

‘ĀINA UNDER THE INFLUENCE: THE CRIMINALIZATION OF ALCOHOL IN 19TH-CENTURY HAWAI‘I

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The adoption of Western law in Hawai‘i extended novel sets of regulation and control on the colonized Native Hawaiians. A primary focus of the law was the control of drinking and the native intoxicant ‘awa (kava). Using perspectives that emphasize the governing of populations through drinking and drug criminalization, this case study shows how overlapping programs of regulation and prohibition grew out of a racialized discourse about the identity of the colonized and the colonizer. This article contributes to the “governmentality” literature through a sociological analysis of the complexities of regulation and criminalization and their relevance to racial disparities in Hawai‘i. (In this reprinted version, an Afterword provides the author’s reflections on the criminalization of Native Hawaiians in more recent times.)

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The regulation and prohibition of drink and other intoxicating compounds share a common significance and origin in the governance of populations. Both moves spring from impulses to indirectly govern populations rather than targeting individuals who are having problems controlling their consumption (see Valverde, 1998). However, choices to regulate or prohibit and thereby criminalize the use of intoxicants are not straightforward results of the perceived dangerousness of these chemical substances, but rather are products of political conflict, moral debate, and processes of social distinction. Historical examinations of law and law enforcement show that moves to regulate substance use are generally hard-fought efforts to demarcate the moral boundaries of groups in conflict, where the interests of social elites trump those of nonelites.

This process can be theorized more by looking at colonial situations in which multiple interest groups and cultures come into conflict. In the colonial encounter, moves to regulate and criminalize behaviors are shaped largely by discourses of race. This article will explore how various modes of regulation were used in 19th-century colonial Hawai‘i¹ to govern populations. I will argue that both the move to criminalize drink and that of regulating it arose from discourses that essentialized both Whites and Native Hawaiians. While the law declared Whites were capable of adhering to regulations controlling alcohol use, it criminalized aboriginal drinking and furthered the erosion of Native Hawaiian autonomy in their Kingdom and on their ‘āina.²

Regulation creates a limited temporal or social space for the consumption or use of sumptuary products such as alcohol or drugs, whereas criminalization of intoxicating compounds makes the use or mere possession of them unlawful. Criminalization may also pertain to states of body and mind, such as drunkenness or intoxication. Although discourses of health and science inform the regulation of drink and drugs in contemporary societies, this is a very recent rationale. During the 19th century and well into the next, authorities explicitly drew upon knowledges about race, class, and gender to govern populations through consumption of intoxicating products.

INTOXICANTS: POWER, COLONIALISM, AND RACE

Alcoholic beverages, psychoactive substances, and even milder stimulants have played important supporting roles in both class formation and capitalist expansion across the globe. Friedrich Engels famously recognized the role that drink played in the subordination of the English working class (Singer, 1986). Similarly, Mintz (1985) illustrated the importance of gin, along with stimulants such as tea and sugar, in motivating reluctant workers during the industrialization of Britain. A number of writers have pointed to the prominent role that alcohol and drug regulation played in the subordination of indigenous groups under colonial and postcolonial rule (Dumett, 1974; Sargent, 1979; Van Onselen, 1976). Other authors offered accounts of alcohol and drug trafficking as central features of alternative economies (Bourgois, 1995; Crump, 1987). These dynamics of social control, class formation, and colonial relations in modernity have sometimes relied on the promotion of alcohol or drugs, but more often have been deployed by regulation of consumers through the products they consume.

Power is manifested in the discourse that accompanies the formation of rules and regulations governing products with psychoactive properties. Recent analysts of American drug policy have pointed to the racist origins of the legal regulation and prohibition of certain intoxicants. The criminalization of opium, marijuana, and cocaine is rooted in a broader discourse of racial and cultural conflicts. Becker (1963) noted the connection between racial fears about Mexicans and the eventual criminalization of marijuana. Similarly, Hickman (2000) showed how anti-Chinese sentiment dominated the discourse about addiction in late 19th-century United States, paving the way for the eventual criminalization of opium. Up to the present day, it is clear that the regulation of intoxicants commonly operates to extend political, economic, and legal control over social groups whether racializing discourses are explicit or not.

PERSPECTIVES ON REGULATION AND PROHIBITION

Whereas many methods of controlling the use of alcohol or drugs directly target the person, this is only one mode of governance, as Valverde (1998) noted. Governance also takes place in less direct ways through licensing, whereby

drinkers (or consumers of drugs) are controlled through constraints on where consumption takes place, times of consumption, what types of beverages might be consumed, and which categories of people may consume them. Prohibition policies are particularly associated with the expansion of the American West and incursions into Native American territories. In 1802, Congress passed the first federal laws prohibiting the sale or distribution of alcohol to American Indians. Colonial authorities implemented similar policies but little note was taken of their lack of success (Unrau, 1994).

These racial prohibition policies were inherently steeped in contradictions (Unrau, 1996). This became far more problematic as growing numbers of Whites moved West and more Native people were moved into the regions known as Indian Country. Both state and federal laws set up programs that prohibited selling liquor to American Indians, but definitional problems mounted, confusing the prohibition project. These issues varied from what constitutes “Indian Country” and, later in the 19th century, how Indians were to be defined (see also Valverde, 1998, for the Canadian case).

These policies were often motivated by concerns over the alarming dying off of native populations as well as fears of liquor-inspired disorder. In common with other colonized aboriginal peoples, Native Americans suffered from a host of problems related to the continual erosion of their culture and subsistence resources, their numbers further devastated by epidemics of diseases. But Whites tended to reify the problems of Native Americans to issues of drink and drunkenness, essentializing them as childlike and incapable of self-control when it came to consuming liquor. This knowledge of the nature of the native came to constitute a series of legal interventions into the situation of alcohol use by these aboriginal peoples. Federal authorities developed policies intended to segregate Whites, who supplied the liquor and modeled poor drinking comportment, from Native American groups. Colonists, explorers, traders, and settlers linked the natives’ serious troubles to a supposed vulnerability to the effects of alcohol. The United States government adopted a paternalistic approach to this problem by prohibition laws enacted early in the 19th century. The 19th-century policy known as “Indian Removals” attempted to push these indigenous peoples into spaces where their drinking could be governed both by prohibition of alcohol and by the exclusion of Whites who supplied liquor (Unrau, 1996).

Colonial strategies to control native drinking varied, depending on the national origin of the imperialists, their own ideologies about alcohol and the types of intoxicating products, and related beliefs of the colonized. In regions where alcohol was unknown, as in most Pacific islands, the image of the aboriginal as an innocent could be sustained in a way that was not possible in regions such as Africa where the colonized were viewed less paternalistically (Valverde, 1998). Across North America and the islands of the Pacific, selling alcohol to native peoples was prohibited, in some cases well into the late 20th century. Colonial authorities enacted race-specific liquor prohibitions and disciplined those Whites who sold or distributed liquor to aboriginals. The reach of law was often limited, however, with the enforcement of prohibitions being notoriously unsuccessful. In some regions, enforcement did not penetrate areas that were primarily under aboriginal control. Prohibiting the distribution and sales of alcoholic beverages by Whites could be marginally more effective than attempts to enforce prohibition in these often sparsely populated aboriginal territories.

In regions where dual legal systems arose, criminalization of native or introduced intoxicants could be somewhat muted by lack of direct mechanisms of enforcement. In other regions, a unitary legal system developed which, while allowing direct rule of native and colonizer alike, proved less tolerant of local practices that dual systems sometimes accommodated (Merry, 2000). The 19th-century Kingdom of Hawai'i, under the tutelage of American missionaries and business interests, developed a unitary system of law. Legal developments in Hawai'i provide a striking example of a unitary system of legal governance that produced a parallel legal code, one for Whites whose drinking could be regulated through licensing and permits and another for native subjects of the Kingdom whose drinking was criminalized.

Some accounts of the role played by the regulation of alcohol and drugs have emphasized the more determinist aspects of political economy that shape class formation and the dynamics of colonialism. As already noted, Engels provided an early and potent example of the role alcohol played in the subordination of the English working class. However, the Hawaiian case does not support the use of the same kind of perspective. Although alcohol was important to the economy of the Kingdom of Hawai'i, it is the adoption of Western rationalities and legal forms that are emphasized here as being important to the undermining of Hawaiian sovereignty. Alcoholic beverages were high-profit commodities in long-distance trade, and therefore were important in economic relations between Hawai'i and the West. However, the ideological significance of drinking was a much more salient

factor in the exercise of social control by Western, and particularly, American colonizers. But Hawai'i provides a contrast with other cases of colonial domination in that the indigenous political authority, namely the Crown, adopted Western law as its own. Faced with the duress of waves of disease, political threats, and the attractions of Western commerce, governing native elites adopted law as a means of maintaining political autonomy in an imperialist world. The Kingdom eventually adopted the very same prohibition policies enacted to control the drinking of Native Americans. The following discussion of the rationalities governing the use of intoxicants in both Hawaiian and Western worldviews sheds light on these developments.

INTOXICATION IN CONTEXT

Prior to the coming of Westerners, alcohol was unknown in Hawai'i. As with many other Polynesian groups, a mild intoxicant known variously as 'awa or kava was commonly used as a ceremonial offering as well as in traditional medicines (Lebot, Merlin, & Lindstrom, 1992). The beverage, made from the roots of *Piper methysticum*, was one of the foremost goods of traditional Hawaiian society and was ritually associated with high rank and divinity. 'Awa use was regulated by a belief complex that associated intoxication with the realm of the divine. Its consumption in precontact Hawai'i was primarily religious and ceremonially associated with sacrificial offerings and petitions to the gods. The distinction between the sacred and the secular that characterizes modern Western life was absent in the Hawaiian cosmology, where all aspects of lived experience were related to attributes of various gods (Valeri, 1985). In Hawaiian ritual life, 'awa was the essential element. The drink was a channel to the divine; if only one sacrificial offering was to be made, "it must be the 'awa" (Titcomb, 1948, p. 139).

'Awa use reflected and symbolically reinforced the traditional status hierarchies of Hawaiian society. In ceremonies, the last and most potent cup of the 'awa infusion was reserved for the highest-ranking chiefs. In a social system in which the transfer of goods was organized around social privilege, the chiefs commanded the highest of these goods. The use of 'awa, as a highly valued and divine good, was the prerogative of chiefs. Its use by others was highly restricted, although commoners might have access to inferior types (Keaulana & Whitney, 1990;

Titcomb, 1948). Unquestionably, the best of everything was reserved for use by the chiefs who demonstrated their power through the accumulation and display of goods such as woven mats and tapa cloth (Linnekin, 1990). The status rivalries among Hawaiian chiefs were exacerbated later when Western goods were introduced (Kame'eleihiwa, 1992; Sahlins, 1985). And, in fact, alcoholic beverages were eventually incorporated into these hierarchical systems of accumulation and came into common use first among the native elite.

Intoxication, as constructed in the Hawaiian moral universe, positioned humans in communication with the divine: "To receive the most potent cup means to become the most intoxicated and therefore the closest of all to the gods, for drunkenness is the experience of self-transcendence" (Valeri, 1985, p. 365, n. 23). This version of intoxication was at odds with notions of drunkenness held by the various players who arrived in Hawai'i in the late 18th and 19th centuries.

From the beginning, liquor made a profound impression on the Hawaiian elites for reasons that went beyond its psychotropic effects. By virtue of its "Westernness" and its value in the accumulation of goods and prestige, liquor shared the same attraction as other Western commodities. Its ideological attraction for these elites may also have been alcohol's symbolic association with the native intoxicant 'awa with all of its sacred and transcendent connotations. Thus the intoxicant was incorporated into the same system of Hawaiian cultural logic (Sahlins, 1985) that defined 'awa as a prerogative of rank and a channel to the divine.

MISSIONARY ARRIVALS AND POLITICAL TENSIONS

The early decades of the 19th century were a time of political turbulence in the Kingdom of Hawai'i. During this period nearly every Hawaiian social institution began to feel the impact of contact with the alien West. Foreigners on voyages of commerce arrived in numbers in Hawaiian ports. Beach communities, odd assortments of former sailors, convicts, and other marginalized Whites grew up on Hawai'i's shores. This period saw the arrival of missionaries from the United States in 1820, coincidentally just after the abolishment of the kapu system (the system of traditional law) and the open warfare that quashed the old religion.

The Protestant missionary efforts to Christianize the islands during the 1820s both took advantage of, and exacerbated, conflicts in the Hawaiian Kingdom (Kame‘eleihiwa, 1992). During the early part of the decade, the Hawaiian government was led by Kamehameha II, heir to the first ruler to unify the Islands. Ka‘ahumanu, a wife of Kamehameha I, served as Regent over the young king and, after 1825, to his successor. Missionaries gained increasing influence with the Regent, standing with her against a group of chiefs who desired a return to the former systems of chiefly authority (Linnekin, 1990). Individual chiefs who were at least nominally Christian began to regulate affairs in their own districts by adopting Western-style laws, inspired by the biblical commandments (Kuykendall, 1938; Merry, 2000).

Political tensions among Hawaiian chiefs increased in part because of missionary concerns over native drinking and in part because of problems with foreigners’ drinking. These concerns were tied to the larger issue of whether the native government could manage public disorder that might interfere with the conduct of commerce. In other words, was Hawai‘i to be a place where the commercial practices of foreigners could be carried on in an environment of security? Was Hawai‘i to be a nation of law? Of course, that question could only be answered in the affirmative if the laws were recognizably Western.

RACIAL PATERNALISM AND THE CONTROL OF DRINKING

What Merry (2000, pp. 67–68) referred to as the “first transition” to religious laws took place beginning in the 1820s, soon after the missionary arrivals. These early laws, in the form of oral pronouncements, were intended to consolidate political authority within the Kingdom as well as to establish new norms. Proclamations went forth beginning in 1823 requiring the observance of the Sabbath, while forbidding murder, theft, and fighting. Political tensions in the Kingdom ratcheted upward during the 1820s, between the old-order chiefs who wanted to maintain their traditional authority and those who aligned themselves with the increasingly centralized government. Whether by convergent events or design, the Regent Queen Ka‘ahumanu leaned on missionaries to consolidate her political authority, a process that found legitimation in Christian notions of rectitude and law (Linnekin, 1990). Just after the death of Kamehameha II in 1825 and the succession

of Kamehameha III, the Regent announced that chiefs across the Kingdom ought to adopt a series of Western-style laws based on the Ten Commandments, including a law forbidding drunkenness (Kuykendall, 1938; Merry, 2000).

The rhetoric about drinking patterns of Hawaiians abounds in accounts by missionaries and other foreigners. Beginning with Liholiho, the young Kamehameha II who died in 1824, Hawaiian drunkenness emerged as a central theme in the colonizers' narrative. James J. Jarves, editor of *The Polynesian*, wrote in 1840 that the only thing that could be said of Liholiho was "that he had been drunk all the time." Nicknames given to later kings such as "Whiskey Bill" (King William Lunalilo r. 1873–1874) and "The Merry Monarch" (King David Kalākaua r. 1874–1891) continued to impugn the Hawaiian character. The critique of Hawaiian alcohol use was part of a broader colonial discourse that suggested that Hawaiians were irresponsible and incapable of governance of the self or, for that matter, political self-governance.

Nowhere are the Hawaiians depicted as more deviant than in the writings of missionary Hiram Bingham, who arrived in Hawai'i in 1820. Confronting the issue of liquor in the Hawaiian Kingdom was only part of the larger mission of uplifting the Hawaiian character. Bingham believed the heathen must be reshaped so that a Kingdom of God might be instituted in Hawai'i. In the third year of the mission, Bingham described the missionary project's goals for improving the natives' inferior culture:

To save their souls was the main object, but that object was not to be singly and constantly pressed on the attention of such a people. Their uncouth and disgusting manners were to be corrected, their modes of dress and living to be improved, their grossness, destitution, and wretchedness, if possible, removed; and taste, refinement, and comfort substituted. (Bingham, 1847/1969, p. 169)

The legitimating narrative of the missionary project was grounded in the condemnation of Hawaiian licentiousness, idolatry, and intemperance. Individual Hawaiians were condemned frequently in missionary accounts. Boki, Governor of O'ahu, was, according to Bingham, "at times like one stupefied with alcohol,

tobacco, and ‘awa” (1847/1969, p. 110). Bingham and other missionaries believed that intoxication posed a special and unique problem among the native people. Again, the young king Liholiho was the focus of condemnation:

The demon of intemperance, so terrible in heathen nations, still held a cruel sway, and threatened ruin to many, but to none, perhaps, more than the monarch of the isles. So disgusting and abominable the doings of the destroyer, even in the family of the king, and so determined were a class of human agents (who knew better) to encourage and confirm the king in his drinking habits, that the missionaries, anxious for him and those who hasted [*sic*] with him in this way to ruin, could have taken their lives in their hands to lay siege to this stronghold of Satan. (Bingham, 1847/1969, p. 218)

Hawaiians were considered to be especially vulnerable to the effects of alcohol because of their natural inferiority compared with the civilized peoples of the West: “Intemperance among men without intelligence, and destitute of attachment to the charities and privileges of well-regulated society is as stubborn a foe as any species of idolatry” (Bingham, 1847/1969, p. 94).

Drinking by Native Hawaiians was constructed as a problem, but not in the same way that drinking by lower-class Whites in the United States was a problem. Liquor was seen as a threat to the social order and to the rectitude of the community, especially in the hands of inferior men. But, in the missionary’s rhetoric, Native Hawaiians held a similar ideological position to children and needed protection. Thus the Hawai‘i situation presents interesting parallels with the American temperance movement, but is further complicated by cultural dynamics and the strains of colonial relations.

THE SHORE-LEAVE ECONOMY: DANGEROUS DRINKERS

The missionary project was painfully challenged by the presence of foreign sailors and commercial actors in the Kingdom. Missionaries like Bingham feared that the licentious behavior and worldly attitudes of these other Whites would present an overwhelming temptation to the native populace. Moreover, other Whites represented a threat to the influence that missionaries had gained with the rulers of the Kingdom. Jarves blames Botany Bay convicts who escaped to O'ahu for making one of the first stills in Hawai'i and for introducing the technology of distillation to the Hawaiians sometime between 1800 and 1805. He reported that Kamehameha I put an end to the group's disorder by placing a kapu on the still and warning the Whites to behave. Jarves (1843) noted that "it was from this class [the white convicts] that the natives received the greatest injury" (p. 195). Dibble, another missionary, noted the evil influence of such foreigners in Hawai'i and the additional problems their presence caused the missionary project:

Then, ignorance, degradation and crime among the people, and evils too introduced by dissipated foreigners, stood forth in all their prominence which the missionaries were called to contend, are deserving of more notice than I shall be able in this limited work to bestow upon them. (Dibble, 1843/1909, p. 168)

During the period between 1820 and 1860, the Hawaiian economy became more and more oriented to the demands of external markets, especially American whaling ships. These vessels, the first arriving in 1819, provided a "floating market" for the produce of the rural areas of the islands (Kuykendall, 1938, p. 310). This traffic intensified the economic aspect of Hawai'i's relationship with the United States and Europe, making the Kingdom's economy increasingly more dependent on outside markets (Kent, 1983). In Hawai'i, whale ship crews, as well as sailors from merchant vessels, provided the clientele for grog shops, legal and illegal, and for native women engaged in prostitution in the ports. Missionaries raged against these activities, which were the essentials of the shore-leave economy. These foreigners were blamed by the missionaries for encouraging debauchery among the Hawaiians, with missionaries noting that the Kingdom "was fast becoming...a nation of confirmed drunkards" (Dibble, 1843/1909, p. 125) thanks to the example of these dissipated foreigners. Liquor became symbolic of the evils associated with other foreigners: lower-class male violence, ignorance, and licentiousness.

INTERNATIONAL PRESSURES: AGENTS OF COMMERCE

By the late 1830s, the missionary faction and the Hawaiian Crown had concerns beyond the drunken rabble in the streets. Pressures from without the Kingdom began to produce internal tensions over the liquor policy. The French, in 1839, angry that the Protestant coterie had banished several Catholic priests, sent a gunboat to Honolulu. In no uncertain terms, the French commander informed the Hawaiian government that no further insults to its citizens would be tolerated. The Crown was forced to submit to a formal treaty guaranteeing protections for French citizens and specifying that no French products, particularly wine and brandy, could be prohibited from entering the Kingdom. Temperance forces were in tumult over the treaty, with missionary Dibble complaining:

No more powerful argument need be brought against the clause of the treaty in question, than the contrast between the year before and the year after it went into effect. The year previous, the streets were quiet; families were undisturbed by shouts and riots of those who indulged in intoxicating drinks. Nothing occurred to offend the eye of the most fastidious...Behold the reverse! The treaty signed, and scores of grogeries start into existence at once. Every part of the town is filled with them. The government, fearful of doing anything which could possibly be construed even into an infraction of the spirit of the treaty, are fearful of imposing the slightest regulation to arrest the disorder. And thus it has gone on. (1843/1909, pp. 398–399)

Nevertheless, the legal regulation of drink began to come into focus as a means of controlling consumption, replacing outright prohibition. Other nations would insist on the same trade terms as France (Kuykendall, 1938), and imported liquor proliferated in the towns. As the following section will show, the criminalization of Native Hawaiian drinking developed in the face of White demands for the right to have liquor.

PROHIBITION AND LICENSING

The regulation of alcohol has long been a locus for governance strategies aimed at the medical and moral regulation of populations (Valverde, 1998). Indeed, as Valverde argued, most of the modern control of drinking has been exerted through bureaucratic regulations and rules about the sale and consumption of alcohol rather than through laws that criminalize drinking behavior. The governance of drink in the Kingdom of Hawai'i began as a general prohibition against the consumption, sale, and production of all intoxicating substances. Regulations governing the use and sale of alcoholic beverages were a product of tensions between the shore-leave economy's commercial interests and the moral concerns of the prohibitionists.

In 1833, the first "Laws for the Licensing and Regulation of Public Houses" were passed. This was a compromise between the merchants who demanded to sell liquor and others in the community who feared social disorder caused by drinking. The king promulgated a revised set of laws in 1835 that dealt with a variety of matters: murder and other forms of homicide, theft, unlawful sexual behavior, fraud, and drunkenness (Kuykendall, 1938). The penalties involved in the last offense category were not for intoxication per se but sought to control the destructive behaviors attributed to drinking (Tokishi, 1988). Law was a means of protecting Hawaiians from the immoral influences of the crews of ships and of controlling the chiefs who still participated in it. Regent Kina'u released an edict in 1837 that threatened to impoverish any chiefs who gave the king liquor and prohibited drinking by natives (*Journal of Stephen Reynolds*, quoted in Tokishi, 1988). The missionaries were winning the struggle to keep liquor out of the hands of the natives, but the establishment of liquor licensing in 1838 permitted Whites access to it. Fines were established for selling liquor without a license, and drunkenness was prohibited in the licensed establishments.

Under the tutelage of missionaries and other foreigners, the Kingdom of Hawai'i adopted a written code of laws compiled and published in 1842. This law brought together existing edicts that permitted the licensed selling of spirits in a few retailing establishments but prohibited the manufacture and distribution of alcohol outside of these few licensed sites. The central focus of laws pertaining to liquor was on drunken behavior rather than mere use. Chapter XXXIX announced, "We prohibit drunkenness," and described the type of behavior that the community found offensive, that is, the individual who drinks liquor and "goes through the streets riotously" (Kingdom of Hawai'i, 1842, pp. 95–96). The penalty was a

hefty \$6, in money or goods. Those who could not pay the fine were ordered to be “whipped twenty four lashes, or be condemned to hard labor one month, or be imprisoned one month” (Kingdom of Hawai‘i, 1842, pp. 95–96).³ Chapter XL, dated 1838, permitted licenses for the sale of liquor, but its manufacture in the Kingdom was prohibited. Indeed, the text addressed the problem of converting scarce food supplies to liquor. These developments reactivated concerns about the quality of the native workforce and about their drinking as codified in the following law signed in 1840:

It is said that the present is a time of scarcity, and we therefore have been searching for the cause of it. One reason we ascertain to be the following. Articles of food, potatoes, sugar cane, melons and other things are taken and transformed into intoxicating drink; the people remain in idleness without labor, in consequence of their lying drunk; wherefore the land is grown over with weeds and is impoverished. (Kingdom of Hawai‘i, 1842, pp. 97–98)

The fines for violating this law were low compared with those for drunkenness: \$1 for each violation or some (unspecified) amount of labor in lieu of payment. The law made a limited number of wholesale and retail licenses available to businessmen, but all others were prohibited from this commercial activity. Fines were enacted for engaging in liquor distribution without a license, specifying the substantial penalties involved: \$50 for the first offense, increasing by the same amount for each subsequent offense. Fines for drunkenness in a licensed house were \$10 for the first offense and \$20 for the second offense.

Prohibitions on aboriginal drinking became explicit in the 1850 Penal Code, when the parallel system of prohibition and regulation was set forth. Whereas the 1842 laws preserved a measure of traditional rule, reflecting a rural society still largely controlled by chiefs, the 1850 laws were unmistakably of American architecture (see Merry, 2000), having been cribbed from statutes of Massachusetts and Louisiana. The paternalistic prohibition of native drink resonated with moves to control the drinking of Native Americans who, like the Native Hawaiians, were perceived as being too socially immature to control their consumption. Westerners observed the dying off of large numbers of aboriginal peoples in both contexts and attributed

this, in part, to the effects of drink rather than the terminus of the many injuries of imperialist encroachment. Chapter XLII, Section 1, of the 1850 law, codified the distinction between foreigner and native for the first time:

Whoever shall sell, give, purchase, or procure for, and in behalf of any native of this kingdom, or for use, any spirituous liquor, or intoxicating drink or substance, shall be punished by a fine not exceeding two hundred dollars; and in default of the payment of such fine, by imprisonment at hard labor for a term not exceeding two years. (Kingdom of Hawai'i, 1850, p. 101)

The owners of victualling houses or other establishments selling liquor without a license could be fined up to \$200 with 2 years' hard labor if in default of payment. Again, all legal liquor was imported, and no licenses were provided during this time for alcohol manufacture in the Kingdom.

The 1869 Penal Code (see Kingdom of Hawai'i, 1869) reflected a nation that had become increasingly modern but remained a decidedly Christian kingdom, with much of the population living in villages or on nascent sugar plantations. Chapter XXXIV prohibited drunkenness, but also blasphemy and profanity. The portion of the law prohibiting native drinking was still in effect, but it came in a chapter with a very long, elaborate series of controls on the manufacture and sale of drink. The 1850 Act (then Chapter XLII) was transformed in a very modern-looking way, except for the provision prohibiting liquor sales to Hawaiians. There was now a very fully elaborated code with 26 sections. (Its precursor, the 1850 law, had but 3 sections.) The \$200 fine for selling liquor to a native subject was retained, but a very long list of provisions that regulated and controlled sales and consumption in the licensed establishments appeared here. Types of products were regulated; bars could not sell fruits preserved in alcohol or sell cologne as a beverage to get around the law, lest sellers be fined \$10 to \$50. No general manufacture of liquor was allowed in the Kingdom, although an 1864 law permitted one distillery to operate in Honolulu. Anybody caught distilling spirits could be fined up to \$1,000 (but not less than \$50) or get up to 2 years' hard labor. Here we begin to see burgeoning temporal limits on drinking through limiting hours of sale and prohibiting sales on Sundays, the codification of the latter dating earlier. Procedures for both retail and wholesale licenses were described in detail.

Regulation and control of drink in the 1880s reflected a Kingdom wherein the pastoral power of the missionaries had largely given way to the interests of a business elite, particularly the class of plantation owners on the islands. Both the laws, and the predominant types of cases in the courts of the Kingdom, indicated a shift away from concerns with building a temperate, Christian nation toward an increasingly capitalist interest in maintaining a sober and industrious workforce. Regulations concerning drink became even more elaborated than in the past, and the law suggested that the business of the manufacture of alcohol had become an important economic resource in the Kingdom (Kingdom of Hawai'i, 1884). Not only was a distillery permitted in Honolulu (since 1864), but the distribution of its product for consumption within the Kingdom was subject to a 50% ad valorem tax, representing a significant source of revenue for the country.

The late 1880s was a period of growing White discontent in the Kingdom over the perceived competence of Hawaiian rule. In 1887, King Kalākaua was forced at gunpoint by White representatives of the powerful business community to sign a constitution limiting the powers of the monarchy (Kame'eleihiwa, 1992, p. 315). These tensions culminated with the overthrow of Queen Lili'uokalani in 1893. The published compilation of laws in 1897, under what was now the Republic of Hawai'i, seems very contemporary. Chapter 41 of the law no longer dealt extensively with drunkenness, which had been reduced to the status of blasphemy and profanity. The fine for drunkenness was still only \$6, far less than the fines for cursing or using vulgar language.

With the overthrow of the Hawaiian Kingdom, the racialized law prohibiting Hawaiians from having alcohol was replaced by an entirely new and extended set of laws governing intoxicating liquors. Section 1 of Chapter XLI (Republic of Hawai'i, 1897) concerning Native Hawaiians no longer existed in the code just a few years after the overthrow. The aboriginal prohibition law was never repealed. Rather, the very existence of the status "native subject of the Kingdom" as it appeared since 1850 had been wiped out. The business of Chapter 41 was now devoted almost entirely to the commercial regulation of liquor, now a fully legitimate business conducted within the confines of the law. Various sections in the law for distilled spirits, malt liquors, and wine described the different sets of rules, licenses, and fines for violations applied to each category of beverage. Sales were prohibited on Sundays, and drunks could not stay in the public houses for more than 3 hours. Selling liquor to minors, women, and persons who were habitually inebriated were all forbidden. The law now specified the temporal, spatial, quantitative

measures and categorical dimensions of drinking and identified new categories of people who could not have liquor. But the law also addressed substances that were new in Western experience, applying many of the same rationalities formerly linked to alcohol, in addition to medicalized knowledges. The following discussion deals with this less well-known issue: the regulation and control of indigenous intoxicants, without which the picture of governance would be incomplete.

REGULATION OF INDIGENOUS INTOXICANTS

The colonial governance of populations through the regulation of intoxicants was not always limited to the primary focus of Western anxiety—ethanol. In the missionary rationale, the mild intoxicant 'awa was especially objectionable because it was linked to idolatry due to its ritual use. Like alcohol, it was originally prohibited under the missionary-influenced monarchy. But it began to be adopted under the rubric of medical knowledge and was declared to be the province of physicians who, alone, could be licensed to dispense it. 'Awa, illegal since the 1820s, was restricted to use by kāhuna (Hawaiian priests) and physicians who had to obtain a license to plant it. Its use, according to the Joint Resolutions Respecting 'Awa of 1846 and incorporated into the Joint Resolutions of 1856 (Kingdom of Hawai'i, 1846/1856), was strictly for medical purposes. The Kingdom provided for one licensed field on each of the four major islands. It was only in these small fields that 'awa could be planted. The unauthorized use of 'awa was subject to a \$10 fine, whereas one growing 'awa without a license could be fined in the amount of \$100. In comparison, the fine for making (distilling) liquor without a license was \$500.

During the first part of the 1850s, it was illegal for anyone to plant 'awa without a license, but cultivation was soon authorized with the focus of regulation shifting to sales and consumption. Sales were permitted by agents authorized by the Crown. To purchase 'awa, one needed a certificate signed by an authorized physician and by the governor of the island stipulating why the individual required the drug and how much might be obtained.

Over time, the regulation regime regarding *‘awa* grew in scope and complexity, similar to that governing the distribution and consumption of alcohol. But its entire intended use was medical. Applications for licenses to sell *‘awa* had to be made in writing to the Minister of the Interior, and the number of licenses was even more restricted than in the 1840s and 1850s. By 1876 three licenses for selling *‘awa* were available in Honolulu, two in Lahaina, Wailuku, and Hilo, and one in each of the other collection districts (Kingdom of Hawai‘i, 1884). Licensees were required to post a \$500 bond, keep records, and send in quarterly reports to the Minister of the Interior.

Law had stripped *‘awa* of its traditional role in Hawaiian religion and effectively criminalized both its sacred and recreational dimensions during the earlier part of the century. Its one permitted use was bracketed under the dominion of medical knowledge. By the 1870s, *‘awa* was a highly regulated secular drug, and intoxication was a problematic secular practice. To acquire and consume *‘awa* according to the law, individuals needed to know how to engage with this modern Western regime, one that required knowledges and practices quite distinct from traditional ones. One also needed literacy, access to cash, knowledge of bureaucratic practices, and, perhaps, training in a Western medical tradition. This transformation did not go without protest, as one anonymous Hawaiian author argued:

But with this thing that had long been given to us, the natives of this archipelago are forbidden to drink, except those who have written permits from medical kahunas. Only then can they obtain some. Why and for what reason are the written permits? Because of intoxication? If so, then it is not right to arrest those under the influence of *‘awa*; for when one looks at a person who is intoxicated with rum one can plainly see that he is drunk, but with *‘awa* it is not possible to tell whether one is drunk or not. And too, one who is drunk with *‘awa* does not make trouble like the one who is drunk with rum, who talks out loud. He may have received his glassful from another person but it is he who fights and shouts aloud before others. On the other hand, when a man is drunk with *‘awa*, his body relaxes, his mind also relaxes, and he does nothing to interfere with the peace of others so that it becomes necessary to forbid and blame him. (Anonymous, 1871)

As the author argued, the law now criminalized a once-central aspect of Hawaiian culture by defining intoxication in Western terms. The only approved use was defined under a set of complex Western practices that permitted 'awa use for medical reasons.

Opium was also present in the Kingdom of Hawai'i by mid-century, having arrived along with Chinese immigrants. This drug had more sinister connotations, given its Asiatic origins, and was even more suspect than 'awa. The law regarding opium, An Act to Regulate the Importation and Sale of Opium and Other Poisonous Drugs, passed in 1869 was quite explicit as a discourse about both opium and who was the source of the danger:

Whereas, suicides and serious riots are of frequent occurrence from the use and abuse of opium and other poisonous drugs; and whereas, there is danger of the pernicious habit of using opium being acquired by Majesty's native born subjects from the example of the Chinese. (Kingdom of Hawai'i, 1869, p. 30)

The Act's four sections prohibited the importation, sales, or distribution of opium and opium preparations, providing for fines of between \$50 and \$500. Qualified medical professionals could obtain licenses to import and sell opium as part of their medical practice. This law not only identified opium use as a Chinese practice, thereby racializing it, but also singled out Hawaiians as needing protection from their bad example.

GOVERNANCE, REGULATION, AND CRIMINALIZATION

Western law both informed and enabled the transition of Hawai'i from a Christianized, subsistence-based economy ruled by chiefs to a society whose institutions, including the law, were oriented toward the service of a capitalist plantation economy. Merry's (2000) data on court cases in the plantation town of Hilo, Hawai'i, showed that the predominant types of cases before the courts changed with this transition. The business of the courts clearly showed the effects

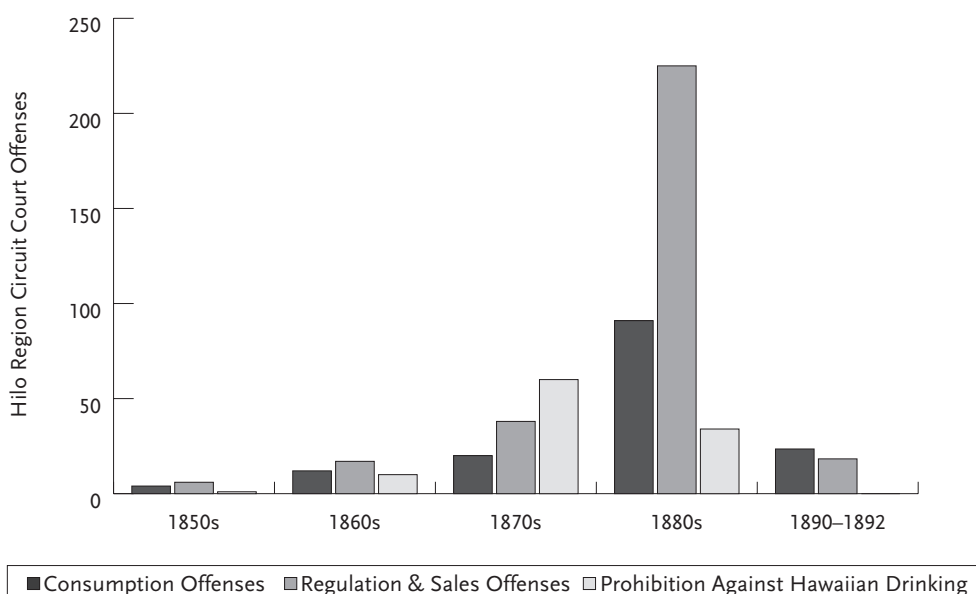
of criminalizing various aspects of Hawaiian (and, later, immigrant) ways of life as these groups were drawn into court in significant numbers. Moving from early concerns about the moral life of Native Hawaiians, the law and its enforcement eventually focused primarily on managing a large multiracial immigrant workforce. Likewise, the controls over alcohol and the use of drugs like ‘awa and opium moved from outright prohibition based on these moral concerns to a focus on regulation.

So perhaps a little more ought to be said about these overlapping programs of prohibition and regulation with regard to enforcement and criminalization. Not only did the law racialize the issue of who could consume intoxicants and under what conditions, but it also reached out into populations and penalized them through court actions, fines, and imprisonment. Contemporary studies of aboriginal prohibition are seldom able to present data on the enforcement of these laws. Indeed, the thorough penetration of Western legal forms and rationales into the governance of the Hawaiian Kingdom in the 19th century has few true parallels. This case not only demonstrates the racialized prohibition strategy common to colonial controls over other aboriginal groups, but also offers a striking case of the colonized authorities who accepted the paternalistic concerns of missionaries and other Whites and codified them. Aboriginal communities have implemented strategies of self-governance through prohibitions on drink but have not, to the extent Hawai‘i has, left fully elaborated historical records of the process at work.

Data on the enforcement of law and punishment ought to enter into theorizing the impact of regulation, particularly when arguments are being made regarding differential impacts and effects. The business of Hawai‘i’s courts in the 19th century indexed the effects of the legal transitions in the Kingdom and the extension of regulation and licensing programs to control drinking and drug use. These data consisted of hundreds of cases from the Hawai‘i police and circuit courts from the 1850s into the 20th century.⁴ The cases described here were heard in the Hilo Region Circuit Court during the latter half of the 19th century until roughly the overthrow of the Hawaiian Kingdom in 1893.

Figure 1 and the accompanying Table 1 compare consumption offenses, regulation (sales and licensing), and aboriginal prohibition cases in the decades from 1850 to 1892. Consumption or use cases include drunkenness, the use of ‘awa, and concealing and possessing opium.

FIGURE 1 Comparison of consumption, regulation/sales, and Hawaiian drinking prohibition cases, Hilo Region Circuit Court (total cases = 621)



Offenses relating to regulation through licensing and sales include the following: sales of ‘awa, having liquor on unlicensed premises, importing or distilling liquor, beer sales, selling or importing opium without a license, smuggling contraband drink, and selling cologne as a beverage in order to evade licensing laws. The prohibition against Hawaiian drinking was prosecuted through cases about selling or otherwise providing aboriginals with alcohol. During the 1850s, consumption, regulation, and prohibition cases appear in small numbers along with prosecutions of crimes such as adultery, fornication, and theft (Merry, 2000), making up less than 10% of the business of the court—115 cases in all during those years. Consumption offenses increased during the 1850s, 1860s, and 1870s.

TABLE 1 Comparison of consumption, regulation/sales, and Hawaiian drinking prohibition cases, Hilo Region Circuit Court, 1850 to 1892

Offense type	1850s		1860s		1870s		1880s		1890-1892		Total cases	
	No. of cases	% of offense type	No. of cases	% of offense type	No. of cases	% of offense type	No. of cases	% of offense type	No. of cases	% of offense type	No. of cases	Total offense type
Consumption offenses	4	2.4	12	7.2	20	12.1	91	54.8	39	23.5	166	100
Distribution & licensing regulations	6	1.7	17	4.9	38	10.8	225	64.3	64	18.3	350	100
Hawaiian prohibition offenses	1	1.0	10	9.5	60	57.1	34	32.4	0	—	105	100
Total offenses by decade	11		39		118		350			10.3	621	

However, in the 1880s, consumption and aboriginal prohibition cases were surpassed by prosecutions of regulation and sales offenses. Prosecutions involving prohibition against providing Hawaiians with liquor peaked in the 1870s, the period of missionary influence in the government. Consumption cases continued to grow, fueled by prosecution of (mostly) Chinese defendants for opium use. By the 1880s (the last full decade in the data series), all cases governing alcohol and drugs made up 31% of the court's business of 1,132 cases. Regulation cases, rather than the other two categories, constituted the vast majority of alcohol and drug matters before the court.

These data reflect the transition within the Hawaiian Kingdom from a missionary-inspired objective of maintaining a moral, religious community to one in which the concern of law was to produce a sober and disciplined workforce equipped for plantation capitalism. Governance through regulation and licensing obviously reached more of the population than a focus on individual consumers. What of the prohibition against providing Native Hawaiians with drink? These cases fell off in the 1880s and were no longer before the court in 1892, signaling that the kind of racial paternalism that motivated the 1850 prohibition laws was no longer a primary concern at the end of the 19th century.

CONCLUSION

The governance of populations through drink, especially through regulations, prohibition, and licensing, has been inadequately theorized (Valverde, 1998). The Hawai'i case permits an exploration of the process that joins the programs of prohibition and regulation. This case illustrates how different groups were racialized according to whether or not they might drink responsibly and which products might be used on a very limited basis within medical practice. Fears connected to dangerous groups such as drunken White sailors or the Chinese with their sinister motives and opium were codified in law, demarcating the moral boundaries of social groups.

At the same time, some of the colonizers began to attribute the dying off of the aboriginal population to the effects of drink—a move that drew attention away from the lethal biological, cultural, and economic effects of their exposure to the colonizers. The paternalist racial distinctions made between Native Hawaiians

who were too childlike to drink responsibly and Whites whose consumption behaviors could be regulated came to define notions of Whites and aboriginals. Native drinking remained a continuing theme in the colonial narrative of the inferiority of Hawaiians. Restricting drinking and sales of liquor to Whites only served to confirm that Hawaiians had not achieved full moral citizenship. An English traveler to Hawai'i in the 1870s noted that while she believed legal prohibitions of native drinking were necessary, "probably all the Natives agree in regarding it as a badge of the inferiority of colour" (Bird, 1881/1998, p. 193). In the 1880s and, finally, with the overthrow of the Hawaiian monarchy in 1893, the Hawaiians lost control of their ancestral lands and, in 1898, the United States annexed the country as a territory. By then, racial paternalism expressed by prohibiting native drinking was no longer a central issue in governing populations. The Hawaiians were replaced by inebriates, women, and children in the category of those who could not drink.

The case of Hawai'i illustrates the overlapping nature of programs of regulation, prohibition, and criminalization. As David Garland (1997) suggested, studies inspired by "governmentality" frameworks ought to move beyond ideal types and abstractions. This article, in dealing with the complex relations of colonialism and the origins of the legal regulation of alcohol, provides an empirical look at these programs at work. The Kingdom of Hawai'i developed an increasingly complex regulatory scheme for controlling drink and drugs not only as a way of keeping order but also as a means of warding off threats to its political autonomy. In instructing the populace about who could drink and who could not, the government taught people the rationales underlying the law—ones that had as much to do with racializing group boundaries as warding off danger. But governance through regulation is hardly as innocuous as thinking about liquor laws may appear at first glance; it has a harder edge because of its adjunct in state power. The Foucauldian idea that power is generalized in society does not preclude an examination of the power of the state to criminalize, along with other modes of governance that reside along with that power.

AFTERWORD

This article was written with an eye toward theorizing how the regulation and criminalization of substance use also regulate and criminalize groups of people. The law produced a system of regulation for consumption of alcohol and drugs for Whites but resulted in the criminalization of Native Hawaiians for indulging in them. During the Kingdom period, the law embodied discourses that constructed the drinking habits of Hawaiians as a social problem. But in this “naming of the problem,” the injuries inflicted by contact with Western nations were obscured. And the hastening collapse of the Kanaka Maoli (indigenous people of Hawai‘i) population was attributed to self-injurious habits such as drink and ‘awa use. Growing alienation from the land, Western disease, diminished Native cultural practices and sovereignty, burgeoning capitalism, and the other consequences of alien influence were all far more influential in the looming destruction of Native Hawaiians than the epiphenomenal use of substances.

For readers who are interested in how history illuminates the present, an obvious continuity in this account is the present-day war on drugs and its impact on Native Hawaiians. If anything, the consequences of modern-day law are more severe than during the Kingdom period. Native Hawaiians are overrepresented in most criminal justice contexts, and they are twice as likely as Whites (the second highest group) to be charged for methamphetamine offenses. While arrested at nearly the same rate as other groups, Native Hawaiians are more likely to be incarcerated and to serve longer sentences, even controlling for the seriousness of the offense. The phenomenon of mass incarceration, so well documented among minorities on the U.S. continent, has devastated Native Hawaiian families. Current research (conducted by a local team of which I am a part) on families of the incarcerated suggests that the most powerful predictor for having multiple relatives incarcerated is Native Hawaiian ancestry. Mass incarceration and the banishment of family members to for-profit prisons on the continent are undermining Native Hawaiian families and communities. Given that research shows that disadvantaged communities with high levels of incarceration have far more crime, these correctional policies increase the institutionalized racism that continues to erode Native Hawaiian well-being.

Some basis for optimism is the recognition that the criminalization of Native Hawaiians is a political issue, not just an interesting academic discussion. It is not that Native Hawaiians are more criminal than other groups; rather, the factors recognized as criminogenic are distributed more frequently and at higher levels in that community: poverty, alienation from institutions of education, erosion of culture and the family, ill health, and political disenfranchisement. A 2010 report released by the Office of Hawaiian Affairs, *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* (from which the data above are cited), is a step in the right direction but falls short of a real political analysis of mass incarceration, the war on drugs, and their consequences for Native Hawaiian well-being. As we understand and embrace the lessons of the past about criminalization as a political weapon, we can begin to build a more just Hawai'i for all.

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NOTES

- 1 Hawai'i was annexed as a Territory of the United States in 1898. This article deals with the time period preceding this, which is characterized best as an economic and cultural form of colonization.
- 2 'Āina is the Hawaiian word for land and connotes a relationship (such as nation) as well as a geographical location.
- 3 Prisons, as such, were not built in the Kingdom until 1857. Before then, persons charged and convicted of crimes were confined at forts, which the Hawaiians discovered could keep people in as well as keep people out. Confinement, as a punishment in itself, was unknown prior to contact with the West.
- 4 These data were produced through Sally Merry's study of Hawaiian courts as published in *Colonizing Hawai'i: The Cultural Power of Law* (2000). See page 146 of the text for the provenance of these data. My thanks to Merry for her generosity in making these data available to me.