

The Constitutional History of the Hawaiian Kingdom

Dr. Keanu Sai



British Protectorate

- In 1794, Hawai‘i became a British Protectorate by agreement between Captain Vancouver and Kamehameha I and the British ensign was the flag of Hawai‘i
- In 1816, Kamehameha I ordered the formation of the Hawaiian flag that is the flag of the Hawaiian Kingdom



The Rise of Kamehameha

- In April 1810, Kaumuali‘i, son of Ka‘eo and King of Kaua‘i, recognizes Kamehameha as his superior and is able to retain his reign over Kaua‘i
- Kamehameha formed the Kingdom of the Sandwich Islands that ruled over the former kingdoms of Hawai‘i, Maui, O‘ahu, and Kaua‘i
- Kamehameha was thereafter known as King of the Sandwich Islands



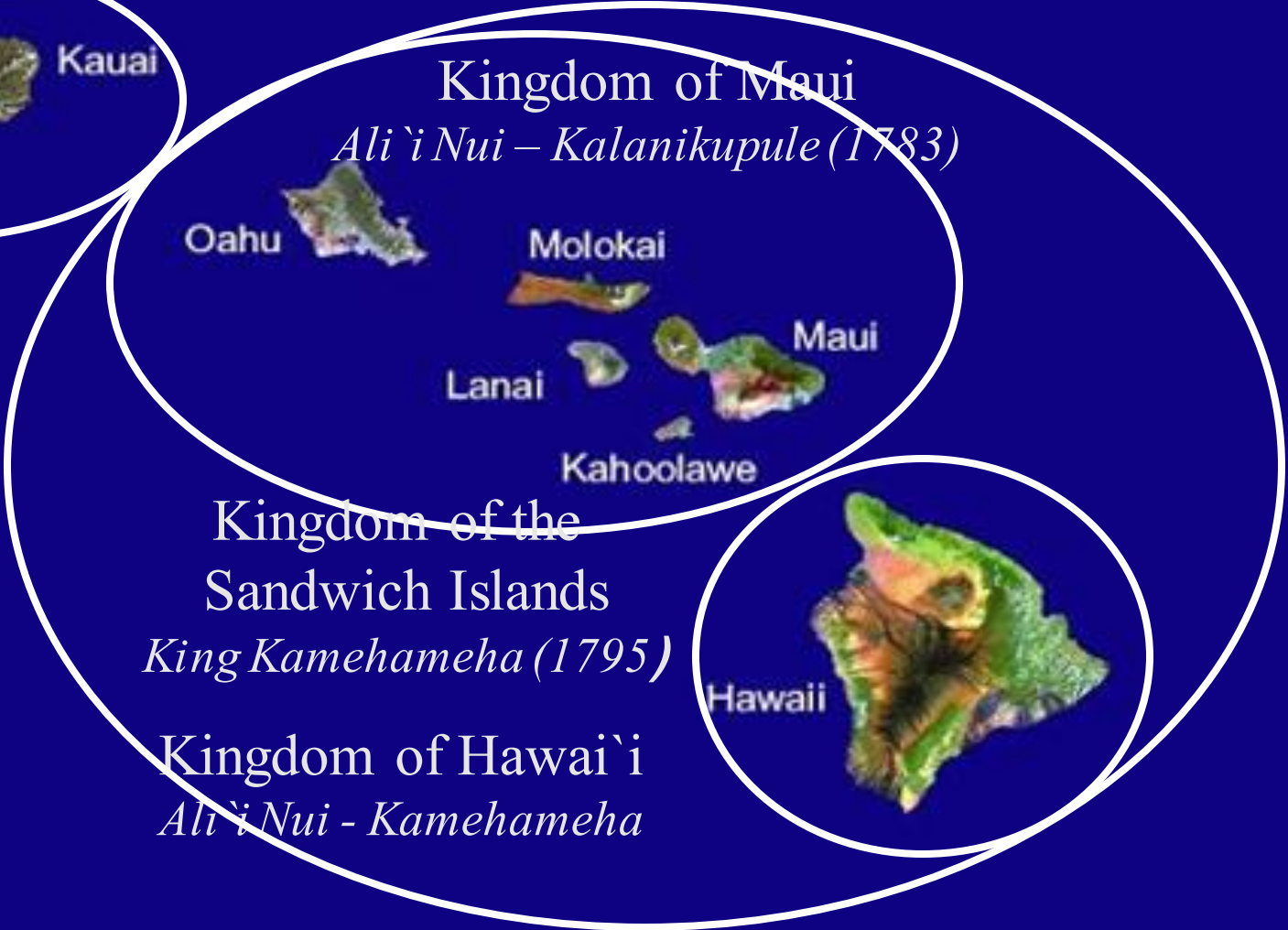
Kingdom of Kaua'i

Ali`i Nui - Kaumuali`i



Kingdom of Maui

Ali`i Nui - Kalanikupule (1783)



Kingdom of the Sandwich Islands

King Kamehameha (1795)

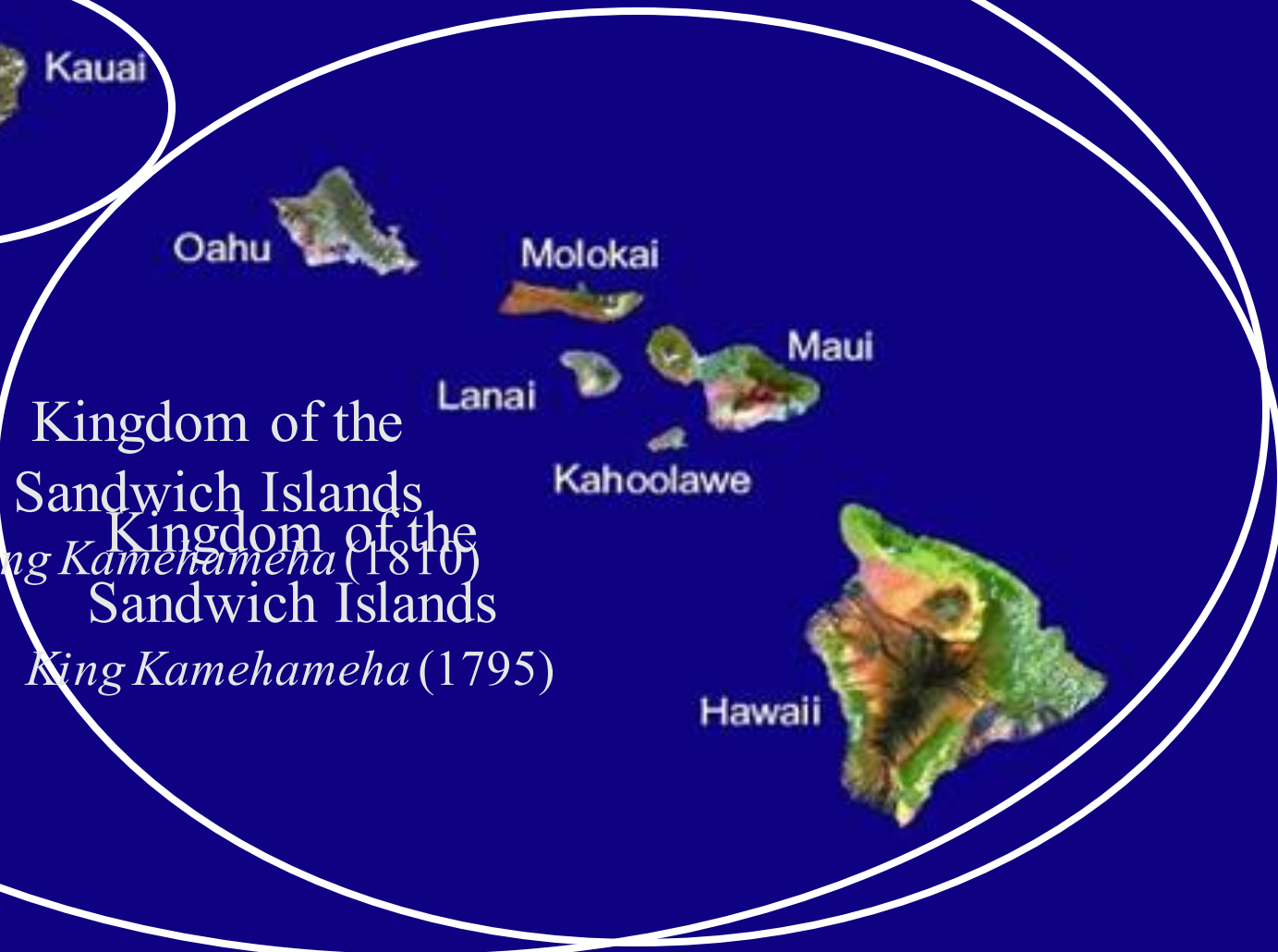


Kingdom of Hawai`i

Ali`i Nui - Kamehameha

Kingdom of Kaua'i

Ali`i Nui - Kaunuaui`i



Kingdom of the Sandwich Islands

King Kamehameha (1810)
Kingdom of the Sandwich Islands

King Kamehameha (1795)

Hawaii

Government Reform

- On May 4, 1825, HBMS Blonde, under the command of Lord Bryon, arrived in Lahaina from London with the bodies of Kamehameha II and Queen Kamāmalu
- In the hands of Lord Byron were secret instructions from the British Crown regarding the Sandwich Islands government and actions to be taken with foreign powers if they exerted sovereignty over the Islands



Government Reform

- The instructions, in part, stated:
 - “You will endeavor to cultivate a good Understanding with the Government, in whatever native Hands it may be, and to secure, by kind Offices and friendly Intercourse, a future and lasting Protection for the Persons and Property of the Subjects of the United Kingdom”



Government Reform

- “As my Lords have directed that you should be furnished with the voyages of Captains Cooke and Vancouver, and that of Captain Kotzebue of the Russian Navy, and an essay on the commerce of the Pacific by Captain Macconochie, you will be apprized of the position in which these Islands stand with regard to the Crown of Great Britain, and that His Majesty might claim over them a right of sovereignty not only by discovery, but by a direct and formal Cession by the Natives, and by the virtual acknowledgement of the Officers of Foreign Powers”



Government Reform

- “His Majesty’s Rights you will, if necessary, be prepared to assert, but considering the Distance of the Place, and the Infant State of political Society there, You will avoid, as far as may be possible, the bringing these Rights into Discussion, and will propose that any disputed Point between Yourself and any Subjects of other Powers shall be referred to your respective Governments”

—Orders to Lord Byron, September 13, 1824



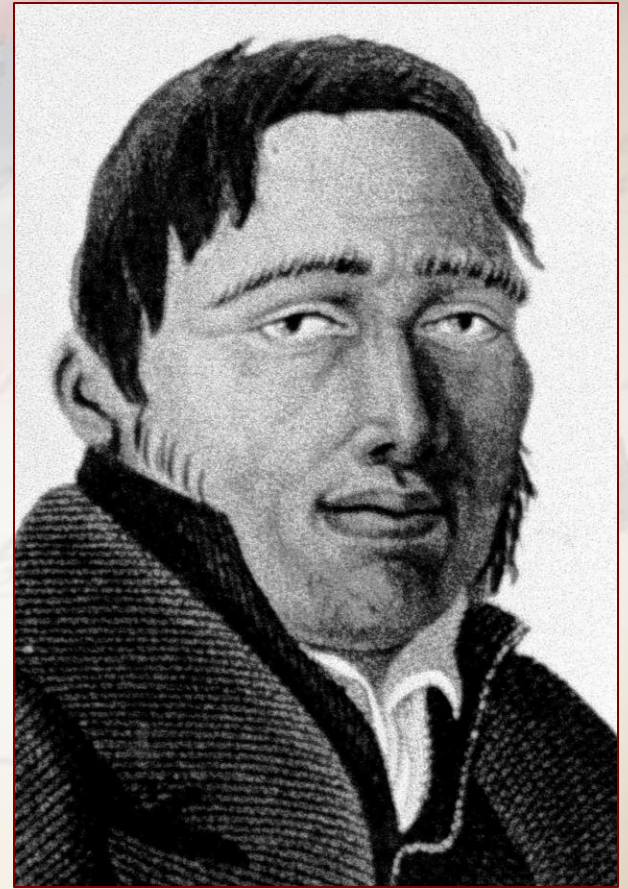
Government Reform

- On June 6, 1824, the Council of Chiefs confirmed Kamehameha II's younger brother, Kauikeaouli, to be Kamehameha III
- But since the young King was only eleven years old, Ka'ahumanu remained Regent



Government Reform

- In the meeting Kalanimoku pointed out defects in the laws especially in regard to the reversion of lands upon the death of a King
- The Council agreed to forego the reversion and the lands remained in the chiefs or their successors except in times of treason



Government Reform

- Lord Byron then submitted eight recommendations to the Council of Chiefs:
 - That the king be head of the people
 - That all the chiefs swear allegiance
 - That the lands descend in hereditary succession
 - That taxes be established to support the king
 - That no man's life be taken except by consent of the king or regent and twelve chiefs
 - That the king or regent grant pardons at all times
 - That all the people be free and not bound to one chief
 - That a port duty be laid on all foreign vessels



Government Reform

- On December 7, 1827, Ka‘ahumanu called a meeting of the Council of Chiefs to discuss Kamehameha’s cession of the Islands to Great Britain and to discuss a Code of laws for the kingdom
- The chiefs understood the British relationship to be comity rather than vassalage and therefore the Council of Chiefs could make the Code of laws without British approval
- On December 8, 1827, was the first Penal Code that prohibited murder, theft, adultery, selling of rum, prostitution and gambling



Government Reform

- At a meeting of the Council of Chiefs in 1829, Captain Finch of the *USS Vincennes* heard for the first time the use of the English word *Hawaiian*
 - “The Government and Natives generally have dropped or do not admit the designation of 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 the Chief of the principal Island of Owhyhee, or more modernly Hawaii”



Government Reform

- Captain Cook named the group of islands that comprised three separate kingdoms the *Sandwich Islands* after the Earl of Sandwich
- In 1829, the Chiefs renamed it to *Hawaiian Islands*, which in the native language is *Kō Hawai‘i Pae ‘Āina*
- *Kō Hawai‘i Pae ‘Āina* is literally “The Islands that belong to Hawai‘i” referring to Kamehameha’s Kingdom of Hawai‘i as opposed to the Kingdom of Maui or Kaua‘i



Government Reform



- Upon the death of Ka‘ahumanu in 1832, Kamehameha III assumed full control of government and appointed Kina‘u as Premier



Government Reform

- In 1834, a more expansive code was enacted with five chapters, and “each chapter was discussed and ratified by the council of chiefs according to ancient custom before receiving the King’s signature and becoming law”



Government Reform

- In the Kingdom, religion was as much a part of chiefly governance as governance was an extension of religion
- When a Catholic missionary party arrived in Honolulu on July 7, 1827, they did not request a license as did the Protestant missionary party in 1820
- Since January 3, 1830, the Catholic religion was banned by Ka‘ahumanu, as Premier



Government Reform

- On September 30, 1836, after another Catholic priest arrived, Kamehameha III issued an ordinance “Rejecting the Catholic religion” on December 18, 1837

AN ORDINANCE, A. D. 1837
Rejecting the Catholic religion.

As we have seen the peculiarities of the Catholic religion and the proceedings of the priests of the Romish faith to be calculated to set man against man in our kingdom, and as we formerly saw that disturbance was made in the time of Kaahumanu I. and as it was on this account that the priests of the Romish faith were at that time banished and sent away from this kingdom, and as from that time they have been under sentence of banishment until within this past year when we have been brought into new and increased trouble on account of those who follow the Pope; and as our determination to keep away such persons is by no means recent, and also on account of the requests of foreigners that we make it known in writing, Therefore, I, with my chiefs, forbid, by this document that any one should teach the peculiarities of the Pope's religion, nor shall it be allowed to any who teaches those doctrines or those peculiarities to reside in this kingdom; nor shall the ceremonies be exhibited in our kingdom, nor shall any one teaching its peculiarities or its faith be permitted to land on these shores; for it is not proper that two religions be found in this small kingdom. Therefore we utterly refuse to allow any one to teach those peculiarities in any manner whatsoever. We moreover prohibit all vessels



Government Reform

- Pursuant to the Ordinance, followers of the Catholic religion were persecuted and imprisoned
- However, on June 17, 1839, Kamehameha III issued “orders that no more punishments should be inflicted; and that all who were then in confinement, should be released”
- Hearing of the persecution, a French warship commanded by Captain Laplace arrived in Honolulu on July 9, 1839



Government Reform

- Captain Laplace was prepared to carry out hostilities if the Catholic religion was not allowed to be practiced in the Kingdom
- In addition to allowing the practice of the Catholic faith, Kamehameha III was compelled to sign an unequal treaty with the French Captain that imposed jury selection benefits to Frenchmen and a fixed duty on French wine or brandy not exceeding five percent *ad valorem*



Government Reform

- On October 26, 1839, the American Consul sent a letter to Kamehameha III regarding the American missionaries and government
 - “Sir: As the opinion seems to be to some extent entertained that American citizens residing in the Sandwich Islands as missionaries under the patronage of an Incorporated Institution in the United States, have exerted a controlling influence upon the framers of the laws of this country, I have very respectfully to inquire, if they have ever had any voice in the passage of laws affecting the interests of other foreigners, and particularly whether they have ever had any thing to do in the measures adopted by your government for the prevention of the introduction of the Catholic religion into the country”



Government Reform

- On October 28, 1839, the Kamehameha III responded:
 - “My Respects to you the American Consul, I have received your letter asking questions respecting the American missionaries, supposed by some to regulate the acts of my government under me; I, together with the chiefs under me, now clearly declare to you, that we do not see any thing in which your questions are applicable to the American missionaries. From the time the missionaries first arrived, they have asked liberty to dwell in these islands. Communicating instructions in letters, and delivering the word of God has been their business”



Government Reform

- “They were hesitatingly permitted to remain by the chiefs of that time, because they were said to be about to take away the country. We exercised forbearance, however, and protected all the missionaries, and as they frequently arrived in this country, we permitted them to remain in this kingdom because they asked it, and when we saw the excellence of their labors, then some of the chiefs and people turned to them in order to be instructed in letters, for those things were in our opinion really true”
- “When the priests of the Romish religion landed at these islands, they did not first make known to us their desire to dwell on the islands, and also their business. There was not a clear understanding with this company of priest as there was that; because they landed in the country secretly without Kaahumanu’s hearing anything about their remaining here”



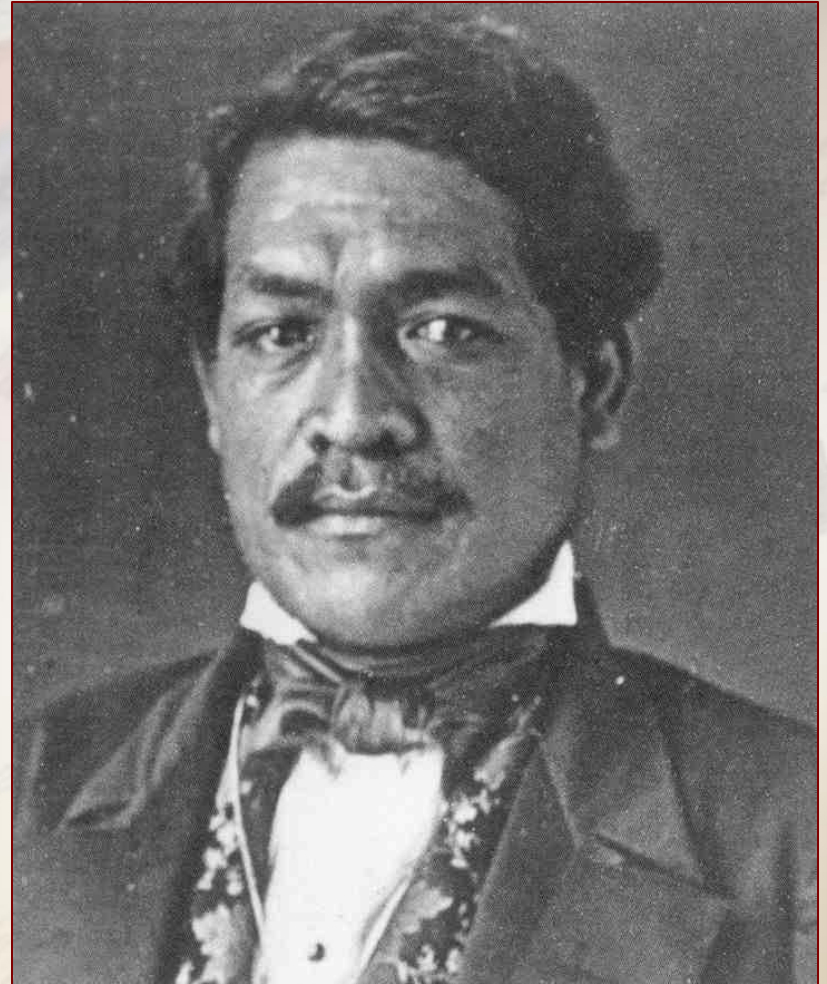
Government Reform

- “But that thing which you speak to me of, that they act with us, or overrule our acts, we deny it, it is not so. We think that perhaps these are their real crimes: Their teaching us knowledge. Their living with us, and sometimes translating between us and foreigners. Their not taking the sword into their hand, and saying to us with power, stop, punish not the worshippers in the Romish religion”
- “But, to stand at variance with, and to confine that company, they have never spoken like that since the time of Kaahumanu I down to the time that the Romish priest was confined on board the Europa”
- “I think, perhaps, those things are not clear to you; it would perhaps be proper, therefor, that the American missionaries should be examined before you and Commodore Read, and us also”



Formalizing Hawaiian Law

- After being threatened with French aggression, Kamehameha III and his chiefs pursued government reform that sought to establish as well as protect the rights of all its people



Formalizing Hawaiian Law

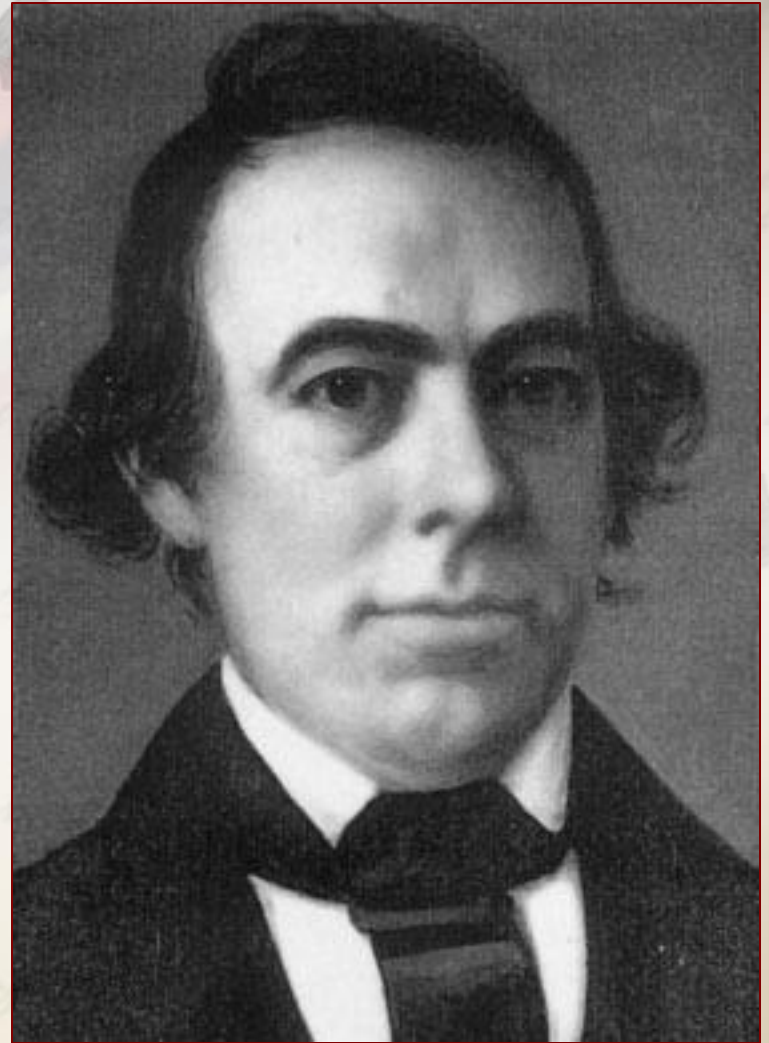
- “If then the natives wish to retain the government of the islands in their own hands and become a nation, if they are anxious to avoid being dictated to by any foreign commanding officer that may be sent to this station, it seems to be absolutely necessary that they should establish some defined form of government, and a few fundamental laws that will afford security for property; and such commercial regulations as will serve for their own guidance as well as for that of foreigners; if these regulations be liberal, as they ought to be, commerce will flourish, and all classes of people will be gainers”

—British General William Miller, 1831



Formalizing Hawaiian Law

- Unable to secure an instructor for the King and chiefs in government reform, William Richards accepted an appointment by Kamehameha III as the instructor



Formalizing Hawaiian Law

- Richards developed a curriculum based upon Hawaiian translations of Professor Francis Wayland's two books
 - Elements of Moral Science (1835)
 - Elements of Political Economy (1837)
- Richards sought to theorize governance from a foundation of natural rights within an agrarian society based upon capitalism that was not only cooperative in nature, but also morally grounded in Christian values



Formalizing Hawaiian Law

- On June 7, 1839, Kamehameha III proclaimed an expanded code of laws preceded by a “Declaration of Rights
- The code stated:
 - “No chief has any authority over any man, any farther than it is given him by specific enactment, and no tax can be levied, other than that which is specified in the printed law, and not chief can act as a judge in a case where he is personally interested, and no man can be dispossessed of land which he has put under cultivation except for crimes specified by law”



Formalizing Hawaiian Law

- The following year on October 8, 1840, Kamehameha III signed into a law the first Constitution incorporating the Declaration of Rights as its preamble
- The function of the constitution was to
 - “lay down the general features of a system of government and to define to a greater or less extent the powers of such government, in relation to the rights of persons on the one hand, and on the other...in relation to certain other political entities which are incorporated in the system”



Formalizing Hawaiian Law

- As a result of the temporary occupation by the French in 1839, British policy toward the Kingdom would change
- Lord Ingestre, a member of the British House of Commons, called upon the Secretary of State for Foreign Affairs, Viscount Palmerston, to respond
- Palmerston was non-committal, but it signaled a change in policy that would be taken up by his successor, Lord Aberdeen



Formalizing Hawaiian Law

- “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 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”



– British Admiralty, 1842



Formalizing Hawaiian Law

- In 1842, Kamehameha III pursued the formal recognition of Hawaiian State sovereignty
- To accomplish this, he appointed Timoteo Ha'alilio, William Richards and Sir George Simpson



Formalizing Hawaiian Law

- While the envoys were on their diplomatic mission, Lord Paulet of the British Navy seized control of the government and occupied the Hawaiian Kingdom on February 25, 1843



Formalizing Hawaiian Law

- Word of the occupation reached British Admiral Thomas in Valparaiso, Chile, and he arrived in the islands on July 25, 1843
- After a meeting with Kamehameha III, the Hawaiian government was restored on July 31, 1843
- At a thanksgiving service after the ceremony, Kamehameha III declared
 - Ua mau ke ea o ka ‘aina i ka pono (the life of the land is perpetuated in righteousness)



Anglo-French Proclamation, Nov. 28, 1843

Declaration.

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 case in the Sandwich Islands of a Government capable of providing the regularity of its relations with foreign nations, have thought right to engage reciprocally to consider the Sandwich Islands an independent State, and never to take possession, either directly, or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed..

The Undersigned, Her Britannick Majesty's Principal

Secretary

foreign nations, have thought it right to engage reciprocally to consider the Sandwich Islands as an independent State, and never to take possession, either directly, or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed..

Secretary of State for Foreign Affairs,

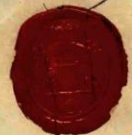
Étrangères

Étrangères de Sa Majesté Britannique et Ambassadeur Extraordinaire de Sa Majesté Le Roi des Français près la Cour de Londres, munis des pouvoirs nécessaires, déclarent en conséquence, par les présentes, que leurs dites Majestés prennent réciproquement cet engagement.

En Foi de quoi les soussignés ont signé la présente Déclaration, et y ont fait apposer le sceau de leurs Armes.

Fait double à Londres, le Vingt-huit Novembre, l'An de Grace mil huit cent quarante trois.

P. Aulard's



U.S. Recognition on July 6, 1844



Department of State,
Washington, July 6th, 1844.

Subsequently appointed to reside on the
Sandwich Islands, were regarded

Sandwich Islands, were regarded
by the President as a full recognition
on the part of the United States, of
the Independence of the Hawaiian
Government. This opinion has undergone

To Major J. Healy and W. Richards,
&c. &c. &c. }



J. C. Calhoun



Formalizing Hawaiian Law

- On October 29, 1845, Kamehameha III commissioned Robert Wyllie of Scotland to be Minister of Foreign Affairs; G.P. Judd, a former missionary, as Minister of Finance; William Richards as Minister of Education; and John Ricord, as Attorney General
- All rescinded their former nationality except for Wyllie, being British, became a dual citizen as a Hawaiian denizen
- The others became Hawaiian subjects prior to the appointments



Formalizing Hawaiian Law

- “The people who have learned the new ways I have retained. Here is the name of one of them, G.L. Kapeau, Secretary of the Treasury. He understands the work very well, and I wish there were more such men. Among the chiefs Leleiohoku, Paki, and John Young [Keoniana] are capable of filling such places and they already have government offices, one of them over foreign officials. And as soon as the young chiefs are sufficiently trained I hope to give them the places. But they are not now able to become speakers in foreign tongues. I have therefore refused the letters of appeal to dismiss the foreign advisors, for those who speak only the Hawaiian tongue”

—Kamehameha III, 1845



Formalizing Hawaiian Law

- “The laws of Rome, that government from which all other governments of Europe, Western Asia and Africa descended, could not be used for Hawai‘i, nor could those of England, France or any other country. The Hawaiian people must have laws adapted to their mode of living. But it is right to study the laws of other peoples, and fitting that those who conduct law offices in Hawai‘i should understand these other laws and compare them to see which are adapted to our way of living and which are not”

—John Ricord, Hawaiian Attorney General



Constitutional Changes

- The theory of a constitutional monarchy states the
 - “three powers of a modern [constitutional monarchy] have distinct functions, but are not completely separate”
 - “As part of an interdependent whole, each power is defined not only by its own particular function, but also by the other powers which limit and interact with it”



Constitutional Changes

- In 1851, the Legislature passed a resolution establishing a commission to revise the 1840 Constitution
- The commission adopted the structure and organization of the 1780 Massachusetts Constitution, being the most advanced at the time in the world
- The revised constitution was approved by the Legislature and Kamehameha III signed it into law on June 14, 1852



Constitutional Changes

- Remnants of absolute rule remained in order to protect the kingdom from foreign aggression
 - Article 39. The King, by and with the approval of His Cabinet and Privy Council, in case of invasion or rebellion, can, place the whole Kingdom, or any part of it under martial law; and he can ever alienate it, if indispensable to free it from the insult and oppression of any foreign power
 - Article 45. All important business for the Kingdom which the King chooses to transact in person, he may do, but not without the approbation of the Kuhina Nui. The King and Kuhina Nui shall have a negative on each other's public acts



Constitutional Changes

- Since 1839, the Hawaiian Kingdom was on tenuous relations with France
- On March 21, 1846, French Rear Admiral Hamelin arrived in Honolulu and returned the four boxes containing \$20,000.00 that was paid to Captain Laplace as a bond
- However, three days later Kamehameha III reluctantly signed two identical treaties with the British and French that reiterated the Laplace treaty



Constitutional Changes

- In August 1849, French Consul Dillon accused the Hawaiian government of violating the 1846 treaty
- These demands centered on the treatment of Catholics, the duty on liquors, and the unequal treatment of Frenchmen
- Admiral De Tromelin landed an armed force in Honolulu and captured the government fort, “the customhouse and other government buildings, and seized the king’s yacht, together with seven merchant vessels in port”



Constitutional Changes

- The French ten-day occupation and destruction of the fort were justified by De Tromelin, by proclamation on August 30, 1849, as France's international right of reprisal
- The two French warships left Honolulu on September 5, 1849, but tensions rose again with the new French consul, Louis Perrin



Constitutional Changes

- Because of the renewed French aggression, the King and Premier were forced to consider placing the kingdom under the protection of the United States
 - Talks of annexation to the United States were negotiated but were not successful
- With the death of Kamehameha III on December 15, 1854, ended any and all talks of annexation



Constitutional Changes

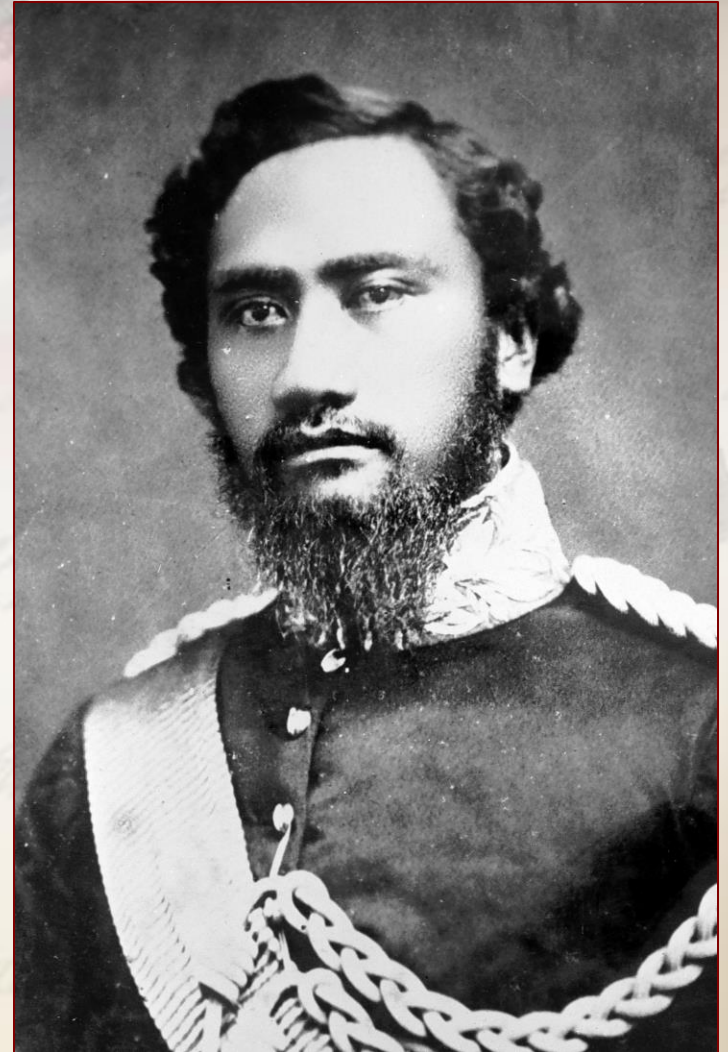
- “The age of Kamehameha III was that of progress and of liberty—of schools and of civilization. He gave us a Constitution and fixed laws; he secured the people in the title to their lands, and removed the last chain of oppression. He gave them a voice in his councils and in the making of the laws by which they are governed. He was a great national benefactor, and has left the impress of his mild and amiable disposition on the age for which he was born”

—Ascension of Kamehameha IV, 1854



Constitutional Changes

- Alexander Liholiho succeeded to the Throne as Kamehameha IV
- During his reign:
 - The Premier was separated from the Minister of the Interior
 - Department of Public Instruction established
 - Legislative sessions were biennial



Constitutional Changes

- On November 30, 1863, Kamehameha IV died
- The Premier, Victoria Kamāmalu temporarily succeeded to the Throne, and thereafter proclaimed Lot Kapuaiwa as Kamehameha V



Constitutional Changes

- Upon ascending to the Throne, Kamehameha V did not take the oath of office because he did not approve the constitution
- Article 94 states:
 - The King, after approving this Constitution shall take the following oath



Constitutional Changes

- Both Kamehameha IV and V felt that the 1852 Constitution had to be amended in order to move forward as a constitutional monarchy
 - Article 45 should be removed and leave any changes to the constitution and laws solely with the Legislative Assembly
 - Article 94 should mandate the oath of office and not make it a choice
 - The constitution should provide for the separation of powers doctrine



Constitutional Changes

- Kamehameha V seized the opportunity to make the necessary alterations when he ascended to the Throne and called for a constitutional convention of elected delegates
- The elected delegates, Nobles and King met in convention from July 7 to August 8, 1864, and agreed upon all the constitutional changes except for qualifications for elected Representatives and those voting for the Representatives



Constitutional Changes

- The convention was at a deadlock on these electoral provisions
- As a result, Kamehameha V, in an act of irony, dissolved the convention and exercised his sovereign prerogative under Article 45, and he then annulled the 1852 constitution
- He proclaimed a new constitution on August 20, 1864



Constitutional Changes

- Along with the electoral qualifications, the office of Premier was eliminated whose check on the actions of the Monarch was replaced by the signature of a Cabinet Minister
 - Unlike the Premier who was not accountable to anyone, the Cabinet Minister was accountable to the Legislative Assembly and could be removed by a vote of a lack of confidence or impeachment proceedings



Constitutional Changes

- The function of the Privy Council was greatly reduced, and a Regency replaced the function of the Premier
- The Crown was required to take the oath of office
- The Legislature became unicameral
- Separation of Powers doctrine was fully enshrined in the constitution



Constitutional Changes

- In his speech at the opening of the Legislative Assembly of 1864, Kamehameha V explained and justified his action under Article 45 of the 1852 Constitution
 - The “forty-fifth article [that] reserved to the Sovereign the right to conduct personally, in cooperation with the Kuhina Nui (Premier), but without the intervention of a Ministry or the approval of the Legislature, such portions of the public business as he might choose to undertake”



Constitutional Changes

- The 1864 Legislative Assembly appointed a special committee to respond to Kamehameha V's opening speech of the new Legislature
- The committee recognized the constitutionality of his actions and stated this
 - “prerogative converted into a right by the terms of the [1852] Constitution, Your Majesty has now parted with, both for Yourself and Successors, and this Assembly thoroughly recognizes the sound judgment by which Your Majesty was actuated to the abandonment of a privilege, which, at some future time might have been productive of untold evil to the nation



Constitutional Changes

- On December 11, 1872, Kamehameha V died without naming a successor to the throne
- For the first time in Hawaiian history, the Legislature would be convened to elect a King, William Charles Lunailo



Constitutional Changes

- King Lunalilo would only reign for one year, after which the Legislature was reconvened to elect another Monarch
- On February 12, 1874, the Legislature elected King David Kalakaua



Constitutional Changes

- King Lunalilo would only reign for one year, after which the Legislature was reconvened to elect another Monarch
- On February 12, 1874, the Legislature elected King David Kalakaua
- During this special session, the Legislative Assembly also repealed the property qualifications embodied in Articles 61 and 62 of the constitution



PROGRESS OF THE SYSTEM.

The system is still in a youthful condition, and many of the natural outgrowths of foreign systems have not yet been fully

tion is evidence that the judgment of the people has

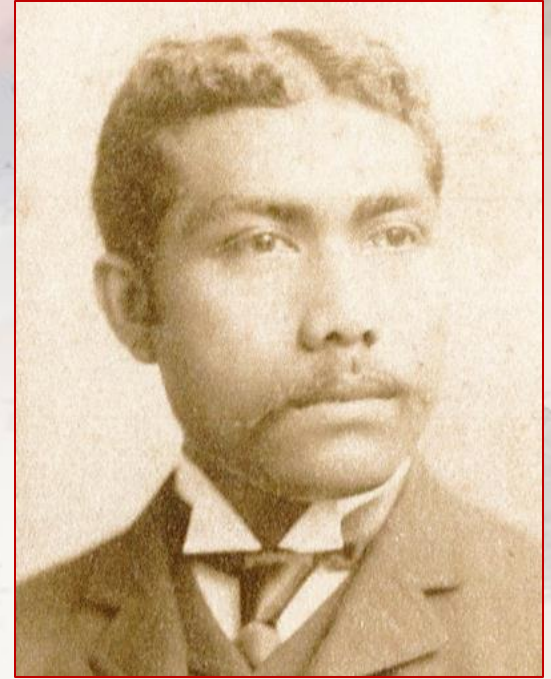
Moral Truths.—One great defect of our Common School teachers is the lack of inclination or ability to teach their pupils moral truths. Our public school system should, like the Government which administers it, be nonsectarian and national; and the Board aim to maintain it free from the influence of church and sect. But this should not prevent the teachers from instructing their pupils in the principles of morality and good behavior, and those habits of thought which form the basis of all religious belief.

ment duty.

for well qualified teachers; and by the desire for new and better school houses to take the place of the old and dilapidated ones. This progress, so satisfactory to the friends of educa-

Constitutional Changes

- Between 1880 and 1892, eighteen Hawaiian subjects participated in the *Hawaiian Youths Abroad* program where they studied in England, Scotland, Italy, United States, China, and Japan
- In England they attended Kings College and St. Chad's College
- Subjects included military training, ironworks, medicine, engraving, and sculpture

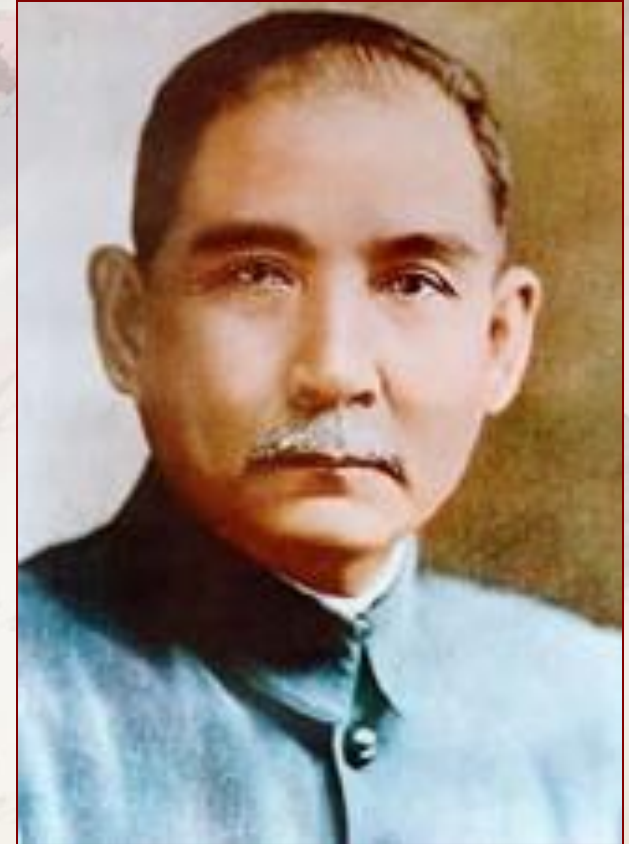


Joseph Kamauoha
King's College



Constitutional Changes

- Founder of modern China, Dr. Sun Yat-sen attended Iolani College and O‘ahu College in Honolulu from 1879 through 1883
- In 1910, Dr. Sun told a reporter in Hawai‘i, “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”



Closing Statements

- The Hawaiian Kingdom is a progressive country that espoused the rule of law
- The Hawaiian Kingdom's literacy was second to Scotland
- Aboriginal Hawaiians throughout the Islands received universal health care at no charge at Queen's Hospital
- Under the 1850 *Kuleana Act*, which has not been repealed, the commoner can purchase up to fifty acres of government land at \$.50 an acre
 - Inflation calculator has \$.50 in 1850 to be \$18.99 today

