

Does the Hawaiian Kingdom Still Exist?

British protectorate

Although Australia, New Zealand and Hawaii have Captain Cook in common, they experienced Western contact differently. Australia and New Zealand became British colonies. Hawaii didn't. By 1795 most of the Hawaiian Islands had become a united kingdom under Kamehameha I. A separate kingdom, Kauai, and its dependency, Niihau, were absorbed around 1820.

Apart from his high chiefs, Kamehameha I was advised by two trusted Englishmen, John Young and Isaac Davis, who had fought alongside him in his wars of conquest. He had a strong grasp of domestic affairs. He also had a strong sense of foreign affairs, as the ships of many nations were passing through his new kingdom. During unification, Captain Vancouver had warned him against trusting foreigners. He believed he could trust the British, though, and he "ceded" Hawaii to Britain in 1794. He regarded Hawaii as a British protectorate, not a British colony, for his strategic purposes, as we can see in part of his letter to George III in 1810:

Am sorry to hear your being at War with so many powers and I so far off cannot assist you. Should any of the powers which you are at War with molest me I shall expect your protection, and beg you will order your Ships of War & Privateer not to Capture any vessel whilst laying at Anchor in our Harbours, as I would thank you to make ours a neutral port as I have not the means of defence.

I am in particular need of some Bunting having no English Colours also some brass Guns to defend the Islands in case of Attack from your Enemies. I have built a few small vessels with an Intent to trade on the North West of America with Tarro [taro] root the produce of these Islands for fur skins but am told by the White men here I cannot send them to sea without a Register [of Admiralty approval]. In

consequence of which I beg you will send me a form of a Register & seal with my Name on it.

In 1819, after Kamehameha's death, his son continued to believe Hawaii was a British protectorate. In November 1823, Liholiho (Kamehameha II) and a Hawaiian delegation travelled to London to clarify Hawaii's protectorate status, and share their concerns about the influx of US citizens and their apprehensions about Russian intentions towards Hawaii. In July 1824, Liholiho died of measles before an audience with George IV could be arranged. In September of that year, the delegation finally met with the King, his prime minister, and his foreign secretary. The delegation reiterated the terms of the cession. George IV reiterated the position he had communicated to Kamehameha I as prince regent in 1812: Hawaii was considered a British protectorate. However, the protectorate would prove to be elastic and contingent, have little practical use, and relations between the two nations were occasionally strained. So, to protect its sovereignty, Hawaii was forced to make protectorate arrangements with the US in 1826, and those arrangements were also elastic and contingent.

British governance

After unification, Kamehameha I modified aspects of British governance and incorporated them into Hawaiian governance. This included a prime minister (Kalaimoku), who managed the day-to-day operations of the national government and was head of the kingdom's treasury. It also included the establishment of three governors, or earldoms, who served as viceroys over different islands. The national government managed foreign policy and the national interest; the regional governments were independent of each other, apart from their collective allegiance to the king. The lands of the federated kingdom, apart from Kauai and Niihau, were divided between Kamehameha and four principal

chiefs. Although these four chiefs were independent, they owed military service to Kamehameha if called upon. The stratification and organisation of this feudal system continued to be cemented with the mortar of traditional Hawaiian religion.

While Kamehameha respected British religion, which he discussed with his English advisers and Vancouver, he remained loyal to the *kapu* (taboo) system; however, soon after his death, his son overthrew the system. While the overthrow was inevitable—Western contact had been undermining the power of the system for decades—it removed the mortar that cemented Hawaiian society. Prior to the overthrow, Hawaii had requested Anglican missionaries from Britain. As none were forthcoming, the religious vacuum was filled by Protestant missionaries from the US, who arrived in 1820.

While the king originally granted the missionaries a one-year probationary residence, on the advice of John Young, they remained much longer, converted the Hawaiian people to their version of Protestantism, translated the Hawaiian language into a written form, and contributed enormously to national literacy. They believed that, in preserving the Hawaiian language, they were preserving the Hawaiian nation. Within a generation, they estimated that Hawaiians were among the most literate peoples of the world. The historical evidence supports this view.

Hawaii made an extraordinarily rapid transition from feudal society to constitutional monarchy. Within a few decades, it managed to create the kind of political, social and religious polity that took Britain several centuries to create. This was particularly remarkable, given the colonial and geopolitical tensions throughout the Pacific, and the imperatives of modernity.

Constitution of 1840

Under Kauikeaouli (Kamehameha III), feudal law gradually gave way to statutory law. The first codification of organic law, upon which statutory law would be based, came with the Declaration of Rights of 1839, which paved the way for the incorporation of shared power under the constitutional monarchy. The Constitution of 1840 recognised three powers: the executive (with the sovereign as chief executive), the legislature, and the judiciary; however, as the Constitution didn't provide for the separation of powers, the prerogatives of the crown

permeated every facet of governance. The legislature was composed of three estates—the sovereign, the house of nobles, and the house of representatives—each with the right of veto over the other.

Kauikeaouli coped with unique pressures. Four are touched on here.

First, foreigners wanted guarantees of protection for their interests, which were rarely compatible with indigenous interests. He knew foreign powers were annexing indigenous kingdoms elsewhere in the Pacific and local foreigners were always threatening to play the cards of annexation or revolution if they didn't get their way. In order to protect Hawaiian sovereignty from constant existential threat, Kauikeaouli sent delegations to the US, Britain and Europe to settle disputes, negotiate treaties that made concessions to international law, and secure recognition of Hawaii as a sovereign nation. In November 1843, Britain and France jointly recognised Hawaii as a member of the family of nations. After that, Hawaii would maintain over ninety embassies and consulates throughout the world.

Second, as chief executive, the sovereign could appoint anyone to the executive, even if they hadn't been elected to the legislature, in a manner similar to the US president. Inevitable tensions emerged when,

within a few years, he appointed trusted white men to ministerial portfolios, which the indigenous population interpreted as a move to replace native chiefs with foreign advisers. The vehicle for white participation in government was a definition of Hawaiian subject, similar to the definition of British subject, which did not discriminate racially. There was also a royal prerogative to grant denization (permanent residency) without naturalisation.

Third, the Mahele, a top-down land reform begun in 1848, introduced the concept of alienable private property: that is, land could now be purchased, owned and sold. The Mahele was initiated to ascertain the proportional land rights of the government, the chiefly classes (the *alii*), their managers or agents (the *konohiki*), and the native classes (the *makaainana* or "people of the land"). The Mahele allowed foreigners to buy land for the first time. Within a few years, a feudal economy was replaced by a capitalist economy that benefited those who understood how capitalism worked. While the government, the *alii*, the *konohiki*, and foreigners benefited, many of the *makaainana* didn't. In this regard, the consequences of the Mahele were often unexpected, unintended and unfortunate.

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Fourth, as it was originally established, the role of prime minister was a misnomer, because there were no other ministers under Kamehameha I administering a government separate from the crown. During Liholiho's reign, the title of prime minister (Kalaimoku) was changed to premier (Kuhina Nui). During Kamehameha III's reign, one of his first acts under the Constitution of 1840 codified the role of premier. In addition to the premier's constitutional functions, she now headed the cabinet as minister of the interior. While this made the role of premier similar to prime minister, for the first time, the role sat uncomfortably within an evolving parliamentary system. The premier was appointed by the king, was usually (but not always) a woman, and was also a member of the royal family. The king couldn't act without the knowledge and approval of the premier. The premier couldn't act without the knowledge and approval of the king. In theory, it was a system of checks and balances. In practice, it didn't facilitate effective parliamentary government, especially when the king and premier held opposing views.

For many reasons, constitutional monarchy in Hawaii never had an opportunity to evolve into the Westminster model as we currently know it, where the sovereign became an observer with reserve powers. There was no party system; no dialectic between loyal government and loyal opposition; no Westminster-style relationship between an elected legislature and an appointed cabinet. As a result, the constitutional monarchy was never allowed to strike the right balance between Bagehot's dignified government (the crown) and efficient government (the cabinet). Hawaiian sovereigns had to be efficient as well as dignified. They were expected to rule as well as reign. In a period of unprecedented change and existential threat, they were politically involved and politically vulnerable.

Constitution of 1852

In 1851, the legislature appointed a commission to investigate and propose amendments to the Constitution of 1840. The commission recommended the structure and organisation of the Massachusetts Constitution of 1780, which was recognised as the most advanced constitution at the time. The draft of the new constitution was submitted to the legislature, approved by both houses, and received royal assent in June 1852.

The Constitution of 1852 contained a declaration of rights, an article describing the mode of constitutional amendment and, most importantly, a framework of government describing the powers of the executive, the legislature and the judiciary. While these three powers were distinct, they still

weren't completely separate. Following Hegel's theory of constitutional monarchy, they were regarded as parts of an interdependent whole; each power was defined by its particular function, in relation to the other powers it interacted with, and was in turn limited by. Under Article 39, the king could alter the Constitution, or even abrogate it, with the approval of his cabinet and privy council, without the approval of the legislature; he could place the kingdom under martial law; he could even alienate it to free it "from the insult and oppression of any foreign power". Under Article 45, the role of the premier continued; all important business which the king chose to transact in person, he could, but not without the approval of the premier: "the King and Kuhina Nui shall have a negative on each other's public acts".

Following Kamehameha III's death in 1854, Alexander (Kamehameha IV) ascended the throne in 1855. He was a renaissance man who, although educated by US missionaries and friendly with foreigners, remained suspicious of their influence and intentions. A devout Anglophile, he brought the Anglican Church to Hawaii and translated the 1662 *Book of Common Prayer* into Hawaiian. By the time he ascended, Hawaii had been internationally recognised as a sovereign nation for nearly a decade, its economy was making the transition from whaling to sugar, and there were still tensions between foreign interests and indigenous interests, which Alexander highlighted in his inaugural speech to the legislature:

To be kind and generous to the foreigner, to trust and confide in him, is no new thing in the history of our race ... I cannot fail to heed the example of my ancestors. I therefore say to the foreigner ... he is welcome ... as long as he comes with laudable motives ... But if he comes here with no more exalted motive than that of building up his own interests, at the expense of the native—to seek our confidence only to betray it—with no higher ambition than that of overthrowing our government, and introducing anarchy, confusion and bloodshed—then he is most unwelcome.

Effective government was proving difficult. Vestiges of the sovereign's absolutist prerogatives, the ambiguous role of the Kuhina Nui, and male suffrage without a property requirement were all becoming problematic. Alexander tried to address these issues by proposing constitutional amendments, but his amendments were unsuccessful, as amending the Constitution was difficult. The majority of both houses had to agree to a proposed

amendment being put. If that was successful, the proposed amendment had to be published three months before the election of the next legislature, which was then required to pass it by a two-thirds majority of both houses.

If much of this sounds similar to the Westminster system of checks and balances, it made governing difficult. So, in a special message to the legislature in 1859, Alexander said:

Experience has conclusively shown that the Constitution of 1852 does not, in many important respects, meet the expectations of its framers, or of my Predecessor, by whom it was voluntarily conceded ... The 105th Article of the Constitution prescribes the ordinary mode of amendment. Without reference to a different manner of revision, clearly founded on the inherent rights of the different Estates of the Kingdom, I am, at this time, content to appeal to the Legislature for such action as will provide an adequate remedy for all existing difficulties.

Alexander was placing the legislature on notice. If it couldn't find ways of fixing the Constitution, he would use his powers under Article 39 and Article 45; but he died of asthma at the age of twenty-nine, and the constitutional problem was handed on to his brother.

Constitution of 1864

Lot (Kamehameha V) called a constitutional convention soon after his ascension in 1864. When delegates couldn't agree on what form suffrage should take, he dissolved the convention with the following speech:

I am very sorry that we do not agree on this important point ... in all other monarchical countries suffrage is limited ... the class who possess property are the proper persons to advise their Representatives in regard to the necessities of the Government ... As we do not agree it is useless to prolong the session ... I make known today that the Constitution of 1852 is abrogated. I will give you a Constitution.

After consultation, Lot drafted and promulgated the Constitution of 1864, through which the office of Kuhina Nui was abolished, the role of cabinet was strengthened, both houses were brought together in one chamber in an attempt to bring discipline to the lower house, a property qualification was introduced for representatives and voters, and a literacy qualification was introduced for voters born after 1840.

One important feature, through which Lot intended to stabilise the new constitution, and the role of the crown within it, was the removal of the sovereign's right to alter or abrogate the new constitution without the approval of the legislature. All remnants of royal absolutism were now removed. In future, no sovereign had the power to do to the Constitution of 1864 what Lot did to the Constitution of 1852.

Constitution of 1887

Lot died in 1872. As he was a bachelor who hadn't named a successor, according to the Constitution of 1864 it was the responsibility of the legislature to elect a new sovereign. There were two candidates: William Lunalilo, a Kamehameha through his mother, and David Kalakaua. Lunalilo was elected by a large majority; however, his health was frail and he died of tuberculosis thirteen months into his reign. Another election was held in 1874. Kalakaua won a convincing majority over the only other candidate, Dowager Queen Emma, Alexander's popular widow.

Known as the Merry Monarch, Kalakaua encouraged the rebirth of Hawaiian culture, promoted the birth rate among the native people, staged his coronation, built his palace, and travelled the world raising Hawaii's international profile. Much of this was good, as far as dignified government and identification with indigenous sensibilities went, but it wasn't efficient government to the white plantation owners who controlled the economy. Hawaii now depended on sugar, on finding markets for that sugar, and on importing a plantation workforce that couldn't be filled locally. Kalakaua was useful to the plantation owners, in negotiating the Reciprocity Treaty of 1875, which gave them free access to the US market in exchange for the land that would eventually become Pearl Harbor, and in negotiating treaties with the monarchs of China, Portugal and Japan which facilitated emigrations of contract labour. The good years didn't last forever, however; the McKinley Tariff Act of 1890 decreased the competitiveness of Hawaiian sugar and created a depression.

In 1887 a group of local foreigners plotted against the sovereign. A new constitution was written in secret. As Kalakaua was forced to sign it at gunpoint, it's known as the Bayonet Constitution: although, as he'd been secretary to the constitutional consultations of his predecessors, he must have known he didn't have the power to abrogate the Constitution of 1864 without the consent of the legislature. Under the Constitution of 1887, executive power was removed from the sovereign but retained by a cabinet responsible to the legislature, everything the

sovereign signed had to be countersigned by cabinet, and property requirements for nobles, representatives and electors were changed. Asians were excluded from voting, even if they were Hawaiian subjects, but otherwise suffrage was extended to all non-Asian residents of Hawaiian, US or European descent, including aliens, provided they were male, could read and write, and had paid taxes. In a nation where the crown had come to represent the people, where the sovereign had become the embodiment of sovereignty, the Bayonet Constitution was a clear indication of where Hawaii was heading.

Overthrow and annexation

Kalakaua died in 1891. He was succeeded by his sister, Liliuokalani. She was determined to heed the calls of her subjects to restore the Constitution of 1864 and the role of the crown within it. She knew the Bayonet Constitution was illegal. She couldn't understand why residents who hadn't taken an oath of loyalty, including non-citizens and aliens, were allowed to vote. In January 1893, when she announced her intention to establish a new constitution, she was deposed by the same US interests behind the Bayonet Constitution, now organised as a revolutionary group called the "Committee of Safety".

After Liliuokalani was deposed, President Cleveland sent an envoy to Hawaii to investigate. The envoy, Commissioner James Blount, concluded that a lawful government had been overthrown. Cleveland asked the provisional government to restore the constitutional monarchy but it refused and established a pro-US republic instead. When President McKinley took office in 1897, he was open to persuasion by expansionists and negotiated with republican annexationists from Hawaii. In 1898, the same year the US Congress annexed Hawaii, Liliuokalani published her memoirs, *Hawaii's Story by Hawaii's Queen*. Even allowing for bias, and the benefit of hindsight, it's still an incisive account, immensely witty and always compassionate. The book is still in print and ought to be widely read.

Once Hawaii was annexed, the US administration suppressed the Hawaiian language, made English compulsory in schools, and promoted a narrative of inevitability about the annexation. That narrative, which prevailed for most of the twentieth century, is now being questioned. More important,

Hawaiian sovereignty has ceased to be a matter of historiography and become a matter of international law.

Liliuokalani never surrendered Hawaiian sovereignty to the Provisional Government (1893 to 1894), which President Cleveland accepted as illegal, or to the Republic of Hawaii (1894 to 1898). While the republic negotiated a "treaty of annexation" with the US in 1897, under the auspices of President McKinley, tens of thousands of native Hawaiians signed a petition against the "treaty", which is why it was never ratified by the US Senate. So, although Hawaii was annexed by Congress in 1898, the issue under international law is whether Congress has the authority to annex a foreign nation without a ratified treaty of annexation. If there is no known record of the Hawaiian sovereign surrendering Hawaiian sovereignty, if the overthrow of Hawaii's constitutional monarchy was illegal, and if the annexation of Hawaii was illegal, then the Kingdom of Hawaii still exists. As the current US administration is aware of this argument, and the ways in which recent administrations have been contributing to the argument since the 1990s, it's being cautious about its response.

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Apologies and consequences

In 1993 Congress and President Clinton separately and officially apologised to the people of Hawaii for the role the US played in the illegal overthrow of their constitutional monarchy. Also, recent federal legislation, the Akaka Bill, which sought to give native Hawaiians similar status as native Amerindians, kept on being re-introduced to Congress, and kept on failing to pass. The fundamental problem with the Akaka Bill, now dead and buried, is that native Hawaiians aren't and never were an indigenous tribe within the US. Their claims to their land are unique.

No doubt those who promoted the Akaka Bill saw it as a useful first step towards remediation and reconciliation but it never addressed the underlying issue. During the nineteenth century, Hawaii was a constitutional monarchy, internationally recognised as a sovereign nation, with a colour-blind definition of citizenship, and the full apparatus of a functioning democracy: an executive, an elected legislature, and a judiciary. Because the Constitution of 1864 wasn't abrogated with the consent of the legislature, because the Bayonet Constitution of 1887 was

illegal, and because Liliuokalani never ceded her nation's sovereignty, there is an emerging perception that Hawaii is an occupied nation. While the perception isn't new, it has tended to remain at the level of historiography, and has only recently become an issue of international law. How this issue will play itself out remains to be seen.

Over the last fifteen years the issue has gained momentum in intriguing ways and in surprising quarters:

- In 2000, the Permanent Court of Arbitration in The Hague heard a non-contentious case, *Lance Paul Larsen v The Hawaiian Kingdom*. In the body of the award handed down by the arbitrators, which included Australia's Gavan Griffith QC, the sovereignty of Hawaii during the nineteenth century was acknowledged.

- Because of this award, representatives of the Hawaiian Kingdom submitted a complaint to the Security Council of the UN, which has accepted the complaint and will investigate it in due course.

- In May 2014, Dr David Keanu Sai, the political scientist behind the Larsen case, was asked by the Office of Hawaiian Affairs (OHA) for a

Memorandum regarding Hawaii as an independent state and the impact this might have on OHA.

- In May 2014, Dr Kamanaopono Crabbe, Chief Executive Officer of OHA, wrote to the US Secretary of State asking whether the Kingdom of Hawaii continues to exist under international law, whether this affects binding executive agreements between the US and Hawaii (including the Hawaii Statehood Act of 1959), and whether members of OHA are therefore incurring criminal liability under international law.

- In September 2014, Dr Williamson Chang, Professor of Law, University of Hawaii, wrote to the US Attorney General (with a copy to the US Pacific Command), to fulfil his legal obligation to report that, based on Dr Sai's Memorandum to OHA, the US has been committing and continues to commit multiple felonies (war crimes) in Hawaii as an occupied nation.

Michael Giffin is a life member of the Hawaiian Historical Society. For those who want to follow a weblog on Hawaiian sovereignty, he recommends www.hawaiiankingdom.org.