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Reprint: Testimony of Edward Halealoha Ayau before the Senate Select Committee on Indian Affairs: Subject: The Restoration of Hawaiian Sovereignty and Land

Source: *American Indian Law Review*, 1988/1989, Vol. 14, No. 2 (1988/1989), pp. 353-357

Published by: University of Oklahoma College of Law

Stable URL: <https://www.jstor.org/stable/20068295>

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**REPRINT: TESTIMONY OF EDWARD HALEALOHA AYAU  
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN  
AFFAIRS: SUBJECT: THE RESTORATION OF HAWAIIAN  
SOVEREIGNTY AND LAND\***

*I. Introduction*

Mr. Chairman, Governor Waihe'e, Kia 'Aina Mili Trask, Ali'i Nui Kalokuokamaile Elua, Trustees of the Office of Hawaiian Affairs, Auntie Peggy Ha'o Ross, *ka po'e Hawai'i, aloha kakou*. My name is Edward Halealoha Ayau. I am a Hawaiian from Moloka'i, land of Hina and Lanikaula. I am a third year law student and co-president of the Native American Law Students at the University of Colorado. I am also a law clerk at the Native American Rights Fund.

As a Hawaiian I am deeply committed to two very mutual principles: first, the restoration of sovereignty for Hawaiians, and second, *aloha 'aina*, love for this land. As we all know, both principles go hand in hand, as the Hawaiian embodies the timeless beauty of these islands. Regretfully, that very beauty was scarred by the events of 1893, whereby the Hawaiian sovereign government was wrongfully overthrown, and later in 1894 when the U.S. Foreign Relations Committee wrongfully issued their report condoning the actions of Minister Stevens and other extremists who aided in the overthrow.

It is said that a structure built on a faulty foundation will ultimately crumble. American authority in Hawai'i was wrongfully established, against the very will of Hawai'i's reigning sovereign. We all know this, that is why we are here. Hawaiians have since become consumed by a foreign power. As Malo put it, "big fish from the dark ocean will eat up small fish in the shallows." Principles of justice dictate that an equitable solution be found where an injustice exists, for surely a wrong is not made right simply due to the passage of time. It is in this breath that I wish to share my *mana'o* on the topic, "restoration of Hawaiian sovereignty and land." I cannot begin to emphasize the importance of the term "restoration," for as Kauikeaouli, Lili'uokalani, and all Hawaiians who love this land believed, *'ea*, the right to be self-determined can never be permanently taken away; its very existence

\* August 26, 1988, Keoni Auditorium, East West Center, University of Hawai'i, Honolulu, Hawai'i.

depended upon, and is provided by, the belief of those who held this ideal.

## II. *The 1843 Restoration of Hawaiian Sovereign Authority*

Restoration of Hawaiian sovereign authority and land has happened once already. On February 10, 1843, Kamehameha III yielded the Kingdom of Hawai'i under protest to George Paulet, captain of a British man-o-war sent by Richard Thomas, commander of the British Pacific Fleet to guard British interests in Hawai'i. Kauikeaouli appealed to Queen Victoria.

On July 31, 1843, in a special ceremony, the 'ea, or sovereignty of Hawai'i was restored when Admiral Thomas declared the imposed cession of February 1843 to be "unacceptable," and Kamehameha III to be the "independent sovereign." Kamehameha III then led a parade to Kawaiha'o Church where he uttered the immortal words: "Ua mau ke 'ea o ka 'aina i ka pono," the life of the land is perpetuated in righteousness. News arrived from the U.S. of the formal recognition of the independence of Hawai'i by England and France. Thereafter, July 31 was declared as Ka La Ho'ihoni 'Ea, Restoration Day.

However, fifty years later Lili'uokalani was dethroned by U.S. citizens residing in the Hawaiian Kingdom, upon the urging of a U.S. Minister and use of the U.S. military. Like Kauikeaouli, Lili'uokalani also yielded under protest. Although England, in 1843, recognized its violation of international law and the rights of indigenous people, the U.S. has yet to formally acknowledge its 1893 "act of war," as President Cleveland called it, and to restore Hawaiian sovereign authority and land.

Since 1893, Hawaiians and non-Hawaiians have not fully embraced the notion that the life of the land was embodied in the concept of 'ea, sovereignty, and was maintained through pono, rightness in its purest sense. It is in light of this rightness that England restored and formally recognized the 'ea, and ku'oko'a, independence of Ka Lahui Hawai'i. England took five short months to realize the truth. In 1983 the Majority Report of the Native Hawaiians Study Commission ignored the truth. But, the truth speaks for itself: to know the truth is to finally become free.

## III. *The Current Existence of Hawaiian Sovereignty*

One argument to be made for restoration of Hawaiian sovereignty and land is that the Hawaiian government had entered into numerous treaties and conventions with other nations, in-

cluding Belgium, Denmark, France, the German Empire, England, Italy, Japan, The Netherlands, New South Wales, Portugal, Russia, Samoa, Spain, Sweden, Norway, Tahiti, and the United States. (*See, Treaties and Conventions Concluded Between the Hawaiian Kingdom and Other Powers Since 1825*). In fact, the monarchy signed at least five treaties with the United States. (*See, Treaties and Other International Agreements of the United States of America*, Vol. 8). Implicitly recognized is the sovereign status of the Hawaiian government, since treaties are agreements between two sovereign entities. Although the U.S. has since assumed dominion over Ka Lahui Hawai'i through an illegal overthrow, nonetheless, Chief Justice John Marshall in the early U.S. Supreme Court decisions *Cherokee Nation v. Georgia*, *Worcester v. Georgia*, and *Johnson v. McIntosh*, made it clear that the United States still recognized the sovereign status of native governments it had defeated in battle, as well as those governments which it assumed dominion over by peaceful means; subject of course to the plenary power of Congress. Hence, today you have the existence of the Navajo, Hopi, and Cherokee nations, to name but a few.

Restoration and Hawaiian sovereign authority is by no means the answer to all the social, political, and economic problems that plague Hawaiians. But it is the beginning to something we Hawaiians have known all along—that as the first inhabitants of these islands, united under a single monarchy, we exhibited the attributes of nationhood. With an autonomous governmental structure independent of state influence, Hawaiians will finally be able to exact the level of control over their affairs that the Department of Hawaiian Home Lands and the Office of Hawaiian Affairs never and will never have; conflict of interest questions will always arise when a state authority, with responsibilities to all its citizens, has jurisdiction and the power of the purse over native people.

The time has come for the United States to fully embrace 'ea, the birthright of every Hawaiian. This is not a radical doctrine but rather a simple, legal recognition of the existence of, and honest desire for, local self-determination that is currently recognized in the Navajo Nation, Kootenay Reserve in Canada, and thousands of other native communities around the world.

Restoration of Hawaiian sovereign authority and land will place responsibility where it ought to be—with Hawaiians. Only Hawaiians can understand the problems that plague Hawaiians and Hawaiians must be the ones to solve them. Restoration of self-determination is but the first step.

There have been countless examples of the exercise of self-

determination by local Hawaiians. Yet due to lack of formal recognition, reaction by state and local authorities was swift and often violent. For example, Hawaiians protested the eviction of George Santos and other tenants of Kalam Valley by the Bishop Estate and were arrested; residents of Hale Mohalu were evicted; Hawaiians protested the lack of rent payment for Hilo Airport located on 5(f) lands; eviction of residents of Sand Island; eviction of Hawaiians from Makua Valley; the deaths of George Helm and Kimo Mitchell protesting the bombing of Kaho'olawe; the eviction of the Brown 'Ohana from Waimea Valley; the arrest and eviction of Hawaiians from Waimanalo Beach; and recently, the beating and jailing of the Kaawa 'Ohana. Whether these Hawaiians knew it or not, they were making the strongest sovereign claim, because the authority upon which these events were based is Hawaiian sovereignty.

If the sovereignty of Hawaiians had never been stolen, these regretful events would have never occurred. But they did, and we Hawaiians live with the responsibility of never allowing such events to happen again. I asked Charles Wilkinson what it would take to unite Hawaiians and he responded with two simple words, "a crisis." In view of the countless events previously described, Hawaiians already live in constant crisis.

Hawaiian sovereignty is also exercised day to day in more intangible ways. In Ka'u, Hawaiians fish for *'opelu*; at Makua, Hawaiians pick *'opihi*; at Aha'ino, Hanapi kane carves milo in the images of dreams, while Hanapi wahine picks *limu* for the evening meal; at Ke'anae, Hawaiians *hukio kalo* and work the *lo'i*; and when the Makali'i rise, Protect Kaho'olawe 'Ohana members begin preparation for the upcoming *makahiki* season. Each of those personal and community acts is a profound expression of self-determination, of cultural individuality.

Broken down, restoration of Hawaiian sovereign authority and lands really stands for meaningful choices. The right to choose to remain a part of the larger society or to pursue a grassroots-lifestyle is a Hawaiian's by birth. It is arrogant to think that only skills that allow a Hawaiian to hold a steady job are meritorious. Are we to look down upon those Hawaiians who live a subsistence lifestyle simply because their skills are not marketable? Certainly not. The skills they possess are used to feed their families. Basically, this is what it is all about.

*Conclusion*

Lili'uokalani left us her legacy and present-day Hawaiian leaders have inherited the historic responsibility of looking after the needs of the Hawaiian people. The sovereignty Lili'uokalani yielded under protest must be fully restored; only then will her spirit be put to rest and the life of the land again be perpetuated in righteousness. The Hawaiian Islands will again be beautiful. *Ua mau ke 'ea o ka 'aina i ka pono.*