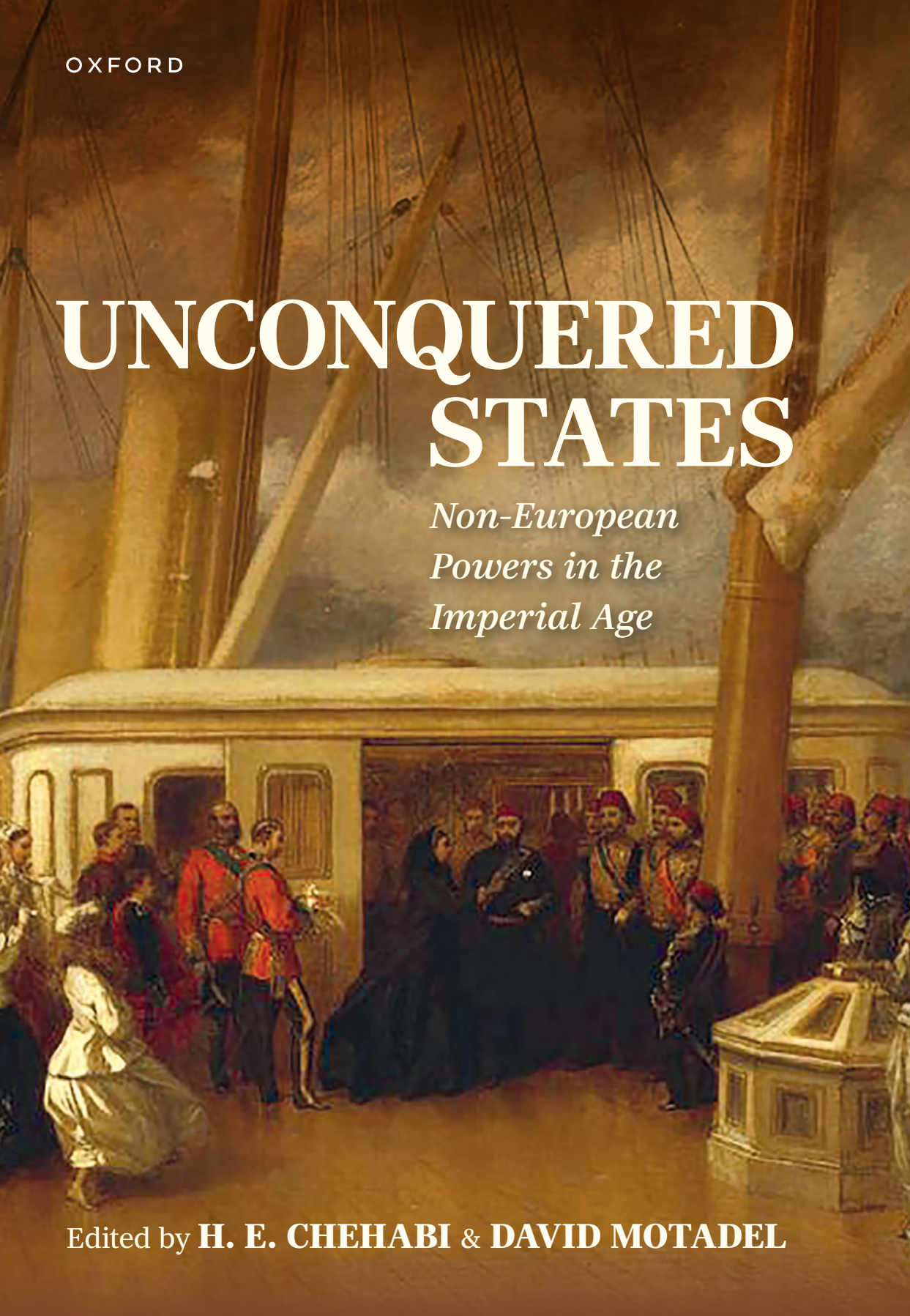
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Non-European Powers in the Imperial Age
Edited by H. E. CHEHABI & DAVID MOTADEL

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CONTRIBUTORS

Ali Ansari | Cemil Aydin | Fantahun Ayele | Gwyn Campbell | Michael Charney
Andrew Cobbing | H. E. Chehabi | Edhem Eldem | Hailegabriel G Feyissa | Takashi Fujitani
Ali Gheissari | Lorenz Gonschor | Patrick Jory | Kirk W. Larsen | Andreu Martinez | David Motadel
Izabela Orlowska | Ronald Po | James Roslington | David Keanu Sai | Glenda Sluga
Chika Tonook | Sven Trakulhun | Wensheng Wang | Erik-Jan Zürcher

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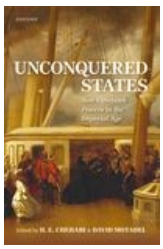

Unconquered States: Non-European Powers in the Imperial Age

H. E. Chehabi (ed.), David Motadel (ed.)

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 The Editors, 2024 ↳

21

Hawai‘i’s Sovereignty and Survival in the Age of Empire

David Keanu Sai

Three years after the tragic demise of Captain James Cook on the shores of the royal residence of Kalaniopu‘u, king of the Hawai‘i Island kingdom, civil war broke out after the elderly king died in January of 1782. While the civil war lasted nine years, it set in motion a chain of events that would facilitate the rise of the celebrated chief Kamehameha to be King of Hawai‘i in the summer of 1791 (Fig. 21.1). Just three years later, Kamehameha joined the British Empire under an agreement with Captain George Vancouver on 25 February 1794. According to Willy Kauai, “Kamehameha’s foresight in forming strategic international relations helped to protect and maintain Hawaiian autonomy amidst the rise of European exploration in the Pacific.”[1]

The agreement provided that the British government would not interfere with the kingdom’s religion, government, and economy; “the chiefs and priests . . . were to continue as usual to officiate with the same authority as before in their respective stations.”[2] Kamehameha and his chiefs acknowledged they were British subjects. Knowing that the religion would eventually have to conform to British custom, Kamehameha also “requested of Vancouver that on his return to England he would procure religious instructors to be sent to them from the country of which they now considered themselves subjects.”[3] After the ceremony, the British ships fired a salute and delivered a copper plaque, which was placed at the royal residence of Kamehameha. The plaque read:

> On the 25th of February, 1794, Tamaahmaah [Kamehameha], king of Owhyhee [Hawai‘i], in council with the principal chiefs of the island assembled on board His Britannic Majesty’s sloop Discovery in Karakakooa [Kealakekua] bay, and in the presence of George Vancouver, commander of the said sloop; Lieutenant

[1] Willy Daniel Kaipo Kauai, “The Color of Nationality: Continuities and Discontinuities of Citizenship in Hawai‘i” (Ph.D. dissertation, University of Hawai‘i at Manoa, 2014), 55.

[2] George Vancouver, *A Voyage of Discovery to the North Pacific Ocean and Round the World* (London: G. G. and J. Robinson, and J. Edwards, 1798), 3:56.

[3] Manley Hopkins, *Hawaii: The Past, Present and Future of Its Island Kingdom* (London: Longmans, Green, and Co., 1866), 133.

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> Peter Puget, commander of his said Majesty's armed tender the Chatham; and the other officers of the Discovery; after due consideration, and unanimously ceded the said island of Owhyhee [Hawaiʻi] to His Britannic Majesty, and acknowledged themselves to be subjects of Great Britain.[4]

In April of 1795, Kamehameha conquered the Kingdom of Maui and acquired the islands of Maui, Lanaʻi, Molokaʻi, and Oʻahu. By April of 1810, the Kingdom of Kauaʻi capitulated and its ruler, Kaumualiʻi, ceded his kingdom and its dependent island of Niʻihau to Kamehameha, thereby becoming a vassal state, with the Kauaʻi king paying an annual tribute to Kamehameha.[5] Thus, the entire archipelago had been consolidated by the Kingdom of Hawaiʻi, which was renamed the Kingdom of the Sandwich Islands, with Kamehameha as its king.

With the leeward islands under his rule, Kamehameha incorporated and modified aspects of English governance, including the establishment of a prime minister and governors over the former kingdoms of Hawaiʻi, Maui, and Oʻahu.[6] The governors served as viceroys over the lands of the former kingdom "with legislative and other powers almost extensive as those kings whose places they took."[7] *Kālaimoku* (carver of lands) was the native term given to a king's chief counselor, and became the native equivalent to the title prime minister. Kamehameha appointed Kalanimoku as his prime minister, who thereafter adopted his title as his name—Kālaimoku.

Foreigners also commonly referred to Kālaimoku as Billy Pitt, the namesake of the younger William Pitt, who served as Britain's prime minister under King George III. The British Prime Minister was also the First Lord of the Treasury and Kālaimoku was also referred to as the chief treasurer. Kālaimoku's duty was to manage day-to-day operations of the royal government, as well as to be the commander-in-chief of all the military, and head of the kingdom's treasury. Samuel Kamakau, a Hawaiian historian, explained: the "laws determining life or death were in the hands of the treasurer; he had charge of everything. Kamehameha's brothers, the chiefs, the favorites, the lesser chiefs, the soldiers, and all who were fed by the chief, anyone to whom Kamehameha gave a gift, could secure it to himself only by informing the chief treasurer."[8]

After the death of Kamehameha I in 1819, the kingdom would continue its transformation as a self-governing member of the British realm. As Lorenz

[4] Vancouver, *A Voyage of Discovery*, 56–7.

[5] This vassalage, however, was terminated in 1821 by Kamehameha's successor and son, Kamehameha II, when he removed Kaumualiʻi to the island of Oʻahu and replaced him with a governor named Keʻeaumoku.

[6] Walter Frear, "Hawaiian Statute Law," *Thirteenth Annual Report of the Hawaiian Historical Society* (Honolulu: Hawaiian Gazette Co., 1906), 15–61, at 18. Frear mistakenly states that Kamehameha established four earldoms that included the Kingdom of Kauaʻi. Kaumualiʻi was not a governor, but remained a king until 1821.

[7] Ibid.

[8] Samuel Kamakau, *Ruling Chiefs* (Honolulu: Kamehameha Schools Press, 1992), 175.

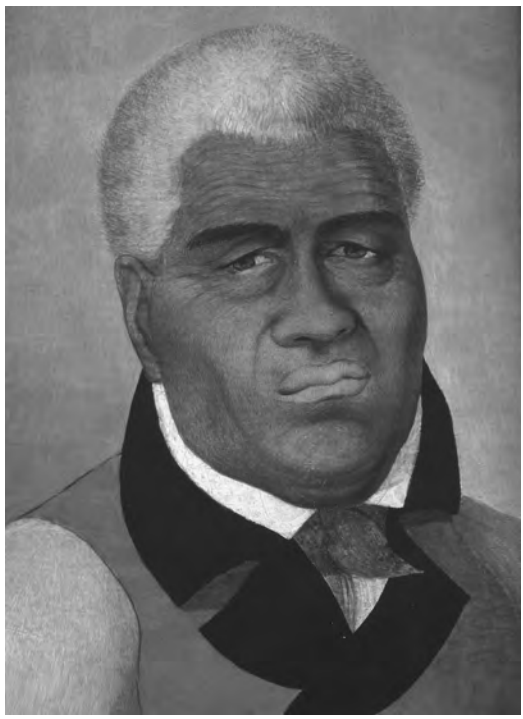

Fig. 21.1 King Kamehameha I, progenitor of the Hawaiian Kingdom, 1795–1819. (Unknown Artist) (Public Domain)

Gonschor writes, "when Kamehameha [learned] of King George and styled his government a 'kingdom' on the British model, it was in fact merely a new designation and hybridization of the existing political system,"[9] and the "process of hybridization was further continued by Kamehameha's sons Liholiho (Kamehameha II) and Kauikeaouli (Kamehameha III) throughout the 1820s, 1830s, and 1840s, culminating in the Constitution of 1840."[10] In 1824, Protestantism became the national religion, and in 1829 Hawaiian authorities took steps to change the name from Sandwich Islands to Hawaiian Islands.[11] The country later came to be known as the Hawaiian Kingdom.

[9] Lorenz Gonschor, *A Power in the World: The Hawaiian Kingdom in Oceania* (Honolulu: University of Hawai'i Press, 2019), 22.

[10] Lorenz Gonschor, "Ka Hoku o Osiania: Promoting the Hawaiian Kingdom as a Model for Political Transformation in Nineteenth-Century Oceania," in Sebastian Jobs and Gesa Mackenthun, eds., *Agents of Transculturation: Border-Crossers, Mediators, Go-Betweens* (Münster: Waxmann, 2013), 157–86, at 161.

[11] "Capt. Finch's Cruise in the U.S.S. Vincennes," U.S. Navy Department Archives. "The Government and Natives generally have dropped or do not admit the designation of the Sandwich Islands as applied to their possessions; but adopt and use that of Hawaiian; in allusion to the fact of the whole Groupe having been subjugated by the first Tamehameha [Kamehameha], who was Chief of the principal Island of Owhyhee, or more modernly Hawaii."

On 8 October 1840, Kamehameha III approved the Hawaiian Kingdom's first constitution. Bernd Marquardt acknowledges that Hawaiʻi's transformation into a constitutional monarchy even precedes that of Prussia.[12] While other European monarchs instituted constitutional reforms before Prussia, what is remarkable is that Hawaiʻi was the first consolidated non-European constitutional monarchy. According to the Hawaiian Supreme Court:

> King Kamehameha III originally possessed, in his own person, all the attributes of absolute sovereignty. Of his own free will he granted the Constitution of 1840, as a boon to his country and people, establishing his Government upon a declared plan or system, having reference not only to the permanency of his Throne and Dynasty, but to the Government of his country according to fixed laws and civilized usage, in lieu of what may be styled the feudal, but chaotic and uncertain system, which previously prevailed.[13]

After French troops temporarily occupied the Hawaiian Kingdom in 1839 under the command of Captain Laplace, Lord Talbot, a British member of parliament, called upon the Secretary of State for Foreign Affairs, Viscount Palmerston, to provide an official response. He also "desired to be informed whether those islands which, in the year 1794, and subsequently in 1824 . . . had been declared to be under the protection of the British Government, were still considered . . . to remain in the same position."[14] Viscount Palmerston reported he knew very little of the French occupation, and with regard to the protectorate status of the islands "he was non-committal and seemed to indicate that he knew very little about the subject."[15]

In the eyes of the Hawaiian government, Palmerston's report quelled the notion of British dependency and acknowledged Hawaiian autonomy.[16] Two years later, a clearer British policy toward the Hawaiian Islands by Palmerston's successor, Lord Aberdeen, reinforced the position of the Hawaiian government. In a letter to the British Admiralty on 4 October 1842, Talbot Canning, on behalf of Lord Aberdeen, wrote:

> Lord Aberdeen does not think it advantageous or politic, to seek to establish a paramount influence for Great Britain in those Islands, at the expense of that

[12] Bernd Marquardt, *Universalgeschichte des Staates: von der vorstaatlichen Gesellschaft zum Staat der Industriegesellschaft* (Zurich: LIT, 2009), 478.
[13] *Rex v. Joseph Booth*, 3 Hawaiʻi 616, 630 (1863).
[14] Ralph S. Kuykendall, *The Hawaiian Kingdom*, vol. 1, *Foundation and Transformation, 1778–1854* (Honolulu: University of Hawaiʻi Press, 1938), 185.
[15] Ibid.
[16] Robert C. Wyllie, *Report of the Minister of Foreign Affairs, 21 May 1845* (Honolulu: The Polynesian Press, 1845), 7.

> enjoyed by other Powers. All that appears to his Lordship to be required, is, that no other Power should exercise a greater degree of influence than that possessed by Great Britain.[17]

In the summer of 1842, Kamehameha III moved forward to secure the position of the Hawaiian Kingdom as a recognized independent and sovereign state under international law, which was unprecedented for a country that had no historical ties to Europe. He sought the formal recognition of Hawaiian independence from the three naval powers in the Pacific at that time—Great Britain, France, and the United States. To accomplish this, Kamehameha III commissioned three envoys: Timoteo Haʻalilio; William Richards, who was at the time an American citizen; and Sir George Simpson, a British subject.

While the envoys were on their diplomatic mission, a British Naval ship, HBMS *Carysfort*, under the command of Lord Paulet, entered Honolulu harbor on 10 February 1843. Basing his actions on complaints in letters from British Consul Richard Charlton, who was absent from the kingdom at the time, that British subjects were being treated unfairly, Paulet seized control of the Hawaiian government on 25 February 1843, after threatening to level Honolulu with cannon fire.[18] Kamehameha III was forced to surrender the kingdom, but he did so under written protest, and pending the outcome of his diplomats' mission in Europe.

News of Paulet's action reached Admiral Richard Thomas of the British Admiralty, who then sailed from the Chilean port of Valparaiso, and arrived in the islands on 25 July 1843. After a meeting with Kamehameha III, Admiral Thomas concluded that Charlton's complaints did not warrant a British takeover and ordered the restoration of the Hawaiian government. The restoration took place in a grand ceremony on 31 July 1843.[19] At a thanksgiving service after the ceremony, Kamehameha III proclaimed before a large crowd, "*ua mau ke ea o ka ʻāina i ka pono*" (the life of the land is perpetuated in righteousness). The king's statement later became the national motto for the country.

The Hawaiian envoys succeeded in obtaining a joint proclamation by Great Britain and France formally recognizing the Hawaiian Kingdom as a sovereign and "Independent State" on 28 November 1843 at the Court of London.[20] The United States followed on 6 July 1844 by a letter of Secretary of State John

[17] The Historical Commission, *Report of the Historical Commission of the Territory of Hawai'i for the Two Years Ending 31 Dec. 1924* (Honolulu: Star Bulletin, 1925), 36.

[18] Kuykendall, *The Hawaiian Kingdom*, 1:214.

[19] Ibid., 220.

[20] United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894–1895* (Washington, DC: Government Printing Press, 1895), 120. "Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the French, taking into consideration the existence in the Sandwich Islands of a government capable of providing for the regularity of its relations with foreign nations, have thought it right to engage, reciprocally, to consider the Sandwich [Hawaiian] Islands as an Independent State, and never to take possession, neither directly or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed."

C. Calhoun.[21] Thus the Hawaiian Islands became the first Pacific country to be recognized as an independent and sovereign state. According to the legal scholar John Westlake, the family of nations comprised "first, all European States . . . Secondly, all American States . . . Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State."[22]

In 1845, the Hawaiian Kingdom organized its military under the command of the governors of the several islands of Hawaiʻi, Maui, Oʻahu, and Kauaʻi, but subordinate to the monarch. Hawaiian statute provided that "all male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective islands where they have their most usual domicile, whenever so required by proclamation of the governor thereof."[23] The legislature enacted in 1886 a statute "for the purpose of more complete military organization in any case requiring recourse to arms and to maintain and provide a sufficient force for the internal security and good order of the Kingdom, and being also in pursuance of Article 26 of the Constitution."[24] This military force was renamed the King's Royal Guard in 1890.[25] Augmenting the regular force was the call for duty of the civilian population under the 1845 statute.

Hawaiian Attorney General John Ricord established a diplomatic code for Kamehameha III and the Royal Court, which was based on the principles of the 1815 Congress of Vienna by virtue of the fact that Hawaiʻi was admitted as a monarchical member of the family of nations.[26] The first diplomatic post was established in London with the appointment of Archibald Barclay as Hawaiian Commissioner on 17 May 1845.[27] Within fifty years, the Hawaiian Kingdom maintained more than ninety legations and consulates throughout the world and entered into extensive diplomatic and treaty relations with other states, including Austria-Hungary, Belgium, Chile, China, Denmark, France, German states, Great Britain, Guatemala, Italy, Japan, Mexico, Netherlands, Peru, Portugal, Russia, Spain, Sweden-Norway, Switzerland, the United States, and Uruguay.[28] The Hawaiian

[21] Wyllie, 1845 Report, 4.

[22] John Westlake, *Chapters on the Principles of International Law* (Cambridge: University Press, 1894), 81.

[23] *Statute Laws of His Majesty Kamehameha III*, Hawaiian Kingdom (Honolulu: Government Press, 1846), 1:69.

[24] *An Act to Organize the Military Forces of the Kingdom*, Laws of His Majesty Kalakaua I (Honolulu: P. C. Advertiser Steam Print, 1886), 37.

[25] *An Act to Provide for a Military Force to be Designated as the "King's Royal Guard,"* Laws of His Majesty Kalakaua I (Honolulu: Gazette Publishing Company, 1890), 107.

[26] "Besides prescribing rank orders, the mode of applying for royal audience, and the appropriate dress code, the new court etiquette set the Hawaiian standard for practically everything that constituted the royal symbolism." Juri Mykkanen, *Inventing Politics: A New Political Anthropology of the Hawaiian Kingdom* (Honolulu: University of Hawaiʻi Press, 2003), 161.

[27] Robert C. Wyllie, "Report of the Minister of Foreign Affairs," in *Annual Reports read before His Majesty, to the Hawaiian Legislature, May 12, 1851* (Honolulu: Government Press, 1851), 39.

[28] Thos. G. Thrum, *Hawaiian Almanac and Annual for 1893* (Honolulu: Press Publishing Co., 1892), 140–1. For the treaties with Austria-Hungary, Belgium, Bremen, Britain, Denmark, France, Germany, Hamburg, Italy, Japan, the Netherlands and Luxembourg, Portugal, Russia, Samoa, Spain, Sweden-Norway,

Kingdom also became a member state of the Universal Postal Union on 1 January 1882.

On 16 March 1854, Robert Wyllie, Hawaiian Minister of Foreign Affairs, announced to the resident foreign diplomats that the Hawaiian domain included twelve islands.[29] In its search for guano, the Hawaiian Kingdom annexed four additional islands, under the doctrine of discovery, north-west of the main islands. Laysan Island was annexed by discovery of Captain John Paty on 1 May 1857.[30] Lisiansky Island also was annexed by discovery of Captain Paty on 10 May 1857.[31] Palmyra Island, a cluster of low islets, was taken possession of by Captain Zenas Bent on 15 April 1862 and proclaimed as Hawaiian territory.[32] Ocean Island, also called Kure Atoll, was subsequently acquired on 20 September 1886, by proclamation of Colonel J. H. Boyd.[33] In all cases, the acquisitions were effected according to the rules of international law.

The Hawaiian Kingdom continued to evolve as a constitutional monarchy as it kept up with rapidly changing political, social, and economic conditions. Under the 1864 constitution, the office of prime minister was repealed, which effectively established an executive monarch, and the separation of powers doctrine was fully adopted.[34] It was also a progressive country when compared to the other European states and their successor states on the American continent in the nineteenth century. Its political economy was not based on Smith's capitalism of *The Wealth of Nations*, but rather on Francis Wayland's approach of cooperative capitalism. According to Juri Mykkanen, Wayland was interested in "defining the limits of government by developing a theory of contractual enactment of political society, which would be morally and logically binding and acceptable to all its members."[35]

Wayland's book *Elements of Political Economy* became the fundamental basis of Hawaiian economic policy-making when translated into the Hawaiian language and adjusted to apply to Hawaiian society accordingly. The book was titled *No Ke Kālaiʻāina*, which theorized "governance from a foundation of *natural rights* within an agrarian society based upon capitalism that was not only cooperative

Switzerland, and the United States, see "Treaties with Foreign States," in David Keanu Sai, ed., *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (Honolulu: Ministry of the Interior, 2020), 237–310.

[29] A. P. Taylor, "Islands of the Hawaiian Domain," unpublished report, 10 January 1931, 5. "I have the honor to make known to you that the following islands, &c., are within the domain of the Hawaiian Crown, viz: Hawai'i, containing about, 4,000 square miles; Maui, 600 square miles; Oahu, 520 square miles; Kauai, 520 square miles; Molokai, 170 square miles; Lanai, 100 square miles; Niihau, 80 square miles; Kahoolawe, 60 square miles; Nihoa, known as Bird Island, Molokini, Lehua, Kaula, Islets, little more than barren rocks; and all Reefs, Banks and Rocks contiguous to either of the above, or within the compass of the whole."

[30] Ibid, 7. [31] Ibid. [32] Ibid. [33] Ibid., 8.

[34] Article 20 of the 1864 Constitution provides that the "Supreme Power of the Kingdom in its exercise, is divided into the Executive, Legislative, and Judicial; these shall always be preserved distinct."

[35] Mykkanen, *Inventing Politics*, 154.

in nature, but also morally grounded in Christian values."[36] The national motto "*ua mau ke ea o ka ʻāina i ka pono*" (the life of the land is perpetuated in righteousness) reflects this national discourse and was adopted by the Hawaiian Kingdom Supreme Court as a legal maxim in 1847. In the words of Chief Justice William Lee:

> For I trust that the maxim of this Court ever has been, and ever will be, that which is so beautifully expressed in the Hawaiian coat of arms, namely, "The life of the land is preserved by righteousness." We know of no other rule to guide us in the decision of questions of this kind, than the supreme law of the land, and to this we bow with reverence and veneration, even though the stroke fall on our own head. In the language of another, "Let justice be done though the heavens fall." Let the laws be obeyed, though it ruin every judicial and executive officer in the Kingdom. Courts may err. Clerks may err. Marshals may err—they do err in every land daily; but when they err let them correct their errors without consulting pride, expediency, or any other consequence.[37]

Education was through the medium of the native language. On 7 January 1822, the first printing of an eight-page Hawaiian spelling book was carried out, and all "the leading chiefs, including the king, now eagerly applied themselves to learn the arts of reading and writing, and soon began to use them in business and correspondence."[38] By 1839, the success of the schools was at its highest point, and literacy was "estimated as greater than in any other country in the world, except Scotland and New England."[39] English immersion schools, both public and private, soon became the preferred schools by the Hawaiian population.

The Privy Council in 1840 established a system of universal education under the leadership of what came to be known as the minister of public instruction. A Board of Education later replaced the office of the minister in 1855 and was named the Department of Public Instruction. This department was under the supervision of the minister of the interior and the monarch served on the board as its president. The president and board administered the educational system through school agents stationed in twenty-four school districts throughout the country. And in 1865, the office of inspector general of schools was formed in order to improve the quality of education.

[36] David Keanu Sai, "Hawaiian Constitutional Governance," in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (Honolulu: Hawaiian Kingdom, 2020), 57–94, at 60.

[37] *Shillaber v. Waldo* et al., 1 Hawaiʻi 31, 32 (1847).

[38] W. D. Alexander, *A Brief History of the Hawaiian People* (New York: American Book Company, 1891), 179.

[39] Laura Fish Judd, *Honolulu: Sketches of Life, Social, Political, and Religious, in the Hawaiian Islands* (New York: Anson D. F. Randolph & Company, 1880), 79.

The Hawaiian Kingdom became the fifth country in the world to provide compulsory education for all youth in 1841, which predated compulsory education in the United States by seventy-seven years. The previous four countries were Prussia in 1763, Denmark in 1814, Greece in 1834, and Spain in 1838. Education was a hallowed word in the halls of the Hawaiian government, "and there [was] no official title more envied or respected in the islands than that of a member of the board of public instruction."[40] Charles de Varigny explained:

> This is because there is no civic question more debated, or studied with greater concern, than that of education. In all the annals of the Hawaiian Legislature one can find not one example of the legislative houses refusing—or even reducing—an appropriation requested by the government for public education. It is as if this magic word alone seems to possess the prerogative of loosening the public purse strings.[41]

Secondary education was carried out through the medium of English in English immersion schools. At Lahainaluna Seminary, a government-run secondary education school, the subjects of mathematics (algebra, geometry, calculus, and trigonometry), English grammar, geography, Hawaiian constitutional history, political economy, science, and world history were taught. Secondary schools were predominantly attended by aboriginal Hawaiians after completing their common school education.[42] The Hawaiian Kingdom also had a study abroad program in the 1880s through which seventeen young Hawaiian men and one woman "attended schools in six countries where they studied engineering, law, foreign language, medicine, military science, engraving, sculpture, and music."[43]

As Gonschor points out, Hawaiian governance also had an impact on other states in Oceania and Asia.[44] In particular, Dr. Sun Yat-sen, who received his secondary education in the Hawaiian Kingdom at Iolani College and Punahou College between 1879 and 1883, told a reporter when he returned to the country in 1910: "This is my Hawaii. Here I was brought up and educated; and it was here that I came to know what modern, civilized governments are like and what they mean."[45] Sun Yat-sen would not have learned "what modern, civilized governments are like" in

[40] Charles De Varigny, *Fourteen Years in the Sandwich Islands, 1855–1868* (Honolulu: University of Hawai'i Press, 1981), 151.

[41] Ibid.

[42] Annual Examination of the Lahainaluna Seminary (12, 13, and 14 July 1882), website of the Hawaiian Kingdom, online. Lahainaluna's 1882 annual exams reflect the breadth of Hawaiian national consciousness.

[43] Agnes Quigg, "Kalākaua 's Hawaiian Studies Abroad Program," *The Hawaiian Journal of History* 22 (1988): 170–208, at 170.

[44] Gonschor, "Ka Hoku o Osiania"; and Gonschor, *A Power in the World.*

[45] Albert Pierce Taylor, "Sun Yat Sen in Honolulu," *Paradise of the Pacific* 38:8 (1928): 8–11, at 8; see also Yansheng Ma Lum and Raymon Mun Kong Lum, *Sun Yat-sen in Hawai'i: Activities and Supporters* (Honolulu: University of Hawai'i Press, 1999), 5.

the United States but only in the Hawaiian Kingdom, where racism was, at the time, unthinkable.

Virginia Dominguez has found that before the United States' seizure of Hawaiʻi in 1898 there was "very little overlap with Anglo-American" race relations.[46] She found that there were no "institutional practices [that] promoted social, reproductive, or civic exclusivity on anything resembling racial terms before the American period."[47] In comparing the two countries she stated that unlike "the extensive differentiating and disempowering laws put in place throughout the nineteenth century in numerous parts of the U.S. mainland, no parallels—customary or legislated—seem to have existed in the [Hawaiian Kingdom]."[48] She admits that with "all the recent, welcomed publishing flurry on the social construction of whiteness and blackness and the sociohistorical shaping of racial categories . . . there are usually at best only hints of the possible—but very real—unthinkability of 'race.'"[49] According to Kauai, the "multi-ethnic dimensions of the Hawaiian citizenry coupled by the strong voice and participation of the aboriginal population in government played a prominent role in constraining racial hierarchy and the emergence of a legal system that promoted white supremacy."[50]

Hawaiian society was not based on race or gender, but rather class, rank, and education. Hawaiian women in the nineteenth century served as monarchs—Victoria Kamāmalu (1863) and Liliʻuokalani (1891–1917); regents—Kaʻahumanu (1823–1825) and Liliʻuokalani (1881, 1891); and prime ministers—Kaʻahumanu (1819–1823, 1825–1832), Elizabeth Kinaʻu (1832–1839), Miriam Kekāuluohi (1839–1845), and Victoria Kamāmalu (1855–1863) (Fig. 21.2).

In 1859, universal healthcare was provided at no charge for aboriginal Hawaiians through hospitals regulated and funded by the Hawaiian government.[51] Even tourists visiting the country were provided health coverage during their sojourn under *An Act Relating to the Hospital Tax levied upon Passengers* (1882).[52] As part of Hawaiʻi's mixed economy, the Hawaiian government appropriated funding for the maintenance of its quasi-public hospital, the Queen's Hospital, where the monarch served as head of the Board of Trustees, comprised of ten appointed government

[46] Virginia R. Dominguez, "Exporting U.S. Concepts of Race: Are There Limits to the U.S. Model?" *Social Research* 65:2 (1988): 369–99, at 372.

[47] Ibid. [48] Ibid. [49] Ibid., 371–2. [50] Kauai, "The Color of Nationality," 31.

[51] Jeffrey J. Kamakahi, "A Socio-Historical Analysis of the Crown-based Health Ensembles (CBHEs) in Hawaii: A Satrean Approach" (Ph.D. dissertation, University of Hawaiʻi at Mānoa, 1991), 49–125. As to the dismantling of the universal health care during the American occupation, David Keanu Sai, "United States Belligerent Occupation of the Hawaiian Kingdom," in Sai, ed., *The Royal Commission of Inquiry*, 97–121, at 115–6.

[52] *Compiled Laws of the Hawaiian Kingdom* (Honolulu: Printed at the Hawaiian Gazette Office, 1884), 666. Section 1 provides that "the Trustees of the Queen's Hospital are hereby authorized and directed to reserve and apply to uses hereinafter mentioned the sum of two thousand and five hundred dollars per annum out of all moneys received by them as and for hospital tax levied upon and received from passengers arriving at the several ports of this Kingdom."

Fig. 21.2 Queen Lili'okalani, Constitutional Executive Monarch, 1891–1917. (Unknown Artist) (Public Domain)

officials and ten persons elected by the corporation's shareholders. According to Henry Witney: "Native Hawaiians are admitted free of charge, while foreigners pay from seventy-five cents to two dollars a day, according to accommodations and attendance."[53] It wasn't until the mid-twentieth century that the Nordic countries did what the Hawaiian Kingdom had done with universal health care.

Kamehameha III sought to secure the independent status of Hawai'i by ensuring international recognition of the kingdom's neutrality. "A nation that wishes to secure her own peace," said Emmerich de Vattel, "cannot more successfully attain that object than by concluding treaties [of] neutrality."[54] Unlike states that were neutralized by agreement of third states, such as Switzerland, Belgium, and Luxembourg, the Hawaiian Kingdom took a proactive approach to secure its neutrality through diplomacy and treaty provisions. The country made full use of its global location and became a beneficial asylum for all states who found

[53] Henry Witney, *The Tourists' Guide through the Hawaiian Islands Descriptive of Their Scenes and Scenery* (Honolulu: Hawaiian Gazette Company's Press, 1895), 21.

[54] Emmerich de Vattel, *The Law of Nations; Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, 6th ed. (Philadelphia, PA: T. & J. W. Johnson, 1844), 333.

themselves at war in the Pacific. Hawaiian Minister of Foreign Affairs Robert Wyllie secured equal and Most Favored Nation treaties for the Hawaiian Kingdom, and, wherever possible, included in the treaties the recognition of Hawaiian neutrality.[55] When he opened the Legislative Assembly on 7 April 1855, Kamehameha IV stated in his speech:

> My policy, as regards all foreign nations, being that of peace, impartiality and neutrality, in the spirit of the Proclamation by the late King, of the 16th May last, and of the Resolutions of the Privy Council of the 15th June and 17th July. I have given to the President of the United States, at his request, my solemn adhesion to the rule, and to the principles establishing the rights of neutrals during war, contained in the Convention between his Majesty the Emperor of all the Russians, and the United States, concluded in Washington on the 22nd July last.[56]

Since 1858, Japan had been forced to recognize the extraterritoriality of foreign law operating within Japanese territory. Under Article VI of the American-Japanese treaty, it provided that "Americans committing offences against Japanese shall be tried in American consular courts, and when guilty shall be punished according to American law."[57] The Hawaiian Kingdom's 1871 treaty with Japan provided for Hawaiian extraterritoriality of Hawaiian law under Article II, which stated that Hawaiian subjects in Japan would enjoy "at all times the same privileges as may have been, or may hereafter be granted to the citizens or subjects of any other nation."[58] This was a sore point for Japanese authorities, who felt Japan's sovereignty should be fully recognized by these states.

During a meeting of the cabinet council on 11 January 1881, a decision was made for King Kalākaua to undertake a world tour, which was unprecedented at the time for any monarch. His objectives were, "first, to recuperate his own health and second, to find means for recuperating his people, the latter . . . by the introduction of foreign immigrants."[59] The royal party departed Honolulu harbor on 20 January 1881 on the steamer *City of Sydney* headed for San Francisco. From San Francisco, they embarked for Japan on 8 February. The world tour would last

[55] Provisions of neutrality can be found in the treaties with Sweden/Norway (1852), under Article XV; Spain (1863), under Article XXVI; Germany (1879), under Article VIII; and Italy (1869), under its additional article.

[56] Robert C. Lydecker, comp., *Roster Legislatures of Hawaii, 1841–1918* (Honolulu: Hawaiian Gazette Co., 1918), 57.

[57] *Treaty of Amity between the United States and Japan* (29 July 1858) U.S. Treaty Series 185, 365.

[58] "Treaty with Japan," 19 August 1871, in *Treaties and Conventions Concluded between the Hawaiian Kingdom and Other Powers since 1825* (Honolulu: Elele, 1887), 115.

[59] Ralph S. Kuykendall, *The Hawaiian Kingdom*, vol. 3, *The Kalakaua Dynasty, 1874–1893* (Honolulu: University of Hawaiʻi Press, 1967), 228. Kalākaua's motto was "*hoʻoulu lāhui*" (increase the race). The native population was decimated by foreign diseases of which they had no immunity, and Hawaiian leaders sought a resolution by introducing foreigners to intermarry.

Fig. 21.3 King Kalākaua with officials of the Empire of Japan, 1881. (Top row L–R) Hawaiian Colonel Charles Hastings Judd, Japanese state official Tokunō Ryōsuke, and William N. Armstrong, Kalākaua's aide; (bottom row L–R) Prince Komatsu Akihito, King Kalākaua, and Japanese Minister of Finance Sano Tsunetami. (Public Domain)

ten months and take the Hawaiian king to Japan, China, Hong Kong, Siam (Thailand), Singapore, Johor (now in Malaysia), India, the Suez Canal, Egypt, Italy, France, Great Britain, Scotland, Belgium, Germany, Austria, Spain, and Portugal (Fig. 21.3). All graciously received the King and he exchanged royal orders with these countries.[60] After he returned home, Kalākaua also exchanged royal orders with Naser al-Din Shah of Persia.[61]

When Kalākaua visited Japan, the Meiji Emperor "asked for Hawai'i to grant full recognition to Japan and thereby create a precedent for the Western powers to

[60] Gonschor, *A Power in the World*, 76–87.

[61] Persian Foreign Minister to Hawaiian Foreign Minister, F. O. Ex. 1886 Misc. Foreign, July–September, Hawai'i Archives.

follow."[62] Hawaiian recognition of Japan's full sovereignty and repeal of the Hawaiian Kingdom's consular jurisdiction in Japan provided in the Hawaiian-Japanese Treaty of 1871 would not take place, however, until 1893, by executive agreement through exchange of notes. By direction of Queen Liliʻuokalani, successor to King Kalākaua, R. W. Irwin, Hawaiian minister to the court of Japan in Tokyo, sent a diplomatic note to the Japanese Minister of Foreign Affairs, in which he stated: "I now have the honour formally to announce, that the Hawaiian Government do fully, completely, and finally abandon and relinquish the jurisdiction acquired by them in respect of Hawaiian subjects and property in Japan, under the Treaty of the 19th August, 1871."[63]

On 10 April 1894, the Japanese Foreign Minister responded: "The sentiments of goodwill and friendship which inspired the act of abandonment are highly appreciated by the Imperial Government, but circumstances which it is now unnecessary to recapitulate have prevented an earlier acknowledgment of your Excellency's note."[64] This dispels the commonly held belief among historians that Great Britain was the first to abandon its extraterritorial jurisdiction in Japan under the 1894 Anglo-Japanese Treaty of Commerce and Navigation. This action taken by the Hawaiian Kingdom, being a non-European power, ushered in Japan's full and complete independence of its laws over Japanese territory.

Japan's request also serves as an acknowledgment of Hawaiʻi's international standing as a fully sovereign and independent state. This would not go unnoticed by Polynesian kings such as King George Tupou I of Tonga, King Cakobau of Fiji, and King Malietoa of Samoa. In 1892, Scottish author Robert Louis Stevenson wrote: "it is here alone that men of their race enjoy most of the advantages and all the pomp of independence."[65]

The population of the Hawaiian Kingdom consisted of aboriginal Hawaiians, naturalized immigrants, native-born non-aboriginals, as well as resident foreigners. In 1890, the majority of Hawaiian subjects were aboriginal Hawaiians, both pure and part, at forty thousand six hundred and twenty-two, and non-aboriginal Hawaiians subjects at seven thousand four hundred and ninety-five.[66] Of the alien population, Americans were at one thousand nine hundred and twenty-eight, Chinese at fifteen thousand three hundred and one, Japanese at twelve thousand three hundred and sixty, Norwegians at two hundred and twenty-seven, British at one thousand three hundred and forty-four, Portuguese at eight thousand six

[62] Gonschor, "Ka Hoku o Osiania," 163.

[63] Mr. Irwin to the Japanese Minister for Foreign Affairs, 18 January 1893, in *British and Foreign State Papers*, vol. 86, *1893–1894*, ed. Augustus H. Oakes and Willoughby Maycock (London: Her Majesty's Stationery Office, 1899), 1186.

[64] The Japanese Minister for Foreign Affairs to Mr. Irwin, in ibid., 1186–7.

[65] Robert Louis Stevenson, *A Footnote to History: Eight Years of Trouble in Samoa* (New York: Charles Scribner's Sons, 1895), 59.

[66] Thos. G. Thrum, *Hawaiian Almanac and Annual for 1892* (Honolulu: Press Publishing Co., 1891), 11.

hundred and two, Germans at one thousand and thirty-four, French at seventy, Polynesians at five hundred and eighty-eight, and other foreigners at four hundred and nineteen.[67] The total population of the Hawaiian Kingdom in 1890 was eighty-nine thousand nine hundred and ninety. The country's primary trading partners were the United States, Great Britain, Germany, British Columbia, Australia and New Zealand, China and Japan, and France.[68]

While preparing to celebrate the 50th anniversary of Hawaiian independence, the Hawaiian Kingdom was invaded, without just cause, by American troops on 16 January 1893. Under orders of US minister John Stevens, "a detachment of marines from the United States steamer *Boston*, with two pieces of artillery, landed at Honolulu."[69] This invasion force coerced Queen Lili'uokalani to conditionally surrender to the superior power of the United States military, on which she stated: "Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands."[70]

President Cleveland initiated an investigation on 11 March 1893 by appointing Special Commissioner James Blount to travel to the Hawaiian Islands and to provide periodic reports to Secretary of State Walter Gresham. After receiving the final report from Special Commissioner Blount, Gresham, on 18 October 1893, notified the president:

> The Government of Hawaii surrendered its authority under threat of war, until such time as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign . . . Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice. Can the United States consistently insist that other nations shall respect the independence of Hawaii while not respecting it themselves? Our Government was the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud.[71]

"Traditional international law was based upon a rigid distinction between the state of peace and the state of war," says Judge Greenwood.[72] "Countries were either in a state of peace or a state of war; there was no intermediate state."[73] This

[67] Ibid. [68] Ibid., 33.
[69] United States House of Representatives, *Executive Documents*, 451. [70] Ibid., 586.
[71] Ibid., 462–3.
[72] Christopher Greenwood, "Scope of Application of Humanitarian Law," in Dieter Fleck, ed., *The Handbook of Humanitarian Law in Armed Conflict* (New York: Oxford University Press, 1995), 39–63, at 39.
[73] United States House of Representatives, *Executive Documents*, 586.

distinction is also reflected by the renowned jurist of international law Lassa Oppenheim, who separated his treatise on *International Law* into two volumes: *Peace* (volume 1) and *War and Neutrality* (volume 2).[74] In the nineteenth century, war was recognized as lawful if justified under *jus ad bellum*.

International law distinguishes the state, being the subject of international law, from its government, being the subject of the state's municipal law.[75] In *Texas v. White*, the United States Supreme Court stated that "a plain distinction is made between a State and the government of a State."[76] Therefore, the military overthrow of the government of a state by another state's military in a state of war does not equate to an overthrow of the state itself. Its sovereignty and legal order continue to exist under international law, and the occupying state, when it is in effective control of the occupied state's territory, is obligated to administer the laws of the occupied state until a treaty of peace.

An example of this principle was the overthrow of Spanish governance in Santiago de Cuba in July 1898. The military overthrow did not transfer Spanish sovereignty to the United States but triggered the customary international laws of occupation later codified under the 1899 Hague Convention (III) and the 1907 Hague Convention (IV), whereby the occupying state has a duty to administer the laws of the occupied state over territory of which it is in effective control. This customary law was the basis for General Orders no. 101, issued by President McKinley to the War Department on 13 July 1898:

> Though the powers of the military occupant are absolute and supreme and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are considered as continuing in force.[77]

An armistice was eventually signed by the Spanish government on 12 August 1898, after its territorial possessions of the Philippines, Guam, Puerto Rico, and Cuba were under the effective occupation of US troops. This led to a treaty of peace that was signed in Paris on 10 December 1898 ceding Spanish territories of Philippines, Guam, and Puerto Rico to the United States.[78] It was after 11 April 1899 that Spanish title and sovereignty was transferred to the United States and American municipal laws replaced Spanish municipal laws that previously applied over the territories of the Philippines, Guam, and Puerto Rico. Unlike Spain, there is no treaty where the Hawaiian Kingdom ceded its territory to the United States.

[74] L. Oppenheim, *International Law: A Treatise*, vol. 1, *Peace* (London: Longmans, Green & Co., 1905) and vol. 2, *War and Neutrality* (London: Longmans, Green & Co., 1906).

[75] David Keanu Sai, "The Royal Commission of Inquiry," in Sai, ed., *The Royal Commission of Inquiry*, 11–52, at 11, 13–4.

[76] *Texas v. White*, 74 U.S. 700, 721 (1868).

[77] *Ochoa v. Hernandez*, 230 U.S. 139, 155 (1913).

[78] 30 Stat. 1754 (1899).

On 18 December 1893, President Cleveland notified Congress that the "military demonstration upon the soil of Honolulu was of itself an act of war,"[79] and that "Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands . . . except the United States Minister." He also determined "that the provisional government owes its existence to an armed invasion by the United States."[80] And, finally, the president admitted that by "an act of war . . . the Government of a feeble but friendly and confiding people has been overthrown." Customary international law at the time obligated the United States, as an occupying state, to provisionally administer the laws of the Hawaiian Kingdom, being the occupied state, until "either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant."[81]

Through executive mediation an agreement of restoration was reached on 18 December 1893.[82] Political wrangling in the Congress, however, blocked the president from carrying out his obligation under the agreement. Five years later, at the height of the Spanish-American War, President William McKinley, Cleveland's successor, unilaterally annexed the Hawaiian Islands by congressional legislation on 8 July 1898, in violation of international law at the time. Senator William Allen clearly stated the limitations of United States laws when the resolution of annexation was debated on the floor of the Senate on 4 July 1898. Allen argued:

> The Constitution and the statutes are territorial in their operation; that is, they can not have any binding force or operation beyond the territorial limits of the government in which they are promulgated. In other words, the Constitution and statutes can not reach across the territorial boundaries of the United States into the territorial domain of another government and affect that government or persons or property therein.[83]

Two years later, when the Senate was considering the formation of a territorial government for Hawai'i, Allen reiterated, "I utterly repudiate the power of Congress to annex the Hawaiian Islands by a joint resolution such as passed the Senate. It is ipso facto null and void."[84] Krystyna Marek asserts that "a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."[85] Only by way of a treaty can one state acquire the territory of another state.

[79] United States House of Representatives, *Executive Documents*, 451. [80] Ibid., 454.
[81] Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford: Clarendon Press, 1996), 224.
[82] United States House of Representatives, *Executive Documents*, 1269–70, 1283–4.
[83] 31 Cong. Rec. 6635 (1898). [84] 33 Cong. Rec. 2391 (1900).
[85] Krystyna Marek, *Identity and Continuity of State in Public International Law*, 2nd ed. (Geneva: Librairie Droz, 1968), 110.

Without a treaty between the Hawaiian Kingdom and the United States whereby Hawaiian territory had been ceded, strictly speaking congressional laws have no effect within Hawaiian territory. This is what prompted the US Department of Justice in 1988 to admit it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution."[86] The conclusion by the Justice Department is in line with the United States Supreme Court, which stated in a 1824 decision that the "laws of no nation can justly extend beyond its own territories [and they] can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."[87] Furthermore, under international law, the Permanent Court of International Justice stated:

> Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.[88]

On 28 February 1997, a group of Hawaiian subjects set up a restored government of the Hawaiian Kingdom under a Regency in accordance with the kingdom's constitutional law.[89] There was no legal requirement for the Council of Regency, being the successor in office to Queen Liliʻuokalani under Hawaiian constitutional law, to get recognition from the United States as the government of the Hawaiian Kingdom. The United States' recognition of the Hawaiian Kingdom as an independent State on 6 July 1844 was also the recognition of its government—a constitutional monarchy. Successors in office to King Kamehameha III, who at the time of international recognition was king of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Liliʻuokalani in 1891, and the Council of Regency in 1997.

The legal doctrines of recognition of new governments only arise "with extra-legal changes in government" of an existing state.[90] Successors to King Kamehameha III were not established through "extra-legal changes," but rather

[86] Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," *Opinions of the Office of Legal Counsel of the United States Department of Justice*, vol. 12 (Washington, D.C.: Government Printing Press, 1996), 238–63, at 238, 252.

[87] *The Appollon*, 22 U.S. 362, 370 (1824).

[88] *Lotus* case (France v. Turkey), PCIJ Series A, No. 10, 18 (1927).

[89] Sai, "The Royal Commission of Inquiry," 18–23; Federico Lenzerini, "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom," *The Hawaiian Kingdom*, 24 May 2020, online; and Royal Commission of Inquiry, "Preliminary Report: The Authority of the Council of Regency of the Hawaiian Kingdom," *The Hawaiian Kingdom*, 27 May 2020, online.

[90] M. J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815–1995* (New York: St. Martin's Press, 1997), 26.

under the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, "Where a new administration succeeds to power in accordance with a state's constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed."[91]

Two years later, the restored government found itself in a dispute with one of its nationals, Lance Larsen, who alleged that the Regency was liable "for allowing the unlawful imposition of American municipal laws over [his] person within the territorial jurisdiction of the Hawaiian Kingdom." On 8 November 1999, the dispute was submitted to binding arbitration at the Permanent Court of Arbitration, The Hague, Netherlands, whereby the Secretariat acknowledged the continued existence of the Hawaiian Kingdom as a state in *Larsen v. Hawaiian Kingdom*, and the Council of Regency as its government.[92]

This awareness of Hawai'i's prolonged occupation brought about by the *Larsen* case also caught the attention of United Nations Independent Expert Alfred-Maurice de Zayas, in Geneva, Switzerland. In a letter to members of the judiciary of the State of Hawai'i dated 25 February 2018, de Zayas concluded:

> I have come to understand that the lawful political status of the Hawaiian Islands is that of sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).[93]

Despite over a century of revisionist history, "the continuity of the Hawaiian Kingdom as a sovereign State is grounded in the very same principles that the United States and every other State have relied on for their own legal existence."[94] The Hawaiian Kingdom is a magnificent story of perseverance and continuity.[95]

[91] American Law Institute, *The Restatement Third of the Foreign Relations Law of the United States* (St. Paul, MN: American Law Institute Publishers, 1987), §203, comment c.

[92] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999–01, online; also David Bederman and Kurt Hilbert, "Arbitration—UNCITRAL Rules—Justiciability and Indispensable Third Parties—Legal Status of Hawaii," *American Journal of International Law* 95:4 (2001): 927–33; and *Larsen v. Hawaiian Kingdom*, 119 Int'l L. Rep. 566 (2001).

[93] Sai, "The Royal Commission of Inquiry," 33.

[94] David Keanu Sai, "A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai'i today," *Journal of Law and Social Challenges* 10 (2008): 68–133, at 132.

[95] Sai, ed., *The Royal Commission of Inquiry*.