

A Brief Summary of the History of Native Hawaiian Governance in Hawai'i



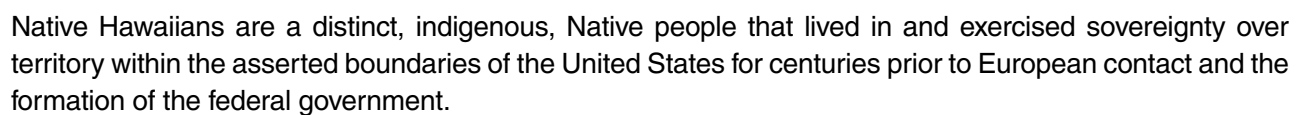
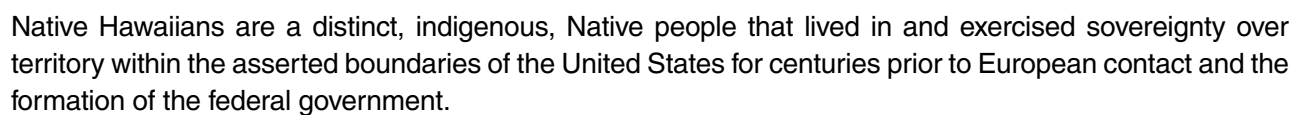
Empowering Hawaiians, Strengthening Hawai'i
July 2013

This is a brief synopsis of an extensive study documenting the long history of Native Hawaiian governance that is being prepared by two Native Hawaiian scholars and practitioners, Dr. Davianna Pōmaika‘i McGregor, Professor and founding member of the Ethnic Studies Department at University of Hawai‘i-Mānoa, and Melody Kapilialoha MacKenzie, Associate Professor of Law and Director of Ka Huli Ao Center for Excellence in Native Hawaiian Law at the William S. Richardson School of Law, University of Hawai‘i-Mānoa.

This synopsis provides a selective history to elucidate three points: (1) Native Hawaiians are the indigenous people of the Hawaiian Archipelago (Ka Pae ‘Āina Hawai‘i) who have a distinct language, culture, history and ancestral land base; (2) Native Hawaiians exercised sovereignty over the islands that now comprise the State of Hawai‘i for centuries prior to the formation of the United States government; and (3) for over a thousand years, Native Hawaiians have continuously exercised forms of self-governance in Hawai‘i that are rooted in inherent Native Hawaiian sovereignty.

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Introduction

Native Hawaiians, the Kānaka Maoli (genuine or true people), are the aboriginal, indigenous people who settled the Hawaiian archipelago, founded the Hawaiian nation and exercised sovereignty over the islands that subsequently became the Hawaiian Kingdom and Constitutional Monarchy, the Republic of Hawai'i, the Territory of Hawai'i and the State of Hawai'i. Every legitimate form of historical methodology, documentation and archaeological investigation, including Hawaiian oral histories, chants and genealogies, substantiates this fact.¹ Most recently, the findings of Act 195 (Session Laws of Hawai'i 2011) affirmed this fact by formally recognizing the Native Hawaiian people as the “only indigenous, aboriginal, maoli people” of Hawai'i.²

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

Throughout their history, Native Hawaiians have maintained a deep abiding faith in the land and the life forces of nature (‘āina) as their source of sustenance, spiritual well-being, collective identity and political empowerment. Family genealogies (mo'okū'auhau) and legendary histories (mo'olelo) trace the lineage of contemporary Native Hawaiians to astronomers, navigators, planters, fishermen, engineers, healers and artisans who settled what is known today as Hawai'i. They cultivated the landscape with irrigated taro (kalo) terraces and dryland agricultural systems. They farmed the ocean within great walled fishponds. They constructed compounds and villages of extended families (kauhale) and temples (heiau) to honor their gods.³

Beyond these forbearers, the genealogical chants trace Native Hawaiian origins to the land and the life forces of nature itself (‘āina) - the earth mother (Papanuihānaumoku); the sky father (Wākea); fresh water springs and streams (Kāne); agricultural productivity and the seasonal rains (Lono); the ocean (Kāloa); volcanism (Pele); and the moon, reefs and tides (Hina). For example, the genealogy of Keohokalohe—the mother of the last two reigning monarchs of the Hawaiian Kingdom and Constitutional Monarchy, King David Kalākaua and his sister Queen Lydia Kamaka'eha Lili'uokalani—traces the origins of their dynasty to the first spark of light out of the deepest source of darkness or what is called Kumulipo. In a total of 2,012 lines, this quintessential Hawaiian genealogy chant traces the evolution of life out of the depths of darkness into the corals, shellfish and seaweeds; the plants of the forest; fishes, insects and birds; the Godly forces of nature; and finally to a succession of chiefly rulers of Hawai'i.⁴

Given this historical and cultural context, Native Hawaiian ancestry and genealogy is not a function of race, it is at the core of Native Hawaiian national identity. Genealogy connects Native Hawaiians to each other as the People whose collective indigenous ancestors developed the first society to establish sovereignty over the Hawaiian Archipelago no less than six and perhaps as many as eight centuries prior to European contact in 1778. Genealogy is a cultural and political relationship that locates Native Hawaiians within their homeland at the first critical point of the establishment of a social and political system in the Hawaiian Islands.

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

2. Act 195, §§ 1-2, 2011 Haw. Sess. Laws. (codified at Haw. Rev. Stat. Ch. 10H).

3. Kamakau, *Ruling Chiefs of Hawai'i*; Kamakau, *Ka Po'e Kahiko: The People of Old*; Kamakau, *The Works of the People of Old*; Malo, *Hawaiian Antiquities*; Handy, Handy & Pukui, *Native Planters in Old Hawaii: Their Life, Lore, and Environment*; Kirch, *Feathered Gods and Fishhooks*; Fornander, *Fornander Collection of Hawaiian Antiquities and Folk-Lore*.

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

A.D. 300 – 600

Canoe loads of Polynesians, probably from the Marquesas, settle the Hawaiian islands

A.D. 600 – 1000

A distinct Native Hawaiian language, culture and belief system indigenous to the Hawaiian Islands prevails in a social system of extended families ('Ohana)

I. Settlement and Early Hawaiian Social System: A.D. 300 – 1000



The social system was organized around communal subsistence production in which large extended families ('ohana) engaged in cooperative work and shared the fruits of their labor. This drawing depicts the basic Hawaiian settlement district – an ahupua'a or watershed area. Illustration: Jonathan Ching

Hawai'i began to be settled during a colonization period of A.D. 300 - 600 by Polynesians who probably came from the nearest occupied archipelago, the Marquesas.⁵ This discovery and settlement of Hawai'i and subsequent development of a distinctively Native Hawaiian social system is believed to have unfolded over six to seven centuries prior to the emergence of a system of governance by district chiefs.⁶ From A.D. 600 - 1000, a core Native Hawaiian language ('Ōlelo Hawai'i) and culture (Nā 'Ike a me Nā Hana Hawai'i) emerged as unique and distinct from that of the Polynesian homeland. The social system was organized around communal subsistence production in which large extended families ('ohana) engaged in cooperative work and shared the fruits of their labor.



Cultivated fields, complex irrigation networks, and large fishponds reflected the industry and skill of the common people working together as extended families ('ohana) and under the oversight of chiefly stewards (konohiki) on behalf of their ruling chiefs. Photo: Arna Johnson

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

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

A.D. 1000 – 1500**Governance by District Chiefs**

Native Hawaiian Governance by District Chiefs

*Generations 1 – 14***II. Governance by District Chiefs: A.D. 1000 - 1500***Generations 1–14 Native Hawaiian Governance by District Chiefs⁷*

By A.D. 1000, ruling chiefs emerged in every district on each island and assumed stewardship over the land. They undertook the responsibility of organizing the common people (maka'āinana) to develop an infrastructure of irrigation networks, roads and fishponds to enable the intensification of the production of food and basic necessities to support a rapidly expanding population.

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

According to the Native Hawaiian genealogies and oral traditions, this era of rapid expansion of the population and the development of the infrastructure corresponded to a new wave of migration from Tahiti. These dynamic developments were further stimulated by religious and political innovations introduced by an emerging class of ruling chiefs, some of whom were indigenous to Hawai'i and some of whom migrated to Hawai'i from Tahiti during this period.⁸

Around A.D. 1400, the voyaging of chiefs and priests between Hawai'i and Tahiti stopped and the Native Hawaiian social system again developed in isolation from external influences over the next two centuries.⁹



Paepae O He'eia, He'eia O'ahu - a traditional Hawaiian fishpond being restored by the community and Kamehameha Schools. Photo: Arna Johnson

7. The estimate of the generations of Native Hawaiian rulers and the approximate years that they ruled is based on Carolyn Kēhaunani Cachola Abad's analysis of Hawai'i chiefs, from the last set who migrated from Tahiti to Hawai'i, forward to King Kamehameha I in "The Evolution of Hawaiian Socio-Political Complexity: An Analysis of Hawaiian Oral Traditions" (Univ of Hawai'i Unpublished Dissertation, 2000). Chiefly genealogies trace the origins of Hawaiian rulers deeper in time. For example, Fornander, in *An Account of the Polynesian Race* places the chief that Abad selected as generation One (1) in her study, as a descendant of 29 generations of ruling chiefs in the Ulu line who preceded him. The Kumulipo Genealogy, traces the Kalākaua Dynasty back to the origin of the universe itself.

8. See generally Ross Cordy, *Exhalted Sits the Chief: Ancient History of Hawaii Island* (Honolulu: Mutual Publishing, 2000).

9. The sources cited in footnote 1 place the end of transpacific voyaging to between 1250 and 1400. Personal communication with Professor Emeritus of cultural anthropology, Univ. of Hawai'i, Mānoa Ben Finney affirmed this, April 6, 2003. According to Finney, once there was a critical mass of people and technology in Hawai'i, there was no great need to commit the vast resources needed to support long range voyaging. The resources of the chiefs were instead used to oppose other chiefs and expand the territory under their control. The book, *Ancient Tahiti* by Teuira Henry (Honolulu: Bernice Pauahi Bishop Museum, 1928), pp. 119-128, provides an account of how the voyaging temple on the island of Taputapuātea, in Tahiti played a critical role in the transpacific voyages and that the murder of a priest from Aotearoa–New Zealand by a chief from Tahiti at that temple led to a prohibition (kapu) on the launching of the wayfinding voyages that were traditionally launched under the auspices of the priests of that temple. Finney's book *Sailing on the Wake of our Ancestors: Reviving Polynesian Voyaging* (Honolulu: Bernice Pauahi Bishop Museum Press, 2003), documents a 1995 ceremony at the temple at Taputapuātea to lift the prohibition. It was conducted by members of the Polynesian Voyaging Society of Hawai'i who revived transpacific wayfinding voyages in 1976 with the round trip voyage of the double-hulled canoe Hōkūle'a from Hawai'i to Tahiti. Navigators from other Polynesian islands joined in the ceremony.

A.D. 900 – 1500**Governance by District Chiefs**

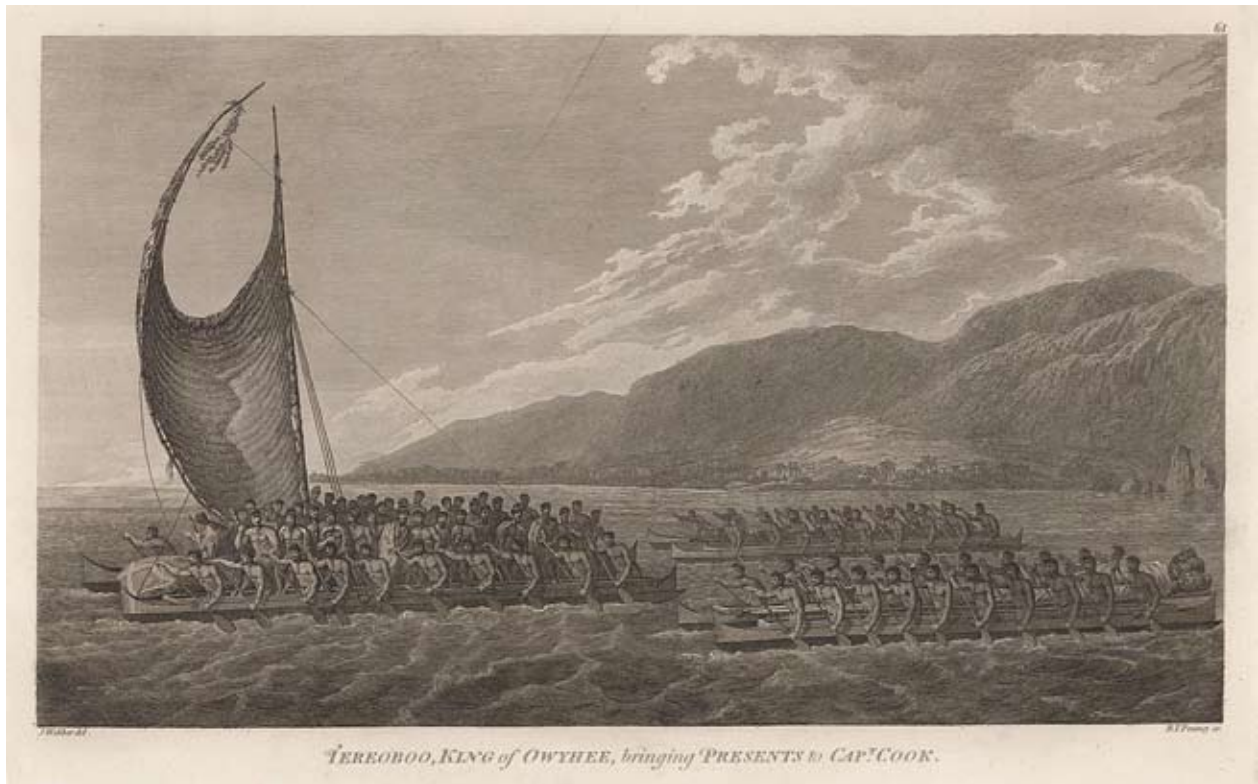
Native Hawaiian Governance by District Chiefs
Generations 1 – 14

A.D. 1500 – 1810

Four Island Chiefdoms Native Hawaiian Governance
by High Chiefs of Islands (Ali'i Nui) and Councils of
Island District Chiefs ('Aha Ali'i) Generations 14 - 23

III. Four Island Chiefdoms: A.D. 1500 – 1810

*Generations 14–23 of Native Hawaiian Governance by High Chiefs of Islands (Ali'i Nui)
and Councils of Chiefs ('Aha Ali'i)*



At the time of contact with the British Captain Cook in 1778, Hawai'i was governed by Four Hawaiian High Chiefs (Ali'i Nui) as individual island Chiefdoms. This drawing by Cook's artist, John Webber, shows the High Chief of Hawai'i, Kalaniopu'u in one of his many war canoes.

The next period, A.D. 1500 - 1795, is referred to as the Protohistoric Period. During this period, there were four distinct chiefdoms (Hawai'i, Maui, O'ahu, Kaua'i) ruled by four high chiefs (Ali'i Nui) who continued to compete for control over districts and islands through inter-island alliances and marriages, religious rituals and military conquest. The Ali'i Nui and their councils of chiefs ('aha ali'i) ruled the individual islands as distinct yet interrelated realms. They had organized these island societies to the point where it became possible in the late eighteenth century for one paramount chief to consolidate and govern the chiefdoms as a federated interisland kingdom.

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



A.D. 1810 – 1819
King Kamehameha I
Generation 23



A.D. 1810 – 1819
King Kamehameha II
(Liholiho)
Generation 24

IV. Federated Central Government Under a Monarchy: 1810 – 1839

Native Hawaiian Governance by a Monarch

Generation 23 - King Kamehameha I 1810 - 1819

Generation 24 - King Kamehameha II (Liholiho) 1819 - 1824

Generation 25 - King Kamehameha III (Kauikeaouli) 1825 - 1839

Once King Kamehameha I gained control of the major Hawaiian islands, he established a Council of Chiefs to provide advice and ensure the proper governance of the islands without reliance on warfare. The Council supervised the division and management of land, the management of fisheries, the sandalwood trade and the annual collection of taxes. Kamehameha also appointed governors for each island, in recognition of the relative autonomy of each island in relation to local affairs and as an accommodation to the federated nature of the governance of the unified Kingdom.¹⁰ The Council provided a constraint on the power of the King and was an early indicator of the democratic direction in which governance of the nation was moving.¹¹

Kamehameha I died in 1819 and his son, Liholiho, took on the responsibility of governance. At that point in time, the sacred religious restrictions (Kapu) that defined the roles and interrelationship of men and women and the various classes of people with each other, as well as the appropriate uses of the land, ocean and natural resources were formally abandoned by Liholiho (Kamehameha II) in an act called the 'Ai Noa (Free Eating).¹² Following the 'Ai Noa, Calvinist missionaries from New England arrived in Hawai'i and introduced a new religious belief system that focused upon the salvation of humans and taught that humans were superior to the land and other living creatures. Their teachings, laced with cultural condescension, were critical of the cultural practices and traditional nature-based spiritual belief system of the Native Hawaiians. Missionaries, together with the whalers and merchants, introduced commercial practices that commodified and degraded cultural landscapes, competed with subsistence uses of the land and resources and undermined the principled belief of the people in the sacred nature of 'āina (land). These contradictory philosophies and practices continued to be an undercurrent influencing the competitive relations between the Native Hawaiian community and foreign residents.

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

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

12. Kamakau, *Ruling Chiefs*, pp. 219-228; Kame'eleihiwa, *Native Land and Foreign Desires*, pp. 67-94; Marshall Sahlins, *Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom* (Ann Arbor: Univ. of Michigan, 1981), pp. 55-64; David Kalakaua King of Hawai'i, *Legends and Myths of Hawaii* (Rutland, VT: C.E. Tuttle Co., 1972), pp. 429-446; William Davenport, "The Hawaiian 'Cultural Revolution': Some Economic and Political Considerations," *American Anthropologist*, LXXI, 1969, pp. 1-20.



A.D. 1825 - 1839
King Kamehameha III
(Kauikeaouli)
Generation 25

V. Hawaiian Constitutional Monarchy: 1839 – 1893

Native Hawaiian Governance by a Constitutional Monarchy

Generation 25 - King Kamehameha III (Kauikeaouli) 1839 - 1854

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

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

Generation 28 - King William Charles Lunalilo 1873 - 1874

Generation 29 - King David Kalākaua 1874 - 1891

Generation 30 - Queen Lili'uokalani 1891 - 1893

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

During Kamehameha III's thirty-year reign, from 1825 through 1854, three closely related developments unfolded that not only continued to propel Hawai'i into a global system of trade and commerce, but also transformed the nature and character of the Kānaka Maoli social system. First, a settler community of New England missionaries and European and American merchants, seamen and vagabonds grew in Hawai'i; second, the Pacific whaling industry developed; and third, the U.S. became the primary market and trading partner for Hawai'i. Combined, these three developments, along with continued threats from foreign governments, led to the establishment of a constitutional monarchy and a new system of private land ownership that unsettled old relationships and created new relationships between the common people and the chiefs and the settler community.¹³

On June 7, 1839, King Kamehameha III proclaimed the Declaration of Rights, imposing restraints on the government and recognizing individual and communal rights of the chiefs and the common people. The Declaration of Rights, directed exclusively to Native Hawaiians, provided, in part, that "God has also bestowed certain rights alike on ... every man and every chief of correct deportment; life, limb, liberty, freedom from oppression; the earnings of his hands and the productions of his mind, not however to those who act in violation of the laws." In a manner of fairness and equity, the Declaration also provided that:

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 ... Protection is hereby secured to the persons of all the people, together with their lands, their building lots, and all their property, while they conform to the laws of the kingdom, and nothing whatever shall be taken from any individual except by express provision of the laws.¹⁴

Within a year, these declarations were incorporated and transformed into Hawai'i's first Constitution in 1840. The Constitution established three branches of government: (1) The King as the chief executive, responsible for foreign affairs, with an appointed premier and four governors of the major islands; (2) A House of Nobles, appointed by the King, and a House of Representatives, chosen by the people from Hawai'i, Maui, O'ahu and Kaua'i; and (3) a Judiciary with a Supreme Court and island judges appointed by the island governors.¹⁵ In the years following, the existing laws of Hawai'i were codified, with an initial Civil Code promulgated in 1859 and again in 1884, and a compiled Penal Code promulgated in 1869. Thereafter, session laws were added every two

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

14. Kingdom of Hawai'i Const. of 1840, reprinted in *The Fundamental Law of Hawaii* (Ed. Lorrin Thurston) (Honolulu: Hawaiian Gazette Company, Ltd., 1904), p.1.

15. *Id.*, pp. 2-9 ("Prerogatives of the King," "Respecting the Premier of the Kingdom," "House of Nobles," "Respecting the Legislative Body," "On the Judges").



A.D. 1839 - 1854
King Kamehameha III
(Kauikeaouli)
Generation 25

years after the legislative session.¹⁶

Throughout the nineteenth century, the United States recognized the independence of the Hawaiian Kingdom and extended diplomatic recognition to the Hawaiian government. The U.S. entered into five agreements and treaties—in 1826, 1842, 1849, 1875 and 1887—with the Hawaiian government relating to friendship, commerce and navigation.¹⁷ In 1842, U.S. President John Tyler officially recognized Hawai'i as an independent nation and declared a policy of maintaining Hawaiian independence.¹⁸ The Hawaiian Kingdom also entered into treaties and received formal recognition as a sovereign, independent nation from nearly every major world power.¹⁹

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

A. Persistence of Cultural and Spiritual Beliefs and Practices

Despite the breaking of the Kapu (sacred religious restrictions) and official abandonment of the traditional religious system, Native Hawaiians in the rural areas of O'ahu and the neighbor islands, distant from the centers of power, turned deeper into the preservation and practice of the essential elements of the Hawaiian culture. They persisted in perpetuating their religious beliefs and spiritual values; language; fishing practices; cultivation and stewardship of their ancestral lands; medical and healing practices, stewardship of sacred sites and oral traditions, chants, music and dance. Men and women knowledgeable in these customs passed on their knowledge, orally and, later, through Hawaiian language newspapers, to succeeding generations. It was this form of cultural perpetuation, primarily in the rural areas of the islands, isolated from the onslaught of missionary teaching and actions that enabled the Native Hawaiian people to endure as a unique, distinct, dignified people throughout the Constitutional Monarchy while resisting the influences of the missionary culture and its political progeny.²⁰

Discernible threads in the evolution of the Native Hawaiian social and political culture distinct from the Hawaiian monarchy began to form during the 1840s. Those seeking to live their lives in customary fashion coalesced when necessary, through ad hoc or temporary organizations, with other Native Hawaiians to express resistance to government conduct. For example, numerous Native Hawaiians signed petitions in 1845 against selling land to foreigners, the appointment of foreigners to government offices and the imposition of new taxes.²¹

During this era, the King and the Council of Chiefs began to focus on protecting the integrity of the government and the nation from the increasing demands of foreign residents and threats to the independence of the nation from foreign governments. Protection of the natural resources for the subsistence of the people; perpetuation of

16. See generally, Preface, *The Civil Laws of the Hawaiian Islands 1897* (Honolulu: Hawai'i Gazette Print, 1897) for a discussion of the various classifications of laws and codes of Hawai'i.

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

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

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

20. Davianna Pōmaika'i McGregor, *Nā Kua'āina: Living Hawaiian Culture* (Honolulu: Univ of Hawai'i Press, 2007).

21. *Id.* pp. 3, 12-14, 55-59 (July petition to Kamehameha III by 1600 commoners concerning "the independence of the kingdom," and prohibiting foreigners to own land); see also Silva, *Aloha Betrayed*, pp. 38-9; E.S. Craighill Handy and Mary Kawena Pukui, *The Polynesian Family System in Ka-u, Hawai'i* (Rutland, VT: Charles E. Tuttle, 1976), pp. 5-6.

Native Hawaiian cultural and spiritual beliefs, customs and practices; and holding the monarch and the council of chiefs accountable for the care and well-being of the people, evolved into the province of the broader classes of those descended from chiefly lines (ali'i), the scholarly, skilled and artisan classes (kāhuna) and the common people (maka'āinana). Their continued exercise of traditional and customary beliefs, customs and practices was recognized and incorporated into the land laws of the Kingdom and Constitutional Monarchy. These actions, combined, account for the endurance of the Native Hawaiian culture and national identity through the 20th century and its growth entering the 21st century.²²

B. Recognition of Hawaiian Cultural Practices in Hawaiian Land Law

During the mid-1840s, Kamehameha III instituted Ka Māhele (Land Division), converting the Hawaiian collective use-rights land system into a fee simple private property system. The political decision to divide the lands of Hawai'i, previously held in trust by the King for the chiefs and the people, was made in order to prevent a foreign power from automatically gaining control of all of the lands should Hawai'i be invaded. One result of Ka Māhele was the creation of two important categories of land - almost a million acres of the King's personal lands, eventually designated as the Crown Lands, and the more than 1.5 million acres of Government Lands of the Hawaiian Kingdom. The Ali'i (chiefs) also received over one and a half million acres of land during this process, while the Native tenants received small parcels of land, known as Kuleana, totaling about 28,658 acres.²³

In this process, the King and the Chiefs articulated and adopted a set of principles of traditional land tenure in the islands that would guide the division of the lands for individual ownership. Between 1847 and 1851, statutory changes directed Hawai'i's judiciary to consider Hawaiian usage in making decisions regarding land use and tenure. Hawaiian usage preserved certain rights of practitioners and commoners in the land regardless of who held "title," and ensured that deeds for land contained a declaration of those usage rights. Practices that had persisted as a cultural and political imperative among commoners now acquired legal recognition and protection.²⁴

The process of establishing a system of private property ownership in Hawai'i was a hybrid system of unique elements of Native Hawaiian principles of land stewardship combined with Western private property land ownership. All of the lands in the Hawaiian Islands—both private and public—retained a layer of vested rights of the hoā'aina or the tenants of the land. The phrase defining these rights was included in private land titles and in the law setting aside the Crown and Government lands of the Kingdom of Hawai'i—"koe wale no na kuleana o na kanaka e noho ana ma ua mau aina la," which literally translates as "reserving only the right of the people who live on the aforementioned lands," and was translated at the time as "subject only to the rights of tenants".²⁵

In addition to the reserved rights in the 'aina itself, there was another set of tenant or common people rights reserved by the King and the legislature in the 1850 Kuleana Act. The Act acknowledged that ownership of small parcels of land by tenants was not sufficient to provide for the needs of the people if they were cut off from

22. See generally McGregor, *Nā Kua'āina*, documenting the perpetuation of customary and traditional practices in rural Hawaiian communities throughout the nineteenth and twentieth centuries and the significance of these communities in the twenty-first century revitalization of the Native Hawaiian language and culture.

23. See generally Kame'eleihiwa, *Native Lands and Foreign Desires*, for a detailed explanation of Ka Māhele. The Māhele process "transformed the traditional Land tenure system from one of communal tenure to private ownership on the capitalist model." Id., pp. 8. See Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai'i?* (Honolulu: Univ. of Hawai'i Press, 2008), pp. 30-58 (2008).

24. The inaccurate proposition that the common people's relationship to the land was reflective of the practices of "feudalism" finds its origins in non-Native historical and legal recitations. See Kuykendall, *I Hawaiian Kingdom*, pp. 10, 269. The proposition emerged as an analogue for American popular and political consumption, and in the brief submitted by the Hawaii Housing Authority to bolster and pejoratively color its argument to support a variable land tenure system in the *Midkiff* case. Brief for Appellant at 3, *Hawai'i Housing Authority v. Midkiff*, 467 U.S. 229 (1984) ("The issue is whether the United States Constitution freezes our fiftieth state into its feudal past."). It was adopted as fact by the Court in *Midkiff*, 467 U.S. at 242 (incorrectly attributing the source to the amicus curiae brief filed by the Office of Hawaiian Affairs) and subsequently reiterated without question in *Rice v. Cayetano*, 528 U.S. 495, 501 (2000) (relying on the inaccuracy created in *Midkiff*). See also Neil M. Levy, "Native Hawaiian Land Rights," 63 Cal. L. Rev. 848, 849 (1975) ("This situation ... distinguished pre-Cook land patterns from the European feudal system ...").

25. It should be noted that subsequent royal patents and deeds sometimes contained slightly different language, such as "koe nae no kuleana o na kanaka maloko." See *Kalipi v. Hawaiian Trust Co.*, 656 P.2d 745 (1982), in which the Hawai'i Supreme Court translated the phrase as: "The kuleanas [sic] of the people therein are excepted."



A.D. 1855 - 1863
King Kamehameha IV
(Alexander Liholiho)
Generation 26

their privileges of gathering the resources they needed for subsistence. The Act granted tenants their traditional and customary gathering rights, rights to drinking water and running water and the right of way. Initially, the law required that the *hoā'āina* obtain permission from the landlords to enter their property. Upon petition of the Native tenants, in 1851, the consent provisions were eliminated. Since 1851, the law has remained unchanged and is currently found in section 7-1 of the Hawai'i Revised Statutes as follows:

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.

This feature of the private land system is uniquely Hawaiian and contrary to Western rights of private property which afford the owner the right to exclude anyone from their privately owned land.

A separate provision in the 1850 Kuleana Act also provided for Native tenants or the common people to purchase between one and fifty acres of Government Land for the minimum price of fifty cents per acre outright. It is estimated that Native tenants received another 167,000 acres through purchase.²⁶ Moreover, in the years after the Māhele, Native Hawaiians attempted to maintain the traditional communal nature of land tenure by banding together to form Hui (groups) that held land communally. After the Māhele, forming Land Hui was a common practice among Native Hawaiians, especially on Maui and Kaua'i, often with purchased Government Land as the basis for the Hui landholdings. Initially begun as informal groups owning land as tenants in common, Land Hui gradually became more organized, with bylaws and specific rules. Large Land Hui sometimes owned thousands of acres, with memberships of one hundred to two hundred people. Over time, as members of a particular Hui died, the land interests became more fractionated with numerous heirs, and some heirs sold their interests to outside parties, particularly plantations, eventually leading to the demise of the Hui movement.²⁷



Hawaiian law states, "The people shall also have a right to drinking water, and running water, and the right of way." Waipi'o Valley, Hawai'i Photo: Kai Markell.

26. Donovan Preza, *The Empirical Writes Back: Re-examining Hawaiian Dispossession Resulting from the Māhele of 1848* (unpublished MA Thesis, University of Hawai'i at Mānoa) (on file with Hamilton Library, University of Hawai'i at Mānoa, May 2010), p. 138.

27. Robert H. Stauffer, *Kahana: How the Land Was Lost* (Univ. of Hawai'i Press, 2004), pp. 109–112. Indeed, Stauffer argues that the Hui movement was viewed by Hui members as a "counter-revolt to gain some of what was taken in the Great Māhele." *Id.*, p. 125; see *id.*, pp. 122–143 for a detailed discussion of the Kahana Land Hui on O'ahu. See also Leslie J. Watson's five-part series on "Old Hawaiian Land Huis—Their Development and Dissolution," *Honolulu Star-Bulletin*, Dec. 12–16, 1932. As a result of a series of cases decided by Hawai'i's territorial courts, the centralized and communal nature of the Land Hui became more difficult to maintain. The last large organized Hui, located in Hā'ena on Kaua'i, was destroyed in 1967 through a partition action.



A.D. 1863 - 1872
King Kamehameha V
(Lota Kapuaiwa)
Generation 27

C. Hawaiian Language Newspapers and National Identity

Beginning in 1861, the struggle between the competing interests of Natives and non-Natives over the future of the Hawaiian nation began to unfold through a new medium—Hawaiian language newspapers. Native Hawaiian political scientist, Noenoe Silva, describes this dynamic as follows:

In this struggle among the mō'ī [King], other ali'i nui [high chiefs], the maka'āinana [commoners], missionaries, and planters of various types, newspapers would become the main battleground for competing discourses.

[I]n 1861, to the shock and outrage of the missionary establishment, a group of Kānaka Maoli [Native Hawaiians], maka'āinana [commoners], and ali'i [chiefs] together, transformed themselves into speaking subjects proud of their Kanaka [Hawaiian] ways of life and traditions and unafraid to rebel.²⁸

One of the important benefits of the Hawaiian language press was to connect Native Hawaiians in rural areas and neighbor islands to Native Hawaiians at the hub of the Hawaiian nation in Honolulu, thus enabling the emergence of a truly nationalist movement. Historian, Helen Chapin, in her book that documents the role of newspapers in Hawai'i's history, noted five general themes that, after 1861, set the Hawaiian language newspapers apart from the English language newspapers:

[T]hey were united in sharing several basic themes that were markedly different from those of establishment papers: one, a conviction that Hawaiians knew what was best for themselves; two, an awareness that the decline of the native population was a serious matter; three, an insistence that Hawai'i remain an independent nation; four, a deep respect for the monarchy; and five, a great love for their land.²⁹

Hawaiian language professor, Puakea Nogelmeier, observed that the independent Hawaiian language newspapers, as compared to the missionary newspapers, also carried more articles and letters directly addressing Hawaiian culture. He wrote:

The century-long concern over the loss of Hawaiian knowledge generated a massive amount of written cultural material: genealogies; histories; legends; chants; riddles; extensive categorical listings regarding stars, plants, fish, sites, winds, rains, clouds, deities, and innumerable other fields of cultural practice.³⁰

According to Silva, the Hawaiian language newspapers emerged as one of the primary weapons for the Hawaiian nationalist movement by contributing to the collective imagining of the nation among Native Hawaiians whose primary point of reference had previously been their own island.



The Hawaiian language press connected Native Hawaiians in rural areas with Honolulu giving rise to a nationalist movement. Courtesy photo

28. Silva, *Aloha Betrayed*, pp. 54-55.

29. Helen G. Chapin, *Shaping History: The Role of Newspapers in Hawai'i* (Honolulu: Univ. of Hawai'i Press, 1996), p. 61.

30. M. Puakea Nogelmeier, *Mai Pa'a I Ka Leo: Historical Voice in Hawaiian Primary Materials, Looking Forward and Listening Back* (Honolulu: Bernice Pauahi Bishop Museum Press, 2010), pp. 129, 146.



A.D. 1873 - 1874
King William Charles Lunalilo
Generation 28

At the same time, the Native Hawaiian people vigorously held on to and asserted their role in the Hawaiian government and were adamant that the Constitutional monarchs uphold their traditional responsibility to look after the well-being of the people. This was most evident in the growth of a nationalist Hawaiian movement that rallied around the slogan, “Hawai‘i for the Hawaiians” during the Kalākaua-era elections for the House of Representatives.³¹

D. Cultural Renaissance and Promotion of National Identity Under King Kalākaua

During his reign, King David Kalākaua promoted a strong national identity for the Native Hawaiian people in order to protect Hawai‘i’s vulnerable independence. The King sought to instill a sense of cultural and national pride among Native Hawaiians through a number of entities and through literature and the visual and performing arts.³² King Kalākaua founded the Hale Nauā Society to revive the study of the ancient scientific knowledge of Native Hawaiians in combination with modern science. He established a Hawaiian Board of Genealogists to research and perpetuate the genealogies of the chiefs of Hawai‘i. The King also established a Hawaiian Board of Health consisting of five Native doctors who were empowered to issue licenses to Native kāhuna lā‘au lapa‘au (herbal doctors) to practice medicine. He sponsored hula and songwriting contests, which not only perpetuated traditional Native Hawaiian dance, chant and song, but also created new chants, songs, hula and styles of hula. Under a program called Ho‘oulu Lāhui (Increase of the Nation) King Kalākaua extended free health care for Native Hawaiians at Queen’s Hospital and he and his wife, Queen Kapi‘olani founded the Kapi‘olani Maternity Home. National cultural projects—‘Iolani Palace, the King Kamehameha Monument, Kalākaua’s coronation and birthday celebrations and the Hawaiian National Anthem projected the prominence of the monarchy, the sanctity and legitimacy of Kalākaua’s rule and the continuation of wise and visionary leadership in the tradition of the nation’s founder, King Kamehameha I.³³



‘Iolani Palace, Honolulu Hawai‘i. Courtesy Photo

E. Establishment of Private Land Trusts by the Ali‘i (Rulers) for the Native Hawaiian People

By the latter part of the nineteenth Century, Native Hawaiian rulers (ali‘i) who did not have surviving birth children of their own, bequeathed their ancestral lands (‘āina) to their people. As they witnessed the ravages of foreign diseases upon Native Hawaiians and the alienation of their people from ancestral lands, these rulers took decisive steps to dedicate their personal lands in trusts for the benefit of all Native Hawaiians, in perpetuity.



Kamehameha Schools Kapālama Campus. Courtesy photo

31. Davianna McGregor-Alegado, *Hawaiian Resistance: 1887 - 1889* (University of Hawai‘i, Mānoa, Unpublished M.A. Thesis, 1979), p. 16.

32. Stacy Kamehiro, *The Arts of Kingship: Hawaiian Art and National Culture of the Kalākaua Era* (Honolulu: Univ. of Hawai‘i Press, 2009), pp. 2-4.

33. *Id.*, p. 2.



A.D. 1874 - 1891
King David Kalākaua
Generation 29



A.D. 1891 - 1893
Queen Lili'uokalani
Generation 30

In 1871, King Lunalilo, before he was elected to the throne, wrote his will, in which he reserved his vast and valuable lands for a trust that would create a home to benefit the “poor, destitute and infirmed people of Hawaiian (aboriginal) blood or extraction, giving preference to old people.”³⁴ In 1883, Princess Bernice Pauahi Bishop wrote her will bequeathing her vast landholdings, most of which were inherited from her cousin, Princess Ruth Ke‘elikolani, for the establishment of the Kamehameha Schools for Native Hawaiian youth.³⁵ The Princess passed away in 1884 and the Kamehameha School for Boys was established in 1887, while the Kamehameha School for Girls opened in 1894. When avid nationalist, Queen Emma passed away, her will created the Queen Emma Trust to support the Queen’s Hospital and St. Andrew’s Priory, an Episcopalian School for girls. At the time, the Queen’s Hospital, which she and her husband King Kamehameha IV had established, still provided free medical care for indigent Native Hawaiians.³⁶ Looking ahead to the next period, in 1909, Queen Lili‘uokalani executed a Deed of Trust which established a private foundation dedicated to the welfare of orphaned children. In 1911, she amended the Deed of Trust to add destitute children among her beneficiaries. In providing these services, the Queen Lili‘uokalani Trust was mandated to give preference to Hawaiian children of pure or aboriginal blood.³⁷ These trusts provided a continuity of leadership and support for the overall health, education and well-being of the Native Hawaiian people from the nineteenth century through to the twenty-first century.

F. Hawaiian Nationalist Opposition to American Colonization of Hawai‘i

During the reign of King Lunalilo in 1873, American planters proposed that the Hawaiian government turn over control of Pu‘uloa or Pearl Harbor to the U.S. government in order to gain the support of Congress for a reciprocal trade agreement. The threat of turning over Hawaiian lands to the U.S. gave rise to a nationalist tide against the growing influence of Americans, which would not recede.³⁸ The nationalist political movement intensified and continued to gain momentum throughout the reign of King Kalākaua. The sentiments of the nationalists, can be understood by Queen Emma’s comments in an August 1873 letter to an acquaintance:

The reciprocity treaty, giving away land, is much discussed these days, ... There is a feeling of bitterness against these rude people who dwell in our land and have high handed ideas of giving away somebody else’s property as if it were theirs.³⁹

When the U.S.-Hawai‘i Reciprocity Treaty of 1875 expired and King Kalākaua refused to turn over control of Pu‘uloa or Pearl Harbor to the U.S. in order to renew the treaty, American planters and business interests formed the Hawaiian League. In alliance with the all-Caucasian 500-man militia called the Honolulu Rifles, the Hawaiian League forced the King to accept the Constitution of 1887, known as the “Bayonet Constitution.”⁴⁰ The Constitution took the executive power away from the King and placed it under a cabinet selected by the Hawaiian League. It also disenfranchised many Native Hawaiians.⁴¹ The Cabinet voted to turn over exclusive use of Pearl Harbor (Pu‘uloa) to the U.S. government in return for the renewal of the U.S.-Hawai‘i Reciprocity Treaty, and the King reluctantly signed the new treaty.⁴² The reorganized government was called the Reform Government.

34. Information on the Lunalilo Trust, available at <http://www.lunalilo.org/> (last visited Oct. 23, 2012).

35. Will of Princess Bernice Pauahi Bishop, available at <http://www.ksbe.edu/pauahi/will.php> (last visited Oct. 23, 2012).

36. See *Native Hawaiian Rights Handbook* (Ed. Melody Kapilioloha MacKenzie) (Honolulu: Univ. of Hawai‘i Press, 1991), pp. 288-289 for discussion of the Queen Emma trust.

37. Excerpt from Queen Lili‘uokalani’s Deed of Trust, available at <http://www.qgcc.org/> (last visited Oct. 23, 2012).

38. McGregor-Alegado, *Hawaiian Resistance*, pp. 15-18.

39. Queen Emma to Keliimoewai, Aug. 20, 1873, cited in Ralph S. Kuykendall, *II The Hawaiian Kingdom 1854-1874: Twenty Critical Years* (Honolulu: Univ. of Hawaii Press, 1953), p. 256. Kuykendall noted that “Other letters show the extreme bitterness of Queen Emma’s feeling against Americans, including the missionaries.” *Id.* fn 46, p. 297.

40. Van Dyke, *Crown Lands*, pp. 120-124.

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

42. Van Dyke, *Crown Lands*, pp. 124-128.

The 1887 Bayonet Constitution and the Reform Government became a rallying point for the Hawaiian nationalist movement which immediately organized mass meetings, circulated petitions and sent delegations to the King asking him to abrogate the Constitution and dismiss the cabinet. A group of loyalists entered the palace one night and demanded that the King abdicate in favor of his sister Lili'uokalani who would, in turn, abrogate the Constitution. The King refused to cooperate with the conspirators and they lacked the military force to carry out their plan.⁴³

The most militant confrontation between Native Hawaiians nationalists and the Reform Government over the "Bayonet Constitution" was the 1889 Wilcox Rebellion, which was suppressed within eighteen hours. Eight Native Hawaiians nationalists were killed, twelve wounded and seventy arrested for carrying out the rebellion. All those arrested were subsequently acquitted of charges of treason by all-Native Hawaiian juries.⁴⁴

Following the failure of the rebellion, the Native Hawaiians nationalists utilized the electoral arena to achieve their goals. On November 22, 1888, between 500 and 1500 Native Hawaiians met in Honolulu to form the Hui Kālai'āina (Hawaiian Political Association). The Hui Kālai'āina persisted as the primary political organization of Native Hawaiians into the early twentieth century.⁴⁵

In 1892, when Lili'uokalani succeeded her brother to the throne and took her position as Queen, the Hui Kālai'āina launched a massive petition drive appealing to the Queen to promulgate a new constitution. They succeeded in getting 6,500 registered voters, two-thirds of all registered voters to sign. The Queen felt both compelled and empowered to abrogate the 1887 Constitution in favor of a new constitution that would limit voting rights to Hawaiian born and naturalized citizens and restore her power as the chief executive of the Hawaiian government.⁴⁶

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

44. McGregor-Alegado, *Hawaiian Resistance, 1887-1889*, pp. 76-107.

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

46. Liliuokalani, *Hawaii's Story by Hawaii's Queen*, p. 231.

A.D. 1893 – 1900

Provisional Government, Republic, Territory of Hawai'i • Native Hawaiian National Organizations of Self-Governance • Queen Lili'uokalani, Hawaiian Patriotic League (Hui Aloha 'Āina), Independent Home Rule Party • Generation 30

VI. Provisional Government, Republic, Territory of Hawai'i: 1893 – 1921

Native Hawaiian National Leaders Form Organizations of Self-Governance

Generation 30 - (1893 - 1917) *Queen Lili'uokalani Hui Aloha 'Āina (Hawaiian Patriotic League), Independent Home Rule Party*

Generation 31 - (1902 - 1921) *Prince Jonah Kūhiō Kalaniana'ole, 'Ahahui Pu'uhonua, Hawaiian Civic Clubs, Hawaiian Royal Societies, Hawaiian Land Hui*

A. Coup d'État

Using the Queen's proposal for a new constitution as an excuse, American and European sugar planters and businessmen, many of whom were descendants of American missionaries, plotted to overthrow the monarchy.⁴⁷ In their efforts, they sought and received the help of the U.S. Minister to Hawai'i, John L. Stevens, an advocate of annexation. On January 16, 1893, Stevens ordered U.S. marines to land in Honolulu under the pretext of protecting American lives and property. The next day, January 17, 1893, the leaders of this *coup d'état* declared the monarchy abolished and a provisional government established in its place.⁴⁸

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

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

The Queen did not yield to the provisional government, but to the "superior forces of the United States of America," which she fully expected would, "upon the facts being presented to it, undo the action of its representatives."⁴⁹ She moved out of 'Iolani Palace. She was still Hawai'i's legitimate chief executive, but no longer in control of the formal apparatus of government. For the Native Hawaiian people, until her death in November 1917, Lili'uokalani remained the queen and ruler of the Native Hawaiian people and the embodiment of the Native Hawaiian government.

B. Hawaiian National Organizations Support the Constitutional Monarchy

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

47. Thurston, *Memoirs*, p. 249.

48. U.S. House of Representatives, 53rd Congress 2d Session, Exec. Doc. No. 47, *President's Message Relating to the Hawaiian Islands*, December 18, 1893 (Washington: U.S. Government Printing Office, 1893), p. iii-xvi, ("The [Naval] military demonstration upon the soil of Hawai'i was of itself an act of war" in a city that "was in its customary orderly and peaceful condition."); Proclamation of the Committee of Safety, January 17, 1893, reprinted in *Fundamental Law of Hawaii* (ed. Lorrin Thurston) (Honolulu: Hawaiian Gazette Co., Ltd., 1904), pp. 196-197; see also Neil Thomas Proto, *The Rights of My People, Lili'uokalani's Enduring Battle With the United States 1893 - 1917* (New York: Algora Publishing, 2009), pp. 22-23.

49. Helen G. Allen, *The Betrayal of Lili'uokalani: Last Queen of Hawaii, 1838 - 1917* (Honolulu: Mutual Publishing, 1998), p. 294; see also Lili'uokalani, *Hawaii's Story by Hawaii's Queen* (Honolulu: Mutual Publishing, 1990), App. B., pp. 387-388; *President's Message Relating to the Hawaiian Islands*, p. XIX.



A.D. 1893 – 1917
Queen Lili'uokalani
Generation 30

Native Hawaiian qualified voters and the Women's Patriotic League represented 11,000 women.⁵⁰

In 1894, Emma and Joseph Nāwahī started to publish the newspaper, *Ke Aloha 'Āina* ("The Love of Our Nation"), continuing the Native Hawaiian newspaper tradition begun in the 1860s. For the next twenty-six years – until 1920 – *Ke Aloha 'Āina* remained a central vehicle for the publication of Native Hawaiian political positions, cultural histories, chants and community, island and international news.⁵¹

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

The Hawaiian Patriotic Leagues and others organized rallies and meetings and an assembly in Honolulu. Native Hawaiian newspapers in Hawaiian and English throughout the islands, in existence since the 1860s, continued to express thoughtful, soundly based arguments in support of the constitutional changes that Lili'uokalani embraced. They also strongly opposed annexation. The Hawaiian Patriotic Leagues in particular submitted testimonies and petitions to Commissioner James Blount, which had a significant impact on his findings, supporting the Queen. Through collective action, drawing on precisely the traditions of family and community and cultural perpetuation that characterized their history, Native Hawaiians continued to govern themselves.⁵²



President Grover Cleveland.
Courtesy photo

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

[I]f a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.⁵³

On July 4, 1894, the Provisional Government declared itself to be the Republic of Hawai'i with a constitution that named Sanford Dole as president.⁵⁴ It was clear, however, that Native Hawaiians did not support the Republic. Just two days prior to the imposition of the Republic's constitution, Hawaiian nationalists held a rally, drawing over 5,000 people. They protested the promulgation of a constitution without the consent of the governed.⁵⁵ The failure of the Republic to gain support from Native Hawaiians was evident by the fact that only 509 Native Hawaiians took the oath of allegiance to the Republic's constitution in 1894 and even by 1897, only 1,126 Native Hawaiians actually voted in elections for representatives to the Republic's legislature.⁵⁶ The Republic could not rightfully claim to represent the Native Hawaiian people.

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

51. *Id.*, pp. 139-142; Andrade, *Unconquerable Rebel*, p. 194.

52. *Id.*, pp. 130-134.

53. *President's Message Relating to the Hawaiian Islands*, Exec. Doc. No. 47, Dec. 18, 1893.

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

55. Tom Coffman, *Nation Within: The History of the American Occupation of Hawai'i* (Kihei: Koa Books, 2009), pp. 161-62. Based on original research by Native Hawaiian historian and political science professor, Noenoe Silva.

56. See Van Dyke, *Crown Lands*, p. 185; House Rep. No. 305 to accompany H.R. 2972, *Government for the Territory of Hawaii*, Comm. on Territories, 50th Cong., 1st Sess., Feb. 12, 1900, p. 9.

In January of 1895, those loyal to Queen Lili'uokalani attempted to regain control of the government.⁵⁷ Nationalists organized an armed insurrection aimed at restoring the Queen to the throne. However, despite months of planning, the restoration effort was defeated just as it was about to be launched. In all, 220 nationalists were arrested and charged as prisoners of war for treason and concealment of treason. The Queen herself was arrested, tried and found guilty for misprision or concealment of treason. She was sentenced to five years of hard labor and fined \$5,000. The Republic held her prisoner at 'Iolani Palace for eight months and then under house arrest at Washington Place for five months. She was then restricted to O'ahu for another eight months. The Republic had effectively detained the Queen for 21 months.⁵⁸

On January 24, 1895, while imprisoned in 'Iolani Palace, Queen Lili'uokalani was forced to sign a statement of abdication in favor of the Republic. Subsequently, she renounced the statement, explaining that she had been coerced into signing it. She described her plight:

For myself, I would have chosen death rather than to have signed it; but it was represented to me that by my signing this paper all the persons who had been arrested, all my people now in trouble by reason of their love and loyalty towards me, would be immediately released. Think of my position, - sick, a lone woman in prison, scarcely knowing who was my friend, or who listened to my words only to betray me, without legal advice or friendly counsel, and the stream of blood ready to flow unless it was stayed by my pen.⁵⁹

The arrests, trials and imprisonment of the royalists effectively suppressed all armed efforts to restore the monarchy. Nevertheless, Native Hawaiians persisted in their opposition to Annexation through rallies, meetings, petitions, newspapers, songs and publications such as *Buke Mele Lahui—Book of National Songs*, which contained patriotic songs honoring the Queen and those who defended her.⁶⁰

C. Hawaiian National Organizations Defeat the McKinley Treaty of Annexation

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

In September and October 1897, Senator John Morgan, Chairman of the Senate Foreign Relations Committee, and four Congressmen traveled to Hawai'i to rally support for a treaty of annexation that the Republic of Hawai'i had negotiated with President McKinley. They met mass opposition as thousands of Native Hawaiians rallied at Palace Square against the treaty.

A Hawaiian delegation joined Queen Lili'uokalani in Washington, D.C. to represent the views of the Hawaiian people on McKinley's annexation treaty. They carried two sets of petitions, gathered by the Hui Aloha 'Āina and Hui Kālai'āina, with almost 38,000 signatures against annexation. Senator George Hoar, who met with the delegation, read the text of the Hui Aloha 'Āina petitions, which bore over 21,000 signatures, into the

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

58. Allen, *Betrayal of Queen Liliuokalani*, pp. 331-350.

59. Liliuokalani, *Hawaii's Story by Hawaii's Queen* p. 274.

60. F.J. Testa, *Buke Mele Lahui—Book of National Songs* (Honolulu: Paiia ma ka Halepai Makaainana, 1895).

A.D. 1900 – 1921

Territory of Hawai'i • Native Hawaiian National Organizations of Self-Governance • Prince Jonah Kūhiō Kalaniana'ole, Ahahui Pu'uhonua O Na Hawai'i, Hawaiian Civic Clubs, Royal Societies, Hawaiian Land Hui • Generation 31

Congressional Record during the Senate debate on annexation.⁶¹ When the delegation had arrived in Washington, D.C., they were informed that there were 58 Senators prepared to vote for the treaty, just two votes short of the 60 needed for its ratification. By the time the delegates left Washington, D.C. on February 27, 1898, there were only 46 Senators prepared to vote for the treaty.⁶² The delegation and the Queen had successfully defeated the treaty. No treaty for the annexation of Hawai'i has ever been ratified by the U.S. Senate or signed by the President.

D. The United States Extends Sovereign Domain Over Hawai'i

On May 4, 1898, Representative Francis G. Newlands of Nevada introduced a joint resolution of annexation in the House of Representatives, which incorporated the language of the failed 1897 treaty of annexation. The constitutionality of annexing a territory by way of resolution rather than by treaty was hotly debated in the U.S. Congress.⁶³ Nevertheless, on June 15, 1898, by a vote of 209 to 91, the House approved the Newlands resolution. On July 6, 1898, the Newlands measure passed the Senate by 42 to 21, with 26 abstentions. President McKinley signed the resolution the very next day.

The formal transfer of the sovereignty of the Republic of Hawai'i occurred in ceremonies on August 12, 1898, at 'Iolani Palace. The Newlands resolution also transferred the title to Hawai'i's public lands, as held by the Republic of Hawai'i, to the United States.⁶⁴ These lands, which included both the Government and Crown Lands, were estimated to amount to almost 1.8 million acres, with a value of at least \$5.5 million.⁶⁵

Throughout the debates in the U.S. Congress over the Organic Act that would rule Hawai'i as a territory, the Hui Kālai'āina and Hui Aloha 'Āina advocated for the restoration of Native Hawaiian voting rights, which had been denied by the Provisional Government and the Republic.⁶⁶

E. Native Hawaiian National Organizations of Self-Governance

In 1900, the Hui Kālai'āina and the Hui Aloha 'Āina founded the Independent Home Rule Party (Home Rula Kū'oko'a). Importantly, the Independent Home Rule Party won the overwhelming majority of seats in the Territorial House of Representatives and Senate, as well as the coveted position of delegate to the U.S. Congress. The Native Hawaiian people had rallied on every island and demonstrated the strength of their political organization, despite the suppression of their voting rights throughout the previous seven years.⁶⁷

Queen Lili'uokalani continued to embody the Hawaiian Kingdom and Constitutional Monarchy and was

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

62. *Id.*

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

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

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

66. Ernest Andrade Jr., *Unconquerable Rebel* (Boulder: Univ. Press of Colorado, 1996), pp. 182-83.

67. Davianna Pōmaika'i McGregor, "Kūpa'a I Ka 'Āina: Persistence on the Land" (Univ. of Hawai'i, Unpublished dissertation, 1989), pp. 201-224.



A.D. 1900 – 1921

Prince Jonah Kūhiō Kalaniana'ole

Generation 31

considered to be the iconic leader of a parallel Native Hawaiian government of her people. When she passed away in 1917, Prince Jonah Kūhiō Kalaniana'ole, who had been in line to succeed Queen Lili'uokalani under the Hawaiian monarchy, assumed the mantle of national leader of the Native Hawaiian people and advocated for their national rights.⁶⁸

Native Hawaiian national leaders who had been prominent in the government of Queen Lili'uokalani were active in the organizing of the Independent Home Rule Party, to field Native Hawaiian candidates to assert their inherent sovereignty as a people and assume their rightful positions in the governance of the islands. These leaders again found themselves allied with missionary descendants, American business interests and owners of plantations and ranches in the governance of Hawai'i. However, the overarching framework of governance and the balance of power had shifted away from the Hawaiian Kingdom and Constitutional Monarchy to the oligarchy, which began to rule Hawai'i as a Territory of the United States of America, under the Organic Act of 1900.⁶⁹ As their predecessors had done under the Hawaiian Kingdom and Constitutional Monarchy, Native Hawaiian leaders—descendants of ali'i (chiefs), warriors (nā koa), skilled craftspersons, engineers, scientists, artisans, healers (kāhuna) and commoners (maka'āinana)—fully participated in the governance of Hawai'i and sustained and formed new political, civic and benevolent organizations that provided for the well-being of the Native Hawaiian people inside and outside of the formal government. Those organizations, which existed outside of the formal government of the Territory of Hawai'i, began to assume the rudimentary functions of a government of the Native Hawaiian people, who were now relegated to the position of an indigenous people of a territory within the United States of America.

The 'Ahahui Pu'uhonua O Nā Hawai'i (Hawai'i Protective Association), organized in November 1914 by two hundred Native Hawaiian leaders, was one such organization. Attorney Noa Webster Aluli, a graduate of the University of Michigan and Yale Law School, prepared its charter and assumed a leadership role. From 1914 to 1928, the 'Ahahui Pu'uhonua published its own newspaper, spoke through churches and civic groups, encouraged education in agricultural pursuits and published articles in other newspapers.⁷⁰

The expansion of ranches and the sugar and pineapple plantations displaced diversified agriculture and marginalized Native Hawaiian taro farmers and fishers to isolated rural communities. The health and social conditions of Native Hawaiians at the opening of the 20th century, especially in urban Honolulu, was alarming. The number of pure Hawaiians declined from 26,000 in 1910 to 23,700 in 1920. The life expectancy of Native Hawaiians was 30.2 years in 1910 and 35 years in 1920.⁷¹ There was a widespread belief that the Native Hawaiian people were doomed to extinction. These conditions spurred Native Hawaiian leaders to undertake a systematic campaign to improve the living conditions of their people.⁷²

In 1918, the 'Ahahui Pu'uhonua developed a plan to “rehabilitate” impoverished Native Hawaiians exposed to diseases, such as tuberculosis, who were crowded into the tenements and squatter camps of Honolulu. They drafted legislation to have the U.S. Congress reserve the former Hawaiian Crown lands for exclusive homesteading by Native Hawaiians. In December 1918, Prince Kūhiō and leaders of the 'Ahahui Pu'uhonua formed a second organization of Native Hawaiians, the Hawaiian Civic Clubs, which included regional clubs on all the islands to

68. Article 22 of the Bayonet Constitution of 1887 provided for the monarch to name his or her successor. The will of King Kalākaua lists the line of succession that he envisioned: first, his sister, Princess Lili'uokalani; second, his niece, Princess Ka'iulani; third, his wife, Queen Kapi'olani; fourth, his sister-in-law, Princess Po'omaikelani; fifth, the eldest son of his sister-in-law, Prince David Kawananākoa; sixth, the second son of his sister-in-law, Prince Kūhiō Kalaniana'ole. The latter two were to assume the name and title of Kalākaua and to be numbered in order from him. *Hawaiian Gazette*, March 10, 1891. The *Hawaiian Gazette* of March 24, 1891, published a proclamation dated March 9, 1891, by Queen Lili'uokalani naming Princess Ka'iulani as her successor. There is no similar proclamation naming any other successor. The Queen's Constitution, which she intended to promulgate in January 1893, shows the line of succession to be first, Princess Ka'iulani; second, Prince David Kawananākoa; and third, Prince Jonah Kūhiō Kalaniana'ole. H.R. Exec. Doc. No. 1, pt. 1, 53rd Cong., 3d Sess., app. II, *Foreign Relations of the United States 1894: Affairs in Hawaii* (1895), p. 1049. By 1917, both Princess Ka'iulani and Prince David Kawananākoa had passed away.

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

70. Davianna Pōmaika'i McGregor, “Āina Ho'opulapula: Hawaiian Homesteading,” *Hawaiian Journal of History*, Vol 24 (1990), pp. 1–4.

71. By 1925, the infant mortality rate for Native Hawaiians was 196 per 1,000 live births, compared to 39 per 1,000 live births for Caucasians in Hawai'i.

72. McGregor, “Āina Ho'opulapula,” p. 9.

help gain support for the rehabilitation plan. Both organizations campaigned vigorously and successfully to bring about the enactment of the Hawaiian Homes Commission Act.⁷³ In 1921, the U.S. Congress passed the Hawaiian Homes Commission Act, setting aside approximately 200,000 acres of former crown and government lands of the Hawaiian Kingdom and Constitutional Monarchy for homesteading by Native Hawaiians of not less than one-half Hawaiian ancestry.

Despite the general policy of assimilating the people of the Territory of Hawai'i into American society, the U.S. President, U.S. Secretary of Interior and the U.S. Congress acknowledged Native Hawaiians as a distinct, indigenous people with whom the U.S. had a trust relationship. This was most evident in, but not limited to, the mandate of the U.S. Bureau of American Ethnology to research Native Hawaiians, the passage of the Hawaiian Homes Commission Act in 1921, the Kalapana Extension Act in 1938 and the Hawai'i Admission Act in 1959.⁷⁴

From June 30, 1906 through August 22, 1949, the U.S. Congress annually appropriated funds to the Smithsonian Institution's U.S. Bureau of American Ethnology, "for continuing ethnological researches among the American Indians and the natives of Hawaii under the direction of the Smithsonian Institution." By contrast, in 1905, the appropriation was "for continuing ethnological researches among the American Indians, under the direction of the Smithsonian Institute." Although the indigenous peoples of American Sāmoa, Guam and the Philippines were also under the jurisdiction of the United States by 1900, only the American Indians and Native Hawaiians were to be studied by the U.S. Bureau of American Ethnology under the congressional mandate.⁷⁵

73. *Id.*

74. Hawaiian Homes Commission Act, Pub. L. No. 66-34, 42 Stat. 108 (1921). The Kalapana Extension Act and Admission Act are discussed in the next section.

75. *See for example*, Pub. L. No. 61-266, 26 Stat. 703, 718 (1910); Pub. L. No. 69-600, 44 Stat. 1069, 1079 (1927); Pub. L. No. 71-158, 46 Stat. 229, 241 (1930) In providing justification for extending the research of the Bureau of American Ethnology to include Hawai'i, William H. Holmes, Chief of the Bureau, compared the status of Native Hawaiians to that of Native Americans and acknowledged that the U.S. government had a trust responsibility for Native Hawaiians. As he wrote to Smithsonian Institution Secretary S.P. Langley on March 12, 1904: "The reasons for recommending the extension of the work to the natives of these islands are, first, that although these people are our wards in the same sense that the Indians are we know very little regarding them. It would seem the part of wisdom to acquire a working knowledge of their history, racial affinities, and physical and mental characteristics; and a record of their native arts and industries, their manners and customs, before it is finally too late. In a dozen years little will be left of either the people or their culture for study. Unless the government undertakes this work now, nothing can be done, and future generations can justly accuse us of neglecting opportunities presented now for the last time." Letter on file in Smithsonian Institution Archives.

A.D. 1921 – 1959

Territory of Hawai'i • Native Hawaiian National Organizations of Self-Governance • Hawaiian Civic Clubs, Hawaiian Royal Societies, Hawaiian Homestead Associations, Hawaiian Land Hui • *Generation 32*

VII. Territory of Hawai'i: 1921 – 1959

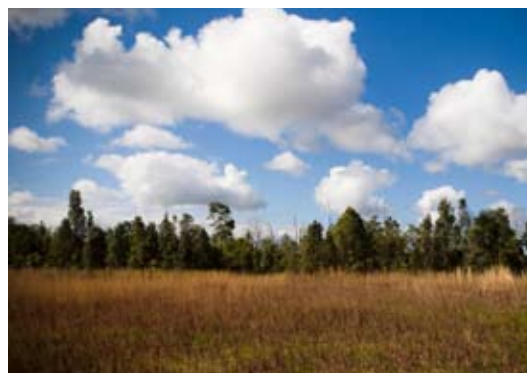
Native Hawaiian National Organizations of Self-Governance

Generation 32 - Hawaiian Civic Clubs, Hawaiian Royal Societies, Hawaiian Homeland Associations, Hawaiian Land Hui

Despite obstacles, Native Hawaiian leaders were determined to fulfill the potential of the Hawaiian Home Lands program on Moloka'i, Hawai'i, Maui, O'ahu and Kaua'i. From the first generation to move on to these lands in 1922, to the present third generation, Native Hawaiian homesteaders established solid and hard-working communities and formed organizations of self-governance, political advocacy and economic advancement.⁷⁶

Likewise, Hawaiian Civic Clubs on every island continued to function as distinct political and social entities for civic purposes, scholarship programs and cultural perpetuation. Hawaiian national leaders persisted in organizing the Hawaiian Civic Club organizations and associations of Hawaiian homesteaders throughout the twentieth century to the present, to advocate for Native Hawaiian rights, land claims and benefits and to promote the culture.

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



Wao Kele O Puna Volcanic Rainforest, Hawai'i Island. Photo: Arna Johnson

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

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

A. Hawaiian National and Cultural Identity During the Territorial Period

The 1930 census showed that, for the first time, the number of Part-Hawaiians (28,224) exceeded the number of Pure Hawaiians (22,636).⁷⁷ The communities established under the Hawaiian Home Lands program became significant centers of Native Hawaiian cultural, social and economic life and contributed to the persistence of Native Hawaiians as a distinct people within the Hawaiian Islands.

In addition to the Hawaiian Home Lands communities, small rural enclaves or cultural kīpuka with majority Native Hawaiian populations played a singularly critical role in the continuity of Native Hawaiians as a distinct people with a distinct culture, language and ancestral land base. These communities sustained a prolonged and uninterrupted continuity of settlement and tenure on the lands of their ancestors. Community members persisted

76. Every homestead community has its own association and more recently many of the organizations have confederated into what is now called The Sovereign Councils of the Hawaiian Homelands Assembly. See <http://www.schha.com/about-schha-2/> (last visited June 28, 2013).

77. U.S. Bureau of the Census, 1931, p. 48, Table 2.

in providing for their extended families ('ohana) through subsistence fishing, farming and gathering which were conducted according to traditional and customary cultural practices and guided by spiritual and cultural beliefs. Such practices continued to be protected by laws established under the Kingdom of Hawai'i, laws that continued into the Territorial period.⁷⁸

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

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

The old fish and poi company, with its accompaniment of tutelary deities, taboos, religion, and magic, still persists in modified form within many of these isolated communities. A small plot of taro and access to the sea and the mountains are apparently all that is required for the satisfaction of their material wants. The wage from an occasional day's work on the government road enables them to purchase the necessary supplies which the old economy cannot now provide. ... The natives themselves have found these rural havens where the economy of life to which they are best adapted can survive.⁷⁹

The diverse undeveloped natural resources in these areas provided an abundance of foods for the Native Hawaiians who lived there. Forested lands provided Hawaiians with fruits to eat; vines, plants and woods for making household implements and tools; and herbs to heal themselves. They provided a natural habitat for animals that were hunted for meat. Marine life flourished in the streams. The ocean provided an abundance of food. Subsistence activities continued to be the primary source of sustenance for the Native Hawaiians in these districts. Production in these districts was primarily oriented around home consumption. Importantly, Native Hawaiian cultural practices dictated a strong ethic of sustainable harvesting and protection of the natural resources. The quality and abundance of the natural resources of these rural Hawaiian communities can be attributed to the persistence of traditional Hawaiian values and practices in the conduct of their subsistence activities.⁸⁰

78. See generally McGregor, *Na Kua'āina*.

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

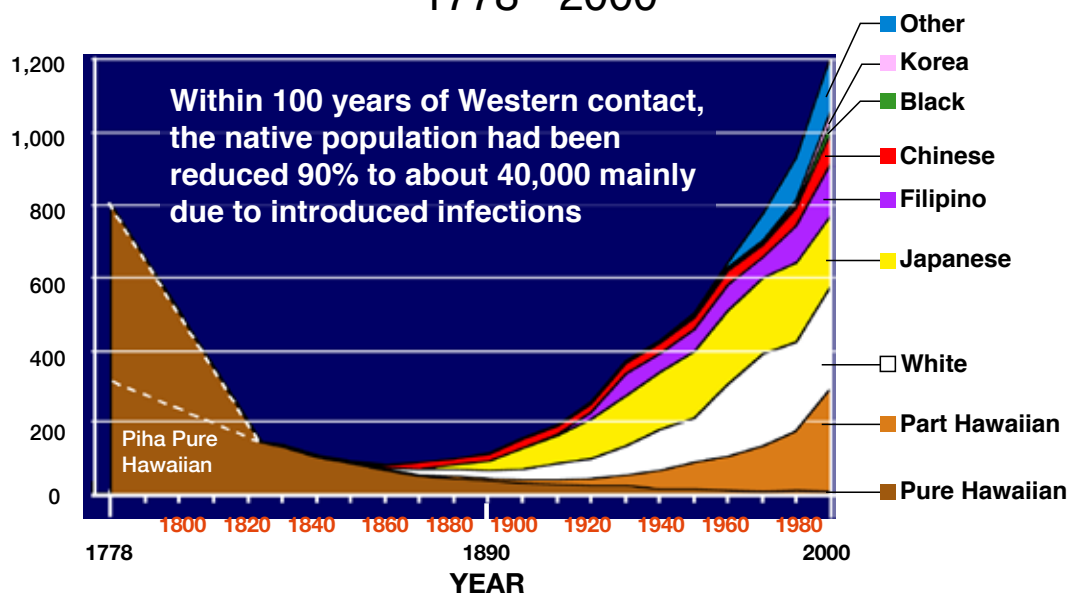
80. McGregor, *Kua'āina*, pp. 15-17.

B. Continuing Recognition of Native Hawaiians as a Distinct Native People

While the United States policy was to incorporate the Territory of Hawai'i into the United States and to Americanize the multi-ethnic peoples of Hawai'i, the U.S. Congress, nevertheless, instituted programs and adopted policies that recognized the Native Hawaiian people as the indigenous people of Hawai'i. As noted earlier, Congress continued to appropriate funds for ethnological research among "the American Indians and the natives of Hawaii" until 1949. As discussed above, the Hawaiian Homes Commission established a trust relationship with the Native Hawaiian people and established a public land trust for Hawaiian homesteading. In 1938, Congress passed the Kalapana Extension Act, which extended the Hawaiian Volcanoes National Park in the Puna district of Hawai'i island, and allows Kalapana Native Hawaiians and those accompanied by them to fish and gather in the Volcanoes National Park. It also had a provision for Kalapana Native Hawaiians to apply for homesteads in the Volcanoes National Park, although this latter provision was never implemented.⁸¹

In 1959, Hawai'i became a state, and in the act admitting Hawai'i to statehood, key provisions demonstrated the United States' continuing recognition of Native Hawaiians as a distinct population of indigenous people. The 1959 Admission Act mandated that the State of Hawai'i, as a compact with the U.S., administer the Hawaiian Homes Commission Act and the approximately 200,000 acres of "ceded land" set aside for Native Hawaiian homesteading, with oversight by the U.S. Congress. Congress also turned over administration of another 1.2 million acres of "ceded lands," the former Crown and Government lands of the Hawaiian Kingdom, to the State to manage for five trust purposes. One trust purpose is "the betterment of the conditions" of Native Hawaiians, as defined by the Hawaiian Homes Commission Act. The other four purposes include education, farm and home ownership, public improvements and public uses.⁸²

Hawai'i Resident Population By Ethnicity 1778 - 2000



Source: R. Kekuni Blaisdell, M.D., Power Point presentation to Global Public Health Conference, June 2003

81. Kalapana Extension Act, Pub. L. No. 75-680, § 3, 55 Stat. 784, 784-85 (1938).

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

A.D. 1959-1978

State of Hawai'i • Native Hawaiian National Organizations of Self-Governance • Hawaiian Civic Clubs, Hawaiian Royal Societies, Hawaiian Homestead Associations, The Hawaiians, Congress of Hawaiian People, A.L.O.H.A., Alu Like, Hui Ala Loa, Protect Kaho'olawe 'Ohana • *Generation 33*

VIII. State of Hawai'i: 1959 to Present

Native Hawaiian National Organizations of Self-Governance

Generations 33 - (1959 - 1978) *Hawaiian Civic Clubs, Hawaiian Royal Societies, Hawaiian Homestead Associations, The Hawaiians, Congress of Hawaiian People, A.L.O.H.A., Alu Like, Hui Ala Loa, Protect Kaho'olawe 'Ohana*

Generation 34 - (1978 - Present) *Office of Hawaiian Affairs, Hou Hawaiians, Ka Lāhui Hawai'i, Sovereign Council of Hawaiian Homelands Assembly, Council for Native Hawaiian Advancement, Hā Hawai'i-Native Hawaiian Convention, Native Hawaiian Roll Commission-Kana'ioloalua, Ali'i Trusts*

In the years following statehood, outside investors began to finance major housing and resort developments on O'ahu and throughout the islands. In 1969, landowner Bishop Estate/Kamehameha Schools evicted farmers from Kalama Valley in east O'ahu in order to expand "Hawai'i Kai," a subdivision development by Henry J. Kaiser and Aetna Life Insurance. This eviction sparked a broad grassroots movement to challenge uncontrolled development on O'ahu. In the broader island society, communities began to organize against the eviction of working class and farming communities to make way for urban renewal and suburban subdivisions. The tenants facing eviction demanded decent relocation housing and long-term agricultural leases. In response to proposed developments in Hawaiian communities, Native Hawaiians asserted their inherent sovereignty by forming political organizations to hold the managers of the Native Hawaiian public and private land trusts accountable for the appropriate stewardship of Hawaiian lands. In rural communities, Native Hawaiians formed organizations to protect ancestral lands, cultural lifestyles, sacred sites and access to natural resources for subsistence.⁸³

On Hawai'i Island, Native Hawaiian communities in Ka'ū and Puna organized to stop a spaceport and to protect the volcano deity Pele from geothermal development. On Moloka'i, Native Hawaiians formed community organizations to open access across private lands, stop tourist developments that threatened subsistence resources and start community-based economic development programs. On Maui, Native Hawaiian communities in Makena, Hāna and Kipahulu organized to keep their access and water rights and to develop community-based economic development projects. On Kaua'i and O'ahu, Native Hawaiian communities worked to protect their cultural and natural resources and initiated community-based economic development projects.⁸⁴



Hakioawa, Kaho'olawe. Photo: KWO Archives

The island of Kaho'olawe, which was used as a live-fire bombing and firing range by the U.S. Navy served as a catalyst to rally Native Hawaiians throughout the islands around a common cause of "Aloha 'Āina" or "Love and respect the land, its resources and the life forces of the land that were honored and worshipped by Hawaiian ancestors as deities." This Hawaiian saying also evoked the nationalist spirit of Hawaiian ancestors who had organized the Hui Aloha 'Āina or Hawaiian Patriotic League in 1893 to support the constitutional monarchy

83. Davianna McGregor-Alegado, "Hawaiians: Organizing in the 1970s," *Amerasia* 7:2(1980), pp. 29-55. These communities included Halawa Housing (1971); Ota Camp (1972); Censust Tract 57 People's Movement (1972); People Against Chinatown Eviction (1972); Waimanalo People's Organization (1973); Old Vineyard St. Residents' Association (1973); Young St. Residents' Assn (1973); Niumalu-Nawiliwili Residents (1973); Waiahole-Waikane Community Assn (1974); He'eia Kea (1975); Mokauea Fishermen's Assn (1975); Hale Mohalu (1978); Sand Island Residents (1979).

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

and oppose annexation.⁸⁵ Forming the Protect Kaho‘olawe ‘Ohana (Extended Family to Protect Kaho‘olawe), Native Hawaiians worked to stop the bombing and military use of the island until they succeeded in 1990. As the movement evolved, the organization revived traditional Hawaiian religious practices on the island, such as the annual Makahiki or Harvest Season ritual that honors the Hawaiian god of agricultural productivity, Lono. The ceremonies, which had ceased with the ‘Ai Noa (or abolition of the sacred religious restrictions) in 1819, called Lono back into the lives of the Native Hawaiian people, asking him to bring the seasonal rains that nourish the land and make it fertile so that the cycle of planting and harvest can start again. From Kaho‘olawe, participants, who had come from every island, began to conduct the ceremonies on their home islands of Hawai‘i, O‘ahu and Moloka‘i. Through Kaho‘olawe, the Native Hawaiian people re-established their beliefs and customary practices which honored the ‘āina (land and nature) as sacred life forces.

A. Native Hawaiian Organizations of Governance

The first Native Hawaiian organization of the 1970s was called “The Hawaiians.” The organization formed chapters on every island in 1970 to seek reforms in the management of the Department of Hawaiian Home Lands, the public land trust established by the U.S. Congress in 1921. One of their main goals was to enable qualified beneficiaries, many of whom had been on the application list for fifteen to twenty years, to be placed on these trust lands.⁸⁶ In 1971, the Congress of Hawaiian people formed on O‘ahu. This organization monitored the land transactions of the trustees of the Bishop Estate and sought to expand educational opportunities for Native Hawaiians at the Kamehameha Schools and improve access to those opportunities.⁸⁷

Aboriginal Lands of Hawaiian Ancestry (A.L.O.H.A.) was the first Native Hawaiian organization to focus on claims of Native Hawaiians arising out of the role of the U.S. government in the overthrow of the Hawaiian monarchy. A.L.O.H.A. worked with Hawai‘i’s congressional delegation to introduce a bill, modeled after the 1972 Alaska Native Claims Settlement Act, to provide monetary reparations to Native Hawaiians. As a result of these efforts, a series of “reparations” bills was introduced in Congress.⁸⁸ In 1976, in order to draw the attention of the U.S. Congress to the injustices and cultural trauma borne by Native Hawaiians and stress the importance of the reparations bill, then A.L.O.H.A. president Charles Maxwell called for the occupation of the island of Kaho‘olawe. This was the inception of the movement to stop the bombing of Kaho‘olawe, which led to the formation of the Protect Kaho‘olawe ‘Ohana. Although not immediately successful, A.L.O.H.A.’s efforts eventually led to 1980 congressional action establishing a Native Hawaiians Study Commission to investigate “the culture, needs, and concerns” of the Native Hawaiian community.⁸⁹ As discussed below, the Protect Kaho‘olawe ‘Ohana developed into an islands-wide organization that ultimately stopped the bombing of the island and shared governance over the island with the U.S. Navy.

Like A.L.O.H.A., some Native Hawaiian organizations focused on the political status of Native Hawaiians at the federal level. In 1975, Alu Like (Working Together) formed as a non-profit organization of Native Hawaiians on every island to qualify for funding from the Office of Native American Programs (now the Administration for Native Americans). The Hou Hawaiians have actively asserted status as a tribal government in litigation in the federal courts.⁹⁰ Self-governance on lands set aside under the Hawaiian Homes Commission Act has also served as a focal point for Hawaiian homesteaders.⁹¹ In 1987, Ka Lāhui Hawai‘i (The Nation of Hawai‘i) organized a constitutional convention with representatives from every island. They adopted a governing structure with elected officials. At one point they had 20,000 citizens enrolled in the organization. Their constitution laid

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

86. Coffman, *Island Edge*, pp. 294-95.

87. *Id.* p. 44 - 45.

88. See, e.g., H.R. 15666, 93rd Cong., 2d Sess. (introduced June 27, 1974); H.R. 1944, 94th Cong., 1st Sess. (introduced January 23, 1975).

89. Pub. L. No. 96-565, Title III, § 303(a) (December 22, 1980).

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

91. See Stu Glauberman, *Third Hawaiian group enters self-determination fight*, *Honolulu Advertiser*, July 25, 1989, at A-3.

A.D. 1978-Present

State of Hawai'i • Native Hawaiian National Organizations of Self-Governance • Office of Hawaiian Affairs, Ka Lāhui Hawai'i, Sovereign Council of Hawaiian Homelands Assembly, Council for Native Hawaiian Advancement, Hā Hawai'i-Native Hawaiian Convention, Native Hawaiian Roll Commission-Kana'iolovalu, Ali'i Trusts • Generation 33

the groundwork for a democratically elected nation of Hawai'i within the American federal and state system, contemplating a government-to-government relationship with the federal and state governments.⁹² More recently, the Council for Native Hawaiian Advancement has taken on the kuleana (responsibility) of working with Native Hawaiian organizations and individuals to enhance the cultural, economic and community development of Native Hawaiians and serve as a forum for discussing the important policy issues—including sovereignty and the U.S.-Native Hawaiian relationship—facing the Hawaiian community.⁹³

B. Recognition of Native Hawaiian Self-Determination and Governance

The first important response to the emergence of these Native Hawaiian organizations exercising varying degrees of sovereignty and self-governance was the 1974 inclusion of Native Hawaiians, by the U.S. Congress, in the definition of Native Americans who could qualify for the funding and programs set up under the Native American Programs Act.⁹⁴ As mentioned above, in 1975, Native Hawaiian leaders in Hawai'i formed the nonprofit organization Alu Like, Inc. in order to qualify for the Native American Programs and channel federal funds into the community for job training, small business development and overall social and economic development.⁹⁵ Shortly thereafter, the Hawai'i state government followed the federal government's lead in affirming the inherent rights of Native Hawaiians as an indigenous people.

1. The 1978 Constitutional Convention and the Office of Hawaiian Affairs

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

One amendment established the Office of Hawaiian Affairs (OHA) with a 9-member board of trustees elected by all Native Hawaiians.⁹⁶ As a result, Native Hawaiians were able to elect a governing body that truly represented their interests as a people distinct from the general population of Hawai'i. In addition to establishing OHA, another amendment specifically designated Native Hawaiians and the general public as the beneficiaries of the “public land trust,” which consists of Government and Crown lands of the Hawaiian Kingdom and Constitutional Monarchy.⁹⁷ These amendments also set a pro rata share of the revenue from the public land trust as a primary funding source for OHA and gave the trustees extensive independent authority.⁹⁸



Bill Paty, president of the 1978 Constitutional Convention, signs a proposed amendment to the Hawai'i State Constitution establishing the Office of Hawaiian Affairs. Courtesy photo

92. See Milliani Trask, *Ka Lāhui Hawai'i: A Native Initiative for Sovereignty*, available at <http://www.hawaii-nation.org/turningthetide-6-4.html>; Ka Lāhui's constitution is available at <http://kalahuihawaii.wordpress.com/ka-lahui-hawaii-constitution/> (last visited June 12, 2013).

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

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

95. Tom Coffman, *The Island Edge of America: A Political History of Hawai'i* (Honolulu: Univ. of Hawai'i Press, 2003), pp. 296-97.

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

97. Haw. Const. art. XII, § 4 (1978). The definition of the public land trust in art. XII, § 4, excludes the 200,000 acres of Hawaiian Homelands since those lands are impressed with a separate, distinct trust for Native Hawaiians. See Haw. Const. art. XII, § 2.

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

2. Kaho‘olawe - Recognition of Shared Governance

As described earlier, the Protect Kaho‘olawe ‘Ohana was founded to stop the U.S. Navy bombing of the island of Kaho‘olawe, heal the island and reclaim it for the Native Hawaiian people.⁹⁹ Along with continued landings on the Island, the ‘Ohana also filed a federal lawsuit to enjoin the Navy from further bombing.¹⁰⁰ In October 1980, the parties entered into a Consent Decree and Order, which required that the United States “recognize that Plaintiffs’ organization [the ‘Ohana] seeks to act as stewards of the moku [island] Kaho‘olawe,” and gave the ‘Ohana access to the island with the responsibility to evaluate and ensure that the Navy lived up to specific responsibilities set out in the order.¹⁰¹ Thus both in practice and as a matter of law, a Native Hawaiian political organization exercised shared governance responsibility with the U.S. Navy over the Island of Kaho‘olawe, from 1980 until 2003, while the United States Navy retained control of access to Kaho‘olawe.¹⁰² A United States District Court gave cognizance to a Native Hawaiian political organization “acting as stewards of the island” for a period of nearly 23 years (from December 1, 1980 to November 11, 2003 when control of access to Kaho‘olawe was transferred to the State of Hawai‘i). Moreover, under the Consent Decree, the Court accorded specific access to Kaho‘olawe—not to the State or County officials—but to the ‘Ohana, a Native Hawaiian political organization.

In 1993, Congress acknowledged the cultural significance of the island, required the Navy to return the island to the State and directed the Navy to conduct an unexploded ordnance cleanup and environmental restoration in consultation with the state.¹⁰³ Hawai‘i law guarantees that when a sovereign Native Hawaiian entity is established and recognized by the United States, the state will transfer management and control of Kaho‘olawe to that entity.¹⁰⁴

3. The 1993 Apology Resolution & Mauka to Makai Report—Reconciliation

In 1993, the U.S. Congress passed, and President Clinton signed into law, a joint resolution apologizing to the Native Hawaiian people for U.S. participation in the overthrow of the Hawaiian Kingdom.¹⁰⁵ The Apology Resolution explicitly acknowledged the “special relationship” that exists between the United States and the Native Hawaiian people. Congress confirmed in the Apology Resolution that Native Hawaiians are an “indigenous people.”¹⁰⁶ Congress also acknowledged that the Republic of Hawai‘i ceded 1,800,000 acres of Crown, Government and Public Lands of the Kingdom of Hawai‘i to the United States without the consent of or compensation to the Native Hawaiian people or their sovereign government; that the Native Hawaiian people never directly relinquished their claims to their inherent



President Bill Clinton signed Public Law 103-150 - The Apology Resolution that acknowledged U.S. participation in the illegal overthrow and that 1.8 million acres of crown, government and public lands of the Kingdom of Hawai‘i was ceded without the consent of or compensation to the Native Hawaiian people or their sovereign government.

Courtesy photo

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

100. *Aluli v. Brown*, 437 F. Supp. 602, 604 (D. Haw. 1977).

101. Consent Decree and Order, December 1, 1980, filed in the United States District Court, Civil No. 76-0380 in *Aluli, et al., v Brown, Secretary of Defense, et al.* (signed by Hon. William Schwarzer, (D.C. N.D. Cal.)).

102. Title to Kaho‘olawe was transferred to Hawai‘i on May 7, 1994, but control of access and the Consent Decree remained in full force and effect until November 11, 2003.

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

104. Haw. Rev. Stat. § 6K-9 (2012).

105. Apology Resolution.

106. *Id.* clause 8.

sovereignty over their national lands to the United States; and that the overthrow was illegal.¹⁰⁷ Congress expressed its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawai'i, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people, and urged the President of the United States to support reconciliation efforts between the United States and the Native Hawaiian people.¹⁰⁸

In 1999, the U.S. Department of the Interior and the Department of Justice conducted meetings in Hawai'i to investigate progress on the reconciliation called for in the Apology Resolution and to solicit input from the Hawaiian community. Oral and written testimony from community members touched on topics ranging from sovereignty to community and economic development and from health and education to housing. The Departments issued recommendations in their report, *Mauka to Makai: The River of Justice Must Flow Freely* in 2000.¹⁰⁹ The recommendation to establish an Office of Native Hawaiian Relations (ONR), in the Secretary of Interior's Office, has been implemented.¹¹⁰

4. Act 195 and the Native Hawaiian Roll Commission—Unrelinquished Sovereignty

The latest recognition of Native Hawaiians and their inherent right to self-governance came in 2011, when the State passed Act 195, which acknowledges Native Hawaiians as the “only indigenous, aboriginal, maoli population” of Hawai'i and identifies Native Hawaiians as a distinctly native community, reaffirming that since its inception, the State “has had a special political and legal relationship with the Native Hawaiian people and has continuously enacted legislation for the betterment of their condition.” The Act also expresses the State’s “desire to support the continuing development of a reorganized Native Hawaiian governing entity and, ultimately, the federal recognition of Native Hawaiians.”¹¹¹ Substantively, the Act created a five-member Native Hawaiian roll commission responsible for preparing and maintaining a roll and certifying that the individuals on the roll meet the definition of a “qualified Native Hawaiian.”¹¹² Since 2012, the Roll Commission has undertaken an extensive effort to inform the Native Hawaiian community of the enrollment process as well as to gather support from Hawai'i's general population. Kana'iolowalu is the Commission's year-long campaign to “reunify Native Hawaiians in the self-recognition of unrelinquished sovereignty, by enrolling Native Hawaiians and supporters in this declaration.”¹¹³

C. Native Hawaiian Renaissance: Reaffirmation as a Distinct People

Economic and political developments stimulated by statehood transformed Hawai'i's social system and unexpectedly, rather than fully integrating Hawai'i's people into American life, laid the foundation for a Native Hawaiian cultural renaissance and revival of the historic sovereignty movement. In developments that paralleled the sovereignty movement, traditional cultural practices and arts were reinvigorated and revitalized. Traditional Native Hawaiian navigational arts were revived through the voyages of the Hōkūle'a double-hulled canoe. During the 1970s and 1980s, Hawaiian music and traditional hula flourished as indicated by an increase in the number of hālau hula (hula schools) participating in the annual Merrie Monarch Festival and the popularity of

107. *Id.*, clauses 26 & 29 and § 1.

108. *Id.*, § 1.

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

110. Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, 118 Stat. 3, div. H, sec. 148 (2004). ONR is tasked with implementing the “special legal relationship” between the Native Hawaiian people and the United States; continuing the process of reconciliation with the Native Hawaiian people; and fully integrating the principle and practice of meaningful, regular and appropriate consultation with the Native Hawaiian people by assuring timely notification and prior consultation before federal agencies take actions that have the potential to significantly affect Native Hawaiian resources, rights or lands.

111. Act 195, §§ 1-2, 2011 Haw. Sess. Laws. (codified at Haw. Rev. Stat. Ch. 10H).

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

113. See Kana'iolowalu available at <http://www.kanaiolowalu.org> (last visited June 2, 2013).

Hawaiian music radio stations on each island. Traditional Hawaiian herbal healing practices, lā'au lapa'au, and ho'oponopono (family dispute resolution) were also revived. The Hawaiian language was brought back from the brink of extinction, subsistence access and gathering practices vital for rural Native Hawaiian communities were recognized under state law and other Hawaiian cultural practices—including the protection of iwi kūpuna (ancestral remains) and practices relating to birth—have been revitalized by the Native Hawaiian community. Culturally and spiritually significant Native Hawaiian lands have been reclaimed for the Hawaiian people. Today, Native Hawaiians continue to live and thrive as a distinct, unique, indigenous people in their homeland.

1. 'Ōlelo Hawai'i – The Hawaiian Language Lives!¹¹⁴

In 1896, three years after the illegal overthrow of the Hawaiian Kingdom, and in order to bolster the case for annexation to the United States, English, which was already the language of government, became the sole medium of instruction in Hawai'i schools.¹¹⁵ During Hawai'i's territorial period, there was a concerted effort to eliminate the Hawaiian language from public life, under the premise of uplifting the Native Hawaiian people and assimilating them into American society.¹¹⁶

In 1978, through the advocacy of Native Hawaiians, the Hawai'i Constitution was amended to designate Hawaiian as one of the two official languages of Hawai'i and to require a Hawaiian education program in public schools.¹¹⁷ Nevertheless, Hawaiian was in danger of becoming an extinct language—by 1983, only 2,000 native speakers remained and most were in their sixties and seventies.¹¹⁸ In 1983, Hawaiian language advocates established Hawaiian immersion schools called Pūnana Leo ("language nests").¹¹⁹

In 1999, the first students educated entirely in the Hawaiian language in more than a century graduated from high school.¹²⁰ By 2011, nearly 4,600 children had graduated from the eleven Pūnana Leo preschools,¹²¹ and there were more than 1,500 Hawaiian-immersion students enrolled at twenty-one different public school sites.¹²² Today, there are over 26,000 Hawaiian language speakers, and an increasing number of college students are receiving undergraduate and graduate degrees in Hawaiian language, with the University of Hawai'i-Hilo offering a Doctorate degree in Hawaiian and Indigenous Language and Culture Revitalization.¹²³

2. Native Hawaiian Traditional and Customary Practices

Native Hawaiians have continued to practice their customs and traditions, those related to land but also those related to every aspect of life, from birth to death. In doing so, they have been supported by laws originally

114. This discussion on the revitalization of 'Ōlelo Hawai'i is based on Melody Kapilialoha MacKenzie, "Ke Ala Loa—The Long Road: Native Hawaiian Sovereignty and the State of Hawai'i," 47 *Univ. of Tulsa Law Rev.* 621, 654-57 (2012).

115. Laws of the Republic of Hawaii, Act of June 8, 1896, No. 57, § 30 (codified in 1897 Haw. Comp. Laws § 123).

116. For a general discussion of this period and the suppression of the Hawaiian language, see Paul F. Nāhoa Lucas, "E Ola Mau Kākou I Ka 'Ōlelo Makuahine: Hawaiian Language Policy and the Courts," *Hawaiian Journal of History*, Vol. No. 34 (2000), pp. 8-10.

117. Haw. Const. art. XV, § 4 (Hawaiian & English official languages), art. X, § 4 (Hawaiian education program) (1978). An article in *Honolulu Magazine* reported that there were only 30 children under the age of 5 who were native speakers of Hawaiian. John Heckathorn, "Ua Hiki Anei Ke Ola Ka 'Ōlelo Hawai'i? – Can the Hawaiian Language Survive?" *Honolulu Magazine* (April 1987), p. 10.

118. Larry K. Kimura & William Wilson, U.S. Dep't of the Interior, *Native Hawaiian Study Commission Minority Report* (1983), p. 191.

119. Albert J. Schütz, *The Voices of Eden: A History of Hawaiian Language Studies* (Honolulu: Univ. of Hawai'i Press, 1994), pp. 366-67. In 1986, the law was amended to allow "special projects" in the Hawaiian language.

120. See Keith Ka'ano'i Walk, Comment, "'Officially' WHAT? The Legal Rights and Implications of 'Ōlelo Hawai'i," 30 *U. Haw. L. Rev.* 243 (2007), p. 252.

121. 'Aha Pūnana Leo, *2007-2011 Progress Report* (2011), p. 10.

122. Katherine Poythress, *Hawaiian Schools Threaten to Boycott State Test*, Civil Beat, Mar. 16, 2011, available at <http://www.civilbeat.com/articles/2011/03/16/9457-hawaiian-schools-threaten-to-boycott-state-test/>.

123. Ng-Osorio, J., and Ledward, B. C., *Aia ke ola i ka 'ōlelo Hawai'i: Revival of the Hawaiian language* (Honolulu: Kamehameha Schools—Research & Evaluation, 2011) available at http://www.ksbe.edu/spi/PDFS/Lang_prevalence.pdf (last visited June 23, 2013); see Graduate Degrees, U. Hawai'i Mānoa Hawai'i inuiākea Sch. Hawaiian Knowledge, http://manoa.hawaii.edu/hshk/index.php/site/degrees_grad/en/ (last visited Mar. 3, 2012); *Ka Haka 'Ula O Ke'elikālanī College of Hawaiian Language Graduate and Post-Baccalaureate Certificate Programs* U. Hawai'i Hilo, <http://hilo.hawaii.edu/catalog/khuok-post-baccalaureate.html> (last visited Mar. 3, 2012); See *Doctor of Philosophy (Ph.D.) in Hawaiian and Indigenous Language and Culture Revitalization*, U. Hawai'i Hilo, http://hilo.hawaii.edu/catalog/phd_hilcr.html (last visited Mar. 3, 2012).

instituted in the Kingdom of Hawai‘i as well as more recent laws. In 1978, the people of Hawai‘i adopted a constitutional amendment reaffirming the State’s commitment to “protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes” by Native Hawaiians.¹²⁴

Access and Gathering Practices

Native Hawaiian traditional access and gathering practices, recognized and codified in Hawai‘i law during the Māhele and in other laws of the Kingdom, have continued to be exercised in rural areas in the cultural kīpuka that have remained the source for regeneration and revitalization of Native Hawaiian culture and way of life. In these kīpuka, kua‘āina (back country folk) continue to go to the mountains for medicinal herbs, gather flowers and ferns to make lei for hula and special celebrations, seek hala (pandanus) trees for leaves to weave mats and baskets, catch ‘ōpae (small shrimp) in ponds at the seashore and continue to grow kalo (taro) as a staple of the traditional diet.

In a series of landmark cases, the Hawai‘i Supreme Court has given definition and life to the constitutional and statutory provisions protecting traditional and customary practices. For instance in one case, the Hawai‘i Supreme Court tasked all state agencies to consider certain factors in granting permits—including the extent to which traditional and customary Native Hawaiian rights are exercised in a particular area; the extent to which those practices will be affected or impaired; and what actions might be taken to reasonably protect Native Hawaiian rights.¹²⁵

The cases on traditional and customary rights are significant because they recognize that Hawaiian custom and usage continues in spite of the transition to a fee simple property system, they reaffirm State policy as set out in the Hawai‘i Constitution, they validate the exercise of customary practices by Native Hawaiians and they set some concrete requirements for state agencies to follow in granting permits. None of these cases could have been brought to court without the kua‘āina continuing in their ways, and all of these cases included kua‘āina as parties to the lawsuits.

Native Hawaiians have also turned to the legislature for recognition and protection of their practices associated with the beginning and ending of life—protection of iwi kūpuna and birthing practices—which demonstrates the continuing vitality of Native Hawaiian culture.

Protection of Iwi Kūpuna (Ancestral Remains)

Beliefs and customs associated with death are deeply ingrained in Native Hawaiian culture, requiring utmost respect and reverence.¹²⁶ Hawaiians believe that the iwi (bones) and the spirit of a person are connected, and that the spirit remains near the iwi following death. Therefore, the area of burial is a sacred place, particularly because the life-force or mana of the deceased person is infused into the place of burial. That life force is imparted to the district and island where the ancestral remains are located. Both the iwi and the burial site are so sacred that if either is disturbed, the ability of the spirit to join the ‘aumākua or ancestors in eternity is in jeopardy. This then could result in injury and spiritual trauma to the living descendants of the deceased person. In 1990, after the desecration of over 1,100 ancestral burials resulted in an outcry from the Native Hawaiian community, the Hawai‘i State legislature passed a burials law giving Hawaiian burial sites—especially those with large numbers of remains—protection.¹²⁷ The law established island burial councils for each of the major islands. These councils included representatives from both the Native Hawaiian community and large landowner interests, with Hawaiian interests constituting a majority on each council.¹²⁸ Although implementation of the law has had mixed results, both lineal and cultural Native Hawaiian descendants have been deeply involved in every aspect of protecting their iwi kūpuna.

124. Haw. Const. art. XII, §7 (1978).

125. See *Ka Pa‘akai o Ka ‘Aina v. Land Use Commission*, 7 P.3d 1068 (Haw. 2000); see MacKenzie, “Ke Ala Loa,” pp. 648-654, for discussion of the traditional and customary rights cases decided by the Hawai‘i Supreme Court.

126. See, M.K. Pukui, E.W. Haertling, C. Lee, *Nānā I Ke Kumu (Look to the Source)*, Vol. I (Honolulu: Hui Hanai, 1983), pp.115-118, 195-196 for a discussion of Hawaiian concepts of death and treatment of human remains.

127. Act 306, 1990 Haw. Sess. Laws (codified at Haw. Rev. Stat. Chap. 6E).

128. Haw. Rev. Stat. § 6E-43.5.

Practices Relating to Birth

Just as customary practices relating to death are culturally and spiritually significant to Native Hawaiians, so too are those relating to birth. The proper care of both the piko (umbilical cord) and 'iewe (placenta) of a newborn increases the child's health and well-being throughout its life. Important rituals associated with both the piko and 'iewe connected a child to his/her homeland.¹²⁹ In 2005, the State Department of Health began enforcing a policy that classified the 'iewe as infectious waste. Previously, hospitals and doctors had given the 'iewe to a mother upon request. Native Hawaiian families sought legislative relief and in 2006, a law passed allowing hospitals to release the placenta to the mother or her designee after a negative finding of infectious or hazardous disease.¹³⁰ The final committee reviewing the bill noted that "the rich ethnic and cultural practices of Native Hawaiian traditions are essential to sustaining the Hawaiian culture, and need protection[.]"¹³¹

3. Hawaiian National Lands

A Hawaiian proverb, *Hānau ka 'āina, hānau ke ali'i, hānau ke kanaka; Born was the land, born were the chiefs, born were the common people*,¹³² describes the inseparable ancestral connection between Native Hawaiians and their land. Protection of their ancestral and national lands is at the heart of the Native Hawaiian quest for federal recognition of their status as a indigenous people with the right of self-governance. The following lands are currently held in trust, in whole or part, for the Native Hawaiian people.

Hawaiian Homelands

In 1918, Native Hawaiian national leaders petitioned the U.S. Congress to set aside, for Native Hawaiian homesteading, the Crown Lands of the Kingdom and Constitutional Monarchy of Hawai'i, which the Republic of Hawai'i had ceded to the U.S. government. In response, the U.S. Congress, in 1921, created a public trust for Native Hawaiians of at least one-half Hawaiian ancestry, which was comprised of the Crown and Government lands ceded to the U.S. government by the Republic of Hawai'i. Today, this public land trust comprised of more than 200,000 acres is home to almost 7,500 Native Hawaiian families spread across all of the major Hawaiian Islands.¹³³

The Island of Kaho'olawe

When the island of Kaho'olawe, consisting of 28,800 acres, was transferred by the U.S. Navy to the State of Hawai'i, the Hawai'i State Legislature passed a law by which the island is held in trust for the Native Hawaiian people. Hawai'i State law provides that the "State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii."¹³⁴ The island, originally named for the Hawaiian god of the ocean, Kanaloa, is honored as one of his a sacred body forms (kino lau). In earlier times, it was a center for the training of navigators in the art and science of celestial wayfinding.

Beneficiaries of the Public Land Trust

In addition to the 200,000 acres of Hawaiian Homelands discussed above, the Admission Act of 1959 transferred administration of 1.2 million acres of "ceded lands" to the State of Hawai'i and established the public land trust to be managed for five purposes, one of which was "the betterment of the conditions of

129. Pukui, et al., 1 *Nānā I Ke Kumu*, p. 184.

130. Act 12, 2006 Haw. Sess. Laws.

131. Twenty-Third Legislature, State of Hawai'i, Senate Comm. on Health, Standing Comm. Report No. 3185 on H.B. No. 2057, H.D. 2 (March 31, 2006). The Committee also noted that many other ethnic groups in Hawai'i, including Filipinos, Chinese and Japanese, also have practices that require burial of the placenta for the health of the child.

132. Mary Kawena Pukui, *Ōlelo No'eau: Hawaiian Proverbs & Poetical Sayings* (Honolulu: Bernice Pauahi Bishop Museum Press, 1983), p. 56.

133. Housing Units on Hawaiian Homestead Lands, OHA Databook, <http://www.ohadatabook.com/T01-09-11.pdf> (last visited June 30, 2013).

134. Haw. Rev. Stat. § 6K-9.

Native Hawaiians, as defined by the Hawaiian Homes Commission Act.” Under Article XII, Section 4 of the Hawai‘i State Constitution, the beneficiaries of the public land trust are native Hawaiians and the general public. Annually, a portion of the revenues from the public land trust is transferred to the Office of Hawaiian Affairs for the benefit of the Native Hawaiian community.

Lands Held in Trust by the Office of Hawaiian Affairs

Wao Kele o Puna, a nearly 26,000 acre native rainforest on the Island of Hawai‘i, was acquired by the Office of Hawaiian Affairs after a more than twenty-year legal and political battle resulting from a private company’s attempts to drill for geothermal energy on the land.¹³⁵ Three important features distinguish these lands for the Native Hawaiian people – the area is important from a spiritual and religious standpoint as the home of Pele, the Hawaiian deity of fire and the volcanoes; Native Hawaiians use the resources of the rainforest for traditional subsistence, cultural and religious purposes; and the lands were classified as Government Lands under the Hawaiian Kingdom. Hailed as the first return of “ceded” lands to Native Hawaiian ownership since the 1893 overthrow of the Hawaiian Kingdom, Wao Kele o Puna rainforest will eventually be transferred to the sovereign Native Hawaiian governing entity.

Waimea Valley, a lush and culturally-rich privately-owned ahupua‘a (land division from the uplands to the sea) on the north shore of O‘ahu—originally managed by high-ranking Hawaiian priests, but more recently threatened to be sub-divided into luxury-home lots—has returned to Native Hawaiian ownership through the Office of Hawaiian Affairs.¹³⁶ The Office of Hawaiian Affairs is protecting both the natural and cultural resources of this land and ensuring that Hawaiian traditional and customary activities are practiced there.

In April 2012, the State of Hawai‘i transferred ten parcels of land in the urban Honolulu district of Kaka‘ako to the Office of Hawaiian Affairs in order to settle public land trust revenue claims that date back to 1978. The parcels currently generate revenue of \$1.1 million a year, which will increase with the implementation of a development plan. Additional lands recently acquired by OHA that will be part of a land base for a Native Hawaiian governing entity include: the Palauea cultural reserve, a 20-acre parcel with an ancient fishing village and agricultural sites located on Maui’s west coast; the Kūkaniloko birthing stones, a sacred site where high O‘ahu ali‘i were born, along with over 500-acres of adjacent lands; and a commercial building, the Gentry Pacific property in Honolulu’s Iwilei district, where OHA plans to relocate its primary office.

Ali‘i Trust Lands

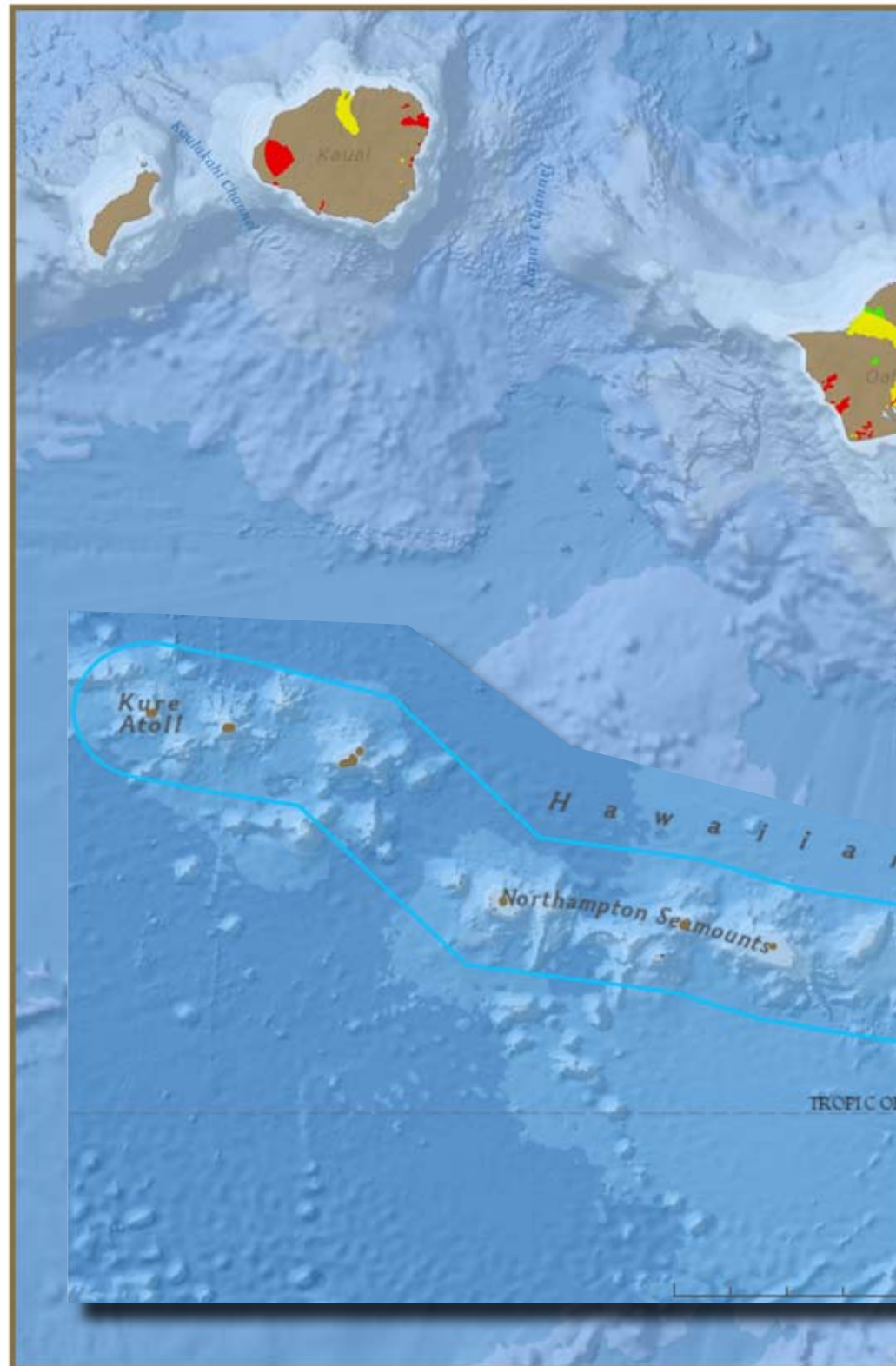
The Kamehameha Schools, the Lunalilo Trust, the Queen Lili‘uokalani Trust and the Queen Emma Foundation, originally land-based private charitable trusts established by the Native Hawaiian rulers in the late nineteenth and early twentieth centuries, continue to provide for the well-being of Native Hawaiians through education, elder care, social services and health care. Federal recognition of the status of Native Hawaiians as an indigenous people with the inherent right of sovereignty will help to protect the valuable assets of these trusts and ensure that they will be able to provide services to the Native Hawaiian community far into the future.

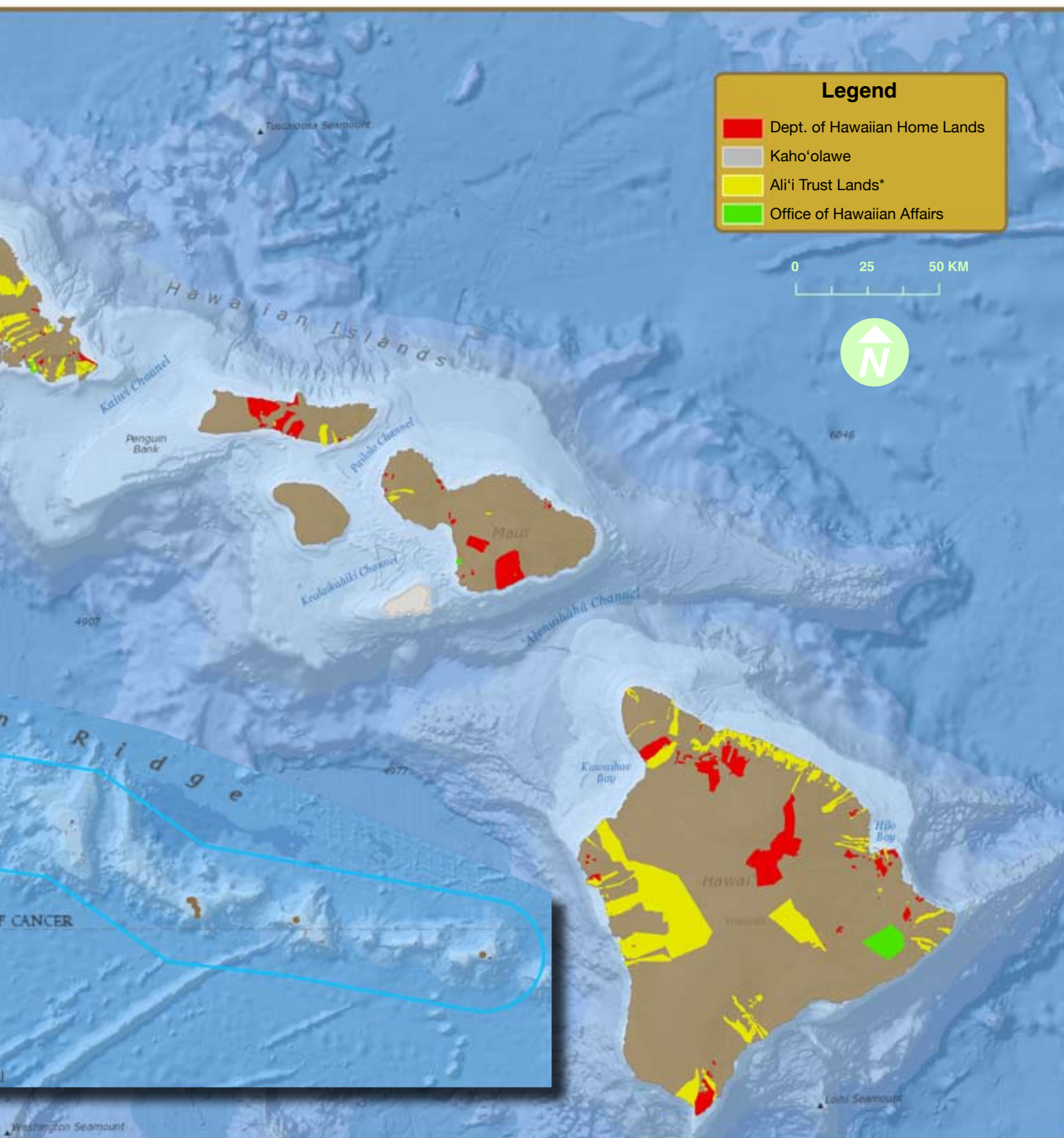
135. See Melody Kapilioloha MacKenzie, Susan K. Serrano & Koalani Kaulukukui, “Environmental Justice for Indigenous Hawaiians: Reclaiming Land and Resources,” *Natural Resources & Environment*, Vol. 21, No. 3, Winter 2007, for further discussion on the return of Wao Kele o Puna and Waimea Valley to Native Hawaiian stewardship.

136. See *Hipaka LLC*, Waimea Valley, http://www.waimeavalley.net/waimea_valley.aspx (last visited Mar. 3, 2012). More recently, the Office of Hawaiian Affairs has been transferred significant cultural lands as well as income producing lands in Honolulu.

**Map of
selected lands
currently held in
trust for the Native
Hawaiian people**

*Ali'i Trust Lands include
the body of lands currently
owned by the Kamehameha
Schools, Lunalilo Home, Queen
Emma Foundation and Queen
Lili'uokalani Trust





IX. E Mau – Let's Strive

In closing, let us reflect upon the words of the song, *E Mau – Let's Strive*, written by Alvin Kaleolani Isaacs, Sr., in 1941, expressing the ongoing hope and aspiration of the Native Hawaiian people to flourish and thrive as a distinct people, with a unique language, history, culture and ancestral land base.

E Mau – Let's Strive

E mau ko kākou lāhui e ho'omau
E mau ko kākou 'Ōlelo e ho'omau
E mau ka hana pono o ka 'āina
I mau ka ea o ka 'āina i ka pono
I ka pono o ka 'āina

Ho'oulu ka pono o ka 'āina e ho'oulu
Ho'ōla ka nani o ka 'āina e ho'ōla
Ho'ōla lā ho'oulu lā a ho'olaha
I mau ka ea o ka 'āina i ka pono
I ka pono o ka 'āina

Let's strive to keep our nation alive, let's strive
Let's strive to keep our language alive, let's strive
Let's strive to preserve the good of the islands
So that the well-being of the land and nation will endure through judicious rule
The well-being of the land and nation will endure

Build the greatness of Hawai'i, let's build
Restore the goodness of the islands, let's restore
Restore, build and sustain them throughout the world
So that the well-being of the land and nation will endure through judicious rule
The well-being of the land and nation will endure



Empowering Hawaiians, Strengthening Hawai'i

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