

**The Color of Nationality: Continuities and Discontinuities of
Citizenship in Hawai'i**

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Acknowledgements

The year before I began my doctoral program there were less than fifty PhD holders in the world that were of aboriginal Hawaiian descent. At the time I didn't realize the ramifications of such a grimacing statistic in part because I really didn't understand what a PhD was. None of my family members held such a degree, and I didn't know any PhD's while I was growing up. The only doctors I knew were the ones that you go to when you were sick. I learned much later that the "Ph" in "PhD" referred to "philosophy," which in Greek means "Love of Wisdom." The Hawaiian equivalent of which, could be "aloha na'auao." While many of my family members were not PhD's in the Greek sense, many of them were experts in the Hawaiian sense.

I never had the opportunity to grow up next to a loko i'a, or a lo'i, but I did grow up amidst paniolo, who knew as much about makai as they did mauka. Their deep knowledge and aloha for their wahi pana represented an unparalleled intellectual capacity for understanding the interdependency between land and life. It was through the relatively modern, and unique cultural innovation of *paniolo*, from which I came to understand a Hawaiian identity. This PhD is dedicated to those paniolo such as my father, Andrew Kauai Sr., whose wisdom continues beyond their physical lifetime and now resides in the hearts and minds of those in which that knowledge was passed on. Mahalo to those that have preserved paniolo culture, and to those that have shared some of that knowledge with me.

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Finally, this PhD is dedicated to every Hawaiian, of every color, who worked to establish the country we now aim to rebuild today.

ABSTRACT

This dissertation examines the evolution of citizenship in the Hawaiian Islands from the late 18th century to present day. Until 1887, race was not used as a basis to determine citizenship in the Hawaiian Kingdom. During the Hawaiian constitutional era (1840-1887), people of all origins were extended rights, privileges, and protections. Acquiring Hawaiian citizenship was based on allegiance, not skin color. This tradition of political inclusion was disrupted by the 1887 Bayonet Constitution, which for the first time introduced racially exclusive policies aligned with American racial standards of citizenship. The term “Hawaiian” became codified under the Bayonet Constitution as a racial or ethnic marker rather than an indicator of nationality or citizenship. Hawaiian nationality was further complicated in 1898 by the United States’ illegal occupation of the Islands. Considering, however, that the US never legally acquired the Islands, the history of citizenship brings forward many political and legal implications today.

Recent, and current, legal proceedings in international courts and U.S. courts are now challenging and re-conceptualizing U.S. sovereignty in Hawai‘i. Such challenges to U.S. jurisdiction in Hawaiian territory presume a continuity of Hawaiian sovereignty. Given the legal bond between citizenship and sovereignty, this also presumes a continuity of Hawaiian nationality. This begs the question: In light of the United States’ illegal occupation, who comprises the “Hawaiian” citizenry today? This dissertation answers this question through an analysis of the origin, evolution, and present condition of Hawaiian citizenship. It also provides a recommendation to address some of the many complications of citizenship that has resulted from the on-going illegal occupation now in its 121st -year.

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Prologue

“The Problem of race is a world wide problem, as alive in the Hawaiian Islands as in any other place on the face of the earth. It seems to me that it is healthy to discuss this problem, to unloose [sic] our deep inner feelings about it, and to look at the complexity and historical circumstances of our racial backgrounds with absolute honesty and as much objectivity as possible.”¹

An Autobiography of Race in Hawai‘i—“What Nationality You?”

“What nationality you?” was a common question often posed to me while growing up in Upcountry, Maui. Despite its ambiguity, it was a question that usually did not require further explanation. It was a common question heard amongst friends, family, teachers, coaches and even strangers. The common response to the question was usually a varied list of ethnic groups that resided in the Upcountry area, a community that spanned the Northern face of Haleakalā from Ulupalakua to Ha‘ikū. Along with Hawaiians, the other predominant ethnic groups of the region included Chinese, Japanese, Portuguese, and whites (or “haole”)—four of the primary immigrant groups to arrive in the Hawaiian Islands in different waves throughout the 18th and 19th centuries.

When people responded to the question “What nationality you?” with “I am Hawaiian,” it was always used in the ethnic or racial sense of the term. The common synonyms and modifiers now popularly associated with the term “Hawaiian,” such as Native, Kanaka Maoli, ‘Ōiwi, Kanaka, or indigenous Hawaiian, were not commonly used then. And although the term “nationality” is used in law to denote membership to an

¹ In John Dominis Holt, *On Being Hawaiian* (Honolulu: Ku Pa'a Publishing Company, 1974), 5.

independent state or country, and often used synonymously with the legal concept of citizenship this was not the usage of “nationality” in which the question “What nationality you?” was posed. In fact, nobody responded to the question with his or her actual nationality. In other words, nobody responded with “I am American”. Rather, the general response would be to announce one’s ethnicity, as in, I am “haole-Japanese” or “I am “Hawaiian-Chinese.”

For me, answering the question “What Nationality You?” was never simple. I was never really sure what ethnic group[s] or race I belonged to. Born to a dark skin Hawaiian father and a white American mother whose fair skin I inherited made me a perpetual target for scrutiny whenever conversations of identity would arise. This meant that growing up amongst the multi-ethnic composition of Upcountry, Maui with white skin and a Hawaiian last name, required tact, patience, and constant mediation. Consequently, my response to the question “What nationality you?” always varied, and was contingent upon place and the given audience. Considering that I had a “Hawaiian” last name, the question of “nationality” when posed to me was always about race or ethnicity. Being “Hawaiian” was predicated on the idea that race was biological; therefore skin color and phenotype were preeminent factors that determined acceptance as being “Hawaiian”. Being accepted as Hawaiian came with varying degrees of social capital, but its most significant implication was that you weren’t white. The idea that biological notions of race overshadowed all other markers of identity was evident in the fact that anybody with the right shade of brown skin could claim, or be perceived as, “Hawaiian.” For those with fair skin, “Being Hawaiian”² Navigating this rigid and complex racial terrain required

² “On Being Hawaiian” has been the subject and title to a book and two articles, all of which use personal stories to demonstrate the challenges of “Being Hawaiian” in certain historical and contemporary context.

careful maneuvering. So when I did claim to be “Hawaiian,” an initial survey of the company I was in usually determined my response.

Yet, because of my fair skin, claiming to be “Hawaiian” was always subject to challenge. Even when I managed to convince people that my father was “Hawaiian”, it was usually received with skepticism. Declaring to be “Hawaiian” often required a methodical plan that anticipated follow up questions like, “How much Hawaiian you?” Such a question required me to produce a quantifiable measurement of Hawaiian blood that was racially consistent with my phenotype and skin color. Similar to the question of “nationality,” I never really knew what percentage of “Hawaiian” I was. While declaring a quantifiable percentage of Hawaiian blood, it became apparent that my stated percentage needed to correspond with my skin color and phenotype in order to avoid further interrogation. Although I really only knew my father to be just Hawaiian and only knew both his parents (my grandparents) to be just Hawaiian, I usually did not claim to have more than 20 percent “Hawaiian.” This seemed to be an acceptable percentage that coincided with my skin color and phenotype, yet even 20 percent managed to raise doubt.

Compounding the skepticism regarding my claim to being Hawaiian was the divorce of my parents and the absence of my father throughout the majority of my

In 1974, John Dominos Holt wrote the book “On Being Hawaii.” Holt’s sharp analytical and deeply personal testimony, laid the foundation for understanding the complex ways in which the imposition of a foreign culture transformed Hawaiian identity. Referencing Holt, in 2006, Jon Osorio published, “On Being Hawaiian”, which offered significant insight to the contemporary challenges that Hawaiians were facing more than thirty years after Holt’s account. In 2007 Brandaon Ledward published on “Being Hawaiian Enough”, which provided a sharp analysis of the intersections of race and Hawaiian identity while also using personal stories. The prologue of this dissertation was inspired by this body of literature and other that drew on personal stories such as Kehaulani Kauanui’s and Judy Rohrer. See Kehaulani Kauanui, *Precarious Positions: Native Hawaiian and US Federal Recognition* (Honolulu: University of Hawaii Press, 2005). Kehaulani Kauanui, *Hawaiian Blood; Colonialism and the Politics of Sovereignty and Indigeneity* (Durham: Duke University, 2008). "On Being Hawaiian," *Hulili: Multidisciplinary Research on Hawaiian Well Being* (Kamehameha Schools) 3 (2006): 19-25. Brandon C. Ledward, "On Being Hawaiian Enough: Contesting American Racialization with Native Hybridity," *Hulili: Multidisciplinary Research on Hawaiian Well Being* (Kamehameha Schools), 2007: 107-138. Judy Rohrer, *Haoles in Hawai'i* (Honolulu: University of Hawaii Press, 2010).

childhood. My Mother relocated us from the rural town of Ulupalakua to what later became an affluent white neighborhood in Kula. Separation and my Father's non-presence intensified people's skepticism, adding to the divisive racial elements that I had to contend with in order to be "Hawaiian" in conversations about my "Hawaiian-ness." Although just a 20-minute drive, the newly developed white neighborhood in which I resided was really light years away from the rural Hawaiian town of Ulupalakua.

Revered as "ka home a'o paniolo" (Home of the Hawaiian cowboy), Ulupalakua was home to four generations of paniolo on my father's side. A third generation paniolo himself, my father was characterized as "100 percent Hawaiian cowboy," and regarded as a "master horseman, expert cattleman, rodeo champion and fearless polo player...with an intimate knowledge of the land."³ His dark complexion, broken Hawaiian-English dialect, tall-slender physique, drinking habits, and mannerisms, made him representative of a unique and fading cultural phenomenon—the paniolo. In an article commemorating my father's death he was noted as being "one of the last guys who knew how to rope the wild cattle...that once marauded the high mountain forests...and although he was stern, no-nonsense foreman, he was also 'kolohe'-rascal."⁴ The article continued, "He grew up when men had to hunt to put food on the table...He had grown up in a very hard way. He quit school so he could work..."⁵

In light of my parents' divorce I would spend short increments of the summer on the 20,000-acre ranch located along the South Eastern flank of Haleakalā. Ulupalakua Ranch was the site of my first memory of the social ordering and hierarchy of race in the

³ Maui News October 23, 2003, Master horseman, paniolo Andrew Kauai Sr. Dies, By Staff writer Ilima Loomis

⁴ *Id.*

⁵ *Id.*

Hawaiian Islands. During these visits I would routinely watch my father, the Ranch foreman for nearly thirty years, leading 25 paniolo atop horses down the main street of the town past the white owner's office and back to the stables. Given the decline of the cattle industry and the subsequent decline of paniolo culture, this was a waning spectacle during the 1980's. Flocks of white tourists visiting the Ranch winery would line the street in front of the tasting room with cameras, itching to get a photograph of this time-honored group of paniolo, casually guiding their horses to the stables at the end of the day. Aside from the owners of the Ranch, the Erdman family, and a few other long-time residents, there were only a minority of white-people that resided in Ulupalakua. Like my father, most of the residents of Ulupalakua came from multi-generational Hawaiian families that were also interrelated and had resided on the ranch since cattle was first introduced to the area in the mid-nineteenth century.

Most of my childhood friends in Ulupalakua were also my cousins, nieces, and nephews, all of who were considerably darker than me. Because Ulupalakua was one of the last resting stops before the trek to Kaupō and Hāna, residents that lived in these rural areas of East Maui frequented the town. Having considerably lighter skin compared to my peers, many from outside of Ulupalakua would mistake me for a member of the Erdman family, which became a running joke among my contemporaries. My skin color often precluded my being perceived as Hawaiian, it also often disqualified me from being the son of a "100 percent Hawaiian Cowboy".

The culmination of a lifetime worth of having to deal with the persistent distraction of race that demanded constant mediation came to a revealing moment when I was 25 years old. Two years prior to my father's passing, I began frequenting rodeo

events in which my family regularly participated. Every 4th of July, my family would gather in Makawao to compete in the annual rodeo held at “Oskie Rice” Arena.⁶ Amidst the gleaming symbols of American patriotism that decorate the arena each 4th of July—American Flags, red, white, and blue streamers, the American National Anthem, corporate sponsorship by Ford, and country music—is the commanding, and distinct presence of paniolo atop horses, adorned with lei pāpale and long-sleeve aloha shirts. For most of the Hawaiian families, rodeo and the family reunion-type atmosphere, rather than American Independence, is really the galvanizing force that keeps this 4th of July tradition alive.

When the rodeo events came to an end on that day, my wife (who was pregnant at the time) and I gathered with other family members at the arena clubhouse. Being one of the only people there not in cowboy attire accentuated my white skin. After talking with some relatives, my fiancé was approached by an older Hawaiian Portuguese cowboy who was visibly a rodeo participant judging by his soiled clothing. He noticed that my wife was pregnant and began making small talk with her. After a few exchanges he asked my wife what the nationality of the baby will be, my wife said Hawaiian, Haole, Japanese, and Chinese. When my wife said “Hawaiian,” the man asked if she was “Hawaiian.” Replying “yes,” she also said, “so is the baby’s father.” When my fiancé directed the man’s attention toward me, it was apparent that my racial appearance shaped his impression of me. After sizing me up from head to toe the Man uttered “How much Hawaiian you?” His pointed statement and tenor was nothing that I hadn’t encountered before. My experiences in these matters kept me comfortable, and confident, which he

⁶ (Oskie Rice is the father of Harold “Freddy” Rice, lead plaintiff in the landmark Supreme Court case *Rice v. Cayetano*).

mistook as arrogance. I smirked and said I wasn't sure. He replied, "You not Hawaiian." I insisted that I was Hawaiian. Just as the tension in our conversation began to escalate, my older cousin who had noticed what was becoming a confrontation intervened. My cousin asked the man, "Uncle, you don't know who this boy is?" Bewildered, the man shrugged his shoulders, replying, "No." My cousin continued, "This is Uncle Andrew's son!" Astonished, the man replied "Andrew Kauai Sr.?" He immediately apologized, while embracing me. In the middle of hugging me, the Man told me, "We're family!"⁷ Within a matter of a few words uttered by my cousin, I went from being perceived as an outsider because of my outer appearance, to being included in the family because of who my father was.

⁷ Kehaulani Kauanui writes, "These kinds of stories are typical...where popular notions of cultural authenticity and biological difference through the use of blood quantum." Kauanui articulates a similar personal encounter in which a family member questions her Hawaiianess. See J. Kehaulani Kauanui, *Hawaiian Blood: Colonialism and the Politics of Sovereignty and Indigeneity* (Durham, NC: Duke University Press, 2008), preface. Also see Brandon C. Ledward, "On Being Hawaiian Enough: Contesting American Racialization with Native Hybridity," *Hulili: Multidisciplinary Research on Hawaiian Well Being* (Kamehameha Schools), 2007: 107-138.

Chapter 1: An Introduction to Hawaiian Citizenship

Race or Citizenship?

As the prologue illustrates the term Hawaiian has been predominantly framed through an ethnic or racial lens. Asking the question “are you Hawaiian?” in the 20th century was presumably a measure of one’s blood quantum or ethnic heritage. Phenotype, skin-color, hair texture, and other biological features, essential to the social ordering and development of American society were commonplace in any discussion of the term Hawaiian. The establishment of American discourses of race in Hawai’i is unequivocally linked to the US occupation of the Islands at the turn of the 19th century.

The imposition of American law for more than a century established a racial system in the islands like that of the US. The US Supreme Court case, *Rice v. Cayetano*, in the year 2000 is one example, amongst a host of others that show how US ideologies of race have been continually imported into the Islands for nearly a century. Along with *Rice*, *The Organic Act*, the *Hawaiian Homes Commission Act*, *The Fukunaga case*, *The Massie-Kahahawai case*, *The Statehood Act*, and *The Native Hawaiian Reorganization Act* (Akaka Bill), are but some of the many ways that American conceptions of race have been imported into the Islands. At the center of these judicial decisions and US Congressional Acts, both historically and contemporarily, is the intent to maintain a stratified racial order in the islands. It has been from within this American legal system, imposed in Hawai’i for the past century, that the dominant legal/political understanding of the term “Hawaiian” as an ethnic or racial marker has been shaped.

The predominant usage of the term Hawaiian today, however, is a steep departure from its usage in the 19th century, where it was not used as a racial or ethnic marker. In the 19th century, the term “Hawaiian” was used to denote nationality or citizenship and defined the legal political relationship between the people and the Hawaiian Kingdom Government. In the 19th century becoming “Hawaiian”, or acquiring Hawaiian citizenship, was based on taxation, residency, and most significantly, allegiance. This dissertation is about the legal and political evolution of Citizenship in Hawai’i. It traces the origins of Hawaiian citizenship from the turn of the 18th century with the rise of the Hawaiian Kingdom, and through the constitutional era in the 19th century. The Hawaiian Kingdom became the first non-European territory to possess international statehood.⁸ Consequently, the aboriginal population, which comprised the majority of the Hawaiian Kingdom’s national citizenry at the time, became the first aboriginal population to possess “the protection and benefits of international law.”⁹ The rise of European imperialism in the Pacific necessitated crafty international diplomacy on the part of the Hawaiian Kingdom, including Kamehameha’s I union with the British Crown in 1794, and Kamehameha III’s to acquisition of international statehood in 1843.

During the constitutional era, the Hawaiian Kingdom government extended citizenship rights to all people of color. This occurred nearly 20 years before the equal protection clause (14th Amendment) was written into the US Constitution. Unlike the US,

⁸ In 1843, by joint declaration of Great Britain and France the Hawaiian Kingdom was recognized as an “Independent State”. And in 1844 US President Tyler, through the office of the Secretary of State, formally recognized Hawaiian Independence. For more on the significance of Hawaiian independence in 1843 see Matthew Craven, "Hawai'i, History, and International Law," *Hawaiian Journal of Law and Politics*, 2004: 6-22.

⁹ Gerhard von Glahn, *Law Among Nations An Introduction to Public International Law*, Second (London: The Macmillan Company, 1965), 198.

where citizenship laws were shaped around a belief in white superiority¹⁰, race was not a central factor in shaping the development of Hawaiian citizenship law. In fact, Hawaiian laws, particularly those laws regarding citizenship, encouraged a diverse, multi-ethnic national citizenry. While the pure and part aboriginal population always comprised the majority, the Hawaiian national citizenry included different ethnicities from throughout the globe, including Oceania, Asia, Africa, the Americas, and Europe. Regardless of race, all people had access to the rights and protections that Hawaiian citizenship afforded.

Drawing from this historical analysis of citizenship, this dissertation also examines the effect of Hawaiian citizenship as a result of the US occupation, now in its 121st year. Given that the US never legally acquired the Islands, the history of citizenship brings forward many political and legal implications today. Recent, and current, legal proceedings in international courts, and U.S. courts, are now challenging and re-conceptualizing U.S. sovereignty in Hawai‘i. Such challenges to U.S. jurisdiction in Hawaiian territory presume a continuity of Hawaiian sovereignty. Given the legal bond between citizenship and sovereignty, this also presumes a continuity of Hawaiian citizenship. This begs the question: In light of the United States’ illegal and prolonged occupation, who comprises the “Hawaiian” citizenry today? This dissertation answers this question through an analysis of the origin, evolution, and present condition of Hawaiian citizenship. It also provides a recommendation to address some of the many complications of Hawaiian citizenship that has resulted from the on-going illegal

¹⁰ See PBS, *Race The Color of an Illusion*, www-tc.pbs.org/race/images/race-guide-lores.pdf (accessed December 12, 2012), In the teacher guide is a list of “10 things that everyone should know about race” in America. Number 8 reads, “Race justified social inequalities as natural. The “common sense” belief in white superiority justified anti-democratic action and policies like slavery, the extermination of American Indians, the exclusion of Asian immigrants, the taking of Mexican lands, and the institutionalization of racial practices within American government, laws, and society.”

occupation now in its 121st -year.

The first time that a historical-legal conceptualization of Hawaiian citizenship was raised in a court, was in 1994, an entire century after the overthrow of the Hawaiian Kingdom Government in 1893, and nearly 7 generations since the Islands were illegally annexed in 1898. In 1994, Anthony Lorenzo filed an appeal with the Hawai‘i Intermediate Court of Appeals (ICA) contesting his conviction for traffic infractions. Lorenzo argued that the courts of the State of Hawai‘i “had no jurisdiction over him because the Kingdom of Hawai‘i still existed as a sovereign nation, having been illegally overthrown in 1893 with the assistance of the United States.”¹¹ Until *Lorenzo*, the question of the continuity of the Hawaiian Kingdom had not been raised in a court of law since Hawai‘i was illegally annexed by the US in 1898.¹²

Unlike *Rice*, *Lorenzo* did not have all the sensationalized racial fixings that American courts have been incessantly ruling on since their inception. *Lorenzo* did not garner widespread attention, and went relatively unnoticed by local media in the Islands. Despite not being covered, *Lorenzo* demonstrated many important aspects relating to the historical-legal significance of Hawaiian citizenship. The case revealed just how much the political usage and legal definition of the term Hawaiian had changed since the 19th century. It also revealed that the legal concept of Hawaiian citizenship as it existed in the Hawaiian Kingdom continues to carry legal and political relevance today, even one hundred years later. For purposes of this dissertation, *Lorenzo* provides a starting point to

¹¹ *State of Hawai‘i v. Anthony Lorenzo*, 16405 (Intermediate Court of Appeals of the State of Hawai‘i, October 20, 1994 p. X).

¹² The legal source of annexation of the Hawaiian Kingdom to the United States (US) rests on the Newlands Resolution, a unilateral resolution of the US Congress, and not a mutual agreement or bilateral treaty between the US and Hawaiian Kingdom governments. *U.S. v. Belmont*, a 1937 US Supreme Court case explained that US Congressional authority has “no extraterritorial operation” beyond the border of the US, except in regard to its own citizens.

begin unravelling the many layers and complexities of Hawaiian citizenship that lie at the intersections of law, politics, history, and race in Hawai‘i.

In the *Lorenzo* case the term Hawaiian was used in its historical-legal sense, as it was used in the 19th century to denote legal and political membership to the Hawaiian Kingdom. Until *Lorenzo*, State of Hawai‘i (US) courts, never heard such an argument. Expectedly, *Lorenzo*’s argument disrupted the conventional thinking of the court. In particular *Lorenzo*’s claim marked the first case in which the issue of annexation was raised whereby notions of race and or ethnicity—signified in terms such as “native”¹³ and “indigenous,”¹⁴ did not frame the claimant’s standing. Instead, *Lorenzo* simply claimed that “he was a citizen of the Kingdom” and “therefore the courts of the State of Hawaii [sic] have no jurisdiction over him.”¹⁵ This approach removed the issue of ethnic or racial entitlements, which was the crux of the issue in *Rice*. His claim, however, was not well supported. This allowed the court to skirt the issue of *Lorenzo*’s citizenship status, while also reframing *Lorenzo*’s claim to that of an ethnic or racial lens. While *Lorenzo* raised issues of citizenship the court tried its best to return the matter to one of race, ethnicity,

¹³ Kehaulani Kauanui distinguishes the term “native Hawaiian” (lower case “n”) and “Native Hawaiian” (upper case “N”) in her book *Hawaiian Blood*. (n)ative Hawaiians are defined as those with 50 percent blood quantum, whereas, (N)ative Hawaiians are defined as those with any percentage of blood quantum.

¹⁴ According to the United Nations Department of Economic and Social Affairs report of 2004, “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.” Because the term indigenous refers to a people that did not belong to a state, Kanalu Young explains that a more useful definition when referring to the original inhabitants of the Hawaiian Islands is the term “aboriginal.” For a full discussion see Kanalu Young, “An Interdisciplinary Study of the term ‘Hawaiian,’” *Hawaiian Journal of Law and Politics*, Summer 2004: 23-45. Also see Article 13 of Pauahi’s will which uses the term “pure or part aboriginal” in order to distinguish from “Hawaiian” who were not pure or part aboriginal. Also, in this context the term “Hawaiian” is being used to denote nationality or citizenship. to in the context of the time, which denoted nationality or citizenship.

¹⁵ *State of Hawaii v. Anthony Lorenzo*, 16405 (Intermediate Court of Appeals of Hawaii, October 20, 1994), 1.

and indigenaity. Subordinate categories that subsume the matter, and more specifically, “Hawaiians”, to an inferior status subject to the jurisdiction of the US.

Lorenzo’s argument rested solely on the *Apology Resolution* enacted the year prior, which formally acknowledged the illegal role of the US in the overthrow of the Hawaiian Kingdom Government.¹⁶ The court explained, however, that despite the US’s admission, the *Apology Resolution* “does not appear to be tantamount to a recognition that the Kingdom continues to exist.”¹⁷ Rejecting Lorenzo’s claim on the basis that he failed to “meet his burden of proving his defense,” the court was not forced to deal with the novel, yet compelling claim that Lorenzo was a citizen of a country that the US had admittedly seized illegally. In doing so, the court shifted the dialogue from an international matter to a domestic one, from a matter of one’s citizenship, to a matter of one’s race and indigeneity. This was apparent in the court record:

As a result of the overthrow and the events that followed thereafter, the indigenous people of Hawai‘i were denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands, and their ocean resources.”

The stated purpose of Act 359 (Hawaii [sic] State Law) is to ‘facilitate the efforts of native Hawaiians to be governed by an indigenous sovereign nation of their own choosing.’¹⁸

The court’s explanation of the overthrow worked in reframing Lorenzo’s argument by conflating his citizenship claim with notions of indigeneity (i.e. race and ethnicity), notions that were unknown in the Kingdom in 1893 at the time of the overthrow, or in

¹⁶ *Apology Bill*, Pub.L. 103--150 Stat. 1510, 1993.

¹⁷ *State of Hawai‘i v. Anthony Lorenzo*

¹⁸ *Id.*

1898 at the time of US's unilateral annexation. While Lorenzo claimed that his citizenship, not his race or ethnicity, was affected as a result of the overthrow, the court's response suggested that his "indigeneity" was affected as a result of the overthrow. In its opinion, the court reverted to the conventional discourse that categorizes Hawai'i's aboriginal population as a "native people of the United States,"¹⁹ entitled to "rights that are unique and distinct from those of other [American] citizens."²⁰ Yet, the question that Lorenzo's argument raised was not whether he should be afforded distinct rights as a result of his indigeneity, but whether the US had jurisdiction over him because he was a citizen of another country: the Hawaiian Kingdom.

Despite dodging the crux of Lorenzo's argument by reframing the case around a narrative less intrusive to US jurisdiction over the Hawaiian Islands, the court did not furnish a conclusive ruling. Not only did the court's opinion raise questions regarding the basis of its own jurisdiction, but it created a precedent that left the door wide open for other citizenship and jurisdictional claims. Strikingly, the court did not rule-out the possibility of Lorenzo being a citizen of the presumably defunct Hawaiian Kingdom. Instead, it merely ruled that Lorenzo "did not meet his burden of proving his defense..."²¹ In its closing remarks, the ICA explained:

Although it may be argued . . . that the actions and the declarations of the United States and the State are not determinative of the question of the continued existence of the Kingdom . . . there is no clear consensus

¹⁹ S. 1011 (111th Congress, 2009-2010) The purpose of the Native Hawaiian Government Reorganization Act, otherwise known as the "Akaka Bill", is to provide ". . . a process for the reorganization of the single Native Hawaiian governing entity and the reaffirmation of the special political and legal relationship between the United States and that Native Hawaiian governing entity for purposes of continuing a government-to-government relationship."

²⁰ Meloday MacKenzie, *Native Hawaiian Rights Handbook* (Honolulu: University of Hawaii Press, 1991), ix.

²¹ *State of Hawai'i v. Lorenzo*, 1.

that the Kingdom does continue to exist . . . Lorenzo has presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state’s sovereign nature. Consequently, his argument that he is subject solely to the Kingdom’s jurisdiction is without merit . . .²²

As reflected in *Lorenzo*, the interpretation of the ICA regarding the concept of Hawaiian citizenship is notably ambiguous. This dissertation seeks to clarify this ambiguity by providing an analysis of the origin and legal evolution of Hawaiian citizenship since the turn of the 18th century to the present. A historical backdrop will provide the necessary context to understand both the political and legal condition of Hawaiian citizenship today, a context that was visibly absent in *Lorenzo*.

Prospectively, if a claimant were to satisfy the evidentiary standard created in *Lorenzo*, the court would be left to issue a ruling to the detriment of its own authority, essentially debasing US sovereignty in the Hawaiian Islands altogether. Since *Lorenzo*, there have been more than 50 cases, in which claimants have either claimed to be citizens of the Hawaiian Kingdom or have argued that the current US court system operating in Hawaiian territory were never legally constituted and therefore lack jurisdiction.²³ In 2001, John Keawemauhili was convicted of “driving without no-Fault insurance, and driving without a license.” In his appeal he requested a conditional plea of no contest if the court would be willing to take “judicial notice that he is a citizen of the Hawaiian

²² *Id.*

²³ Since 1994, *Lorenzo* has been cited in more than fifty cases in order to reject either Hawaiian citizenship or jurisdictional claims. This includes two cases held in the ICA in 2014, *State of Hawa’i v. Simbralynn L. Kanaka’ole and State of Hawaii v. Kaliko Kana’ele*. A list of citizenship and jurisdictional claims are available on Lexisnexis. *Lexisnexis*, www.lexisnexis.com.eres.library.m (accessed April 4, 2014).

Kingdom and is not an American Citizen.”²⁴ In 2003, Harvey Keli‘ihoa was convicted of driving with an “expired safety check”, and “driving a vehicle with a delinquent motor tax.” Appealing his conviction, Keli‘ihoa argued that the “State of Hawai‘i lacked jurisdiction to enforce its traffic laws on him, as he is . . . a member of the Hawaiian Kingdom.”²⁵ While most cases stemmed from minor traffic incidents, other cases included serious allegations and convictions. Such was the case in 2004 when Keoki Araujo appealed his conviction of First Degree Terroristic Threatening by asserting that he is a “citizen of the Kingdom of Hawai‘i, and is therefore not subject to the criminal laws, indeed, any laws, of the State of Hawai‘i.”²⁶ Pursuant to *Lorenzo*, each of these appeals and all other citizenship claims have been denied on the basis of lack of evidence.

Apart from what seems to be a strategic way to maintain jurisdiction, the courts’ consistent denial of cases since *Lorenzo* based on a “lack of evidence” is likely correct given the little evidence presented in the claimants arguments. In *Lorenzo*, and all succeeding cases, the idea of citizenship in the Hawaiian Kingdom has been ambiguously presented to the court. In many cases, claimants themselves provide vague evidence and questionable legal theories that do little to explicate their claims. The legal scope and possibility that these citizenship claims should prompt are never reached. Considering the nature of the argument, such a claim should instigate international legal measures and US foreign relation principles. Most proceedings, however, never get to that discourse but

²⁴ *State of Hawai‘i v. John Keawemauhili*, 24601 (Intermediate Court of Appeals of Hawai‘i, March 18, 2003), 1.

²⁵ *State of Hawai‘i v. Harvey Keliikoa*, 25683 (Intermediate Court of Appeals of Hawai‘i, July 21, 2004), 1.

²⁶ *State of Hawai‘i v. Keoki Araujo*, 25264 (Intermediate Court of Appeals of Hawai‘i, January 14, 2004), 1.

instead collapse into a dialogue shaped by US domestic law and its ‘vexed bond’ with race.²⁷

The prevalence of American racial logic in these court cases has played a tremendous role in clouding legal notions of Hawaiian citizenship. While a steady flow of claimants continue to challenge US sovereignty in the Hawaiian Islands by asserting varying forms of citizenship²⁸ to the Hawaiian Kingdom—both the historical and legal significance of Hawaiian citizenship, as evidenced in court proceedings since Lorenzo—remain notably unclear. The ambiguity in Hawai‘i state courtrooms reflects the ambiguity that resonates throughout the wider public regarding the topic of Hawaiian citizenship. Despite what could be perceived as minimal gains, such citizenship claims mark a significant shift in the way US sovereignty in the Hawaiian Islands is contested. Hawaiian citizenship claims in the 21st century animate many questions about the legal origin, evolution and present condition of Hawaiian citizenship.

Central Claim

The central claim of this dissertation is predicated on the notion that Hawaiian state sovereignty remains intact, despite a prolonged US military occupation.²⁹ From a

²⁷ Crenshaw, K., Gotanda, N., Peller, G., & Kendall, T. (1995). *Critical Race Theory*. (K. Crenshaw, N. Gotanda, G. Peller, & T. Kendall, Eds.) New York: The New Press., Introduction. (no page number). As these scholars explain, the purpose of critical race theory has two primary objectives. “The first is to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America, and, in particular to examine the relationship between that social structure and professed ideals such as ‘the rule of law’ and ‘equal protection.’ The second is a desire not merely to understand the vexed bond between law and racial power but to *change it*.”

²⁸ Current US Federal and State of Hawai‘i court cases such as *Sai v. Obama*; *State of Hawai‘i v. Gordon Au*; and *State of Hawai‘i v. David Kaulia* will be examined in chapter 6.

²⁹ For a comprehensive explanation on the continuity of Hawaiian sovereignty amid a prolonged and illegal occupation see David Keanu Sai, *Ua Mau Ke Ea Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands* (Honolulu: Pua Foundation, 2011). Also see, Stephen Kuhio Vogeler, ““For Your Freedom and Ours” The Prolonged Occupation of Hawaii and the Baltic States” (Unpublished Doctoral Dissertation, 2009). Matthew Craven, “Hawai‘i, History, and International Law,”

legal standpoint, therefore, it stands to reason that if Hawaiian state sovereignty remains intact, then so does Hawaiian citizenship.³⁰ Considering this notion, the supporting chapters of this dissertation demonstrate the legal evolution of Hawaiian citizenship, from its origins at the turn of the 18th century, how it evolves throughout the constitutional era of the 19th century, and how it is disrupted, (yet continuous) amid a prolonged US occupation during the 20th and 21st centuries.

Along with demonstrating a legal continuity of Hawaiian citizenship, another focus of this dissertation concerns race, particularly its intersection with Hawaiian citizenship laws, both historically and contemporaneously. As reflected in Hawaiian Kingdom law, prior to the Bayonet Constitution, race was not a criteria in determining eligibility for Hawaiian citizenship. Allegiance rather than race was paramount in acquiring and maintaining Hawaiian citizenship. Racially inclusive citizenship laws bolstered a multi-ethnic society. Civil and political rights were extended to all people, regardless of color. The multi-ethnic dimensions of the Hawaiian citizenry coupled by the strong voice and participation of the aboriginal population in government played a prominent role in constraining racial hierarchy and the emergence of a legal system that promoted white supremacy.

The concept of white supremacy as legal scholar Frances Lee Ansley explains, “refers to a political, economic, and cultural system in which whites overwhelmingly control power ...and relations of white dominance and non-white subordination are daily

Hawaiian Journal of Law and Politics, 2004: 6-22. Tom Coffman, *Nation Within: The History of the American Occupation of Hawaii* (Kihei: Koa Books, 2009).

³⁰ Krystyna Marek, *Identity and Continuity of States in Public International Law* (Geneva: Librairie Droz, 1968), 83.

reenacted across a broad array of institutions...”³¹ In 19th century Hawai’i, white supremacy, as a legal, or institutional practice did not exist, until 1893 and the events that led to the overthrow of the Hawaiian Government. One of the first scholars to highlight the effect that the overthrow, annexation, and the subsequent occupation had in regard to the institutionalization of US racial order in the Islands was Virginia Dominguez.

“The Kingdom of Hawai’i was clearly not an egalitarian state or society before annexation, but its terms of distinction and modes of differentiation had very little overlap with Anglo-American racial ones. No Institutional practices promoted social, reproductive, or civic exclusivity on anything resembling racial terms before the American period.”³²

This is a significant point that is often overlooked in most accounts of societal relations in Hawaii. As explained in the literature review, many scholars have claimed that Hawaiian Kingdom law was the mechanism through which white people gained an economic and political advantage over the aboriginal population and other peoples of color. Dominguez’s research offers a completely different perspective. Through an analysis of census reports, Dominguez points out that use of racial classifications in census reports corresponds with the demise of the Hawaiian Kingdom. Prior to 1898, citizenship rather than race was the primary classification in the Hawaiian census reports, which had begun officially in 1860. According to Dominguez, “Everything changed the minute the United States annexed Hawai’i in 1898. The very next census—of 1900—

³¹ Francis Lee Ansley, "White Supremacy (and what to do about it)," in *Critical White Studies: Looking Behind the Mirror*, 592-595 (Philadelphia: Temple University Press, 1997), 592.

³² Virginia Dominguez, "Exporting U.S. Concepts of Race: Are There Limits to the U.S. Model?," *Social Research* 65 (Summer 1998): 369-399, 372.

blatantly classified the population by ‘color.’”³³ She explains that although Hawaiians developed a consciousness of American racial thought, primarily through an understanding of slavery in the American south, “all other evidence suggest that the idea of race failed to take hold institutionally or conceptually in the nineteenth-century Hawaiian society.”³⁴ Dominguez’s analysis sheds light on a new way of thinking of race relations in the in the Kingdom era.

Drawing attention to the anomaly that the Hawaiian case presents in the field of race studies, Dominquez explains, “Even in all the recent, welcomed publishing flurry on the social construction of whiteness and blackness and the sociohistorical shaping of racial categories, there are usually at best only hints of the possible—but very real—unthinkability of race.”³⁵ If race relations in the Hawaiian Islands were not based on U.S. racial logic, then how did it work? Further, what role did Hawaiian Kingdom law and the institutions that made up the government play in shaping race relations? Such questions demonstrate the enormity of such a project. This analysis of the legal and political evolution of Hawaiian citizenship adds to this important discussion. It does so by illuminating the racially inclusive policies regarding citizenship, in which people of all colors were afforded civil and political rights, regardless of skin color.

Research Questions

The questions at the core of this dissertation seek to articulate the intersections of law and race during the 19th century by examining the legal origin and evolution of Hawaiian citizenship. Five questions drive the chapters of this chronologically ordered

³³ *Id.*, 374.

³⁴ *Id.*

³⁵ *Id.*

dissertation: The first question (“What national and international factors underpin the origin of Hawaiian citizenship before the constitutional era?”) examines the rise of Kamehameha I amidst the emergence of European Imperialism in the Pacific. The domestic and international policies of the Kingdom’s founder laid the foundation for societal relations from which conceptions of Hawaiian citizenship would emanate. The second question (“How did Hawaiian citizenship evolve during the constitutional era, and what effect did these laws play in preventing a system of white supremacy from emerging?”) surveys the legislative statutes and judicial decisions between the years 1840-1887 that defined citizenship in the Kingdom. The third question (“How was Hawaiian citizenship affected as a result of the domestic disruptions caused by the coup of 1887?”) analyzes the political turmoil that gripped the Kingdom between the years 1887-1893 resulting in the first instance in which race became a prerequisite to acquire the privileges of Hawaiian citizenship. The fourth question (“How did the US occupation of the Hawaiian Kingdom effect Hawaiian citizenship?”) examines the disruptions of Hawaiian citizenship and governance as a result of the US’s prolonged and illegal occupation of the Hawaiian Islands (1893-present). The last question (who comprises the Hawaiian national citizenry today?) takes into account the origin, evolution, disruptions, and continuities of Hawaiian citizenship in order to answer the question: who is “Hawaiian” today?

Literature Review

While many historians have provided cursory coverage on the topic, there are few analyses of Hawaiian citizenship. Librarian and archivist, Maude Jones, is one of the few people to have researched the topic directly. An analysis of her work is provided later in

this chapter. Patrick Hannifin’s work indirectly dealt with the topic of Hawaiian citizenship. His research uses the history of Hawaiian citizenship to argue for a ‘color-blind’ Hawai’i today. This work will also be discussed later in the chapter. These studies exemplify the scope of research on the topic of Hawaiian citizenship.⁴⁰

Colonial Paradigm

A central reason why the topic of Hawaiian citizenship, or Hawaiian Kingdom law for that matter, has gained little academic attention is because most historians who analyze the Kingdom era (as reflected in Jones’ summary of naturalization law) have either ignored or marginalized aboriginal agency in law making. By most accounts, the codification of written laws beginning in the middle of the 19th century with the creation of the constitutional system is widely regarded as an expression of white rule in the Islands. Law or “Western law” is considered to be synonymous with “haole (foreign or white in particular)” and or “domination.”⁴⁸ From this angle, law is perceived as the source from which white supremacy and colonialism emanate.

Instead of drawing aboriginal agency to the center of their historical analysis, most scholars choose to portray the aboriginal population as victims of the Kingdom’s legal system—a system that was predominantly governed aboriginals. When aboriginal participation in government or legislation is acknowledged, it’s often regarded as

⁴⁰ Also See Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai’i?* (Honolulu, HI: University of Hawaii Press, 2008), 131.

⁴⁸ The meaning and usage of the term “Haole” has changed throughout the 19th century. According to Eleanor Nordyke, the term was “originally used by Hawaiians for persons who could not speak the Hawaiian language and did not understand the native culture. Haole did not indicate skin color in its early usage—the term was applied in reference to a stranger.” See Eleanor Nordyke, *The Peopling of Hawai’i* (Honolulu, HI: University of Hawaii Press, 1989), 43. Evelyn Nakano Glenn explains that the term “Haole” takes on a different meaning and usage during the rise of the plantation industry. Glenn explains, the “term ‘haole’ came to have a specific class as well as racial meaning in contrast to ethnically diverse laboring class.” See Evelyn Nakano Glenn, *Unequal Freedom: How race and gender shaped American citizenship and labor* (Cambridge, MA: Harvard University Press, 2002), 208.

coerced, influenced, contrived, or manipulated—ultimately aboriginals are portrayed as victims who unknowingly participated in their own demise. Sally Merry demonstrates this perception in an excerpt from her book *Colonizing Hawai‘i*.

As the Kingdom of Hawai‘i reconstructed its social and legal system, its leaders necessarily drew Europeans into the heart of the operation. They were hired to provide technical knowledge for the project but ultimately undermined and destroyed the conditions for independence.⁴⁹

Although Merry’s calculation acknowledges aboriginal agency in reconstructing the Hawaiian legal system, she claims that the mere decision of the Kingdom’s leaders to include Europeans in government is what ultimately led to the Kingdom’s demise. From this vantage, aboriginal leaders are seen as naive, whereas Europeans are portrayed as cunning conspirators that outwitted the aboriginal with law. Jon Osorio, in *Dismembering Lāhui* provides a portrayal of Hawai‘i’s legal history similar to Merry. While critiquing haole individuals that played central roles in establishing the Kingdom’s constitutional system, Osorio writes,

The advice of haole missionaries such as William Richards, Richard Armstrong, and Gerrit Judd was the fundamental reason for the passage of laws and for the institution of a Western economic system that ultimately dispossessed the Natives of land, identity, and nationhood. ...Western laws enabled haole to become powerful authorities in Hawaiian society ...⁵⁰

⁴⁹ Sally Engle Merry, *Colonizing Hawai‘i: The Cultural Power of Law* (New Jersey: Princeton University, 2000), 13.

⁵⁰ Jonathan Osorio, *Dismembering Lahui: A History of the Hawaiian Nation to 1887* (Honolulu: University of Hawai‘i Press, 2002), 13.

Written from an angle very similar to Merry's, Osorio portrays "haole" such as Richards, Armstrong, and Judd as uncomplicated and unrestrained colonial-type actors whose behaviors were never constrained by aboriginal authority. In doing so, no distinction is made between "haole" in the Kingdom. This has contributed to the prevailing consensus that all "haole" had the same intentions: use law to establish a system of discrimination that disadvantaged the aboriginal in order to advantage the "haole". In contrast to this prevailing idea, and as it is argued in chapter 4, the legal assistance provided by white people such as Richards and Judd, not only helped the aboriginal leaders to set the legal cornerstone for Hawaiian constitutionalism and cement Hawaiian independence, but their assistance actually became the greatest obstacle for many of their descendants who attempted to revolt against the government fifty years later.

This view of law is evidenced in the work of many prominent current historians. Kirch and Sahlins assert that the "the reign of Kauikeaouli as Kamehameha III, saw the decline of Hawaiian control of the kingdom. White men (Haole) took it over and turned the government into a constitutional monarchy . . . By the late 1840's the central government was for all intents in the hands of Whites, mostly Americans."⁵¹ Similarly, Judy Rohrer notes that the "Legal and political processes were centrally important in colonization and the establishment of haole [white] hegemony in the century after contact. . ."⁵² Rohrer continues, "Haole were quite familiar with laws . . . and were quickly able to use them to their advantage, especially since they helped write them."⁵³

⁵¹ Patrick Kirch and Marshall Sahlins, *Anahulu: The Anthropology of History in the Kingdom of Hawai'i*, Vol. 1 (The University of Chicago Press, 1992), 3.

⁵² Judy Rohrer, *Haoles in Hawai'i* (Honolulu: University of Hawai'i Press, 2010), 18.

⁵³ *Id.*, 20

More emphatically, Bob Stauffer, explains, the Kingdom's government was often American –dominated if not American-run. The emotionally charged changing of the flag on January 17, 1893, it can be argued, was simply the acknowledgement of an already accomplished fact.”⁵⁴

These statements reflect the general disregard for aboriginal agency and the portrayal of Kingdom law as a colonial-type construct that only served haole in the subjugation of the aboriginal. While these scholars are actually writing on behalf of the aboriginal population, they demonstrate the inadvertent, yet overarching tendency to frame Hawai'i's legal history in a way that dismisses the strong voice and participation of the aboriginal population in constructing Kingdom law.⁵⁵ The widespread dismissal of aboriginal agency in appropriating and adapting foreign legal conventions has actually worked to support the hegemony that most scholars are critiquing. Not only has this affected historical perceptions, but as Sai explains, “is one of the reasons why the Hawaiian situation has not been understood within the framework of international law, but rather has been pigeon-holed in colonial/post-colonial discourse concerning the rights of indigenous peoples, which only serves to reify U.S. Sovereignty over the Hawaiian Islands—a claim that international law and Hawaiian history fails to support.”⁵⁶

⁵⁴ Bob Stauffer, *Kahana: How the Land was Lost* (Honolulu: University of Hawaii Press, 2004), 73.

⁵⁵ For a comprehensive analysis of aboriginal agency, adaptation, and selective appropriation see K.B. Beamer, “Na Wai Ka Mana? 'Oiwī agency and European imperialism in the Hawaiian Kingdom” (Honolulu, HI: Unpublished doctoral thesis, University of Hawai'i at Mānoa, 2008). Beamer's dissertation helped to change the way we think about history and the actors therein, particularly Ali'i. His work contributed to the paradigm shift that occurred at the University of Hawai'i in the first decade following the millinia. Beamer's dissertation reconceptualized our understanding of the Kingdom era by bringing to light the heroic actions of the ali'i during unprecedented changes, events, and transitions that took place in 19th century.

⁵⁶ David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (unpublished dissertation UHM), .15. Also see David Keanu Sai, "A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and

Maude Jones' manuscript titled "Naturalization laws in Hawai'i" published in 1934, features a thorough compilation of the Kingdom's development of laws pertaining to the naturalization of foreigners from 1795-1900.⁵⁸ In the introduction, Jones writes that the concept of naturalizing foreigners began in the era of Kamehameha I. "The first foreigners were in many cases undesirable persons, being deserters from ships or fugitives from foreign lands. To those whom he considered worthy foreign settlers, the King, Kamehameha I, gave lands and the privileges of native subjects."⁵⁹ The most comprehensive aspect of Jones' work concentrates on the constitutional era, which she dates from 1840-1893. Drawing from legislative enactments, court decisions, and public discourse from newspaper articles and personal letters, Jones provided a compilation of naturalization laws during the Hawaiian constitutional era. Jones' work on naturalization is of great worth to this dissertation as it provides a thorough baseline to understanding the process of naturalization, which makes up a significant aspect of Hawaiian citizenship. Jones writes,

The story of Naturalization in Hawai'i from 1795 to date [1934] has been one of the struggle between peoples of other nationalities to gain control. Laws have been enacted, amended and repealed to suit American, British, French and Oriental residents. The history of Hawai'i is a history of foreign influences and intrigues.⁶⁰

Hawaiian Indigeneity and its Use and Practice in Hawai'i Today," *Law and Social Challenges (University of San Francisco School of Law)* 10 (Fall 2008): 68-133.

⁵⁸

⁵⁹ *Id.*, 9.

⁶⁰ *Id.*, 52.

In her analysis, Jones contends that naturalization laws provided a way for “peoples of other nationalities to gain power.”⁶¹ Jones makes the claim that the law was used to suit foreigners and that access to “gain control” happened through the legal process of naturalization.⁶² Whereas other scholars have appealed to the more general notion of law as oppressive, Jones identifies a specific aspect of Hawaiian Kingdom law, namely naturalization as the mechanism from which “foreigners” gained control. While Jones statement may be correct, the opposite may be just as correct—that naturalization laws were actually the mechanism in which “foreigners” were controlled.

Color-Blinders

As previously mentioned, ‘color blind’⁶⁴ proponent, Patrick Hanifin, published an article, “*To Dwell on the Earth in Unity: Rice, Arakaki, and the Growth of Citizenship and Voting Rights in Hawai‘i.*”⁶⁵ Discussing Hanifin, a Honolulu attorney was “one of the key legal advisers behind federal lawsuits challenging Hawaiian entitlements . . .”⁶⁶ Hannifin’s article provided a relatively sound legal review of some of the historical aspects of Hawaiian citizenship. This included: an overview of the Hawaiian Kingdom’s adoption of English Common Law practices in structuring Hawaiian citizenship laws and a of review of statutory enactments and judicial decisions regarding Hawaiian citizenship law. In providing this overview Hanifin stressed the point that in the 19th century, “the

⁶¹ *Id.*

⁶² *Id.*

⁶⁴ Eduardo Bonilla-Silva writes that the color-blind argument allows whites to “enunciate positions that safeguard their racial interest without sounding ‘racist.’ Shielded by color blindness, whites can express resentment toward minorities; criticize their morality, values, and work ethic; and even claim to be the victims of ‘reverse racism.’” In Eduardo Bonilla-Silva, *Racism without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America* (Lanham: Rowman & Littlefield, 2014), 4.

⁶⁵ See. Patrick W. Hanifin, “To Dwell on the Earth in Unity: Rice, Arakaki, and the Growth of Citizenship and Voting Rights in Hawai‘i,” *Hawai‘i Bar Journal* 13 (2002): 15-44.

⁶⁶ Mike Gordon, “Patrick Hanifin, 48, fought entitlements”, *Honolulu Advertiser*, June 17, 2003.

government of the kingdom of Hawai‘i . . . offered immigrants easy naturalization and full political rights . . . Race and ethnicity did not matter.”⁶⁷ Hannifin’s work properly outlined the fact that the term Hawaiian denoted citizenship rather than race during the constitutional era. It is from this tradition of racial inclusion that Hannifin argues against Hawaiian “racial” entitlements in his desire to promote a “color blind” Hawai‘i today.

Problems with a colonial discourse analysis: Aboriginal Agency Marginalized

Although the Hawaiian Kingdom was never actually a colony (US or otherwise), its history has been presented as if it was. Nearly all accounts of the 19th century have been framed by using a colonial discourse analysis. An over-reliance on this theoretical framework has resulted in historical deficiencies, many of which reflect the shortcomings of the field of colonial discourse analysis. Critics of colonial/post-colonial frames of analysis assert that such an analysis often fails to recognize aboriginal agency or resistance. The tendency of this scholarship has tended to “prioritize an analysis of the strategies of the colonizers over those of the colonized . . .”⁷⁴ Other scholars critical of the field argue that a colonial/post-colonial frame of analysis cannot be “historicized modally, and that [it] ends up being tilted towards description of all kinds of social oppression and discursive control.”⁷⁵

With regards to law, John Comaroff explains that most “writing—especially on colonialism and the political sociology of race . . . has emphasized the dark side of law... [f]rom this vantage, legal institutions and processes appear as tools of domination and

⁶⁷ Hanifin, 15.

⁷⁴ Gurpreet Bhasin, “Mediating Publics in colonial Delhi,” in *Rethinking the Public: Innovations in Research, Theory and Politics*, ed. Janet Newman, Clive Barnett Nick Mahony (Great Britain: The Policy Press, 2010), 62.

⁷⁵ Stephen Slemon, “The Scramble For Post-Colonialism,” in *De-Scribing Empire: Post-colonialism and textuality*, ed. Chris Tiffin and Alan Lawson, 15-33 (NY: Routledge, 1994), 22.

disempowerment. . .”⁷⁶ Similarly, Assaf Likhovski explains that the study of law from a colonial/post-colonial framework is “often based on the perception of law . . . as an instrument of violence, conquest, and subjugation of hapless natives.”⁷⁷ The emergence of Hawaiian law, particularly during the constitutional era has been viewed as “Western law imposed from above by colonial rulers and used to directly oppress, dispossess, and exploit the native population.”⁷⁸

Because the significant legal history of Hawaii has been left to a reductive colonial narrative, the function of law beyond a conventional hegemonic critique has not been fully considered. Because Hawaiian Kingdom law has often been portrayed as oppressive and violent, the legal and political history of Hawai‘i remains narrow and in need of greater research. Question simplistic narrations of history, Anne McClintock argues, “the inscription of history around a single ‘continuity of preoccupations’ and a ‘common past’, runs the risk of a fetishistic disavowal of crucial international distinctions that are barely understood and inadequately theorized.”⁷⁹ From the colonial vantage point, Hawaiian Kingdom law is often portrayed as an elaborate expression of white supremacy.

While law has often been the conveyor of white supremacy since the invention of race, as argued in chapter 4, Hawaiian Kingdom law had almost the opposite effect. The idea of law as antithetical to white supremacy is demonstrated by casting light on the exceptional inclusivity of Hawaiian citizenship laws, which until the 1887 Bayonet Constitution, extended full civil and political rights regardless of race or ethnicity. The

⁷⁶John Camaroff, *Contested States: Foreword in Law, Hegemony, and Resistance* (New York and Longdon: Routledge, 1994), x.

⁷⁷ Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill: University of North Carolina Press, 2006), 7.

⁷⁸ *Id.*, 8.

⁷⁹ Anne McClintock, *Imperial Leather: Race, Gender, and Sexuality in the Colonial Contest* (London: Routledge, 1995), 12.

inclusivity of Hawaiian citizenship laws not only disrupts wide-held beliefs that whites were architects of an oppressive legal system it also induces a paradigm shift that recalibrates perceptions of law in the 19th century. Because aboriginals always represented the overwhelming ethnic majority of the democratically governed constitutional monarchy they also made up the majority of law makers and government officials throughout the 19th century.⁸¹ Considering the persistency of aboriginals in the construction of Kingdom law, the law cannot be simply read as an artifice of colonialism, but rather should be seen as an authentic, and genius expression of aboriginal voice, amidst extraordinary times. This shift repositions “the hapless natives” as victims of an oppressive legal system, to autonomous actors controlling their own domestic affairs.

At the cornerstone of this paradigmatic shift is the notion that law can be utilized in the name of liberation and resistance, rather than domination and subjugation.⁸² From this angle, therefore, the adoption of Western legal conventions by aboriginals was an exceptional method for its time, a method that effectively preempted “colonialism [by] creat[ing] a strong central state that could oppose the threat posed by the West.”⁸³ Professors Kamana Beamer and Kao Duarte, some of the first historians to begin detailing the agency of aboriginals during the 19th century assert:

The inclusion and adaptation of Western tools and concepts by Hawaiians is abundant in their rich history, both ancient and recent. Iron, electricity, mapping, and independent Statehood were among some of the more modern tools and concepts that Hawaiians of the late-1800s and 1900s brought into the Hawaiian consciousness.

⁸¹ See Robert Lydecker, *Roster Legislatures of Hawaii* (Honolulu, HI: The Hawaiian Gazette, 1918).

⁸² Kimberle Crenshaw, Neil Gotanda, Gary Peller and Thomas Kendall, *Critical Race Theory* (New York: The New Press, 1995), xii.

⁸³ Likhovski, 8.

Emerging research that acknowledges aboriginal agency lends a different vantage point than the one taken from Jones and Hannifin. Missing from Jones' assessment is the strong participation of the aboriginal population in government. When citizenship laws were being shaped during the 1840's, the legislative assembly, which consisted of the House of Representatives and the House of Nobles, predominantly consisted of aboriginals.⁸⁵

When considering aboriginal agency in law making, before and during the constitutional era, naturalization, citizenship, Hawaiian Kingdom law in general can be seen in a different light. Not as a way for foreigners to *gain control*, but actually as a way that the foreign population could *be controlled*. From the origin of the Hawaiian Kingdom under the reign of Kamehameha I, and throughout the constitutional era, the aboriginal population mobilized law to their advantage. Law was used as a tool to constrain domestic behaviors like the emergence of white supremacy, but also international behaviors, such as colonialism. These points will be furthered argued in chapter 3.

False Racial Binary

Omi and Winant have explained that race has no biological or scientific foundation. They argue that "Race is indeed a pre-eminently sociohistorical concept. Racial categories and the meaning of race are given concrete expression by the specific social relations and historical context in which they are embedded. Racial meanings have varied tremendously over time and between different societies."⁸⁶ Rather than dissecting

⁸⁵ See Lydecker, Robert

⁸⁶ Omi and Winant, *Racial Formations in the United States: From the 1960's to the 1980's* (London: Routledge, 1986), 13.

the complex intersections of race and law throughout the 19th century, the prevailing narrative has formulated its analysis by erecting false racial binaries, creating a tendency to analyze Hawaiian history by pitting aboriginals against white people. Although this predominant view has identified race-based conflicts between aboriginals and whites, it has done little to articulate and frame the complex societal dynamics of the 19th century whereby citizenship rather than race was the dominant categorization.

Even in this binary however, most analyses are never geared towards emphasizing the voice and participation of the aboriginal. Instead, the voice that is consistently projected is the actions, words, statements, comments, and behaviors of white people. While white people were active and influential in politics, they never held the majority of government. The first instance in which white people had control of the country was in 1893 when the US military invaded and then belligerently occupied the Kingdom. As previous demonstrated, despite being the minority, the voice of “haole” is often placed at the center of 19th century law and politics. Framing history in this way has resulted in minimizing aboriginal autonomy in the construction of the Hawaiian Kingdom.

Moreover, framing history as an aboriginal-white binary has rendered invisible the actions and agency of other ethnic groups, particularly the Chinese who consistently held a formidable presence amongst the Kingdom’s national citizenry. Not only did the Chinese community in the Hawaiian Islands benefit from their political inclusion under Kingdom law, but their strong and consistent presence in the Kingdom’s business sector played an important role in subduing the emergence of white supremacy. As will be discussed in chapter 4, the Chinese stronghold on the Kingdom’s economy became an impetus for their disenfranchisement during the coup of 1887, in which all Asians were

restricted from voting. This restriction introduced exclusionary race-based citizenship law in the Hawaiian Kingdom. The coup of 1887 also marked a critical rupture in the Chinese experience in the Hawaiian Kingdom. Nonetheless, the predominant method of analyzing history by forcing racial binaries has created a lopsided history that, amongst other things, portrays white people as legally boundless and aboriginals and other ethnic groups as legally bounded and disadvantaged.

The Other Side of Hawaiian Kingdom Law

In contrast to the general consensus and prevailing view of law as “oppressive”, this dissertation provides a broader analysis of Hawaiian Kingdom law by illuminating the ‘other side of law’, the side that holds law “as the key, actual or potential, to liberation, and empowerment...and equality and opportunity.”⁸⁸ What has been missing from the discourse of Hawaiian history is the remarkable proficiency that the aboriginal population of the 19th century displayed in law, both domestic and also international. Despite the aboriginal population’s persistent engagement with law throughout the 19th century, very little has been written on the topic of Hawaiian Kingdom law. The minimal literature on the topic of Hawaiian citizenship is but one example of the limited research. While the entire legal system of the Kingdom is in need of further research, so are many of its actors: those who were central in operating the kingdom’s legal system. Amongst them, and maybe the most prominent actor of all, Queen Lili‘uokalani. While there is relatively a lot written about the Queen, there are few studies about her brilliant political and legal tactics during the Kingdom’s most critical moments. As she demonstrated, knowing the law, not just Hawaiian Kingdom law, but US Constitutional and

⁸⁸ Camaroff, ix.

international law, was a source of empowerment and a rallying point for thousands of her supporters. As discussed in chapter 5, the law also provided political leverage throughout her diplomatic negotiations with President Cleveland and other representatives of the US Government. When considering the aboriginal populations appropriation, adaptation, and application of Western legal conventions, an exceptional legal history appears.

Yet, this exceptional legal history of the Hawaiian Kingdom is not for purposes of history only, especially considering that “For the law relevant time exists long before and beyond the present.”⁸⁹ When taking into account the interdependent nature of law and history, the legal history of the Kingdom unveils a path towards legal justice today. The timeless nature of law that “transcend any particular era or individuals life”⁹⁰ brings profound relevance to current Hawaiian citizenship claims in court today. Current citizenship claims underscore the utility of law as “not only cumulative and expansive but reversible” while bringing resonance to the notion that “The past can meet and control the present, but the present can reverse the past as well.”⁹¹

As *Lorenzo*⁹² demonstrated, this history is of great contemporary significance as well. The historical development of law in the Hawaiian Kingdom, along with the strategic application of legal principles demonstrated by historical figures, such as Queen Lili‘uokalani, is the primary reason why *Lorenzo* and all succeeding cases remain legally significant today. In 2012 a nuanced legal argument was presented in Hawai‘i Courts sharing *Lorenzo*‘s claim of Hawaiian nationality while also providing sufficient evidence to challenge US jurisdiction in Hawaiian territory. However, instead

⁸⁹ Patricia Ewick & Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago and London: The University of Chicago Press, 1998), 95.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *State of Hawai‘i v. Lorenzo*

of challenging the Courts jurisdiction over Kaulia, the defense sought to dispute the case based strictly on the procedural rules of subject matter jurisdiction. These legal tactics, and the pleadings therein, since *Lorenzo* reflect the growing body of legal scholarship that has uses international law, U.S. Constitutional law, and Hawaiian Kingdom law, to demonstrate that not only has the U.S. illegally *occupied* the Hawaiian Islands since 1898, but that Hawaiian sovereignty remains intact. These newer cases such as Kaulia will be covered in chapter 6. Hawaiian citizenship claimants since *Lorenzo* illustrate the importance of engaging law. John Camaroff explains, “To the degree that law *appears* to be imbricated in the empowered construction of reality, it also presents itself as the ground on which to unravel the workings of power, to disable and reconstruct received realities.”⁹³ Law not only provides the venue to activate the legal history of the 19th century, but it also serves as the public arena where the politics of a 115-year prolonged occupation can be mediated.

Giving a broader interpretation and purpose of the law, Assaf Likhovski explains, “Law is not merely about power. It is also about self-definition . . . They [laws] are also representations of reality.” He continues, “Law is a story that people tell themselves about themselves.”⁹⁴ From this angle, the law provides “a way to answer the question, ‘who are we?’”⁹⁵ For more than a century, the aboriginal population of Hawai’i has been contemplating this question; are we American, Native American, Indigenous, Hawaiians, Native Hawaiians, Kānaka Maoli, Hapa Haole, etc.? This analysis of Hawaiian citizenship does not seek to answer this question, but rather help to contextualize the

⁹³ Camaroff, xii.

⁹⁴ *Id.* , 8.

⁹⁵ *Id.* , 2.

question. It does this by providing a survey of the origin, evolution, and disruptions and continuities of Hawaiian citizenship law.

Problems with a color blind argument

While Hanifin’s article used appropriate legal theory and logic to articulate the racially inclusive nature of Hawaiian citizenship throughout most of the 19th century, his approach assumes an discontinuity of Hawaiian sovereignty. Hanifin’s political agenda “to challenge the validity of Native Hawaiian programs”⁹⁶ shines through full bore in his legal calculation of annexation. In order to support his political leanings in the present, Hanifin glosses over annexation, merely asserting, “Annexation brought Hawai’i under the Constitution of the United States, including the Fourteenth Amendment, peacefully establishing a democracy in the long run.”⁹⁷ Hanifin’s treatment of annexation attempts to merge two disparate legal histories of citizenship of two countries into one seamless narrative.

Based on this anemic treatment of annexation, Hanifin argued that institutions such as Kamehameha Schools, the Office of Hawaiian Affairs (OHA), and the Department of Hawaiian Home Lands (DHHL), were not only illegal under the 14th Amendment of the US Constitution, but that racially exclusive policies such as the Akaka Bill were also inconsistent with the policies of the Hawaiian Kingdom.⁹⁸ Hanifin’s re-appropriation of Hawaiian citizenship is concluded with three politically charged sentences that neatly summarize the tone of the article, the level of scholarly inquiry, but most of all its political purpose. He writes, “No one deserves more than equality. All of

⁹⁶ Gordon, *Id.*

⁹⁷ *Id.*, 29.

⁹⁸ See *Doe v. Kamehameha; Rice v. Cayetano and Arakaki v. State of Hawai’i.*

the people of Hawaii [sic] are heirs of the Kingdom and its tradition of political inclusion. The citizens of Hawaii [sic] can say: 'We are all sovereign now.'"⁹⁹

The occupation of the Hawaiian Kingdom would obstruct the effect that Hawaiian citizenship laws sought to bolster (i.e. racial inclusion) before 1887. The racially inclusive laws that once characterized Hawaiian citizenship were replaced with racially exclusive tenets of American citizenship. Hanifin properly identifies the absence of racial categories in the Hawaiian Kingdom era but his framework of interpretation contorts more than it clarifies. He misses the fact that race was a US importation¹⁰⁰ while simultaneously arguing that Hawaiians today should return to a "color blind" framework where "race or ethnicity did not matter."

Hawaiian Society of Law and Politics

In recent years the US's flimsy, even comical, claim over the Hawaiian Islands has attracted widespread public attention. In 2010, Tom Coffman, a former Associated Press news reporter, published a revised issue of the book that he wrote in 1998, *Nation Within*. A notable change that Coffman made was in the subtitle. In 1998, the title read *Nation Within: The Story of America's Annexation of the Nation of Hawai'i*. And in 2010, the title of the revised edition read, *Nation Within: The History of the American Occupation of Hawai'i*. Coffman explained the change of sub-title,

I am compelled to add that the continued relevance of this book reflects a far-reaching political, moral and intellectual failure of the United States to recognize and deal with its takeover of Hawai'i. In the book's subtitle, the word Annexation has been replaced by the word

⁹⁹ Hanifin, 44.

¹⁰⁰ Virginia Dominguez, "Exporting U.S. Concepts of Race: Are There Limits to the U.S. Model?," *Social Research* 65 (Summer 1998): 369-399.

Occupation, referring to America's occupation of Hawai'i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law we are left with the word occupation.¹³⁵

Coffman noted that he was compelled to make this change because of the emergence of new research and scholarship on the topic. These emerging scholars represent a new generation of aboriginals and non-aboriginals that have begun to take ownership over, and for, their country—the Hawaiian Kingdom—through scholarship and research.

Among these scholars, Kamana Beamer wrote, “I am interested to see if any other story might be told with the colonial spectacles placed on the table.”¹³⁸ Based on his analysis, Beamer concluded, “that so long as the aboriginal population had a Mō‘ī [King/Queen] of aboriginal descent and a government composed of Hawaiian nationals, they had access to power. It was this relationship that was drastically altered following the events in 1893 . . .”¹³⁹ Another scholar, Sydney Iaukea, whose research centers on the public service of her great-great-grandfather, Curtis Piehu Iaukea, who held office during some of the most pivotal moments in the history of the Hawaiian Kingdom. Iaukea writes that in her research she “found a Hawaiian political agency and intelligibility that was already there”—an intelligibility that she explains has been “silenced by a colonial discourse that still reads land and native participation as victimized entities on displaced geographical spaces.”¹⁴⁰

¹³⁵ Tom Coffman, *Nation Within: The History of the American Occupation of Hawaii* (Kihei: Koa Books, 2009), preface.

¹³⁸ Beamer, 10.

¹³⁹ *Id.*, 12.

¹⁴⁰ Sydney Lehua Iaukea, *E Pa'a 'Oukou: Holding And Remembering Hawaiian Understandings of Place and Politics* (Honolulu, HI: Unpublished Doctoral Dissertation (University of Hawaii), 2008), 2.

While the projects of Beamer and Iaukea demonstrated the significance of 19th century agency amongst aboriginal leaders, the work of Keanu Sai was the first to articulate the significance of the Hawaiian Kingdom today despite what he describes as a “prolonged occupation”. Sai’s research demonstrated how that the legal status of the Hawaiian Kingdom as a sovereign and independent state was never extinguished, and therefore since 1898, the Hawaiian Islands have undergone a prolonged military occupation. Sai expounds, “Hawai‘i was deliberately treated as a non-self-governing territory or colonial possession in order to conceal the United States’ prolonged occupation of an independent and sovereign State for military purposes.”¹⁴¹ Outlining the legal implications that resulted from the US’s invasion and subsequent occupation of the Hawaiian Kingdom, Sai explained:

Three important facts resonate in the American occupation of the Hawaiian Kingdom. First, the Hawaiian Kingdom was never at war with the United States and as a subject of international law was a neutral state; second, there was never a military government established by the United States to administer Hawaiian law; and, third, all laws enacted by the Federal government and the State of Hawai‘i, to include its predecessor the Territory of Hawai‘i since 1900, stem from the lawmaking power of the United State Congress, which, by operation of United States constitutional constraints as well as Article 43, have no extraterritorial force. In other words, there has been no legitimate government, whether de jure or de facto under Hawaiian law or military law by the executive authority of the U.S. President, operating within the occupied State of the Hawaiian

¹⁴¹ David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (to be published), 167.

Kingdom since the illegal overthrow of the Hawaiian government on January 17th 1893...¹⁴²

One prominent and crucial issue that kept surfacing in Sai's scholarship, but garnered little attention, was the extensive complications of citizenship that resulted from what Sai had framed as a 115-year occupation. The late professor of Hawaiian Studies at the University of Hawai'i at Mānoa, Kanalu Young, was of the first to begin to conceptualize the possibilities that such an analysis would bring. With regards to the legal continuity of the Hawaiian Kingdom and the possible restoration of Hawaiian sovereignty, Young wrote:

“A formidable multiethnic national collective will be mobilized here when the definition of nationality according to the Constitution of 1864 is applied as the legal precedent. It would then be possible to identify hundreds of thousands more as Hawaiian nationals in accordance with their birthright. What is more, for the purposes of this hypothetical, replace the adjective “local” wherever it is found today to denote island identity with “national” and one begins to realize how pervasive a justice-based change there will be.”¹⁴³

This dissertation attempts to add to this body of research that scholars such as Sai, Young, Beamer, Iaukea, and a handful of others have begun to unveil. While the prevailing discourse has uncovered and analyzed significant aspects of the past, what has gone amiss is the other side of the historical spectrum. The side of history that represents the Hawaiian Kingdom and its legal system as a historical phenomenon and a source of empowerment afforded to not only the aboriginal population, but for other people of

¹⁴² David Keanu Sai, *Ua Mau Ke Ea Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands* (Honolulu: Pua Foundation, 2011), 119.

¹⁴³ Kanalu Young, "Kuleana: Toward a Historiography of Hawaiian National Consciousness, 1780-2001," *Hawaiian Society of Law and Politics*, Summer 2006: 1-33, 5.

color as well—a history that reflects the aboriginal population’s remarkable appropriation, adaptation, and proficiency in law, which included, but was not limited to, collaborative and dynamic relations with white people. And perhaps most importantly, given the timeless and versatile nature of law, this history of Hawaiian citizenship is not merely an exercise in historiography, but rather it has profound relevance to the present and future political condition of the Hawaiian Islands.

Chapter 2: The Origins of Hawaiian Citizenship

Before Kamehameha I consolidated the Hawaiian archipelago, the islands were divided by four distinct islands Kingdoms. Each Kingdom was ruled independently of one another. Yet, despite the political boundaries that separated each Kingdom the inhabitants shared, for the most part, a common culture, language, religion, and history, which evolved for nearly 2 millennia. Each Kingdom was governed in a manner similar to feudalism, where a class structure existed between ali‘i and maka‘āinana. It was from this feudal structure that a reciprocal relationship and bond of allegiance between ali‘i and maka‘āinana was formed. This chapter will discuss the significance of allegiance in relation to early conceptions of Hawaiian citizenship. Kamehameha’s unification of Hawai‘i Island provided a learning experience that would influence his character as a leader. From a battle in Puna, comes an infamous event known as Mamalahoa—Law of the Splintered Paddle. As discussed later in this chapter, following this event Kamehameha begins to re-conceptualize the ali‘i/maka‘āinana relationship, marking an important moment in the development of the individual rights of the commoner class. Another important event during the consolidation of Hawai‘i Island is the relationship that is forged between Kamehameha I and British Captain, George Vancouver. Kamehameha’s foresight in forming strategic international relations helped to protect and maintain Hawaiian autonomy amidst the rise of European exploration in the Pacific.

Feudal Allegiance

The social structure throughout each of the Kingdoms was consistent. Hawaiian societies consisted of a hierarchical class system, which W.D. Alexander commented “bore a remarkable resemblance to the feudal system that prevailed in Europe during the Middle Ages”¹⁴⁵. In agreement, Judge Walter Frear explained:

The system of government was of a feudal nature, with the King as lord paramount, the chief as mesne lord and the common man as tenant paravail—generally three or four and sometime six degrees. Each held land of his immediate superior in return for military and other services and the payment of taxes or rent.¹⁴⁶

Although most analogies of the traditional social structure have been likened to European feudalism, Stuart Banner contends that the “comparison was not perfect, it was close.”¹⁴⁷ He writes “no one owned land in the sense in which the word was used in 19th-century Europe and the United States. Maka‘āinana [commoners] had rights to use zones of land allocated by ali‘i, or chiefs, in exchange for providing labor and agricultural products to the ali‘i.”¹⁴⁸ Banner asserts that while this hierarchical class structure reflects that of a feudal nature, there are two distinguishing factors that differentiate European feudalism from traditional Hawaiian society. The first is that in Hawaiian society, land

¹⁴⁵ William De Witt Alexander, *A Brief History of the Hawaiian People* (Honolulu, 1899).

¹⁴⁶ W.F. Frear, "The Development of Hawaiian Statute Law," *Thirteenth Annual Report of the Hawaiian Historical Society* (Hawaiian Gazette), 1906, 16.

¹⁴⁷ Stuart Banner, *Possessing the Pacific: Land, Settlers, and Indigenous People from Australia to Alaska* (Harvard: Harvard College Press, 2007), 132.

¹⁴⁸ *Id.*

tenure rights were not always predicated on military service. The other is that maka‘āinana and ali‘i relations were not static, the commoner class could relocate freely to the dominion of another chief and obtain rights to land if the former chief was unjust.¹⁴⁹ This interdependency between maka‘āinana and ali‘i set the societal structure apart from European feudalism. Accordingly, Lilikalā Kame‘eleihiwa writes that ali‘i were “protectors of the maka‘āinana, sheltering them from terrible unforeseen forces.” Kame‘eleihiwa further explains that if an ali‘i were to “neglect proper ritual and pious behavior”, that chief risked the possibility of being “struck down, usually by the people.”¹⁵⁰

Renowned historian, Davida Malo, likened the social structure to a figurative body. “The government was supposed to have one body (kino). As the body of a man is one, provided with a head, with hands, feet and numerous small members, so the government has many part, but one organization . . . The corporate body of the government was the whole nation, including the common people and chiefs under the king.”¹⁵¹ Accordingly, the civil polity of the Islands was not tribal. Instead, as Robert Hommon illuminates in his recent study, Hawaiian society possessed the qualities of a ‘state’, which Hammond defines as:

a central government with a leader or coleaders applying political power backed by the threat of force to supervise a multistratum bureaucracy that accomplishes tasks that include tax collection,

¹⁴⁹ *Id.*

¹⁵⁰ Lilikalā Kame‘eleihiwa, *Native Land and Foreign Desires: Pehea La E Pon Ai?* (Honolulu, HI: Bishop Museum, 1992), 26.

¹⁵¹ Davida Malo, *Hawaiian Antiquities (Moolelo Hawaii)*, trans. Dr. N.B. Emerson (Honolulu: Honolulu Gazette, 1903), 248.

maintenance of internal order, external negotiation, and the waging of war.¹⁵²

Early Statecraft

Robert Hommon has begun to contend that these traditional governing structures in the islands were a global phenomenon that constituted one of the “major revolutions of human history.”¹⁵³ He explains that even before European contact, the Kingdoms were operating as a centralized bureaucratic system, what is referred to as a primary state—“the ultimate progenitors of the 200 nation-states that now span the world.”¹⁵⁴ According to Hommon, Primary States “formed independently, by means of internal processes rather than through coercive influence from, negotiation with, or emulation of existing states . . .”¹⁵⁵ Hommon asserts that the “Hawaiian State”, was the “seventh and last world region to host indigenous state formation”.¹⁵⁶ The other “six regions of the world: Mesopotamia, Egypt, the Indus Valley, China, Mesoamerica and Andean South America.”¹⁵⁷ Hommon’s work on the ancient Hawaiian State adds context to the Hawaiian Kingdom’s evolution into a modern state.

Before Kamehameha I consolidated the leeward kingdoms, which no other chief had accomplished, each kingdom had a defined territory, a distinct population, and a centralized government. Furthering this view, it could be said that each of the kingdoms before consolidation—Maui, O‘ahu, and Kaua‘i—possessed a distinct nationality. In this case, what distinguished nationality or political-legal affiliation was territory and

¹⁵² Robert Hommon, *The Ancient Hawaiian State: Origins Of A Political Society* (New York: Oxford, 2013).

¹⁵³ *Id.*, 1.

¹⁵⁴ *Id.*, preface.

¹⁵⁵ *Id.*, 1.

¹⁵⁶ *Id.*, 2.

¹⁵⁷ *Id.*, preface.

allegiance to the Mō‘ī of a specific kingdom. Despite the centrality of allegiance in the hierarchical class system, “it was not unusual for a chief to transfer his allegiance from one overlord to another . . .”¹⁵⁸ This aspect of the traditional civil polity is a significant factor that shaped Kamehameha’s perception and intent of his agreement with Vancouver in 1794.

Four Kingdoms Become One

Kamehameha I became the ruling chief of Hawai‘i Island “by the death of Keōua Kūahu‘ula”, the other ruling chief of Hawai‘i Island in 1791. By virtue of this, Kamehameha inherited the entire dominion of Hawai‘i Island, including its inhabitants. At the time when Kamehameha united Hawai‘i Island, the islands were divided politically into four distinct Kingdoms: The Kingdom of Hawai‘i; The Kingdom Maui and its outlying dependencies of Kaho‘olawe, Lāna‘i, and Moloka‘i; The Kingdom of O‘ahu; The Kingdom of Kaua‘i, and its dependency, Ni‘ihau. Each Kingdom had a defined territory, population, and a central government.¹⁵⁹

Despite the oscillating political boundaries that separated the eight islands, the inhabitants throughout the region shared a common culture—language, religion, and custom that had evolved in relative isolation for nearly two millennia.¹⁶⁰ As a result, a cultural commonality developed that transcended not only the political boundaries between the islands, but also the class divisions. David Malo explained “Commoners and

¹⁵⁸ Kuykendall, 29.

¹⁵⁹ David Keanu Sai, *Ua Mau Ke Ea Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands* (Honolulu: Pua Foundation, 2011),

¹⁶⁰ Patrick Vinton Kirch, *Legacy of the Landscape: An illustrated Guide to Hawaiian Archaeological Sites* (Honolulu: University of Hawaii Press, 1996), 4.

chiefs were all descended from the same ancestors...”¹⁶¹ Similarly, Kamakau wrote “Chiefly genealogy are the ancestors of the chiefs and general populace of Hawaii nei.”¹⁶² Kamakau also wrote “O na li’i Oahu a me Kauai, o ko Hawaii a me Molokai hookahi no kupuna.” (“The Chiefs of O‘ahu, of Hawai‘i, of Maui and of Moloka‘i, have all one common ancestor.”)¹⁶³

Mamalahoa: Protection of Individuals

W.D. Alexander wrote that under the rule of Kamehameha I, “Energetic measures were taken for the suppression of brigandage, murder, and theft, throughout the kingdom.”¹⁶⁴ Such measures were reflected in the edict, or law, known as ‘Māmalahoa’.¹⁶⁵ Declared by Kamehameha I as the law of the land, Māmalahoa began to rezeptualize how a rival chief’s subjects were viewed. It read, “let the aged man go and sleep on the road-side; let the aged woman go and sleep on the road-side, and let no one injure or molest them.”¹⁶⁶ This law was inspired by a fortuitous event that Kamehameha personally experienced while waging war against Keawemauhili, chief of Hilo and it adjacent districts. Prior to Māmalahoa, all subjects of the King, including women and children were considered extensions of the Mō‘ī, and therefore vulnerable to attack during times of war.

¹⁶¹ In Lilikala Kameeleihiwa, *Native Land and Foreign Desires; Pehea La E Pono Ai* (Honolulu: Bishop Museum Press, 1992), 19.

¹⁶² *Id.*

¹⁶³ K.B. Beamer, "Na Wai Ka Mana? 'Oiwī agency and European imperialism in the Hawaiian Kingdom" (Honolulu, HI: Unpublished doctoral thesis, University of Hawaii at Manoa, 2008), 44., 44.

¹⁶⁴ Alexander, W. D. (18919). *A Brief History of the Hawaiian People*. Honolulu. The W.D. Alexander text was published in 1891. This text was actually the same history book used by the Department of Education, in the Hawaiian Kingdom. Although the text is not without its flaws, it offers a glimpse into Hawaiian history, especially considering that it was compiled during a time when stories of Kamehameha I could still be accessed by a number of residents. Along with historians such as Alexander, the significant work of historians such as Kamakau and Malo are also referenced in the same context.

¹⁶⁵ For an account of the story that led Kamehameha I to declare ‘Mamalahoa’ see Hopkins, C. (1905). *Mamalahoa, An Ancient Hawaiian Law. Hawaiian Almanac and Annual for 1906* , pp. 81-86.

¹⁶⁶ *Id.* , , 85.

According to Kuykendall, Kamehameha “made a plundering raid on the coast of Puna, where he had an encounter with two fishermen which nearly proved fatal to him.”¹⁶⁷ Seeing the fishermen as an extension of his rival chief, Kamehameha attempted to kill them. During his pursuit of the fishermen, Kamehameha’s “foot slipped into a crevice of the lava rock and held him fast; one of the fishermen, seeing his helpless plight, turned and struck him on the head with a paddle”¹⁶⁸ While Kamehameha escaped, “the incident made a lasting impression on his consciousness”¹⁶⁹ This experience became the basis of the law known as Māmalahoa. The mercy demonstrated by the fishermen, in sparing Kamehameha’s life, led to a change in government policy regarding warfare. Historian Samuel Kamakau wrote that the “law was the means of saving many lives during a time of slaughter; when this law proclaimed, no more slaughter was allowed; all were saved.”¹⁷⁰ Along with providing individuals protections it also contributed to a re-conceptualizing of the relationship between the Hawaiian government and its subjects. Māmalahoa was a transformative event in the development of Hawaiian citizenship because it marked the beginning of separating the rights of the individual from the King. Prior to this law, the non-warrior class of a rival chief was vulnerable to the same treatment as the warrior class. After Māmalahoa, the non-warrior class begins to be viewed as distinct from their chief.

While Māmalahoa played a significant role in shaping the domestic or municipal development of Hawaiian citizenship as it provided a sense of individual autonomy, another significant event that occurred during the reign of Kamehameha I that also

¹⁶⁷ Kuykendal, 34.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ S.M. Kamakau, *Ruling Chiefs of Hawaii* (Honolulu, HI: Kamehameha Schools, 1992), 312.

contributed to building the international character of Hawaiian citizenship. In 1794, after Kamehameha unified the island of Hawai‘i, he negotiated a political union with Captain George Vancouver on board the *HMS Discovery*. The increasing and frequent presence of Europeans in the islands motivated Kamehameha to form a political alliance with the British Crown. An alliance would provide Kamehameha’s kingdom protection against the prospect of European imperialism. As explained later in this chapter, Kamehameha made numerous assertions of British nationality with regards to himself, his possessions, and his government.

Foreign Power on Display

Kamehameha I was a relatively low ranking chief whose rise coincided with the introduction of Europeans in the islands. Captain Cook’s expedition to the Pacific “changed the world”.¹⁷¹ His three voyages to the Pacific offered Europeans a comprehensive guide to know the world and travel the world like never before. Before Cook’s voyages, “To Europeans . . . the globe was uncertain and dangerous; after it was comprehensible and ordered.”¹⁷² Cook’s expedition relieved some of the anxieties that Europeans harbored about the world by providing a “mathematical, scientific, and textual vision of the world’s places.”¹⁷³ Encouraged by a renewed confidence, Europeans poured into the Pacific, eager to capitalize on the economic possibilities that a new trade route between Asia and Europe presented. While Cook himself introduced traumatic changes to the world that these island kingdoms had constructed, his arrival was merely the first of a never ending wave of Europeans that would crash into the islands.

¹⁷¹ See Brian Richardson, *Longitude and Empire: How Captain Cook's Voyages Changed the World* (Vancouver: UBC Press, 2005),

¹⁷² *Longitude and Empire: How Captain Cook's Voyages Changed the World*, Vancouver UBC Press 2005.

¹⁷³ *Id.*, 7.

Shortly following Cook's expedition, the islands became an important economic hub for trade and commerce linking Europe with China. Pauline King notes, "By 1795 there had been about forty one visits by trading vessels, both British and American."¹⁷⁴ The constant and increasing presence of Europeans injected an external variable into the political interplay of the four kingdoms, all of which were vying for supremacy over the islands. Recognizing a new kind of 'mana' [power] that foreigners possessed with regard to weaponry, the ruling chiefs recruited and to varying degrees exploited European sailors, captains, merchants, and others, in an effort to procure muskets, cannons, ammunitions, but also for service in military battle. This eventually gave rise to an arms race between the four kingdoms.¹⁷⁵ By 1793, the ruling chiefs of each Kingdom had accumulated "stockpiles of western weapons as well as western advisers and employees."¹⁷⁶

Not all Europeans aligned themselves with particular kingdoms in the islands as many travelled throughout each for purposes of exploration. Guns and ammunition were not just acquired by chiefs, but also by the maka'āinana. Kamakau writes, "The natives took hogs a fathom length to trade for guns . . ."¹⁷⁷ While new weapons amplified the fighting on the battlefields, increasing the death toll in inter-kingdom wars exponentially, foreign weaponry also escalated the violence when tensions flared between Europeans and the general population. The *Olowalu Massacre* in 1790 was a testament to the violence that Europeans were capable of inflicting beyond the battlefields. In a village located on the island of Maui "more than a hundred [aboriginals] were killed by a

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* , 475.

¹⁷⁶ King, 99.

¹⁷⁷ *Ruling Chiefs of Hawaii* Honolulu HI Kamehameha Schools 1992, 100.

Captain Simon Metcalfe in retribution for some interference with his ship.”¹⁷⁸ Incidents like the Olowalu Massacre, but also the magnified killing on the battlefield, gave the ruling chiefs a window into the kind of power that Europeans harnessed. Most ruling chiefs were concerned primarily with making alliances with Europeans to enhance their military campaigns against their interisland rivals. One ruling chief, however, had greater intentions for building alliances with Europeans than to gain supremacy over his rivals in the islands.

For Kamehameha and the other chiefs, the arrival of haole added an unprecedented variable into the dynamics that shaped the politics between the four independent kingdoms. Abraham Fornander commented:

To the chiefs it was an El Dorado of iron and destructive implements, and visions of conquest grew as iron, and powder, and guns accumulated in the princely storerooms. The blood of the first discover [Cook] had so rudely dispelled the illusion of the “Haoles” divinity that now the natives, not only not feared them as superior beings, but actually looked upon them as serviceable, though valuable, materials to promote their interests and to execute their commands.¹⁷⁹

Like the other ruling chiefs, Kamehameha was invested in an arms race to gain supremacy in the islands. Kirch and Sahlins, note that by 1804, Kamehameha had accumulated an “arsenal of 600 muskets, 14 cannon, 40 swivels, and 6 small mortars.”¹⁸⁰

Kirch and Sahlins also explain that Kamehameha had amassed a naval fleet of “twenty to

¹⁷⁸ Greg Denning, *The Death of William Gooch: A History's Anthropology* (Melbourne: Melbourne University Press, 1995), 44.

¹⁷⁹ Abraham Fornander, *Ancient History of the Hawaiian People* (Mutual Publishing, 1996), 321.

¹⁸⁰ Patrick Kirch and Marshall Sahlins, *Anahulu: The Anthropology of History in the Kingdom of Hawaii*, Vol. 1 (The University of Chicago Press, 1992), 43.

thirty vessels of European model . . . [including] the famous peleleu fleet: a great number of European rigged, Hawaiian-hulled double canoes...”¹⁸¹

Along with procuring weapons, the chiefs also recruited Europeans to serve in different capacities within his military campaigns, but also as laborers. Kamehameha’s army of “seven to eight thousand warriors,”¹⁸² also included a number of Europeans, including two Englishmen, John Young and Isaac Davis. Both were at first captives of Kamehameha, but later became loyal advisors and eventually ascended to a chiefly class. Kamakau writes, “These men, Young and Davis, became favorites of Kamehameha and leaders in his wars, and from them are descended chiefs and commoners of Hawaii.”¹⁸³ While Young and Davis were the most notable, Kamehameha employed scores of other Europeans including “carpenters, joiners, masons, blacksmiths, and bricklayers...”¹⁸⁴ Archibald Campbell writes that most Europeans under Kamehameha’s servitude “were almost all English”¹⁸⁵ Kuykendall remarked, that Kamehameha “. . . was an excellent judge of men and had, to an unusual degree the faculty of inspiring loyalty in his followers . . .”¹⁸⁶

Of all the chiefs, Kamehameha was the first to conceptualize “the advantages to be gained from friendly relations with foreigners, but he avoided the error of falling into their power . . .”¹⁸⁷ As reflected throughout the many of captain’s logs, journals and

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ S.M. Kamakau, *Ruling Chiefs Hawaii: Revised Edition* (Honolulu: Kamehameha Schools Press, 1992), 147.

¹⁸⁴ Archibald Campbell, *A Voyage Round the World, From 1806 to 1812* (New York: Broderick and Ritter, 1819), 117.

¹⁸⁵ *Id.*, 116.

¹⁸⁶ R.S. Kuykendall, *The Hawaiian Kingdom 1778-1854*, Vol. 1, 3 vols. (Honolulu, HI: University of Hawaii Press, 1980), 29.

¹⁸⁷ Ralph S. Kuykendall, *The Hawaiian Kingdom: 1778-1854, Foundation and Transformation*, Vol. 1 (Honolulu, HI: University of Hawaii Press, 1953), 30.

records, Kamehameha was known as an “ambitious conqueror” who also “possessed . . . great administrative ability.”¹⁸⁸ His reputable abilities in battle and diplomacy “spread beyond the Islands . . . [as] he was often referred to as ‘The Great Kamehameha’ or ‘The Napoleon of the Pacific.’”¹⁸⁹ Like Napoleon, however, “the art of war and diplomacy meshed.”¹⁹⁰ Kamehameha “was often as brilliant and successful at diplomacy as he was at war . . .”¹⁹¹ Although it was Kamehameha, ‘the Conqueror’, who led a relatively quick and effective military campaign that consolidated the neighboring kingdoms of Maui, O‘ahu, and Kaua‘i; it was Kamehameha, ‘the Diplomat’, that negotiated an agreement with Britain in 1794, which insulated his expanding kingdom from an impending threat that even his exceptional battle skills or his impressive military could not withstand—European conquest.

Napoleon of the Pacific

While Kamehameha made alliances with Europeans in order to “give him an edge in the final conflict with his rivals,”¹⁹² he had other concerns that extended beyond inter-kingdom politics. In 1794, Kamehameha made an alliance with the British Crown that not only preserved his rule, but also provided the political basis for the autonomy of his Kingdom, even well beyond his lifetime. Kamehameha surmised that an alliance with the world’s most powerful monarchy would deter European imperialism and afford him the

¹⁸⁸ Rev. T.C. Damon, "The Sandwich Islands," *Nautical Magazine and Naval Chronicle* 39 (1870): 654-670, 654.

¹⁸⁹ Pauline King, "Some thoughts on Native Hawaiian attitudes towards Captain Cook," in *Captain Cook: Explorations and Reassessments*, ed. Glyndwr Williams, 94-109 (Rochester, NY: The Boydell Press, 2004), 100.

¹⁹⁰ Napoleon and the Art of Diplomacy: How War and Hubris Determined the Rise and Fall of the French Empire.

¹⁹¹ *Id.*

¹⁹² Robin Fisher, "Vancouver's Vision of Native People: The Northwest Coast and Hawai'i," in *Pacific Empires: Essays in Honour of Glyndwr Williams*, ed. Alan Frost and Jane Samson, 147-162, 161.

ability to expand his Kingdom, both domestically, and internationally. Thus, in 1794, one year before Kamehameha would consolidate the neighboring kingdoms of Maui and O‘ahu under his rule, Kamehameha made an agreement with Captain George Vancouver aboard the *HMS Discovery* in Kealakekua Bay on the Island of Hawai‘i.

In 1794, Kamehameha and Vancouver met on board the *HMS Discovery*. On board, they negotiated the cession of Kamehameha’s recently unified Island Kingdom of Hawai‘i to the British Crown. This was not their first meeting, nor was it the first time the topic had been raised either. Accounts vary as to who proposed the cession or initiated the negotiations. According to Archibald Menzies, the ship’s botanist, “the idea was Vancouver’s, and Kamehameha refused . . . unless Vancouver left one of his ships . . .”¹⁹³ Vancouver claimed in his captains log that “Kamehameha had raised the possibility during the *Discovery*’s previous visit.”¹⁹⁴ Nevertheless, on this occasion, “both Kamehameha and Vancouver were prepared to consider it seriously.”¹⁹⁵

The two had first been acquainted when Vancouver, “visited the Islands in 1778 and 1779 as a junior officer under Cook.”¹⁹⁶ Vancouver was a midshipman under Cook’s command and was actually on the *Discovery* “at the time . . . Cook was killed in Kealakekua Bay in 1779.”¹⁹⁷ Kamehameha was also of lesser rank at the time of Vancouver’s initial visit. He was regarded as an *ali‘i wohi*, a lower ranking chief under

¹⁹³ Lynne Withey, *Voyages of Discovery: Captain Cook and the Exploration of the Pacific* (LA: University of California Press, 1989), 457.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Lawrence M. Kasdon, Ann Rayson Norris Whitfield Potter, *History of the Hawaiian Kingdom* (Honolulu: Bess Press, 2003), 7.

¹⁹⁷ W.D. Westervelt, "Kamehameha's Cession of the Island of Hawaii to Great Britain in 1794," *Annual report of the Hawaiian Historical Society* (The Hawaiian Gazette Company), 1893: 19-24, 19.

King Kalani'ōpu'u, then ruling chief of Hawai'i Island.¹⁹⁸ Fifteen years later, Kamehameha and Vancouver had ascended considerably in rank in their respective governments. Vancouver was now “the rank of commodore . . . in command of [the] expedition to the northwest . . . with two ships, the *Discovery* and *Chatham*.”¹⁹⁹ Kamehameha, on the other hand, was now ruling chief of Hawai'i Island and was making preparations to consolidate the neighboring Kingdoms under his rule. Having been introduced to Kamehameha nearly a decade prior, Vancouver took note of the changes that he saw in his former acquaintance. In his journal, Vancouver wrote, “I was agreeably surprised in finding that [Kamehameha's] riper years had softened that stern ferocity which his younger days had exhibited, and had changed his general deportment to an address characteristic of an open, cheerful, and sensible mind.”²⁰⁰

Vancouver's return to the Pacific was an official expedition “undertaken By His Majesty's Command.”²⁰¹ The expedition occurred nearly a decade after his first voyage with Cook from 1790-1795. Including his Voyages with Cook, Robin Fisher writes that, “Vancouver had probably spent more time in the Pacific and among its peoples than any other European of his generation.”²⁰² Adding to this, Kuykendall explains that while Vancouver was in the Pacific “a far greater part was passed in the dominions of Kamehameha and under the watchful eye and protection of that chieftain.”²⁰³ Vancouver

¹⁹⁸ Jocelyn Linnekin, *Sacred Queens and Women of Consequence: Rank, Gender, and Colonialism in the Hawaiian Islands* (Michigan: The University of Michigan Press, 1990).

¹⁹⁹ Sam McKinney, *Sailing With Vancouver: A Modern sea dog, antique charts and a voyage through time* (B.C., Canada: Touch Wood Editions, 2004), 5.

²⁰⁰ George Vancouver, *A Voyage of Discovery to the North Pacific Ocean: And Round the World* (London, 1801).

²⁰¹ Vancouver, Title Page.

²⁰² Robin Fisher, "Vancouver's Vision of Native People: The Northwest Coast and Hawai'i," in *Pacific Empires: Essays in Honour of Glyndwr Williams*, ed. Alan Frost and Jane Samson, 147-162, 150.

²⁰³ Ralph S. Kuykendall, *The Hawaiian Kingdom: 1778-1854, Foundation and Transformation*, Vol. 1 (Honolulu, HI: University of Hawaii Press, 1953), 43.

was commissioned to complete two objectives in the Pacific. One objective was to “complete the exploration of the North-West Coast which had been begun by Captain Cook.”²⁰⁴ Along with completing Cook’s survey, the British Crown commissioned Vancouver to serve as lead agent representing Britain in a dispute with Spain over Nootka Sound, a territory what is now the Northwest American coastline. While Vancouver represented Britain, the Spanish representative was “Juan Francisco de la Bodega y Quadra, navy Captain and commander of the . . . Spanish Pacific naval headquarters for North America.”²⁰⁵ At Nootka, Britain affirmed its sovereignty over Nootka Sound by repudiating the Doctrine of Discovery “a well-recognized legal procedure and ritual mandated by international law and designed to [assert] a country’s legal claim over ‘newly discovered’ land and people.”²⁰⁶

Vancouver documented the negotiations of the political union with Kamehameha in his Captains log, which along with being the official report to the British Government, was also later compiled into a six-volume publication with “permission from the Admiralty.”²⁰⁷ Vancouver wrote that during the negotiation process “several speeches [were] made.”²⁰⁸ Vancouver explained that Ke‘eaumoku, a high ranking chief, “in a spirited and manly speech,” asserted that “on becoming with so powerful a nation a force for their protection should be obtained from England and the first object ought to be the

²⁰⁴ Id., 43.

²⁰⁵ Janet R. Fireman, "The Seduction of George Vancouver: A Nootka Affair," *Pacific Historical Review* (University of California Press) 56, no. 3 (Aug 1987): 427-443, 427.

²⁰⁶ Robert J. Miller, "The Doctrine of Discovery," in *The Doctrine of Discovery in English Colonies* (New York: Oxford Press, 2010), 2.

²⁰⁷ Stephen Brown, *Madness, Betrayal and the Lash: The Epic Voyage of Captain George Vancouver* (Vancouver: Douglas & McIntyre, 2008), 207.

²⁰⁸ George Vancouver, *A Voyage of Discovery to the North Pacific Ocean: And Round the World* (London, 1801), 94.

conquest of the island of Mowee (Maui) . . .”²⁰⁹ Other chiefs, Vancouver wrote, held similar motivations, “Tianna [Kaiana] agreed with Ka-how-motoo [Ke‘eaumoku] that Mowee [Maui] should be chastised . . .”²¹⁰ While Ke‘eaumoku and Ka‘iana were concerned primarily with the neighboring island kingdom of Maui, Kamehameha offered another line of reasoning.

In his speech, Kamehameha “enumerated the several nations already coming to the islands each of which was too powerful for them to resist.”²¹¹ Conscious of the steady increase of Europeans in the Pacific, Kamehameha reasoned that ceding his island kingdom to Britain afforded his kingdom international protection. Without protection, Kamehameha reasoned, “the natives would be liable to more ill-treatment than they had yet endured unless they could be protected . . .”²¹² The growing number of Europeans in the islands magnified tensions, resulting in the death of numerous foreigners and even more aboriginals. Not only was Kamehameha attempting to avoid horrific incidents like the *Olowalu Massacre*,²¹³ it can be speculated that an alliance with the world’s most powerful monarchy might repel the ambitions of European imperialism. As Vancouver was primarily concerned with “promoting peace”, his personal intentions were not paramount.²¹⁴ His first obligation was in the capacity of an official British representative. Vancouver followed British Foreign policy, which at the end of the 18th century

²⁰⁹ W.D. Westervelt, "Kamehameha's Cession of the Island of Hawaii to Great Britain in 1794," *Annual report of the Hawaiian Historical Society* (The Hawaiian Gazette Company), 1893: 19-24, 22.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ Houston Wood, *Displacing Natives: The Rhetorical Production of Hawai'i* (Lanham: Rowman & Littlefield Publishers, INC, 1999), 9.

²¹⁴ Lawrence M. Kasdon, Ann Rayson Norris Whitfield Potter, *History of the Hawaiian Kingdom* (Honolulu: Bess Press, 2003), 8.

“preferred trade to domination.”²¹⁵ After Cook’s arrival, the islands became an international hub for commerce and trade. The object of the cession for Vancouver was “to recognize an appropriately powerful king who, hopefully, favored the British Crown.”²¹⁶ That king, Vancouver rightly supposed, was Kamehameha.

Nearly fifteen years to the day and place where Cook was killed, and on board Cook’s former ship the *Discovery*, Vancouver and Kamehameha came to an agreement to cede Kamehameha’s kingdom to the British Crown. Vancouver wrote that after various speeches were made and the “preliminaries being fully discussed, and thoroughly understood on both sides . . . it was unanimously approved of.”²¹⁷ The conditions of the cession as Vancouver explained, amounted to Kamehameha’s kingdom becoming a protectorate of the British Crown, a category that British foreign relations law would develop much later into the 19th and even 20th centuries. In his Captain’s log, Vancouver explained the conditions of the agreement: He notes, “It was clearly understood that no interference was to take place” in the internal affairs of Kamehameha’s kingdom, including “. . . religion, government, and domestic economy.”²¹⁸ It was also agreed upon that “Tamaahmaah [*Kamehameha*], the chiefs, and priests, were to continue to officiate as usual to officiate with same authority as before in their respective stations, and that no alteration in those particulars was in any degree thought of or intended.”²¹⁹ Rather than becoming a British ‘colony’, Kamehameha retained control over the internal affairs of his kingdom, while Britain maintained the external affairs.

²¹⁵ Lynne Withey, 457.

²¹⁶ Brian Richardson, *Longitude and Empire: How Captain Cook's Voyages Changed the World* (Vancouver: UBC Press, 2005), 131.

²¹⁷ Vancouver, 94.

²¹⁸ *Id.*

²¹⁹ George Vancouver, *A Voyage of Discovery to the North Pacific Ocean: And Round the World* (London, 1801), 94.

After consenting to the conditions of the cession, Kamehameha along with his chiefly advisors, made a provocative declaration. Vancouver wrote that after the agreement was made, “the whole of the party declared their consent by saying, that they were no longer *Tanata no Owyhee* [Hawaii], but *Tanata no Britanee*”²²⁰ Vancouver also took note that the declaration of the chiefs reverberated amongst the maka‘āinana surrounding the *Discovery*. “This was instantly made known to the surrounding crowd in their numerous canoes about the vessels, and the same expressions were cheerfully repeated throughout the attending multitude.”²²¹ After the cession was settled, Vancouver recorded the event by creating “two copper plates”²²² with an inscription that read:

On the 25th of February, 1794, Tamaahmaah [Kamehameha] king of Owhyhee [Hawai‘i], in council with the principal chiefs of the island, assembled on board His Britannic Majesty’s sloop *Discovery* in Karakakooa [Kealakekua] bay, and in the presence of George Vancouver, commander of the said sloop; Lieutenant Peter Puget, commander of his said Majesty’s armed tender the *Chatham*; and the other officers of the *Discovery*; after due consideration, unanimously ceded the said island of Owyhee to His Britannic Majesty, and acknowledged themselves to be subjects of Great Britain.²²³

The copper inscription acknowledging Hawaiians as “subjects of Great Britain” brings context and clarity to Kamehameha’s statement declaring to be “*Tanata no Britanee*.”

The term “*Tanata*” is not merely being used in its literally usage meaning “man” or

²²⁰ *Id.*

²²¹ *Id.*

²²² Alliance or Cession? Missing Letter from Kamehameha I to King George III of Enland Casts Light on 1794 Agreement, *The Hawaiian Journal of History* 20 1986 1-12, 8.

²²³ Vancouver, 56.

“human”, but rather “subject”²²⁴ to Britain. Along with the copper plate Vancouver also left in the possession of Kamehameha a British flag and a letter that documented the conditions of the cession, and the nationality of the territory and the inhabitants as British.²²⁵

Asserting British Nationality: Protecting the Kingdom

After the cession and throughout his reign, Kamehameha maintained relations with the crown while also making numerous assertions of British nationality, none more explicit than in Kamehameha’s letters to the British Crown in which he refers to himself as a British subject, while also recognizing King George III as his “liege and lord.”²²⁶ In the same correspondence, Kamehameha also refers to himself as the “King of the Sandwich Islands”²²⁷, and his country as the “Sandwich Islands”²²⁸, a designation that British Captain James Cook gave the islands after the Lord Admiral of the British Navy, the Earl of Sandwich.²²⁹ Along with asserting these specific designations, Kamehameha makes other assertions of British nationality. The first western style sloop that Kamehameha built with material provided by Vancouver was named the *Britannia*, “a thirty-six-foot schooner for the king’s ‘warship.’”²³⁰ In 1816, Kamehameha designed the official flag of his kingdom, which featured a British Union jack in the left corner. And as late as 1818, one year prior to his death, a Russian Captain who met with Kamehameha

²²⁴ According to Nā Puke Wehewehe ‘Ōlelo Hawai‘i, the term “Kanaka” is defined as “Human being, man, person, individual, party mankind, population; *subject, as of a chief.*”

²²⁵ Hackler, 6.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Alliance or Cession? Missing Letter from Kamehameha I to King George III of Enland Casts Light on 1794 Agreement, *The Hawaiian Journal of History* 20, 1986, 1-12.

²³⁰ Stephen Brown, *Madness, Betrayal and the Lash: The Epic Voyage of Captain George Vancouver* (Vancouver: Douglas & McIntyre, 2008), 186.

took note the he was “dressed in the uniform of an English naval Captain.”²³¹ In the same account, it was also reported that Kamehameha was adhering to the rules of English law. After salvaging “ingots of copper”²³² from a British ship that had run aground, the Russian Captain explained that Kamehameha had applied the laws of England pertaining to salvages, in which he returned all but “one eighth”²³³ of the material to the English ship owners.²³⁴ These various designations in which Kamehameha addresses himself, his possessions, and his territory as British possessions, illustrates a continued pursuit of maintaining relations to the British Crown and also suggests that he was cognizant of his affiliation with the British Crown and also the significance of allegiance in British governance.

Despite the great distance between England and the Hawaiian Kingdom, Kamehameha’s ability to conceptualize British governing principles, particularly in regard to allegiance, is not unusual. The political structure of Kamehameha’s Kingdom “bore a remarkable resemblance to the feudal system that prevailed in Europe during the Middle Ages”²³⁵[and] “the closest analogy through which Hawaiian land tenure was normally understood.”²³⁶ Because of such commonalities, Kamehameha understood his position and status within the feudal hierarchy of the British Empire. A feudal structure as Heater asserts that “stressed allegiance not to an impersonal state but to one’s lord and one’s position as subject of the king.”²³⁷ Allegiance in both governing systems was

²³¹ Capt. Golovnin, "Golovnin's Visit to Hawaii in 1818," *The Friend*, July 1894: 50-53,

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*, 51.

²³⁵ W.D. Alexander, “A Brief History of Land Titles in the Hawaiian Kingdom,” *Interior Department, Appendix to Surveyor General’s Report to the 1882 Hawaiian Legislature*, 3.

²³⁶ Juri Mykkanen, *Inventing Politics: A New Political Anthropology of the Hawaiian Kingdom* (Honolulu: University of Hawaii Press, 2003), 160.

²³⁷ Derek Heater, *Citizenship In Britain: A History* (Edinburgh: Edinburgh University Press, 2006), 5.

paramount.

After Kamehameha successfully conquered the rivaling Kingdoms, he established a system of governance by appointing “his uncles, Keaweaheulu, Ke’eaumoku, Kame’eaimoku, and Kamanawa, who had aided him to secure the rule, his governors and gave them large tracts of land from Hawaii to Oahu in payment for their services.”²³⁸

Along with the appointment of Governorships, Kamehameha also erected an office of Prime Minister and selected Kalanimoku to fill the position. Kamakau explains, “Kalanimoku he made commander-in-chief and chief treasurer with duty of dividing the lands to the chiefs and commoners, to all those who had used their strength for the victory of Kamehameha.”²³⁹ Regarding the appointment of Kalanimoku as Prime Minister Juri Mykkanen explains, “The Hawaiians knew that in England there was a high-ranking person who ran the affairs of the English aupuni [government]; the foreigners knew that there was an equally high-ranking person in Hawaii who also took care of the practical affairs of the islands and was the next man from high chief or king.”²⁴⁰ Considering Kamehameha’s relationship with Great Britain, adopting an English form of governance presented a logical step by not only providing a viable model of governance that could be adapted, but a system that foreign countries could interpret and effectively interact with. The office of Prime Minister was referred to in the islands as “Kalaimoku” which alluded to somebody that divides and maintains land. The usage of the term Kalaimoku in the islands also “developed a practice of calling the foreign prime ministers (of other countries)—those second in rank—by the same Hawaiian word

²³⁸ S.M. Kamakau, *Ruling Chiefs Hawaii: Revised Edition* (Honolulu: Kamehameha Schools Press, 1992), 175.

²³⁹ *Id.*

²⁴⁰ Mykkanen, 115

(Kalaimoku).”²⁴¹ Kamehameha’s adaptations of English Governance is in part a result of not having complete cultural access to the context of these forms of governance, but more than that it speaks to Kamehameha’s capability of translating theories of governance “into Hawaiian conceptual schemes.”²⁴²

British nationality did not diminish Kamehameha’s authority or his identity as a “Hawaiian”, it enhanced it. For Kamehameha, allegiance to Britain was not to the detriment of his identity as Mō‘ī and the hierarchical class structure that he was born into. Despite being affiliated with the British Crown, Kamehameha retained his authority as King, which is actually consistent with British conceptions of Empire.²⁴³ Being British was a provocation that afforded Kamehameha something that he could not provide for himself—protection from the prospect of European inundation at the onset of imperialism in the Pacific. Protection was a necessary element for Kamehameha to maintain his rule, and expand his Kingdom. By 1810, Kamehameha’s kingdom constituted the entire island chain. Maintaining ties with the British Crown, Kamehameha took the initiative to apprise King George III of his accomplishments. In a series of letters following the consolidation of the four Island kingdoms, Kamehameha provides updates to the British Crown regarding the political affairs of his Kingdom.²⁴⁴ In the letters Kamehameha also requested certain items from the British Crown with the aim to further protect his rule. One of the letters, dated August 6th 1810, read:

Kamehameha, King of the Sandwich Islands, wishing to render every assistance to the ships of his most sacred Majesty’s subjects who visit

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ See Alliance or Cession? Missing Letter from Kamehameha I to King George III of England Casts Light on 1794 Agreement, *The Hawaiian Journal of History*, 1-12.

these seas, have sent a letter by Captain Spence . . . to his Majesty, since Timoree [Kaumuali'i], King of Atooi [Kaua'i], has delivered his island up and we are now in possession of the whole of the Sandwich Islands. We, as subjects to this most sacred Majesty, wish to have a seal and arms sent from Britain, so as there may be no molestation to our ships or vessels in those seas, or any hindrance whatever. Wishing your Majesty a long, prosperous, and happy reign.²⁴⁵

After the unification of the Island chain, Kamehameha apprised the British Crown of his success. In a letter addressed to "His Majesty King George,"²⁴⁶ Kamehameha requested a number of items. He explained that he was in need of "Bunting having no English Colours, also some brass Guns to defend the Islands in case of Attack from [Britain's] Enemies."²⁴⁷ Along with such items to protect his Kingdom from invasion, Kamehameha's other concern was economic. Also in the letter Kamehameha expressed his desire to "trade on the North West of America with Tarro [sic] root the produce of Islands."²⁴⁸ Kamehameha indicated that he "built a few small vessels" and expressed concern for sending them to "sea without a register."²⁴⁹ For this reason, Kamehameha requested a "Register & seal with [his] name on it,"²⁵⁰ which would mark the nationality of his trading vessels as British. According to maritime law "states are to fix the

²⁴⁵ Manley Hopkins, *Hawaii: The Past, Present, And Future Of Its Island-Kingdom* (New York: D. Appleton and Co., 1869), 131.

²⁴⁶ Rhoda E. A. Hackler, "Alliance or Cession? Missing Letter from Kamehameha I to King George III of England Casts Light on 1794 Agreement," *The Hawaiian Journal of History* 20 (1986): 1-12, 7.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

conditions on which it grants its nationality to ships and for their right to fly its flag; and ships may sail only under the flag of one state.”²⁵¹

Kamehameha understood that entering into international trade and commerce without certain symbols that signalled affiliation with Britain was risky business. Registering the nationality of his ships as British would provide protection in international water. These requests demonstrate Kamehameha’s comprehension of maritime law, a branch of international law. Under maritime law, “serious obligations lie on flag states and ships are obliged to be registered with a state. The nationality of ships is, therefore, of some consequence.”²⁵² Kamehameha’s requests were aimed at protecting his Kingdom: a British warship, to ward off European invasion of the islands; bunting, to create a Hawaiian flag that asserted his affiliation with Britain; and a register and seal to confirm British nationality over Kamehameha’s vessels.

Despite the growing presents of Europeans in the islands, the Hawaiian Kingdom retained its autonomy, having never been taken over by any colonial power. This continued even after Kamehameha’s death. In 1840, during the “age of imperialism” in the Pacific, not only did the Hawaiian Government maintain its autonomy, but it also underwent significant political and legal reform. Along with developing a constitutional form of rule, the Hawaiian Kingdom Government also made a calculated, and strategic decision to pursue international statehood.²⁵³ The move towards independence was prompted by the Hawaiian Governments apprehension of the growing presence of Europeans in the Pacific. At the time nearly every other Pacific Island territory was being enveloped by European colonialism. This included, the declaration of French sovereignty

²⁵¹ Michael White, *Australian Offshore Laws* (Sydney: The Federation Press—no date).

²⁵² *Id.*

²⁵³ Cite Judd here, Hawaii joins the world, envoy leaves in 1842.

over Tahiti, the Marquesas, and New Caledonia.²⁵⁴ At the same time, “New Zealand became a British colony in 1840” through the ambivalent document known as the “Treaty of Waitangi.”²⁵⁵ Although Britain and France on two different occasions attempted to exercise force over the Hawaiian Kingdom, both acts of aggression, as one 19th century Sea Captain wrote, “seem to have been individual acts, rather than national, and no enduring wrong was done to the infant state.”²⁵⁶ Developing a constitutional form of government amid European expansion was vital to preserving Hawaiian control over the islands. It was also an essential factor for the Hawaiian government’s strategic and calculated move towards seeking international statehood. In 1843, the Hawaiian Kingdom became the first non-European territory, and the first aboriginal nation to possess international statehood and the protections and securities therein as defined by the standards of the “Family of Nations”. With independence in 1843, the Hawaiian Kingdom had contributed to breaking the long-standing color barrier that had defined the international legal system.

Conclusion

Notions of citizenship and citizenship rights were often at the center of government reform in the Hawaiian kingdom. Prior to the constitutional era, social and political membership to the Hawaiian Kingdom government was defined by “concepts of subjecthood and hierarchy...”²⁵⁷ The shift from subjecthood to citizenship developed gradually during the reign of Kamehameha I. In this period, the relationship between the

²⁵⁴ Ernest Dodge, *Islands and Empires: Western Impact on the Pacific and East Asia* (Ontario: University of Minnesota, 1976), 170.

²⁵⁵ Jane Samson, *Imperial Benevolence: Making British Authority in the Pacific Islands* (Honolulu: University of Hawaii Press, 1998), 5.

²⁵⁶ Raymond Cazallis Davis, *Reminiscences of a Voyage around the world* (Ann Arbor: Chase Steam Printing House, 1869), 190.

²⁵⁷ Faulks, 30.

individual and the government changed as limitations were placed on the office of the King and chiefs alike. Internal revolt or violent uprising against a monarchical government at the time was usually the impetus for governmental reform and the expansion of individual rights. In the Hawaiian case, the expansion of individual rights resulted from the kings themselves. No longer would social and political membership to the Hawaiian Kingdom be determined only by the reciprocating dynamic of allegiance and protection, but the concept of individual or common rights began to form during this era. International and domestic factors weighed heavily in this transformation. The increasing presence of Europeans in Hawaiian waters injected a significant variable into the domestic politics of the islands. For Kamehameha I, incorporating all the island kingdom's into one central state occurred as a result of his decisions to decentralize governmental power by beginning to extend rights to individuals, but also by entering into, and establishing, international relations with Britain as a protecting power.

Maintaining ties with the British Crown while also asserting British nationality had a significant impact on the political legal development of the Hawaiian Kingdom. Kamehameha's kingdom managed to evade the age of imperialism amidst the constant presence of Europeans in the Pacific. The relations that Kamehameha established with Britain and his varying assertions of British nationality lasted throughout his lifetime until his death in 1819. These international relations that Kamehameha built over the span of twenty-five years, naturally carried over to his successors.

Chapter 3: Domestic Evolution of Hawaiian Citizenship

Both Kamehameha II and III were left with the lofty task of maintaining, but also forwarding the development of the Kingdom, which their father had initiated nearly thirty years earlier. Despite his father's consolidation of the Hawaiian Islands, Kamehameha II's reign 1819-1823 was filled with domestic challenges, prompting a diplomatic mission to London to renegotiate treaty relations with the British Crown in an attempt to deal with some of the internal domestic issues surrounding his reign. Kamehameha II's short reign and eventual death in London during this trip would lead to his brother, Kamehameha III's re-conceptualization of what was necessary to protect Hawai'i and its people. While Kamehameha II was mostly dealing with domestic threats to his reign, Kamehameha III would face international threats, stemming from domestic disputes between himself and foreign nationals who would often appeal to their country to intervene on their behalf in disputes with the Hawaiian Kingdom government. While the threats were mostly international, Kamehameha III organized and strengthened the domestic laws of the country that attempted to mitigate frequent disputes with resident and transient foreigners. But this would also affect domestic relations between the government and its people through the continued extension of rights to individuals, leading to the domestic evolution of Hawaiian citizenship.

Nationality, Citizenship, and the Hawaiian State

In providing this legal analysis of Hawaiian citizenship, it is important to define the terms 'citizenship' and 'nationality' as they relate to legal membership to a particular

state, to understand their intersections, overlaps, and differences. In the legal sense, the terms ‘citizenship’ and ‘nationality’ are often used synonymously to denote “two aspects of the same notion: State membership.”²⁶² Despite this synonymous usage in denoting state memberships, the terms ‘nationality’ and ‘citizenship’ can also be distinguished. Making this point, Paul Weis explains that “Nationality stresses the international and Citizenship the national, municipal, aspect”²⁶³ of state membership. For purposes of the Hawaiian Kingdom, making this distinction between citizenship and nationality is important given that the Kingdom had both, a ‘municipal’ and ‘international’ legal character.

Nationality

The term ‘nationality’ has multiple meanings and usages across many disciplines and fields. The legal sense of the term ‘nationality’ must be distinguished from the non-legal sense of the term denoting a ‘race’ or ‘nation’ commonly applied in “the field of sociology and ethnography.”²⁶⁴ In the legal sense, nationality represents the legal relation between the individual and the state. According to Gerhard von Glahn, nationality “is the bond which unites a given person with a given state . . . which enables him to claim its protection and also subjects him to the performance of such duties as his state may impose on him.”²⁶⁵ Between the individual and the state, or the national and the state, is the matter of allegiance. Makarov explains that the aspect of allegiance, which constitutes the basis of nationality, derives “from the feudal relationship of ‘perpetual allegiance in

²⁶² Paul Weis, *Nationality and Statelessness in International Law* (Alphen aan den Rijn: Sijthoff & Noordhoff International Publishers B.V. , 1979), 4.

²⁶³ Weis, 5.

²⁶⁴ *Id.*

²⁶⁵ Gerhard von Glahn, *Law Among Nations An Introduction to Public International Law*, Second (London: The Macmillan Company, 1965), 198.

English common law . . .”²⁶⁶ Citing Blackstone, Paul Weis expands on the feudal nature of the term ‘nationality’.

“In English the term ‘subject’ is used as a synonym for national. It stresses the quality of the individual as being subject to the Sovereign, and its typical of the feudal concept of nationality prevailing in Anglo-Saxon law, which regards nationality as a territorially determined relationship between subject and Sovereign by which the subject is tied to his Sovereign (liege lord), the King in person, by the bond of allegiance.”²⁶⁷

Nationality is one of the primary elements that make up an independent state. Other elements of a state include “a defined territory, government, and capacity to enter into relations with the other states.”²⁶⁸ Patrick Weil affirms, “If territory determines the geographical limits of state sovereignty, nationality determines its population. Beyond these limits one finds foreign land, foreign sovereignty, and foreigners.”²⁶⁹ The relationship between territory and nationality was defined in the Calvin Case, a 1608 English court case.²⁷⁰ Polly Price explains that the Calvin Case “is the earliest, most influential theoretical articulation by an English court of what came to be the common-law rule that a person’s status was vested at birth, and based upon place of birth.”²⁷¹ This common law rule became the basis for determining nationality, primarily for countries

²⁶⁶ *Id.*, 30

²⁶⁷ Weis, 4.

²⁶⁸ “Convention on Rights and Duties of States, Seventh International Conference of American States” (Montevideo, 1934).

²⁶⁹ Patrick Weil, “Access to citizenship: a comparison of twenty-five nationality laws,” in *Citizenship today: Global perspectives and practices*, ed. T. Alexander Aleinikoff and Douglas Klusmeyer, 17-35 (Caregie Endowment for International Peace, 2001),

²⁷⁰ For a legal review of the Calvin Case see Polly J. Price, “Natural Law and Birthright Citizenship in Calvin’s Case (1608),” *Yale Journal of Law and the Humanities*, Winter 1997.

²⁷¹ Polly J. Price, “Natural Law and Birthright Citizenship in Calvin’s Case (1608),” *Yale Journal of Law and the Humanities*, Winter 1997, 1

that subscribed to the English common law system.²⁷² This mode of acquiring nationality is commonly referred to as *jus soli*, which is Latin for born on the soil. Von Glahn notes that most “ states follow the law of the soil (*jus soli*) according to which mere birth on the soil of a state is sufficient to create the bond of nationality, irrespective of the allegiance of the parents.”²⁷³ In “eighteenth-century Europe, *jus soli* was the dominant criterion of nationality law in the two most powerful kingdoms: France and the United Kingdom.”²⁷⁴ In both kingdom’s, the concept of nationality derived from the “feudal tradition: human beings were linked to the lord who held land where thy were born.”²⁷⁵

Another predominant mode of acquiring nationality was through the principle of *jus sanguinis*. According to Adam Boczek, “Under the principle of *Jus Sanguinus* (the law of the blood), favored by the civil law countries of Europe, the nationality of a child is determined, irrespective of its place of birth, by the nationality of its parents or, in some countries, one of its parents.”²⁷⁶ Rey Koslowski notes that “throughout the nineteenth and early twentieth centuries, states adopted either the *jus sanguinus* (ancestral lineage) or the *jus soli* (birthplace) principle . . .”²⁷⁷ During the age of revolutions, however, beginning with France at the end of the 18th century, a transformation occurred along with a new way of conceptualizing state membership—that of citizenship.

Citizenship

While ‘nationality’ and ‘citizenship’ are often used interchangeably, they also have significantly different usages and meanings. Weis explains, “every citizen is a

²⁷² *Id.*

²⁷³ von Glahn , 199.

²⁷⁴ Weil, 19.

²⁷⁵ *Id.*

²⁷⁶ Boleslaw A. Boczek, *International Law: A Dictionary* (Lanham: Scarecrow Press. Inc, 2005), 189.

²⁷⁷ 205

national, but not every national is necessarily a citizen of the state concerned.”²⁷⁸ In clarifying this notion, the example usually cited is the Philippines. Prior to independence, the Philippines was a territory of the US, while Filipino’s were considered to be American nationals, they were not recognized as American citizens.²⁷⁹ Those that are regarded as ‘citizens’ or have been granted ‘citizenship’—more often than not—possess all the rights of an individual within a particular state. While nationality represents the principle link between the individual and state, citizenship on the other hand is determined by the prerogative of a state’s particular government. Thus, governments define citizenship, whereas nationality is a status that is contingent on the international recognition of a state. Therefore with regard to international law, each government is at liberty to set forth criteria to confer citizenship. The formation of citizenship laws within a particular government is often determined by the legal traditions that crafted the government. According to Weis, “Under the laws of most States citizenship connotes full membership, including the possession of political rights; some states distinguish between different classes of members.”²⁸⁰

Indeed the development of citizenship, as Michael Mann pointed out, was “The rise of citizenship is conventionally narrated as the rise of modern classes to power.”²⁸¹ The shift from absolutist conceptions of state membership gave rise to constitutional conceptions of state membership that were not hierarchical, but egalitarian focused. In the European states this shift came at the expense of violent uprisings and revolution. In this light, citizenship reform is usually emblematic of government reform and the shift from

²⁷⁸ Weis , 6.

²⁷⁹ von Glahn , 198.

²⁸⁰ Weis, 5.

²⁸¹ Michael Mann, *The Sources of Social Power: Volume 2, The Rise of Classes and Nation-States, 1760-1914* (New York: Cambridge, 2012), 250.

absolutism to constitutionalism. Because the elements of this transformation differed from state to state, or government to government, citizenship laws within states are always distinct. Patrick Weil explains that citizenship law is “influenced by its [the states’] juridical traditions, nation-state building, examples from abroad and the role played by migration (emigration and immigration) or the presence of minorities.”²⁸² The conceptual origin of citizenship is often associated with the French Revolution in 1789 and the emergence of what Jon Locke would have characterized as the ‘liberal state.’ Locke is credited with building a theory of citizenship. According to Faulk, “Locke’s theory aimed to balance a Hobbesian concern with security with the protection of the rights of life, liberty and property . . .”²⁸³ Therefore, “modern notions of citizenship are intimately tied to the development of the liberal state.”²⁸⁴ The development of the liberal state was the result of the revolutions and uprisings that swept through many European states at the turn of the 18th century, beginning with France in 1789. The concept of citizenship developed “as the boundaries between states grew more precise, particularly from the eighteenth century onwards, the people within those boundaries became ever more concerned with the conditions of their membership.”²⁸⁵

In the development of citizenship law in a particular state, the concept of ‘naturalization’ was usually added as a mode to acquire ‘citizenship’ (i.e. full municipal rights, privileges, obligations, and protections). Naturalization also afforded ‘nationality’ (i.e. rights, privileges, obligations and protections that stem from the “Law of Nations” or international law). Citizenship and nationality can be distinguished as different layers of

²⁸² Weil, 18.

²⁸³ Keith Faulks, *Citizenship* (New York: Routledge, 2000), 23.

²⁸⁴ *Id.*, 21.

²⁸⁵ *Id.*, 24.

rights: those that emanate domestically and those rights that emanate internationally.

While these layers can be seen as separate, there are instances in which the layer of rights of nationality and citizenship intersect. One prominent area where the intersection of rights is seen is the process of naturalization. Von Glahn defines naturalization as a “major mode of acquiring nationality”. It is a “voluntary act by which the national of one state achieves membership in the body of nationals of another state.”²⁸⁶ Because naturalization laws are contingent on the prerogatives of a certain government, naturalization as a mode of acquiring state membership varies.

While the concept of nationality is commonly viewed as a universally inclusive marker of state membership, citizenship on the other hand has been a mode to discriminate against certain members of the state that usually cuts along racial and gender lines. One way to see this aspect of citizenship is by examining a state’s naturalization laws. For example, the naturalization laws of the US have traditionally been framed by race. Ian Hanley Lopez asserts that, “In its first words on the subject of citizenship, [US] Congress in 1790 restricted naturalization to ‘white persons.’ Though the requirements for naturalization changed frequently thereafter, this racial prerequisite to citizenship endured for over a century and a half, remaining in force until 1952.”²⁸⁷ Another aspect of naturalization includes ‘dual nationality’, in which an individual possess membership to two or more states. A branch of this notion is ‘denizenship’, which is a form of state membership that is extended to foreign-born individuals “who had been naturalized by

²⁸⁶ von Glahn, 202.

²⁸⁷ Ian Lopez, *White By Law: The Legal Construction of Race* (New York and London: New York University Press, 1996), 1

letters-patent of the King.”²⁸⁸ Denizens were not required to relinquish their former nationality and therefore possessed dual nationality.

Hawaiian-British Relations

After the death of Kamehameha I in 1819, his successor, Liholiho, became King of the Hawaiian Islands and was named, Kamehameha II. Like his father, Liholiho also asserted varying forms of British nationality. In his coronation ceremony held in Kona, it was noted that Liholiho wore an “English *papale alii* or cocked hat on his head.”²⁸⁹ Yet maybe the most significant indicator of British ties that he inherited from his father was when in 1822, Captain Kent of the British admiralty presented “a schooner of seventy tons, called the ‘Prince Regent’, with an armament of six guns”.²⁹⁰ W.D. Alexander writes that the vessel was delivered “to fulfill a promise made by Vancouver to Kamehameha I.”²⁹¹ As these relations between the Hawaiian Kingdom and Britain reflect, such relations were not that of colonial subjectivity. Instead, the long-standing diplomatic relations with Britain established by Kamehameha I was quite possibly the key from which Hawaiian independence would later be acquired. Yet, maintaining the foundation that Kamehameha I had built proved challenging for his successor.

Shortly after the Kamehameha II took office, his authority was under constant scrutiny and attack by the lesser ranking chiefs. This caused Liholiho to actually travel to “England to seek help from King George.”²⁹² Liholiho’s authority as Mō‘ī, as Hiram

²⁸⁸ Alfred M. Boll, *Multiple nationality and International law* (Netherlands: Martinus Nijhoff, 2007), 90.

²⁸⁹ *The Hawaiian Monthly: Literature, Art, Science, Politics, And General Culture* (Honolulu: Honolulu Gazette, 1884), 83.

²⁹⁰ H.L. Chase James Jackson Jarves, *History of the Hawaiian Islands* (Honolulu: Henry M. Whitney, 1872), 109.

²⁹¹ William De Witt Alexander, *A Brief History of the Hawaiian People* (Honolulu, 1899), 179.

²⁹² Juri Mykkanen, *Inventing Politics: A New Political Anthropology of the Hawaiian Kingdom* (Honolulu, HI: University of Hawaii Press, 2003), 38.

Bingham and Asa Thurston observed, was routinely fettered by “undue exertions of power, infringing often his rights.”²⁹³ Contestations with lesser ranking chiefs Kamakau explained, drove Liholiho “to seek power in Kahiki (foreign land, referring to England) . . .” England Kamakau explained, was the land of Cook-Lono and of his father’s brother King George.²⁹⁴ Kamana Beamer writes that Liholiho’s expedition to Britain was not a “whimsical journey”, but rather a significant diplomatic mission.²⁹⁵ A U.S. diplomat stationed in Rio de Janeiro who spoke with Liholiho’s delegation on their way to London, took note that Liholiho was “on his way to visit the King of Great Britain to ask his protection . . . against the encroachments [*sic*] of his chiefs”²⁹⁶, but particularly Ka’ahumanu. A Catholic priest by the name of Bachelot also explained that Liholiho travelled to London “in order to place his estates under the protection of the English and engage their powers against the enterprises of the old queen Tamanu [Ka’ahumanu].”²⁹⁷ It is clear that Liholiho’s intentions were to renegotiate the terms and conditions of the agreement that his father made with Britain nearly thirty years ago. Rather than the British Crown merely providing external protection over the islands, Liholiho wanted the British Crown to exercise authority in the internal affairs of the Kingdom. Doing so, Liholiho speculated, would prospectively subdue the aggressions felt from the chiefly class.²⁹⁸

Shortly after their arrival, however, both Liholiho and his wife, Kamāmalu, died as

²⁹³ (Bingham and Thurston, 15 Feb. 1821.) In Patrick Kirch and Marshall Sahlins, *Anahulu: The Anthropology of History in the Kingdom of Hawaii*, Vol. 1 (The University of Chicago Press, 1992), 61.

²⁹⁴ S.M. Kamakau, *Ruling Chiefs Hawaii*: (Honolulu: Kamehameha Schools Press, 1961), 256

²⁹⁵ See Beamer in *Ua Mau Ke Ea: Sovereignty Endures*, directed by Kau’i Sai-Dudoit, 2011. See Ua Mau Video

²⁹⁶ (AH/HM: Racquet, 8 Mar 1824) in Kirch and Sahlins, *Anahulu*, 62.

²⁹⁷ *Id.*

²⁹⁸ See David Keanu Sai, *Ua Mau Ke Ea Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands* (Honolulu: Pua Foundation, 2011), 27.

a result of disease and never had the chance to meet with the King of England. However, the King’s entourage did meet with the King, who at this time was King George IV. At Windsor Castle, King George “expressed his shock”²⁹⁹ for the death of Liholiho and Kamāmalu. The King instructed the delegation to “return to your islands”³⁰⁰ and that he “shall not interfere in your internal troubles, but I shall guard you from outside invasion as I did in the time of Kamehameha the first . . .”³⁰¹ Instructions were given to Lord Byron by the British Admiralty in 1824, while returning the bodies of Kamehameha II and Kamāmalu together with the delegation of Chiefs from England. The instructions that Lord Byron relayed to the chiefs in council alluded to the Kamehameha-Vancouver agreement that at this point had occurred nearly 30 years prior. Sai writes that British Lord George Byron who escorted the bodies of the Hawaiian King and Queen back to the Hawaiian Islands “held in his possession secret instructions from the British Crown regarding the native government.”³⁰² Lord Byron relayed the instructions to the British Consul stationed in the islands. Although Liholiho wanted Britain to play a larger role in the kingdom’s domestic affairs, Sai writes that the instructions as they were carried out did not make any changes to the Kamehameha—Vancouver agreement that was made 30 years earlier. After the chiefly delegation that accompanied Liholiho returned from London, that experience, Mykkanen speculates, “could have been the beginning of seeing Hawaii as a monarchy by Hawaiians, as the Hawaiian chieftainship was compared to the courts of England...”³⁰³ Liholiho’s expedition to Britain served as a crucial diplomatic

²⁹⁹ Kristin Zambucka, *The High Chiefess, Ruth Keelikolani*, 12

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (to be published), 50.

³⁰³ Mykkanen, 116.

mission that helped to continue relations with Great Britain.

Kauikeaouli

With the death of Liholiho, Kauikeaouli ascends to the throne and becomes known as Kamehameha III. However, because Kamehameha III was too young to fulfill the capacity of king, Ka‘ahumanu, the favorite Queen of the late Kamehameha I, served as regent. Sai explains, “After the funeral and time of mourning had passed, the Council of Chiefs met on June 6th in Honolulu with Lord Byron and the British Consul...It was confirmed that Liholiho’s brother Kauikeaouli was to be Kamehameha III.”³⁰⁴ Similar to Liholiho, Kaahumanu, would rule the Kingdom through Kauikeaouli.³⁰⁵ The internal problems that Liholiho encountered with the chiefs did not change under Kamehameha III. Relations with Britain also continued. In 1827, “A counsel of the chiefs was convened by Kaahumanu to consult . . . sending Gov. Adams [Kuakini] to England with a code of laws to present to King George for ratification.”³⁰⁶ Although this plan was never fulfilled, “the traces of the Hawaiian self-conception as ‘men of Britain’ (or ‘Tanata no Britaine’) were manifest notably in debates over the laws [that] Ka‘ahumanu [and the] chiefs sought to put in effect . . .”³⁰⁷ In 1828, three laws were adopted by the chiefs which prohibited murder, theft, and adultery. Along with the enactment of these laws, the chiefs also proposed laws against the sale of alcohol, gambling, and prostitution. Kuykendall writes that on October 7, 1829, Kauikeaouli issued a formal proclamation declaring, “The laws of my country prohibit murder, theft, adultery, fornication, retailing ardent spirits at

³⁰⁴ Sai, *Ua Mau Ke Ea*, 32.

³⁰⁵ Lilikalā Kame‘eleihiwa, *Native Land and Foreign Desires: Pehea La E Pono Ai?* (Honolulu, HI: Bishop Museum, 1992), 73.

³⁰⁶ (L. Chamberlain, journal, 8 Dec 1827, cf. Dibble 1909: 211)

³⁰⁷ Kirch and Sahlins, 75.

houses for selling spirits, amusements on the Sabbath day, gambling and betting on the Sabbath day.”³⁰⁸ The frequent presence of foreigners in the country and their influence on Hawaiian society forced the chiefs to enact such laws. Like the reigns of Kamehameha I and Kamehameha II, domestic and international political forces led to the gradual expansion of individual rights and protections, which contributed to re-conceptualizations of the relationship between maka‘āinana and the Hawaiian government.

Sandwich Island Subjects to Hawaiian Subjects

After Ka‘ahumanu passed away in 1832, Kamehameha III, stepped into his full capacity as king. During his reign, Kamehameha III made a calculated move to begin developing and asserting a national identity, that was not British, but distinctively, ‘Hawaiian’. The term Hawaiian first appeared sometime during the reign of Kauikeaouli. James Finch, Captain of the USS Vincennes, took note in his Captain’s log that the term ‘Hawaiian’ had replaced the term ‘Sandwich Islands’. Finch noted the “Government and Natives generally have dropped or do not admit the designation of Sandwich Islands as applied to their possessions . . .”³⁰⁹ Instead Finch noted they have adopted the term Hawaiian, “in allusion . . . to Tamehameha [Kamehameha], who was the Chief of the principle Island of Owhyee [sic], or more modernly [sic], Hawaii.”³¹⁰ Thomas Thrum explains, that after Finch’s exposition, the term Hawaiian gradually “gained supremacy and the English given name (Sandwich Islands) died from disuse.”³¹¹ What Finch’s account had illuminated was a period of transition in the Kingdom government’s legal

³⁰⁸ R.S. Kuyendall, *The Hawaiian Kingdom 1778-1854*, Vol. 1, 3 vols. (Honolulu, HI: University of Hawaii Press, 1980), 126.

³⁰⁹ "Capt. Finch's Cruise in the U.S.S. Vincennes," (US Navy Department Archives, 1829).

³¹⁰ *Id.*

³¹¹ Thos Thrum, *Hawaiian Almanac and Annual* (Honolulu: Self published, 1922), 70.

and political evolution. A shift from a complex and sometimes capricious relationship with Britain, first conceived by Kamehameha I in 1794, to an era of independence and the constitutional development of ‘Hawaiian nationality’ initiated in 1843 under the rule of Kamehameha III, Kamehameha III, Kamehameha III, Kauikeaouli.

Declaration of Rights and the 1840 Constitution

In the years 1839-1840 the Hawaiian Kingdom embarked on governmental reform. In 1839, the Hawaiian Declaration of Rights was adopted and in 1840, the Kingdom’s first constitution was established. The Declaration, regarded as the Hawaiian Magna Charta, was “proposed and signed by His Majesty Kamehameha III on the 7th of June, 1839...”³¹² The Declaration of Rights laid the framework for the constitutional era that would follow. It marked the beginning of the Hawaiian constitutional era and a shift from traditional structures of governance. Kamana Beamer writes, “Throughout the 24 pages of these laws there seems to be a clear intention by Kauikeaouli to codify the relationship between the ali‘i [Chiefs] and the maka‘āinana [Commoners] with a special interest in protecting the maka‘āinana from the potential abuses of overbearing ali‘i.”³¹³ For the first time commoners would be afforded the ability to participate in the political process of the government. Both the Declaration of Rights and the 1840 Constitution were clear attempts to democratize the Kingdom government by instituting a legal framework that promoted an egalitarian society, principles of democracy that took aim at building an egalitarian society by providing a legal framework that promoted conceptual notions of citizenship with equality. To this effect the 1840 constitution read:

³¹² Westervelt, W. (1908). Hawaiian Printed Laws Before the Constitution. *Annual Report of the Hawaiian Historical Society*, 39-57.

³¹³ K.B. Beamer, “Na Wai Ka Mana? ‘Ōiwi agency and European imperialism in the Hawaiian Kingdom” (Honolulu, HI: Unpublished doctoral thesis, University of Hawai‘i at Mānoa, 2008), 176.

In making laws for the nation it is by no means proper to enact laws for the protection of the rulers only, without also providing protection for their subjects; neither is it proper to enact laws to enrich the chiefs only, without regard to enriching their subjects also...neither shall any tax be assessed, nor any service or labor required of any man . . .

The lawful constitutional era (1840-1886) was forged by Kamehameha III, a charismatic leader who voluntarily divested himself of his absolute authority. He was a king who ‘cut off his own head’, so to speak, by erecting a constitutional system beginning in the years 1839-1840. The constitutional system, Kuykendall remarked, “for the first time gave the common people a share in the government—actual political power.”³¹⁴ To this effect, a bi-cameral legislative system comprised of a House of Nobles and a House of Representatives was formed. While members of the House of Nobles were appointed by the executive branch, members of the House of Representatives were “chosen by the people, according to their wish, from Hawai‘i, Maui, Oahu and Kauai...”³¹⁵ The 1840 constitution stated that, “No law shall be passed without the approbation of a majority to them [Representatives.]”³¹⁶

Hawaiian citizenship, as the constitution read, was based on two reciprocating notions that are interdependent of one another: allegiance and protection. According to International legal scholar Paul Weis, “the conception of nationality is based on allegiance and founded upon reciprocal relations.”³¹⁷ Gerhard von Glahn explained that nationality “is the bond which unites a given person with a given state . . . which enables

³¹⁴ R.S. Kuyendall, *The Hawaiian Kingdom 1778-1854*, Vol. 1, 3 vols. (Honolulu, HI: University of Hawaii Press, 1980), 167.

³¹⁵ 1840 Constitution

³¹⁶ *Id.*

³¹⁷ Paul Weis, *Nationality and Statelessness in International Law* (Alphen aan den Rijn: Sijthoff & Noordhoff International Publishers B.V., 1979), 33.

him to claim its protection and also subjects him to the performance of such duties as his state may impose on him.”³¹⁸ Adding to this Lassa Oppenheim provides that, “Nationality is the principal link between individuals and the benefits of the of the law of nations.” During the constitutional era, Hawaiian nationality laws were enacted by the Legislative Assembly. By 1845, an entire section of statutory law pertaining to nationality was constitutionally adopted by the Hawaiian Kingdom. In exchange for allegiance, Hawaiian nationals were afforded certain rights and protections within the domestic jurisdiction of the Kingdom. As covered in Chapter 4, the Kingdom’s status as an independent state provided an international layer of rights and protections to Hawaiian nationals who traveled abroad, including Hawaiian diplomats. Oppenheim referred to these rights and protections as “the benefits of the Law of Nations.”³¹⁹ The Hawaiian Kingdom’s political evolution played a major role in shaping the foundation of the Hawaiian constitution. This can be seen in the construction of Hawaiian citizenship law during the constitutional era.

Many aspects of Hawaiian constitutionalism were inspired by the principles of the English Common law system.³²⁰ The acquisition of Hawaiian nationality was consistent with the English common law rule “that a person’s status was vested at birth...”³²¹ Accordingly, anyone born in the dominion of the Hawaiian Kingdom possessed Hawaiian nationality. Hawaiian constitutionalism was similar to British constitutional principles. John Ricord, the Kingdom’s first Attorney General, noted that certain aspects of

³¹⁸ Gerhard von Glahn, *Law Among Nations An Introduction to Public International Law*, Second (London: The Macmillan Company, 1965), 198.

³¹⁹ Oppenheim, L. (1967). *International Law*. London: Longmans. NEED TO GET PAGE NUMBER

³²⁰ Cite Ricord here

³²¹ Polly J. Price, "Natural Law and Birthright Citizenship in Calvin's Case (1608)," *Yale Journal of Law and the Humanities*, Winter 1997, 1

Hawaiian constitutionalism were based on the “doctrines, principles, definitions and applications of the Common Law of England . . .”³²² This was particularly true in acquiring Hawaiian citizenship. Acquiring Hawaiian citizenship was based on the rule that “a person’s status was vested at birth, and based upon place of birth.”³²³ Patrick Hanifin writes that even before the arrival of the British, political membership in the Islands was based on birth. Even before Kamehameha consolidated the leeward kingdoms of Maui, O‘ahu, and Kaua‘i, nationality was based on birth. As in England, Hannifin writes, “Hawaiian custom was in accord with the rule that all people living in a kingdom were subjects of the king, no matter where they had come from . . . a person became a subject either by being born on land that was within the kingdom’s territory or by pledging his loyalty to the king.”³²⁴

A Unique Transition to Constitutionalism

The conceptual transformation in the Hawaiian Kingdom that led to the rise of egalitarian notions of citizenship finds resonance with John Locke’s theory regarding the emergence of modern ideas of citizenship. Locke’s theory of modern citizenship “aimed to balance a Hobbseian concern with security with the protection of the rights of life, liberty and property.”³²⁵ Faulks writes that the liberal tradition of citizenship was “founded by Hobbes” and “developed by Locke, who built upon the idea of the

³²² "Statute Laws of His Majesty Kamehameha III., Passed by the House of Nobles and Representatives " (Government Press, 1845-1847), 7.

³²³ Polly J. Price, "Natural Law and Birthright Citizenship in Calvin's Case (1608)," *Yale Journal of Law and the Humanities*, Winter 1997, 1

³²⁴ Hanifin, P. W. (2002). To Dwell on the Earth in Unity: Rice, Arakaki, and the Growth of Citizenship and Voting Rights in Hawaii. *Hawaii Bar Journal* , 13, 15-44, 17.

³²⁵ Faulks, 23.

egalitarian individual's direct relationship with the state to construct a rights-based theory of citizenship."³²⁶

Thomas Hobbes was amongst the first political theorist to conceptualize the relationship between the individual and the modern state. He was concerned primarily with demonstrating the significance of centralized government in respect to matters of protection and security over and for the individual. His writings emphasized "the rights of the sovereign, not the individual."³²⁷ Faulk explains, "Hobbes's model for the relationship between the individual and state might, at best, be termed subject-citizenship because it had as its aim the securing of order rather than the performance of civic virtue, or the protection of individual rights."³²⁸ Although Hobbes's logic sought to uphold the "sovereign's right to absolutist power"³²⁹, which appears counter intuitive to the conceptual development of citizenship, Faulk writes that Hobbes was "an important transitional figure in the history of citizenship, with many of his ideas leading directly to the more developed sense of citizenship."³³⁰ One aspect central to Hobbes' contribution, Faulk notes, was that this Hobbseian idea of centralized authority and absolute power "was important for citizenship since it marked a break with the feudal notion of divided sites of power . . ."³³¹

The Declaration of Rights adopted in 1839 by the Hawaiian Kingdom is a flashpoint in the conceptual shift of citizenship as articulated by Hobbes and Locke. The Hawaiian Declaration of Rights was prefaced by the statement, "Every man and every

³²⁶ *Id.*

³²⁷ *Id.*, 22

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

chief of correct deportment” are given alike; “life, limb, liberty, [and] freedom from oppression.” From this Declaration, Hawaiian constitutionalism would evolve.

Consequently, the legal concept of Hawaiian citizenship would evolve through statutory laws during the constitutional era spanning the latter half of the 19th century.

In 1839, under the reign of Kamehameha III, the constitutional era began when the *Hawaiian Declaration of Rights* was adopted. In part, the Declaration read, “it is by no means proper to enact laws for the protection of the rulers only, without regard to enriching their subjects also . . .”³³² W.D. Westervelt wrote that the Declaration, regarded as the Hawaiian Magna Charta, was “proposed and signed by His Majesty Kamehameha III on the 7th of June, 1839 . . .”³³³ The Declaration of Rights laid the framework for the constitutional era that would follow. Ralph Kuykendall remarked that the rise of Hawaiian constitutionalism “for the first time gave the common people a share in the government—actual political power.”³³⁴ Prior to the constitutional era, and the rise of Kamehameha I, social and political membership to the Hawaiian Kingdom government was defined by “concepts of subjecthood and hierarchy”³³⁵

Although many similarities exist between other government reforms that took place during the ‘age of revolutions’, there are sharp differences that make the development of Hawaiian citizenship unique. As this chapter aims to illuminate, the first distinction to be made is that the transition from subjecthood to citizenship, or autocracy to democracy, took place without violent uprising. Rather, governmental

³³² Hawaiian Declaration of Rights, 1839

³³³ Westervelt, W. (1908). Hawaiian Printed Laws Before the Constitution. *Annual Report of the Hawaiian Historical Society*, 39-57.

³³⁴ R.S. Kuyendall, *The Hawaiian Kingdom 1778-1854*, Vol. 1, 3 vols. (Honolulu, HI: University of Hawaii Press, 1980), 167.

³³⁵ Faulks, 30.

reform occurred during an extended period of peace in the Hawaiian Islands. Warfare in the Hawaiian Islands ended in 1804 after Kamehameha I consolidated the entire group. This aspect of the development of a rights discourse is unique considering that in most cases, such as in France and America, the shift to democracy often spurred extremely violent uprising. Second, the conceptual design of the government did not happen abruptly. Instead it happened gradually, spanning the reigns from Kamehameha I to Kamehameha III. Each king in this era took several direct and indirect actions that diminished the prerogatives of the King in order to increase the rights, privileges, and protections of their subjects. The third is that although foreign or international forces were at play throughout this era, the terms and conditions of government reform, and individual rights, always rested with the prerogatives of the aboriginal population who comprised the majority, both in population and government

Kamehameha III's decision to voluntarily relinquish his absolute authority in favor of instituting a constitutional system in 1840 set into motion nearly fifty years of Hawaiian constitutionalism and the basis of a public legal system in the Hawaiian Kingdom. Establishing a constitutional monarchy included the organization and separation of governmental functions. The Kingdom's first constitution "recognized three grand divisions of a civilized monarchy, king, legislature, and judges, and defined in some respects the general duties of each."³⁴⁵ The first constitution, however, proved to be too vague and in need of clarification. Despite the organization and sharing of power that the constitution aimed for, the document had its share of shortfalls.

The Kingdom's Attorney General, Jon Ricord, described that "there seemed to be a blending of their separate functions, requiring the aid of organic acts . . . to secure the

³⁴⁵ "Statute Law of His Majesty Kamehameha III," Vol. 1 (Honolulu: Government Press, 1846), preface.

civil liberties intended to be conferred upon the people.”³⁴⁶ As a result, over the span of three years, the legislative assembly, along with the Kingdom’s Attorney General, enacted nearly seven hundred pages of statutory law that further defined the intent of the Kingdom’s first constitution.³⁴⁷ *The Polynesian*, an English-language newspaper of the Kingdom at the time reported, “The debates and business in the Legislative Council are conducted with spirit and method, and speak very favorably for native intellect.”³⁴⁸ Kuykendall wrote that during these formative years of the Hawaiian Kingdom, the Legislature worked “with patience and critical care, altering and amending them [laws] in numerous essential respects.”³⁴⁹ While the efficacy of the newly formed Legislative Assembly was impressive as highlighted by Kuykendall, the other interesting flashpoint that the legislative process produced was in regard to race. The racial dynamics that played-out during the statutory process, but really the formative years of the constitutional era in general, was an anomaly altogether.

Explaining the racial conditions and relations, Reverend S.C. Damon asserted that, “The most important feature of these changes during the 1840’s was the union of native and foreigners.”³⁵⁰ The union in the above quote refers to a political union between two different races, as opposed to a union of marriage between two different races. **Damon furthered his thought saying, “I am not aware that this same principle has been adopted in any other part of the world where copper-colored and white races have been brought in contact.”**³⁵¹ **The collaboration that**

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ Kuykendal, 262.

³⁴⁹ *Id.*

³⁵⁰ S.C. Damon, "The Restoration and Independence of the Hawaiian Kingdom," *The Friend*, September 1, 1863: 65-72.

³⁵¹ *Id.*

occurred between the aboriginal population and those of the “white races”, as Damon characterizes, was a dynamic that was unique for its time in the order of the world. Kuykendall wrote, the “union of natives and foreigners appeared to be the policy of the government under the Kamehamehas.”³⁵² Damon’s observation disrupts the idea that the formative years of the constitutional era was a bastion for white supremacy in the Hawaiian Islands. While Damon’s observation of racial union is correct, it merely provides a snippet at understanding the anomalous racial dynamics that existed at the time. Not only did aboriginals and the “white races” work collaboratively but it is also important to note that Americans and Europeans were employed to serve aboriginals, not vice versa.

Conclusion

Not only does the Hawaiian case demonstrate an anomaly in constitutional evolution, considering that such governmental reforms by aboriginals were unheard of and that only Europeans were thought to have experienced this shift during the ‘age of revolutions’. For an aboriginal population to erect a constitutional system, and shortly after acquire independence (as discussed in chapter 4) amidst the rise of European imperialism in the Pacific was emblematic of the Kingdom government’s international diplomacy, particularly the diplomatic relations of its leaders and their decision to evolve domestically. As will be discussed in Chapter 4, this evolution laid the foundations for the international recognition of the Hawaiian state, which provided international protections and rights, further contributing to the evolution of Hawaiian citizenship.

³⁵² Kuykendal, 187.

Chapter 4: International Evolution of Hawaiian Citizenship

Hawaiian citizenship laws evolved with the Hawaiian Kingdom Governments transition from an absolute monarchy to a constitutional monarchy. During the constitutional era citizenship laws were shaped through legislative enactments and judicial decisions. The municipal aspect of Hawaiian citizenship laws was enhanced by the Kingdom government's international relations, particularly its recognition as an independent state in 1843. International statehood bestowed another layer of rights, privileges, and protections to those that possessed Hawaiian citizenship. While the aboriginal population constituted the majority, the Hawaiian citizenry also included a diverse minority of Asian, African, European, and Oceanic, descent. Considering that the Hawaiian Kingdom was the first non-European territory to become internationally recognized, Hawaiian statehood was as an important event in the evolution of citizenship laws. On a global scale, Hawaiian statehood also marked an important event in helping to break the long-held color barrier of International law.

This chapter provides a survey of Hawaiian citizenship laws as it relates to the Hawaiian Kingdom's recognition as an independent state. Given the Kingdom's geographic location, citizenship laws played an important role in regulating not only the national citizenry and the resident alien population, but also transient foreigners as well. The Kingdom's racially inclusive citizenship laws gave rights to all people of color, including those who did not qualify for such rights in the countries from which they emigrated.

As the first section of this chapter illustrates, just as important as the outcome of international statehood, was the process by which it was accomplished. The Hawaiian delegation sent on this diplomatic mission included three people of different racial and national backgrounds, including Hawaiian, American, and British. While their nationality and skin color may have been different, their commitment to Hawaiian independence as well as their allegiance to the Hawaiian Kingdom was the same. Their mission, which Kamehameha III put in to motion in 1842, was a reflection of the international attributes that Hawaiian society had evolved in to. In particular, the story of Ha'alilio and Richards, who travel across the globe together for nearly two years and the manner in which they evaded the many racial blockades that they faced while in the US and Europe, was emblematic of Hawaiian society and the context from which Hawaiian citizenship laws would be crafted to in order to address the growing international character of the Hawaiian Kingdom.

Allegiance

The commitment of non-aboriginals in the development of the Hawaiian Kingdom's legal system was demonstrated in such foreigners as William Richards. Prior to serving as the Kingdom's Minister of Public Instruction and before relinquishing his American citizenship to become a Hawaiian national, Richards was deployed on a diplomatic mission by Kamehameha III. In 1842, Richards left Honolulu with Hawaiian Ambassador Timoteo Ha'alilio to seek international recognition for the Hawaiian Kingdom. The focus of their assignment, which would span the course of two years was explained by Kamehameha III. "The grand ultimate object which you are to have in view is to secure the acknowledgement by those governments of the independence of this

nation.”³⁶⁶ Kamakau wrote that Independence “would prevent foreigners from making further trouble in the kingdom . . .”³⁶⁷ The urgency of the mission was heightened by the temporary occupation of the Hawaiian Islands by a British Naval Captain. The Hawaiian delegation was made aware of Britain’s aggression in Hawai‘i while they were meeting with King Leopold in France. In apprising the Hawaiian delegation, Governor of O‘ahu Mataio Kekūānao‘a, reiterated to Ha‘alilio and Richards the significance of their mission writing:

We have borne it patiently, with the hope that protection will be granted through the mission of you two, and we have also informed this officer of the man-of-war, that when you two are successful, then, we will get our rights, as also our Rulers. Therefore you two must have no fear about the abuses, and about the king's having given the land with the intention of appealing to the rulers of Great Britain...you two must strive very hard for that which you were sent to do, so that we may receive the benefit through the work of you two, so that our Rulers may receive peace of mind, be steadfast and be patient according to the instruction of our master, because, we are servants under oath, and we are only to obey the instructions, and should we die in carrying them out, we will be blessed if we die in obeying the voice of our master.³⁶⁸

Together, Ha‘alilio and Richards traveled from the Hawaiian Kingdom to the US, England, France and Belgium. While en route Ha‘alilio wrote a letter home from Mexico, which in part gave a vivid description of their physical condition,

³⁶⁶ Kuykendal , 192.

³⁶⁷ Kamakau , 366.

³⁶⁸ *Ua Mau Ke Ea: Sovereignty Endures*, directed by Kau'i Sai-Dudoit, 2011.

Our bodies were wearied by the length of the road. There was heat and cold. We were wet with the rain and snow. We crossed mountains and streams penetrating deep into the wilderness of Mexico. We have swum rivers lying at the foot of mountains. We have been cold and hot, have suffered hunger, and have ridden all day on the backs of mules.³⁶⁹

While the two faced harsh physical conditions through Mexico, they would face a different set of challenges when they reached the United States. Eric Love writes that the appearance of Ha‘alilio “captured the greatest attention.”³⁷⁰ John Quincy Adams was said to have been taken aback by the appearance of the Hawaiian Ambassador. The US officials had not been accustomed to entering into diplomatic relations with a statesman of such a race. Adams described Ha‘alilio to be “nearly black as an Ethiopian, but with a European face and wool for hair.”³⁷¹ Similarly, President Tyler’s wife characterized the Hawaiian Ambassador as being “about as dark as a negro, but with Indian hair . . .” While the Americans were confounded about the diplomat’s physical appearance, they seem to be more perplexed with Ha‘alilio’s manner. Eric Love writes that Ha‘alilio was also perceived by the Americans as “modest and graceful, which left the impression that he was ‘quite a man of the world in comparison with his Interpreter,’ a reference to Richards.”³⁷²

The racial dynamics between Ha‘alilio and Richards, while natural in the Hawaiian Kingdom, was seen as backwards in America. The racial dynamics that were normal for Ha‘alilio and Richards was not just viewed as peculiar, but in some spaces

³⁶⁹ Kamakau. , 367.

³⁷⁰ Love, E. (2004). *Race over Empire*. Chapel Hill: The University of North Carolina Press, 81.

³⁷¹ *Id.*

³⁷² *Id.*

unacceptable. In a French newspaper, *Le Globe*, an article was written about the delegation's meeting with the President Tyler. The article, however, also featured an interesting altercation that captures the anomalous racial conditions that existed between Ha'alilio and Richards. Indirectly, the article is also reflective of the contrasting racial dynamics between the Hawaiian Kingdom and the United States. As the article read,

Last Wednesday, Haalilio embarked in New York for New Haven, aboard the steam boat *Globe*, together with the reverend Richards, who serves him as companion and interpreter on his diplomatic voyage. When the time came for lunch, one of the employees gave to the reverend two admission tickets, one for himself and one for his servant. Mr. Richards explained that the alleged servant was not less than one of the highest and most powerful lords of the Sandwich kingdom, and the ambassador to the government of the United States. The employee, after having examined Haalilio from head to foot, replied that he does not know anything about diplomacy, but that he knows how to distinguish white from black, and that in consequence, Haalilio, being of a very dark copper colour, would have lunch at the table of the servants, or he would not have lunch at all. This decision was appealed before the captain Stone, who refused to alter it. Thus the reverend, not wanting to separate himself from his illustrious companion, went to take part with him at the lunch of the servants.³⁷³

This account is significant for a couple of reasons: First, it rightly suggests that William Richards was an assistant to Timoteo Ha'alilio, and not vice versa. Further, Richard's decision to join Ha'alilio in the servants' quarters is striking as it speaks to both to Richard's relation with the Hawaiian ambassador, but also his commitment to the Kingdom. Another important aspect of the French article is that Ha'alilio's and Richards

³⁷³ *Le Globe*, February 27, 1843. Translated from French by Lorenz Gonschor, October, 2006.

encounter with race in America, conversely speaks to the racial dynamics in the Hawaiian Kingdom. What was odd and peculiar for Americans was the fact that a white man would serve or be an assistant to a man of color. While normal in the country from which the two had travelled away, it was the opposite of the norm in the US. Ha‘alilio, as Edward P. Crapol wrote, was one of, if not the first, “distinguished man of color to visit the nation’s capital.”³⁷⁴

Ha‘alilio and Richards’ assignment was completed in London, when on November 28th, 1843; Britain and France jointly recognized the independence of the Hawaiian Kingdom. The treaty of Hawaiian independence was referred to as the Anglo-France Declaration. In recognizing Hawaiian independence, the Anglo-France treaty declared “no power ought either to take possession of the Islands as a conquest or for purpose of colonization, and that no power ought to seek for any undue control over the existing Government.”³⁷⁵ Following Britain and France, in 1844, US President John Tyler, through a communication from Secretary of State John C. Calhoun, confirmed the “full recognition on the part of the United States of the independence of the Hawaiian Government.”³⁷⁶ The work of Ha‘alilio and Richards was acknowledged by “thirty-nine signatures” comprised of “every American established here [Hawai’i] as a resident...”³⁷⁷ They also offered their condolences for Ha‘alilio, who had died at sea on the return home. In part the article read,

We sincerely congratulate your Majesty that these desirable ends had been accomplished before [Haalilio] was called away and we would

³⁷⁴ Love, 81.

³⁷⁵ Anglo-France Proclamation, November 28, 1843.

³⁷⁶ *Foreign Relations of the United States*, Congressional (Washington D.C.: US Government Printing Office, 1894-1895), 12.

³⁷⁷ *The Friend*, "Letter," April 1, 1845: 49-56.

also congratulate your Majesty on the safe return of the Rev. Wm. Richards, Haalilio's most worthy coadjutor in his noble work, his devoted friend, and one whose services have also been devoted to your Majesty government; We would avail ourselves of this occasion to assure your Majesty of the sincere friendship and good feelings which we do and always have entertained towards your Majesty's government . . .³⁷⁸

Kamehameha I's diplomatic agreement with the British Crown lasted well beyond his lifetime. In 1843, the Hawaiian Kingdom, under the rule of Kamehameha III, became the first aboriginal nation and the first non-European territory to possess international statehood and all the protections that it afforded. Britain was a primary signatory to the Hawaiian independence proclamation in 1843, a result of Kamehameha's diplomatic prowess amidst an age of European domination. In this light, Hawaiian independence in 1843 was attributed to the Kamehameha-Vancouver agreement in 1794. Kamehameha's diplomatic agreement with Vancouver and his assertions of British nationality sustained relations with the British Crown and created the political possibility for international statehood nearly a century later. The significance of Ha'alilio and Richards mission was Hawaii's recognition as an independent state. From this point, Hawaiian Citizenship would take on an international aspect, not just a domestic one. The recognition of the Hawaiian Kingdom as an independent state (country) afforded its nationals protections while traveling internationally.

³⁷⁸ *Id.*

Acquiring Hawaiian Citizenship

Chapter V., Section III., of the Hawaiian Kingdom's 1845-1846 statutory laws provides the criteria that defined the process to acquire Hawaiian citizenship:

All persons born within the jurisdiction of this kingdom, whether of alien foreigners, of naturalized or of native parents, and all persons born abroad of a parent native of this kingdom, and afterwards coming to reside in this, shall be deemed to owe native allegiance to His Majesty. All such persons shall be amenable to the laws of this kingdom as native subjects.³⁷⁹

Inherent in the Kingdom's citizenship laws were principles of the English Common Law system, a result of the government's affiliation with the British Crown since the turn of the 18th century. According to Blackstone, territories that were a part of Britain often inherited the British common law system if the ruler desired to forego native law³⁸⁰, while other countries, once affiliated with the British Crown, adopted completely the principles of the English legal system, such as happened in the U.S. Kamakau, citing Ricord, explained that neither the "the laws of Rome" nor "those of England" could be used in their entirety in the Hawaiian Kingdom. "The Hawaiian people must have laws adapted to their mode of living. But it is right to study the laws of other peoples . . . to see which are adapted to our way of living . . ." ³⁸¹ The hybrid nature of Hawaiian Kingdom law was apparent in the construction of the laws that defined citizenship.

³⁷⁹ "Statute Laws of His Majesty Kamehameha III., Passed by the House of Nobles and Representatives " (Government Press, 1845-1847), 76.

³⁸⁰ William Blackstone, *Commentaries on the Laws of England*, ed. Willam Carey Jones, Vol. Books 1 and 2 (San Francisco: Bancroft-Whitney , 1915), 106.

³⁸¹ Kamakau, 402.

Jus Soli—Birth on the Soil

Acquiring citizenship by being born in the jurisdiction of the Kingdom was the method in which the majority of individuals acquired Hawaiian citizenship, a principle referred to as ‘Jus Soli’. According to Boczek, “Under the principle of *Jus Soli* (the law of the territory), historically favored by the countries of the common-law tradition . . . a child born on the state’s territory automatically becomes its national.”³⁸² Patrick Weil writes that, “In eighteenth century Europe, jus soli was the dominant criterion of nationality law in the two most powerful kingdoms: France and the United Kingdom.”³⁸³

At the center of the laws that formulated citizenship in the Kingdom was the English common-law rule that “a person’s status was vested at birth, and based upon place of birth.”³⁸⁴ The roots of this principle go back to the Calvin Case of 1608. The Calvin Case, Polly Price, explains, “is the earliest, most influential theoretical articulation by an English court of what came to be the common-law rule that a person’s status was vested at birth, and based upon place of birth.”³⁸⁵ Polly Prices notes that the “Calvin Case led to what is today known in international law as Jus Soli (from the soil) the rule under which nationality is acquired by the mere fact of birth within the territory of the state.”³⁸⁶ According to Chapter V., Section. III of the Hawaiian statutes, “All persons born within the jurisdiction of this kingdom. . . owe native allegiance to His Majesty.”³⁸⁷ On this topic, Hanifin wrote that, “The common law rule that everyone born in a country and subject to its jurisdiction is a subject accorded with the Hawaiian tradition and was readily adopted

³⁸² Boleslaw A. Boczek, *International Law: A Dictionary* (Lanham: Scarecrow Press. Inc, 2005), 189.

³⁸³ Weil, 19.

³⁸⁴ Polly J. Price, "Natural Law and Birthright Citizenship in Calvin's Case (1608)," *Yale Journal of Law and the Humanities*, Winter 1997, 1

³⁸⁵ Price, 1.

³⁸⁶ *Id.*

³⁸⁷ "Statute Laws of His Majesty Kamehameha III. , 76.

as part of the new Hawaiian legal system.”³⁸⁸ The principle of Jus Soli as a method to acquire Hawaiian citizenship was recognized in Hawaiian Supreme Court Case *Naone v. Thurston*.³⁸⁹

Naone v. Thurston

Common law principles regarding the acquisition of Hawaiian citizenship came to the fore in an 1856 Hawaiian Supreme Court case, *Naone v. Thurston*. The defendant Thurston challenged an 1851 Act that required that “children born of foreign parentage” be taxed an additional \$5 “for their education in English.”³⁹⁰ The defense argued that levying a greater sum of tax “upon foreign residents and subjects of foreign birth or parentage...[was] repugnant to the Constitution.”³⁹¹ Ruling in favor of Naone, Judge Robertson explained,

“We cannot see that such an enactment is repugnant either to the letter, or spirit, of the Constitution. This is not a question of rights and privileges. The rights and privileges of that portion of His Majesty’s subjects upon whom this special tax is laid, are not abridged in the slightest degree.”³⁹²

The courts justification for the additional tax was because of the added expense that an English education required. At the time English medium schools were few and far between and had higher operating cost.

Aside from the court’s opinion, what is also instructive about this case is that the

³⁸⁸ Hannifin, 19.

³⁸⁹ *Naone v. Thurston*, 1 Hawai’i 220, 1856.

³⁹⁰ *Id.* Also, section 2 of the Education Act of the Kingdom was intended “To provide for the education of the children of foreigners, and those of foreign extraction in the city of Honolulu, and other places in the kingdom.”

³⁹¹ *Naone v. Thurston*, 1 Hawai’i 220, 1856, 1..

³⁹² *Id.*

court acknowledged Thurston's self-identification as being a "Hawaiian subject by birth."³⁹³ Asa G. Thurston was born on the Island of Hawai'i on August 1, 1827 of American parents, and in 1855 he was elected to the House of Representatives. As a requirement for election Article 77 of the 1852 Constitution requires, "No person shall be eligible for a Representative of the people . . . unless he be a male subject or denizen of the Kingdom." Because political rights were granted only to nationals, aliens could not hold positions in government. By virtue of the common law, as affirmed by the Hawaiian Supreme Court, Asa G. Thurston, along with many other non-aboriginals, who were born within the realm of the Kingdom, even prior to the formal codification of citizenship laws, possessed Hawaiian nationality. In contrast to Asa G. Thurston acquired Hawaiian nationality through his birth on Hawaiian soil. His father Asa, who was born in Massachusetts, could not have acquired Hawaiian citizenship through birth on the soil but applied for citizenship through naturalization under Section X of the abovementioned Act on May 30, 1849,

Jus Sanguinus—Parentage

In the Hawaiian Kingdom there were three main ways to acquire Hawaiian citizenship, each which borrowed from the traditions of the common and civil law systems. The first principle, *Jus Sanguinus*, extended citizenship to an individual based on the citizenship status of their parents, regardless of place of birth. Boczek writes that "Under the principle of *jus sanguinus* . . . favored by the civil law countries of Europe, the nationality of a child is determined, irrespective of its place of law . . ."³⁹⁴ According

³⁹³ *Id*

³⁹⁴ "Statute Laws of His Majesty Kamehameha III., Passed by the House of Nobles and Representatives " (Government Press, 1845-1847), 76.

to Hawaiian Kingdom law, citizenship was conferred to “all persons born abroad of a parent native of this kingdom . . .”³⁹⁵

In the 19th century, this principle was significant when considering the out-migration of Hawaiians who settled abroad. Kamakau writes, “At Papaeete in Tahiti there were 400 Hawaiians, in Oregon 500, at Paita in Peru 50, and many have gone to Nantucket, New Bedford, Sag Harbor, New London, and other American ports . . . Some went to Nukuhiva, the Micronesian islands, New Zealand, and to the bush ranges of California . . .”³⁹⁶ While reasons for this out-migration vary, the Hawaiian language newspaper, *Ka Hoku Pakapika*, reported on a Hawaiian colony that was developing in the Marquesas. The newspaper spoke on the topic of perpetuating the Hawaiian language by introducing it to the people of the Marquesas, where a Hawaiian mission existed.

Explaining this, the article read:

The spread of the Hawaiian Language among its own people and those of other groups would be a means for the perpetuation of our society. If Hawaiian were to be taught to other peoples, like where our ministers recently sailed to convert the Marquesas Islands, all teaching materials should be made only in Hawaiian up through their conversion. Then Hawaiian would be a common language among them, and all the books they read should be printed in Hawaiian, and in the span of two or three generations their own language would be forgotten, and they would become Hawaiians.³⁹⁷

³⁹⁵ *Id.*

³⁹⁶ Kamakau, 404

³⁹⁷ Puakea Nogelmeier, "The Poetry of Kamehameha I: Jewels in the Dust," ed. Puakea Nogelmeier, *I Ulu I Ke Kumu* (UH Press), 2011.

While the article brings up two rather interesting illustrations that may disrupt conventional understandings of history—namely the idea of Hawaiians as missionaries and as colonizers or semi-colonizers—the article also brings to light an interesting notion regarding citizenship, particularly its intersections with notions of nationhood. Using Hawaiian language in the Marquesas as a means to have those natives “become Hawaiians” raises intriguing questions about the development of nationhood outside the borders of the Kingdom. On this topic, Puakea Nogelmeier writes of another incident in which aspects of Hawaiian nationhood were developing outside of the territorial limitations of the Kingdom. He explains that when Hawaiian nationals began working in the South Pacific as guano workers, they would maintain their national ties in part by their ability to submit letters to the editor of the Hawaiian Newspaper, *Ka Hae Hawaii*. Citing Benedict Anderson, Nogelmeier suggests that the workers’ reading of *Ka Hae Hawaii* while living abroad aided the production of the notion of a kind of a boundless nation.

While this study does not focus on the sociological or psychological aspects of citizenship—specifically its intersection with the concept of nationhood—the newspaper article speaks to the conceptual space in which Hawaiian citizenship was operating. The idea of a people ‘becoming Hawaiian’ by speaking the language while living thousands of miles away was a reflection of the way that notions of citizenship were discussed beyond the legal discourse. Nonetheless, when considering all the colonies of Hawaiians who had settled in various places in the world, and given the rule of *Jus Sanguinis*, which extended Hawaiian citizenship through parentage, there existed a sizable number of Hawaiian subjects who lived abroad. This outmigration also posed a problem to the

Hawaiian Government, as it added to an already diminishing number of Hawaiian nationals. In 1850, a law was passed that aimed to regulate the number of Hawaiians leaving the islands in order to “prevent such loss to the nation.”³⁹⁸

While the principle of Jus Sanguinus was a criteria in the Kingdom to acquire citizenship, during the formative years of the constitutional era, the two primary methods to acquire Hawaiian citizenship was either by being born in the jurisdiction of the Kingdom or through naturalization.

Naturalization

The Hawaiian legislature enacted naturalization laws that provided resident aliens a process to acquire citizenship. As naturalization processes vary among states the criteria to acquire citizenship is dependent on the domestic laws of a particular government. Oppenheim asserts that, “It is not for international law but Municipal law to determine who is, and who is not” a member of a particular state.⁴¹⁰ In the Hawaiian Kingdom, naturalization was not contingent on racial or ethnic prerequisites. Rather than race, allegiance was the determining factor to acquire Hawaiian citizenship. Chap. V. Section I of the Kingdom’s 1846 statutory laws provided for the management “of Subjects And Foreigners” by a “Bureau of Naturalization.”⁴¹¹

The Bureau of Naturalization was “superintended and managed by the Minister of the Interior.”⁴¹² At the center of the Bureau’s duties was the regulation of foreigners, those who were either temporarily or permanently residing in the Kingdom. The

³⁹⁸ "Penal Code of The Hawaiian Islands, Passed By The House of Nobles and Representatives" (Honolulu: Government Press, June 21, 1850), 154.

⁴¹⁰ Oppenheim, 643.

⁴¹¹ "Statute Laws of His Majesty Kamehameha III., Passed by the House of Nobles and Representatives " (Government Press, 1845-1847), Chap. V., Sec. I, p. 75.

⁴¹² Id.

Hawaiian Kingdom's geographic location coincided with a bustling economic hub well suited for trans-Pacific commerce and diplomatic affairs. Foreign traffic in the Islands was constant, necessitating a demand to enact laws that accounted for transient foreigners and an increasing resident alien population. This was acknowledged formally during the beginning of the constitutional era. In what is regarded as the 'Alien Laws' the foreign presence in the Islands garnered the most attention:

Because of the great number of foreigners, and strangers from other countries, residing in these islands, who desire to be governed by the laws of this land, and of being protected by this country; and because of the uncertainty of the standing of these foreigners to the Kings of these islands, and the rights appertaining to them are doubtful, and because of the vagueness of the laws which have been passed, but have not yet been printed, and have not been put into proper shape.⁴¹³

While it is uncertain as to whether the alien laws were actually enacted, the intent to regulate foreigners was at the center of passing such laws. Citizenship laws in particular played a significant role in regulating and accounting for aliens. Maude Jones writes that Hawaiian "law contains strict regulations relating to foreigners, including presentation of passports attested by endorsement of some diplomatic agent . . ." ⁴¹⁴ The regulation of foreigners was explained in Art. I, Sec. I, of the 1846 statutory laws:

It shall be incumbent upon all foreigners coming from foreign countries into this kingdom, whether for transient purposes or intent to remain permanently, and being at the time aliens to this, to bring and here exhibit before landing, a passport from some competent officer in the country whence such foreigner shall have come, descriptive of the

⁴¹³ "Laws For the Foreigners", August 17, 1838. See Jones p. 1.

⁴¹⁴ Jones, 11.

person, age, sex and vocation of such foreigner, properly authenticated, so as to be attested by the diplomatic agent, consul or commercial agent here resident, of the country whence such foreigner shall have come.⁴¹⁵

It was incumbent of all aliens to uphold the laws while in the Hawaiian Kingdom. Section V. of the statutory laws explained that aliens were not “exempted from the taxes imposed by law, nor are they less than subjects amenable to the punishments, fines, penalties and forfeitures prescribed by the several acts of this kingdom.”⁴¹⁶ Indeed, foreigners residing in the Kingdom were not only obligated to respect and uphold the laws of the Kingdom, they were also obligated to uphold international law, particularly the treaty relations that the Hawaiian Kingdom had entered into. In regard to this matter, in June of 1844, the Hawaiian Government published a code of etiquette for the foreign diplomatic corps to uphold while stationed in the Islands. In proclaiming a diplomatic code of etiquette, the Hawaiian Government aimed to conform its diplomatic relations to the standards of other independent states. The government stated:

As far as possible, to the ceremonies observed at the courts of other independent and sovereign powers, to testify our recognition of the binding force of public conventional usages, and to manifest our equal consideration for all friendly nations...⁴¹⁷

In reaching this intent the Hawaiian Government adopted the diplomatic code of etiquette that was issued by the 1814 and 1815 Vienna Congress. Without such etiquette, the

⁴¹⁵ "Statute Laws of His Majesty Kamehameha III., Passed by the House of Nobles and Representatives " (Government Press, 1845-1847), 75.

⁴¹⁶ *Id.*, 77.

⁴¹⁷ King Kamehameha III, "A Code of Etiquette," *Polynesian*, July 20, 1844: 4,1.

Hawaiian Kingdom would be vulnerable to conflict between foreigner representatives thus escalating the potential of an international incident and or war.

Treaty relations that the Hawaiian Kingdom had with other independent states included stipulations that defined the rights and duties of foreign nationals residing in the Kingdom. Foreign diplomats were stationed in the Kingdom to maintain treaty relations and also to oversee their nationals residing in the islands. Shortly after Hawaiian independence was recognized, an American diplomatic officer was stationed in Honolulu. As the US congressional record indicates, “On March 3, 1843, Mr. George Brown, of Massachusetts, was appointed commissioner.” On his arrival, Brown “presented his credentials, with an address to the King, in which he asked on behalf of the citizens of the United States favorable and impartial treatment . . .”⁴¹⁸ By the latter part of the 19th century a number of foreign consulates and embassies were established in the capital city of Honolulu.⁴¹⁹

Conversely, the Hawaiian Kingdom also maintained treaty relations by stationing diplomatic and consular representatives abroad. By 1893, 92 Hawaiian legations dotted the globe, dispersed throughout major cities and ports of the world, including Tokyo, Manila, San Francisco, New York, Lima, Monte Video, London, Rome, Belfast, Amsterdam, Sydney, and Tahiti, to name a few.⁴²⁰ In most cases, reciprocal citizenship rights and duties were extended between treaty partners. An example is provided in Art. II of the 1846 Hawaiian-Danish Treaty, which states:

⁴¹⁸ *Id.*

⁴¹⁹ For a list of foreign legations and consulates see David W. Forbes, *Hawaiian National Bibliography, 1780-1900*, Vol. 4 (Honolulu: University of Hawaii Press, 2003), 319.

⁴²⁰ Thos Thrum, *Hawaiian Almanac and Annual* (Honolulu: Self published, 1922), 144.

The subjects of His Majesty the King of Denmark residing within the dominions of the King of the Hawaiian Islands, shall enjoy the same protection in regard to their civil rights as well to their person and properties, as native subjects; and the King of the Hawaiian Islands engages to grant to Danish subjects the right and privileges which now are, or may hereafter be granted to or enjoyed by any three foreigners, subjects of the most favored nation.”⁴²¹

The Hawaiian-Danish Treaty, signed in Honolulu, was the first Hawaiian treaty to include the favored-nation clause. The clause, “Most favored-nation”, according to Stanley Hornbeck, “Deals with the treatment which citizens or subjects of each of the contracting powers shall receive in the territories and at the hands of the other, especially in matters of navigation and commerce.”⁴²² Preceding treaties with France and Britain did not include the most-favored nation clause, which became the source of problems for the Hawaiian government. The 1846 French and British treaties, identical in description, both included stipulations that gave preferential treatment to British and French citizens residing in the Kingdom. British and French citizens charged of committing a crime in the Kingdom were tried by juries “comprised of native or foreign residents.” The Juries’ were “proposed by the consul (English or French) and accepted by the Hawaiian Government.”⁴²³ These stipulations would later be annulled, but not before a series of

⁴²¹ The Treaty with Denmark was signed at Honolulu, October 19th, 1846. The preface read “It being desirable that a general convention, and instrument of mutual agreement, should exist between Denmark and The Hawaiian Island, the following articles have for that purpose, and of the intent, been mutually agreed upon and signed between the Governments of Denmark and the Hawaiian Islands.”

⁴²² Stanley Kuhl Hornbeck, *The most-favored nation clause in commercial treaties*: (Madison: University of Wisconsin, 1910), 9.

⁴²³ *Foreign Relations of the United States*, Congressional (Washington D.C.: US Government Printing Office, 1894-1895), 8.

disputes that in part resulted in the “seizure of the islands by the armed forces of France.”⁴²⁴

While the actions of foreigners residing in the Kingdom were regulated by international customs, domestically all foreigners in the Kingdom were limited by certain disabilities. As the law stated,

All aliens shall, as in Great Britain and the United States, continue to be under the following disabilities:

They are not eligible to any civil or military office in the kingdom, created by the laws.

They are not entitled to vote at any election for elective officers of this kingdom, nor to take any official share in the administration of the government.

They are not able to acquire any allodial or fee simple estate in lands.⁴²⁵

They are not entitled to the registration of their vessels in this kingdom, nor to hoist thereon the Hawaiian flag.⁴²⁶

Aliens wanting to conduct business in the Kingdom could do so, but they were first required to apply for a “Certificate of Nationality” to “reside and do business, or

⁴²⁴ *Id.*

⁴²⁵ This changes in 1850 with the passage of the Aliens Disabilities Act, which allowed aliens or foreigners to acquire a fee simple title to real property. Nonetheless, these aliens did not “own” land but rather title to land. One outcome of the Act also was meant to generate revenue through property tax. See Donovan Preza, *The Emperical Writes Back: Re-Examining Hawaiian Dipossession Resulting From the Māhele of 1848* (Honolulu: University of Hawaii M.A. Thesis , 2010).

⁴²⁶ Statute Law of His Majesty’s Kingdom, 76.

acquire advantages in this Kingdom . . . shall obtain from said minister, a certificate of nationality.”⁴²⁷ The application included the following declaration:

This [form] is to certify that _____, a native of _____, in _____, has come to reside in the Hawaiian Islands, and to subject himself to the laws so long as he shall remain; and all authorities thereof are required to respect the rights guaranteed to him by law as a domiciled alien.⁴²⁸

In 1850, the Legislature enacted a law “To Abolish the Disabilities of Aliens to Acquire and Convey Lands in Fee Simple”.⁴²⁹ The intent of the Act, which was supported by the King, was “to encourage the introduction of foreign capital and labor to the utmost extent that . . . rights of sovereign jurisdiction and domain will allow.”⁴³⁰ The Act amended the former law passed in 1847⁴³¹ that had allowed aliens to acquire only leasehold rights, but not fee-simple right. The motivation behind the 1847 law was the same as the 1850 Disabilities Act: to increase government revenue to boost the economy. Along with encouraging foreign capital, the amendment now allowed aliens or foreigners to acquire a fee-simple title. This generated property tax for the Kingdom government. Sumner J. La Croix and James Roumasset explain that such decisions were “driven by new market opportunities and considerations of public finance.”⁴³² The law stated that domiciled aliens were required “to serve as jurors” and were “compellable to pay all taxes and assessments applicable to personal and real chattels, and to contribute to the maintenance

⁴²⁷ *Id.*

⁴²⁸ *Id.* 77.

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ 1847 Statute laws. Act Relating to the Land Titles of Aliens

⁴³² See Sumner La Croix and James Roumasset, "The Evolution of Private Property in Nineteenth-Century Hawaii," *The Journal of Economic History* (Cambridge University Press), 1990: 829-852.

of schools.”⁴³³ Despite certain duties and responsibilities, such as property rights, aliens could not vote. Nonetheless, such laws and the rights therein encouraged the growth of a large domiciled alien community in the Kingdom.

The term ‘domiciled’ refers to a certain classification of alien, usually “differing in fixity which their residence possesses.”⁴³⁴ Edwin Borchard writes that it is a general principle of International law that, “The domiciled alien owes to the state of his residence practically all the duties of the native except such as have a political character.”⁴³⁵ Aliens who possessed a certificate of nationality, according to Hawaiian law were “denominated *domiciled*.”⁴³⁶ Domiciled aliens were prohibited “. . . to vote at any election . . . nor take any official share . . . in government.”⁴³⁷ Despite their status, they were nonetheless obligated to adhere to all the laws of the Kingdom. Additionally, aliens were bound to the laws of their own state.

They [domiciled aliens], in common with all other aliens, shall be civilly and criminally responsible in all respects to the extent of the rights and privileges conferred on them by law, and be entitled to seek international intervention when all the internal recourses afforded by the laws of this kingdom shall have been fully and finally resorted to for redress without just effect, but not otherwise.⁴³⁸

While the certificate of nationality extended some of the rights of Hawaiian citizenship to domiciled aliens, the law provided a process for naturalization in which

⁴³³ "Statute Law of His Majesty Kamehameha III," Vol. 1 (Honolulu: Government Press, 1846), 77, 78, or 79.

⁴³⁴ Edwin Montefiore Borchard, *The Diplomatic Protection of Citizens Abroad or The Law of International Claims* (New York: The Banks Law Publishing Co., 1915), 92.

⁴³⁵ *Id.*

⁴³⁶ "Statute Laws of His Majesty Kamehameha III., Passed by the House of Nobles and Representatives " (Government Press, 1845-1847), 77.

⁴³⁷ *Id.* 76.

⁴³⁸ *Id.*

aliens could acquire full citizenship and possess all the rights therein. Hawaiian citizenship was extended to aliens that satisfied the legal criteria for naturalization.

Allegiance to government was at the center of the criteria to become a naturalized Hawaiian subject. According to Section X of the 1846 statutory laws, “Any alien foreigner . . . may, after a residence of one year in this Kingdom, apply to his Excellency the governor of the island of Oahu . . . for permission to become naturalized.”⁴³⁹ The law deterred “those of immoral character”, as well as those in the categories of “refugee from justice”, “deserting sailor”, “soldiers or officers”, who belonged to a foreign country.⁴⁴⁰ The naturalization process concluded when the Governor of O‘ahu administered the “oath of allegiance” to the foreign alien.⁴⁴¹

The undersigned, a native of _____, lately residing in _____, being duly sworn upon the holy evangelists, upon his oath declares that will support the constitution and laws of the Hawaiian Islands and bear true allegiance to His Majesty the kingdom.⁴⁴²

Unlike a ‘certificate of nationality,’ which only granted certain rights, aliens could naturalize and acquire full citizenship. Those naturalized were “entitled to all the rights, privileges and immunities of an Hawaiian subject.”⁴⁴³ Maude Jones explains that the naturalization laws of the constitutional era were consistent with notions of naturalization laws since the era of Kamehameha I. Jones writes that Kamehameha “quickly recognized and rewarded certain foreigners . . . for their advice and

⁴³⁹ *Id.*, 78.

⁴⁴⁰ *Id.*, 79.

⁴⁴¹ *Id.* 78.

⁴⁴² *Id.* 79.

⁴⁴³ *Id.* 79.

assistance.”⁴⁴⁴ Foreigners such as John Young, Isaac Davis, Alexander Adams, and William Sumner, Don Francisco de Paula y Marin and Elliot de Castro, “were given lands and all the privileges as well as the disabilities of native subjects.”⁴⁴⁵ According to Marin’s journal, Jones writes that, “In 1815, Kamehameha I, realizing the evil influence of the undesirable foreign element, issue an order that all foreigners not holding lands of the King should leave the Islands.”⁴⁴⁶ She speculates that such men and the criteria in which they were given certain rights might be considered early conceptualizations of naturalization in the Hawaiian Kingdom prior to the constitutional era.

From the enactment of naturalization laws during the constitutional era until 1890, approximately 3,200 foreigners from nearly every country in the world took the oath of allegiance.⁴⁴⁷ For some Anglo Saxons, particularly Americans, relinquishing their US citizenship was a contentious decision, as it meant that they would surrender the advantages of being white, which was the norm in some of their former countries. For people of color, the racially inclusive citizenship laws afforded social mobility in the Kingdom, an attribute not found in many independent states at the time.

Missionaries and Hawaiian Citizenship

For many missionaries who remained in the Kingdom permanently after arriving in 1820, the question of naturalization was a concern for many. Coincidentally, the major waves of missionaries all arrived during transformative times in the development of the Hawaiian Kingdom. Children born on the soil, including children of missionaries were

⁴⁴⁴ Maude Jones, *Naturalization in Hawaii* (Honolulu: Hawaii State Archives , 1934), 3.

⁴⁴⁵ *Id.* , II.

⁴⁴⁶ *Id.*

⁴⁴⁷ A complete list of the naturalization records of the Hawaiian Kingdom can be found at Hawaiiankingdom.org/info-registry.shtml.

Hawaiian subjects by birth. While missionary children were extended all the rights and duties of Hawaiian citizenship, this was not the case for their parents who retained their former citizenship unless they fulfilled the Hawaiian Kingdom's naturalization requirements. In 1802, the US Congress repealed a law that extended American citizenship to children born abroad to an American father.⁴⁴⁸ Van Dyne, an American constitutional scholar, writes that the principle of jus sanguinis within the law of American citizenship was ambiguous. The children of American missionaries born in the Hawaiian Kingdom actually took on a different citizenship status than their parents. The first generations of missionary children born in the Hawaiian Kingdom were Hawaiian, their parents, American. This matter regarding citizenship was the basis of a report published by the American Board of Commissioners for Foreign Missions (ABCFM). American citizenship laws between 1802 and 1856 did not adhere to the principle of extending citizenship through parentage. This question was addressed in an ABCFM report, which referenced international legal authorities. It stated, "According to Chancellor Kent, the existing statutes recognize only those children born out of the United States as citizens, whose parents were citizens previous to April 14th, 1802."⁴⁴⁹ The report concluded that "As to the children of missionaries, born abroad, legislative interposition would be necessary to entitle them to similar rights and privileges" as American citizens.⁴⁵⁰ The US Congress would enact legislation in 1856 that would grant citizenship to children born abroad. According to US legislative Attorney, Margaret Lee, US constitutional law was generally ambiguous and "law makers were torn between a

⁴⁴⁸ Dyne, F. V. (1904). *Citizenship of the United States*. New York: The Lawyers' Co-operative Publishing Co, 33.

⁴⁴⁹ American Board of Commissioners for Foreign Missions, *Thirty-Second Annual Meeting*, Minutes (Boston : Crocker & Brewster , 1841), 38.

⁴⁵⁰ *Id.*

‘consensualist’ doctrine of citizenship, by which a person and a government consent to be mutually obligated, and an ‘ascriptive’ doctrine by which a person is ascribed citizenship by virtue of circumstances beyond his control.”⁴⁵¹ Like the British common law, it was “very doubtful whether the common law covered the cases of children born abroad.”⁴⁵² One US attorney urged Congress to pass a statute that refined the American common law in order to account for Americans born abroad, including the descendants of missionaries born in the islands.

The work of Horace Binney, a US attorney, is often regarded as the basis for a clearer and more robust definition of American citizenship. In his article, *The Alienigenae of the United States*, Binney urged lawmakers to consider what he saw as a problem with American citizenship laws. He wrote, “It does not, probably, occur to the American families . . . that all their children born in a foreign country are Aliens, and when they return home, will return under all the disabilities of aliens.”⁴⁵³ Therefore, many children born of Americans in the Kingdom did not qualify for American Citizenship. In other words, as Theodore Dwight put it, “birth here [in the US] confers citizenship; birth abroad causes alienage. On this view, the citizenship of the parents is of no consequence. Citizenship assumes a territorial character.”⁴⁵⁴

Considering the provisions of US law, not all missionary children were affected by this rule. Joy Shultz writes that the “first two companies of ABCFM missionaries to the Hawaiian Islands were unaffected . . . but by the third company’s arrival in 1828, the

⁴⁵¹ Margaret Mikyung Lee, *Birthright Citizenship Under the 14th Amendment of Persons Born in the United States to Alien Parents*, Congressional, US Congress (Washington D.C. : Congressional Research Service , 2010), Summary.

⁴⁵² Charles H. Maxson, *Citizenship* (Oxford : Oxford Press, 1930), 80.

⁴⁵³ Horace Binney, "The Alienigenae of the United States," *The American Law Register* (The Univesity of Pennsylvania Law Review) 2 (Feb 1854): 193-210, 193.

⁴⁵⁴ Theodore William Dwight, *Commentaries of the law of Persons and Personal Property* (Boston: Little, Brown, And Company, 1894),125.

law began to have effect upon the younger missionaries and their children.”⁴⁵⁵

Speculatively, this may have been a variable when considering why many missionary families never returned to the US—their children would have been considered aliens to the US. Nonetheless, Maude Jones writes that, “During the early 1840s there was much discussion as to whether or not missionaries should take the oath of allegiance.”⁴⁵⁶ G.P. Judd, one of the King’s advisors, was amongst those who encouraged missionaries to take the oath of allegiance and become naturalized Hawaiian subjects.

Marriage

Maude Jones explains that some of the earliest recorded naturalizations “have on most of them, the word ‘married together.’”⁴⁵⁷ Jon Van Dyke writes, “In 1830, Dr. Thomas C.B. Rooke, who had arrived from England the previous year, was allowed to marry the Ali‘i Grace Kama‘ikui Young on the understanding that he would swear allegiance to the Mō‘ī.”⁴⁵⁸ In 1838, “Laws For The Foreigners”⁴⁵⁹ was enacted, in which foreigners were required to obtain a marriage certificate and also take the oath of allegiance to the government. The certificate, which was issued by the court, verified that the applicant was a resident for at least two years. It also ensured that the applicant “is strong and able to work, that he is honest, and that he will be some benefit to the country.”⁴⁶⁰ The essence of these rules became formalized during the constitutional era

⁴⁵⁵ Joy Schulz, *Empire of the Young: Missionary Children in Hawai‘i and the Birth of U.S. Colonialism in the Pacific, 1820-1898* (University of Nebraska : Unpublished Dissertation , 2011), 204.

⁴⁵⁶ Maude Jones, *Naturalization in Hawaii* (Honolulu: Hawaii State Archives , 1934).

⁴⁵⁷ *Id.* , 6.

⁴⁵⁸ Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai‘i?* (Honolulu, HI: University of Hawaii Press, 2008), 138.

⁴⁵⁹ “Laws For The Foreigners” August 17, 1838, pg. 3

⁴⁶⁰ *Id.*

two years later. Jones writes that, “The first compilation of laws, known as the ‘Blue Book’ contains the first marriage law, dated November 12, 1840.”⁴⁶¹

As stated in the constitution, “no foreigner shall marry a wife here unless he first go before the Governor and declare under oath that it is his design to remain in the country.”⁴⁶² The law prevented foreigners who married a native from deserting their familial obligations. To curb this trend, Jones explains that the government required “foreigners wishing to marry [a] native [woman] to go before the Governor and take an oath of allegiance to the King.” Along with the oath of allegiance, foreigners were also required to submit a \$400 bond to the government. In the case that an individual deserted his or her family, three fourths of the bond was paid to the family and the government claimed the other one-fourth.⁴⁶³ In 1847, the marriage law was amended. The new law did not require foreigners to take the oath of allegiance. While the oath was removed, the residency requirement of two years remained. The bond requirement remained as well, and was increased to one thousand dollars. Despite such amendments, the intent of the law did not change. Having the ‘bond of indemnity’ returned was contingent on the “the faithful discharge of his duties as a husband and father, to the best of his abilities; that he will not forsake his wife or children, not leave them temporarily without providing for their maintenance and support during his absence . . .”⁴⁶⁴ While race was not necessarily mentioned in this law, there is an interesting racial and gender intersection. Essentially the rule aimed to preclude white foreign men from taking advantage of aboriginal

⁴⁶¹ Jones, 6.

⁴⁶² Constitution and laws of the Hawaiian Islands 1842. Chap. X., Section IX.

⁴⁶³ Jones, 78.

⁴⁶⁴ Statutory Laws, 1847. “An Act to Alter and Amend the Law of Marriage.”

women. Such a rule points to gender implications that differ from the laws of other countries at the time.

Becoming Hawaiian

According to the statutory laws passed during the early years of the constitutional era, “Every foreigner so naturalized, [was] deemed to all intents and purposes, a *native* of the Hawaiian islands—be amenable only to the laws of this kingdom . . . and be no longer amenable to his native sovereign while residing in this kingdom . . .” (emphasis added)⁴⁶⁵ The term, ‘Native’, as written in the statute, did not mean race or ethnicity. Rather it was used in it’s territorial sense to denote “the place or environment in which a person was born or a thing came into being . . .”⁴⁶⁶ Therefore, the designation, ‘Native’, according to Kingdom law was not limited to the aboriginal population, but extended to all people born within the jurisdiction of the Kingdom. The Organic Acts of 1846 and 1847 provided the precedent from which all other laws regarding citizenship stemmed. Subjects of the Kingdom were granted civil rights, which ensured basic principles of humanity and political rights, which enabled the citizenry to partake in political appointments and elections. Thus, those who became “Hawaiian”, were not granted civil and political rights. Therefore, “Hawaiian” denoted one’s nationality, not their race or ethnicity. This perspective, which does not privilege race is significant. As will be discussed in chapter 5 race is a very “natural” way of categorizing individuals. The Hawaiian Kingdom was unique in this sense were the dominant category was nationality not race.

⁴⁶⁵ *Id.*

⁴⁶⁶ Definition of “Native” *Dictionary.com*, 2014, dictionary.reference.com/browse/native?s=t (accessed May 8, 2014).

Blacks

As the naturalization records indicate, citizenship laws in the Kingdom were racially inclusive. Hawaiian law extended full political and civil rights to anybody willing to swear allegiance to the Kingdom. This included a number of African Americans who had escaped the grips of American slavery and had become Hawaiian subjects. The recognition of the Hawaiian Islands as a sovereign and independent state deterred colonialism. In turn, racial institutions, such as slavery or other systems of white supremacy that were spreading throughout the world were never established in the Hawaiian Islands. This is attributed to the strong presence and voice of the aboriginal population in the Legislative Assembly and other elected positions. Not only was slavery outlawed in the Kingdom, Article 11 of the Penal Code stated, “whenever a slave shall enter Hawaiian Territory, he shall be free.”⁴⁶⁸ This was the case for Anthony Allen, who was considered the first “Black Man” in the Hawaiians Islands. Allen was a former slave who found his way to Honolulu around the year 1811. As Marcus Scruggs explains, Anthony was able to navigate the societal dynamics of the Hawaiian Kingdom and was soon able to garner both “respect” and “esteem”.⁴⁶⁹ Allen’s prosperity, Shrugg notes, included “what appeared to be the first resort in Waikiki, a compound that attracted not only ‘gentlemen’ seamen, but also the Hawaiian Monarch King Kamehameha III.”⁴⁷⁰ On his beachfront property, Allen, the former slave, had many enterprises, “including animal husbandry, farming, a boarding house, a hospital, a bowling alley, and a grog shop.”⁴⁷¹ Albert S. Broussard wrote that in the Hawaiian Kingdom, “Allen succeeded beyond his

⁴⁶⁸ Hawaiian Penal Code of 1850, Article 11.

⁴⁶⁹ Marc Shruggs, ""There is One Black Man, Anthony Allen..."," ed. Miles Jackson, *Social Process in Hawaii: They Followed the Trade winds: African Americans in Hawaii* 43: 24-52, 24.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.* , 35.

wildest expectations, becoming a respected merchant, marrying a Hawaiian woman, and serving as one of the advisors of Kamehameha the Great.”⁴⁷²

The first “African American woman to embark on the shores of the Hawaiian Islands” was Betsy Stockton.⁴⁷³ Also an active member of society, she founded the Stockton Institute, a school for women and children. She was an educator who spoke both Hawaiian and English. Guttman and Golden write, Stockton “taught the Hawaiian women Western skills in taking care of their children to keep them from getting sick but used Hawaiian herbs to heal children’s sores and skin rashes.”⁴⁷⁴ While Stockton never naturalized, she was still extended civil rights and the social mobility as a resident alien, despite the color of her skin.

Hawaii’s non-exclusionary citizenship laws gave access to civil and political rights to such African Americans. This occurred nearly 20 years before the US civil war (1861-1865), the adoption of the 14th amendment, and almost 120 years before the US civil rights Act was passed in 1964. The extension of citizenship to people of color, Kathryn Takara says, was possibly attributed to the notion that “Hawaiians seemed to disregard Blackness as an indicator of status and intelligence.”⁴⁷⁵ Another possibility is that the skin color of people such as Allen and Stockton resembled that of the majority of Hawaiian society. Takara explains that in 1833, “Blacks were so numerous in Honolulu that they had begun to feel the need for community organizations.”⁴⁷⁶ She writes that they

⁴⁷² Albert S. Broussard, "The Honolulu NAACP and Race Relations in Hawai'i," *The Hawaiian Journal of History* 39 (2005): 115-133, 115.

⁴⁷³ D. Molentia Guttman and Ernest Golden, *African Americans In Hawai'i* (Charleston : Arcadia Publishing , 2011), 10.

⁴⁷⁴ *Id.*

⁴⁷⁵ Takara, K. W. (2003). The African Diaspora in Nineteenth-Century Hawai'i. In M. M. Jackson (Ed.), *They Followed the Trade Winds: African Americans in Hawai'i* (pp. 1-22). Honolulu: University of Hawaii Press, 11.

⁴⁷⁶ *Id.*

formed a chapter of the African Relief Society Rally. The purpose of the Hawaiian charter “was to assist Black seamen who visited the Islands aboard maritime fleets sailing from Africa, West Indies, the Cape Verde Islands, the United States, Spain, and England.”⁴⁷⁷

The Black experience in the Kingdom era offer many reflections of 19th century Hawaiian society. It illustrates the “unthinkability” of race during the Kingdom era as characterized by Virginia Dominguez. The stories of Allen, Stockton, and countless other Blacks, who escaped the tortures of American slavery to find shelter in the Hawaiian Kingdom, demonstrates the sharp contrast of racial ideology between the US and the Hawaiian Kingdom. While the US went to war with themselves over whether or not people of color should be afforded basic rights of humanity, the Hawaiian Kingdom extended both civil, and political, rights to people of color without question, let alone a civil war.

Chinese

Between 1840 and 1887, nearly 3,200 people from numerous other places in the world became naturalized Hawaiian subjects.⁴⁷⁸ Along with nearly every European state, the naturalization records show that immigrants were arriving from places that included Calcutta, Mexico, Cape Verde, Tahiti, New Zealand, China, Japan, Manila, Guam, Singapore, Arabia, Roratonga, Bermuda, Huahine, Prussia, Jamaica, Guayaquil, Malta, Samoa, Maritius, Niue, Cook Islands, Austrailia.⁴⁷⁹ Among those of foreign birth that

⁴⁷⁷ *Id.*

⁴⁷⁸ As recorded in the 1890 census, the Hawaiian national population totalled 48, 107. Of this total, 7, 495 were both naturalized Hawaiian subjects and also those born in the Kingdom of foreign parents. See Hawaiiankingdom.org/info-registry.shtml.

⁴⁷⁹ A complete list of the naturalization records of the Hawaiian Kingdom can be found at Hawaiiankingdom.org/info-registry.shtml.

arrived in the Kingdom during the 19th century, the Chinese were among the first to settle in the Islands. Wai-Jane Char writes that Chinese began to establish themselves as entrepreneurs in various capacities, including the “tong see (sugar masters) who established successful plantations on the Islands of Maui and Hawaii.” Elaborating on their place in the Kingdom, Char explains:

Chinese are a fascinating group. They were among those initiating the sugar industry in Hawaii, with the consent and cooperation of the King and other Hawaiian chiefs; they participated in business ventures with Anglo-American associates in the rapidly growing economy of mid-century Hawaii; and they married Hawaiians and founded families with many important and well-respected descendants.⁴⁸⁰

As Char points out, Chinese played a central role during the formative years of the Kingdom era. They were the first to own and operate successful sugar plantations and were at the center of the business sector “during the period . . . Honolulu changed, from a small village into a flourishing town with lumber yards, wharfs, streets, schools, and churches.”⁴⁸¹ This entrepreneurial Chinese community established close ties with the ali‘i. Along with economic relationships, the Chinese built strong relations with the Hawaiian Government as well. In November of 1856, “The Chinese merchants of Honolulu and Lahaina combined, gave a grand ball to their Majesties the King and Queen (Kamehameha IV and Emma) in honor of their recent marriage.”⁴⁸² The ball “was pronounced as the most splendid affairs of the kind ever seen in Honolulu. It cost the

⁴⁸⁰ Chinese Merchant-Adventurers and Sugar Masters in Hawaii: 1802-1852, p. 3.

⁴⁸¹ Wai-Jane Char, "Three Chinese Stores in Early Honolulu," *Hawaiian Journal of History* 8 (1974): 10-38, 11.

⁴⁸² *Id.*, 33.

Chinese the sum of \$3,700.”⁴⁸³ The adaptation and integration of Chinese into Hawaiian society resulted in numerous marriages between aboriginals and Chinese. While in the Hawaiian Kingdom, Samuel Hill, an American traveler, took note that:

Chinese were seen as contributing to the part-Hawaiian group. The [aboriginals] took kindly to the Chinese who appeared to learn the language with great facility. They made good husbands and fathers and in many cases had large families. Many intermarried with [aboriginals] and today in regions all over the islands, especially in rural places, are many descendants of Chinese-Hawaiian parentage.”⁴⁸⁴

While the adaptability of the Chinese into Hawaiian society was a central factor, their intermarriages were also circumstantial. Disease had depleted the aboriginal population, resulting in a shortage of males. Most Chinese resident in the Islands were male. According to Ramanzo Adams, these marriages were inconsistent with patterns of intermarriage in Hawai‘i. Carol Jean Forster explains that these marriages were beneficial to both aboriginal women and Chinese men. Forster writes that “marriages were not all one sided.”⁴⁸⁵ She explains, “The Chinese husband usually acquired a healthy and hard-working wife,”⁴⁸⁶ and on the other hand, it was believed at the time that “Chinese men were more dependable than either aboriginal or haole men.”⁴⁸⁷ Nevertheless, Chinese-aboriginal marriages were socially accepted, and even encouraged for a number of reasons. To most Americans, as Hill’s statement reflects, the role of Chinese in the Kingdom was different from their role in the US. Traditionally, global Chinese migration

⁴⁸³ *Id.*

⁴⁸⁴ S.S. Hill, "Travels in the Sandwich and Society Islands," *Polynesian*, March 25, 1848: 303-3117.

⁴⁸⁵ Carol Jean Forster, *Chinese Entrepreneurs in Nineteenth-Century Hawaii* (Edmonton, Alberta : Unpublished Masters Thesis, 1995).

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

has often been met with sharp regulatory policies that sought to control Chinese settlement.⁴⁸⁸ In contrast to Chinese exclusion policies in the US, the Hawaiian Kingdom extended citizenship to Chinese without prejudice. Many Chinese became Hawaiian subjects through marriage and all their children born in the Kingdom became Hawaiian subjects through birth. Those children of native and foreign parents born in the Kingdom were categorized in the census as “Hapa” [part]” or Half- caste.⁴⁸⁹ Yet despite such distinctions, Kauanui writes, “many children were of mixed ancestry but were absorbed within Hawaiian communities. Some were not even aware of their mixed ancestry, especially if they were adopted by other Hawaiians.”⁴⁹⁰

Chinese Businesses and Socio-Economic Mobility

In 1852, the Royal Hawaiian Agricultural Society recruited “175 field laborers and 20 houseboys from China.”⁴⁹¹ The recruitment of laborers from China lasted throughout the 19th century. Clarence Glick estimated that of the 46,000 Chinese migrants who arrived in Hawai‘i before 1898, “probably two-thirds to three-fourths began as laborers on sugar plantations.”⁴⁹² This system was in accordance with an Act passed in 1850 called the *Masters and Servants Act*. While some have argued that the Act reflected a kind of indentured servitude, Forster argues that the story not often told is the large number of Chinese who left the plantations to pursue other economic opportunities

⁴⁸⁸ Laws such as the Chinese Exclusion Act passed in the US Congress in 1882 prevented Chinese from acquiring American Citizenship and the rights therein. These restrictive measures lasted until 1952 when the Immigration and Nationality Act was passed in US Congress. The Act, know as the McCarran-Walter Act, repealed the anti-Asian law that had restricted American citizenship to Asians for eighty-years.

⁴⁸⁹ See J. Kehaulani Kauanui, *Hawaiian Blood: Colonialism and the Politics of Sovereignty and Indigeneity* (Durham, NC: Duke University Press, 2008), 56.

⁴⁹⁰ *Id.*, 57.

⁴⁹¹ Chinese Immigration: A Letter to the Board of Immigration, 1865, 142.

⁴⁹² Clarence E. Glick, *Sojourners and Settlers: Chinese Migrants in Hawaii* (Honolulu, HI: University of Hawaii Press, 1980), 23.

in the Kingdom. Forster writes, “Between 1854 and 1862, 291 Chinese held business licenses including hawking and peddling, victualling, retail and plantation stores.”⁴⁹³ Glick writes that while some Chinese came as laborers and remained so, “by far the greater number left the plantations when their contracts expired.”⁴⁹⁴ Their socio-economic success can be attributed, in part, to their access to the rights of Hawaiian citizenship.

Thousands of ethnic Chinese became naturalized Hawaiian subjects during the constitutional era. But many ethnic Chinese were Hawaiian subjects by virtue of being born in the Kingdom, similar to the previously mentioned case of Asa Thurston. Those born before the establishment of formal citizenship laws in the Kingdom were recognized as Hawaiian subjects due to birth on the soil. Yet, as the records indicate, members of the ethnic Chinese community who had not been born in the Kingdom, became naturalized subjects throughout the 19th century. Clarence Glick writes that of the most notable early Chinese to have settled in the islands was a man by the name of Chun Fong, later referred to as Afong. Glick writes that Afong “had many business interests in Honolulu where he married a Hawaiian woman of noble lineage by whom he had twelve daughters. He became the largest shareholder in [a sugar] plantation near Hilo.”⁴⁹⁵ And Hsiao-Ping Huang writes that, “In order to marry this part-[aboriginal] woman, Afong became a naturalized Hawaiian citizen. He was made a member of the Privy Council in 1879, the first Chinese to be so honored.”⁴⁹⁶

⁴⁹³ Carol Jean Forster, *Chinese Entrepreneurs in Nineteenth-Century Hawaii* (Edmonton: Unpublished Thesis University of Alberta, 1995), 45.

⁴⁹⁴ Glick, 39.

⁴⁹⁵ *Id.*

⁴⁹⁶ Hsiao-ping Huang, *Chinese Merchant Background and Experience in Hawaii Under the Monarchy* (Honolulu, HI: Unpublished Ph.D Dissertation, University of Hawaii , 1989), 260.

Naturalization: Necessary or Sufficient Condition to Infiltrate Government?

Maude Jones identifies naturalization laws in Hawai'i as a sufficient condition for "peoples of other nationalities to gain control"⁴⁹⁸ of government during the Kingdom era. Jones assertion that the "history of Hawai'i is a history of foreign influences and intrigues"⁴⁹⁹ is reflective of the colonial paradigm whereby aboriginal agency is overlooked and foreign influences is privileged. Maude Jones speaks generally to the notion of naturalization laws opening the door to foreign influence. From Jones' perspective foreigners would not have been able to access political positions in the Hawaiian Government without naturalization. While Jones identifies naturalization laws as a sufficient condition it is argued here that naturalization laws were only a necessary but not sufficient cause for foreigners to gain control of government. The first cabinet of the Kingdom's constitutional system, which was comprised of naturalized foreigners, demonstrates that allegiance was also a major factor in regulating the actions of foreigners in government.

Oath of Allegiance

The oath of allegiance during the formation of the constitutional era included an abjuration clause, which required foreigners to renounce their former allegiances before naturalizing. The abjuration clause was a point of contention for foreigners. In order to gain all the rights and advantages in Hawaiian society, Hawaiian citizenship was necessary. Yet, renouncing one's allegiance was not only contingent upon Hawaiian law, but also the laws of the state in which citizenship was originally granted. At times, the

⁴⁹⁸ Maude Jones. , 52.

⁴⁹⁹ *Id.*

citizenship laws of the Hawaiian Kingdom conflicted with the citizenship laws of other states. Such conflicts were apparent in varying citizenship statutes of the individuals that comprised the Kingdom's first executive Cabinet.

Gerrit P Judd—Encouraging Naturalization

The first Executive cabinet of the constitutional era was comprised of four white foreigners appointed by Kamehameha III. Gerrit P. Judd was an American citizen-turned-Hawaiian national who served on Kamehameha's Cabinet as the Kingdom's first Minister of Finance. Judd renounced his American citizenship on March 9, 1844 and became a naturalized Hawaiian subject. As the Minister of Finance, Kamakau wrote that Judd handled the affairs of the Hawaiian treasury well, and that "he was praised for upholding the rights of the native race."⁵⁰⁴ Judd encouraged American citizens, particularly the missionary faction, to relinquish their American citizenship and become naturalized Hawaiian subjects. He provided seven reasons why missionaries should consider naturalization:

1st. The fact that the missionaries already owe allegiance to these islands.

2d. That they here professedly to settle for life, and to devote all their energies to the benefits of Hawaiians.

3d. That their children are subjects of His Hawaiian Majesty.

4th. That all missionaries hold more or less lands, and require more or less in future. A power which no Government can grant to aliens, except by an ephemeral tenure, without endangering its Sovereignty,

⁵⁰⁴ Kamakau, 402.

and this favoritism to aliens practised towards even benefactors, which is very dangerous to this Government, is claimed by other subjects of foreign Powers, who likewise claim to be benefactors. I speak of both Frenchmen and Englishmen.

5th. As Aliens the influence of the missionaries is likely soon to be unavailable, in promoting education and the general objects of the Government, because others claiming the same rights and backed by foreign power, will claim and receive the same, unless both are prohibited.

6th. The Protection afforded by the United States to its Citizens abroad is of little worth – not to be compared to that which can be afforded here if they become naturalized.

7th. As subjects, His Majesty could at once avail himself of the example, countenance and aid of all the missionaries. He could remit all duties on goods, confirm titles to lands, etc... Such offices such as School Inspectors etc etc might also be Conferred on the secular men & Teachers, and thereby the jealousy which now exists towards the mission & towards the Government when it listens to them, be done away.⁵⁰⁵

From Jones' perspective G.P. Judd encouraging naturalization could be seen as a way for foreigners to gain access to political power such as voting and owning property. It will be argued later in this chapter that such naturalization laws were a necessary condition but not a sufficient condition to “gain control” of governance as Jones would contend.

⁵⁰⁵ Archives of Hawai'i, Foreign Office Files, Sept. 5, 1844. In Jones, 7.

John Ricord—Expatriation

Another cabinet member was John Ricord who served as the Kingdom’s first Attorney General. Ricord was a central figure in the organization of the Hawaiian constitution. Ricord naturalized and became a Hawaiian subject on the same day as Judd, March 9, 1844. An American-trained attorney, Ricord was competent in both the common law and civil law traditions, having practiced law in Louisiana, the only state of the Union that used civil law, rather than the common law as the basis of its domestic law. An individual who comprehended both legal traditions was pivotal considering that Hawaiian law would be based on an adaptation of both the civil and common law principles practiced by foreign states. Kuykendall wrote that Ricord possessed “fine qualities, such as absolute loyalty to his trust, unwearying [sic] industry in the conduct of his office and a sort of grim delight in wrestling with hard problems.”⁵⁰⁶

Ricord’s personal experience regarding Hawaiian citizenship contributed to the evolution of Hawaiian citizenship laws. Ricord’s status as a naturalized Hawaiian subject became a point of discussion when he submitted a request to the King to formally release him from his status as a Hawaiian subject because he wanted to return to America to live. Because Ricord was a naturalized Hawaiian subject, his request presented the Hawaiian government with a new question regarding Hawaiian citizenship—expatriation. Expatriation or denaturalization refers to “the voluntary renunciation or abandonment of nationality and allegiance.”⁵⁰⁷

⁵⁰⁶ Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai’i?* (Honolulu, HI: University of Hawaii Press, 2008), 34.

⁵⁰⁷ Frederick Van Dyne, *A Treatise on the Law of Naturalization of the United States* (Washington: The Law Reporter Printing Company, 1907), 333.

The Minister of Foreigner affairs, Robert Wyllie, issued a statement on the government's decision to denaturalize Ricord, who cited personal reason for wanting to return to the US. In it, Wyllie explained, "In permitting Mr. Ricord to leave the Kingdom and return to his natural allegiance as the laws of the United States may allow, the King by no means exempts Mr. Ricord from the local allegiance which he and all other aliens owe to the King, so long as they choose to reside under his jurisdiction."⁵⁰⁸ Wyllie's statement clarified that although Ricord was being denaturalized, he was not being released of his obligation while residing in the Kingdom to uphold the laws and pay allegiance to the King, an expectation placed on all aliens and nationals alike. Nevertheless, this experience regarding Hawaiian citizenship contributed to its rapidly evolving nature at the time, particularly in regard to allegiance. It is also an example of how matters' pertaining to Hawaiian citizenship laws was affected by domestic and international circumstances.

Robert Wyllie – The Evolution of Denizenship

Robert Wyllie was appointed Minister of Foreign affairs by Kamehameha III. Kamakau described Wyllie as "skilful in handling affairs with foreign governments." Wyllie's experience also contributed to the evolution of Hawaiian citizenship laws. On this topic, Robert Wyllie "presented to the King and Premier in Council, a 'Draft suggesting Remedy for Existing Inconveniences in the Matter of Foreigners Taking the Oath of Allegiance."⁵⁰⁹ As a British subject, he was actually not legally able to renounce his British nationality. In it, he challenged the abjuration clause found in Hawaiian law explaining that it was at odds with the English common law.

⁵⁰⁸ Robert Wyllie Letter to Government, In Maude Jones 123.

⁵⁰⁹ Achives of Hawaii, Foreign Office Files, Dec. 1845, 11.

According to British law, British subjects are not able to renounce British allegiance, even if it was desired. Wyllie referenced this in an article published in the newspaper *The Friend*. Wyllie explained, “As all foreigners owe subjection to the government while they reside within its jurisdiction, I do not see that the oath is objectionable upon that ground, nor would I find fault with those who please to take it...”⁵¹⁰ Wyllie did not object to the matter of paying strict allegiance to the Mō‘ī while in the Kingdom. Yet, he did provide an explanation as to why he was not able to renounce his British nationality referencing the Ligamen, a group of British subjects, who “were of the opinion that they [British subjects] cannot legally abjure their allegiance to their own sovereign.”⁵¹¹

International legal scholars refer to this as the *Doctrine of Indelible Allegiance*. Gerhard von Glahn writes that this doctrine was formulated in Great Britain, and that “under this theory, an individual cannot lose his nationality without the prior consent of his sovereign.”⁵¹² Wyllie stressed that not only would the abjuration clause prevent a British subject from “serving his Majesty faithfully”, but it “would place a British subject in a worse position than other foreigners, who by the laws of their own countries, are permitted to make that abjuration.”⁵¹³ Wyllie’s case demonstrated how domestic Hawaiian Kingdom citizenship laws was affected by other countries domestic laws and how Hawaiian nationality was thus influenced by the international relations therein.

Wyllie’s appeal helped to motivate the legislature to enact another form of acquiring Hawaiian citizenship, which granted Hawaiian citizenship to aliens and did not

⁵¹⁰ Robert Wyllie, "Oath of Alleigiance," *The Friend*, October 9, 1844: 91.

⁵¹¹ *Id.*

⁵¹² Von Glahn, 203.

⁵¹³ *Id.*

require them to surrender their allegiance to their native country: denizenship. The status of 'denizen' was a form of dual citizenship established in Hawaiian law. It extended temporarily all the rights and privileges to individuals who fulfilled particular services to the government. Denizens were permitted to retain their original nationality while also possessing Hawaiian citizenship, thus they possessed dual citizenship. Denizenship laws were first enacted in 1846. According to Ch. V, Art. 1, Section XIV:

It shall be competent to His Majesty, with the attestation of the premier, and on consultation in privy council, to confer upon any alien resident abroad, or temporarily resident in this kingdom, letters patent of denization, conferring upon such alien, without abjuration of native allegiance, all the rights, privileges and immunities of a native. Said letters patent shall render the denizen in all respects accountable to the laws of this kingdom, and impose upon him the like fealty to the king, as if he had been naturalized, as hereinbefore provided.”⁵¹⁴

Another example of a British subject acquiring Hawaiian citizenship through denization was Sir George Simpson. Simpson was instrumental in the Hawaiian Kingdom's recognition as an independent state. He was tasked by Kamehameha III to travel to Britain to negotiate and secure Hawaiian independence while Ha'alilio and Richards were responsible for securing recognition from America. The actions of such foreigners were significant in helping to secure sovereignty and the international protections that it would provide. These individuals such as Simpson and Wyllie were granted Hawaiian citizenship and also helped to evolve citizenship laws. In colonial situations, foreigners infiltrated government to impose foreign power over a territory and its inhabitants. In the

⁵¹⁴ "Statute Laws of His Majesty Kamehameha III., Passed by the House of Nobles and Representatives " (Government Press, 1845-1847), 79.

Hawaiian case, foreigners helped to secure and also maintain Hawaiian independence. In a colonial setting foreigner's allegiance would have been with their mother country but in the Hawaiian Kingdom foreigners paid allegiance to Hawai'i.

William Little Lee

The status of denizen was granted sparingly. In the five decades following the passage of denizenship laws, less than one hundred individuals were granted the status.⁵¹⁵ Another notable Denizen of the Kingdom was William Little Lee. Little Lee was granted denizenship on December 1, 1846 and tasked with the duty of operating the Hawaiian Supreme Court alongside associate justices, John 'Ī'ī, a native subject, and Lorrin Andrews, a naturalized Hawaiian subject. In 1847, the Hawaiian legislature requested that Lee submit a legal opinion regarding the Kingdom's marriage law that required foreigners to take the oath of allegiance. The legislature was concerned with whether such a law "is contrary to the law of nations, or in violation of any treaty existing between this Kingdom and the Government of any other nation."⁵¹⁶ In his response, Lee iterated the international legal principle of equality among states. Citing legal authorities of the time, Lee wrote, "There is no principle of the law of nations more firmly settled...that every sovereign state possess . . . the supreme and exclusive power over its civil, criminal and municipal legislation."⁵¹⁷ Emphasizing the rights of independent states, Lee opined that the Hawaiian Kingdom had every right to institute laws that it thought necessary. He wrote that the "restrictions and conditions it may think proper to the marriage of its citizens among themselves, or with foreigners, is recognized by the

⁵¹⁵ Maude Jones, *Naturalization in Hawaii* (Honolulu: Hawaii State Archives, 1934), 24.

⁵¹⁶ *Id.*

⁵¹⁷ Jones, 112

usage and custom of other nations, and most explicitly laid down in the law of nations.”⁵¹⁸ The significance of Hawai‘i’s recognition was that sovereignty provided the means from which domestic laws could be developed to protect the interest of the Hawaiian citizenry. In this case, as previously mentioned, men were required to submit a bond, sign the oath of allegiance, and be held amenable to the laws of the Kingdom, before marrying a Hawaiian woman. The intent of such a law was to protect women and any potential children from abandonment in case a male foreigner decided to leave the islands.

William Richards

William Richards, the Kingdom’s Minister of the Interior and diplomat formally relinquished his American citizenship on May 8, 1845.⁵¹⁹ He was a central figure in helping develop the Kingdom’s political economy by translating American Professor Francis Wayland’s book, “The Elements of Political Economy.” Prior to Richard’s formally naturalizing, he performed several actions and made many statements, direct and indirect, formal and informal, that demonstrated his allegiance to the Hawaiian Kingdom. Richards may be the most notable of Kamehameha III’s Cabinet members, for his devoted service to the government in which he served in many capacities. It was Richards who proclaimed to the Council of Chiefs, “With you is my life, with you is my death.”⁵²⁰ As Noelani Arista points out such a statement, recorded in 1827, was an early expression of the depth of allegiance that foreigners such as Richards had for the Kingdom.

⁵¹⁸ Jones, 113

⁵¹⁹ Archives of Hawaii, “Naturalization Book”

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Protesting Naturalization

Davianna McGregor cites specific protests, particularly petitions opposing the inclusion of foreigners in government. She identifies a letter of protest that the Hawaiian legislature received that was signed by 5,790 people who opposed the naturalization of foreigners. At the center of this issue on naturalization was the service of foreigners in government. This issue played out over an exchange of correspondences between historian/scholar Samuel Kamakau and His Majesty, Kauikeaouli, Kamehameha III. This correspondence was published in the newspaper the *Ka Elele*. In one article, Kamakau expresses the sentiment of “some old gentlemen, men who knew Kahekili and lived in his kingdom in the reign of Kamehameha I.” In a letter to Kauikeaouli, Kamakau noted the displeasure that many had over the government allowing foreigners to serve in public office. Allowing this, Kamakau wrote, “will lead to the government coming into the hands of the foreigner, and the [aboriginal] people becoming their servants to work for them.”⁵²²

These concerns were addressed by Kauikeaouli in a letter that was published in many newspapers in the Kingdom. The King explained the government’s policy regarding foreigners in government. In his response, Kauikeaouli wrote,

I desire all the good things of the past to remain such as that good old law of Kamehameha that ‘the old women and the old men shall sleep by the wayside,’ and to unite them with what is good under these new conditions in which contempt for the ancient wisdom of the land, but because my native helpers do not understand the laws of the great countries who are working with us...I earnestly desire to give places to

⁵²² Kamakau, 401.

the commoners and to the chiefs as they are able to do the work connected with the office.⁵²³

Kamakau agreed with the King's response, stating, "we ought therefore not to object to foreign officials if we cannot find chiefs learned enough for the office."⁵²⁴ As Kauikeaouli noted, the Kingdom's status as an independent state required the aide of individuals that were skilled in international relations. This was a skill that foreigners such as Richards and Sir George Simpson could offer the Hawaiian Government.

The actions of 'whites', 'Americans', or 'Europeans' during this era are often simplistically regarded in popular narratives to be the root cause of the coup in the Hawaiian Kingdom nearly fifty years later. Ironically, the legal assistance provided by non-aboriginals during the formation of the constitutional system and the acquisition of Hawaiian independence became the greatest obstacle for many of their descendants, many of whom engaged in treasonous acts against the state and sought to dismantle the legal system that earlier individuals such as Williams Richards helped to build. This is highlighted in a newspaper article written in the *Hawaii Holomua*. The article contrasts the difference in the behaviors of the Kingdom's first minister of foreign affairs, Gerrit P. Judd, a former missionary who arrived in 1827, from his son, Albert Francis Judd, Chief Justice of the Supreme Court during the time of the 1887 coup. Chas Nordhoff, the author of the article writes:

They, the fathers, stood by the natives [aboriginals] against all foreign aggression. The elder Judd, a very able man, gave time, ability and his own means to the restoration of Hawaiian independence when it was attacked by an English admiral; his degenerate son, the present chief

⁵²³ Kamakau, 401.

⁵²⁴ *Id.*

justice was part of the conspiracy which upset the government he had sworn to support and, himself a native of Hawaii, is active in the movement to destroy the State which his father gave a long life to establish defend and maintained.⁵²⁵

The contrast between the elder Judd and his “degenerate son” disrupts prevailing narratives that have generalized foreigners throughout time as having the same intentions to “gain control” of government while ignoring the allegiance paid to the Hawaiian Kingdom Government by earlier foreigners. In a petition from the “people of Kona, Hawaii,” the usage of the term ‘foreigner’ was contextualized and distinctions were made between the motivations and allegiance of such foreigners. The first kind of foreigner were characterized as those “who have been here a long time, from Kamehameha I to Kamehameha II, up to Kamehameha III... They are true Hawaiians... These people are like us, and die with us...”⁵³⁰ These kind of foreigners were contrasted with those foreigners who only wanted to “acquire wealth.” It is this kind of distinction regarding allegiance that has been ignored by historians who have depicted Hawaiian history through a colonial lens.

Conclusion

Within three years after the establishment of the constitutional system, the Hawaiian Kingdom became recognized as an independent state, giving rise to citizenship laws in Hawai’i. The Kingdom’s status as an independent state afforded its nationals with another layer of rights and protections internationally. In this short period, Hawaiian citizenship laws evolved rapidly leading to the growth of individual rights.

⁵²⁵ *Hawaii Holomua*, "Missionary Policy of Greed Disastrous To The Islands," September 23, 1893: 1-4.

⁵³⁰ "1845 Petitions" (Hawaii State Archives).

Foreigners played an important role in developing individual rights but also securing Hawaiian independence. This was a unique circumstance considering that the Hawaiian Kingdom became the first non-European territory to possess international recognition. The actions of foreigners during this era have often been mis-contextualized as laying the foundation for the actions of their descendents and their involvement in the overthrow of the Hawaiian Government in 1893. Ironically, the overthrow of the government in 1893 was an attempt to finally gain control of the government. Historians such as Jones have placed foreigners attempts at gaining control of government to earlier periods and to the creation of citizenship laws more generally. It is argued here that citizenship laws were a necessary but not sufficient condition for foreigners to gain control of government.

With the formal recognition of Hawaiian state sovereignty citizenship laws were now necessary. The Hawaiian Kingdom provided three primary ways to acquire citizenship: birth on the soil, parentage, and naturalization. Domestic and international factors pertaining to the development of the Kingdom helped to shape the evolution of Hawaiian citizenship laws, leading to a fourth way to acquire Hawaiian citizenship—Denizenship. In this era, the term “Hawaiian” denoted nationality and was not contingent on race or ethnic origin. The inclusive nature of Hawaiian citizenship laws bolstered a multi-ethnic citizenry providing socio-economic opportunity to all people regardless of color. Though while not based on race, the main criteria for Hawaiian citizenship was based on allegiance. Expressions of allegiance were exemplified in the actions of early foreigners who helped to secure Hawaiian independence.

Internationally, the Kingdom's status as an independent state prevented the intrusion of colonialism. Beamer asserts that 19th century “‘Ōiwi (the aboriginal population) were not only never colonized de jure, but were not even colonized ipso facto as most observers would claim . . .”⁵³¹ One reason for this, as Beamer's analysis illustrates, is the aboriginal populations use of law. He writes, “Law could enable a militarily inferior nation to be looked upon as a theoretical equal . . . Law also offered the ability to conduct . . . regulations within the defined boundaries of one's nation.”⁵³² An analysis of citizenship during the formative years of the constitutional monarchy (1840-1886) contributes to Beamer's vantage point of Hawaiian law as being a source from which aboriginal agency was clearly present. As this chapter attempted to demonstrate, legal and public discourses regarding the creation and evolution of Hawaiian citizenship reveals how Hawaiian law played an important role in shaping Hawaiian society. Unlike the history of race in the US, citizenship in the Hawaiian Kingdom was not based on institutions that bolstered white supremacy, such as the extermination of Native Americans and the enslavement of African Americans. As long as the aboriginal population maintained their political voice in the legislature and in the office of the monarch, the aboriginal population, along with the Kingdom's multi-ethnic population, had access to political power. Conversely, the racially inclusive legal system of the Hawaiian Kingdom also suppressed white racial hierarchy. This system developed constitutionally for almost fifty years until the coup of 1887.

While the Hawaiian Kingdom experienced a very different history of race than that of the US, the gradual deterioration of the Hawaiian Kingdom Government and the

⁵³¹ Beamer, K. (2008). *Na Wai Ka Mana? 'Ōiwi agency and European imperialism in the Hawaiian Kingdom*. Honolulu, HI: Unpublished doctoral thesis, University of Hawai'i at Mānoa, 160.

⁵³² *Id.*

rise of the Provisional Government and the Republic corresponded with the rise of American ideologies of white supremacy. The institutionalization of US racial ideologies becomes evident in Hawaiian law beginning with the Bayonet Constitution of 1887. For the first time in the history of the Hawaiian Kingdom, the term “Hawaiian” as contextualized in the Bayonet Constitution was used to denote race or ethnicity, not nationality or citizenship. Acquiring Hawaiian citizenship was never contingent on race, but rather allegiance. As made clear in the Bayonet Constitution, beginning in 1887 citizenship laws became less about allegiance and more about race.

Chapter 5: Disruption of Hawaiian Citizenship: Bayonet Constitution

This chapter investigates the politics around citizenship laws during the years between 1887-1893. In 1887 the Hawaiian Kingdom had experienced a coup. The insurgents, who under Hawaiian law constituted traitors, put into force a document known as the Bayonet Constitution. Despite being unlawful, the revolutionary constitution made severe amendments to Hawaiian citizenship laws. In particular, race rather than allegiance became the central factor in determining eligibility for Hawaiian citizenship. From 1887 until US annexation in 1898, race became an important factor in the laws regarding citizenship. During these years, the racial inclusion that once defined Hawaiian citizenship laws were altered in order to enhance the white political minority. Those of European and American descent were granted voting privileges without having to naturalize or renounce their former allegiances. Also, beginning in 1887, Asians were completely disenfranchised of all political rights. Property qualifications were also instituted which disenfranchised a majority of the aboriginal voting block. In response to these drastic changes, multi-ethnic alliances were established to fight back against the emergence of white supremacy in the Kingdom. These multi-ethnic alliances reflect an important moment in Hawaiian history, where people of all colors not only stood up against an emergence of white supremacy but also aligned politically in order to preserve and maintain Hawaiian independence. Their resistance was effective in putting down what appeared to be a move to empower a white minority. Joining this cause, in 1893, Queen Lili'uokalani responded to the call for constitutional reform. The Queen's constitution would have restored political balance to the country by removing the racial

prerequisites that put those of color at a disadvantage, and the white minority at an advantage. Before the Queen could promulgate a new constitution, John L. Stevens, the rogue US ambassador orchestrated the overthrow of the Hawaiian Government. Without the unauthorized landing of US troops, the white minority that had fallen from the political vantage established in 1887 would have surely been defeated. This history of citizenship between the years 1887-1893 concludes with an analysis of the Queen's constitution and the proposed amendments regarding Hawaiian citizenship.

A System of Advantages

Naturalization laws were codified during the constitutional era. Americans and nearly all Europeans who either served as Kingdom officials or became naturalized Hawaiian subjects were first required to relinquish their citizenship to their respective home countries—a condition of Hawaiian Kingdom law, the United States, and most European governments, with the exception of Great Britain.⁵³³ Relinquishing European or American citizenship to become a national of a country governed primarily by aboriginals in order to acquire Hawaiian citizenship was a decision that many made. The legal and social advantages of being white in the Hawaiian Kingdom were not as they were in America and most European countries at the time. The unique racial conditions of the Hawaiian Islands was observed by the American merchant Captain John Wilkes who while in the port of Honolulu witnessed a verbal dispute between a white man and an aboriginal. According to Gerald Horne, Wilkes had not experienced a place “where ‘white’ men could be treated thusly by those who elsewhere would be deemed slaves.”⁵³⁴

⁵³³ Maude Jones, *Naturalization in Hawaii* (Honolulu: Hawaii State Archives, 1934), 124.

⁵³⁴ Gerald Horne, *The White Pacific : U.S. Imperialism and Black Slavery in the South Seas after the Civil War* (Honolulu: University of Hawaii Press, 2007), 32.

Wilkes had witnessed an aboriginal give a white man a tongue lashing on the docks of Lāhaina Harbor. Horne writes, that for Wilke's, who had been involved in blackbirding⁵³⁵ in Fiji, "the altercation was an early indication that the sovereignty of Hawaii presented a clear and present danger to white supremacy."⁵³⁶

Tatum argues that understanding racism as a "system of advantage and disadvantage is critical to understanding of how racism operates in American society."⁵³⁷ In the context of the Hawaiian Kingdom, this system did not work to the advantage of a particular "race" and to the disadvantage of other races. And while Whites were a part of Hawaiian society, Hawaiian law did not extend more or less privilege to the white community. Arguably, if there was a group or a class of people who did have a certain advantage over other in society, it could be argued that the system did advantage the aboriginal population. Hawaiian Kingdom law actually gave exclusive rights to the aboriginal population, such as the laws pertaining to Native Tenants—a land right reserved for only the aboriginal population. Nonetheless, the aboriginal populations central role in developing Hawaiian Kingdom law was the main ingredient in preventing racial inequality. While the domestic laws of the Kingdom offered rights and protections to people of color within the territory of the Kingdom, the Hawaiian Governments used its international character to extend rights and protections to other developing states throughout Oceania. The Kingdom's foreign relations policies in Oceania throughout the

⁵³⁵ i.e. kidnapping of people in south Pacific islands to be transported to other countries and sold as slaves. This practice was prevalent in the early to mid 1800s. See Gerald Horne, *The White Pacific : U.S. Imperialism and Black Slavery in the South Seas after the Civil War* (Honolulu: University of Hawaii Press, 2007).

⁵³⁶ Horne, 32.

⁵³⁷ Beverly Daniels Tatum, *Why Are All the Black Kids Sitting Together in the Cafeteria? and Other Conversations about Race* (New York: Basic Books, 1997), 37.

19th century prompted the usage of an interesting diplomatic term, with interesting racial connotations, ‘Hawaiian Supremacy.’

As Horne writes, the term ‘Hawaiian Supremacy’ was used in regard to the Hawaiian Kingdom’s “role as the leading Pacific power and of annexing or establishing protectorates or spheres of influence over various other groups in this vast ocean region.” The specter of Hawaiian Supremacy throughout Oceania, however, may have been more impacting than most historians have demonstrated. Lorenz Gonschor argues that the Hawaiian Kingdom held a central role in preventing European colonialism in Oceania. His research shows that the Hawaiian Kingdom’s 19th century statecraft developments served as model for other non-Western territories in their state building projects. These countries included Tonga, Fiji, Sāmoa, Thailand, Japan, and China. Yet as Gonschor points out, the burgeoning rise of “Hawaiian Supremacy” in Oceania presented a threat to the ambitions of “European supremacy” in Oceania. He writes,

The US. takeover of Hawai‘i virtually ‘beheaded’ Oceania, disabling its most developed nation-state, the only one with its own network of international diplomats, a fact which in turn facilitated the colonial takeover of the other archipelagos...By 1900, every single Pacific Island nation had in some way directly or indirectly, become subject to Western imperial rule.⁵³⁸

The racial connotations blanked in Gonschor’s research adds to the significance of the Hawaiian Kingdom, not only for people of color that resided in the Kingdom, but also for other nation in Oceania. Gonschor’s work contributes to the notion that compared to

⁵³⁸ Lorenz Gonschor, *Ka Hoku o Osiania: Promoting the Hawaiian Kingdom as a Model for Political Transformation in Nineteenth-Century Oceania*, Vol. 6, in *Cultural Encounters and the Discourses of Scholarship*, ed. Sebastian Jobs and Gesa Mackenthun (Berlin: Waxman, 2013).178.

other countries in the world race operated from differently in the Hawaiian Kingdom. The racial dynamic of Hawaiian society was not white over brown, nor was it brown over white. The legal system in the Hawaiian Kingdom and the society that contributed to it offered a system of advantages that was not restricted to any race. This tradition of racial equality and political inclusion, which had evolved since the origins of the Hawaiian Kingdom, was abruptly disrupted in 1887.

From Political Inclusion To Racial Hierarchy

The evolution of Hawaiian citizenship laws since the on-set of the constitutional era played an important role in the development of the Hawaiian Kingdom. Citizenship laws formed the legal and political basis from which society functioned within the jurisdiction of the Kingdom. Those that possessed Hawaiian citizenship were extended full political and civil rights that provided protections, liberties, and voting rights. The racially inclusive nature of Hawaiian citizenship laws played a significant role in not only providing rights to all people, no matter their race or ethnicity or color, but also in constraining a system of racial hierarchy from forming during the constitutional era.

Acquiring Hawaiian Citizenship and the rights therein were based on allegiance. Minister of Finance David Gregg commented on the inclusive citizenship policies of the Hawaiian Kingdom. While delivering a lecture before the Honolulu Lyceum, Gregg stated that he knew of no other country “where the alien is received with a more cordial welcome than in the Hawaiian Kingdom.”⁵³⁹ Lauding the purpose of such policies, Greg

⁵³⁹ Pauline Nawahineokala'i King, *A Political Biography of David Lawrence Gregg: American Diplomat and Hawaiian Official* (Honolulu: University of Hawaii (Dissertation), 1976), 224.

rejected “illiberal criticisms” that aimed to “thwart its purposes, and paralyze its exertions for the common good...on account of race, or physical peculiarity [sic].”⁵⁴⁰

In 1882, US Representative Daggett commented that the legislative assembly of the Hawaiian Kingdom was under complete native control. Writing to the Secretary of State Flechingfine, Dagget noted “this should be a matter of little surprise, when it is considered that the [aboriginals] outnumber the whites...almost ten to one, and the ballot is given only to native-born and naturalized citizens.”⁵⁴¹

Rather than citizenship laws being used to hold up a system of white supremacy, as they were in the US, in the Hawaiian Kingdom citizenship laws did almost the opposite. White supremacy as legal scholar Frances Lee Ansley explains, “refers to a political, economic, and cultural system in which whites overwhelmingly control power ...and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions...”⁵⁴² Until 1887, Hawaiian Kingdom law was never used to support a system of white racial hierarchy. While Hawaiian society before 1887 was by no means color-blind, racism as defined as a system of advantages and disadvantages based on race was never institutionalized.⁵⁴³ Virginia Dominguez writes that “Unlike the extensive differentiating and disempowering laws put in place throughout the nineteenth century in numerous parts of the U.S. mainland, no parallel

⁵⁴⁰ *Id.*

⁵⁴¹ Daggett, R. (1882). *Legation of the United States, Honolulu September 24, 1882*. Washington D.C.: US Government. See *Executive Documents of the House of Representatives* , 47th Congress (D.C.: Washington Government Press, 1882-83), 347.

⁵⁴² Francis Lee Ansley, "White Supremacy (and what to do about it)," in *Critical White Studies: Looking Behind the Mirror* , 592-595 (Philadelphia: Temple University Press, 1997), 592.

⁵⁴³ Beverly Daniels Tatum, *Why Are All the Black Kids Sitting Together in the Cafeteria? and Other Conversations about Race* (New York: Basic Books, 1997),103.

laws—customary or legislated—seem to have existed in the Kingdom of Hawai'i.⁵⁴⁴ In the US, white men were tasked with crafting the qualifications to possess American citizenship. Since the invention of race in the United States, law has been the medium through which a system of white supremacy has been instituted. This was not the case in the Hawaiian Kingdom. Despite the arrival of white foreigners beginning in 1778 and their omnipresence throughout the 19th century, white supremacy was never institutionalized in the Hawaiian Kingdom. Hawaiian Kingdom law played an important role in preventing white supremacy from forming.

Racially, Hawaiian society during the 19th century was an anomaly. Race in the Hawaiian Kingdom operated differently than other regions of the world in which European colonialism ventured. As Omi and Winant note, the concept of race as used as a marker of superiority and inferiority derives from the moment of contact “When European explorers in the New World “discovered” people who looked different than themselves”⁵⁴⁵ As Chapter 2 demonstrated, in the Hawaiian Kingdom, the experiences and interactions between Europeans and the aboriginal population were unlike any other region in the world. Since the time of Kamehameha I, Europeans served as assistants, advisors, and laborers for Hawaiian chiefs. Indeed, many foreigners became subjects of the Kingdom. Even before naturalization laws were created during the constitutional era, as Maude Jones writes, foreigners from different regions of the world, particularly white Europeans, such as John Young (Britain), Isaac Davis, Alexander

⁵⁴⁴ Virginia Dominguez, "Exporting U.S. Concepts of Race: Are There Limits to the U.S. Model?," *Social Research* 65 (Summer 1998): 369-399, 372.

⁵⁴⁵ Omi and Winant, *Racial Formations in the United States: From the 1960's to the 1980's* (London: Routledge, 1986), 11.

Adams, William Sumner, Don Francisco de Paula y Marin, and Elliot de Castro, were granted “all the privileges as well as the disabilities of native subjects.”⁵⁴⁶

Unlike the US, slavery in the Hawaiian Kingdom was prohibited since the inception of the constitutional era. Further, a colonial government was never established in the Hawaiian Islands. The Hawaiian Kingdom’s tactical diplomacy with European states since Kamehameha I, eventually culminating in the recognition of the Hawaiian kingdom as the first non-European territory and nation to possess international statehood, vanquished the possibility of a colonial government from being imposed. The Kingdom’s diplomatic relations not only prevented a colonial government from being established in the islands, it also insured aboriginal rule over the Hawaiian Islands. In contrast to the development of American citizenship, Hawaiian citizenship was crafted not by white men, but predominantly by legislators who were of pure or part aboriginal decent.

The constitutional system in which the aboriginal population represented the majority constrained the political power of the white minority that resided in the Kingdom. This political agency of the aboriginal population over the white minority had a direct impact on the business affairs of the Hawaiian Kingdom. White American businessmen expressed anxiety over the political constraint that the aboriginal population had over their business interest in the Kingdom. This was demonstrated in diplomatic correspondence between US Representative James Comly of the Hawaiian Legation and US Secretary of State Frelinghuysen.⁵⁴⁷ In 1882, Comly reported that American businessmen were in a “state of anxiety.”⁵⁴⁸ Comly wrote that the predominance of

⁵⁴⁶ Maude Jones, *Naturalization in Hawaii* (Honolulu: Hawaii State Archives , 1934), 11.

⁵⁴⁷ *Executive Documents of the House of Representatives* , 47th Congress (D.C.: Washington Government Press, 1882-83), 342.

⁵⁴⁸ *Id.* 343.

aboriginal legislators put American businessmen at a disadvantage. The American's felt that that they contributed greatly to the economy of the Hawaiian Kingdom but they possessed "uncertain control of the rate of taxation."⁵⁴⁹

In 1887, however, the legal system that had constrained white supremacy in the Hawaiian Kingdom for nearly fifty years was compromised. As a result of the coup de tat of 1887, race became a fixture in the written laws governing Hawaiian society. The coup was personified by the imposition of a document known as the "Bayonet Constitution." The alleged constitution was drafted by a band of white men, both Hawaiian nationals and foreigners, who subscribed to the expressed racial belief that the aboriginal "was unfit for government."⁵⁵⁰ These racially charged beliefs were in part a reaction to the domestic and foreign policies of the King. Kalākaua, who had revitalized traditional aspects of Hawaiian governance, was considered a champion of civil rights and equality. He had also spearheaded nation-building and regional cooperation efforts through alliances with South Pacific government in order to develop a pan-Pacific confederation. Kalākaua's domestic and foreign policies infuriated those white residents of the Kingdom who carried out the coup of 1887.

Kalākaua: Champion or Threat?

Kalākaua's motto, "E Ho'ōulu Lāhui" (to grow or increase the nation) was a fitting slogan for the many policies that the King adopted during his reign. Kanalu Young explained that for Kalākaua, a renewed interest in the past was a method to "empower

⁵⁴⁹ *Id.*, 343

⁵⁵⁰ David Keanu Sai, *Ua Mau Ke Ea Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands* (Honolulu: Pua Foundation, 2011).

them [the aboriginal population] politically.”⁵⁵¹ Noenoe Silva writes that public performances of hula at Kalākaua’s coronation and the publishing of the Kumulipo (an aboriginal cosmogonic tradition) were “aimed at constituting and strengthening the nation through re-enacting the traditional cosmology.”⁵⁵²

In 1880 Kalākaua signed into law *An Act to Perpetuate the Genealogy of the Chiefs of Hawaii*.⁵⁵³ The Act attempted to preserve the monarchical tradition of the Kingdom by establishing a committee dedicated to recording Chiefly Genealogy. The Act stated “It is proper that such genealogies of the Kingdom be perpetuated, and also the history of the chiefs and kings from ancient times down to the present.”⁵⁵⁴ Along with identifying possible heirs to the throne, the Act also served as a guide for the King “in the appointment of Nobles in the Legislative Assembly.” Both the office of the Monarch and the Nobles were appointments reserved for “lawful Descendants”⁵⁵⁵—those identified as a part of the chiefly class. To carry out these provisions, the Act established “The Board of Genealogy of Hawaiian Chiefs.”⁵⁵⁶ Kalākaua, and his Cabinet Council appointed the board. They were responsible for collecting “from genealogical books, and from the knowledge of the old people the history and genealogy of the Hawaiian chiefs...”⁵⁵⁷

Among the other actions that illustrated a renewed interest in Hawaiian art, mo‘olelo, and customary traditions, in 1886 Kalākaua established a society known as the

⁵⁵¹ Kanalu Young, *Rethinking the Native Hawaiian Past* (1998), 32.

⁵⁵² Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham, NC: Duke University Press, 2004), 92.

⁵⁵³ Compiled Laws of the Hawaiian Kingdom 1880 Chap. VII. *An Act To Perpetuate the Genealogy of the Chiefs of Hawaii*.

⁵⁵⁴ *Id.*

⁵⁵⁵ 1864 Constitution Article 22

⁵⁵⁶ *Id.*

⁵⁵⁷ Compiled Laws of the Hawaiian Kingdom 1880 Chap. VII. *An Act To Perpetuate the Genealogy of the Chiefs of Hawaii*.

‘Hale Nauā’.⁵⁵⁸ As stated in its constitution, the purpose of the society was dedicated to the “revival of Ancient Science of Hawaii in combination with promotion and advancement of Modern Sciences, Art, Literature and Philanthropy.”⁵⁵⁹ Along with domestic policies that aimed to build a more vivid national identity, one that aligned with the history of the Hawaiian Kingdom, Kalākaua’s nation-building efforts extended beyond the territorial borders of the Kingdom, where he dispatched Hawaiian envoys to the South Pacific in order to develop a Pacific Confederation. In his speech during the opening of the 1886 Legislature, Kalākaua thanked the legislative assembly for supporting his foreign affairs policy. He stated “You [legislature] have wisely provided the means for carrying out the policy of advising and aiding those Polynesian communities, of the same race as the Hawaiian, which still preserve their independence.”

Kalākaua’s efforts, however, would come to a halt in the summer of 1887 when the Kingdom Government was revolted against and a subversively written constitution was forced onto the government and the national citizenry. The imposition of the Bayonet Constitution limited the political power of the non-white majority while enhancing the political power of the white-minority. For the first time, suffrage in the Hawaiian Islands was limited by race. While racial prerequisites restricted Asians from voting altogether, property qualifications severely limited the aboriginal voting block. Although property qualifications existed in previous constitutions, the intent of those property qualifications were not created with the purpose of bolstering the political power of the white minority as it was in 1887. As stated in the Bayonet constitution, those classified as “European” or “American” were granted voting rights without having to renounce their foreign

⁵⁵⁸ Kuykendal, 345.

⁵⁵⁹ Hale Naua Constitution

allegiances—citizenship. Essentially, white foreigners without an allegiance to the government were given the franchise. In the decade following the coup, citizenship reform became the vehicle to curtail the political and economic authority that the non-white majority wielded over Hawaiian society. From 1887-1898, the Kingdom experienced the emergence of a system of white supremacy. And for the first time in the Kingdom's long tradition of political inclusion, race rather allegiance became a factor in possessing Hawaiian citizenship, with its motivation being the ambition for control over the government. It is therefore the coup of 1887, which led to the Bayonet Constitution that marks the first attempt to impose on the Kingdom a US-like political/social structure, based on racial hierarchy, with whites at the top, Asians at the bottom and aboriginals in the middle.

The Hawaiian League

The coup d'état against the Hawaiian Kingdom in 1887 was organized by the leaders of the Hawaiian league. The League was founded as a secret organization whose leaders were comprised entirely of white men. Founders of the league included native-born Hawaiian subjects, naturalized Hawaiian subjects, and also foreign nationals. Tom Coffman characterized the Hawaiian League as “a race-based organization...of European decent” with “a nominal allegiance to the government.”⁵⁶⁰ The original 13 members included W.A. Kinney, S.B. Dole, P.C. Jones, W.R. Castle, W.E. Rowell, C.W. Ashford,

⁵⁶⁰ Tom Coffman, *Nation Within: The History of the American Occupation of Hawaii* (Kihei: Koa Books, 2009).

Major H.M. Benson, A.T. Atkinson, Dr. G.H. Martin, and Dr. N.B. Emerson, H. Riemenscheider, C. Furneaux and Lorrin A. Thurston.⁵⁶¹

Among the leagues primary concerns was government reform. In the words of C.W. Ashford “such a reformation of governmental conditions in Hawaii should supplant the then outworn Constitution of Kamehameha, and introduce in its stead either a more liberal Constitution under monarchical institutions or a Republic.”⁵⁶² While the league claimed to promote democracy their policies and actions would prove the opposite. To fulfill their objectives the Hawaiian League made it evident that government reform was to be had, by all means necessary, including violent hostility.

The leaders of the league referred to themselves as the Directorate, “emulating the leadership of the French Revolution a century earlier.”⁵⁶³ The clear distinction, however, between the French Revolution and the actions of the League was that while the French Revolution enjoyed popular support, the League did not. Therefore what had transpired in 1887 was not a “revolution”, but rather a coup d’état; the result being strong resentment by the populace towards the coup conspirators. Apart from the actions of the Hawaiian League, there is no evidence of a popular uprising against the government in 1887, or any time prior for that matter. The Hawaiian League was an outgrowth of the Honolulu Rifles, “a semi-military and social organization.”⁵⁶⁴ In accordance with Kingdom law, the Honolulu rifles were an actual extension of the kingdom’s military force. The Honolulu

⁵⁶¹ R.S. Kuykendall, *The Hawaiian Kingdom 1778-1854*, Vol. 1, 3 vols. (Honolulu, HI: University of Hawaii Press, 1980), 347.

⁵⁶² C.W. Ashford, op. cit., p.22. In R.S. Kuykendall, *The Hawaiian Kingdom:1874-1893*, Vol. 3 (Honolulu: University of Hawaii Press, 1967), 349.

⁵⁶³ Stephen Dando- Collins, *Taking Hawaii: How Thirteen Honolulu Businessmen Overthrew The Queen of Hawaii in 1893, With a Bluff* (e-reads, 2012),

⁵⁶⁴ R.S. Kuykendall, *The Hawaiian Kingdom:1874-1893*, Vol. 3 (Honolulu: University of Hawaii Press, 1967), 351.

rifles were one of the Kingdom's five volunteer military companies that "were subject to call for active service when needed."⁵⁶⁵

Just four months prior to the coup, the Honolulu Rifles performed an exhibition drill and social dance at the Beritānnia Street Armory. The Daily Bulletin reported that members in the audience included Kalākaua, the King's Privy Council and cabinet, representatives of the Hawaiian legislature, the diplomatic and consular representatives, and members of the general public.⁵⁶⁶ When the exhibition ended, Kalākaua presented the Captain of the Rifles the Hawaiian national ensign. As if offering a premonition, Kalākaua stated, "as your King, I confide in your patriotism and courage, and shall hope to see many and honorable record inscribed upon the flag I now present."⁵⁶⁷ Accepting the flag was Rifles Captain, Volney V. Ashford, a Hawaiian denizen of Canadian nationality, who within a short time would actually lead the militant aggression against Kalākaua. After receiving the flag Volney stated, "...Through your Majesty, whose friendship to the Rifles is known and appreciated by everyone of us, this beautiful emblem of the unity of many peoples who, blended together on a benignant basis of political and race equality, combine to form the Kingdom of Hawaii, of which Your Majesty is the honored Sovereign."⁵⁶⁸ Not long after their performance, the Honolulu Rifles, directed by the Hawaiian League, would attempt to overturn the racial virtues that Volney lauded as making the Kingdom exemplary.

⁵⁶⁵ *Id.*

⁵⁶⁶ *The Daily Bulletin*, "Honolulu Rifles, Exhibition Drill and Ball," March 26, 1887.

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

Acts of Sedition: The Hawaiian League's Public Meeting

In July of 1887, the Hawaiian League held a public rally in front of the armory of the Honolulu Rifles, which for all intents and purposes marked the start of the coup. Newspaper headlines read “Government Reform!”, “A New Constitution and a New Government Demanded.”⁵⁶⁹ The Hawaiian Gazette reported that the “meeting had been advertised...in English, Hawaiian and Portuguese” in the days leading up to the event. The newspaper stated that the “corner of Punchbowl and Beretania streets, were thronged with crowds of people of all classes...” Describing the nature of the meeting the headlines of the Daily Herald exclaimed, “Reform!”, “Immense Mass Meeting”, “Under Military Protection”, “Radical Resolutions”, and “Strong Speeches,” in favor of the coup.⁵⁷⁰

Under the protective watch of the Honolulu Rifles, the meeting officially began when Hawaiian League leader Sanford B. Dole “called the meeting to order and nominated Mr. P.C. Jones as chairman...”⁵⁷¹ In his opening remarks, Jones took note of the diversity amongst the audience. Jones stated “here are gathered people of all nationalities—Hawaiians, Americans, English, Portuguese, and Chinese—and we can present our resolution.”⁵⁷² While Jones may have given the impression that the meeting and resolutions therein was a multi-ethnic cause, those that spoke at the meeting were comprised almost entirely of one race—white. And despite the façade of a racially inclusive reform movement that League leaders were trying to imply, some speakers

⁵⁶⁹ *The Hawaiian Gazette*, "Government Reform," July 5, 1887.

⁵⁷⁰ *The Daily Herald*, "Reform!," July 1, 1887: 1-4.

⁵⁷¹ *Id.*

⁵⁷² *Id.*

made it painfully clear that government reform was meant primarily to enhance the political power of the white race.

Before Jones invited public opinion, Lorrin Thurston was asked to read the resolutions that would be forced upon the King immediately following the meeting. Of the many outrageous demands, the King would be forced to dismiss his executive cabinet and accept replacements that were determined by the Hawaiian league. Other demands required Kalākaua to take a pledge that he would not “interfere either directly or indirectly with the election of representatives” and that “he will not interfere with or attempt to unduly influence legislation or legislators.”⁵⁷³ After the resolutions were read, league leaders invited speeches from prominent league leaders in the audience.

Most spoke of the alleged corruption and mismanagement that league leaders accused Kalākaua and his administration of. Other speeches went a step further invoking a racial logic of the White Man’s Destiny. J.A. McCandless likened the reform movement to the American Revolution and other European battles that were fought to either maintain or establish white rule in a particular territory. McCandless reminded the audience “that this movement was in the hands of the descendants of the men who one hundred years ago fought for liberty in America; also the descendants of the heroes of Waterloo, Balaklava, and Appomattox...”⁵⁷⁴ McCandless confidently claimed that such descendants residing in the Kingdom numbered 2,500. Of this number McCandless noted that under the current constitution 1,500 white men were disenfranchised, unable to vote. To McCandless, and many others in the room, restricting suffrage to disallow white men on any account was unacceptable, even if they were foreign nationals. Regardless of their

⁵⁷³ *The Hawaiian Gazette*, "Government Reform," July 5, 1887.

⁵⁷⁴ *Id.*

status as foreign nationals without an allegiance to the kingdom, McCandless simply believed that white men “had a right to have their franchise unconditionally.”⁵⁷⁵ As the Newspapers reported, McCandless’ speech drew loud applause from the audience, comprised of mostly white men.

Expressing similar racial overtones, Lorrin Thurston in his speech, brazenly claimed to be speaking on behalf of the aboriginal population. In the same speech, Thurston also made an overt racial gesture referring to the King as a “coon” who can be controlled forcefully. Thurston stated:

My parents came here in the reign of Kamehameha I. I was born and brought up here and I mean to die here...I speak for Hawaiians because you foreigners can speak for yourselves and look out for yourselves, but many of these Hawaiians are ignorant and have been deserted by their leaders...It may be that this letter from His Majesty was meant to head off these resolutions. I remember reading somewhere of a man who was going to shoot a coon and the coon said ‘Don’t shoot, I’ll come down.’⁵⁷⁶

While most speeches encouraged government reform by any means necessary including armed force, one speech published in the newspapers offered a perspective that differed from the general view of most at the gathering. Paul Isenberg, a Hawaiian national and former member of the House of Nobles,⁵⁷⁷ urged the audience to “go about it in a legal manner to gain the respect of the world.”⁵⁷⁸ Because the legislature was out of session, being an odd numbered year, Isenberg stated “that nothing would be lost by proceeding

⁵⁷⁵ *Id.*

⁵⁷⁶ *The Hawaiian Gazette*, "Government Reform," July 5, 1887.

⁵⁷⁷ Robert Lydecker, *Roster Legislatures of Hawaii* (Honolulu, HI: The Hawaiian Gazette, 1918), 127.

⁵⁷⁸ *The Daily Herald*, "Reform!," July 1, 1887: 1-4.

in a regular manner. An extra session of the Legislature could be called.⁵⁷⁹ As the newspapers reported, Isenberg's suggestion was met with opposition from those in attendance. The reporter of the Daily Herald wrote that Isenberg's speech "provoked such a demonstration of dissent that the speaker took his seat."⁵⁸⁰

The last speaker was Lieutenant C.W. Ashford, brother of the Captain of the Honolulu Rifles, Volney Ashford. Ashford's speech as the newspapers wrote repeated much of what had already been addressed and "was largely based on the theory that the Anglo Saxon race was expected to carry free institutions with it wherever it went on the globe."⁵⁸¹ In sharp contrast to the reservations that Isenberg stressed, Volney implored that government reform could not be done constitutionally for "if they waited for rights to be given [to] them, they would have to wait till their grandchildren were gray-headed."⁵⁸² Keanu Sai writes that as a minority, the Hawaiian League had no intent of effecting change through the legislative process. Instead, Sai explains, "They embarked on a criminal path of treason"⁵⁸³, a high crime clearly defined in the Hawaiian penal code that was punishable up to death. Rather than using the constitutional system, Ashford, like the majority of the people in the audience, were advocates of using force to achieve reform. At the conclusion of Ashford's speech, it was reported that the Honolulu Rifles "marched into the hall...[and] three rousing cheers were given for the corps."⁵⁸⁴ The racial sentiment expressed in the meeting coupled with the display of militant aggression served as a prelude to the series of events that were about to unfold. At the conclusion of the

⁵⁷⁹ *Id.*

⁵⁸⁰ *Id.*

⁵⁸¹ *The Daily Herald*, "Reform!," July 1, 1887: 1-4.

⁵⁸² *Id.*

⁵⁸³ David Keanu Sai, *Ua Mau Ke Ea Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands* (Honolulu: Pua Foundation, 2011), 60.

⁵⁸⁴ *The Daily Herald*, "Reform!," July 1, 1887: 1-4.

public testimony, W.R. Castle motioned to adopt the resolutions. Nathaniel Emerson seconded the motion. As reflected in the resolutions the League alleged:

That the administration of the Hawaiian Government has ceased, through corruption and incompetence...to perform the functions and afford the protection to personal and property rights, for which all governments exists.” With this as its basis, the League demanded that Kalākaua first “dismiss his present Cabinet,” “that he will not, in the future, interfere either directly or indirectly with the election of representatives,” “that he will not interfere with or attempt to unduly influence legislation or legislators.”⁵⁸⁵

As the Herald reported the resolutions “were carried unanimously without even a murmur of dissent.”⁵⁸⁶ Upon presenting the said resolutions to the King, the league expected Kalākaua to deliberate much longer than he did. However, Kalākaua issued a written response within a day after receiving the document. According to Kuykendall, before consenting to all the terms of the resolution Kalākaua consulted with the foreign diplomatic core. This included representatives from Britain, France, Portugal, Japan, and America. British Commissioner Wodehouse urged the King to avoid armed conflict. For similar reasons, US Representative Merrill advised Kalākaua to accept the terms and conditions of the resolution. Later Wodehouse said that had “His Majesty not placed Himself in our hands unreservedly, bloodshed [would] have ensued.”⁵⁸⁷ Although it is difficult to ascertain as to what or who exactly influenced Kalākaua’s decision; one thing

⁵⁸⁵ *The Pacific commercial advertiser* , "Mass Meeting," July 1, 1887.

⁵⁸⁶ *Id.*

⁵⁸⁷ R.S. Kuykendal, *The Hawaiian Kingdom:1874-1893*, Vol. 3 (Honolulu: University of Hawaii Press, 1967), 364.

is for sure, the Hawaiian League was stunned at how quickly and easily the King had given in to their demands. Former Minister of the Interior, Charles Gulick wrote:

The ready acquiescence of the King to their demands seriously disconcerted the conspirators as they had hoped that his refusal would have given them an excuse for deposing him, and a show of resistance a justification for assassinating him.⁵⁸⁸

In his reply, the King addressed the letter to “The Committee of a Meeting of Subjects and Citizens.”⁵⁸⁹ The majority of the content of the letter was rather straightforward, as the King simply consented to the terms of the resolutions. However, in a dignified manner, the King consented with some choice words and pointed statements in what seemed to be a strategic show of authority.

Gentlemen—In acknowledging the receipt of the Resolution adopted at a Mass Meeting held yesterday and presented to us by you, we are pleased to convey through you to our loyal subjects as well as to the citizens of Honolulu, our expressions of good will and our gratifications that our people have taken the usual constitutional step in presenting their grievances.”⁵⁹⁰

After explicitly consenting to all (5) five propositions, Kalākaua closed the letter with the following message,

We are pleased to assure the members of the committee and our loyal subjects that we are and shall at all times be anxious and ready to cooperate with our Councilors and advisers as well as with our intelligent and patriotic citizens in all matters touching the honor,

⁵⁸⁸ In David Keanu Sai, *Ua Mau Ke Ea: Sovereignty Endures* (Honolulu: Pū‘ā Foundation, 2011), 61.

⁵⁸⁹ *The Daily Herald*, "The Kings Reply," July 2, 1887: 4, 1.

⁵⁹⁰ *Id.*

welfare and prosperity of our Kingdom. Given at our Palace this first day of July A.D. 1887, and the fourteenth year of our reign.⁵⁹¹

With a subtle confidence, the League moved forward with their plans. Over a span of three days the Hawaiian league drafted what historian Jon Osorio described as “a hastily written constitution” that would come to be known as the “Bayonet Constitution.”⁵⁹² On July 6, 1887, at the point of a bayonet, members of the Hawaiian League forced Kalākaua to sign the constitution. The forceful imposition of the Bayonet Constitution officially kicked off the Hawaiian coup of 1887.

Articulating the magnitude of the event, the *Daily Herald* compared the coup to the arrival of Cook, stating that the “1887 revolution may be expected to stand out more conspicuously in Hawaiian story than 1778.”⁵⁹³ The changes resulting from the revolution the *Herald* exclaimed “were events on which the local historian of the future may dilate with more hearty satisfaction than on the appearance of Captain Cook’s Resolution and Discovery.”⁵⁹⁴ Indeed the coup was a significant event; it marked the end of nearly fifty years of constitutional government and the first time in which race became a part of the laws pertaining to citizenship.

Bayonet Constitution

The Bayonet Constitution was a revolutionary document drafted by treasonous Hawaiian subjects and foreigners. It drastically altered the political course of the Hawaiian Kingdom. The racial charges and aggressive expressions that filled the speeches of the public meeting hosted by the Hawaiian League came to life just a week

⁵⁹¹ *Id.*

⁵⁹² Jonathan Osorio, *Dismembering Lahui: A History of the Hawaiian Nation to 1887* (Honolulu: University of Hawaii Press, 2002), 1.

⁵⁹³ *The Daily Herald*, "Kauai Notes," July 18, 1887.

⁵⁹⁴ *Id.*

later when the King, under gunpoint, was forced to sign the constitution. The constitution as Stephen Dando-Smith observed was based “partly on the previous Constitution of Hawaii and partly on the constitutions of several American States.”⁵⁹⁵ In the Bayonet Constitution, race became a central factor in determining Hawaiian citizenship and the rights therein. Racial prerequisites and property qualifications limited suffrage, resulting in a radical shift that flipped the Kingdom’s political institutions on its head. In 1906, Professor of International law, John Bassett explained that the Bayonet Constitution had “a certain native antagonism...not only because it curtailed the powers of the king but because it increased the political privileges of the foreign residents, who were allowed to enjoy political rights without renouncing their foreign allegiance and citizenship.”⁵⁹⁶ The 1887 constitution and its implementation would mark the source from which aboriginal voice in government would be weakened, and the voice of white men, including foreigners, would be lifted. Before 1887, the aboriginal population held the majority within the legislative assembly. After 1887, the white population quickly went from holding a minority of seats in the Hawaiian legislature to the majority.

The traditional aspects of government that exalted chiefly genealogy, represented in both the office of the monarch as well as the House of Nobles, were replaced with a governmental structure that was allegedly based on republican ideals of democracy. The new constitution, however, would prove to be anything but democratic. As the historical and global trend reflects, governments have transformed from absolute forms of government to a constitutional form of governance. The Hawaiian Kingdom had undergone this transformation nearly five decades earlier when Kamehameha III,

⁵⁹⁵ Stephen Dando- Collins, *Taking Hawaii: How Thirteen Honolulu Businessmen Overthrew The Queen of Hawaii in 1893, With a Bluff* (e-reads, 2012).

⁵⁹⁶ John Bassett Moore, *A Digest of International Law* (D.C.: Government Printing Office, 1906), 496.

Kauikeaouli, relinquished his absolute authority in favor of limiting his powers and erecting a written constitution. The 1887 constitution, however, did the opposite—it transformed the government from a democratic and relatively equalitarian system to an un-democratic system that privileged white men. Despite the manner in which the Bayonet constitution was imposed, its preamble ironically called for the elimination of the “...many provisions subversive of civil rights and incompatible with enlightened Constitutional Government.” This alleged commitment to “civil rights” and “constitutional government”, however, stood in complete contrast to the Articles that followed the preamble.

Article 31 of the Bayonet Constitution directly reduced the executive power of the King. Before the Bayonet Constitution, Article 31 read, “To the King belongs the Executive power.” After, the article was changed to read, “To the King and the Cabinet belongs the Executive power.”⁵⁹⁷ Articles 41 and 78 also relegated the office of monarch to a mere figurehead by requiring any act of the King non-effective until countersigned by the cabinet. Arguably, the most drastic changes made to the constitution, however, were in regard to citizenship laws.

Citizenship Under The Bayonet Constitution

During the drafting of the Bayonet constitution, Albert Judd took note that the Hawaiian league had contemplated restricting the aboriginal population from voting completely. Most had adopted the idea that not only was the aboriginal population was unfit to rule, and also unfit to vote. Citizenship reform became the political sway of the white population. This, of course, was at the expense of the aboriginal and other ethnic

⁵⁹⁷ See Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai'i?* (Honolulu, HI: University of Hawaii Press, 2008), 120.

groups that comprised the non-white majority. Osorio writes, “The Bayonet Constitution allowed the whites political control without requiring that they swear allegiance.”⁵⁹⁸ For the aboriginal population these restrictions, Kuykendall remarked, reduced the aboriginal population “...to an inferior political position.”⁵⁹⁹ Along with the aboriginal population, the Bayonet Constitution took aim at the Asian community by excluding them from Hawaiian citizenship completely. While anti-Asian laws affected those of Japanese descent, Kuykendall writes that those laws were “directed mainly against the Chinese.”⁶⁰⁰ Despite their nationality, all “Asians” were excluded from Hawaiian citizenship. This included native-born Hawaiian nationals of Chinese descent who had resided in the Kingdom for nearly three generations. Notwithstanding the racial restrictions, the most reflective change that captured the political gall and racial tenor of the Bayonet Constitution was the Citizenship provision that granted voting rights to “Europeans and Americans” of foreign nationality and allegiance.

As Osorio explained, the Bayonet Constitution “significantly altered the meaning of citizenship and nationhood in the kingdom.”⁶⁰¹ After 1887, political and legal citizenship to the Hawaiian Kingdom became based primarily on race, rather than allegiance. Osorio writes, “the constitution removed every paradox that had confounded...white residents by making the nation belong to them without requiring that they belong to the nation.”⁶⁰² Changes made to citizenship were present in four articles of the Bayonet Constitution, which targeted both the aboriginal and Chinese populations

⁵⁹⁸ Jonathan Osorio, *Dismembering Lahui: A History of the Hawaiian Nation to 1887* (Honolulu: University of Hawaii Press, 2002), 197.

⁵⁹⁹ *Id.*

⁶⁰⁰ R.S. Kuykendall, *The Hawaiian Kingdom*, Vol. 3, 3 vols. (Honolulu, HI: University of Hawaii Press, 1987), 402.

⁶⁰¹ Osorio, 193.

⁶⁰² *Id.*, 197.

respectively. It was the first time, Osorio writes, “that democratic rights were determined by race in any Hawaiian constitution.”⁶⁰³

The Position of Chinese Under the Bayonet Constitution

Articles 59 and 62 excluded the “Asian” population from suffrage completely. As the constitution stated, voting rights were only granted to “male residents of the Hawaiian Islands of Hawaiian, American, or European birth or descent...”⁶⁰⁴ The large Chinese community, and other groups categorized as “Asian”, were simply written out of the constitution. For the first time, the legal sense of the term “Hawaiian” as a marker of national identity was not an inclusive designation. In response to Asian exclusion, “Chinese and other Asiatics” submitted a petition for “Equal Rights under the Constitution.”⁶⁰⁵ The petition included nearly 400 signatures that specifically opposed articles 59 and 62 of the Bayonet constitution. In response to the petition, the office of the minister of the interior, Lorrin Thurston, when asked if “Asiatics or Chinamen who have taken the Oath of Allegiance under the old Constitution [are] entitled to vote,” simply responded, “they cannot.”⁶⁰⁶ In 1892, Sanford Dole, a participant of the revolution and a Supreme Court Justice upheld the “race requirement” of the Bayonet Constitution when he ruled in the case *Ahlo v. Smith*.⁶⁰⁷

The rather brazen attempt to disqualify the Asian electorate was met with swift opposition by the Chinese community. As the newspaper rightly forecasted, “a movement will be made to try and have the objectionable clauses amended, so as to give them the

⁶⁰³ *Id.*

⁶⁰⁴ Bayonet Constitution, Article 59

⁶⁰⁵ Maude Jones, *Naturalization in Hawaii* (Honolulu: Hawaii State Archives, 1934), 50.

⁶⁰⁶ Interior Department, Letter Book No. 30, p. 145, Archives of Hawaii. August 8, 1887, Letter from J.A. Hassinges, Chief Clerk to the Office of the Interior to R.A. Lyman Esq.

⁶⁰⁷ *Ahlo V. Smith*, 1892 Hawaiian Kingdom Supreme court

right of vote.”⁶⁰⁸ The article continued, pointing out the non-sensible logic of Chinese exclusion, arguing that the new laws excluded “a people who contribute a very large percentage to the support of the Government, both in duties on importations and internal taxes.”⁶⁰⁹

By 1887, Hawaiian nationals of Chinese decent held a formidable political voice, having been one of the first ethnic groups to establish themselves in the kingdom, since first arriving in the early 19th century. Huang writes, “During the century of the post-contact Hawaiian monarchy, Hawaiian society developed politically, economically and socially in a way that allowed extensive participation by Chinese immigrants.”⁶¹⁰ By the latter part of the 19th century, the ethnic Chinese community were involved in “all types of entrepreneurial ventures”, including “...rice planters, butchers, restaurateurs, bakers, pharmacists and merchants.”⁶¹¹ Their economic interest motivated their political interest as they played an active role in politics before racial suffrage was ended in 1887. While the Chinese demographic of the Kingdom was a pivotal part of the electoral body, Chinese filled formidable government positions, both elected and appointed.

Socio-Economic Mobility of Chinese

Possibly the most notable Chinese individual was Chun Afong. Afong’s experiences like many other Chinese was representative of the socio-economic possibilities that were afforded to Chinese prior to the revolution. Glick writes that Afong “had many business interest in

⁶⁰⁸ *The Daily Herald*, "The Chinese Element--Claiming the Franchise--A Meeting Held," July 19, 1887.

⁶⁰⁹ *Id.*

⁶¹⁰ Huang, H.-p. (1989). *Chinese Merchant Background and Experience in Hawaii Under the Monarchy*. Honolulu, HI: Unpublished Dissertation.

⁶¹¹ Carol Jean Forster, *Chinese Entrepreneurs in Nineteenth-Century Hawaii* (Edmonton, Alberta : Unpublished Masters Thesis, 1995).

Honolulu...[and] “He became the largest shareholder in [a sugar] plantation near Hilo.”⁶¹² Afong married an aboriginal women of “noble lineage by whom he had twelve daughters.” As a result of this marriage, Afong became a naturalized Hawaiian subject. This method of naturalization, where a Chinese Man married an aboriginal man was a common trend in the 19th century. It accounted for a large population of aboriginals that were also of Chinese descent. Hsiao-Ping Huang writes, “Afong became a naturalized Hawaiian citizen.” He was a close acquaintance of Kalākaua, and in 1879 Afong “was made a member of the Privy Council...the first Chinese to be so honored.”⁶¹³

Another prominent Chinese individual was a man by the name of Aswan. Similar to Afong, Aswan was a successful businessman having been a pioneer in the rice growing business in the Kingdom. Upon his death, The Hawaiian Gazette wrote of Aswan’s entrepreneurship during the latter part of the 19th century: “At first he had coffee shops and a small store. Then he abandoned the restaurants and set out for a mercantile career. He had as many as half dozen stores in Honolulu and on Oahu at one time and had establishments on the other Islands.”⁶¹⁴

Yet perhaps the most popular, and yet least written about in the context of the Hawaiian Kingdom was Sun Yat-sen, founder of the Chinese revolution, and the founding father of the Republic of China. Sun Yat-Sen, the Republic of China’s first President, was educated at ‘Iolani, a school comprised mostly of pure and part aboriginal students. Khoon Choy Lee writes that when Sun Yat Sen graduated in 1882, he was

⁶¹² Clarence E. Glick, *Sojourners and Settlers: Chinese Migrants in Hawaii* (Honolulu, HI: University of Hawaii Press, 1980), 3.

⁶¹³ Hsiao-ping Huang, *Chinese Merchant Background and Experience in Hawaii Under the Monarchy* (Honolulu, HI: Unpublished Ph.D Dissertation, University of Hawaii , 1989), 260.

⁶¹⁴ *Hawaiian Gazette*, "A Pioneer Gone," July 12, 1898.

awarded “the second prize in English grammar.”⁶¹⁵ This was quite the accomplishment considering that before arriving in the Hawaiian Kingdom he never spoke English.⁶¹⁶ In an interview, after the Chinese revolution had been won, Sun Yat-Sen spoke of his experience in the Hawaiian Kingdom exclaiming “here [Hawai‘i] I was brought up and educated; and it was here that I came to know what modern, civilized governments are like and what they mean.”⁶¹⁷ According to Chun Chee Kwon, Sun Yat Sen admired the Hawaiian Kingdom. For Sun Yat Sen, Kwon wrote, “Although Hawaii was a small island kingdom, it had law and order, and the people were happy and prosperous...if China was not revived, although there were 400 million people, the Chinese could not even keep up with the Hawaiians.”⁶¹⁸ Sun Yat Sen’s experiences, and the experiences of other prominent Chinese of the 19th century, represented the inclusive nature of Hawaiian society and the social, political, and economic mobility that all Hawaiian subjects were afforded.

Chinese Mobilization against Bayonet

Chinese mobilized their political and economic weight that they had accumulated in the Hawaiian Kingdom to oppose the Bayonet Constitution. The Daily Herald took note of a meeting that was held to discuss their right to vote. As the article read, “During the discussions considerable resentment was expressed regarding sections 59 and 62 of the new constitution, which conceded the right of voting to all nationalities, except the

⁶¹⁵ Ruth M. Tabrah, *Hawaii: A History* (New York: W.W. Norton & Company, Inc., 1984), 88.

⁶¹⁶ Khoon Choy Lee, *Pioneers of Modern China: Understanding the Inscrutable Chinese* (NJ: World Scientific Publishing Co., 2005), 26.

⁶¹⁷ Yansheng Ma Lum and Raymond Mun Kong Lum, *Sun Yat-Sen in Hawaii: Activities and Supporters* (Honolulu: University of Hawaii Press, 199), 5.

⁶¹⁸ *Id.*

Chinese.”⁶¹⁹ Chinese protest was widespread. They formed political organizations, and participated in both violent, and non-violent forms of protest. Kuykendall writes that an Asian Union was formed in response to the imposition of restrictive citizenship laws. He explains, that along with businessmen, “Mechanics and workingmen formed a union primarily to oppose the ‘Asiaticising’ of the country...”⁶²⁰ Another historian, Huang Hsiao-Ping writes, “In defense of their rights, the Chinese in Hawaii acted through organizations, especially the United Chinese Society, to protest against discriminatory restrictions.”⁶²¹ To protect their political as well as economic interests, Clarence Glick writes that representatives of the Chinese community formed an organization called the “Bow On Guk”, also known as the “Self Defense Society’ or ‘Protective Bureau”⁶²² The organization urged the Chinese community “to refuse to do business with members of the of the Workingmen union and Caucasian firms most active in the anti-Chinese agitation.”⁶²³ Along with expressing their political views through meetings and the press, Huang adds that Chinese mobilized their legal rights. Leading merchants, Huang writes, “submitted petitions or brought cases to the Supreme Court when fighting for their voting right.”⁶²⁴

Among the representatives of the Chinese community was C. Monting, a naturalized Hawaiian subject.⁶²⁵ In a public meeting, the Hawaiian businessman spoke out against Asian exclusion, citing amongst other things, the financial contributions that the Chinese community had made to the Hawaiian economy. According to Monting the Chinese provided approximately

⁶¹⁹ *The Daily Herald*, "The Chinese Element--Claiming the Franchise--A Meeting Held," July 19, 1887.

⁶²⁰ R.S. Kuykendall, *The Hawaiian Kingdom*, Vol. 3, 3 vols. (Honolulu, HI: University of Hawaii Press, 1987), 402.

⁶²¹ Hsiao-ping Huang, 241.

⁶²² *Id.*, 216.

⁶²³ Glick, 216.

⁶²⁴ *Id.*

⁶²⁵ According to Hawaiian Kingdom naturalization records, C. Monting naturalized from China in 1886.

“\$500,000, or more than one-third” of the tax revenue generated by the Kingdom Government.⁶²⁶ Referencing the Interior records, Huang charts the increase of business licenses issued to the Chinese, totaling nearly 5,000 leading up to the coup.⁶²⁷ Forster writes that the ascendance of Chinese business, particularly during the 1880s, posed an economic threat to the white business owners.⁶²⁸ At its height, Chinese owned businesses were widespread including “458 retail stores; 121 victualling houses; 11 wholesale stores; 4 awa; 3 horses; 15 public shows; 66 butchers; 1 peddling; 27 cake peddling; 3 spirits wholesale; 22 drays; 69 drivers; 89 hacks; 1 auction; 2 billiard and bowling; and 25 lodging” businesses.⁶²⁹ These numbers reflect the grasp that the Chinese had on the Hawaiian economy. If white supremacy was to prevail in the Hawaiian Kingdom, the Chinese element needed to be constrained both politically but perhaps more significantly, economically.

The Position of Aboriginals Under the Bayonet Constitution

While Asian-exclusion laws were important, if the coup was going to be successful, the insurgents needed to take away the political control that the aboriginal population held over the Legislature. Since the inception of the constitutional monarchy, the aboriginal population always constituted the majority in both the House of Representatives and the House of Nobles. The year 1887, marked the first instance in which the majority of the legislative assembly was not comprised of aboriginals.

As the framers of the Hawaiian constitutional system fifty years prior, the House of Representatives was the voice of the people, and the House of Nobles, the voice of the chiefs. If white rule was to be instituted, the legislative system that was controlled by the aboriginal

⁶²⁶ *Id.* , 246.

⁶²⁷ Hsiao-ping Huang, 119. Huang cites the interior department chart. *Business licenses issued to Chinese.*

⁶²⁸ Forster, 119.

⁶²⁹ *Id.* , 119.

population needed to be toppled. To achieve this, the insurgents instituted property qualifications, which restricted a large percentage of the aboriginal population from voting for members of the House of Nobles. Prior to the Bayonet Constitution, the House of Nobles comprised the upper house of the legislative assembly. Members of the House of Nobles were nominated by the King and confirmed by the House of Representatives. After Bayonet, the House of Nobles became an elected body and “For the first time in the history of the country the number of nobles [was] made equal to the number of representatives.”⁶³⁰ Such legislative changes, William Adam Russ wrote, were intended “to give to the whites...almost complete domination in the upper House.”⁶³¹

The criteria to vote for the House of Nobles differed from the criteria to vote for the House of Representatives. In effect, the Bayonet Constitution created two different classes of voters. Although it was proposed, property and income qualifications were not a condition in order to vote for members of the House of Representatives. Property qualifications were created to limit eligibility for members of the House of Nobles. Article 59 of the Bayonet Constitution required that those eligible to vote for the House of Nobles “shall own and be possessed, in his own right, of taxable property qualifications...of the value not less than three thousand dollars...and have received an income of not less than six hundred dollars.”⁶³² This restrictive measure became the source from which a large percentage of the aboriginal population was denied the right to vote in the election of Nobles. James Blount wrote, “property qualifications for membership in the upper house gave three-fourths of the vote for Nobles to the whites and

⁶³⁰ James Blount, *Report of Commissioner to the Hawaiian Islands*, Government, US Executive Branch (U.S., 1893), 760.

⁶³¹ William Adam Russ, *The Hawaiian Revolution* (Cranbury: Associated University Presses, Inc., 1992), 20.

⁶³² Bayonet Constitution, Article 59.

one-fourth to the natives.”⁶³³ As a result of this stipulation, the racial dynamic of the House of Nobles became inversed. Consequently, the legislative branch of the Hawaiian government took on a different role from its original intent. Instead of providing a political platform for aboriginal voice and authority, the legislature now became the source to establish a system of white rule in the Hawaiian Kingdom. The restrictive measures that severed the political voice of the aboriginal population was further intensified by the provision that gave foreign nationals the right to vote, and also the right to hold an elected government position in the Kingdom.

The Bayonet Constitution gave voting rights to resident aliens as long as they had been “domiciled in the Kingdom for one year immediately preceding the election...” Kuykendall explains “the voting privileges extended to resident aliens (except Asians) gave to the haoles (white people) as a group a greatly increased power in the government and reduced the [aboriginal] to a position of...inferiority in the political life of the country.”⁶³⁴ Yet, perhaps the most concerning provision made to citizenship from the perspective of the aboriginal population was the clause that required all qualified voters to take an oath to support the Bayonet Constitution. According to Osorio, “Requiring that voters swear to support the constitution placed the [aboriginals] in a nearly impossible position. To participate at all, to have any hope of amending the constitution, meant that they had to give their word to support it...”⁶³⁵

Multi-Ethnic Alliances and Opposition

The drastic amendments made to citizenship law—racial restrictions, property qualifications, extending political rights to foreign nationals to vote—were placed into

⁶³³ Blount Report 578.

⁶³⁴ R.S. Kuykendal, *The Hawaiian Kingdom: 1874-1893*, Vol. 3 (Honolulu: University of Hawaii Press, 1967), 370.

⁶³⁵ Jonathan Osorio, *Dismembering Lahui: A History of the Hawaiian Nation to 1887* (Honolulu: University of Hawaii Press, 2002), 244.

effect during the special election that occurred nearly two months after the Bayonet Constitution was forced onto the King and the national citizenry. Public outcry was widespread during the two months preceding the special election. The two most disenfranchised ethnic groups of the national citizenry, the Chinese and aboriginals, were the most demonstrative and vocal against what they had perceived as movement to institute a system of white supremacy in their country. Along with separate movements that the aboriginal population and the Chinese spurred, the two groups would also find common political motives, and eventually joined forces. According to Historian Hsiao-ping Huang the ethnic Chinese and the aboriginal population would become “important allies...in terms of financial and material support.”⁶³⁶ This alliance even entailed a failed incursion that resulted in the death of several aboriginal and part-aboriginal Hawaiian nationals.

Poepoe, Katsura, and Monting

To protect their political and economic interests, the Chinese and aboriginal communities, along with other ethnic groups disenfranchised by the revolution, became allies. In July, a mass meeting was held in Honolulu. It was reported that the meeting, which focused on the racial restrictions that Bayonet instituted, was “attended by two to three hundred native Hawaiians, Chinese, and Japanese in opposition to the new constitution”.⁶³⁷ The meeting featured prominent leaders including “Joseph Poepoe; a native attorney, K. Katsura; a Japanese attorney; and C. Monting; a Chinese Merchant.”⁶³⁸

⁶³⁶ Hsiao-ping Huang, *Chinese Merchant Background and Experience in Hawaii Under the Monarchy* (Honolulu, HI: Unpublished Dissertation, 1989), 265.

⁶³⁷ R.S. Kuyendall, *The Hawaiian Kingdom 1874-1893*, Vol. 3, 3 vols. (Honolulu, HI: University of Hawaii Press, 1980).

⁶³⁸ *Id.*

Speaking in opposition to the coup conspirators, Poepoe explained that the constitution “was improperly made and forcibly took away the prerogatives of the sovereign...” It was an attempt, he exclaimed. “...To make the country like the United States, without nobility.”⁶³⁹ Despite the egregious nature of the document, “Poepoe urged the [aboriginal] element to lose no time in qualifying themselves for the coming November election, so as to elect a majority in both branches...”⁶⁴⁰ Poepoe’s position on the matter of taking the oath demonstrated the conflict that loyal aboriginal patriots were forced to contemplate with the election nearing. Participation in the 1887 election could be seen as an act of compliance to the provisions that the coup imposed if the aboriginals voted. Nonetheless, without surrendering their oath of support to the revolutionary constitution, the aboriginal voice would surely be silenced in both the House of Nobles and the Representatives. Aboriginal attorney Samuel Kāne encouraged the aboriginal population to take the oath. He stated “...no matter if we agree with it or not, we shall have a majority on our side, and then we will be able to change it (the constitution).”⁶⁴¹

Speaking on behalf of the Chinese Community was C. Monting who “...dwelt on the mistake that framers of the Bayonet Constitution had made in omitting the Chinese from that document—insisting that his class contributed largely towards the revenues of the country and should, he thought, have a voice in framing of the laws.”⁶⁴² Another representative of the Chinese community, D.L. Ahphart commented on the legality of the Bayonet Constitution by pointing out the unconstitutional manner in which the new laws were established. He explained, a “Constitution was a contract that required the

⁶³⁹ *The Daily Herald*, "Another Mass Meeting: Natives and Orientals in Convention," July 20, 1887.

⁶⁴⁰ *Hawaiian Gazette*, "Native Meeting," July 26, 1887.

⁶⁴¹ Osorio, 245.

⁶⁴² *Hawaiian Gazette*, "Native Meeting," July 26, 1887.

agreement of two parties to make it valid.”⁶⁴³ In effect, Ahphart’s position was in accordance with the provisions of Hawaiian law, which required that constitutional amendments “shall be agreed to by two-thirds of all the members of the Legislative Assembly, and be approved by the King.”⁶⁴⁴

The other prominent speaker was Keigoro Katsura, a lawyer of Japanese ancestry from Wailuku. Like the former speaker, Katsura’s remarks stressed the “omission of Asiatics from the franchise.”⁶⁴⁵ As an attorney, Katsura stated that he had sworn his allegiance to His Majesty when he was admitted to the Hawaiian bar, and to support the constitution and the laws...⁶⁴⁶ This Katsura testified, made him “on the same footing here as a native of the Kingdom.”⁶⁴⁷ Despite the public outcry against the illegal process in which the new laws were promulgated, the property qualifications and racial prerequisites were put into effect during the special election that was held nearly two months after the Bayonet constitution.

James Blount reported that the election was held on September 12 and it was carried out “with the foreign population well-armed and the troops hostile to the crown and people.”⁶⁴⁸ According to Kuykendall, Ashford Godfrey, the attorney general of the newly imposed Cabinet, exhorted that the “administration would carry the election if necessary at the point of the bayonet...”⁶⁴⁹ The visible threat of violence instigated a quiet, yet intense election. As the Newspapers reported, the only commotion that could be seen was at the polling places. In accordance with the provisions set forth in the Bayonet

⁶⁴³ *The Daily Herald*, “Another Mass Meeting: Natives and Orientals in Convention,” July 20, 1887.

⁶⁴⁴ 1864 Hawaiian Constitution, Article 80.

⁶⁴⁵ *Hawaiian Gazette*, “Native Meeting,” July 26, 1887.

⁶⁴⁶ *Id.*

⁶⁴⁷ *Id.*

⁶⁴⁸ Blount Report, 579.

⁶⁴⁹ R.S. Kuykendal, *The Hawaiian Kingdom: 1874-1893*, Vol. 3 (Honolulu: University of Hawaii Press, 1967), 409.

Constitution the “Asian” population did not vote. As Schmitt explains, nearly fifty percent of all males of voting age were of either Chinese or Japanese descent, yet “none were registered to vote.”⁶⁵⁰ Conversely, as James Blount reported, “large numbers of Americans, Germans, English and other foreigners unnaturalized were permitted to vote...”⁶⁵¹ This included newly arrived Portuguese laborers who were “taken before the election from the cane fields in large numbers...and voted according to the will of the plantation manager.”⁶⁵² As Van Dyke explains, the crafty language of the Bayonet that allowed Europeans to vote was “designed explicitly to allow those of Portuguese ancestry to vote.”⁶⁵³ Van Dyke concludes that “‘it was the votes of foreigners including the Portuguese, enfranchised by the new constitution that gave the Reform Party its decisive victory’ in the election held in September 12, 1887.”⁶⁵⁴

With the restrictive citizenship provisions in place and the voting box restricted to many people of color, the election results were drastic, but not surprising. When the ballots were counted, the House of Nobles was comprised entirely of white men, some of whom were not even subjects of the Kingdom.⁶⁵⁵ The prerogatives of white foreigners now replaced the branch of the legislature that was once represented by the voice of the chiefs. Race would now hold a permanent place in Hawaiian politics.

⁶⁵⁰ Schmitt, “Voter Participation Rates” in Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai'i?* (Honolulu, HI: University of Hawaii Press, 2008), 147.

⁶⁵¹ Blount Report, 579.

⁶⁵² *Id.*

⁶⁵³ Van Dyke, 147.

⁶⁵⁴ *Id.*

⁶⁵⁵ *The Hawaiian Gazette*, “The New Legislature,” September 20, 1887.

Turning the Tables on the Racist Agenda

Following the elections, political organizations were formed in order to regain the civil and political rights that the Bayonet Constitution had taken away. While these political organizations were largely determined along racial lines, Kuykendall commented that political parties were “not only comprised of pure aboriginal stock, but many of Caucasian parentage and some of mixed ancestry.”⁶⁵⁸ These groups, while led by the aboriginal population, consisted of many different ethnicities, including whites that were loyal to the King and sympathetic to the non-white population that had recently been disenfranchised. These political movements were multi-ethnic, especially considering that many aboriginals were part white as well. What also made it a multi-ethnic movement were the alliances formed between the two most disenfranchised groups (per capita)—the aboriginal and the Chinese populations. The aboriginal and Chinese communities posed a formidable opposition to the objectives of the white minority.

In 1888, the Hui Kālai‘āina was organized. Its mission was to restore the constitutional order, as it had existed prior to “June 30, 1887.”⁶⁶⁴ The political association would eventually come together around five principles, all of which centered on enhancing the political voice of the aboriginal race.

First. This constitution deprived the Crown of the Hawaiian Islands of its ancient prerogatives.

Second. This constitution [Bayonet] based the principles of government on the forms and spirit of republican governments.

Third. This constitution opens the way to a republican government.

⁶⁵⁸ *Id.*, 187

⁶⁶⁴ David Keanu Sai, *Ua Mau Ke Ea: Sovereignty Endures* (Honolulu: Pū‘ā Foundation, 2011), 63.

Fourth. This constitution has taken the sovereign power and vested it outside of the King sitting on the throne of the Hawaiian Kingdom.

Fifth. This Constitution has limited the franchise of the native Hawaiians.⁶⁶⁵

In 1889, a political organization called the Liberal Patriotic Association (LPA) was formed. Similar to the Hui Kālai‘āina, the LPA was led primarily by aboriginals. The organization sought to “restore the former system of government and the former rights of the king.”⁶⁶⁷ Unlike the Hui Kālai‘āina, the LPA was committed to restoring the government, even if it meant the use of force. Membership to the LPA included a sworn allegiance to a constitution that was aimed at overthrowing Kalākaua’s dubious ministry, which had been constituted under the Bayonet Constitution.

The LPA was led by Robert Wilcox, an aboriginal patriot with a strong will to restore the Hawaiian government to its condition prior to the revolution. On July 30, 1889, Wilcox attempted to restore the Government when he “led about one hundred armed men over the Palace wall...soon after three o’clock in the morning.”⁶⁶⁹ While these men were comprised mainly of aboriginals, the group also included members of other ethnic groups and even foreign nationals. Dando-Collins writes that Wilcox “had put together an eclectic coalition of disaffected Hawaiians, Westerners, and several wealthy Chinese merchants.”⁶⁷⁰ In regard to the Chinese, Huang writes that a Chinese merchant by the name of “Papu” was the “main go-between between the Chinese

⁶⁶⁵ James Blount, *Report of Commissioner to the Hawaiian Islands*, Government, US Executive Branch (U.S., 1893), 17.

⁶⁶⁷ Sai, 63.

⁶⁶⁹ *Daily Bulletin*, "Unsuccessful Attempt at Revolution!," August 2, 1889.

⁶⁷⁰ Stephen Dando- Collins, *Taking Hawaii: How Thirteen Honolulu Businessmen Overthrew The Queen of Hawaii in 1893, With a Bluff* (e-reads, 2012),

merchants and Wilcox.”⁶⁷¹ While each of the Chinese merchants had pledged to “recruit more and gather arms”, Papu was said to have actually delivered “guns, uniforms and money for the purchase of ammunition and provisions.”⁶⁷²

Despite these efforts, the insurrection was quickly subdued. By the end of the day, Wilcox was captured and hauled off to prison by the Honolulu Rifles. The battle had claimed the life of five aboriginals. The coroner’s office reported, “the bodies of Loika, Poni, Sam Tucker, Keki Kelelua and Kawaiwai (all native male Hawaiians),”⁶⁷³ were pronounced dead “by reason of gunshot wounds inflicted while said person were in open insurrection against...”⁶⁷⁴ Among the badly injured: Kalihi; Kamai; Tom Hopa, A Tahitian; and George Markham, a native-born Hawaiian subject.⁶⁷⁵

The arrest of Wilcox was followed by the arrest of more than sixty others. Those arrested included members of the King’s royal guard, police officers, foreign nationals, and Hawaiian nationals of all ethnicities. Robert Wilcox and Albert Loomens, a Belgium national, were both initially charged with treason. Twenty-two others were charged with Conspiracy and thirty-six individuals were charged with rioting.⁶⁷⁶ The cases were presided over by Albert F. Judd, Chief Justice of the Hawaiian Supreme Court. Judd made note of the popular interest of the Wilcox case. He stated, the Wilcox case “has excited a great deal of attention especially on the part of the [aboriginals], as witnessed by the large audiences here from day to day, listening to the proceedings.” These cases,

⁶⁷¹ Hsiao-ping Huang, *Chinese Merchant Background and Experience In Hawaii Under the Monarchy* (Honolulu, HI: Unpublished Doctoral Dissertation, 1989), 266.

⁶⁷² *Id.*

⁶⁷³ James Blount, *Report of Commissioner to the Hawaiian Islands*, Government, US Executive Branch (U.S., 1893), 1148.

⁶⁷⁴ *Id.*

⁶⁷⁵ *Id.*

⁶⁷⁶ *Hawaiian Gazette*, "Supreme Court," October 15, 1889.

but more notably Wilcox's case, were of the most popular that the Hawaiian Supreme Court had ever tried.

Despite the long list of those arraigned, only three individuals were ever tried. Loomens and Wilcox were charged with treason and Ho Fon a writer for the Chinese press was tried for conspiracy. While other Chinese such as Papu played a larger role, Huang speculates that Hon Fo was made an example out of—a warning to the “Chinese community not to interfere in Hawaiian politics...”⁶⁷⁷ In the end, Hon Fo was found guilty of conspiracy “by an all-haole jury and fined \$250.00.”⁶⁷⁸ The Belgium national, Loomens, was found guilty of treason and sentenced to “one year’s imprisonment on condition that he leave the country.”⁶⁷⁹ Because Loomens and Hon Fo were foreign nationals they were tried by a jury comprised of foreigners. Under Hawaiian law, juries were selected according to race and citizenship. The law was created in order to protect the natives of the country, and likewise, for any foreigners that found themselves accused of a crime in the Hawaiian Kingdom.

The Role of Robert Wilcox in Inspiring the Loyal Public

The Wilcox case had a different outcome than Loomens and Hon Fo. Because Wilcox was a Hawaiian national, a jury comprised of Hawaiian nationals tried him. Further, before the trial was started Attorney General Ashford, representing the prosecution reduced the charges against Wilcox, from treason to conspiracy. It became clear that a treason charge would never be upheld and furthermore the revolutionary government did not want to instigate another counter-insurgency. Even if found guilty,

⁶⁷⁷ Hsiao-ping Huang, 268.

⁶⁷⁸ *Id.*, 267.

⁶⁷⁹ R.S. Kuykendal, *The Hawaiian Kingdom: 1874-1893*, Vol. 3 (Honolulu: University of Hawaii Press, 1967), 429.

the majority of the Hawaiian citizenry would not allow Wilcox to face capital punishment. It was apparent in Ashford's reasoning for reducing the charges that the Hawaiian League was concerned about maintaining control over the national citizenry. He explained, "that enough blood has already been shed and we do not want more lives to be forfeited for the misdoing of that day."⁶⁸⁰ Wilcox's immense popularity posed a threat to the Hawaiian league. Kendal wrote, "Wilcox had become a hero to the native Hawaiians."⁶⁸¹ Reducing the charges was not the Hawaiian league being lenient or sympathetic, they were actually being cautious about not provoking another armed attack.

Pursuant to Hawaiian law, the jury in the Wilcox case was comprised entirely of Hawaiian nationals. During the jury selection, the prosecutor (Ashford) and Defense attorney(s) J.W. Kalua and Antone Rosa carefully examined the prospective jurors. The importance of an impartial jury was the focus for both sides during the rounds of questioning, which took an entire morning. During the first examination, the prosecution objected to the fact that the potential juror was related to Wilcox. The judge, however, rejected the prosecution's objection stating that relationship was not a valid claim to excuse a prospective juror. Other jury candidates disqualified themselves by divulging their prejudice. M.P. Robinson excused himself by revealing he had already formed an opinion, which he explained would not be "fair" to Wilcox. On the other side of the spectrum was the confession of C.K. Kapaialii. During the cross examination, Kapaialii made it clear that "he had made up his mind that defendant was not guilty."⁶⁸² After the Defense and Prosecution were satisfied with their examinations the Jury consisted of 12

⁶⁸⁰ *Id.*

⁶⁸¹ *Id.*

⁶⁸² *Hawaiian Gazette*, "Supreme Court," October 29, 1889.

Hawaiian nationals of aboriginal and white descent— 1) Mr. Bibikane, 2) E. Harbottle, 3) W.R. Holt, 4) Ainoa, 5) J.M. Bright, 6) Kalukilaau, 7) Heil Kapu, 8) J. Mii, 9) M. Kawaiahoa, 10) A.N. Gilman, 11) C.Mahoe, 12) Kalauakua.⁶⁸³ Judge Judd implored that the jury remain impartial. The Attorney General also urged the jury to be unbiased in their rendering of the case. He stated:

that they were called here to do the highest duties in citizenship and they were expected to try this case with utmost impartiality...If the prisoner is innocent it will most highly subserve the interests of justice that he be acquitted; the same occurs if he be guilty that he be convicted. The Crown wants no verdict that cannot be obtained beyond any reasonable doubt.⁶⁸⁴

To the disgust of some white residents, but to the surprise of none, the jury acquitted Wilcox of all charges by a vote of 9-3. According to one American diplomat stationed in the islands, the Wilcox verdict “fairly represented the popular native sentiment throughout these islands in regard to his effort to overthrow the present ministry and to change the constitution of 1887.”⁶⁸⁵ A supporter of the decision expressed the following sentiment:

When the foreigners paraded with arms to secure what they deemed their rights in 1887, we Hawaiians did not interfere with them; but when a hand of our people did the same thing in 1889 they were remorselessly shot at and six or seven of them were killed. We consider the lives of these our country-men more than balance the account against us. One way to make accounts even would be the

⁶⁸³ *Id.*

⁶⁸⁴ *Id.*

⁶⁸⁵ *The Executive Documents of the House of Representatives*, (D.C.: Government Printing Office, 1894-1895), 298.

raising of another disturbance, but for this we have no inclination. This however, we are determined upon, that, so far as we have opportunity, we will exert all the powers we have as peaceable citizens to prevent any more of our countrymen from being punished.⁶⁸⁶

On the opposite side of the spectrum, those from the Reform Party, many of whom rose to power through the Bayonet Constitution, saw the verdict as “a miscarriage of justice.”⁶⁸⁷ Sereno Bishop, one of the period’s most outspoken commentators whose statements were conceived through white racist ideology, wrote that “most of us would have preferred a conviction, and would like to have had some penalty inflicted for the evil act of attempting to restore a wasteful and degraded government...”⁶⁸⁸ Although Bishop disagreed with the verdict, he was not surprised that Wilcox was found not guilty. He explained that race and allegiance were central to the merits of the case. Bishop had observed that “It became in the minds of a majority of the jury a political question and farther, a national and patriotic one, in which an obligation to side with Hawaiians seemed paramount...”⁶⁸⁹ Bishop’s analysis articulated the frustration that those of the Reform Party had felt regarding the outcome. Such frustration was also a clear indication that the changes imposed upon the government would not go unchallenged.

Citizen’s Arrest as an Act of Patriotism

Politically, the not-guilty verdict was a tremendous blow for the Reform party. The racial policies instituted in 1887 created a sharp racial divide that did not bode well for the Reform party. And despite the civil upheaval that the Bayonet Constitution

⁶⁸⁶ *Daily Bulletin*, "The Acquittal of Wilcox," November 4, 1889.

⁶⁸⁷ R.S. Kuykendal, *The Hawaiian Kingdom: 1874-1893*, Vol. 3 (Honolulu: University of Hawaii Press, 1967), 429.

⁶⁸⁸ S.E. Bishop, "Wilcox Acquitted," *The Friend*, December 1889.

⁶⁸⁹ *Id.*

caused, the political system was still based on majority rule. The acquittal of Wilcox and the public support that followed were a clear political expression on the part of the majority of the Hawaiian citizenry. During the trial it was speculated that Wilcox had “been working with the king to get a new constitution and oust the Reform cabinet.”⁶⁹⁰ It was also claimed that Wilcox had possibly allied with Princess Lili‘uokalani. Support for Wilcox was widespread. This was evident not only in his non-guilty verdict, but the involvement of public officials, which presumably included the King and his would be successor. Contrary to popular belief, the actions of Wilcox were not that of rebellion, but rather those of a loyal subject to the Hawaiian Kingdom government. From the lens of the judicial system, which had acquitted him, Wilcox was a loyal subject attempting to apprehend those who he identified as criminals for their role in disrupting the legal order of the Kingdom in 1887. The non-guilty verdict presented an interesting paradigm shift. Wilcox entered the trial as an alleged traitor, and when the case concluded, he left the courtroom as the antithesis to a traitor—a Hawaiian patriot. Legally, according to Keanu Sai writes that the actions of Wilcox and members of the LPA were not a counter-revolution, but rather a lawful attempt to make a citizens’ arrest. He writes:

In theory, counter-revolution can only take place if the original revolt was successful. But if the original revolt was not successful, or in other words, the country was still in a state of revolt or unlawfulness, any action take to apprehend or to hold accountable the original perpetrators is not a violation of the law, but rather an enforcement of the law.⁶⁹¹

⁶⁹⁰ R.S. Kuykendal, 429.

⁶⁹¹ David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (to be published), 109.

According to the Hawaiian Penal Code, “Any one in the act of committing a crime, may be arrested by any person, without a warrant.”⁶⁹² From the law’s perspective, Wilcox was not the rebel, nor was he a criminal, but rather a loyal Hawaiian subject utilizing what could be viewed as a citizen’s arrest. Sai’s treatment of Wilcox’s actions rightly suggests that the actual rebels and criminals were the individuals and organizations that were connected to the Hawaiian League, including members of the Honolulu Rifles and the Reform Party. Legally, any individual or group that was in any way connected with the actions taken upon the Hawaiian Government in 1887 could be tried for treason. Pursuant to Hawaiian law, many of them had committed treason, a crime punishable by death. Wilcox articulated this view on the legislative floor,

I never felt this action of mine to be a rebellion against my mother land, her independence, and her rights, but for the support and strengthening of the rights of my beloved race, the rights of liberty, the rights of the Throne and the good of the beautiful flag of Hawai’i.⁶⁹³

One newspaper described the speech as a “defiant and outrageous harangue, intended to excite the native race against the foreign races...”⁶⁹⁴ Yet, despite the report, Wilcox’s speech was nonetheless stirring. The intent was to solicit votes for the newly formed National Party. Similar to the former Liberal Patriotic Party, the National Party, of which Wilcox was the group’s outspoken leader, sought to rally support for restoring the legal order of the Hawaiian Kingdom. Seeking to impress upon his audience a Hawaiian national consciousness, Wilcox drew on historical and contemporary histories to elicit their attention. Election day, Wilcox stated, “was the day on which you are to

⁶⁹² Chapter L. “Arrest.” Penal Code 1850. P. 119.

⁶⁹³ In David Keanu Sai, *Ua Mau Ke Ea: Sovereignty Endures* (Honolulu: Pū‘ā Foundation, 2011), 64.

⁶⁹⁴ *The Hawaiian Gazette*, “Address of R.W. Wilcox,” January 28, 1890.

show your love for your country, the country that Kamehameha I joined together and made one...”⁶⁹⁵

Race was also at the center of Wilcox’s speech. He denounced the white element that had partaken in treasonous acts, while urging his audience to vote against certain white men in the coming election. During his campaign, he told the crowd, “I hear that a white man is going to run out here in the Fifth District—I think his name is Peter O’Sullivan—drive him off.”⁶⁹⁶ Lorrin Thurston, the current Minister of the Interior at the time, was called a “murderer” for the violence that was committed against the counter insurgency led by Wilcox. White people, however, were not the only people that Wilcox rallied against. He took aim at traitors that were of aboriginal ancestry as well. He referred to the handful of them that backed the Reform ticket, “spitals” and “hoopilimeaaais” (social climbers/wannabes).⁶⁹⁷ Wilcox proclaimed those “...are the kind of people who ought to be driven off, they are traitors, evident traitors to their country.”⁶⁹⁸ For Wilcox, race was central, but allegiance was paramount in order to secure the country and make it “impossible for these people to again commit any acts of treason.”⁶⁹⁹

Wilcox and others continued their assault on the Reform Party throughout the election season. This pressure led to an almost clean sweep for the national party. As Van Dyke explained, the 1890 census reported that 13, 593 people were registered to vote. Of the total, 9,554 or 70 percent were categorized as either pure or part aboriginals.⁷⁰⁰

⁶⁹⁵ *Id.*

⁶⁹⁶ *Id.*

⁶⁹⁷ *Id.*

⁶⁹⁸ *Id.*

⁶⁹⁹ *Id.*

⁷⁰⁰ Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai'i?* (Honolulu, HI: University of Hawaii Press, 2008), 148.

Accordingly, when the 1890 legislative session began in May, the National party held the majority in both houses of the legislature, even with the citizenship restrictions still in place. Not only did individuals such as Wilcox now control the legislature, the Executive cabinet that was created during the Bayonet Constitution was ousted. In June, Thurston “on behalf of himself and his colleagues of the cabinet majority, announced their resignations.”⁷⁰¹ One week later, Kalākaua appointed a new cabinet to replace the cabinet that was forced onto him three years prior.

White Supremacy Movement Defeated

The defeat of the reform party during the summer of 1890 was a major blow to the insurgents that started the coup de tat of 1887. Adam Russ asserts that the 1890 election “showed how completely the white party had wrought in vain...”⁷⁰² The historian explains that their failure to gain control of the government was predicated on two factors. First, those that wrote the Bayonet Constitution failed to make “inescapable provisions for hamstringing the King.”⁷⁰³ And the second, “The constitution-makers of 1887 were unable to prevent their enemies from getting into control of the legislature...”⁷⁰⁴ The actions of the King and the national citizenry alike had stamped out what had been a three year concerted effort to institute a system of white rule in the Hawaiian Kingdom. At the on-set of the new legislative session Representative Joseph Nawahi forwarded a resolution expressing that “it is the universal wish of the people to

⁷⁰¹ Kuykendal, 461.

⁷⁰² William Adam Russ, *The Hawaiian Revolution* (Cranbury: Associated University Presses, Inc., 1992), 27.

⁷⁰³ *Id.*

⁷⁰⁴ *Id.*

have a constitution giving equal rights to all...⁷⁰⁵ The 1890 Legislature “approved amendments to the Constitution to reduce the amount of property one had to own...and to allow only ‘subjects’ instead of mere ‘residents’ to vote...”⁷⁰⁶ However, proposed amendments to reform citizenship were never adopted. Instead they actually became more restrictive. Moon-Kie Jung writes, “racist consensus against ‘coolies’ reached its apotheosis in 1890 and 1892, making Chinese laborers’ entry and stay contingent on being limited to work unwanted by others.”⁷⁰⁷ Jung asserts it was during these years that the Chinese became subjected to a “coercive form of labor that came the closest to slavery in Hawaii’s history.”⁷⁰⁸ The ceiling that was placed over the heads of the Chinese community in 1887 was reinforced in order to supply the labor demands of a bustling sugar industry. Chinese were no longer allowed to become business owners, nor could they become rice and sugar plantation owners as they once had. Without the social-economic mobility that Hawaiian Law once afforded, incoming Chinese were now confined to work in the fields or as domestic servants.

Racial restrictions actually became more rigid despite what many had perceived to be a legislature that would support universal equality as early amendments proposed. The economic demands of the country loomed large over the discussion of racial suffrage. The McKinley Tariff Act of 1891 sent the recent sugar boom in the Hawaiian Kingdom into a tail spin as it “wiped out the differential advantage that Hawaiian sugar had enjoyed in the American market.”⁷⁰⁹ The Act went into effect in 1891, abrogating the

⁷⁰⁵ Merze Tate, *The United States and the Hawaiian Kingdom: A political history* (Greenwood Press, 1980), 103.

⁷⁰⁶ Van Dyke, 148.

⁷⁰⁷ Moon-Kie Jung, *Reworking Race: The Making of Hawaii’s Interracial Labor Movement* (New York: Columbia University Press, 2006), 71.

⁷⁰⁸ Jung, 72.

⁷⁰⁹ Kuykendal, 456.

Reciprocity treaty of 1876, which had been the principle source for the expansion of the Hawaiian Kingdom's sugar industry. Despite the crippling effect of the McKinley Tariff Act, "sugar production increased, from 242,165,835 pounds in 1889 to 263,656,715 pounds in 1892."⁷¹⁰ The difference, however, was that in 1889 sugar was sold at more than one-hundred dollars per pound. In 1892, a pound of sugar was sold at a little more than fifty-dollars per pound. Labor from China was essential if sugar was to be profitable.

The ethnic alliances that congealed as a result of 1887 and during the counter-insurgency in 1889 had all but faded. Aboriginal members of the legislature and also prominent groups such as the Hui Kālai'āina and the Mechanics Union began to support anti-Asian laws. In a meeting attended by official representatives of the Mechanics' Union and the Hui Kālai'āina multiple resolutions were passed that supported Asian Exclusion. One resolution that was adopted stated that "No new comers of Asiatic races should be allowed to engage in trade or mechanical occupations, the present license [should] be gradually cancelled..."⁷¹¹ The economic depression and the lingering politics born out of 1887 had fractured relations between the aboriginal and the Chinese community. The depression had induced racial agitation, turning former alliances into opposing factions—a residual effect of 1887.

The aboriginal population's political predicament was complicated by the double-sided edge of race. For the aboriginal population, race, according to the Hawaiian League, was the main reason the aboriginals were unfit to govern. Yet race also became a primary rallying point for the aboriginal population. This set a dangerous precedent in the

⁷¹⁰ Cesar J. Ayala, *American Sugar Kingdom: The Plantation Economy of the Spanish Caribbean 1898-1934* (Durham: North Carolina Press, 199), 55.

⁷¹¹ *Hawaiian Gazette*, "The Combination Platform," January 7, 1890.

Hawaiian Islands, and it was the result of the Bayonet Constitution, which ended the long tradition of politically inclusive laws. First whites, and then aboriginals, used race to galvanize their political movements. According to the *Hawaiian Gazette*, Vice-President of the House of Representatives, L. Aholo “made race prejudice the basis of his campaign, appealing with impassioned utterances to the natives to vote down the foreigners.”⁷¹² Indeed, 1887 significantly altered race relations in the Hawaiian Islands. As Kuykendall observed, it began an era of separation between aboriginals and foreigners, racial intolerance, and racial antagonism.⁷¹³

Queen’s Attempt to Right the Wrong

The next serious attempt to implement citizenship reform came in 1893 under the reign of Queen Lili‘uokalani, successor to Kalākaua. The Queen opened the new legislative session by exalting the seventeen-year reign of her brother, Kalākaua. His reign, she stated, “marked an extraordinary epoch in our country’s history, an era of unparalleled commercial advancement, of educational advancement and political progress.”⁷¹⁴ After informing the legislature of her executive decision to select Princess Kai‘ulani as heir apparent to the throne, the Queen asked the legislative assembly to focus on two concerns during the upcoming legislative session: (1) “preserve the autonomy and absolute independence of the Kingdom”; (2) “assist in perpetuating the rights and privileges of all who are subject to our laws and in promoting their welfare and happiness.”⁷¹⁵

⁷¹² *Id.*, “A Complete Victory.”

⁷¹³ Kuykendall, 225

⁷¹⁴ Robert Lydecker, *Roster Legislatures of Hawaii* (Honolulu, HI: The Hawaiian Gazette, 1918), 180.

⁷¹⁵ *Id.*

The Kingdom's new monarch planned to promulgate a new constitution, which would have restored the Hawaiian Government to its former character before the revolution of 1887. Unlike the Bayonet Constitution, the Queen's constitution was drafted after more than a year of conversation and contemplation. One supporter of the Queen, Julius Palmer, recalled that the Queen's constitution was "the first Constitution of Hawaii that was ever given in answer to a popular invitation."⁷¹⁶ Palmer was referring to the thousands of petitions that the queen received from the national population calling for constitutional reform. Answering the call of the people, the Queen enlisted the advice of her most loyal advisers including Samuel Nowlein, Joseph Nawahi, and William White. The constitution included amendments that would have disqualified foreigners from voting and allowed only native born and naturalized Hawaiian subjects to comprise the electorate. The Queen ridiculed the egregiousness of citizenship laws under Bayonet.⁷¹⁷ Rhetorically, the Queen asked, "Is there another country where a man would be allowed to vote, to seek for office, to hold the most responsible of positions, without becoming naturalized...?"⁷¹⁸ The Queen's Constitution would have restored the political rights to the majority of people that the Bayonet Constitution had stripped away in 1887. As the articles of her Constitution reflected, the Queen attempted to quell the political instability that had resulted from the coup d'état of 1887. The Queen's Constitution sought to expand voter eligibility by removing the racial prerequisites and restrictions that had

⁷¹⁶ Julius Palmer, "An Address Delivered by Julius A. Palmer at a Meeting of the Massachusetts Reform Club," *The Independent*, February 4, 1898.

⁷¹⁸ Liliuokalani, *Hawaii's story by Hawaii's Queen* (Boston: Berwick and Smith, 1898), 238.

privileged the white vote under the Bayonet Constitution. Article 62 provided the criteria that determined voter eligibility:

Every male subject of the Kingdom who shall have paid his taxes, who shall have attained the age of twenty years, and shall have been domiciled in the Kingdom for one year immediately proceeding the election, and be possessed of real property in the Kingdom, to the value over and above all encumbrances of one hundred and fifty dollars, or a leasehold property on which the rent is twenty-five dollars per year, derived from any property or some lawful employment and shall know how to read and write, if born since the year 1840 and shall have caused his name to be entered on the list of voters of his district as may be provided by the law, shall be entitled to one vote for the representative or representatives of that district.⁷¹⁹

Along with lifting race from the criteria to acquire all the privileges of Hawaiian citizenship, the Queen's constitution also lowered, significantly, the property and income qualifications in order to bolster the aboriginal vote. The steep property and tax qualifications that restricted suffrage under Bayonet were reduced to anyone that had "an income of not less than seventy-five dollars per year, or a leasehold property on which the rent is twenty-five dollars per year..."⁷²⁰ Yet, even these provisions were amenable to change pursuant to Article 63 which included a clause that "The property qualifications of the representatives of the people, and of the electors, may be increased or decreased by law..."⁷²¹ Along with these attempts to expand suffrage, the Queens constitution also sought to restore the criteria that determined the appointment of Nobles. The Queens Constitution made those legislative positions appointed by the Office of Monarch just as

⁷¹⁹ Blount Report, 571.

⁷²⁰ *Id.*

⁷²¹ *Id.*

they were since the start of the constitutional era, rather than elected as was prescribed under Bayonet. For five years, since 1887, a white minority had controlled a multi ethnic and predominantly aboriginal national population. The Queen's Constitution intended to remove the despotism that grew out of the insurgency in 1887.

Along with the removal of race and the lessening of property and income qualifications, the Queens Constitution stressed, more than any other Hawaiian constitution, the crime of treason. Article 62, after listing the criteria to vote, contains a section devoted to those "convicted of any infamous crimes."⁷²² Prior to the Queens draft, the articles or clauses pertaining to treason were never directly stated in any Article regarding citizenship and voting rights. In the Queen's draft, however, the last clause of Article 62 explained that voting privileges would be renounced if any individual committed an infamous crime such as treason, "unless he shall have been pardoned by the Queen."⁷²³ The attention paid to treason served as an inflection point in the evolution of the laws regarding citizenship and a direct result of the events that stemmed from the insurrection of 1887.

A new constitution would have restored the legal and political order of the country as it had existed prior to 1887. It represented the final blow to the insurrectionist's political and economic motives and their attempt to institutionalize a system of white supremacy in the Hawaiian Kingdom. Equally, the constitution was also representative of the resiliency of the multi-ethnic citizenry. Since the inception of the insurrection in 1887, loyal Hawaiian nationals of all colors mobilized to effectively

⁷²² *Id.*

⁷²³ *Id.*

suppress the political agenda of a white minority that had attempted to gain political control over the country.

Along with restoring the political voice too many that had been silenced since 1887, the Queen also attempted to restore the traditional aspect of the House of Nobles to its place before the coup. Prior to Bayonet, Nobles were appointed by the Monarch and served a life term. Rather than the House of Nobles being an elected position in which foreign nationals could not only vote but be elected, the Queen sought to restore the traditional system by making the House of Nobles once more an appointed legislative seats reserved for those identified as a part of the chiefly class. This would allow the Queen to choose candidates for the House of Nobles subject to confirmation by the House of Representative.

The Queens constitution set out to restore the rights of her people as they existed before the 1887 revolution. On January 16, 1893, in a public announcement the Queen reassured the national population, when she spoke “do not be disturbed or troubled in your minds, because within the next few days now coming I will proclaim the new constitution.”⁷²⁴ For those facing treason charges, blocking the Queen from promulgating the new constitution was paramount. A new constitution that would have repealed the numerous disabilities that the Bayonet Constitution had imposed onto the national population. Legally, the Queens constitution also represented the final blow to the revolution that had spanned almost five years. However, before the Queen was able terminate the 1887 constitution, and use her authority to promulgate a new constitution,

⁷²⁴ Senate Reports, 53 Congress, 2 session. (1893). *I* (227) , 37. US Congress.

the US Minister stationed in the Hawaiian Islands, conspired with a group of Hawaiian nationals and foreigners to overthrow the monarchy.

Rogue Minister: Setting the stage for US takeover

Before Queen Lili‘uokalani was able to restore political balance to the Hawaiian Islands in 1893 by promulgating a new constitution to counter the greatly resented Bayonet Constitution of 1887, with its racial prerequisites, US forces occupied the Hawaiian Kingdom in breach of its multiple treaties with the sovereign state. During this time, the American Minister assigned to the Kingdom, John Stevens⁷²⁵, conspired with the group of failed insurgence. Given the two countries’ longstanding treaty relations, the actions of the US Minister constituted a direct violation of international law, the treaties of friendship and commerce between the two countries, and domestic Kingdom and US laws. Acting outside of his jurisdiction and allegedly unbeknownst to the US government,⁷²⁶ the American Minister, immediately upon the execution of the coup on the 17th of January 1893, recognized a self-declared Provisional Government by proclamation in his capacity as US Minister to the Hawaiian Kingdom.

Since the start of his commission in the Hawaiian Islands, the US Minister had been initiating discussions on the topic of annexation of the Kingdom with the US with certain US officials, including Secretary of State, James Blaine.⁷²⁷ Stevens wrote to the Secretary asserting, “the time is not distant when the United States must say ‘yes’ or ‘no’

⁷²⁵ Assigned to the Hawaiian Kingdom since 1889.

⁷²⁶ Exactly what was known by then US President Grover Cleveland and/or his administration regarding Stevens’ actions at this time, and when it is he/they knew it, is a matter to be understood more fully in a separate study. Cleveland wasn’t sworn in as US President until March 1893, after Stevens’ actions; Cleveland had been president from 1885-1889 but lost presidency and then regained it. Consequently, he is the only US President to serve in the office of President for two non-consecutive terms.

⁷²⁷ Other US government leaders with whom Stevens had communication regarding his actions in the Kingdom remain to be revealed in a separate study.

to the question of ‘annexation’⁷²⁸. Kuykendall explains that Stevens “wrote frequently of the importance of having an American warship in Hawaiian waters to safeguard American lives and property, to exert a tranquilizing influence upon troublesome elements in the local population . . .”⁷²⁹ The “troublesome local population”, to which Stevens referred, most likely included the Queen and the majority of the national citizenry who supported the Constitutional government: the government and citizenry of the country who had every right to determine for themselves the domestic and foreign agendas of their country without regard for Stevens’ (or any foreign government’s) opinions. Stevens supposed that a standing US military presence was necessary in order to suppress the Monarchy and its national body. A US show of military might, the Minister asserted, could also send a message to “foreign nations that the United States has a special case for these islands.”

On the fateful day of the 16th of January 1893, Minister Stevens ordered more than 150 US troops to be landed at Honolulu Harbor in support of the Safety Committee’s coup to be executed the next day; this, in violation of treaties of friendship between the US and the Kingdom. The US Minister justified the order by convincing Captain Wiltse of the USS Boston that “American life and Property”⁷³⁰ were in danger. As the Captain would come to see upon landing, American life and property were clearly not in danger, but this did not prevent the Captain from fulfilling Stevens’ order and the order was executed⁷³¹. It was bold of the US Minister to (allegedly) act alone in this order

⁷²⁸ This also brings into question, as noted earlier, whether those in Pres. Cleveland’s administration were aware of Stevens’ ambitions and actions and whether his ambitions reflected a personal or national agenda.

⁷²⁹ Kuykendal, 568.

⁷³⁰ Blount Report, 208.

⁷³¹ This calls into question the personal culpability of Captain Wiltse—also a study recommended to be carried out.

and brazenly intervene in the domestic affairs of the Kingdom without the consent of his President. The US Minister believed that US possession of the Hawaiian Islands was a vital for American expansion. Knowing that the US could never simply overthrow the Kingdom government, the Minister cultivated a provisional government comprised of members of a group named the “Committee of Safety.”

It is clear that without Stevens’ actions, the Committee of Safety would have had no US diplomatic or military support for their coup. It is also clear that without the threat of US military intervention under the direction of Stevens, the coup conspirators (not just the one American involved, but all conspirators) would have been arrested, tried, and convicted under Kingdom law—with the punishment being death—and that the Queen and the citizenry of the Kingdom would have enjoyed continued protection under the rights guaranteed by the new constitution that Lili‘uokalani was about to introduce to the Legislature in 1893.

Coup Conspirators: The Committee of Safety as foot soldiers for the US

US Minister Stevens’ ambition to have the Hawaiian Islands annexed to the US were aligned with that of the Safety Committee whose members were conspirators of the 1887 coup and guilty of a plethora of acts of sedition against the state—the punishment being execution under Kingdom law (as is the case in the US and other countries with regards to the same types of offence). The Committee’s four natural-born Hawaiian subjects were L.A. Thurston, W.O. Smith, W.R. Castle and A.S. Wilcox. Its three naturalized Hawaiian subjects were W.C. Wilder, C. Bolte, and H. Waterhouse. Its two

foreign nationals were E. Suhr, a German national, and J. Emmeluth, an American⁷³². For the coup conspirators of who began their political movement in 1887, conspiring with the US Minister was a tactical move that demonstrated desperation to avoid prosecution for treason under Kingdom law given the consequences.

The vast majority of the population resented the Committee.⁷³³ Domestically, the members of the Committee had completely expended their political capital over the past five years. By 1893, the Committee was politically bankrupt and the Queen enjoyed widespread support throughout the country. The only way possible for the Committee to realize success in their ambitions of total control of the Kingdom government and its territory was to enlist the US Minister, particularly his ability to call in or threaten to call in US troops.

US Attorney General Richard Olney in repudiating the legitimacy of the Provisional Government, calling it “Stevens’ Government”, alluding to the US Minister’s central role in the overthrow of Lili‘uokalani government. US President Cleveland publicly condemned the Minister’s actions and in 1893, assigned Senator James Blount to investigate the events leading up to the overthrow of Lili‘uokalani’s government at the hands of US marines in collaboration with a treasonous rebel band. Senator Blount’s investigation had fingered Minister Stevens as the ringleader of the plot to overthrow Lili‘uokalani’s government.

Cleveland told the US Senate that the overthrow was committed through the “active aid of our representative . . . and through the intimidation caused by the presence

⁷³² R.S. Kuykendal, *The Hawaiian Kingdom: 1874-1893*, Vol. 3 (Honolulu: University of Hawai‘i Press, 1967), 587.

⁷³³ As reported by Ronald Williams (2013) regarding Safety Committee members, “This small minority within the Hawaiian Kingdom was moving towards a hegemonic dominance that would secure their, and their race’s, place as leaders over the masses.”

of an armed naval force of the United States which was landed for that purpose at the instance of our Minister.”⁷³⁴ Upon the landing of the troops, Stevens immediately recognized the Committee of Safety as the Provisional Government of the Hawaiian Islands in his capacity as US Minister. Historian Theodore Salisbury Woolsey, commented on the speed with which Stevens recognized a new government,

Before the people of Oahu had a chance to pronounce upon their desire for the change, before the other islands could even hear of it, before the regime could demonstrate its capacity for fulfilling the obligations of the State, before it had gained possession of all the Government buildings and proved its power, its recognition was granted . . .⁷³⁵

Similarly, Kuykendall wrote that before the Queen had even yielded her authority to US President Cleveland⁷³⁶, and “long before the police station was surrendered,” Stevens recognized the Provisional Government “as the de facto Government of the Hawaiian Islands.”⁷³⁷ Under Kingdom law, the coup constituted treason and Marshal C.B. Wilson of the Hawaiian police force was prepared to issue “warrants for the arrest of the ringleaders of the plot.” But it became clear that the US Minister was prepared to protect the newly recognized self-declared Provisional Government from any actions taken by the Queen or her supporters.

⁷³⁴ Cleveland’s address to the Senate in Richard Olney, 84

⁷³⁵ Woolsey, T. S. (1894). *The Hawaiian Case. The Yale Review*, II, 348.

⁷³⁶ It is important to note that Queen Lili‘uokalani yielded her authority to the US Government and not Minister Stevens or the self-proclaimed provisional government, indicating that she was answerable for the coup and the actions of his Minister as his actions were viewed as the actions of the US itself.

⁷³⁷ Kuykendall, R. (1967). *The Hawaiian Kingdom: 1874-1893* (Vol. 3). Honolulu: University of Hawai‘i Press, 601.

Conclusion

The period between 1887-1893 was one of the most trying times of the Hawaiian Kingdom. At the center of the politics that shaped this period was the fight over who qualified for the rights and protections that Hawaiian citizenship provided. The Bayonet constitution redefined citizenship in the Hawaiian Kingdom. It marked the first time the term Hawaiian was used in a legal (illegal) sense to denote race and ethnicity rather than citizenship. During this period a collective of white men, some of which were Hawaiian nationals, attempted to institute a system of white supremacy. History also shows that the overwhelming majority of the Kingdom's national population met this white minority with strong resistance. Inter-ethnic alliances were forged in order to resist the rise of white supremacy and the looming prospect of annexation to the US. The actions of the national citizenry were supplemented by the actions of the Queen, who attempted to restore democracy to the country by returning voting rights to all members of the national citizenry. Indeed, the years between 1887-1893 revealed the character of the Kingdom and the energy to which the national citizenry was willing to expend in order to defend their rights and protect the country from which they belonged. What this period revealed was how the Hawaiian Kingdom was able to deal with such explosive civil strife. If not for the landing of the troops in January of 1893, at the direction of the rogue US Ambassador, democracy would have been restored to the Hawaiian Kingdom, as it existed prior to 1887.

Chapter 6: Hawaiian Citizenship Under Occupation

This chapter examines the legal effect of Hawaiian citizenship as a result of the US occupation of the Hawaiian Islands. The Hawaiian Kingdom was occupied twice by the US. The first occupation extended from January 16, 1893 to December 13, 1893 and led to the creation of the Provisional Government and the Republic of Hawai'i. The second occupation of the Hawaiian Kingdom lasted much longer. The second occupation began on August 12, 1898, and continues until the present. Despite never acquiring legal title over the Hawaiian Islands, the second US occupation led to the creation of two more illegal governing regimes, the Territory of Hawai'i, and the State of Hawai'i. Under the Provisional, Republic, Territory, and State of Hawai'i governments significant changes were made to citizenship laws in order to change the racial demographics in order to sustain the American occupation of the Hawaiian Kingdom.

The overthrow of the Kingdom government, on January 16, 1893, and the subsequent prolonged occupation of the Hawaiian Kingdom, disrupted the municipal basis of Hawaiian citizenship and the international basis of Hawaiian nationality. The illegal annexation of Hawaii to the United States on August 12, 1898 became the basis from which American citizenship would be forced onto the Hawaiian citizenry. Hawai'i's status as an internationally recognized sovereign state and the rights afforded to its citizens, were concealed in an effort to fortify military operations in the Philippines in a war against Spain. According to international legal scholarship, the acquisition of territory through cession in the form of a bilateral agreement between two states may result in the extinguishment of a states citizenship and the incorporation of citizenship to

the acquiring state.⁷³⁸ However, the alleged “treaty of annexation” that cedes the Hawaiian Kingdom to the US has never physically existed, yet it became the legal fiction⁷³⁹ from which the US asserts legal jurisdiction over the citizens of Hawaii. As the Alabama Claims Arbitration (1872) affirmed, “it is clear that a state cannot plead the provisions of its national law as a valid reason for violating international law.”⁷⁴⁰ “Likewise, a state may not invoke its internal law as justification for its failure to perform a treaty.” (Art. 27 of the Vienna Convention on the Law of Treaties 1969.) In other words, “A state cannot plead before an court that its national law authorizes it to do something which amounts to an internationally unlawful act. (*Texaco v Libya 1977*).”⁷⁴¹ The primary sources of international law are treaties. Since the Hawaiian Kingdom’s existence as an Independent state, numerous treaties between the two governments have been ratified Sources of International law.⁷⁴² In violation of those international treaties, the US illegally intervened in the domestic affairs of the Hawaiian Kingdom.

US Intervention

On January 17, 1893, the government of the Hawaiian Kingdom was illegally overthrown through intervention by United States troops who were landed to protect and aid a small group of insurgents that had committed the act of treason. The insurgency

⁷³⁸ Sources of international law See Lassa Oppenheim, *International Law* (London: Longmans, 1967), 556.

⁷³⁹ According to Black’s Law Dictionary, a legal fiction is “Believing or assuming something not true is true. Used in Juridical reasoning for avoiding issues where a new situation comes up against the law.”

⁷⁴⁰ Martin Dixon, *Textbook on International Law* (Oxford: Oxford University Press, 2013), 94.

⁷⁴¹ *Id.*, 94

⁷⁴² In regard to the “Sources of international law”, William Elliot Butler explains, “The existing consensus on the criteria of validity is reflected in Article 38 of the Statute of the International Court of Justice (ICJ). According Article 38(1), the Court, “whose function is to decide in accordance with international law such disputes as are submitted to it, “ is to apply: ‘a. international conventions (treaty’s), whether general or particular, establishing rules expressly recognised by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognised by civilised nations.’” See C.J. Warbrick, "Sources of International Law in a Changing International Community," in *Perestroika and International Law*, ed. William Elliot Butler, 61-80 (MA: Martinus Nijhoff, 1990). 62.

called itself the provisional government and its purpose was “to exist until terms of union with the United States of America have been negotiated and agreed upon.”⁷⁴³ After the U.S. Minister John Stevens notified the Hawaiian government that he would support the insurgency and provide them protection, Queen Lili‘uokalani and her cabinet submitted the following diplomatic protest.

I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.⁷⁴⁴

Over the protest of the Queen and her cabinet, the treaty of cession was signed at Washington, D.C., on February 14, 1893, with U.S. President Benjamin Harrison who thereafter submitted it to the Senate for ratification. Harrison, however, would be leaving office the following month, since he lost the presidential election to Grover Cleveland the

⁷⁴³ *Laws of the Provisional Government of the Hawaiian Islands*, Declaration, Executive and Advisory Councils (Honolulu: Robert Grieve, Steam Book and Job Printer, 1894), vi.

⁷⁴⁴ James Blount, *Report of Commissioner to the Hawaiian Islands*, Government, US Executive Branch (U.S., 1893), 1279.

year before. Sai explains, “After his inauguration on March 4, 1893, President Cleveland received the Queen’s protest and assignment from Paul Neumann, former Hawaiian Attorney General, who, by a power of attorney, represented the Queen.”⁷⁴⁵ On March 9, Cleveland withdrew the treaty from the Senate and initiated a Presidential investigation into the overthrow of the Hawaiian government. The President appointed James Blount as Special Commissioner to travel to the Hawaiian Islands and to submit periodic reports to the Secretary of State Walter Gresham. Upon arriving in Honolulu, Blount ordered that the American Flag that had been hoisted above the government building be taken down.

Blount’s investigation concluded that the “Provisional Government was established by the action of the American minister and the presence of the troops landed from the Boston, and its continued existence is due to the belief of the Hawaiians that if they made an effort to overthrow it, they would encounter the armed forces of the United States.” Blount characterized the provisional government “as a small faction, and so heterogeneous at that, whose only force is to be loud-mouthed and utterly regardless of veracity.”⁷⁴⁶ The US investigator debased their claims that American capital was under duress and in need of US intervention. Blount stated, “To cover their numerical weakness, the annexationists faction have tried to awaken American sympathies by alluding to the necessity of protecting American capital, which they claim to be so largely invested in these islands.”⁷⁴⁷

Blount reported that Stevens was “full of zeal for annexation” and that he was willing to achieve the outcome he so wanted even if it meant “deviation from established

⁷⁴⁵ David Keanu Sai, *Ua Mau Ke Ea: Sovereignty Endures*, (2011), p. 74.

⁷⁴⁶ House of Representatives, *Foreign Relations Of the United States 1894 Affairs in Hawaii*, (Washington : Government Printing Press, 1895), 1300, 921. (Hereafter US Foreign Relations Documents)

⁷⁴⁷ *Id.*

international rules and precedents.”⁷⁴⁸ According to International legal scholar Krystyna Marek, coups concern civil or domestic strife of a particular state, which entail certain actions or events considered to be extra-constitutional. Because coups are a domestic issue, third party states are “legally bound not to interfere in civil strife within another state . . .”⁷⁴⁹ This principle Marek stresses, “is a well-known rule of customary international law that third States are under a clear duty of non-intervention and non-interference in civil strife within a state.”⁷⁵⁰ Drawing from the Spanish civil war, Marek affirms, “Any help given to such rebels in the form of supplies of arms or, more particularly of men, would be a flagrant breach of international law.”⁷⁵¹ The actions of the American diplomat, Blount concluded, “was ungentlemanly as it was undiplomatic, according to the universal rule which prohibits every diplomatic agent to interfere in the internal affairs of a foreign country.”⁷⁵²

After the Blount report, Secretary of State Gresham recommended to the President, “Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.” The President agreed and directed Gresham to initiate executive mediation with the Queen in order to present the President’s position that he would restore the government as it stood before the landing of U.S. troops on January 16, 1893 on condition that the Queen would thereafter grant full amnesty to the insurgents and their

⁷⁴⁸ *Id.*, 449.

⁷⁴⁹ Krystyna Marek, *Identity and Continuity of States in Public International Law* (Geneva: Librairie Droz, 1968), 65.

⁷⁵⁰ *Id.*

⁷⁵¹ *Id.*

⁷⁵² US Foreign Relations Documents, 923

supporters. Negotiations began on November 13, 1893, at the U.S. Legation in Honolulu between the new U.S. Minister Albert Willis and the Queen. The first meeting proved unsatisfactory to the Queen, but an agreement was finally reached on December 18, 1893, whereby the Queen made the following declaration.

I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government. I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained. I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown.

Executive Agreements

The international agreement between Queen Liliu‘okalani and President Grover Cleveland formalized a settlement regarding any consequences attributable to the US’s involvement of the overthrow.⁷⁵³ Initially the Queen had serious reservations regarding the conditions of the agreement, which would grant the treasonous nationals and non-nationals a full pardon for their role in the overthrow. However, the Queen was compelled to make such concessions and on December 20, 1893 issued a formal letter consenting to the conditions of the agreement that in part read:

If reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof... I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained.⁷⁵⁴

Before being apprised of the Queens consent, President Cleveland addressed the US Congress. After being fully briefed by Senator James Blount who conducted an extensive investigation of the overthrow, stated in part:

⁷⁵³ David Keanu Sai, *Ua Mau Ke Ea Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands* (Honolulu: Pua Foundation , 2011), 73. Sai writes that the executive agreement settled the US’s intervention that resulted in the overthrow of the Hawaiian Kingdom Government.

⁷⁵⁴ US Foreign Relations Documents, 1269.

The military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property. It must be accounted for in some other way and on some other ground, and its real motive and purpose are neither obscure nor far to seek... She surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States...I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned. The conditions suggested, as the instructions show, contemplate a general amnesty to those concerned in setting up the provisional government and a recognition of all its bona fide acts and obligations. In short, they require that the past should be buried, and that the restored Government should reassume its authority as if its continuity had not been interrupted.

From these diplomatic negotiations two executive agreements were established through an *exchange of notes*. According to Elmer Plischke, “the most memorable executive agreements [were] by means of exchange of notes.”⁷⁵⁵ And James McCormick explains that the US has made important commitments abroad through “an exchange of notes by executive representatives of the two governments.” This included the Rush-Bagot Agreement of 1817 in which America and Britain agreed to “limit the amount of naval vessel on the Great Lakes” and also the “‘Gentlemen’s Agreement’ in 1907 to restrict

⁷⁵⁵ Elmer Plischke, *U.S. Department of State: A Reference History* (CT: Greenwood Press, 1999), 349.

Japanese immigration into the United States.”⁷⁵⁶ Henkin explains, “Presidents from Washington to Clinton have made many thousands of agreements, differing in formality and importance, on matters running the gamut of U.S. foreign relations.”⁷⁵⁷

Sai explains that like many other executive agreements, the two executive agreements between the Queen and the President occurred through an exchange of notes:

The first executive agreement, by exchange of notes, was the temporary and conditional assignment of executive power (police power) from the Queen to the President on January 17, 1893, and the acceptance of the assignment by the President on March 9, 1893. The second executive agreement, by exchange of notes, was the President’s “offer” to restore the de jure government on condition that the Queen would commit to grant amnesty to the insurgents on November 13, 1893, and the “acceptance” by the Queen of this condition on December 18, 1893. The two executive agreements are referred to herein as the Lili‘uokalani assignment and the Agreement of restoration, respectively.

The term “executive agreement” is specific to US foreign relations policy. Article II of the United States Constitution enables “the president the sole authority to make treaties on behalf of the United States [such]... agreements may cover almost any area of interaction among nations...”⁷⁵⁸ In *United States v. Curtiss-Wright Export Corporation*; Supreme Court Justice Sutherland clarified the nature of executive agreements. In his opinion Sutherland affirmed that the president is “the sole organ of the federal

⁷⁵⁶ James McCormick, *American Foreign Policy and Process*, ed. Fifth (Boston: Wadsworth , 2010), 263.

⁷⁵⁷ Louis Henkin cited in Sai, David Keanu Sai, "1893 Cleveland-Lili'uokalani Executive Agreements," *unpublished*, November 2009, 10.

⁷⁵⁸ Lee Epstein and Thomas Walker, *Constitutional Law for a Changing America: Institutional Powers and Constraints*, Vol. 7 (Washington D.C.: Congressional Quarterly INC., 2011), 248.

government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress...”⁷⁵⁹ While articulating the applicability of executive agreements, Sutherland also references Justice Marshall who in the year 1800 characterized the office of president as “the constitutional representative of the United States with regard to foreign relations.”⁷⁶⁰ Marshall further maintained that the office of President “manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be responsible to the Constitution.”⁷⁶¹ Since the inception of the office of president till this present day, tens of thousands of executive agreements have been entered into, which in part have authorized the executive branch to resolve matters of foreign relations such as the illegal overthrow of the Kingdom Government.⁷⁶²

The executive branch of the Kingdom Government through the office of the Queen understood the negotiations with President Cleveland as being consistent with the Kingdom’s foreign relations policy. The negotiations on the part of the Queen were not interpreted as an executive agreement per se, but rather an international treaty or compact that attempted to mitigate the effects of the overthrow. Throughout the Kingdom’s existence as an Independent State, numerous treaties with foreign countries, including the US, were negotiated. These included treaties of commerce, friendship, navigation, and neutrality. Pursuant to Article 29 of the Hawaiian Constitution the monarch has the “power to make Treaties. Treaties involving changes in the Tariff or in any law of the

⁷⁵⁹ *Id.*

⁷⁶⁰ *Id.*

⁷⁶¹ *Id.*

⁷⁶² According to Louis Henkin, “as of 1996, presidents had made some 1,600 treaties with the consent of the Senate, but many thousands of other international agreements without seeking Senate consent.” See John F. Murphy, *The United States and the Rule of Law in International Affairs* (NY: Cambridge University Press, 2004), 111

Kingdom...⁷⁶³

For President Cleveland an executive agreement with the Queen was the appropriate legal remedy to resolve this matter especially considering that “he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries...”⁷⁶⁴ Historically, as explained by Justice Sutherland, executive agreements afforded the President a degree of discretion to avoid the time consuming, and publicized, treaty-making process. Executive agreements also provide an avenue for the US to avoid “embarrassment—perhaps serious embarrassment”⁷⁶⁵ while maintaining international relations. Although certain types of agreements such as congressional-executive agreements require ratification, sole executive agreements do not require Senate approval. The President has the authority to enter into sole executive agreements as authorized by any of the five constitutional powers of the executive office—“(1) take care that the laws be faithfully executed; (2) to conduct foreign relations generally; (3) to appoint ambassadors, other public ministers and consuls; (4) to receive ambassadors and other public ministers; (5) to serve as commander in chief of the army and navy.”⁷⁶⁶

Although sole executive agreements do not require Senate approval many executive agreements do require the “Congress to remain involved through its control of purse strings.”⁷⁶⁷ It is within this phase of the executive agreement process that the terms and conditions of the executive agreement are susceptible to political wrangling. The Congress, which may not be supportive of the Presidents foreign negotiations, may hold

⁷⁶³ Article 29, Hawaiian Constitution, 1864.

⁷⁶⁴ *United States v. Curtis-Wright Export Corp.* 299 U.S. 304 (1936).

⁷⁶⁵ *Id.*

⁷⁶⁶ Kermit Hall and David Clark, *The Oxford Companion to American Law* (New York: Oxford University Press, 2002), 283.

⁷⁶⁷ Glen S Krutz and Jeffery S Peake, *Treaty Politics and the Rise of Executive Agreements: International Commitments in a System of Shared Powers* (Michigan : University of Michigan Press, 2009), 30.

the authority of the executive branch hostage. As was the case in Hawaii, whereby the decision of Congress, although hotly contested in both the House and the Senate, did not release funding in order to mobilize the military to administer the restoration of the Queen and the constitutional system. Although Congress may have compromised Cleveland's agreement to restore the Queen, the Lili'uokalani—Cleveland executive agreement is considered a legal agreement that is binding, even upon successor presidents. Professor Quincy Wright affirms, "In general, the President can bind only himself and his successors in office by executive agreements."⁷⁶⁸

Non-Compliance

The US's non-compliance with the conditions of the executive agreement gave the insurgents a platform to govern. In 1895, the Republic of Hawai'i was formed. An extension of the provisional government, the Republic flourished as a result of the politics that were taking place in the US Congress over the situation in Hawai'i. Although President Cleveland had entered into an Executive agreement with the Queen to restore her to the throne, members of the US Congress held the President's order hostage. This allowed the alleged "Republic of Hawai'i" to organize an undemocratic system of governance that bolstered a system of white supremacy. During the years in which the Hawaiian Republic reigned, white supremacy was institutionalized and, unlike the staunch opposition that the Bayonet Constitution incited, resistance proved futile because of the presence of American troops and the protection they afforded to the insurgents. US presence, although unwarranted and in clear violation of international norms, allowed a white minority to take control of the government. Following the overthrow, Sereno

⁷⁶⁸ Quincy Wright, *The Control of American Foreign Relations* (New York: The Macmillan Company, 1922), 235.

Bishop, published a litany of articles that illustrated the new racial conditions of the Hawaiian Islands. In an article published in the *New York Times*, Bishop makes a case for US annexation by describing the new racial conditions that prevailed in the Islands since the overthrow:

Hawaii has done with their royal heathen monkeying. We are a white colony of nearly 25,000, largely American in blood, with ruling American institutions and culture. We have forty millions of property a large commerce, a high civilization, a refined and generous culture. We will now make a government suited to our condition and needs. We can do this as an independent republic. We can do it vastly better as a part of the American Union...What about our Hawaiian natives, 55,000 of them? Just now a majority of them bedevilled by the Palace and the Kahunas, are opposed to whatever the intelligent and progressive whites desire...now that the malign Palace influence is destroyed they will all readily fall into line under the kindly leadership of the very philanthroole [sic] whites.”⁷⁶⁹

Despite its name, the Republic of Hawaii was a despotic government that despite its name restricted citizenship to people of color to enhance the political power of a white minority, many of whom were nationals of foreign countries. The constitution of the Republic marked one of the most oppressive and racially exclusive systems that the Hawaiian Islands ever experienced. The government structure and the laws that were implemented generated a system of white rule in the islands. The draconian provisions made to Hawaiian citizenship during the coup of 1887 were resurrected under the Republic. Like the Bayonet constitution, race held a central part of the Republic’s constitution. Naturalization was restricted to those that could “intelligently explain...in

⁷⁶⁹ *New York Daily Tribute*, "The Feeling In Hawaii," February 16, 1893: 4.

the English Language the general meaning and intent of any article or articles of the constitution.”⁷⁷⁰ Paradigmatically, the constitution offered special citizenship rights to those that supported the illegal rise of the Republic. Pursuant to Section 2 of the constitution of the Republic, “anyone who took active part, or otherwise rendered substantial service in the formation of, and has since supported the Provisional Government... shall be entitled to all the privileges of citizenship without thereby prejudicing his native citizenship or allegiance.”⁷⁷¹ The provisions regarding citizenship began to mirror the racial prerequisites and restrictions of US citizenship laws. Noenoe Silva writes that the laws that framed Hawaiian citizenship during the Republic were regarded to have had the same effect as the infamous Mississippi Laws, which prevented Blacks from voting in that Southern American state.⁷⁷²

Under the Republic, the 1895 Land Act was established which gave incentives to white Americans who settled the islands. According to Donovan Preza, the Republic “intentionally attempted to lure Americans to Hawai’i, with the promise of homesteading.”⁷⁷³ Preza writes that before the Land Act of 1895, “little had been done in the way of introducing Americans from the mainland to these islands... the Act of 1895 was distinctly made with that object in view.”⁷⁷⁴ Kamana Beamer also writes that the purpose of the Land Act was not only to “change existing Land Laws of the Kingdom,”

⁷⁷⁰ *Hawaiian Gazette*, "The New Constitution," June 5, 1894.

⁷⁷¹ "Constitution of the Republic of Hawaii and Laws Passed by the Executive and Advisory Councils of the Republic" (Honolulu: Robert Griend, Steam Book and Job Printer, 1895), 80.

⁷⁷² Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham, NC: Duke University Press, 2004). 136.

⁷⁷³ Donovan Preza, *The Emperical Writes Back: Re-Examining Hawaiian Dipossession Resulting From the Māhele of 1848* (Honolulu: University of Hawaii M.A. Thesis, 2010), 162.

⁷⁷⁴ *Id.*

but it also encouraged “new settlers who could begin to plant and foster the seeds of American Nationalism in the Islands.”⁷⁷⁵

A policy similar in intent and purpose to the Land Act was the Hawaiian Language Ban of 1896, which eliminated funding to public schools that used a Hawaiian language medium for instruction. The Act stated: “The English language shall be the medium and basis of instruction in all public and private schools...Any schools that shall not conform to the provisions of this section shall not be recognized by the Department.”⁷⁷⁶ Beamer writes that the gradual movement of “Hawaiian language out of the public sphere...placed it on unequal standing...in the government.”⁷⁷⁷ The ban was another attempt by the Republic to Americanize the region. Prospective settlers could now be assured that their children could receive an education through English medium instruction.

The Prospect of Annexation

The existence of the Republic of Hawai‘i was widely disputed and challenged by not only the Hawaiian national citizenry but also non-nationals residing in the Kingdom. Even US citizens residing in the Hawaiian Islands poorly characterized and criticized the illegal regime. One American citizen was reported to having been “arrested...handcuffed...and threatened with death” by the Republic for allegedly aiding the counter insurgency.⁷⁷⁸ In another similar case, “Charles E. Dunwell, a British subject, who came from Jamaica to Hawaii...was arrested on suspicion of being a sympathizer

⁷⁷⁵ K.B. Beamer, "Na Wai Ka Mana? 'Oiwī agency and European imperialism in the Hawaiian Kingdom" (Honolulu, HI: Unpublished doctoral thesis, University of Hawaii at Manoa, 2008), 280.

⁷⁷⁶ See. Paul F. Nahoia Lucas, "E Ola Mau Kākou I Ka ‘ōlelo Makuahine: Hawaiian Language Policy and the Courts."

⁷⁷⁷ *Id.*, 287.

⁷⁷⁸ *The San Francisco Call*, "Davies of Hawaii Gets His Freedom," March Friday, 1895.

with the ex-Queen's cause and of knowing something about alleged plots and intrigues to restore her to power."⁷⁷⁹ The government policies of the Republic, which systematized white privileged, always received strong ridicule and organized resistance. The vast majority of the national citizenry, including all of the respective ethnic groups, continually attacked (both violent and non-violent) the very legitimacy of the Republic. For the Republic, annexation to the US was their only way to survive. As was the case for the Provisional Government in 1893, the Republic was becoming politically bankrupt and was in need of US intervention. Yet, unlike 1893, the second occupation of the Hawaiian Kingdom in 1898 was not temporary or conditional. In violation of the Liliuokalani—Cleveland agreement, the Republic attempted to annex the Hawaiian Islands to the US. Despite incoming President McKinley's legal obligation to uphold the commitments of the executive agreement, he attempted to enter into a treaty of cession with the Republic in June of 1897 in Washington D.C.

For the vast majority of the non-white national population, the Republic's strong push to annex the islands to the US was alarming. The aboriginal population had a "sincere suspicion that in the event of annexation they would be treated in social, if not in political matters, like the American negro."⁷⁸⁰ Similarly, the Chinese community in the Hawaiian Kingdom also had grave concerns. The U.S.'s long-standing tradition of anti-Asian sentiment manifested in discriminatory laws such as the 1882 US *Chinese Exclusion Act*, which banned the "Chinese race"⁷⁸¹ from entering the country, and posed

⁷⁷⁹ C.W. Ashford, "Worked Hard to Convict," *The Sanfrancisco Call*, March 15, 1895.

⁷⁸⁰ W.N. Armstrong, "The Native And The Negro," *Hawaiian Gazette*, October Tuesday, 1897.

⁷⁸¹ In the Supreme Court case *Wong Kim Ark*, the court affirmed the US common law rule of birthright citizenship. Wong Kim Ark had been born in the US. In blank date he traveled to China. Upon his return, Wong Kim Ark was denied when attempting to re-enter the country. Despite the Asian exclusion laws Wong Kim Ark was allowed to return because of his status as a natural born American citizen.

a grave threat to Chinese in Hawai'i. Considering such policies, the prospect of the Hawaiian Islands being annexed created the possibility that Hawaiian nationals of Chinese descent would be stripped of their civil and political rights in favor for a new labor group with fewer economic and political ties. One newspaper predicted, "that should Hawaii be annexed to the United States, that the Japanese will occupy every line of manufacturing requiring cheap labor. The Chinese will be shut out by the Exclusion Act, and the manufacturer, whether of sugar or any other product, will demand the Japanese as against any other laborer."⁷⁸²

To protest the annexation treaty, Queen Lili'uokalani traveled to Washington D.C. While traveling across the American continent by train, the Queen questioned the US's logic for wanting to annex her islands. While looking out into the expansive and seemingly endless American landscape, the Queen questioned the US's racial and legal logic for occupying her Kingdom:

"And yet this great and powerful nation [US] must go across two thousand miles of sea, and take from the poor Hawaiians their little spots in the broad Pacific, must covet our islands of Hawaii Nei, and extinguish the nationality of my poor people, many of whom have now not a foot of land which can be called their own. And for what? In order that another race-problem shall be injected into the social and political perplexities with which the United States in the great experiment of popular government is already struggling? in order that a novel and inconsistent foreign and colonial policy shall be grafted upon its hitherto impregnable diplomacy?"⁷⁸³

⁷⁸² *The Independent*, "When Annexation Comes," September 1, 1897.

⁷⁸³ Liliuokalani, *Hawaii's story by Hawaii's Queen* (Boston: Berwick and Smith, 1898).

When the Queen arrived in Washington D.C. in June of 1897 she filed a diplomatic protest with the US State Department. In the protest, the Queen discredited the legitimacy of the Republic to enter into a treaty of cession with the US. The Queen declared that “such a treaty be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties...”⁷⁸⁴

The protests of the men and women’s Hawaiian patriotic leagues added to the Queen’s objections. In 1897, a monster petition was submitted to the US Congress with the names of more than 21, 000 signatures including both Hawaiian nationals and resident aliens.⁷⁸⁵ In part the petition read, “We, the undersigned, native Hawaiians and residents...who are members of the Hawaiian Patriotic League...and others who are in sympathy with the said League, earnestly protest against the annexation of the Hawaiian Islands to the said United States of America in any form or shape.”⁷⁸⁶ While the aboriginal population both pure and part comprised the majority of those that signed onto the monster petition, nearly 200 resident aliens of various nationalities also placed their names.

⁷⁸⁴ *Id.* , 354.

⁷⁸⁵ See Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham, NC: Duke University Press, 2004), 157.

⁷⁸⁶ *The Independent*, "Anti-Annexation," September 13, 1897.

The many sides of the Annexation debate

The thought of extending US citizenship to the “hordes of Asians”, the “ignorant Portuguese”, “Natives and half-breeds”⁷⁸⁷ as reported in newspapers across the United States, was considered a travesty to many white Americans. Yet similarly, the vast majority of the Kingdom’s multi-ethnic citizenry remained adamantly opposed to annexation while also voicing concerns of the prospect of being exposed to the racialized standards of US society. Such opposition was reflected in American journalist Miriam Michelson’s provocative article in the San Francisco Call entitled *Strangling Hands Upon A Nations Throat*. While in Hawaii, Michelson observed, “that of the 100,000 people on the islands... Of these not 3 percent have declared for annexation. To the natives the loss of nationality is hateful and aberrant.”⁷⁸⁸ Hawaii based newspapers also weighed in on the prospect of annexation and the effect that it would have on Hawaii’s societal dynamic. The Hawaiian Gazette in 1897 noted that the aboriginal population in particular had “sincere suspicion that, in the event of annexation, they will be treated in social, if not in political matters, like the American negroes” and the American Indian.⁷⁸⁹

Americans that opposed annexation for reasons other than for its illegality did so on the basis of upholding white racial purity in America, in accord with the laws that restricted US citizenship. This sentiment resonated in newspapers across the United States leading up to annexation. An article in the *Boston Transcript* echoed the anxiety around the prospect of extending US citizenship to the multi-ethnic population of Hawaii.

The article remarked, “Annexation would at once politically Americanize 21,000

⁷⁸⁷ The San Francisco Call, "Opposition To The Annexation OF THE Islands: Unanimous Sentiment Among Southern Californians That the Bars Must Not Be Let Down for the Asiatic Hordes in Hawaii" (San Francisco, November 1, 1897).

⁷⁸⁸ Miriam Michelson, "Strangling Hands Upon A Nation's Throat ," September 30, 1897.

⁷⁸⁹ S. Armstrong, "The Native and The Negro," *Hawaiian Gazette*, October 19, 1897.

Chinamen, 31,000 Hawaiians and half-breeds, a large number of Japanese... and other various nationalities who could hardly meet the conditions of the restrictive [US] immigration measures.”⁷⁹⁰

Similarly, citizenship concerns spurred US Congressional debate in which aspirations of imperialism were pitted against maintaining a semblance of racial purity in the United States. The racially charged rhetoric of Southern Congressional delegates was quick to remind their colleagues that annexation could amount to “unrestricted immigration into the United States of non-assimilable [sic] Hawaiians and Asians.”⁷⁹¹ Expressing this line of thought, Senator Gibson of Louisiana posited that Canadians or Europeans were better candidates for American citizenship because they resemble “ourselves, with firesides, with laws, and with religion, with wholesome traditions.”⁷⁹² People from Hawaii Gibson furthered, would “test the powers of our digestion, of our institutions.”⁷⁹³ The racial tenor and tone of these debates continued after annexation and into the territorial era where discussions of citizenship and suffrage remained focused on the question of how white racial superiority would be maintained. On the US house floor, Representative Williams of Missouri commented on the matter of suffrage in the islands. He declared, “Whenever I am faced with the race problem...I stand for white supremacy. I stand for white supremacy in Hawaii as I stand for it in Mississippi.”⁷⁹⁴ Although the racial tone of Congress was not always as sharp as Southern congressional delegates such

⁷⁹⁰ The San Francisco Call, "Annexation Scheme Foredoomed: The Reputable Press of the Nation Denounces in Thunder Tones the Plot to Rob and Enslave the People of Hawaii" (San Francisco, December 16, 1897). In this newspaper edition the Call publishes excerpts from more than 25 newspapers across America that voices opposition to annexation.

⁷⁹¹ Gregory Lawrence Garland, "Southern Congressional Opposition to Hawaiian Reciprocity and Annexation, 1876-1898" (University of North Carolina, 1983 Masters Thesis), 29.

⁷⁹² *Id.*

⁷⁹³ *Id.*, 30

⁷⁹⁴ The Independent, *The Hawaiian Bill*, April 17, 1900.

as Williams, notions of racial hierarchy and white supremacy as it existed in the Jim Crow South would nonetheless become a prevalent part of the dialogue concerning citizenship in the Hawaiian Islands following annexation.

US senators Pettigrew and Dubois came to the Hawaiian Islands in 1898 to investigate the political climate of the islands regarding annexation. Both congressional members aligned with the sentiment of the national population and spoke publically against annexation. In one of these speeches, Senator Du Bois asserted:

“Unless some such plan be followed, something showing regard to some kind for the wishes and sentiments of the inhabitants of the islands, constant trouble will follow annexation, and we will be compelled to keep an army and navy on the islands to maintain the government we force on these people. For annexation against the will of the people against their almost unanimous protest, would be an outrage against all our history and policy. The Islands would be a source of weakness for the US government...what can the future promise but attempts to overthrow the government thus forced upon them?”

The Forceful Annexation

The emphatic and widespread protest against the treaty of annexation precluded the Senate from accumulating the necessary votes to ratify a treaty of cession. However, less than a year after the second attempt to annex the Islands had been defeated, the US Congress passed a Resolution “To provide for annexing the Hawaiian Islands to the United States.”⁷⁹⁵ Although US Congressional Acts do not have “extraterritorial

⁷⁹⁵ *Newlands Resolution No. 55*, 30 Sta. atL. 750; 2 Supp. R.S. 895 (July 7, 1898).

operation”⁷⁹⁶ beyond their own borders, President McKinley signed the *Newlands Resolution* on July 7, 1898, purportedly annexing Hawaii. Despite being in conflict with nearly every legal body and principle of law, the *Newlands Resolution* became the fictive “legal” basis on which Hawaiian sovereignty was supposedly extinguished, and US sovereignty in the islands emanated. Hawaii’s status as an internationally recognized sovereign state and the rights afforded to its citizens, were concealed in an effort to fortify military operations in the Philippines in a war against Spain. According to international legal scholarship, the acquisition of territory through cession in the form of a bilateral agreement between two states may result in the extinguishment of a state’s citizenship and the incorporation of citizenship to the acquiring state.⁷⁹⁷ However, the alleged “treaty of annexation” that cedes the Hawaiian Kingdom to the US has never physically existed, yet became the quintessential fabrication from which the US would come to assert legal jurisdiction over the national citizenry of the Hawaiian Kingdom.

Nearly three weeks after the *Newlands Resolution* was enacted, the San Francisco Call published an article illustrating the responses to Congresses’ aberrant political decision to seize the Islands. Of the varying responses, the prophetic words of “Mohailani” provided a strikingly accurate, yet chilling forecast of the future of Hawai‘i.

You ask me how we Hawaiians have received the news which has deprived us of our country and our nationality. I can only say that my countrymen are yet unable to realize the fact that the great republic which boasts of its democratic and republican principles has committed the unholy act which in history will be known as the “Rape of Hawaii.”

⁷⁹⁶ See *U.S. v Belmont*, 301 U.S. 324, 332 (Supreme Court, 1937).

⁷⁹⁷ Lassa Oppenheim, *International Law* (London: Longmans, 1967), 556.

We had hoped that the joint resolution would be defeated in the Senate, and we were stunned when we learned of the vote, which results in the annihilation of our beloved country and in the driving to the wall of all Hawaiians. I can assure you that there is not one Hawaiian who in his heart favors annexation. What would you think of any man or woman who with indifference could see the flag of his or her country go down and their individually absorbed by a foreign race which, whatever you may say, does look down on us as their inferiors and despises our color and our way of living?

I can tell you, and few men have the opportunity of knowing the Hawaiians as I do, that many tears were shed when the news by the Coptic reached the homes of those who know no other country than these islands, which once were justly called the Paradise of the Pacific. We cannot be happy under our new conditions. We will feel like strangers among the people who will rule us, and with whose ideas, mode of living and political principles we cannot harmonize.

Our women feel it even worse than we men do. The teachings of the New England missionaries, the rum they brought with them, the diseases following in their train, have enervated the Hawaiian men. We can talk, don't you forget it, but we cannot fight. If we had yet the fighting qualities of our ancestors, the overturn of our monarchy would never have taken place, and during the past years we would have been entitled to interference in the name of humanity in our struggles against the usurpers.

Our women have shown more energy, more solid patriotism and more strength than we have. The women of Hawaii to-day stand as a unit in their hatred toward America and everything American. And can you blame them? They see before them a future where their children will be forced into competition with your pushing, rushing, money-

grabbing race. The dolce far niente of Hawaii must disappear and the struggle for life will begin in which the strongest will survive, and the gentle, indolent, easy-going Hawaiian will have no show in that battle for life, and who can blame us for feeling sad over a future which necessarily means destruction of our race?

I cannot deny that one great reason for our opposition to annexation is that we fear that we will be called “niggers” and treated as you do that class in your “free” country. We have been assured that such will not be the case, but experience tells us differently. Our countrymen who have traveled in the States have often been subjected to great humiliation and insult on account of their skin, and we expect that the day will come when we will risk similar affronts right in our streets, and remember that we have neither the wealth nor the inclination to strike our tents in other climes. We have no other home than Hawaii, and that home we have lost.

And what will our position be in the political and social life of these islands after your flag floats over the palace of our chiefs?

Senator Morgan of Alabama told a large assembly of Hawaiians, when he visited here, that he could promise them equal political rights with any American in any State of America. He told us that each of us would have as good a chance to become President of the United States as has Grover Cleveland. (I believe him in that.) He said that Hawaii would be a State, and that by the power of our majority we would control the affairs of Hawaii and enjoy true self-government. He paid a glowing tribute to our intelligence and excellent qualities, and told us how he loved “colored” people.

We didn’t believe a word of what that ex-slave driver from Alabama said, and there is no man more despised and loathed among the

Hawaiians than Senator Morgan, who now is to frame a government for Hawaii.

The Hawaiians have at present no intention of taking any active interest in the government of their country. They feel like the children of Israel did when they sat down in exile and bemoaned their fate. What has happened cannot be undone, but none of us can see what your great country has gained by adding to the Union such unwilling and hostile people. We are not savages, as your Indians of Alaska, or ignorant as your "greasers." For nearly a century we have conducted a fairly good government and lived in harmony with the white man who benefited from our hospitality and whose descendants now rob us of our country.

Go ask any man, woman or child what he thinks to-day of the "haole" (the foreigner), and you will get an answer in a very emphatic and plain language.

When Chinese and Japanese coolies are stopped from coming here as contract laborers we will have the satisfaction of laughing at the men who make their money out of slave labor and who brought on annexation to gain the benefit of the sugar bounty. But that satisfaction is very slim when we realize the fact that we will be trodden under foot by the invaders, and that when your flag, which we admire in its proper place, waves over Hawaii, to pronounce the fact that we are homeless and that our country has ceased to exist.⁷⁹⁸

The significant function that Kingdom citizenship laws played in suppressing racial hierarchy in the 19th century were annulled by annexation and the establishment of the Territory of Hawaii. The racially inclusive citizenship laws of the Hawaiian Kingdom that once afforded civil and political rights to people of color, were replaced by a legal

⁷⁹⁸ "Haywood Gratified, Mohailani Very Sad," July 7, 1898.

system bent on doing the opposite. The absence of Hawaiian sovereignty and aboriginal voices in government precipitated the institutionalization of American racial ideology. In the century following annexation, principles of white supremacy settled into nearly every social, educational, cultural, economic, political, and legal institution in the islands.⁷⁹⁹

Lawrence Fuchs explained, “the essential purpose of the haole elite for four decades after annexation was to control Hawaii; the major aim for the lesser haoles was to promote and maintain their privileged position...”⁸⁰⁰

Attempt to alter the demographics of the national citizenry

The last official census of the Kingdom taken three years before the overthrow, recorded a national population of 48,107. The ethnic break down of the national population included 40,622 pure and part Aborigines, 4,117 Portuguese, 1,701 Chinese and Japanese, 1,617 Whites, and 60 Others.⁸⁰¹ When considering the rule of law and the clear string of unlawful events that led to the US’s acquisition of Hawaii, legal questions begin to surface as to how the national populations citizenship status as Hawaiian was extinguished. Article 4 of the *Organic Act* stated that “all persons who were citizens of the Republic of Hawaii on August twelfth, eighteenth hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.”⁸⁰² Of course, this article in the Organic Act, which is the principal clause that allegedly articulates the criteria for American citizenship in Hawai‘i, is fettered by a host of legal contradictions.

⁷⁹⁹ For an examination of institutional racism following annexation see part II of Michael Haas, *Institutional Racism: The Case of Hawaii* (Wesport, CT: Praeger, 1992), 99.

⁸⁰⁰ Lawrence Fuchs, *Hawai‘i Pono: A Social History*, (Harcourt Brace and World, 1961), 68.

⁸⁰¹ 1890 Census, Hawaiian Kingdom

⁸⁰² Hawaiian Organic Act, Art. 4.

The gradual decay of the Kingdom government, coincided with the largest migrant waves to arrive in the islands. In particular, from 1894 to 1908, approximately 125,000 Japanese were brought to Hawaii to fill the labor demands of white sugar planters who now had a dominant voice in government.⁸⁰³ Prior to their arrival after the overthrow the Japanese population in Hawaii was relatively small. Census records indicate that in 1884 there were only 116 Japanese residing in Hawaii as either resident aliens or Hawaiian nationals.⁸⁰⁴ Along with the Japanese, from 1895-1898 “ten thousand new Chinese contract laborors [were] brought in...on the condition that unless they work in the rice and sugar industries or as domestic servants they were to be returned to China.”⁸⁰⁵ The restrictive conditions placed on this new wave of Chinese laborors was to insure that they could not experience the socio-economic mobility that Chinese who came before experienced.

With American racial ideology firmly instituted during the occupation, white Americans flooded the islands. From a population of merely 2,226⁸⁰⁶ in 1896, to 564,323 in 2010.⁸⁰⁷ Today, the white population comprises 25% of the total population, more than any other group in Hawai‘i. Whites are also near the top of the socio-economic ladder. The Japanese population, characterized as the “model minority”⁸⁰⁸, makes up

⁸⁰³ Gary Y. Okihiro, *Cane Fires: The Anti-Japanese Movement in Hawaii, 1865-1945* (Philadelphia, PA: Temple University, 1991), 27

⁸⁰⁴ Robert C. Schmitt, *Historical Statistics of Hawaii* (Honolulu, HI: The University of Hawaii Press, 1977), 90.

⁸⁰⁵ Clarence E. Glick, *Sojourners and Settlers: Chinese Migrants in Hawaii* (Honolulu, HI: University of Hawaii Press, 1980), 223.

⁸⁰⁶ Thos G. Thrum, *Hawaiian Almanac and Annual*, Vol. 13 (Honolulu, 1903), 18.

⁸⁰⁷ Lindsay Hixson, Bradford B. Hepler and Myoung Ouk Kin, *The White Population: 2010*, Census Briefs, U.S. Department of Commerce (Washington D.C.: U.S. Census Bureau, 2011), 8.

⁸⁰⁸ Johnathan Okamura, *Ethnicity and Inequality in Hawaii* (Philadelphia: Temple University Press, 2008), 126.

approximately 312,292, nearly 23% percent of the population.⁸⁰⁹ As the first large migrant wave since annexation, Japanese were the first to climb to the top of the political and socio-economic scale. Today, the Japanese are at the top of nearly all socio-economic and political indicators. The second largest, and fastest growing ethnic group in Hawai‘i today are Filipino. With a population of nearly 342,095, the Filipino community comprises almost 25% percent of the population.⁸¹⁰ Like the Japanese, the Filipino migration wave arrived in the years following annexation.⁸¹¹ Unlike the Japanese, Filipino’s have not made the same kind of socio-economic and political strides.⁸¹²

The large waves of Asian laborers brought into the Islands by the planters were in conflict with the vision that others had about the future of Hawai‘i. This tension was articulated by Edward P. Irvin’s article titled “Importing A Population” in the Democrat Newspaper in 1910.

No good can result from an attempt to fuse the blood of the white man with that of the yellow and the brown. Yet the sugar planters of Hawaii, while talking enthusiastically about the Americanization of the the Territory, have filled it up with Chinese and Japanese, Porto Ricans, Portuguese, Spaniards, Filipinos and Russians, and would have the rest of the community believe that from this mixture of incompatibles they can concoct an American citizenship worthy to rank with the citizenship of other communities.⁸¹³

⁸⁰⁹ US Census 2010

⁸¹⁰ Ben Gutierrez, *Hawaii News Now*, 2011, www.hawaiinewsnow.com/story/14926806/filipinos-now-second-largest-population-group-in-hawaii (accessed Nov 28, 2012).

⁸¹¹ Harry H.L. Kitano and Roger Daniels, *Asian Americans: Emerging Minorities*, 2nd (Englewood Cliffs, NJ: Prentice-Hall, 1995), 81

⁸¹² Okamura, 53.

⁸¹³ Edward Irwin, "Importing A Population," *The Democrat*, October 28, 1910: 3, 1.

While many restrictive voting measures were contemplated, the Organic Act limited suffrage to those “able to speak, read and write the English or Hawaiian Language.”⁸¹⁴ This had a severe effect on the large waves of Japanese, Filipinos, and other ethnic groups, many of which arrived either during the political upheaval of the Hawaiian Kingdom or after the Territorial Government was instituted, many of whom could not meet the English or Hawaiian literacy criteria and were therefore restricted from voting. Evelyn Nakano Glenn explains, “as late as 1905...not a single Japanese resident in Hawaii was registered to vote.”⁸¹⁵ Despite the obstructions that precluded certain ethnic groups from voting, the organizational structure of the Territorial Government made the right to vote even less significant. While the Territorial Legislature was elected by qualified voters, both the Territorial Governor and the Territorial Supreme Court were “appointed by the President, by and with the advice and consent of the Senate of the United States...”⁸¹⁶ And while the Organic Act provided for a Territorial delegate to be elected to Congress to sit with the House of Representatives, “Every such delegate...[had] the right of debate, but not of voting.”⁸¹⁷ Many shared the sentiment of John Kuakini Adams Cummings, who in 1903 remarked, “The action of the Congress of the United States in annexing the islands is not and never will be approved by the Hawaiian people in general... You have made us American citizens against our will...”⁸¹⁸

⁸¹⁴ *Id.* , Hawaiian Organic Act, Art. 60.

⁸¹⁵ Evelyn Nakano Glenn, *Unequal Freedom: How race and gender shaped American citizenship and labor* (Cambridge, MA: Harvard University Press, 2002), 204,

⁸¹⁶ *Id.* , Hawaiian Organic Act, Art. 82.

⁸¹⁷ *Id.* , Hawaiian Organic Act, Art. 85.

⁸¹⁸ Hilo Tribune, "A Voice Lifted Up: What one Witness Testified to Before the Senatorial Commission," January 23, 1903: 1-8, 5.

Along with implanting a foreign settler population, the US Government made overt attempts to Americanize the Hawaiian Kingdom's educational system. In 1906, the territorial government adopted a patriotic program, which attempted to systematically erase the history of the Hawaiian Kingdom. The Patriotic Program provided a detailed list of American national holidays and historical figures that school children were to learn about, observe, and celebrate. The program was designed "as a means of inculcating patriotism in the schools" by observing "those notable national days in the schools, as tending to inculcate patriotism in a school population that needed that kind of teaching..."⁸¹⁹ One daily exercise included the following protocol:

Formation and Salute To (American) Flag; Patriotic Songs; Patriotic Topics; Special Anniversary dates. After saluting the American flag, children were to "stand at their seats and repeat in concert the following salutation: 'We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!'"⁸²⁰

Eileen Tamura writes that "the Americanization campaign in Hawaii...grew from a subtler anxiety over the future of American control of the territory."⁸²¹ Michael R. Olneck has characterized the Americanization movement in Hawai'i as "an effort to secure cultural and ideological hegemony through configuration of the symbolic order." Such an order, Olneck continued, effectively constrained "the field of legitimate action and choice."⁸²² In regard to the aboriginal population, Jon Osorio writes that "annexation was not itself the thing that separated Hawaiians from their identities. It was what came

⁸¹⁹ *Hawaiian Gazette*, "Patriotic Program For School Observance," April 3, 1906.

⁸²⁰ *Id.*

⁸²¹ Eileen Tamura, *Americanization, Acculturation, and Ethnic Identity: The Nisei Generation* (Illinois: University of Illinois Press, 1994), 57.

⁸²² *Id.*

as a consequence of the takeover—the military occupation, the American school system, and the brutal evictions of our people from the public lands and the large estates over the next century—that disfigured us as a people.”⁸²³

Statehood

Throughout the territorial era, the inhabitants of the Hawaiian Islands were forced to conform to the standards and conditions of a foreign nationality. The Americanization project met its desired outcome with the enactment of the statehood bill in 1959. Like all the other illegal regimes that the US occupation had given rise to, the “State of Hawaii” imposed another form of American citizenship. One that was equivalent to the citizenship of the other states of the American Union. The passage of the Statehood Act in 1959 was preceded by a plebiscite of the residents of the islands, which included the progeny of Hawaiian nationals of different ethnicities but also the settler population that had come to reside in the islands of 1898. The special ballot included three propositions: 1. Shall Hawaii immediately be admitted into the Union as a state? ; 2. The boundaries of the State of Hawaii shall be as prescribed in the Act of Congress approved March 18, 1959...are hereby irrevocably relinquished to the United States? ; 3. All provisions of the Act of Congress approved March 18, 1959...made to the State of Hawaii are consented to fully by said State and its people?”⁸²⁴ In June, the US Secretary of State announced the results, 132,773 votes were casted in favor of the conditions of Statehood, and 7,971

⁸²³ Jon Osorio, "On Being Hawaiian," *Hulili: Multidisciplinary Research on Hawaiian Well Being* (Kamehameha Schools) 3 (2006): 19-25, 21.

⁸²⁴ State of Hawaii, "Statehood Hawaii," *Statehoodhawaii.org*, June 27, 1959, stathoddhawaii.org/images/pebballot.jpg (accessed March 3, 2014).

opposed it.⁸²⁵ For the majority of the population, including the aboriginal population, statehood was the only option that offered relief from the despotic Territorial era.

Lorenz Gonschor writes that some aboriginals spoke out against statehood and were advocates of restoring Hawaiian independence rather than joining the American Union, yet none were “successful in forming a permanent political movement.”⁸²⁶ Others such as Walter Heen entered Government and served as “legislator, city councilman, judge, and finally chairman of the Democratic Party.” Like most of that generation, little was known about the specific legal circumstances of the overthrow or of the injustice that had occurred. Coffman writes, however, that individuals such as Heen had a deep sense of democracy in the Islands. “His grandparents’ generation brimmed with Hawaiian royalists. His Chinese grandfather, Chung Muk Hin, was a Hawaiian subject that had married Heen’s Hawaiian grandmother.”⁸²⁷ Heen’s actions were a part of a string of Hawaiians, among them Prince Kūhiō and Robert Wilcox, that worked within the illegal regime to foster change.

The Sovereignty Movement

Transfer of US foreigners and other nationalities into the territory skyrocketed after statehood. In 1900, the population was 154,001. By the 1960’s and 70’s the population had increased exponentially to nearly three quarters of a million people. The seemingly never-ending inundation of settlers triggered a cultural renaissance. George Kanāhele wrote that the renaissance was a “‘psychological renewal,’ a purging of feelings of

⁸²⁵ *Id.*

⁸²⁶ Lorenz Gonschor, *Law As A Tool Of Oppression And Liberation: Institutional Histories And Perspectives on Political independence In Hawai’i, Tahiti Nui/French Polynesia And Rapa Nui* (Honolulu: M.A. Thesis University of Hawaii Manoa, 2008), 167.

⁸²⁷

alienation and inferiority”, “a reassertion of self-dignity and self-importance,” grounded in a “renewed interest in history.”⁸²⁸ As Agard and Dudley commented, the renaissance ushered in an era where “it was ok to be Hawaiian again.”⁸²⁹

Along with a renewed sense of cultural identity, a political arm of the renaissance emerged. The “Hawaiian Sovereignty Movement” as it was called carved out a space for ethnic Hawaiians within the fabric of American law and society. As Ty Tengan explains, “During the late 1960’s and early 1970’s, a renewed sense of identity and history as to what it meant to be Hawaiian began to emerge.”⁸³⁰ Drawing from the work of John Hutchinson, Tengan employs the term “cultural nationalism” to characterize this renewed sense of identity. Driven by the ideals of a revitalized culture, this form of nationalism “was born in a period of economic transformations, political upheavals, civil disobedience, anti-war protest, assertions of minority rights in the United States, and decolonization movements internationally.”⁸³¹ A reflection of the American socio-political landscape of the time, Hawaiian nationalist sentiment, as Davianna McGregor points out, “galvanized into a movement for Native Hawaiian recognition and sovereignty.”⁸³²

The term nationalism as Earnest Gellner states occurs when “The political boundary of a given state...fail[s] to include all the members... Nationalist sentiment is the feeling of anger aroused by the violation of the principle, or the feeling of satisfaction

⁸²⁸ Tengan from Kanahale

⁸²⁹ Michael Agard and Keoni Dudley, *A Call for Hawaiian Sovereignty* (Honolulu, HI: Nā Kāne O Ka Malo Press, 1990). Michael Agard and Keoni Dudley, *A Call for Hawaiian Sovereignty* (Honolulu, HI: Nā Kāne O Ka Malo Press, 1990), 107.

⁸³⁰ Ty P. Kawika Tengan, *Native Men Remade: Gender and Nation in Contemporary Hawaii* (Durham and London: Duke University Press, 2008), 53.

⁸³¹ *Id.*

⁸³² Davianna Pomaika'i McGregor, *Na Kua'aina: Living Hawaiian Culture* (Honolulu, HI: Univerisity of Hawaii Press, 2007), 48.

aroused by its fulfillment.”⁸³³ Gellner writes that “nationalism does not restore old nations, it creates new ones.”⁸³⁴ Appearing to reflect similar struggles, histories, and forms of oppression, the Sovereignty Movement constructed a political identity that borrowed from other movements such as the African American civil rights movement, American Indian Movement, the Maori of New Zealand, and the native population of Tahiti, influenced the objectives and mission of the Sovereignty Movement. The problem however, was that the political and legal history of these groups, although ostensibly alike, sharply differed from Hawaii. Factions of the Sovereignty Movement, pushing for varying forms of self-determination and independence from the US, employed civil rights language and anti-colonial rhetoric to stake their claims.

Informed by a growing sense of injustice, Hawaiian nationalists began to reference the overthrow of the Hawaiian Kingdom in 1893 as the catalysis for claims and reparations that could be ascertained through the processes of US law. Neal Milner explains, “native Hawaiians were at times eager to use the courts to resolve disputes for which they no longer had effective dispute-resolving mechanisms.”⁸³⁵ From battles regarding the military usage of Kaho‘olawe, to the Pele Defense Fund, “Law [was] used to resist further encroachment on threatened cultures.”⁸³⁶ Publications such as the *Native Hawaiian Rights Handbook* provided a language of rights to “defenders of threatened Hawaiian culture as a way of protecting culture.”⁸³⁷ Since the 1960’s “over 160 [US] Congressional statutes providing separate programs for Native Hawaiians or including

⁸³³ Ernest Gellner, *Nations and Nationalism*, 2 (New York: Cornell University, 2006). 1.

⁸³⁴ *Id.*

⁸³⁵ Neal Milner, "Legal Culture in Hawaii," in *Portion of Paper on Political Culture in Hawaii written by Richard Pratt, Deane Neubauer for the Ethnic Studies Conference* (Honolulu: Unpublished, 1995), 1.

⁸³⁶ *Id.*

⁸³⁷ *Id.*

them in [US] laws and benefit programs that assist other native people.”⁸³⁸

While it is possible to say these laws and policies had benevolent intentions to address “the cultural, needs, and concerns of the Native Hawaiians,”⁸³⁹ Melissa Nobles writes that it is also sought to put on the record that the “U.S. government bore no responsibility for the overthrow of the sovereign Hawaiian Kingdom.”⁸⁴⁰ In her book, *The Politics of Official Apologies*, Nobles writes that US policy such as the “*Apology Resolution*”, acknowledges a moral responsibility to address the consequences that resulted from the overthrow, while at the same time ignoring any legal obligation. Nobles explains that this crafty policy language was also evident in the 1980 report Native Hawaiian Study Commission (NHSC). Although the report “offered policy recommendations for improving the collective conditions of Native Hawaiians” Noble contends that it did so “by disconnecting present-day political disadvantage from historical disempowerment.”⁸⁴¹

The staggering socio-economic condition that the occupation had caused, spurred the aboriginal population to pursue certain rights that differed from other “State of Hawaii” citizens. Forced to conform to the occupier’s civil rights framework, the aboriginal population constructed a political identity that further entrenched their national status within the illegal regime. Hundreds of US Congressional Acts accompanied by politically warped policy narratives reconfigured the status of the aboriginal population by forcing a foreign citizenship on to them. The US not only imposed a foreign nationality onto the Hawaiian national citizenry, but it further solidified the occupation

⁸³⁸ Melody K. MacKenzie and Jon M. Van Dyke, "An Introduction to the Rights of the Native Hawaiian People," *Hawaii Bar Journal*, July 2006.

⁸³⁹ Nobles, M. (2008). *The Politics of Official Apologies*. New York: Cambridge University Press, 90.

⁸⁴⁰ *Id.*

⁸⁴¹ *Id.*

by making the aboriginal population, which was the largest ethnic group at the time of occupation, dependent wards of the US, the occupying state. The occupation, as Professor of Hawaiian Studies Kanalu Young put it, converted Hawaiian nationals of aboriginal descent into a “largely ignored and long occupied political minority. A minority that has found it necessary to react against contemporary injustices foisted upon them by the occupier from an identity based in legal quicksand.”⁸⁴²

Legal Limits of a Colonial Discourse analysis

The theoretical framework of colonialism and post-colonialism had been the primary optic through which the bulk of scholarly analysis and inquiry regarding history, politics, law, and identity in Hawai‘i has been produced. The framing of Hawaii’s legal and political history within the context of a colonial discourse analysis has demonstrated its “legal” limits and constraints.

Earlier scholars such as Haunani-Kay Trask, provided the analytical building blocks that set into motion an entire discourse dedicated to penetrating the hierarchical power structure of contemporary Hawai‘i in part by comparing the history of the islands to territories that had been formally colonized. The development of scholarship from Trask and a wide range of others was primarily inspired by the work of “Franz Fanon, Michel Foucault, and Edward Said, who examined how the relations of power and culture forged during the colonial era have shaped the present.”⁸⁴³ Trask claimed, “Modern Hawai‘i, like its colonial parent the United States, is a settler society; that is, Hawai‘i is a society in which the indigenous culture and people have been murdered, suppressed, or

⁸⁴² Kanalu Young, "Kuleana: Toward a Historiography of Hawaiian National Consciousness, 1780-2001," *Hawaiian Society of Law and Politics*, Summer 2006: 1-33, 10.

⁸⁴³ Sally Engle Merry, *Colonizing Hawaii: The Cultural Power of Law* (New Jersey: Princeton University, 2000), 11.

marginalized for the benefit of settlers who now dominate our islands.”⁸⁴⁴ More recent scholars such as Kehaulani Kauanui added to this theory by insisting “The relationship between U.S. colonialism and indigeneity is critical to a meaningful discussion of why the relation between blood and land differed so dramatically for black people and American Indians and for Asian people and Hawaiians.”⁸⁴⁵ Such analyses have been instrumental in deconstructing the intersections of power and race within the occupation.

Reliance on a colonial/post-colonial method of analysis, however, has created over-generalized binaries—colonizer-colonized, native-haole, dominance-resistance, that has “too readily license[d] a panoptic tendency to view the globe through generic abstractions void of political nuance.”⁸⁴⁶ As Anne McClintock warns, attempting to rally around a common global “panoptic past... runs the risk of a fetishistic disavowal of crucial international distinctions that are barely understood and inadequately theorized.”⁸⁴⁷ Because the primary method of analysis has been confined to colonial and post-colonial theories, the history of the Hawaiian Kingdom as an internationally recognized state comprised of a diverse multi-ethnic citizenry, has been warped to fit within a global *indigenous peoples* movement and narrative. Linda Tuhiwai Smith explains that a global “social movement of indigenous peoples occurred from the 1960’s [along with] the development of an agenda or platform of action which has influenced indigenous research activities.”⁸⁴⁸ Aboriginal scholars and activists in Hawai’i embraced this trend

⁸⁴⁴ Haunani Kay Trask, *From a Native Daughter: Colonialism and Sovereignty in Hawaii* (Honolulu: University of Hawaii Press, 1999), 25.

⁸⁴⁵ Kehaulani Kauanui, *Hawaiian Blood; Colonialism and the Politics of Sovereignty and Indigeneity* (Durham: Duke University, 2008), 18.

⁸⁴⁶ Anne McClintock, *Imperial Leather: Race, Gender, and Sexuality in the Colonial Contest* (London: Routledge, 1995), 11.

⁸⁴⁷ *Id.* 12

⁸⁴⁸ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London & New York: Otago Press, 1999), 108

during the latter half of the 20th century. The overthrow of the Hawaiian Kingdom in 1893 became the catalyst to substantiate claims that were expressed through anti-colonial rhetoric coupled with Marxist reasoning that sought to undermine the legitimacy of Hawai'i's political power structure. This spawned an ambiguous sense of nationalism that while referencing the illegalities of the overthrow formulated an identity that was theoretically detached from the identity of the national population that actually existed during the Kingdom era. As Trask describes, "Out of anti-eviction and other land struggles in rural areas threatened with urbanization was a born a Native rights movement, similar to movements of other colonized Native peoples, such as the Tahitians and the Maori, in the Pacific."⁸⁴⁹ Notions of culture, ethnicity, and even race, became the proxy for identity formation. During this time, the Hawaiian Kingdom's rich and complex political and legal history was limited to a small set of published works that reduced the Kingdom era to simplified variations of a manifest destiny. Over simplified perceptions of history led to conceptual formulations of an aboriginal identity that reflected the struggle of other colonized people and not their own history.

Although a colonial/post-colonial analysis may have provided a glimpse into the political dynamics that have effected identity formation over the past century, such analyses are limited in scope as they are not informed by positivist methodologies, which "demands rigorous tests for legal validity."⁸⁵⁰ Because a colonial/post-colonial analysis is ideologically at odds with law, it is devoid of legal nuance. Therefore the conceptualization of law, from this viewpoint, has been minimized to a simplistic variant

⁸⁴⁹ Haunani Kay Trask, *From a Native Daughter: Colonialism and Sovereignty in Hawaii* (Honolulu: University of Hawaii Press, 1999), 66.

⁸⁵⁰ Steven R. Ratner and Anne-Marie Slaughter, ed., *The Methods of International Law*, ed. Steven R. Ratner and Anne-Marie Slaughter (Washington, D.C.: The American Society of International Law, 2004), 26.

that perceives law simply as an “instrument of violence, conquest, and subjugation of hapless natives.”⁸⁵¹ This narrow calculation of law, according to legal scholar Assaf Likhovski, induces an “essentialist dichotomy between ‘the colonizer’ on one hand and ‘the natives’ on the other...law is thus reduced to a single aspect of its nature—its use in the service of power.”⁸⁵² This essentialist dichotomy, coupled with a narrow perception of law has been the basis from which identities are often formulated to resist American hegemony. The framing of law from this perception is problematic, as it has caused many analyses to fall way short of capturing the full legal and political scope associated with the US in Hawai‘i. Paradoxically, scholars that have relied upon a colonial/post-colonial method of inquiry reinforces, albeit unconsciously, a legacy of US rule in Hawai‘i. Yet, because Hawai‘i was treated as a colony, both physically and psychologically, many of the classic symptoms associated with colonialism are a pervasive feature in Hawai‘i society today. As a result, colonial and post-colonial frames of analysis are of relevance yet such analyses should be properly contextualized to consider Hawai‘i’s unique legal and political status.

Conclusion

Given that there has never been a treaty of cession between the Hawaiian Kingdom and the US, it is presumed that Hawaiian sovereignty was never extinguished and continues to remain intact today. According to international law, particularly the “presumption of continuity” rule provides for the continuity of Hawaiian Sovereignty. A.A. Yusuf writes, “The presumption of continuity aims to protect the state from

⁸⁵¹ Likhovski , 7

⁸⁵² *id.*

extinction and the international system from instability.”⁸⁵³ According to Ineta Ziemele, “It can be said that the presumption of continuity of States in international law is a basic presumption of international law, supported by a number of norms of customary international law...”⁸⁵⁴ This basic principle of international law, not only provides for the continuity of Hawaiian sovereignty, it also means that for past 121 there has never been a legitimate government exercising Hawaiian sovereignty in the islands.

Both the Territory of Hawaii and its successor, the State of Hawai’i, can be seen as nothing more than puppet governments exercising political (and not legal) control over the islands. In this context, both the Territory of Hawai’i and the State of Hawaii have been the basis of what should be termed as the “American Sovereignty Movement” in Hawaii. That is, a political party that has governed through political force, disguised as law, attempting (legally unsuccessfully) to establish US sovereignty in the islands. Marek explains that illegitimate governments, also known as puppet governments, are those entities that have circumvented “the limitations of belligerent occupation...[by] interfering with the continued existence of the occupied State.”⁸⁵⁵ Considering that the US has never legally acquired sovereignty, both the Territory, and the State of Hawai’i should be seen as failed attempts to establish what cannot exist without a treaty. Such a framing, shifts the burden of proof on to the US to provide evidence that shows how Hawaiian sovereignty was extinguished and how the US acquired sovereignty over the islands. It also reveals that for more than 121 years there has never been a legally

⁸⁵³ Alexandros Yannis, "State Collapse and Prospects for Political Reconstruction and Democratic Governance in Somalia," in *African Yearbook of International Law*, ed. A.A. Yusuf, 23-47 (Cambridge: Kluwer Law International, 1997), 29.

⁸⁵⁴ Ineta Ziemele, *Is the Distinction between State Continuity and State Succession Reality or Fiction? The Russian Federation, the Federal Republic of Yugoslavia and Germany*, Vol. 1, in *Baltic Yearbook of International Law*, ed. Ineta Ziemele, 191-221 (Hague: Kluwer Law International, 2001), 221.

⁸⁵⁵ Krystyna Marek, *Identity and Continuity of States in Public International Law* (Geneva: Librairie Droz, 1968), 111.

governing entity in the islands. Nonetheless what has transpired over the past 121 years, despite the creation and actions of political organizations, particularly the state of Hawaii and territorial government, has been an *illegal occupation*.

Chapter 7: Continuity Under International Law: Sovereignty and Citizenship

The seventh and final chapter, ties together the historical continuity of Hawaiian citizenship by providing a legal recommendation to address the accumulation of problems concerning citizenship as a result of a century long occupation. Drawing from recent scholarship, and current court cases, which has demonstrated a continuity of Hawaiian sovereignty despite an illegal and prolonged occupation, this chapter illuminates the reciprocal bond between sovereignty and nationality. The continuity of Hawaiian sovereignty presumes a continuity of Hawaiian nationality according to international law. The legal continuity of Hawaiian nationality amid a 121-year prolonged military occupation raises the question: who comprises the Hawaiian national citizenry today? And reciprocally, who comprises the foreign settler population today? Along with answering these questions this chapter recommends the enactment of the *Hawaiian Nationality Act*, which could serve as a blueprint to begin to address the complexities of citizenship that the US occupation of the Hawaiian Kingdom has caused.

This chapter is about the legal and political effect of Hawaiian nationality as a result of the overthrow of the constitutional government in 1893 and the United States (US) unlawful military occupation since 1898. As this chapter demonstrates, despite the US's non-compliance with international law for more than 115 years, particularly the commitments outlined in the Cleveland—Liliuokalani Agreement, the legal character of Hawaiian nationality was never extinguished, and remains legally intact. According to

Blackstone, “change of sovereignty means change of nationality.”⁸⁵⁶ Because the Islands were never legally acquired either by treaty or conquest, the Hawaiian Kingdom remained a sovereign state according to international law.⁸⁵⁷ Consequently, the same is true with regard to the legal character of Hawaiian nationality; it too was never changed. A legal continuity of Hawaiian nationality is presented by drawing on principles of international law, particularly the Law of Occupation. In addition to providing an appropriate frame of analysis in order to understand the legal quality of Hawaiian nationality amid a prolonged occupation, international law also provides the appropriate framework to begin answering the many questions that arise regarding Hawaiian citizenship.

Within an occupation, nationality is not issued through any legal means. As way to preserve the integrity of the state, and to avoid an influx of foreign immigration from the occupier’s civilian population, the issuance of citizenship halts when occupation begins. While the occupier is obligated to administer the laws of the occupied country, the only source from which nationality is transferred during an occupation is through parentage. Anyone born within the occupied territory retains the citizenship status of their parents. This rule is to preserve the legal character of the national population until the occupied state is restored. The problem in Hawaii is that American law, rather than Hawaiian Kingdom law and the laws of occupation, have been enforced. Consequently, US citizenship has been issued in the Islands since the US occupation of the Hawaiian Kingdom began in 1898. Not only has the occupation forced American citizenship onto

⁸⁵⁶ William Blackstone, *Commentaries on the Laws of England*, ed. Willam Carey Jones, Vol. Books 1 and 2 (San Francisco: Bancroft-Whitney , 1915).

⁸⁵⁷ David Keanu Sai, *Ua Mau Ke Ea Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands* (Honolulu: Pua Foundation , 2011), 95.

the national population, but the settler population that arrived during the occupation has inundated the occupied territory for more than a century. Yet, considering the law of occupation, who comprises the national citizenry today? Furthermore, given the aim of the law of occupation, which is to administer the transition from occupied to restored state, how does international law account for the large settler population—those that were either were born in the occupied territory of foreign parentage, and those that migrated to the islands during the illegal occupation?

Hawaiian Nationality and the Hawaiian State

The recognition of Hawaii as an independent and sovereign state in 1843 was the “principle link”⁸⁵⁸ that binded the Hawaiian citizenry to the Hawaiian State.

Independence also made Hawaiian nationals “objects” of the State. von Glahn writes that “It is commonly accepted “that states and certain international organizations have been regarded as the true subjects of international law...[while]...individuals, on the other hand, have been viewed as objects of the law of nations.” As “objects”, nationals of an independent state are afforded international rights and responsibilities. According to Oppenheim:

When, for instance, the Law of Nations is seen to recognize the personal supremacy of every State over its subjects at home and abroad, these individuals appear as objects of the Law of Nations just as does State territory in consequence of the recognized territorial

⁸⁵⁸ Lassa Oppenheim, *International Law* (London: Longmans, 1967), 588. Oppenheim explains that “nationality is the principal link between individuals and the benefits of the Law of Nations.” Similarly, Paul Weis explains that “nationality is the principal link between the individual and international law, and since ‘the rules of international law relating to diplomatic protection are based on the view that nationality is the essential condition for securing to the individual the protection of his rights in the international sphere.’” See Paul Weis, *Nationality and Statelessness in International Law* (Alphen aan den Rijn: Sijthoff & Noordhoff International Publishers B.V. , 1979), 162.

supremacy of every State....If, as stated, Individuals are never subjects but always objects of the Law of Nations, nationality is the link between them and the Law of Nations. It is through the medium of the nationality only that individuals can enjoy benefits from the existence of the Law of Nations.”⁸⁵⁹

The recognition of Hawaii as an independent and sovereign state in 1843 was the principle link that bonded Hawaiian nationality to the principles of international law. In 1898, the US occupation purportedly severed that link when the Islands were annexed. Yet as international legal scholar Matthew Craven explains, if the “US neither came to acquire the Islands by way of treaty of cession, nor by way of conquest, the question then remains as to whether the sovereignty of the Hawaiian Kingdom was maintained intact.” Craven concludes, “The closest parallel, in this regard, is to be found in the law governing belligerent occupation.” According to international law, during an occupation “the occupant is expected to establish an effective and impartial administration, to carefully balance its own interests against those of the inhabitants and their government, and to negotiate the occupation's early termination in a peace treaty.”⁸⁶¹ What has complicated the occupation is the fact that the US has never taken legal responsibility for its violation of Hawaiian sovereignty.

The only way to prevent the international law of occupation from being applied over the Hawaiian Islands would be to conclude that the Hawaiian Kingdom is no longer an independent and sovereign State for international law purposes. In 2001, the Permanent Court of Arbitration acknowledged that, “in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United

⁸⁵⁹ Lassa Oppenheim, *International Law* (London: Longmans, 1967), 460.

⁸⁶¹ Eyal Benvenisti, *The International Law of Occupation* (Princeton University Press, 1993).

States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.” International law recognizes only two ways by which a State could transfer its sovereignty, by *cession* or *debellatio*.

Cession is where one State cedes its territory and sovereignty to another State by an agreement, and according to Oppenheim, “The only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State.”⁸⁶² As stated by Feilchenfeld, *debellatio* takes place, “If one belligerent conquers the whole territory of an enemy, the war is over, the enemy state ceases to exist, rules on state succession concerning complete annexation apply, and there is no longer any room for the rules governing mere occupation.” In other words, the fact of occupation would serve as the transfer of the vanquished State’s sovereignty. Since the Hawaiian Kingdom was never at war with the United States, *debellatio* cannot be considered, and since there is no cession by treaty, the Hawaiian Kingdom remains an independent state under occupation.

Sai writes that three main factors form the basis of the American occupation of the Hawaiian Kingdom. 1) The Hawaiian Kingdom was a neutral state and never at war with United States; 2) the US has not administered Hawaiian Kingdom law in accordance with the law of occupation; 3) “all laws enacted by the Federal government and the State of Hawai’i, to include its predecessor the Territory of Hawaii since 1900, stem from the law making power of the United State Congress, which by operation of US constitutional

⁸⁶² L. Oppenheim, *International Law*, vol. 1, 7th ed. (1948), p. 500.

constraints...have no constitutional force.”⁸⁶³ According to international law, the US was “expected to establish an effective and impartial administration, to carefully balance its own interests against those of the inhabitants and their government, and to negotiate the occupation's early termination in a peace treaty.” Instead, the US has imposed American law in an occupied territory.

The Law of Occupation

According to Benvenisti, “The foundation upon which the entire law of occupation is based is the principle of inalienability of sovereignty through the actual or threatened use of force.”⁸⁶⁴ This fundamental principle of the law of occupation is premised on the understanding of equality amongst sovereign states. Under the law of occupation, “foreign military force can never bring about by itself a valid transfer of sovereignty.”⁸⁶⁵ The law of occupation regulates the actions of the occupier and insures that the occupation is not only regulated but also temporary. Benvensti articulates both of these points when he writes,

From the principle of inalienable sovereignty over a territory spring the constraints that international law imposes upon the occupant. The power exercising effective control within another sovereign’s territory has only temporary managerial powers, for the period until a peaceful solution is reached.⁸⁶⁶

It is this fundamental principle of inalienable sovereignty in which both the national body of the citizenry and territorial regime is maintained under the law of

⁸⁶³ David Keanu Sai, *Ua Mau Ke Ea Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands* (Honolulu: Pua Foundation, 2011).

⁸⁶⁴ Eyal Benvenisti, *The International Law of Occupation* (Princeton University Press, 1993), 6.

⁸⁶⁵ *Id.*

⁸⁶⁶ *Id.*

occupation. In order to maintain the national integrity of the state the law of occupation serves as “‘governance gap’ that is created whenever a state exercises public power in a foreign land.”⁸⁶⁷

Occupation refers to the “effective control of a power over a territory to which that power has no sovereign title...”⁸⁶⁸ Since 1898, the US has asserted effective control over the territory and nationality of a sovereign state—the Hawaiian Kingdom. Rather than complying with the laws of occupation, the US has administered its own laws in an occupied region. The occupation of the Hawaiian Kingdom resulted in the emergence of four illegal regimes that served as “puppet governments” of the US. The “Provisional Government”, “Republic of Hawaii”, “Territory of Hawaii”, and the current “State of Hawaii”, were all born out of the US occupation of the Hawaiian Kingdom. Each government also served the interest of the US at the expense of the Hawaiian Kingdom. Marek writes that the actions of puppet governments are unlawful, “Such acts may range from mere violations of the occupation regime in the occupied, but still surviving State to a disguised annexation.”⁸⁶⁹ In violation of international law, under each of these illegal regimes Hawaiian nationality laws were significantly altered, not as a means to end or regulate the occupation but as way to prolong it. Along with implanting a foreign settler population, Hawaiian nationals also experienced a staunch denial of their civil and political rights, including the imposition of a foreign nationality.

⁸⁶⁷ *Id.*, vii.

⁸⁶⁸ *Id.*, 3.

⁸⁶⁹ Krystyna Marek, *Identity and Continuity of States in Public International Law* (Geneva: Librairie Droz, 1968), 110.

Nationality and the Law of Occupation

The function and purpose of the international laws of occupation is to preserve the *status quo ante* of the occupied State, and “the law of occupation is designed to apply while occupation lasts.”⁸⁷⁰ Article 43, Hague Convention, IV (1907), provides,

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.⁸⁷¹

According to Krystyna Marek, “there can hardly be a more serious breach of international law than forcing the occupant’s nationality on citizens of the occupied State.”⁸⁷² The “law of occupation” provides the specific body of international law to examine and contextualize Hawaiian nationality as a result of the prolonged American occupation of the Hawaiian Islands. Article 43 of the Hague Convention, IV, provides a compiled synthesis of accepted principles and prescriptive measures consistent with “national courts, military manuals (including the US Army Field Manual), non-binding international instruments, and many legal scholars,”⁸⁷³ all of which are dedicated to regulating military occupations. These internationally acknowledged legal principles have the versatility to address the complexities that stem from an illegal and prolonged occupation, including the problems arising from nationality. Von Glhan writes that the relevant modern law of occupation has its origins with the Hague Peace convention of

⁸⁷⁰ Benvenisti, 86.

⁸⁷¹ Edmund Jan Ozmanczyk, *Encyclopedia of the United Nations and International Agreements*, Third, ed. Anthony Mango, Vols. 2: G-M (New York: Routledge, 2003), 867.

⁸⁷² Marek, 83.

⁸⁷³ Benvenisti, 8.

1899. He writes that the “1899 convention laid the basis for most of today’s rules governing military occupation in wartime.” The Hague Regulations of 1899 provided the baseline from which guidelines were developed aimed at protecting the “civilian population brought under the control of an occupant and safeguarded the interests of the ousted government for the duration of the occupation.”⁸⁷⁴ As stated in the US Army Field Manual (USAFM) Chapter 6, Article 358, “Occupation does not transfer sovereignty”, and in regard to the nationals of the occupied territory, Chapter 6, Article 359 explains, “It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.” This international principle regarding citizenship, written into US law, is taken verbatim from Article 45 of the 1907 Hague Convention.⁸⁷⁵

Within an occupation, citizenship and nationality are not issued through any legal means. According to the Law of Occupation, “The occupant must not seek to effect long-term changes that would complicate the re-establishment of authority by the legitimate government.”⁸⁷⁶ As a way to preserve the integrity of the state, and to avoid an influx of foreign immigration from the occupier’s civilian population, the only way in which citizenship is acquired during an occupation is through parentage. According to von Glahn “children born in territory under enemy occupation possess the nationality of their parents.”⁸⁷⁷ Therefore any individual that has presumed to have acquired US citizenship by virtue of either the Organic Act of 1900 or the Statehood Act of 1959 actually did not acquire US citizenship. Yet, in violation of international law, the US has issued American citizenship to foreign settlers in an occupied territory for more than a century. Both the

⁸⁷⁴ *Id*, 20.

⁸⁷⁵ Ozmanczyk, 867.

⁸⁷⁶ *Id*, 93.

⁸⁷⁷ von Glahn, 669.

Organic Act and the Statehood Act stand in direct violation to Article 49 of the Geneva Convention and Article 382 of the US Army field manual. According to Article 49, Geneva Convention IV, which is also cited verbatim in the USAFM, Chapter 6, Article 382, “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”⁸⁷⁸ The US’s egregious violation of this rule for the past century has allowed hundreds of thousands of foreign nationals to settle and take up permanent residence in the islands. Not only did the US illegally transfer parts of its own civilian population into the occupied Hawaiian state, but it also allowed and promoted large waves of other foreign nationals from settling in the islands and offering them American citizenship.

The intent of the international regulations concerning citizenship is to maintain the status quo of the national population that is under occupation. Such laws are also intended to prevent foreigners from settling within the occupied region. When the law of occupation regarding citizenship is applied to the Hawaiian case a review of key historical events is important to help frame questions regarding citizenship. Considering that Hawaiian nationality can only be acquired through parentage during an occupation, the only way in which Hawaiian nationality could be acquired after the occupation began on August 12, 1898, is by being a direct ancestor of a Hawaiian national at the time. Therefore, those that comprise the national citizenry today are those direct descendants of Hawaiian nationals that existed prior to the US occupation began on August 12, 1898. Accordingly, this includes nearly the entire aboriginal population. While the aboriginal population is the largest ethnic group that continues to possess Hawaiian nationality

⁸⁷⁸ <http://www.globalsecurity.org/military/library/policy/army/fm/27-10/Ch6.htm> US Government Army Field Manual, *Global Security*, www.globalsecurity.org/military/library/policy/army/fm/27-10/Ch6.htm (accessed March 6, 2013).

today, given the Kingdom's long tradition of politically inclusive laws, many other ethnic groups and individuals could also lay claim to Hawaiian nationality today. Although 1898 marks the official start of the prolonged occupation, because the country was under siege, both domestic and international, from 1887-1898, Hawaiian nationality could not be issued through naturalization because since 1887 there has never been a legitimate government to administer the oath of allegiance and naturalization law in general. Also, as demonstrated in chapter 5, the changes made to naturalization laws were never legally ratified. Therefore, any naturalization that transpired after 1887 was without legal validity.

Another important historical event in trying to reach a standard criteria for understanding who comprises the Hawaiian citizenry today is the overthrow of the Hawaiian Government, but more specifically the subsequent occupation that followed. Those people born during the time of the first US occupation, which was from January 16, 1893 to April 1 1893, could not have acquired Hawaiian citizenship by birth. Anyone born in Hawaiian territory after the US invasion took place in January of 1893 until the occupation ended in April when Blount removed the US military, retained the nationality of their parents. Notwithstanding these factors, anyone with a “genuine link”⁸⁷⁹ to someone who was a Hawaiian national before the prolonged occupation began on August 12, 1898 retains the nationality of their ancestors today. Those without a genuine link, including those ancestors born in the Kingdom during either of the two illegal US occupations, or those ancestors naturalized under any of the illegal regimes since 1887,

⁸⁷⁹ The principle of ‘genuine link’ refers to the rule of determining the legality regarding nationality under international law. Kristine Kruma explains that the principle is applied by the courts to determine “whether nationality was acquired in accordance with the rules and principles existing in international law.” See Kristine Kruma, *EU Citizenship, Nationality and Migrant Status* (Leiden: Martinus Nijhoff, 2014). 44

would not be considered ‘Hawaiian’ today. Rather they would retain the nationality of their parents and be considered a part of the settler population that was illegally transferred into the occupied region. What is sorely needed in order to sort out the problems of citizenship as a result of the occupation is a comprehensive census. A census that takes into account the effect of citizenship as a result the prolonged occupation, including the events leading up to 1898 in order to begin to get a clearer understanding of who comprises the Hawaiian national citizenry today, and may be more important, a clearer understanding of who comprises the resident alien population.

Among the few researchers who have used appropriate legal analyses to provide estimates of the number of Hawaiian nationals that exist in Hawai’i today are Lorenz Gonschor. Using the data from the last official census of 1890 and the 2000 US census, Gonschor gives a percentage projection that offers an estimate of individuals living in the Islands today whose nationality or citizenship would be Hawaiian. He writes,

According to the last census report of the Hawaiian Kingdom of 1890, eighty-four percent of the national population were aboriginal Hawaiians, while the remaining sixteen percent were either native-born or naturalized nationals of a foreign origin. If we project these percentages to the present to produce a rough estimate, there would be about 310,000 Hawaiian nationals living in Hawai’i today, including both the estimated 260,000 aboriginal Hawaiians and an estimated 50,000 non-aboriginal nationals.⁸⁸⁰

Gonschor also accounts for the large population of Hawaiian nationals that reside in other countries, particularly the US. Using the 2000 census data Gonschor writes, “the overall

⁸⁸⁰ Lorenz Gonschor, *Law As A Tool Of Oppression And Liberation: Institutional Histories And Perspectives on Political independence In Hawai’i, Tahiti Nui/French Polynesia And Rapa Nui* (Honolulu: M.A. Thesis University of Hawaii Manoa, 2008), 261.

number of Native Hawaiians within the reach of the census was about 400,000. Using the same percentage projection, there would be more than 476,000 descendants of Hawaiian nationals today...” Gonschor’s 2008 percentage projections could be updated today by using the most recent US census report, which was conducted in 2010. According to the 2010 census, 527, 077 identified as Native Hawaiian, an increase of 10% since 2000. As the Census reported,

Native Hawaiian was the largest detailed...group, numbering more than one-half million...There were about 156,000 who reported Native Hawaiian alone, and an additional 370,931 people who reported Native Hawaiian in combination with one or more other races.⁸⁸¹

Using a basic projection percentage, based on the percentages of the 1890 census and the 2010 US census, approximately 612,000 Hawaiian nationals, including about 527,000 aboriginal Hawaiians and roughly 85,000 non-aboriginal Hawaiian nationals exist in the islands and abroad today. Of the total number of Hawaiian nationals, only about half of the national population, or 306,000 thousand actually reside in the Hawaiian Islands today.

This means that of the estimated 1.4 million people that now reside in US occupied Hawai‘i, about 1.1 million are foreign nationals who either settled in the region during the occupation or were born in the region during the occupation. Sai explains that under US occupation the “putative US national population exploded...from a meager 1,928 in 1890, to 423,174...in 1950.”⁸⁸² As Sai furthers, “these migrations stand in direct violation of Article 49 of the Fourth Geneva Convention, which provides that the

⁸⁸¹ US Government, Census 2010 News, May 8, 2012, www.census.gov/2010census/news/releases/operations/cb12-83.html (accessed October 8, 2014).

⁸⁸² David Keanu Sai, "American Occupation of the Hawaiian State: A Century Gone Unchecked," *Hawaiian Journal of Law and Politics*, 2004: 46-81, 65.

‘Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.’⁸⁸³ The prolonged occupation forced thousands of Hawaiian nationals to leave the islands throughout the 20th and 21st centuries—in search for better living standards and socio-economic mobility. Consequently, this gave rise to a large Diaspora that, ironically, forced thousands to reside within the territory of the occupier. The fragmentation of the national population has literally divided-in-half an entire national population while at the same time inundating the occupied territory with its own national population. Such an analysis brings into focus the physical, geographical, and psychological, layers that appeal when one begins to peel back the many other complications of Hawaiian citizenship that has resulted from occupation.

These complications and projected estimates underscore the need for a comprehensive census to be conducted that accounts for an appropriate legal logic that includes the law of occupation, and Hawaiian citizenship law, as they existed prior to the US occupation. While these estimates are not exact, it nonetheless, provides a general understanding of just how inundated the Hawaiian national population has become because of US occupation. And while these numbers are striking, two particular cases reveal the magnitude of the citizenship problem and just how far-reaching the implications of a prolonged occupation have been in regard to citizenship.

Why The Birthers Are Right For All The Wrong Reasons

The legal consequences that stem from this predicament not only affect the political landscape of Hawaii, but strike at the heart of the US Government as well. Highlighting the extremities of these implications may cast a light on the scope of the

⁸⁸³ *Id.*

problem of citizenship in Hawaii. Both Daniel Inouye, a six term senior US congressional member, as well as Barack Obama, the first African American US President, cannot claim to be natural born US citizens. Daniel Inouye was born in Hawaii on 7 September 1924. The son of first-generation Japanese immigrants, Inouye before his death was the third highest-ranking official of the US Government who also served as Captain in the famous 442nd infantry regiment during WW II. Because Inouye was born during an illegal occupation, as *a matter of law*, drawing from the principle of jus sanguinis (*parentage*), he retains the nationality of his parents, which is Japanese, making him ineligible to serve in the US Congress.

Similarly, US President Barack Obama was also born under an illegal occupation. The two term US President was born on the island of O‘ahu on 4 August 1961 to a US born mother and a Kenyan born father. Although Obama is considered a US citizen by virtue of his mother’s birth in Kansas, Obama cannot claim to be a natural born US citizen because he was born in an occupied territory. According to Article II Section I of the US Constitution “No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President.”⁸⁸⁴

⁸⁸⁴ *US Constitution* Art. II. Sec. I. Also see Denesh D’souza interview with Willy Kauai in Dinesh D’souza, *Obama’s America: Unmaking the American Dream* (Washington D.C.: Regnery Publishing, INC, 2012), 73. D’souza writes, “At the University of Hawaii I also interviewed Willy Kauai, a graduate student who recently gave a talk on ‘Why the Birthers Are Right for All the Wrong Reasons.’ Kauai’s argument is very interesting. He says that of course Barack Obama was born in Hawaii, but he is still ineligible to be president. That’s because the [US] Constitution specifies not only that the president must be a U.S. citizen but also that the president must be ‘natural born.’ The president, in other words, must be born in the United States. But Kauai’s argument is that Hawaii is not legally part of the United States because U.S. forces illegally annexed Hawaii in the late nineteenth century. So from Kauai’s point of view the birthers are right not because Obama was born in Kenya, but because Hawaii, where Obama was born, is actually a foreign country...I asked if this would amount to Hawaii seceding from the United States. He said no. ‘Seceding would imply that Hawaii was ever part of the United States.’”

Compliance

Sai argues, “Despite the egregious violations of Hawaiian sovereignty by the United States since January 16, 1893, the principle of estoppel not only serves as a shield that bars the United States from asserting any legal claim over the Hawaiian Islands, but also a shield that protects the continued existence of the Hawaiian Kingdom, the nationality of its citizenry, and its territorial integrity as they existed in 1893.”⁸⁸⁵ As Sai explains, “The 1893 Cleveland-Lili`uokalani international agreement is binding upon both parties as if it were a treaty” and the “actions taken against the Queen and Hawaiian subjects are directly attributable and dependent upon the non-performance of President Cleveland’s obligation, on behalf of the United States, to restore the Hawaiian government.”⁸⁸⁶ Raising the legal issue of estoppel, Sai further states, “Despite the egregious violations of Hawaiian sovereignty by the United States since January 16th 1893, the principle of estoppel not only serves as a shield that bars the United States from asserting any legal claim over the Hawaiian Islands, but also a shield that protects the continued existence of the Hawaiian Kingdom, [and] the nationality of its citizenry”.⁸⁸⁷ According to Gordon Stoner, the principle of estoppel is premised on the idea of “an admission, or something which the law treats as equivalent to an admission, of an extremely high and conclusive nature—so high and so conclusive, that the party whom it affects is not permitted to aver against it or offer evidence to controvert it...”⁸⁸⁸

Any attempt to transform or replace Hawaiian nationality would be legally

⁸⁸⁵ David Keanu Sai, “A Slippery Path Towards Hawaiian Indigeneity,” 10 *Journal of Law and Social Challenges* 68-133, 130 (Fall 2008).

⁸⁸⁶ David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (to be published), 216.

⁸⁸⁷ *id.*, 221

⁸⁸⁸ Gordon Stoner, “Pleading Estoppel,” *Michigan Law Review*, 1911: 484-498, 484.

inhibited by virtue of the Liliu'okalani—Cleveland agreement, a binding obligatory law. The *Nottebohm Case*, concerning an international dispute over the nationality of Friedrich Nottebohm, a national of Liechtenstein and a resident alien of Guatemala, the International Court of Justice provided that the function of estoppel, both internationally and municipally, is “a formal and artificial rule of law...[that]...is essentially grounded in considerations of good faith and honest conduct in the relations of States and individuals alike.”⁸⁸⁹ Any attempt to blur the binding nature of treaties or executive agreements “would strike at the legitimacy of the state itself ...[states] from time to time may break their treaty obligations...but there is no instance of a state suggesting that treaties are not, as a matter of law, binding.”⁸⁹⁰

Along with framing the obligatory nature of treaties, International law also imposes strict territorial regulations onto independent states that prevent them from asserting jurisdiction outside of its own territory. These limitations were reaffirmed in *The Lotus case* (France vs. Turkey) in which the Permanent Court of International Justice (PCIJ) presided over. The court observed two principles of international law that form the basis of jurisdictional limitations placed on independent states. The court asserted,

Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a

⁸⁸⁹ Nottebohm case (second phase), Judgment: I.C.J. Reports, 1955, p. 4 at p. 17.

⁸⁹⁰ Dennis Patterson, *A companion to philosophy of law and legal theory* (Malden: Blackwell Publishing, 1996), 108.

permissive rule derived from international custom or from a convention.⁸⁹¹

The first basic principle of international law, the court explained, regulated the exercise of jurisdictions on the part of independent states outside of its own territory, unless some kind of treaty or agreement permits otherwise. The court reinforced this principle by also reaffirming the jurisdiction of independent states within its own territory. The PCIJ affirmed,

Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to person, property and acts outside their territory, it waves them in this respect a wide measure of discretion, which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable. This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States ... In these circumstances all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.⁸⁹²

These basic principles, which affirm the jurisdictional limitations of states reinforces, through international law, the US's inability to exercise jurisdiction in the islands.

⁸⁹¹ S.S. "*Lotus*", *France v Turkey*, 10, ICGJ 248 (Permanent Court of International Justice, September 7, 1927), 45.

⁸⁹² *Id.*, 46.

Despite the extensive lapse of time, the US Government, particularly the executive branch, remains obligated to fulfill the conditions of the Liliu’okalani—Cleveland agreement. Complying with the conditions of the agreement would entail the restoration of rights to Hawaiian nationals, which have been suspended since the US occupation began. As a way to compel the US to comply with its international agreement and international law more generally, Hawaiian subjects continue to challenge US jurisdiction over Hawai’i in US Courts today.

Mobilizing Hawaiian nationality amid occupation

Since Lorenzo introduced the court to the concept of Hawaiian citizenship in 1994, there have been numerous other claims within US courts. While the claims being made today, nearly two decades after *Lorenzo*, are essentially the same—that Hawaiian sovereignty was never extinguished—what has changed is the new legal evidence that is now being presented to the courts. In other cases, international legal principles were presented and offered as evidence. In *State of Hawai’i v. Keawemauhili*, the claimant attempted to reinforce his standing as a Hawaiian national by urging the court to consider a string of international legal arguments, including the notion that “no international treaty of annexation has ever been completed”, and as a result “His rights as a Hawaiian national [should be] protected by the international laws of occupation.”⁸⁹³

In 2010, nearly fifteen years after *Lorenzo*, a Federal lawsuit was filed in the District Court of Washington D.C. that pushed the *Lorenzo* threshold to its limits. David Keanu Sai, a resident of Hawai’i filed a civil suit against the U.S. Federal Government under the auspices of the Alien Tort Statute (ATS). The ATS affords Federal District

⁸⁹³ *State of Hawaii v. John Keawemauhili* , 24601 (Intermediate Court of Appeals of Hawaii, March 18, 2003), 3.

Courts with jurisdiction over “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”⁸⁹⁴ Sai alleged that his rights as a Hawaiian national had been violated when a Hawai‘i Circuit Court convicted him of Attempted Theft in March of 2000. As in *Lorenzo*, the attorneys attempted to redirect Sai’s argument by trying to re-frame the Plaintiffs standing by invoking notions of indigeneity as defined by American Indian law. Sai presented a barrage of evidence, (based on his doctoral research), that supported his claim that he was a Hawaiian national, and therefore a US alien. Sai claimed that he was a Hawaiian national seeking “permanent injunctive relief, redress, restitution, [and disgorgement].” In doing so he was seeking standing as an alien whose rights had been violated by the US as a result of the occupation. Among other legal requests, Sai summoned the Federal District Court for “a declaratory judgment by the Court declaring the *1898 Joint Resolution to provide for annexing the Hawaiian Islands to the United States* (30 U.S. Stat. 750), to be unconstitutional under U.S. law as well as a violation of Hawaiian sovereignty...” In the pleadings, Sai argued that the State of Hawai‘i could not legally exist as it is in direct conflict with the provisions of Hawaiian Kingdom Law, International Law, and most specifically, U.S. Constitutional Law. In the preliminary stages of the pleadings Sai explained:

This lawsuit alleges the violation of an executive agreement entered into between Queen Lili‘uokalani of the Hawaiian Kingdom and President Grover Cleveland of the United States in 1893, whereby Hawaiian executive power was temporarily and conditionally assigned to the President to administer Hawaiian Kingdom law in the Hawaiian

⁸⁹⁴ Alien Tort Statute, 28 U.S.C Section 1350

Islands. This executive agreement, known as the Lili‘uokalani assignment (January 17, 1893), was assigned under threat of war, and binds President Cleveland’s successors in office in the administration of Hawaiian Kingdom law until such time as the Hawaiian Kingdom government has been restored...⁸⁹⁵

After more than a year of pleadings, the Federal Attorneys could not refute Sai’s claim. Rather than providing a counter argument that not only addressed the evidence that Sai forwarded, the Attorneys appealed to the political inclination of the Judge. In their closing remarks the Federal Attorneys stated, “An ‘unusual need’ exists for adherence to the political decision to annex Hawaii in 1898...In the 113 years that have passed since that decision was made, Hawaii has become a firmly established part of the United States—a vital part of its political, economic, and military working. Over one million Hawaiians live as United States citizens. Indeed, President Barack Obama’s status as a ‘natural born citizen’ derives from his birth in the State of Hawaii.” On March 10, 2011, United States Federal District Judge Colleen Kollar-Kotelly granted a motion to dismiss the complaint on the grounds that Sai’s argument presented a non-justiciable political question. The court opined, “to conclude that Plaintiff is an alien capable of bringing claims under the Alien Tort Statute rather than a U.S. citizen—the Court would have to determine that the annexation of Hawaii by the United States was unlawful and void. As described above, that is a political question that this Court cannot decide.”⁸⁹⁶

In a similar case based on the same legal logic that Sai presented to the Federal Court, Dennis Kaulia presented his defense pleadings to a Hawai‘i Circuit Court for Third Degree Assault charges. Kaulia argued that he was a “subject of the Hawaiian

⁸⁹⁵ *David Keanu Sai v. Barack Hussein Obama*, No. 1: 10-cv-00899 (United States District Court for the District of Columbia, May 27, 2010), 1.

⁸⁹⁶ *Id.*

Kingdom and a Protected Person under 1949 Geneva Convention, IV.”⁸⁹⁷ However, instead of challenging the Courts jurisdiction over Kaulia, the defense sought to dispute the case based strictly on the procedural rules of subject matter jurisdiction. Kaulia did not contest the Assault charges against him, but instead argued that the presiding Circuit Court was in fact the wrong court to oversee his case. Pursuant to Rule 12(b)(1) of the Hawai‘i Rules of Penal Procedure, Kaulia argued:

to dismiss the Complaint for want of subject matter jurisdiction in that the suit would manifestly require the Court to act outside the constitutional limitations of its judicial power, and unlawfully intrude upon, and in effect seize political control over an Executive Agreement concluded on December 18th 1893 between U.S. President Grover Cleveland and the Hawaiian Kingdom’s Queen Lili‘uokalani to restore the Hawaiian Kingdom government, a usurpation not only contrary to the ‘separation of powers’ provision of the U.S. Constitution, but in direct violation of the constitutional authority to enter into international agreements with foreign States exclusively in the hands of the Executive branch of the Federal government, specifically the President of the United States.⁸⁹⁸

In another recent case, *State of Hawaii v. Gordon Au*, Au filed his case as a Hawaiian subject while also raising the issue of subject matter jurisdiction. Au, who had been accused of tax evasion, “claimed...that he did not have to file general excise tax returns because he is a Hawaiian national”⁸⁹⁹ Like the *Kaulia* case, Au argued that State of Hawaii courts lacked subject matter jurisdiction pursuant to rule (12)(b)(1) because Hawai‘i State Court were not legally constituted as they are extensions of a political

⁸⁹⁷ *State of Hawai‘i v. Kaulia*, 09-1-352 (State of Hawai‘i Third , April 9, 2010), 3.

⁸⁹⁸ *Id.* , 2.

⁸⁹⁹ Advertiser Staff, "Man convicted of tax evasion ," *Honolulu Advertiser*, May 26, 2010.

entity—the State of Hawai‘i—, which cannot legally exist. According to one news outlet, Attorney General Mark Bennett, whose office prosecuted the case, stated, “we will vigorously prosecute those who willfully fail to pay their state taxes.”⁹⁰⁰ Despite never refuting any of the evidence that questioned the very existence of the State of Hawai‘i, the Attorney General stated, “all citizens have the responsibility to pay the taxes they owe...”⁹⁰¹ Au’s argument however, was not that he was trying to get away from paying taxes, but rather that his taxes were being appropriated from an illegally constituted government—the State of Hawai‘i.

Depriving a Fair and Regular Trial

While these parties provided sufficient evidence to satisfy the evidentiary threshold in *Lorenzo*, State of Hawaii and US Federal Courts have never provided counter evidence that could refute the evidence in any of these cases in which Hawaiian nationality is asserted.⁹⁰² Despite the mountains of evidence presented in cases such as *Sai*, *Kaulia* and *Au*, US courts have continually ruled against Hawaiian nationals. However, it is not only Hawaiian nationals that are being deprived of a fair and regular trial.

⁹⁰⁰ *Id.*

⁹⁰¹ *Id.*

⁹⁰² The burden of proof to support such an argument is incumbent on the contestant arguing on the basis of Hawaiian nationality in order to challenge the courts jurisdiction over the claimant. Additionally, the 1996 ICA decision in *Nishitani v. Baker (Nishitani)* reinforced *Lorenzo* by illuminating another layer of rigor to the threshold by calling attention to an additional burden of proof that rested on the prosecution. In *Nishitani* the court held that although defendants claiming Hawaiian nationality “had the burden of proving facts in any defence, such as immunity [from Hawai‘i State Law]”, the prosecution “has the burden of proving beyond a reasonable doubt facts establishing jurisdiction...” At the center of the courts decision in *Nishitani* was the organization of procedural matters—subject matter jurisdiction and personal jurisdiction—in court proceedings that involved Hawaiian nationality and jurisdictional arguments. It was clarified that “where immunity claims are raised as a defence to [personal] jurisdiction, the burden is on the defendant to establish his or her immunity.” It was further coordinated that the burden of proving subject matter jurisdiction, which validates the courts authority to adjudicate the subject matter at hand, “clearly rests with the prosecution.” Despite the clarification of *Lorenzo* in the *Nishitani* decision it is not clear as to why the ICA issued such an open-ended ruling.

In 2013, Attorney Dexter Kaiama represented Elaine Kawasaki, a Hilo resident of Japanese ancestry, who was facing foreclosure from Wells Fargo Bank. Different from most other claimants that questioned the legal validity of the State of Hawai'i and its judicial system, Kawasaki never claimed to be a national of the Hawaiian Kingdom. Citing the 12(b)(1) rule, Kaiama motioned to dismiss the complaint based on the courts lack of subject matter jurisdiction. In the proceedings, Kaiama implored the court to make a decision based on the merits of the case and the overwhelming evidence presented. Kaiama reminded the court that this was not the first time he had appraised the court of such evidence. Kaiama stated,

“I have now been arguing, Your Honor, this motion before judges of the courts of the circuit court and district court throughout the State of Hawai'i...probably over 20 times, and in not one instance has the plaintiff in the cases challenged the merits of the executive agreement or that the executive agreements have been terminated. Because we believe, respectfully, again, Your Honor, they cannot.

Kaiama is not exaggerating in his conviction that he has presented compelling evidence to the court on numerous occasions. The attorney's evidence included emerging research from the University of Hawai'i that has included an exhaustive analysis of Hawai'i's legal and political status today. Kaiama's evidence also included expert witness testimony from Keanu Sai who specializes in international law, and Williamson Chang, Senior law professor from the University of Hawai'i Richardson School of Law. Despite this overwhelming evidence, and no substantial rebuttal from the Plaintiff, Judge Hara, along with numerous other judges, have continually ruled against Kaiama's clients.

Aside from presenting the court with a legal history that they did not know, Kaiama's argument has presented a political conundrum for the court to contemplate. Ruling in favor of the Defendants, who had provided overwhelming evidence, while the Plaintiffs' in some cases do not even respond to Kaiama's evidence, would be to admit that not only did the court lack subject matter jurisdiction, but that the entire judicial system in Hawai'i has no legal basis. The evidence also presumes that the State of Hawai'i itself, like its predecessor the Territory of Hawai'i, has never been legally constituted, either in accordance with international law or US Constitutional law. This also presumes that Hawaiian state sovereignty was never extinguished in 1898 and therefore continues to exist today, albeit, amidst an illegal and prolonged occupation.

Ironically, Judge Hara, best articulated the paradox that State of Hawai'i courts were left to contemplate. In denying Kaiama's claim, the Hawai'i Circuit Judge expressed the courts dilemma. He also divulged his political leanings when he told Kaiama of the political blowback that he could face if he did not rule in favor of the bank. Hara stated,

“What you're asking the court to do is commit suicide, because once I adopt your argument, I have no jurisdiction over anything. Not only of these kinds of cases...but jurisdiction of the courts evaporated. All of the courts across the state from the supreme court down, and we have no judiciary. I can't do that....[its] like the atomic bomb for the judiciary...”⁹⁰³

It was clear that no matter what the evidence was, Hara did not want to accept the political backlash that he would have ensued. Despite the judges' political leanings,

⁹⁰³ Weblog of the acting government of the Hawaiian Kingdom, *Hawaiian Kingdom Blog*, January 28, 2014, hawaiiankingdom.org.

Hara's statement reveals a kind of nervousness and anxiety over having been placed in such a predicament. Hara's statement seems misplaced, as it does not reflect the words of a judge, but rather a politician. Kaiama responded by reminding the Judge of the standing precedent set in *Lorenzo*, nearly twenty years earlier that created the evidentiary standard of anyone who argued that the Hawaiian Kingdom continued to exist. Kaiama stated, "What we're doing here, Your honor, ...really for the first time, is we are presenting the court with that evidence..." Nearly twenty years ago, *Lorenzo* was denied because of a lack of evidence. Today, claimants are being denied not because of a lack of evidence, but because courts have ignored the evidence, brazenly disregarding standard principles of law, and more significantly, justice.

Since *Lorenzo*, the topic of Hawaiian state continuity, and the prolonged and illegal US occupation, has garnered widespread attention, both domestically, and internationally. The emergence of collegial scholarship and research has led to the development of curriculum that is being taught in public grade schools, community colleges, and at the University levels. Much of the evidence that Kaiama utilizes in court was developed at the University of Hawai'i for more than a decade now. This research, as demonstrated in Kaiama's court transcripts, has not just leveled the playing field in courts, it have visibly shaken the very foundation of the Hawai'i State court system to its core. In 1994, *Lorenzo* did not have access to the wide-ranging scholarship and evidence available today. This once allowed the court to re-frame such claims, while relying on conventional, and legally illogical suppositions to deny *Lorenzo*. Despite the novelty of the *Lorenzo*'s argument in 1994, a lack of evidence made it easy for the court to evade the crux his claim. In 1994, they did this by racializing the case, even though *Lorenzo*

argued citizenship. Today, however, the court is not able to simply evade such jurisdictional and citizenship claims because of how precise the legal argument has now become, and the mountains of evidence and scholarship that continues to pour out of the University.

Along with education, another important distinction that can be made since *Lorenzo* is the absence of race as a central matter in the court proceedings. In *Lorenzo*, the issue of race anchored the courts position, where notions of ethnicity and indigenaity that spoke much about the aboriginal populations connections to land, worked to convolute the matter of nationality, and ultimately deny Lorenzo's claim. *Kawasaki*, however, never projected any particular racial, ethnic, or national identity, nor was the court able to impose a particular identity on to her. Instead, the focus of the proceedings centered on the identity of the court, particularly weather or not the court was even legally constituted. This paradigm shift is representative of the legal precision that attorneys such as Kaiama and a few others have developed since *Lorenzo*. As *Kawasaki* demonstrates, Judges such as Hara, are placed in a very perilous position. They are asked to render a decision in which their own legitimacy is questioned. To avoid the political consequences, judges have chosen to willfully deprive Hawaiian nationals and even foreign nationals of a fair and regular trial.

International Criminal Court

The consistent denial of a fair and regular trial forced Kaiama to seek justice for his clients from an international body, particularly the International Criminal Court (ICC). Because Kaiama had exhausted all the other options, the ICC became the court of law resort. The ICC is an autonomous international organization, "it is the first

permanent, treaty based, international criminal court established to end impunity for the perpetrators of the most serious crimes of concern to the international community.”⁹⁰⁴

Kaiama’s request called on the ICC, which has the international versatility, and capacity, to hold the Hawai‘i State Judiciary accountable for what Kaiama held as a clear and brazen disregard for basic principles and standards of law and justice.

According to Article 8 (2)(a)(vi) of the ICC, Elements of Crimes, five threshold criteria that constituted the “War crime of denying a fair trial” include:

1. The perpetrator deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.⁹⁰⁵

Kaiama’s demonstrated how judges had been conducting themselves as what could only be described as a “Kangaroo Court,” an unauthorized court “that is set up without legal power and authority...”⁹⁰⁶ Such courts are characterized by “irresponsible, unauthorized,

⁹⁰⁴ *International Criminal Court*, www.icc-cpi.int (accessed October 10, 2104).

⁹⁰⁵ *University of Minnesota Human Rights Library*, www1umn.edu/humanrts/intree/iccelementsofcrimes.html (accessed October 10, 2014).

⁹⁰⁶ *The Law Dictionary*, October 6, 2014, thelawdictionary.org/kangaroo-court/.

or irregular status or procedures... judgment or punishment given outside of legal procedures.”⁹⁰⁷ As exclaimed by the judges themselves, the potential political backlash felt by the judge outweighed their ability to uphold the court’s legal obligations. This was evident in Hara’s statement when he stated that despite the overwhelming evidence, ruling on behalf of Kaiama’s client was to commit “political suicide.” These kinds of courts, Desmond Manderson holds, belong to supposed “Legal systems that abandon all efforts to justify and give reasons, thereby refusing to open themselves to question...”⁹⁰⁸

On February 14, 2012, Kaiama filed a complaint with the Prosecutor of the International Criminal Court alleging that State of Hawaii judges and other officials of the State of Hawaii’s judiciary have willfully deprived his clients of a fair and regular trial. The first judge reported to the ICC was District Court Judge Harry P. Freitas. Following the procedures associated with the ICC, Kaiama requested that the Office of the Prosecutor of the ICC open an investigation based on the evidence provided by the attorney to the ICC. One of the significant aspects of Kaiama’s request was that it was actually received and accepted by the ICC. What is maybe most significant of Kaiama’s complaint was not just it’s content, but that it was accepted by the international court.

According to the procedural rules, whenever a complaint is filed with the ICC, it must satisfy “The threshold to initiate an investigation.” Upon receiving a complaint, the Office of the Prosecutor will not “initiate an investigation unless he first concludes that there is a reasonable basis to proceed.” This process includes a Pre-Trial Chamber to an investigation. “The Chamber must be satisfied ‘that the case appears to fall within the jurisdiction of the Court’...” On 13 June, 2013, the Office of the Prosecutor received a

⁹⁰⁷ *Merriam Webster*, October 6, 2014, www.merriam-webster.com/dictionary/kangaroo%20court.

⁹⁰⁸ Desmond, *Kangaroo Courts and the Rule of Law: The Legacy of Modernism* (New York: Routledge, 2012), 171.

thirty (30) page referral requesting that the ICC investigate alleged war crimes being committed in the islands. The referral explained that such war crimes resulted from:

The prolonged and illegal occupation of the entire territory of the HAWAIIAN KINGDOM by UNITED STATES OF AMERICA since, the Spanish American War on 12 August 1898, and the failure on the part of the UNITED STATES OF AMERICA to establish a direct system of administering the laws of the HAWAIIAN KINGDOM.⁹⁰⁹

On June 24, 2013, M.P. Dillion, Head of Information & Evidence Unit Office of the Prosecutor, accepted the complaint.

“The Office of the Prosecutor of the International Criminal Court acknowledges receipt of your documents/letter.

This communication has been duly entered in the Communications Register of the Office. We will give consideration to this communication, as appropriate, in accordance with the provisions of the Rome Statute of the International Criminal Court.

As soon as a decision is reached, we will inform you, in writing, and provide you with reasons for this decision.⁹¹⁰

Since this communication on June 24, 2013, which confirmed the start of the investigation, the ICC has yet to make any other communication. The courts non-communication presumes the investigation is ongoing. According to the ICC, the details of investigations are not made available to the public. The case file is “only accessible to persons authorized by the Court.” This, the Court explains, is to ensure “that victims and

⁹⁰⁹ Acting Government of the Hawaiian Kingdom, *Hawaiian Kingdom Blog*, June 26, 2013, hawaiiankingdom.org/blog/international-criminal-court-acknowledges-receipt-of-the-hawaiian-kingdoms-request-for-investigation-into-war-crimes/ (accessed October 13, 2014).

⁹¹⁰ *Id.*

witnesses were adequately protected...”⁹¹¹ While the ICC has yet to issue any public announcement, or give any official update as to the status of the investigation, District Judge Harry Freitas, who Kaiama reported to the ICC February 2013, revealed to certain officers of the Hawai’i State Court that he received a summons from the ICC.⁹¹² There have also been other reports that Judge Freitas was not the only Judge to have received a warrant from the ICC, but that all Hawai’i Island judges reported for war crimes also received warrants. While these reports have not been confirmed, local media found it speculative enough to cover. The Hawai’i Tribune-Herald reported that State of Hawai’i Officials were “unaware of any formal complaints against the judges” and gave no comment. Another media outlet, Big Island Now, reported that the Hawaii Island Police Department “took an unusual step” to deny that any investigation of judges were underway.⁹¹³ According to the Coalition for the International Criminal Court, an arrest warrant is issued by the ICC to ensure three conditions: “The person appears at the trial; The person does not endanger or obstruct the investigation or the court proceedings; and When necessary, to prevent the person from continuing with the alleged or related crime.”⁹¹⁴

Adding another layer of complexity to this ICC case is the matter of nationality. Judge Harry Freitas and Attorney Dexter Kaiama actually share the same nationality.

⁹¹¹ *Coalition for the International Criminal Court*, www.coalitionfortheicc.org/?mod=coalition (accessed October 3, 2014).

⁹¹² Acting Government of the Hawaiian Kingdom, *Hawaiian Kingdom Blog*, August 19, 2014, hawaiiankingdom.org/blog/state-of-hawaii-judge-says-he-received-summons-from-the-international-criminal-court/, (accessed October 19, 2014).

⁹¹³ Dave Smith, "Police: No Investigation of Judges Underway," *Big Island News*, May 9, 2013.

⁹¹⁴ *Id.*

Both are Hawaiian nationals.⁹¹⁵ While they both share the same nationality, they both lie at opposite sides of a complex political spectrum, whereby one national is accusing the other of committing grave breaches of international law. Prior to the complaint being filed with the ICC, or before Kaiama stepped into Freitas' court, it is likely that the judge never knew of Hawai'i's legal history. Nor was Freitas aware of the consequences that he had incurred as a result of being apprised of the contemporary implications that a legal history brings to light today. The dynamics between Kaiama—the attorney, and Freitas—the Judge, both of who are nationals of the same country, is but one reflection of the complex dynamics that Hawaiian nationals have been faced with as a result of the occupation. An occupation that has manipulated a national population to the extent that two people of the same nationality or citizenship can be so divided and hold such desperate beliefs about where their allegiances should lie. The complaint to the ICC has unveiled these many complexities and illuminated the intersections that lie at the center of law and politics. Along with apprising the international community of the ongoing occupation, the ICC proceedings has also created an important dialogue from which such legal and political complications that the occupation has caused can be unpacked. For Kaiama and others, the law provides a set of rules and procedures, which ultimately leads to a Hawai'i without the US. Ironically, for Freitas and other Judges, it is not the law that has guided their decisions, but rather the political implications that a legal history of Hawai'i incites that is what guides their (non) actions. In addition to the internal dialogue that the ICC proceedings has generated, it is yet another international venue that is now being apprised of the on-going US occupation of the Hawaiian Kingdom.

⁹¹⁵ It was brought to my attention that Harry Freitas is a Kamehameha Schools alumnus. Presumably, he is of aboriginal descent and there a direct descendent of a Hawaiian subject before the US occupation began. This would make him a Hawaiian subject through parentage.

Hawaiian Citizenship in the Post-Occupation Era

As the last official census of the Hawaiian Kingdom reported, at the end of the 19th century the ethnic make-up of the Hawaiian national citizenry included approximately 85 percent pure and part aboriginals and 15 percent non-aboriginals. Given the intent of the law of occupation to preserve the status quo as it existed prior to the occupation, these would be target percentages to aim for when a Hawaiian national population is conceived of in post-occupied Hawai'i. The late professor Kanalu Young was one of the first to begin to conceive of the restoration of a multi-ethnic Hawaiian citizenry in the post-occupation era. He wrote, "A formidable multiethnic national collective will be mobilized here when the definition of nationality according to the Constitution of 1864 is applied as the legal precedent." In the same vein, with regard to the legal continuity of the Hawaiian Kingdom and the possible restoration of Hawaiian sovereignty, Young wrote "what is more, for the purposes of this hypothetical, replace the adjective "local" wherever it is found today to denote island identity with "national" and one begins to realize how pervasive a justice-based change there will be."⁹¹⁶

Pursuant to the laws of occupation, all the laws of the Hawaiian Kingdom would need to be restored, as they existed prior to the coup of 1887.⁹¹⁷ This includes the Civil Code and all Session Laws passed in the Hawaiian Kingdom that were passed up until the last legally constituted legislature was convened in 1886. A legally convened

⁹¹⁶ Kanalu Young, "Kuleana: Toward a Historiography of Hawaiian National Consciousness, 1780-2001," *Hawaiian Society of Law and Politics*, Summer 2006: 1-33, 5.

⁹¹⁷ Article 80 of the 1864 Constitution provided the process by which constitutional amendments are to be made. It provides: "Any amendment or amendments to this Constitution may be proposed in the Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its journal, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or the next election of Representatives; and if in the next Legislature such proposed amendment or amendments shall be agreed to by two-thirds of all members of the Legislative Assembly, and be approved by the King [or Queen], such amendment or amendments shall become part of the Constitution of this country."

legislature has yet to reconvene since for more than 128 years. Consequently, every statute, act, or amendment, that was every adopted since the Hawaiian Legislative Assembly closed its session in 1886. This includes any laws passed during the remainder of Kalākaua's reign, and the reign of his successor, Queen Lili'uokalani. This also includes every statute, act, and amendment, ever adopted by the either the Territorial or State of Hawai'i legislative bodies. The same conclusions regarding the illegality of the legislative branch can be made in regards to the judiciary. All judicial decisions ever rendered in the Islands for the past 127 years has no legal basis. The legal maxim, *Quod ab initio non valet, in tractu temporis non conualescit*, or, what is not valid in the beginning does not become valid by time, has great significance given the great time that has elapsed since the Hawaiian Islands were last governed legally. Therefore, what was illegal then, continues to be illegal today. The opposite is also true: what was legal then, continues to be legal today.

A legal framing of Hawai'i's current status unveils a tremendous web of questions that arise. Equally, a legally framing also provides a baseline for coming up with solutions for such questions. This dissertation sought to articulate one aspect of the complex problems that has resulted from occupation. Along with providing a historical analysis of the origins and evolution of Hawaiian citizenship, this dissertation set-out to add perspective to the many questions regarding citizenship. In doing so it sought to ultimately answer the question: Given a prolonged and illegal occupation of the Hawaiian Kingdom, who comprises the Hawaiian national citizenry today? Of the many complexities of citizenship is that of rights. While this project attempted to provide a cursory history of the evolution of the rights of Hawaiian nationals, a comprehensive

analysis is but one of many sorely needed research projects. Yet, any discussion of rights must first include a discussion of *who* exactly possesses those rights. Given the on-going nature of the occupation citizenship laws would need to be updated which would be the responsibility of the newly convened legislative assembly. Nonetheless, legislative enactments and judicial decisions that were created during the constitutional era would be the baseline from which amendments and new laws regarding citizenship would emanate during the post-occupation era.

When the US withdraws, the post-occupation governing entity would need to pass legislation accounting for all persons, and their progeny, who settled during the occupation. One of the many amendments that would need to be made in regard to Hawaiian nationality, by the new governing entity in the post-occupation era, would be to repeal the Hawaiian common law rule of birthright citizenship. According to Hawaiian law, anyone born within the territorial jurisdiction of the Kingdom becomes a national of country. Without repealing or amending this law the progeny of foreign settlers would acquire Hawaiian citizenship and again overrun the Hawaiian citizenry. Prospectively, within a few generations the settlers that had come during the occupation would again upset the national demographics of the country. Naturalization laws would need to be amended in order to account for the settler population. While naturalization laws would be determined by the new governing regime, international human rights law regulates the legislative treatment of the settler population.

International legal scholar Yael Ronen explains, “Common to most situations is resentment towards the settlers as representatives of the exploiting regime, and a common

thirst for retribution.”⁹¹⁸ Ronen adds that this has included calls “for the physical removal of settlers from the country or at least...their exclusion from the body politik.”⁹¹⁹ Racial discrimination is often the medium through which talks over expulsion are had. In Hawai‘i, given the ethnic tensions and the sense of injustice felt by the national population, particularly the aboriginal population, generated by a century long occupation, calls for expulsion would certainly be raised. However, as Ronen explains, expulsion policies that are created during times of transition are “limited by the operation of human rights law and standards applicable to long-term residents, regardless of the original impermissibility of their arrival in the territory and subsequent invalidity of their status.”⁹²⁰

In her study, Yael Ronen examined the transition of five states with a focus on how international human rights law regulated the legal treatment of large settler populations during the post-occupation era. The study included Rhodesia to independent Zimbabwe, Russia to the restored Baltic States, South Africa’s transition from apartheid to democracy and the extinguishment of the Transkei, Bophuthatwana, Venda and Ciskei State’s, and the transition from Indonesia to independent East Timor. Her final analysis looked at the ongoing situation between Cyprus and Turkey, and their prospective reunification. From this study, Ronen explains that at the time of transition, international law prohibits expulsion policies that bolster inequality on the basis race, ethnicity, and national origin. In contrast, Ronen argues, “A distinction among persons is not discriminatory if the criteria used are reasonable and objective and their effect is

⁹¹⁸ Yael Ronen, "Status of Settlers Implanted By Illegal Territorial Regimes ," in *British Year Book of International Law 2008*, ed. James Crawford and Vaughan Lowe, 195-229 (New York: Oxford , 2008), 196.

⁹¹⁹ *Id.*

⁹²⁰ *Id.* , 197

proportionate to the aim pursued.”⁹²¹ These cases represent the most modern and applicable law regarding the treatment of settlers in a post-occupied region. Accordingly, residents of the Hawaiian Islands could not be denied naturalization on the basis of race. Nor should they be prosecuted for settling the region. However, those that wished to remain in the Islands without naturalizing would be afforded civil rights but not political rights. Voting would be reserved for Hawaiian nationals only.

⁹²¹ *Id.*, 237.

Epilogue—Change is Here

Change is upon us. When I first started this project in 2008, the topic of Hawaiian citizenship, the discourse of occupation, and the current significance of the Hawaiian Kingdom began to emerge. Since 2008, a handful of Hawaiian nationals and foreigners alike have earned doctoral degrees that illuminate the historical significance of the 19th century, thus providing a backdrop for understanding the current political and legal realities of a prolonged occupation today. This includes, Kamana Beamer, Keanu Sai, Sydney Iaukea, Kūhio Vogeler, Kalawaia Moore, Keao NeSmith, Umi Perkins and Ron Williams. Among those that are near completing their PhD research, Lorenz Gonschor, Mary Lindsey-Correa, and Donovan Preza, who have already made great academic contributions.

Known collectively as the Hawaiian Society of Law and Politics (HSLP), this group of scholars has helped to collapse the ivory tower that often separates the academy from the community. These scholars have filled-in significant pieces of history and have given countless community presentations throughout the Islands, and also abroad. While a clear legal and political analysis is important, the scholarship of HSLP is merely one part of an emerging interdisciplinary educational movement, which at its core is dedicated to preserving Hawai'i, its people, and its culture. The progression of this educational movement is reflective of the amount of Hawaiians that hold PhD's today. When I first began this PhD project in 2006, there was less than fifty PhD's of aboriginal descent in the world. Nearly a decade later, that number has tripled. Today, Hawaiian's hold PhD's across a broad array of disciplines. The upward trend of Hawaiian's in higher learning, particularly graduate education, continues to swell. This educational movement,

as it has already proven, will continue to have a direct impact in the community, and as more questions regarding the future of these Islands surface, more research will be necessary. The relationship between the academy and the community must continue, as the future of post-occupied Hawai‘i will rely on this relation for its preservation and survival.

The late Professor of Hawaiian Studies, Kanalu Young, who served as an academic advisor to HSLP, stressed the importance of developing scholarship that was relevant to the reality of life today. Through education, scholarship, and research, Kanalu sought to develop scholarship and curriculum to help develop a “Hawaiian national consciousness” that was based on a well-researched account of history—a history that included Hawai‘i’s current legal and political status today as occupied. Kanalu believed that building a national consciousness was a necessary condition to end the occupation not only on the land and in the sea, but also in the mind’s of the people. What was needed, Kanalu asserted,

“A body of publishable research that gives life and structure to a Hawaiian national consciousness that connects to the theory of State continuity...To begin to restore fully a sources-centered study of Kingdom law, governance, and politics for domestic affairs today.”⁹²²

Kanalu believed that education and research were central to the process of restoring the Hawaiian Kingdom. Education was the vehicle to connect the people of today with a clear understanding of Hawai‘i’s history. He wrote, “A connection to the past...is vital to the reestablishment of a historically authentic Hawaiian national identity.”⁹²³ A Hawaiian

⁹²² *Id.*

⁹²³ *Id.*

national consciousness was important in order to rebuild a Hawaiian identity, spiritually, emotionally, but also practically. In this regard, Young explained that building a Hawaiian national consciousness also brings “clarity when discussing the issue of who is Hawaiian today...”⁹²⁴ This dissertation attempted to bring clarity to this question, a question that I was introduced to in 2004 when I first enrolled in Kanalu’s course. I was among many of Kanalu’s students that were awakened to a history that we never knew

Before passing away in 2008 Kanalu began the important work of building a Hawaiian national consciousness by introducing a new course at the University. Hawaiian Studies 691—*Sovereign State-Kingdom Law* was among the first classes at the University to begin the lofty task of developing an academic discourse needed to build a Hawaiian national consciousness. The course provided a comprehensive blueprint to begin rebuilding and redefining what it means to be Hawaiian today, including the “kuleana” therein. The course description read:

Nation-State continuity as it applies historically to the Hawaiian Islands also yields significant contemporary relevance. Use of international relations and public international law for graduate study in this program is not just fodder for another course, but instead signals the development of an entirely different paradigm for understanding the historical roots of Hawaiian national consciousness in constitutional monarchy and inter-State relations. In these contexts, Hawaiian is the nationality and particular references to ethnicity are made more specifically (e.g. aboriginal Hawaiian or *kanaka maoli* for those nationals of pure or part native blood.) Such variations must be taught and learned.⁹²⁵

⁹²⁴ *Id.*

⁹²⁵ “HWST 691 Syllabus”, Seminar on the History of Hawaiian Kingdom Law, 2006.

In the wake of Kanalu Young's death, Professor Kamana Beamer, now teaches the course and continues this important kuleana.

Today, the discourse regarding the Hawaiian Kingdom is now being taught in many other departments outside of Hawaiian Studies, including Political Science, Law, History, Geography, and Ethnic Studies. Community Colleges throughout Hawai'i also offer courses that center on this emerging discourse. Hawaiian Studies 255—*Introduction to the Hawaiian Kingdom*, is currently being offered at Kapi'olani Community College and Windward Community College. Along with the collegiate level, this education is also being taught in Hawai'i's public and private schools. Despite these great strides in education at all levels, the University of Hawai'i must play a larger role; not only helping to expose the prolonged and illegal occupation, but become a major institution that can help to shape the transition and restoration process.

The deoccupation of Hawaii and the restoration of the Hawaiian Kingdom will create tremendous economic, social, political, cultural, and environmental, opportunity. Maximizing this opportunity, to create a better Hawai'i, will depend on comprehensive research, planning, and vision. Higher education institutions of Hawai'i, particularly UH Mānoa, the only Research-One university in the islands, must begin to play a much more influential role in helping to shape the future of a post-occupied Hawai'i. This will begin when the University formally acknowledges the US occupation of Hawai'i in order to better understand its role within it. For the University and other educational institutions, it is only a matter of time in which the occupation of the Hawaiian Kingdom will need to be addressed. This will occur as more and more Hawaiians enter the University. It will also occur because of a strong relationship between the University and the community.

The significance of the academy in relation to the community; in bringing the Hawaiian Kingdom into a contemporary context, was apparent at the Department of Interior (DOI) hearings during the summer of 2014. The DOI hearings will forever be remembered as an inflection point that represented a critical shift in the discussion regarding Hawaiian sovereignty. Today we have begun to revitalize our legal/political identity that was formed in the development of the Hawaiian Kingdom. It is clear that since the 1970's, great strides have been made in revitalizing a Hawaiian identity—culturally, politically, and now legally. The testimonies of thousands of Hawaiians at the DOI hearings resonated with the passion and conviction of the anti-annexation testimonies at the turn of the 19th century. The resounding call from the overwhelming majority of people testifying was: 1) the US has no legal jurisdiction in Hawai'i; and (2) the Hawaiian Kingdom continues to exist. These two claims made up the drumbeat that rang throughout all 15 hearing from Hawai'i to Kaua'i. The topic of Hawaiian citizenship as an inclusive and multi-ethnic signifier was also a reoccurring topic at the DOI hearings. Many testifiers reputed the US's racial classification of Hawaiians, while recalling the history of the Hawaiian Kingdom as a multi-ethnic independent state that was absent of racial logic such as blood quantum. The legal, political, and historical proficiency that was on display at the DOI hearings was as impressive, as it was inspiring. It is also why the summer of 2014 will be written about in future history books as it will be remembered as a defining moment that set the standard for future public discourse regarding the US in Hawai'i. The 2014 DOI hearings were a clear indication that “change is here.”

Among the approximately one-thousand people who gave testimony, one testimony that was most impacting for me personally was the testimony of my brother, Ronnie Kauai, a fourth generation paniolo from Ulupalakua. Despite not having access to attend college, his testimony symbolized the growing national consciousness that is now occurring in the community. Before the DOI hearings, my brother and I hardly talked about Hawaiian politics. After the DOI hearings, the topic of Hawaiian politics is now at the center of many of our conversations. For me this new connection with my brother also symbolizes the important connection between the community and the academy, which was prevalent in the DOI hearings. As the hearings reflected, many within the Hawaiian community are very educated on the issue of the US in Hawai'i. Along with institutions of higher learning, the Internet has played an important role in disseminating information. Various social media forums have become important educational venues where research is shared and constructive conversations regarding the occupation of the islands are happening. Despite never giving public testimony or taken a class on the subject of the Hawaiian Kingdom, my brother delivered a powerful testimony, which for me, symbolized the effect of education in overcoming the hardships that Hawaiians have endured for more than a century. In front of a packed public school cafeteria in Kahului, Maui, my brother, Ronnie Kauai, a paniolo from Ulupalakua gave critical insight into the realities that Hawaiians face as a result of a 121 year, trans-generational, prolonged and illegal occupation.

Aloha People, Aloha Panel,

My name is Ronnie Kailima Kauai, I come from Ulupalakua Ranch. I was fortunate enough to live there and learn the old Hawaiian style. My Kupuna taught me how to hunt the mountain for pig, and work the Ocean for ‘Opihi, and Crab—live the ole Hawaiian style. When I was twenty I had to leave the Ranch. There went my Hawaiian trip. I had hard time. I did wrong. I got locked up. I said I was sorry I did my time the court gave to me. You guys (United States) said you guys was sorry when you guys going do your time. I’m here to speak for all my... Excuse me people I get hard time talk, I not use to this. Even my language you have to excuse, this is how I ended up talking when you took away my Hawaiian speech. My mom, my dad, my grampa and grandma, could all speak Hawaiian. As a small boy growing up I was always confused. I ask, how come my mama couldn’t teach me? [she said] “No boy, not the way stay now.” Every time they talk about the Kingdom, my kupuna were sad, they only look down, they no like talk. Now I understand why—do you guys understand what happened to us, and are willing to make a difference for us? Especially you, Esther (Kiaaina)... You get our koko. You should back us up when you go up there (D.C.). Don’t just put all these things on the side, because this is coming from real kind Hawaiian people that still work the land and know how important the land is. You guys (US) have been taking all of our land, poisoning our land...its just like you guys trying to kill the kanaka off so that you can just take my mama. My mama is our ‘Āina, and she is not for sale. I don’t know who this governor (Abercrombie) came over here, smiling on T.V., talking like he like sell our land, not even our Kings and Queens could do that. So, take this back to the people that matter, and send the right guys over here. Because according to all my people you not the right people. I wanted you to hear my story of how we Hawaiians suffer till today from our Kingdom being taken away. Thank you.

We are now witnessing unprecedented change, which a decade ago was unthinkable. Only those that are conscious and receptive will be able to see and feel the

change that is now unfolding almost daily. Along with the DOI testimonies, another recent indicator of such change was the 2014 gubernatorial race. The continued existence of the Hawaiian Kingdom was a reemerging topic that candidates were tasked with responding to. While all candidates tip-toed around the subject in 2014, it will not be so easy to evade such questions in the future, as the issue of the Hawaiian Kingdom will continue to grow, both in Hawai'i and internationally. One indicator of the international community's growing awareness is the listing of Hawai'i as an occupied state in the 2013 "War Report" published by Oxford Press. The more domestic and international awareness and the longer the US refuses to acknowledge the prolonged occupation of the Hawaiian Kingdom, the larger the issue will become. In the near future, the steady rise of a Hawaiian national consciousness will continue to move the Hawaiian Kingdom to the very center of the political spectrum in the islands. An independent Hawai'i was once viewed as a radical notion. Contrary to this long-held belief, research has begun to reveal that this is a legal matter and therefore very conservative. Furthermore, research has also begun to reveal the great potential that Hawai'i and its people will incur in a post-occupied future. After all, it was the Provisional Government, the Republic of Hawai'i, the Territory of Hawai'i, and finally the State of Hawai'i, that introduced the most radical and destructive change that these Islands have ever experienced. Notwithstanding the legality of the situation, it should be clear that before the US became involved in the governing of these islands, albeit illegally, the Hawaiian Kingdom developed a society with high literacy rates, universal health care, a global economy, international relations, technological advancement, and a diverse multi-ethnic population who had access to civil and political rights regardless of the color of their skin. While the Hawaiian Kingdom

was by no means utopic, even on the backwards scale of Western civil progress, matters of race, class, and gender did not obstruct the social progress of the Hawaiian Kingdom as it did in many Western states.

The Hawaiian Kingdom was a unique anomaly whose effectiveness served as a model for other developing non-western nations within the Pacific basin. As Lorenz Gonsior's research unveils, the democratic principles of the Hawaiian Kingdom served as a model for many Pacific Island Nations, and other burgeoning non-Western states such as Japan, China, and to a lesser degree, Thailand. Knowing the great strides that the Hawaiian Kingdom made in the 19th century, led mainly by the aboriginal population, raises the question of where Hawaii would have been today, if not for the US dragging the islands and its people into the virtual Stone Age. From one of the most progressive independent states in the world to one of the most forgotten. If not for the US, where would Hawai'i rank among the countries of the world today in regard to health care, political rights, civil rights, economy, and the environment? In the 19th century Hawaii was a global leader in many ways, even despite its size.

The importance of aboriginal epistemology must be included in the governmental process today, not as a means to attract tourism, but as a means to sustain life. After all, it was the aboriginal population that had governed society and managed resources in the islands for approximately two millennia, adapting when necessary; including navigating the tricky transition to modernity and the constitutional era. The culture of the peoples that lived here from time immemorial should once again be at the center of government affairs. Not because it is morally, politically, or legally correct, but because the secret to sustaining life in these islands are embedded in the Hawaiian culture. As long as the

aboriginal population remains incarcerated, uneducated, and unhealthy, Hawai‘i will continue to be sick and unhealthy as well.

This dissertation examined one important aspect of Hawai‘i’s history—citizenship. It shined light on the far-reaching legal and political implications that have been overlooked for too long. Most countries in the world have extensive histories regarding the origin and evolution of their country, including the topic of citizenship laws and the social forces that shaped its development. The hope is that this study of Hawaiian citizenship will prompt other studies on the topic. More research on the topic of citizenship will be necessary in bringing the prolonged occupation to an end. Equally, more research on the topic will be necessary in shaping Hawaiian citizenship laws in the future. What expectations, values, and virtues should shape Hawaiian citizenship in a post-occupied Hawai‘i? What cultural values should shape the moral character of Hawaiian citizenship? If there were a naturalization test, what would it measure, and what kinds of questions should it ask? What civic duties—social, political, environmental—should be required of the national citizenry in a restored Hawaiian state? Given the affects of a century long occupation, answering such questions will not be easy. Yet, it is important to remember that we will not be starting from scratch. The answers to the problems that the future holds, will come from a clearer understanding of our past, including future Hawaiian citizenship laws.

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