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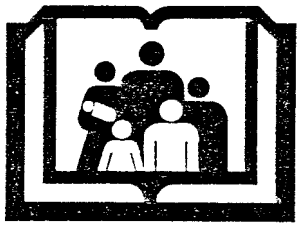

# The Crossroads of the Pacific: The Development of Multicultural Families in Hawaii

Robert J. Morris

Series 815

# THE CROSSROADS OF THE PACIFIC: THE DEVELOPMENT OF MULTICULTURAL FAMILIES IN HAWAII

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> In a seething of saints and sinners, winners or losers, in a womb of superstition, faith, genius, crime, sacrifice, here is the People. . . the living flowing breath of the history of nations. . . Everywhere is love and love-making, weddings and babies from generation to generation keeping the Family of Man alive and continuing.[1]
>
> —Carl Sandburg

> Justice in a grass house is as precious as justice in one of coral.[2]
>
> —Chief Justice Lee,
> Hawaii Supreme Court

> If one seeks for a test of the attitude of the Americans of the old stock he will find no other so significant as the marriage test.[3]
>
> —Romanzo Adams

From her discovery by an Englishman, to her evangelization by Americans, and eventually to her American statehood, Hawaii has been for two hundred years a laboratory for experimentation in Western-style democracy. But to set the beginning of Western, or more especially American, law in Hawaii at, say, 1900—the effective date of territoriality—would be a mistake. For by that time, there existed on the books already a half-century's reported cases, statutes, constitutions, rules, and proceedings of a Hawaii Supreme Court which began its work with the January term, 1847—a year before the great Mahele. This vast body of precedent made the transition to American territory, with the Organic Act of 1900, one of little more than legal formality as far as stare dicisis, or precedent, was concerned. In other words, Hawaii was in many ways acting as a state de jure some fifty years before she became a state de facto. The enormous social ferment of those years is a matter of voluminous record, and the law had an enormous impact on the way multi-ethnic families developed in the islands during those years. In that impact was truly manifest the motto of American law: E Pluribus Unum (out of many, one).

It would be a great presumption for me here to attempt any kind of reiteration, or even summary, of the landmark sociological, demographic, historical, and anthropological studies which have limned the metes and bounds of inter-ethnicism in Hawaii. Names like Adams, Schmitt, Lam, Lind, Fuchs, and even Michener, have admirably expounded these areas, and their works are cited in the notes to this paper, with my thanks and admiration. What we inquire into here, rather, is where is the law in all this ferment, where the jurisprudence? There is a need to know what jurisprudence has to say about what has happened in Hawaii because today we stand Janus-like, looking both forward and backward, looking from Hawaii in the east to Niihau in the west, as we talk of history and destiny.

Why should genealogists care about the law of race relations and marriage?

After all, isn't our common concern merely that something happened, not why? The answer is that we are today's lawmakers, and we are today's children, but tomorrow's parents. And future generations will scrutinize us and the laws we make to see whether we learned anything from the past. Those laws will embody either our humanity and fairness, or our racism and bigotry—whatever we choose. We literally have the power in our hands to see that "government of the people, by the people, and for the people" shall perish neither from our lives in the Hawaiian Islands, nor from the earth. Let us remember that the law is an ass, a donkey, a beast of burden to serve our will. The law can raise a standard of burden to serve our will. The law can raise a standard of liberty—for ourselves, our spouses, our children, our families, our nation, our freedom.

As far as Western-style law was concerned, Hawaii was a clean slate at the time of Cook's discovery in 1778—or at least as clean a slate as positive law could perhaps hope to find in a modern world where the shrinking global village encountered the newly unified island village in the name of Manifest Destiny. "Geography," wrote Will and Ariel Durant in The Lessons of History, "is the matrix of history."[4] If so, then history is the matrix of the law. At discovery, the fountainhead of Hawaiian law was the sovereign and the chiefs under him, who operated within a system of law called kapu--sacred prohibitions and social regulations, unwritten but plenary, which governed thought and action, guilt and innocence, in matters both civil and criminal, from age to age. Indeed, historian David Malo speaks of those who flouted the kapu as being "without law."[5]

From discovery onward, the king and his chiefs chose the vehicle of interracial marriage as a means to bestow their favor on honored foreigners who had distinguished themselves in the service of Hawaii Nei. The giving of royal daughters in marriage, and the accepting of the same as wives by those first foreigners, set a precendent which would later stop their descendants from officializing by law any anti-miscegenation in Hawaiian society, if for nothing more than fear of offending the resulting hapa-haole, or mixed-blood, offspring.

With the further influx of Western and Oriental man came new rivers of new law and ways of organizing society for the purpose of social control. From Protestant England and America came a legalism which was highly positivistic and whose focus was on the individual human being as the basic legal unit of society. At first, that individual was the man, the husbands, but more and more the law's consciousness came to include the woman, the wife, also. A line drawn from Luther to Jefferson to Whitman would suggest the lineage of this idea. Cried Whitman:

> Underneath all, individuals,
> I swear nothing is good to me now that ignores individuals,
> The American compact is altogether with individuals. . .[6]

On the other hand, from the Catholic countries (Spain, Portugal, the Philippines), where that church had early opted for Aquinas over Augustin; and from the Confucian countries (China, Japan, Korea), where a rigid familialism had prevailed for centuries, came people for whom the family—not the individual—was the fundamental legal unit of society. These would be typical of the description of ancient law given by Sir Henry Maine as "the despotic commands of the heads of households."[7]

How these great and differing traditions came together and mixed in Hawaii has been, if nothing else, a triumph of accommodation and fraternity. A study of the case law and statues of Hawaii during the last half of the nineteenth century reveals it to be composite of six great rivers mixed to accommodate this special population: (1) English common law, but more especially (2) American common law; (3) civil law (not as opposed to criminal

law, but derivative of the Justinian code), and its counterparts in Asian countries; (4) natural law; (5) ancient Hawaiian tradition, custom and usage; and (6) reason. Truly, this mixing has been a reconstitutive crisis, a "creative synthesis," in the world of Hawaiian jurisprudence.[8] As in all situations in which human beings have been required by circumstances to view themselves as new or different creatures from what they were before, the beginnings of the "brave new world" in Hawaii portended metamorphoses for all the peoples who came there. In a very real sense, for the residue whose progeny populate Hawaii today, there is no going home again.

The common law, said Judge Learned Hand, is like a coral reef, built up by the miniscule and uncountable accretions of contributors over centuries.[9] It is fascinating even today to hear the Hawaii Supreme Court take counsel as amicus curiae (friend of the court) from the living kupuna, the Hawaiian oldsters, as to how traditional usage should and must impinge on both the positive and the common law. Herein lies the special form of Hawaiian equity which allows due deference to the practices and feelings of the people.[10]

When English and Americna common law came to Hawaii, they came upon the vehicle of English and American English, in which that common law lived and moved and had its being. The words of that language such as nation, state, freedom, liberty, rights, equality, commerce, contract, individual, property, franchise, and agency now flooded the consciousness of Hawaiian law and therefore the consciousness of society in Hawaii. What changes occur in the mind of man, for example, when one thinks with the word "law" instead of the word "kanawai"? What changes in world-view must occur, what reconstitutive crises, when "family" or "marriage" comes now to mean one husband and one wife, married by ceremony as licensed by the state, with the subsequent birth of issue or death of any member thereof to be duly registered with the recorder? What then of divorce records, real property recording acts, censuses, and court cases litigated over any of these questions? The implications for genealogists and archivists are overwhelming, for it is no secret to anyone who has ever been involved in probate, for example, that enormous legal consequences can turn on the status of a claimant's provable genealogy. That from the earliest days of positive law in Hawaii the admission of testimony regarding pedigree has been a major exception to the hearsay rule (as it is today in both federal and state rules of evidence), seems only a logical extension of the center place which genealogy occupied anciently in Hawaii. Names, fortunes, and titles have thus always been at stake, whether in deciding who shall be the next chief or who shall inherit the family treasures. Here is an area of law which every lay person can understand.

There has always been, it seems, a presumption—a rather haughty one—among lawyers that the law is something which only the initiated can understand. Thus, for a layman, a nonlawyer, to assert an understanding of it is thought to be an unseemly arrogation. For example, when Kamehameha III promulgated the first Hawaiian constitution in 1840, mainland lawyers saw it merely as a cheap impersonation and not for the noble and substantive rights which it guaranteed. One such lawyer, Henry E. Chambers, wrote:

> There had been no formal demand for the first Hawaiian Constitution. The king was a savage arch-chief who ruled unquestioned in his own way. The constitution was purely a concession upon his part, and the motive which actuated him in making the concession was no doubt the impulse to ape and imitate which lower races seem as a rule to possess. When contact with foreigners brought to him a dim knowledge of political forms he determined to pattern by them.[11]

That these assertions by Mr. Chambers will not bear strict scrutiny is obvious to anyone acquainted with the course of Hawaiian history. Furthermore, Hawaiian law, both statutory and common, during its first hundred years, is the more remarkable for what it does not contain than for what it does, for the researcher looks in vain for any law prohibiting miscegentation, interracial marriage, and this during a time of rampant, legally sanctioned racism and anti-miscegentation on the mainland which continued in some states up until 1971 when the United States Supreme Court held that such laws were repugnant to the Equal Protection Clause of the Fourteenth Amendment.[12]

The 1840 constitution of Kamehameha III had declared in its opening paragraph: "God hath made of one blood all nations of men to dwell on the earth," in unity and blessedness. God has also bestowed certain rights alike on all men and all chiefs, and all people of all lands."

Whatever social attitudes to the contrary may have existed among Hawaii's mixed population, no single group ever gained enough of a majority to oppress the others, and her law remained aloof and contitutional, to its credit.

Indeed, it might be correctly said further that Hawaiian law not only never prohibited miscegentation, but upheld it, frowning only on polygamy, concubinage, incest, and adultery, and refusing therefore to give comity to such marriages consummated in the ancestral lands of immigrants, or where a new marriage or relationship in Hawaii would result in such. But the strong public policy of Hawaii never disallowed the mixing of the races if the marriage were otherwise lawful.

This is significant because he who deals with multi-ethnic marriage and divorce in Amerian law deals largely with social apostasy, at least in the nineteenth century, for in our history the players in that drama have usually been the black sheep or the pioneers, the rebels or the social miscreants of the national family. Writing in 1898 to oppose the annexation of Hawaii to America, New York Judge Daniel Agnew said: "This mixed brown, yellow, and dusky people, partly pagan, cannot be absorbed by assimilation; for they cannot marry with American whites."[13] Agnew spoke for many important American jurisprudents of the time, yet his words, coming at the time they did, were both anachronistic and false. The balance between liberty and equality had already shifted.

Walt Whitman had rhapsodized: "Great is liberty! Great is equality! I am their follower!"[14] But the uncritical reader of those words needs to be reminded of what Will and Ariel Durant teach: "We are all born unfree and unequal. . . . Inequality is not only natural and inborn, it grows with the complexity of civilization. . . Nature smiles at the union of freedom and equality in our utopias. For freedom and equality are sworn and everlasting enemies, and when one prevails the other dies."[15]

Translated into present terms, when nations or races decide to mingle their blood, or when man and wife come together as greater equals under the law, as in Hawaii, the one who was formerly superior gives up some freedom, while the one who was formerly inferior gains more freedom, for equality is both a bootstrap and a leveler, and in being both it becomes a unifier. In the tension which the balance between freedom and equality creates lies the American paradigm of a federal republic consisting of separate powers which check and balance each other. How Hawaii would necessarily alter that balance was the concern of men like Judge Agnew. At the same time that Hawaiians contemporary with Kamehameha the Great were lamenting that high chief's conquest and unification of the previously independent islands as a "withering," demoralizing event,[16] Americans on the other hand were lauding him as a wise and noble ruler, who had done for his people only what their own Federalists had done for theirs.

What the newly-arrived positivistic American law required was that the individual stand accountable before it, in his or her own name, for his or her own crimes or torts, while at the same time creating certain rights and obligations in the individual. This insistence found its way into the laws regulating marriage, and this process reconstituted the Hawaiian world-view, for better or for worse. It also reconstituted the world-view of all who came to the islands, for whatever reason. For some, the lodestone was the whale spuming in the Lahaina roads between Maui and Lana'i. For others, it was a three-pronged harbor at the mouth of the Pearl River whose trade and military possibilites were then only glimmerings in the eyes of admirals. Others came for business or religion, or business and religion, or the business of religion, while yet others came like characters in a Joseph Conrad novel--the prodigals, the lost, the heroes, the pilgrims, wanderers, and strangers in the earth. Many came singly, having left first families in the motherland, and in Hawaii they turned to each other in the bonds of marriage and family anew. In that most intimate contact, individuality and commonality encountered each other, and in experiencing the ragged nature of life on the frontier, many of them came to ask, in their own way, what the anguished Jews in Babylon before them had asked: "How shall we sing the Lord's song in a strange land?"[17]

As for the Hawaiians themselves, who saw their old ways and life-support systems disappearing with the wind, they adopted into their language the lament recorded in I Samuel 4:21: Ua hala aku la ka nani mai ka Iseraela aku; The glory is departed form Israel. Yet some of their own number aided in that disappearance, perhaps hoping to assist in the birth of the new world. We know the astounding story of a young man nicknamed "Kahekili," who spied upon his own people during the overthrow of the Queen's monarchy in 1893 and reported all their loyalist doings to the white foreigners bent on deposing Liliuokalani. Thus, it was a time when one person's morality was another's moral turpitude.

Nowhere was this irony in greater evidence that in the essential differences between the labor question as it was manifested by slavery in the American South, the Oriental problem in the west, especially California, and the plantation system of Hawaii. Whether one sees these problems primarily as labor disputes or racial disputes, there was in the nineteenth century a kind of pitiable desperation in them which recognized that if America were not to backslide into the gaping hole of slavery, the appetite for cheap labor would have to be appeased by free Americans, not by any servile class of whatever color. But if the law had to protect the imported laborers from a new kind of slavery, it also had a duty to protect indigenous American laborers from what some considered to be an unjust and degrading competition with Orientals. The answer was exclusion.

In this, however, Hawaii represented perhaps the greatest irony of all, for even as the edifice of America's anti-Oriental law was a-building, and before Hawaii ever became a United States territory subject to that law, her Chinese population was largely already settled in place! They had come under the law as indentured servants, on contract, not as slaves by means of involuntary servitude. And while their brethren on the mainland were facing exclusion, deportation, or other banishment, the new home of the Chinese in Hawaii was still a monarchy and a sovereign nation in its own right, untouched as yet by American law! Thus, the only effective measure left to the Organic Act of 1900 was to forbid emigration of Hawaii's Chinese from Hawaii to the mainland, or to deport those illegally in Hawaii, and to restrict or forbid further indenturing. But for all practical purposes, the emplacement of a substantial Chinese population in Hawaii was a fait accompli (a thing already done) by 1900, and after all the Sturm

und Drang (storm and stress) of the previous thirty or more years to keep the Chinese out of the United States, in one fell swoop we brought them into the body politic when we brought Hawaii in. It was, indeed, an interracial marriage between Hawaii and America!

Here we may borrow a metaphor from the story of Keanu the leper in O. A. Bushnell's novel, Molokai. Keanu, originally healthy and whole, was convicted of murder and sentenced to the leper settlement at Kalawao-Kalaupapa. He agreed, in exchange for his king's pardon, to undrgo an operation by Dr. Newman wherein the doctor would implant in Keanu's healthy arm a leproma to discover whether leprosy could thus be transmitted. Many Americans saw the annexation of Hawaii in this way. Both legal and medical writers feared for the strong arm of America and what this strange alliance would do to it. Some of them spoke of Hawaii as a "mass of infection," meaning both the leprous population specifically, but also meaning the racially mixed population as well.

The word of the day was "eugenics," the study of human hereditary improvement, which combined with Manifest Destiny and white supremacism to produce a great juggernaut of public sentiment against Hawaii. The ubiquitous image of the melting pot gave rise to fears of lost or blurred pedigrees and uncertain ancestry.

Had there really been a melting pot in Hawaii, probably little of the traditions or heritage of her constituents would have survived. As it was, on the other hand, there was probably only a mixing pot, the elements of which are therefore still present, discrete, and identifiable--today awaiting only the centrifuge of the archivist, the historian, the genealogist, and the lawyer to precipitate them out for this generation anew. In this there is, however, a warning about the shortness of time, from the pen of Romanzo Adams: "After a time it will come about that most of the mixed-bloods will be unable to trace their ancestry and then they will gradually come to think of themselves as a race,—the Hawaiian or Neo-Hawaiian."[18] in a sense, this speaks of a unification, but it also speaks of a splitting away from the roots of the past, and thus from the cause of all that is today.

We have seen how the law was one of the proximate, efficient causes of the mixing of Hawaii's peoples, whether by its presence in confining them to Hawaii, or by its absence in allowing them to immigrate and to mingle interacially and interculturally. This mingling was largely a matter of indifference to the overseer race. Indeed, as it became the policy of the Hawaiian planters to play one ehtnic group against the others as a means of pre-union labor control, they created thereby a social proximity of the races in which intermarriage was inevitable.

If the law ever made any discrimination against interacial marriage, it did so in the matter of the electoral franchise, and it did so most invidiously against Hawaiin, American, European and Oriental women who chose to marry Orientals—a choice not without some frequency in Hawaii.. Such a household could have no voter, both because of the sex of the wife and the alienage of the husband. However, this would only deter those to whom the franchise mattered, and this bias was not total since even if two persons married intra-racially and one of them was not Oriental, the husband still had to meet the property and literacy qualifications.

Generally, however, the law helped to hybridize the genealogical tree, mingling the genotypes for survival, and in the process, creating new phenotypes which are often dazzling and beguiling. After all, does not Mendelian genetics teach us that parents from widely disparate parts of the gene pool usually produce the strongest offspring, the exponents of "pure" races to the contrary notwithstanding?

Western man has never, as far as we know, encountered a group of genetically "pure" Hawaiians—ever. Those which Cook found in 1778 were a mixed group, racially if not culturally. The ideal of the new law which they brought was a government of laws and not of men in which the law itself was color-blind. It is said in the motto of Hawaii, first uttered during the days of the monarchy, that "the life of the land is preserved in righteousness," Ua mau ke ea o ka aina i ka pono. Between the purity implicit in such righteousness and the purity alleged in the specious argument from racial stock there is no nexus.

In fact, where the trees of such multi-ethnic families touched and intertwined their branches, there grew up in Hawaii a kind of unity and discipline which made for a certain communal morale of the kind which went beyond what the law only had power to create. It was a sort of concensus called the "Aloha spirit," an unwritten but potent form of social control which worked like a kapu in reverse because it held that each person had an affirmative duty to recognize the worth of every other person regardless of his color, or the language he spoke, or to whom he was married. This peculiarly Hawaiian consciousness grew out of the need to accommodate and comfort new arrivals from whatever part of the earth they came, or for whatever homesickness they might bring. Hawaiian law was ready to accommodate that need, too.

The Thirteenth Article of the Hawaiian constitution, in effect in 1875, provided: "The King conducts his government for the common good and not for the profit or interest of any one man, family, or class of men among his subjects." As early as 1875, the Hawaii Supreme Court construed that clause much as the constitutional jurisprudence of today construes the Equal Protection Clause of the Fourteenth Amendment by means of "strict scrutiny," whereby the law may not create a "suspect class" of persons based exclusively on characteristics such as race or sex.[19] In litigations involving miscegenation, hanai (adopted) children, sex discrimination, and wives' wrongful death actions, both the Hawaii Supreme Court and the United States District Court for the Territory of Hawaii upheld the well-settled policy that under "our system of government it is rightfully the policy of the law to uphold the legality of marriage wherever possible, and particularly so in cases where the relation has resulted in children being born."[20]

Yet even in the presence of such legal support, it has always been the Hawaiian way to resort, instead, to arbitration, conciliation, and settlement before litigation. It is the concept of olu olu, of being pleasant, conciliatory, and solicitous.

Probably the last vestige of anti-miscegenation feeling which became cognizable at law, which formed more than a footnote in Hawaii's legal history, was the Massie-Fortescue rape and murder trials in 1931 and 1932. Even with the support of mainland media, impugning Hawaiians as half-breed, lustsodden savages lurking behind trees for white women, so able an advocate as Clarence Darrow was unable to prevail for his mainland clients with the racially mixed jury. The social arguments against miscegenation had already waned to such an extent as to be useless as a trial tactic. It is significant that Romanzo Adams authored his Interracial Marriage in Hawaii in 1937—only five years after the Massie-Fortescue affair ended? His objective treatment of the subject was astonishingly avant-garde. Today, nearly four decades later, we see the Neo-Hawaiians as Shakespeare's Antony, having the elements so mixed in them that Nature might stand up and say to all the world that they are men—neither the gods nor the freaks imagined by the nationalists or the xenophobes, but mere human beings. As to the Hawaiian part of that mixture, we may only speculate what precious things have perished irrevocably

from that ancient culture because they were not written down. We know more of the Greeks 2,500 years ago than we do of the Hawaiians 500 years ago, because the Greeks wrote.

Yet some of that apparent loss can be retrieved. Today, laws like the "Hawaiian Homes Commission Act" provide real property benefits to those who can establish, according to law, a certain blood quantum. In that process there is necessarily a legal imperative to multi-ethnic self-awareness, an incentive grounded in the law of property to discover the law of self. Such self-awareness is part of a movement now afoot which is nobly entitled "the Hawaiian Renaissance." The retrieval which this "Renaissance" attempts is of things particularly Hawaiian, things largely oral and mnemonic, and therefore slippery, like the tenacious language which was their vehicle, and by which the accretions of that long-ago coral reef were laid down. Certain symbols of this movement have gained notable attention, and here, too, families and the law have played their part. The process has reminded us all again that one of the ancient names for Hawaii was "the Gathering Place," and gathering is the business of genealogists and archivists. Now it has become the business of lawyers, too.

"Renaissance" is a high and holy word. It was to Europeans in the sixteenth century what "Zion" was to the Jews of an earlier date. It implied not only a new birth, and a better birth, but a gathering in, a concentration. In order to have a true Renaissance, you must first have in place a critical mass, a hard core, or true Renaissance men and women. To achieve this requires much extraordinary thinking and much extraordinary effort. This is the ferment going on in Hawaii today. Was "Kahekili," the Hawaiian boy who spied on his countrymen, a practitioner of parricide, or a wielder of forceps? A colossus? A midwife? A treasoner?

Speaking for myself, I cannot conceive of a more felicitous way to enact the better side of the Hawaiian Renaissance than by the gathering, processing, and storing of Hawaiian genealogical materials before it grows too late. In 1893, the First Annual Report of the Hawaiian Historical Society, at page 13, bore these significant words: "Nothing ever printed in this country, even an ephemeral handbill, is without ultimate historical interest, and there is destroyed every month, in this community, materials that would be of permanent interest and value on the shelves of our library."

Here at last, in this suggestion, is a quiet, nonpolitical way to stanch the tide, at least personally, of commercialism, of racism, of materialism, of ethnocentrism, and of xenophobia—to find one's roots, to preserve one's heritage, to make one's statement, even despite the concrete and the pavement and the hotels on the beaches. It would, in fine, be a substantive action to turn the tide expressed in the lament of a modern Hawaiian folksong: "In all of your dreams / Sometimes it just seems / That I'm just along for the ride."[21]

May all Hawaiian genealogists follow the Biblical injunction to bring all your treasures into the storehouse, and there claim your birthright. Bring them to be copied, microfilmed, shared with others. But let us here and now stipulate to a truism that matters of family history—the chants, the records, the stories—are most personal, private, and sacred. They are never to be divulged lightly to anyone. Yet they are also part of the common coral reef called Hawaii. And each of us must do his or her share in adding to the accretion. It is wise, perhaps, to hide the chief's bones in the cave after he dies, but when the modern bulldozer threatens them with disintegration, it is also wise, and prudent, to know their whereabouts and to retrieve them to safer ground.

Do your teenagers need a summer job? A channel for their energies? A Hawaiian consciousness? Put them to work on

genealogy! Get your scouts working on their genealogy merit badge! Thus to retrieve such of the past as is now within human power to retrieve would remind all of us of what we have inevitably become and would answer affirmatively Isaiah's ancient interogatory: "Shall a nation be born at once?"[22] It would help to beat swords into plowshares.[23] It would, in the end, foster freedom and due process of law. Professor Lon Fuller of Harvard Law School writes:

> [T]he original meaning of the words "liberty" and "freedom" was not absence of constraint, but enfranchisement. To be free, to enjoy liberty, was—in the original sense of the terms—to be admitted to effective participation in the affairs of the family, the tribe or the nation. And meaningful participation requires that one accept, and act through, the forms of procedure that make possible a functioning whole.[24]

But genealogists deal with dilemmas: which marriages and which spouses are legitimate, and under whose laws? More fundamentally, who is a husband, a child, a wife? To help answer such questions in Hawaii, I suggest the presence of a collected work heretofore largely untouched by archivists and researchers other than lawyers and law librarians. I mean those volumes entitled the Hawaii Reports, available in law libraries throughout the country, and containing those cases decided by the Hawaii Supreme Court since 1847. Within these volumes lies an information system full of hidden treasures in the form of appellate opinions on divorce, marriage, paternity, adoption, probate, wills, immigration, naturalization, and descriptions of family relations, peoples, places, events, ships, ports, and laws—the study of which might open doors and assuage frustrations where all else has failed. In addition, there is the added factor that the cases are narrated in story form with characters who are not merely plaintiffs or defendants, or slots on a pedigree chart, but are three-dimensional players in a drama, living and present before the court (and the imagination!) at the time.

In these cases, seen as history, the dicta are clearly more interesting, and usually more significant, than the holdings. The casual comments and observations of the judges, their references to briefs, and their deference to still-existing customs and usages, all provide insight into the genealogist's problems. In the adversary process, where plaintiff and defendant clash in sharp litigation, the attorneys and friends of the court conduct painstaking research on the law, history, culture, tradition, pedigree, and circumstances, thus bringing into court the most balanced and exhaustive learning which can be arrayed on the issues. Courts are forums of learning and accuracy in this process, often as exacting and detailed as anything in academe, and surely more dramatic. In this way, the law is a conservator. In addition to these appellate opinions, there are trial transcripts, briefs exhibits and the like.

It has been the custom in the Hawaii Reports since the beginning for the court to designate the names and law firms of the attorneys on both sides of each case, either at the beginning or at the end of the written opinion. Many law firms and lawyers retain their records and files assembled during preparation for litigation--records valuable to the genealogist. Most state supreme courts also keep extensive libraries of the appellate briefs filed in cases argued before such courts, and these, if properly annotated, as most are, will provide additional rich mines for research. If they are "Brandeis briefs," that is, extensive and lenghthy studies devoted to supporting the legal theories presented, and chock-full of relevant historical, statistical, and sociological data, so much the better.

Furthermore, each volume of the Hawaii Reports has in the front a table of "Cases Reported" arranged alphabetically by the surname of both the plaintiff and the defendant in each case reported in that volume. In other words, each case is listed twice, according to its parties. In the back of each volume is an index of the cases according to subject matter, such as "divorce" and "husband and wife." Examples of both kinds of tables appear in Exhibits A and B to this paper. A researcher should begin by combing these tables for the surnames of persons similar to those he is seeking or indexing. There are also now developing several nationwide computer systems for legal research, access to which is by telephone line and which is patterned after the fashion of concordance search by work, phrase, topic, case name, key number, and all such methods commonly used by legal researchers. Such data basing now includes significant amounts of the national law reporting systems, as well as some state reporting systems. Furthermore, it is to be hoped that in the near future all volumes of the Hawaii Reports will be placed on microfilm and be made available to the worldwide branch library system of the Genealogical Society of Utah.

As every serious researcher knows, success means knowing a good librarian or two. As a genealogist, I would know my local law librarian. I would know how to use a law library. No other field is more minutely indexed or cross-referenced than the law, and there are a number of good books in print which can teach you all the special interests of treaties, international law, the law of foreign nations, and legal history. For some of the specifics on how this can be done, I refer you to a paper delivered at this Conference, entitled "Family History Resources: Court Records," by John D. Austin, Jr.

In conclusion, it seems that there is a final irony, that by looking back we look ahead; by seeking the collectivity we find the individual. To understand the full impact of the law on the development of multi-ethnic families in Hawaii is to understand more than just the law of multi-ethnicism, for we paint with a broader brush. It is really to understand the direct jurisprudential connection between that transaction of the barons and King John at Runnymede on June 15 1215; or that transaction that day near 1783 at Keaau on the Big Island, between Kamehameha the Great and the fishermen Naone and Ka-lau-a'i; and what happened in that transaction of 1954 among the American peoples when the United States Supreme Court announced its decision in Brown v. Board of Education.[25] From Magna Carta to Mamala Hoe to desegregation is quite an arch, but it circumscribes Hawaii and her races and their intermarriages. It suggests the larger image invoked by the word ohana, family.

For if due process, the law of the land, is anything, it is fraternal. It means doing all that the law can do to foster fraternity. It is calling into lively participation and enfranchisement every member of society, calling for contribution, for obligation, for equality, and for freedom.[26] Where fraternity goes begging. As former U.S. Attorney General Elliot Richardson reminds us, "there is no right without a corresponding obligation. . . We need to close the circle of rights and obligations, and in so doing, fill and complete ourselves."[27]

As we observe in our time the new race of men called Neo-Hawaiians, do we have the wit to see the same mystery as that in the parable of the loaves and fishes—not a dilution of races but a geometric multiplication? In an age of cloning, test-tube babies, and man-made bacteria, the most significant legal questions we can ask are: who are we? Where do we come from? Where are we going? There are new life forms afoot in the land, and as we try to understand who they are and what they mean, Hawaii will provide a pattern of liberality and accommodation for us all. In all of this, it would truly be a pity were brotherhood to turn

on the mere convolutions of the double helix.

Once upon a time, there was a Hawaiian man, keeper of the image of the god Kaili in Kohala, who made a canoe and places the image in it after Kamehameha the Great had conquered the islands and kapu was abolished. He wept over the god, saying, "O Kaili, here is your canoe, here is food, here is awa here is tapa; go back to Kahiki [our ancestral home]."[28] Then he set the god adrift, and it sailed, we suppose, to Kahiki and was never seen again. You and I do not have the luxury of going back. Like Janus, we may look back to get our bearings, but unlike Kaili, we may not go back. Rather, we find our direction in the closing words of a chant composed for the beloved chief Kupake'e of Ka'u, which says: "There is no going back. Our ways now are different. Only in childhood does one regret in secret, grieving alone. Look forward with love for the season ahead of us. Let pass the season that is gone."[29]

The optimism of that creed should serve us well as we approach the fable year of 1984, that by our commitment to better law and better social relationships we may prove George Orwell's vision to be but a dream, and that we may yet come to a day when the echo of our song will be nothing but "sweet freedom's song."

NOTES

[1]Carl Sandburg, "Prologue," The Family of Man, by Edward Steichen for the Museum of Modern Art (New York: Maco Mag. Corp. 1955).

[2]Chief Justice William L. Lee, Hawaii Supreme Court, quoted in Meiric K. Dutton, "Courthouse Marks Its Centennial," Haw'n Hist. Soc. Ann. Rep. 61 (1952), p. 15.

[3]Romanzo Adams, Interracial Marriage in Hawaii (New York: Macmillan Co., 1937), p. 317.

[4]Will and Arial Durant, The Lessons of History (New York: Simon and Schuster, 1968), p. 15.

[5]David Malo, Hawaiian Antiquities (Honolulu: Bishop Museum Press, 1976), pp. 57-58, 73, 80.

[6]Walt Whitman, "By Blue Ontario's Shore," Leaves of Grass XV, 6-9

[7]Sir Henry Maine, Ancient Law, quoted in William R. Bishin and Christopher D. Stone, Law, Language, and Ethnics (New York: Foundation, 1972), p. 242.

[8]Laurence H. Tribe, "Technology Assessment and the Fourth Discontinuity: The Limits of Instrumental Rationality," So. Cal. L. Rev, 46 (1973), p. 617.

[9]Learned Hand, review of Benjamin Cardozo's The Nature of the Judicial Process, Harv. L. Rec. in 35 (1921-22), p. 479.

[10]See, e.g., the discussion in Michael A. Town and William W. L. Yuen, "Public Access to Beaches in Hawaii: 'A Social Necessity,'" Hawaii Bar J., 10 (1973), p. 5.

[11]Henry E. Chambers, "Constitutional History of Hawaii," Johns Hopkins University Studies in Historical and Political Science, 14 (1896), p. 7.

[12]Loving v. Virginia, 388 U.S. 1, 87 S.Ct 1817, 18 L. Ed. 2d 1010 (1967), reversing the holding of the trial court which had stated: "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix."

[13]Daniel Agnew, "Unconstitutionality of the Hawaiian Treaty," Forum, 24 (1897-98), p. 461.

[14]Walt Whitman, "Great Are the Myths," Leaves of Grass, I. 4.

[15]Durant, p. 20.

[16]E. S. Craighill Handy and Marry Kawena Pukui, The Polynesian Family System in Ka-u, Hawaii (Japan and Vermont: Tuttle, 1978), p. 232.

[17]Psalm 137:4.

[18]Adams, p. 228.

[19]See, e.g., Kini Maka v. Ah Fai, 3 Hawaii 631 (1875).

[20]United States v. Lee Sa Kee, 3 D. C. Hawaii 265, 270 (1908).

[21]From the song, "Waimanalo Blues," originally "Nanakuli Blues," quoted as recorded by Country Comfort on Trim Records, Honolulu, 1975.

[22]Isaiah 66:8.

[23]Isaiah 2:4; but see Joel 3:10.

[24]Lon L. Fuller, "Freedom As A Problem of Allocating Choice," Proceedings of the American Philosophical Society 112 (1968), p. 101.

[25]347 U.S. 483 (1954). See also, N. B. Emerson, "Mamala-Hoa," Haw'n Hist. Soc. Ann. Rep., 10 (1903), p. 15.

[26]Frank I. Michelman, "Formal and Associational Aims in Procedural Due Process," Nomos ("Due Process"), 18 (1977), p.126; Edmund L. Pincoffs, "Due Process, Fraternity, and a Kantian Injunction," Nomos ("Due Process"), 18 (1977), p. 172.

[27]Elliot Richardson, "On Behalf of Obligations," Lincoln L. Rev., 8 (1973) 109.

[28]Martha Beckwith, Hawaiian Mythology (Honolulu: University Press of Hawaii, 1979), p. 29.

[29]Handy and Pukui, p. 85.