

## ***HO'OLOHE'OLE: Not Heeding, Unreceptive, Disobedient.*<sup>1</sup>**

**By Kai Ana Makaanoe Kaikaulaokaweilaha Kaululaau**



83 Native Hawaiian artifacts extracted from the U.S. Military in 2002

### **Abstract**

*"If there is anything Native Hawaiians will come to know it's eviction. They evict us when we're alive, they evict us when we're dead. We are never safe. Our responsibility is to protect our sense of place."  
- Punahale Lerma*

As the U.S Military continues to excavate Native Hawaiian ancestral remains and incarcerate protestors, anger, division and resentment intensify toward the state and federal government as the “digging up and showcasing” of Native Hawaiian *iwi* (bones) only remind us of the blatant and wanton disregard of Kanaka Maoli<sup>2</sup>'s past. For what is sacred to an indigenous people has now become a commodity, a vain trinket of power – false control. How much more must be wrongfully dug up? Only to be made a show, mis-catalogued, stolen and sold to the highest bidder. The goal of this essay is to accurately portray the indispensable duty of civil disobedience regarding the safeguarding of Kanaka Maoli's ancestral remains, wrongfully excavated by the U.S military.

### **Introduction**

In the past 200 years, with the surge of colonialism and military occupation, Hawaii has undergone tremendous and drastic changes in its land development. While such increased expansion continues at present day, numerous unmarked burial sites are being discovered; as an effect, many of these sites are being robbed, nonconsensually excavated, or, in some cases, completely built over. Despite the fact that Native Hawaiians strongly believe that caring for *iwi* (bones) ensures the continuity of both spiritual and family life as well as the preservation of culture – such beliefs and values continue to fall on deaf ears. The objective of this discourse is to assess the justification of Ho’olohe’ole – of civil disobedience regarding the conservation of Kanaka Maoli’s ancestral remains iniquitously unearthed by the U.S military. This writing will be 1) a preliminary of the Hawaii State Supreme Court case *Hui Malama I Na Kapuna O Hawai’I Nei (Hui Malama) v. John Dalton (secretary for the U.S Navy) and Bernice Pauahi Bishop Museum (Civil No. 94-00445 DAE)* that will provide a detail of the various issues within the excavation process that escalated in tension and division amongst the U.S Military and various Native Hawaiian groups. 2) Examine the actions taken by the Native Hawaiian group Hui Malama and their stated justification of non-compliance toward the State of Hawaii’s Supreme Court, the U.S Navy and the Bishop Museum, in order to assess non-violent civil disobedience and its corrective use in the management of both state and federal policy.

**Preliminary of Hui Malama I Na Kapuna O Hawai’I Nei v. John Dalton (secretary for the U.S Navy) and Bernice Pauahi Bishop Museum (Civil No. 94-00445 DAE)<sup>3</sup>**

In 1940, under Federal Executive Order and a Declaration of Taking<sup>4</sup>, the U.S. Navy seized 464 acres of Mokapu beach on the big island of Hawaii: publicly stating the “general objective” of the acquisition was to build a naval base. Years later in 1992, *iwi* (bones), wooden statues and other cultural remains were discovered - as an effect, the U.S Navy restated the “new general objective” of the land in possession was to excavate and provide an accurate inventory of the human remains and funerary objects (which were now to become property of the U.S federal government). In turn, the U.S Navy contracted the Bishop Museum in a “joint effort” of the excavation and store; however, during the unearthing process, many discrepancies relating to age, sex, physical attributes became visible; skeletal parts were erroneously commingled with other remains<sup>5</sup>; the skull of a Native Hawaiian woman was stolen and sold on eBay for \$12,500<sup>6</sup>; various Native Hawaiian burial objects once owned by the Bishop Museum were being trafficked and sold on the black market to various antique shops<sup>7</sup>. On June 14, 1994, the group

Hui Malama I Na Kupuna O Hawaii Nei (Hui Malama) filed suit against John Dalton, Secretary of the Department of the U.S Navy, asserting that all information and research related to the examination be destroyed and placed under seal in order to mollify the “shame and anguish felt by these ancestors for being exposed in such an offensive manner<sup>8</sup>.” The suit was filed for declaratory and injunctive relief under the Native American Graves Protection Act<sup>9</sup> (NAGPRA), Hui Malama contended that 1) In accordance to Native Hawaiian custom, human remains possess “mana,” a life force that encompasses the traits of a living person; therefore, mishandling of the remains has induced suffering and injury. 2) Under Hawaiian law, the government is obligated to protect all rights that are “customary and traditionally exercised” by Native Hawaiians that entails a spiritual guardianship of cultural items and ancestral remains.

On July 25, 1995, David Alan Ezra, United States District Judge for the District of Hawaii, concluded that 1) Under the Native American Graves Protection Act, human remains are classified as “cultural items;” under the classification of “cultural items,” human remains are objects or entities without attributes of life; therefore, such objects are not afforded legally protected interest. 2) Statutory language does not indicate a trust responsibility between the federal government and Native Hawaiians. 3) While certain actions such as theft, trafficking and illegal selling of remains has occurred by certain individuals – their behavior does not represent the U.S Navy hence, the U.S Navy is not responsible for their actions. Judge Ezra maintained that the U.S Navy’s publicly stated intent was to collect and gather accurate inventory of the cultural items and skeletal remains that entails the “need to learn for the future from the past<sup>10</sup>...” Moreover, in various past congressional hearings, Native American witnesses did not object to the scientific studies conducted (as long as studies had specific purpose and timelines), the U.S Navy has not given any “indication” of such indefinites, nor have any legitimate grievances been sufficiently proven. The court ruled in favor of the U.S Navy and determined that the examination of remains was properly conducted and subject to disclosure.

5 years later on February 26, 2000, as the digging, cataloguing and inventory of our remains continued - Hui Malama’s leader Eddie Ayau went to the Bishop Museum, signed out the 83 artifacts “on loan,” and secretly reburied them in various locations. Seven days later on April 5, 2000, Judge Ezra demanded that Eddie Ayau and Hui Malama provide a “the precise location of

each item loaned as well as the names and addresses of each person who know the exact location of the items<sup>11</sup>.” Eddie Ayau and Hui Malama were given 15 days to meet the imposed demands - the defiant leader refused. Judge Ezra lashed out against the group’s behavior as a “sabotage [of] the repatriation process... by hijacking the remains.” Additionally, the judge also criticized the Department of Hawaiian Homelands<sup>12</sup>, alleging that certain employees within that department knew where the artifacts are buried. A reprimand made by Judge Ezra to Eddie Ayau who stated, “What you did was not *pono* (good)... I want to do [this] in a sacred way, but one way or the other - these objects will come back to the Bishop Museum.” Ayau simply answered “There is nothing sacred about taking from the dead...” and was jailed indefinitely<sup>13</sup>. Nevertheless, the U.S Navy made two attempts to recover the “hijacked items” on April 27, 2000 and September 26, 2000: nothing was found.

Throughout history, as various societies and cultures around the world have honored their dead in their own particular way - for Native Hawaiians, the death of family members was profoundly entrenched into our everyday life. Honoring and burying our dead reflects expressions of love and respect, as well as expressions of sorrow and deep sense of loss. The bones of our ancestors are the very veins sealed into a land we fight to preserve because it links us to what was lost: a legacy, a wisdom passed. The ancient remains of our ancestors are the Mana (energy) that comfort us in our grief, direct us when we are lost, calm us in our moments of chaos or confusion. They guide us in our present, and are bonded to our future thus reflecting the common threads we hold not only in our sense of place, but throughout humanity as well. In this and through this - joint efforts between Native Hawaiian groups, various Native American tribes and U.S Congress worked to mutually write, mutually support and mutually establish The Native American Graves Protection Act to ensure that such values were to be protected, preserved and kept sacred; such federal policy also established a commitment that illegal digging and outright grave robbing will no longer occur as it did in the past.

While the initial Declaration of Taking of 1940, was to build a naval base to secure homeland protection. Out of complete and utter self-interest, the Declaration of Taking was restated to “excavate and compile an accurate inventory of the human remains and funerary objects...” without any type of justification whatsoever. Despite the fact that Congress enacted the Native

American Graves Protection Act on November 16, 1990 - the process of excavation at Mokapu Beach still continued. As an effect, the mindful and judicious effort in constructing such shields of protection, has become an inverted, loose and convoluted justification that entails the digging of ancestral remains “to learn for the future from the past...” The nonconsensual digging, tagging, stealing and selling of ancestral remains *was* and *is* a defilement, a vile and gross act carried out without slightest consideration, or further question of how the descendents of these remains - the Native Hawaiians of present day have to say. Eddie Ayau and the Hui Malama group saw this, (along with many others) took the necessary steps, rose to the responsibility of their actions and followed through with the consequences of such “hijackings.” But the heart of the matter lies in this, while incarceration was carried out: what Judge David Alan Ezra considered a hijacking, a disobedient act, violation of law or not-heeding is essentially a response to values continually ignored, the response to repeated insult, the response to wrongful imposition of vain power and vain will, the response to a blatant disregard to policies mutually established – *Ho’olohe’ole*.

### **Dynamics of Civil Disobedience and the Actions of Hui Malama I Na Kupuna O Hawaii Nei**

While “The State” may minimize some exploitation, the rise of economic or military self-interest often gives rise to institutional corruption, the bending of values, or even suppression of laws established that wrongfully call certain “facts” or realities into question. As an effect, policies that stem from the certain facts or realities “in question,” often become insufficient, prioritized or reinterpreted thus converting into a suppression of history - a conspiracy of silence. This conspiracy of silence becomes a concealment of truth and history of injustices because it deprives citizens of corrective acknowledgement, resolution or more importantly – the internal self-healing needed for pragmatic resolve. Moreover, the dynamics behind such concealment, blatantly and wantonly ignore the values of a particular culture; it deteriorates the very ethos behind the mutual meetings of others and respect for each other’s differences which lies at the heart of corrective and fruitful societal (as well as cultural) progress. Additionally, those who continue to negotiate and comply in and through such terms of institutional corruption or self-interest ultimately contribute to the perpetuation of the corruption and self-interest by ignoring or betraying the particular values of concern. Fundamentally, such systems of enactment are created

and maintained in order to implant and instill fear: fear of losing one's recognition, fear of the military's "superseding" coercive action; fear of losing more than what has already been lost: the spirit and identity of one's culture and way of life. Subsequently, this mistranslates individuals of the state into a class of "subordinates" or "infidels" by coercively rendering them incapable of resisting "State Power" thus making such procedures of demoralizing subordination unworthy and undeserving of citizen allegiance. Accordingly, civil disobedience becomes a sacred duty when the state has become prioritized by economic or military self-interest, a conspiracy of silence, particular histories or values suppressed. It becomes pragmatically indispensable to the ethical action of recognition and deliverance regarding injustices committed in the past because it enacts a stand against chronic self-interest.

While some may contend that civil disobedience is a breach of law and policy, where an individual is either "*for or against the state...*," or "*loyal or disloyal to the state, institutions or communities it entails...*;" Conversely, it must be further elaborated that when the body of politics or its laws and interpretations thereof, become unreliable or inadequate to the fidelity of purpose - they essentially do not represent the will of the people, they represent the self-interests of "the few and elite." To illustrate, why wasn't the U.S Navy's "restated objective" not collaborated more thoroughly with state or local entities or statutes such as State Statute, Chapter 6E<sup>14</sup>, the Burial Sites Program or Act 306 that provides a process to protect the resting places of Hawaii's dead? While the federal government (or its institutions such as the U.S Navy) may have a superseding authority over state or local entities, does this validate the ignoring of laws that reflect the local values of our islands? Or was all of this overshadowed by the *monetary value* of such priceless artifacts? If such interests entail the justification of accumulated revenue through the *breaching*, bending and twisting of both law and interpretation, then such interests fundamentally reflect the *extent* of unscrupulous actions the ruling few are willing to carry out in order to further their yield. Moreover, initial civil compliers of law such as Hui Malama actively participated in various joint efforts to establish and act in accordance with federal and state laws such as National Museum of the American Indian Act<sup>15</sup> (NMAIA) and the Native American Grave Protection and Repatriation Act (NAGPRA)<sup>16</sup> - the court wrongfully ignored or refused to consider this factor. By demonstration, while Hui Malama's actions reflect a primary adherence

to civil obedience and willing conformity to laws set, their justified civil disobedience also becomes the assertion of a right in which law is (or should be) extended, yet unfairly denied.

But crucially, in the light of civil disobedience, even Gandhi strongly asserted: “*violence breeds violence...Pure goals can never justify impure or violent action...*”<sup>17</sup> that ruminates as: while the means may loosely be construed as “just means,” such means are, for all intents and purposes - everything. While violence enacted even in the most ethical of causes may bring some success in the short run, such actions fundamentally betray a confidence that peaceful reform is possible. Such actions reinstate the thought that recognition or reform is (or may be) possible if and only if we enact violent measures: such measures entail the physical beating or possible killing of individuals, verbal attacks, non-consensual enforcement, manipulation, to threaten, to violate, to damage, brute force or “*any and all actions that cause pain and suffering to the person I impose it upon in order for me obtain that which I ask for or a cause in which I wish to further....*” such actions of violence also give rise to skepticism not only to the “act of disobedience” itself, but the character and ethos of the civil resister as well. Essentially, the “strength to fight” lies in the demonstration of both civility and humility as the integral means of showing respect toward others while maintaining the sole purpose of non-compliance to the unjust law in and of itself. Upon this, non-violent civil disobedience internally as well as externally challenges both the civil resister’s honesty of purpose and their capacity in translating the ethical issue at hand into a principle of compelling enactment. Therefore, his strength indispensably lies upon the correctness of his position that can never be put down or questioned regardless of the hardships that lie before him.

For disobedience to be civil and ethical, it is a movement that is open and cautious - it implies discipline, mindfulness and care. When such acts are carried out in mindfulness and care, they are in turn evolved into a courage of conviction, a brave trust and belief in the corrective reform that *is not* and *cannot* be fabricated or manufactured by “superseding rule” or coercion. Thus, in the case of non-violent civil disobedience, while one may surrender the will to react in a violent manner, one must *not cooperate* with the rule of injustice; but most importantly, if the civil resister has any “*property in their possession as a trustee, they will relentlessly refuse to surrender it.*”<sup>18</sup> Moreover, while the civil resister may suffer to some degree because of their

non-compliance, they are more than willing to accept the consequences for their actions because they act upon the valor of principle to stand against such injustices systematically imposed and push for nothing less than ethical responsibility, ethical accountability and ethical resolve. In turn, the civil resister becomes answerable and conscientious thus giving rise to adherence, reform and transformation of transcendence to truthful solutions regarding the matter at hand.

Such transformations of accurate, honest resolution lie in the edification of both culture and values that are consistent and impeccable demonstrations of protest *against* what is one-sided thus in turn *leading* others by unswerving, firm *example*. Such transformations become revolutions of proper reform because they reflect the coherent and harmonious elements of the society in order to bring about ethical change. Such transformations derive their strength from within and should never lose hope, so long as there is the slightest ground left for perseverance - in itself and for itself. In the case of edification, those who are our present: Native Hawaiians today both young and old, are of the very *line* and reflection – they are the eyes of our ancestral past looking into the present and toward our future. Their stories are the narratives of past; their actions of defense regarding our land, culture and iwi (bones) is a protection, a preservation of knowledges long ago. They are guided by the sealment of our ancestral remains - the remains that nurture, cultivate and support our land, our identity our very way of life. Through this lineage, they are the very descendents of those of the past that echo hope, reform and change in our policies – but most importantly, they reflect our infinite and inherited consciousness. Mahalo.

## **Bibliography**

Dalton, Dennis (1996) – *“Mahatma Gandhi: Selected Political Writings,”* Hackett Publishing Company, Inc. Indianapolis/Cambridge. 169 Pages

Merton, Thomas (1964) – *“Gandhi on Non-Violence – Selected Texts from Mohandas K. Gandhi’s Non-Violence in Peace and War.”* New Directions Publishing Corporation. New York, New York. 83 Pages.

Hui Malama I Na Kapuna O Hawai’I Nei v. John Dalton (secretary for the U.S Navy) and Bernice Pauahi Bishop Museum (Civil No. 94-00445 DAE). 894 f. Supp. 1397,\*; 1995 U.S Dist. LEXIS 10632.\*\*

## Notes

---

<sup>1</sup> *Ho'olohe'ole* in the Native Hawaiian language means: not heeding, unreceptive, to disobey - a defensive action in the face of injustice. But most importantly, *Ho'olohe'ole* is about getting to the root and understanding of why such disobedience, such noncompliance, such non-receptiveness becomes paramount because it enacts a stand against injustices which remain ignored. This essay is dedicated to those who continue the struggle regarding Native Hawaiian rights, armed with the sincerity, humbleness and integrity to do what is right and not heeding what has been systematically imposed upon an indigenous people. Aloha.

<sup>2</sup> Kanaka Maoli in Hawaiian means "people of the land." The term has grown increasingly preferential to Native Hawaiians with aboriginal blood quantum as those with no aboriginal blood quantum have begun to identify themselves as Hawaiian or even Native Hawaiian as such "Native Hawaiians" were born on the islands.

<sup>3</sup> *Ibid*

<sup>4</sup> § 3114. Declaration of Taking. 40. U.S.C State Statute 3116 (Eminent Domain)

<sup>5</sup> Hui Malama I Na Kapuna O Hawai'i Nei v. John Dalton (secretary for the U.S Navy) and Bernice Pauahi Bishop Museum (Civil No. 94-00445 DAE)

<sup>6</sup> Pang, Gordon Y. K (2005)- Honolulu Advertiser. November 4, 2005. "Skull Offered on eBay" <http://www.thehonoluluadvertiser.com/article/2005/nov.04/in/fp511040364.html/?print=on>

<sup>7</sup> <http://www.mooleo.com/huimalama-shocked.html>

<sup>8</sup> Hui Malama I Na Kapuna O Hawai'i Nei v. John Dalton (secretary for the U.S Navy) and Bernice Pauahi Bishop Museum (Civil No. 94-00445 DAE)

<sup>9</sup> Native American Graves Protection Act – 104 Stat. 3048 Public Law 101-601 – November 16, 1990.

<sup>10</sup> Hui Malama I Na Kapuna O Hawai'i Nei v. John Dalton (secretary for the U.S Navy) and Bernice Pauahi Bishop Museum (Civil No. 94-00445 DAE)

<sup>11</sup> *Ibid*

<sup>12</sup> A state department created to preserve and distribute homestead land to Native Hawaiians.

<sup>13</sup> Pang, Gordon Y. K (2005)- December 21, 2005: "Hawaiian Group Defies Judge's Order About Artifacts" & September 2, 2005: "Judge Orders Hawaiian Artifacts Returned"

<sup>14</sup> <http://www.hawaiiiparalegal.org/histypreserv1.htm> ;

[www.hawaii.edu/ohelo/statutes/HRS006E/HRS006E.html](http://www.hawaii.edu/ohelo/statutes/HRS006E/HRS006E.html)

- The law provides penalties of up to \$10,000 per burial for unauthorized alteration, excavation or destruction of unmarked burial sites. Equipment used in any violation may be confiscated by the State of Hawaii.
- The amendments to Chapter 6E established procedures to be followed whenever human skeletal remains are encountered inadvertently, usually through development activities or through natural erosion.
- When remains are encountered, all work in the immediate area is stopped and the police are notified as well as the Department of Land and Natural Resources. A qualified archaeologist then examines the burial context to assist in determining jurisdiction.
- If the remains appear to be over fifty years in age since death and interment, a likely unmarked burial site, the DLNR, in consultation with the affected landowner, the island burial council and any identified descendants, determines whether the burial can safely remain in place where discovered or whether relocation may be needed.

<sup>15</sup> P.L. 101-185, (Nov. 1989)

---

<sup>16</sup> P.L. 101-601, (Nov. 1990)

<sup>17</sup> Merton, Thomas (1964) – “*Gandhi on Non-Violence – Selected Texts from Mohandas K. Gandhi’s Non-Violence in Peace and War.*” New Directions Publishing Corporation. New York, New York. 83 Pages.

<sup>18</sup> Dalton, Dennis (1996) – “*Mahatma Gandhi: Selected Political Writings.*” Hackett Publishing Company, Inc. Indianapolis/Cambridge. (Page 82, paragraph 1, lines 3-5.)