bar, proprietor, and editor)—no other authors or contributors are listed.

In the first issue of *Ke Kanawai*, there is no foreword, preface, or introduction. It simply begins with the translation of the United States Constitution (Poepoe, January 1902, 1–21), followed by a partial translation of Sir William Blackstone's *Commentaries on the Laws of England* (ibid., 21–25). The careful selection and presentation of these particular pieces for the inaugural issue of *Ke Kanawai* are somewhat puzzling until reading the section entitled “Kela ame Keia,” which contains Poepoe's editorial musings²⁶ (ibid., 26).

In this section, Poepoe's wit and clever wordsmithing are evident at the very start: “O ke KANAWAI paa, o ia ke ALOHA, no laila, o ke Aloha Makahiki Hou no ko kakou apau.” This may be translated as, “The true, settled LAW is ALOHA, therefore, ‘Happy New Year’ to all.” Poepoe's use of words in all caps has significance and reflects his goal to ascribe and layer meaning—this is deftly accomplished by: (1) the clever reference to the title of his journal, *Ke Kanawai*, and (2) the introduction of the thematic connection between *kānāwai* (law) and aloha.

Continuing on this theme of aloha and its relation to law, Poepoe next quotes Mataio 22:37–39, “E aloha aku oe ia Iehova i kou Akua me kou naau apau, ame kou uhane apau, a me kou mana'o apau. O ka mua keia ame ke kauoha nui. Ua like hoi ka lua me ia. E aloha aku oe i kou hoalauna me oe ia oe iho” (Baibala Hemolele). This famous Bible quote captures Jesus's response to a wily lawyer who, eager to find fault in Jesus's teachings, questions: “Master, which is the greatest commandment in the law?” (Matt. 22:37–39 [KJV]). The answer, reduced to its simplest of terms, is: love God, and love your neighbor as you love yourself (ibid.). This rhetorical device, which draws upon a biblical passage involving a lawyer, masterfully conveys the point: the greatest *kānāwai* is aloha.

In the next paragraph, Poepoe then cites Blackstone's (1795, 40) *Commentaries on the Laws of England*, an influential eighteenth-century legal treatise heavily infused with Judeo-Christian principles. As described by scholar Robert Ferguson (1984, 11), all of America's “formative documents—the Declaration of Independence, the Constitution, the Federalist Papers and the seminal decisions of the Supreme Court under John Marshall—were drafted by attorneys steeped in Sir William Blackstone's *Commentaries on the Laws of England* (1765–1769).” In this paragraph, Poepoe translates section 2, “Of the Nature of Laws in General.” A side-by-side comparison is provided below:

A oiai hoi, o ke Akua, aole Ia he
Mea mana he Mea naauao palena
ole wale no, aka, he maikai palena
ole nohoi Ia, ua oluoluia e Ia ka hana
i ke ku-io ana o ke kanaka me ke
ano e lilo ai ke Aloha ia kakou iho i
kumu hoeeu hookahi iloko o kakou
no ka noii ana aku a huli aku ia mea
he pono ; a o ke aloha ka rula alakai
laula no ia mea he hana. (Poepoe,
January 1902, 26)

As, therefore, the Creator is a being,
not only of infinite *power*, and
wisdom, but also of infinite *goodness*,
he has been pleased so to contrive
the constitution and frame of
humanity, that we should want no
other prompter to inquire after and
pursue the rule of right, but only
our own self-love, that universal
principle of action. (Blackstone
1795, 40; italics in the original)

He concludes this section by stating, “Ua ku ke Kanawai maluna o ke Aloha ; a o ka mea i piha i ke aloha no ke Akua ame kona hoalauna, aole auanei oia e kue ana i ke Kanawai o ke Aloha” (ibid.). Broadly translated, “Aloha is the essence of Akua, and the essence of his law—for this reason, so too must mankind strive to actuate and embody aloha. Therefore, a person who is filled with aloha for Akua and his neighbor will never act in contravention of the Kānāwai of Aloha.”

Poepoe then shifts to describe kānāwai in a manner that bridges the gap between Western and Native Hawaiian thought (ibid.). Law and pono governance is metaphorically described as a human body with many parts, yet operating as a holistic unit. A similar metaphor was employed by Davida Malo in his description of Native Hawaiian government (Malo, forthcoming, 38:1–4²⁷). Poepoe perhaps sought to connect traditional thought with modern understandings of law, thus providing a recognizable introduction for most Native Hawaiians.

For example, Poepoe (January 1902, 26) compares God’s two supreme commandments to the two hands of a human: “Elua lima o ke kanaka ; a he elua nohoi mahele o na kanawai o ke Akua, oia ke Aloha i ke Akua ame ke Aloha i ka hoalauna.” Building upon this metaphor, Poepoe (ibid.) then moves on to describe modern law, its two main divisions (civil and criminal), and the many branches of law that flow from it: “Elike me elua lima o ke kanaka, pela hoi he elua mau mahele nui o ke Kanawai o ka aina—he Kanawai Kivila ame ke Kanawai Karaima—a elike me ka lehulehu o na manamana ma na lima elua o ke kanaka, pela i hoolehulehu ai na mahele i manamana aku ai ke Kanawai o ka aina.” Through its constituent parts, our body of law (civil and criminal) works as a unified whole to benefit society, and in this way, the life of the people may be advanced within the body politic (“Pela no i hanaia ai ke Kanawai Kivila ame ke Kanawai Karaima, me ko laua mau mahele lehulehu i mau mea e pono ai ka noho ana o ke kanaka maloko o ke kino Aupuni”) (ibid.).

Poepoe continues to draw parallels between Native Hawaiian and Western legal traditions in the next paragraph by comparing the fundamental principles contained within ke Kānāwai Māmalahoa²⁸ with the original founding principles of the American government:

O Ke Kanawai Mamalahoa a Kamehameha I i kau ai i kela mau la o-kikilo loa i au wale aku la, o ia ka olelo kuahaua mua i kukuluia maluna o Hawaii no ka nohona Lanakila, ka nohona Kuokoa a nohona Hoopilikia ole ia mai hoi o ke kanaka. O keia ihola no na Pou-Hana i ku ai ka halau hale o ke Aupuni “Repubalika” o Amerika Huipuia ma Hawaii nei. A o ua Kanawai Mamalahoa ‘la, oia keia : “E hele ka Elema-kule a moe i ke ala, E hele ka Luahine a moe i ke ala, E hele ke Keiki a moe i ke ala.” (Poepoe, January 1902, 27)

In broadly construing this passage, it may be understood to mean as follows: “Kamehameha’s Māmalahoa law, established in a bygone era, was the first law promulgated in Hawai‘i that ensured independence, liberty, and peace for the people. Symbolically, these three principles represent the supporting pillars upon which the edifice of the American republican government shall be erected here in Hawai‘i.” Poepoe then closes with the famous lines of the Kānāwai Māmalahoa.

In the next paragraph, Poepoe (January 1902, 27) transitions to a discussion about the translation of the US Constitution, stating:

Ma keia helu mua loa o ka puka ana o KE KANAWAI, ke hoopukaia aku nei ke KUMUKANAWAI o Amerika Huipuaia mai kona hoomaka ana a hiki i kona hopena, me ke koe koena ole. Ke lana nei ko makou mana'o, e lilo ana keia umuhina [sic] a makou e hoopuka aku nei i pomaikai nui no na lunakanawai, na loio ame na Hawaii noho i pau i mahuahua ole ka ike ma ka Olelo Beritania.

This may be translated as, “In the very first issue of KE KANAWAI, the US CONSTITUTION was published in its entirety, from beginning to end, with nothing omitted—with the hope that this published translation will be of great benefit to judges, lawyers, and all Hawaiians who do not have much understanding of English.” Poepoe concludes by describing the various pieces that will be published in *Ke Kanawai*.

At this point, it becomes clear that Poepoe's listing and description of laws and their precise order were all carefully considered. Throughout, Poepoe's multi-layered approach reveals a skillful intertwining of Western and Native Hawaiian perspectives. On one hand, we have been given a *genealogical* rendition of kānāwai and its thematic ties to aloha. Moreover, the metaphoric descriptions relating to Native Hawaiian polity, and the rights and protections granted to Kānaka under the Kānāwai Māmālahoa are all distinctively Native Hawaiian.

On the other hand, his presentation also reflects the structure used in legal arguments and judicial decisions which heavily draws upon the doctrine known as *stare decisis* and precedence. A precedent is a previous decision that establishes a legal principle, and *stare decisis* is the legal doctrine that commands deference to that precedent. As one scholar has explained, precedence “is a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges” (Garner et al. 2016, 9). Similar to the way an attorney structures a brief, Poepoe supports his statements using authoritative sources in a manner that leads the reader to a desired conclusion: that there are shared principles contained in all foundational laws—whether it is aloha, liberty, freedom, or justice.

In sum, these seemingly disparate approaches actually compatibly co-exist to produce a cogent argument. In this way, Poepoe persuades his intended audience (judges, lawyers, and all Hawaiians) to consider that perhaps there are commonalities that deserve further consideration. His discussion reflects, to some extent, a lawyer's idealistic view of justice and a belief in the restorative power of law. Most importantly, however, we clearly see Poepoe's concern for and commitment to the dissemination of legal knowledge for Native Hawaiians. For example, Poepoe's likely rationale for providing a translation of the US Constitution was two-fold: (1) it is a foundational legal document that enumerates rights and establishes protections for the people, and (2) it was not readily available—a translation of the US Constitution was disseminated in booklet form²⁹ only once by the Ahahui Hoohuiaina nearly a decade prior (Ahahui Hoohuiaina, n.d.).

As Dr. Silva (2017, 105) explains, Poepoe's most important contribution “is his acting on his kuleana as an educator, legal advocate, editor, writer, political activist, and thinker from a position of mo'okū'auhau consciousness.” This is evident throughout *Ke Kanawai* in his publication of both legal and non-legal materials of significant value. For example, in a continuing series entitled “Ka Logika—Ke Kakaolelo,” Poepoe presents an overview of concepts perhaps derived from Aristotle's theory of deductive logic.

In the January issue, he describes syllogism, enthymeme, sorites, and dilemma: “Ma keia hoakaka ana, ua maheleia ka Logika iloko o na mahele nui e alakai ana i na olelo hoakaka : (1) Na hoohana ana i ka noonoo ; (2) Ka Sulogisema, o ia hoi ka mea i kapaia he Hookulana Manao, o ia paha ke kukulu ana i ka manao alakai ; (3) ke Dilema ; (4) ka Enetimeme me ka Sorite ; (5) ka Oratorio, o ia hoi ka Haiolelo” (Poepoe, January 1902, 40–41).

In another series entitled “He Moolelo Hawaii Kahiko,” Poepoe (March 1902, 8–16) demonstrates his commitment to preserving Hawaiian mo‘olelo and mo‘okū‘auhau. This is evident in the stated rationale for the production of this series: “Kakauia e kekahi mea i makemake nui e loa na kuauhau kahiko o Hawaii nei i loa ai ko Hawaii moolelo oiaio” (ibid., 8). In other words, “He Moolelo Hawaii Kahiko” was “written by those who greatly desired to obtain knowledge of the old Hawai‘i genealogies derived from authentic Hawaiian historical accounts.”

In *The Mo‘olelo Hawai‘i of Davida Malo*, Davida Malo (forthcoming, 1:10) lists five names from the original genealogical lines: Kumulipo, Palikū, Olōlo, Puanue, and Kapohihi. According to Poepoe, Malo purportedly left the genealogies incomplete, from “Puanue back to Kumulipo and forward to Wakea” (Beckwith 1972, 2). In Poepoe’s *Ke Kanawai*, the genealogical account for Puanue is provided, likely relying upon a manuscript authored by Kamokuiki, who was “one of those who were instructed with David Malo under Auwae, the great genealogist of Kamehameha’s last days” (Beckwith 1972, 2). Poepoe’s version expands upon a pre-existing work produced in 1892 by G. Nāka‘a (1893, 1) in a long-running *Nupepa Kuokoa* series entitled “He Moolelo Hawaii.” Nāka‘a’s series mentions the existence of Puanue’s genealogy but fails to provide it. Consistent with Poepoe’s dedication to the preservation of Hawaiian knowledge, it is clear that the inclusion of this mo‘olelo was intended to benefit the younger generations of Hawai‘i and those that followed: “E hoomanaoia ke hana nei makou i keia moolelo no ka pomaikai o ka hanauna opio o Hawaii nei ma keia hope aku.”

MANA‘O PANINA / CONCLUSION

It is beyond the scope of this introductory article to delve into each piece contained in *Ke Kanawai*—indeed, there are many fascinating pieces that deserve detailed study. To be clear, this article barely scratches the surface, but the hope is to draw attention to these materials so others will be inspired to study and analyze Poepoe’s work.

Poepoe wisely recognized over 135 years ago the need to provide access to justice for Kānaka. At the time of *Ke Kanawai*’s publication, there were just a handful of Hawaiian attorneys licensed to practice before all courts in Hawai‘i, and Hawaiians were over-represented in the prison population. To fill a real legal need, Poepoe diligently worked to provide translations of important legal texts to ensure Kānaka were aware of their rights. Poepoe was a dedicated legal advocate and committed his life to the preservation of ‘Ōlelo. May we all draw strength from Poepoe’s spirit and the knowledge he bequeathed to us.

‘ŌLELO PĀKU‘I HOU / APPENDIX

What follows below is first a synopsis of some of the legal materials contained within *Ke Kanawai* (see table 3) and then a chart summarizing some of the non-legal items contained within *Ke Kanawai* (see table 4). These lists are by no means comprehensive—indeed, readers are encouraged to examine all three volumes to fully appreciate the range of Poepoe’s work.

Table 3. Summary of legal materials contained in first three issues of *Ke Kanawai*

Title of article	Brief description	Issue
“Ke Kumukanawai o Amerika Huipuia”	Complete translation of the US Constitution	January
“Ke Kumukanawai”	Editorial description of the US Constitution and its relevance for the people of Hawai‘i	January
“He Mau Hoakaka Kanawai i Laweia noloko mai o na Hoakaka Kanawai a Pohakueleele”	Partial translation of Blackstone’s <i>Commentaries on the Laws of England</i> , taken from “Of the Nature of Laws in General”	January March
“Ke Alakai no ka Lawelawe Hihia ana imua o na Aha Hookolokolo”	Guide to the practice of law before the courts	January February March
“Ke Alakai no na Notere o ka Lehulehu”	Guide for notaries public	January February
“Na Olelo Hooholo Aha Kiekie: Teritori o Hawaii vs. M. Abreu”	Complete translation of <i>Territory of Hawaii v. Abreu</i> , 13 Haw. 421 (1901)	January
“Ke Kuhikuhi o ke Kanaka Hawaii”	Revision and update of J. W. H. Kauwahi’s <i>Ke Kuhikuhi o ke Kanaka Hawaii</i>	January February
“Ka Ahaolelo Nui o ke Aupuni”	Partial translation of the First Annual Message of President Theodore Roosevelt, delivered before the US Congress on December 3, 1901	January
“Olelo Hooholo no ka Hoohui Aupuni”	Complete translation of Newlands Resolution, 31 Cong. Rec. 5981, H5982 (June 15, 1898)	February
“Kanawai Hoonohonoho Aupuni no ke Teritori o Hawaii”	Partial translation of the Organic Act (Act of Congress Organizing Hawaii into a Territory, 31 Stat. 141)	February March
“Kahilina vs. Kahilina”	Unpublished divorce case between Susan Kahilina and Senator Kahilina, involving dispute over amount of alimony	March

Table 4. Summary of non-legal materials contained in first three issues of *Ke Kanawai*

Title of article	Brief description	Issue
“Ke Ao Piliolo Beritania”	Learning English grammar	January February March
“He Hoakaka Huaolelo Beritania”	English and Hawaiian dictionary	January February March
“Ka Logika—Ke Kakaolelo”	Art of deductive logic and oratory	January February March
“He Moololelo no Isamaela; Ke Kanaka Opio i Lilo i Kakaolelo Kanawai Kaulana”	Partial translation of <i>Ishmael; or, In the Depths</i> , by Emma Southworth	March
“He Moololelo Hawaii Kahiko”	Expanding upon existing mo’olelo Hawai’i (Pogue, Kamakau, Malo, Fornander); expands upon work of G. Nāka’a	March

NOTES

1. My translations from Hawaiian are intended as dynamic equivalents rather than literal representations. Whenever possible, I have tried to express the essential points of the Hawaiian in forceful, idiomatic English rather than imitate the syntax and order of the Hawaiian. I am indebted to Dr. Jeffrey “Kapali” Lyon for his years of support, patience, and encouragement. He has been instrumental in helping me move away from producing stilted but grammatically correct translations.

2. As noted by Judge Richard Bissen, “To give life and validation to Hawai’i’s co-official language, the Task Force urged in its report that the use of ‘ōlelo Hawai’i in state and local government must be broader than token phrases, more accessible in everyday life, and equally valid as the use of English” (*Relating to Hawaiian Language: Hearing on S.B. 2162, Before the Senate Comm. on Hawaiian Affairs and Judiciary and Labor*, 28th Sess. 1 [Haw. 2016] [testimony of Judge Richard Bissen, chair of Hawaiian Language Web Feasibility Task Force]).

3. See, e.g., *Tagupa v. Odo*, 843 F. Supp. 630, 631 (D. Haw. 1994). In that case, the court denied a plaintiff’s request to provide his deposition testimony in Hawaiian, explaining, “The mere fact that Hawaiian is also an official language of Hawai’i” does not mean we can “ignore the practical realities” involved in obtaining a Hawaiian-language interpreter as it “is an unnecessary expense that would needlessly complicate and delay” the judicial process (*ibid.*).

4. Smith (2005, 33) writes, “Under colonialism indigenous peoples have struggled against a Western view of history and yet been complicit with that view. We have often allowed our ‘histories’ to be told and have become outsiders as we heard them being retold.”

5. I have been asked about this source since I was a law student but never actively looked for it until very recently.

6. I have not had the opportunity to look for other issues of *Ke Kanawai*.

7. In the early 1880s, there were two different licenses to practice law in Hawai’i. One license permitted the attorney to practice before the police and district courts in the Kingdom of Hawai’i. Such practitioners were examined to determine whether they were “Hawaiian sub-

jects of good moral character” (*Compiled Laws of the Hawaiian Kingdom* 1884, § 1074a). This license lasted for two years and cost five dollars for the first issuance and two dollars thereafter for renewal (*ibid.* § 1074b). In contrast, the other license permitted the attorney to practice in all courts of the kingdom, which included the Hawai'i Supreme Court, the Hawai'i Intermediary Court, the district courts, and the police courts (*ibid.* §§ 1065, 1067). A one-time ten-dollar fee was required upon receipt of this license (*ibid.* § 1074). The admittee of such a license was required to be a Hawaiian subject and of “good moral character” as determined by the Supreme Court (*ibid.* § 1065). Terms and periods of study necessary to admission were also set forth by the Supreme Court (*ibid.* § 1072).

8. Russell had a prestigious legal pedigree as evidenced by the documents he submitted in support of his petition to practice law in the Kingdom of Hawai'i (*Ka Nupepa Kuokoa* 1881).

9. That same year, the Supreme Court heard the petition of C. W. Ashford, a qualified applicant who was denied admission to the Hawai'i Bar because he was not a Hawaiian subject (*In re Ashford*, 4 Haw. 614 [1883]). He argued that the law had “created a monopoly in the present Bar,” which was comprised “of about a dozen members.” The Supreme Court acknowledged that while “this appears to be true,” the law is clear: “None but Hawaiian subjects can be admitted to practice here” (*ibid.* at 616).

10. Although there were more Native Hawaiian attorneys licensed to practice in the lower courts, the ability to effectuate real change could arguably only be accomplished with a license that permitted one to practice before all courts in Hawai'i. The statistics provided here may contain some inaccuracies as they were collected from biennial reports issued by the chief justice of the Supreme Court. See *Report of the Chief Justice* (1901, 161–66). In cross-checking this list against various primary legal sources, including court filings, applications to practice law, and other judicial administrative records, I uncovered a few omissions. As such, some caution should be exercised in relying on this data.

11. The Hawaiian and part-Hawaiian population totaled 40,014 and 4,218, respectively (Schmitt 1968, 74).

12. As of January 2018, there were a total of 262 Native Hawaiian females and 211 Native Hawaiian males registered as attorneys with the Hawai'i State Bar Association (HSBA) (2018, 6). A total of 4,564 attorneys (or approximately 93 percent) responded to the HSBA's (*ibid.*) question about ethnicity.

13. See, e.g., Poepoe, January 10, 1883, 10.

14. Out of the eleven cases that Poepoe argued in front of the Supreme Court of the Kingdom of Hawai'i, he obtained a positive result for his client in five cases: *In re Kameenui*, 6 Haw. 542 (1884); *In re Kahulu*, 5 Haw. 283 (1885); *Kahui v. Lauki*, 5 Haw. 296 (1885); *Mutch v. Holau*, 5 Haw. 314 (1885); *Kahui v. Lauki*, 4 Haw. 487 (1885). In the remaining cases, Poepoe lost or obtained an unfavorable result: *King v. Keanu*, 4 Haw. 173 (1884); *In re Keliūkoa*, 5 Haw. 279 (1885); *Kong Kee v. Kahalekou*, 5 Haw. 548 (1886); *Ex parte Piūpiūlani*, 7 Haw. 95 (1887); *Kailaa v. Kaaukai*, 7 Haw. 653 (1889); *In re Akahi's Estate*, 9 Haw. 610 (1895).

15. Data was obtained using Westlaw's Hawai'i database, with the following advanced search parameters: “DA(aft 12-31-1883 & bef 01-01-1886) & poepoe.”

16. Data was obtained using Westlaw's Hawai'i database, with the following advanced search parameters: “DA(aft 12-31-1883 & bef 01-01-1886).”

17. During that time period, the Hawaiian Kingdom population totaled 80,578 (*Biennial Report of the Chief Justice* 1886, 14). Of that amount, there were approximately 44,232 Native Hawaiians (23,623 males and 20,609 females), thus comprising approximately 55 percent of the total population. In comparison, 2,822 Hawaiian males were convicted of criminal activity out of a total prison population of 6,622 (*ibid.*). This is significant as it demonstrates Native Hawaiians were underrepresented in the prison population (43 percent)—this changes at the turn of the century, when Poepoe is preparing to publish *Ke Kanawai*.

18. Ragsdale's (1867) volume also includes a section entitled "Na Rula o ka Aha Kiekie ame ka Aha Kaulike o ko Hawaii Pae Aina."

19. Using the same methodology as described above, I calculated the total number of cases leading up to 1902 (volume 9: 160 cases, volume 10: 148 cases, volume 11: 152 cases, volume 12: 63 cases, and volume 13: 121 cases). Volume 14 of the Hawaiian Reports contains 139 cases. However, because Poepoe published *Ke Kanawai* in 1902, cases in volume 14 that go beyond that year were excluded.

20. Act of April 30, 1900, ch. 339, 31 Stat. 141 (1900).

21. *Ibid.* § 44, 31 Stat. at 148.

22. This report states that there were 204 attorneys registered with the Bar Association as of 1901 (*Report of the Chief Justice*, 1901, 161–66). However, the name of Nickeus Johnson (registered to practice on December 20, 1900) is listed twice—once on page 164 and again on page 166. For this reason, I listed 203 as the estimated total, not 204.

23. This decline may also be attributed to the requirement that all government workers (such as judges) and officers of the court were required to swear an oath of allegiance to the Provisional Government, and later to the Republic of Hawai'i. See, e.g., Act 2, January 20, 1893, in *Laws of the Provisional Government of the Hawaiian Islands Passed by the Executive and Advisory Councils: Acts 1 to 86* (1894).

24. Between 1898 and 1899, there were 3,294 Hawaiians convicted of all offenses. Out of the 11,097 persons convicted during these years, 29.68 percent of those convicted were Hawaiian (*Report of the Chief Justice* 1901, xxx).

25. As described above in note 17, Native Hawaiians were underrepresented in the prison population in the early 1880s. I am currently analyzing data covering multiple decades and collected from a variety of legal sources (both primary and secondary) to track and analyze Hawai'i prison and asylum demographics. My paper "Confinement in the Hawaiian Kingdom, Before and After Annexation: Understanding Incarceration Disparities Wrought by Injustice," presented at the 2018 Annual Conference of the Australia and New Zealand Law and History Society, examines these issues in more detail.

26. It is nearly impossible to adequately convey Poepoe's eloquent, elevated writing style. In translating this section, I utilized the extensive Hawaiian-language legal corpus and worked collaboratively with Dr. Lyon in tackling some of the more complex passages.

27. References from the Charles Langlas and Jeffrey Lyon edition of *Malo* (forthcoming) utilize the following citation form: chapter:paragraph.

28. The name of this *kānāwai* is more frequently seen in the Hawaiian-language newspapers as "Mamalahoā" (sixty-eight hits for "kanawai mamalahoā" on Papakilo Database [www.papakilodatabase.com]) than as "Mamalahoē" (fourteen hits for "kanawai mamalahoē"), though both names were used during the kingdom era.

29. It was also produced in serialized form in the pro-annexation paper *Nupepa Puka La Kuokoa* (1893, 1).

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