

Word Count 2,011, pages 10

Which Way, Hawaii?

“We are who we were. We are the Hawaiian Nation.” or “From Native Hawaiian to Native American.”

By Keahi Felix, M.A.

Introduction

The *`aha* councils on each of the Hawaiian Islands, and subsequently representatives from each of these councils coming together as a group were the forerunners of unifying governing systems in Hawaii as we know them in recorded history. The Hawaiian Kingdom under the dynasty of the Kamehamehas and that of the Keawe line which began with Kalakaua and ended prematurely with Liliuokalani in the 19th century proved that Hawaii was both country and nation in its own right. Kamehameha III, King Kamehameha III, took it to the next level: global political standing. In 1843 he succeeded in having the Kingdom recognized as an international state, an independent nation-state equal to other recognized states in the Family of Nations, attested to by the major world powers of the time, England, France and the United States. Kamehameha III also declared state neutrality. Recently in 2000 in the case of *Lance Paul Larsen vs. the Hawaiian Kingdom*, the Permanent Court of Arbitration, at The Hague, the Netherlands, affirmed the Hawaiian Kingdom under its 1843 status.

Even with their government unfortunately absent, that affirmation from an international juridical body assures a nation made up of *kanaka maoli* and descendents of ancestors

who were naturalized subjects of the Hawaiian Kingdom – Hawaiian Nationals all – to know where they came from and who they are: “We are a nation by every definition.”¹

However by its preemptive strike against the Hawaiian Kingdom on January 17, 1893 in which it overthrew the legitimate government of one of its equals and replaced it with its own administrative system, the United States violated the original international agreement it had been a party to. It also violated the Treaty of Friendship, Commerce, and Navigation which it had with the Hawaiian Kingdom, a treaty which its own government had ratified in 1850.

That binding contract of 1850, never rescinded by either party, is one more piece of evidence capable of exposing the proposed Native Hawaiian Government Reorganization Act known as the Akaka Bill, as a mockery of legal fact. The bill would instate a native Hawaiian governing body and regulate it by policies within the framework of United States domestic law, areas that, given the Hawaiian Kingdom’s independent status do not fall under the jurisdiction of another country.

The burden of proof for incorporation as a tribal nation lies on the United States of America. It must show that Hawaii, i.e., the Hawaiian Kingdom, is not as it is internationally claimed to be. The stakes are much higher than offering pseudo independence under U.S. domestic law to one segment of a national population. Truth demands that it be able to show why the inalienable status of sovereignty, fixed under

¹“*La Ku`oko`a: Events Leading to Independence Day, November 28, 1843,*” *The Polynesian Newspaper*, (November, 2000).

international law that inherently belongs to the Hawaiian Kingdom is an attribute that can be manipulated by it, the country's occupier through an act of war. Without it, any sort of negotiation regarding the political and legal standing of Hawaii and/or Native Hawaiians carries with it no legal basis.

Below is an excerpt from a comprehensive essay I am writing entitled, "Hawaiian National Integrity, Bridge from Yesterday, into Today, into Tomorrow." In this excerpt, I place Hawaii as though it were at the point of negotiation with the United States for the reversal of wrongs done to it by the United States, contrasting Hawaii's position as a nation-state with its position as a native Hawaiian governing entity under the nation-within-nation framework.

Distinguishing Traits of Negotiation

In the *'Oiwi Files news journal* for Jan./Feb 2004 mention was made of a Native Hawaiian coalition being formed to provide an opportunity under one forum to consider and debate all political status positions in relation to the United States of America. This would include: a) independence, b) free association, or c) integration.²

If we scroll down that menu, we can amplify those categories: a) independence by historical/legal right, b) a compact of free association c) incorporation as a domestic dependent entity.

In that same news journal, J. Kehaulani Kauanui, Ph.D. provides a sobering, in-depth discussion of items (b) and (c) above. She uses the current day painful experience of American Indians, Alaska Natives, and Pacific Islanders under U.S. plenary power, and counsels Hawaiians to “look before they leap” into domestic dependent nationhood under the U.S.³ For my purposes here, I would like to contrast two of the political status positions under study, (a) and (c), concentrating on the way Hawaii would be able to operate under each form in negotiating with the United States. This will be my emphasis.

² Keoni Agard, 2

³ J. Kehaulani Kauanui, 8-9

Distinguishing Traits of Negotiation

an independent established Nation

a nation within a Nation

(a)

(c)

Foundational Claims

Hawaiian Kingdom Political Status

Native American-Hawaiian Political Status

Nation-state

Indigenous group

Sovereign, independent

Incorporation as a subordinate

Historically occupied

Historically “annexed”

Standards of International Law &

Standards of U.S. domestic law

H.K. domestic law

Equal to equal parties

Sub-contractor to a plenary power

Characteristics of Political Population

Subjects of H. K.

Citizens of U. S.

Hawaiian Nationals

Native Americans

Nationality (inclusive)

Ethnicity/Nationality (exclusive)

Underlying Attribute

Actualized self-governance

Regulated self-governance

Outcome of Negotiation

Hawaii becomes a world figure

Native Hawaiians become the

New American Figment

Examining the positions⁴

For the moment, let's consider the table above as a rudimentary guide; a stance to argue from on the legal side of the issue of ability to enter into negotiation.

- a) confronts U.S.A. on what premise?
- c) confronts U.S.A. on what standing?

By what right of law has either to negotiate with the world's current super power? We are just looking now at the criteria for negotiation, not at grievances or restitution or anything else.

The table reveals that a recognized state is competent to enter the diplomatic venue because its credentials indicate the substance of sovereignty, while an indigenous group merely possesses the accidents, the fringe accessories of legal sovereignty.

⁴ Before I begin, let me say that Actualized self-governance is a term I have coined. It refers first to the condition of the constitutional monarchy which was in full operation as a government in the 19th century. Actualized self-governance for the Hawaiian Kingdom as a nation-state in today's world is not permanently in place. It could come about in its full sense after the international laws of occupation are in effect through U.S. compliance with them, and Hawaiian Kingdom Law in force instead of U.S. domestic law.

For in-depth information about this matter visit www.hawaiiankingdom.org and <http://www2.hawaii.edu/~hslp/journal.html>, the *Hawaiian Journal of Law and Politics*, Vol. 1(Summer 2004).

The principle of State equality shows that although the government of the Hawaiian Kingdom is currently in exile and the Kingdom itself under occupation, and, therefore, politically less powerful than the United States—legally the Hawaiian Kingdom, as an International Personality, is its equal under international law. “Whatever inequality may exist between States as regards their size, population, power, degree of civilization, wealth, and other qualities, they are nevertheless equals as International Persons.”⁵

As the table well illustrates, the same cannot be said of the “legal” personality of a Hawaiian indigenous party to negotiation with the U.S.

This is the reason why pursuing recognition under a nation-within-nation framework puts Hawaii on an uneven footing in the negotiation. It is why as an established nation-state, it can negotiate on the even plane of equality where real dialogue can begin.

⁵ Lassa Oppenheim, *International Law*, 3rd Ed., (London: New York: Longmans, Green & Co., 1920), in *American Occupation of the Hawaiian State: A Century Unchecked*, David Keanu Sai, *Hawaiian Journal of Law and Politics*: 1 (Summer 2004): 56.

Conclusion

A common cause links those who support either political status position discussed above. That cause is a return to wholeness. A return to dignity lost. Because the difference between the two is fundamental, goals achieved will, in consequence, yield different values.

The bid of Native Hawaiians for resolution in (c), while providing a safety net as a special, identifiable group having a measure of autonomy under United States prescription in the Department of the Interior, will nevertheless, result in gains falling far short of those actually owed them by history. The goals sought under (a) through face to face conference with the U. S. State Department, while calling for enormous reserves of mind and will and the support of the international community to bear pressure on the occupier, will ultimately lead to freedom to turn for guidance to a heritage already established, and bring up a vision of possibilities for today with its accompanying rights and responsibilities. The lesson to be learned may well be that respect for Hawaii's authentic credentials is the way to move the giant.

That will be the first step. Checks and balances to oblige the United States to withdraw its law and its presence from the independent nation-state that is Hawaii.

But the aspect of a unifying Hawaiian governing system must make the journey backward not only in time but in focus. Besides pressing the Undo Button that would

delete the interference of U.S. puppet governments like OHA (Office of Hawaiian Affairs), < state of Hawaii, <Territory of Hawaii, <Republic of Hawaii, and even the fraudulent provisional government of foreigners of the late 19th century, it must seek additional authenticity. It must recognize that the legacy left by the Kamehamehas and Keawes which favored British ways of government, are only one facet of the wholeness that would constitute a real grasp of appropriate law and order.

Our gaze must shift to examine non-Western viewpoints of national independence that are embedded in the concept of the national integrity of Hawaii. A true and harmonious stance for independence, i.e. “We are a nation under every definition,” would include what from time immemorial Hawaiians have cherished as their self-determining nature. The *aha* councils mentioned earlier are a known product of that independent spirit which holds that “rights of government begin with the people.” They do not depend on Western or American forms of law, protocols of other cultures, or investiture of authority from a human superior. Instead, they depend on adherence to natural laws and aboriginal practices in a world view that embraced the concept of interdependence at all levels. This interdependence extended to nature, family, society and to global as well as national relations. In other words, national integrity under this model of sovereignty supposes cultural integrity at its most profound level.

“Which way, Hawaii? We are who we were. We are the Hawaiian Nation.” I propose that Hawaii’s national integrity is inclusive of (1) ancient ancestral protocol, (2) the form of government that later emerged as a constitutional monarchy, and (3) international nation-

state position. (With reference to a constitutional monarchy, models of government may legitimately be exchanged for another.)⁶ As a physical country of land and water resources and a nation of people, Hawaii stands on its own. At the same time, it has a tri-fold heritage of sovereignty and jurisdiction already established to draw from as it directs itself forward in the present day.

Unless the three influences that make up its identity are acknowledged and in balance, who has the right to say “This is Hawaii”? The trick is for Hawaiians to find their way home. Just as *`aha* councils on each island in olden times were aligned to each other to form one Hawaii in the manner of strands of fiber braided together to make a strong rope, so braiding the three strands of historical sovereignty together into one unity may be the most important task ahead.

Kekuni Blaisdell, long time tireless worker-advocate for independence characterizes the process of going forward in its basic terms. “Change, reform, remedy, replacement. A nation re-born.”⁷

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⁶ In this case, by reflection on the domestic and common laws of the Hawaiian Kingdom, such as Article 33 of the 1864 Constitution before any change can be made.

⁷ Phone interview: 01/09/2008.