

EDITOR'S NOTE

“If a big wave comes in large and unfamiliar fishes will come from the dark ocean, and when they see the small fishes of the shallows they will eat them up.” David Malo¹

The evidence was all around the Pacific and, by April 1842, His Majesty King Kamehameha III saw it clearly—large and unfamiliar fishes coming up from the dark ocean.

Great Britain had taken Australia and made it a penal colony and a dependency. Catholic priests had been expelled from Tahiti in 1836 leading to French gunboats in 1838. In 1840, the British had settled into Aotearoa by way of the Treaty of Waitangi that guaranteed the Maoris some “still to be fully understood status” in exchange for British “sovereignty.”² The French took the Marquesas and Society islands in 1842 en route to declaring Tahiti a Protectorate and triggering a three-year war of independence by Queen Pomare IV. In 1842, French and British naval vessels visited Hawaii to demand “equal status” for their nationals.

The Hawaiian Islands’ strategic mid-Pacific position made it a likely next target. Invasion, overthrow and occupation seemed imminent. In the face of this threat, His Majesty commissioned and dispatched three Ministers Plenipotentiary—two Westerners and a trusted childhood friend—to secure the recognition of the Hawaiian Kingdom’s independence and its membership in the family of nations. His Majesty’s goal was to obtain the protection of public international law that accompanied recognition as a member state in the family of nations.

In April 1842, Timoteo Ha`alilio, William Richards and Sir George Simpson received their commissions. Simpson left soon for England. Ha`alilio and Richards departed in July for the United States. By December 1842, the United States had recognized the Hawaiian Kingdom. Ha`alilio and Richards left to meet Simpson in Europe where all three secured formal recognition from Great Britain and France. On April 1, 1843, Lord Aberdeen, on behalf of Her Britannic Majesty Queen Victoria, assured the Hawaiian delegation that: “Her Majesty’s

¹ Gavan Daws, *Shoal of Time: A History of the Hawaiian Islands* (Honolulu: University of Hawai'i Press, 1968), 106, quoting Hawaiian scholar David Malo.

² See F.M Brookfield, *Waitangi and Indigenous Rights: Revolution, Law, and Legitimation*, (Auckland: Auckland University Press, 1999); See also Peter Cleave, *The Sovereignty Game: Power, Knowledge and Reading the Treaty*, (Wellington, Victoria University Press, 1989).

Government was willing and had determined to recognize the independence of the Sandwich Islands under their present sovereign."³

Keeping in mind that news and people traveled at the same rate in the 1840's, the reader should not be surprised to learn that while the Hawaiian delegation was securing the recognition of Hawaiian independence by these three major world powers, His Majesty faced precisely the danger he was attempting to avoid—a military invasion and occupation. In February 1843, the British military came ashore just as the United States Government would one month short of 50 years later.

The pretext was a diplomatic dispute brought on by the British Consul, Richard Charlton. He had been the British Consul to the Hawaiian Kingdom since 1825. Daws describes him as “a miserable choice. .[who] . . . For two decades . . . [had] laid about him savagely and clumsily at Honolulu, and from the wreckage of his personal life . . . constructed huge and baseless diplomatic causes.”⁴ Charlton's last “huge and baseless cause”, that began in 1840, involved his attempt to enforce a forged, fraudulent, or invalid 299 year lease of prime real estate in Honolulu at Pūlaholalo. The purported grantees and signers were Hawaiian Kingdom subjects who were both well known and long dead. No one had heard of the lease, all questioned its authenticity, and the Hawaiian Kingdom government, reasonably enough, refused to enforce it. Charlton seemed to be breaking down mentally. He was soon convicted of assaulting the editor of *The Polynesian*, the major Hawaiian newspaper and by September 1842, he had left “bound for London, avowedly to secure ‘justice’ for British subjects.”⁵ He left Alexander

³ On November 28, 1843, the British and French Governments entered into a formal agreement recognizing Hawaiian independence. The Declaration states “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 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. The undersigned, Her Britannic Majesty's principal secretary of state for foreign affairs, and the ambassador extraordinary of His Majesty the King of the French, at the court of London, being furnished with the necessary powers, hereby declare in consequence that their said majesties take reciprocally that engagement.” “Anglo-Franco Proclamation of Hawaiian Statehood, 28 November 1843,” Executive Documents of the United States House of Representatives, 53rd Congress, 1894-95, Appendix II, Foreign Relations, (1894), 64. Hereinafter “Executive Documents” available at <http://libweb.hawaii.edu/libdept/hawaiian/annexation/blount.html>. (accessed 22 July 2004). Reprinted at *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 114.

⁴ Daws, *supra* note 1, 77.

⁵ *Id.*, 113. More than twenty years later, Mark Twain captured the flavor of Consul Charlton's personality in a piece appearing in the *Sacramento Daily Union*, September 6, 1866, titled “A Funny Scrap of History.” According to Twain he was a “pestilent fellow . . . [who seemed] to have employed his time in sweating, fuming and growling about everything and everybody; in acquiring property by devious and inscrutable ways; in blackguarding the Hawaiian Government and the missionaries; in scheming for the

Simpson, his deputy, to represent British interests.⁶ British “imperial” justice sailed into Honolulu harbor on 11 February 1843 on the deck of the British ship *H.M.S. Carysfort*, in the form of Lord George Paulet.

Paulet investigated neither the circumstances nor the validity of Charlton’s complaints. With a studied impertinence, Paulet intentionally ignoring the customary diplomatic niceties of a salute to His Majesty and promptly demanded a *personal* interview with His Majesty. By letter, the King declined, directing Paulet to meet instead with his representative, Dr. Gerrit P. Judd. Paulet’s reply letter of 17 February 1843 promised “immediate coercive steps to obtain” satisfaction of the demands accompanying his note. Presumably to dissuade the Americans from involving themselves on the Hawaiian side, Paulet simultaneously sent a menacing note to the captain of the U.S.S. Boston.

His Majesty’s response to the threatened violence in the face of overwhelming force was to both protest against it and bend to it. The result was that on 25 February, His Majesty gave the following speech:

. . . Hear ye! I make known to you that I am in great perplexity by reason of difficulties into which I have been brought without cause; therefore, I have given away the life of our land, hear ye! But my rule over you, my people, and your privileges will continue, for I have hope that the life of the land will be restored when my conduct is justified.⁷

Then an act of “Provisional Cession” of his Kingdom to Great Britain was read and the King left Honolulu.

In the meantime, Dr. Judd had clandestinely secured the commitment of a J.F.B. Marshall⁸ to be His Majesty's Special Envoy and carry dispatches detailing the events leading up to the invasion and occupation to the governments of the United States, Great Britain and France. Marshall was to travel under “commercial cover” on the same vessel as

transfer of the islands to the British crown; . . . in promptly raising thunder every time an opportunity offered, and in making himself prominently disagreeable and a shining nuisance at all times,” available at <http://www.twainquotes.com/18660906u.html>. (accessed 22 June 2004).

⁶ Alexander Simpson was a young relative of Sir George Simpson. Daws, *supra* note 1, 113.

⁷ “Proclamation of King Kamehameha III, 25 February 1843,” Executive Documents, *supra* note 3, 51.

⁸ See J.F.B. Marshall, “An Unpublished Chapter of Hawaiian History,” *Harper’s Monthly*, Sept. 1883, 511-521. Many years later, in 1881, as Treasurer of the Hampton Institute Marshall loaned Booker T. Washington the \$250 that served as the down payment for purchase of the abandoned plantation, which became the Tuskegee Normal and Industrial Institute. See, Booker T. Washington, *Up From Slavery*, (Washington, D.C.: The Riverside Press, 1900), 35.

the acting English consul Simpson. On 11 March 1843, both left Honolulu on a ship, under British command, bound for San Blas, Mexico, that arrived there on 10 April. The next day the British Vice Consul, a Mr. Barron, received them both meeting first with Simpson. Deceit comes naturally to both the self-righteous and the greedy -- to the former it has the sanction of a higher power; for the latter, earthly justifications suffice. Simpson relayed a deceitful version of the cession of the Hawaiian Islands representing it as "voluntary."

Marshall in his private session with the Vice Consul presented his credentials and His Majesty's protest containing the truthful narrative of the events. Barron forwarded both versions to Rear Admiral Thomas, Commander in Chief of Her Britannic Majesty's Ships and Vessels in the Pacific, Lord Paulet's commander, who was stationed in Valparaiso, Chile. In the 1840's, six weeks was a typical sailing time from San Blas to Valparaiso, and likewise from Valparaiso to Honolulu.⁹ On 26 July 1843, Admiral Thomas arrived at Honolulu on H.B.M.S. Dublin from Valparaiso. He immediately sought an interview with His Majesty during which he conveyed an apology and the restoration of Hawaiian sovereignty on 31 July 1843. It is here that the parallel between the British invasion and occupation and the United States Government's invasion and occupation ends: the British apologized, deoccupied the nation, restored sovereignty and shortly thereafter sailed away.

On that day of rejoicing, still remembered in Hawai`i, a cheering crowd gathered on the plains east of Honolulu, waving and shouting as the King appeared with his royal guards. Cannons were fired in Puowaina, Honolulu Fort and the harbor. A ten-day celebration of the Restoration followed, and there were annual observations for several years thereafter. Some years later, at the request of His Majesty, Admiral Thomas sent his portrait to Hawaii where it still hangs in `Iolani Palace. Thomas Square in Honolulu was named for him.

In 1893, one month short of fifty years later, the United States Government invaded Honolulu and installed a puppet government.¹⁰ Five years later, on 13 August 1898, Hawaii was militarily occupied and forcibly annexed to the United States as a territory. The United States Government made it a state in 1959.

⁹ For example, in 1849, HMS Amphitrite left Valparaiso on 8 April and arrived 24 May in Honolulu and left Hilo on 4 August and arrived Valparaiso 25 September. Available at http://home.wxs.nl/~pdavis/Log_Amphitrite.htm (accessed 9 June 2004).

¹⁰ President Cleveland, in his message to the U.S. Congress of 18 December 1893 detailing the investigation of the invasion, occupation and installation of a puppet government summarized as follows: "If a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparations." "President's Cleveland's Message," Executive Documents, *supra* note 3, 457. Reprinted at *Hawaiian Journal of Law & Politics* 1 (Summer, 2004): 208.

In the afternoon of 31 July 1843, His Majesty, during the Restoration and after a solemn procession with his chiefs to Kawaiaha`o Church, spoke the words that were to become the motto of the Hawaiian Kingdom and later the United States' Federal State of Hawai`i: "Ua mau ke ea o ka `aina i ka pono." Some translate the phrase as "Sovereignty has been preserved because it is righteous." The United States' Federal State of Hawai`i translates it: "The life of the land is perpetuated in righteousness." Others believe that it means: "The sovereignty of the land is maintained by righteous behavior." There is a more historical understanding however. With the memory of the 1843 British occupation still fresh, Chief Justice William Lee, the first Chief Justice of the Hawaiian Kingdom Supreme Court, referred to it four years later as a guidepost for jurisprudence in the Kingdom's courts and translated it in a slightly, but tellingly different way, noting:

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."¹¹ (emphasis added)

On 31 July 1986, a gathering, appropriately enough at Thomas Square, Ka La Ho`iho`i Ea (Sovereignty Restoration Day) was reinstated as part of the Hawaiian Renaissance.

We, of the Hawaiian Society of Law and Politics, are issuing Volume 1 of the Hawaiian Journal of Law & Politics on 31 July 2004—one hundred and sixty one years to the day of the Restoration of Sovereignty to the Hawaiian Kingdom and the end of the British Occupation in an effort to restore discourse about the Hawaiian Kingdom to its proper place in the area of public international law since the Hawaiian Kingdom, as an independent state recognized under international law, remains in the family of nations, even if it is presently occupied. We invite and encourage our readers to react to our position and proposition that the legal order of the Kingdom existed, and, never having been lawfully extinguished, exists still.

"Quondam regnum, regnum adhuc."

Stephen Laudig,
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¹¹ *Shillaber v. Waldo*, 2 Hawai`i Reports 31, 32 (1847).